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Eric Hayes
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EU delegations: Europe’s link to the world

Eric Hayes

The Treaty of Lisbon, which entered into force on 1 December 2009, introduced major changes to the institutional architecture of the EU’s external policy dimension. One of the central new provisions is that the EU should be represented in third countries and at international organisations by a network of Union delegations (Article 221 TFEU). Although this is the first time that such a provision has figured in any of the EU treaties it is not a novel departure. On the contrary, it consolidates and builds upon decades of existing practice in the external representation of the EU. However, the manner in which this new provision is implemented will be one of the key factors in determining whether the Lisbon Treaty succeeds in its preambular objective of enhancing the efficiency and coherence of the EU’s actions.

A number of authors have addressed the general implications of the Lisbon Treaty for the EU’s external policy dimension. The three major comprehensive analyses of the Lisbon Treaty published to date all contain lengthy sections on the external dimension: Piris (2010: 238–88); Craig (2010: 379–437), and Griller and Ziller (2008: 143–222). There are in addition a number of good analyses devoted exclusively to the external policy provisions of the Treaty, focusing for the most part on the implications for the CFSP and CSDP, and on the consequences of the continued ‘ring-fencing’ of the latter. Donnelly and Haselar (2006) place their analysis of the essentially identical provisions of the defunct Constitutional Treaty in the wider historical context. Wessels and Bopp (2008) rightly make the point that the impact of most of the innovations introduced by Lisbon can be measured only after ratification. Missiroli (2010) similarly argues that the implementation of Lisbon will be as important in defining the EU’s international profile as the Treaty text itself. It is no doubt for this reason that he and several other authors focus their analyses on those new elements in the EU’s external institutional set-up where the Treaty is least precise. A fairly extensive literature has thus emerged on the subject of the new ‘triple-hatted’ High Representative/Vice-President and of the new European External Action Service (EEAS) which is to support her (Article 27 (3) TEU). Much of this is necessarily either speculative or prescriptive and has consequently been overtaken by the political decisions reached in the meantime. Notable among those contributions that remain substantially relevant to the current debate are: Avery and Missiroli, 2007; Behr, Siitonen and Nykänen, 2010; Crowe, 2008; Duke, 2004 and 2010; Hocking and Spence, 2005; Quille, 2010; Raube, 2008; and Weiss, 2010.
Very little has, by contrast, been written on the subject of the new EU delegations – and this despite the fact that, to the outside world, they are (alongside the triple-hatted High Representative/Vice-President) one of the most visible novelties of the EU’s post-Lisbon external policy dimension. Most of the above literature does little more than touch the subject in passing. This undoubtedly reflects, in large part, the uncertainty that has until recently prevailed as regards the practical arrangements for establishing these new delegations; something that has inevitably handicapped those few authors (Bruter, 2009; Duke, 2004; Karalus, 2009; Spence, 2004) that have until now addressed the subject. Hopefully, now that the most important initial decisions have been taken, other contributions will be forthcoming.

Against this background, the present chapter reviews the origin of the new EU delegations, describes their formal framework and highlights the main novelties compared with the status quo ante. It goes on to analyse the main similarities and differences between the EU’s diplomatic network and that of a typical sovereign state and the possible implications for the future of the member states’ own diplomatic and consular networks. Particular attention is given to the special legal and institutional problems surrounding EU delegations to international organisations. Finally, some tentative conclusions are drawn regarding the implications for the EU’s external policy profile and possible areas for further study.

**Historical background**

Prior to Lisbon, there were no comprehensive treaty provisions as to how the EU should be represented externally. The task of negotiating international agreements with non-member countries or international organisations was assigned to the Commission, which was also charged with maintaining ‘such relations as are appropriate’ with all international organisations, and specifically with the various organs of the UN and with the GATT (now WTO). The Treaty of Maastricht assigned to the member state holding the presidency of the EU Council responsibility for representing the EU on matters falling under the newly created Common Foreign and Security Policy. Following the entry into force of the Treaty of Amsterdam, the latter was assisted in this by High Representative Solana. As regards the many other situations in which the EU and/or the Community might need to be represented in its relations with third countries or international organisations, the treaties were silent. In practice, however, it was generally accepted that for all matters of Community (i.e. first pillar) competence other than monetary policy the EU should be represented externally by the Commission. This long standing de facto role is now explicitly confirmed by Article 17 (1) TEU.

