Abstract:
This paper takes as its starting-point the assumption that the Lisbon Treaty will be ratified in its present form, at least as far as the provisions relating to the High Representative and the External Service are concerned. However, an External Service along the lines envisaged by the Lisbon Treaty could also be established by an Interinstitutional Agreement. The High Representative, enjoying simultaneous institutional affiliation to the Commission and the Council, could not. A new model for the co-ordination of the Union’s external policies, which would not depend upon the double personal affiliation of the new High Representative, might be sought. The paper contends that it would be surprising if in the medium term an External Service very much along the lines of that foreshadowed by the Lisbon Treaty were not part of the Union’s response to its foreign policy challenges.
THE EUROPEAN EXTERNAL ACTION SERVICE

Introduction

Despite the claims sometimes made by both its critics and supporters, the Lisbon Treaty does not institute a unified system of decision-making for the external policies of the European Union. The abandonment by the new treaty of the potentially misleading term “Union Minister for Foreign Affairs,” which was contained in the preceding European Constitutional Treaty, is a useful reminder of this underlying reality. The Union’s member states, the European Council, the Council of Ministers and the European Commission will all continue to exercise their autonomous rights of decision-making in external affairs. Rather than unifying or centralizing the work of these decision-makers, the Treaty aspires to make their decisions and policies more internally coherent and consistent with each other.

The principal facilitator of this enhanced coherence and consistency is to be the European Union’s High Representative for Foreign Affairs and Security Policy. He or she is to be assisted in this work of co-ordination by the newly-founded European External Action Service. While the High Representative will also have the task of representing and advocating to third parties the consensual European policies and attitudes which he or she has helped to bring into being, it is worth stressing at the outset the logical priority of the High Representative’s work of consensus-building within and between the European institutions. Without such consensus within the European Union, there will be little indeed in the way of robust and effective European policies which the High Representative can seek to advocate to the wider world. This analysis is also valid for the work of the External Action Service, which will have the twin roles of facilitating consensus between the decision-makers of the Union and presenting the results of this consensus to the wider world, particularly through the Union’s external delegations. The unresolved administrative questions relating to the new Service need to be considered above all in the light of these related, but not identical tasks for the new Service.

Institutional Affiliation Of The Service

Analyses of the appropriate institutional affiliation of the Action Service have been predictably varied since its creation was first mooted by the European Constitutional Convention. The controversy about whether the Service should be more closely associated with the Council of Ministers, with the European Commission or with neither, faithfully reflects the composite status of the High Representative as both a servant of the Council and simultaneously a Vice President of the European Commission. The controversy also reflects differing views as to whether in future the Common Foreign and Security Policy of the Union should continue to be conducted primarily by intergovernmental agreement, or whether over time it should become more similar in its operation to the rest of the Union’s workings, with greater roles for the Union’s central institutions, namely the Commission, Parliament and Court of Justice. Those favouring the latter approach will naturally see the European Commission as the appropriate institutional home of the new Service. They will rightly point out that of all the European institutions, the Commission has the greatest experience as broker and reconciler of differing national and institutional negotiating
positions. Depending upon the precise membership of the Service, the Commission might also be expected to provide the largest single contribution to the personnel of the new body.

Persuasive although these arguments may appear, there is a significant risk associated with them. The new Service may well be less able facilitate consensus if it is seen as simply a representative of one interested party within the sought-for consensus, namely the European Commission. The need to co-ordinate better the external policies of the Commission, the Council and the member states was the main motivating force behind the European Convention’s recommendations in this area and in the Treaties which followed these recommendations. Many national governments moreover, including some which can be expected to play a substantial part in the reinforcement of the Union’s external role, insisted in the Convention and have continued to insist since, that substantial elements of intergovernmentalism should remain for the foreseeable future as component parts of the Union’s decision-making in external affairs. To entrust so potentially powerful a tool of the Union’s external policy to the Commission as the External Service could well be seen by these governments as an attempt to modify the terms of the painful compromise contained in the Lisbon Treaty, whereby the High Representative is institutionally bound both to the Council and the Commission.

It is no doubt an awareness of these dangers that has led a number of commentators to call for the new Service to be given a sui generis status, or to become an agency of the Union. The role of the High Representative corresponds to nothing in the traditional institutional architecture of the European Union, a fact well illustrated by the Treaty change necessary to allow the High Representative, as a member of the Commission, also to work for the Council while remaining a member of the College. The most logical institutional affiliation of the Service would appear to be the High Representative himself or herself, as a sui generis element of the Union, mirroring the sui generis nature of the Representative. If at some time in the coming years the institutional character of the High Representative changes, then the institutional character of the Service can evolve correspondingly.

