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Using the Opportunity of the EEAS Review for Controlling the Agent: A Principal-Agent Method in Explaining the EU's Diplomatic Service.

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Abstract

The functioning of the European External Action Service (EEAS) has been a much discussed and highly controversial issue since its establishment in 2010. By constructing one single actor for EU external policy, the EEAS now has to deal with finding most efficient ways of accommodating the interests of the EU Member States and those of the EU institutions. The paper applies the Principal-Agent method to examine the delegation of EU external policy to the 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 Principal-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 are mobilised at the time of the 2013 review. The paper highlights the means of control that the principals, i.e. the Member States, have employed to sanction the EEAS against future policy drifts or expanded competences, and what control mechanisms are strengthened by using the opportunity of the EEAS review in 2013¹.

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 politics². 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"³. According to the Council Decision establishing the service in 2010, the EEAS "shall support"⁴ 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

¹ The research is funded by the PCIG12-GA-2012-333906 project 'Evaluating the Post-Lisbon Effects of Delegation in the EU External Relations'.

² Bretherton, Charlotte and Volger, John, *The European Union as a Global Actor*, Oxon, Routledge, 2006, pp. 1-12.

³ Christoffersen, Poul, 'The European External Action Service: Preparing for Success', *Clingendael Papers*, No. 1, 2010, p. 1.

⁴ 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/VP⁵. 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 representation⁶.

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 policy⁷. 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"⁸ and fascinates or frightens supporters and opponents, respectively, as a new type of 'foreign ministry'⁹. 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"¹⁰. 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 Commission¹¹. 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"¹²

Although the Member States were able to ensure their place in the new institutional arrangements, it is far from clear whether the actions of the External Action Service will remain in line with Member States' preferences. At the moment it is difficult to see the EEAS as a threatening, independent

⁵ 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.

⁶ Van Vooren, *loc. cit.*, p. 478; Murdoch, Zuzana, 'Negotiating the European External Action Service (EEAS): Analysing the External Effects of Internal (Dis) Agreement', *Journal of Common Market Studies*, vol. 50, no. 6, 2012, p. 1011.

⁷ 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.

⁸ 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.

⁹ 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

¹⁰ Van Vooren, *op. cit.*, p. 478.

¹¹ 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.

¹² Spence, *loc. cit.*, p. 118.

institution as it is torn by an internal strife over power and conflicting working cultures between the ex-Commission staff and Member State diplomatic servants¹³. 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 mandate¹⁴. 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 run¹⁵.

This paper aims through the lens of Principal-Agent theory to investigate to what extent the Member States are willing and able to control the EEAS. Although it is a novel theoretical approach in the realm of European Politics, Principal-Agent theory has generously been applied to explaining delegation to the Commission both in terms of internal and external policy areas¹⁶. Based on Rational Choice presumptions, the theory is instrumental in explaining how a self-interested agent tends to drift away from the principal’s preferences, unless it is successfully controlled¹⁷.

The purpose of this paper is to investigate the relationship between the Member States as the principal 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 how the EEAS review in 2013 has reflected the control mechanisms by the Member States. The research question addressed is stated as follows: *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 principal employs in its attempt to tie the hands of the agent, i.e., appointment, administrative procedures, organisation, legislation and institutional checks¹⁸, 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 Principal-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 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 Principal-Agent theory that were used during the creation of the EEAS. The theory stipulates that the very delegation of a policy from the

¹³ Bindi, *loc. cit.*, p. 129.

¹⁴ Treaty of the Functioning of the European Union

¹⁵ Spence, *loc. cit.*, p. 116.

¹⁶ 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;

¹⁷ Versluys, Helen and Orbie, Jan, ‘Theorising EU Humanitarian Aid Policy’, *Conference Paper for Third Pan-European Conference on EU Politics*, Istanbul, 2006, p. 8.

¹⁸ Gilardi, Fabrizio, ‘Principal-Agent Models Go to Europe: Independent Regulatory Agencies as Ultimate Step of Delegation’, *ECPR General Conference*, Canterbury, 2001, p. 15.

principal to the agent implies specialisation and an asymmetry of information¹⁹, therefore perfect control of the agent is incompatible with efficiency in the delegated task²⁰. In light of the EEAS review of 2013 revolving around the rhetoric of enhancing efficiency²¹, an arising question that will be tackled in the third section is related to the evidence of control that the Member States have demonstrated throughout the EEAS reforms. The research will follow the developments and tendencies of the 2013 revision to analyse the types of control by the Member States in the delegation of EU external relations. The final section will summarize the argument by testing the theoretical presumptions suggested in this paper.

