EFFECTS OF DELEGATION IN FRAMING THE EU's EXTERNAL POLICY

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Abstract

This paper serves as an introduction to further study applying the Principle-Agent method to examining the delegation of EU external policy to the European External Action Service (EEAS). The vague mentioning of the EEAS in the Lisbon Treaty and the inter-institutional negotiations preceding the July 2010 Council Decision on the organisation and functioning of the EEAS illustrate how Member States have decided to leave a remarkable degree of autonomy to the new external relations agent. However, as Principle-Agent theory suggests, any agent that is left with great discretion will form a life of its own, from which the EEAS has been no exception in light of the proposals for change in the mid-2013 EEAS review. The paper argues that given that the Member States failed to integrate the desired degree of control in the 2010 Council Decision, their efforts will be mobilised at the time of the 2013 review. This introduction to a broader research project will highlight the means of control that the principles, the Member States, have employed to sanction the EEAS against future policy drifts or expanded competences, and what control mechanisms are expected to be strengthened using the opportunity of the EEAS review.

Introduction

The foreign policy of the European Union has been a reactive rather than proactive policy area of the EU because of the Member States' reluctance to give up national competence over this policy area that stands at the heart of high politics[1]. The early days of EU foreign policy cooperation, starting with the missed opportunity of the European Defence Community in 1952, the Political Cooperation in 1970 and the gradual set-up of the Common Foreign and Security Policy with the Maastricht Treaty, were marked by slow and hesitant steps. Against this backdrop, the post-Lisbon developments with the creation of the position of the High Representative of the EU and its supporting bureaucratic body, European External Action Service (EEAS), appears to be set up at the "Guinness record of speed"[2]. According to the Council Decision establishing the service in 2010, the EEAS "shall support"[3] the High Representative and Vice President of the European Commission (HR/VP) in ensuring coherency and consistency in the EU's external action and implementing the Common Foreign and Security

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[1] Bretherton, Charlotte and Volger, John, *The European Union as a Global Actor*, Oxon, Routledge, 2006, pp. 1-12.

[2] Christoffersen, Poul, 'The European External Action Service: Preparing for Success', *Clingendael Papers,* No. 1, 2010, p. 1.

[3] Council of the European Union, 'Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service', 2010/427/EU, Brussels, 26 July 2010.

Policy (CFSP) as well as support her under her mandate as the HR/VP[4]. After fierce inter-institutional negotiations over its form and content, it was decided in 2010 that the EEAS would stand outside the Commission or Council bodies, and consist of the civil servants from the European Commission, the diplomatic service of the Member States, and the Council Secretariat. By depriving the Commission of DG Relex and the Union's delegations, the EEAS stripped the Commission both in terms of competence and staff. The significant institutional changes were undertaken in the name of less duplication, enhanced efficiency and coherence in the EU's external representation[5].

As a *sui generis* bureaucratic body, the EEAS has gained significant attention by academics and practitioners alike, with a frequent focus on assessing its potential in delivering on the intended optimisation, efficiency and coherence of EU foreign policy[6]. Consisting of civil servants from two EU institutions and Member State diplomatic services, the EEAS has become a laboratory for solving the EU's "capacity-expectations gap"[7] and fascinates or frightens supporters and opponents, respectively, as a new post-Westphalian type of 'foreign ministry'[8]. As one of the more sceptical of observers, the European Parliament Chairman of Foreign Affairs, Elmar Brok, warns, "the EU does not need a new bureaucracy…", which "in the long term would lead to a life of its own to become an independent kingdom outside our control"[9]. The words of Brok resonate in the concerns that many Member States have previously expressed about the loss of control over the delegation of EU external relations to the Commission[10]. The negotiations leading up to the Council Decision establishing the EEAS and the final end product illustrate that winning back control over EU foreign policy was a pivotal point for the Member States throughout. In the words of Spence, the final arrangement would imply that

> "action would rest solely with EU member states…" in order to "[clip] the fledgling EEAS's wings in two ways: by overriding the independence of the European Commission, and imposing the unanimity principle when the EEAS aspires to be the external representative of EU competence"[11]

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[4] Van Vooren, Bart, 'A Legal-Institutional Perspective on the European External Action Service', *Common Market Law Review,* no. 48, 2011, pp. 475-502; Duke, Simon, 'The European External Action Service: Antidote against Incoherence?', *European Foreign Affairs Review,* vol. 17, issue 1, 2012, p. 45.
[5] Van Vooren, *loc. cit.,* p. 478; Murdoch, Zuzana, 'Negotiating the European External Action Service (EEEAS): Analysing the External Effects of Internal (Dis) Agreement', *Journal of Common Market Studies,* vol. 50, no. 6, 2012, p. 1011.
[6] Van Vooren, *loc. cit.,* p. 478; Jonas, Poul, 'EU Foreign Policy After Lisbon: Will the New High Representative and the External Action Service Make a Difference?', *CAP Policy Analysis,* no. 2., 2008, p. 32.
[7] Hill, Christopher, 'The capability–expectations gap or conceptualising Europe's international role', *Journal of Common Market Studies*, vol. 31, issue, 3, 1993, pp. 305–328.
[8] Bindi, Federica., 'One Year On: Assessing the European Foreign Policy and the European External Action Service', *Brown Journal of World Affairs,* vol. 17, issue 2, 2011, p. 129
[9] Van Vooren, *op. cit.*, p. 478.
[10] Spence, David, 'The Early Days of the European External Action Service: A Practitioner's View', *The Hague Journal of Diplomacy,* no. 7, 2012, p. 119.
[11] Spence, *loc. cit.,* p. 118.

