

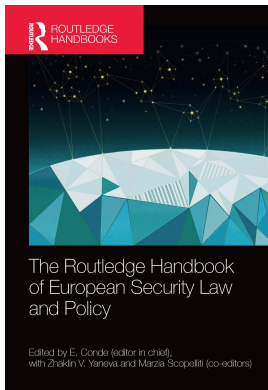
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### **The Role of EU Institutions in the Design of EU Foreign and Security Policies**

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### 3

# THE ROLE OF EU INSTITUTIONS IN THE DESIGN OF EU FOREIGN AND SECURITY POLICIES

*Akasemi Newsome and Marianne Riddervold*

## Introduction

The member states of the EU have transferred authority to common institutions in an unprecedented manner. Under the “ordinary legislative procedure,” decision-making is based on qualified majority voting, legislative powers are shared between the member states and the European Parliament, policy initiatives come from the Commission, while the Court of Justice of the European Union (CJEU) oversees the application of EU law and settles legal disputes. The Commission also has extensive management roles and is the guardian of the treaties, including the right to take cases of noncompliance to the Court. The only exemption to this “ordinary” legislative procedure is the Common Foreign and Security Policy (CFSP). In this domain, member states have decided not to delegate authority to the supranational institutions, instead keeping it as an intergovernmental instrument run by special procedures. The CFSP is the only EU policy area where the European Parliament does not have co-decision powers, but instead has the right to be informed and can give opinion and advice. The Commission does not have the right to initiate new policies, nor is it the guardian of the treaties. Neither does the Commission have management functions within the CFSP. Instead, the administrative work in the CFSP lies mainly with the new “EU foreign service,” the EU External Action Service (EEAS), which is responsible for implementing the Union’s external action and maintaining diplomatic relations with the rest of the world. The formal principal-agent relationship in the Common Foreign and Security Policy is in other words clear: Member states are initiators and decision-makers, and the EEAS and the Commission prepare and implement their decisions.

A growing number of studies suggest, however, that the de facto role and influence of the EU institutions in policy-making processes falling under the CFSP procedures differ substantially from this formal description. The de facto role and influence of the EU institutions are key to this development. Rather than simply advising or implementing the member states’ decisions, the EU institutions – the High Representative of the Union for Foreign Affairs and Security Policy (HR/VP) and her foreign service, the EEAS, the Commission, and the Parliament – are important drivers of the policies agreed in the CFSP, influencing agenda setting, decision-making, and implementation of CFSP policies and decisions.

The aim of this chapter is to shed light on this phenomenon, systematically describing these institutions' influence on the CFSP. What de facto influence do these institutions have on CFSP, beyond their delegated powers? The answers to this question have important consequences for our understanding of the day-to-day working of EU foreign and security policies and indeed of the EU more broadly, and are hence of great importance to the citizens of the EU. Empirically, the influence of these institutions is puzzling as one would not expect this within an intergovernmental policy area. In the CFSP, the member states remain the sole decision-makers and can in principle at will veto any decisions on common EU positions or actions. It follows that democratic control of the CFSP is supposed to be indirect: Member states' executives decide on common policies and actions through unanimity and are again held accountable at the national level. The fact that institutional actors such as the Commission and the EEAS influence the policies they agree to conduct, therefore, challenges not only the way we conventionally perceive foreign and security policy as the prerogative of the states, but also the idea that citizens can hold their elected governments accountable in this domain.

To systematically explore the influence of the EU institutions on the CFSP, the chapter proceeds as follows. In the next part, we first discuss the formal organization of the CFSP, including the Common Security and Defence Policy (CSDP), as described in the EU treaties and as interpreted by legal scholars. The subsequent section contains the analysis, discussing, first, how the Parliament's and then the Commission's influence differs from this formal description. In this section, we also discuss their various forms of formal and informal interactions with the HR/VP and the EEAS in the domain, focusing particularly on if and how such interactions have been used as avenues to influence CFSP developments or affect their institutional powers. Analytically, and as further elaborated below, we here draw on Cross' concept of *agency*<sup>1</sup> to illustrate how the institutions not only have influence over policy developments but also have increased their powers beyond the member states' control or in spite of the member states' attempt to keep the CFSP a member state prerogative. Empirically, we discuss findings from our own studies of EU maritime foreign and security policies<sup>2</sup> and of the Parliament's role in human rights protection<sup>3</sup> as well as other studies exploring the institutions' influence in the CFSP. Part IV contains the conclusion, summing up our findings and discussing some of their implications for our understanding of the functioning and democratic legitimacy of the CFSP and indeed the EU more broadly.