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

The Principal-Agent theory is a newcomer to EU studies, originating in the United States in the 1980s in the form of economic governance literature²². 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”²³. 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 Commission²⁴, the European Court of Justice or the European Central Bank²⁵, has been remarkably fruitful. Applying Principal-Agent theory to the study of the EU has become popular in the last decade. Previous literature has focused on the delegation to the European Commission, mostly in terms of internal policy areas²⁶. 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 Principal-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 Principal-Agent theory, and what potential insight or explanatory capacity the theory carries for the service and its 2013 review.

The Principle-Agent theory shares its ontological features with rational choice theory. The three key presumptions are: firstly, that actors (both principals and agents) are self-interested and seek

¹⁹ 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.

²⁰ 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.

²¹ 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.

²² 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.

²³ Hawkins et al., ‘Delegation Under Anarchy: States, International Organisations, and Principal-Agent Theory’, *Delegation and agency in international organizations*, Cambridge, University Press, 2006, p. 3.

²⁴ 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.

²⁵ Elgie, *loc. cit.*

²⁶ Franchino, *op. cit.*

to maximise their utility²⁷. Secondly, the theory stipulates that there is a tendency for a conflict of interest to occur between the principal and the agent. The third feature is that there is an asymmetry of information between the principal and the agent, which is in favour of the latter by virtue of its specialisation in the given policy domain²⁸.

Principal-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 principal to gain credibility on policy commitments that is only attainable by delegating the task to the agent²⁹. 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 principal and agent is marked by an asymmetry of information³⁰. 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 Pollack³¹, Franchino³² and Grant and Keohane³³. In other words, some, but never unlimited inbuilt autonomy is present in every form of delegation³⁴. Furthermore, when the principals 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 principals with heterogenous preferences³⁶.

This inbuilt autonomy, purposeful or not, forms the so called ‘Principal-Agent problem’³⁷. Because agents are utility-maximising actors with arguably diverging preferences from the principals, 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

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.*

³⁸ Pollack Mark A., ‘Delegation, Agency, and Agenda-setting in the European Community’, *International Organization*, vol. 51, no. 1, 1997, pp. 99-134.

of the delegation”³⁹. After having made a cost-benefit analysis, principals, 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. This paper will borrow the list of control mechanisms from Gilardi’s work⁴⁰. 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; (7) *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.

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 Principal-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 Principal-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 expertise⁴¹. These two logics of delegation can both be applied to the creation of the EEAS. The Council Decision 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 action⁴². 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

³⁹ Hawkins et al. p. 33.

⁴⁰ Gilardi, *op. cit.*

⁴¹ Majone, *op. cit.*

⁴² 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.

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 Commission⁴³. By supporting the HR/VP in her mandate, the EEAS is thought to contribute to coherence and credibility in external relations as supposed by the delegation rationale.

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 the EU institutions with a brokering role⁴⁴, 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 principal(s) try to hit a balance between pre-emptive control and a healthy degree of discretion, which depends on the intentions of the principal(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 principals 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 EEAS⁴⁵. 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 principals as conventionally presumed in Principal-Agent theory. Namely, it was the HR/VP, arguably the agent itself, who submitted the initial proposal for the Council Decision in 2010⁴⁶. The same applies to the EEAS review that was compiled and published by the HR/VP. Further, the subsequent negotiations illustrated a key role of the European Commission, which 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) prior to the Lisbon Treaty. A major tension appeared between the Member States and the Commission

⁴³ *Ibid.*

⁴⁴ 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.

⁴⁵ 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.

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.

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 positions⁴⁷. Interestingly, in their fight against the Commission, the Member States clearly supported giving more autonomy to the HR/VP and the EEAS⁴⁸. 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.

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:

H: 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.