Although the Member States were able to weaken the Commission and ensure their place in the new institutional arrangements, it is far from clear whether the actions of the newly established service will remain in line with Member State preferences. At the moment it is difficult to see the EEAS as a threatening, independent institution as it is torn by an internal strife over power and conflicting working cultures between the ex-Commission staff and Member State diplomatic servants[12]. However, in the long-run, the risk of the service wandering into its own orbit is enforced by the fact that the Lisbon Treaty is not more precise than stating that the EEAS "shall support" the HR/VP in fulfilling his or her mandate[13]. There is no clear list of internal rules of procedures of the EEAS. This arms the service with a margin of manoeuvre that it can potentially use for pursuing its own intentions and shaping its own identity in the long run[14].

This paper aims to investigate to what extent the Member States are willing and able to control the EEAS through the lens of Principle-Agent theory. Although it is a novel theoretical approach in the realm of European Politics, Principle-Agent theory has generously been applied to explaining delegation to the Commission both in terms of internal and external policy areas[15]. Based on Rational Choice presumptions, the theory is instrumental in explaining how a self-interested agent tends to drift away from the principle's preferences, unless it is successfully controlled[16]. The purpose of this paper will be to investigate the relationship between the Member States as the principle and its new agent in EU external relations, the EEAS, by assessing the ways in which Member States have been able to ensure control over the agent since its creation, and what changes are awaited with the upcoming EEAS review in 2013. The research question addressed is stated as follows:

Research question: To what extent have the Member States used the EEAS review to enhance their control over the realisation of EU external policies?

By going through the control mechanisms that the principle employs in its attempt to tie the hands of the agent, i.e., oversight, appointment, administrative procedures, organisation, legislation and institutional checks[17], it is possible to provide for a distinct logic for the development of the EEAS. This paper will be structured in several stages. The first section will highlight the existing academic literature employing Principle-Agent theory and outline the key assumptions of the theory. The second section will illustrate the applicability of the theory to the European External Action Service. Academics and practitioners alike have observed that the set-up of the EEAS was met by a strong

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[12] Bindi, *loc. cit.,* p. 129.
[13] Treaty of the Functioning of the European Union
[14] Spence, *loc. cit.,* p. 116.
[15] Dijkstra, Hylke, 'Explaining variation in the role of the EU Council Secretariat in first and second pillar policy-making', *Journal of European Public Policy*, vol. 17, issue 4, 2010, pp. 527-544;
[16] Versluys, Helen and Orbie, Jan, 'Theorising EU Humanitarian Aid Policy', *Conference Paper for Third Pan-European Conference on EU Politics,* Istanbul, 2006, p. 8.
[17] Gilardi, Fabrizio, 'Principal-Agent Models Go to Europe: Independent Regulatory Agencies as Ultimate Step of Delegation', *ECPR General Conference,* Canterbury, 2001, p. 15.

presence of the Member States with regard to efforts to imbed their voice in the new institutional arrangement. The section will elaborate on the theoretical control mechanisms of Principle-Agent theory that were used during the creation of the EEAS. The theory stipulates that the very delegation of a policy from the principle to the agent implies specialisation and an asymmetry of information[18], therefore perfect control of the agent is incompatible with efficiency in the delegated task[19]. In light of the upcoming EEAS review in the latter half of 2013 revolving around the rhetoric of enhancing efficiency[20], an arising question that will be tackled in the third section is what the upcoming EEAS reforms will cost the Member States in terms of national control. The research will follow the developments and tendencies of the 2013 revision to analyse the emerging changes in the delegation of EU external relations. The final section will outline the research design and methodology of the study that is to test the theoretical presumptions suggested in this paper.

Principle-Agent theory and its early application to the study of the EU

Principle-Agent theory is a newcomer to EU studies, originating in the United States in the 1980s in the form of economic governance literature[21]. It is based on the act of delegation, which is defined as "a conditional grant of authority from a principal to an agent in which the latter is empowered to act on behalf of the former"[22]. Although it traditionally stood under comparative politics, the recent application of the theory to explaining delegation from EU member States to its institutions, such as the European Commission[23], the European Court of Justice or the European Central Bank[24], has been remarkably fruitful. As a mid-range theory, Principle-Agent theory has a targeted explanatory capacity[25]. It is thus best applied to cases where a deeper understanding is required on the questions of why principles delegate competences and power to agents rather than setting up merely cooperative arrangements; how the principles control their agents; and whether the control mechanisms that guide their relationship are successful[26].

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[18] Kassim, Hussein, and Anand Menon, 'The Principal-Agent Approach and the Study of the European Union: Promise Unfulfilled?, *Journal of European Public Policy*, Vol. 10, No. 1, 2003, pp. 121-39.