**Tasks of the Service**

Some confusion has been caused in public discussion of the tasks of the Action Service by the conflation of two related but separate tasks of the Service, namely its contribution to the formation of robust, consistent and well-constructed external policies for the European Union and its role as representing these policies outside the European Union, whether providing individual envoys of the High Representative or as providing personnel for Union delegations in third countries. These tasks can and should be considered separately.

**Internal co-ordination within the Union**

The Treaty of Lisbon imposes upon the High Representative at least three different co-ordinating roles within the Union’s external policies. The Representative will chair the Foreign Affairs Council and seek to promote among its members, not least by use of the Representative’s right of initiative, the unanimity of view which is the precondition of that Council’s action. The Representative will be a Vice-President of the European Commission, responsible as executor or co-ordinator for the different aspects of the Commission’s activities which bear on the Union’s external relations.
The Representative will finally by his or her double affiliation in the Council and the Commission always be vigilant to ensure that the views of these two institutions do not damagingly diverge from each other. This is a challenging spectrum of activity. The Action Service is one of the few instruments of support for the Representative in these tasks.

From its very inception, the structure of the Service must therefore reflect above all the co-ordinating roles of the Representative. At least as important as geographic or thematic expertise is a steady stream of information to the Representative of the development of opinion on central questions of external relations within the member states, within the Council of Ministers and within the Commission. The High Representative will not have the time to follow all such issues in detail, nor without advice and guidance be able to recognize at an early stage the possibility of harmful divergence in emerging analyses and policies. This advice and guidance could be provided initially for the High Representative by a relatively small cadre of officials, whose primary task it would be to monitor and promote in appropriate for a on the High Representative’s behalf consensual policy formation within the Council, the Commission and the member states, and draw to the Representative’s attention those areas where failing efforts of mediation and consensus-building, within or between the institutions, call for an intervention from the Representative. It may well be that in due course greater thematic and geographic responsibilities can more directly be located in the new External Service, but such is not the immediate underlying rationale of the Lisbon Treaty, and of the uneasy compromise that it represents between differing views of the Treaty’s signatories on the subject of the Union’s external policies. According to this uneasy compromise, those tasks which until now have been carried out by the member states individually, by the member states in the Council and by the College of Commissioners will continue under the Lisbon Treaty to be carried out as before by essentially the same institutional actors. The High Representative, supported by the External Service, has the new and complex responsibility under the Treaty of weaving these various elements of policy and decision-making into a more coherent whole. But he or she does not have exclusive, or even primary responsibility for producing these various elements of policy and decision-making. It would be surprising indeed if it were possible to gain consensus within the Council, necessary as a precondition for the setting up of the External Service, on an initial model for that Service which widely diverged from the (perhaps unsatisfactory) political compromise on external policy enshrined in the Treaty of Lisbon. This consideration points strongly to a relatively limited initial set of officials to comprise the staff of the Service working to the High Representative in Brussels.

**External representation**

Different arguments apply to the contribution which the new Service can make to the external representation of the Union. A specific provision of the Lisbon Treaty envisages the setting up of “Union delegations,” which would most naturally be based in the buildings of the current Commission representations throughout the world. The obvious major source of staff for these “Union delegations” would be the new Service, reporting from third countries to and acting on the instructions of the High Representative. No doubt, as in many national diplomatic services, some individuals from outside the Service could find a place within specific delegations, with appropriate arrangements being made on ad hoc basis for the individuals involved. At least potentially, the organizational structure of “Union delegations” could well in the
medium term come significantly to resemble that of most national embassies in foreign capitals.

The question of how far the Union delegations staffed by the External Service could take over the tasks of national embassies is a different and more complicated one. An attraction for some national governments of the new External Service is the possibility that in the medium to long term it may be able to take over some or all of the responsibilities exercised currently by national representations abroad. This prospect is an entirely feasible one for consular matters. There is no reason at all why in ten years time the “Union representations” in third countries, particularly small third countries geographically remote from Europe, should not carry out consular duties for all EU citizens in the countries to which they are accredited and in particular provide Schengen visas to citizens of these countries wishing to visit the EU. The emergence of a specialized corps of consular officials within the External Service would be an entirely logical development, demonstrable proof of the Union’s ability to save the money of European tax-payers by common action...

Much less clearcut is the extent to which “Union delegations” could replace in the foreseeable future the work of political reporting and representation of national interests which are today core tasks of national embassies. It may well be that no definite answer can yet be given to this question. Size, economic development and historical ties to specific countries or regions all make for a very varied calculus of interests between different member states. It will be many years before any member state would be prepared to give up its national embassy in Washington. Shared political reporting and even representation of specifically national interests is altogether easier to envisage in less economically and politically significant capitals geographically remote from Europe. Any agreements made now for the future development of the Service in this direction can only be preliminary, tentative and facilitatory.