The paper draws on Gilardi's types of control mechanisms⁴⁹ and traces them throughout the EEAS review process. This paper focuses on the 2013-review but the broader research project includes also the coming review in 2015 as well as looks on the appointment of the new HR/VP in 2014. In order to reduce the risk of 'slippage', the principals 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 and organization, appointments, budget, organisation, legislation, and institutional checks.*

The EEAS review – the signs of dissatisfied principals

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 in terms of control measures are triggered by the Member States through the review process. There were a number of reasons for the initial scepticism from the Member States regarding the set-up

⁴⁷ Whitman, *op. cit.*, p. 12

⁴⁸ *Ibid.*

⁴⁹ 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.

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 States’ 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 EEAS⁵⁰. 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, 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”⁵¹. The document contained concrete aspects of the EEAS work, where the principal 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.

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 2013⁵² 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.⁵³ 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 Gymnich Council) to the discussions on the EEAS review. The Gymnich meeting was held in Dublin on 23 March 2013⁵⁴ 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. After the publication of the EEAs review on 26 July 2013⁵⁵, the comments by analysts and

⁵⁰ Reviewing Member States’ Commitment to the European External Action Service, EPIN Working Paper, No.34, November 2012.

⁵¹ 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_nonpaperfms_en.pdf.

⁵² Germany calls for more powerful EU diplomatic service, European Observer 18.03.13, <http://euobserver.com/institutional/119459>.

⁵³ *Ibid.*

⁵⁴ 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

⁵⁵ EEAS Review, http://eeas.europa.eu/library/publications/2013/3/2013_eeas_review_en.pdf.

media suggested that the Foreign Policy Chief (agent) attempted to gain more powers through this review⁵⁶. The document, which is signed by Baroness Ashton herself and described as “very much Cathy’s personal document”⁵⁷ 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.

Accessing types of control by the Member States on the External Action Service

The hypothesis is tested by qualitative methods in two steps – analysis of the EEAS review and through a series of interviews with the Member State’s officials, who have participated in the deliberation process in COREPER in the fall of 2013. Five semi-structured interviews were carried out in the capital and in Brussels with the representatives of Ministry of Foreign Affairs to gain an insight in the deliberations in the Council. Latvia was selected as the target country for carrying out the interviews, assuming that the findings could be generalized, since they focus on the negotiations in the Council and not the preferences of one single Member State.

EEAS review was one of the priorities of the Lithuanian Presidency. The negotiations in the Council were carried out in the COREPER framework by the ambassadors with an active engagement of the Antici Councillors, signalling the political salience of the dossier for the Member States and the Council Presidency. The Member States’ evaluation of the EEAS review was summarized in the Council Conclusions discussed by the Ministers of Foreign Affairs General Affairs Council and formally adopted at the Foreign Affairs Council in December 2013. According to the interviews the Presidency opted for passing the dossier through two Council formations for strategic reasons, by marking the ownership and control of the Member States. Namely, the Foreign Affairs Council is chaired by the HR/VP, whereas the General Affairs Council is the responsibility of the Rotating Presidency. Thus, the discussions among the COREPER ambassadors and ministers could be conducted in a more critical and open manner towards the evaluation of the EEAS review. The Political Security Committee (PSC) was involved in the Council work when discussing the CFSP-related issues. The fact that the EEAS review was scrutinized on the level of COREPER (contrary to other dossiers that undergo the Council Working group deliberations) proves the political salience of the issue for the Member States. The Lithuanian Presidency organized the work in four blocks, each relating to one thematic issue: the first on the EEAS role and functioning (EEAS review recommendations 3, 6, 7, 10, 13, 22), the second on external representation and delegations

⁵⁶ 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>

⁵⁷ The EU’s Foreign Policy Chief wants to increase the Service’s authority,

<http://online.wsj.com/article/SB10001424127887324809004578637932007327220.html>

(recommendations 2, 14, 15, 16, 17), the third on the cooperation with Member States and EU institutions (recommendations 2, 14, 15, 16, 17, 18, 19) and the fourth on staffing issues (recommendations 23, 24, 25, 26). For each block, one CORPEPER meeting was planned between 9 October and 7 November. Additionally two COREPER meetings were scheduled in December for solving the outstanding issues before the General Affairs Council on 17 December 2013. The discussion road map demonstrates that the Member States focused on the review in a committed and independent way, solely keeping the process in the hands of the Council. In the interviews with experts, who prepared the national positions in the capital, delegates in Brussels and representatives of the National Parliament, we tested to what extent the Member States (principals) focused on the following types of control mechanisms (*organization and administrative procedures, appointments, budget, legislation, and institutional checks*) while evaluating the EEAS (agent) performance in two and a half years after the establishment of the EU's diplomatic service.

