

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.

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.

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 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. 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.

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.

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.

Proposal for a **COUNCIL DECISION**
of (date)

establishing the organisation and functioning of the European External Action Service

(25 March 2010)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 27(3) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy ("the High Representative"),⁴

Having regard to the Opinion of the European Parliament,⁵

Having regard to the consent of the Commission,⁶

⁴ OJ...

⁵ OJ...

⁶ OJ...

Whereas:

(1) The purpose of this Decision is to establish the organisation and functioning of the European External Action Service ("EEAS"), a functionally autonomous body of the Union under the authority of the High Representative, set up by Article 27(3) of the Treaty on European Union ("TEU"), as amended by the Treaty of Lisbon.

(2) In accordance with Article 21(3), second subparagraph, of the TEU, the Union will ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative, will ensure that consistency and will cooperate to that effect.

(3) The EEAS will support the High Representative in fulfilling her mandate to conduct the Common Foreign and Security Policy ("CFSP") of the European Union and to ensure the consistency of the EU's external action. The EEAS will support the High Representative in her capacity as President of the Foreign Affairs Council, without prejudice to the normal tasks of the General Secretariat of the Council. The EEAS will also support the High Representative in her capacity as Vice-President of the Commission, for her responsibilities within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action, without prejudice to the normal tasks of the Commission services.

3a In its contribution to the EU external cooperation programmes, the EEAS should verify that these programmes respond to the objectives for external action as set out in Article 21 TUE, in particular its paragraph (d) on fostering sustainable economic, social and environmental development, and that they respect the objectives of EU development policy in line with Article 208 TFEU. In this context, the EEAS should also promote the fulfilment of the objectives of the European Consensus on Development and the European Consensus on Humanitarian Aid.

(4) It results from the Treaty of Lisbon that, in order to implement its provisions, the EEAS must be operational as soon as possible after the entry into force of that Treaty.

(5) The European Parliament will fully play its role in the external action of the Union, including its functions of political control as provided for in Article 14(1) of the TEU, as well as in legislative and budgetary matters as laid down in the Treaties. Furthermore, in accordance with Article 36 of the TEU, the High Representative will regularly consult the European Parliament on the main aspects and the basic choices of the CFSP and will ensure that the views of the European Parliament are duly taken into consideration. The EEAS will assist the High Representative in this regard.

(6) The High Representative, or her representative, should exercise vis-à-vis the European Defence Agency, the European Union Satellite Centre, the European Union Institute for Security Studies and the European Security and Defence College the responsibilities provided for in their respective founding acts. The EEAS should provide these entities with the support currently provided by the General Secretariat of the Council.

(7) Provisions should be adopted relating to the staff of the EEAS and their recruitment. For matters relating to its staff the EEAS should be treated as an institution within the meaning of the Staff Regulations. In accordance with Article 27(3) of the TEU, the EEAS will comprise officials from the General Secretariat of the Council and the Commission as well as personnel seconded from the diplomatic services of the Member States. The High Representative will be the Appointing Authority, in relation both to officials subject to the Staff Regulations of Officials of the European Communities ("Staff Regulations") and agents subject to the Conditions of Employment of Other Servants. The High Representative will also have authority over the Seconded National Experts ("SNEs") in post in the EEAS. The number of officials and servants of the EEAS will be decided each year as part of the budgetary procedure and will be reflected in the establishment plan.

(7a) After the stage of setting up the EEAS during which the EEAS will recruit exclusively officials from the General Secretariat of the Council and the Commission as well as staff seconded from the diplomatic services of the Member States, all officials and other servants of the European Union should be able to apply for vacant posts in the EEAS.

(7b) Seconded National Experts in post in the EEAS will not be counted in the one third which staff from Member States should represent when the EEAS will reach its full capacity. Their transfer in the phase of setting up of the EEAS will not be automatic and will be conditional to the agreement of their Member State of origin.

(7c) The Commission and the EEAS will agree on modalities relating to the issue of instructions from the Commission to delegations.