[19] Pollack, Mark A., 'Theorizing EU Policy-Making', in Helen Wallace, William Wallace, Mark A. Pollack (eds), *Policy-Making in the European Union*, 2005, p. 33.

[20] Ashton, Catherine, 'EEAS Review: Foreword', Brussels, July 2013, retrieved at http://eeas.europa.eu/library/publications/2013/3/2013_eeas_review_en.pdf, last accessed 30 July 2013.

[21] Elgie, Robert, 'The Politics of the European Central Bank: principal-agent theory and the democratic deficit', *Journal of European Public Policy,* vol. 9, no. 2, 2002, pp. 186-200.

[22] Hawkins et al., 'Delegation Under Anarchy: States, International Organisations, and Principle-Agent Theory', *Delegation and agency in international organizations*, Cambridge, University Press, 2006, p. 3.

[23] Franchino, Fabio, 'Efficiency or credibility? Testing the two logics of delegation to the European Commission', *Journal of European Public Policy,* vol. 9, no. 5, 2002, pp. 677-684.

[24] Elgie, *loc. cit.*

[25] Pollack, Mark, 'Principal-Agent Analysis and International Delegation: Red Herrings, Theoretical Clarifications, and Empirical Disputes', *Bruges Political Research Papers,* no. 2, February 2007.

[26] Hawkins et al., *loc. cit.,* p. 6.

Principe-Agent theory shares its ontological features with rational choice theory. The three key presumptions are: firstly, that actors (both principles and agents) are self-interested and seek to maximise their utility[27]. Secondly, the theory stipulates that there is a tendency for a conflict of interest to occur between the principle and the agent. The third feature is that there is an asymmetry of information between the principle and the agent, which is in favour of the latter by virtue of its specialisation in the given policy domain[28].

Principle-Agent theory suggests that the act of delegation to a third party is not random; there are strong reasons for such a cost-bearing act. Majone proposes 'two logics of delegation', from which the first rationale is for the principle to gain credibility on policy commitments that is only attainable by delegating the task to the agent[29]. In other words, the credibility rationale for delegation is applied where the principle's actions are prone to short-termism, such as electoral cycles. Delegation allows for continuity and hence credibility. The second 'logic' for delegation is to delegate for the purpose of gaining policy relevant expertise, as the agent is in a position to specialise on a subject area. In other words, the relationship between the principle and agent is marked by an asymmetry of information[30]. The author suggests that delegation for credibility reasons means that the agent is granted with more independence or autonomy than when delegation takes place for policy-relevant expertise. Nevertheless, separating the two of delegation based on varied autonomy has been criticised by Pollack[31], Franchino[32] and Grant and Keohane[33]. In other words, some, but never unlimited inbuilt autonomy is present in every form of delegation[34]. Furthermore, when the principles sign a 'contract' of delegation, they often purposely leave parts of the mandate to be completed by the agent. This is referred to as 'discretion'[35]. Hawkins *et al.* suggest that discretion is particularly employed where there is uncertainty over the future developments of an ever changing policy area, when a degree of specialisation is needed that only the agent can provide, or in the scenario, in which there are multiple principles with heterogonous preferences[36].

This inbuilt autonomy, purposeful or not, forms the so called 'Principle-Agent problem'[37]. Because agents are utility-maximising actors with arguably diverging preferences from the principles,

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[27] Gilardi, Fabrizio, 'Principal-Agent Models Go to Europe: Independent Regulatory Agencies as Ultimate Step of Delegation', *ECPR General Conference Paper,* 6-8 September 2001, p. 5.
[28] *Ibid*.
[29] Majone, Giandomenico, 'Two Logics of Delegation: Agency and Fiduciary Relations in EU Governance', *European Union Politics,* vol. 2, no. 1, 2001, pp. 103-21.
[30] *Ibid*.
[31] Pollack, *op. cit.,* p. 10.
[32] Franchino, *op. cit.*
[33] Grant, Ruth W., and Robert O .Keohane, 'Accountability and Abuses of Power in World Politics', *American Political Science Review*, vol. 99, no. 1, 2005, pp. 29-43.
[34] Hawkins et al., *op. cit.,* p. 4.
[35] Grant and Keohane, *loc. cit.,* p. 31.
[36] Hawkins, *op. cit.,* p. 29.
[37] *Ibid*.

they seek to follow their own intentions where possible and to expand their autonomy even further. The agent's abuse of its empowered position is referred to as 'slippage'[38]. As already established, agents will always have some degree of autonomy, and "too much control… undermines the purpose of the delegation"[39]. After having made a cost-benefit analysis, principles, will select a type of control mechanism that will ensure that the agent does not diverge from the principal's initial preferences too radically. Different academics elaborate different types of control mechanisms; and this paper will borrow the exhaustive list of control mechanisms from Gilardi's work[40]. He identifies seven types of control: *(1) Oversight (police patrols),* which is in other words the constant monitoring of the agent's behaviour; *(2) Oversight (fire alarms),* allowing third parties to report any 'slippage'; *(3) Administrative procedures,* i.e. determining the agent's role in the decision-making process; *(4) Appointments*, meaning that a like-minded agent is granted by having power over appointees of head positions; *(5) Budget,* which is reduced in case of bad behaviour; *(6) Organisation,* i.e. threatening the agent to change the composition of the internal set-up or personnel; *(6) Legislation,* or the threat to change the laws and procedures; and, finally, *(7) Institutional checks*, which is the idea of creating multiple agents that would compete and mutually control each other.

