



Brugge

College of Europe
Collège d'Europe



Natolin

The Deputisation of the High Representative/ Vice-President of the Commission: Making the Impossible Job Work

Martin Schmid



DEPARTMENT OF EU INTERNATIONAL
RELATIONS AND DIPLOMACY STUDIES

EU Diplomacy Paper

02 / 2012



College of Europe
Collège d'Europe



Department of EU International Relations
and Diplomacy Studies

EU Diplomacy Papers

2/2012

**The Deputisation of the High Representative/
Vice-President of the Commission:
Making the Impossible Job Work**

Martin Schmid

© Martin Schmid 2012

About the Author

Martin Schmid studied Law and French at the Karl-Franzens-University of Graz, Austria, where he also worked as a student research assistant at the Department of Public Law and Political Science. He holds an MA in EU International Relations and Diplomacy Studies from the College of Europe in Bruges (Albert Einstein Promotion 2010-2011). This paper is based on his Master's thesis submitted at the College of Europe.

Editorial Team:

Andrew Bower, Gino Brunswijck, Francesca Fenton, Grzegorz Grobicki, Sieglinde Gstöhl, Vincent Laporte, Jing Men, Raphaël Métais, Charles Thépaut, Claudia Zulaika Escauriaza

Dijver 11 | BE-8000 Bruges, Belgium | Tel. +32 (0)50 477 251 | Fax +32 (0)50 477 250 |
E-mail info.ird@coleurope.eu | www.coleurope.eu/ird

Views expressed in the *EU Diplomacy Papers* are those of the authors only and do not necessarily reflect positions of either the series editors or the College of Europe.

Abstract

By combining the post of the High Representative for Common Foreign and Security Policy with that of the External Relations Commissioner, the Treaty of Lisbon created the position of the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the Commission (HR/VP), who is additionally tasked to chair the Foreign Affairs Council. This demanding job profile led scholars and observers to argue for the establishment of deputies, without which this position would be unmanageable.

Given that the Treaty of Lisbon does not include an explicit provision that would allow for the HR/VP's deputisation, this paper in a first step aims to assess what the legal possibilities and constraints with regard to the setting up of a deputisation system are. Taking into account that the HR/VP interacts with various actors of the institutional environment of the European Union (EU), the paper attempts to find out, in a second step, to what extent these actors allow for the HR/VP's deputisation. Finally, it examines how the HR/VP's replacement is assured inside and outside the EU in practice and to what extent those arrangements can be considered as efficient.

An application of different interpretation methods to the Treaty on European Union (TEU) will first demonstrate that the teleological approach offers the most convincing arguments in order to argue for the lawfulness of deputies in EU primary law. As to the second research aim, an analysis of Rules of Procedures and political declarations will find that the environment – if at all – rather allows for other forms of the HR/VP's replacement than deputisation by a person, who is placed under her authority. Ultimately, it will be shown that the lack of legal provisions is compensated by the expedient prioritisation of meetings by the HR/VP as well as by the establishment of practices which consist in forms of replacement but – to an increasing extent – also in deputisation, and which are subject to constant enhancements. The paper will conclude by advocating the expansion of such practices to other cases where the HR/VP's replacement has to be assured, and most notably to the Commission, where the disadvantages of no deputisation prove to be intolerably high.

1. Introduction: The 'impossible job' of the HR/VP as a downside of bridging institutional divides

The Treaty of Amsterdam established the post of the Secretary General of the Council of the European Union/High Representative (SG/HR) for the Common Foreign and Security Policy (CFSP),¹ intending "to increase the effectiveness and visibility"² of this policy area. However, this innovation did not address the problem of cross-pillar incoherence, resulting from the Maastricht Treaty's pillar-structure, which created an artificial division between CFSP ('pillar II') and other – mainly economic – "aspects of external policy"³ which remained within 'pillar I' of the European Community (EC).⁴ This institutional divide, including its diverging decision-making procedures, are still maintained under the actual Treaty of Lisbon,⁵ which therefore only formally abolishes the pillar structure.⁶

