

Proposal for a **COUNCIL DECISION**
of (date)

establishing the organisation and functioning of the European External Action Service

(25 March 2010)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 27(3) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy ("the High Representative"),¹

¹ OJ...

² OJ...

³ OJ...

⁴ OJ L 327, 13 December 2007, page 10.

⁵ The Commission will make a declaration to the effect that the High Representative will have the necessary authority in this area, in full respect of the Financial Regulation.

Having regard to the Opinion of the European Parliament,²

Having regard to the consent of the Commission,³

Whereas:

(1) The purpose of this Decision is to establish the organisation and functioning of the European External Action Service ("EEAS"), a functionally autonomous body of the Union under the authority of the High Representative, set up by Article 27(3) of the Treaty on European Union ("TEU"), as amended by the Treaty of Lisbon.

(2) In accordance with Article 21(3), second subparagraph, of the TEU, the Union will 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, will ensure that consistency and will cooperate to that effect.

(3) The EEAS will support the High Representative in fulfilling her mandate to conduct the Common Foreign and Security Policy ("CFSP") of the European Union and to ensure the consistency of the EU's external action. The EEAS will support the High Representative in her capacity as President of the Foreign Affairs Council, without prejudice to the normal tasks of the General Secretariat of the Council. The EEAS will also support the High Representative in her capacity as Vice-President of the Commission, for her responsibilities within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action, without prejudice to the normal tasks of the Commission services.

(4) It results from the Treaty of Lisbon that, in order to implement its provisions, the EEAS must be operational as soon as possible after the entry into force of that Treaty.

(5) The European Parliament will fully play its role in the external action of the Union, including its functions of political control as provided for in Article 14(1) of the TEU, as well as in legislative and budgetary matters as laid down in the Treaties. Furthermore, in accordance with Article 36 of the TEU, the High Representative will regularly consult the European Parliament on the main aspects and the basic choices of the CFSP and will ensure that the views of the European Parliament are duly taken into consideration. The EEAS will assist the High Representative in this regard.

(6) The High Representative, or her representative, should exercise vis-à-vis the European Defence Agency, the European Union Satellite Centre, the European Union Institute for Security Studies and the European Security and Defence College the responsibilities provided for in their respective founding acts. The EEAS should provide these entities with the support currently provided by the General Secretariat of the Council.

(7) Provisions should be adopted relating to the staff of the EEAS and their recruitment. For matters relating to its staff the EEAS should be treated as an institution within the meaning of the Staff Regulations. In accordance with Article 27(3) of the TEU, the EEAS will comprise officials from the General Secretariat of the Council and the Commission as well as personnel seconded from the diplomatic services of the Member States. The High Representative will be the Appointing Authority, in relation both to officials subject to the Staff Regulations of Officials of the European Communities ("Staff Regulations") and agents subject to the Conditions of Employment of Other

Servants. The High Representative will also have authority over the Seconded National Experts ("SNEs") in post in the EEAS. The number of officials and servants of the EEAS will be decided each year as part of the budgetary procedure and will be reflected in the establishment plan.

(8) In order to ensure the budgetary autonomy necessary for the smooth operation of the EEAS, the Financial Regulation should be amended in order to treat the EEAS as an "institution" within the meaning of the Financial Regulation, with a specific section in the Union budget. The EEAS will be subject to the procedures regarding the discharge as provided for in Article 319 of the Treaty on the Functioning of the European Union and in Articles 145 to 147 of the Financial Regulation.

(9) Rules should be laid down covering the activities of the EEAS and its staff as regards security, protection of classified information and transparency.

(10) It is recalled that the Protocol on the Privileges and Immunities of the Union applies to the EEAS, its officials and other agents, who shall be subject either to the Staff Regulations or the Conditions of Employment of Other Servants of the Union.

(11) The European Union and the European Atomic Energy Community continue to be served by a single institutional framework. It is therefore essential to ensure consistency between the external relations of both, and to allow the Union Delegations to undertake the representation of the European Atomic Energy Community in third countries and at international organisations.

(12) This Decision should be reviewed in the light of experience in the beginning of 2014.