(8) In order to ensure the budgetary autonomy necessary for the smooth operation of the EEAS, the Financial Regulation should be amended in order to treat the EEAS as an "institution" within the meaning of the Financial Regulation, with a specific section in the Union budget. 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 to 147 of the Financial Regulation.

(9) Rules should be laid down covering the activities of the EEAS and its staff as regards security, protection of classified information and transparency.

(10) It is recalled that the Protocol on the Privileges and Immunities of the Union applies to the EEAS, its officials and other agents, who shall be subject either to the Staff Regulations or the Conditions of Employment of Other Servants of the Union.

(11) The European Union and the European Atomic Energy Community continue to be served by a single institutional framework. It is therefore essential to ensure consistency between the external relations of both, and to allow the Union Delegations to undertake the representation of the European Atomic Energy Community in third countries and at international organisations.

(12) This Decision should be reviewed in the light of experience in the beginning of 2014.

HAS ADOPTED THIS DECISION:

Article 1

Nature and Scope

1. This Decision establishes the organisation and functioning of the European External Action Service ("EEAS").
2. The EEAS, which has its headquarters in Brussels, shall be a functionally autonomous body of the European Union, separate from the Commission and the General Secretariat of the Council, with the legal capacity necessary to perform its tasks and attain its objectives.
3. The EEAS shall be placed under the authority of the High Representative of the Union for Foreign Affairs and Security Policy ("High Representative ").
4. The EEAS shall be made up of a central administration and of the Union delegations to third countries and to international organisations.

Article 2

Tasks

1. The EEAS shall support the High Representative:
 - in fulfilling her mandate to conduct the Common Foreign and Security Policy ("CFSP") of the European Union, **including the Common Security and Defence Policy ("CSDP"), to contribute by her proposals to the development of that policy, which she shall carry out as mandated by the Council** and to ensure the consistency of the EU's external action;
 - in her capacity of President of the Foreign Affairs Council, without prejudice to the normal tasks of the General Secretariat of the Council;
 - in her capacity as Vice-President of the Commission for fulfilling within the Commission the responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action, without prejudice to the normal tasks of the services of the Commission.

2. The EEAS shall assist **the President of the European Council**, the President of the Commission ~~and~~, the Commission, **in the exercise of their respective functions in the area of external relations** ~~and the President of the European Council~~.

Cooperation

1. The EEAS shall work in cooperation with the **diplomatic services of the Member States as well as 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.
2. The EEAS and the services of the Commission shall consult each other on all matters relating to the external action of the Union **in the exercise of their respective functions except on matters covered by CSDP**. The EEAS shall take part in the preparatory work and procedures relating to acts to be prepared by the Commission in this area. This paragraph shall be implemented in accordance with Chapter 1 of Title V of the TEU, and with Article 205 of ~~the Treaty on the Functioning of the European Union~~ ("TFEU").
3. The EEAS may enter into service-level arrangements with relevant services of the Commission, the General Secretariat of the Council, or other offices or interinstitutional bodies of the European Union.
4. The EEAS shall extend appropriate support and cooperation to the other institutions and bodies of the Union, **in particular to the European Parliament**.

Central administration⁷

1. The EEAS shall be managed by a Secretary-General who will operate under the authority of the High Representative. The Secretary-General shall take all measures necessary to ensure the smooth functioning of the EEAS, including its administrative and budgetary management. He shall ensure effective coordination between all departments in the central administration as well as with the Union delegations, ~~and shall represent the EEAS.~~
2. The Secretary-General shall be assisted by two Deputy Secretaries-General.
3. The central administration of the EEAS shall be organised in directorates general. These shall **in particular** include:
 - a number of directorates general comprising geographic 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;
 - a directorate general for administrative, staffing, budgetary, security and communication and information system matters under the direct authority of the Secretary-General;
 - the crisis management and planning directorate, the civilian planning and conduct capability, the European Union Military Staff and the European Union Situation Centre, placed under the direct authority and responsibility of the High Representative in her capacity as High Representative for Foreign Affairs and Security Policy.

