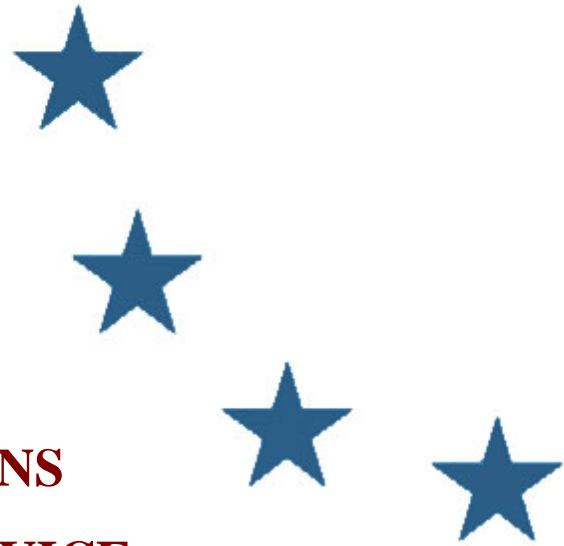


**ANALYSIS ON THE
INTERGOVERNMENTAL AND
SUPRANATIONAL CONSTRICTIONS
ON THE EXTERNAL ACTION SERVICE**



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ANALYSIS ON THE INTERGOVERNMENTAL AND SUPRANATIONAL CONSTRICTIONS ON THE EXTERNAL ACTION SERVICE

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Statutory Declaration

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<15,466> (including references and abstract)

Abstract

In the first period of the 2000s every commentator noticed and discussed the lack of consistency and coherence in the limited external actorness of the EU. Thus the Convention for the Future of Europe introduced its initiative to create a European service to enhance the aspects of coherence and consistency in the external action. This proposal followed the demand of the Laeken Declaration of greater coherence in the European external relations. The Convention introduced the idea of an External Action Council (in the future the Foreign Affairs Council), the institution of a “*one joint service*” and of a European Diplomatic Academia. After the failure of the Constitution that followed, the European Council called for a new version of the Treaty, it will later become the Lisbon Treaty.

The intergovernmental conference held in Lisbon on 18th-19th October 2007 was an attempt to increase the external capabilities of the European Union through the introduction of several changes: the institution of a permanent President of the European Council, the reinforcement of the figure of High Representative for Foreign Affairs and Security Policy (HR), the establishment of the European External Action Service (EAS) and the new role of the European Parliament in the conclusion of international agreements. Even if the European External Action Service was founded in the Summer of 2010, actually the development of a network of Delegations followed the European process of integration from the beginning. The new European diplomatic service was founded as a *sui generis* organ (Art. 15 and 27 TEU). According to the original design of the intergovernmental conference the new service shall assist the High Representative and the European Union, and in the meantime it shall be more self-reliant than the classic Commission General Directorates (DG) and the Committee of the European Council (EC). A symbol of this autonomy is the EAS Headquarter situated in the Triangle building between the Belaymont and the Justus Lipsius.

According to the intent of the Lisbon Treaty the new service should work as a “bridge” or an “arch” between the Council and the Commission, integrating their Directorates that operate in the international system. Thus the EAS will be composed 1/3 of European Commission officials, 1/3 staff from the Council and 1/3 diplomats from the national ministries of foreign affairs. Furthermore the service could employ Specialized Seconded National Experts (SNEs) in particular circumstances.

Although the necessity to enhance the external coherence of the European Union is commonly acknowledged, the national governments and the European Commission still hold strong grips on many EU external competences. The Commission and the Council are the

main actors in the decision-making process of issues such as security in the European neighborhood and relations with the new trade partners (e.g. the BRICS countries). Concerning security issues, European international security affairs are still an inter-governmental matter.

This dissertation will first analyze the historical evolution of the European Diplomatic Service, thence it will discuss the incongruity deriving from the exclusion from the EAS of a significant policy, as the external aspects of Common Commercial Policy (CCP). Finally it will analyze the present organizational issues in the planning of European operations affecting external security.

In my opinion the actual External Action Service is still a constrained body between the intergovernmental (the Member States) and the supranational (the Commission) powers. In fact I believe that some Directorates of the Commission (in particular DG Trade) by preserving their competences in significant external matters (e.g. commercial issues), prevent the development of the EAS.

I thank Mr. Mikko Huttunen, First Counselor and Legal Officer in the EU Mission to the WTO. In the course of the preparation of a paper for the College of Europe, Mr. Huttunen kindly answered my questions regarding the role of the EAS in the Genève Mission with a focus in the field of trade.

Keywords

European Union

European External Action Service

Actorness

Coherence and Consistency

Common Foreign and Security Policy

National Diplomatic Services

External Security

Table of Contents

Statutory Declaration	iv
Abstract	v
Keywords	vii
List of Annexes.....	x
List of Abbreviations.....	xi
1 Historical Evolution.....	12
1.2 The beginning:	13
1.3 The effects of the Convention of Lomé on the representation of the European Communities:	14
1.4 The new “Annex X” to the Staff Regulations:	16
1.5 Fall of the Wall. A further phase of expansion:	17
1.6 The jurisprudence of the European Court of Justice:	19
1.7 Before the new wave:.....	21
1.8 The Constitution of the European Union and the Lisbon Treaty	22
Conclusion of the Chapter:	24
2 The European External Action Service, the European Commission and the conflict of competences:	26
2.1.1 <i>The Head of the EAS:</i>	27
2.2 The Decision of the Council of the 26 July 2010:.....	27
2.3 The EU Mission to the WTO and the effects of the Decision of the Council: .	28
2.4 The division of competences between the EAS and the Commission in the EU Mission to the WTO:	31
Conclusions of the Chapter:	33
3 The EAS and the European Union Foreign and Security Policy	34
3.1 The impact of the EAS on the external coherence and consistency	35
3.1.1 <i>The issues of coherence</i>	35
3.1.2 <i>Efforts to develop a common external security policy: the European Security Strategy:</i>	37
3.2 The EU management of security threats:.....	39
3.2.1 <i>The organization of a CSDP operation:</i>	41
Conclusions of the Chapter:	43

4	General Conclusion	45
	Bibliography.....	48
	ANNEXES	51

List of Annexes

Annex 1 – The EU’s actors in external relations after the Lisbon Treaty.....	49
Annex 2 – The Permanent Mission of the EU to the WTO, Organization Chart.....	50
Annex 3 – The Transfer of Staff from the Commission and the Council to the EAS...	51
Annex 4 – The Institutional Structure of the EAS.....	52

List of Abbreviations

ACP	African, Caribbean and Pacific Countries	EULEX	European Rule of Law (Mission)
CFSP	Common Foreign and Security Policy	EUMS	European Union Military Staff
CivCom	Committee for Civilian Aspects of Crisis Management	FEDOM	Fond européen de développement d'outre mer
CMC	Crisis Management Concept	HR	High Representative for Foreign and Security Policy
CMCO	Civil-Military Coordination	IGC	Intergovernmental Conference
CMPD	Crisis Management and Planning Directorate	PRC	People's Republic of China
CONOPS	Concept of Operation	SALW	Small Arms and Light Weapons
CPCC	Civilian Planning and Conduct Capability	TEU	Treaty of the European Union
CSDP	Common Security and Defence Policy	TFEU	Treaty on the Functioning of the European Union
DG	Directorate General	UNSC	United Nations Security Council
DG DEVCO	DG Development and Cooperation	US	United States
EAC	European Agency for Cooperation	UK	United Kingdom
EC	European Commission	WTO	World Trade Organization
EAS	(European) External Action Service		
ECSC	European Coal and Steel Community		
EEC	European Economic Community		
EP	European Parliament		
EU	European Union		
EUFOR	European Force (Mission)		

1 Historical Evolution

The European Commission, since its establishment, has always aspired to acquire the status of effective actor in the international system. Actually the Commission policies constitute a substantial part of the EU external affairs. The main tool in the implementation of these policies was a network of Commission Delegations. Their slow evolution and widening took 40 years of history, with sharp peaks due to historical events as the decolonization process or the fall of the Berlin Wall. In July 2010 this network of Delegations was included in the newborn European External Action Service (EAS), depriving the Commission of an important tool for the implementation of its policies. Nevertheless the Commission welcomed the new service, in reason of the EAS aim to enhance the external actorness of the European Union as a whole. In 2011 the network finally counts 165 Delegations accredited in host countries and in international organizations.

Even if the European Union policies have by now a global diffusion, the ability of the Commission to operate abroad is greatly limited by the unwillingness of the member national governments to create a coherent and consistent response to the foreign demand of a major EU activity. The national governments have often failed to co-ordinate their foreign policies. For example, when relating with external powers as Russia and the United States or during security crisis, the European governments have been disappointing in matters of consistency and coherence. Nevertheless the Member States reluctance to put in practice a common European security policy have not spoilt the Commission reputation. The EU Delegations are well considered abroad for the detailed information provided on EU policies and for the correct implementation¹. However, the Commission has been unsuccessful to “hit” externally according to its “weight”. Following the principle of discreet diplomacy, its actions in the international system were not proportionate to its capability². Thence the Commission and the Member States agreed to establish a new body able to create coherence among the external policies of the European Institutions.

The 2009 Lisbon Reform surely enhances the external capabilities of the European Union equipping it with an official Diplomatic Service similar to a national ministry of

¹ Spence David, “*The Commission’s External Service*” in David Spence and Edwards Geoffrey, *The European Commission*, London 2006, 3rd edition, p. 410

² Ibid

foreign affairs, even if the Commission is so deprived of its network of Delegations. The reticent Member States preferred to establish a new institution operating between the Council and the Commission, providing it with a certain grade of autonomy.

Even so the European Commission was able to preserve its responsibility on the crucial external trade policy, keeping its role as competent institution towards the Delegations in all matters regarding the CCP. In this way there are no winners, since the Commission and the Council have lost part of their staff and of their role in policies having external effects. In the meantime the EAS is still a developing body with no competence in external trade. Furthermore it has to follow the decisions taken in the Council or in the Commission.

1.2 The beginning:

The Lisbon Treaty did not “nip & cut” a new “Frankenstein” creating the External Action Service, since the development of a network of Delegations followed the European process of integration from its start. The Treaty of Paris established on 18th April 1951 the European Coal and Steel Community (ECSC), and thus the need for a coherent external representation immediately emerged. The first step in that direction was the establishment in 1954 of an ECSC information office in Washington DC, headed by Mr. Leonard Tennyson (former Marshall Plan official), with the sustain of Jean Monnet³. Tennyson was later joined by Mr. Curt Heidenreich, the first European diplomat of a European Institution to be appointed outside Europe⁴. In that period the US accredited an ambassador to the ECSC in order to establish diplomatic relations⁵. The ECSC opened in addition a liaison office for South America in Santiago de Chile and in 1956 a full diplomatic Delegation in London⁶. In 1972 the Commission’s Delegation in Washington obtained the full diplomatic status from a legislative act of both Chambers of the Congress⁷.