**Composition of the Service**

According to the Treaty of Lisbon, the External Service shall “comprise officials from 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.” Further details of its functioning will be established by a Decision of the Council, on a proposal of the High Representative, after consulting the European Parliament and with the assent of the Commission.” Some preliminary discussions between the interested parties took place on this matter in 2005, although many questions remained predictably unresolved. One interesting feature did, however, emerge from the discussions, namely the acceptance that the Directorate General of the Commission responsible for External Trade should not be incorporated into the new Service. Limited although this point of agreement appears, it can be taken as implying a more general model for the setting up of the Service, a model which corresponds to the broader political and institutional analysis of the Lisbon Treaty developed earlier in this paper.

The main unresolved question as to how the future External Service should be structured is essentially that of what proportion of the existing Commission organization should be incorporated within it. The significance of this issue can hardly be overstated. A wide-ranging transfer of existing Commission personnel to the Service would reinforce the personal standing of the Representative, not least at the expense of the President of the Commission. Simultaneously and perhaps
paradoxically, it would reinforce the impression that the new Service is simply the European Commission in another manifestation. On any hypothesis, Commission officials will predominate numerically in the new Service. This predominance will be reinforced the greater the number of Commission officials allocated in the first instance to the new Service.

The Treaty of Lisbon does not provide guidance as to what may be the “relevant departments” as recruiting-grounds for the External Service. Implicitly, however, the non-incorporation of the Directorate-General for External Trade does answer that question, because it respects the fundamental philosophy of the Lisbon Treaty that existing competences will continue over the spectrum of external policy will continue to be exercised by those who have exercised them until now. There is no aspect of the Commission’s responsibilities which more directly impinges upon the external relations of the European Union than trade policy and the negotiations in the World Trade Organization which are at its heart. There are good administrative reasons why the High Representative should not take on, in addition to his or her many other tasks, the direct responsibility for this complex field. But that the day to day responsibility for this vital external policy area should be in the hands of another colleague in the Commission clearly reflects an institutional philosophy which emphasizes the co-ordinating and representative role of the High Representative rather than the executive and implementing aspects of that post.

This philosophy can be more broadly applied to the structure of the new Service. The philosophy implies that a wide range of expertise and advice should be available to the High Representative, but that this expertise should not normally derive from the wholesale incorporation into the Service of existing Commission structures. Nor should substantial parallel structures be built up in the Service to reduplicate the work already being carried out by those Directorates General of the Commission, the work of which has an impact on the external policies and relations of the Union. It might be that at some stage in the future these Directorates will be transferred to the External Service. Until that happens, it would be an expensive source of institutional friction for the External Service to reduplicate the work of these Directorates or to do more than monitor and co-ordinate their activities. The High Representative will need advisers with recent and current knowledge of the work of many of the Commission’s Directorates General. A clear distinction should be observed, however, between the substantive work of those Directorates and the co-ordinating role of the High Representative, supported by the External Service.

There is only one major aspect of the Commission’s present structure that obviously will gravitate towards the new Service. According to the Lisbon Treaty, the High Representative will, in addition to “co-ordinating other aspects of the Union’s external action, be the Vice President of the Commission charged personally with “responsibilities incumbent on it (the Commission) in external relations.” Within the present Commission, the Commissioner responsible for external relations is supported by the large External Relations Directorate, a Directorate which would logically work after ratification of the Lisbon Treaty for the High Representative. It would be strange indeed if this Directorate did not provide a substantial contribution to the new External Service, together with the corresponding (less numerous) officials from the General Secretariat of the Council responsible for external and those responsible for military affairs. The presence of these latter officials, many of whom are seconded from national administrations, will reflect the important role of the High Representative in the Common Security and Defence Policy, a function the exercise of which will demand appropriate technical support. Beyond these mentioned
officials, however, there is at present no compelling rationale for wholesale incorporation into the External Service of existing clusters of officials from either the Council Secretariat or the Commission.

The final main building-block of the External Service will be, as the Treaty stipulates, the national civil servants recruited directly to its ranks. The High Representative will in any case need experts on national external policies and national civil servants are those most likely to be able to provide the necessary insights. More generally, the Service will be dependent upon national administrations for a supply of national administrators who can ensure that the ethos of the new organization adequately reflects the contribution to and competences in European external affairs of national governments. It will be difficult to achieve this without the willing collaboration of national governments, probably operating initially on at least a loose quota system. The assurance that senior positions will be available to suitably qualified candidates from national administrations will be one precondition of attracting candidates of appropriate quality from the civil services of the member states.

**Conditions of service**

If the External Service is to perform effectively its co-ordinating function, it must be seen as an honest broker between the interested parties, particularly when conflicting views and interests fall for resolution. The internal culture of the Service must not merely be non-partisan, but must be understood to be such by outsiders. A number of administrative arrangements for the new Service would be helpful in facilitating this culture and its external perception.

