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Multiple Actors in framing the EU's External Policy: The Case of the EU Global Security Strategy.
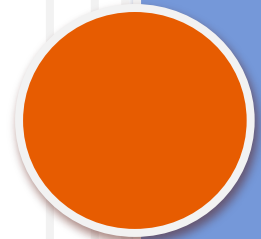
Ilze Ruse

Multiple Actors in framing the EU's External Policy: The Case of the EU Global Security Strategy.

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Abstract:

The functioning of the European External Action Service (EEAS) has been a much discussed issue since its establishment. By constructing, through the Treaty of Lisbon, a single actor for the EU external policy, the EEAS now has to deal with finding most efficient ways of accommodating the interests of both the EU Member States and the EU institutions. The paper applies the Principal-Agent method to examine the delegation of EU external policy to the EEAS. The vague mentioning of the EEAS in the Lisbon Treaty and the inter-institutional negotiations preceding the July 2010 Council Decision on the organisation and functioning of the EEAS illustrate how Member States have decided to leave a remarkable degree of autonomy to the new external relations agent. However, as the Principal-Agent theory suggests, any agent that is left with great discretion will eventually form a life of its own, from which the EEAS has been no exception in light of the negotiating the European Global Strategy in 2016. The paper explores the means of control that the principals, i.e. the Member States have employed to keep their ownership in framing the new security strategy of the EU.

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1. Introduction

The foreign policy of the European Union has been a reactive rather than proactive policy area of the EU because of the Member States' reluctance to give up national competence over this policy area that stands at the heart of high politics[1]. The early days of EU foreign policy cooperation, starting with the missed opportunity of the European Defense Community in 1952, the Political Cooperation in 1970 and the gradual set-up of the Common Foreign and Security Policy with the Maastricht Treaty, were marked by slow but determined steps. According to the Council Decision establishing the service in 2010, the EEAS "shall support"[2] the High Representative and Vice President of the European Commission (HR/VP) in ensuring coherency and consistency in the EU's external action and implementing the Common Foreign and Security Policy (CFSP), as well as support her under her mandate as the HR/VP[3]. After fierce inter-institutional negotiations over its form and content, it was decided in 2010 that the EEAS would stand outside the Commission or Council bodies, and consist of the civil servants from the European Commission, the diplomatic service of the Member States, and the Council Secretariat. By depriving the Commission of DG Relex and the Union's delegations, the EEAS stripped the Commission both in terms of competence and staff. The significant institutional changes were undertaken in the name of less duplication, enhanced efficiency and coherence in the EU's external representation[4].

As a *sui generis* bureaucratic body, the EEAS has gained significant attention by academics and practitioners alike, with a frequent focus on assessing its potential in delivering on the intended

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[1]Bretherton, Charlotte and Volger, John, *The European Union as a Global Actor*, Oxon, Routledge, 2006, pp. 1-12.

[2] Council of the European Union, 'Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service', 2010/427/EU, Brussels, 26 July 2010.

[3] Van Vooren, Bart, 'A Legal-Institutional Perspective on the European External Action Service', *Common Market Law Review,* no. 48, 2011, pp. 475-502; Duke, Simon, 'The European External Action Service: Antidote against Incoherence?', *European Foreign Affairs Review,* vol. 17, issue 1, 2012, p. 45.

[4] Van Vooren, *loc. cit.,* p. 478; Murdoch, Zuzana, 'Negotiating the European External Action Service (EEEAS): Analysing the External Effects of Internal (Dis) Agreement', *Journal of Common Market Studies,* vol. 50, no. 6, 2012, p. 1011.

optimization, efficiency and coherence of EU foreign policy[5]. Consisting of civil servants from two EU institutions and Member State diplomatic services, the EEAS has become a laboratory for solving the EU's "capacity-expectations gap"[6] and fascinates or frightens supporters and opponents, respectively, as a new type of 'foreign ministry'.[7]