A series of events in the 1960s triggered a further step in the evolution of the European Diplomatic System. Before the beginning of the process of decolonization, the Treaty of Rome (25th March 1957) had already included measures to associate the overseas countries and territories of the six founding nations (France, Netherland and Belgium in particular)⁸. This included a five year development fund managed by the Commission,

³ Ibid p. 14

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Ibid

⁸ Ibid

known by its French acronym FEDOM (corresponding to 580 mln ECU). To properly administer projects employing these funds the Commission needed to employ people in those countries. In fact the Commission used to employ directly “*contract teams led by a contrôleur technique from European engineering consultancy companies resident in the beneficiary country*”⁹. Even if the representatives could accomplish these projects, they were inadequate to deal with the now independent governments and so general issues emerged with the decolonization process. In the meantime several recently independent African countries established their diplomatic delegations in Brussels. The response of the Communities was the European Agency for Cooperation (EAC), funded by the Commission and composed mostly by its officials. These offices were mainly technical and concerned essentially development cooperation¹⁰. From 1965 and beyond, 21 offices of the EAC were established in the related countries “*in order to implement Community aid granted through the new European Development Fund and the Yaoundé Conventions (1966-75)*”¹¹. In the 1973 320 people were working in these offices, they were frequently previous colonial administrators or developmental officers from private sectors¹².

Whilst other Delegations were opened at the OECD (Paris) and Geneva, the office in Washington was converted officially into a Delegation. At the beginning of the 1970s a part of the European Commission staff (amounting to 150 persons) was working in more than 30 EC missions¹³. A primitive form of the European Diplomatic Service was finally operative¹⁴.

1.3 The effects of the Convention of Lomé on the representation of the European Communities:

The signing of the first Lomé Convention in February 1975 between the EC and the African Caribbean and Pacific (ACP) Countries had strong effects on the evolution of the European Delegations. The previous Yaounde Convention was founded in order to manage development cooperation, and it was based on an outdated “association” policy¹⁵ which was seen as a “new-colonial” strategy by many ACP states¹⁶. The Lomé Convention instead was focused on a higher political approach including not only the development cooperation but

⁹ Ibid

¹⁰ Ibid, p. 15

¹¹ Ibid, p. 16

¹² Ibid, p. 15

¹³ Ibid

¹⁴ Ibid, p. 20

¹⁵ Ibid

¹⁶ Ibid

also “matters as trade, regional integration and cultural cooperation”¹⁷. These new functions were beyond the mandate of the mere contrôleurs. Furthermore the figure of the “*Commission Delegate*” acquired a more representative role in the new agreement, with “*its functions settled in the Convention itself*”¹⁸. For example, similarly to the conventional diplomatic procedure, the designation of the new Delegate was part of the Convention, and the Commission’s representative had to control the correct implementation of the agreement¹⁹.

Similarly to the EAS system, the selection of new staff was expanded to include the Commission officials from Brussels and development specialists from the Member States, whilst the EAC kept its role of administrating the EC Delegations in the ACP states. New agreements between the European Communities and Southern and Mediterranean States, together with expanded responsibilities of the Commission in external trade policy, brought a growth of new Delegations in these countries and in the growing Asian economies. Further Delegations were opened in Japan and at the UN in New York (1976)²⁰. These missions were all administered by a new Directorate General of the Commission, the DG I, which evolved in the External Relations DG (Relex). This expansion was soon followed by a Commission review of the network which, once communicated to the European Council (1977), gave to the EC Delegation network the feature of a national diplomatic service. This review provided the main tasks for the Delegations, among which: (i) providing advice and support for the EC officials travelling in that country; (ii) operating as a contact point for those willing to communicate with the EC Institutions; (iii) giving available information on the EC policies and objectives; (iv) cooperating with Member State embassies or missions *in loco*, and informing them on the EC work; (v) encouraging cooperation between Member State missions.

DG I established that prior the opening of each Delegation, the Community and the host country would have agreed an “*accord du siege*”. These agreements were based on the 1961 Vienna Convention on Diplomatic Relations, conferring the Delegate a full diplomatic status. By 1980 fifty EC Delegations were established around the world, employing 1000 officials.

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid, p.24

In the meanwhile the growth of the EC external capabilities brought out several problems which persuaded the Commission to reform the Delegation network. First of all the growth of the EC competences and the birth of the “*European political cooperation*”, a forerunner of the Common Foreign and Security Policy (CFSP), enormously increased the responsibilities of the staff working abroad. Secondly, most of these officials began their EC career in order to work in Brussels and not to experience a livelihood out of Europe. So, not only were they not specialized as their national colleagues, but they lacked motivation to work abroad. Finally, because of the expansion of EC relations with other States and due to the relative early life of the EC Institutions, the new General Directorates were used to treat the Delegations as mere offices representing abroad their DG.

1.4 The new “Annex X” to the Staff Regulations:

Although the new reform of the Commission was comprehensive, it gave priority to the regularization of the ACP Delegations staff. Once negotiation with the Delegation officers and with the European Parliament was concluded, the Commission’s Staff Regulations were amended to include the staff operating in the Delegations. Following this significant innovation the EAC contract staff became officials of the Commission²¹. Thus the proposal was submitted to the Commission, to the EP and to the Council in 1986, becoming the new “Annex X” of the Staff Regulations of the Commission, which was finally approved in 1987²². As soon as the new provisions became effective in 1988 the staff of the Delegations was considered as Commission officials. Furthermore, in order to create harmony in the administration of the external structure of the European Commission, the Delegations would have been in future administered under “*commons statutory rules*”²³. A new directorate, DG IX, was in charge of the administration of the Delegations until 1993. DG IX took also control of the main functions of the EAC, which was relegated to the recruitment of specialized staff for the Delegations²⁴. The status of the Delegation officials was upgraded again, and new establishment agreements were concluded, even in ACP countries. At the end of this phase, several Head of Delegations were accredited with the status of Head of State and many Delegations were considered as common diplomatic missions²⁵. In spite of the efforts of the Commission, which was able to identify the main

²¹ Ibid, p. 33

²² Ibid

²³ Ibid

²⁴ Ibid, p. 34

²⁵ Ibid, p. 36

structural problems of its Delegation network, the Institution did not succeed to fully address these dysfunctions because of the increasing flourishing of new offices in the world²⁶.

Besides the Member States diplomatic services were not reduced as a consequence of the spreading EC Delegations. Actually the Member States had been able to preserve most of their external competences before the Amsterdam Treaty and the introduction of the Common Foreign and Security Policy. The EAS character of novelty instead has motivated the national governments to ensure that the European Commission would not increase its external powers. For the above reason, differently to the 1980s, the administration of the EAS is *ex novo* and internal to the service, and not part of a Commission Directorate.

The importance of the Delegations increased notably for the European institutions and the Member States, since they were relying on these missions for advice on: (i) *political cooperation* (e.g. a Member State embassy in a foreign country could contact the Delegation for their experience on EU matters and policies); (ii) *trade regulations* (regarding the EC trade policies); (iii) *development cooperation* (e.g. the Delegations in the ACP countries were the main actors concerning the conception, implementation and monitoring of the development projects); (iv) *supporting* the concerned Member State embassy with high-level visits and (v) *providing information* on the process of European integration²⁷.

1.5 Fall of the Wall. A further phase of expansion:

In the 1990s the European Delegation network had reached a global diffusion with the huge exception of the Soviet bloc. The fall of the Berlin Wall was not only a European political memento, but also the trigger for a further expansion of the Delegation network in East Europe. In response to the close political revolution, the European Commission initiated the TACIS (*Technical Assistance to the Commonwealth of Independent States*) and the PHARE (*Poland and Hungary: Assistance for Restructuring their Economies*) programmes in order to support the economic and political reforms needed in the Ex-Soviet Republics²⁸. New missions were accredited from the Czech Republic to the Kazakhstan²⁹. Some of these offices had a regional mandate (e.g. Ukraine) since the Commission Delegations were not accredited in all the States. The role of the Delegations that were opened in the East European Countries was not limited only to the representation of the EU institutions but more importantly they were in charge of the preparation of these Countries for their adhesion

²⁶ Ibid p. 38

²⁷ Ibid

²⁸ Ibid p. 39

²⁹ Ibid

to the European Union, mainly in the acquisition of the *acquis communautaire*. Moreover the EC Delegations operated as the operating eyes of the Commission in these countries, verifying the correct application of the reforming process before the adhesion to the EU.

Following this additional expansion of the network, the EC began to reconsider again the enforcement and the deepening of the functions of the Delegations. Actually the 1993 Maastricht Treaty constituted a further evolutionary step for the European Union external capabilities. Until then the role of the EC in the external relations was recognized and amplified mainly by the European Court of Justice (ECJ) in the 1970s (*Kramer, ERTA, Haegeman, International Fruit Company* and the famous *Opinion 1/76*). Nevertheless this process was reversed by the ECJ itself in the 1990s through a series of opinions specifying that the EC external capabilities were exceptional (*Opinions 1/91, 1/92 EEA, 2/91 OECD* and in particular *Opinion 1/94* on the WTO agreement)³⁰. This was probably also a reaction to the Delors Commission and to the increasing EC claims regarding its role in the international system.

The 1990s, during the Balkan crisis and the period of reforms in East Europe, seemed to herald a period of growth for the EU activeness, not only in monetary matters but also in the external affairs of the Member States. In response to this turbulent phase a further European integration was achieved through the creation of the European Union, established by the Treaty of Maastricht on three “pillars”. The European Communities constituted the *first* pillar of the European Union. The *second* pillar brought the novelty of the *Common and Foreign Security Policy* (CFSP), giving to the EU at least the pretext of being interested in external matters, such as the Balkan crisis. The *Police and Judicial Co-operation in Criminal Matters* was the *third* pillar. This peculiar division of the European Institutions represented the *dualist* nature of the EU, divided between the European supranational powers and the intergovernmental dimension created by the Member States and their representative institution, the Council³¹. Before the increase of EU competences the dualist nature was not evident since these two dimensions did not overlap. In the last two decades the increasing complexity of the international system (globalisation, regional crisis, rising new powers) amplified the EU competences and functions in the international arena. New policies have been prepared in the sphere of the CFSP (for example the European Security Strategy, December 2003) and the creation of the figure of High Representative for the

³⁰ Ott Andrea and Wessel Ramses “The Eu’s External Relations Regime: Multilevel Complexity In An Expanding Union” p. 19 <http://www.utwente.nl/mb/legs/research/wessel/wessel10.pdf>

³¹ Missiroli Antonio “Introduction: A tale of two pillars – and a Arch” in The EU Foreign Service: how to build a more effective common policy” European Policy Center Working Paper No. 28, November 2007

CFSP (Amsterdam Treaty) made the contrast between the supranational and intergovernmental dimensions stronger. Although during the 1990s the EC/EU external activity slowed down compared to the 1980s, on the other hand the two Treaties (Maastricht and Amsterdam) provided the EU with the institutions needed to take action in the international arena. Behind these reforms there was the visionary idea of providing the EU of institutions, in a first phase, as these will then identify all the necessary tools to transform the EU in an international actor. Nevertheless the Member States had some reservations on this expansion of the EU external capabilities. For the above reason the national governments began to resist the Commission assertions of more exclusive competence in matters perceived by the Member States as belonging to their national sovereignty (e.g. trade issues such as intellectual property and Foreign Direct Investments). This dichotomy between the Member States and the European Community/Union was extended to the Constitutional jurisprudence.