On an institutional level, the Lisbon Treaty tries to meet the concerns of cross-pillar incoherence by combining the "post of the High Representative for Common Foreign and Security Policy"⁷ with that of the hitherto External Relations Commissioner; the Treaty of Lisbon institutes the position of the High Representative for CFSP, who is at the same time Vice-President of the Commission (HR/VP).⁸ As the current office holder, Baroness Catherine Ashton, is additionally tasked to chair the Foreign Affairs Council⁹ (FAC) – a duty that was assured by the rotating Presidency before¹⁰ – the new position of the HR/VP "fulfils a bridging function between both, these EU institutions and the different dimensions of EU external relations".¹¹

¹ C. Bretherton & J. Vogler, "Common Foreign and Security Policy – A Political Framework for EU External Action?", in C. Bretherton & J. Vogler (eds.), *The European Union as a Global Actor*, London, Routledge, 2006, 2nd edn., pp. 168-169.

² *Ibid.*, p. 168.

³ *Ibid.*

⁴ *Ibid.*

⁵ See art. 24 (1) par. 2 TEU, European Union, "Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union of 13 December 2007", *Official Journal of the European Union*, C 115, 9 May 2008 [Hereafter, all articles followed exclusively by the abbreviations "TEU" or "TFEU" refer to the "Consolidated Versions 2007"].

⁶ J. Wouters, D. Coppens & B. De Meester, "The European Union's External Relations after the Lisbon Treaty", in S. Griller & J. Ziller (eds.), *The Lisbon Treaty: EU Constitutionalism Without a Constitutional Treaty?*, Vienna, Springer, 2008, p. 148.

⁷ S. Vanhoonacker & N. Reslow, "The European External Action Service: Living Forwards by Understanding Backwards", *European Foreign Affairs Review*, vol. 15, no. 1, 2010, p. 2.

⁸ *Ibid.*

⁹ Art. 18 (3) TEU.

¹⁰ J.C. Piri, *The Lisbon Treaty: A Legal and Political Analysis*, Cambridge, Cambridge University Press, 2010, p. 244.

¹¹ Vanhoonacker & Reslow, *op.cit.*, p. 2.

Given that these three posts (frequently also referred to as “hats”¹²) were assumed by three different individuals under the former Treaty of Nice,¹³ it is obvious that the HR/VP faces a very tight agenda.¹⁴ Moreover, it lies in the nature of a Foreign Minister’s office that it demands a lot of travelling and presence abroad, which is also true for the HR/VP.¹⁵ These two aspects led many scholars to judge the HR/VP’s job description as impossible.¹⁶ Consequently, the establishment of a system of deputisation was broadly suggested in order to allow for a delegation of certain duties and to guarantee an efficient performance of all the tasks incumbent upon this position.¹⁷

The Treaty of Lisbon, however, “does not provide for deputies having the same [...] responsibilities”,¹⁸ and thus seems to neglect the risk of underachievement, which might undermine the aspired effects of the institutional reforms. This risk has until now been realised in so far as Lady Ashton, during her first year in office was criticised for having been absent from important meetings¹⁹ as well as for her poor attendance record of weekly Commission College meetings.²⁰

In the face of the “urgent need”²¹ for a structure of deputisation, a thorough analysis of how the HR/VP’s replacement can be and is assured is considered more than appropriate. Therefore, the paper’s research objective is a threefold one: first, given the evident prerequisite that any system of deputisation has to conform to EU primary law, the first step of the analysis is to assess what the legal possibilities and

¹² Wouters, Coppens & De Meester, *op.cit.*, p. 150. ; Piris, *op.cit.*, p. 243.

¹³ Piris, *op.cit.*, p. 243.

¹⁴ P.M. Kaczynski *et al.*, “The Treaty of Lisbon: A Second Look at the Institutional Innovations”, *Joint CEPS, EGMONT and EPC Study*, Brussels, Centre for European Policy Studies, EGMONT Institute & European Policy Centre, September 2010, p. 144.

¹⁵ Piris, *op.cit.*, p. 248.