Although the Member States were able to ensure their place in the new institutional arrangements, it is far from clear whether the actions of the External Action Service will remain in line with Member States' preferences. Some studies consider that, at the moment, it is difficult to see the EEAS dominance as it is affected by an internal strife over power and conflicting working cultures between the Commission staff and Member State diplomatic servants.[8] However, in the long-run, the possibility of the service wandering into its own orbit is enforced by the fact that the Lisbon Treaty is not more precise than stating that the EEAS "shall support" the HR/VP in fulfilling the mandate.[9] There is no clear list of internal rules of procedures of the EEAS. This arms the service with a margin of maneuver that it can potentially use for pursuing its own intentions and shaping its own identity in the long run.[10]

This paper aims to investigate, through the lens of the Principal-Agent theory, the extent to which the Member States are willing and able to control the EEAS. Although it is a novel theoretical approach in the realm of European Politics, the Principal-Agent theory has generously been applied to explaining delegation to the Commission both in terms of internal and external policy areas.[11] Based on Rational Choice presumptions, the theory is instrumental in explaining how a self-interested agent tends to drift away from the principal's preferences, unless it is successfully controlled[12]. The political science approach is complemented with a chapter addressing the legal perspective of foreign policy delegation.

The purpose of this paper is to investigate the relationship between the Member States as the principal and its new agent in EU external relations, the EEAS, by assessing the ways in which Member States have been able to ensure control over the agent, and how the negotiations and adoption of the EU Global Security Strategy have reflected the control mechanisms by the Member States. The research question addressed is stated as follows: *To what extent have the Member States exerted their control over EEAS in deliberations on European Global Strategy?*

By going through the control mechanisms that the principal employs in its attempt to 'tie the hands' of the agent, i.e., appointment, administrative procedures, organization, legislation and

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[5]   Van Vooren, *loc. cit.,* p. 478; Jonas, Poul, 'EU Foreign Policy After Lisbon: Will the New High Representative and the External Action Service Make a Difference?', *CAP Policy Analysis,* no. 2., 2008, p. 32.

[6]   Hill, Christopher, 'The capability–expectations gap or conceptualising Europe's international role', *Journal of Common Market Studies*, vol. 31, issue, 3, 1993, pp. 305–328.

[7]   Bindi, Federica., 'One Year On: Assessing the European Foreign Policy and the European External Action Service', *Brown Journal of World Affairs,* vol. 17, issue 2, 2011, p. 129

[8]   Bindi, *loc. cit.,* p. 129.

[9]   Treaty of the Functioning of the European Union

[10]   Spence, *loc. cit.,* p. 116.

[11]   Dijkstra, Hylke, 'Explaining variation in the role of the EU Council Secretariat in first and second pillar policy-making', *Journal of European Public Policy*, vol. 17, issue 4, 2010, pp. 527-544;

[12]   Versluys, Helen and Orbie, Jan, 'Theorising EU Humanitarian Aid Policy', *Conference Paper for Third Pan-European Conference on EU Politics,* Istanbul, 2006, p. 8.

institutional checks,[13] it is possible to provide for a distinct logic with respect to the EEAS. This paper will be structured in several stages. The first section will highlight the existing academic literature employing the Principal-Agent theory and outline the key assumptions of the theory. The second section will illustrate the applicability of the theory to the European External Action Service. Academics and practitioners alike have observed that the set-up of the EEAS was met by a strong presence of the Member States with regard to efforts to imbed their voice in the new institutional arrangement. The section will elaborate on the theoretical control mechanisms of the Principal-Agent theory, which stipulates that the very delegation of a policy from the principal to the agent implies specialization and an asymmetry of information,[14] therefore perfect control of the agent is incompatible with efficiency in the delegated task.[15] In light of the EEAS an arising question that will be tackled in the third section is related to the evidence of control that the Member States have demonstrated throughout the negotiations on the EU Global Security Strategy. The research will follow the deliberations and adoption of the security strategy to analyze the evidence of control by the Member States in the delegation of EU external relations. A fourth section will recognize the legal limits to which the EEAS can gain autonomy via the Principal-Agent theory by looking at the jurisprudence of the Court of Justice of the EU (CJEU) in the area of the CFSP. The final section will summarize the argument by testing the theoretical presumptions suggested in this paper.

