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## **Proposal for the establishment of the EEAS**

**Working document by Elmar Brok (AFET), and Guy Verhofstadt (AFCO),  
rapporteurs on EEAS**

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This paper has been elaborated following a broad consultation within the Parliament, based in principle in AFET and AFCO, but engaging also all the committees involved in the process of the establishment of the EEAS (COBU, JURI, DEVE, INTA, CONT, FEMM). This process is ongoing and common language is to be found on amendments to the draft Council Decision establishing the EEAS as well as on the amendments to the Financial Regulation and the Staff Regulation.

The aim of this paper is to set out an ambitious and realistic framework for the European External Action Service (EEAS). It approaches the issue from examining the Treaty and ensuring that the EEAS will be an effective service, able to support the development of a more coherent and effective EU foreign policy. However, if the Parliament is to be able to support the establishment of the EEAS and provide it with political legitimacy, it is critical that a number of essential points are addressed. These primarily concern budgetary prerogatives, political accountability, including the hearing of top EEAS staff by the European Parliament prior to taking up their posts, as well as the need for a strengthened consultation mechanisms regarding Council decision-making on the Common Foreign and Security Policy (CFSP) (*see Annex III - Key principles concerning parliamentary control rights*).

### **Purpose**

The EEAS is essential in order to ensure that the Union's external relations are more coherent and efficient and that their profile is raised. The establishment of the EEAS will enable the Union to raise its visibility in foreign policy in a way that is commensurate with its existing international trade and economic status and enhance the EU's capacity to act effectively in the international arena and pursue its values as laid down in Article 21 TEU.

The EEAS must be a logical extension of the *acquis communautaire* in the sphere of the Union's external relations, and lead to closer coordination between the CFSP and the external policies realised in accordance with the Community model. The EEAS, which shall integrate the Union delegations abroad, will not be a competitor for Member States' diplomatic representations but complement them.

The establishment of the EEAS must contribute to the avoidance of duplication, inefficiency and wasteful use of resources as regards the Union's external action. This can only be achieved by creating an EEAS which is an integrated platform of all relevant CFSP and Community services that can work to support the Union in defining single political strategies for addressing the growing range of international challenges over the decades to come.

### **EEAS Institutional Aspects**

The mandate of the High Representative/ Vice President of the Commission (HRVP) is outlined in Art. 18 TEU.

In Article 27.3 TEU, which is the legal base for the establishment of the EEAS, it is described as a 'service' that will assist the HRVP. There are no precedents for a structure such as a 'service' and no clear definition of what a service should be. Clearly the EEAS cannot be an 'institution' as these are determined by the Treaty. Neither can it be an 'agency' or an 'office' as their remits are more limited and specific.

As none of the possibilities mentioned above can be used, it must therefore be linked to an existing institution. However, due to the specific *sui generis* nature of the EEAS, its statute must clearly define its role and the mechanism for interaction with the institutions. In view of the fact that a large majority of elements that will form part of the EEAS's duties are currently part of the Commission's competences (including development aid and neighbourhood policy) and that the Commission possesses the necessary know-how in both administrative and budgetary matters, it is clear that the EEAS and the European Commission should be linked. Concretely, the EEAS should be an **autonomous service** that:

- is in administrative, organisational and budgetary terms linked to the Commission, as for example OLAF;
- serves to support the definition and implementation of Council or Commission (or even both) decisions in accordance with the division of competences foreseen in the Treaty;
- is accountable to the European Parliament, both in political and budgetary terms;
- has staff appointed by the VP/HR
- assists the HRVP in her work, as described in Title V of TEU, in particular Articles 21, 22, 24, 27, 36 and 40.

The EEAS is not a decision-making body, but a service that supports the VP/HR in her role in Council and Commission decision making, as laid down in the Treaty. The general Guidelines of CFSP – and indeed Common Security and Defence Policy (CSDP) – must be agreed by the European Council acting unanimously (Article 26.1 TEU). The Council can frame the CFSP and the decisions to define and implement it on the basis of the European Council's Guidelines (Article 26.2). The Council can also take decisions to define the approach of the Union to a particular matter, thematic issue or geographical area (Article 29 TEU). The HRVP has a right of initiative in all these areas (Article 30 TEU) and is also responsible for the implementation of the CFSP (Article 27.1). Within policy areas that fall within the competence of the Commission, decisions will need to be made within the College. Finally, CFSP implementation will require action by the Commission and /or the Member States.