HAS ADOPTED THIS DECISION:

Article 1

Nature and Scope

1. This Decision establishes the organisation and functioning of the European External Action Service ("EEAS").
2. The EEAS, which has its headquarters in Brussels, shall be a functionally autonomous body of the European Union, separate from the Commission and the General Secretariat of the Council, with the legal capacity necessary to perform its tasks and attain its objectives.
3. The EEAS shall be placed under the authority of the High Representative of the Union for Foreign Affairs and Security Policy ("High Representative").
4. The EEAS shall be made up of a central administration and of the Union delegations to third countries and to international organisations.

Article 2

Tasks

1. The EEAS shall support the High Representative:
 - in fulfilling her mandate to conduct the Common Foreign and Security Policy ("CFSP") of the European Union and to ensure the consistency of the EU's external action;
 - in her capacity of President of the Foreign Affairs Council, without prejudice to the normal tasks of the General Secretariat of the Council;
 - in her capacity as Vice-President of the Commission for fulfilling within the Commission the responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action, without prejudice to the normal tasks of the services of the Commission.
2. The EEAS shall assist the President of the Commission, the Commission and the President of the European Council.

Article 3

Cooperation

1. The EEAS shall work in cooperation with the General Secretariat of the Council and the services of the Commission, as well as with the diplomatic services of the Member States, in order to ensure consistency between the different areas of the Union external action and between these and its other policies.
2. The EEAS and the services of the Commission shall consult each other on all matters relating to the external action of the Union. The EEAS shall take part in the preparatory work and procedures relating to acts to be prepared by the Commission in this area. This paragraph shall be implemented in accordance with Chapter 1 of Title V of the TEU, and with Article 205 of the Treaty on the Functioning of the European Union ("TFEU").
3. The EEAS may enter into service-level arrangements with relevant services of the Commission, the General Secretariat of the Council, or other offices or interinstitutional bodies of the European Union.
4. The EEAS shall extend appropriate support and cooperation to the other institutions and bodies of the Union.

Article 4

Central administration

1. The EEAS shall be managed by a Secretary-General who will operate under the authority of the High Representative. The Secretary-General shall take all measures necessary to ensure the smooth functioning of the EEAS, including its administrative and budgetary management.

He shall ensure effective coordination between all departments in the central administration as well as with the Union delegations, and shall represent the EEAS.

2. The Secretary-General shall be assisted by two Deputy Secretaries-General.
3. The central administration of the EEAS shall be organised in directorates general. These shall include:
 - a number of directorates general comprising geographic desks covering all countries and regions of the world, as well as multilateral and thematic desks. These departments shall coordinate as necessary with relevant services of the Commission and with the General Secretariat of the Council;
 - a directorate general for administrative, staffing, budgetary, security and communication and information system matters under the direct authority of the Secretary-General;
 - the crisis management and planning directorate, the civilian planning and conduct capability, the European Union Military Staff and the European Union Situation Centre, placed under the direct authority and responsibility of the High Representative in her capacity as High Representative for Foreign Affairs and Security Policy; the specificities of these structures, as well as the particularities of their functions, recruitment and the status of the staff shall be respected.

The central administration shall also include:

- a legal department under the direct administrative authority of the Secretary-General which shall work closely with the Legal Services of the Council and the Commission;
 - departments for inter-institutional relations, information and public diplomacy, internal audit and inspections, and personal data protection.
4. The High Representative shall designate from among EEAS staff members the chairpersons of Council preparatory bodies that are chaired by a representative of the High Representative, including the chair of the Political and Security Committee.
 5. The High Representative and the EEAS shall be supported where necessary by the General Secretariat of the Council and the relevant departments of the Commission. Service level arrangements may be drawn up to that effect by the EEAS, the General Secretariat of the Council and the relevant Commission departments.

Article 5

Union delegations

1. The decision to open a delegation shall be adopted by the High Representative, after consulting the Council and the Commission. The decision to close a delegation shall be adopted by the High Representative, in agreement with the Council and the Commission.
2. Each Union delegation shall be led by a Head of Delegation.

