



BULLETIN

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Compromise on the Creation of the European External Action Service (EEAS)

by Dorota Liszczyk

After almost three months of negotiations, on 21 June 2010 the presidency of the EU Council, the High Representative for Foreign Affairs and Security Policy (HR), the European Commission (EC) and the European Parliament (EP) reached a political agreement on a proposed Council decision establishing the organization and functioning of the EEAS. As announced by representatives of EU institutions, the EEAS is to become operational as of 1 December 2010.

Context. Article 27.3 of the Treaty on European Union (TEU) and Declaration 15 annexed to that Treaty, i.e. the legal grounds for establishing the EEAS, provide no more than very general guidelines for the creation of the service. They specify only that preparatory work should start immediately after the Lisbon Treaty (LT) is signed, and that the basis for organization and functioning of the EEAS will be a Council decision adopted at the request of the HR following consultations with the Parliament and once the consent of the Commission is obtained. In view of the fact that the future activities of the EEAS will involve foreign policy, which is an area sensitive from the point of view of states' sovereignty, and its structure will largely be based on EC and Council Secretariat units and departments already in place, serious complications in negotiations between the member states and interested EU institutions came as no surprise.

Even before the HR presented the draft Council decision defining EEAS organization and rules of functioning on 25 March, the creation of this new structure was the object of particular interest of the EP. Although the LT does not provide for greater powers of this institution with regard to EU foreign policy, or for its inclusion in discussions regarding the organization and rules of functioning of the EEAS, in a document presented on 18 March the EP put forward its own draft guidelines concerning the creation of the service. At the same time, the MEPs, underlining the joint decision-making powers granted to the EP under the LT with regard to issues relevant to the creation of the EEAS (changes in staff and financial regulations; approval of adjustments to the budget), reiterated that those acts would be adopted if the EP's proposals regarding the establishment of the EEAS were accommodated. One of the most important suggestions made by the Parliament contrary to the proposals in the HR document concerned the EEAS' administrative, organizational and budgetary ties to the EC. In the EP's view, this solution stems from the fact that a significant range of future EEAS powers are within the current competence of the EC, which additionally has the appropriate administrative and budgetary knowledge and know-how. This would also prevent structure duplication and guarantee full parliamentary control over the EEAS. The EP also proposed a broad and ambitious definition of EEAS' scope of activity, with the inclusion of development and humanitarian aid policy, EU enlargement, and neighborhood policy intended to ensure cohesion of the EU's external activities. Since the talks had begun the MEPs were also proposing the creation of posts of the high representative's political deputies, who would be interviewed by a relevant parliamentary committee prior to taking up their duties and would have the authority to represent the HR (including before the EP) and enter into political dialogue with third parties. Also, the EP demanded that officials in other EU institutions be entitled to apply for posts in the EEAS. It suggested maintaining the appropriate geographical representation and sexual parity within the EEAS, and also that at least 50% of EEAS personnel be from the EC and 30% from EU member states, noting that these proportions would ensure the proper level of autonomy of the EEAS, safeguarding it against potential pressures from the member states. The MEPs chairing the consultations with the HR, EC and president of the Council, Elmar Brok, Guy Verhofstadt and Roberto Gualtieri, emphasized that the EP would not accept a decision that would limit the level of the EP's political and budgetary control or denote a departure

from the community method, providing for an equal say of the Council, EC and PE in the Union's foreign policy.

Guidelines of the Compromise. The agreement drawn up on 21 June contains a range of provisions incorporating the EP's proposals. The strengthening of the community method within the new service is to be ensured by a guarantee that at least 60% of EEAS personnel will be permanent EU officials, and by keeping all instruments for financing the EU's external activities under the control of the EC. The EP's political control is sanctioned by a declaration annexed to the draft Council decision. It specifies that the HR will consult the EP on proposed decisions granting EU operation mandates, negotiation mandates regarding adoption of international treaties, and strategies that are part of the Common Foreign and Security Policy. The Parliament has also gained the power to interview nominees for delegation heads in states of strategic importance to the EU and EU special representatives. At PE plenary sessions, the HR is to be represented either by commissioners (in cases falling under the authority of the EC) or by members of the Foreign Affairs Council (on issues relating to Common Foreign and Security Policy). The EEAS operational budget will be integrated with the EC internal budget, and for the administrative budget of the new service a separate section will be set up within the EU budget and will be subject to the same parliamentary control procedures as the EC budget. At the request of the EP, a post of Director General for Budget and Administration will also be set up within the structure of the EEAS. This official will be responsible for ensuring the proper administrative and financial functioning of the service. Emphasis has also been placed on preserving the correct geographical proportions in the EEAS structure, to be reviewed and adjusted if necessary in 2013. It has also been decided that from mid-2013 employees of all EU institutions will be eligible to apply for posts in the EEAS alongside EC and Council Secretariat officials and delegates of national diplomatic services. In line with the Parliament's recommendations, the compromise also provides for the creation of sections responsible for human rights both at the headquarters and delegation levels.

Conclusions and Perspectives. The agreement is a negotiation success for the EP, which, exceeding its treaty-based consultation powers, managed to exert a major influence on the wording of the decision creating the EEAS. This is in line with the EP's broader tendency to increase systematically its influence on the Common Foreign and Security Policy. In fact, based on the budgetary and personnel powers afforded it under the LT, it has managed to safeguard a say in shaping of EU foreign and security policy. Over the next few years this institution can be expected not only to exercise the rights afforded thereto, but also to make further attempts at systematically enhancing its powers. A good opportunity here seems to be the debate on the models for carrying out an inter-parliamentary review of the Common Foreign and Security Policy and the Common Security and Defense Policy following the dissolution of the Western European Union.

The achieved compromise is not binding for the time being and needs to be passed by individual institutions. During the plenary session on 8 July, the EP approved the terms of the agreement. It can be assumed, therefore, that during the next Council meeting on 26 July a final decision will be made on the organization and functioning of the EEAS. The launch of the service's operational capability in December 2010 depends on the tempo of work, especially in parliamentary committees, on other vital acts of law: Staff Regulations of Officials of the European Communities and Conditions of Employment of Other Servants of those Communities, the Financial Regulation and Amending Budget for the year 2010. The first of these documents forms the framework for filling posts and the EEAS staffing policy, the second lays down the principles and rules for functioning of the service's budget, and the third enables a special section to be set up in the overall EU budget to cover the EEAS' administrative expenses. Enjoying the right to co-decide on the adoption of the above acts, the EP will try to enhance and define more precisely the guarantees obtained under the compromise. The initial stage of work on the documents proposed by the EC, as well as the number and nature of the amendments submitted by parliamentary committees, suggest that it may be difficult for the EEAS to obtain operational capability as of 1 December, although the date remains feasible.