⁷ **This Article will be further examined in the light of results of the discussion on the representation/replacement of the High Representative.**

The specificities of these structures, as well as the particularities of their functions, recruitment and the status of the staff shall be respected.

Full coordination between all the structures of the EEAS shall be ensured.

The central administration shall also include:

- **a strategic policy planning department;**
 - a legal department under the ~~direct~~ administrative authority of the Secretary-General which shall work closely with the Legal Services of the Council and the Commission;
 - departments for inter-institutional relations, information and public diplomacy, internal audit and inspections, and personal data protection.
4. The High Representative shall designate ~~from among EEAS staff members~~ the chairpersons of Council preparatory bodies that are chaired by a representative of the High Representative, including the chair of the Political and Security Committee, **in accordance with the modalities set out in Annex II of the COUNCIL DECISION of 1 December 2009 laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council, (2009/908/EU)⁸.**
5. The High Representative and the EEAS shall be supported where necessary by the General Secretariat of the Council and the relevant departments of the Commission. Service level arrangements may be drawn up to that effect by the EEAS, the General Secretariat of the Council and the relevant Commission departments.

⁸ OJ L 322, 9.12.2009, p. 28.

Article 5

Union delegations

1. ~~The decision to open a delegation shall be adopted by the High Representative, after consulting the Council and the Commission.~~ The decision to **open or** close a delegation shall be adopted by the High Representative, in agreement with the Council and the Commission.
2. Each Union delegation shall be ~~led~~ **placed under the authority of** a Head of Delegation.

The Head of Delegation shall have authority over all staff in the delegation, whatever their status, and for all its activities. He shall be accountable to the High Representative for the overall management of the work of the delegation and for ensuring the coordination of all actions of the Union.

Staff in delegations shall comprise EEAS staff and, where this is appropriate for the implementation of the Union budget and Union policies other than those under the remit of the EEAS, Commission staff.

3. 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, **in accordance with article 221(2) TFEU**, also issue instructions, to delegations, which shall be executed under the overall responsibility of the Head of Delegation.

4. The Head of Delegation shall implement operational credits in relation to EU projects in the corresponding third country, where sub-delegated by the Commission, in accordance with the Financial Regulation.
5. The operation of each delegation shall be periodically evaluated by the Secretary General of the EEAS; evaluation shall include financial and administrative audits. The Secretary General of the EEAS may request to be assisted for this purpose by the relevant Commission departments.
6. The High Representative shall enter into the necessary arrangements with the host country, the international organisation or the third country concerned. In particular, the High Representative shall take the necessary measures to ensure that the host States grant the Union delegations, their staff and their property, privileges and immunities equivalent to those referred to in the Vienna Convention of 18 April 1961 on Diplomatic Relations.
7. Union delegations shall have the capacity to service the needs of other EU institutions, in particular ~~the European Council and the European Parliament~~, in their ~~official~~ contacts with the international organisations or third countries to which ~~they~~ **the delegations** are accredited.
8. The Head of Delegation shall have the power to represent the EU in the country where the delegation is ~~located~~ **accredited**, in particular for the conclusion of contracts and being a party to legal proceedings.
9. The Union delegations shall work in close cooperation **and share information** with the diplomatic services of the Member States. ~~They shall, on a reciprocal basis, provide all relevant information.~~

10. The Union delegations shall ~~have the capacity to~~, upon request by Member States, support the Member States in their diplomatic relations and in their role of providing consular protection to Union citizens in third countries.

Article 6

Staff

1. The EEAS shall comprise: ~~(a)~~ officials and other servants of the European Union, including personnel from the diplomatic services of the Member States appointed as temporary agents⁹;

~~(b)~~ If necessary, ~~and on a temporary basis,~~ **the EEAS may have recourse to** specialised seconded national experts (SNEs).
2. The staff members of the EEAS shall carry out their duties and conduct themselves solely with the interests of the Union in mind. Without prejudice to Articles 2(1), third subparagraph, 2(2) and 5(3), they shall neither seek nor take instructions from any Government, authority, organisation or person outside the EEAS or any body or person other than the High Representative.
3. The Staff Regulations, the Conditions of Employment of Other Servants and the rules adopted jointly by the European Union institutions for the purpose of applying the Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of the EEAS referred to in paragraph 1, **first** subparagraph~~(a)~~.

