THE CONSTRUCTION OF THE EUROPEAN EXTERNAL ACTION SERVICE♦

Kolja Raube
ARENA
Centre for European Studies
University of Oslo
kolja.raube@arena.uio.no

Abstract

Which institutional designs were preferred by the constitutional actors in order to establish the European External Action Service (EEAS), and what may this tell us about the conceptions about European foreign policy as a whole? To conceptualize the nature of European foreign policy, we introduce three ideal conceptions of European foreign policy which are deriving from three ideal conceptions of the EU as a polity. In order to answer the question which institutional designs were preferred in order to establish the EEAS we will look into the constitutional debates in the Convention as well as the following debates over the EEAS, especially during the implementation phase in 2005. By doing this, we can see to which of the three conceptions the arguments speak. Three different indicators – overall function, legitimacy/authority and institutional set-up – enable us to analyze to which aspects of the conceptions the arguments speak in particular. By the overall mapping of the arguments, this paper shows, first, which institutional designs were – according to the arguments – preferred, and, second, that the arguments reveal different conceptions about the European foreign policy as a whole. Can we already see a move beyond intergovernmentalism in European foreign policy?

Introduction

As a result of the failure of the Constitutional Treaty, and the subsequent difficulties in achieving ratification of the Lisbon Treaty, the European Union is reported to be in crisis. Many expect integration at the European level to slow down. However, the field of foreign and security policy does not seem to be much affected by this bout of eurosclerosis. On the contrary, most of the reforms suggested in the Constitutional Treaty have survived (albeit sometimes under a different label), and public opinion polls suggest that this is an area in which European citizens welcome further integration. The EU is becoming an increasingly important actor in international crisis situations. But in what direction is foreign and security policy moving? Are we simply observing a more sophisticated and effective form of multilateral diplomacy at a European level, or is the Union going down the road of integration, that is, an uploading of functions from the member states to the EU level?

Academics report of an increasing "brusselsisation" of European foreign and security policy, that is, a shift in the locus of national decision-making from home institutions to Brussels-based institutional structures(Allen 1998; Dijkstra 2008, Christiansen 2008, Christiansen/Vanhoonacker 2008; Duke 2007; Duke 2006; Duke/Vanhoonacker 2006; Müller-Brandeck Bocquet 2002; Spence/Fraser

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2004). Such observations suggest that although the institutional structures in the field of foreign and security policy remain formally intergovernmental, the Brussels based institutions have gained considerable autonomy. However, a number of questions remain unanswered. The significance as well as empirical validity of these observations needs to be further investigated. It is particularly unclear what the implications of such observations really are for the EU's ability to develop an autonomous governance capacity in the field of foreign and security policy, as well as what precisely, a move "beyond" intergovernmentalism consists in. How can we conceptualize this and what kind of competences and powers are being uploaded? In this paper we seek to contribute to these questions through an analysis of the development of the so-called European External Action Service (EEAS). We ask what the constitutional debates regarding the precise outline of this service might tell us about the conception of European foreign and security policy. Thus, we examine the debates on the setting up of the EEAS in order to see whether the arguments made in these debates speak to a conception which understands European foreign policy as being "beyond itnergovernmentalism".

The idea of an EEAS was launched during the constitutional debates in the Convention on the Future of Europe, and included in the Constitutional Draft Treaty. In 2005, governments of EU member states, the Commission and the current High Representative started negotiations on its implementation in order for it to be set-up after constitutional ratifications. After the defeat of the Constitutional Treaty at the French and Dutch referenda, it was re-introduced in the Lisbon Treaty with only slight changes. However, after yet another defeat of the Lisbon Treaty at the Irish referendum in 2008, the implementation of the EEAS came to a halt and the final decisions on its institutional layout have yet to be made. Amongst many other topics, the composition and staff numbers, the concrete physical location, as well as the budgetary oversight of the EEAS remained undecided. Nevertheless, its main function is clear: it is to serve as an administrative substructure to the Common Foreign and Security Policy (CFSP). Amongst its main tasks will most likely be those of assisting the "new" High Representative in policy-formulation, agenda-setting and policy-implementation.

At first sight then, this commitment to an EEAS seems to confirm the putative move "beyond intergovernmentalism" in European foreign and security policy. Its very existence will constitute a significant change in the workings of the CFSP, its expected tasks are quite similar to those of national foreign ministries, and hence it is likely to further increase the autonomy of the EU in foreign policy. However, as noted the concrete shape of the service is hotly debated, and has been deeply contested. Although recognizing the need to increased efficiency in this policy field, the EEAS is not, in the eyes of all, meant to reflect a loosening of the grip of the member states on foreign and security policy. Thus, it is not entirely clear in which direction the establishment of the EEAS is pointing.

Analytical framework

Several possibilities arise in regard to the question of what kind of foreign and security policy is emerging in the context of the EU. In this paper we take as our starting point three ideal conceptions, which are derived from three overall conceptions of the EU as a polity (Eriksen and Fossum 2007). We ask to which of these conceptions the arguments regarding the future shape of the EEAS speak. It goes without saying that, as these are ideal conceptions, they are unlikely to fit perfectly with empirical findings.

In the first conception, the EU is conceived of as an Audit Democracy. Its purpose would be to address problems that the member states cannot (or can more efficiently) resolve when acting independently. In order to handle such issues, the member states would establish politically independent institutions such as specialist agencies and delegate policy-making powers to independent regulatory commissions. In order to preserve national sovereignty and ensure that member states would be able to hold the EU institutions accountable, a set of institutions in which member states would have the right to veto would be established at the EU level. This would be a European order in which one would have national European foreign, security and defence policies, with only concrete tasks delegated to the European level. To the extent that there would be institutions at the EU level dealing with foreign and security issues, these would be intergovernmental. Member states would communicate through the traditional means of diplomacy, with national diplomatic missions in Brussels (Sjursen 2007).

In the second conception, the EU is conceived as a multinational federal European state. Rather than being premised on a sense of common destiny of the kind one traditionally considers to be at work in the framework of a nation state, the idea here is that of a multinational federal state, where nation building processes at member state and regional levels would have to be accommodated within the overall federal structure. The common identity basis would then be premised on a "…commitment to direct legitimacy founded on basic rights, representation and procedures for opinion and will-formation, including a European-wide discourse." (Eriksen and Fossum 2007). In this conception of the EU, there would be a single foreign, security and defence policy at the federal level. Core criteria of statehood, would have to be fulfilled (Sjursen 2007).

The third conception is of the EU as a regional cosmopolitan order, in which government would be separated from the state. It would be a non-state democratic polity with explicit government functions. In such a polity, the concept of government would rest on the moral authority of the procedures established for decision-making and law making (Eriksen and Fossum, 2007: 29). Compliance, in other words, would be ensured as a consequence of decisions following such authorised procedures, and not as a result of coercion (or the threat of coercion). What is envisaged is a polity "with a pyramidal conception of congruence and accountability, i.e. where the global level contains certain fundamental legal guarantees, the EU handles a limited range of functions over which it has final authority." (Eriksen and Fossum 2007: 30)

These overall conceptions of foreign policy are the background in front of which we examine the debates on the different institutional solutions to the EEAS that were preferred by the constitutional actors. To which of these overall conceptions of the EU do they speak? In order to answer this question, we introduce three indicators with which we can more precisely understand what the arguments in the constitutional debates are about.

But what more concretely would the administrative structure of the EU's foreign and security policy look like in the three above conceptions? We will focus on the following three core indicators: The indicators are: a) overall function of the administrative structure in foreign affairs; b) the legitimacy and authority of action in the administrative structure and c) the institutional structure of the internal and external structure of the foreign relations administration.

By the *overall function* of the administrative structure we understand the specific tasks the administration is assumed to fulfill in foreign relations. *Legitimacy and authority* refers to the constituency to which the administration is answerable and loyal and, thus, on whose behalf it takes action. The *institutional structure* of the external relations administration is composed of an internal and an external structure, which are interlinked. However, these structures can also vary according to the shape of the polity in which the administration is embedded.

The Audit Democracy

According to the conception of European foreign policy in the Audit Democracy, *the overall function* of a foreign affairs administration would be the coordination of cooperation among governments. Co-operation would be based on the unanimous will of the governments to work together in order to benefit from collective foreign policy action. Ideally, any action could be taken as long as governments would be willing to act collectively. But initially, it is likely that the action would follow the basic preferences of the member states and their governments: While these preferences can either be norm-oriented or material gains, it is assumed that they will rather be channeled "bottom-up" to the level of cooperation among governments where they can form the basis for collective decision-making. The function of the administration would be to coordinate the cooperation of the member states.

As a consequence competence in foreign policy still rests with the member states. *Legitimacy* derives directly from the member states through their democratically elected governments. However, they may delegate administrative tasks to the EU in order to enable it to fulfill its overall function – to act on behalf of the member states whenever they wish so. International organizations, although based on intergovernmental decision-making, can have legal personality. However, legal personality is not given to international organizations in absolute terms. Rather, depending on the tasks that states are willing to delegate to an international organization, the range of legal personality enlarges (Malanczuk 1997).

