

## Diplomats for Europe

### Key elements for a European External Action Service

By Annette Heuser

The name is a misnomer, for European External Action Service (EEAS) initially suggests that we are dealing with a bureaucratic and innocuous institution. However, in recent weeks the EEAS has become the scene of a new struggle for power and influence between member states and EU institutions. In the debate about the advantages and disadvantages of the European Constitution this agency was initially nearly disregarded. Hardly anyone now remembers the heated debates in the Convention about greater EU influence in foreign and security policy. Thus the Constitutional Treaty fell short of expectations primarily in the area of foreign and security policy. As a rule decisions still have to be made unanimously and qualified majority voting can be employed only in exceptional cases. There was too much resistance, especially from the large member states, against yielding competences to Brussels. That it proved possible to reach agreement about the EEAS at all under these circumstances was remarkable.

It has now been decided to establish the EEAS on the basis of the Constitutional Treaty, even before the latter has been ratified in all of the member states. Yet as so often in European politics, the problems are once again to be found in the fine print. What has been referred to as the "double hatting" of the European Minister for Foreign Affairs, the vague formulation concerning the structure of the EEAS in the Constitutional Treaty, and the familiar power struggle between member states and EU institutions confront those responsible for establishing the EEAS with seemingly insoluble challenges.

The future Union Minister for Foreign Affairs is to be responsible for the consistent conduct of the common foreign and security policy in both the Council of Ministers and the European Commission. This is laid down in Article I-28 of the Constitutional Treaty (TCE):

- "2. The Union Minister for Foreign Affairs shall conduct the Union's common foreign and security policy. He or she shall contribute by his or her proposals to the development of that policy, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
3. The Union Minister for Foreign Affairs shall preside over the Foreign Affairs Council.
4. 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."

This is a unique occurrence in the history of the Union in that it creates a situation in which an incumbent is accountable to two institutions – the Council of the European Union and the Commission. The “double hatting” solution seeks to emphasize the fact that foreign policy derives from two competence sources, the EU level and the policies of the member states. However, the influence and power of the new position cannot simply be laid down in writing; they will have to be demonstrated in terms of practical politics. Will the Minister for Foreign Affairs be closer to the Council or the Commission as he performs his duties? How much influence will be accorded to the Minister for Foreign Affairs as he acts in conjunction with the President of the Commission and the President of the Council? Here the Constitution contains potential for conflict inasmuch as the President of the Council of the European Union, in accordance with Article I-22 TCE, can also represent the Union in the area of foreign relations.

The problems which may materialize as a result of the creation of such a dual position also figure prominently in the arrangements for the establishment of the EEAS. The stipulations for the service are not particularly precise in the Constitutional Treaty, which merely states in Article III-296:

“3. In fulfilling his or her mandate, the Union Minister for Foreign Affairs shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a European decision of the Council. The Council shall act on a proposal from the Union Minister for Foreign Affairs after consulting the European Parliament and after obtaining the consent of the Commission.”

Although these stipulations are of a very general nature, they lay the foundations for a new entity which could easily have an adverse effect on what has hitherto been a carefully balanced power structure. For this reason issues of a sensitive nature affecting the EU and national levels have surfaced in the discussions concerning the establishment of the EEAS. To put it in a nutshell: the Commission and European Parliament are pitted against the Council of the European Union and the member states. The former favour a visible enhancement of the Community method in foreign and security policy, and thus propose to incorporate the EEAS into the Commission. The Council and the member states are prepared to entertain a number of options, but would certainly not accede to a complete integration into the Commission.

### The current state of affairs

The limited amount of time available has exerted considerable pressure on all concerned. In September 2004 the Council of the European Union commissioned the High Representative for Common Foreign and Security Policy, Javier Solana, to prepare for the creation of the EEAS. Solana is due to present his report to the summit on 16 and 17 June 2005. There were hearings

in the Parliament, and working groups met in the Council and Commission in January, February and March of this year. Certain foreign ministries, e.g. the German Foreign Ministry, have defined their positions in internal papers. The EEAS is officially due to begin its work when the European Constitution comes into effect in November 2006. However, agreement has been reached only on the following points:

- The EEAS shall be established.
- The service shall reflect in institutional terms a completely new dimension of European foreign policy. This is meant when the EEAS is technically described as an entity "sui generis". There are no models in the area of foreign relations which could serve as a point of departure in its inception.
- The staff shall be recruited – as envisaged by the Constitution – from officials from the Commission and Council and the national diplomatic services.

