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THE NEW CHALLENGES OF THE
EUROPEAN FOREIGN POLICY IN THE
CONTEXT OF THE WESTERN BALKAN
REGION
AND THE EU ENLARGEMENT

Abstract

Historically seen, coordination between the Commission-driven enlargement agenda and the Council-driven CFSP/CSDP has been minimal. Each of these institutions has long adhered to their own structures, objectives, and chains of command. The current very challenging question for debate is whether the Lisbon Treaty and the EEAS have been able to address these inconsistencies. As it is generally known the Lisbon Treaty has introduced a new area in EU external relations. The creation of the EU High Representative position, which doubles as a Vice President of the European Commission, and of the European External Action Service, unveils the EU's intention to overcome the decades-old schisms between the Community-driven set of external policies, on the one hand, and the Member State controlled CFSP/CSDP, on the other. There is a growing awareness among Member States that the lack of coherence between its policies and institutions inhibits the EU self-declared role as a global player in the world. For the EU, it is of utmost importance to maintain positive momentum by resolving the current stalemates through results-oriented decision-making by the EEAS, and the smart and efficient coordination of various political and operational instruments and commitments, and for the Western Balkan countries, there is a whole set of advantages envisaged in the short and long-term, particularly once the obstacle of membership is removed. This paper will elaborate the impact of the Lisbon Treaty on the institutional structure of CFSP as well as the position and competencies of the newly formed European External

Action Service and how these competencies will affect the countries from the Western Balkan region on their path to EU.

Key words: EEAS, Foreign policy, EU Enlargement, CFSP, Lisbon Treaty

1. The Lisbon Treaty and the EU Common Foreign Policy – Two Different Standpoints

There is no doubt that the EU, after the adoption of the Lisbon Treaty, has made a qualitative step toward strengthening of its own global identity at the international scene through improving of its own efficiency and transparency in the field of the Common Foreign policy.

This is the conclusion of many theoreticians who believe that this Treaty has brought significant changes that deeply impact the inter-institutional balance of this policy. In their opinion, this is a significant step towards strengthening and ensuring better coherence and efficiency of the EU Foreign policy through the incorporation of the large number of supra-national elements.

Also, in accordance with the provisions of the Treaty, the Union, as a player at the international scene, should be led by the principles of the democracy, rule of the law, universality and the guaranteed human rights and freedoms, respect for the human dignity, equality, solidarity, as well as by the principles incorporated in the UN Charter and the International Law¹.

The development of relations and partnerships between the EU and the third countries and with the international, regional and global organizations ought to be based on these principles.

We should also highlight that besides these positive considerations there are also those who believe that the Lisbon Treaty provisions can be interpreted as an ever-refined type of “rationalized intergovernmentalism”ⁱⁱ where the heads of state and governments overtake restricted competences from the European Parliament and from the Commission, but still stick to the unanimous decision-making in the Council, i.e. to the centralized role of the European Council.

In fact, in this context is the argument that the transfer of competences goes hand in hand with the increased complexity in the decision making procedures.

According to these considerations, the Member States leave the control over all important issues from the field of the Foreign policy to the European Council, while they most often use the provisions from the Treaty for realization of their own national goals.

Following the considerations of the second group of authors, we

come to a conclusion that the Lisbon Treaty does not provide new basis in this field, but on the contrary, the Heads of state and governments are dragged more and more into an intergovernmental trap.ⁱⁱⁱ

From this intergovernmentalist reading the CFSP is seen as a mere “agent” of the Member States as “principals” and “masters” of national governments which seek to pursue their national interests and strengthen their position in the international system via the Union’s institutional set-up.^{iv}

Regardless of the different considerations about the Lisbon Treaty provisions concerning the Common Foreign policy, it remains a fact that it contains a complex list of goals and tasks for the Foreign EU action which covers all aspects of the so-called traditional (national) foreign policy.

The Lisbon Treaty stresses the mutual commitment of the Member States to support the Union’s external policy “actively and unreservedly in a spirit of loyalty and mutual solidarity” and to “refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness” (Art. 24 (3) TEU), thus specifying the general assurance of mutual cooperation and fulfillment of treaty obligations (Art. 4 (3) TEU).

If we take a closer look at the modifications to the institutional balance in this policy, we see that the role of the European Parliament in CFSP matters has not been substantially modified. The Lisbon Treaty inserted the High Representative as the new contact partner of the EP (instead of the Commission or the Council Chairman) who shall regularly inform it and to whom it can address questions and recommendations (Art. 36 TEU).

Furthermore, the frequency of debates within the European Parliament on CFSP matters has been upgraded to twice instead of once per year. As a minor amendment the Lisbon Treaty added that the EP should also be regularly consulted on aspects of the CFSP (Art. 36 TEU), and not only in CFSP issues.

But as administrative and operating expenditures of CFSP are charged to the Union budget – except for matters having military or defence implications (Art. 41 TEU) – the EP has at least some kind of influence via the budgetary procedure.