Also, the administration would be composed exclusively of seconded officials from the member states` governments working under the roof of a Secretariat with their workplace in the Secretariat, but officially delegated by the member states. A secretariat would organize meetings among governments in the international organization. However, its tasks will rather be administrative and no authority would be delegated to the Secretariat. The Secretary General's competence would be limited to overseeing the administration of the Secretariat, rather than acting in a political fashion to the outside world.[1]

The institutional structure of the administration would remain in the shadow of national embassies. The Secretariat is based on information provided by the national foreign services. The administration is only responsible to set up meetings and write minutes on behalf of the acting Presidency. Thus, information is actually coming from the presidency. External representation would be ad-hoc, that is, there would be special envoys etc. nominated to deal with specific issues or crises, nominated for limited time periods by the member states (e.g. through a humanitarian mission). Otherwise, the external administration is rather dependent on the national embassies which, especially in the case of the presiding member state, also speak on behalf of the organization. Thus, in contrast to the Secretariat which is institutionalized in order to coordinate governments in the international organization and cut transaction costs internally, the external administration remains based on ad-hocism and national representation of the international organization. The Secretary General is to be held responsible by the governments as well.

The Federal Multinational Democracy

The overall function of a state is to provide security and order for and among its citizens inside a fixed territory. In this sense, security has a very wide meaning – but it helps to understand that the state is ultimately expected to defend its interests and principles towards the outside world. Through foreign policy, the federal multinational democracy communicates with other actors outside its borders. Thus a legal personality would be crucial, including diplomatic representation (see Tiilikainen 2008). As we saw above, legal personality is possible for international organizations, too. In a state-like entity though – unlike in international organization which can have legal personality in certain areas of action – the legal personality including the right to delegate powers to international organizations is undividable. Moreover, the legal personality of states always includes "international personality". Whereas international organizations might have legal personality (e.g. to make treaties with their staff), they only have international personality if their tasks require them to have one (Malanczuk 1997).

Inside the federal entity, the institutional make-up of the polity classically enables the federal level to have competence in foreign affairs (Egeberg 2001: 730; Ehrenzeller at al. 2002; Wheare 1963). The sub-unit level of government will still have competence in other policies, but in external relations the federal level acts more or less exclusively. In fact, among other instruments to conduct foreign policy, means of coercion stick out most. The federal governments can use coercive means (e.g. military force) to conduct foreign policy.

The government as executive including its administration is held responsible by being elected democratically. Parliamentary control of foreign policy is often contested for reasons of secrecy and efficiency of executive actions. The Administration of the executive, preparing information and organizing the executive decision-making process, thus acts on behalf of the government in order to fulfill exactly that function.

Although multinational, the federal state will have one main centre of administrative support to the executive. Analogue to the competence to conduct foreign policy on the federal level, the administration is centrally established.

Central idea is that the administration is not dispersed vertically or horizontally over other (sub-) units, but centrally organized. Likewise, this internal structure is mirrored outside the federal state. There are officially only the representations of the federal government representing the federal state abroad. In terms of institutional structure, the embassies abroad are the external part of the foreign

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[1] See also Egeberg, who points to the fact that an IO Secretariat is – ideally – "anonymous" and "without its own will" (2001: 733).

affairs administration fulfilling all the tasks state embassies are required to (political and economic relations, consular assistance and information of the central service, see above). The representation abroad is a permanent network of embassies representing the federal state.

Regional Cosmopolitan Order

As a Regional Cosmopolitan Order the EU within foreign policy would have government functions without being a state (Eriksen and Fossum 2007). Government functions would have to be underpinned with a solid administration. As such, any such administration would differ from a pure "Secretariat" like in an international organization. By having government functions, the administration is preparing executive decisions – in doing so, it would be informed through resources independent of the member states. According to the overall conception, the entity would also act towards the outside world. The conception of foreign policy in the regional cosmopolitan order would not foresee an overall replacement of governmental functions of member states in foreign policy. Rather, an EU foreign policy would complement governmental functions by looking after goals different of its member states. According to the conception the EU would be expected to conduct a foreign policy in its own right by focusing of the advocacy/execution of human rights as cosmopolitan norms and values (Manners 2002; Sjursen 2006).

The international personality of this EU would rest on the tasks it conducts in international affairs. These tasks however do not have to be officially assigned in the treaties: indeed, subjects to international law can have personality because their tasks have emerged over time (Malanczuk 1997). In the conception of the Regional Cosmopolitan Model the tasks would emerge as being mainly delegated by the United Nations: The EU would emerge as a regional entity under the roof of the United Nations, just as Article 48 and 52 UN Charta foresees.

The EU would have moral authority in its conduct of foreign policy. There are two sources for this. On the one hand, while not turning into a fully-fledged state (missing features like a common identity and overall means of coercion) the EU would build on legitimate procedures. According to the conception of European foreign policy following the model of a cosmopolitan order the EU would reach out for legitimate procedures based on the deliberative-democratic assumption that those have to be included in the decision-making processes that are affected by the regional order's actions (this applies to both those which are affected in and outside the polity). The EU would be legitimized by representative institutions (procedures) on the regional level providing for participation and communication of those which are affected by the policy (EU citizens and cosmopolitan citizens). Regional parliamentary overview over government functions (Sjursen 2007: 13-14), including the administration via the executive (Eriksen/Fossum 2007), would be an appropriate procedural legitimacy; however, there might be additional forms of inclusive executive decision-making (such as a more inclusive committee governance).

Next to control on the regional level, the executive would be held responsible by the global level – by the need to live up to cosmopolitan norms (Sjursen 2007: 14). By "Being cosmopolitan", the EU moral authority would derive from higher-order laws which have to be upheld. E.g. human rights and their warranty to would stick out as leading goals of the order. The executive of the regional order, which is likely to be organized "beyond intergovernmentalism" (but without forming a democratically elected government), would derive its authority mainly by acting upon the principles of moral and procedural legitimacy. According to the conception of European foreign policy in the regional cosmopolitan order, the administration of the EU's executive – as in the other two models – would fulfill the task of assisting the executive to the end of achieving its policy-goals. The competence to conduct the particular (cosmopolitan) foreign policy would exist beside the foreign policies of the member states (shared competence) and without running into incoherence, e.g. legal agreements (Sjursen 2007: 16). There is likely to be one external service of the EU next to those of the other (current) 27 member states, which is foremost a resource of executive action in the "cosmopolitan way". It is thus dependent on its "own" services abroad providing information next to the member states representations.

The internal part of the administration of this external service is central to the understanding that the gathering of information is directly injected in the executive decision-making process of the regional order. The necessity of a key political figure of the executive that is able to introduce the ad-

ministrative resources into the actual decision-making process becomes necessary. The member states would remain key-players in the decision-making process; thus, a key figure representing the EU's position next to the member states becomes crucial.

Towards the outside world, the administration would represent the regional organization as a power in its own right without taking over member states` representations. The representation would "stand for" something else than the member states. The idea is that representation is about being present *and* symbolic (Pitkin 1967: 60ff. and 92 ff.; Sharp 2004: 60 ff.). As we mention below, today the EU is represented by member states and partially by EU institutions (like the Commission); however, the EU is not representing itself in all its "governmental" functions presently. It is represented by other representatives (like the Commission or the Member states) – only sometimes e.g. CFSP is represented through Special Representatives. Having a cosmopolitan connotation one of the most central representations in CFSP will have to be installed at the global level of governance, likely at the United Nations and other organizations like the International Court of Justice or the International Criminal Court (Sjursen 2007: 22). In order to act upon universal norms and thus taking responsibility to uphold those, it has to be ensured that this is actually in line with well-established norms (such as multilateralism).

Different Orders, different outcomes

As Table 1 summarizes the preceding section, we can see that according to the different conceptions different outcomes of how the administration of foreign affairs is thought of can be expected.[2]

But to which conception of European foreign policy do our empirical findings speak? We focus on what we call the constitutional debates of the EU – starting in the Convention on the Future of Europe and lasting until today through discussions on the implementation of the treaty-changes. As major changes did not occur during the IGC in 2003, this IGC will not be observed. However, the introduction of the Lisbon Treaty and the IGC of 2007 did bring some additional changes to the EEAS. Parallel to those last changes in the construction of the EEAS, governments, the High Representative and the Commission started trying to implement the constitutionally envisaged EEAS.[3] In the case of the EEAS, the new organization is mentioned in the treaty-changing treaties, but the actual institutional set-up is left for implementation to actors such as the member states, the High Representative, the Commission and the European Parliament. Therefore, we divide the constitutional debates into two different parts: one construction and one implementation phase.

We will analyze the constitutional debates in a qualitative way. This means that in this paper we will analyze the arguments made in the overall constitutional discourse with regard to their content/meaning without counting the overall numbers of arguments. While in this paper, in which we want to know which arguments speak to the three above introduced conceptions, the actual appearance of arguments is at the core, the quantity of arguments is not of major relevance. Rather, it is assumed that arguments made by actors independent of their quantity and frequency are important to the overall undertaking of mapping the arguments according to which conception they speak to. Moreover, while this paper is not about decision-making or the impact of actors `arguments on institutional change, the pure content of the argument – its meaning – is important. An argument is understood as a statement made by one of the constitutional actors in the constitutional debates, which directly speaks to the indicators of the three conceptions. Thus, the statement is the unit of analysis. As debates we understand communicative units of an overall discourse on the constitutional future of Europe. They do not necessarily have to be actual debates amongst one or many physically present reason-givers; the idea is that the debate itself is formed by different sources of communication that add up to an overall discourse.

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[2] This draws on Sjursen (2007).