However, the list of unresolved issues is much longer. It includes questions relating to institutional assignment, financial and staffing arrangements, and the definition of the responsibilities of the EEAS and its relationship to the national diplomatic services.

### **Where should the EEAS be located in institutional terms?**

Whereas the Commission and the Parliament favour a straightforward integration into the Commission, this has been rejected by a large number of member states, who are supported by the General Secretariat of the Council. Europarlamentarians in particular argue that the Community method clearly needs to be strengthened. In this way they are attempting to ensure that in future they will be entitled to make further contributions to foreign policy. The member states are in favour of a division of competences in the institutional organization and assignment of the EEAS which mirrors that which exists in the area of foreign and security policy. Examples of the kind of structure envisaged are already being proposed, and they take their bearings from that of the translation service, even though there can be no doubt about the fact that there are differences between the political significance of the two services. The translation service leads an independent existence between the institutions. This means that it is not assigned to any of the EU institutions, though these can make use of its facilities. Thus it is possible to conceive of an EEAS which is incorporated into neither the Council nor the Commission.

### **What are the constituent elements of the EEAS budget and where should it be located?**

This will depend largely on the answer to the first question. If the EEAS were to be incorporated into the Commission, it would have to depend entirely on its budgetary resources. If the EEAS were not directly linked to a specific institution, it would also be possible for the Council to provide financial resources. In general terms it may be assumed that the administrative budget for the EEAS, if indeed it materializes, will be only slightly larger than what the Council and the Commission currently spend on foreign relations activities. In fact, by avoiding content

duplication – for example, in the area of the direct neighbourhood policy – the two institutions could engage in cost-cutting and make it possible to use the operational budgetary resources more efficiently.

### **What is the requisite EEAS staffing level?**

The 25 EU member states have about 40,000 diplomats at their disposal. The EEAS will not reach this kind of staffing level. However, estimates concerning the envisaged size of the European diplomatic corps vary between 600 and 7,000. For some member states the number of appointments is in itself a political issue, for from the very beginning this will have a considerable influence on the political significance of the EEAS. Similarly, the question of how many officials or diplomats can be seconded to the service by the Commission, the Council and the member states remains unresolved. An agreement could perhaps be reached on a 1/3 parity appointments basis.

### **How ought the responsibilities of the EEAS be defined?**

The EEAS is supposed to assume responsibility for the representation of EU foreign relations. This is a large area, which can range from trade and development policy to foreign and security policy and even defence policy. Which of these areas will be integrated into the service and which will be excluded? Here again power struggles are beginning to come to the fore. In formal terms the European Minister for Foreign Affairs – and thus also the EEAS, which is assigned to him – is supposed to be responsible for all aspects of external action, though de facto several commissioners will in future continue to be concerned with these subject areas. For example, it is difficult to imagine that Peter Mandelson will magnanimously surrender his portfolio – external trade policy – and present it to Javier Solana, the first Union Minister for Foreign Affairs.

### **What tasks remain for the national diplomatic services?**

The spectre of an EEAS which devours everything in sight, making the national foreign ministries superfluous in the medium and long term, is already beginning to surface. Currently this does not seem very realistic. It is far more likely that the permanent representations of the member states in Brussels will acquire greater political significance with regard to the coordination of EU foreign policy. They could assume an important interface function between the EAAS and EU capitals.

### **What will happen to the EU Commissioner for External Relations?**

This question is of a short-term political nature and should be relatively simple to resolve. The creation of a Minister for Foreign Affairs means that the responsibilities of Commissioner Benita Ferrero-Waldner will be assigned to Javier Solana. When, as a result of his dual function, the latter becomes vice-president of the Commission, the Commissioner for Monetary and Economic Affairs, Joaquin Almunia, who is also a Spanish member of the college, will have to go. The



current treaties as well as the constitution clearly stipulate that no member state can have more than one commissioner. The vacant portfolio could then be assigned to Austria. As in the past, such a situation could be a welcome opportunity to rearrange the assignment of areas of responsibility within the Commission.