### **The CFSP legal structure: the formal role of the institutions in the CFSP**

The EU's Common Foreign and Security Policy is a formal decision-making structure covering all foreign policy decisions that are not part of the EU's external relations. Most importantly, the CFSP includes the Common Security and Defence Policy, i.e. the EU's civilian and military operations and common security strategies, EU sanctions, EU diplomacy, as well as common EU policies and positions in a variety of intergovernmental organizations. As discussed in the introduction, formally, and despite the removal of the pillar structure following the adoption of the Lisbon Treaty in 2009, EU foreign and security policies continue to be "subject to specific rules and procedures."<sup>4</sup> General principles and overall aims are set by the European Council. Building on these overall strategic goals, the Council decides on common policies in the form of joint actions (specifying common actions, including CSDP mission) or common positions (defining guidelines to which member states' policies must conform regarding a particular situation or in an international organization). All decisions are taken by unanimity, following special procedures within special CFSP institutions.<sup>5</sup> Accordingly, the competences of the EU institutions are limited.

### ***The European Parliament***

The role of the European Parliament (EP) in Common Foreign and Security Policy was formally circumscribed in the 1993 Treaty of European Union which designated CFSP as belonging to the intergovernmental second pillar. Only member states could propose policies for the EU in CFSP and policies could only be adopted through unanimous votes taken by member states.<sup>6</sup> Although the Treaty of Lisbon did not formalize parliamentary decision-making in the CFSP and maintained the primacy of member states, the creation of new actors in the CFSP other than member states in the Council opened new possibilities for participation for the EP, in that individuals occupying these positions could choose to take a neutral or positive view towards the input of the EP in CFSP.<sup>7</sup> The fused position of the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the Commission and the European External Action Service took effect in 2009 with the Treaty of Lisbon. As the EP had consistently pushed for a transformation of the High Representative into an EU foreign minister, as well as the introduction of an EU diplomatic corps, the emergence of these two actors represents a fulfillment of parliamentary demands separate from potential pathways of influence for the EP on CFSP. According to Article 21(TEU) Parliament has the right to be updated and the right to be solicited for input on CFSP matters. In practice, the EP regularly responds to CFSP updates in parliamentary proceedings and offers suggested policy changes to the Council, High Representative/Vice-President of the Commission and the EEAS. In 2010 HR/VP Catherine Ashton issued a declaration that bolstered the EP's rights to information on the CFSP by institutionalizing Joint Consultation Meetings between MEPs, the Council, and the Commission on Common Security and Defence Policy, by supporting the 2002 Inter-Institutional Agreement (IIA) allowing the EP to view confidential information on CFSP missions, and by institutionalizing EP hearings where the HR/VP updates the EP on CFSP and CSDP.

In addition to its right to information about CFSP, the EP has significant veto powers over spending allocations for the CFSP. The Parliament can veto the CFSP budget and has a key role in funding decisions for programs overlapping in content with CFSP such as the European Instrument for Democracy and Human Rights. The EP is also broadly involved in EEAS administration and provides recommendations and input the placement procedures and mission focus of different EEAS delegations. The EP is a key broker of international agreements including those of association as the Council cannot become a party to an agreement if Parliament opposes it. The EP's formal power to approve international agreements does not include a formal spot at the table to define the terms of such agreements. In practice, however, the EP exercises informal power to define the terms of international agreements by potentially blocking an international agreement which the Commission has an interest in concluding.<sup>8</sup> In order to more effectively acquire information and provide policy input, the Parliament has also institutionalized committees with foreign and security policy expertise: the Committee on Foreign Affairs (AFET) and its two subcommittees on Security and Defence (SEDE) and Human Rights (DROI); the Committee on International Trade (INTA); and the Committee on Development (DEVE). Given Parliament's role in budgetary oversight, committees such as the Budgetary Control Committee (CONT) and the Budgets Committee (BUDG) also provide avenues for the EP to influence CFSP.<sup>9</sup>

### ***The European Commission***

The Commission's formal role and influence in EU foreign policy-making depends on its treaty-based competences, which vary across policy areas. Within what is often termed "EU

external relations” it plays a leading role. In international organizations, the Commission must, for example, be involved in the member states’ coordination processes when issues link to or overlap with community policies, which is often the case. Competences are, for instance, shared between the member states and supranational institutions within enlargement, environmental, and anti-terrorism policies.<sup>10</sup> Unlike governments in national systems, the competences the Commission holds in community policy areas do not, however, travel automatically to the international level. In most international organizations, the EU states remain members and signatories to conventions, also in cases where the EU itself is a signatory. The Commission is, for instance, not a signatory to all international treaties dealing with issues falling under its competences and needs a mandate from the member states to negotiate on their behalf, for example, during trade negotiations.<sup>11</sup>