To assist it in exercising its external representation functions, the Commission gradually established an extensive network of external offices. The general history of this process is well documented in European Commission (2004), Bruter (1999) and Spence (2004). The first offices were opened already in the 1950s in Washington, Santiago de Chile and London, under the aegis of the European Coal and Steel Community (the first of the European Communities). Most early offices however were essentially technical operations overseeing the EC’s aid programme in the ACP countries. Dimier (2004a) and (2004b) and Dimier and McGeever (2006) provide particularly interesting historical accounts of these, which were for many years run by a semi-privatised ‘Foreign Legion’ of contrôleurs-délégués. Most offices had initially only a tenuous diplomatic status. During the 1970s and 1980s, however, this diverse and expanding network was gradually brought under a single management structure (European Commission, 2004: 36). Offices, which had previously sported a variety of titles, became uniformly known as ‘delegations’, most of them benefiting from full diplomatic privileges and immunities.
In the absence, prior to the Lisbon Treaty, of any specific treaty provision endowing the EC with a right of active legation, there has, over the years, been both scholarly and popular debate about the precise legal status of the Commission’s delegations (see Duke, 2002; Karalus, 2009, pp. 96ff). Frid (1995) considers (pp. 28–39) that this can be derived from other treaty provisions, although it is unclear which institution is entitled to exercise it. Macleod, Hendry and Hyett (1996), on the other hand, argue (pp. 208–22) that the EC had no right of active legation; and that the Commission delegations should best be regarded as having been established by virtue of the Commission’s right as an institution to organise its resources as it sees fit in order to fulfil the tasks entrusted to it. Either way, the treaties themselves have long provided for cooperation between the diplomatic and consular missions of the member states and ‘the Commission delegations in third countries and international conferences’. Moreover, the Lomé Convention and its successors grant the ACP countries the right to request the setting up of a Commission delegation on their territory. This has not stopped periodic accusations in the UK Eurosceptic press that the Commission’s network was either illegal or created by stealth (Sunday Express, 1996; Daily Telegraph, 2005). Even former UK foreign secretary Jack Straw is on record (House of Commons, 2004) as referring to ‘all sorts of odd-bods from the European Union running all sorts of odd offices around the world’. In reality, of course, not only were the Council and the Parliament kept regularly informed by the Commission of its future plans; but they also, in their capacity as budgetary authority, actually approved the necessary annual budgetary appropriations.

The diplomatic status of the delegations is similarly somewhat unorthodox. Full diplomatic privileges and immunities (currently governed by the 1961 Vienna Convention) are traditionally accorded only to the diplomatic missions of sovereign states; international organisations are accorded a lesser status (Satow, 1979). Since the early 1990s, however, Commission delegations have progressively acquired full Vienna Convention privileges and immunities, with the head of delegation accredited at head of state level (and, for the more senior, with the personal rank and courtesy title of ambassador) and figuring in the diplomatic list immediately after the heads of mission of sovereign states and before those of international organisations (see European Commission, 2004: 36; Karalus, 2009: Part II). Achieving such status was not, in most cases, a major problem since host countries were normally demandeurs for the establishment of a delegation and had already diplomatically recognised the EC/EU by accrediting their own ambassadors in Brussels.

By the time of the entry into force of the Lisbon Treaty, the network consisted of over 130 delegations, including seven accredited to international or regional organisations. These are today a central plank in the external action of the EU, particularly since the devolution of project management tasks from Brussels to the delegations in the so-called ‘deconcentration’ exercise that took place, as part of the wider reform of the management of EU external assistance, between 2000 and 2004. This is described in detail in Spence (2004: 69–71) and European Commission (2000 and 2001). It is important to note that, until the entry into force of the Lisbon Treaty, all these delegations were – as indeed the Commission has always maintained – delegations of the Commission, not of the EU, or even of the EC. In principle their right to represent the EC/EU was thus limited to those issues of Community competence where there was an established EC position or where (e.g. trade, competition, agriculture) the Commission itself had delegated executive or negotiating powers. In practice (as Bruter, 1999; Spence, 2004; and Edwards and Rijks, 2008 point out) their profile has in most cases been a rather broader one. Nevertheless, and particularly for CFSP issues, life has generally consisted of a rather delicate pas de deux with the local embassy of the member state holding the presidency, as well as with the colleagues of the other member states (well illustrated in Edwards and Rijks, 2008; and Bale, 2002). Herein lies the greatest change introduced by the Lisbon Treaty.
The formal framework

