

EXPLANATORY MEMORANDUM

COUNCIL DECISION

Establishing the organisation and functioning of the European External Action Service

The European Union has the clear objective to support a more stable, prosperous and secure environment for its citizens. In order to better achieve this, the Lisbon Treaty lays the basis for greater coherence in the Union's foreign policy. By bringing together, as foreseen in article 21 TEU, its many levers of influence in a more effective manner and pursue a wide range of goals on the international scene, it will increase the Union's political and economic influence in the world.

Article 18 TEU tasks the High Representative¹ to conduct the Union's Common Foreign and Security Policy (CFSP), to chair the Foreign Affairs Council, to fulfil within the Commission the responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external relations, and to support and facilitate the cooperation between the Council and Commission in order to ensure consistency between the different areas of external action.

In fulfilling her mandate, the High Representative shall be assisted by a European External Action Service (EEAS), as stipulated in article 27.3 TEU. An effective EEAS is critical to allowing the High Representative, together with the Member States and the Commission, to accomplish the strategic objectives set by the Lisbon Treaty. It will help strengthen the European Union on the global stage, give it more profile, and enable it to project its interests and values more efficiently. In order to attain these objectives and implement the Lisbon Treaty, the EEAS must be operational as soon as possible.

The organisation and functioning of the EEAS shall be established by a decision of the Council, acting on a proposal of the High Representative after consulting the European Parliament and after obtaining the consent of the European Commission. The present proposal for a Council Decision is based on wide and constructive consultations the High Representative held with Member States, the Commission and the European Parliament over the last months. It sets out the framework for an efficient and effective EEAS and lays the foundation upon which it will be built. The question of the adaptation of existing Inter-Institutional Agreements with the European Parliament will be examined in the upcoming deliberations between institutions.

The EEAS shall be a functionally autonomous body of the European Union, separate from the Commission and the General Secretariat of the Council. It is placed under the authority of the High Representative and shall support her in fulfilling her mandate. It shall also assist the President of the Commission and the Commission and the President of the European Council and

¹ For the reader's convenience the term "High Representative" will be used throughout this Memorandum to cover all functions of the High Representative of the Union for Foreign Affairs and Security Policy, who is also a Vice-President of the European Commission, without prejudice to the specific responsibilities under the respective functions he exercises.

will equally extend appropriate support to the other institutions and bodies of the Union, in particular the European Parliament.

To perform these functions, the EEAS will cooperate 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. It shall in particular coordinate with the Commission departments. In this vein, the EEAS and the Commission services in question shall consult each other on all matters relating to the external action of the Union, and the EEAS and the Commission shall take part in their respective preparatory work.

To ensure the effective day-to-day administration and operation of the Service, the High Representative shall appoint a Secretary-General, two Deputy Secretaries-General working under the latter's authority, and the Directors General of the EEAS. The Secretary-General, assisted by the Deputy Secretaries-General, shall manage the EEAS and ensure the effective coordination between all departments of the EEAS and with the Union Delegations. The Directorates General of the EEAS shall include geographical 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. The EEAS will also comprise administrative, staffing, financial and other support services necessary for the functioning of the service. The Chairpersons of the Political and Security Committee and other Council preparatory bodies under the High Representative's authority shall be designated by her from the EEAS staff.

The Union Delegations constitute an integral part of the EEAS. They are a key platform for the international projection of common European interests. The decision to open a Delegation shall be adopted by the High Representative, after consulting the Council and the Commission, while a decision to close a Delegation shall be adopted in agreement with the Council and the Commission.

Each Delegation or other EU mission shall be led by a Head of Delegation or equivalent, who has authority over all staff and activities of the Delegation and who is accountable for the overall management of the work of the delegation and for ensuring the coordination of all actions of the Union. 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 the Delegations, which shall be executed under the overall responsibility of the Head of Delegation.

To cover the full breadth of EU external relations, the staff of each Delegation shall comprise EEAS staff and, where this is appropriate for the implementation of the Union budget and Union EU policies other than those under the remit of the EEAS, Commission staff. The Head of Delegation shall be responsible for the implementation of operational credits in relation to EU projects in the third country concerned, in accordance with the Financial Regulation.

The EU Delegations shall have the capacity to service the needs of institutions other than the Council and the Commission, in particular the European Council and the European Parliament, in their official contacts with the organisation or country to which it is accredited. They shall also work in close cooperation with the diplomatic services of the Member States. They shall in

particular, on a reciprocal basis, provide all relevant information to the diplomatic services of the Member States and, where possible and upon request, support the Member States' in their diplomatic relations and in their role of providing consular protection to EU citizens.

The staff of the EEAS shall comprise officials and other servants of the European Union including personnel from the diplomatic services of the Member States appointed as temporary agents, and, if necessary and on a temporary basis, specialised seconded national experts (SNEs). The Staff Regulations, the Conditions of Employment of Other Servants (CEOS) and the rules adopted jointly by the European Union institutions for the purpose of applying these Staff Regulations and CEOS shall apply to the staff of the EEAS. The powers conferred on the appointing authority by the Staff Regulations and on the authority authorised to conclude contracts by the CEOS shall be vested in the High Representative, who may delegate those powers inside the EEAS.

