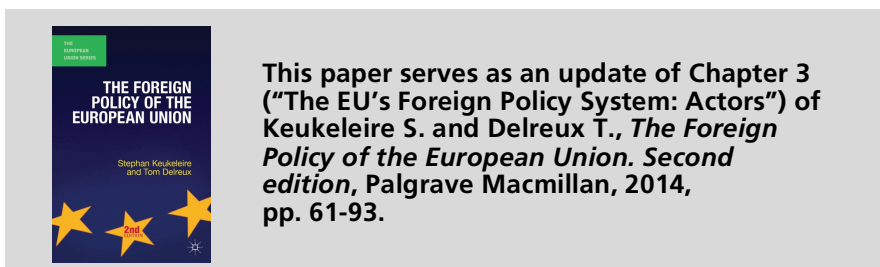


Actors in the EU's foreign policy system: New faces, some new approaches, but no fundamental changes

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Since the publication of the second edition of ‘The Foreign Policy of the European Union’ (2014), the composition and functioning of the main institutions that play a role in EU foreign policy-making have undergone a number of changes. This document provides a short update of the factual information provided in chapter 3 on the actors in the EU’s foreign policy system. Its structure mirrors the structure of chapter 3 of the book.

The European Council and the Council

In a context of the EU facing multiple crises at the same time in the last few years, the *European Council’s* agenda was packed with many issues needing crisis-management at the highest political level. As a result, long-term and strategic thinking on foreign policy was still not the main European Council’s business (Lehne 2015). Although a number of these crises included foreign policy issues – most notably Ukraine and Syria – most attention was paid in recent years to the management of the financial-economic crisis, migration, antiterrorism, the Brexit referendum and its consequences. Particularly in the latter context, the European Council started to meet informally in a ‘EU27’ format since the summer of 2016 – thus without the participation of the UK’s prime minister, Theresa May.

In December 2014, Donald Tusk, the former Polish prime minister, succeeded Herman Van Rompuy as the President of the European Council. Tusk’s two and a half years was renewed in 2017, until the end of 2019. Just like Van Rompuy, Tusk had to focus primarily on the EU’s internal policy challenges and played a rather low-profile role on foreign policy, except for his rather outspoken

declarations on Russia. He largely limited himself to receiving leaders from third countries for diplomatic exchanges in Brussels and to representing the EU at G7 or G20 summits or in various bilateral summits between the EU and third countries, often in tandem with the new Commission President Juncker.

The main change regarding the composition and the functioning of the *Council* is related to a change in personnel. Since December 2014, Federica Mogherini is the ‘High Representative of the Union for Foreign Policy and Security Policy/Vice-President of the European Commission’ (HR/VP, see below). Succeeding Catherine Ashton in that function, she chairs the Foreign Affairs Council (except when trade policy is discussed). In the Council, including its various preparatory committees and working groups, the British ministers continue to take part in the meetings up to the moment the UK will formally leave the EU, although their position within the EU’s policy-making process changed significantly since the Brexit-referendum.

The Commission

In November 2014, the new European Commission took office, with as new President Jean-Claude Juncker, the former Prime Minister of Luxemburg and former President of the Eurogroup. The former Italian Minister of Foreign Affairs, Federica Mogherini became the HR/VP, who is responsible for external relations in the Commission and for leading the EU’s European External Action Service (EEAS) (see below). In the field of external relations, other key players in the Commission are the new Commissioners for Trade (Cecilia Malmström), for European Neighbourhood Policy and Enlargement Negotiations (Johannes Hahn), for International Cooperation and Development (Neven Mimica), and for Humanitarian Aid and Crisis Management (Christos Stylianides). Yet also other Commissioners play a role in the EU’s external relations. The Climate Action and Energy Commissioner (Miguel Arias Cañete), for instance, represents the EU during international climate change negotiations (together with Environment or Climate minister of the member state holding the rotating Presidency of the Council). Following the Brexit referendum, Julian King was appointed as the new Commissioner from the UK, with responsibility for ‘Security Union’ (covering internal security such as the fight against terrorism and organized crime).