1.6 The jurisprudence of the European Court of Justice:

In the 1970s and in the 1990s the jurisprudence of the European Court of Justice (ECJ) intervened in the debate of the EC's role in external affairs. In the 1970s the Court of Justice of the European Communities extended the capabilities of the European Community in quite a few steps. Firstly the Court recalled the Community legal personality in the *Costa/ENEL* case. However the question of the objective legal personality of the EEC remained unanswered. Thence the ECJ recognized the Community competence to conclude agreements with third States (*ERTA* judgement of 1971). Although the competence to conclude international agreements was already allowed by the Treaty (Art. 133, external trade), the *ERTA* case provided the Community of the agreement-making competence, even if this was not explicitly present in the Treaty. Actually this capacity shall not arise only from the precise text of the Treaty, but *“flow from other provisions of the Treaty and from measures adopted, within the framework of those provisions, by the Community institutions”* According to the Opinion *“regard must be (given) to the whole scheme of the Treaty no less than to its substantive provisions”*. But the EC ability to conclude agreements became more loose when the ECJ Opinion 1/76 stated that *“whenever Community law has created for the institutions of the Community powers within its internal system for the purpose of attaining a specific objective, the Community has authority to enter into the international commitments necessary for the attainment of that objective even in the absence of an express provision in*

that connexion”³². The Court seemed to employ the argument that external competence was needed for the Community in order to attain its internal objectives³³. This principle of “*complementarity*” was used to justify the existence of an external competence as corollary of an internal competence³⁴. These implied powers were nevertheless limited by the successive Court sentences. Among them the most famous is the Opinion 1/94 which established, in the framework of the Uruguay round, that if the EC was exclusively competent to conclude agreements on trade in goods (Art. 133 EC Treaty), the conclusion of the GATS and TRIPS was a shared competence between the Community and the Member States. Furthermore the sentence established that “*save where internal powers can only be effectively exercised at the same time as external powers, **internal competence can give rise to exclusive external competence only if it is exercised***”. In fact the text of the Opinion establishes that “*where harmonizing powers have been exercised, the harmonization measures adopted may limit, or even remove the freedom of the Member States to negotiate with non-member countries. However an internal power to harmonize which has not been exercised internally in a specific field cannot confer exclusive external competence in that field on the Community*”. Thence the external competence of the European Community was limited to what we could define its internal activity. The EC had competence to conclude an external agreement only in order to reach an objective in a determined internal sector in which the Community had already exercised its exclusive competence. The same Opinion specifies that “*whenever the Community has included in its internal legislative acts provisions ... expressly conferred on its institutions powers to negotiate with non-member countries, it acquires exclusive external competence in the spheres covered by those acts*”. “*The same applies in any event, even in the absence of any express provision authorizing its institutions to negotiate with non-member countries, where the Community has achieved complete harmonization of the rules governing access to a self-employed activity...*” “*That is not the case in all service sectors, however, as the Commission has itself acknowledged*”. “*It follows that competence to conclude GATS is shared between the Community and the Member States*”³⁵. Truly the ECJ jurisprudence has been a strong and decisive protagonist in

³² Court of Justice of the European Communities (CJEC), Opinion of 26 April 1977, Opinion given pursuant to Article 228 (1) of the EEC Treaty, Draft Agreement establishing a European laying-up fund for inland waterway vessels, Opinion 1/76, in Reports of Cases before the Court. 1977, p. 741.

³³ Op. Cit Ott Andrea and Wessel Ramses p. 24

³⁴ Ibid

³⁵ Court of Justice of the European Communities, [06.06.2006]. Opinion 1/94. Available on <http://curia.eu.int/en/content/juris/index.htm>. Paragraphes 95 - 96 - 97 - 98

the development process of the EU external action. This has been expanded and limited in different periods by the European Court itself.

1.7 Before the new wave:

Differently from the jurisprudence of the ECJ court, the Amsterdam and the Maastricht agreements provided the EU, not only with competences derived by the meaning of the Treaty, but also with new tools to operate in the international system. The Common Foreign and Security Policy (CFSP) and the High Representative were both important changes in the evolution of the EU as an international actor. The CFSP was significantly reinforced by the Amsterdam Treaty which established the High Representative, role that was entrusted to Dr. Javier Solana for ten years. The EC Delegations became an important support for Dr. Solana's official and (unofficial) missions. In the 1990s a deep reflection was underway in the development of the European diplomatic service, in particular the Commission leadership began, after the constant widening of the Delegation network, to deepen the Delegation tools in order to carry out the tasks of the missions. For example Mr. Günther Burghardt was named at the lead of the DG IA, a new Directorate-General created by the Delors Commission and charged to strengthen and to make more effective and coherent the relations between the EU and third countries. The Commission dealt also with the issue of the necessary professionalization of the Delegations officials, in order to select a proper staff. As described above most of the European Delegations were composed by officers who applied to work in Brussels, in the framework of the European Institutions, and not to begin a career in the international relations with a high geographical mobility. For this reason Mr. David Williamson, former Secretary General of the Commission, produced a key document asking for the professionalization of the European diplomatic service³⁶. The report faced the necessity for the Commission to create an homogenous body of people willing to work overseas and ready to experience a long-life diplomatic career³⁷. Following this new administrative culture, the European Parliament passed a new important resolution in the year 2000, calling for a common (European) diplomacy and for a new College of European Diplomacy³⁸. This document, called 'Galeote report', was very welcomed by the European Commissioner for External Affairs, Mr. Chris Patten. In December 2002 the Commission

³⁶ Spence David Op. Cit. p. 53

³⁷ Ibid

³⁸ European Parliament resolution on the establishment of a common diplomacy for the European Union (2000/2006)INI, European Parliament 24 July 2000, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A5-2000-0210+0+DOC+PDF+V0//EN>

published a decision for an administrative reform, which aimed to consolidate the unification of the External Service, to provide a clarification of the functions of the Delegations, and to provide an effective career plan. The Prodi Commission rationalized the central services so that the External Relations Directorates-General (DG-RELEX) could focus on its external tasks. For example a new Directorate-General was set up to administer the worldwide network of projects for the development and cooperation between the EU and third countries, an important sector considering that the European Union is the major world provider of official development funds, accounting for around half of the total³⁹. I should say that this data refers to the European Member States considered as a whole. Whilst the Commission is usually the tool for the implementation of these funds, only part of its budget is employed in the resources directed to these countries.

The staff working in the Delegations was increasing as long as the Commission concluded new trade agreements with third countries, new members adhered to the WTO and new development projects were implemented. By the end of 2003 the European network of Delegations was employing a total of 5000 staff with offices accredited in 150 countries⁴⁰.

1.8 The Constitution of the European Union and the Lisbon Treaty

During the Prodi and Barroso mandates the Commission experienced new reforms, directed mainly to its management system. In the realm of the External Relations, Mr. Chris Patten and Mr. Claude Chêne (Director General for personnel and administration) conceived a new reorganization of the External Service, in order to promote its functioning. Mr. Chris Patten reform concerned particularly the management of the EC foreign assistance, reducing substantially the time needed to implement cooperation programs. This reform was defined “*deconcentration*”, involving a devolution of responsibility for the correct execution of foreign assistance programs⁴¹. Patten’s changes improved considerably the quality and the responsiveness in project management, and they “*ensured robust financial, technical and contractual management procedures in line with the best international standards of propriety and accountability*”⁴². A year after the management reform, a new internal report, concerning the network of Delegations, became available. The Chêne report introduced further measures to improve the functioning of the External Service. This document recommended that the Head of Delegations should not only represent the sectoral interest of

³⁹ Op. Cit. Spence David, p. 54

⁴⁰ Ibid, p. 56

⁴¹ Ibid, p. 54

⁴² Op. Cit. Spence David, “*The Commission’s External Service*” p. 410

a specific DG but the Commission as a whole. Furthermore this document reformed the staffing system of the External Service, in particular the administrative status of the officials working in the Delegations. These internal reforms were crucial for an effective EU External Service, making it more efficient or influential in the host States, but they could not make it the final instrument for an EU willing to be considered as an international actor. In order to achieve a diplomatic service at the same level of the national ministries of external affairs, the Member States had to bring the European Diplomatic Service to the next level.

The disapproving feeling that was expressed with the French and Irish “NOs” against the Constitution of the European Union did not really concern the EU External Powers, since most of the European people were positive towards an EU as international actor. Actually the Europeans have always recognized the lacks of the EU as an international power, in terms of actorness, coherence (which is opposed by the intergovernmental divisions) and consistency. Together with these processes of reorganization occurring in the Commission, the Intergovernmental Conference behind the Constitution Treaty tried to increase the European Union capabilities in the international relations. The Constitution of the European Union established that: *“The Union Minister for Foreign Affairs shall be one of the Vice-Presidents of the Commission. He or She shall ensure the consistency of the Union’s external action. He or she shall be responsible within the Commission for responsibilities incumbent of it in external relations and for coordinating other aspects of the Union’s external action”* (Art. I-28-4). And, moreover, the *“Union Delegations in third countries and at international organizations shall represent the Union. Union Delegations shall be placed under the authority of the Union Minister for Foreign Affairs. They shall act in close cooperation with Member States’ diplomatic and consular missions”*⁴³. For the first time the European Commission Delegations were recognized as European Union Delegations. This clearly means that the representative offices of the Commission will represent the European Union as a whole, and all its institutions.

With the Treaty of Lisbon the Union Minister for Foreign Affairs has become the High Representative for Foreign Affairs and Security Policy. The Lisbon Treaty did not amend the Art. I-28 (now Art. 18), which means that the main roles of the Union Minister have remained the equivalent responsibilities of the High Representative (the Lisbon Treaty modified exclusively the name). The Constitution (art. I-18) established that the Union Minister tasks will principally include: (i) the conducting of the Union CFSP and CSDP; (ii) the presidency of the Foreign Affairs Council to ensure the consistency of the EU external

⁴³ Ibid, p. 400

action; (iii) the responsibility “*within the Commission for responsibilities incumbent on it in external relations*”⁴⁴; (iv) the coordination of the other aspects of the Union’s external action. The major innovations of the Union Minister, differently from the old High Representative/Secretary General, have been the merger of the High Representative with the Commissioner for the External Relations, his/her assignment to the presidency of the Foreign Affairs Council and the charge of authority over the Union Delegations⁴⁵. The Constitution did not specify whether the Union Delegations formed part of the External Action Service or not, and this opened rooms for negotiations and discussions. Differently from the Constitution, the Lisbon reform gives more details on the Union Delegations, establishing that the “*Union Delegations shall be placed under the authority of the High Representative of the Union for Foreign Affairs and Security Policy*”, Art. 221 TFEU. Furthermore the last version of TEU specifies the role of the EAS, and it provides that the High Representative’s first task will be the formulation of a proposal for the Council on the organisation and functioning of the service. The Decision approved by the Council in July 2010 is the main document regarding the organization and the management of the External Action Service. This service is not an institution⁴⁶ but it constitutes a body autonomous from the EU institutions.

Conclusion of the Chapter:

Some analysts have defined the EAS as an “*arch*”, which links the two sides of the dichotomy, the Commission and the Council. Thence, if the two institutions turn out to be the new “pillars” of the EU External Action Service, who gets the role of cornerstone? The High Representative should be the right answer, but it is already evident that this new figure has too many responsibilities to sustain. Probably the intents of the Lisbon Reform are honourable, but the new system (which includes Commission, EAS and Council) which is in charge of the management and organization of the EU external affairs, seems weakened by the new reform, since now none of the three actors have enough power to truly operate in the international arena.

The EU is recognised externally as a legitimate negotiator, for example in the WTO General Council, where the European Union is a full member. Even in the United Nation

⁴⁴ Ibid

⁴⁵ Treaty Establishing a Constitution for Europe, Art. 328, Official Journal of the European Union, 16 December 2004, available at <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2004:310:SOM:en:HTML>

⁴⁶ The Art. 13 (par. 1) TEU provides an exhaustive list of the EU institutions which include: the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank, the Court of Auditors.

Security Council, according to the Art. 34 TEU, the High Representative may be invited to present the Union's position whenever the Member States, which sit on the UNSC, shall request it (this practice makes use of the Rule 39 of the UNSC Provisional Rules of Procedure).