### What needs to be done now?

Irrespective of the various preferences of the member states and EU institutions, the creation of the EEAS should take its bearings from an overriding principle which is in the interests of the development of the Union's common foreign and security policy. This overriding principle should be the notion of consistency, both internally and externally. The EEAS, in institutional, staffing and financial terms, must be organized in such a way as to make it possible to represent the EU externally in a homogeneous and effective manner. For this reason the following sensitive issues need to be resolved.

- **What is the significance of consistency with regard to institutional assignment?**

The notion of consistency suggests that a decision is needed which reflects the EU's competence profile in the area of foreign and security policy. For this reason neither a dual institutional assignment nor an exclusive integration into one of the EU institutions seems advisable. Assigning the EEAS to the Council and the Commission would certainly not clarify the distribution of responsibilities, and would merely cement the unsatisfactory status quo.

The Constitution is designed to strengthen foreign and security policy on the EU level. If one thinks of European foreign and security policy in terms of categories of finality, it might be possible to assume that the member states would initially transfer their competences in this area step by step to the EU level, and at some point in the future perhaps completely. A full integration of the EEAS into the Commission would make sense only at this juncture. However, the Union still has a long way to go before it reaches this kind of situation. In fact, foreign and security policy competences will for a long time to come continue to be assigned to both the Union and member-state levels. It would thus be logical to create the EEAS as an independent authority which is integrated into neither the Commission nor the Council. This would also make it clear that the competences in question are divided between the EU and the member states.

Reporting directly to the European Minister for Foreign Affairs, the diplomatic service would consequently be subject to the instructions of both the Commission and the Council.

Furthermore, from the very beginning it is vital to create a feeling of "ownership" towards the EEAS among the member states. A complete integration into the Commission would immediately weaken the service and curtail its room for manoeuvre. Under no circumstances should this be allowed to happen, since it would make it impossible to strengthen the future foreign and security policy of the EU.

The question of institutional assignment is a very sensitive issue, especially for the larger member states Germany, France, and the United Kingdom. If they do not support the EEAS from the outset, its chances of success will be very slim.

In practical terms the external representation of the EEAS will mean that those bodies which have in the past been established as representations of the European Commission will become EU representations and embassies respectively.

However, in the context of the restructuring of the external representations it should not be overlooked that the system of diplomatic representations within the EU has still not been reconsidered. The fact that the 25 member states maintain bilateral embassies is reminiscent of an outdated view of the state which no longer seems appropriate in 2005. The potential savings in the area of human and financial resources could be used for the creation of the EEAS.

- **What is the significance of consistency for the staffing levels and the budget?**

The staffing levels are of considerable importance, since they will make it possible from the very start to set new quantitative standards in the area of European foreign policy. If one adds the relevant departments of the Commission and the Council, and diplomats seconded from the member states, it is possible to assume an EEAS staffing level of about 3,000 to 4,000. The future Minister for Foreign Affairs, Javier Solana, has already referred to a staffing level target of 7,000. However, it should be noted that staffing levels will have to be increased if and when the Union agrees to accept additional external tasks. Furthermore, there is still a need for a single employment statute pertaining to EEAS diplomats. It must be ensured that officials from the national foreign ministries are not worse off than those seconded from the Commission. This issue could be resolved by adapting the European civil service statute to the needs of the EEAS.

With regard to the financial resources required, it must be ensured that the EEAS is given a budget of its own. Currently the budget of the Commission's External Relations Directorate-General amounts to €3.8 billion. However, the EEAS budget should not be distinct from the community budget, which is also the case with the EU agencies. There must be a precise distinction between the administrative budget and the operational budget. The EEAS would have to present its administrative budget on an annual basis to the Commission in accordance with the usual budgetary procedures. The Commission would incorporate these estimates into its total budget, which would then be approved on the basis of the rules of budgetary control. In such a structure the European Parliament would also be able to play a role. The Parliament considers the competence of budgetary control to be of great importance on account of its restricted powers in the area of foreign and security policy. Leverage in this area could give the Parliament an opportunity to influence external policies.