[3] As argued elsewhere, constitutional-change or treaty change is made of different phases (Frisch and Landfried and Raube 2008

Table 1: The Administration of foreign affairs along ideal conceptions of European Foreign Policy

Conception / Categories	Audit Democracy	Multinational Federal Democracy	Regional Cosmopolitan Order
Overall Function	Assisting and coordinating national executives in their collective endeavors/the governmental cooperation and execution of national goals on the European Level	Assisting the federal executive in protecting territorial security and European values	Assisting the regional executive in upholding cosmopolitan principles
Authority and Legitimacy	Via democratically elected national Executives	Via a democratically elected federal executive	Via democratically elected regional executive and higher order norms/global institutions
Institutional Set-Up	Internal and external part of administration of foreign affairs is organized by national administrations; international secretariat fulfills can be delegated to set up ad hoc external representation	Single internal and external foreign affairs administration; national administrations and representations are replaced; constant network of federal foreign affairs administration	Additional set up next to national foreign affairs administrations/representations and complementing internal and external part of national foreign affairs administrations

The data basis of our research are those Plenary Debates of the Convention on the Future of Europe, which dealt with the reform of foreign and security policy (transcripts of the three debates), as well as all the text documents of the Working Group on External Action (with a total number of 73 documents), a joint paper of High Representative Solana and the Commission to the European Council in 2005, which serves as another source of the ongoing debate about the EEAS. Also in 2005, the European Parliament initiated a Report on the EEAS and held a Plenary Session inviting Commissioner Wallström to report on the Commission's interests in the implementation of the EEAS. These documents form the primary data of this paper. They will be analyzed unstructured (meaning without a code book or tools of content analysis), but by close reading of all the documented statements. All other sources will only be treated subordinately: A number of think tanks, policy-advisors and policy-makers have released studies on the future meaning of an EEAS (e.g. Heusgen 2005) which add informative insights add another layer information to this paper.[4]

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[4] In spring 2009, interviews are to be conducted with government representative in Brussels, members of the Commission and the Council Secretariat. Their perceptions are also likely to be very valuable when it comes to the question whether the introduction of the EEAS is a step "beyond intergovnermentalism".

The Administrative Substructure of CFSP and the Introduction of the EEAS

Before turning to the analysis, a quick introduction to today`s administrative substructure in CFSP serves as a background to the debates on the EEAS.

The administrative substructure of CFSP provides the executive of CFSP with the planing, organization and implementation of tasks, which are necessary to guarantee its ongoing capacity to act.

In order to act efficiently in international relations, international and transnational actors rely on some kind of diplomatic administration (the institutionalized administration of networks between international actors) which is made of an *internal* and an *external* structure. In the case of the most influential international actor, the state, the internal structure is pre-dominantly embedded in the Foreign Service and made up of different units and desks concerned with different geographical and functional tasks; the external representations of the respective state, the embassies, towards other states and international organizations are linked to the overall Foreign Service and to the specialized units in the internal structure respectively.[5] The embassies fulfill mainly the tasks of a) representing the state abroad, b) extending economic relations with the third state, c) caring for their citizens in consular matters and d) reporting back to the central Foreign Service (Everts 2002). Thus, the internal service, which is linked to the executive process of political decision-making in the government, relies on information of its external representations. In turn, the external part of the Foreign Service is executing the state's interests on behalf of the foreign service/the government. It acts upon directives from the centre of the Foreign Service. Effective government action – agenda-setting, policy-formulation and implementation as well as policy evaluation – is thus linked to a two way processes between the two parts of the external service.

The internal structure of the EU`s external administration

The second-pillar is often called intergovernmental stressing the general unanimity requirement of the decision-making process in the Council. The High Representative is supposed to assist the Council in all matters of CFSP (Article 26 TEU). In this sense, the High Representative coordinates policies between the member states (vertical) and the other EU institutions (horizontal). The vertical coordination is necessary because the competence to conduct foreign policy still rests with the member states.[6] The Treaty of the European Union only states that member states will coordinate their foreign policies in the CFSP (Article 11 TEU). According to Article 16 TEU member states are obliged to work together in any matter of "general interest" (Hillion and Wessels 2008: 81). This is not to be mistaken with any concurrent or even exclusive power of the European Union,[7] and still the member states "nonetheless remain obliged to inform and consult one another whenever issues are of general interest, in the sense that they reach beyond national interests" (Hillion and Wessels 2008: 81). Indeed, the High Representative and the administration surrounding it in the Council Secretariat are crucial in identifying and representing the general interests of the European Union. As such, the High Representative has become an extremely important actor in the performance of the CFSP/ESDP. (Christiansen/Vanhoonacker 2008).

The High Representative today relies on specific internal administrational assets within the Council Secretariat which are "reserved" for CFSP. In terms of CFSP administration, next to his private cabinet the High Representative is supported by the work of the Council Secretariat`s DG E and the Policy Unit. Other administrative sections of the Council Secretariat are mainly concerned with different operational tasks, such as policies in the first pillar, the preparation of Council meetings, European Council meetings or advice in treaty-reforms (Christiansen 2002; Dijkstra 2008). With the increase of CFSP/ESDP activity in the wake of the 1999 Balkan crisis, the Council Secretariat expanded its influence in assisting the High Representative by integrating new units such as the Policy Unit and the

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[5] Not all actors in international relations have external representation (Malanczuk 1997). In In the case the actor is a state, this absence of external representation does not automatically deprive them of their "statehood" or their status as entities "which carry out static functions." Such cases can be dealt with as exceptions rather than the rule, e.g. micro states or so called international protectorates (Malanczuk 1997).

[6] This emphasizes intergovernmentalism in CFSP even more.

[7] Indeed, this will not change through a treaty-change by the Lisbon Treaty (Metz 2007).

linked Military Staff (responsible for early warning and military analysis) and SITCEN (providing national intelligence information).

Regional desks in the DG E and tasks of the Policy Unit overlap considerably while in theory the DG E is rather meant to provide supportive administrative information and the Policy Unit rather early warning and strategic planning functions in crisis-management (Vanhoonacker 2008: 151). However, this distinction has never worked in practice (Christiansen/Vanhoonacker 2006). Indeed, the Policy Unit has never lived up to its expectations (Dijkstra 2008). According to this view, the member states and the Commission were never really interested in providing necessary and helpful information about crisis-situations via their external services (Dijkstra 2008). As a consequence to overcome problems of internal coordination and external information, in some geographical areas such as the Middle East, the Western Balkans and the Mediterranean the Policy Unit and the DG E were merged within the Council Secretariat (Vanhoonacker 2008: 151). Thanks to different "background in administrational culture" (Vanhoonacker 2008: 151) – some were seconded, some directly working for the Secretariat – the fusion did not function as smoothly as it was meant to happen.

At the same time the European Commission has developed its own "External Service" within the different DG`s concerned with external relations (Spence 2004: 400 ff.). The Commission can also rely on the information provided by its external representations which constantly report to the DG`s in the different fields of external competence (Bruter 1999). The Commission`s role has steadily increased after CFSP took shape after the Maastricht Treaty. Although termed intergovernmental, the Commission is responsible for the CFSP budget and the implementation of most of the CFSP instruments. At the same time, community action may overlap with CFSP while in some areas both have the power to act. Organisationally, a DG only concerned with CFSP has been installed in CFSP focussing on the coordination with the Council and participating in Council meetings.

The external structure of the EU`s external administration

Problems of internal policy coordination within the Council Secretariat have been accompanied by the lack of an external counterpart abroad. Despite its internal problems the Council Secretariat can be seen as an important player in the CFSP decision-making process (Christiansen 2002; Christiansen/ Vanhoonacker 2007; Dijstra 2008), but it can hardly rely on an information basis of its very own abroad. It is thus dependent on other sources – especially from the member states and the Commission.

Even though the EU acts in international relations as an international actor in the CFSP-pillar, the EU has not gained formal legal personality (de Witte 2008) and – thus – no formal representation abroad. Only the European Communities, associated with the first pillar of the EU, gain formal legal personality. Still, and this is the paradox of the current Treaty, the EU is able to act towards third countries and explicitly required to do so in CFSP, e.g. through taking action on behalf of its Article 13 TEU (Common Principles and Strategies), 14 TEU (Common Action), Article 15 (Common Point of View) and Article 24 TEU (Agreements with third States and international organizations). Especially through taking action on behalf of Article 24 TEU, third states and organizations have recognized the EU as an international actor with legal personality (De Schouette and Andoura 2007: 240). Officially though, e.g. the Special Representatives sent by the Council abroad based on Article 18 (5) TEU (see Grevi 2007), are not part of the EU as a legal entity, but only delegated based on a Council decision. The consequence is quite far-reaching: they do not automatically have a diplomatic status (De Schouette and Andoura 2007: 241). Currently, there are 11 Special Representatives abroad.[8]

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[8] Currently, Torben Brylle serves as Special Representative to Sudan (mandated until 28th of February 2009); Pieter Feith is Special Representative to Kosovo (mandated until 28th of February 2009); Erwan Fouréré is Special Representative to the Former Yougoslav republic of Macedonia (mandated until 28th of February); Miroslav Lajcák is Special Representative to Bosnia and Herzegowina (mandated until 28th of February 2009); Kálmán Mizsei is Special Representative to Moldova (mandate until 28th of February 2009); Pierre Morel is Special Representative to Central Asia (mandated until 28th of February 2009); Marc Otte is Special Representative to the Middle East Peace Process (mandated until 28th of February 2009); Peter Semneby is Special Representative is Special Representative to South Caucasus (mandated until 28th of February 2009); Ettore Francesco Sequi is Special Representative to Afghanistan (mandated until 28th of February 2009); Roeland van de Geer is Special Representative to the Great Lakes Region (mandated until 28th of February 2009); Koen Vervaeke is Special representative to the African Union (mandated until the 31st of February 2008).