⁹ **Article 98(1), second subparagraph of the Staff Regulations will read as follows: “As from 1 July 2013, the Appointing Authority shall also consider the applications of officials from other institutions without giving priority to any of these categories.”**

4. The High Representative shall adopt the rules, equivalent to those laid down in Council Decision 2003/479/EC **as amended by Council Decision 2007/829/EC** of 5 December 2007¹⁰, under which SNEs are put at the disposal of the EEAS in order to provide specialised expertise.
5. The powers conferred on the appointing authority by the Staff Regulations and on the authority authorised to conclude contracts by the Conditions of Employment of Other Servants shall be vested in the High Representative, who may delegate those powers inside the EEAS.
6. All appointments in the EEAS shall be based on merit and ~~on the broadest possible geographical basis~~ **ensuring adequate geographical balance**. The staff of the EEAS shall comprise a meaningful presence of nationals from all the Member States.
7. **Regardless whether they are officials of the European Union or temporary agents coming from the diplomatic services of the Member States,** All members of the staff of the EEAS **as** covered by the Staff Regulations and the Conditions of Employment of Other Servants 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. No distinction shall be made between temporary agents coming from national diplomatic services and officials of the European Union as regards the assignment of duties to perform in all areas of activities and policies implemented by the EEAS.

¹⁰ OJ L 327, 13 December 2007, page 10.

8. The relevant departments and functions in the General Secretariat of the Council and in the Commission listed in the Annex shall be transferred to the EEAS. Officials and temporary agents occupying a post in departments or functions listed in the Annex shall be transferred to the EEAS. This shall also apply to contract and local staff assigned to such departments and functions. SNEs working in those departments or functions shall also be transferred to the EEAS **with the consent of the authorities of the originating Member State.**

These transfers 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 his function group which corresponds to his grade.

- 9.¹¹ The High Representative shall establish the selection procedures for EEAS staff, which shall **be undertaken through a transparent procedure based on merit with the objective of securing the services of staff of the highest standard of ability, efficiency and integrity while ensuring adequate geographical balance, a need for a meaningful presence of nationals from all EU Member States in the EEAS and aiming towards gender balance**~~be based on merit and on the broadest possible geographical basis.~~ **It shall be established** in conformity with the Staff Regulations and the Conditions of Employment of Other Servants,~~with due regard for gender balance.~~ **Representatives of the Member States, the General Secretariat of the Council and the Commission shall be involved in the recruitment procedure for vacant posts in the EEAS.**¹²

¹¹ The details of the selection procedure will be set up in a Declaration, see in ADD 1.

¹² Article 95(2) of Staff Regulations will read as follows: "In respect of Heads of Delegation, the powers concerning appointments shall be exercised on the basis of a list of candidates [for] which the Commission has agreed [that they are capable of exercising financial management responsibilities.]"

10. The procedures for recruiting staff for posts transferred 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 and completed under the authority of the High Representative in accordance with the relevant vacancy notices and the applicable rules of the Staff Regulations and the Conditions of Employment of Other Servants.

~~In the course of setting up the EEAS, representatives of the Member States, the General Secretariat of the Council and the Commission shall be involved in the recruitment procedure for vacant posts in the EEAS.~~

~~The staff of the EEAS central administration shall be made up of officials and other servants from, respectively, 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.~~

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, **as referred to in paragraph 1, first subparagraph**. Each year, the High Representative shall present a report to the Council on the occupation of posts in the EEAS.

11. The High Representative shall lay down the rules on mobility so as to ensure that the members of the staff of the EEAS are subject to a sufficient degree of mobility. Specific modalities shall apply to the personnel referred to in Article 4 (3), third ~~hyphen~~**indent**. In principle, all EEAS staff shall periodically serve in Union delegations. The High Representative shall establish rules to that effect.