As the extensive list of control mechanisms suggests, explaining the ways principles control agents is one of the key functions of Principle-Agent theory. It provides for interesting insight into the relationship between states and international organisations, regulatory bodies, etc., including the EU institutions.

Applying Principle-Agent theory to the study of the EU has become popular in the last decade. The multiple institutions and involved actors make the Union a complex research subject. Previous literature has focused on the delegation to the European Commission, mostly in terms of internal policy areas[41]. Analysing separate policy areas appears to be necessary as the EU competences and degrees of delegation and control mechanisms vary across the different policy areas. With the entry into force of the Lisbon Treaty, an additional bureaucratic actor entered the already complex web of delegation. As a new agent in the foreign policy arena with a loosely defined mandate, the European External Action Service has recently thrilled advocates of Principle-Agent theory with its potential for strengthening or upgrading the theoretical premises with new empirical evidence. The following section will outline our interpretation of the ways in which the EEAS can be mapped into Principle-Agent theory, and what potential insight or explanatory capacity the theory carries for the service and its 2013 review.

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[38] Pollack Mark A., 'Delegation, Agency, and Agenda-setting in the European Community', *International Organization,* vol. 51, no. 1, 1997, pp. 99–134.
[39] Hawkins et al. p. 33.
[40] Gilardi, *op. cit.*
[41] Franchino, *op. cit.*

The External Action Service as an EU's external relations agent

With the entry into force of the Lisbon Treaty in 2009, the Member States paved the way for the creation of a new foreign policy agent in the EU architecture. Namely, articles 18 and 27 of the Treaty of the European Union outline the creation and mandate of the High Representative/Vice President of the European Commission, who is to be supported by the European External Action Service. Because the EEAS and its head are legally and structurally linked, they can be placed into Principle-Agent theory as a single agent. Rather than familiarising the reader with the EEAS in greatest detail, this section will highlight the aspects of it that are most relevant to the questions asked by Principle-Agent theory. It will be depicted why the Member States decided to create the agent and what control mechanisms they put in place at the time of its establishment in order to pre-emptively avoid 'slippage'.

As outlined in the previous section, the reasons for delegation can be various, for example for the purpose of (1) enhancing credibility, and (2) gaining policy relevant expertise[42]. These two logics of delegation can both be applied to the creation of the EEAS. The Council Decision of 2010 establishing the organisation and functioning of the European External Action Service states that the formal objective for its creation was to enhance the consistency and coordination of the various external action policy areas and to ensure that also the traditionally internal policy areas that hold implications on external policy are in no contradiction with the external action[43]. The problem that needed to be addressed was that various EU external policies are subject to different degrees of EU communitarisation, meaning that the external representation of the EU become highly complex by virtue of the various actors in charge of each policy area. The introduction of a single position of the High Representative/Vice President of the Commission (HR/VP) was thought to allow for more coherence and dialogue between the EU's institutions and the Member States. The mandate of the HR/VP subsequently was to chair the Foreign Affairs Council, shape the EU's Common Foreign and Security Policy (CFSP) and to ensure coordination with other external policies, such as European Neighbourhood Policy and Development Policy under the mandate as Vice President of the Commission[44]. By supporting the HR/VP in her mandate, the EEAS is thought to contribute to coherence and credibility in external relations.

Secondly, the delegation to the EEAS also serves the gaining of policy-relevant expertise by virtue of the EEAS's now holding the EU's delegations in third countries, which are important sources of information on the ground. Furthermore, it is thought that the EEAS should stand between

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[42] Majone, *op. cit.*
[43] Council of the European Union, *Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service,* 2010/427/EU, Brussels, paragraph 2.
[44] *Ibid*.

the EU institutions with a brokering role[45], which is a position that allows it to possess more information. However, the service is too young and the organisational issues still too salient to feel the potential output of policy relevant expertise or specialisation at this point of time. Overall, the initial assessment of the creation of the EEAS supports both logics of delegation with an emphasis on the credibility logic.