The “Protocol on the Role of National Parliaments in the European Union” furthermore foresees that a “conference of Parliamentary Committees for Union Affairs” may organise inter-parliamentary conferences “in particular to debate matters of common Foreign and Security policy, including common Security and Defence policy” (Art. 10 of the Protocol).^v

Actually, the key innovation in terms of actors on the international scene is the Foreign Affairs Representative and the links which this post has to both the Commission and the Council.

The dual nature of the post is perhaps best illustrated by the fact that the Foreign Affairs Representative will chair the Council in its foreign affairs composition (although it remains surprising that Member States accepted that their foreign ministers and other ministers dealing with

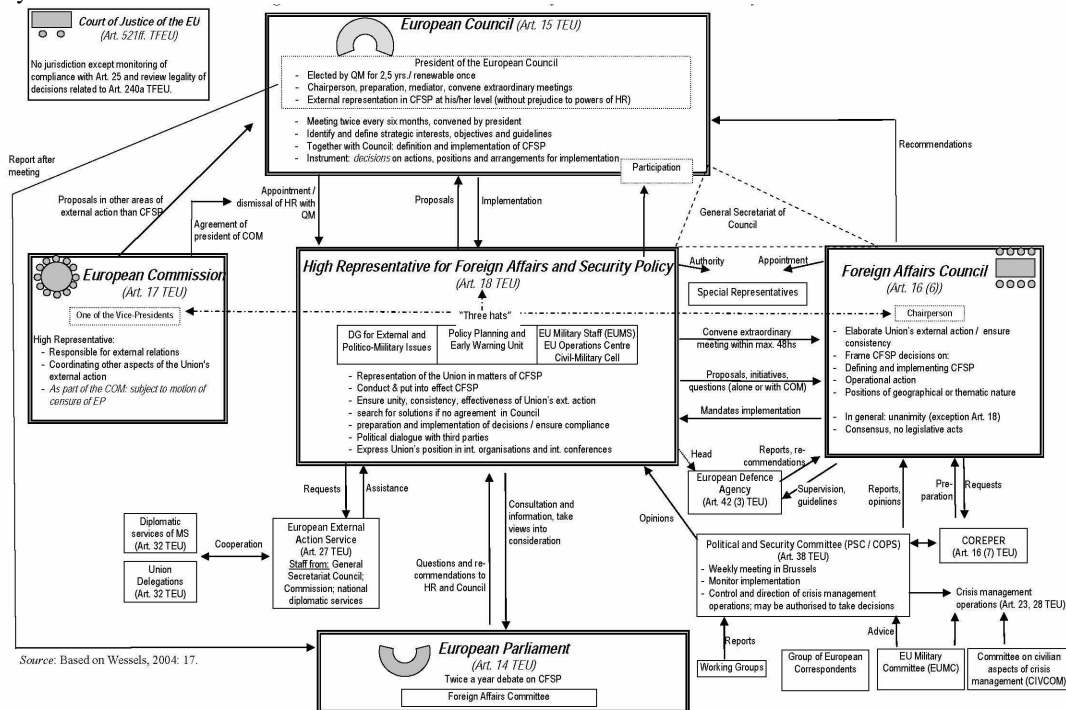
external affairs are presided over by a Union representative and Vice-President of the Commission.^{vi}

The Foreign Affairs Representative is assisted by a European External Action Service (or EEAS, Article 27(3) TEU). This Service works in cooperation with the diplomatic services of the Member States and comprises officials from the General Secretariat of the Council and from the Commission, as well as staff seconded from the national diplomatic services.

While the EEAS is referred to in Chapter 2 of Title V TEU, in other words in the part relating specifically to the CFSP, it is clear from the decision to set up the Service that it has a somewhat broader mandate and will play a role in the implementation of non-CFSP external policies as well, including development policy but excluding international trade policy.^{vii}

Referring the conclusion of the international agreements, the Commission negotiates, the Council concludes and the Parliament is either consulted or required to give its consent.^{viii}

The new post-Lisbon institutional structure in the field of the Foreign policy is elaborated in the chart below:



Taken from: Wolfgang, Wessels and Franziska Bopp (2008), “The Institutional Architecture of CFSP after the Lisbon Treaty-Constitutional breakthrough or challenges ahead?”, Research Paper No. 10, Challenge Liberty & Security, pp.14, <http://www.ceps.eu/book/institutional->

[architecture-cfsp-after-lisbon-treaty-constitutional-breakthrough-or-challenges.](#)

As we can see, the EU institutional structure responsible for the common Foreign EU policy **is composed of several bodies and agencies**: the European Council, the EU Council, the EEAS and the structures for crisis management, the European Commission, the European Parliament and the EU Member States.

1. The European Council, which under the Lisbon Treaty became a fully fledged EU institution, is composed of Heads of State and governments together with the President of the European Council and the President of the European Commission. It provides the political direction to the EU by identifying the strategic interests, determining the objectives and defining the guidelines of CFSP. It meets twice every six months and, as a rule, takes decisions by consensus.