In the CFSP, where the member states as discussed above have maintained exclusive competence, the Commission’s formal competences are much more limited. In contrast to all other policy areas, the administrative work in the CFSP lies with the new “EU foreign service,” the EU External Action Service. The Commission does not control the intergovernmental external action units in the EEAS.<sup>12</sup> Due to the establishment of the EEAS, scholars have even argued that the latest EU treaty, the Lisbon Treaty, *reduced* the Commission’s formal influence within the CFSP. After all, with the Lisbon Treaty, the Commission’s previous “full association” in the CFSP has been “replaced by the HR’s [i.e. High Representative of the Union for Foreign Affairs and Security Policy and her foreign service, the EEAS] involvement who in CFSP does act outside the Commission’s ambit control.”<sup>13</sup> The fact that the HR/VP is also vice-president of the Commission and chairs the Foreign Policy Council meetings does not change this. The HR/VP and the Commission can jointly suggest policies and actions, but it is up to member states to decide on any common policies or actions through unanimity. Instead, the Commission’s role in the CFSP is linked mainly to the treaty requirement that all EU policies should be coordinated and consistent. Due to the EU Treaty’s overall aim of “consistency between the different areas of its external action and between these and its other policies”<sup>14</sup> the Commission and the High Representative, i.e. the EEAS, “shall cooperate” to ensure consistency between the CFSP and other EU policies.<sup>15</sup> The Treaty also states that the two should cooperate with the Council for this purpose, which in practice often means cooperating with the Council secretariat and the country holding the Presidency.<sup>16</sup> The Commission and the HR/EEAS may thus also “submit joint proposals to the Council.”<sup>17</sup> These requirements do not, however, apply to the Common Security and Defence Policy. In the area of security and defense, the Treaty explicitly states that the EEAS and the Commission are not to cooperate, and they cannot submit any common proposals.

The European External Action Service was established following the Lisbon Treaty, as an EU foreign service led by the High Representative of the European Union for Foreign Affairs and Security Policy. It is the EU’s foreign and security policy apparatus, and is responsible for implementing the Union’s foreign policies and maintaining diplomatic relations with the rest of the world. It does not have a role in any other EU policy areas. In its own words, “the EEAS is the European Union’s diplomatic service. It helps the EU’s foreign affairs chief carry out the Union’s Common Foreign and Security Policy.”<sup>18</sup> As already mentioned, the Commission and the EEAS have to cooperate to the extent needed to ensure coherence between foreign and security and other policy fields, but they are formally two distinct administrative entities, and the Commission does not control the administrative units of the EEAS in any way. Formally, the member states’ control over the EEAS hence remains strong: The EEAS is part of the special CFSP organization structure, under the control of the HR/VP who, when chairing the EU Foreign Affairs Council, “receives her instructions from the Council in CFSP,” tasked to implement the decisions that are taken by the member states.<sup>19</sup>

The HR/VP has three distinct functions, often referred to as “triple-hatted.”<sup>20</sup> S/he has to conduct the Union’s common foreign and security policy; preside over the Foreign Affairs Council (FAC); and be one of the vice-presidents of the Commission.

According to Keukeleire and Delreux<sup>21</sup> the HR/VP’s task can be broken down into four interrelated elements: decision-making; implementation; external representation; and consistency.

Regarding decision-making, the HR/VP chairs the Foreign Affairs Council and can make proposals with the EU member states and with the Commission (Articles 18 (2), 27 (1), 30 (1), and 42 (4)). Following Articles 26 (3) and 27 (1) of the Treaty of Lisbon (ToL), the HR/VP is also responsible for implementing the CFSP decisions adopted by the Council. Following a decision, the HR/VP and the ministers for foreign affairs “shall coordinate their activities within the Council.”<sup>22</sup> The HR/VP moreover coordinates CSDP missions together with the Political and Security Committee (PSC) (Article 38 of the ToL). Externally, the HR/VP represents the Union on CFSP connected issues in relation to third parties or in international organizations. Lastly, and as mentioned above, the HR/VP, the Council and the Commission have to ensure consistency within the EU’s external actions (Articles 18 (4), 21 (3), 24 (3) and 26 (2) of the ToL).