The new provisions of the TEU seem to be in line with the slow evolution of the European diplomatic service, leading to a more coherent management and organization of the EU external action. Probably the principal intent of the Lisbon Treaty, concerning external action, was to create a body (the EAS) with several tasks which through its growth should succeed in acquiring more power and so actorness.

The following two chapters will analyse two different aspects of the EU external action: the Common Commercial Policy (i.e. external trade) and the Common Foreign and Security Policy (in particular the aspects concerning external security). The EU external capabilities operate in several crucial sectors (e.g. Aid, Development Cooperation and Global Environment) but common interest focuses on two policies: external trade and external security. More importantly the real power of an international actor determines itself in these two crucial sectors. In the last three decades the EU has clearly increased its external actorness (after all its supranational origin provides the European Union with a natural vocation to operate in the international system).

2 The European External Action Service, the European Commission and the conflict of competences:

In the following chapter I will focus on the Title V TEU, as amended by the Lisbon Reform. In particular I would evidence the changes introduced by the Articles 15 and 27 TEU which establish three new European organs: the High Representative of the Union for Foreign Affairs and Security Policy, the President of the European Council and the External Action Service (EAS). The European External Service is established by the Article 27 (3), the only part in the TEU where the new service is mentioned, together with the two declarations n° 14 and n°15 (which do not have a legal binding effect but constitute a statement of the Member States and act as aid to interpretation). The Article 27 (3) ⁴⁷ establishes that in fulfilling his/her mandate, the High Representative shall be assisted by a European External Action Service. The Article ⁴⁸ continues with the statement that the service shall be composed of officials of the Council (*for one third*), of the Commission (*for one third*) and of the national diplomatic services of the Members States (*for one third*). It also states that the EAS will work in cooperation with the diplomatic service of the Member States. The Article 221 (2) of the Treaty on the Functioning of the European Union (TFEU) states that the Union Delegations will work under the authority of the High Representative and they will cooperate with the Member States diplomatic and consular missions.

According to the article 17 TEU ⁴⁹ the functions of the High Representative do not include the external representation of the Common Commercial Policy, which is also an exclusive competence of the Union. Since this role is conferred to the Commission by the article 17 TEU ⁵⁰, the Commissioner of Trade Mr. Karel De Gucht is the man in charge of the representation of the EU in matters concerning external trade. The officials of the Trade Department (Directorate General - DG Trade) conduct the negotiations in the framework of the CCP, demonstrating their strong experience in this field. However the external role of DG Trade doesn't compromise the representation of the EU in the WTO and abroad, since the Trade officials have a strong knowledge in matter of negotiations and they have a better management than the EAS, which organizational structure is still a "work in progress". Moreover the EAS doesn't have a proper unit for external trade, and currently only the

⁴⁷ Treaty of the European Union, Brussels, entered in force the 1 December 2009

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

cabinet of Lady Catherine Ashton has an expert of external trade, Mrs. Renate Nykolai, previous advisor of Trade Commissioner Lord Peter Mandelson. Mr. Huttunen confirmed in his interview that many components of the Genève Mission are Commission officials “despite the e-mail address”⁵¹. Thence the decision of not including the external trade among the tasks of the EAS (leaving it to DG Trade) does not spoil the general external capabilities of the EU, but it seems to put some limits to the EAS task of increasing the consistency of the EU external action.

2.1.1 The Head of the EAS:

It is worth to briefly describe the division of tasks at the deputy level as finally developed by the HR Catherine Ashton. Truly the functioning of the EAS executive level is strongly related to the development of political coherence and consistency when the EAS is relating with the Council and the Commission. The objective of increasing the coherence is on the shoulders of the Corporate Body (headed by Lady Ashton and comprising the Executive Secretary General Mr. Pierre Vimont, the Chief Operating Officer David O’ Sullivan, and the two Deputy Secretaries-General Helga Schmid and Maciej Popowski). The Corporate Board is responsible for the functioning of the service, while a Political Board (under the HR) will ensure general coherence. The Political Board follows the political decisions of the Corporate Board through the person of the Deputy Secretary-General for Political Affairs Schmid. In the future the Political Board will operate as a bridge between the EAS and the Foreign Affairs Council and the General Affairs Council and the Council Secretariat and with the respective Commission DG through the Deputy Secretary-General Popowsky.

2.2 The Decision of the Council of the 26 July 2010:

Since the TEU has not given many indications, the High Representative Catherine Ashton was charged to prepare a proposal on the organization of the new service. This document had to be presented to the European Parliament and to the Member States for its approval. Whilst the deadline was fixed on the month of April 2010, the draft was presented for the first time to the European Institutions on March 25th 2010. It was immediately

⁵¹ Mr. Mikko Huttunen, Legal Officer to the EU Mission to the WTO, Genève, interviewed by correspondence on March 24- 2011

rejected by the European Parliament (EP) which refused⁵² the figure of a secretary-general whose roles included the organization of the archives of the EAS and his/her evaluating function on the “*operation of each Delegation*”, including “*financial and administrative audits*”⁵³. On April 22nd the High Representative presented a new proposal that took in consideration the observations of the EP.

On June 25th 2010 the Council published its decision developed on the basis of the HR proposal, following the compromise reached between the Spanish Presidency, the Commission and the EP (21 June). On July 26th the foreign ministers of the Member States gave their final approval. The Decision of the Council confirms that the EAS will have the function of supporting Lady Ashton as HR and Vice-President of the Commission. The same text also establishes that the new Service “*shall assist the President of the European Council, the President of the Commission and the Commission in the exercise of their respective functions in the area of external relations*”⁵⁴, thence the EAS is not only at service of the High Representative, but it will also assist the Commission and the President Van Rompuy. Moreover the EAS is in charge of the coordination of all the Delegations of the European Union and at the same time, it will assist the different Presidency of the Council, the Commission and the High Representative to “*ensure the consistency*”⁵⁵ of the EU in its external relations. A perfect example of the division of competences between the Council, the EAS and the Commission is represented by the effects of the Decision of the Council on the Delegation of the European Commission to Genève. The Head of the Mission is an official of the EAS, and thence he has to report directly to the High Representative. For the above reason it is highly probable that the EAS will have a voice also in the work of the EU mission to the WTO. In the meanwhile the staff of the mission is mostly composed of Commission officials (particularly DG Trade).

2.3 The EU Mission to the WTO and the effects of the Decision of the Council:

It is worth to describe the evolution of the tasks of the EU Delegation to Genève, recently divided in a EU Mission and in a Delegation. At the moment the Head of the

⁵² EURACTIV “The EU's new diplomatic service” First published: 09 March 2010 Updated: 08 February 2011 <http://www.euractiv.com/en/future-eu/eus-new-diplomatic-service-links dossier-309484>

⁵³ Articles 5 and 10 of the Proposal for a Decision of the Council on the External Action Service

⁵⁴ Council Decision of 26 June 2010: establishing the organization and functioning of the European External Action Service
(2010/427/EU)

⁵⁵ Op. cit. Council Decision of 26 June 2010

Mission is the Ambassador S.E. Angelos Pangratis, whose previous function was Deputy Head in the EU Delegation to the United States, in Washington D.C. from August 2005 to December 2010⁵⁶. Mr. Guus Houttuin is the Deputy Head of the Mission and currently he is also the responsible of the WTO section in the EU Mission. In 1961 the Commission opened its first representation in Genève in the form of a “Bureau of Press and Information” (BPI), and its mandate concerned the multilateral relations with the International Organizations. In 1964 the Commission established a permanent Delegation with three officials, which mandate concerned the monitoring of the “*Kennedy Round*” of the GATT trade negotiations⁵⁷. Since the GATT was the precursor of the WTO (i.e. the agreement is part of the WTO), at the beginning the tasks of the ECC Delegation already concerned the trade relations with third countries. In 2006, prior to the adoption of the Lisbon Treaty, the EU Delegation in Genève represented the EU at the UN, at the WTO and at the other International Organizations in Genève. The substantial and increasing importance of the WTO and the exclusive competence of the EU on trade created a considerable load of work for the personnel operating in the mission. For this reason on May 26th 2010 the Commission proposed with a Communication to split the Delegation in Genève in a Mission to the WTO and a Delegation to the UN and to other International Organizations⁵⁸. This division respects partially also the TEU, since only the Commission is in charge of the representation of the EU in the external matters concerning the CCP.

As a matter of fact the Commission competence on external trade emerges also in the Council Decision on the EAS. According to Article 2 (Tasks of the new service) paragraph 1 (third indent)⁵⁹, the EAS will support the High Representative “*without prejudice to the normal tasks of the Commission services*”. The paragraph 2 determines that the EAS will support the Commission in the exercise of its functions in the external relations. This regulation, in relation to the Article 17 TEU, establishes that the EAS functions shall not prejudice the role of the Commission in its external capabilities (such as the CCP), and, consequently, in the political decisions directed to the EU Mission to the WTO. The content of the Article 3 (paragraphs 2, 3)⁶⁰ confirms that the EAS and the Commission shall “*consult each other on all matters relating to the external action of the Union in the exercise of their*

⁵⁶ See the EU Mission to the WTO website <http://www.delgva.ec.europa.eu>

⁵⁷ For the history of the EU Mission to the WTO visit http://www.delgva.ec.europa.eu/en/historique_delegation.htm

⁵⁸ COM/2010/0287 final: Communication from the Commission to the Council and the European Parliament - Establishment of an EU delegation to the UN in Geneva <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0287:FIN:EN:HTML>

⁵⁹ Op. cit. Council Decision of 26 June 2010

⁶⁰ Ibid

respective functions, except on matters covered by the CSDP” (paragraph 2) and that “*the EAS may enter into service-level arrangements with relevant services of [...] the Commission*”. This last part of the Decision deserves some interpretation, since the expression “*service-level arrangements*” could be the legal basis of the actual cooperation between the EAS and the Commission in the management of the EU Mission to the WTO.

Article 5 and Article 6 are particularly important as they list the exceptions to the main role of the EAS in the coordination of the Union Delegations. The Article 6 paragraph 3 establishes that in the areas where the Treaties have conferred powers to the Commission, it “*may, in accordance with article 221(2)*” (TFEU), “*also issue instructions to Delegations, which shall be executed under the overall responsibility of the Head of Delegation*”. Since the article 221(2) of the TFEU confirms the authority of the High Representative on the Union Delegations, the Commission should probably keep in consideration the opinion of the HR in taking decisions regarding the EU Mission to the WTO. Article 6 (4)⁶¹ establishes that “*without prejudice to the third indent of article 2(1)*⁶² *and to the articles 2(2)*⁶³ *and 5(3)*⁶⁴, *the Delegations shall neither seek or take instructions from any government, authority, organization or person outside the EEAS and the High Representative*”. Considering the three paragraphs of these two articles, the Union Delegations of the EAS have to follow the instructions provided by the Commission, if it operates in respect of the Treaties.

The overall lecture of these Articles communicates the original intent of establishing more horizontal consistency between the Council, the Commission and the EAS. When the Article 3 (paragraph 2) states that the External Action Service and the Commission “*shall consult each other*”, it evidently tries to increase the coherence and cooperation between the EU institution and the new body. It is not clear if this Article has to be interpreted as an obligation for the two institutions to share also their information. Probably the Commission and the EAS shall consult each other on directives that may have implications in the execution of their respective functions.