¹⁶ A. Missiroli in “Solana Leaves Ashton Impossible Job Description”, *Euractiv*, 10 December 2009, retrieved 17 March 2011, <http://www.euractiv.com/en/future-eu/solana-leaves-ashton-impossible-job-description/article-188183>; Wouters, Coppens & De Meester, *op.cit.*, p. 155; Kaczynski *et al.*, *op.cit.*, p. 143.

¹⁷ Kaczynski *et al.*, *op.cit.*, pp. 143-144 ; “The EU’s High Representative for Foreign and Security Policy”, *European Union Centre of North Carolina*, 31 March 2010, p. 4, retrieved 17 March 2011, http://www.unc.edu/depts/europe/business_media/businessbriefs/Brief1004-high-rep.pdf.

¹⁸ Piris, *op.cit.*, p. 249.

¹⁹ D. Charter & G. Keeley, “Baroness Ashton under fire for missing European defence summit”, *The Times*, 26 February 2010, retrieved 17 March 2011, <http://www.timesonline.co.uk/tol/news/world/europe/article7041984.ece>.

²⁰ B. Waterfield, “Is absent Ashton a part-timer?”, *EUObserver*, 10 January 2011, retrieved 17 March 2011, <http://blogs.euobserver.com/waterfield/2011/01/10/absent-ashton-a-part-time-eu-foreign-minister>.

²¹ Kaczynski *et al.*, *op.cit.*, p. 144.

constraints with regard to the setting up of a deputisation system are. To this end, established interpretation methods will be applied to find out how the provisions of the Treaty of Lisbon concerning the HR/VP have to be interpreted in order to argue in favour of the lawfulness of deputisation.

Second, by assuming her functions, the HR/VP presents herself before the European Parliament, the European Council, the Council as well as the Commission, which means that her replacement is subject to the procedural requirements of these institutions. Therefore, another research aim is to examine the respective provisions in Rules of Procedure as well as political agreements and declarations in order to assess to what extent they allow for deputisation.

Third, a case study will provide for the empirical data necessary to analyse how and by whom the replacement of the current officeholder Lady Ashton inside and outside the EU is arranged in practice and to what extent these arrangements can be considered as efficient.

As to the key concepts of this analysis, the HR/VPs position is in the literature either characterised as being 'double-hatted', when referring to the idea that it joins together the post of the former HR/SG (Council) with the post of the Commissioner for External Relations²² or 'triple-hatted', if the presiding over the FAC itself is also counted.²³ This paper adopts the concept of 'triple-hatting' since such a reading facilitates to reveal the different ways of replacement that are applied to the particular posts. Moreover, for the sake of semantic clarity, the notion of 'position' will exclusively be used to refer to the entity of the HR/VP. In contrast, the term 'hat' will be used as an equivalent of 'post', and one 'hat' (or 'post') can itself comprise various 'functions' or 'tasks'.

Two further associated concepts are those of 'replacement' and 'deputisation'. 'Replacement' denotes all cases where a natural person, regardless of his or her institutional belonging, assumes 'functions', which the Lisbon Treaty assigns to the HR/VP in the absence of the office holder. In contrast to this, 'deputisation' is characterised by the formal delegation of authority, enabling the deputy to express him- or herself on behalf of the HR/VP and thus implies a relation of hierarchy. Its pragmatic aspect denotes both, a minimum of scope of action as well as largely the same procedural rights granted to the HR/VP by the respective environment. Being

²² Wouters, Coppens & De Meester, *op.cit.*, p. 151.

²³ J. De Ruyt, "A Minister for a European Foreign Policy", *Robert Schuman Centre for Advanced Studies Policy Paper*, no. 5/03, Florence, European University Institute, November 2005, p. 15.

thus one particular way of 'replacement', 'deputisation' is favoured in this paper over other forms of 'replacement' because of the existence of a chain of command, which allows the HR/VP to instruct the 'deputy' and hence to ensure that her position is perfectly upheld, which is not the case as to 'replacement'.

Finally, the notion of 'efficiency' denominates the need for all forms of 'replacement' to be organised in a way which assures that the entirety of 'tasks' incumbent on the HR/VP can be assumed to their fullest extent.