The staff of the EEAS shall carry out their duties and conduct themselves solely with the interests of the Union in mind, as stipulated in article 11 of the Staff Regulations. They shall carry out the duties assigned to them objectively, impartially and in keeping with their duty of loyalty to the Union.

The EEAS staff shall comprise a meaningful presence of nationals from all the Member States. No distinction shall be made between temporary agents coming from national diplomatic services and EU officials. All members of the staff of the EEAS covered by the Staff Regulations and the CEOS 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. All appointments in the EEAS shall be based on merit and on the broadest possible geographical basis of nationals of Member States of the Union. 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.

In the interest of full transparency and in order to provide necessary expertise, representatives of the Member States, the Commission and the General Secretariat of the Council shall be involved in the recruitment procedure in the EEAS together with EEAS officials, through the establishment of a Consultative Committee on Appointment (CCA). The CCA shall compose the selection panel for senior appointments (Directors and above) and propose a short list of candidates for appointment by the High Representative. All candidates for posts of Heads of Delegations shall be subjected to selection procedures. The powers concerning appointments shall be exercised on the basis of a shortlist of candidates to which the Commission has agreed, given in particular the role of Heads of Delegation in the management of financial assistance programmes.

The CCA shall also monitor selection procedures at other levels in the EEAS and the development of EEAS staffing, including with regard to gender and geographical balance. It shall provide advice to the High Representative in these matters. The procedures for recruiting staff 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, under the authority of the High Representative, in accordance with the vacancy notices and the applicable rules of the Staff Regulations.

The departments and functions in the General Secretariat of the Council and in the Commission that are relevant to the tasks of the EEAS shall be transferred to the Service. They shall be listed in the Annex to the present Decision. This transfer applies to all categories of staff, as well as to Seconded National Experts. It 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 the function group which corresponds to his grade.

To draw on their experience and expertise in the most effective manner, EEAS staff may be assigned duties to perform in all areas of activities and policies implemented by the Service. The High Representative shall lay down specific rules as to ensure a sufficient degree of mobility within the EEAS, including the principle of rotation between headquarters and service in Delegations. Officials should normally rotate every four years. 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, under the relevant provisions of their national laws. Beyond two consecutive secondments, each Member State may decide to prolong such guarantee. EU officials serving in the EEAS shall have the right to apply for posts in their institution of origin alongside internal candidates.

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.

The High Representative shall act as authorising officer for the EEAS section of the General Budget of the European Union and shall adopt the internal rules for the management of the corresponding budget lines, which shall include rules on those powers which are delegated to the Secretary-General and the conditions under which he can sub-delegate these. 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.

The High Representative shall have responsibility for the CFSP budget, the Instrument for Stability, the Industrialised Countries Instrument, communication and public diplomacy and election observation missions. The Commission shall be responsible for their financial management under the direct authority of the High Representative in her capacity as Vice-President of the Commission. 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 145-147 of the Financial Regulation.

As the focal point for the management of bilateral relations worldwide, the EEAS shall contribute to the programming and management cycle of all geographic financial instruments in the external relations field², except the European instrument for pre-accession assistance, which will continue to be managed by DG Enlargement in the Commission. This will also apply to certain thematic instruments³ and to any successor instrument with equivalent geographic and thematic coverage.

² The Development Cooperation Instrument, the European Development Fund, the European Neighbourhood and Partnership Instrument and the Instrument for Cooperation with Industrialised Countries.

³ The European Instrument for Democracy and Human Rights and the Instrument for Nuclear Safety Cooperation.

Other 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.

Throughout the whole cycle of planning and implementation of these instruments, which remain under the authority of the Commission, the High Representative and the EEAS shall work in consultation with the relevant members and services of the Commission. The EEAS shall in particular have responsibility for preparing the Commission decisions on the strategic, multi-annual steps within the programming cycle. Given their portfolio responsibilities in the Commission, the proposals and programming documents pertaining to the European Development Fund, the Development Cooperation Instrument and the European Neighbourhood and Partnership Instrument, shall be prepared by the relevant services in the EEAS and the Commission under the direct supervision and guidance of the Commissioners for Development and Neighbourhood respectively, and then jointly submitted with the High Representative for decision by the Commission.

Due consideration will be given to the overall objectives of development and neighbourhood policy in preparing all these proposals and documents. As is the case today, horizontal Communications on Development Policy will be prepared by the relevant Commission services under the guidance of the Commissioner for Development, and presented to the Commission in association with relevant Vice-Presidents and Commissioners.

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. To this end, the EEAS shall have a department responsible for security matters which shall be assisted by the competent services of the Member States. The High Representative shall adopt 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.

In accordance with the guidelines of the European Council of December 2009, it is critical that the present Decision be adopted swiftly. In parallel and as part of this overall project, amending provisions to the Financial Regulation and the Staff Regulation and an amending budget should be adopted rapidly, with a view to rendering the EEAS fully operational.

The High Representative shall submit a report to the Council on the functioning of the EEAS in 2012. In the light of experience, the Council, acting on a proposal by the High Representative, shall review this Decision in accordance with Article 27 TEU, no later than the beginning of 2014.