⁶¹ Op. cit. Council Decision of 26 June 2010

⁶² Ibid

⁶³ Ibid

⁶⁴ Ibid

2.4 The division of competences between the EAS and the Commission in the EU Mission to the WTO:

The articles of the Decision, just mentioned, provide the legal basis to the role of the Commission in the Union Delegations, and in my opinion this was decided in respect of the content of the article 17 TEU. The statement “*without prejudice to the normal tasks of the Commission services*” makes its first appearance in the proposal presented on March 25th by the High Representative⁶⁵. Thus the High Representative already recognized the Commission external exclusive competence derived from the CCP. Evidently this document tries to avoid an overlap of functions between the EAS, the Commission and Council services, since the EAS functions shall not harm the normal objectives of the Commission or of the Council. Of course this does not mean that there are no communications between the Commission and the EAS.

Although the aim of this decision would be the improvement of the EU consistency concerning international affairs and the prevention of an overlap of competences between an Institution and a service with different structures, some doubts may arise about the coherence of the EU external actorness. In the end both the EAS and the Commission are giving directives to the representative office of the EU to the WTO. Whereas the EAS directives are mainly administrative, the Commission directions should have a political content (since the Commission has an exclusive competence in matters of CCP). Thence the EAS should not be able to increase the EU actorness in the realm of external trade provided that it is the Commission to do its old job.

As a matter of fact, the question is which of the instructions directed to the EU Mission come from the Commission or from the EAS. Considering the Article 17⁶⁶ and that the CCP is an exclusive competence, in matter of policies we can suppose that the EU Mission shall receive mainly directives from the Commission. In its interview Mr. Huttunen confirmed⁶⁷, on this point, that “*as long it concerns trade, all the substantive instructions come from the Commission*”. Probably the directives from the EAS will concern mainly the administration, since as Mr. Huttunen states⁶⁸, all the Union delegations “*work under the general supervision of the EAS and most of the daily administration is carried out by the EAS and its officials*”. We can also suppose that some relevant political decisions concerning trade may come from the EAS, if these will involve political and security issues, such as an

⁶⁵ Proposal for a COUNCIL DECISION establishing the organization and functioning of the European External Action Service, Brussels, 25 March 2010 <http://register.consilium.europa.eu/pdf/en/10/st08/st08029.en10.pdf>

⁶⁶ Op. cit. Treaty of the European Union

⁶⁷ Op. cit. Mikko Huttunen

⁶⁸ Ibid

arms embargo or strategic technologies. According to the answer of Mr. Huttunen⁶⁹: *“Only the question what is “trade” (common commercial policy) might sometimes be difficult. Therefore, one cannot exclude that some substantive instructions for the WTO mission might come also from the EAS. This is very much work in progress so I am afraid it is difficult to go more into details”*. Truly this division of competences between the EAS and the Commission is questionable, moreover for the practicability of creating an External Action Service which has not a strong influence on its Delegations in matter of trade issues and disputes, which are one of the most important competences of the European Union.

The great importance of the EU trade policies is evident and well-known. Basically every Internal Market policy has an external dimension, and all these policies need *“an adequate and consistent consideration in the negotiation of international agreements in regulatory dialogues with third countries and in all the other international fora where the Commission takes a position on Internal Market policies”*⁷⁰. Even the ECJ jurisprudence agrees that an internal exclusive competence could expand in an external exclusive capability of the European Union. The conclusion of agreements concerning the external trade of goods, services and intellectual property are finally recognized from the Lisbon Treaty as an exclusive competence of the European Union. The Commission is the main actor, even if the final decision and the ratification of the agreement is an exclusive process of the Council.

Thus the aspects of external coherence and consistency are very important in the Common Commercial Policy, and they should be improved through the establishment of the EAS, as long as it concerns the management of the Delegations. The external aspect of the Common Commercial Policy provides the EU with power to interact and influence third countries and the remaining international actors. The EU has been recently defined as a Market Power⁷¹, as the EU is trying to externalize, through multilateralism, its internal policies and regulations that concern the Single Market (SM). Sure thing the Single Market is a strong tool for the EU during the negotiations. The People’s Republic of China (PRC) considers, probably, the SM and its internal regulations the strongest leverage for the EU during the negotiations. This personal assumption derives from the evidence that the PRC is still developing its domestic consumption of goods and services. Thence the Chinese

⁶⁹ Ibid

⁷⁰ Commission of the European Communities, “The EU Single market: the external dimension”, 1/9/2008, at http://ec.europa.eu/internal_market/ext-dimension/index_en.htm.

⁷¹ Damro Chad, “*Market Power Europe: EU Externalisation of Market-Related Policies*”, Mercury, E-Paper N° 5 October 2010, available at http://www.mercury-fp7.net/fileadmin/user_upload/E-paper_no5_final2_2010.pdf

production is directed mainly to the external market. The SM is the largest domestic market in the world and it is strongly attractive for cheap Chinese goods. Furthermore the EU is composed of 27 Members of the WTO, which implies that the EU is already a strong and influential actor in the international arena, when all of its Member States policies are coherent. Sure thing the actorness is increased by a stronger consistency and coherence, and the first objective of the EAS is to improve these two aspects of the EU external action, which includes the CFSP/CSDP.

Conclusions of the Chapter:

At the moment the EAS is still a “work in progress” and it is obvious to suppose that the Commission, through the Commissioner De Gucht and the General Directorate of Trade, is the main decision-maker for the EU Mission to the WTO. Not only the EU Mission in the WTO but also the EU Delegations in third countries follow the directions coming from DG Trade, as long as trade is concerned (e.g. the EU Delegation in Beijing, a fact confirmed by an anonymous Commission official). Even if the Treaties establish clearly that the Commission is in charge of the CCP, I believe that the EAS will have a stronger responsibility in matter of trade, as long as this concerns issues that are considered included in the competences of the External Action Service. In 2013 the EAS will expand, including officials from all the Institutions of the EU, and it will be a more effective body compared to now. Thence on the basis of Articles 17, 27 TEU and 221 TFEU, and considering the Decision of the Council, we can suppose that in the future the EAS will cooperate with the Commission on trade issues, coordinating with its services in the management of the Union Delegations.

In the following chapter I will analyze the current role of the EAS in the matters of CFSP and CSDP. The recent crisis has implied not only the return of freedom in the Arab world, but also an opportunity for the External Action Service to demonstrate its capacities in the security of the countries belonging to the Mediterranean ring around the EU.

3 The EAS and the European Union Foreign and Security Policy

The Lisbon reform has introduced several changes that could potentially enhance the European external action. In particular the reform has clearly tried to solve the lack of consistency and coherence which distinguish the EU external action in the global system, through the establishment of the legal personality of the European Union, the introduction of the President of the European Council, the “three hatted”⁷² High Representative and the creation of the European External Action Service. This chapter concentrates on the new role of the EAS in the Common Foreign and Security Policy (CFSP) and particularly in the aspects of the Common Security and Defence Policy (CSDP). These two policies constitute the bulk of the inter-governmental side of the External Action Service.

The Lisbon Treaty clearly defines the EU external competences through the inclusion in the Art. 21 TEU of all the objectives of the European external policies (this Article merges different policies as trade, development, security and environment). Lady Catherine Ashton, succeeding Dr. Javier Solana, has been appointed as High Representative of the European Union for Foreign Affairs and Security Policy on November 19th 2009. Her first task was the development of the proposal for a Council Decision establishing the division of competences and objectives of the European External Action Service. According to the Decision establishing the organisation and functioning of the EAS, Article 2 (paragraph 1) the first task of the new diplomatic service is to support the High Representative “*in fulfilling his/her mandate to conduct the Common Foreign and Security Policy [...] including the Common Security and Defence Policy*”. The same paragraph continues establishing that the EAS will assist the HR in the formulation of the proposals directed to the Council and in the execution of the CFSP as mandated by the Justus Lipsius institution. In order to develop its function the EAS has incorporated the Council General Secretariat (CGS) Directorates operating in the realm of the CSDP. In the following section I will first analyse the issue of coherence in the external affairs with some examples, then I will describe one of the most considerable achievements of the HR Javier Solana in external security (i.e. the European Security Strategy). A part of this chapter will describe the actual role of the EAS in the operations undertaken under the CSDP.

⁷² The High Representative is in the meantime Vice-President of the European Commission (for External Affairs), President of the Foreign Affairs Council and High Representative for the CFSP.

3.1 The impact of the EAS on the external coherence and consistency

3.1.1 The issues of coherence

As established in the Treaty, the EU decision-maker concerning the CFSP are the European Council and the Council. The High Representative, together with the Council, is in charge of ensuring the “*unity, consistency and effectiveness*”⁷³ of the external action of the Union. Thus the role of the HR, according to Article 27 paragraph 1, is to contribute to the development of the common foreign and security policies through its proposals, including the Common Security and Defence Policy. The role of the EAS, in this case, is restrained to backing the HR in the accomplishment of its tasks and in the development of the CFSP/CSDP. Moreover the EAS shall assist also the President of the Council, the Commission and the European Parliament in all matters of external affairs.

Although it constitutes the first objective of the EAS, the achievement of greater coherence and consistency in the European external action is a very ambitious goal. Even the institutions of a national government find difficult to follow the same political guidelines or to cooperate. The main problem in the EU case is the contrast which emerges between the national interests⁷⁴ of the Members, represented by the Council, and the European Commission. The Commission and the Council have often disputed over their respective competences in the realm of the external security and the ECOWAS case is a good example of this dichotomy.

The progressive elimination from trade of small arms and light weapons (“SALW”)⁷⁵ was the subject of European Union strategy adopted in 2005⁷⁶, since this kind of armament is often implemented in different crisis. The ECOWAS Moratorium on the Importation, Exportation and Manufacture of Light Weapons (adopted in 1998 and renewed in 2001⁷⁷) had significant weakness (e.g. its non-binding and voluntary nature), and the outcome of these limitations was the decision of the ECOWAS Members to change the Moratorium into a legally-binding document⁷⁸. The Council Decision adopted on December 2nd 2004 provided a contribution of € 515.000 to finance a secretariat with the role of converting the

⁷³ “*The Treaty of the European Union*”, Article 26

⁷⁴ Firstly the maintenance of their national sovereignty in spite of the European Union.

⁷⁵ Van Vooren Bart, “*The European External Action Service: avoiding past disputes in the security-development nexus*” in Joris Larik and Madalina Moraru “*Ever-Closer in Brussels – Ever-Closer in the World? EU External Action after the Lisbon Treaty*” European University Institute, Florence, Department of Law Working Paper 2011 p. 22

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Ibid, p. 23

Moratorium in a binding document⁷⁹. In the meanwhile the Commission, following the provisions of the Cotonou agreement, established a regional cooperation strategy and partnership programme with the ECOWAS and the West African Economic and Monetary Union⁸⁰. As this document mentioned the ECOWAS Moratorium and stated that the Community would have provided support for its implementation, the Commission began to prepare a financial proposal⁸¹. For this reason a conflict between the Council and the Commission emerged on the security-development competence. The Commission sustained that its competences in the realm of development aid had been violated by the Council which was intentioned to take immediate action⁸². In this particular case this dilemma was resolved by the Court of Justice through an interpretation of the Art. 47 TEU-Nice which stated that “*nothing in this Treaty shall affect the Treaties establishing the European Communities*”. According to the Commission the Decision of the Council (based on Title V TEU) violated clearly the Article 47 since “*the impugned CFSP decision [...] affects the Community powers in the field of development aid*”⁸³. In the end the Court of Justice ruled in favour of the Commission.