12. In accordance with the applicable provisions of its national law, 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-service~~ to the EEAS. **This period of service, in accordance with the provisions of Article 50b of CEOS, shall not exceed eight years, unless, it is extended for a maximum period of two years in exceptional circumstances and in the interest of the service¹³.** ~~Beyond two consecutive secondments, each Member State may decide to prolong such guarantee in accordance with the applicable provisions of its national law.~~ EU officials serving in the EEAS shall have the right to apply for posts in their institution of origin on the same terms as internal applicants.
13. 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.

¹³ **Article 50b(2) of CEOS will read as follows : “2. They may be engaged for a maximum period of four years. Contracts may be renewed for a maximum period of four years. In total, engagement should not exceed eight years. However, in exceptional circumstances and in the interest of the service, at the end of the eighth year, the contract may be extended for a maximum period of two years. A renewal or extension shall be granted on condition that the secondment from the national diplomatic service is extended for the period of renewal.”**

Article 7

Budget

1. The High Representative shall act as authorising officer for the EEAS section of the General Budget of the European Union and adopt the internal rules for the management of the corresponding budget lines. These internal rules shall lay down which of the powers of the authorising officer are delegated to the Secretary-General and the conditions under which the Secretary-General can sub delegate these powers.
2. 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.
3. ~~As regards operational expenditure arising from the implementation of~~ The CFSP budget, the Instrument for Stability **except the part referred to in Article 8(1)**, the Instrument for Cooperation with Industrialised Countries, the Communication and Public Diplomacy as well as the Election Observation Missions **are under the responsibility of the High Representative/EEAS.** ~~]~~ [The Commission shall be responsible for their financial management under the authority of the High Representative in her capacity as Vice-President of the Commission.^{14]}¹⁵
4. The EEAS shall be subject to the procedures regarding the discharge provided for in Article 319 of the Treaty on the Functioning of the European Union and in Article 145 to 147 of the Financial Regulation.

¹⁴ The Commission will make a declaration to the effect that the High Representative will have the necessary authority in this area, in full respect of the Financial Regulation.

¹⁵ **This sentence will be further examined in light of results of discussions on the Financial Regulation.**

Programming

1. In the framework of the management of EU external cooperation programmes, which remain under the responsibility of the Commission, the High Representative **shall give strategic political guidance**. The EEAS shall contribute to the programming and management cycle for the following geographic and thematic instruments, on the basis of the policy objectives set out in the said instruments. **The High Representative shall ensure the unity, consistency and effectiveness of the EU's external action in particular through the external instruments:**
 - the Development Cooperation Instrument,
 - the European Development Fund,
 - the European Instrument for Democracy and Human Rights,
 - the European Neighbourhood and Partnership Instrument,
 - the Instrument for Cooperation with Industrialised Countries,
 - the Instrument for Nuclear Safety Cooperation,
 - **the Instrument for Stability, regarding the assistance foreseen in article 4 of Regulation (EC) n. 1717/2006 of 15 November 2006.**

2. In accordance with Article 3, throughout the whole cycle of programming, planning and implementation of these instruments, the High Representative and the EEAS shall work with the relevant members and services of the Commission **without prejudice to Article 1(3)**. All proposals for decision will be prepared through Commission procedures and submitted to the Commission for decision.

3. The EEAS shall in particular have responsibility for preparing the following Commission decisions on the strategic, multi-annual steps within the programming cycle:
 - (i) country allocations to determine the global financial envelope for each region (subject to the indicative breakdown of the financial perspectives). Within each region, a proportion of funding will be reserved for regional programmes;
 - (ii) country and regional strategic papers (CSPs/RSPs);
 - (iii) national and regional indicative programmes (NIPs/RIPs).
4. With regard to the European Development Fund and the Development Cooperation Instrument, any proposals, including those for changes in the basic regulations and the programming documents in paragraph 3 above, shall be prepared by the relevant services in the EEAS and in the Commission under the direct supervision and guidance of the Commissioner responsible for Development Policy and then jointly submitted with the High Representative for decision by the Commission.
5. With regard to European Neighbourhood and Partnership Instrument, any proposals, including those for changes in the basic regulations and the programming documents in paragraph 3 above, shall be prepared by the relevant services in the EEAS and in the Commission under the direct supervision and guidance of the Commissioner responsible for Neighbourhood Policy and then jointly submitted with the High Representative for decision by the Commission.