The Lisbon Treaty provisions relating to the new EU delegations (Article 221 TFEU) are distinctly short on content and long on omission. The divergences of opinion in the European Convention of 2002–3 led the latter to opt for the ‘compromise’ formula of the triple-hatted HR/VP, rather than the full integration of the HR into the Commission.10 There was, however, only partial agreement on the consequential question of how to structure the services that would support the HR/VP’s various hats.11 Even this was watered down in the final text of the draft Constitution;12 and further still in the Constitutional Treaty itself as a result of the deliberations in the IGC.13 The end result,14 which was incorporated unchanged into the Lisbon Treaty, thus limits itself to providing that Union delegations shall represent the Union; that they shall be placed under the authority of the High Representative; and that they shall act in close cooperation with member states’ diplomatic and consular missions. There is no mention of how these delegations are to be created, of how they are to be staffed, or of what their relation should be to the rest of the EU institutional structure.

By mid-2005, however, when preparatory work on the EEAS was abandoned following the Dutch and French referendums, there was already a broad consensus that the existing network of Commission delegations should become the future Union delegations (Council of the European Union, 2005). Despite reservations by the Commission, most member states by then also considered that the delegations should be an integral part of the EEAS, which should itself be so structured as to assist the minister in all his functions, including that of Commission vice-president. There was indeed a certain organisational logic to all of this, even if it did not entirely correspond to the text of the Treaty and may, as we shall see below, have resolved one set of institutional ‘boundary’ issues at the expense of creating another. It was nevertheless the view that ultimately carried the day in the guidelines for the EEAS adopted by the European Council of October 2009, as part of the implementation of the Lisbon Treaty (Council of the European Union, 2009). These state inter alia that ‘with the entry into force of the Lisbon Treaty, the Commission’s delegations will become Union delegations under the authority of the HR, and be part of the EEAS structure’.

The European Council thereby effectively ordained that the organisation and functioning of the new Union delegations should be established in the same manner as for the EEAS as a whole: namely, by a decision of the Council, acting on a proposal by the High Representative, after consulting the Parliament and obtaining the consent of the Commission (Article 27 (3) TEU). Several months of bitter inter-institutional infighting were to follow (see Financial Times, 2010; European Voice, 2010a and 2010b; Behr, Siiitonen and Nykänen, 2010) before the Council’s Decision on the organisation and functioning of the EEAS (Council of the European Union, 2010) was finally adopted in July 2010. The Decision includes extensive provisions on the new Union delegations (see further below).

Meanwhile, in line with the European Council conclusions, all Commission delegations were re-titled ‘EU delegations’ on the entry into force of the Treaty of Lisbon on 1 December 2009. Initially, this was just a ‘nameplate’ operation. Legally and functionally, delegations remained delegations of the European Commission, managed and staffed by the latter, until 1 January 2011, when the ‘relevant Commission services’, together with the related infrastructure, were transferred to the EEAS in accordance with the Council decision.15 Many delegations, moreover, will become ‘real’ EU delegations only when they have received the necessary reinforcement to cope with the additional tasks involved.

How does the new set-up differ from the status quo ante?

In many aspects, the new EU delegations will closely resemble their Commission predecessors. The traditional tasks of representation, political and economic reporting, promotion of trade
and economic relations, implementation of assistance programmes and public diplomacy will continue much as before. There are essentially three areas where important changes will occur: CFSP issues, staffing and reporting structure.

**CFSP issues**

Under the Lisbon Treaty, the task of representing the EU externally for CFSP questions, which the Maastricht Treaty had assigned to the rotating presidency, passes to the High Representative, assisted by the EEAS. Outside the EU, this role will be assumed by the new EU delegations. This will be by far the most visible consequence of the Lisbon Treaty in third country capitals, where until now the EU has been represented by two separate diplomatic missions: the delegation of the Commission and the local embassy of the rotating presidency. Henceforth there will be only one, covering all EU matters.

The previous arrangement was certainly not conducive to the presentation of a unified external image for the EU, or to the effective conduct of EU diplomacy; the waters being even further muddied by the activities of the various EU special representatives reporting to High Representative Solana. The precise division of responsibility between Commission and presidency was seldom clear. Matters were further confused by the ever-present temptation to use the presidency ‘hat’ to pursue issues of primarily national concern.