The Head of Delegation shall have authority over all staff in the delegation, whatever their status, and for all its activities. He shall be accountable to the High Representative for the overall management of the work of the delegation and for ensuring the coordination of all actions of the Union.

Staff in delegations shall comprise EEAS staff and, where this is appropriate for the implementation of the Union budget and Union policies other than those under the remit of the EEAS, Commission staff.

3. The Head of Delegation shall receive instructions from the High Representative and the EEAS, and shall be responsible for their execution.

In areas where the Commission exercises the powers conferred to it by the Treaties, the Commission may also issue instructions to delegations, which shall be executed under the overall responsibility of the Head of Delegation.

4. The Head of Delegation shall implement operational credits in relation to EU projects in the corresponding third country, where sub-delegated by the Commission, in accordance with the Financial Regulation.
5. The operation of each delegation shall be periodically evaluated by the Secretary General of the EEAS; evaluation shall include financial and administrative audits. The Secretary General of the EEAS may request to be assisted for this purpose by the relevant Commission departments.
6. The High Representative shall enter into the necessary arrangements with the host country, the international organisation or the third country concerned. In particular, the High Representative shall take the necessary measures to ensure that the host States grant the Union delegations, their staff and their property, privileges and immunities equivalent to those referred to in the Vienna Convention of 18 April 1961 on Diplomatic Relations.
7. Union delegations shall have the capacity to service the needs of other EU institutions, in particular the European Council and the European Parliament, in their official contacts with the international organisations or third countries to which they are accredited.
8. The Head of Delegation shall have the power to represent the EU in the country where the delegation is located, in particular for the conclusion of contracts and being a party to legal proceedings.
9. The Union delegations shall work in close cooperation with the diplomatic services of the Member States. They shall, on a reciprocal basis, provide all relevant information.
10. The Union delegations shall have the capacity to, upon request by Member States, support the Member States in their diplomatic relations and in their role of providing consular protection to Union citizens in third countries.

Article 6

Staff

1. The EEAS shall comprise:
 - (a) officials and other servants of the European Union, including personnel from the diplomatic services of the Member States appointed as temporary agents;
 - (b) if necessary, and on a temporary basis, specialised seconded national experts (SNEs).
2. The staff members of the EEAS shall carry out their duties and conduct themselves solely with the interests of the Union in mind. Without prejudice to Articles 2(1), third subparagraph, 2(2) and 5(3), they shall neither seek nor take instructions from any Government, authority, organisation or person outside the EEAS or any body or person other than the High Representative.
3. The Staff Regulations, the Conditions of Employment of Other Servants and the rules adopted jointly by the European Union institutions for the purpose of applying the Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of the EEAS referred to in paragraph 1, subparagraph (a).
4. The High Representative shall adopt the rules, equivalent to those laid down in Council Decision 2003/479/EC of 5 December 2007⁴, under which SNEs are put at the disposal of the EEAS in order to provide specialised expertise.
5. The powers conferred on the appointing authority by the Staff Regulations and on the authority authorised to conclude contracts by the Conditions of Employment of Other Servants shall be vested in the High Representative, who may delegate those powers inside the EEAS.
6. All appointments in the EEAS shall be based on merit and on the broadest possible geographical basis. The staff of the EEAS shall comprise a meaningful presence of nationals from all the Member States.
7. All members of the staff of the EEAS covered by the Staff Regulations and the Conditions of Employment of Other Servants shall have the same rights and obligations, regardless whether they are officials of the European Union or temporary agents coming from the diplomatic services of the Member States, and be treated equally, in particular as concerns eligibility to assume all positions under equivalent conditions. No distinction shall be made between temporary agents coming from national diplomatic services and officials of the European Union as regards the assignment of duties to perform in all areas of activities and policies implemented by the EEAS.
8. The relevant departments and functions in the General Secretariat of the Council and in the Commission listed in the Annex shall be transferred to the EEAS. Officials and temporary agents occupying a post in departments or functions listed in the Annex shall be transferred to the EEAS. This shall also apply to contract and local staff assigned to such departments and functions. SNEs working in those departments or functions shall also be transferred to the EEAS.

These transfers shall take effect on the day of the adoption of the amending Budget of the European Union providing for the corresponding posts and appropriations in the EEAS.