The Juncker Commission employs new working methods in order to strengthen the role and coherence of the European Commission in EU foreign policy. These changes are not only an indication of a shift towards a more hierarchically organized Commission since Juncker, but they also reveal a strengthening of the European Commission in EU foreign policy making (Pierini 2014; Witney 2014). One of the main tasks of Mogherini as one of the Vice-Presidents of the Commission is to steer and coordinate the work of the four above-mentioned Commissioners with responsibility for external relations, aiming to make the Commission more effective in bringing together the various tools of the

EU's external action that are administered by different Commissioners (Helwig 2015; Missiroli 2017). The HR/VP chairs the 'Commissioners' Group on External Action' which is supposed to develop synergies between the portfolios of these Commissioners. Juncker also empowered HR/VP Mogherini with a strategic filtering role and even veto power in the agenda-setting of the Commission, implying that the other Commissioners with responsibilities for external relations can only put new initiatives at the agenda of the College of Commissioners with the agreement of the HR/VP. Mogherini also more closely coordinates with the other Vice-Presidents having policy portfolios with external relevance, such as Vice-President Šefčovič for the Energy Union. More anecdotally, but also indicative for the Commission regaining powers in EU foreign policy-making is the fact that under the Juncker Commission the HR/VP's main office is relocated from the EEAS building to the Commission building.

Next to the changes in the political wing of the Commission, Juncker also introduced some adjustments in the Directorate Generals (DGs) and services with foreign policy relevance:

- The former DG Enlargement and the units dealing with the EU's neighbourhood in the DG DEVCO were merged into a new *Directorate-General for Neighbourhood and Enlargement Negotiations* (DG NEAR).
- DG DEVCO now refers to *Directorate-General International Cooperation and Development*.
- Although it keeps its old acronym, DG ECHO now has the full title *Directorate-General European Civil Protection and Humanitarian Aid Operations*.
- The *Service for Foreign Policy Instruments* is now referred to as 'FPI' (labeled previously as 'Foreign Policy Instrument Service' or FPIS) and is responsible for the operational expenditure of various foreign policy related budget lines.

The High Representative/Vice President and the EEAS

Since November 2014, the HR/VP is Federica Mogherini, who was before the Italian Minister of Foreign Affairs. Her appointment was part of a larger political package deal together with the choices of Tusk as European Council President and Juncker as President of the European Commission: it was largely the result of a delicate equilibrium that had to be found between party political considerations (Mogherini is a social-democrat, while Juncker and Tusk are from the center-right European People's Party), geographical and gender balances. Although Mogherini was initially criticized – particularly by the Baltic member states – for an alleged sympathy towards Russia (yet this was also counterbalanced by the appointment of Tusk as European Council President), this criticism faded away once she was in office.

A number of differences regarding the function of HR/VP can be noticed between the Mogherini and the Ashton era. First, as mentioned above, Mogherini is more active in her function as 'Vice-President

of the European Commission', where she has the responsibility for external relations. A Commission with a more hierarchical structure and a stronger horizontal coordination role for the Vice-Presidents has indeed increased the foreign policy capacity of the Commission. Second, with the EEAS being up and running for five years, Mogherini is able to focus more on preparing, conducting and implementing foreign policy activities. This forms a sharp contrast to Ashton, who had to spend a lot of time and energy in setting up the EEAS and steer the latter through its first years (Helwig and Rürger 2014).

Federica Mogherini made a rather positive impression in two years of her mandate and in any case faced less public criticism than her predecessor did. Her most visible success was the successful negotiation of the Joint Comprehensive Plan of Action on the nuclear program of Iran. Although Mogherini received the praise for the EU's mediation role in these negotiations, it is in the Ashton era that the foundations for this agreement were laid. Internally, Mogherini prepared the 'EU Global Strategy', which presents a new approach to EU foreign policy (see update 'EU Foreign Policy in Times of Existential Crises: Instability in the Neighbourhood, Brexit, Trump, and beyond'). However, Mogherini's dynamism does not necessarily solve the institutional flaws that had undermined the position of the previous HR/VP: the difficult combination of the policy-making dynamics and rationales of the Commission and the Council, the HR/VP's dependence on the instructions and backing by the member states; and the fact that the HR/VP is not the only EU foreign policy interlocutor in the world.

Five years after its creation and an initial period characterized by growing pains typical to any by nascent bureaucratic institution, the EEAS is now a relatively well-functioning service that has found a *modus operandi* in how to work together with the Commission and the Council. It has also gained a certain independence vis-à-vis the foreign affairs ministries of the member states (Riddervold and Trondal 2016), confirming our argument (see chapter 4 of the book) that the EEAS can contribute to overcome the hurdles of intergovernmentalism in EU foreign policy-making.