The Special Representatives mostly rely on the information of the Commission`s delegations abroad. The EU is only "indirectly" represented by the delegations of the Commission (there are about 130 delegations world-wide).[9] The Commission`s external representation is a large diplomatic service with 5000 staff members working in over 130 delegations abroad.[10] With regards to its overall out-reach the Commission has one of the widest-spread "diplomatic" services in the world (Bruter 1999). Sometimes, EU delegations are larger than individual member states` overseas embassies (Bruter 1999; Everts 2002), but in terms of overall numbers the Commission`s network is small and to a large extent made-up by hired local staff (Bruter 1999). As it has been stated elsewhere (Cameron 2007: 53-55), the Commission`s delegations are very well equipped and specialized especially in those fields where the Community has some sort of competence (association agreements, trade, development etc.), but generally their specialization in the field of CFSP, concentrating mainly on security issues and including civilian and military crisis-management, remains low (Cameron 2007: 55). The Commission is after all especially concerned with those policies it has formal competences in (Bruter 1999).

In the case of representation at international organizations the status of the EU has been termed "bicephal" (Metz 2007: 101): In the case of the United Nations, only the Community has an official observer status (not the EU) and there is only one seat. However, representation takes place by both: the Commission represents the Community, at the same time the Council is represented through the presiding member state or the General Secretariat. Still, the official name-plate states "European Community" while two "seats" would be an overrepresentation of the European Union (Hoffmeister 2008: 178).

While externally CFSP is then only represented by a "de facto diplomatic service" made of Special Representatives (De Schouette and Andoura 2007: 241) and the presiding Member States, in Brussels the Council Secretariat (assisting the High Representative) becomes reliant on member states` infor-mation from third countries. Also, as already mentioned, information can be gathered indirectly through the Commission`s external delegations which in the case of CFSP report to the Commission`s Directorate General Relex (and its CFSP directorate).[11] Indeed cooperation between the second and the first pillar is crucial because of the treaty-based obligation to look for a coherent foreign policy between the Commission and the Council (Cremona 2008).

"Something Missing?"

What is lacking in the EU compared to the operation of national foreign services is a united foreign service "taking" and "channelling" information from the external delegations (ideal gate-keeper-function (Spence 1999: 254)). This united foreign service would have the responsibility to serve in-formation to its head, the foreign service minister and the government he/she is serving, which both is currently not the case (Duke 2004). The EU`s external service remains divided, because of the two pillars. The administration concerned with CFSP – the Commission and the High Representative/the Council – might be called "a tandem" in positive terms (Spence/Cameron 2003), but it is far from being "a single" administration. Also, what seems to lack compared to national foreign services is an external network of EU representations which are fully equipped to provide information to the "cen-tral" service. This could either happen to take place through an expansion of tasks provided by the Commission`s delegations or an increased overseas cooperation between member states` embassies and the already existing delegations which are "associated" with the EU (Commission`s delegations, Special Representatives). One other option could be the introduction of an additional EU external ser-

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[9] As it becomes clear from the reading of the European Parliament`s report on this issue (mention report of the EP), the dele-gations are officially delegations of the Commission, not the European Community. Strictly, the delegations are thus respon-sible for providing the Commission with information, but not other institutions such as the Council or the European Parlia-ment. In a few cases, a double-hatted model has been chosen to make the Special Representatives also Heads of the Com-mission`s Delegation in the particular country or region.
[10] See European Commission: Taking Europe to the World – 50 year`s of the European Commission`s External Service. Brussels, 2004, p. 3.
[11] Whereas during the Prodi Commission it was often talked about the tandem between the High Representative of the Coun-cil, Solana, and the Commissioner for External Relations, Patten; these days especially the relationship between Solana as now-and-then High Representative and Barroso as the Commission`s President has to be stressed.

vice complementing or taking over all the representative tasks of the other delegations – either the Commission`s and/or the member states`.

"A Foreign Minister! – And a Foreign Service!"

The creation of a "Foreign Minister" of the European Union, which was renamed "High Representative" after the defeat of the French and Dutch Referenda in the Reform- and finally in the Lisbon Treaty, is about merging the functions of the two post of the High Representative and the Commissioner of External Affairs (see e.g. Egeberg 2006). Also, the new "Foreign Minister"/"new High Representative" will be Vice-President of the Commission and Chairman of the Council of External Relations. The new "Foreign Minister" will have the formal power to initiate action in the CFSP. The construction of this new institution is said to enhance the coherence between the Commission and the Council – and finally shall lead to a more effective foreign-policy of the European Union.[12]

Whereas today`s High Representative is often referred to as "Mr CFSP", this view downplays the complexity of the policy-making machinery in the CFSP/ESDP. Indeed, the "new" High Representative will only be able to live up to the magnitude of tasks embedded in the Lisbon Treaty[13], if the institution is provided with a solid administrative substructure. In the context of the double-hattedness of the "new" High Representative ideas about a new substructure blossomed. The idea of constructing a transgovernmental "European External Action Service" (EEAS), which assists the "new" High Representative with his/her tasks in CFSP/ESDP, dates back to the Convention debates.[14]

The construction and implementation of the EEAS

The idea to have a Diplomatic Service of the European Union, which would be on the one hand set up centrally in Brussels and on the other hand represent the Union abroad by embassy-like delegations, has been articulated in the literature since the late 1990`s (Bruter 2004; Duke 2004; Spence 1999).

The debate lived up when the External Action Service became thought of as a necessary tool for the functioning of the newly institutionally set-up foreign policy of the Union. The EEAS was focused on in the debates in the Constitutional Convention on the Future of Europe, its Laeken mandate, and a phase which was used to implement the treaty provisions. As mentioned above, I will divide the debates in one construction phase, which is about the delivery of initial ideas and decision-making, and one implementation phase, which is about the implementation of the institution as set out in the constitution.

Construction Phase

Let us have a look at the arguments made in this construction phase in order to understand which particular EEAS was argued for by the constitution makers. The categories identified above will help us to answer the question.

Which EEAS? – The Overall Function

It becomes obvious that there has to be a functional need to set up an administration like the EEAS. I have introduced the category of "overall function" above and will now apply it to the construction

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[12] Possible "turf wars" between the future President of the European Council (also responsible for the representation of the EU abroad) and the President of the Commission are still possible though (see e.g. Pinelli 2007).

[13] See Articles 27 TEU, Article 30 TEU, Article 31 (2) paragraphe 1 TEU, Article 31 (2) paragraphe 2 TEU, Article 32 (2)TEU, Article 33 TEU, Article 34 (1)TEU, Article 34 (2) TEU, Article 36 (1) TEU, Article 38 (1) TEU, Article 41 (3) TEU, Article 42 (4) TEU, Article 43 (2) TEU, Article 44 (1) TEU, Article 46 (1) TEU, Article 46 (2) TEU.

[14] Before the High Representative was introduced through the Amsterdam Treaty, in the negotiations preceding the Maastricht Treaty, the communitarization of EU Foreign Policy was another tabelled idea – consequentially leading to the erection of a European Foreign Affairs Service embedded in the Commission`s structures (Nuttall 2000).

phase. In the construction phase, the arguments varied over the functional need of the EEAS. Almost from its beginning constitutional debates in the Convention on the Future of Europe focused on the question how the European Union`s foreign policy could be improved. Thus, two catch-all terms dominated the Laeken agenda (mandate) and were picked up almost as a reflex by the Convention`s constitution-makers (Raube 2007):[15] Overcoming the lack of *effectiveness* was believed to be achieved by tackling the question of (in-)*coherence*.[16] The Declaration of Laeken said: "The third question concerns how we can improve the efficiency of decision-making and the workings of the institutions in a Union of some thirty member states. How could the Union set its objectives and priorities more effectively and ensure better implementation? […] How should the coherence of European foreign policy be enhanced? How is synergy between the High Representative and the competent Commissioner to be reinforced? Should the external representation of the Union in international fora be extended further?"[17]

In order to become more effective, all institutions and policy measures of the Union had to be pulled together in a coherent manner.[18] Indeed, a logical step of such a coherent approach would have been to communitarize the CFSP in the first place handing over to the Union concurrent competence in a new federal system.[19] However, the system of pillar diversity remains present until today – even after the draft of the Constitutional Treaty and the Lisbon Treaty (de Witte 2008: 14). In fact, there are two treaties with different procedures and policies serving one goal: the international presence of the European Union.[20] As soon as the introduction of the competence catalogue by Giscard d`Estaing in fall 2002,[21] the Draft Constitutional Treaty and all the following treaties excluded CFSP/ESDP from the competence catalogue and thus maintaining these policies as distinct from the others which fell under the competence catalogue.[22]

The vertical re-collection of competences could have ultimately meant a "state like" EU foreign policy, allocating foreign policy making powers on the federal level of the EU.[23] Instead of the vertical collection of powers, the debates concentrated on the horizontal separation of powers between the Commission and the Council. Bearing in mind that the CFSP would have to be more coherent, but agreeing on the fact that competences would not be altered vertically, options for institutional change were looked upon. The construction of the High Representative and, eventually, the EEAS were found as solutions to this perceived problem. The functional need of the EEAS has been linked to the overall installation of a "Foreign Minister" of the European Union. While the envisaged "Foreign Minister" – later re-named High Representative in the Lisbon Treaty – embraces executive tasks from the Commission and the Council, the EEAS was thought of as providing administrative assistance to the execu-

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[15] Ibid.