Having established the logics of delegation, the next question to be addressed is what was the degree of discretion offered to the agency and why? The principle(s) try to hit a balance between pre-emptive control and a healthy degree of discretion, which depends on the intentions of the principle(s). In the theoretical section above it was suggested that leaving greater discretion to the agent can be desirable to an agent, such as the EEAS, firstly, because it consists of multiple and heterogeneous principles and, secondly, because the policy area in which delegation takes place requires flexibility that accommodates unanticipated changes of events at the global stage. The consequence or cost of leaving greater discretion to the agent is that more oversight and corrective control will be needed in the future. Looking at the case of the EEAS, the Lisbon Treaty, which provides the legal basis for the process of delegation, very vaguely outlined the mandate and functioning of the EEAS. Articles 18 TEU and article 27(3) TFEU outline the mandate of the HR/VP and vaguely state that the EEAS should "support" the HR/VP in her mandate. The Council Decision of 26 July 2010 establishing the organisation and functioning of the EEAS provides the agent with more precise rules and procedures; however, it has to be noted the actors behind its content were not only the principles as conventionally presumed in Principle-Agent theory. Namely, it was the HR/VP, arguably the agent itself, who submitted the initial proposal for the Council Decision in 2010[46]. Further, the subsequent negotiations illustrated a key role of the European Commission, who is the preceding agent in EU external relations, formerly in charge of the delegations to third countries and the Directorate General for External Relations (DG Relex). A major tension appeared between the Member States and the Commission regarding the question of how much of a role to leave for the Commission regarding aid programming within Development Policy and the European Neighbourhood Policy, and latitude in the appointment of senior positions[47]. The Commission proved itself as a fierce player in the negotiations, and the Member States had to conduct frequent informal meetings before the negotiations to gain bargaining power from a unified voice. The end result in the Council Decision was a compromise to meet the preferences of the Commission, as the EEAS was given the responsibility over strategy and the overall financial allocations for developing countries,

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[45] Whitman, Richard, G., 'The Rise of the European External Action Service: Putting the Strategy Into EU Diplomacy?', *12th Biennial Conference of the European Union Studies Association* (EUSA), 2011.
[46] The High Representative for Foreign Affairs and Security Policy, 'Draft Council decision establishing the organisation and functioning of the European External Action Service', 8029/10, Brussels, 25 March 2010.
[47] Whitman, *op. cit.,* p. 12

and the Commission was left in charge of the execution of the policies[48]. Interestingly, in their fight against the Commission, the Member States clearly supported giving more autonomy to the HR/VP and the EEAS[49]. It could be suggested that the dominance of the previous external relations agent, the Commission, was so salient that the Member States used the empowerment of the EEAS as a means to strip the Commission of its competences. If retaining powers from the Commission was indeed part of the rationale of the Member States, then leaving greater discretion to the new agent is only a short-term solution before the new organisation establishes itself and develops its own agenda.

In order to reduce the risk of 'slippage', the principles need to attach control mechanisms in the 'contract' of delegation and build in future measures to oversee the agents' behaviour. Here, we employ the list of control mechanisms that were introduced in the theory chapter above. The types of control that are played out at the time of the set-up of the contract are all but those associated with oversight: *administrative procedures, appointments, budget, organisation, legislation,* and *institutional checks.*

Looking at the case of the EEAS, the Lisbon Treaty, which provides the legal basis for the process of delegation, very vaguely outlined the mandate and functioning of the EEAS. Articles 18 TEU and article 27(3) TFEU outline the mandate of the HR/VP and merely state that the EEAS should "support" the HR/VP in her mandate. Thus the Council Decision of 2010 establishing the organisation and functioning of the EEAS should be considered the effective delegation 'contract', illustrating what control mechanisms Member States activated *ex ante*. The following table will highlight how the various control mechanisms appear in the Council Decision. The principles are in charge in the control mechanisms directly only in the cases, where the table indicates that the 'Actors in charge' are the 'Member States'; in the other cases the principles' control is indirect.

Type of control mechanism	Meaning in Principle-Agent theory[50]	Actors in charge	Description	Practical implications
Budget	"Budgets can be used as rewards and sanctions and thus structure the agencies' incentives"	HR/VP	The HR/VP suggests the draft budget to be allocated to the EEAS	The EEAS can be sanctioned on the basis of breaching the EU institutional rules; however, less so on the grounds of not pursuing future preferences of the principles
		European Parliament	The Parliament will oversee and approve the budget of the EEAS	
		Member States	The Member States provide the final decision on the size of the budget with the approval of the European Parliament	
		European Commission	The Commission will be in charge of the implementation of the	

[48] *Ibid*.
[49] *Ibid*.
[50] Gilardi, *op. cit.*

			operational budget	
Appointment	"The power of political principals to appoint the agencies' head and management board members"	**Member States** (European Council), the European Parliament	The appointment of the HR/VP is key to the behaviour of the agent as it is the single leading position with concentrated influence on the working of the EEAS as a whole. The European Council appoints the HR through qualified majority vote, and the European Parliament approves the HR/VP under his mandate as vice President of the Commission.	The fact that the Member States share the appointment decision with the European Parliament arguably weakens the ability of the Member States to select a like-minded HR/VP as a control mechanism against 'slippage'.
		The HR/VP	The Lisbon Treaty states that there should be 'meaningful presence' of Member State staff (the sources of civil servants are also mentioned in article 27(3) TEU, however, the exact figures are decided by the HR/VP. The appointment procedure involves a committee that includes Member State representatives who participate in the appointment of only some EEAS head officials.	Generally, the inclusion of staff from the Member States should be seen as a direct form of control by the Member States as the civil servants rotate back to their national ministries after their temporary contracts at the EEAS, retaining their loyalty to the national diplomatic services. It has been noted that there exists a 'work culture' cleavage between the staff originating in the Commission and the Member States. Member States have expressed concerns about the lack of transparency and their involvement in the recruitment process[51].