2. Principal-Agent theory and its early application to the study of the EU

The Principal-Agent theory is a newcomer to EU studies, originating in the United States in the 1980s in the form of economic governance literature.[16] It is based on the act of delegation, which is defined as "a conditional grant of authority from a principal to an agent in which the latter is empowered to act on behalf of the former".[17] Although it traditionally stood under comparative politics, the recent application of the theory to explaining delegation from EU Member States to its institutions, such as the European Commission,[18] the European Court of Justice or the European Central Bank,[19] has been remarkably fruitful. Applying the Principal-Agent theory to the study of the EU has become popular in the last decade. Previous literature has focused on the

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[13]   Gilardi, Fabrizio, 'Principal-Agent Models Go to Europe: Independent Regulatory Agencies as Ultimate Step of Delegation', *ECPR General Conference,* Canterbury, 2001, p. 15.

[14]   Kassim, Hussein, and Anand Menon, 'The Principal-Agent Approach and the Study of the European Union: Promise Unfulfilled?, *Journal of European Public Policy*, Vol. 10, No. 1, 2003, pp. 121-39.

[15]   Pollack, Mark A., 'Theorizing EU Policy-Making', in Helen Wallace, William Wallace, Mark A. Pollack (eds), *Policy-Making in the European Union*, 2005, p. 33.

[16]   Elgie, Robert, 'The Politics of the European Central Bank: principal-agent theory and the democratic deficit', *Journal of European Public Policy,* vol. 9, no. 2, 2002, pp. 186-200.

[17]   Hawkins et al., 'Delegation Under Anarchy: States, International Organisations, and Principal-Agent Theory', *Delegation and agency in international organizations*, Cambridge, University Press, 2006, p. 3.

[18]   Franchino, Fabio, 'Efficiency or credibility? Testing the two logics of delegation to the European Commission', *Journal of European Public Policy,* vol. 9, no. 5, 2002, pp. 677-684.

[19]   Elgie, *loc. cit.*

delegation to the European Commission, mostly in terms of internal policy areas.[20] With the entry into force of the Lisbon Treaty, an additional bureaucratic actor entered the already complex web of delegation. As a new agent in the foreign policy arena with a loosely defined mandate, the European External Action Service has recently thrilled advocates of the Principal-Agent theory with its potential for strengthening or upgrading the theoretical premises with new empirical evidence. The following section will outline our interpretation of the ways in which the EEAS can be mapped into the Principal-Agent theory, and what potential insight or explanatory capacity the theory carries for the service and its engagement in drafting the European Global Strategy.

The Principe-Agent theory shares its ontological features with rational choice theory. The three key presumptions are that, firstly, actors (both principals and agents) are self-interested and seek to maximize their utility;[21] secondly, the theory stipulates that there is a tendency for a conflict of interest to occur between the principal and the agent; and finally, the third feature is that there is an asymmetry of information between the principal and the agent, which is in favor of the latter by virtue of its specialization in the given policy domain.[22]

