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The New European External Action Service: Between Ambition and Compromise

The article analyses institutional reforms of the common foreign and security policy initiated by the Lisbon Treaty. Particular attention is paid to new institutions – the office of the High Representative of the European Union for Foreign Affairs and Security Policy and the European External Actions Service. Due to the fact that these institutions have already been labeled as the “EU Diplomatic Service”, the functioning of the national diplomatic service, which is considered an ideal model of the contemporary international affairs actor for the implementation of foreign policy, has been taken as a reference point for this analysis. The author seeks to find out whether the amendment of the fundamental ES existence-period document in essence means the institutionalization of the EU foreign policy that the use of the term “diplomatic service” presupposes, and whether legal and institutional changes will guarantee the consistency and harmony of the EU common foreign and security policy. The article highlights many contradictions and undeveloped decisions of the reform. It is complicated to speak about the birth of the EU diplomatic service because, in spite of all innovations, EU foreign policy has essentially remained a national prerogative.

Introduction

After the Lisbon Treaty came into force, the common foreign and security policy (CFSP) of the European Union (EU) again experienced great attention from politicians, diplomats and foreign policy observers. This is associated with the declared EU attempt to strengthen its influence in the world, seeking to be not only the largest trade partner and development assistance supplier in the world, but also a global player¹.

Traditionally, in the discourse of political scientists, several factors that will determine the effectiveness of CFSP are named. The first factor is related to the institutional architecture. Michael E. Smith states that weak institutionaliza-

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** The views and evaluations expressed in this article are purely those of the writer and may not in any circumstances be regarded as stating an official position of the Ministry of Foreign Affairs of the Republic of Lithuania and its institutions.

¹ Weiss, S., “From Global Payer to Global Player”, *Bertelsmann Stiftung: Spotlight Europe Special # July 2010*, <http://www.bertelsmann-stiftung.de/spotlight>.

tion of foreign and security policy is perhaps the greatest problem of the EU². This statement is based on the assumption that there exists a two-way link between the institutional development and behavior of states. When institutions are weak, their impact on behavior of states is limited. When institutions are strong, have clear goals and unambiguous rules, the behavior of states is correspondingly adjusted. A differing impact of institutions on behavior is particularly distinct when CFSP is compared with the EU economic and monetary union. In it decisions are made and implemented by the supranational institution – the European Commission (EC); therefore, the behavior of states is predictable. There has been nothing similar, at least until now, in the area of CFSP. The second factor underlines the importance of the commonality of the Member States' national interests. As Ramūnas Vilpišauskas points out, the main reasons of CFSP weakness and respectively the inability to adopt a united position concerning important foreign policy issues, should be sought not so much in the institutional architecture as in differences of the national interests of the Member States³. This would mean that a genuinely successful and effective CFSP is feasible only in that case if the Member States will manage to agree on common national interests and ways and methods to implement or defend them. The third most often indicated factor is a common identity. For example, Dirk Jacobs and Robert Maier, who devoted their study to identity problems, came to the conclusion that a common European identity is the essential premise in seeking a politically and economically strong and militarily capable Europe in the world.⁴ In the authors' opinion, the problem with the formation of the common European identity is that it is difficult to define due to its multilayered and multifaceted nature.

Nothing essential has happened in the past years in the common EU identity or in the common EU interest formation areas that would justify talking about the strengthening of CFSP. Therefore, hopes for a more effective EU policy in the area of foreign policy should be linked to institutional changes initiated by the Lisbon Treaty. It is known that the Lisbon Treaty, otherwise known as the Reform Treaty, came into force on December 1, 2009, and was aimed at initiating institutional EU reforms and improving work methods, first and foremost, in the area of common foreign and security policy.

In itself, this does not prove the advantage of the institutional factor in forming CFSP with respect to other factors. To decide which factor is the most important in developing CFSP, is not the aim of this article. They all have their own logic and purpose. Algirdas Gričius and Kęstutis Paulauskas tried to link them up, pointing out that a clearly articulated and globally projected EU CFSP will not be possible unless common European interests steaming from

² Smith, M. E., *Europe's Foreign and Security Policy: The Institutionalization of Cooperation*, Cambridge: Cambridge University Press, 2004.

³ Vilpišauskas, R., "Has the voice of Europe become better heard in the world? And that of Lithuania in Europe?", <http://myep.delfi.lt>, 04 06 2010.

⁴ Jacobs, D., Maier, R. "European identity: construct, fact and fiction" in Gastelaars, M., de Ruijter, A., eds., *A United Europe. The Quest for a Multifaceted Identity*. Maastricht: Shaker, 1998, p. 13-34.

as common European identity and implemented by common supranational institutions will emerge.⁵

In any case, the institutional factor is important; therefore, before undertaking further research in what determines or will determine CFSP, it is necessary to adequately estimate legal provisions of the Lisbon Treaty. Besides, attention to the issues of CFSP institutional restructuring was also drawn by how the institutional restructuring was interpreted not only by mass media, but also by EU officials themselves.

One of the results of the Lisbon Treaty-initiated reforms was a new EU office of the High Representative for Foreign Affairs and Security Policy (further – the High Representative or HR) and a newly established institution – the European External Action Service (further the EEAS) – that would help implement the functions assigned to him. Both observers and the High Representative of the Union Catherine Ashton, having stepped behind the wheel of the new service, did not lose time in calling these innovations the EU Diplomatic Service⁶.

It is important to pay heed to C. Ashton's words because the use of the term "diplomatic service", if we understand it in terms of traditional diplomacy, undoubtedly presupposes the institutionalization of foreign policy towards which, at first, supporters of the Treaty Establishing a Constitution for Europe and later, after its demise, those of the Lisbon Treaty, clearly strove for. And there is more. Such a term can be perceived as a specific allusion to the birth of a new state and its attempts to get established in the international arena. Such an allusion arises due to the dominant inclination to until now associate diplomacy with the international system, established after the Westphalia Peace Treaty, whose main legal entities are on territorial basis formed states with a clearly expressed power centre, and a source of sovereignty and foreign affairs of which are overseen by ministries of foreign affairs. In other words, guarding such understanding the right and duty to execute diplomatic functions only sovereign states enjoy. And although the modern international system has long become different – it is unimaginable without international organizations or even other non-governmental actors, while ministries of foreign affairs of sovereign states are no more the only organizations performing diplomatic activity on the international scale, – it is said that some organizational qualities of common diplomatic logic and diplomacy remain unchanged. Diplomacy is primarily perceived as activity associated with the implementation and coordination of foreign policy⁷. It is institutionalized and organized, while concrete activity is carried out by services that make up an integral organizational unit in which activity elements manifest themselves in clear and non-recurrent forms and functions. In other words, in the institutional architecture of the political

⁵ Gricius, A., Paulauskas, K., European Union common foreign and security policy and Lithuania", *Lithuanian Annual Strategic Review 2003*, p. 75–102.

⁶ Ashton, C., "Presenting the New EU Diplomatic Service", *The Wall Street Journal*, July 27, 2010.

⁷ About the relationship of diplomacy to advice for foreign policy, its formation and implementation see: Barston, R.P., *Modern Diplomacy (3rd Edition)*, London: Longman, 2006, p. 16.

entity, diplomatic services are acknowledged as primary institutions responsible for the implementation and in part shaping of foreign policy. Finally, diplomacy is practiced by a political entity, seeking to establish or represent its place in the international arena as well as influence international political, economic, legal and other structures within a narrower or wider geographical area⁸ – an existing or seeking this subject of the international legal system, the fact of the existence of which is acknowledged and a proposition to establish appropriate-level international relations is expressed by already established actors of the international system.

Consequently, if the functioning of the national diplomatic service is considered an ideal model of modern international relations actor for the implementation of foreign policy, declarations about the birth of the EU diplomatic service call, whether one likes it or not, for a certain comparison, hoping for a new qualitative leap in the EU common foreign and security policy.

The article is divided into four parts. The first part surveys the road of the EU institutional development in the area of foreign policy before the Lisbon Treaty. This part seeks to identify the main drawbacks that have precluded the EU from calling itself a diplomatic player. Taking into consideration these findings, the second part assesses common provisions of the Lisbon Treaty concerning the Union's foreign policy – competencies, objectives as well as implementation instruments and principles. The task is to evaluate the scope of the qualitative change, in comparison with the provisions of documents of the previous lifespans of the EU. In the third and the fourth parts, the new institutional architecture of CFSP and organizational aspects of EEAS will be examined, comparing how and if they correspond to the organizational principles and traditions of the diplomatic services of nation states. Research results are summarized in the concluding section.