The transfer to the new EU delegations of the presidency’s former CFSP functions has been taking place progressively over a transitional period to allow time for the necessary reorganisation and – in many cases – reinforcement of the former Commission delegations, with many delegations meanwhile continuing to work in close cooperation with the local embassies of the rotating presidency in fulfilling their new functions.

In most third country capitals, the additional tasks involved are not that onerous, consisting principally of the local organisation of summits, ministerial meetings and other ‘political dialogue’ and ‘troika’ activities; and of the organisation and chairing of the local cooperation between EU missions. In all cases the local Commission delegation was in principle already fully associated. Commission delegations in the countries concerned have also borne much of the local burden of supporting EU military and police missions and EU special representatives. The situation is obviously rather different at the UN and some other international organisations.

In order to perform their new duties credibly, however, and to provide effective support for Ashton in all her three capacities, delegations will need in addition to become more ‘political’. They will need to be accepted as regular and valuable interlocutors within foreign and security policy circles in their host country (including by their EU colleagues); and no longer seen just as trade and development partners. The quantity and quality of political and economic reporting will need in many cases to be improved. Most Commission delegations did not have a political counsellor or political section. During the ‘deconcentration’ exercise the emphasis was primarily on enhancing financial and management skills. There will now be a corresponding prioritisation of political and diplomatic skills, both via staff training and by the addition to their strength of career diplomats from member states.

**Staffing**

All posts of head of delegation and deputy head of delegation in the new EU delegations will be held by officials of the EEAS, which will also provide the staff of the political, administrative, and information and public diplomacy sections. Initially, most of these posts will be held by former Commission officials, since the 440 Commission officials occupying them in the former
Commission delegations were transferred *en bloc* with their posts to the EEAS on 1 January 2011 (Council of the European Union, 2010: Article 7 (1) and Annex). This will change over time, as the medium term objective is that at least a third of administrative grade posts in the EEAS should be occupied by personnel from the diplomatic services of the member states, appointed as temporary agents (Council of the European Union, 2010: Article 6 (9)). A number of such appointments have already been made to head of delegation and deputy head of delegation posts in the 2010 rotation exercise.¹⁹

However, all posts dealing with the implementation of the Union budget and Union policies other than those under the remit of the EEAS will be filled by Commission employees (officials, contract agents and local staff). The latter will thus constitute the vast majority of staff in most EU delegations, since the workload will continue to be dominated by the implementation of development assistance programmes, trade issues and other economic policies such as agriculture, fisheries, environment, transport and RD as well as by new areas such as justice and home affairs and health. None of these falls within the remit of the EEAS. There were around 1,450 officials in the EU delegations following the transfer of staff. Of these, nearly 900 were Commission officials and only around 550 EEAS officials (mainly – as noted above – Commission officials who have been transferred). Of the nearly 6,000 other staff (mainly contract agents and local staff) in the former Commission delegations prior to the transfer, only around 1,700 were transferred to the EEAS. The modest strengthening of delegations that is progressively taking place to meet the extra burden of CFSP/CSDP issues will not radically alter this picture.

Commission staff working in EU delegations now figure on the establishment plan of their ‘home’ directorate-general in the Commission, on whom they will also depend for career and promotion purposes. In most cases, this will be DG TRADE, DG Enlargement or the newly formed DG DEVCO (Development and Cooperation – EuropeAid).²⁰ This is a consequence of the disbanding of the Commission’s former DG RELEX, on whose strength they previously figured.

**Reporting structure**

The command and control structure governing the new EU delegations, like the above staffing arrangements, reflects the need to respect the specific institutional and decision-making provisions that apply in the different areas of EU external representation. Delegations are thus an integral part of the EEAS, under the authority of Ashton (Council of the European Union, 2010: Article 1 (4)). The head of delegation is accountable to the high representative, from whom he receives his instructions, and has authority over all staff in the delegation, whatever their status, and for all its activities.