The President of the European Council, now a full-time position with periods of office running for two and a half year (renewable once), represents the Union externally on issues concerning CFSP “without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy” (Article 15 TEU). This full-time position is also meant to bring increased consistency to the Union’s external action, particularly as the former powers/functions of the rotating presidency of the Union in the area of CFSP have been reduced.^{ix} 2. The Council of the EU meets in different configurations depending on the policy area (the configurations with competence on CFSP are the Foreign Affairs Council (FAC) and the General Affairs Council (GAC)). The FAC deals with the whole of the Union’s external action, and is responsible for ensuring consistency across the instruments in the EU’s external action together with the GAC.

3. The Political and Security Committee (PSC) is the permanent body constituted by permanent representatives of EU Member States who are based in Brussels and who meet at ambassadorial level (the Member States’ PSC Ambassadors). It is in charge of monitoring CFSP within the Council of the EU and of exercising political control and setting the strategic direction of crisis management operations (Article 38 TEU). The PSC formulates opinions on these issues at the request of the Council, the HR/VP or on its own initiative. The PSC now has a permanent chair directly linked to the Corporate Board of the EEAS.

4. The CFSP is implemented by the High Representative for Foreign Affairs and Security Policy (HR/VP) and by the Member States. The new post of HR/VP is responsible for increasing the consistency of the Union’s external action (Article 26 TEU). The HR/VP, currently Catherine Ashton, chairs the Foreign Affairs Council and is one of the vice-presidents of the European Commission (and in this latter role is subject to a vote of consent by the European Parliament), taking on functions divide among three roles: the six-monthly rotating presidency on CFSP; the High

Representative for CFSP and the Commissioner for External Relations. The HR/VP is also Head of the European Defence Agency. The HR/VP also enjoys formal right of initiative in CFSP/CSDP matters and ensures coordination of the civilian and military aspects of CSDP, under the authority of the Council. The HR/VP also conducts political dialogue with third countries.

5. The High Representative is assisted by the European External Action Service (EEAS) which works in co-operation with the diplomatic services of the Member States. The EEAS is also responsible for communication and public diplomacy in third countries, drafting country and regional strategy papers, and election observation missions.

Furthermore, the EEAS, in co-operation with the Commission's services, is involved in the programming, planning and management of relevant funding instruments, such as the Instrument for Stability and the European Instrument for Democracy and Human Rights. European Union Special Representatives (EUSRs) are responsible for developing a stronger and more effective CFSP. There are currently 10 EUSRs. They may be appointed by the Council, following a proposal from the HR/VP, with mandates covering particular transversal issues and/or geographic areas, and they report directly to the HR/VP. They are engaged in political dialogue in regions they cover and are committed to increasing the coherence of the EU's action towards a particular region.

Before the entry into force of the Lisbon Treaty, the European Commission's delegations mainly dealt with trade, aid and development cooperation. With the entry into force of the Lisbon Treaty and the acquired legal personality of the EU however, they became European Union delegations with competencies for CFSP which previously fell under the competence of the rotating presidencies of the EU.^x They now represent the Union as a whole under the authority of the HR/VP, and have the status and structures to contribute to steering and strategizing the political engagement of the EU with a third country. All EU delegations will now have a political and communication section, unlike before, and are allowed to co-ordinate and represent the EU's position in third countries. EU Delegations in third countries now hold weekly meetings with representatives of the Member States in the country; these meetings were previously organized by the embassies of the rotating presidencies of the EU.^{xi}

The common EU Foreign policy continues to stand on **four hierarchy levels**.

At the top is the European Council which gives the general political directions for the EU and which represents the highest level of decision-making in case of major differences in the opinion of the lower bodies. The Council is also the initiator of the common strategies in the field of the EU foreign policy and of its reform proposals in this area.

The second level of decision-making is the EU Councilⁱⁱⁱ. The political and the security-political committee, whose composition includes senior officials/ambassadors in the permanent representative offices in the of

the EU member countries in Brussels and which executes the central function of mediator between the political and the administrative level, **which is in fact the third level of decision-making**. This committee, together with COREPER, executes the preparations for the work of the Council and processes its decisions.

The **fourth level of the Common Foreign policy hierarchy** are the monthly meetings of the EU Member States ambassadors and the ambassadors in the non-EU countries, in the international organizations and conferences.

In devising the Lisbon Treaty structures, EU Member States wanted to overcome some of the deficits of the intergovernmental approach, but they did not want to reduce their own national foreign policies' room for maneuver. The big Member States in particular were not prepared to empower the EU's central institutions to assume a leading role, and the informal steering role of the largest EU Member States has not been diminished.

Some of the smaller Member States with generally modest foreign policy ambitions were little interested in a significantly more activist and engaged center of operations in Brussels that might drive up the costs and risks of their foreign policy making. Nor was the European Commission prepared to accept the limitations on its lead role in external relations that would result from giving the EEAS an effective coordinating function. Many commission officials initially regarded the EEAS as a Trojan horse designed to repatriate commission competences to the Member States. While there is a debate in the EU Foreign policy community over whether the EEAS's glass is half full or half empty, most would agree that it would be useful to add more water. The political decision that established the EEAS provided for a review of the service in the summer of 2013.^{xiii}

2. The External Action Service and the Western Balkan region- Key challenges

The South-East Europe (or more specifically, the Western Balkans) is an exceptionally important geostrategic region for the Union and for the European External Action Service (EEAS), having in mind the fact that the EU is proclaiming itself as main political and operative player in the region. Because of this role, the Union is often facing a challenge when it comes to its unified approach to the foreign policy towards the Balkans.