The High Representative and the Action Service were established in order to overcome these institutional disputes. In consequence of the Lisbon innovations the Commission has tried to preserve a considerable part of its external powers, creating many aspects of incoherence between the Commission and the EAS (and consequently the High Representative), such as in the case of the Neighbourhood policy. Concerned that the Commissioners, with activities extended to the external security affairs, could loose part of their competences, the Commission Barroso tried to preserve the political guide in sectors part of the EU regional security policy, while the implementing staff of such policies were merged in the EAS⁸⁴. Finally, according to the Council Decision Art. 9(5), the proposals for the Council in the context of the Neighbourhood policy are to be prepared through a joint cooperation between the EAS and the Commission services, under the responsibility of the Commissioner for the Neighbourhood policy. A further example is brought from the General

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ibid

⁸³ Action brought on 21 February 2005 by the European Commission against the Council of the EU, OJ C115, 14 May 2005, 10

⁸⁴ An example is the Neighbourhood Policy: whilst the DG Relex directorates working on: European neighbourhood policy, Eastern Europe, Southern Caucasus and the Southern Mediterranean will be part of the EAS, Mr. Stefan Füle remains the Commissioner for enlargement and European neighbourhood policy. In Van Vooren Bart, “*The European External Action Service: avoiding past disputes in the security-development nexus*” p. 21

Directorate for Development, since the majority of its staff has been transferred to the EAS, and the rest merged with DG Aid in the new DG DEVCO. Thus two Commission DGs have been transferred to the EAS, whilst the political guidance has remained in the Commission⁸⁵.

Therefore political coherence in the realm of security will require a complex procedure involving the following structures: *first* DG Africa and North Africa of the EAS, *second* EAS DG on global and multilateral issues, *third* the EAS desk Human Rights & Democracy and Conflict Prevention Security Policy, *fourth* the EAS service for Foreign policy instruments, *fifth* the Commission DG DEVCO and finally the EU delegations that will receive the instructions from the EAS or from the Commission, in relation to their respective competences. According to the EU this procedure should “enhance” consistency and coherence in the realm of security.

3.1.2 Efforts to develop a common external security policy: the European Security Strategy:

The Treaty of Lisbon includes, among the European Union objectives, the contribution to peace, security and sustainable development in the “*wider world*”⁸⁶. In the realm of external affairs the European Commission has lacked of “*overall planning strategy*”⁸⁷. The first real step in this direction, was the European Security Strategy “*A Secure Europe in a Better World*” adopted on December 12th 2003 by the European Council and developed by Dr. Javier Solana and his staff. Following the issue of the National Security Strategy from the US Presidency in September 2002, which focused on defence against external global threats, the European Union felt the urge to embark in a Security Strategy Reform, and the first stage was constituted by the European Security Strategy (ESS). The content of this document confirmed the EU intention to share the US concerns over global threats: Weapon of Mass Destruction (WMD), Aids, Terrorism, failed States etc.⁸⁸. Moreover the EU intent was to confirm to Washington its availability to support the transatlantic partnership⁸⁹. However if the US National Security Strategy (2002) focuses mainly on the issue of the international terrorism and WMD, the EES gives an equal concern to all global threats, avoiding to confer predominance to any of them in particular⁹⁰. As emphasized by the analysts (which took part to the three seminars organized by the EU

⁸⁵ Van Vooren Bart Op. Cit p. 14

⁸⁶ Treaty of the European Union, Art. 3 paragraph 5

⁸⁷ Van Vooren Bart Op. Cit.

⁸⁸ Biscop Sven, “*The European Security Strategy – a Global Agenda for Positive Power*” Aldershot, Ashgate 2005 p. 18

⁸⁹ Ibid

⁹⁰ Biscop Sven, Op. Cit. p. 19

previously to the issue of the ESS) the old threats are equally important (e.g. regional conflicts, state failure and organized crime), since these could be the actual roots of international terrorism or of international insecurity. Research shows that most of the terrorists “*have an internal domestic agenda, [...]and whose most likely target is the domestic regime*”⁹¹. Thus the real threat for the EU could be constituted by the “*internal European terrorism*”, including the ETA, the Corsican separatist and the attacks executed for political reasons. Also current international terrorism, which the ESS recognises being often linked to Islamism, has more often an “*internal*” European origin. Indeed terrorism is not “*imported*” in Europe from an international network which is headed by a group hidden in Afghanistan or in other “*Rogue State*”, but it is often the activity of internal groups, claiming the “*international brand*” of Al-Qaeda in order to get more massive media and political attention⁹². This does not mean that the threat is diminished, but on the contrary it becomes more difficult to control. It would be a huge mistake to focus only on the menaces of WMD and terrorism, since international security is threatened by other risky situations, as the spread of AIDS, the lack of democracy or internal inequality of wealth.

Specifically on terrorism the EES stated in 2003 that “*Europe is both a target and a base for such terrorism [...]. Logistical bases for Al Qaeda [...] are located in the UK, Italy, Germany, Spain and Belgium*”. This analysis was quite different from the National Security Strategy (NSS) of 2002, which focused on the same tasks of the ESS with a different priority and emphasized the US external action following the distinctive “*American Internationalism*”⁹³ approach, which definitely contrasted with the typical European multilateralism⁹⁴. The EU Strategy underlines that the anticipation of these menaces should be conducted not only through military forces, but each of these new threats requires a “*mixture of instruments*”⁹⁵. For example terrorism could require a combination of intelligence, judicial and military means. Furthermore the past experiences evidenced the necessity to provide also civilian and humanitarian forces to establish the basic services and public order. The EU has always been recognised as a civilian power, since its Member States have a strong experience in employing this type of forces. The EU missions are

⁹¹ Ibid, p. 20

⁹² Ibid

⁹³ “*The National Security Strategy of the United States of America*” the White House Washington D.C. 22 September 2002, p. 1 available at http://www.au.af.mil/au/awc/awcgate/nss/nss_sep2002.pdf

⁹⁴ This distinction between the two actors is the result of their proper nature. Whilst the EU was born from multilateral meetings and decisions, the US have always tried to act unilaterally in the international system.

⁹⁵ Ibid p. 7

known abroad as being constituted not only by military forces but also by civilian ones, with unusual tasks such as the development of common services (as an internal judiciary system).

The ESS, complemented by the High Representative's Report on the Implementation of the European Security Strategy issued on 11th December 2008, was definitely more straight forward than the NSS of 2002, in fact it focused more on the current issues that may create future menaces. Probably behind this approach were different reasons such as: the EU lack of tools to face the most worrisome threats; the lack of enthusiasm of some Member States to fight the global terrorism in Afghanistan (and then in Iraq); the realistic modesty of Brussels which prefers a good and effective implementation of the poor military capabilities made available by the national governments. Sure thing the European Security Strategy demonstrates that even in 2003 the HR could succeed to assist the European Council in the elaboration of foreign policy. Even if the ESS is a dated document, its content is quite far-sighted. This document correctly highlights the connection between globalization and the increasing complexity of global threats⁹⁶.

3.2 The EU management of security threats:

The Arab Spring has found the High Representative and the European Union quite unprepared (which raises some questions on the European information network). Only in the Libyan conflict the HR and the EAS have succeeded to prove their commitment in the current crisis. According to the ECFR analysis on Europe's performance, during the year 2010 the external actions of the European actors (including EU, Council, HR and some Member States) were not completely mediocre⁹⁷. Examples of united response were the stabilization in Iraq, relations with the Eastern Neighbourhood, relations with China on the Iran issue, European policy in the WTO, etc. Sadly the list of the missed chances is much longer, to mention some: the relations with the US and the NATO reform (this was a real missed chance), bilateral relations with Turkey (which is loosing interest in the EU), the rule of law and the respect of Human Right in China, the relations with the US in the reform of the global financial system (even if lately the EU scored some points to its favour), European

⁹⁶ Globalization has surely created new opportunities and it has recently constituted a vector of democracy in the world (e.g. the Arab uprising has been feed by internet, by the social network and by the desire of more equality). But in the meantime the lift of millions out of poverty has been followed by the growth of inequality in some countries or in entire continents (e.g. China, Africa and India).

⁹⁷ J Vaisse and H Kundnani (eds), *European Foreign Policy Scorecard 2010* (London: ECFR 2011) in Steven Blockmans, "Beyond Conferral: The Role of the European External Action Service in Decision-Shaping" in Joris Larik and Madalina Moraru "Ever-Closer in Brussels – Ever-Closer in the World? EU External Action after the Lisbon Treaty" European University Institute, Florence, Department of Law Working Paper 2011 p. 5

policy in the G20 and in the G8⁹⁸. The issues present in the upper list are mentioned in the ESS, but to address these challenges in a fast changing world the EU strategies need a constant revision and provision of resources from the Member States. When these two conditions are lacking, the EU external action is inefficient.

The partial inaction during the first acts of the Arab Spring (e.g. in Tunisia or in Egypt) is the result of those lacks that the Treaty of Lisbon was intended to solve. As explained above, the first role of the EAS should be to increase the coherence and consistency between the different European actors. The service shall also assist the HR in his/her key role in programming and implementation of the EU external action. According to the Article 9 of the EAS Decision, the High Representative “*shall ensure overall political coordination of the Union’s External Action*” ensuring its coherence, consistency and effectiveness. As I already stated, the actual internal division of tasks and competences between the EAS, the Council and the Commission has made more problematic the decision-making procedure to manage external security issues. The multitude presence of voices is noticeably inconvenient to the external European actorness. Furthermore the characteristic huge amount of developing funds implemented in third countries makes the EU the major donors for developing countries, but not the major global actor.

Nevertheless the EU has searched to enhance its presence in external security threats, following the ESS spirit, through also preventive missions. At the moment the EU has a total of 13 operations under the Common Security and Defence Policy⁹⁹. To promote their military activities abroad the Member States have been testing new ways to integrate and implement their common forces. Besides the EU officials were aware of the Member States reticence to a deep integration of their military capabilities (contrasting with NATO) and thence they concentrated only on threats which could be faced also with temporary operations employing small amount of forces, in particular occasions and under peculiar conditions. Therefore the mandates of the integrated operations are permeated by a large number of restrictions (in accordance to the prerequisites of Member States): withdrawal deadlines strongly fixed in the mandates, operations usually carried out in restricted areas and the forces implemented are distinguished by their narrow sizes. In addition the EU military operations are well known for never directly engaging against the current opponent (only in limited occasions the EU forces got directly involved in some skirmishes). Another trait of the EU missions is the contemporary implementation of military and civilian forces

⁹⁸ Ibid, p. 6

⁹⁹ Mix E. Derek “*The European Union : Foreign and Security Policy*” CRS Report for Congress 15 August 2011

which tasks can sometimes converge, e.g. the EULEX in Kosovo, where the EU is engaged in a civilian rule-of-law mission including the training of the local police forces, judges, custom officials and civil administrators. Counting on a staff of 1,650 elements, the EULEX is the largest civilian operation the EU has ever embarked on¹⁰⁰.

Since its institution the External Action Service has incorporated a number of “specialized support structures¹⁰¹”, established as part of the Secretariat of the Council of Ministers to conduct the “operational planning and implementation of the CSDP”¹⁰². Among them the Crisis Management Planning Directorate (CMPD) which integrates civilian and military strategic planning; a Civilian Planning Conduct Capability (CPCC), an office running civilian missions; a Joint Situation Centre (SitCen) for intelligence analysis and threat assessment; and an EU Military Staff (EUMS) which provides military expertise and advice to the High Representative.