Organization and administrative procedures

With regard to the theoretical framework of the study, the administrative procedures and organization are used as control types by the principals through determining the agent's role in the decision-making process. In terms of overall EU administrative procedures, it is coded in the Lisbon Treaty that the EEAS has 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 Foreign Affairs Council and as the initiator of foreign policy proposals, the HR/VP is in a privileged procedural position. The administrative procedures are defined in the Council Decision 2010 establishing the organisation and functioning of the EEAS. It is a legally binding delegation 'contract', illustrating what control mechanisms Member States could activate *ex ante*. The EEAS organizational structure is set up according to the Council Decision and includes a number of geographical DGs, multilateral and thematic desks and a DG for administration. Other EEAS departments in Brussels deal with strategic planning, legal issues and public diplomacy.

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 presidency⁵⁸. One could expect that the Member States would push for an enhanced role for the rotating presidency. Yet the Council was divided on the issue of deputising. Interviews showed that some Member States called for more regular engagement of the rotating presidency, whereas others were inclined to create a more permanent Deputy-HR post that currently has limitations of legal nature because the treaty does not foresee such an option.

⁵⁸ *Ibid.*, p.13.

More clear commitment of the Member States' to keep the control on the decision-making process could be seen in discussions on the Working Group chairs. 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, COTER group and COJUR group and Athena committee. The reason mentioned by the review was that the "relationship between the work of these groups and the policy areas covered by groups [is] already chaired by the EEAS"⁵⁹. This issue sparked the liveliest debates with a high level of scepticism from the Council to give up its ownership in chairing the working level meetings. Majority of the Member States wanted to avoid any unified solutions in this regard and preferred to postpone the discussion for a later stage on case-by-case basis.

Appointments

The appointment of the HR/VP is a 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'. Another factor that has to be taken into account in the context of the appointment of the HR/VP is the fact that he or she becomes the member of the European Commission College, thus gliding away from the Member States' control. It has to be noted that a lot depends also on the personality of the appointed HR/VP.

Interview respondents pointed out that the appointment of the HR/VP was not questioned by the Member States, partly because the provisions are defined in the treaty and difficult to change. Instead the staffing issues of the EEAS were in the spotlight for the Council discussions. 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). 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 in the interviews that there exists a 'work culture' cleavage between the staff originating in the Commission and the Member States. Responding to the EEAS review, the Member States were strongly committed to increase the representation of the Member States' share in the EEAS (at least to 1/3 of the overall staff number). This issue has been discussed already during the early discussions at

⁵⁹ EEAS Review, p.6. http://eeas.europa.eu/library/publications/2013/3/2013_eeas_review_en.pdf

the Gymnich meeting in March 2013 and remained high on the priority list of the Council. Furthermore, the Member States' foreign services were concerned about the transparency in the recruitment process, the distribution of the senior posts between the Commission and the Member States, as well as on unified approach in educating and training the future EU delegation diplomats. Some concrete proposals from the Member States governments aimed at establishing permanent discussion formats, where these issues could be regularly addressed. The control by the Member States of the recruitment and staffing policy of the EEAS was among the concrete short-term results that the Council could urge on the basis of the existing legal framework without changing the Council Decision.

Budget

The theory suggests that budget can be used as rewards and sanctions and thus structure the agencies' incentives. The decision on budget for the EEAS is made by several actors – the HR/VP suggests the draft, the European Parliament approves it and oversees expenditure, whereas Member States provide their input in deciding the strategic priorities on spending in the Working Group of Financial Instruments of the EEAS. Finally, the Commission is in charge of implementation of the projects that are funded by the EEAS budget. Any substantial changes on the budgetary issues were, thus, impossible because of the binding provisions in the legal basis. Yet, the interview respondents referred to the short-term control measures that the Member States could call for with regard to the recommendations in the review. For instance, they asked for the targeted and efficient spending of financial resources in the EU delegations; saving money by more coherent interaction between the EU delegations and the EU Special Representatives in the third countries; better coordination between the EEAS and the Commission while implementing the projects.