The state of play of the EEAS in the Balkan region presents a mixed picture and some unfulfilled potential, despite the fact that the region encapsulates the potential for the new service and the High Representative of the Union for Foreign Policy/Vice President of the Commission (HR/VP) to prove their added value.^{xiv}

This is very important for the Western Balkan countries, which traditionally have weak state capacities, are continuously facing with inter-ethnic tensions and conflicts, they have problems maintaining their stability and are facing with corruption and organized crime. More and more people in the Union think that it is the EEAS that should solve the problems in the region, i.e. to oppose political movement in the countries from the region that will result with incorporation of European standards in their overall life and will bring more coherent approach to the region in context of encouraging the process of further integration in the Union.

There is also a belief that the EEAS can overcome the administrative divisions among the different EU institutions when it comes to the EU Foreign policy.^{xv} The problems located in the EEAS' programme for the SEE region mostly concern the dual character of the EU obligations towards the region.

The EU delegations in the Western Balkans are cut across tight administrative divisions. Political sectors respond to the EEAS, while operations sections respond to DG Enlargement in the Commission. While the operational implications of this division should not be overestimated, the lengthy launch of the EEAS has so far resulted in complicating rather than simplifying EU operations and representation in the region.

Namely, the enlargement process is still a process led by the European Commission, while the common Foreign policy is mostly in the hands of the EU Member States.^{xvi}

This dualism puts the SEE region at a crossroad between the EU foreign policy at one, and the EU Enlargement^{xvii} at the other hand, and therefore it is quite difficult sometimes to say where the competences of the Directorate General for Enlargement end and where the competences of the EAS start.

In the EU delegations in the SEE countries, like, for example, the Delegation in Skopje, the political departments are directly connected with EAS, while the other departments, which perform the operational tasks, are directly connected with the DG Enlargement, i.e. with the EC.

On the other hand, the other EU missions in the region (EULEX in Kosovo, EUFOR and Altea in Bosnia) open a new dimension for analysis. The successful completion of Croatia's accession is an extraordinarily important step for the EU enlargement policy and sends out a positive message for the rest of the region.

In other words, the positive message that the Union sends to the region is that the EU membership can come as a reward for all countries that are ready to apply the EU standards and values, although this is not always the case (Macedonia's example shows that in the process of accession some other criteria that go beyond the Copenhagen framework can be applied. One may notice that Brussels continuously falls under the influence of its member state Greece and simply fails to find a solution for the Macedonian issue. The EAS also, at least so far, failed to give any concrete proposals in direction of opening a political dialogue between the two countries).

Still, having in mind the problems of the countries from the region listed above, and the problems of the EU itself, it is justified to believe that Croatia's integration in the EU will be the last enlargement in this decade, and perhaps for even longer.^{xviii}

Because of this objective and real threat some believe that the EU must find a new strategic approach to the region in the interest of maintaining the momentum of the accession process. If this process slows down it will reflect directly on the "transformative power" that the Union has in the region.

The EU must continuously seek for new ways and new instruments in order to motivate the SEE countries to continue with the reforms despite the fact that their joining to the Union may never happen. In this complex environment it does not come as a surprise that the EAS is making a constant pressure on the other EU institutions to create or help in creating new, more unified positions that will help solving the number of open issues in the region (the name dispute that Greece has with Macedonia, problems concerning the democratic development in Serbia, the implementation of the Kosovo-Serbia agreement in reality, and so on.)

It is a general impression that the EEAS must, at operational level, use its own capacities, besides the capacities for crisis management in order to make more significant changes in the region. Also, some may conclude that the EU lacks a coordinated and successful strategy for the Southeast Europe. This gap has been present since the nineties of the last century when the EU failed to prevent the conflicts at the territory of ex-Yugoslavia. Even with the establishment of the common foreign and security policy in 1999 the Union still did not manage to create a stronger image for the Balkans. It seems that even then the EU got confused in its own complex approach to the region and it is still stuck in it. The pre-Lisbon involvement of the EU in Kosovo confirmed this conclusion.

Namely, more than seven different EU-led missions needed to speak in one voice there, but they were doing it all very unsuccessfully. The coordination between the Commission and its enlargement agenda on one hand, and between the Council and its agenda for the common foreign and security policy on the other, were also quite weak at that period.

This is why the Lisbon Treaty mainly focused on improving the EU position in the segment of the foreign policy by introducing a new service, the EEAS, which will consolidate the internal relations within the EU.

However, having in mind the fact that the decision of the Council from July 2010 did not give any competences to the new diplomatic service in the part of the enlargement, the public is now again standing in front of the dilemma whether the EEAS will really have any importance for the countries from the region.