3.2.1 *The organization of a CSDP operation:*

Following the enactment of the Lisbon treaty the procedure for the implementation of an EU operation has changed. Obviously it will require the coordination between the EAS and the Council staff in order to organize the operation. All the civilian and military operations of the CSDP are planned by the CFSP working groups (e.g. CIVCOM) and the previously Council Secretariat Directorates (EUMS, CMPD and CPCC) now definitely DGs of the EAS. The Lisbon Treaty provides also another change, that is the introduction of permanent chairs for CIVCOM and the PMG¹⁰³. All the missions are under the authority of the Political and Security Committee (PSC), an intergovernmental structure composed of the representatives of the Member States. The CPCC, the EUMS and the CMPD are in charge of the designing and the handling of the operations. The moment the Foreign Affairs Council and the PSC take the political decision to operate a CSDP mission, the CMPD conduces the organization of the operation and it delineates the Crisis Management Concept (CMC) which identifies the strategic objectives of the mission¹⁰⁴.

In the framework of the civilian missions the CPCC develops another document, the Concept of Operation (CONOPS) and assists the Heads of the Missions (HOMs) in the

¹⁰⁰ European External Action Service (EAS), *EULEX Kosovo*, <http://www.consilium.europa.eu/EAS/security-defence/eu-operations/eulex-kosovo.aspx?lang=fr> in Mix E. Derek “*The European Union : Foreign and Security Policy*” CRS Report for Congress 15 August 2011 p. 11

¹⁰¹ Mix E. Derek Op. Cit. p. 10

¹⁰² Ibid

¹⁰³ Bloching Sebastian “*Security Sector Reform Missions under CSDP: Addressing Current Needs*” August 2011 Publishers DCAF available at www.dcaf.ch and ISIS Europe www.isis-europe.org p. 4

¹⁰⁴ Ibid

development of the Operation plan¹⁰⁵. Like the EUMS the CPCC is the organ responsible concerning the conduct of the operation and the support of the CSDP missions. Thus we could define the CPCC the operational headquarter of the civilian missions¹⁰⁶. On the military side instead, this role is played by the EUMS, which, once the CMC has been defined by the CMPD, takes the lead of the detailed planning process. The designation of the operational command has three options: (i) the EU chooses to undertake an autonomous operation, thence it can make use of one of the Member State headquarters; (ii) if the operation falls under the Berlin Plus, the EU can make use of the Supreme Headquarters, Allied Powers Europe (the notorious SHAPE); (iii) finally the EU can decide to send a limited military operation of 2000 staff and in this case the Operation Centre located in Brussels is adequate¹⁰⁷. The CMPD is the result of the merger between the General Secretariat Council Directorate VII (Defence Aspects) and the Directorate IX (Civilian Crisis Management)¹⁰⁸. This new organ was established two years after the creation of the CPCC, and the two structures cooperate in the planning and in the carrying out of the operations. In the course of the shaping of the CMPD the Directorate IX was in charge of the “*conceptual and strategic issues, including capability and planning development*”¹⁰⁹, whereas the CPCC was the structure responsible for the designing and the conduct of the operation. Today the CPCC and the CMPD have a clear and effective division of labour¹¹⁰.

If the conduct of civilian-military missions are said to be a characteristic EU capability, this division in two chains of command for civilian and military operations is said to hinder the civilian-military approach¹¹¹ and the development of civilian-military capabilities. The inclusion in the EAS of the CSDP Directorates, previously part of the Council Secretariat, had the double objective of improving the conduct and the planning of these operations and of increasing the understanding of the SSR operations¹¹², in cooperation with the European Security and Defence College (ESDC)¹¹³.

¹⁰⁵ Ibid

¹⁰⁶ Ibid

¹⁰⁷ Ibid p. 5

¹⁰⁸ Ibid p. 14

¹⁰⁹ Ibid

¹¹⁰ Ibid p. 15

¹¹¹ For the above reason the European Parliament in November 2010 has called on EU Member States to allow for a joint civilian and military headquarter, in its Report on civilian-,military cooperation and the development of civilian-military capabilities. In Bloching Sebastian Op. Cit. p. 5

¹¹² I.e. the civilian-military operations conducted in the framework of the CSDP and after the issue of the European Security Strategy (2003). That is the 10 missions undertaken since 2005.

¹¹³ “*The ESDC is a virtual network college comprising civilian and military national universities, academies, colleges, institutes and think tanks that have expertise in CSDP*” Bloching Sebastian Op. Cit. p. 5

It is worth mentioning a current problem in the recruitment of personnel deployed in the CSDP operations, particularly in the case of the civilian missions. Actually the Member States are reticent to deploy their expert staff in critical situations. This nuisance is similar but not related to the original problem of the Delegation network in the recruitment of the personnel employed in the EC Delegations in third countries (as in the 70s). Furthermore this issue concerns not only the EAS, but more the Member States and the Commission that usually furnish the staff in these circumstances. This problem is not very inherent to this discussion and for this reason I will not examine it any further.

Conclusions of the Chapter:

Different analysts and commentators are concerned that the EAS could function not as a “bridge” but as a “bridgehead” of the Member States in the external competences of the EU. According to these apprehensions the Member States could impede, through the EAS, the EU from being too autonomous in security policies involving the Member States and their facilities. Actually if the EAS is composed of “only” one third of officials from Member States, the service can always employ national experts, and a considerable part of its personnel originates from the Council. Furthermore, whilst the political decisions concerning the CSDP are always taken in the intergovernmental structures of the Council (i.e. PSC), the EAS staff, deriving from the Commission DG, constitutes the remnant one third, and some of these officials are still strongly pursuing the Commission political decisions (such is the case of the Neighbourhood Policy).

The examples previously illustrated in the chapter (the divided planning and commanding structures for civilian and military missions, the DEVCO and the Neighbourhood Policy cases) reveal the persistence of inconsistency in the European external action. Even if the EAS is a recent creation of the Lisbon Reform and we might have to wait more to observe some concrete results, the world is not a good bystander. Simply it does not “stand-by” to allow the EAS to realise its potential and to transform the EU in the definitive international actor, able to assist the US and the UN in keeping stable the external security. The Arab Spring was a rogue awakening for the EAS and the EU as a whole (Member States included) and has a crucial importance for the European internal security. Truly these revolutions could improve the actual political condition through the creation of a Mediterranean ring of Arab democracies, or they could politically degenerate transforming in nearby roots of security threats (see Somalia). I personally believe that considering the current global situation, this series of revolutions have been, up to this moment, a source of good news. But other threats are emerging in Eastern Europe (i.e.

Belorussia, Ukraine and Georgia) and if the EU desires to reach the achievement of the promises and tasks established in the ESS, the European External Action Service has to sharply accomplish its full potential.

4 General Conclusion

The first chapter of this dissertation describes the evolution of the European network of Delegations with the purpose of representing the fact that the EAS constitutes the final step in the development of an EU diplomatic service. However, as described in the second and third chapters, the External Action Service is more than the original network of Delegations (which constitutes the major part of its body). The EAS is the service comprising most of the EU structures operating in the international system. Nevertheless, the EAS is deprived of important aspects of the EU external action. The main example is obviously trade, but also development, aid and the neighbourhood policies which have experienced a transfer of staff from the Commission to the EAS, but the political guide is still in the Berlaymont building.

Considering the general importance of this policy for the European Union, the case of DG Trade is the more striking and contradictory. Truly the DG Trade officials have a long experience in dealing trade agreements with third countries and are used to operate in international forum such as the WTO. Furthermore the European Commission follows a strong and well defined strategy concerning the settlement of disputes in the WTO and the relations with the external partners. However the exclusion of a crucial exclusive competence as the external trade from the EAS structure of policies constitutes indeed a detriment for the newborn service. An analyst could consider the choice of Lady Ashton as High Representative related to her experience on the external EU trade policies acquired in the course of her mandate as Trade Commissioner from October 2008 to November 2009. It could be already a good improvement if the External Action Service included the DG Trade staff, leaving the political guide to the Commission, as in the case of DG DEVCO or the Neighborhood policy. In this hypothetical case trade and CFSP/CSDP could constitute in the EAS the core of its external policies. In view of the current situation the EAS will probably coordinate its policies with DG Trade and the joint cooperation will be eventually limited to information sharing. This incongruity is a bizarre method to enhance the external consistency which has always been perceived as a strong deficiency of the EU system of relations with third partners.

Evidently the European Commission, in the course of the negotiations, has imposed its exclusive competence in external trade as a condition *sine qua non*, in order to avoid a stronger influence from the Member States. Nevertheless the EAS is competent in the

external security policies, even if the decision-making process is centered in the Justus Lipsius building.

The planning procedure for the external security policies could be improved, since in some circumstances it involves too many actors, (the EAS, the Commission, the Council, and eventually Member States). This situation becomes more confused when other actors, even external to the European Union (such as the UN Security Council), are directly involved in the decision-making of a military operation. This could have dangerous consequences in the case of an urgent circumstance requiring a sharp resolution.

This situation is influenced also by the decision of the Member States to keep in the Justus Lipsius the main part of the decision-making process of the operations, which has always been considered absolutely nonnegotiable. Nevertheless the organization of the division of competences between the Council and the EAS, and the transfer of the CGS staff to the EAS has created organizational discontinuity in the planning procedure of the external security operations. At the moment the civilian and military missions follow two different trails. It would have been an advantage for the EU to develop a single structure able to plan civilian-military operations abroad. The EU is well known abroad for its operations with a double civilian and military “face”. But the lack of a single headquarter for these operations is a detriment for their implementation. A better organization of the EAS organs, that are respectively in charge of planning the civilian and military operations, would simplify an already complex situation involving many participants.

For a new actor such as the European Union, still looking for a definition of its external power, the External Action Service is a tool full of meaning, mainly for the different actors of the International System. Nevertheless this body is still constrained not only by the Commission, but also from national governments, which are the main decision-makers in the EU external affairs, mainly in matters of security. The European governments, through an effective implementation of European institutions such as the Council, still keep a strong grip on international affairs. Their behavior has two effects: *firstly* it reduces the EU external influence and powers, *secondly* it damages the EU actorness through too many divisions.

In my opinion the division of external competences between the Commission and the EAS does not decrease the general capability of the EU as an international actor, but neither does the reform increase it. Whilst the Commission maintains its external competences in matter of trade, the EAS role is to assist the High Representative in the conduction of the CFSP (including the CSDP), which will contribute through his/her proposals to “*the*

development of this policy”¹¹⁴. The structure of the EAS will be enriched of apposite Directorates-General “*comprising geographic desks [...] and thematic desks*”¹¹⁵. Thus the role of the EAS concerns mainly the organization and management of the Delegations network, *plus* the EU foreign and security policies. Although the EAS role in the CFSP/CSDP is significant, these policies are mainly part of the national governance of the Member States. The EU probably needs another couple of decades to develop a strong and influential external activity in matter of security affairs. Finally the EU should be more independent from the dividing internal pressures which may undermine the coherence and consistency of its external action¹¹⁶. At the moment the new External Action Service is constrained between the international competences of the Commission and the international aspects of the Member States sovereignty.

For the above reason the Lisbon reform of the EAS risks becoming only the last step of the developing organization of a European diplomatic service. Actually the EAS does not represent only the network of Delegations, even if they are part of it. As I explained above the EAS is a complicated body constituted of several directorates, and once completed, it will include at least 3000 official staff. Effectively the External Action Service has the same capacity to implement its policies as every EU Institution.