### **The institutions’ de facto influence in the CFSP: drivers of integration?**

As mentioned in the introduction, in reality, there is an increasing amount of supporting evidence that the CFSP may not be as different from other policy areas as this formal description suggests. Despite the CFSP’s formally intergovernmental structure, there are a number of studies which suggest that processes of socialization, institutionalization, and the development of informal decision-making norms have led to a de facto “move beyond intergovernmentalism” in the CFSP.<sup>23</sup> The role of the EU institutions is key to this description. This section of the chapter moves on to discuss this development, exploring the de facto influence of the EP, the Commission and the HR/VP and the EEAS in the CFSP. Since the member states are formally the sole decision-makers in the CFSP, when seeking to explore the institutions’ influence on this process, it is their impact on the member states’ decisions on policy and actions that we ultimately want to illustrate. We also start from the assumption that the institutions have a vested interest in trying to increase their own powers or influence particular in policy development.<sup>24</sup> Consequently, an actor’s “influence” is here defined as the impact it has on the member states’ common policies: It has influence if its behavior and actions cause the member states to conduct a different EU foreign and security policy or give the institutions more powers than they would otherwise have had. This narrow definition builds on Dahl’s classic definition, being that actor A has power if s/he makes another actor, B, do something s/he would otherwise not have done.<sup>25</sup> We use this definition of influence because it is the type of influence one would least expect to find in a policy area that formally lies exclusively with the member states. More precisely, to operationalize this, we build on Cross’ concept of *agency*.<sup>26</sup> Initially developed to study the role of international diplomats, Cross’ argument<sup>27</sup> is that diplomats have agency when they act beyond their delegated authority “in ways that statesmen do not anticipate” (ibid.), that is, beyond their delegated powers. There are three empirical indicators of institutional agency within intergovernmental organizations such as the CFSP.<sup>28</sup> The first two are linked to the member states’ control of the institutions’ involvement, while the third is linked to the member states’ veto powers. Within an intergovernmental setting such as the CFSP, non-state actors have delegated powers only, foremost to solve practical questions or to secure the member states’ commitments.<sup>29</sup> If the member states’ ability to control is undermined due to an EU



institution's actions or behavior, this would thus imply that it has the ability to act beyond its delegated authority in ways that are not anticipated by the member states. More precisely, evidence of institutional agency includes: (1) at least some of the member states having unsuccessfully tried to limit some or all of the EU institutions' participation in particular cases; and/or (2) the institutions having influenced EU policies by circumventing the member states' intergovernmental decision-making structures, cooperating with each other to achieve particular goals behind the member states' representatives' backs; and/or (3) an institution's actions and behavior having resulted in a different outcome than the one initially decided by the member states. So, then, to what extent do the EU institutions have agency in the CFSP, as suggested by this definition and these indicators?

### ***The European Parliament's agency in the CFSP***

There are several empirical findings to suggest that the EP indeed exercises some agency in the CFSP. As a first example, the EP successfully secured a change in the maritime security intervention, ATLANTA, although member states initially opposed the EP's policy recommendations. The Parliament wanted ATLANTA to provide cover to European commercial fishing ships in addition to the focus on containers and tankers. For example, Member of Parliament (MEP) de Grandes Pasqual noted in a plenary discussion in November 2009 that "Operation ATLANTA is inadequate ... It has to become possible to protect not only the routes along which humanitarian aid moves, but also community fishing and merchant vessels."<sup>30</sup> The Council responded to this EP demand initially with an assertion of territoriality and member state sovereignty, yet by 2012 the Council had implemented this EP demand to include commercial fishing within the scope of the mission. Notwithstanding this important policy change, the EP has not been successful in regularizing and transforming its informal role in developing the European Maritime Security Strategy to a formal one.<sup>31</sup> In another example, the EP took advantage of an impasse among member states on how to deal with Ukraine by proposing an increased role for a parliamentary envoy to the Ukraine. Nitoiu and Sus point out that despite the unwillingness expressed by members of the Council and the Commission that the EP should get involved,<sup>32</sup> the EP organized a mission to Ukraine led by past president of Poland Aleksander Kwasniewski and past president of the EP Pat Cox. Kwasniewski and Cox traveled to Ukraine to witness the legal proceedings against Ukraine's previous prime minister, Julia Tymoshenko. In so doing, the EP created the space for a new parliamentary role in EU foreign policy towards Ukraine.<sup>33</sup> One of the key achievements of the mission by Cox and Kwasniewski was to push the Ukrainian government to improve the treatment of political dissidents including the release of some. As an incentive, the EP representatives reaffirmed the EU's interest in closer relations with the Ukraine with the goal of motivating the Ukrainian government to hew more closely to international humanitarian standards. Still, the mission fell short of the progress needed by the EU association agreement.<sup>34</sup>

The EP has also expended some efforts in widening the substantive scope of CFSP to include human rights, democracy, and the rule of law.<sup>35</sup> Starting in the early 1980s, the EP has provided summary assessments of the state of human rights globally and succeeded in modifying the criteria for both EU trade agreements and development funding to incorporate human rights scoring and measures for potential partners and recipients.<sup>36</sup> Given its pivotal position in budgetary proceedings, the EP established the European Instrument for Democracy and Human Rights (EIDHR) as part of CFSP and has renewed financial support for EIDHR annually since the mid 1990s.<sup>37</sup> For example, the EP strongly criticized the terms of international treaties owing to insufficient attention to the poor human rights track record of Central Asian governments.<sup>38</sup> In the area of democracy

and rule of law, the EP went as far as to refuse consent to international treaties with Morocco and the US as well as agreements with more than two parties such as the “ACTA treaty on intellectual property rights enforcement and anti-counterfeit.”<sup>39</sup>