1. EU, Foreign Policy and Diplomacy before the Lisbon Treaty

When U.S. Secretary of State Henry Kissinger asked: “Whom do I call when I want to talk to Europe?” he might have been puzzling over such a dilemma: the U.S. understands the need to talk with Europe, since it would like to uphold European integration processes that it initiated itself, realizes the added value of Europe in implementing certain foreign policy tasks of the U.S., yet he was not sure whether anybody in Europe wanted to talk about the issues of common foreign policy, although it seemed that debating whether to call or not implied that such ambitions were present in Europe; however, it

⁸ About the democracy function to exert influence on international structures see: Keukeleire, S., Thiers, R. and Justaert, A., “Reappraising Diplomacy: Structural Diplomacy and the Case of the European Union”, *The Hague Journal of Diplomacy* 4, 2009, p. 143–165.

was not clear whom specifically he should talk to and through the assistance of what structures. This perhaps somewhat simplified interpretation of Kissinger's intent well reflects the complicated relationship of foreign policy and diplomacy that existed in the EU before the Lisbon Treaty.

Since its very inception, the EU has been an odd international relations actor, while its relationship with foreign policy and diplomacy has been ambiguous and often even deceptive. Though the essence of the 1957 Treaty of Rome, which established the European Community, the EU predecessor, was economic integration and foreign policy did not fall under the competence of the European Community, the Treaty of Rome, by creating a common trade policy and providing for the possibility to sign association treaties with third countries, *de facto* granted the Community an international role. Moreover, to strengthen this role and to defend its interests, the European Community, from the very beginning, employed economic and even diplomatic instruments⁹. Though the objective of the European Political Cooperation (EPC), established in 1970, was only foreign policy "consultations", later they developed into foreign policy "coordination" or even "common policy" – to such an extent that some observers treated EPC as a unique diplomatic experiment – "a model of the most advanced collective diplomacy in the world"¹⁰. Finally, though the EU did not have the status of a legal entity, and some observers even claimed that the EU does not "exist" in the international arena¹¹, the majority of political entities in international public law acknowledged the EU as a fully-entitled (and important) participant of the international system¹². And not only acknowledged, but also acted as a powerful force, making the EU look for possibilities to implement self-declared or imposed on it tasks¹³. This should not cause surprise, because the very project of the integration of Europe was a political project in the success of which the United States of America took an interest and were for a greater role of the EU in the international arena. Therefore, it is not surprising that Kissinger wanted to call Europe. The problem was that there was no one to answer the phone. There was also no common organized

⁹ For example, in 1955, before the signing of the Treaty of Rome, European coal and steel community established in London its first mission.

¹⁰ Von der Gabelentz in Smith, M.E., *Europe's Foreign and Security Policy: The Institutionalization of Cooperation*, Cambridge: Cambridge University Press, 2004., p. 2

¹¹ For example, this was stated by the Reflection Group which was assigned the preparation of the Treaty of Amsterdam.

¹² Schoutete, P., Andoura, S., *The Legal personality of the European Union*, Working Paper, Egmont-Royal Institute for International Relations, 2007. The authors claim that the basis for that was set as early as 1949 in the advisory opinion of the International Court of Justice concerning the status of the United Nations. Having analyzed the Charter of the UN and subsequent treaties, the practice of the functioning duties and obligations of the organization, the International Court of Justice stipulated that UN members „by entrusting certain functions [to the organization, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged“. In the opinion of the Court, the rights and obligations of the international entity depend on „purposes and functions as specified or implied in its constituent documents and developed in practice“.

¹³ Hill, C., „The Capability-Expectations Gap, or Conceptualizing Europe's International Role“, *Journal of Common Market Studies*, Vol. 31, No.3, 1993, p.305-328.

structure for the implementation of foreign policy. In spite of the gravitation, affected by internal and external forces, towards the Community, cooperation in foreign policy remained exceptionally the business of the Member States, while diplomatic ambitions of the Community were confined to the areas of trade and assistance. EPC did not belong to the competence of the Communities; therefore, the institutions of the Communities – the Commission or the Assembly (later having become the Parliament of Europe) – did not actually participate in the political cooperation of Europe. EPC had no permanent organizational structure and no bureaucratic apparatus, the rules of conduct were obscure, instruments for common actions limited. As M.E. Smith claims, perhaps the only thing about which the ministers of foreign affairs of the Member States agreed was that EPC should remain strictly separated from the supra-state procedures of European Communities and that EPC format is not a suitable place to discuss security or defense issues¹⁴. Although the EPC system kept evolving, forms and means of practical cooperation grew in scope and, after the Single Act of Europe came into force in 1987, EPC was officially registered and legalized as a separate area of intergovernmental cooperation of EC states, the attitude of the Member States concerning the autonomy of foreign policy and national security matters remained unchanged. A certain leap forward took place in 1992, after the signing of the Maastricht Treaty, when EPC was changed into CFSP while European Communities and CFSP (as well as cooperation in justice and interior matters) were legally connected into one new institutional framework, known as the “European Union”. CFSP became a constituent part of the EU structure, its second pillar, for the first time certain objectives corresponding to the doctrine of foreign policy were formulated – to seek common values and primary interests, guarantee the independence and integrity of the Union, strengthen the security of the Union, maintain peace and strengthen international security. However, in essence, governments of the EU states remained responsible for the implementation of this policy. In other words, though CFSP became part of the EU, yet on the operational level, it further functioned more like the EPC mechanism in which the institutions of the Communities had a limited role. Essentially, the only institution of the Community which played a somewhat more significant role in CFSP was the Commission to which a representative role in political dialogues with third countries and a consultative-nature role in the decision-making mechanism of CFSP was provided for in the Maastricht Treaty. And though the difference between CFSP and EPC was obvious, because EPC *strove* for the Member States to execute common policy, whereas CFSP specifically *demand*ed that the EU countries accept and implement common policy¹⁵, the implementation of this

¹⁴ Smith, M.E., *Europe's Foreign and Security Policy: The Institutionalization of Cooperation*, Cambridge: Cambridge University Press, 2004., p. 1

¹⁵ Article J.1 of Title V of the Maastricht Treaty points out that “The union and its The The Member States shall define and implement a common foreign and security policy, governed by the provisions of the Title and covering all areas of foreign and security policy”. It was signed on 7 February 1992 and came into effect on 1 November 1993. http://www3.lrs.lt/pls/inter1/dokpaieska.showdoc_l?p_id=32156, 15 08 2010

provision fell primarily on the shoulders of the state chairing the Union. CFSP did not become more effective, since decision-making called for a unanimous vote of all Member States, while the historical data of CFSP activity indicates that a unanimous opinion on issues significant for foreign and national security are reached particularly rarely. Therefore, the EU constantly encountered the chronic problem of fast decision-making as well as the absence of a common EU position on the international arena which often determined a vague and weak position of the organization in the global world.

Attempts to consolidate a particular coherence within CFSP and also the establishment of the office of CFSP High Representative in 1997 did not achieve the desired result. On the contrary, judging from the perspective of third countries, it became still more complicated. Third countries found it really difficult to understand how the EU is represented in the international arena, when highest-level meetings with EU countries partners or regions partners were conducted by the chairing member state, the High Representative and the Chairman of the European Commission. Besides, the activity of individual Community institutions, which carried out functions assigned to them according to their competence, first of all in the areas of trade, enlargement, development and humanitarian assistance, brought additional confusion to external relations.

It is obvious that this situation could be changed only by initiating institutional reforms. The enlargement of the EU, the growing pressure for the EU to undertake a more active role in foreign policy and the ideas, that strengthened at the end of the 1990s, to create a federal EU, stimulated discussions about the necessity to establish a structure for the formation and implementation of CFSP. The first real attempt to introduce elements of such common structure surfaced in the European Convention held in 2002–2003 and its propositions were later reflected in the Treaty Establishing a Constitution for Europe. This document provided for the establishment of the office of the EU Foreign Affairs Minister and – in order to guarantee that the functions of this official are carried out – the European External Action Service. However, when the referendums in 2005 in France and the Netherlands rejected the project of the EU Constitution, a “period of reflection” was announced. One of the most important reasons that caused the downfall of the Treaty Establishing a Constitution for Europe was named as fear to hand over the issues of national security and foreign policy to supranational EU institutions. The period of discussions over the future of the EU ended in the decision of the EU states claiming that it is necessary, in one form or another, to renew a set of fundamental principles according to which the EU is governed. The result was the Lisbon Treaty that was signed in 2007 by Heads of EU States and Governments and came into force at the end of 2009. In part, it amended the Treaty on the European Union and the Treaty Establishing the European Community.

2. Basic Principles of the Lisbon Treaty on Foreign Policy

2.1. The Status and Limits of Competences of the Legal Entity

The review of CFSP development indicates that one of the most important reasons that precluded the creation of common EU foreign policy and the institution for the implementation of this policy, was the reluctance of the Member States to hand over their competences concerning foreign policy and national security issues to the EU. This, in its own turn, had a decisive impact on how the Member States are inclined to treat the EU in the international scope.