Finally, the section on the EEAS in the book requires three more factual updates. First, by early 2017 the number of Special Representatives has been slightly reduced from 12 to 9 as the mandates of the EUSRs for the African Union, the Southern Mediterranean Region and Sudan have not been renewed. Second, the EEAS now has a single 'Secretary-General' (currently Helga Schmid) and three Deputy Secretary-Generals. Also the top-management of the various units has been simplified (Missiroli 2017). Third, some changes took place in the organization set-up of the structures to make CSDP policies operational. Only the EU Military Staff (EUMS) is still falling under the direct responsibility

of the HR/VP. Four other such structures are now grouped under the authority of the ‘Deputy Secretary General CSDP and crisis response’:

- The *Civilian Planning and Conduct Capability* (CPCC) is responsible for the planning, deployment, conduct and review of civilian CSDP crisis management missions.
- The *Crisis Management and Planning Directorate* (CMPD) is tasked with the political-strategic planning and coordination of CSDP civilian missions and military operations actions.
- The *EU Intelligence and Situation Centre* (INTCEN), previously called ‘SITCEN’, provides intelligence analyses to the HR/VP and the EEAS by monitoring international events that are potentially of strategic importance.
- The *Directorate for Security Policy and Conflict Prevention* (SECPOL) contributes to the overall expertise on conflict, peace and security inside the crisis management bodies, for instance by assessing the impact of a planned CSDP mission on conflict situations in third countries and regions.

The European Parliament

Since the entry into force of the Treaty of Lisbon, the European Parliament’s consent is required to ratify most international agreements in the field of external action and the external dimension of internal policies, including trade agreements. Although the EP does not have the legal powers to take part in drafting the mandate or conducting the international negotiations and its powers are mostly limited to an *ex post* veto power in the ratification stage, the EP increasingly succeeds to be informally involved in these earlier stages of the decision-making process. Not only are (non-binding) parliamentary resolutions more and more considered as a kind of informal mandate and are parliamentary debates used to signal the range of agreements that the EP will be willing to accept to the EU’s negotiators, but the EP is also increasingly active during the course of the negotiations by means of various tools of parliamentary diplomacy (such as attending international negotiations and having informal exchanges with the EU negotiators as well as third countries). This does not mean that the EP is now on equal footing with the Council, but its role has certainly grown in the last few years (Stavridis and Irrera 2015; Stavridis and Jancic 2016).

A second recent tendency in the EP relates to the role of the President of the European Parliament, who has in the last few years increased the visibility of the EP and its President at the international scene. One of the formal tasks of the EP President is to represent the Parliament in its external relations, yet the personality of the President in function largely determines the visibility of that task. Martin Schulz, EP President in the period 2012-2016 and succeeded by Antonio Tajani in January 2017, has conducted this function of the President in a maximalist way, which increased the visibility and status of the EP in EU foreign policy-making (Gianniti and Lupo 2016; Nitoui and Sus 2017). Not only did he devote considerable political energy on highly salient foreign policy issues such as

Ukraine by meeting the Ukrainian government, but he also profiled himself as a mediator in other files (for instance in the discussions between the Walloon Region and Canada on the signing of the EU-Canada CETA agreement).

The Court of Justice

Through its constantly developing case law, the Court of Justice continues to have an impact on the legal dimension of EU foreign policy. Here, we briefly present a Court case and an opinion from 2016 with an impact on CFSP and external trade policy. First, in Case C-455/14 P (H v. Council), the Court refined the interpretation of its jurisdiction in the CFSP field. As explained in the book (Keukeleire and Delreux 2014: 89-90), the general rule of thumb is rather simple: the Court has no jurisdiction on CFSP. Yet, this was qualified in Case C-455/14 P, which dealt with a staff dispute raised by an official serving in a CSDP mission (Butler 2016). It recognized the jurisdiction of the Court to assess the validity under EU law of an administrative decision, even in the sphere of CFSP, thereby creating another exception to the overall rule of thumb that CFSP does not fall under the Court's jurisdiction.

Second, in December 2016, an Advocate-General of the Court issued an opinion (which is non-binding, but likely to be followed by the Court in Spring 2017) clarifying the division of competences between the EU and the member states on the EU-Singapore Free Trade Agreement. This opinion followed a dispute between the Commission and the member states, with the former arguing that the EU had exclusive competence to conclude the agreement and the latter maintaining that the trade deal was a mixed agreement. This opinion presented a detailed list of the exclusive, shared and national competences in the EU-Singapore agreement and the Advocate-General argued that most elements of the agreements are covered by exclusive competences, but not all of them. Her conclusion was thus that the EU-Singapore agreement was a mixed agreement and that its conclusion required not only the ratification by the Council and the EP, but also by the national (and sometimes regional) parliaments of the member states (Peers 2016).

This opinion may turn out to be an important precedent for the conclusion of future trade agreements (including a post-Brexit EU-UK FTA). The multiplication of the number of (domestic) veto players in the case of broad and comprehensive trade agreements that go beyond the exclusive competences of trade in goods and services is likely to make it harder for the EU to conclude trade agreements in the future. As trade agreements are one of its strongest foreign policy instruments, this might also have an impact on EU foreign policy more broadly.

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