Legislation

If the principal observes that the agent drifts away from the initial preferences set by the agent, the principal can limit the agent's autonomy by enacting new laws or simply threatening to do so. In the case of the EEAS review the Council had opportunity to propose the revision of the Council Decision 2010/427/EU. One could expect that the Member States would initiate the change of rules by legally binding means in limiting powers of the EEAS. The interview data reveals the opposite. The Council Conclusions adopted at the December General Affairs Council focus mainly on the short-term measures that can be reached within the existing legal basis. It is explained by the hesitance of the Member States to re-open the Lisbon Treaty or to amend the Council Decision 2010/427/EU. The latter would mean the co-decision agreement on the amended proposal engaging the European Parliament, which could result in an unintended control also from the European Parliament's side. Instead, the Council agreed on inviting the EEAS to report back on progress made in implementation of the recommendations of the report on the EEAS by the end of 2014. A repeated EEAS review in

2015 (under the new HR/VP) would allow re-considering whether to amend the existing legal basis of the agent-principal contract.

Institutional checks

Control by the principal in terms of institutional checks is clearly present in the case of the EEAS, meaning that there are multiple agents that compete and mutually control each other, thus, indirectly helping the principal. The strongest institutional check is carried out by the Commission, which remains in charge of parts of the EU's external relations. For instance, in the field of Development policy, the EEAS share responsibility at different parts of the policy cycle, rendering them highly interdependent. As a result, two agents control each other to the principal's advantage. The interview testimonies show that the Commission in many cases works very independently. The Commission's office in Brussel may even issue their own instructions to the EEAS delegations in the third countries, bypassing the political section of the EU delegations. Also, the European Parliament intervenes as a powerful actor (multiple agent). Although it does not participate in the composition of the EEAS, it controls the EU's foreign service by issuing the reports on its functioning and approves the budget of the EEAS. Finally, the interview respondents refer to the need of better coordination to reach the effective and coherent EU foreign policy. 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 attained⁶⁰. This means that the Member States call for more transparent information exchange and more efficient coordination between multiple agents.

Concluding remarks

This paper aimed to clarify to what extent the Member States used the EEAS review that was published in July 2013 for controlling the EEAS. Through the lens of the Principal-Agent theory, the study assessed the control mechanisms through which the Member States (principals) have reacted on the performance of the EEAS (agent) during the first three years of its operation. The study hypothesized that the principals would use the review process for limiting the autonomy of the EEAS and its abuse of power to avoid 'slippage'. Although the EEAS appeared quite weak in the aftermath of its creation, over time the service seemed to have gained 'flesh to its bones' and gradually reached advantage of its discretion. The evolution of its own performance summarized in the mid-2013 EEAS review (and signed by the HR/VP herself) illustrated a clear attempt of the service to expand its powers. For instance, a recommendation on taking over the chairing of all Working groups, including

⁶⁰ Strategic Europe, November 2012, <http://carnegieendowment.org/2012/11/14/review-of-european-external-action-service-in-2013/eifi>.

those that have remained under the responsibility of the rotating presidency, is a clear sign of seeking more influence.

Analysis of the Council negotiations on the EEAS review confirm the hypothesis that the Member States have used the opportunity of review in preventing agent from drifting away from the initial contract (Council Decision 2010). All types of control could be found in the reactions by the Member States. *Appointments* as well as *Administrative and organizational* type of control tend to be among the most distinct, whereas the *legislation* seems to be used marginally. Although the principals were willing to retain their control over the agent, the means of opening the Lisbon Treaty or amending of the Council Decision turned out to bear side effects that could be unfavourable for the principal. Also, *Budget* as a control measure was difficult to apply because of the binding legal basis. The control mechanisms that remain for sanctioning bad behaviour are *Institutional checks*. Here the complexity of the composition plays in favour for the EEAS, because the principal can control the agent by getting additional oversight support from other institutional actors, such as the European Parliament. Although many control mechanisms are fixed by the existing legal basis, 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.

In conclusion a surprising observation that can be made is the great degree of discretion that was left to the EEAS after the 2013-review. The reason why it is surprising is the co-existence between great discretion and weak control mechanisms by the Member States. 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 in the forthcoming EEAS review in 2015.

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