The EU claims to become a full-fledged diplomatic actor were for the first time formulated in the Maastricht Treaty, pointing out that the purpose of the EU is “to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defense policy, which might in time lead to a common defense”¹⁶. However, the status of the legal entity was not granted to the EU by the Maastricht Treaty. This should be considered a paradox, because logic states that without legal personality it is impossible to establish identity.

The Treaty of Lisbon resolved this ambiguity but only in part. Only in part, because, though in the Treaty of Lisbon it is ascertained that “[t]he “Union shall have legal personality” (Article 47 TEU)¹⁷ thus endowed with powers to sign international treaties or join international organizations, at the same time the Lisbon Treaty confirmed the “Declaration concerning the legal personality of the European Union” (No. 24), which notes that “the fact that the European Union has a legal personality will not in any way authorize the Union to legislate or to act beyond the competences conferred upon it by the Member States in the Treaties.”¹⁸

Yet it still remains unclear where the Union competencies in the area of foreign policy begin and end. In the part defining the competences of the Union (Article 2 Point 4 TFEU) it is only said that “[t]he Union shall have competence to define and implement a common foreign and security policy including the progressive framing of a common defense policy¹⁹”. Thus, there is no reference either to the exclusive competence, when it is only the European Union that can enact legal acts and the Member States can only implement them; or to the shared competence when the Member States can pass legally binding acts in case the European Union did not do that; or to the supportive competence when the EU passes acts intended to support or supplement the policy of the

¹⁶ *The Treaty on the European Union*. It was signed on 7 February 1992 and came into effect on 1 November 1993. http://www3.lrs.lt/pls/inter1/dokpaieska.showdoc_l?p_id=32156,06_09_2010.

¹⁷ *Consolidated versions of the Treaty on the European Union and the Treaty on the Functioning of the European Union*, Luxembourg: Official Journal of the European Union C 83,2010, p.41.

¹⁸ *Ibid*, p. 346.

¹⁹ *Ibid*, p. 50

Member States. As W. Wessels points out, CFSP in this respect is unique, because in other areas of policy limits of competences are clearly defined²⁰. The exclusivity of CFSP is still more confirmed by the provision, that CFSP “is subject to specific rules and procedures” (Article 24 TEU)²¹.

It remains unclear how the Union intends to define competences in CFSP area. Theoretically the field of the EU diplomatic service might completely disappear because the “Declaration in relation to the delimitation of competences” (No.18) emphasizes: “in accordance with the system of division of competences between the Union and the Member States as provided for in the Treaty on European Union and the Treaty on the Functioning of the European Union, competences not conferred upon the Union in the Treaties remain with the Member States”²².

The Lisbon Treaty did not confer on the European Union any additional exclusive powers. In the Declaration concerning the common foreign and security policy (No 14) it is clearly stated that “the provisions covering the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions nor do they increase the role of the European Parliament”²³. Differently from the Constitutional Treaty, the Lisbon Treaty does not hold a single article establishing the superiority of the law of the European Union over the national law in the area of CFSP. Similarly, the Lisbon Treaty did not create state-like symbols, for example a flag or an anthem. Also, such concepts as “constitution”, “law”, “minister of foreign affairs”, used in the Constitutional Treaty were removed.

In general in the Treaty many defense-related provisions with respect to the EU legal entity and competencies were established. One of them, inscribed in Declaration concerning the common foreign and security policy (No.13), it is stated that “the provisions in the Treaty on European Union covering the Common Foreign and Security Policy, including the creation of the office of High Representative of the Union for Foreign Affairs and Security Policy and the establishment of an External Action Service, do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organizations”²⁴.

²⁰ Wessels, W., Boop, F., “The institutional architecture of CFSP after the Lisbon Treaty – Constitutional breakthrough or challenges ahead?”, *CEPS Research paper No. 10*, June 2008, p. 10.

²¹ *Consolidated versions of the Treaty on the European Union and the Treaty on the Functioning of the European Union*, Luxembourg: *Official Journal of the European Union* C 83,2010, p.30.

²² *Ibid*, p. 344

²³ *Ibid*, p. 343

²⁴ Declarations No.13 and No.14 on common foreign and security policy, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, p. 343.

2.2. CFSP Objectives and Tasks

Another feature of the situation before the Lisbon Treaty was the absence of clearly articulated objectives in the area of foreign policy and a program for the implementation of this policy. Without a clearly defined CFSP, the institution of a fully-fledged diplomatic service is practically unimaginable. What do provisions of the Lisbon Treaty stipulate on this issue?

It is recorded in the Preamble of the Lisbon Treaty that the Member States have determined “to implement a common foreign and security policy including the progressive framing of a common defense policy, which might lead to a common defense in accordance with the provisions of the Article 42 TEU, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world”²⁵. It is possible to decide what the objective to reinforce the European identity could mean on the grounds of another provision recorded in the Preamble – the EU will draw inspiration from “the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law”²⁶.

In general, judging from the emphasis on values and normative foreign policy objectives, the EU diplomacy should exceptionally follow values-based principles “which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law”²⁷ (Article 21 TEU). This article also lends itself to the conclusion that the EU shall seek to develop relations and build partnerships with only those countries, and international, regional or global organizations which also share the referred to principles²⁸.

Value-related ambitions can also be discerned in other objectives presented in Article 21 of the Treaty on European Union, indicating that the Union will define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

- safeguard its values, fundamental interests, security, independence and integrity;
- consolidate and support democracy, the rule of law, human rights and the principles of international law;
- preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations

²⁵ Ibid, p. 16.

²⁶ Ibid, p. 15.

²⁷ Ibid, p. 28.

²⁸ Ibid, p. 28.

Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;

- foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
- encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
- help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
- assist populations, countries and regions confronting natural or man-made disasters; and
- promote an international system based on stronger multilateral cooperation and good global governance²⁹.

An article has been written in the same vein, which describes the manner of the Union's relationship with the wider world. (Article 3 Point 5 TEU). In addition to other things, it states that "in its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens"³⁰. The reference to the protection of citizens is a new element in common foreign and security policy. It might mean consular protection; however, this provision first of all appeared due to the demand by France to establish protection from consequences of the globalization³¹, which also indicates a clearly expressed value-related aspect.

Notwithstanding that the objectives identified in the Lisbon Treaty raise questions as to the possibilities of their implementation, within the context of this article, it is important that the provisions of the Treaty indicate that the EU identifies itself not only as an economic bloc, but also as a certain political power, capable of disseminating and seeking to disseminate its ideas beyond the geographical limits of the EU. To this end, it first of all plans to employ diplomatic and political means; however, a military component also emerges in the Lisbon Treaty. Article 42 of the Treaty on the European Union stipulates that, in order to ensure the operational capacity of the Union, necessary civilian and military assets should be drawn, so that they may be used on missions outside the Union. Article 43 specifies that such missions comprise joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilization

²⁹ Ibid, p. 28-29

³⁰ Ibid, p. 17.

³¹ EuroActive, Interview: France to push 'protective Europe' agenda at EU helm, 06 November 2007, <http://www.euractiv.com/en/future-eu/interview-france-push-protective-europe-agenda-eu-helm/article:168064, 08 09 2010>.

operations³². It is also pointed out that all these missions may contribute to the fight against terrorism, including supporting third countries in combating terrorism in their territories.

The provision concerning Solidarity is important. Article 222 of the Treaty on the Functioning of the European Union introduces the Solidarity clause which stipulates that “the Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster”³³. The Treaty also provides for a solidarity clause of a defensive nature; however, more complex procedures are applied for its implementation and the Parliament of Europe should be informed (Article 222 Point 3 TFEU).

Summarizing the objectives and tasks of CFSP in the Lisbon Treaty, it is possible to claim that they are both ambitious and vague. Ambitious due to their “missionary” nature and expansiveness for the implementation of which traditional and new diplomatic means and methods, effective management and a corresponding budget would be necessary. Vague because they carry no meaning as to how the concrete agenda of the EU CFSP would be shaped. For instance it fails to answer whether and how the EU will develop relations with states whose scale of values is different, but with respect to which it has a distinct pragmatic interest.

2.3. Instruments and Principles of CFSP Implementation

Another thing that commands attention is the discrepancy between the ambitious objectives set for CFSP and legal instruments entrusted to the Union for the implementation of CFSP. The experience of the EU integration processes indicates that the greatest success attends those policies whose implementation is consolidated by a legal base – regulations or directives. In the area of CFSP such a possibility is not provided for: Article 24 of the TEU stipulates that for common foreign and security policy “the adoption of legislative acts shall be excluded”³⁴. CFSP implementation instruments that the Union has at its disposition are provided for in Article 25 of the Treaty of European Union which reads that:

- the Union shall conduct the common foreign and security policy by:
- (a) defining the general guidelines;
 - (b) adopting decisions defining
 - (i) actions to be undertaken by the Union;
 - (ii) positions to be taken by the Union;
 - (iii) arrangements for the implementation of the decisions referred to in points (i) and (ii); and by

³² *Consolidated versions of the Treaty on the European Union and the Treaty on the Functioning of the European Union*, Luxembourg: Official Journal of the European Union C 83,2010, p.39

³³ *Ibid*, p. 148

³⁴ *Ibid*, p. 30.