Although the EP lacked a formal role to shape policies addressing terrorist acts committed within the EU’s territory, by creatively relying on “issue linkage” the EP expressed its objections to potential privacy violations included in the “American Terrorist Finance Tracking Programme (TFTP).”<sup>40</sup> Counter to the wishes of the member states, particularly the UK which was interested in remaining in good standing with the Obama administration, the EP went as far as to openly reject cooperation with the US counter-terrorism agencies in order to facilitate information sharing on monetary transactions in Europe linked to terrorist networks and organizations. This step taken by the EP also clashed with the views of the Commission’s, which was also willing to share information on monetary transactions with the US. The grounds for the rejection of the “Interim Agreement” were the lack of privacy safeguards for EU citizens, the lack of a mandated oversight role for the courts and minimal general oversight provisions. The EP did capitulate in that it received only some of the privacy controls that it desired, as well as an independent monitor of the data being transferred to ensure those privacy controls were followed, before consenting to the revised agreement with the US.<sup>41</sup>

Not only are there formal institutions, there are also many informal ways allowing the EP to engage in CFSP. For example, as “mandated by the EP’s Conference of Presidents,” parliamentarians may go overseas to solicit or share expertise with legislative bodies around the world as an “ad-hoc delegation.” Given that political parties represented in the European Parliament have established European networks beyond national borders, as do NGOs and lobbying groups aligned on common issues, Members of Parliament regularly exchange information, receive policy input and travel overseas to share expertise on issues directly involving or linked with foreign and security policy.<sup>42</sup>

Another example in which the EP exercised agency in CFSP beyond its formal powers can be seen in the recognition of Kosovo as a sovereign state. Initially, EU member states did not all support the 2008 decision of national authorities in Kosovo to declare themselves a sovereign nation. In fact, at the time of writing, certain EU member states continue to reject Kosovo’s aspiration to statehood: Cyprus, Greece, Romania, Slovakia, and Spain. Supranational bodies also have been reluctant to validate Kosovo’s status as a sovereign nation and Redei notes that “neither the European Council nor the Council of Ministers ... has an official position on Kosovo’s independence.”<sup>43</sup> Notwithstanding these objections by individual member states and the Council, the EP continued to issue statements to Kosovo and replicate parliamentary practices that it reserved for other sovereign nations with it, effectively legitimating and buttressing its aspirations to independence. In so doing, the EP effectively shaped the EU’s approach to Kosovo such that most recently, HR/VP Mogherini met with the heads of state of Kosovo and Serbia to discuss the contentious issue of redrawing territorial boundaries, thus validating Kosovo’s independence claims further in line with the EP’s original goal of full state recognition for Kosovo.<sup>44</sup>

### ***The European Parliament and the EEAS: the EP increases its own role***

The EP has also influenced the role and functions of the HR/VP and the EEAS, in particular contributing to defining and expanding its own powers and responsibilities vis-à-vis this newly established institution. The Treaty of Amsterdam created the position of High Representative for Common Foreign and Security Policy and Secretary General of the Council of the European Union and Javier Solana served in this role for two five-year terms from 1999–2009. For



most of Solana's term, the EP struggled to expand its role in CFSP to include areas other than access to information about the policy process. In this, member states retained CFSP firmly within their purview.<sup>45</sup> However, the EP did succeed in broadening the scope of the types of information it received access to, namely by convincing member states to institutionalize the sharing of "sensitive information" on CFSP by the Council with the EP.<sup>46</sup> This institutionalization occurred with the implementation of the Inter-Institutional Agreement of November 20, 2002, which specified a deadline by which the Parliament had to receive access to CFSP decisions made by Council and defined missions and policies impacting security and defense that could thus not be publicly communicated as within the domain of parliamentary access. Here, "five working days" were delimited as the maximum amount of time that the Council could wait before sharing decisions with the EP.<sup>47</sup>