After a brief job description of the HR/VP's 'position' in the next section, starting from art. 18 TEU and pointing out the 'tasks' performed under each 'hat', each of the research questions will be dealt with in a separate section. The argument put forward in answer to the first research aim is that compared to a historical or a systematic interpretation of the TEU, a teleological approach – although not without frictions – is most appropriate to make a case for deputies' legality in EU primary law. Second, other actors of the EU's institutional environment constrain the HR/VP's 'deputisation' in so far as in their Rules of Procedure or in political agreements allowance is made rather for different forms of 'replacement' while 'deputisation' proves to be an exception. Third and finally, it is shown that in order to manage the challenging agenda, the absence of a formal legal basis for 'deputisation' is compensated in practice by the prioritisation of meetings and the establishment of informal practices consisting of different forms of 'replacement', including 'deputisation'. Interestingly, these practices, which are subject to constant advancement, do not necessarily have to fully correspond to the provisions examined beforehand and increasingly grant 'deputisation' a right to exist among other forms 'replacement', which is advocated by this paper.

2. The 'hats' and 'functions' of the HR/VP

Compared to the role of the former HR/SG, the 'tasks' incumbent on the HR/VP under her 'High Representative hat' were significantly upgraded by the Lisbon Treaty.²⁴ This becomes apparent when reading art. 18(2) TEU, which tasks her to "conduct the Union's common foreign and security policy [...as well as] the common defence and security policy".²⁵ She does so by submitting proposals to the

²⁴ Wouters, Coppens & De Meester, *op.cit.*, n. 30, p. 151.

²⁵ Art. 18(2) TEU.

Council or European Council²⁶ and carrying out decisions taken by the Council.²⁷ Furthermore, when putting into effect²⁸ the CFSP, she is responsible for “[ensuring] the unity, consistency and effectiveness”²⁹ of the Union’s action. It is important to note that the HR/VP has a “right of initiative both, as HR only (in strictly CFSP matters) and as double-hatted VP”³⁰ for external relation matters managed by the Commission.³¹

Moreover, as the HR/SG before,³² she conducts ministerial political dialogues with third parties.³³ The innovation is that now she is able to interact with a third party alone not only for CFSP matters but also for Commission issues of external relations.³⁴ The HR/VP also presides over the Union’s Special Representatives (EUSR).³⁵ Additionally, she exercises authority over the European External Action Service (EEAS).³⁶ As the EEAS is mandated to assist the HR/VP with regard to all of her tasks,³⁷ this ‘function’ cannot exclusively be assigned to this ‘hat’. Another assignment brought about by the Lisbon Treaty is that the HR/VP “shall take part in the work [of the European Council]”,³⁸ although she is not a member of it and is not entitled to cast a vote.³⁹

Having taken a number of responsibilities in the field of the Union’s external relations from the rotating Presidency of the Council, the Lisbon Treaty now calls on the HR/VP to “represent the Union for matters relating to the common foreign and security policy”⁴⁰ and to “express the Union’s position in international organisations and at international conferences”,⁴¹ which includes the United Nations Security

²⁶ D. Chalmers, G. Davies & G. Monti, *European Union Law*, Cambridge, Cambridge University Press, 2010, 2nd edn., p. 64.

²⁷ Art. 18(2) TEU.

²⁸ Art. 24(1) par. 2.

²⁹ Art. 26(2) par. 2 TEU.

³⁰ Kaczynski *et al.*, *op.cit.*, p. 143.

³¹ De Ruyt, “A Minister for a European Foreign Policy”, *op.cit.*, p. 15.

³² Piris, *op.cit.*, p. 244.

³³ Art. 27(2) TEU.

³⁴ De Ruyt, “A Minister for a European Foreign Policy”, *op.cit.*, p. 15.

³⁵ Chalmers, Davies & Monti, *op.cit.*, p. 64 ; and art. 33 TEU.

³⁶ Piris, *op.cit.*, p. 247.

³⁷ Council of the European Union, “Council Decision (2010/427/EC) of 26 July 2010 establishing the organisation and functioning of the European External Action Service”, *Official Journal of the European Union*, L 201/30, 3 August 2010, p. 32.

