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COVER NOTE

from: Legal Service
to: Delegations

Subject: EEAS Review – indications relating to the legal and institutional issues raised
by the recommendations

Delegations will find annexed hereto a table indicating the legal and institutional issues relevant to each of the recommendations in the EEAS Review (doc. 13977/13), in the order in which they are presented in the Review.

As the recommendations are not always very specific and concrete, this overview is only indicative and not exhaustive.

Within the legal constraints identified, each of the institutions/entities involved will have to make policy choices, taking all relevant considerations into account.

EEAS Review – indications of the legal and institutional issues raised by the recommendations

Short-term recommendations	
ORGANISATION	
Recommendation	Legal and institutional issues
<p>S 1. Appoint permanent EEAS chairs for the Council Working Groups in the area of external relations that have remained with the rotating Presidency (Relex Counsellors, Development WG, Africa, Caribbean, Pacific (ACP) Working Group, the EFTA group, the Counter Terrorism Working Group (COTER), the International Public Law Working Group (COJUR)</p>	<p>Requires amendment of Council Decision 2009/908/EU on the chairing of working parties (on the initiative of the Council).</p>
<p>and Athena committee).</p>	<p>Requires amendment of Council Decision 2011/871/CFSP setting up Athena, which is the mechanism administering the financing by MS of the common costs of EU military operations (the Athena SC is not a Council working party).</p>
<p>Review staffing levels devoted to External Relations issues in the Council Secretariat and transfer necessary resources to EEAS.</p>	<p>See S.20 on the GSC role required by the Treaties and Council RoP (Art. 23) and reflected in Article 2 Council Decision 2010/427/EU on the EEAS.</p> <p>Any changes in staffing levels require amendments to the EEAS and Council budgets (having regard to the MFF) and establishment plans.</p>
<p>Create a special working relationship between the Enlargement Working Group (COELA) group and the EEAS.</p>	<p>Formalising this would require a decision by Council, either <i>ad hoc</i> or by amending Council Decision 2009/908/EU on the chairing of working parties.</p>
<p>S 2. Transfer Presidency responsibilities to EU delegations led by chargés d'affaires in Laos, the Gambia, Costa Rica, New Zealand, Trinidad and Tobago and the Solomon Islands.</p>	<p>Arrangements between EEAS and MS; could be reflected in the periodic document listing the local presidencies.</p>
<p>S 3. Confirm co-ordinating responsibility for Deputy Secretary General for CSDP and Security Policy and Crisis Prevention departments, including their relations with the rest of the EEAS.</p>	<p>Requires an amendment of Art. 4(3)a of Council Decision 2010/427/EU on the EEAS for some reporting lines (on the initiative of the HR).</p>

<p>S 4. Review EUSR mandates and role, to closer integrate them into EEAS structures (HQ and delegations).</p>	<p>EEAS and EUSRs are based on two distinct legal bases: Art. 27 and 33TEU.</p> <p>Full integration of EUSRs as such into the EEAS requires an amendment of Council Decision 2010/427/EU on the EEAS (it was deliberately not included in 2010) and of the TEU. Council decisions on specific EUSR mandates would need to be amended too.</p> <p>Integration of EUSR staff/budgets into the EEAS requires amendment of Council decisions on specific EUSR mandates and an increase in the EEAS budget and staff.</p>
<p>Revisit the Council guidelines on the appointment, mandate and financing of EUSRs.</p>	<p>No general legal act involved. Requires amendment of the guidelines by Council and would subsequently have to be reflected in individual Council decisions on EUSRs.</p>
<p>S 5. Strengthen EEAS sanctions team, including transfer of relevant staff from FPI (Commission)</p>	<p>EEAS internal.</p> <p>EEAS and COM budgets and establishment plans. Transfer of FPI staff has to take account of COM Treaty-based responsibilities: e.g. it implements some sanctions (notably UN Al Qaida) and ensures uniform application of the sanctions regimes.</p>
<p>and additional seconded staff from Member States;</p>	<p>Requires MS agreement to second staff and some changes in the EEAS budget.</p>
<p>S 6. Reinforce EEAS capacity for external aspects of key EU policies (energy security, environment, migration, fight against terrorism, external economic issues);</p>	<p>EEAS internal, within the limits of the Treaties and the Council Decision 2010/427/EU on the EEAS.</p>
<p>S 7. Strengthen the EEAS Policy Planning capability to work on strategic issues and papers.</p>	<p>Internal EEAS.</p>
<p>S 8. Co-locate the 24/7 EEAS situation room with the newly created Commission of a 24/7 Emergency Response Centre to create a single EU Crisis Response Centre better using EU resources.</p>	<p>COM and EEAS internal decisions.</p>