An expanded role for the High Representative of the Union for Foreign Affairs and Security Policy to also include that of Vice-President of the European Commission came into being with the Lisbon Treaty. By 2009, the HR/VP would also lead the newly launched EU diplomatic corps – the European External Action Service. In this "triple-hatted position," Catherine Ashton served a single five-year term from 2009–2014. It is important to contrast the duties of the HR/VP during the tenure of Javier Solano in which the HR was seen to be "representative of the collective power of the member states" in comparison with Ashton who faced the obligation of "tak[ing]up the tasks of the former external relations Commissioner and the rotating presidency in matters of CFSP."<sup>48</sup> At the start, the EP and Ashton had very different views of the legislative role in CFSP and the High Representative's office. The EP wanted "oversight of the [External Action] service's budget, personnel, aid policy and ratification procedure" and "public parliamentary hearings for top positions." Ashton, on the other hand, thought a more effective EEAS should take the shape of "an autonomous agency reporting directly to the HR-VP ... equally answerable to the Council, Commission and the member states ... with a pyramidal hierarchy headed by a powerful Secretary General."<sup>49</sup> Notably absent from her vision for the EEAS was a consequential role for the European Parliament. Although the EP did not succeed in molding the EEAS in its desired image and appointments to the Service incorporated "closed-door hearings with no [legislative] veto,"<sup>50</sup> the EP did shape some features of the EEAS by interpreting its already existing powers of "staff regulation" and "financial regulation" to extend to the EEAS.<sup>51</sup> The EP made the case that as the EU's representative body, the EP has a vested interest in ensuring that the EU institutions account for the principles of gender parity as well as the regional location within EU territory for individual EU member states in staffing the EEAS. In an effort to carve out influence for itself in CFSP, the EP thus proposed that the EU's new diplomatic service should reflect these balances when filling appointments and thereby created a way for the EP to review EEAS appointments through "issue linkages."<sup>52</sup> Ashton eventually acquiesced to some of the EP demands by agreeing to regular updates of the EP and prioritizing a substantive focus on "human rights and democracy promotion within the EEAS."<sup>53</sup>

Between the second and third HR/VP, the EP exerted considerable energies in shaping the modes of interaction between the HR/VP and the EEAS on the one hand and the EP on the other hand. The EP pushed for Ashton to consult with the EP on a scheduled basis and sought to codify the type and rank of officials who could substitute for the HR/VP *in absentia* in the text of the "Declaration on Political Accountability" (DCA). The DCA also detailed a mechanism by which diplomatic envoys dispatched by the HR/VP first had to brief the EP prior to traveling overseas. In this way, the EP expanded its own role in CFSP by broadly interpreting and formalizing its ability to "scrutinize" in a way that "deviates from the original intention."<sup>54</sup> The EP continued the practice of exercising its agency and influence in CFPS as expansively as possible under the third HR/VP, Federica Mogherini, who took office in 2014 and is expected

to remain in office through 2019. Where Ashton chafed under the scheduled briefings with the EP, Mogherini accepted as settled her informal mandate to brief the EP on a scheduled basis. The EP also succeeded in informally inserting its views into the 2016 EU Global Strategy. Shortly after taking office, Mogherini announced her intention of developing a new EU Global Security Strategy by 2016. In an effort to informally shape the new Global Security Strategy, the EP released a report addressing key issues in CFSP taking care to link CFSP to “instruments over which the EP has legislative powers.”<sup>55</sup> For example, the EP flagged the expansion of investment in research to include defense given that the EP “exercises legislative budgetary functions as well as political control and consultation functions.”<sup>56</sup>

### *The European Commission’s agency in the CFSP*

Next we turn to the de facto influence of the Commission in the CFSP. The fact that the Commission is present in different CFSP decision-making forums is well established. Dijkstra<sup>57</sup> has, for example, studied the involvement of the Commission in the CFSP over time, while Joachim and Dembinski<sup>58</sup> argue that “the Commission has moved from being an observer to an active participant in the CFSP.” Similarly, both Smith<sup>59</sup> and Kostadinova<sup>60</sup> show that the Commission is present in forums where foreign and security policies are discussed. More importantly, there is also evidence to suggest that the Commission has agency in the CFSP – that it has influence beyond the member states’ control. Suggesting that the Commission has been able to increase its own powers in spite of the member states’ traditional strong resistance to supranational elements in the CFSP, Blauburger and Weiss<sup>61</sup> found that the strategic use of a combination of threats and promises accounts for the Commission’s success in increasing its competence in the defense sector, in particular “the Commission’s strategic use of Court jurisprudence in overcoming member states’ resistance to European secondary legislation.”<sup>62</sup> The directives are particularly important in understanding the Commission’s increasing of its own powers, as they are the very first supranational directives in the domain, and hence represent a departure from the understanding that the CFSP is intergovernmental only (ibid). Strikwerda<sup>63</sup> adds important knowledge to our understanding of the Commission’s role in this process, highlighting how the Commission “was able to accomplish policy change in (at least) three member states by publishing a non-legally binding Guidance Note on offsets during the implementation process of the Defence and Security Procurement Directive.”<sup>64</sup>