There is also a dilemma with regard to the position of the countries from the region towards the EU, where we need to make a difference between the "candidate-countries", whose relations with the EU are already covered with the enlargement agenda, and the "potential candidate

countries", i.e. Bosnia and Herzegovina and Kosovo, who are already hosts to the EU missions coordinated by the EEAS.

On the other side, the Union has launched the new idea for reorganizing the European Commission into several clusters. In a cluster-based system, each Member State would continue to nominate a commissioner, but **the portfolios would be grouped in five to seven topically related clusters** centered on key Commission tasks, such as external relations, economy, citizenship, natural resources, and administration. Every cluster would be headed by one vice president of the commission.

Whereas the position of vice president has so far been little more than an honorific title, the new vice presidents should have real authority in overseeing the work within a cluster, including having to agree to place an item on the commission's agenda. This system would enable the Commission to coordinate better among related areas, set strategic direction, improve decision making, and reduce the urge toward excessive regulation. Such a significant structural reform of the Commission would no doubt be controversial. A new president might see the idea of empowering vice presidents as a threat to his/her prerogatives. However, this would be shortsighted. Like in a private-sector corporation, a stronger top management team working under the commission president's direct guidance would ultimately enhance his/her authority.

While reorganizing the entire commission on the basis of clusters would be useful, it can be argued that on external relations in particular, it is actually necessary and even prescribed in the EU's Treaty. That document charges the high representative with ensuring the consistency of the EU's external action and coordinating its various aspects.

All of this is necessary to ensure that the EU can effectively address challenges in its role in the Balkans region, and in its Southern and Eastern neighborhoods. A cluster system would allow stronger leadership by the high representative in the various areas of external relations and would strengthen information sharing, coordination, and teamwork among all relevant commissioners. It would result in an EU that can act more rapidly and that is capable of uniting its different strengths and capacities in coherent action which would certainly affect the active role of the EU on the Balkan region.

3. Conclusion

Obviously the EU is confronting with few main challenges and dilemmas in its approaches to the Western Balkans.

The first main challenge is known as the 'EU enlargement fatigue' *versus* 'Balkans accession fatigue'.

The second EU challenge is how to deepen and widen its external coherence in reality.

The Lisbon Treaty indeed made some efforts in order to enhance efficiency and effectiveness of single institutions, especially by the establishment of the newly position of the High Representative and the EEAS in the Common Foreign policy of the Union.

But, it is very obvious that it is not clear how the EEAS will fare in the complex political Western Balkans settings having in mind that the EU engagement with Serbia on the dialogue with Kosovo is still an exception, but not a rule.^{xix}

The Treaty provisions for the institutional architecture remain quite vague and leave substantial room for interpretation of the so-called “living architecture”.

This is specially visible in the undertaken Western Balkans Union’s actions with confused responsibilities within the Union produced through unclear divisions of power not only between the High Representative and the “full-time” President of the European Council, but also between the EEAS and the European Commission.

It is more than clear that the two institutional decisions that are looming – the selection of a new leadership team and the reorganization of the European Commission in a way that allows for better coordination among external policies and the Common Foreign and Security Policy - will greatly enhance the EU’s ability to pull all its assets together, to act in a coherent and comprehensive fashion and to help determine the EU’s future capacity as an international actor.

It is general accepted that the Western Balkans is one particular region where the EU is lacking of a coordinated and coherent strategy. This is the third EU main challenge. The EU policy towards the Balkans is very much divided between the Foreign policy component (managed by the EEAS), and the enlargement component (controlled by the Commission). This is also reflected at the delegation’s level, where EEAS officials report to the Head of Delegation (HoD), while enlargement officials report directly to Commission headquarters in Brussels.

This different position of the Western Balkans countries, on the one hand, and of the EU institutions, on the other, is actually a new challenge not only for the EU, but also for the countries in the region.

ENDNOTES:

ⁱ “TITLE V - General Provisions on the Union’s External Action and Specific Provisions on the Common foreign and Security Policy, **Chapter I – Provisions having General Application, Article 21, 2.** The Union shall 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: **(a)** safeguard its values, fundamental interests, security, independence and integrity; **(b)** consolidate and support democracy, the rule of law, human rights and the principles of international law; **(c)** preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of

the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders; **(d)** foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty; **(e)** encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade; **(f)** 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; **(g)** assist populations, countries and regions confronting natural or man-made disasters; and **(h)** promote an international system based on stronger multilateral cooperation and good global governance. **3.** The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies. The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect." Article 3 TEU-new contains values to be upheld externally, although one must question the necessity of distinguishing between values and objectives. **See: Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union, <http://register.consilium.europa.eu/pdf/en/08/st06/st06655-re07.en08.pdf>.**

ⁱⁱ See: Wessels, Wolfgang, (2001), "Nice results. The Millenium IGC in the EU's evolution", *Journal of Common Market Studies*, Vol. 39, No. 2, (pp. 204).