(c) strengthening systematic cooperation between the Member States in the conduct of policy³⁵.

It is also important to note that the Treaty has no provision for common strategy and confines itself to a less obliging formulation stating that “the European Council shall identify [...] the Union’s strategic interests, objectives and define general guidelines” (Article 26 TEU)³⁶.

For the execution of operational action, the EU diplomatic service can also expect other means which, alongside their duration and the conditions for their implementation, will have to be laid down by the Council (Article 28 TEU). There is also a provision stipulating that for the implementation of CFSP national and Union resources can be used (Article 26 Point 3 TEU). However, within the context of this research, the most significant conclusion is that the most important instruments, identified in the Treaty for the execution of common foreign and security policy, fall into the domain of Council competencies.

It is obvious that success will depend not on the instruments but conduct and principles of the Member States – the commitment of the Member States to unreservedly support the Union’s CFSP in a spirit of loyalty and mutual solidarity and comply with the Union’s action in this area as well as refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations (Article 24 Point 3 TEU).

Perhaps the only more important novelty is that now a more flexible voting order for CFSP decisions has been set forth: individual states are allowed to abstain, decisions can be adopted by qualified majority or most of the states have the right to operate independently, yet decisions with military implications or those in the area of defense are still required to be adopted unanimously.

3. The New Institutional Architecture of CFSP

Generally, the implementation of foreign policy of sovereign states is clearly regulated and defined. And although it differs, depending on the political system of the state, decision-making and implementation of decisions, the system is clear. A member of the Cabinet of Ministers—most frequently the Minister of Foreign Affairs—is responsible for the formation and implementation of foreign policy. In the institutional architecture of state governance, the Ministry of Foreign Affairs takes a high place in compliance with its powers, while its head in the Cabinet of Ministers is considered in many countries as second office with respect to its significance (in coalition governments, the head of the Ministry of Foreign Affairs is often appointed as the Deputy Prime Minister). Ministers of Foreign Affairs are traditionally also responsible for

³⁵ Ibid, p. 31.

³⁶ Ibid, p. 31.

many diplomatic functions, e. g., receiving of leaders from foreign countries and diplomatic visits to other countries.

The essence of the EU institutional reforms was also to make the architecture of foreign policy clearer, to pool resources necessary for foreign policy, thus enhancing the effectiveness of CFSP. The main actors and competencies of the new institutional CFSP architecture after the Lisbon Treaty are reflected in Figure 1.

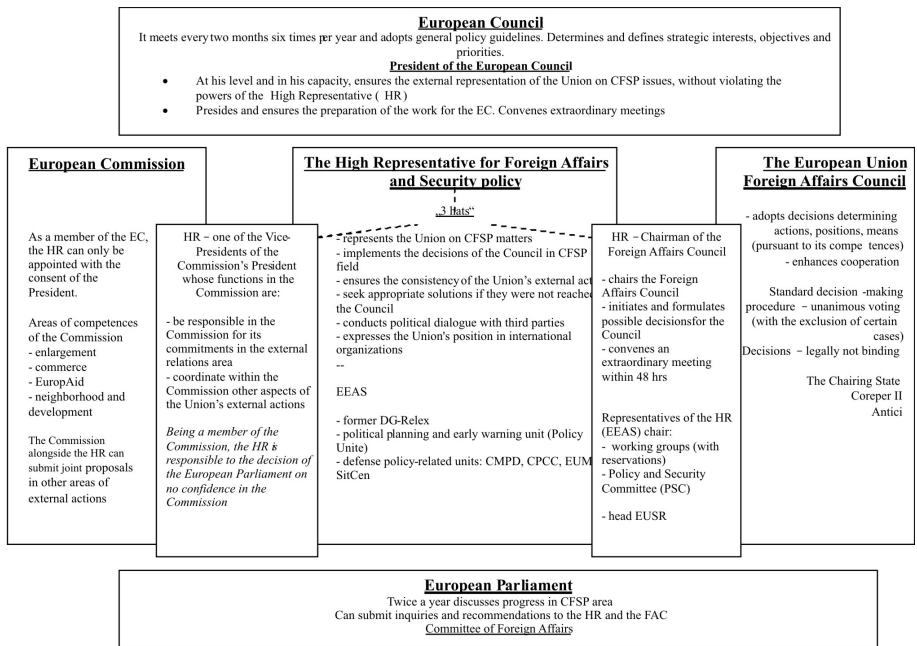


Figure 1. Institutional Architecture of CFSP after the Lisbon Treaty

In comparison to the institutional architecture of CFSP before the establishment of the Treaty of Lisbon, the greatest changes are associated with the introduction of the offices of the High Representative for Foreign and Security Policy and the President of the European Council. Also a new institution was established – the European External Action Service – whose objective is to assist the High Representative in executing his function, alongside changes in place and subordination of other CFSP actions-related elements, such as the Commission's Directorate General for External Relations (DG-Relex), Political Planning and Early Warning Unit (policy Unite), and defense policy-related units – Civilian–Military Planning Directorate (CMPD), Civilian Planning and Combat Capability (CPCC), military personnel (EUMP), Situation Centre (SitCen) as well as in Policy and Security Committee (PSC), the main institution until then, which assisted the Council in shaping CFSP and ESDP and in some other working groups of the Council as well as EU special representatives (EUSR).

3.1. The High Representative (HR) for Foreign Affairs and Security Policy

According to the project, the central institution in the new CFSP institutional architecture had to be the High Representative of the Union for Foreign Affairs and Security policy. This office only partly corresponds to the former post of the High Representative for Common Foreign and Security Policy because it is not only the title that differs (provisions for the “European Union” and “foreign affairs” surface) but also the competences and the place in the architecture. These attributes, practically unchanged, were transferred from the Treaty Establishing a Constitution for Europe, though the inherent in the constitutional treaty office of the “Minister of the Foreign Affairs of the Union” was replaced by a more neutral office of the “high representative”.

The first High Representative for Foreign Affairs and Security Policy became a representative of the United Kingdom, Baroness Catherine Ashton. Based on the provisions of the treaty, the European Council, acting by a qualified majority, with the agreement of the Commission President appointed her to this office (Article 18 Point 1 TEU). The European Council may end her term of office by the same procedure. In addition to that the HR, at the same time being one of the Vice-Presidents of the Commission President, is a subject to a vote of approval by both the President of the Commission (Article 18 Point 1 TEU) and the European Parliament (Article 17 Point 7 TEU).

Pursuant to the Lisbon Treaty, she is assigned to execute functions which until now, in the order of rotation for the length of six months, used to be carried out by the chairing Member State, EU High Representative for Common Foreign and Security Policy /Secretary General of the EU Council and a member of the Commission responsible for external relations. As a member of the Commission, the High Representative fulfils the duties of the Vice-President of the Commission. Using the EU jargon, the HR wears as many as three hats, and that makes the CFSP architecture quite complicated.

Based on Articles 18 and 27 of the Treaty on European Union, the High Representative is assigned certain tasks:

- to conduct the Union’s common foreign and security policy (CFSP) and common security and defense policy (CSDP);
- to preside over the Foreign Affairs Council;
- to ensure the consistency of the Union’s external action;
- to be responsible in the Commission for its commitments in the area of external relations;
- to coordinate in the Commission other aspects of the Union’s external actions;
- to conduct political dialogue with third countries and express the Union’s position in international organizations and at international conferences.

Thus, the HR has responsibilities related to leadership, initiative, the submission of proposals, coordination and representation. The HR will have a significant challenge, namely, to ensure the set policy direction and its support by consistent use of EU resources and national assets, adhering to the decision making order foreseen in the Treaty. The Treaty presupposes that the task of the HR is not to manage different measures for the Union's external actions, but to ensure their coherent application.

3.2. The European Council and the President of the European Council

At the strategic level, the main measures for the Union's external actions are concentrated within the European Council. In other words, the Council plays a leading role in the area of CFSP. In the Lisbon Treaty, the Council is formally acknowledged as an EU institution which "provides the Union with the necessary impetus for its development" and defines its "general political direction and priorities" (Article 15 Point 1 of the TEU)³⁷. These competences of the European Council within the area of CFSP are reiterated in Article 26, Point 1 TEU with a supplement which states that the Council also defines common foreign and security policy, including defence related matters as well as the Union's strategic interests and tasks³⁸. However, it does not exercise legislative functions and meets only twice every six months, although when necessary because of international events, an extraordinary meeting of the European Council may be convened "to define the strategic lines of the Union's policy in the face of such developments" (Article 26, Point 1 TEU)³⁹. Nevertheless, it is obvious that the Council will not have a major influence on day-to-day foreign matters. In this respect, the position of the President of the European Council is of greater significance. It is a new position designed to improve continuity and consistency of work. Long-term chairing has replaced the former six-month rotation system. The President is elected by qualified majority of the European Council for a 30-month term and may be reelected.