Upon their transfer to the EEAS, the High Representative shall assign each official to a post in his function group which corresponds to his grade.

9. The High Representative shall establish the selection procedures for EEAS staff, which shall be based on merit and on the broadest possible geographical basis, in conformity with the Staff Regulations and the Conditions of Employment of Other Servants, with due regard for gender balance.
10. The procedures for recruiting staff for posts transferred to the EEAS which are on-going at the date of entry into force of this Decision shall remain valid: they shall be carried on and completed under the authority of the High Representative in accordance with the relevant vacancy notices and the applicable rules of the Staff Regulations and the Conditions of Employment of Other Servants.
In the course of setting up the EEAS, representatives of the Member States, the General Secretariat of the Council and the Commission shall be involved in the recruitment procedure for vacant posts in the EEAS.

The staff of the EEAS central administration shall be made up of officials and other servants from, respectively, relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States.

When the EEAS has reached its full capacity, staff from Member States should represent at least one third of all EEAS staff at AD level. Each year, the High Representative shall present a report to the Council on the occupation of posts in the EEAS.

11. The High Representative shall lay down the rules on mobility so as to ensure that the members of the staff of the EEAS are subject to a sufficient degree of mobility. Specific modalities shall apply to the personnel referred to in Article 4 (3), third hyphen. In principle, all EEAS staff shall periodically serve in Union delegations. The High Representative shall establish rules to that effect.
12. In accordance with the applicable provisions of its national law, each Member State shall provide its officials who have become temporary agents in the EEAS with a guarantee of immediate reinstatement at the end of their period of secondment to the EEAS. Beyond two consecutive secondments, each Member State may decide to prolong such guarantee in accordance with the applicable provisions of its national law. EU officials serving in the EEAS shall have the right to apply for posts in their institution of origin on the same terms as internal applicants.
13. Steps shall be taken in order to provide EEAS staff with adequate common training, building in particular on existing national practices and structures. The High Representative shall take appropriate measures to that effect within the year following the entry into force of this Decision.

Article 7

Budget

1. The High Representative shall act as authorising officer for the EEAS section of the General Budget of the European Union and adopt the internal rules for the management of the corresponding budget lines. These internal rules shall lay down which of the powers of the

authorising officer are delegated to the Secretary-General and the conditions under which the Secretary-General can sub delegate these powers.

2. The EEAS shall exercise its powers in accordance with the Financial Regulation applicable to the general budget of the Union within the limits of the appropriations allocated to it.

3. As regards operational expenditure arising from the implementation of the CFSP budget, the Instrument for Stability, the Instrument for Cooperation with Industrialised Countries, the Communication and Public Diplomacy as well as the Election Observation Missions, the Commission shall be responsible for their financial management under the authority of the High Representative in her capacity as Vice-President of the Commission.⁵

4. The EEAS shall be subject to the procedures regarding the discharge provided for in Article 319 of the Treaty on the Functioning of the European Union and in Article 145 to 147 of the Financial Regulation.

Article 8

Programming

1. In the framework of the management of EU external cooperation programmes, which remain under the responsibility of the Commission, the High Representative and the EEAS shall contribute to the programming and management cycle for the following geographic and thematic instruments, on the basis of the policy objectives set out in the said instruments:
 - the Development Cooperation Instrument,
 - the European Development Fund,
 - the European Instrument for Democracy and Human Rights,
 - the European Neighbourhood and Partnership Instrument,
 - the Instrument for Cooperation with Industrialised Countries,
 - the Instrument for Nuclear Safety Cooperation.
2. In accordance with Article 3, throughout the whole cycle of programming, planning and implementation of these instruments, the High Representative and the EEAS shall work with the relevant members and services of the Commission. All proposals for decision will be prepared through Commission procedures and submitted to the Commission for decision.
3. The EEAS shall in particular have responsibility for preparing the following Commission decisions on the strategic, multi-annual steps within the programming cycle:
 - (i) country allocations to determine the global financial envelope for each region (subject to the indicative breakdown of the financial perspectives). Within each region, a proportion of funding will be reserved for regional programmes;
 - (ii) country and regional strategic papers (CSPs/RSPs);
 - (iii) national and regional indicative programmes (NIPs/RIPs).
4. With regard to the European Development Fund and the Development Cooperation Instrument, any proposals, including those for changes in the basic regulations and the programming documents in paragraph 3 above, shall be prepared by the relevant services in the EEAS and in the Commission under the direct supervision and guidance of the Commissioner responsible for Development Policy and then jointly submitted with the High Representative for decision by the Commission.
5. With regard to European Neighbourhood and Partnership Instrument, any proposals, including those for changes in the basic regulations and the programming documents in paragraph 3 above, shall be prepared by the relevant services in the EEAS and in the Commission under the direct supervision and guidance of the Commissioner responsible for Neighbourhood Policy and then jointly submitted with the High Representative for decision by the Commission.
6. Thematic programmes shall be prepared by the appropriate Commission Service under the guidance of the Commissioner responsible for Development and presented to the College in agreement with the High Representative and other relevant Commissioners.