ⁱⁱⁱ See: Klein, Nadia and Wolfgang Wessels (2006), "A 'saut constitutionnel' out of an intergovernmental trap? The provisions of the Constitutional Treaty for the Common Foreign, Security and Defence Policy", in Lenka Rovná and Wolfgang Wessels (eds), *EU Constitutionalisation: From the Convention to the Constitutional Treaty 2002-2005. Anatomy, Analysis, Assessment*, Prague.

^{iv} See: Kassim, Hussein and Anand, Menon (2003), "The Principal-Agent Approach and the Study of the European Union", *Journal of European Public Policy*, No. 1, pp.121-139, as well as in Pollack, Mark A. (2006), "Rational Choice and EU Politics" in Knud Erik Jørgensen, Mark A. Pollack and Ben Rosamond (eds), *Handbook of European Union Politics*, London/Thousand Oaks/New Delhi, pp.31-56.

^v See: Wolfgang, Wessels and Franziska Bopp (2008), "The Institutional Architecture of CFSP after the Lisbon Treaty-Constitutional breakthrough or challenges ahead?", *Research Paper No. 10, Challenge Liberty & Security*, pp.14, <http://www.ceps.eu/book/institutional-architecture-cfsp-after-lisbon-treaty-constitutional-breakthrough-or-challenges>.

^{vi} That said, when the Council deals with international trade matters (common commercial policy), it is chaired not by the Representative, but by the rotating presidency; see a footnote to Article 2(5) of the Council's Rules of Procedure, Council Decision 2009/937/EU of 1 December 2009, (2009) OJ L325/35.

^{vii} See: J.M. Lioveras Soler (2011), "The New EU Diplomacy: Learning to Add Value", *EUI Working Papers RSCAS 2011/05*, Florence, European University Institute, as well as S. Blockmans (2012), "The European External Action Service One Year On: First Signs of Strengths and Weaknesses", *CLEER*

Working Papers 2012/2, The Hague, Centre for the Law of EU External Relations.

^{viii} See more details: **P. Eeckhout (2011), EU External Relations Law, 2nd edition, Oxford University Press.** Article 218 TFEU now governs the procedure for concluding all international agreements: the Commission recommends to the Council the opening of negotiations and the Council, if it agrees, nominates a Union negotiator. The Council may also adopt negotiating directives and appoint a special committee to be consulted in the course of negotiations. According to Article 17(1) TEU, one of the tasks of the Commission is to ensure the Union's external representation. While this task is not without exception or at least adaptation, it may be expected that, except in special cases, the negotiator designated by the Council will normally be the Commission-and in matters concerning the CFSP, specifically its Vice-President (the Foreign Affairs Representative). Sometimes the Treaty itself is specific as to who will negotiate for the Union: Art. 207(3) TFEU concerning the common commercial policy stipulates that the Commission is the negotiator in this policy area. The decision to conclude an agreement and, if separate signature or provisional application are envisaged, to authorize signature and/or provisional application will be taken by the Council, acting, as a rule, by qualified majority. Unanimity is required, *inter alia*, of the agreement covers a field for which unanimity is required internally or is a so-called association agreement (Article 217 TFEU) or a cooperation agreement (Article 212 TFEU) with a candidate country. See in details: **Allan Rosas and Lorna Armati (2012), EU Constitutional Law, An Introduction, Second Revised Edition, Oxford and Portland, Oregon, Hart Publishing, pp.241.**

^{ix} See: **EPLO Briefing Paper 1/2012 Common Foreign and Security Policy structures and instruments after the entry into force of the Lisbon Treaty, April 2012,**

[http://www.eplo.org/assets/files/2.%20Activities/Working%20Groups/CSDP/EPLO Briefing Paper 12012 CFSP After Lisbon.pdf](http://www.eplo.org/assets/files/2.%20Activities/Working%20Groups/CSDP/EPLO%20Briefing%20Paper%2012012%20CFSP%20After%20Lisbon.pdf).

^x The coming into force of the Lisbon Treaty brought some changes in the enlargement area having in mind that as a policy it remains under the Commission's competence, while all the enlargement issues are now dealt with the General Affairs Council (GAC). This is still chaired by the rotating presidency and subject to unanimity decisions on all enlargement issues. However, in European Union terms, there is a distinction between countries that are already negotiating and those which only enjoy accession perspectives. The Council working group on enlargement (COELA) currently deals with Turkey and Iceland. The remaining countries with accession perspectives are dealt with by the working group on the Western Balkans (COWEB-group dealing with Bosnia and Herzegovina, Republic of Macedonia, Serbia, Montenegro, Kosovo and Albania). On the other hand, the Stabilization and Association Process (SAP) are considered a part of EU external relations and foreign policy and thus handled by the Foreign Affairs Council, which is chaired by Vice-President of the European Commission and High Representative of the Union for Foreign Affairs and Security Policy, Catherine Ashton. This means that the role of the rotating presidency is limited to the negotiations in the COELA, which mainly decides on the closing and opening of chapters. The actual effects of the new institutional set-up remain to be seen.