The role of the President of the European Council in CFSP is defined by Article 15, Point 6 of the Treaty on European Union: "The President of the European Council shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy"⁴⁰. This provision raises the issue of the interaction between the President of the European Council and the HR and particularly the wording "*at his level*" and "*in that capacity*".

³⁷ *Ibid*, p. 23.

³⁸ *Ibid*, p. 31.

³⁹ *Ibid*, p. 31.

⁴⁰ *Ibid*, p. 23.

As compared with the functions of the HR provided for in the Treaty, specific responsibilities of the President of the European Council in the area of CFSP are unclear. The Treaty only identifies that the President of the European Council must chair the Council and ensure preparation for its work as well as “shall endeavor to facilitate cohesion and consensus within the European Council”⁴¹ which can imply both ordinary cooperation and leadership. However, since both the HR and the President of the European Council are new positions and there has been no precedent of their cooperation, in many cases their relationship will depend on personal ambitions and the interpretations of their mandate. It cannot be excluded that both officials may seek to consolidate their status and role in the area of external actions at the expense of each other. The provision that after every meeting of the European Council, its President must present a report to the European Parliament (Article 15, Point 6 TEU) also leads to some ambiguities regarding their responsibility, although it is the HR’s responsibility to inform the EP about the developments in CFSP.

Nevertheless, from the perspective of administrative capabilities, it will be more difficult for the President of the European Council to manage CFSP affairs because in his work he will rely on the General Secretariat of the Council, whose scope and diplomatic experience cannot equal the EEAS. Besides, during the implementation of the institutional reform, some important functions of the Secretariat related to external activities were limited while transferring them to the realm of the EEAS.

3.3. The Foreign Affairs Council

On the basis of the general guidelines and strategic directions defined by the European Council, common foreign and security policy is shaped and decisions necessary for defining and implementing this policy are made by the Foreign Affairs Council (Article 16 Point 6 TEU). Key measures for external actions by the Union are within the competence of this particular Council. Like in the case of the European Council, this once again proves that, in essence, EU governments are still responsible for foreign and security policy; however, unlike previous practice, foreign affairs will be monitored not by a Member State chairing the Council on a rotational basis, but by the HR. It is a very significant innovation, the importance of which is also emphasized by the fact that the Presidency of other Council configurations will be held by Member State representatives in the Council on the basis of rotation (Article 16, Point 9 TEU). In terms of the institutional structure, such division of competences raises a number of questions regarding coherence of foreign policy. It is not yet clear what will be the ultimate role of the chairing state within CFSP and whether no friction between different actors will be caused, because before the Lisbon Treaty came into force, it was one of the key areas of the activity of chairing

⁴¹ *Ibid.*, p. 23

states. Another fact that raises concern is that even though by the Lisbon Treaty a decision was made to divide the former General Affairs and External Relations Council (GAERC) into the General Affairs Council (GAC) and the Foreign Affairs Council (FAC), thus seeking to eliminate a possible collision between the chairing state and the HR, it is very difficult to draw a clear boundary between the competences of these councils. To answer the question where today traditional foreign policy and the area of diplomats' activity end and where general affairs begin and vice versa is extremely difficult. This will have implications for the CFSP related activity center – the Political and Security Committee (PSC), chairing of which was handed over by the Council to a representative appointed by the HR, although the Committee of Permanent Representatives in the European Union (COREPER) will be further presided by a Member State representative presiding over the General Affairs Council. A threat to consistency and coherence will also come from chairing different working groups, because the groups that acted in the assigned areas of external relations and first pillar (such as trade, development cooperation or expansion) will continue to be chaired on a rotation basis, although the groups that have worked only in the area of CFSP or that have closely cooperated with the PSC will be chaired by a member of the EEAS. (As far as mixed competence groups are concerned, *ad hoc* decisions will be made.)

The Treaty on the EU did not change the decision-making process. Article 24, Point 1 of the Treaty on European Union states that “[t]he common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise”⁴². Thus, within CFSP, unanimity remains a standard decision making procedure.

Exceptional cases laid down in the Treaty are defined by Article 31, Point 2. It states that by qualified majority the Council:

- adopts decisions defining an action or position of the Union on the basis of a decision of the European Council relating to the Union's strategic interests and objectives (referred to in Article 22, Point 1);
- adopts a decision defining an action or position of the Union on the proposal submitted by the High Representative of the Union for Foreign Affairs and Security Policy at a specific request from the European Council made on its own initiative or that of the High Representative;
- adopts all decisions implementing a decision defining an action or position of the Union;
- appoints a special representative (in accordance with Article 33 TEU)⁴³.

Thus, qualified majority voting has very limited use: it is used merely for general actions and only in the case of their practical implementation, but not in the case of a decision to take them in general.

⁴² *Ibid*, p. 30.

⁴³ *Ibid*, p. 33-34

If a member of the Council declares that because of essential and specifically defined reasons related to national policy it does not intend to endorse a decision which is to be adopted by qualified majority, it is not voted upon. In close consultation with the relevant Member State, the High Representative seeks a solution acceptable to that state. In case he does not succeed, the Council may, by qualified majority of votes, request to pass the issue on to the European Council for a decision by unanimity⁴⁴.

The second point is of great importance. If the HR proposes a decision which requires qualified majority, first of all, he has to refer to the European Council and only afterwards can submit the matter to the Foreign Affairs Council. Qualified majority is achieved when a decision is approved by 55 per cent of the Member States, representing at least 65 per cent of all population. When the Council acts not according to the proposal of the Commission or the High Representative, the required majority of the Member States rises to 72 per cent (Article 238, Point 2 TFEU). In order to block the adoption of a legislative act, at least four states must vote against the project. The new mechanism will enable 75 per cent (as from April 1, 2017 – 55 per cent) of the Member States to request re-discussion of the proposal within “an appropriate period” (Declaration on Article 16(4) of the Treaty on European Union and Article 238(2) of the Treaty on the Functioning of the European Union, No 7).

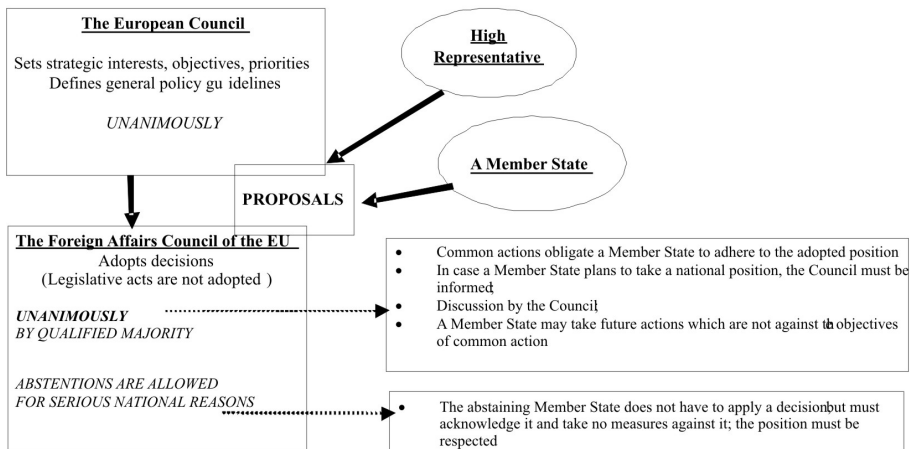


Figure 2. Decision-making procedure

⁴⁴ *Ibid*, p. 33-34

3.4. The Commission

As is known, the European Commission promotes the general interests of the European Union and is the impetus of the integration process. Prior to the institutional reform, the role of the Commission in external relations was limited to the areas of economy and trade; therefore, many experts had expected that the institutional reforms of the EU would add weight to the EU in dealing with international issues⁴⁵.

It is hard to decide if this has happened. In essence, a lot will depend on the HR's position and actions. On the one hand, taking into consideration that the HR, as one of the Vice-Presidents of the Commission, "brings" additional functions from elsewhere, he could strengthen the influence of the Commission in external actions. This would help him/her, within the framework of the Commission, perform the functions which are laid down in Article 18, Point 4 of the Treaty on European Union: to implement the Commission's obligations in the field of external relations and coordinate aspects of other external actions of the Union. On the other hand, considering the fact that almost the whole role of the Commission within CFSP is assigned to the High Representative, one should not disregard the fact that the role of the Commission in the area of external relations might decrease provided the HR decided to identify himself more with the Council. As a matter of fact, Article 22, Point 2 of the Treaty on European Union foresees that together with the HR, the Commission may submit common proposals, but it can do it only in other areas of external actions. It indicates that the Commission General Directorates were not deprived of all their mandates in the area of external relations, but, at the same time, some issues arise as to what those mandates of the Commission are in the area of external relations and what those other aspects of external relations are which are laid down in Article 18, Point 4 of the Treaty on European Union.