Article 9

Security

1. The High Representative shall decide on the security rules for the EEAS and take all appropriate measures in order to ensure that the EEAS manages effectively the risks to its staff, physical assets and information, and that it fulfils its duty of care responsibilities. Such rules shall apply to all EEAS staff, and all staff in Union Delegations, regardless of their administrative status or origin.
2. The EEAS shall have a department responsible for security matters, which shall be assisted by the competent services of the Member States.
3. The High Representative shall take any measure necessary in order to implement security rules in the EEAS, in particular as regards protection of classified information and the measures to be taken in the event of failure by EEAS staff to comply with the security rules. For that purpose, the EEAS shall seek advice from the Security Office of the General Secretariat of the Council, from the relevant services of the Commission and from the relevant services of the Member States.

Article 10

Access to documents, archives and data protection

1. The EEAS shall apply the rules laid down in Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. The High Representative shall decide on the implementing rules for the EEAS.
2. The Secretary General of the EEAS shall organise the archives of the Service. The relevant archives of the departments transferred from the General Secretariat of the Council and the Commission shall be transferred to the EEAS.
3. The EEAS shall protect the individuals with regard to the processing of personal data in accordance with the rules laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. The High Representative shall decide on the implementing rules for the EEAS.

Article 11

Immovable property

1. The General Secretariat of the Council and the relevant Commission services shall take all necessary measures so that the transfers referred to in Article 6(8) can be accompanied by the transfers of the Council and Commission buildings necessary for the functioning of the EEAS.
2. The terms on which immovable property is made available to the EEAS central administration and to the Union delegations shall be decided on jointly by the High Representative and the General Secretariat of the Council and the Commission, as appropriate.

Article 12

Final provisions

1. The High Representative, the Council, the Commission and the Member States shall be responsible for implementing this Decision and shall take all measures necessary to do so.
2. The High Representative shall submit a report to the Council on the functioning of the EEAS in 2012.
3. The Council, acting on a proposal from the High Representative, shall review this Decision in the light of experience no later than the beginning of 2014, in accordance with Article 27 of the TEU.
4. This Decision shall enter into force on the date of its adoption. Its provisions on financial management and recruitment going beyond the existing Staff Regulations and Financial Regulation shall only produce their legal effects once the necessary amendments to the Staff Regulations and the Financial Regulation, as well as the amending budget, have been adopted. In order to ensure a smooth management of the personnel of the EEAS and pending the entry into force of the modifications to the Staff Regulations, the Conditions of Employment of Other Servants and the Financial Regulation necessary for the implementation of this Decision, arrangements shall be entered into by the High Representative, the General Secretariat of the Council and the Commission, and consultations shall be undertaken with the Member States.
5. At the latest one month after the entry into force of this Decision, the High Representative shall submit to the Commission an estimate of the revenue and expenditure of the EEAS, including an establishment plan, in order for it to present a draft amending budget.
6. This Decision shall be published in the Official Journal of the European Union.

Brussels, [date]

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Annex

Departments and functions to be transferred to the EEAS

1. General Secretariat of the Council

2. Commission (including Delegations)