Whilst promoting the closest integration possible between the different components of the EU external action, a mechanism will need to be found within the EEAS to ensure that the

prerogatives of the Council are fully respected in the area of CFSP (in accordance with Articles 17, 24 and 40 TEU).

## Architecture

Article 21 TEU describes the values and objectives to be pursued by the Union. In order to ensure coherence in the pursuit of these objectives, the EEAS will need to include all those services and functions that will strengthen the EU's capacity for coherent action. This concerns all classic elements, (such as safeguarding EU values and its fundamental interest), but it also includes elements that are more traditionally included in the development policy arena, in line with Art 208 TFEU, as explained below. The EEAS shall also duly mirror the principle of gender equality in its structure and action as enshrined in articles 2 and 3 TEU.

In translating the Treaty into a practical outcome, the EEAS is to include competences for the following items:

- Bi-lateral geographic desks;
- Multilateral relations - such as UN, OSCE, international law;
- Crisis Response - both through conflict prevention and peace building policies but also in the ability of the Union to intervene when faced with man made or natural disasters;
- Crisis Management
- Development - through ensuring that policies lead to sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
- Human Rights and Democracy promotion - through the strengthening of EU Human Rights policy, including its mainstreaming into all aspects of EU external policy and full application of the Charter of Fundamental Rights in all these aspects;
- Environment - through contribution to the development of international measures for sustainable management of global resources.
- The integration of the external aspects of other Community policies (justice, freedom and security, migration, asylum, fishery policy etc.) with due respect to the prerogatives of the relevant directorates general in the Commission.

Several of these services are currently spread out between the Commission and the Council, and for the EEAS to be effective, they must be brought together. It is essential that coherence is ensured between the programming of external assistance and its implementation. Programming and implementation is to be realised under the Commissioner responsible in order to ensure coherence and avoid divergences between political goals and implementation of the financial assistance on the ground, as has been the case in the past.

Another underlying principal must be the avoidance of duplication. The Treaty, again in Article 21 TEU states that *'The Union shall ensure consistency between the different areas of its external action and between these and its other policies'*. This therefore suggests that if the EEAS is to play a key role in the framing of external policy, it must also have all the required tools at its disposal without duplicating services in other institutions.

Duplication can only be entirely prevented by attaching the EEAS to the Commission in terms of administration and budget. This would concern, among other issues, personnel management, logistics, IT services and offices. The Commission already has considerable experience in this field as it currently provides such services for its external relations DGs and its delegations in third countries. Rather than duplicating these services within the EEAS, it would make sense for them to be provided directly by the Commission.

The current Council crisis management structure (CMPD, CCPC and EUMS) as well as the current Commission crisis response and peacebuilding structure shall be grouped under a common the Crisis Management Directorate which shall form an integral part of the EEAS. In budgetary and administrative terms, this Directorate shall fall under the managerial authority of the Director General of the EEAS. The CFSP budget and Instrument for Stability shall be integrated into this Directorate

This Directorate shall have, in view of the specific functions of the civilian and military capabilities, a direct operational chain of command to the HRVP.

Since Article 208 TFEU requires that "the Union shall take account of development cooperation in the policies that it implements which are likely to affect developing countries", all Commission services, including the EEAS, must ensure that external and other policies do not act to the detriment of poverty eradication or other objectives of development policy.

Close coordination needs to be ensured with DG ECHO under the authority of the Commissioner for Humanitarian Aid, while respecting the European Consensus on Humanitarian Aid and the principles and good practice of humanitarian donorship as endorsed in Stockholm in 2003. The ECHO DG should also be further developed by integrating the proposals set forth by Michel Barnier concerning the establishment of a European Civil Protection Force. Crisis situations, such as Haiti, also underline the role of the Instrument of Stability and the need for close coordination between the HRVP, the Commissioner for Humanitarian Aid and the relevant EEAS structures.

In areas which are not directly of its competence, such as trade, climate change, environment, immigration, energy, justice, freedom and security, the EEAS must develop a strong interface with the relevant Commission services. The EEAS must take these sectoral policies into account when formulating its policies and vice versa, as the sectoral services must consider external policy elements within their own areas without compromising or contradicting EU external policy priorities.

Also, the EEAS needs to dispose of dedicated staff, including in EU Delegations, in charge of parliamentary matters, promoting parliamentary capacity building in third countries, in close coordination with the European Parliament's human rights and democracy promotion activities and for providing support (incl. logistic and security matters) to EP activities abroad.