Reference has already been made to the need to reassure national civil servants joining the Service that senior posts will be open to them. More generally, a strong mix of officials from different backgrounds at every level of the Service will reinforce the non-partisan credentials of the new organization. It should be a conscious policy of the personnel department of the Service to ensure in every working unit adequate representation of all three main streams of recruitment, Council, Commission and national civil services. It should also be the responsibility of the officials themselves and their managers to ensure that this mixture of backgrounds leads to the constructive integration of different strands of interest and argument, rather than a simple reproduction within the Service of institutional rivalries that have been traditional outside the Service. Long standard periods of employment within the Service, a code of professional conduct for the Service, regular and repeated training for new entrants and the rapid establishment of a career pattern exclusively within the Service would all be helpful in this regard. A natural guarantee for the independence of the Service would be the recognition that that all personnel questions are the exclusive responsibility of the High Representative.

**The Budget of the Service**

Since many of those who will comprise the first members of the External Service are already employed by the Union, the extra cost to the Union of setting up the Service will be correspondingly mitigated. An unresolved issue is that of the salaries and other expenses associated with the national civil servants who are to join the Service. Since the member states are the signatories of the Lisbon Treaty and all of them are beneficiaries of the more coherent external policies for the Union which the Service
will be promoting, it would be entirely reasonable for them to bear the costs of the civil servants they contribute to the Service. The interests of the Service however probably point in the opposite direction, to the entire cost of the organization’s being borne by the Union’s budget. For the member states to remain the paymasters of “their” civil servants working for the Service would be a barrier to integration within the organization and might well lead to undesirable differences of working conditions between colleagues in the Service.

Irrespective of the precise arrangements adopted for national civil servants, it is anyway clear that the European Parliament, as joint budgetary authority, will have great influence over the financial affairs of the new Service. It will be a matter for political decision within the Parliament how and how far it wishes to make use of this influence. The understandable and proper desire of the Parliament to hold the Service and indeed the High Representative to democratic account may conflict, particularly in the early years of the Service, with another goal of the Parliament, namely to demonstrate the Union’s enhanced capacity for external action after the Lisbon Treaty, of which the rapid establishment and effective functioning of the External Service will be a major element.

First steps

The discussions concerning the External Service which were suspended after the French and Dutch referendums in 2005 made clear that widely differing views existed between the participants about the future role and composition of the Service. If an overall agreement on the establishment of the Service cannot in the short term be attained, there might be merit in setting up those elements of the Service which are least contentious and which can most easily be implemented. It is in any case highly likely that the Service will be have to be set up gradually, rather than in a single act of creation. From the very first day of the High Representative’s activity, however, there will be a need for advice and analysis to support the Representative’s co-ordinating and representative roles. There is no reason why plans should not already be prepared for member states, the Council Secretariat and the Commission to set up a skeleton staff for the High Representative, which could function as a nucleus around which later development of the External Service could take place. Parallel preparations could be made for the remodelling of the Commission’s external offices into “Union delegations.” The change of name of all these offices can occur simultaneously, on a designated day. There would however be powerful symbolism in ensuring that, as soon as possible after this change of name, members of the External Service, particularly those who previously had been in the Council Secretariat and national civil services, were sent to join the staff of these renamed delegations. These first tangible activities of the Service in supporting the work of the High Representative and in providing personnel for external representation might well act as a spur to further agreement in the Council of Ministers and elsewhere on a more precise blueprint for the future structure of the Service. Despite the vagueness of the Lisbon Treaty about the details of the Service’s administrative configuration, the Service is conceived by the Treaty as exercising relatively clear functions. The exercise of those functions may give added substance and urgency to the otherwise potentially self-absorbed debate on the best theoretical model for the Service.
Concluding reflection

This paper has taken as its starting-point the assumption that the Lisbon Treaty will be ratified in its present form, at least as far as the provisions relating to the High Representative and the External Service are concerned. If that is not the case, the member states will certainly look for other ways of implementing at least some of the provisions of the Treaty. The provisions of the Treaty relating to external policy are obvious candidates for this implementation. An External Service along the lines envisaged by the Lisbon Treaty could certainly be established by an Interinstitutional Agreement. The High Representative, enjoying simultaneous institutional affiliation to the Commission and the Council, could not. It may be that the European Council, if the Lisbon Treaty finally fails, will wish to consider a short and specific amendment to the European Treaties which would permit the double affiliation of the High Representative and all that flows from it. Alternatively, a new model for the co-ordination of the Union’s external policies, which did not depend upon the double personal affiliation of the High Representative, might be sought. It is generally recognized that there is currently a gap in the co-ordination and representation of the Union’s external policies. It would be surprising if in the medium term an External Service very much along the lines of that foreshadowed by the Lisbon Treaty were not part of the Union’s response to this challenge.