³⁸ Art. 15(2) TEU.

³⁹ Wouters, Coppens & De Meester, *op.cit.*, p. 152.

⁴⁰ Art. 27(2) TEU.

⁴¹ *Ibid.*

Council.⁴² It is important to note here that she exercises her representational duties only on ministerial level since the Treaty states that it is up to the President of the European Council to represent the Union in CFSP matters on the level of Heads of State or Government.⁴³

In addition, the HR/VP takes over the 'tasks' to "negotiate international agreements relating exclusively or principally to CFSP matters on behalf of the Union"⁴⁴ as well as to assume consultation and information duties on CFSP matters towards the European Parliament.⁴⁵

Finally, contrary to the accumulation of tasks on one single individual, it is worth noting that the Lisbon Treaty relieved the HR/VP of the duty of the Secretary-General of the Council of the EU.⁴⁶

As to her 'Council-hat', art. 18(3) TEU determines that she shall preside over the FAC.⁴⁷ In respect of the 'Commission hat', the Treaty provides that the HR/VP "shall be one of the Vice-Presidents"⁴⁸ of the Commission. Within this institution, she is responsible for "handling external relations"⁴⁹ and "for coordinating other aspects of the Union's external action".⁵⁰ Although the HR/VP is thus expected to fulfil a bridge-building function between those Commissioners dealing with "different aspects of the external policies",⁵¹ the TEU does not equip the HR/VP with procedural prerogatives (e.g. a formal hierarchy among Commissioners) to facilitate this task.⁵² Hence, it is ultimately up to "the President of the Commission (and the College as a whole)"⁵³ to effectuate consistency of all EU external policies.

Vice versa, the somewhat cryptic formula of art. 18(4) s. 4 TEU ensures that the HR/VP will "not [...] be forced to renounce the position [she] defends, if this position

⁴² Art. 34(2) par. 3 TEU.

⁴³ Art. 15(2) TEU, Art. 15(6) par. 2 TEU.

⁴⁴ Piris, *op.cit.*, p. 246.

⁴⁵ Art. 36 par. 1 TEU.

⁴⁶ Kaczynski *et al.*, *op.cit.*, p. 143.

⁴⁷ Art. 18(3) TEU.

⁴⁸ Art. 18(4) s. 1 TEU.

⁴⁹ C. Kaddous, "Role and Position of the High Representative of the Union for Foreign Affairs and Security Policy under the Lisbon Treaty", in S. Griller & J. Ziller (eds.), *The Lisbon Treaty: EU Constitutionalism Without a Constitutional Treaty?*, Vienna, Springer, 2008, p. 212.

⁵⁰ Art. 18(4) s. 3 TEU.

⁵¹ D. Allen, "So who will speak for Europe? The Constitutional Treaty and coherence in the EU external relations", *CFSP Forum*, no. 5, 2004, p. 2, cited in Wouters, Coppens & De Meester, *op.cit.*, p. 154.

⁵² *Ibid.*

⁵³ *Ibid.*

comes from" one of her other two CFSP-related 'hats'.⁵⁴ This could theoretically happen if the HR/VP was "sidelined"⁵⁵ by a decision taken collectively in the College through formal voting⁵⁶ – based on simple majority.⁵⁷

In sum, three findings deserve being kept at the back of the mind throughout the analysis: First, apart from the considerable number of 'tasks', their great variety deserves closer attention. The fact that the different 'functions' may have a representative role (e.g. political dialogue), an initiating role (FAC), a coordinating role (Commission), a consensus-building role (FAC) as well as a managerial or operational (within the EEAS) nature could have implications on how the HR/VP's 'replacement' is assured and by whom. Second, the 'tasks' of third party dialogue, the negotiation of international agreements and the right of initiative can be exercised under both, her 'HR hat' and her 'Commission hat', and the EEAS assists the HR/VP in all tasks irrespective of the 'hat'. This specific feature could be relevant in so far as the form of 'replacement' could depend on the policy area in question. Third, nearly all 'tasks' imply meetings that require the HR/VP's personal attendance within EU institutions, abroad in third countries and before international organisations. Since she is thus regularly moving in a foreign environment, it depends on those actors' rules and procedures whether and to what extent 'replacement' or even 'deputisation' is allowed.