The Commission, or rather the President of the Commission, will have certain limited influence within CFSP during the procedure for appointing the HR, since he/she can be appointed only upon the approval of the President of the Commission (Article 18, Point 1 TEU). However, since the HR is appointed by the European Council, it is doubtful that the President of the Commission would decide to worsen relations with it. The opposite is more likely: since different procedures are established for appointing the HR and other members of the Commission (the members are appointed by the President of the Commission), the issue of loyalty to the Commission may arise. Finally, because of the intensive diplomatic schedule – frequent visits abroad, negotiations, participation at international conferences – the HR may lack both time and energy for activity in the Commission, whereas because of the constitutional provisions of the Treaty and the character of work, he/she will be forced to spend more time among Ministers of Foreign Affairs of the Member States

⁴⁵ Gricius, A., Paulauskas, K., "Common Foreign and Security Policy of the European Union and Lithuania", *The Lithuanian Annual Strategic Review 2003, 2004*, p. 84.

(socializing as well) but not in Commission meetings. This, in its turn, may also reduce the importance of the role of the Commission within common foreign and security policy.

3.5. The European Parliament

Although by the Treaty of Lisbon the legislative powers of the EP were expanded – an ordinary legislative procedure is now applied in over 40 new policy areas – the role of the EP within CFSP has been slightly modified. The role of the European Parliament within CFSP is defined by Article 36 of the Treaty on European Union which states that the HR must regularly consult with the EP on key aspects of common foreign and security policy as well as common security and defense policy and basic choice issues, inform it about the evolution of these policies and give due consideration to the position of the European Parliament. It is also stated that “The European Parliament may address questions or make recommendations to the Council or the High Representative. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defense policy”⁴⁶.

The EP has the greatest powers within the area of CFSP during the new budgetary procedure which establishes full equality between the Parliament and the Council when adopting the annual budget. In accordance with the new provisions, a multi-year financial program must be coordinated with the Parliament (consent).

Nevertheless, it is obvious that the ambitions of the EP, which acts according to the new provisions, have grown in the area of CFSP. This can be illustrated by EP actions during the process of setting up the European External Action Service. The EP was constantly urging to set up a common European diplomatic service. It urged the Council, the Commission and the Member States to use the opportunity, offered by setting up the EEAS, to shape a more coherent, consistent and efficient foreign policy.⁴⁷ Exercising greater control powers over the EC than over the HR (e.g. during the elections of the Commission President), the EP was striving to retain the EEAS as integrated in the EC structure as possible, primarily by using the budgetary procedural and political accountability leverage, and, at the same time, urging the Commission, when performing preparatory work related to the EEAS, to use its full influence as an institution, seeking to preserve and further develop the Community model in external relations⁴⁸. And although according to some EP members, for example, Chairman of the European Parliament’s Foreign Affairs

⁴⁶ *Consolidated versions of the Treaty on the European Union and the Treaty on the Functioning of the European Union*, Luxembourg: Official Journal of the European Union C 83,2010, p. 36.

⁴⁷ *European Parliament Resolution of 22 October 2009 on the Institutional Aspects of Setting up the European External Action Service*, Official Journal of the European Union, C 265, 30 September 2010, p. 10.

⁴⁸ *Ibid.*, p. 11

Committee Guy Verhofstadt, the European Parliament succeeded in achieving it⁴⁹, such statement was not true. A very promising beginning of the preamble to the decision of the Council that “the European Parliament will continue to play its full role in the external action of the Union” annuls the provision laid down in Article 14, paragraph 1 of the Treaty on European Union stating that “The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions”⁵⁰. So, the only more considerable power that the EP will have regarding diplomatic service and, consequently, CFSP, will be during the adoption of the budget. All other activities will be of a more informational than guiding nature.

3.6. The Court of Justice of the European Union

As before, the jurisdiction of the Court of Justice of the European Union does not include matters of CFSP (Article 24, Point 1 TEU and Article 275 TFEU). However, there is one provision. Article 40 of the Treaty on European Union stipulates that “The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 of the Treaty on the Functioning of the European Union”⁵¹. The mentioned articles indicate that the Union has exclusive competence in the areas of the customs union, in the establishment of the competition rules necessary for the functioning of the internal market, monetary policy for the Member States whose currency is the Euro as well as in common trade policy. It is also stated that the Union has exclusive competence to conclude international agreements when their conclusion is provided for in the legislative act of the Union or when it is necessary for the Union to exercise its internal competence, or provided their conclusion may affect common rules or change the area of their application.

4. The European External Action Service

The European External Action Service is assigned to assist the High Representative to exercise his responsibilities. Article 27, Point 3 of the Treaty on European Union states that in its work, this service acts in cooperation with diplomatic services of the Member States and consists of officials from respective departments of the General Secretariat of the Council and the Com-

⁴⁹Weiss, S., “From Global Payer to Global Player”, Bertelsmann Stiftung: Spotlight Europe Special, No. July 2010, p. 2.

⁵⁰ *Consolidated versions of the Treaty on the European Union and the Treaty on the Functioning of the European Union*, Luxembourg: Official Journal of the European Union C 83,2010, p. 22.

⁵¹ *Ibid*, p. 37.

mission as well as the staff assigned from national diplomatic services⁵². The structure, competences or functioning of the EEAS were not referred to in the Lisbon Treaty. These modalities of the EEAS were later defined by a separate decision of the Council which was prepared by a high-level working group (created by HR Ashton) including representatives from the Council Secretariat, the Commission, the chairing state and several most influential EU Member States. This working group had to reach a compromise on the sensitive issues which had been postponed by the Lisbon Treaty makers in order to avoid the fate of the Treaty establishing a Constitution for Europe. After the intensive six-month negotiations which were repeatedly discussed at the meetings of the Permanent Representatives of the Council (Coreper), the Foreign Affairs Council, the Commission and the EP Foreign Affairs Committee, the Council decision on setting up the EEAS was adopted on 26 July, 2010. The negotiations and results on the establishment of the EEAS once again revealed the complicated birth of CFSP and the ambitions of the Member States not to lose control of their foreign policy.

4.1. The Nature of the EEAS and its Activity Areas

Three possible variants of the legal status of the EEAS and its activity planning were discussed. The supporters of a limited EU diplomatic service were in favor of the EEAS as a European office type institution. In the first case, it would be similar to the Publications Office with very limited administrative and budgetary autonomy. This proposal did not comply with the legal acts, since the establishment of the EEAS was defined by the Treaty, whereas European offices are usually set up by one of EU institutions. Another proposal was to grant the EEAS status as a EU agency. This choice would have given the EEAS a higher degree of autonomy, enabled the HR to draw up an operating budget for the EEAS and the EEAS would have been empowered to implement it. Moreover, the HR would have had the right to make decisions on the employment of EEAS officials, but administrative and budgetary freedom would have still remained limited. Therefore, the supporters of a stronger diplomatic service were seeking to set up a new institution/service similar to the European Ombudsman's office. However, this variant was also rejected because none of the institutions within CFSP agreed to hand over part of its competence to the new institution. For instance, most influential EU Member States sought a decision which, on the one hand, would grant the HR and the EEAS greater powers, but on the other hand, would limit their independence, "tying" them to the Council as much as possible. The EC and the EP were seeking the same objectives. In order to reach a compromise between different CFSP actors, both EC President José Manuel Barroso and former HR for CFSP Javier Solana and most of the Member States supported the EEAS as a

⁵² *Ibid*, p. 32.

“sui generis”-type service. A decision was made that the EEAS will not be a part of either the Council or the EC, but functionally it will be an autonomous body of the EU with legal capacity necessary to perform its tasks and attain its objectives.⁵³ Nevertheless, the EP and the EC managed to make the EEAS administratively closely connected with the Commission. Close administrative links mean that the Commission or the General Secretariat of the Council are charged with some administrative functions: maintenance of buildings, daily personnel management, data processing, telecommunications and personnel security, administration of access to documents, etc. This decision has certain logic: duplication of the activity would be avoided, costs would be reduced, and the HR could perform his functions using not only the EEAS resources but also those of the Commission and the Council. However, in principle, such a decision should be treated as a compromise in the argument that has been going on since the Convent times – progress has been made, but reasons for different tensions to emerge still remain.