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[51] Ryszarda, Formuszewicz and Liszdzyk, Dorota, 'The Staffing Policy of the European External Action Service: Stocking Ahead of the 2013 Review', *The Polish Quarterly of International Affairs,* no. 1, 2013, p. 139.

Administrative procedures	"[Determining] the sequence of decision-making and, in particular, which groups have a privileged access to the decision-making process"	**Member States**	In terms of overall EU administrative procedures, it is coded in the Lisbon Treaty that the EEAS is to "support" the HR/VP in her broad mandate, which leaves it with a quite ambiguous role in the EU decision-making with a lot of room for manoeuvre. In her mandate as the chair of the various institutional formations and as the initiator of foreign policy proposals, the HR/VP is in a privileged procedural position.	As the EEAS has been preoccupied with its own internal set-up, staffing, etc., the service still has acted below its potential. Presuming that the service will develop its own institutional identity over time, it is thought to take more advantage of its privileged position.
Organisation	"Elected politicians can also try to control bureaucracy through threatened or actual reorganisations of departments"	**Member States**	The EEAS should consist of (1) a number of geographical DGs, multilateral and thematic desks, (2) a DG for administration, staffing, budget, communication and information system matters; (3) the crisis management and planning directorate, the civilian planning and conduct capability, the European Union Military Staff and the European Union Situation Centre; (4) a strategic policy planning department (5) a legal department under the administrative authority of the Executive Secretary-General which shall work closely with the Legal Services of the Council and of the Commission, (6) departments for inter-institutional relations, information and public diplomacy, internal audit and inspections, and personal data protection	The range additional departments to those with a geographical orientation are clear indicators that the EEAS has a considerable degree of autonomy in terms of its own staffing, budget allocation and security. The principles will further be able to sanction the agent with the threat of reorganisation against bad behaviour in with the upcoming EEAS review.
Legislation	"Enacting new laws, or even simply threatening to do so, could seem an obvious and simple means to control the bureaucracy"	**Member States**	More generally, the threat of limiting the EEAS autonomy and powers with the EEAS review in 2013 in case it does not pursue the principles' intended behaviour (article 11(3) of the Council Decision	It could be foreseen that the Member States will use the EEAS review as a chance to re-examine whether the EEAS drifts away from their initial preferences as further legal 'repatriations of powers' are difficult to carry out in the EU institutional context.

Institutional checks	"Political principals can delegate the same competence to more than one agent so as to force them to compete in a way that is beneficial to the principals"	Commission	The Commission and the EEAS need to cooperate very closely in a range of ways. For example, the Commission may issue instructions to the delegations that previously stood under its authority, but it needs to forward all communication to the EEAS administration and the Heads of Delegation.	The strongest example of an institutional check remains the Commission, which remains in charge of parts of the EU's foreign policy. In the case of Development policy, the EEAS and the Commission share responsibility at different parts of the policy cycle, rendering them highly interdependent. As a result, the two agents control each other to the principles' advantage.
		The Court of Auditors	The Court of Auditors provides an annual report on the effective use of the EU budget on the EEAS, to which the EEAS will have to respond	
		European Parliament	it will be consulted and have access to information; The Parliament has the right to discharge authority	
		OLAF	the EEAS needs to adopt the decision for the regulation on terms and conditions for internal investigations	
		Member States and EU institutions	the HR/VP issues a report by the end of 2011 on the functioning of the EEAS, especially regarding the staffing in and communication with delegations; and submits a proposal for the EEAS review by mid-2013.	

The table has illustrated the ways in which various control mechanisms that can be found in the Council Decision are anticipated to guide the behaviour of the EEAS. Although the list of control mechanisms may appear comprehensive at first glance, several considerations need to be added to the further analysis. Firstly, most of the control mechanisms are *ex ante* control in the sense that they are fixed 'rules' that frame the agent's room of manoeuvre or discretion. The control mechanisms that are set, unless an exceptional intervention is required, are *administrational procedures*, *organisation*, *legislation*, and *institutional checks*. It has to be noted that the coding of the principles' preferences in the initial contract was limited, given that the existing EU procedures, rules and voices of other agents had to be considered. Although these control mechanisms are fixed, they do contain some 'windows' for future revision, such as the evident example of the EEAS review enshrined in article 13(3) of the Council Decision, though the potential changes will mostly be geared towards improving staffing and general efficiency. Secondly, the table illustrates that several variables or flexible control tools still remain in the principles' hands for future control or sanctioning. These are *appointments* and the

budget, which count as *ex post* control mechanisms. However, even in these cases of recruitment and the budget, the Member States are not the sole decision-makers, sharing the responsibility with the European Parliament in the case of the budget, and the Commission and the High Representative in the case of the appointment of most head personnel of the EEAS.