To conclude, I personally consider the EAS an “Arch” which is laying on two pillars: the Commission and the Council, but these two pillars risk to constrict the EAS, which is meant to enhance coherence and consistency in the European Union. However the officials of the EAS have to deal with the other two Institutions in order to implement the policies in which they are able to operate. The Triangle building is effectively excluded from the most important decision-making procedures, as external trade (implemented by DG Trade) and the CSDP (since the PSC takes the final decision). 2013 will be the crucial year for the EAS, since it should then be fully operative. Even if the PSC keeps the lead of the decision-making procedure in the CSDP (which is obvious) and the Commission maintains the political guide in significant external policies, the newborn External Action Service will need a certain grade of political independence. The High Representative embodies this autonomy, but this is not sufficient. The EAS should be exclusively competent on a significant core of external policies, in order to achieve an external relevance.

¹¹⁴ Op. cit. Council Decision of 26 June 2010

¹¹⁵ Ibid

¹¹⁶ These internal pressures are often the result of the dividing national policies and decisions. Exemplary the indecisions of the Member States in front of the Balkan crisis, the war in Iraq and the crisis in Georgia.

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ANNEXES

Annex 1

The EU's actors in external relations after the Lisbon Treaty

	CFSP/CSDP Exclusive Member State competence	External Policy: Exclusive EU competence	External Policy : Shared//Complementary EU Competence
Decision-Making Body	Foreign Affairs Council; European Council	Council (formation depends on issue discussed)	Council (formation depends on issue discussed)
Decision-Making Rule	EU position decided upon by consensus	EU mandate decided upon by Qualified Majority Vote	EU position or mandate, usually decided upon by consensus
External Representation	HR/VP; President; European Council; EAS	European Commission (President or Commissioner)	Rotating Presidency*, HR/VP or Commission?
On the ground	EU Delegation	EU Delegation	Embassy, rotating EU Presidency or EU Delegation
European Parliament	Consultation	Assent required when EU ratifies and concludes	Assent required when EU ratifies, signs and concludes

*During the Belgian six months the Rotating Presidency maintained a low profile. The Hungarian Presidency instead tried to keep a stronger role.

Annex 2

THE PERMANENT MISSION OF THE EU TO THE WTO, Organization Chart¹¹⁷

<p>Head of Delegation : Angelos PANGRATIS Secretariat : Fiona KITSON Deputy Head of Delegation: Guus HOUTTUIN Secretariat: Viktoria STANGE</p>
<p>WTO Team Andreas JULIN (Market Access, Rules of Origin, Trade Facilitation, ITA, Tariffs) Oliver SITAR (Agriculture, State Trading Enterprises) Ivano CASELLA (Trade in Services) Jorge VITORINO (WTO Coordination (incl General Council, TNC), Budget Committee, WTO Functioning, CRTA, Trade and Environment, Aircraft Agreement, TRIMS Tomas BAERT (Rules (AD, Subsidies, Safeguards), Intellectual Property, (TRIPS, WIPO), Competition Michaela DODINI (WTO Co-ordination (incl. General Council, TNC), Trade & Development (incl. SDT, LDCs, Small Economies, Transfer of Technology, TRTA/Aid for Trade, Integrated Framework), BOP Committee, Trade Debt and Finance, Press Relations and Info Mikko HUTTUNEN (Legal Advisor) Ann-Sofie SJÖBERG-KAUPPINEN (Legal Assistant) Marie-Pierre NICORA (Accessions, Customs Valuation, Import Licensing, Pre-shipment Inspection, Textile Issues, TBT) Hene LEHT (Trade in Services (incl. Services Aspects of WTO Accession, Art. XXI Process), Government Procurement, Trade Policy Review</p>
<p>Secretariat Evelyne BENOIST Eliane BARBAGLIA Xenia NETTLETON</p>
<p>Common services to the EU Mission to the WTO and the EU Delegation to the UN</p>
<p>Administrative support Betty BIGGS (Head of Administration) Colette JEMAA Muriel BOUVIER Marie-Laure BLANC Lene SOERENSEN Alain NIBUT Nuria ALTADILL Agustin ASENJO Ettore ZAMPRONI Elias BENE</p>

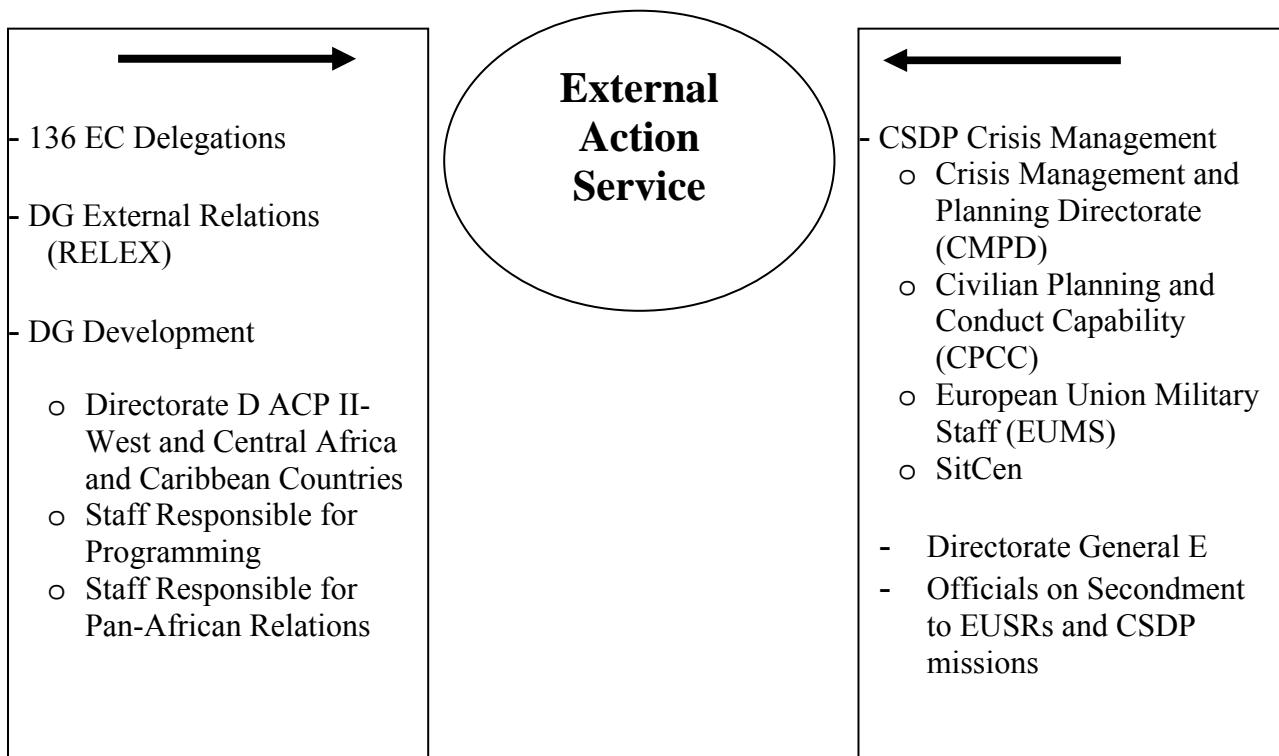
¹¹⁷ Source: Website of the Permanent Mission of the EU to the WTO <http://www.delgva.ec.europa.eu>

Annex 3

The Transfer of Staff from the Commission and the Council to the EAS¹¹⁸

European Commission

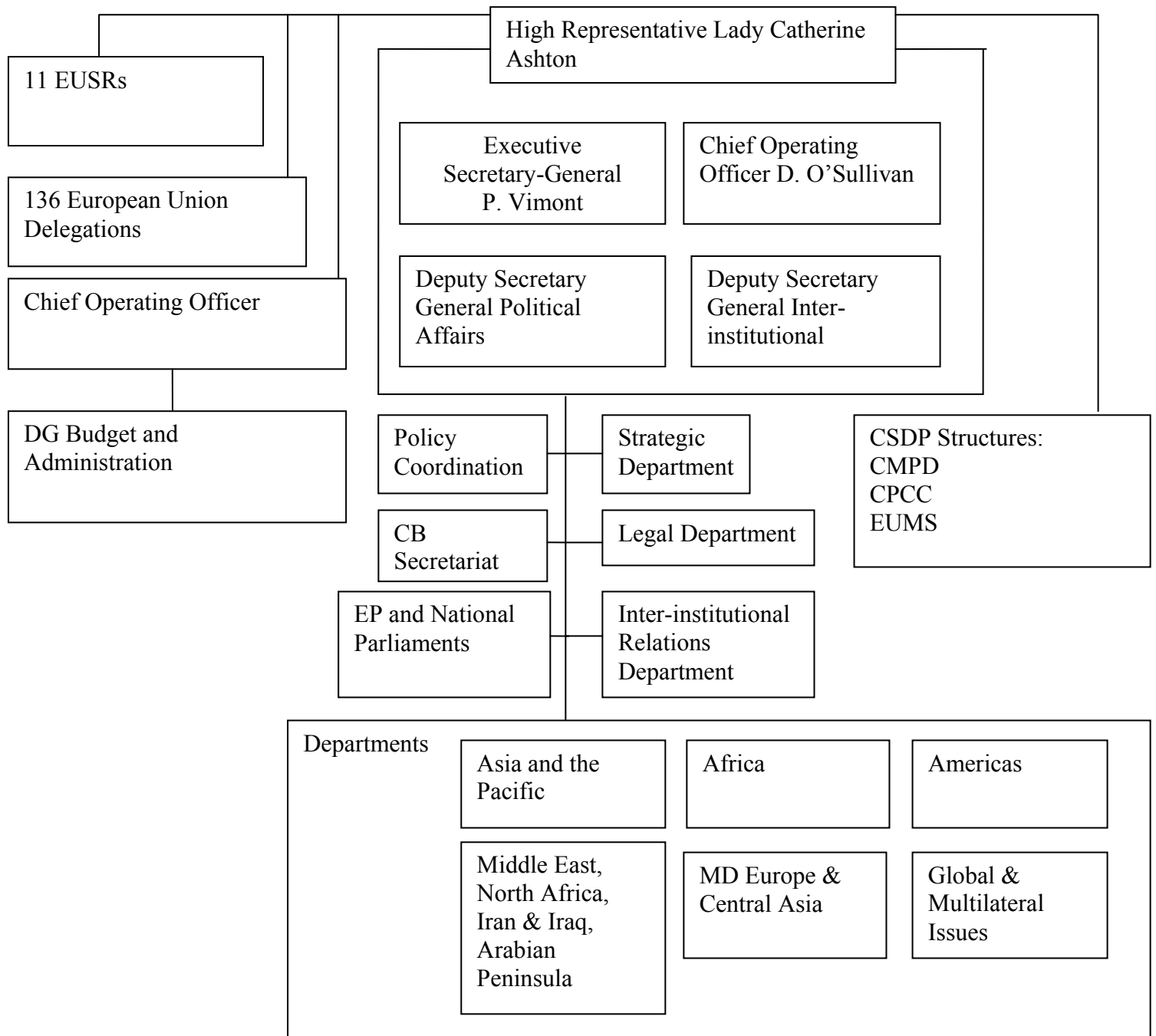
Council General Secretariat



¹¹⁸ Source: Helwig Niklas & Stroß Simon "The Setup of the External Action Service Inexplicable by Grand Theories of European Integration " Madrid 7-8 April 2011

Annex 4

The Institutional Structure of the EAS¹¹⁹



¹¹⁹ Source: Helwig Niklas & Stroß Simon “The Setup of the External Action Service Inexplicable by Grand Theories of European Integration ” Madrid 7-8 April 2011