A clear commitment to a structured dialogue between the EEAS and civil society is to be demonstrated in order to ensure appropriate consultations are held.

### **Leadership / Policy Coordination Body**

The EEAS will be headed by the HRVP. But the HRVP will need to refer to the Council or to the Commission or in some cases, even both when implementing decisions of those institutions. As stated before, the EEAS is a service which is to be responsive to these two political chains of command. Furthermore, the HRVP is also chair of the Foreign Affairs Council, a position that requires both dealing with the input and output of such Council

meetings. In effect, the HRVP is not only double hatted – incorporating both the Council and the Commission – but triple hatted in her role as chair of the Foreign Affairs Council. In these circumstances it will clearly be necessary to provide effective and legitimate deputisation.

One possible solution would be the establishment of deputies to the HRVP. These nomination would be quasi political and Article 33 TEU could provide a perfect legal base (see Annex 2). This article describes the procedure for the nomination of EU Special Representatives providing them with a mandate in particular policy areas under the authority of the HRVP. There are no limitations set on the mandate and it can clearly be either geographic or thematic in nature. Deputies nominated on this basis, and heard before European Parliament's responsible committee before taking up their duties, would dispose of the necessary political legitimacy to effectively deputise for the HRVP and engage in political dialogue with third parties.

An alternative solution would be to include directly in the Decision on the establishment of the EEAS the procedure for the nomination of the deputies. This could provide for the HRVP to nominate a candidate that would then have to be agreed by the Council using QMV, and heard by the EP's responsible committee before taking up their duties. The Decision would have to stipulate, as does Article 33 TEU, that the deputies are under the direct authority of the HRVP. A procedure for their removal could also be included.

In principle, the deputies' term of office is to be identical to the one of the HRVP (5 years).

The HRVP shall be able to consult and concert with the three Commissioners in charge of related issues (Development, Humanitarian Aid and Neighbourhood) and the HRVP deputies. This consultation will take place within the Policy Coordination Body which would ensure that the HRVP had been presented with all issues pertaining to a specific proposal prior to framing it. Consultation within this Body would be required and thereby provide coherence and ensure all viewpoints had been appropriately considered. However, the final decision concerning EEAS proposals would fall to the HRVP, prior to submitting them to the College or the Council, as envisaged by the Treaty. In the case of the competence clearly falling into areas covered by one of three Commissioners, the same process would apply but the relevant Commissioner would have the final decision. In the case of joint competence, such as development, the Commissioner responsible formulates development cooperation policies for decision, which will be taken jointly by both the Commissioner and the HRVP and presented jointly to the College of Commissioners for final decision. The main purpose of the consultation between the Commissioners, the deputies and the HRVP is to promote and ensure coherence, but this should and would in no way affect the prerogatives of the competent Commissioners with respect to the College of Commissioners, and the rights and duties of the HRVP in her area of competence, as laid out in the Treaty.

A Director General is to ensure, under the authority of the HRVP, the administrative and budgetary management of the whole service, including delegation of the appointing authority.

### **Appointments to senior EEAS positions**

Two alternatives exist concerning the procedure for appointments to senior EEAS positions, beyond the deputies mentioned above, as well as for appointments to Heads of EU delegations.

The first would be to divide the areas of responsibility within the EEAS between the Council and the Commission. In such a case, the Commission or Council would propose a nominee but the final decision would be with the HRVP.

Another option would be to establish a selection panel composed of representative from the Council and the Commission. These could be former diplomats or former high level EU civil servants. Importantly, the panel must not be composed of representatives from all Member States and should also be able to establish its own selection criteria whilst respecting the principles of merit, geographical and gender balance. The panel would then be tasked with making recommendations to the HRVP on possible appointees to internal EEAS positions or to the external delegations. However, the final decision on appointment would fall to the HRVP.

Appointees to senior EEAS posts and strategically important political positions on the ground (Heads of Delegations, EUSRs) are to be heard by the relevant parliamentary committee, before taking up their duties, so as to provide them with sufficient political legitimacy and authority.

### **Democratic accountability**

The EEAS is to support the HRVP in her political relationship with the European Parliament and in ensuring the political and budgetary accountability of her action. Therefore the Council Decision establishing EEAS must explicitly refer to this principle. The current proposal as presented by the HRVP on 25 March 2010 lacks such a reference and is therefore not acceptable.