The Principal-Agent theory suggests that the act of delegation to a third party is not random; there are strong reasons for such a cost-bearing act. Majone proposes 'two logics of delegation', from which the first rationale is for the principal to gain credibility on policy commitments that is only attainable by delegating the task to the agent.[23] The second 'logic' for delegation is to delegate for the purpose of gaining policy relevant expertise, as the agent is in a position to specialize on a subject area. In other words, the relationship between the principal and agent is marked by an asymmetry of information.[24] The author suggests that delegation for credibility reasons means that the agent is granted with more independence or autonomy than when delegation takes place for policy-relevant expertise. Nevertheless, separating the two of delegation based on varied autonomy has been criticized by Pollack,[25] Franchino[26] and Grant and Keohane.[27] In other words, some, but never unlimited inbuilt autonomy is present in every form of delegation.[28] Furthermore, when the principals sign a 'contract' of delegation, they often purposely leave parts of the mandate to be completed by the agent. This is referred to as 'discretion'.[29] Hawkins *et al.* suggest that discretion is particularly employed where there is uncertainty over the future developments of an ever changing policy area, when a degree of specialization is needed that only the agent can

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[20]   Franchino, *op. cit.*

[21]   Gilardi, Fabrizio, 'Principal-Agent Models Go to Europe: Independent Regulatory Agencies as Ultimate Step of Delegation', *ECPR General Conference Paper,* 6-8 September 2001, p. 5.

[22]   *Ibid.*

[23]   Majone, Giandomenico, 'Two Logics of Delegation: Agency and Fiduciary Relations in EU Governance', *European Union Politics,* vol. 2, no. 1, 2001, pp. 103-21.

[24]   *Ibid.*

[25]   Pollack, *op. cit.,* p. 10.

[26]   Franchino, *op. cit.*

[27]   Grant, Ruth W., and Robert O .Keohane, 'Accountability and Abuses of Power in World Politics', *American Political Science Review*, vol. 99, no. 1, 2005, pp. 29-43.

[28]   Hawkins et al., *op. cit.,* p. 4.

[29]   Grant and Keohane, *loc. cit.,* p. 31.

provide, or in the scenario, in which there are multiple principals with heterogonous preferences.[30]

This inbuilt autonomy, purposeful or not, forms the so called 'Principal-Agent problem'.[31] Because agents are utility-maximizing actors with arguably diverging preferences from the principals, they seek to follow their own intentions where possible, and to expand their autonomy even further. The agent's abuse of its empowered position is referred to as 'slippage'.[32] As already established, agents will always have some degree of autonomy, and "too much control… undermines the purpose of the delegation".[33] After having made a cost-benefit analysis, principals, will select a type of control mechanism that will ensure that the agent does not diverge from the principal's initial preferences too radically. This paper will borrow the list of control mechanisms from Gilardi's work,[34] according to whom, several types of control are identified:

(1) *Oversight,* which is the constant monitoring of the agent's behavior;

(2) *Administrative procedures,* i.e. determining the agent's role in the decision-making;

(3) *Appointments*, meaning that a like-minded agent is granted by having power over appointees of head positions;

(4) *Legislation,* or the threat to change the laws and procedures; and

(5) Institutional checks of creating multiple agents that would compete and mutually control each other.

2.1 The External Action Service as an EU's external relations agent

With the entry into force of the Lisbon Treaty, the Member States paved the way for the creation of a new foreign policy agent in the EU architecture. Namely, Articles 18 and 27 of the Treaty of the European Union (TEU) outline the creation and mandate of the High Representative/Vice President of the European Commission, supported by the EEAS. Because the EEAS and its head are legally and structurally linked, they can be placed into the Principal-Agent theory as a single agent. This section will highlight the aspects of the EEAS that are most relevant to the questions asked by the Principal-Agent theory.

As outlined in the previous section, the reasons for delegation can be various, for example for the purpose of enhancing credibility, and gaining policy relevant expertise.[35] These two logics of delegation can both be applied to the EEAS. The Council Decision 2010 establishing the organization and functioning of the EEAS states that the formal objective for its creation was to

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[30]   Hawkins, *op. cit.,* p. 29.
[31]   *Ibid*.
[32]   Pollack Mark A., 'Delegation, Agency, and Agenda-setting in the European Community', *International Organization,* vol. 51, no. 1, 1997, pp. 99–134.
[33]   Hawkins et al. p. 33.
[34]   Gilardi, *op. cit.*
[35]   Majone, *op. cit.*

enhance the consistency and coordination of the various external action policy areas.[36] The introduction of a single position of the High Representative/Vice President of the Commission (HR/VP) was thought to allow for more coherence and dialogue between the EU's institutions and the Member States.