6. Thematic programmes, **except** [...]¹⁶, 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.

Article 9

Security

1. 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. Such rules shall apply to all EEAS staff, and all staff in Union Delegations, regardless of their administrative status or origin.
- [2. **Pending the Decision referred to in paragraph 1:**
 - **With regard to the protection of classified information, the EEAS shall apply Council Decision 2001/264/EC;**
 - **With regard to other aspects of security, the EEAS shall apply Commission Decision 2001/844/EC.]**
23. The EEAS shall have a department responsible for security matters, which shall be assisted by the competent services of the Member States.
34. The High Representative shall take 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. For that purpose, the EEAS shall seek advice from the Security Office of the General Secretariat of the Council, from the relevant services of the Commission and from the relevant services of the Member States.

¹⁶ **Thematic programmes in the EEAS to be determined.**

Article 10

Access to documents, archives and data protection

1. The EEAS shall apply the rules laid down in Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. The High Representative shall decide on the implementing rules for the EEAS.¹⁷
2. The Secretary General of the EEAS shall organise the archives of the Service. The relevant archives of the departments transferred from the General Secretariat of the Council and the Commission shall be transferred to the EEAS.
3. The EEAS shall protect the individuals with regard to the processing of personal data in accordance with the rules laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. The High Representative shall decide on the implementing rules for the EEAS.

Article 11

Immovable property

1. The General Secretariat of the Council and the relevant Commission services shall take all necessary measures so that the transfers referred to in Article 6(8) can be accompanied by the transfers of the Council and Commission buildings necessary for the functioning of the EEAS.

¹⁷ **Without prejudice to the future arrangements with the European Parliament.**

2. The terms on which immovable property is made available to the EEAS central administration and to the Union delegations shall be decided on jointly by the High Representative and the General Secretariat of the Council and the Commission, as appropriate.

Article 12

Final provisions

1. The High Representative, the Council, the Commission and the Member States shall be responsible for implementing this Decision and shall take all measures necessary to do so.
2. The High Representative shall submit a report to the Council on the functioning of the EEAS **no later than the end of 2011**~~in 2012~~. **This report shall in particular cover the implementation of the provisions of Article 8 and Article 5(3) and (10).**
3. The Council, acting on a proposal from the High Representative, shall review this Decision in the light of experience no later than the ~~beginning~~**end** of 201**3**~~4~~, in accordance with Article 27 of the TEU.
4. This Decision shall enter into force on the date of its adoption. Its provisions on financial management and recruitment ~~going beyond the existing Staff Regulations and Financial Regulation~~ shall ~~only produce their legal~~**take** effects once the necessary amendments to the Staff Regulations and the Financial Regulation, as well as the amending budget, have been adopted. In order to ensure a smooth management of the personnel of the EEAS and pending the entry into force of the modifications to the Staff Regulations, the Conditions of Employment of Other Servants and the Financial Regulation necessary for the implementation of this Decision, arrangements shall be entered into by the High Representative, the General Secretariat of the Council and the Commission, and consultations shall be undertaken with the Member States.

5. At the latest one month after the entry into force of this Decision, the High Representative shall submit to the Commission an estimate of the revenue and expenditure of the EEAS, including an establishment plan, in order for it to present a draft amending budget.
6. This Decision shall be published in the Official Journal of the European Union.

Brussels, [date]

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Departments and functions to be transferred to the EEAS

1. General Secretariat of the Council

2. Commission (including Delegations)
