

BRIEFING

ESTABLISHING THE EU EXTERNAL ACTION SERVICE (EEAS)

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STATE OF NEGOTIATIONS ON THE EEAS AND REMIT

There is some strategic consensus emerging around the extension of the EEAS beyond its direct remit, with clear safeguards.

In those negotiations it is important to keep focus on the fact that the treaty states explicitly that the EEAS will be established to support the High Representative *in her role as High Representative of Foreign Affairs and Security Policy*.

Therefore any negotiated political outcome that extends the EEAS beyond this remit, can only potentially be acceptable if it safeguards all the other aspects of EU policy protected in the Lisbon Treaty.

UNDERSTANDING DOUBLE-HATTEDNESS

The Lisbon Treaty introduced a 'double-hatted' function for the new function of EU High Representative of Foreign Policy and Security Policy.

The High Representative would combine this role with the role of Vice-President of the European Commission, so allowing her to credibly represent all the aspects of the EU intergovernmental Common Foreign and Security Policy (CFSP) and the community-based common policies with an external dimension, notably trade, fisheries, development co-operation and humanitarian assistance.

The Lisbon Treaty does not establish a new class of double-hatted officials, or institutions, and neither does it establish a new set of double-hatted policies, decisions, procedures or laws.

FROM DOUBLE-HATTED TO TRIPLE-HATTED: QUESTIONS OF ACCOUNTABILITY

Lady Ashton is in fact triple-hatted, in that she also chairs the Foreign Affairs Council. She therefore combines three distinct functions: High Representative of CSFP, Vice-President of the Commission and Chair of the EU Foreign Affairs Council.

In these three pillars the High Representative combines responsibility of the executive (the European Commission) with the legislative (the EU Council) together with a representative role.

The question of scrutiny to ensure that some division of power remains and that the European Parliament and Member States retain some control to scrutinise policy implementation remains therefore acutely important.

THE EEAS MANDATE VIS A VIS THE EUROPEAN COMMISSION

An element that has been introduced during the negotiations is the idea that double-hattedness would extend beyond the High Representative itself.

In the course of negotiations double-hatted officials are appearing. The argument put forward is that the EEAS itself is a double-hatted service. Given that the Lisbon Treaty provides that an EEAS can be established to support the High Representative for Foreign Policy and Security, the Treaty does not envisage a service that itself has a double mandate.

The provision in the Treaty for a double-hatted representative does not in any way allow the establishment of a service with a double mandate.

The Lisbon Treaty provides unambiguously that the European Commission implements the EU budget.

The Community areas which include development cooperation are the responsibility of the European Commission, and the European Parliament is responsible for the discharge of the implementation.

The European Development Fund explicitly states that the European Commission will execute and implement the resources in line with the Cotonou Agreement. The Lisbon Treaty makes no distinction between regions, and the Development Cooperation Instrument and ENPI are equally within the remit of the European Commission, for all budget allocation matters. Only the European Commission can therefore be responsible for the National Indicative programmes.

INTERGOVERNMENTAL VERSUS COMMUNITY

There are some arguments circulating that the Lisbon Treaty does away with the distinction between intergovernmental and community policies.

This is explicitly not the case.

The raison d'être of the double-hatted High Representative is precisely in the acceptance that foreign policy, defence and security remain at the heart of Member States sovereignty and are therefore strictly intergovernmental with cooperation enhanced through the EU Council, with the EEAS servicing its implementation where there is joint agreement.

The Lisbon Treaty does not extend Foreign, Security and Defence Policy to common community policies.

The European common policies, such as development policy and humanitarian assistance, are at the heart of the community policies, for which the European Commission is charged with implementation.

CONSISTENCY AND COHERENCE

If the EEAS were to bring the EU external policies together – for which there is no mandate in the Lisbon Treaty – a consistent proposal would bring together the entirety of EU external policies, including trade.

The Lisbon Treaty does charge the High Representative with the responsibility to ensure the EU's foreign policy is consistent with other areas and this coordinating role should be placed in the EEAS so as to assist the High Representative.