[16] The Declaration of Laeken said: "The third question concerns how we can improve the efficiency of decision-making and the workings of the institutions in a Union of some thirty member states. How could the Union set its objectives and priorities more effectively and ensure better implementation? […] How should the coherence of European foreign policy be enhanced? How is synergy between the High Representative and the competent Commissioner to be reinforced? Should the external representation of the Union in international fora be extended further?"[16]

[17] Declaration of Laeken, Annex to the Presidency Conclusions, European Council, Laeken, 14th to 15th of December, 2001.

[18] Ibid.

[19] See the comments of Teija Tiilikainen to the preliminary draft report, WG VII, WD 32.

[20] Things become even more complicated if one considers that according to whatever new treaty there will be only one legal personality: the one of the EU. Whereas this legal personality is important for the EU to conduct international agreements or to become a member in international organizations, it does not determine which "pillar" is responsible for conducting such a move (see: de Witte 2008: 14).

[21] Indeed, the Competence Catalogue was introduced through a first draft of the constitution. In this competence catalogue, the CFSP was clearly mentioned outside other Union competences such as "conferred", "exclusive", "shared" and "supportive" competences. See: CONV 369/02, 28th of October 2002.

[22] De Witte (2008) mentions quite correctly that for reasons of legal unity the CFSP/ESDP could have been included in the competence catalogue, but imposing on them a series of exceptional procedures.

[23] According i.e. to Stein Rokkan, all federal states allocate foreign policy making powers on the federal level (2000). In this sense then, the EU as a federal political system is different. Most of the powers remain on the national level and are integrated on a cooperative basis. In some cases, powers are shared (development policy) and exclusive (trade). See also: K.C.Wheare, who states: "Indeed one of the arguments for establishing a federation is usually that it will provide for a unified foreign policy. So important is this thought to be that in most federations there is an explicit provision in the Constitution absolutely forbidding the component states form entering into obligations with foreign states, or permitting it only with the consent of the general government, in which case potentially exclusive control rests with the general government" (1963: 169).

tive of the EU`s Foreign Policy. The construction of the High Representative and the EEAS can hardly be disentangled.

In a first plenary session in July 2002, members of the Convention debated options for a move towards more effectiveness and coherence. Some already mentioned the possibility of a "new" High Representative – merging the High Representative and the Commissioner on External Relations.[24] Almost as early as November 2002 the Convention found a solution to the problem in its Working Group on Foreign Policy (WG VII), chaired by former Belgium Prime Minister Jean-Luc Dehaene. Except for some members, the WG VII final report stated that most members of the group envisaged a merger of the two posts of the Commissioner on External Affairs and the High Representative.[25] However, the report also stated that at least two other options were considered: the complete integration of the High Representative into the Commission and the continuation of the status quo (accompanied with an increase of the High Representatives` capabilities).[26]

The latter option was connected especially to Members of the Convention from the United Kingdom. It became clear during the discussions of the Working Group and the Plenary Sessions on Foreign Policy that some members of the debates rather wanted to add minor changes or intergovernmental changes to the administrational set-up.[27] The High Representative would either remain in place gaining only a few additional capabilities (including a right to initiative) or it would be serving as a Minister to the new President of the European Council.[28] However, its administrational substructure would remain the same: The Council Secretariat and the policy unit would remain unchanged delivering necessary policy-information. There would be no fusion with administrative elements of the Commission. Also, the Commission`s delegations should not be linked with those serving the High Representative in the Council. Any symbolic emphasize on any sort of a "statism" was rejected.[29] There would be no European embassies, no European diplomatic service. A renamed High Representative – as "Foreign Minister" – was rejected.[30] Overall, whereas these views advocated a further coordination among member states, they were not willing to give additional capacities and powers to the High Representative or its administrative substructure. This understanding corresponds the most with the conception, which rather sees the function of the international organization in assisting member state interests. It would rather see the set-up of the foreign policy administration (internal and external) in the hands of the member states, while the function of the international organization`s administration rests in coordinating the member states` interests on the international organization`s level. While we know that overall the EU has transcended from such a pure international organization even in the intergovernmental pillar, the arguments made in favor of a status-quo must be judged as being very close to the intergovernmental conception – leaving a lot of policy leverage in the hands of the member states.

Another option mentioned in the Convention debates and the Working Group VII was the integration of the High Representative in the Commission. Those members of the Convention, who were rather in favor of a more united foreign policy, advocated a larger and more integrated role of the High Representative in the Commission. Indeed, according to their views, a necessary step for a more effective European Union foreign policy was to integrate the High Representative into the Commission.[31] Thus responsibilities of the High Representative would be transferred from the Council to the Commission. In doing such a move, the High Representative would be fused with the present Commissioner on External Relations.[32] The Commission argued in a moderate way that a so-called "Secretary"

[24] See e.g. the speech by Peter Glotz, German government representative to the Convention, who at 11th of July 2002 argued that the double-hat would be a good compromise between a more Commission-leaning institutional development proposed by members of the European Parliament and the approach of i.e. the British government promoting co-ordinated initiatives between the High Representative and the Commission on the Council.

[25] Final report of Working Group VII on External Action, WG VII 17, CONV 459/02, 16th December 2002.

[26] See ibid., p. 21-22. A fourth option was considered: A foreign minister subordinated to a new President of the European Council.

[27] See the various contributions of Peter Hain, government representative of the United Kingdom in the plenary debates of the Convention and the Working Group VII.

[28] See Report WG VII, at fn 25.

[29] WG VII, WD 40 by Peter Hain.

[30] Ibid.

[31] See below the contributions by TeijaTiilikainen and Elmar Brok, at fn 49, 50, 51.

[32] See e.g. below the contribution by Günther Pleuger, at fn 47.

could be selected by the European Council and confirmed by the European Parliament via the confirmation procedure of the Commission (see Spence/Fraser 2004: 134).[33] Others wanted the merger to result in a rather supranational Commissioner. In both cases, an administrative substructure would have been integrated into the Commission, as the Commission argued.[34] It would have been likely that important information desks like the policy unit would have been integrated in the Commission under the authority of the Secretary. Also, the Commission would have become responsible for the external representation of the Union under the authority of the Secretary.[35] The Council Secretariat would have been left with tasks it provided before the introduction of the High Representative at the Treaty of Amsterdam.[36] Overall the accountability of the "integrated" foreign policy would have increased, while the "Secretary of the Union" or "new Commissioner" of the Commission could have been held responsible by the European Parliament and/or the Council.[37] Indeed, a state-like solution was not envisaged by these arguments by only merging the High Representative with the Commission. However, some proposals, as we saw, added that next to this construction a concurrent competence in foreign policy was needed. By linking horizontal with vertical competences, the institutional framework of a federal state-like foreign-policy could accordingly have emerged. However, the administration was not envisaged as taking over competences from the member states. As such, the set-up was rather thought of as being complementary; a finding that rather speaks to the third conception of European Foreign Policy .

While both the rather intergovernmental idea and the supranational idea of a new High Representative/ Secretary/ Commissioner and its substructure organization were meant to be opposing views about the future polity of CFSP, a third rather conciliating view entered the debates. It had been brought forward already in the first debate of the Convention on foreign policy in July 2002: The double-hatted High Representative.[38] Interestingly, the idea of a High Representative wearing two hats – one Council and one Commission hat – was seen as a positive institutional step into a more coherent policy-making future of the EU.[39] As mentioned above, this idea and compromise caused considerable confusion with regards to the administrative substructure of the new High Representative. A single person might be split up into different tasks (some people say this causes problems in terms of workload), but which organizational environment should this person have? Indeed, whereas the affiliation of the High Representative caused problems (Council or Commission), so did the question where his administrative substructure should be located: Of course it was possible that the administration remained in the Council while the High Representative served two different functions in the Council and the Commission. Others said that the High Representatives` administration should be positioned in the Commission – personnel from the Council could thus move into the Commission.[40] Just like in the overall approach towards the individual tasks of the High Representative it was argued that a new body should be created, a European External Affairs Service, which composition should be made of staff from the Commission, the Council and national administrations.[41] Interestingly, this model was thought of being able to overcome problems of horizontal and vertical coherence by increasing coordination amongst the different servants.[42] The proposals left open which parts or desks of the Commis-

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[33] See the "Penelope"-constitutional draft by the Commission President Prodi and the two Commission`s delegates Barnier/Vitorino in the Commission ("Contribution to a preliminary Draft – Constitution of the European Union"), December 2002, Article 46 and Article 47 and Article III-109. See also: Communciation from the Commission, forwarded by Mr barnier and Mr Vitorino "A Project for the European Union", CONV 229/2, 3 September 2002.

[34] See the "Penelope-draftt, fn 41.

[35] See the "Penelope"-Draft, fn 41, Article III-109: "The Secretary of the Union shall have the operational support of all the competent departments of the Council and Commission, including the permanent representations of the Union in third countries and to international organizations. Those departments shall be at the Commission under the authority of the Secretary of the Union."

[36] For an overview of functions of the Council Secretariat outside the CFSP see Christiansen 2002.

[37] See the contributions of Elmar Brok, who was arguing in favor of a more effective foreign policy, but enhancing the role of the Commission and the European Parliament at the same time (see i.e. the WG VII WD).

[38] See footnote 15.