Secondly, the delegation to the EEAS also serves the gaining of policy-relevant expertise by virtue of the EEAS's now holding the EU's delegations in third countries, which are important sources of information on the ground. Furthermore, the EEAS has to stand between the EU institutions with a brokering role,[37] which is a position that allows the EEAS to possess more information. Overall, the initial assessment of the creation of the EEAS supports both logics of delegation with an emphasis on the credibility logic.

Having established the logics of delegation, the next question to be addressed is what was the degree of discretion offered to the agency and why? The principal(s) try to hit a balance between pre-emptive control and a healthy degree of discretion, which depends on the intentions of the principal(s). In the theoretical section above it was suggested that leaving greater discretion to the agent can be desirable to an agent, such as the EEAS, firstly, because it consists of multiple and heterogeneous actors and, secondly, because the policy area in which delegation takes place requires flexibility that accommodates unanticipated changes of events of the global scale. The consequence of leaving greater discretion to the agent is that more oversight and corrective control will be needed in the future.

The paper draws on the Principal-Agent relationship between the Member States (principals) and EEAS (agent) in the deliberation of the European Global Strategy and argues that Member States have applied several types of control mechanisms as provided in Gillardi's model.[38]

3. The Case of the EU Global Strategy

Adoption of the security strategy by the European Council on 28 June 2016 has been a significant moment for EU's external actorness. In spite of numerous crisis internally and externally during the recent decade, the EU has not been able to agree on an up-dated strategy for its external action. Its full name – *Global Strategy for the European Union's Foreign and Security Policy (EUGS)* indicates that the strategy is addressing EU's role as a global actor. The strategy deals with both the internal and the external threats. Compared to the European Security Strategy (ESS) from 2003, the EUGS offers "a new overall approach to foreign and security policy"[39]. Instead of

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[36]   Council of the European Union, *Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service,* 2010/427/EU, Brussels, paragraph 2.

[37]   Whitman, Richard, G., 'The Rise of the European External Action Service: Putting the Strategy Into EU Diplomacy?', *12th Biennial Conference of the European Union Studies Association* (EUSA), 2011.

[38]   Gilardi, Fabrizio, 'Principal-Agent Models Go to Europe: Independent Regulatory Agencies as Ultimate Step of Delegation', *ECPR General Conference Paper,* 6-8 September 2001, p. 5.

[39]   Biscop, Sven, 'The EU Global Strategy: Realpolitik with European Charecteristics', *Working paper*, Egmont Institute, June, 2016.

only listing the threats, as the ESS did, the new strategy for the first time ever outlines the interests of the EU's external action. This is done on the backdrop of the current global challenges and thus frames the long term guidelines for the foreign policy and external action. The main five objectives of the EUGS are:

> (1) Internal security of the EU;
>
> (2) The security beyond the borders – neighborhood;
>
> (3) Measures in times of crisis;
>
> (4) Regional stability; and
>
> (5) Effective global governance.[40]

The aim of the paper is to focus on the process of deliberations on the EUGS, rather than scrutinizing its contents. Yet, it has to be noted that in the context of its overarching nature the EUGS frames a foreign policy strategy, which merges European interests with national interests of Member States as well as the citizens. Accordingly, throughout the deliberation process we can trace the interaction between the EEAS and the Member States in integrating set of various interests in the final document.