However, in areas where the Commission is exercising its treaty powers, it too may issue instructions to delegations, to be executed under the overall responsibility of the head of delegation (Council of the European Union, 2010: Article 5). Given that the Commission is responsible for ensuring the external representation of the EU in all areas except the CFSP and the monetary policy of the euro zone, this potentially covers a wide field. Indeed, in a world where foreign policy is no longer just a combination of skilful diplomacy and military force, the Commission’s responsibilities in the wider realm of external policies will mean a crucial role for the latter and its president (Missiroli, 2010). The Commission may furthermore make a head of delegation sub-delegated authorising officer, on its behalf, for the implementation in the country in question of operational credits in relation to EU external cooperation programmes (for the management of which the Commission remains responsible).
At first sight this is not hugely different from the reporting structure of the former Commission delegations. The latter were under the overall authority of the Commissioner for External Relations, with ‘functional’ cross-reporting to other Commission directorates-general on matters such as trade, development, enlargement, agriculture, environment, justice and home affairs, energy and transport. EU delegations will be under the overall authority of the High Representative, who is at the same time the Member of the Commission responsible for External Relations, and will maintain the same ‘functional’ cross-reporting links to other Commission departments.

But the institutional dynamics will be very different. The new EU delegations will be under the overall control of an independent service (the EEAS) that will be predominantly intergovernmental in nature since its primary function will be to manage the CFSP/CSDP. Commission staff in delegations and the home departments to which they now belong, and to which they report will, by contrast, be concerned to ensure that the Commission’s institutional prerogatives under the treaties are not undermined by having to be exercised under the aegis of an intergovernmental foreign policy. The reporting structure will thus be more complex, and potentially more conflictual, than was the case for the former Commission delegations. It is not immediately obvious how cases of conflicting instructions will be resolved. Making the new system work smoothly will require not only political determination, but also a fair amount of good will and common sense on all sides.

**Similarities and differences between the EU’s diplomatic network and that of a sovereign state**

The question of whether the EU possesses a ‘real’ diplomatic network has been addressed, in scholarly literature, from two main angles: the special characteristics of Commission delegations; and the changing nature of diplomacy itself. Bruter (1999) analyses in detail the particularities of being ‘an embassy without a state’. Karalus (2009) compares and contrasts the institutional and procedural characteristics of the EU’s diplomatic representation with those of a traditional diplomatic network. Bátora (2005) argues that the process of European integration may challenge the ‘logic of appropriateness’ upon which diplomacy as an institution is based. Keukeleire, Thiers and Justaert (2009) and Keukeleire, Smith and Vanhoonacker (2010) argue that the changing nature of diplomacy, away from purely inter-state relations in favour of strategic and structural diplomacy, involving multiple stakeholders, has increased the relevance of the EU, whose institutions and instruments are well suited to the latter. See also Hocking and Bátora (2009).

Certainly, by modern standards of diplomacy, the Commission delegations ultimately became full participants in the diplomatic arena. They were universally recognised as full diplomatic missions, akin to those of sovereign states, under the Vienna Convention. Already in 1982, during the formative years of the Commission’s external service, a senior UK career diplomat, Adrian Fortescue, concluded, in a report drawn up for the Commission on the external competences of the Community, that ‘the Commission has a nucleus of a foreign service. Its external delegations are doing work directly comparable to Member State embassies. They cover a narrower field but involve the same techniques of negotiation, representation, confidential dealings with governments and international organisations, and political and economic analysis’ (European Commission, 2004: 29). Yet, while there were indeed many similarities to national embassies, there were also some important differences.

Perhaps the most fundamental was that delegations not only did not represent a state; they did not even represent their own unique supranational organisation, only one of its institutions (Bruter, 1999). Moreover, because of the Maastricht pillar structure, and the continued existence of
member state embassies, the EU lacked a united foreign service comparable to that of a nation state, taking and channelling information, via a foreign ministry to a unitary central administration (Raube, 2008).

Fortescue highlighted the important area of personnel management. Unlike national administrations, the Commission never really developed a proper career foreign service. Initially, the staffs of its external delegations were not properly integrated into the Brussels personnel structure. Indeed, those working in the delegations in the ACP countries were, as already mentioned, not even formally employed by the Commission. A series of reforms in the 1980s and 1990s brought staff policy more into line with that prevailing in national administrations, particularly as regards regular rotation of delegation staff and greater mobility between headquarters and delegations. But serving in delegations was never the exclusive preserve of those working in the external relations departments of the Commission; nor did senior posts abroad have the same cachet as in most European foreign ministries. Proper career management and training structures have remained an elusive goal, provoking continued doubts about the ‘professionalism’ of the service (see Duke, 2002).