Similar tensions may also occur due to not fully drawn lines between the competences of the Commission and the EEAS. The HR’s mandate has room for interpretation as to what specifically means to coordinate “other” aspects of the Union’s external actions. This prompted some major EU countries to strive for EEAS competence not to be limited to CFSP matters overseen by the Directorate-General for External Relations (DG-Relex) of the EC, but be extended to other areas of external relations overseen by the Directorates for Trade (DG-TRADE), Enlargement (DG-ENLARG) and Development (DG-DEV). The representatives of the Commission and the EP viewed these attempts as “the shift towards the intergovernmentalism” or even as an ambition of some of the Member States to usurp the ES enlargement budget.⁵⁴ The Directorate-General for Trade and the Directorate-General for Enlargement remained within the Commission, whereas the Directorate-General for Development was transferred to the EEAS in spite of the EC’s objections. On the other hand, management tools and instruments that had been administered by this directorate were left in the Commission. However, according to the decision of the Council, the EEAS will be responsible for the programming and management cycles of these instruments (in the first place, while providing political guidelines), whereas the Commission will be in charge of more technical functions. This kind of work distribution will hardly contribute to the efficiency of CFSP.

There were no problems concerning the separation of competences between the EEAS and the General Secretariat of the Council. Although some countries proposed a limit to the key structure of the General Secretariat of the Council comprising EU external relations, CFSP and ESDP, i.e. the Directorate-General for External Relations of the Council (DG E) and the policy planning

⁵³ Council Decision of 26 July 2010 establishing the organization and functioning of the European External Action Service, Luxembourg: Official Journal of the European Union L 201, 2010, p. 30.

⁵⁴ Funres, M., “The European External Action Service: a new institutional framework for EU development cooperation”, DIE Research Project, Discussion Paper, 15/2010, p. 8.

and early warning unit (Policy Unit), most Member States were in favor of a larger EEAS and supported the proposal to transfer all CSDP and crisis management structures – the Crisis Management and Planning Directorate (CMPD), the Civilian Planning and Conducts Capability (CPCC), the European Union Military Staff (EUMS), the EU Joint Situation Centre (SITCEN) – with the exception of the SITCEN staff performing auxiliary functions for the Security Accreditation Authority.⁵⁵

4.2. Management and Structure of the EEAS

From the organizational point of view, the EEAS will not differ from typical ministries of foreign affairs; it will consist of a central administration with its headquarters in Brussels and the Union's delegations in third countries and international organizations. However, the approved management of the EEAS reflects the complicated outcome of the negotiations between the EC, the EP, the HR and the Member States.

The Parliament rejected the original proposal on the structure and functioning of the EEAS submitted by HR Ashton noting that the management of the EEAS was in the interest of only a few powerful Member States (i.e. Germany and France) seeking to usurp the EEAS, because, according to it, the Executive Secretary General who should manage the EEAS would not be accountable either to the Parliament or to the Council. Such a proposed model of EEAS management was named by some EP members as “French-style”, according to which the Secretary General would hold enormous power⁵⁶. Parliament members warned that in case such a proposal was approved, the Secretary General with his two deputies would run the EEAS web “like a spider”.⁵⁷ The main critique of the Parliament members consisted in the fact that the proposed structure did not have politically legitimized deputies. The HR himself cannot have them either since the Lisbon Treaty does not provide for them.

The critique from the Parliament was partly considered in the proposal amended and adopted by the Council. It was decided that the EEAS, like previously, would be run by the Executive Secretary General who would take all necessary measures to ensure smooth functioning of the EEAS, including its administrative and budgetary management, which would guarantee efficient coordination of the activity of all central administration branches as well as the interaction with the Union's delegations. The Executive Secretary General will be assisted by two Deputy Secretaries General. However, unlike the original proposal, this one provides for one more directorate responsible for the budget and administration matters alongside other Directorates General

⁵⁵ Council Decision of 26 July 2010 establishing the organization and functioning of the European External Action Service, Luxembourg: Official Journal of the European Union L 201, 2010, p. 39.

⁵⁶ “Ashton puts French ‘spider’ at centre of EEAS web”, <http://euroactiv.com>, 09/09/2010.

⁵⁷ *Ibid.*

within the central administration structure of the EEAS. The Council decision envisages that according to regular rules of employment, the HR appoints the Directorate General responsible for the budget and administration who acts in accordance with the same budget lines and administrative rules applicable in the part of Section III of the Union's budget which falls under Heading 5 of the Multi-annual Financial Framework.⁵⁸ As translated from the EU bureaucratic language, it means that in this way the Parliament gains certain influence in EEAS management because it approves the budget.

Other Directorates General comprising the central EEAS administration reflect EEAS activity areas that have been discussed earlier. First of all, these are several directorates General which consist of geographical divisions covering all countries and regions of the world as well as multilateral and thematic divisions. They also include the Crisis Management and Planning Directorate, the Civilian Planning and Conducts Capability, the European Union Military Staff and the EU Joint Situation Centre which are placed under direct authority and responsibility of the High Representative and which assist him in performing his tasks of conducting the Union's CFSP in accordance with the provisions of the Treaty, while taking into consideration other competences of the Union following Article 40 of the Treaty on European Union.⁵⁹

The central administration of the EEAS also includes the strategic policy planning department, the legal department, departments responsible for inter-institutional relations, information and public diplomacy, internal audit and inspections as well as protection of personal data.

4.3. The Delegations of the Union

One of the key innovations implemented by the Treaty is, undoubtedly, the establishment of the Union's delegations in third countries and international organizations. They are mostly associated with the emergence of EU diplomacy, often dubbed as embassies, although such a term cannot be found either in the Treaty on European Union or in the Council Decision on the Structure and Functioning of the EEAS. The delegations are constituent parts of the EEAS, and they formally became such as from January 1, 2010, when all of the approximately 130 EC delegations in third countries and international organizations were renamed into the European Union delegations.

Article 221 of the Treaty on the Functioning of the European Union defines that all Union delegations will be placed under the authority of the HR. However, the Treaty on the EEAS does not mention the dependence of the delegations. The Council Decision had to define their interrelationship. By it, the delegations were assigned to the EEAS, although taking into account

⁵⁸ Council Decision of 26 July 2010 establishing the organization and functioning of the European External Action Service, Luxembourg: Official Journal of the European Union L 201, 2010, p. 33.

⁵⁹ *Ibid*, p. 33.

different responsibilities defined in the Treaty which are connected with representation of the EU in external relations, there was a question whether they should be part of the EEAS.

The issue of delegation staff subordination was dealt with in a similar way. The Commission tried to maintain its influence, though eventually a decision was made that all staff members of the delegation in spite of their status and even if they belong to the Councils of the Commission would be placed under the authority of the Head of the Delegation who would oversee its overall activities. He is accountable to the High Representative for the general management of the delegation's work as well as for ensuring the coordination of all actions of the Union. The operation of each delegation is periodically evaluated by the Executive Secretary General of the EEAS; the evaluation includes financial and administrative audits.

However, full autonomy of the delegation was not defined because in the areas where the Commission has the powers conferred upon it by the Treaties, it may also, following Article 221, Point 2 of the Treaty on the Functioning of the European Union, issue instructions to the delegations and these instructions must be executed under overall responsibility of the Head of the Delegation.⁶⁰ The European Parliament also succeeded in establishing its interests in the activity of the delegations since the delegations will have to take into account the needs of the EP and other institutions of the Union in their contacts with international organizations or third countries to which or in which these delegations are accredited.⁶¹

Nonetheless, future cooperation with diplomatic services of the Member States deserves special attention. Although the Council Decision emphasizes that the Union's delegations closely cooperate and share information with diplomatic services of the Member States,⁶² considering the fact that foreign policy in principle has remained a national prerogative, the scope and depth of the cooperation will depend on a specific issue of foreign policy. At least so far, cardinal changes in either mutual cooperation or in the host country behavior model have not yet occurred.

4.4. The Staff

The Council decided that the staff of the EEAS would consist of officials from the services of the Council and the Commission External Relations services as well as the personnel from diplomatic services of 27 Member States. Most of the Member States held the opinion that the size of the service must correspond to the scope of competence and functions of the EEAS. This size will be specified later. It is planned that the EEAS will comprise 5,000-6,000 officials, although ac-

⁶⁰ *Ibid.*, p. 34.

⁶¹ *Ibid.*, p. 34.

⁶² *Ibid.*, p. 34.

ording to High Representative C. Ashton, in order to fully perform the functions, up to 8,000 employees would be necessary. The planned size of the EEAS equals the number of employees of the diplomatic service of a big European country. For example, the German diplomatic service has 6,000 employees. However, the EEAS will be smaller in size as compared with the US foreign service, which has 11,500 officials.

Since the staff of the EEAS is recruited from three sources, the Member States emphasized that it was important to them to have a sufficient number of national diplomats in the EEAS who would hold different level positions. Almost all Member States agreed that the staff should comprise not national experts seconded by the Member States, but personnel having the status of temporary agents to ensure that all EEAS staff members have equal status and equal working conditions. The Council adopted this particular provision, not excluding the possibility of temporary employment of other seconded experts from the Member States when necessary.

It was agreed that the EEAS staff would be appointed by merit and adequate recruitment procedures would be observed. It implies that the HR would play the key role, including his approval of the final decision. It is also important that the principle of geographical balance has been established and the temptation to implement a quota-based system has been avoided.