The work on the EUGS started with a mandate given to the High Representative by the June European Council in 2015 during the Latvian Presidency. The Council Conclusions tasked the High Representative to "*continue the process of strategic reflections with a view to preparing an EU global strategy on foreign and security policy in close cooperation with Member States, to be submitted to the European Council by June 2016*".[41] With respect to the Principal-Agent theoretical framework, this quote bears a significant empirical value, as it reveals the relationship of the actors involved in the framing of the new policy document. The European Council (here the principal) tasks the High Representative (here the agent) to draft a strategic document for the EU's external action to be submitted to the European Council (the principal). The delegation logic here corresponds to the rational for the gaining policy relevant expertise through giving the task to the EEAS. The delegation can be also justified for the purpose of more credibility on policy commitments, as the EUGS was supposed to become a tool for global actorness of the EU.

The foreign and security policy (CFSP) is a much debated field in European Politics because the competence division between the Member States and EU institutions. CFSP is neither exclusive nor shared competence under TFEU. Instead, it is treated as *sui generis*. Article 2(4) TFEU provides that the Union shall have competence, in accordance with the provisions of the TEU, to define and implement a common foreign and security policy, including the progressive framing of a defense policy[42]. The nature of that competence is not clarified. Article 24(1) TFEU provides that the Union's competence shall cover all areas of foreign policy and all questions relating to the Union's security. Further, Article 24(3) TEU instructs the Member States to support the

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[40]   EU Global Strategy - https://europa.eu/globalstrategy/en
[41]   European Council Conclusions, 25-26 June, 2015
[42]   Article 2(4) TFEU

policy actively and unreservedly in a spirit of loyalty, and to comply with the Union's action in this area. Decisions on operational action shall commit the Member States in the positions they adopt and in the conduct of their activity (Article 28(2) TEU). Member States shall also ensure that their national policies conform to the Union's positions (Article 29 TEU). They shall consult one another within the European Council and the Council on any matter of foreign and security policy of general interest in order to determine a common approach (Article 32 TEU).

Accordingly, the European Council and the Council are the most important institutions for the conduct of the CFSP. Whereas policy implementation under the TFEU is characterized by a strong division of powers between the Council, the Commission, and the European Parliament, requiring constant co-operation between those institutions, the Council clearly dominates the CFSP.

In the light of the legal basis of CFSP, the adoption of a new 'foreign policy strategy' for the EU's global actorness would have taken place with a strong engagement by the Member States and the Council. In reality the whole process was largely owned by the High Representative and European External Action Service.

The mandate given by the European Council was implemented by the High Representative through organizing the preparation work under the EEAS institutional framework. The main body – 'a task force' of collecting the input from the Member States and stakeholders was established under close supervision of the High Representative herself. In 2015 a Special Advisor to the High Representative was nominated – Dr.Nathalie Tocci, the former advisor on International strategies to Ms. Frederika Mogerini during her time as the Italian Foreign Minister. The special task force on drafting the EUGS included 28 focal points from the Member States, who were supposed to give an input with respect to the various national interests of each of the Member States. Between September 2015 and May 2016 this was at large the only direct involvement in the drafting of the strategy by the Member States. The Council as the EU institution was not involved in deliberations. Instead, the High Representative actively engaged various stakeholders in the consultation process. The EUGS was discussed at numerous seminars with think-tanks in the EU capitals and beyond its borders. According to external relations law, the High Representative has a competence to make proposals (Art.18(2), 22(2), 27(1) and 43(3) of the TFEU)[43]. Apart from initiating the policies, the High Representative has a role in implementing and supervising the CFSP (Art.24, 27(1) and 26(3) of the TFEU). Finally, there is an obligation of ensuring consistency in the EU's external action by enhancing better coordination between the Council, the EEAS and the Commission (Art.18(4) and 21(3) of the TFEU.). The post or the High Representative aims in ensuring coherence and efficiency. Some scholars argue that the complexity of the relationship between the actors can sometimes lead to "institutional schizophrenia".[44]

Application of the Principal-Agent theory helps to explain the relationship between the High Representative and the Council in adoption of the EUGS. The Member States have urged to adopt