FUNCTIONING	
S 9. The High Representative, as Vice President of the Commission, should propose specific external relations proposals for inclusion in the Commission annual work programme;	COM internal.
S 10. The EEAS should present medium-term strategies for specific regions or thematic issues in line with the established policy priorities, for discussion in the Council according to an agreed timetable. These strategies could also foster more joined-up discussions between discussions at different levels within the Council (European Council, Ministerial meetings, PSC, working groups);	Pursuant to Articles 22 and 26 TEU, the European Council shall identify the strategic interests and objectives of the Union and within this framework the Council takes decisions on the CFSP. Article 22(2) TEU provides for joint HR / COM proposals.
S 11. The EEAS should contribute to the broader work programme of the trio of rotating Presidencies	Article 2(6) Council RoP provides for involvement of the HR as FAC chair for FAC issues in the 18 month programme of Council activities, which is endorsed by Council. As FAC chair, the HR can provide input where relevant. Article 2(6) Council RoP also provides for "appropriate consultations". Formalising any greater role requires changing Council RoP (on the initiative of the Council).
S 12. Regular meetings of Relex Group of Commissioners chaired by HRVP, supported by joint EEAS - Commission secretariat. Confirm lead co-ordinating role of HRVP, supported by EEAS geographical and thematic services, for all external relations issues.	COM internal and subsequent arrangements with EEAS.
S 13. Maintain active EEAS influence on programming of EU external assistance, within existing legal framework.	EEAS - COM agreement in application of Article 9 of Council Decision 2010/427/EU on the EEAS.
Additional seconded experts from Member States could reinforce EEAS profile and impact;	Requires MS agreement to second staff and some changes in the EEAS budget.
S 14. Require all instructions to delegations to pass by Heads of Delegation, copied to the relevant EEAS geographical desk.	EEAS and COM in application of Article 5(3) and recital 13 of Council Decision 2010/427/EU on the EEAS.

S 15. Promote closer co-ordination between EU delegations and embassies of Member States in third countries, in particular through greater use of joint reports and mutual sharing of information. Ensure full implementation of system for exchange of sensitive and classified information (including with non-resident EU ambassadors).	EEAS and MS.
S 16. Establish priority list of joint projects for co-location and pooling support services between EU delegations and national embassies (with appropriate cost-sharing arrangements). Examine ways of providing MS national security resources to protect EU delegations on cost recovery basis,	EEAS and MS.
S 17. Simplify administrative budget of delegations to ensure single source of funding (combining money from EEAS and Commission budgets);	EEAS and COM and possibly changes to the Financial Regulation (Council Regulation (EC, Euratom) No 1605/2002 , as amended) (on the initiative of COM) and/or Article 8 of Council Decision 2010/427/EU on the EEAS.
S 18. Reinforced EEAS-Commission co-ordination on management of resources in delegations (merger of EUDEL and COMDEL structures).	EEAS and COM.
S 19. Consolidate focal points in all EU delegations to cover key policy areas (eg human rights).	EEAS internal, involving MS where appropriate.
Further develop network of military and civilian security experts in delegations.	EEAS and MS (in case of secondment).
Pursue debate on possible consular role of EU delegations, subject to political agreement and additional resources and expertise from Member States.	May require amendment of Art. 5(10) Council Decision 2010/427/EU on the EEAS, within the limits set out in Articles 35 TEU (on EUDELs) and 23 TFEU.

<p>S 20. Clarify division of labour between EEAS and Commission/Council Secretariat services with external relations responsibilities to improve efficiency and eliminate duplication.</p> <p>Any necessary staff transfers could be addressed in the 2014 budget procedure.</p>	<p>There is no duplication in the tasks attributed to the GSC and the EEAS. Article 2 Council Decision 2010/427/EU on the EEAS provides that the EEAS assists the HR "<i>in his/her capacity as President of the [FAC], without prejudice to the normal tasks of the [GSC]</i>". The GSC role is set out in the Treaties (Art. 240(2) TFEU) and the Council RoP (Art. 23): it supports the Council as a whole, including of course the Presidency; is both the Council's "registrar" and its adviser; and is closely and continually involved in organising, coordinating and ensuring the coherence of the Council's work, including in the legislative process (notably in co-decision).</p> <p>Article 2 of Council Decision 2010/427/EU on the EEAS contains a similar caveat as regards the Commission services.</p> <p>Staffing levels: EEAS, COM and Council budgets (having regard to the MFF) and establishment plans.</p>
<p>S 21. Review Service Level Agreements with Commission and Council Secretariat and the allocation of resources to address known problem areas (e.g. use of Council meeting rooms for conferences and political dialogue, transfer of secure communication systems, resources for security in third countries).</p>	<p>Any changes to Service Level Agreements would need to be discussed by the respective parties (EEAS- COM or EEAS-GSC) and could require changes in the respective budgets.</p>
<p>S 22. Review priorities and seek to streamline formal political dialogue meetings at Ministerial and senior official level. Meetings should be scheduled on the basis of the substance to be discussed.</p>	<p>Requires agreement by Council and amendment of arrangements with third countries where these fix periodicity.</p>
<p>STAFFING</p>	
<p>S 23. Human resources policies to keep balance of permanent officials and temporary agents stable at all levels in relation to 1/3 target for national diplomats and 60% minimum for officials (based on principle of equal treatment, ensuring attractive career prospects for all). Publication of posts to the three Treaty sources adapted to needs in terms of turnover of existing temporary agents.</p>	<p>EEAS and MS, within the limits of Council Decision 2010/427/EU on the EEAS.</p>