The Lisbon Treaty also stipulates that all policies that impact on developing countries should take into account the objective of development cooperation, which is poverty eradication. The policies referred to in the treaty (§ 208) are all policies, including internal policies that can impact on developing countries, such as for instance the CAP.

There is no intention in the treaty to suggest that all these policies should be incorporated in the EEAS, but there is a duty for the High Representative to ensure Foreign and Security Policy is consistent with other external areas and coherent with development objectives.

FUSION

The European Union is often advanced through officials of Member States, officials of European institutions and others working on proposals and packages. It is good for the EU to advance on the basis of commonly accepted ideas and for such European notions to develop.

However, the process of such fusion is a process taking place in administrations, which do not in themselves find a justification in the Treaty.

On the contrary the Lisbon Treaty safeguards the specific roles of the institutions, defining the European Commission as independent from Member States individual interests charged with protecting the interests of the Union. The European Council reflects the individual interests of Member States.

While the High Representative can be present in both as part of her double-hatted nature, a fusion of the institutions would undermine the balance of interests that the Lisbon Treaty has provided for between in the institutions.

INCREMENTAL CHANGE?

A concern with the proposal to extend development cooperation into the EEAS is the process of incrementally changing the nature of the balance of power between the institutions. Whereas a small addition to the EEAS in development cooperation might seem to be relatively insignificant today, it provides the basis for much greater areas of policy making to be extended to the EEAS.

With the EEAS not being defined as a service in the Commission, nor a service in the Council, it is an institutionless orphan, and it will be unclear how it is governed. If the current negotiations open up the path for a big service without a clear mandate the question whether this is in the interest of the European Union is justified.

CONFLICT OF INTERESTS

In defence of the Ashton proposals double-hatted officials are coming out with the idea that European Union Foreign and Security Policy are set up with the purpose of promoting soft policies, and that it will provide carrots to developing countries to promote this policy more effectively.

First of all there is a question as to whether the post of High Representative for Foreign Affairs and Security policy was set up to only promote the EU's soft power.

Secondly, it denies the real conflicts of interests that do exist between EU policy areas and interests of developing countries, and therefore, the need to address objectives in such a way that the particular policy aims are promoted and not undermined. Whereas the EU's trade policy legitimately and aggressively defends the interests of the EU economy, the EU's development cooperation provides balance in having eradication of poverty as the central objective. They are different and require different instruments and whether or not policies are effective is measured in a different way.

The EU development policy is based on the concept of a partnership, of promoting ownership of development cooperation by developing countries; this has been a welcome change away from previous approaches that had more (neo-)colonial points of departure. This idea of partnership, in respect of ownership, has to remain the central underpinning of the EU development policy.

The proposal to integrate development cooperation in the EEAS has been defended on the basis of it helping the EU to offer carrots to developing countries (as opposed to brandishing sticks). It is questionable indeed if the developing countries will be interested in replacing ownership with carrots.

DOUBLE-HATTED OFFICIALS

Would double-hattedness become a possibility for some officials but not for all, then those few will become de facto decision-makers, with an unclear mandate, political accountability or scrutiny.

The Lisbon Treaty does not make provision for double-hatted officials – apart from the High Representative, and it has identified the Commission solely as the independent guardian of the EU treaties to promote the interests of the Union. It does not make a distinction between officials and this should remain the basis for a healthy executive.

PARLIAMENTARY SCRUTINY AND SCRUTINY BY MEMBER STATES

The danger with groups of double-hatted officials in the institutions will create a centre of power without any base in the Lisbon Treaty, and without clear references to scrutiny procedures. There is a real danger that this will increase the democratic deficit and will particularly harm the capacity of the European Parliament, national parliaments and the majority of member states. It is likely to lead to control over EU future external policies being assumed by the three largest member states.

CONCLUSIONS

It is vital that the establishment of the EEAS complies with the spirit and intention of the Lisbon Treaty.

The Treaty does not provide for double-hatted officials. It introduces a double-hatted High Representative, who is assisted with single-hatted officials for Foreign Policy and Security in the EEAS and single-hatted officials in the Commission for her duties as Vice President of the European Commission.

The construction of the EEAS needs to be carefully monitored against the provisions in the Treaty, especially in relation to lines of accountability.