EEAS budgetary regulations of this kind could form part of the overall package relating to the creation of the EEAS which will be approved by the Council of Foreign Ministers.

- **What is the significance of consistency for the definition of areas of responsibility?**

The point of departure for the clarification of this issue must be the definition of the tasks assigned to the European Minister for Foreign Affairs. It is his duty to create a coherent European foreign policy internally and externally. By means of permanent coordination with the EU capitals, the Union's foreign policy should ideally amount to more in future than the lowest common denominator. It is difficult to imagine that far-reaching coordination of this kind can be carried out with only one top position. A number of deputies modelled on the state secretaries of the national diplomatic services will have to be appointed.

The Constitutional Treaty expressly assigns to the Minister for Foreign Affairs the responsibility for

- European foreign policy and
- European security and defence policy.

Absolutely essential, although it is not mentioned in the treaty, is the incorporation of development policy into the EEAS area of responsibility. Now and in future European foreign policy defines and will define itself largely through financial aid to third countries. This would also make it possible to tie development policy, which has to a large extent been decoupled, more effectively into the EU's operational foreign policy.

Regional and thematic working groups would be established in the areas alluded to above. The coordination with the Commission's remaining areas of responsibility would proceed on the basis of the mechanism of ministerial coordination which is the norm on the national level.

The Commission should retain control over humanitarian aid and external trade policy. To remove these areas would amount to an emasculation of the original competences of the Commission. Armed with these two substantial competences, the EEAS could easily become a kind of "second Commission." Furthermore, it could promote suspicions that in these areas, and especially in that of external trade policy, the large member states are intent on pursuing policymaking thus circumventing the Community method.

Finally, in the medium and long term, the responsibilities for visa would have to be transferred from the national ministries to the EEAS within the framework of a common European immigration policy.

The units which would have to be transferred to the EEAS from the Council would, in addition to the strategy, planning and early warning sections, include the Situation Centre, the Directorate-General for External Relations and the military staff. The EU Institute for Security Studies, which has hitherto been located in Paris, could be integrated into the EEAS as a planning unit. In addition there should be close coordination between the EEAS, the EU Satellite Centre, and the recently created European Defence Agency.

### Where are the limits of what the EEAS can do?

However desirable it might seem from the point of view of many of the smaller member states that EU embassies will in future represent the united position of the Union in non-EU countries, the reality will be different. In places such as Washington, Moscow and Beijing in particular, the member states will continue to have more staff in their embassies than the EU. Furthermore, the member states will wish to represent their national interests on the spot themselves, especially vis-à-vis the U.S. and Russia. Only in cases where no overriding national interests are affected will they permit the EEAS to represent them. The structure and composition of the EEAS will at the same time define the room for manoeuvre available to the Minister for Foreign Affairs. In addition to this, the Minister for Foreign Affairs will have to demonstrate the extent of his influence in conjunction with the Presidents of the Commission and the Council. However, the foreign ministers of the member states will not automatically subordinate their national reflexes to a common European policy simply on account of the creation of a European Minister for Foreign Affairs and the diplomatic service assigned to him.

It is of course possible to insist on the need to eradicate such competition. However, the chances that this will happen are very slim. In this area Brussels must simply face the facts. It should recognize the limitations of the EEAS, and attempt in close conjunction with the national services to achieve a high degree of consistency and efficiency.

Thus the EEAS should be construed as a kind of pioneering entity that is not part of the established EU institutions. However, it must be placed under parliamentary control. In this way it could become a precursor for a more pronounced Union role and more Union competences in the area of foreign and security policy. The EEAS constitutes an important step towards providing a solid foundation for the Union's foreign policy, which for years has been conducted with minimal resources. The Commission's know-how and the complementary expertise of the Council and the member states possess the potential to ensure a new and excellent external representation of the EU.

The debate about the creation of the EEAS is already reflecting a tangible part of constitutional reality, even without a ratified constitutional treaty. Thus, even if the constitution comes to grief, it is still possible to assume that the political will to introduce the office of a European Minister for Foreign Affairs and a European diplomatic service will succeed.