[39] See the various contributions to the plenary sessions of the European Convention, but especially those on the 11th and 12th of July as on the 20th of December. Also contributions made to the Working Group VII.

[40] See contribution by Brok and Tiilikainen to the Working Group and the Plenary.

[41] It can be seen that the German government was very interested in such an administrative approach. See contributions by Pleuger and Bury to the Working Group VII of the Convention.

[42] See Bury`s interpretation of an administrative fusion, WG VII, WD 28.

sion and the Council should be moved to the new body. Also, while creating a new organization, it was not clear where the organization should be placed. Once the new body was created it could be re-integrated in either the Commission or the Council, the arguments went. However, a new body with a new location and address was perceived as adding another layer of complexity to the EU polity.[43]

The final report of the Working Group on Foreign Policy was very cautiously written – looking for possible consent in the overall Convention (Raube 2007). As such, the double-hatted Foreign Minister became a viable option for consent (see also Crum 2006: 397). What became crucial was the question how this new institution of the Foreign Minister should be sufficiently integrated in one or the other institution when merged. Coming from the Council, the Foreign Minister was seen as being put by a "cuckoo" in the Commission`s nest. As Andrew Duff, MEP, mentioned in the Convention: "I find especially worrying the fact that the person will be a full member of the Commission with a mandate from the Council. He will be able to act without the authority or even the agreement of the Commission. It is a recipe for a fraught relationship with the President of the Commission, and he could easily be seen to be a Council cuckoo in the Commission`s nest."[44] Looking from the other side, it was feared that his function as part of the Commission could "supranationalize" the CFSP in the Council because responsibilities of the High Representative would not be clear-cut any longer – with the consequence of a further push towards unity.[45] The Working Group`s report concluded that possibly the High Representative should become Vice-President of the Commission (being picked by the European Council and accepted by the European Parliament). Also, in the Council the High Representative should chair the "non-rotating", new Foreign Affairs Council. It was also here were the High Representative should possibly get a right to initiate policies in CFSP. Indeed this point was rather uncontroversial in the Convention.[46] However, in the course of the Convention`s work one important feature of the High Representatives' powers was abolished: the possibility of a Qualified Majority Voting, if the High Representative initiated policy action in the Council (compare the present and changed Article 31 (2) TEU). By this procedure, the High Representative could have – like the Commission in the first pillar – bargained with member states in order to get through a rather supranational leaning policy. Without this initiative at hand, the influence of the High Representative was reduced without doubt. Also, a possibly influential Commission as administration would have had a limited influence.

In the debates we can see that initial ideas about the EU as a state-like order in its external dimension were thought of only with regards to concurrent powers. The institutional set-up would have put the Commission in a stronger position conducting foreign policy. However, as a compromise over the issue of a "Foreign Minister" had to be found, ideas about the role of the CFSP as run by governments and intergovernmental institutions like the Council as well as ideas about the Commission as a necessary player in the overall external relations of the EU gained importance. Here, we can see how the different conceptions of European foreign policy along the two conceptions (regional cosmopolitan conception and an intergovernmental conception) are underlined by the arguments on the new double-hatted foreign minister. While governmental functions without a state are taken over by the Foreign Minister, the conception of a cosmopolitan power is spoken to. At the same time, the first conception of a Foreign Policy is spoken to by arguments which bring back in the intergovernmental theatre: e.g. can the new President of the European Council ask for assistance from the EEAS, next to the Foreign Minister. While the President clearly derives his legitimacy on the national level (through the European Council), the EEAS is used for rather intergovernmental reasons, serving the coordination between Member States.

According to this reading, debates in the Convention did move into the direction of a combination of arguments that spoke to conceptions of European Foreign Policy along intergovernmental and rather cosmopolitan lines. Once the double-hatted Foreign Minister was chosen, arguments centered on the fact how administrative functions of both the Council and the Commission could be merged. A rather intergovernmental reading, in which the Council Secretariat and member states were asked to

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[43] Ibid.
[44] See speech by Andrew Duff in the European Convention, 20th of December 2002.
[45] See speech by Peter Hain in the European Convention, 11 th of July 2002: "I was interested in the comments made by Mr Dini and others on the double-hatting of the Commissioner for External Relations and the High Representative. My question – and those that want to merge have to answer it – is to which body would that individual answer and be accountable: the Council or the Commission? Who is the master? That is the question. Can you have two bosses?"
[46] See plenary debates on the 11th and 12th of July, 2002, and the 20th of December.

increase their assistance (voluntarily), was rather connected to a High Representative mirroring the institutional status-quo. On the other hand, a merger of the High Representative with the Commission would have implicated a move of administrative functions from the Council to the Commission. But in the argumentation of those looking for a compromise, the administration`s overall function was meant to provide the Foreign Minister with additional administrative functions mirroring the construction of the Foreign Minister as double-hatted. In that sense, the Foreign Minister of the European Union can be seen as a break away from intergovernmentalism and the EU as a pure international organization, based on interest-cooperation and transaction-cost reduction. At the same time, the "Foreign Minister", while being occupied with governmental functions, is by far not representing what its name stands for: the foreign minister of an elected government in a (multinational) state (like a state-oriented conception would assume). In other words, the administration does not serve a democratically elected government (Peters 2004), but rather selected government functions. In sum then, the overall administrative function deriving from the construction of the Foreign Minister would not reproduce the administration of a state-government or some sort of international organization`s secretariat, but rather a new type of administration.

Which EEAS? – Legitimacy and Institutional Structure

The question is which institutional design they preferred for such a service. In order to understand how far arguments made were in line with the above operationalized models, we now concentrate on the analysis of the remaining categories – legitimacy and institutional structure.

Legitimacy of the EEAS is important in order to understand on which behalf the administration has authority to act. It became clear during the Convention debates that one argument was to let legitimacy and authority of foreign policy derive from the member states only. As such, any administration assisting the High Representative, as it looks like today on the basis of the Nice Treaty, would be an administration assisting a High Representative which is legitimated only through the member states. There would be no other source of authority than that.[47] While this argument, as shown above, rejected the merger of the High Representative and the RELEX-Commissioner on the basis of the argument made by the British government representative Peter Hain that the merger would just not work,[48] no EEAS was envisaged.

Rather than building on democratic legitimacy on the national level (and leaning to the model of audit democracy), there were mostly arguments that the EEAS would be run under the authority of the "new" Foreign Minister, which would have institutionally merged. Teija Tiilikainen, government representative of Finland, argued in the Working Group VII of the Convention that a double-hatted approach would lead to fuzzy accountability, unclear parliamentary responsibility, duplications of administrations and the likelihood of an intergovernmentalisation of communitarized policies.[49] Tiilikainen stressed that when becoming a compromise the double–hatted approach should be accompanied by stating that the ultimate goal was a merger under the roof of the Commission.[50] However, the compromise of a double-hatted Foreign Minister would be legitimated and authorized by two different sources, as Elmar Brok, EP representative in the Convention, stated: It would be legitimated by the member states (via the Council) and by the European Parliament (via the "election" of the Commission).[51] Accordingly, the legitimacy the EEAS derived from two different sources, the one pointing rather to legitimacy deriving from the member state and a national democratic audit, while the other is deriving from supranational institutions set up by regional integration and government functions beyond the member states. Also, the authority could vary: According to the constitutional treaty the Foreign Minister and his administration would be bound by decisions in the Council in CFSP (Metz 2007: 255). Such a rather intergovernmental conception is balanced by the fact, that the Foreign Minister is part of the Commission and can – together with the Commission – table initiatives in CFSP which would have been planned in the "intregrated", coherence-oriented EEAS. As such, the concep-

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[47] See WG VII, WD16 by Bobby McDonaugh; WG VII, WD 40 by Peter Hain; WG VII, WD 42 by Hjelm Wallen.
[48] See WG VII, WD 39 by Peter Hain.
[49] See WG VII, WD 19 by Teija Tiilikainen.
[50] See WG VII, WD 61 by Teija Tiilikainen.
[51] See WG VII, WD 26 by Elmar Brok.

tion of a European Foreign Policy which is different to its member states and might ultimately speak to a cosmopolitan imprint is not to be underestimated.