Another important difference has been the much greater reliance by the Commission on locally recruited staff who are nationals of the host country (European Commission, 2004: 46–48). This approach has both advantages and drawbacks. On the plus side, local staff provides corporate memory and local knowledge and are cheaper to employ. On the minus side, they cannot by definition be security cleared, which limits their range of work. This has led the Commission in recent years to rely increasingly, despite the higher cost involved, on contract agents recruited from the EU member states.

The new EU delegations will, in two important respects, be more similar than their predecessors to traditional diplomatic missions. Firstly, delegations will represent the EU as a whole, and no longer just the European Commission. Secondly, they will be an integral part of a single EU ‘Foreign Ministry’. There will however still be no unitary central administration: responsibility for EU external policy will be divided between the new ‘tandem’ of EEAS and Commission.

The resulting command and control structure for EU delegations (see above) will if anything diverge even further from Spence’s ‘ideal gate-keeper’ function (cf. Raube, 2008; see also Hocking and Spence, 2002). Member states moreover will continue to maintain their own separate diplomatic networks.

**Implications for the future of member state diplomatic missions**

The Treaty of Lisbon does not (except marginally in the field of trade) involve any transfer of external competences from the member states to the Union; merely a reorganisation of the manner in which the EU represents itself externally. Nevertheless, it will profoundly affect member states’ diplomatic services in a number of ways.

The most obvious will be the disappearance (see above) of the representational and coordination functions of the rotating local presidency. This development, which has to be seen against the background of the wider transfer of the presidency’s external agenda-setting, brokerage and representational tasks (see Tallberg, 2008), is a double-edged sword. On the one hand, it will relieve embassies of the periodic resource pressures imposed by the holding of the presidency. On the other, it will deprive them of the periodic opportunity of profiling themselves as the representative of the EU – although the value of this has declined as successive enlargements have increased the period between presidencies.

The establishment of the new EU delegations and the possibility for member state diplomats to rotate between their national services and the EEAS will be further factors encouraging
member states (especially the smaller ones) to review the size and extent of their national diplomatic networks. The need for the member states to maintain separate bilateral embassies will not disappear. There will still be areas of activity, traditionally part of the mandate of a national embassy, that are not within the remit of EU delegations: things such as trade and investment promotion, cultural exchanges and defence and intelligence cooperation; as also those issues falling within the scope of the CFSP where there is not, or not yet, a common EU position. Consular work has also traditionally been the preserve of member state embassies, although there are now pressures for EU delegations to take over some of these tasks, particularly in relation to matters covered by the Schengen passport union.

Given the high costs of maintaining an overseas diplomatic network, member state resources are likely to become more focused on those countries where they have specific national interests to defend or promote, leaving the EEAS to carry the burden in those where the common EU interest adequately covers their national concerns. The likely prospects here are analysed in detail by Rijks and Whitman, and Edwards and Rijks (2008). National embassies will continue to be relevant in European external relations, but their role could gradually be transformed from constituting the backbone of European diplomacy to being the fall-back instruments for member states when European diplomacy cannot deliver. Personally, I think this will depend very much on how far the EEAS is seen by member states to be ‘delivering the goods’ and what clout the new EU delegations are seen to be carrying in the countries to which they are accredited.

EU delegations to international organisations – a special case

The entry into force of the Treaty of Lisbon has had major implications for the EU’s representation in international organisations, and at international conferences. Not only is the EU as such for the first time expressly accorded legal personality (Art 47 TEU) – something previously assigned only to the Community ‘pillar’; it also replaces and succeeds the European Community (Art 1 TEU), thereby automatically taking over all the rights and obligations of the Community, including those related to its membership in international organisations. This apparently positive step has paradoxically led to significant problems in ensuring the continued exercise of the EU’s competences in certain international organisations, with serious repercussions for the new EU delegations accredited to them. Foreseeing this, the European Council, in adopting its October 2009 guidelines for the EEAS, noted that ‘Further work is needed on the modalities for the EU delegations accredited to international organisations on a case by case basis’ (Council of the European Union, 2009, point 33). The issue was however not addressed in the Council’s Decision on the establishment of the EEAS, since the latter was concerned only with the internal institutional structure of the EU, not its international status.