It was also agreed that once the EEAS is fully staffed, the Member States in the Council would be represented by no less than 1/3 of the personnel, whereas the compliance with this provision will be guaranteed by presenting an annual report to the Council on the occupation of posts in the EEAS. Besides, in order to ensure transparency, representatives with an advisory vote from all Member States, the Commission and the Council are invited to participate in the process of staff selection. They are obligated to select the best potential candidates for the final decision of the HR.

It is predictable that the recruitment of the staff from different sources will pose a problem of common identity. Will a representative of a Member State in the EEAS represent common EU interests rather than the national interests of his own state? Will a German, Briton or Lithuanian always retain greater loyalty to the blue flag of the EU than to the colors of their own countries, especially being aware that special representatives, and those seconded by the Member States will conclude fixed-term service contracts with the EU, which means that they will not be indifferent as to how their further home career will develop.

Most probably, it is not accidental that the original idea based on four-year rotation of the EEAS staff between national foreign ministries and EU institutions was rejected in favor of a longer contract. One of the motives for such a decision was an ambition to develop a common identity. It refers not only to a different nationality. Unlike the prevailing practice in the countries, EU institutions comprise personnel with very different education and experience who often have nothing to do with international relations or diplomacy. To this end, a European diplomatic college is intended to be set up which, in

close cooperation with respective institutions of the Member States, would provide Union and Member States officials, who perform responsibilities within external relations, adequate training services based on coordinated study programs, including services in the areas of consular and diplomatic procedures, diplomacy and international relations as well as in the history of the European Union and methods of its activity.

4.5. The Budget

Although the countries agreed that after the Lisbon Treaty comes into effect, the strengthening of CFSP will require additional financial resources from the EU, negotiations on the EEAS budget became one of the main obstacles precluding the EEAS from starting its activity soon. The HR tried to attain the greatest financial independence possible, whereas the EP claimed a greater role for itself. Having stronger control powers in respect of the EC than the HR, the EP opposed the creation of a separate section referring to the new service in the EU budget, thus making the EEAS similar to other EU institutions. The aim of the EP was to finance the EEAS from the Commission section provided for in the EU budget. Eventually, a compromise was reached. As mentioned before, having made a decision to establish the EEAS as a *sui generis* institution, a new EU budget section “*The European External Action Service*” was made, but the finances assigned in it will be allocated only to cover EEAS administrative expenditure. Meanwhile, the activity of the EEAS will be financed from the section of the Commission budget. Therefore, the separated administrative and activity budget may limit the increase of the influence of the EEAS.

According to the EU budget first approved after the Lisbon Treaty came into effect, in 2011 the EEAS was allocated 464,1 mln Euro. A major part of this sum was allocated at the expense of the Commission and the Council, having transferred to the EEAS the staff that had monitored external matters in these institutions – 1,114 from the Commission and 411 from the Council Secretariat. From 464,1 million Euro, 140,2 million were assigned to the staff management at the Headquarters, 43,8 million – to the maintenance of buildings, equipment and operating expenditure at the Headquarters, 279,9 million – to the management of delegations⁶³.

It can be seen that these finances have been earmarked for administrative costs. However, the influence of the EU in the world will be determined not only – or, not as much in – the strength of the diplomatic service but rather the finances allocated for the implementation of different programs of foreign policy, the administering of which remains within the remit of the Commission. Theoretically, the EEAS could claim a part of the 8 billion Euro sum which in the EU budget was allotted for strengthening the role of the EU in the world

⁶³ EU Budget for 2011, <http://eur-lex.europa.eu/budget/data/LBL2011/LT/SEC10.pdf>, 20 01 2011.

and which is equal to approximately 6 per cent of the overall EU budget⁶⁴. Is that a lot or a little? By comparison, in the fiscal year of 2010, the US State Department budget with all foreign programs made 55 billion dollars. The figures speak for themselves.

Conclusions

There is no doubt that over more than fifty years of the unification of Europe considerable progress has been made in the formation of common foreign and security policy. The Lisbon Treaty is the latest step in this direction. It implemented some significant institutional reforms which altered the modalities of the formation and implementation of CFSP that were created after the Maastrich Treaty. The greatest innovations are the established offices of the permanent President of the European Council and the EU High Representative for Foreign Affairs and Security Policy as well as the European External Action Service designed to assist the High Representative to perform his functions. Soon afterwards, political observers named the EEAS as a EU diplomatic service and the High Representative as the chief of the EU diplomacy. The present article tries to answer the question whether we can really call them so and what EU institutional innovations look like as compared to the traditional definition of diplomacy and national diplomatic services.

A brief retrospective revealed the main drawbacks to treating the EU as a full-fledged diplomatic actor. The EU was not yet a legal entity. The areas of foreign and security policy were beyond the competences of the Union. The objectives of CFSP were mainly of a declaratory nature, while the policy itself lacked content. And finally, even though the countries agreed on common foreign policy, there were no legal instruments for its implementation.

Provisions of the Lisbon Treaty on foreign policy only partly eliminated these drawbacks. On the one hand, they provided possibility for the EU to become a full-fledged actor in the international system, i.e. bestowed legal entity status; on the other hand, the Member States, neither giving a mandate to the EU to pass legal acts nor defining clear competences of the Union in foreign policy, put the Union on a leash, the length of which will depend on their will. Meanwhile, CFSP experience suggests that the Member States will not have much will to limit their competences on the issues of foreign policy and national security. EU diplomatic activity is likely to limit itself to declaratory though ambitious repetition of CFSP objectives laid down in the Treaty because it will be difficult to find a common denominator for a particular foreign policy agenda. In other words, it will be difficult to transform common values and ambitions into a specific common policy. It is obvious that the success of

⁶⁴ EU Budget for 2011, http://ec.europa.eu/budget_detail/current_year_en.htm, 20 01 2011.

CFSP will continue to depend not on EU diplomacy but on the behavior and principles of the Member States.

In terms of the organization of diplomatic service, it is worth mentioning that the office of the High Representative is not clearly and unequivocally defined as the key and the only institution that performs management functions of EU foreign issues and implements EU policy in these areas. Provisions of the Treaty on the institutional architecture within CFSP have not been sufficiently defined and leave much room for interpretation. The procedure for the appointment of the HR is also complicated. Under the qualified majority vote provision, the HR can easily become a hostage in the game between the Member States which would hinder the HR in efficient performance of responsibilities delegated to him. All this creates the threat of inter-institutional conflict. It is evident that in everyday activity he will be carefully watched by the Ministers of Foreign Affairs of the Member States and his colleagues in the Commission and the President of the European Council. For the same reason, the High Representative faces the risk of becoming a double or even triple personality. This, in its turn, may adversely affect the activity of the EEAS; the fact that the EEAS administrative and operating budget is separated also adds to that. However, the EEAS has a lot of attributes similar to national diplomatic services: organizational structure, assigned functions, subdivisions abroad. In terms of EEAS efficiency, the greatest and potentially most dangerous difference might be related to staffing – staff recruitment from different sources will cause the problem of identity and loyalty.

In conclusion, it may be said that the new structure created for the implementation of EU common foreign and security policy is similar to a “hybrid”: ambitions to implement foreign policy exist, they are expressed as institutional innovations, but the implementation mechanism itself does not follow the organizational logic of a diplomatic institution.

From the perspective of third countries, CFSP has remained complicated and “hard to crack”. The dilemma of a single telephone number for Europe has not been resolved. Many still do not understand the difference between Van Rompuy and Barroso; why Barroso (the President of the Commission) and not Van Rompuy (the President of the European Council) presents the annual report defining the Union’s situation and setting further guidelines for the future; what do Sarkozy, Merkel and other Heads of States or Governments of the Member States have to do with this; what else does Baroness Ashton do, and in general, why are there so many of them and why are they so different and disagree so much. In short, who should Kissinger speak with after the Lisbon Treaty remains unclear.

Words are very important, especially in the world of diplomacy. The fact that the EEAS is the EEAS and not a diplomatic service or a MoFA and the High Representative is not a Minister of Foreign Affairs, speaks for itself. This shows that the states are not yet ready to transfer foreign policy and national security matters to a supranational institution.

What is next?

There is no doubt that the High Representative for foreign affairs and security policy as well as the European External Action Service will try to justify their existence and ensure cohesive use of different measures for EU external actions. In the period of relative calm, rather good results may be achieved. But how is this going to be achieved provided the EU faces serious challenges, e.g. the Iraq war when the positions of the Member States on foreign issues point in cardinally opposite directions? It will be impossible to keep this form without taking further steps in a federal direction. And then the issue of the fate of national diplomatic services will arise.

However, the Member States are not yet ready for this step. History shows that major institutional changes in the EU occur at an interval of approximately twenty-five years. Meanwhile, the High Representative and the European Council will seek to win their place in the diplomatic world, while the Member States will try to increase their influence in this structure.

Vilnius-Washington, June-December 2010