In conclusion, this modest initial analysis of the control mechanisms in place with the Council Decision establishing the organisation and functioning of the EEAS has highlighted the areas that require further investigation and analysis. The preliminary observations that can be made through the logic of Principle-Agent theory are that the delegation to the EEAS took place in a far more complicated context than the previous delegations in the EU, i.e., to the European Central Bank or the European Commission. The negotiations preceding the Council Decision revealed an influence of EU institutions other than the Council; namely, the prominent role of the Commission and, to a lesser extent, European Parliament[52]. As already stated, the gravity of the pressure felt by the Member States from the Commission was illustrated in the fact that the Member States pushed each other to converge for a joint position to gain more weight against the Commission in the negotiations. The significance of the existing institutional procedures is also noted throughout the Decision regarding oversight by the Court of Auditors or the European Parliament, or recruitment policies that have already been applied to civil servants of previous agents. A surprising observation that can be made is the great degree of discretion that is left to the EEAS and the High Representative, calling for further investigation. The reason why it is surprising, or rather, alarming, is the co-existence between great discretion and weak control mechanisms by the Member States. The only control mechanisms that remain *ex post* for sanctioning bad behaviour are: *appointment*, and the *budget*. It is noteworthy that the Member States have indeed expressed their interest in maintaining control and competence in the EU external relations, therefore the passive form that they have appeared to be taking to date calls for a further investigation.

The EEAS review – the continuous signs of the dissatisfied principles

The following empirical section will, firstly, shed light on the attitudes of the Member States in the years following the creation of the EEAS and, secondly, in light of the 2013 EEAS review. The section will highlight what are the areas of potential 'slippage' that appear in the review and what reactions may be triggered amongst the Member States.

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[52] Formuszewicz and Lisczyk, *op. cit.* p. 140.

Doubting the EEAS

There were a number of reasons for the initial scepticism from the Member States regarding the set-up of the EEAS. Firstly, the Lisbon Treaty provided a major change in the legal and institutional order within the External relations field, which traditionally has been the domain of the Member States. Secondly, they were willing to demonstrate that the 'Member State ownership' in the field of CFSP were to remain at the heart of the dispute and that they were committed to control not only the CFSP but also the EEAS[53]. Elmar Brok, who led the work on the report on the EEAS at the European Parliament, warned when comparing the state of play with the pre-Lisbon institutional architecture: "we have to see whether the EEAS has brought added value, or is it simply another voice in the EU's external action?"[54].

Indeed, with quite a vague mandate in the Lisbon Treaty, the efficiency of the EEAS has been questioned by the member states already from the very outset of its creation. The first sceptical signals from the 'principals' emerged a year after the creation of the EEAS. On 8 December 2011 twelve Foreign Ministers of the Member States jointly issued a non-paper[55], in which they expressed concerns about the effectiveness of the EEAS proposing more active Member States' engagement by arguing: "we would like to join efforts to further enhance the effectiveness of the EEAS and to help to develop its full potential". The document contained concrete aspects of the EEAS work, where the principle saw space for improvement, including the preparation of the Foreign Affairs Council (FAC) meetings, the coordination with the Commission, internal organization and functioning of the EEAS procedures, and the further strengthening of the EEAS delegations and their staff. In spite of the rather general nature of this document, it contained a number of very concrete ideas with the view to newly established 'agent'. Under the title *Full Involvement of Member States,* the signatories of the non-paper addressed the issue of Member States' involvement, by encouraging the EEAS to avoid the setting up of a new structure disconnected from the Member States. Particular concerns were expressed regarding the recruitment of the Member States' diplomats in the EEAS. Drawing on the control mechanisms suggested in the previous section, it can be concluded that *appointments* or the integration of their own staff members into the internal workings of the service is an essential control mechanism that the Member States will strive to enhance.

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[53] Reviewing Member States' Commitment to the European External Action Service, EPIN Working Paper, No.34, November 2012.

[54] EEAS two years on: MEPs call for more ambitious diplomatic corps http://www.europarl.europa.eu/news/en/pressroom/content/20130607IPR11368/html/EEAS-two-years-on-MEPs-call-for-more-ambitious-diplomatic-corps.

[55] Non-paper on the European External Action Service from the Foreign Ministers of Belgium, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland and Sweden, 8 December 2011,http://www.europarl.europa.eu/meetdocs/2009_2014/documents/afet/dv/201/201203/20120321_nonpaperf ms_en.pdf.

Further reactions on the functioning of the EEAS came both from the individual Member States and the EU institutions. Germany issued its individual non-paper dated 1 February 2013[56] calling for the larger EEAS budget and more internal coherence of the internal coordination of the EEAS. It was followed by the French non-paper, guarding its right to independent foreign policy.[57] Following the internal Directors-General consultations among the Member States in February 2013, the Irish Council Presidency devoted the whole agenda of the Informal Meeting of the Ministers of Foreign Affairs (the so called Gyminch Council) to the discussions on the EEAS review. The Gymnich meeting was held in Dublin on 23 March 2013[58] with an aim of exchanging views among the ministers on the work of the EEAS before the mid-2013 review of the EEAS was due to be published. The informal ministerial meeting was chaired by the Minister of Foreign Affairs of the Irish Presidency, including also the high-level participation of the EU institutions, namely, Vice-President of the European Commission Maroš Šefcovic and the MEP Elmar Brok. The review of the functioning of the EEAS was discussed among the Member States also paying attention to the leadership change, as the mandate of the Baroness Ashton runs by the end of October 2014.

The EEAS review: The first signs of 'slippage'?