The EC was a full member of only a handful of international organisations: primarily the WTO, the FAO, various regional fisheries organisations and certain international commodity agreements. Here there is no problem. But in most organisations of the UN family, as in the OSCE, the EC had (and the EU has consequently acquired) only observer status, with no right to vote and only limited rights to speak. As for the rest, it is present in the G8 and the G20 and ‘participates’ in the work of the OECD, the Council of Europe and the International Energy Agency. The EU has no regular place at all in the World Bank or the IMF. This fragmented and inconsistent state of affairs has, with the entry into force of the Lisbon Treaty, come under increased scrutiny and criticism, both politically (European Parliament, 2011) and academically (Jørgensen, 2009).

In the UN, for the tabling of resolutions, delivery of formal statements, explanation of votes etc., the EU has traditionally relied on the (now disenfranchised) rotating presidency, exercising
its rights as a full member (see Crowe, 2008). Following a botched initial attempt in September 2010,24 the EU succeeded in early May 2011 in obtaining agreement to a UN resolution granting it enhanced ‘super-observer’ status,25 which will resolve most practical problems. The EU will however still be unable to vote, co-sponsor draft resolutions or put forward candidates. This would require full membership. Unfortunately, the resolution reafirms forcefully that this is for sovereign states alone, effectively pre-empting an EU bid anytime soon. Ashton will therefore continue, to a more limited extent, to ‘borrow’ the services of the rotating presidency.26

In the international financial institutions (IMF, IBRD), by contrast, there is little prospect of a permanent EU seat of any sort, or even a single EU constituency, let alone the single EU seat urged by many within the EU.27 The Lisbon Treaty leaves essentially unchanged the arrangements for external representation of the euro zone.

Conclusions: EU delegations as a bridge – or as a battleground?

The creation of the ‘triple-hatted’ High Representative/Vice-President and the establishment of the EEAS would, it was hoped, by bridging the intergovernmental-supranational divide that runs through the EU’s external policy dimension, help improve the latter’s coherence and effectiveness. The elimination of the rotating presidency has reduced the number of actors and should over time increase the consistency of EU policy. The damaging bureaucratic rivalry that previously prevailed between the Commission and the Council Secretariat28 has been eliminated. Responsibility for EU external policy will admittedly still be divided between two separate bureaucracies: the EEAS (for CFSP/CSDP and strategic programming of external assistance) and the Commission (for trade, aid management and all other economic external policy). But the duplication of functions is substantially reduced; and what was previously the most contentious part of the intergovernmental-supranational divide – namely the borderline between the CFSP/CSDP and EU development policy (as highlighted by the ECOWAS judgment of the Court of Justice)29 – has largely been ‘internalised’ within the EEAS by the transfer of responsibilities and staff resulting from the Council’s Decision of June 2010. Moreover, at the ‘sharp’ end, in the new EU delegations, the two bureaucracies will be brought together as one. Delegations, with their new coordination and representation functions for CFSP matters, are thus potentially the most powerful symbol, after Ashton herself, of the unity of the EU’s external action post-Lisbon.

For delegations to operate effectively as a single unit, however, their disparate elements will need to be inspired by a common corporate culture and ethos; and they will need to be fully ‘plugged in’ to the different parts of the Brussels machinery, receiving clear and well-coordinated instructions. Both will be more difficult to achieve than in the erstwhile Commission delegations. Regular two-way mobility between the Commission and the EEAS, properly handled in career management terms, would undoubtedly help towards the former. Central to the latter will be the attitude and behaviour of the Commission DGs in charge of those aspects of the Union’s external action that fall within the responsibility of the Commission, and which Ashton, wearing her Commission Vice-President hat, is supposed to be coordinating (Art. 18 (4) TEU). The credibility of the new EU delegations will be terminally undermined if the EEAS officials at their head are seen not to have the full confidence of these DGs; or if the latter are seen to be establishing their own parallel lines of communication using ‘their’ delegation staff or – worse – (as the Council Secretariat frequently did) the Brussels mission of the host country. This applies particularly to the Trade and Enlargement DGs, both of which have emerged strengthened from the post-Lisbon reorganisation, with their geographical ‘desks’ intact.
Equally important will be the unity and cohesiveness of the EU ‘family’ as a whole. How will member state embassies react to the transformation of their role? Will the negative ‘socialisation’ and ‘epistemic’ effects of the further ‘Brusselisation’ of the CFSP, and the disenfranchisement of the presidency, widen the rift between euro-diplomats and national diplomats or will this be offset by staff interchange with the EEAS (cf. Spence, 2009; Cross, 2007; and Nuttall, 2000: 270–75)?