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[43]   Treaty on the Functioning of the European Union

[44]   Craig, Paul, *The Lisbon Treaty. Law Politics and Treaty Reform*, Oxford University press, 2010, pp. 111

a new strategy for EU global actorness already for some time. The previous security strategy of 2003 has been largely outdated due to the changes in the international security environment, enlargement in 2004, as well as the treaty change in 2009. The Member States have been truly interested in getting their preferences integrated in the EUGS draft. Yet, throughout the drafting process the Member States as principals had a limited influence in delegating the policy mandate to the agent (here EEAS) due to the fact that the Council was not engaged in the drafting process.

The theoretical framework of this paper hypothesizes that the principals will select a type of control mechanism to ensure that the agent does not diverge from the principal's initial preferences. Indeed, this could be observed throughout the deliberation process. The Member States used the whole set of control mechanisms, as suggested in the theory (oversight, administrative procedures, appointments, legislation, institutional checks). First, the mandate by the European Council ensured the legal basis of the Principal-Agent delegation. The final document of the EUGS was supposed to be adopted by the European Council a year later, to ensure the feedback. With respect to appointments, each country nominated a responsible focal point, who would interact with the EEAS task-force. The network of the focal points worked closely together to avoid asymmetries in information distribution between the principle and agent. With all process concentrated in the EEAS, there was a risk that the agent could 'glide away' and form the preferences of its own. The oversight was ensured through submitting the non-papers to the EEAS with the clearly defined interests from the governments or the like-minded groups of Member States. These Member States' inputs contained clear guidelines for the contents that the principal was willing to see in the final document drafted by the agent. Finally, there were additional institutional checks by the Member States governments through multiple agents. The deliberation process involved high engagement of civil society and think-tanks of the Member States. These formats were used by respective Foreign ministers to signal about the preferences of their countries. For instance, the Estonian Foreign Minister called for more intensive cooperation in the field of cyber security during a conference in Tallinn,[45] the Portuguese Minister of Defence gave a special address on defense issues while speaking in Lisbon,[46] while the Latvian Foreign Minister stressed the role of Central Asia in regional context during the discussion in Riga,[47] etc. This ministerial input balanced the absence of the Council as an institution in drafting the strategy. The consultation process concluded with an exchange of views on the EUGS during the informal Council of Foreign ministers (Gimnich) during the Dutch Presidency to ensure that the multiple interests were properly integrated in the EUGS.

4. Legal explanations on the limits of 'slippage' by the EEAS

The application of the Principal-Agent theory places the discussion in the Political science domain. The aim of this section is to involve the legal analysis in addressing the limits of

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[45]   https://europa.eu/globalstrategy/en/estonian-fm-kaljurand-calls-more-inclusivity-international-cyber-cooperation-cyber-security

[46]   https://europa.eu/globalstrategy/en/portuguese-minister-defence-stresses-importance-european-project-defence-lisbon-conference

[47]   https://europa.eu/globalstrategy/en/latvian-fm-rinkevics-and-kazakh-deputy-fm-vassilenko-address-eu-central-asian-relations-eu-global

discretion by the EEAS. While the Member States, as the principals, may find themselves concerned with 'slippage' by the EEAS, their agent, one must remember that, by virtue of the principle of conferral, any action by the Union is constrained by the limits imposed on it by the Member States.[48] This implies that in theory, as a matter of EU law, the EEAS cannot gain such behavioral autonomy that its actions fall beyond what the Member States have conferred in the Treaties. Yet this tells just half the story given the "uneasy relationship"[49] between the CFSP and other areas of EU law. Having developed as a separate pillar in EU law, the CFSP has retained its *sui generis* nature in the Lisbon treaty. One of the most striking features of the Common Foreign and Security Policy can be found in the last paragraph of Article 24(1) TEU, coupled with Article 275 TFEU, which takes the CFSP outside the jurisdiction of the Court of Justice of the European Union (CJEU). However, while the CJEU may be deprived of jurisdiction on matters of substance in CFSP actions, the aforementioned provisions make clear that the Court shall have jurisdiction to "monitor compliance with Article 40 [TEU]". In accordance with Article 40 TEU, the CFSP must be implemented in the light of the principle of conferral, the CJEU maintaining jurisdiction to assure that an action is taken within the correct legal basis.[50] In other words, from the perspective of attribution of conduct, the Treaties ensure that the Agent does not glide away from the mandate given by the Principal. Applying the Gillard's model, the legal basis serves here as an additional control mechanism to avoid the slippage by the Agent.