However, due to the different chairmanships of the two Council working groups, and due to the parallel presence of geographical desks at the EEAS and the responsible offices in the Directorate-General (DG) for Enlargement at the Commission, the

situation does raise coherence issues. The initial intention of the Lisbon Treaty, to simplify the EU's relations with the rest of the world in general and the Western Balkans specifically, has been obscured. See in details: **Vladimir Bartovic, Julie Herschend Christoffersen, David Král, Tija Memišević, Eliška Sláviková**, "The EU Enlargement to the Western Balkans: Time to Put Conditionality First Again", <http://www.notre-europe.eu/media/tgae20115abartovic...pdf?pdf=ok>

^{xi} Ibid.

^{xii} The new Treaty has given the European Council the leading role in Foreign and Security policy. This corresponds to developments in the Member States, where over the past decades the presidents and prime ministers have emerged as the central foreign policy actors, whereas the foreign ministers have lost ground almost everywhere. The Treaty has also stipulated that the foreign ministers are no longer part of the European Council. Yet, at the same time, the Lisbon Treaty has given the president of the European Council only a rather vague mandate for foreign policy. The president has the task of ensuring "at his level and in that capacity...the external representation of the Union on issues concerning (the Common Foreign and Security Policy), without prejudice to the powers of the High Representative". This mandate means that the High Representative rather than the President is the centerpiece of the EU Foreign policy structures. The High Representative attends the meetings of the European Council, but the position's primary institutional partner is the Council of EU Foreign ministers, which the EEAS head chairs commission president's direct guidance would ultimately enhance his/her authority.

^{xiii} See: **Stefan Lehne (2014)**, "A Window of Opportunity to Upgrade EU Foreign Policy",

Paper, May 2, Carnegie Group Europe, <http://m.ceip.org/2014/05/02/window-of-opportunity-to-upgrade-eu-foreign-policy/h9sk>. High Representative Catherine Ashton also submitted her report in June 2013, where she laid out that the progress achieved in setting up the service against a backdrop of difficult circumstances and made a number of recommendations for short-and medium-term improvements, picking up on many of the ideas contained in the papers of the EP and the 14th Member States. While hardly revolutionary, the report seemed to indicate some ambition to overcome the deficits of the existing setup. Ashton suggested streamlining the structure of the EEAS to reduce its top-heavy management, better integrating crisis management structures into the EEAS, and strengthening the service's capacity to provide strategic direction. She placed special emphasis on improving cooperation between the EEAS and the Commission, particularly through better coordination among the external relations commissioners and within the EU delegations, which currently draw 1/3 of their staff from the EEAS and 2/3 from the Commission. Ashton also supported more systematic cooperation between the EEAS and the Member States, especially on the ground in third countries. She highlighted the importance of better arrangements allowing the high representative to appoint deputies to reduce the impossible workload. The meager outcome of the discussions on the review is reflected in the EU Council conclusions of December 2013. Members of the Council broadly endorsed Ashton's short-term recommendations, which can be implemented within the existing legal framework. On more important issues, such as crisis management and cooperation between the EEAS, on one side, and the Commission and Member States, on the other side, the Council limited itself to generalities. The medium-term recommendations were postponed for latter. The

only operational outcome of the review was a mandate for the next high representative to present a new report on the functioning of the EEAS by the end of 2015, including proposals for possible legislative changes.

^{xiv} See details: **Eva Gross and Alessandro Rotta (2011), “The EEAS and the Western Balkans”, Instituto Affari Internazionali, IAI Working Papers 11-15 June, (p.4),** ISBN 978-88-98042-20-3, <http://www.iai.it/pdf/DocIAI/iaiw1115.pdf>. “In theory, the Western Balkans represents a theatre where the HR and VP hats reinforce each other. HR/VP Ashton can use and access policy instruments from different baskets and maximize the EU’s clout as a result. Similarly, the Western Balkans is a region where the EU rather than its member states have a political lead. Finally, it is perhaps the only region where the US has largely (with the notable exception of Kosovo) delegated the provision of security and political lead to the EU. As a consequence, there are fewer opportunities for internal division between the EU and its member states but also of transatlantic divergences that may derail or divide the EU, and a greater potential for the EU and its partners to work jointly towards common goals”.

^{xv} When it comes to enhancing EU leadership through the EEAS there are some positive signs. Appropriately, it was in the Western Balkans that the EEAS achieved a first meaningful success: in September, 2010, Serbia was persuaded by the HR/VP (in conjunction with individual EU Member States) to agree to sponsor, together with the EU, a joint UN General Assembly (UNGA) resolution that called for technical negotiations between the governments in Belgrade and Pristina. This in turn kicked off the Pristina-Belgrade dialogue, which also represents an EU-sponsored and EU-led endeavor and can in itself be seen as a testimony of an (initial) EEAS success. These two achievements, as well as the HR/VPs engagement in Bosnia and Herzegovina, show that the Western Balkans remains high on the EU’s political agenda and that a concerted effort is taking place to reinvigorate not just the accession perspective for the countries in the region but also to break political deadlocks. See more in: **Eva Gross and Alessandro Rotta (2011), “The EEAS and the Western Balkans”, *ibid*, pp.5.**