When the EEAS review was published on 26 July 2013[59], the first comments by analysts and media suggested that the Foreign Policy Chief attempts to gain more powers through the mid-term review [60]. The document, which is signed by the Baroness Ashton herself (as described by foreign analysts, "very much Cathy's personal document"[61]) contains three sections: (1) the organization of the EEAS, (2) the functioning of the EEAS, and (3) the role of the HR/VP. It provides a number of short-term and medium-term recommendations for the future improvement of the EU's external action. Apart from general language, it contains some very concrete proposals, which indicate that the chief of the EEAS wants to increase the service's authority. The review sets out a new proposal for changing the chairing arrangements of the Council Working groups. Namely, it suggests that the responsibility for chairing of the following formations should be taken from the Rotating Council Presidency and given to the EEAS: the RELEX group, Development working group, Africa Caribbean Pacific working group, EFTA group, COTPER group and COJUR group and Athena

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[56] Germany calls for more powerful EU diplomatic service, European Observer 18.03.13, http://euobserver.com/institutional/119459.

[57] *Ibid*.

[58] President Šefcovic tells Europe's Foreign Ministers: review of EEAS must strengthen the role of the EU as a global player, http://europa.eu/rapid/press-release_MEMO-13-284_en.htm?locale=en

[59] EEAS Review, http://eeas.europa.eu/library/publications/2013/3/2013_eeas_review_en.pdf.

[60] Ashton in bid to gain more powers, European Voice, 31.07.2013. http://www.europeanvoice.com/article/2013/july/ashton-in-bid-to-gain-more-powers/78008.aspx

[61] The EU's Foreign Policy Chief wants to increase the Service's authority, http://online.wsj.com/article/SB10001424127887324809004578637932007327220.html

committee. The reason mentioned by the review is that the "relationship between the work of these groups and the policy areas covered by groups [is] already chaired by the EEAS"[62].

In terms of organisational changes, the review suggests a major reform with the creation of a deputy for the HR/VP who could replace her in carrying out responsibilities internally and externally. The review offers a whole chapter on the deputising for the HR/VP with options for both the political deputy HR/VP position and the involvement of the Minister of the rotating presidency[63].

With the increased number of actors in the EEAS (multiple actors' dilemma), the service has to cope with the internal coordination constraints. From the Member States' perspective – a more tightly integrated service with a clearer chain of command should be attained[64]. This means that the Member States call for more transparent information exchange and more efficient coordination between all the actors. Besides, also the staffing issue repeatedly appears in the review. It remains to see whether the proposed distribution of staff members between the three actors of the EEAS – the nationals from the Member States' diplomatic services, the officials from the Commission and the representatives of the Council Secretariat – are acceptable for the Member States. This issue has been vividly discussed already during the early discussions at the Gymnich meeting in March 2013. The next steps in the review process after the publication of the review in July are the discussions on the Member States among the Senior Officials level followed by the discussions among the Foreign Ministers and the Heads of States in the December European Council 2013.

Provided the evidence that the Member States have witnessed the first years of the EEAS and continuously express their concerns over losing competence to the gradually strengthening external relations service, there is reason to believe that their voices will be particularly salient during the 2013 EEAS review. Drawing on the early relationship between the Member States and the EEAS, the following hypothesis can be formed:

Hypothesis: Given the great discretion that the Member States have given to the EEAS with the 2010 Council Decision because of various external circumstances, it can be anticipated that the EEAS review will contain substantial efforts to strengthen Member State control.

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[62] EEAS Review, p.6. http://eeas.europa.eu/library/publications/2013/3/2013_eeas_review_en.pdf
[63] *Ibid*., p.13.
[64] Strategic Europe, November 2012, http://carnegieendowment.org/2012/11/14/review-of-european-external-action-service-in-2013/eifi.

Concluding remarks

The present conference paper depicts the first steps of the research project to be carried over the year following the release of the mid-2013 EEAS review. The infant stages of this project have opened up a debate around the apparent discretion of the EEAS regarding its relatively ambitious role in the shaping and implementing the EU foreign policy compared to any previous delegation in EU external relations. Although the EEAS appeared weak in the aftermath of its creation, over time the service appears to be bringing flesh to its bones and gradually taking advantage of its discretion. The mid-2013 EEAS review published by the High Representative has illustrated a clear desire of the service to expand its competences and test the limits of the sceptical Member States. This paper has suggested that the control mechanisms offered by Principle Agent theory that should prevent 'slippage' or sanction a disobedient agent are limited to some aspects of budgetary control and staffing. The further focus of this study will be to track the relationship between the Member States and the EEAS with respect to the potential conflict over autonomy versus control in the aftermath of the EEAS review. Specifically, a great deal of attention will be awarded to any changes in staffing procedures; the degree of transparency of the service and cooperation with the Member States (especially, the Rotating Presidency); the involvement of National Parliaments; and consular burden sharing with the Member State embassies. In terms of methodology, the research will be supported thorough qualitative interviews with civil servants in three variously sized Member States (Latvia, Austria, Spain and France) as well as with civil servants within the EEAS. The research is to be carried out over 2014, capturing the attitudes in the Member State capitals over time and allowing for a deeper understanding of the nature of the delegation to the new external relations agent and its future implications to the Member States.

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