Also in the domain of EU maritime foreign and security policies, there is evidence to suggest that the Commission has *agency*, i.e. that it influences policies beyond the control of the member states.<sup>65</sup> The Commission influences EU maritime foreign and security policy-making first and foremost in two ways: first, through its expertise in interlinked policy areas and, second, by indirectly influencing policy developments through actions outside of the formal CFSP arenas, to some extent circumventing the formal CFSP procedures, in particular by cooperating with the EEAS. In the cases explored in Riddervold’s 2018 book on EU maritime foreign and security policy (EU Arctic policies, the EU’s naval missions and the EU’s maritime security strategy), the Commission has been most influential when linking EU maritime foreign and security policies to community policy areas, when cooperating with presidencies with particular interests in furthering EU maritime security integration, and when developing policy proposals together with the EEAS, independently of the member states. For example, in the formally intergovernmental process of developing and adopting an EU Maritime Security Strategy, the Commission took on a much bigger role in the process than it should on the basis of its formal competences. And, more importantly, it did so contrary to several member states’ explicit attempts to limit the Commission’s role in this process, and it exerted much of its influence

behind many of the member states' backs. In the making of the Maritime Labour Convention (MLC) in the International Labour Organization (ILO) maritime sessions, the conflict between the Commission and some of the member states was particularly clear. Negotiations on the MLC took place at a time when the role of the Commission in international organizations was unsettled and the EEAS had not yet been established, and the Commission very explicitly used this international process to increase its own competences in the domain. As a result, the conflict between the member states on the one hand and the Commission on the other was clear: The Commission spoke in the ILO meetings despite member states claiming it had no such role, it presented opinions specifying linkages to community policy areas that reduced the member states' ability to act individually and that strongly influenced the common positions reached. Due to the clear opposing views on what role the Commission should play, the member states even met outside of the regular coordination meetings to discuss how they could better control the Commission and reduce its influence on the MLC. In the end, however, the Commission got its way, eventually playing a bigger role in the MLC than in any other previous international processes falling under the CFSP procedures.<sup>66</sup> These are only a few of many examples, but, in sum, the Commission has gradually increased its own competences significantly. Due to these and other processes, maritime foreign and security policy has gradually developed to become an area in which the Commission has a stronger role than was initially anticipated or even wanted by many of the member states. Over time, the Commission has built an increasingly strong and more accepted role for itself in all phases of policy-making, where it is now not merely an agent of the member states but more importantly an important agenda setter and de facto co-decision taker. On the one hand, one may argue that this is only natural. After all, the Commission's increased involvement in EU maritime foreign and security policies is also linked to the fact that maritime security is a cross-sectoral policy field, covering not only foreign and security, including Common Security and Defence (CSDP) issues, but also community policy issues. There are also several formal reasons why the Commission is becoming more involved in the CFSP after Lisbon, in particular the "triple hattedness" of the HR/VP and the treaty-based duty to coordinate CFSP issues with all other policy areas. This duty to coordinate CFSP with other policy areas and the focus of developing a comprehensive approach to external issues will necessarily lead to more cooperation between the Commission and the EEAS and the member states, including the Presidency.<sup>67</sup> One may even argue that this is particularly so in a per definition cross-sectoral policy field such as maritime security. On the other hand, however, there is a difference between having access to or being involved in decision-making and actually influencing outcomes in a policy area that member states explicitly have sought to keep under their control.<sup>68</sup> More importantly, studies of EU maritime foreign and security policy processes reveal how the Commission has contributed to increase its own role and influence during these policy processes. Put differently, the influence the Commission has in EU foreign and security policy has not been delegated by the member states as one would expect in an intergovernmental system but has to a large degree been taken by the Commission itself.

### ***The EEAS and the de facto functioning of the CFSP administration – EEAS and Commission circumvention***

Lastly, we move on to explore how the Commission influences the CFSP through its interactions with the EEAS. Riddervold and Trondal suggest<sup>69</sup> that the EEAS is also much more independent of the member states than its formal role entails, to a large degree cooperating informally with the Commission outside of the formal, intergovernmental CFSP special structure and procedures. It is also much more integrated into the structures of the Commission in