^{xvi} In the articles regulating the division of competences between the Union and its Member States, the Union’s competence in the area of CFSP is mentioned neither within the area of exclusive competences, nor within the “shared”, nor “supporting” competences. CFSP “is subject to specific rules and procedures”, and an additional declaration stresses that “competences not conferred upon the Union in the Treaties will remain with the Member States” (Declaration No. 18). A further point of reference for the Member State’s anxiety not to lose too much power can be found in Declaration No. 25, which offers reassurances that Union’s “legal personality” will not authorize it to act beyond its competences. Thus, despite the official granting of “legal personality” to the Union, which basically allows the Union to conclude international agreements in all its areas of competence and is generally seen as a very positive asset regarding the Union’s external capability to act, the special provisions for CFSP seem to draw a different picture. See also: **David, Miliband, (2007), Speech at the College of Europe, Bruges, 15 November,** (online available at <http://www.britischebotschaft.de/en/news/items/071115a.htm>, 11 December).

^{xvii} I would like to draw attention on four possible scenarios for the future of EU Enlargement towards the Balkans which are part of the Executive Summary of the project “Balkans in Europe, Policy Advisory Group, The Unfulfilled Promise: Completing the Balkan Enlargement”, Centre for Southeast European Studies,

European Fund for the Balkans, http://www.suedosteuropa.uni-graz.at/sites/default/files/article_attach/ExecutiveSummaryFinal.pdf.

Scenario no. 1, called “Business as Usual”, which entails the continuation of the gradual and slow approach to EU membership, based on enhanced conditionality, a strong focus on the rule of law during the accession process, and new means of engaging with countries in impasse. The risk of this “new” approach is that while it might work for some countries, it might be insufficient for others to overcome their particular problems, such as the bilateral dispute with in the case of the Republic of Macedonia, or deadlock in Bosnia and Herzegovina. **Scenario no. 2, called “Following Turkey’s Path: Alienation from the EU”**. If the accession process continues to drag out without a tangible prospect of membership, this scenario becomes realistic. As opposition to enlargement in the EU and various blockades by Member States make accession unpredictable and remote, countries start giving up on the goal of accession. As a result, EU conditionality loses its credibility and ability to support and induce reforms. Abandoning the EU membership perspective in all but name holds potential negative consequences for the consolidation of democracy, stability of interethnic relations and long-term economic investments in the Balkans.

Scenario no. 3, called “Abandoning Enlargement and New Unpredictability in the Western Balkans”, extends the risks of the previous scenario with enlargement grinding to a standstill. As accession becomes unlikely due to continued internal crisis in the EU and opposition to further enlargement, alternative actors might become engaged in the Western Balkans. In particular, considering the crisis in Ukraine, Russia might be tempted to lure or coerce countries in the region to move closer to it and to undermine the EU. This, in turn, might motivate other countries, such as Turkey, to engage politically and economically in the Balkans as an alternative to the Union. **Scenario no. 4, called “The Balkans Big Bang”**, would see the acceleration of integration, including the start of accession talks with all countries of the Balkans, and the offer of a single entry date, as happened in the case of the Central and East European enlargement. Instead of increased conditionality, which is particularly hard to fulfill by countries plagued by statehood issues (such as Bosnia and Herzegovina and Kosovo), this approach would focus again on the *acquis* itself, and require substantial EU engagement to resolve disputes that currently hinder accession. What emerges from the scenario is that the current approach is not enough. The risks are too great and the transformative potential of the EU too slow to fully mitigate the risks of keeping some countries of the Western Balkans out for another decade or more. As a result, the EU needs to explore new approaches to keep its promise of a European future for the Balkans.

^{xviii} See: “**The Western Balkans and the EU: ‘the hour of Europe’**”, European Union, Institute for Security Studies, Edited by Jacques Rupnik, June 2011, http://www.iss.europa.eu/.../cp126-The_Western_Balkans_and_the_EU.pdf.

^{xix} Catherine Ashton will be remembered mainly for three major accomplishments. The first was an agreement to normalize relations between Serbia and Kosovo in April, 2013, which helped defuse one of the remaining hot spots in the Western Balkans. The second was an interim agreement with Iran on its nuclear program signed in November 2013. And the third one was setting up the EEAS. The Serbia-Kosovo deal is very much Ashton’s personal achievement. She brought the two prime ministers together for a long series of meetings and steered their negotiations to a successful conclusion. On the Iran nuclear issue, Ashton did not shape the policy but rather served as chair and spokesperson of the 5+1 group of the five permanent

United Nations Security Council members plus Germany to implement strategy essentially designed in Washington. She fulfilled this task with great skill and thereby contributed to the success of the interim agreement. And, finally, while the EEAS has significant shortcomings, setting it up under the difficult conditions of the euro crisis was no mean achievement. Other major accomplishments are expected on the Balkans region for closing the open issues as an obstacle for the European integration of the Balkan countries, such as, the so-called “name issue” between the Republic of Macedonia, on one, and Greece, on the other side.

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