In particular, the HRVP supported by the EEAS shall consolidate the consultation and reporting duties so far accomplished by Commission, Council and Rotating Presidency in the area of external action (incl. art. 36 TEU). The Parliament shall be consulted on all draft proposals for Council decisions with regard to Parliament's rights concerning international agreements and budgetary implications of EU external action (e.g. mandates for operations, mandates for negotiations of international treaties, strategies, etc.).

Also, as mentioned above, appointees for senior EEAS posts, incl. Heads of Delegations and EUSR's need to appear in front of the Parliament's responsible committee so as to provide them with political legitimacy and authority.

Detailed functioning of the relationship between the EEAS and the Parliament, including, inter alia, the question of participation of the HRVP and her deputies in parliamentary proceedings, access to EEAS documents and briefings, or the issue of security arrangements for parliamentary delegations to third countries, is to be set out in a separate agreement, to be agreed before the Council decision is adopted.

### **Budgetary accountability**

The prerogatives of the budgetary authority - including explicit right of discharge - are to be fully safeguarded.

The appropriations for the EEAS should be entered under a special budget heading which will form part of the section III of the general budget of the European Union.

A clear distinction between administrative and any residual operational expenditure (Heading IV) must be made. The principle of full transparency to the budgetary authority should apply to all activities, irrespective of their financial base, carried out in the name of the Union in external relations. Also, full budgetary transparency regarding the

establishment plan of the EEAS is to be guaranteed.

In addition, the 2006 IIA on budgetary discipline concerning EP's prerogatives regarding CFSP/CSDP budget needs to be revised, including the need for new rules on the flexible use of the CFSP budget for civilian CSDP missions, need to restructure the CFSP budget so as to establish budgetary lines for operations, and the full transparency over military crisis management operations (in particular the use of the start-up fund). The MFF regulation should also be modified in order for the specificities of the CFSP budget to be taken properly into account.

### **Financial Tools**

All the strategic programming of external assistance instruments should be done within the EEAS. This concerns the Development and Cooperation Instrument (DCI), the European Development Fund (EDF), the European Neighbourhood and Partnership Instrument (ENPI), the European Instrument for Democracy and Human Rights (EIDHR). It is essential that also the programming of the Instrument for Stability (IFS) is undertaken by the EEAS. The service shall also assist the HRVP as regards operational expenditure under the CFSP budget.

Proposals for programming documents under these instruments will be agreed jointly by the HRVP and the competent Commissioners and presented to the College for the final decision. In case of disagreement between the HRVP and the competent Commissioner, the decision will be made by the College of Commissioners.

As already underlined above, close coordination between the EEAS and the Commission services implementing the EU external assistance needs to be ensured.

The democratic scrutiny rights of the European Parliament over the strategic programming of EU external assistance instruments are to be strengthened. The committee responsible is to be involved in consultation over all strategic programming (country allocation, country and regional strategy papers, national and regional indicative programmes) drafted by the EEAS. The outcome of ongoing negotiations on delegated acts will have to be reflected.

### **Staff matters**

The principles set out below need to be included in the Council Decision establishing EEAS and/or the Staff Regulations; the current proposals by the HRVP and the Commission are not satisfactory in this regard.

The loyalty and independence of all EEAS staff regardless of origin needs to be guaranteed. Therefore, all three initial components have to be treated equally, with the same **rights and duties** and with the HRVP as the appointing authority for all staff.

For employment of staff originating from the national diplomatic services, a new category of temporary staff engaged on an open-ended basis is to be created. Specific rules will be laid down in the Staff Regulations defining in what circumstances and by whom the employment of such staff can be brought to an end. Employment as a temporary staff member in the EEAS excludes any *passerelle* to work in other EU institutions, agencies or bodies.

Such temporary staff are to be recruited on the basis of the normal recruitment procedure laid down in the Staff Regulations, which is based on clear procedural

requirements designed to recruit staff of a high quality. All EEAS staff must be selected on the basis of an objective assessment of merit defined in terms of skills and expertise relevant for tasks of EEAS, and in line with the principle of gender balance.

The legitimacy of the service, building on the sense of ownership by all, strongly depends upon an adequate geographical representativity of its staff of all grades and posts. For that purpose, national indicative recruitment targets should be established for all nationals. The principle of temporary provisions as applied in the Council Regulation 401/2004 shall be laid down for under-represented Member States.

The Decision establishing the EEAS needs to provide that more than half of all AD staff (including Detached National Experts) engaged in the EEAS originate from the Commission.