Questions of legitimacy and authority are linked to the institutional set-up. However, The institutional set-up can differ according to different views on how the administration of foreign policy should be arranged. Standing for the approach of an entirely state-based and controlled foreign policy, any further moves into the direction of EU representations abroad or the existence of an EEAS in Brussels were rejected.[52] Portuguese government representative Lopes argued the EU was premature of having an "EU diplomatic service".[53] Cooperation of states would do. Quite the opposite, the EU as a multinational state with one foreign policy and one external service within one European government, was not thought of. Most of the thoughts concentrated on how the EEAS could actually be set-up, rather than denied or envisaged as a super-ministry. What seems obvious is that within the project of the EEAS, it was not assumed appropriate that the Council Secretariat would become the core of the EEAS, as German government representative Günther Pleuger stated.[54] Some institutional aspects of the Council Secretariat, however, were thought of as being valuable to be integrated in the EEAS, e.g. the Policy Unit, as Czech government representative Jan Kohout mentioned.[55] While the Foreign Minister would be double-hatted, some Convention members still argued that the EEAS should be integrated in the Commission only – "a diplomatic corps within the Commission."[56]

As in the case of the "double-hatted" Foreign Minister, many members of the Convention and policy-makers argued in favor of another "integrative" approach. As Martin Bury, German government representative, said: It was about creating a substructure "to allow the double-hat to perform his office effectively."[57] Invited to the Working Group in the Convention, Javier Solana, present High Representative, said one should pool from the resources involved in the EU`s foreign policy which all would make up to one "European Foreign Ministry".[58] Klaus Hänsch, representative of the European Parliament to the Convention, became concrete and proposed that the Foreign Minister should rely on the DG on External Relations of the Commission and a DG of the Council Secretariat, which would have to be newly erected.[59] Several members mentioned that a diplomatic academy could be installed which would train "EU" diplomats, but which could also lead to a "Europeanization" of EU member states` administration.[60] All present external services working on the European level should be merged in order to fulfill the "objective …of a fully fledged Foreign Service", argued Austrian government representative Tusek.[61] This also meant thinking about the external part of the EEAS – representing the EU abroad. In this respect, Bury claimed it was necessary to transform Commission delegations abroad and merge them with Council Secretariat branches like the Special Representatives.[62] Tusek explained that also the Liason Offices of the EU to the United Nations should become a necessary part of the EEAS.[63] Elmar Brok said that in those countries were less than 4 member states actively represented in a third country, the EU representations should take over functions.[64] Clearly, this understanding was in line with a new overall "legal personality" of the EU, which was developed in the respective Working Group on "Legal Personality" and which would constitute the EU – and not only the Community – as a legal person, including respective rights and obligations, in international affairs (Raube 2007).

What becomes obvious from the debates in the Convention, which finally led to the acceptance of the double-hatted Foreign Minister and the "integrative" EEAS is that arguments varied quite widely over if and – if yes – how the EEAS should be set up. By taking the three conceptions, we can see that all three conceptions are represented to different degrees in the Convention debates. Whereas, as we

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[52] See WG VII, WD 40 by Peter Hain.
[53] See WG VII, WD 34 by Lopes.
[54] See WG VII, WD 17 by Günther Pleuger. But see Heusgen (2005).
[55] See WG VII, WD 33 by Jan Kohout.
[56] See WG VII, WD 26 by Elmar Brok.
[57] See WG VII, WD 28 by Hans-Martin Bury.
[58] See WG VII, WD 8 by Javier Solana.
[59] See WG VII, WD 45 by Klaus Hänsch.
[60] See WG VII, WD 33 by Jan Kohout; WG VII, WD VII, WD 26 by Elmar Brok.
[61] See WG VII, WG 36 by Gerhard Tusek.
[62] See WG VII, WD 28 by Hans-Martin Bury.
[63] See WG VII, WG 36 by Gerhard Tusek.
[64] See WG VII, WG 26 by Elmar Brok.

mentioned earlier, e.g. the conception of the EU as a state-like polity does hardly appear with regards to legitimacy, it pops up when in some cases EU external representations shall not only additionally represent the EU to the world, but even take over functions from member state embassies (yes, even by replacing them) on the basis of a newly won legal personality. Apart from that cosmopolitan conception catches our attention when it comes to understanding the additional set-up of an additional foreign policy service on the EU (regional) level, which will not carry out ad-hoc functions (like the Special Representatives) but in the future represent the EU as a whole. However, internally, this service still "suffers" from deriving its legitimacy not only from supranational EU organs, but also from the member states as well (double-hattedness). As such, the legacy of intergovernmentalism and a flavor of audit democracy is here to stay.

Implementation Phase

The actual compromise to the substructure of the Foreign Minister was found in the Convention by delaying the issue of which administrational substructure would follow from the double-hattedness. Article III-197 of the Draft Constitutional Treaty stated: "In fulfilling his or her mandate, the Union Minister for Foreign Affairs shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the member states." In a Declaration added to the Draft Constitutional Treaty it continues that the new "European External Action Service" should be "composed of officials from relevant departments of the General Secretariat of the Council of Ministers and of the Commission and staff seconded from national diplomatic services."[65] Also the declaration continues that the Union`s staff in international delegations, as mentioned in Art. III-230 and which provide the High Representative with information from abroad should be taken from the EEAS.[66]

After the adoptions by the IGC and the signing of the Constitutional Treaty in 2004, it was added in Article III-296 that the EEAS should be established after a decision of the Council. However, it was also stated that the Council would do so only after a proposal of the new High Representative, which needed to rest on the consent of the Commission and a formal consultancy of the Parliament.[67] The Constitutional Treaty also added a more precise outline of the process how consent on the EEAS should be found in a declaration to Article III-296: "The Conference declares that, as soon as the Treaty establishing a Constitution for Europe is signed, the Secretary-General of the Council, High Representative for the Common Foreign and Security Policy, the Commission and the member states should begin preparatory work on the European External Action Service."[68] In this way the IGC took up the idea to sign those actors responsible of the implementation of the EEAS which had the obligation to submit personnel to the EEAS. In doing so, a consensual process was lying ahead in which only with the consent of the Commission and the member states the EEAS could be built up upon. The Council Secretariat itself was represented by the High Representative, who would also have a formal influence by initiating the final proposal on the EEAS.

Discussions followed which tried to find a solution to the constitutional mandate to set-up the Service. Indeed, in early 2005 the European Council assigned the High Representative, Javier Solana, and the Commission to launch further debates between Commission, Council and the member states and submit a report on the state of the construction of the EEAS. Meanwhile, the European Parliament stepped into the debate. While the Foreign Minister has to present his final proposal to set up the EEAS to the Commission and the European Council, he is held accountable by the European Parliament when becoming part of the new Commission. Thus, the European Parliament points to the fact that – according to the Treaty – it will have to be heard in the debates on the construction of the EEAS.

The European Parliament indeed started to be actively involved launching a report in its Committee on Constitutional Affairs in 2005.[69] While having a final debate on the Committee report in the ple-

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[65] Declaration on the Creation of a European External Action Service, added to the Draft Constitutional Treaty.
[66] Ibid.
[67] See Article III-296 Constitutional Treaty.
[68] Declaration on Article III-296 annexed to the Constitutional Treaty.
[69] European Parliament Resolution on the institutional aspects of the European External Action Service, P6_TA(2005)0205, 26th of May 2005.

nary, Margot Wallström as Commissioner responsible for parliamentary relations was invited to tell the Parliament about the current state of debates on the construction of the EEAS.[70] The Commission was interested in a rather supranational approach of the EEAS, including setting up a desk for parliamentary relations within the EEAS: "The Commission, including the Minister/Vice-President, will seek to preserve and promote the Community method, which has proved its capacity to work and achieve good results in external relations. More generally, the Commission will be active and vigilant in safeguarding the institutional balance."[71] Also she stated: "I conclude by repeating that we, in the Commission, share the objective of parliamentarians to safeguard and enhance the Community method, and the role of the Commission and Parliament in this process. At the same time, I believe that we share with you the aim of creating new structures that can really contribute to improving the effectiveness, coherence and influence of the Union`s policies and actions in the world."[72] This was warmly welcomed by the Parliamentarians. On the one hand, the EP still advocated an EEAS which was financially and organizationally embedded in the Commission.[73] On the other hand, while the Constitutional Treaty did provide for a better institutional framework to hold the "new" High Representative accountable (Raube 2008), the installation of close relations between the EEAS and the EP would mean a direct way of gathering information from the EEAS in CFSP in general.[74] The democratic control of the foreign service would be enhanced by close contacts between the EEAS and the parliament, making two-way information processes between the administration and the legislative more likely. In this way and following the expectations of the regional cosmopolitan order, the EEAS could not only serve as an administration next to those of the member states, but it would also be democratically embedded.

The earlier mentioned Report of Solana and Barroso submitted to the European Council in July 2005 (so-called "Progress Report") still showed varying attitudes among the implementing actors.[75] On March 10th of 2005, in COREPER Member states debated the several issues at stake (on the basis of an "Issues Paper by the High Representative and the President of the Commission[76]). Especially the overall embededness of the EEAS showed that member states had a hard time coming to terms. However, the two authors of the report write that it is indicated that the EEAS should be "sui generis", not a new institution, but with close ties to both the Council and the Commission.[77] All member states agreed that it should assist the Minister. It is mentioned that in order to work effectively, the Minister should rely on all "services currently dealing with CFSP (including ESDP), together with geographical desks covering all regions of the world and thematic desks dealing with issues such as human rights, counter-terrorism, non-proliferation and relations with the UN."[78] According to the "Issues Paper" also a service concerned with relations with the EP should be established.[79]

Already the "Issues Paper" mentioned that no duplication with services in the General Secretariat or the Commission should come into existence.[80] There is a consensus that trade policy should not be dealt with in the EEAS. Overall only a few member states want the EEAS to be restricted to CFSP or extended to broader fields of foreign affairs. Such as neighborhood policy or development.[81] It became however clear that the majority preferred that the EEAS shall integrate all the different regional desks

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[70] The initiative of the European Parliament was a way out of the "stealth approach" of the Council and the Commission.

[71] Margot Wallström in the European Parliament Plenary Debate, 11th of May 2005, Strasbourg, based on the oral question to the Commission by Jo Leinen, on behalf of the Committee on Constitutional Affairs on institutional aspects of the European External Action Service (B6-233/05).

[72] Ibid.

[73] See Elmar Brok, MEP, in the European Parliament Plenary Debate, 11th of May 2005, Strasbourg, based on the oral question to the Commission by Jo Leinen, on behalf of the Committee on Constitutional Affairs on institutional aspects of the European External Action Service (B6-233/05).