<p>S 24. Specific policy on status and management of temporary agents from Member States to cover contract duration/renewal, access to mobility and rotation policies for EEAS posts, grading, promotion</p>	<p>EEAS internal. Depending on the scope this may also require amendment of Article 6 Council Decision 2010/427/EU on the EEAS and/or the Staff Regulations (the latter on the initiative of COM).</p>
<p>and reclassification and re-integration into national foreign ministries.</p>	<p>MS.</p>
<p>S 25. Sustained efforts to address residual issues on geographical balance and achieving a meaningful presence of national of all Member States;</p>	<p>EEAS and MS, within the limits of Article 6 Council Decision 2010/427/EU on the EEAS and the Staff Regulations.</p>
<p>S 26. Additional measures to promote gender balance.</p>	<p>EEAS and MS.</p>
<p>Medium-term recommendations</p>	
<p>ORGANISATION</p>	
<p>M 1. Overhaul management and procedures for CSDP operations (streamline planning functions for civilian and military missions; reduce intermediate steps in consultation of Council working groups; simplified procurement and financial procedures). The December European Council debate on security and defence could also cover structural issues (e.g. integration of CSDP structures within the EEAS, reporting lines, mission support);</p>	<p>This requires:</p> <ul style="list-style-type: none"> - a review of the ‘Crisis Management Procedures’; - an amendment of Article 4 Council Decision 2010/427/EU on the EEAS and/or political Council support combined with internal EEAS decisions; - possibly an amendment of the Financial Regulation (or recourse to Article 41(3) TEU).

<p>M 2. Create a shared services centre to provide logistical, procurement and administrative support for all CSDP missions and EUSRs.</p>	<p>Would probably require a Council Decision under Art. 25(b)iii TEU as well as amendment of specific Council decisions on CSDP missions and EUSRs.</p>
<p>M 3. Clarify system of political deput(ies) for the High Representative (either within EEAS structures or through clearer responsibility for HRVP over other Commissioners). Conclude formal arrangements for existing practice where Foreign Ministers, members of the Commission and senior EEAS officials can deputise for the HRVP (including having formal representation rights in EP, Council and Commission meetings);</p>	<p>The creation of deputies would require a Treaty amendment affecting the institutional balance, as would changes in representation of the HR before the EP.</p> <p>Formalising the current system of 'deputising' for the HR within the current Treaties could take different forms, e.g. a joint HR, COM and Council Declaration; involving also the EP where appropriate. It could include changes in the declaration on political accountability.</p>
<p>M 4. In future allocation of Commission portfolios, strengthen HRVP position in Commission decision-making on external assistance programmes, to ensure optimal coherence with EU foreign policy priorities and clarify the HR/VP's lead responsibility for relations with Western Balkans and ENP countries.</p>	<p>Decision by COM President under Article 17(6) TEU (internal organisation and guidelines for COM work). Could include amending Article 9 Council Decision 2010/427/EU on the EEAS on the EEAS role in financial instruments.</p>
<p>M 5. Streamline EEAS top management structure in particular the composition of the Corporate Board and the division of labour between Managing Directors and Directors. Merge posts of Executive Secretary General and Chief Operating Officer into a single post of Secretary General reduce number of Managing Directors.</p>	<p>Within HR remit.</p>
<p>FUNCTIONING</p>	
<p>M 6. As part of the forthcoming institutional transition, revise the HRVP declaration on political accountability (e.g. to address who can represent HRVP in EP debates; intensify EP input to upstream policy planning; access to classified information, including political reporting from EU delegations; support for EP visits in third countries);</p>	<p>Revising the declaration on political accountability must respect the balance of powers between the institutions as laid down in the Treaties and requires Council agreement where it affects the powers of the Council.</p>

<p>M 7. Modify Financial Regulation to address problems of dual financial circuits in delegations</p>	<p>Requires amendment of the Financial Regulation.</p>
<p>M 8. Review roles of Commission Accountant and Internal Audit Service in relation to financial management of EEAS</p>	<p>EEAS and COM internal and may require amendment of Article8 Council Decision 2010/427/EU on the EEAS and/or the Financial Regulation.</p>
<p>M 9. Address residual competence issues to ensure that EEAS and EU delegations are the single channel for EU external relations issues, including in areas of mixed competence and in multilateral fora including the UN system, OSCE etc.</p>	<p>Under the current Treaties COM (and President EUCO) has external representation prerogatives too.</p> <p>Requires MS agreement as regards mixed competence (incl. shared non-exercised competence).</p> <p>Cannot cover the determination of EU positions, which belongs to Council.</p> <p>Requires MS agreement as regards coordination.</p>