Officials and qualifying members of the temporary staff of any Union institution or body, including the European Parliament, should be able to apply for vacant posts in the EEAS, following the principle of inter-institutional mobility.

A Code of Professional conduct needs to be drawn up by the HRVP. Also, a common training curriculum/External Action Academy needs to be established in order to reinforce the esprit de corps of the EEAS.

## **EU Delegations**

The Head of Delegation is to be responsible for the execution of all instructions given by the HRVP. Instructions may be issued by the President of the European Council, President of the Commission, members of the Commission or Commission sectoral services, but need to be passed to the delegations via the HRVP and the Head of Delegation. In case of disagreement between a Commissioner and the HRVP, the College of Commissioners should take the decision.

Also, as outlined above, the Delegations need to dispose of dedicated staff in charge of parliamentary matters, promoting parliamentary capacity building in third countries, in close coordination with the European Parliament's human rights and democracy promotion activities, and for providing support (incl. logistic and security matters) to EP activities abroad.

In order to ensure an effective implementation of the EU Human Rights Policy, a focal point on Human Rights and Democracy has to be systematically appointed in each EU Delegation.

EU Delegations shall also develop a structured dialogue with civil society and consult on a systematic basis with local NGOs and Human Rights Defenders.



## ANNEX I

### *Article 21*

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

- (a) safeguard its values, fundamental interests, security, independence and integrity;
- (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
- (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders,
- (d) ***foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;***
- (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
- (f) ***help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;***
- (g) assist populations, countries and regions confronting natural or man-made disasters; and
- (h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.

## **ANNEX II**

### **Article 33 TEU**

The Council may, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issues.

The special representative shall carry out his mandate under the authority of the High Representative.

## **ANNEX III**

### **Key principles concerning parliamentary control rights vis-à-vis the European External Action Service**

The EEAS is to support the HRVP in her political relationship with the European Parliament and in ensuring the political and budgetary accountability of her action:

#### **Budgetary rights**

- The prerogatives of the budgetary authority - including explicit right of discharge - are to be fully safeguarded.
- A clear distinction between administrative and any residual operational expenditure (Heading IV) must be made. The principle of full transparency to the budgetary authority should apply to all activities, irrespective of their financial base, carried out in the name of the Union in external relations.
- Full budgetary transparency regarding the establishment plan of the EEAS is to be guaranteed.
- In addition, the 2006 IIA on budgetary discipline concerning EP's prerogatives regarding CFSP/CSDP budget needs to be revised, including the need for new rules on the flexible use of the CFSP budget for civilian CSDP missions, need to restructure the CFSP budget so as to establish budgetary lines for operations, and the full transparency over military crisis management operations (in particular the use of the start-up fund).

#### **Political accountability**

- In particular the HRVP supported by the EEAS shall consolidate (see Art. 36 TEU) the consultation and reporting duties so far accomplished by Commission, Council and Rotating Presidency in the area of external action. The European Parliament shall be consulted on all draft proposals for Council decisions with regard to Parliament's budgetary or ratification rights (e.g. mandates for operations, mandates for negotiations of international treaties, strategies, etc.).
- The democratic scrutiny rights of the European Parliament over the strategic programming of EU external assistance instruments are to be strengthened. The committee responsible is to be involved in consultation over all strategic programming (country allocation, country and regional strategy papers, national and regional indicative programmes) drafted by the EEAS. The results of the ongoing negotiations on delegated acts will have to be reflected.
- Appointees to senior EEAS posts and strategically important political positions on the ground (Heads of Delegations, EUSRs) are to be heard by the relevant parliamentary committee, before taking up their duties, so as to provide them with sufficient political legitimacy and authority.

Detailed functioning of the relationship between the EEAS and the Parliament, including, inter alia, the question of participation of the HRVP and her deputies in parliamentary proceedings, access to EEAS documents and briefings, or the issue of security arrangements for parliamentary delegations to third countries, is to be set out in a separate agreement, to be agreed before the Council decision is adopted.