This principle of responsibility was made clear by the Court in the *ECOWAS* Case[51], which concerned the Cotonou Agreement concluded by the EU with a number of African, Pacific and Caribbean States. Drawing reference from a UN-backed prohibition, certain actions under the Agreement were made under the auspices of the CFSP, rather than under the corresponding legal basis empowering the EU institutions. Given the *sui generis* nature of the CFSP, the Court held that any measure which can be adopted under either the Community or CFSP pillar must be adopted under the Community pillar.[52] This is potentially a remarkable limitation on the action of the EEAS, which finds itself at the crossroads of competences in the Treaties.[53] This means that, unless a measure finds itself fully under the CFSP, it must be taken under its corresponding *Union* legal basis and is reviewable by the CJEU – a rule that has recently been extended to include review of actions taken by a Head of an EU Mission formed under the CFSP.[54]. Such legal constraints could be seen as having the dual consequence of assuring that the EEAS doesn't 'slip' too far away from the preferences of the Member States, at the same time placing a limit on the scope of the CFSP, and consequently, the global actorness of the EU.

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[48]   Article 5(1) TFEU stipulates that "the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein"

[49]   Chalmers, Damian; Davies, Gareth and Monti, Giorgio, *European Union Law*, Oxford University Press (2nd edition), 2010, pp. 660

[50]   *Ibid.*

[51]   Case C-91/05 *Commission v Council* [2008] ECR I-3651

[52]   *Ibid*, para. 77

[53]   De Baere, Geert and Wassel, Ramses, 'EU Law and the EEAS: Of Complex Competences and Constitutional Consequences', paper presented at the conference *The EU's Diplomatic System: post-Westphalia and the European External Action Service*, London, 19 November 2013, pp. 7

[54]   Case C-455/14 P *H v Council and Commission* [2016] not yet reported

5. Concluding remarks

This paper aimed to analyze the policy delegation in the complex relationship between the European External Action Service and the Member States in carrying out the external relations. The adoption of the European Global Security Strategy offers a great potential in this regard. Through the lens of the Principal-Agent theory, the paper assessed the control mechanisms through which the Member States (principals) have reacted on the performance of the EEAS (agent) in deliberation of the new comprehensive strategy for future EU's global actorness. The study hypothesized that the principals would use different control mechanisms to avoid the 'slippage' by the agent. Although the EEAS appeared to demonstrate a high level of ownership throughout the drafting process, the Member States managed to successfully integrate their preferences within the document through appointing their focal points, sharing the non-papers and actively engaging the Foreign ministers throughout the multiple agent networks during the consultation process. The paper notes the legal limits to the CFSP under EU law; these limits simultaneously operate as a legal safeguard against agent 'slippage'.

In conclusion, the EUGS is one of the most significant policy documents in the field of the EU external relations in the recent years. The process of deliberations between 2015 and 2016 showed impressive work by the EEAS under the direct leadership of the High Representative. Yet, the final result has to be viewed as collaboration between various stakeholders. The Member States actively communicated their preferences through multiple channels, to ensure that the new EUGS document accommodates the preferences of all actors. The Principal-Agent model is a helpful theoretical tool in explaining checks and balances throughout the deliberation process of the European Global Security Strategy.