its daily functioning than the treaty-based distinction between the intergovernmental pillar, the CFSP, on the one hand and the community pillar on the other hand would suggest. Again, the making of the EU Maritime Security Strategy is a revealing example. During the first, defining stages of this process, the Commission and the EEAS acted independently of the member states: They wrote the Joint Communication and they to a large extent controlled the member states' involvement. The findings moreover suggest that the EEAS and the Commission while cooperating on maritime security issues have institutionalized a new system on how to work together on a day-to-day basis. How the EEAS and the Commission were to cooperate in the domain remained rather unspecified in the Lisbon Treaty, allowing the two to develop a system of their own, to a large degree adopting the Commission's procedures. And most importantly, they did so beyond the control of the member states, without consulting their formal principles. In the system that has been established, the Commission has a bigger role than what has been formally delegated by the member states, and the two to a large degree also influence policy outcomes beyond the member states' control. From other studies we know that this mainly informal cooperation between the EEAS and the Commission is important for understanding not only the European Union Maritime Security Strategy (EUMSS) but also the development of the EU's Arctic policies and the launch of the naval mission "Sophia" in response to the migrant crisis.<sup>70</sup> In the latter case, the member states' agreement to act in response to the migrant crisis was to a large degree driven by humanitarian concerns linked to the so-called Lampedusa accident, where more than 800 people drowned in the waters off the Italian island. However, the EEAS and the Commission's actions were important for understanding the choice of a military mission: When the member states decided to take action to help migrants in despair at sea, the way in which they should respond was suggested and pushed by the EEAS and the Commission, who largely copied what was successfully done the last time the EU faced a crisis at sea (anti-piracy mission ATLANTA).<sup>71</sup> The strong cooperation developed between the EEAS and the Commission on the EUMSS also laid much of the basis for the EU's Arctic policy. According to Østhagen,<sup>72</sup> the very initiation of an EU Arctic policy can be traced back to the Commission: "The EU begun to develop an Arctic Policy as a result of the European Commission acting as a policy entrepreneur to secure its own competence and relevance in the domains of foreign policy." And this work was taken further by the EEAS and the Commission in parallel with their work on the EU Maritime Security Strategy. As with the maritime strategy, the 2012 Joint Communication on an EU Arctic policy was not only developed in parallel with the maritime strategy – it was to a large degree written and coordinated by the same persons from the two institutions, without much member state involvement.<sup>73</sup> And as was the case with the maritime strategy, this work has later laid the ground for much of the EU's Arctic policies.<sup>74</sup>

### Findings and implications

This chapter set out to systematically explore the influence of the EU institutions on the CFSP by focusing on how the EP and the Commission have agency in the domain, i.e. whether they influence CFSP policy-making processes and outcomes beyond the member states' initial wishes and interests. Discussing evidence across a number of cases, we have shown how the two have both influenced policies and increased their own competences in the domain. In this way, we also explored how the two institutions have affected the functioning of the EEAS and indeed the de facto functioning of this domain more widely.

The fact that the Commission and the EP so clearly have influence beyond their delegated powers in the CFSP challenges the way we conventionally perceive foreign and security policy

as the prerogative of the member states. Contrary to the assumption that policy-making processes and outcomes within the CFSP reflect the member states' material interests and relative strength, we have shown that the supranational institutions have far more influence than the member states have agreed to delegate. Indeed, the CFSP is a policy area where the member states explicitly have tried to avoid delegating authority to these institutions, and still we see that in particular the Commission increasingly exercises influence in that domain. Although this might vary somewhat from case to case, the member states' veto powers in the domain have clearly become limited due to the de facto powers of the Commission – powers that it to a large degree has taken on itself, over time – and the cooperation between the EEAS and the Commission. The Parliament has significantly fewer formal competences in CFSP than the Commission. Yet, the EP has generously interpreted its statutory formal powers, for example, in budgeting and treaty assent as well as substantively through “issue linkage” to extend its role in CFSP beyond what the member states prefer. The HR/VP and EEAS also bear the stamp of the EP in that not only did the EP insert itself into the supranational information flow on CFSP previously limited to the Commission and Council in the change of administration between Ashton and Mogherini, the EP succeeded in institutionalizing its access to information. Undoubtedly, the member states are still key actors and decision-makers in the CFSP. The member states set the political priorities and they still have to give their final consent for policies to be adopted. But as our discussion has illustrated, there is much more to CFSP decision-making processes than member state bargaining, and much of this development takes place informally at lower levels and outside of the formal CFSP setting, often in incremental steps.

These findings have important implications not only for our understanding of the functioning of EU foreign and security policy but also for our understanding of the democratic legitimacy of this domain. This chapter hence contributes to the debate about the EU's democratic deficit, in particular in the CFSP.<sup>75</sup> However, it takes this argument forward by identifying several of the informal mechanisms that increase the democratic challenges in this domain. Conventionally being perceived as an intergovernmental policy area where decisions are taken by unanimity and all states have veto powers over common outcomes, the argument has been that the CFSP's democratic legitimacy can be secured indirectly. As long as it is the national executives who decide on common policies and actions and they all have the right to say no, these executives can be held accountable at the national level, through their various national procedures. However, if the premise for this argument does not hold, the argument of indirect democracy does not hold either. And as we have shown, the executives do not fully control CFSP decisions, and they do not have veto powers over all developments in the domain. Instead, evidence that so much of the Commission's influence, often together with the EEAS, remains informal and takes place at least partly without the member states' control or even knowledge suggests that the democratic deficit in the CFSP is bigger than we have anticipated. The fact that we also find that the EP is increasing its influence in the CFSP does not really solve this challenge either. Indeed, as the EP grows in influence in a de facto more supranational CFSP, this might also decrease the CFSP's legitimacy. In this way, the democratic challenges linked not only to the national but also to the supranational executives' powers in the domain remain.

## Notes

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