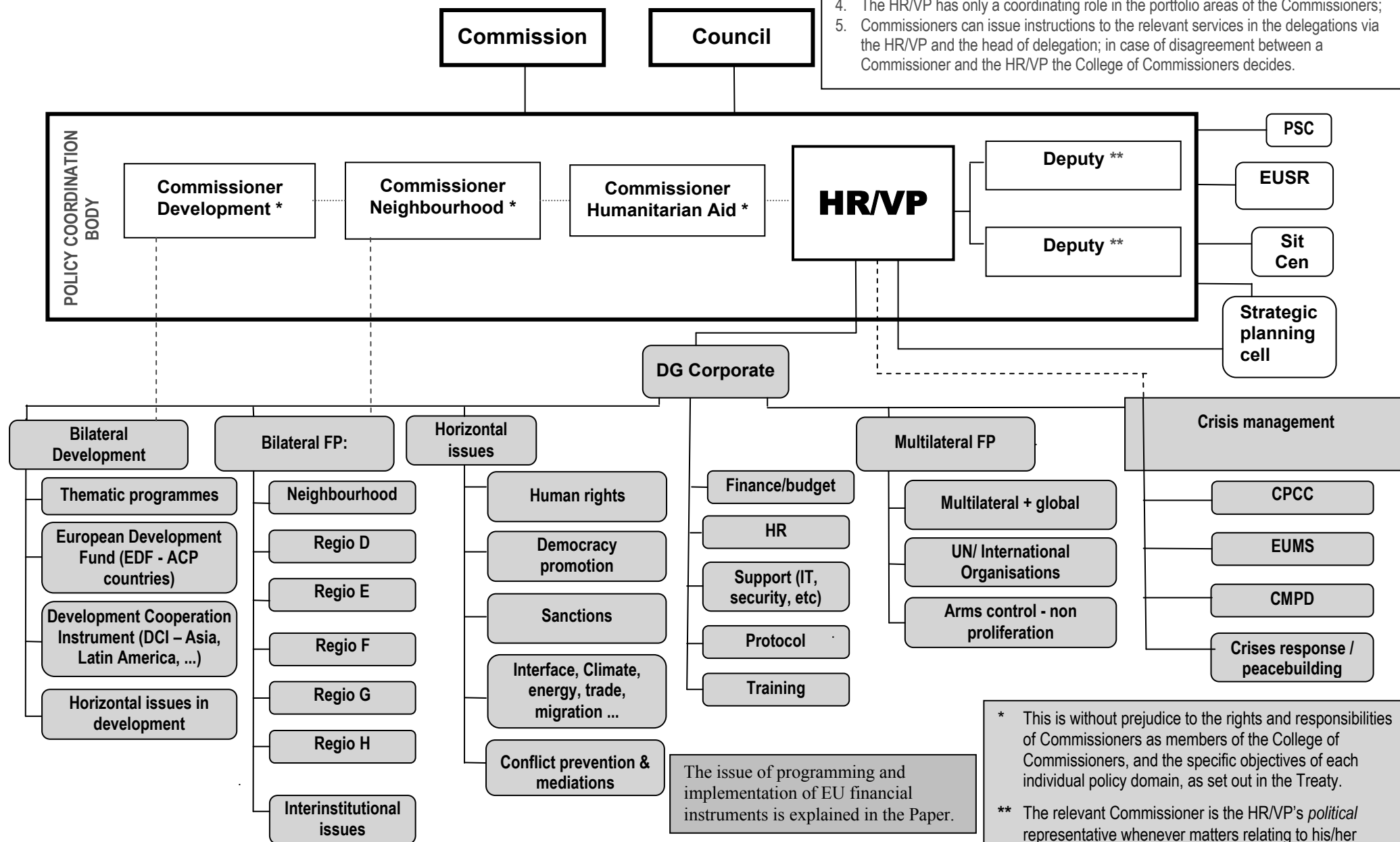


## (Annex IV)

(Dashed lines represent direct access to relevant services – dotted lines represent coordination between Commissioners and HR/VP in order to ensure consistency of external action and policy coherence for development as required by the Treaty)

The following essential conditions apply to the organigramme:

1. Commissioners are not hierarchically under the HR/VP;
2. Commissioners must have direct access to the services responsible for the programming in their portfolio areas;
3. In case of disagreement between a Commissioner and the HR/VP on a programming matter the College of Commissioners decides;
4. The HR/VP has only a coordinating role in the portfolio areas of the Commissioners;
5. Commissioners can issue instructions to the relevant services in the delegations via the HR/VP and the head of delegation; in case of disagreement between a Commissioner and the HR/VP the College of Commissioners decides.



\* This is without prejudice to the rights and responsibilities of Commissioners as members of the College of Commissioners, and the specific objectives of each individual policy domain, as set out in the Treaty.

\*\* The relevant Commissioner is the HR/VP's *political* representative whenever matters relating to his/her portfolio are in question.