[74] However, as open as in 2005 the exchange of views between the Commission and the European Parliament seemd to be from the outside, in 2008 the European Parliament complained in its annual report on CFSP that the construction of the EEAS was made in secrecy without any information leaking through (European Parliament 2008).

[75] See "Joint Progess Report to the European Council by the Secretary-General/High Representative and the Commission", Annex I to the European Council 9956/05, 9th of June 2005.

[76] See "Issues Paper on the European External Action Service", Annex II to the European Council 9956/05, 9th of June 2005.

[77] See "Joint Progess Report", at fn 69.

[78] Ibid.

[79] See "Issues Paper", at fn 76.

[80] Ibid.

[81] See "Joint Progess Report", at fn 75.

of the Council Secretariat and the policy unit. Also, it is thought of that the Military Staff might become part of the EEAS. It remained open if also SITCEN was moved into the EEAS.[82] With regards to the Commission, all the DG External Relations was to be moved into the EEAS. All desks serving DG Trade should remain in the Commission; also development and enlargement are likely to stay in the Commission without being linked to the EEAS. It was also envisaged that preparatory bodies of the Council in external relations might be chaired by members of the EEAS. In those areas with mixed competences, such a decision could be taken from time to time.[83]

With regards to the external service part of the service the Joint Progress Report mentioned that there was "broad consensus" that Commission`s delegations would become delegations of the European Union and that they [84]should be under the authority of the Foreign Minister (as outlined in Art. 328 CT) and the EEAS. However, it became also clear that members of the delegations do not necessarily have to members of the EEAS. In other words, staff working in the delegations could also come from different administrative background (just as in the embassies of member states where personal comes from different "home ministries"). In that sense than, the EEAS might mirror national embassies abroad (without functionally replacing them).

With regards to staff, the member states underline that although staff should be composed of the Council Secretariat, the Commission and the member states, "a sufficient number of national diplomats in the EEAS and in a range of positions at all levels" should come from the member states.[85] The personnel, however, should be temporary at the EEAS, which means that payment and conditions of employment would be the same throughout the EEAS staff. Overall though, the responsibility of the EEAS budget was still to be settled.[86]

What can be seen from these developments is that the EEAS will be neither an administration working independent of the member states, nor will it be a pure intergovernmental secretariat. It will not replace all the Commission`s tasks in external affairs. It would not become an institution of its own. Also, those actors afraid of any special influence beyond member state sovereignty in foreign policy introduced further limitations to the EEAS. After the constitutional failure of the Constitutional Treaty in France and the Netherlands in 2005, the Lisbon Treaty was introduced. Indeed, the constitutional bargaining that took place during the German Presidency in the European Council in the first half of 2007 leading to the "reform-treaty", which was then called Lisbon Treaty, opened up the possibility to change some parts of the treaties. Also, aspects of the foreign policy were subject to change. The "Foreign Minister" was changed into "High Representative". Especially, British interests were met, when the symbolic meaning of "Foreign Minister", suggesting some sort of statehood beyond the member states was crossed out. And also, thanks to British bargains, a declaration was added to the Lisbon Treaty stating that through the work of the EEAS no competences of the Council should be questioned in CFSP at any time.[87]

Through the several treaty proposals the EEAS has by the time of implementation become a fact – a fact that moves the administration of the EU`s foreign policy beyond its status-quo. It is not independent of the member states, though. In Brussels, no new official institution comes into existence, but it will have strong links to the Council and the Commission, without duplicating them in functions.

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[82] Ibid.
[83] Ibid.
[84] Ibid.
[85] Ibid.
[86] Ibid.
[87] The Declaration (14) to the Lisbon Treaty sets out: "…the High Representative and the External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including the Member State`s membership of the Security Council of the United Nations." In: Official Journal, C 115/28, Volume 51, 9 May 2008.

Table 2: To which conception did they speak? – Constitutional Actor Preferences on the EEAS (Cursive Letters indicate what was <u>not</u> argued by constitutional actors, while all other arguments were raised in the debates)

Conceptions / Categories	Audit Democracy	Multinational Federal Democracy	Regional Cosmopolitan Order
Overall Function	Assisting the High Representative (as set out in the Amsterdam Treaty) Assisting the President of the European Council (as set out in the Lisbon Treaty) Assisting the Minister of the President of the European Council (see proposal WG VII)	Assisting the EU Executive in the case that the EU gains concurrent or exclusive competence in CFSP/ESDP (as set out by Tiilikainen)	Assisting the double-hatted Foreign Minister (Constitutional Treaty)/ High Representative (Lisbon Treaty) Assisting the "Secretary" of the European Union/ in the Commission (as set out by the Commission proposal "penelope")
Authority and Legitimacy	Authority through the High Representative in the Council Secretariat (as set out in the current treaties; as set out by P. Hain) Authority through the "double-hatted" High Representative, who, however is bound by decisions in the Council in CFSP-matters. Legitimacy through democratically elected national governments in the European Council who appoint the High Representative (as one source of legitimacy of the double-hattedness)	*(Authority through a European government)* *(Legitimacy e.g. through a direct election of the European President of the Commissioner (Bruton 2006) or the appointment of a European Government on the basis of general elections to the European Parliament (Peters 2004))*	Authority directly through the High Representative as double-hatted member of the Commission (as set out in the Lisbon Treaty) Authority through the Secretary in the Commission (as set out by the Commission in "Penelope") Legitimacy through the European Parliament (by consenting to the Commission`s composition including the High Representative; as it is set out in the Lisbon treaty) Legitimacy through institutional links and compliance with the United Nations (as set out in some proposals)
Institutional Set-Up	Institutional Status Quo in CFSP (as proposed by the Portuguese government) External Ad Hoc Representation in CFSP or through the Member States, while Commission represents the "Community" (see also the Portuguese government) National diplomats as major part of the EEAS composition (current status of negotiations)	Commission's External Representations take over functions from the national embassies on the basis of legal personality (as proposed by Elmar Brok)	EU delegations (current status of negotiations) EEAS and EU delegations next to Member States institutions (in addition to the Member States) (current status of negotiations) "At least" Mixed-Composition in EEAS and EU delegations (current status of negotiations) Diplomatic Academy Europe

The external part of the EEAS will appear quite united to the outside world – establishing a constant network of EU delegations in third countries and towards international organizations. It is interesting, if we consider the cosmopolitan conception, that especially the delegations and desks dealing with the UN and the services dealing with the EP are mentioned in the debates. Indeed, these links of the EEAS might point to the principles upon which the Foreign Minister/High Representative and the EEAS are required to act, if the EU runs into the direction of a cosmopolitan order.

Conclusion

This paper analyzed which design of the EEAS is preferred as an administrative substructure in the EU`s foreign policy. Arguments about the future of the EU administration in foreign policy spoke to all three conceptions of European foreign policy. By having looked especially into the debates of the Convention on the Future of Europe and following debates, we detected different arguments of different actors in line with all three conceptions (see Table 2). As such, first the overall ideal conceptions of the EU as a polity helpfully inspired three conceptions of the European foreign policy. Second, the conceptions of European foreign policy proofed to be empirically relevant. In other words, we could see that the arguments made with regard to the construction of the EEAS were made along the broader lines of the conceptions. The debates also showed indications that a lot of arguments were made in line with a rather intergovernmental or cosmopolitan conception. Seldom arguments which spoke to a state-like conception of European foreign policy were made. However, what mattered in the study was not the quantity of arguments and how they spoke to the conceptions. The study rather showed that all the conceptions mattered in the debates. While at the same time the conceptions vary to a great extend, this shows the different options available for a construction of the EEAS. While the final decision is yet to be made, the variety of conceptions which were entering the debate even in their later stages (implementation) show how contested the issues were. Without starting any speculation about the future outlook, from this study it follows that any institutional design of the EEAS leaning into only one conceptual direction would come as a surprise. Quite differently, as table 2 reveals on the basis of the empirical findings, even the existing proposal for a High Representative and EEAS speaks to different conceptions of European Foreign Policy at the same time.

The hypotheses made above in the introduction to this paper were based on ideal conceptions of European foreign policy. However, what we can see after having analyzed the arguments towards the construction of a EEAS in the EU is that arguments did speak to the third conception of European foreign policy in the light of a regional cosmopolitan order: Arguments were made in favor of an EEAS which would be made up in addition to the member states serving the execution of government functions. Explicit links towards the United Nations and the EP as well as the obligation to live up to cosmopolitan norms such as human rights and procedural norms (e.g. stemming from multilateralism) add to the idea that this EEAS serves a cosmopolitan order in the making (see Table 2). However, as I tried to show in the paper at several points, aspects of authority and legitimacy as well as the institutional set-up clearly show that the EEAS`construction and implementation also follows different ideas – e.g. those which are rather associated with a European foreign policy conception in the light of an audit democracy. But – as we could see – even arguments in line with a state-like conception of European foreign policy (following the ideal of a multinational federal democracy) appeared in sketches, e.g. with regards to the external representation of the EU based on overall (international) legal personality (see Table 2). In the end though one has to recognize that the internal as well as the external part of the EEAS – as currently discussed – adds up to the established national diplomatic services and their world-wide networks (see Table 2).

"The shape of things to come", to quote a George Benson jazz album, is still not clear yet. Neither the High Representative, nor the EEAS is in place. However, the present study helps to understand which underlying conceptions of European foreign policy are having an impact on the shape of things

to come. In the example of the EEAS it could be seen that the conceptions do not necessarily disqualify others and that the eventual outcome might speak to different conceptions at the same time.

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