Even if all goes well, and the new Brussels institutional set-up for CFSP/CSDP is matched as hoped by a corresponding quantum leap on policy substance, there are a number of reasons why third countries will still, in many cases, find it in their interest to maintain parallel bilateral channels of communication with individual member states, especially the larger ones.

Article 26(3) TEU states clearly that the CFSP shall be put into effect jointly by the High Representative and the member states, using both national and Union resources. This, together with Declarations 13 and 14 on the CFSP, will ensure that the member states continue to be important actors alongside the EEAS and its EU delegations. The EU will sing more often from a single hymn sheet and increasingly in unison, but there will not yet be a single voice on ‘foreign policy’ issues.

Nor has the Lisbon Treaty modified the legally complex status quo ante in respect of the many areas of shared competence outside the CFSP field, where both the Union and its member states may legislate and adopt legally binding acts – although the Treaty does set out clearly for the first time (Article 3 TFEU) what these areas are (essentially codifying existing law and jurisprudence). At the Cancun Climate Change conference in December 2010 – a typical example – negotiations were, as in the past, jointly led on behalf of the EU and its member states by the rotating presidency and the Commission, with several individual member states designated as lead negotiators on one or other specific issue and overall coordination assured by the presidency.30

Even in areas of exclusive EU competence, the predominance of the Council in the EU’s external decision-making and the retention of the rotating presidency for all Council configurations except foreign affairs will mean that individual member states will still be worthwhile interlocutors for third countries.

This somewhat messy situation inevitably colours the attitude of even close partners of the EU towards full EU membership in many international organisations. There is deep reluctance in many capitals to tampering with the present balance of membership, financial contributions and voting rights for fear of where it may lead. Yet, if the new EU delegations are to play their full part in enhancing the efficiency and coherence of the EU’s external policy dimension, a way forward needs to be found. As in so many other areas of EU life, this may need to be a sui generis solution, reflecting the sui generis nature of the EU within the global international order. The recent agreement reached in the UN shows that, with sufficient unity, persistence and persuasion, pragmatic and practical solutions can be found, even if they are not institutionally perfect.

Notes

1 All Treaty references, unless otherwise stated, are to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) as they result from the Treaty of Lisbon.
2 Piris’s account is of particular interest since, as Head of the Council’s Legal Service, he was a key participant.
3 See in particular Donnelly and Haselar, 2006; Laursen, 2010; Wessel, 2008; Wessels and Bopp, 2008; and Whitman, 2008.
4 Arts 228 and 229 of the original EEC Treaty of Rome, which ultimately became Arts 300 and 302 of the EC Treaty (Nice version).
5 Originally Art. J.5 (1) TEU (Maastricht); latterly Art. 18 TEU (Nice).
6 A concept first introduced by the Single European Act of 1987 and found latterly in Article 20 TEU (Nice).
7 See e.g. Fourth ACP-EEC Convention, Art. 316.
8 In most cases via the negotiation of an establishment agreement with the host authorities; in a few cases (e.g. Canada and the USA) by Executive Order, in accordance with host country practice (which can sometimes result in better treatment, e.g. as regards precedence, than that normally sought by the Commission).
13 See successive Presidency proposals for Arts. III-197 and III-230 in CIG docs 50/3, 60/3 ADD 1, 73/04, 76/04 and 79/04.
15 Duke, 2004 argues (p. 6) that the change would result automatically from the assumption by the Union of legal personality. That would however be so only if the Commission delegations had been delegations of the Community, which they were not.
16 Art. 18 TEU (Nice).
17 Art. 20 TEU (Nice).
18 Arts 18 (4) and 27 TEU (Nice).
20 Created by the fusion of DG AIDCO with those former DG DEV posts that were not transferred to the EEAS.
21 For Commission delegations, the President of the Commission was by definition the ultimate arbiter.
22 Fortescue had served in the cabinet of External Relations Commissioner Sir Christopher Soames and was later to occupy a number of senior posts in the Commission.
24 See UN doc. GA/10983.
28 Well analysed, with several useful additional references, in Dijkstra, 2009.

References

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