The next section analyses to what extent the Treaty of Lisbon itself allows for the HR/VP's 'deputisation'.

3. Deputisation and the EU legal order: possibilities and constraints

In order to answer the question of deputies' legality, the TEU is interpreted according to the interpretation methods regularly applied by the European Court of Justice (ECJ). Those methods, which are equally drawn on by national courts,⁵⁸ are notably the "grammatical, historical, systematic and teleological interpretation of a

⁵⁴ De Ruyt, "A Minister for a European Foreign Policy", *op.cit.*, p. 19.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ European Commission, "Commission Decision (2010/138/EU, Euratom) of 24 February 2010 amending its Rules of Procedures", *Official Journal of the European Union*, L55, 5 March 2010, p. 62, art. 8(3).

⁵⁸ L.N. Brown & T. Kennedy, *The Court of Justice of the European Communities*, London, Sweet & Maxwell, 2000, 5th edn., p. 323.

norm".⁵⁹ As a grammatical interpretation, which relies on the "words of the text"⁶⁰ in question, is inapplicable due to a lack of an explicit legal basis, the conduct of a historical interpretation is next in line in the subsequent section.

3.1 *The HR/VP's deputies: a feature lost on the way to the Constitutional Treaty?*

Historical interpretation usually aims to reveal "the subjective intention of the author of the text",⁶¹ notably by focusing on the preparatory work,⁶² which denotes "written documents reflecting the attitude of the negotiators of the Treaties from their inception to their conclusion".⁶³ Although the doctrine until recently considered this method as "impermissible in Union law owing to the lack of publication of the travaux préparatoires",⁶⁴ this opinion can no longer be upheld due to the innovation that the preparatory materials of the Constitutional Treaty as well as the documents produced during the Convention on the Future of Europe were 'published'.⁶⁵ Despite certain objections on the part of the ECJ to this method,⁶⁶ an examination of the respective preparatory materials will contribute to understand whether 'deputies' were considered at all, how they were institutionally conceptualised and for what reason they were not considered in the Lisbon Treaty.

When talking about preparatory material of the Lisbon Treaty, one has to be aware of the fact that the Treaty text concerning foreign policy was, to a considerable extent, taken over word by word from the Constitutional Treaty – after its rejection in May and June 2005⁶⁷ – and incorporated in the Reform Treaty,⁶⁸ which became known as Lisbon Treaty.

Given this development, the quest for provisions with regard to 'deputies' for the then 'Union Minister for Foreign Affairs' (UMFA) – as the 'HR/VP' was originally

⁵⁹ P. Dann, "Thoughts on a Methodology of European Constitutional Law", *German Law Journal*, vol. 6, no. 11, 2005, p. 1462.

⁶⁰ *Ibid.*, p. 324.

⁶¹ *Ibid.*, p. 330.

⁶² *Ibid.*

⁶³ A. Bredimas, *Methods of Interpretation and Community Law*, Amsterdam, North Holland, 1979, p. 57.

⁶⁴ Dann, "Thoughts on a Methodology", *op.cit.*, p. 1463.

⁶⁵ *Ibid.*

⁶⁶ Brown & Kennedy, *op.cit.*, pp. 330, 332.

⁶⁷ N. Nugent, *The Government and Politics of the European Union*, Basingstoke, Palgrave Macmillan, 2010, 7th edn., p. 76.

⁶⁸ S. Keukeleire & J. MacNaughtan, *The Foreign Policy of the European Union*, Basingstoke, Palgrave Macmillan, 2008, p. 63.

called⁶⁹ – has to focus on the work of the Convention on the Future of Europe, the subsequent Intergovernmental Conference (IGC) 2003/2004 and the IGC 2007. When considering the work of the Convention on the Future of Europe, it is important to emphasise that the Convention assumed only a preparatory task for the later IGC and that its members were in no way identical with those of the latter.⁷⁰ Since it is generally at IGCs where member states produce legally binding documents,⁷¹ only preparatory materials of IGCs mirror the real intention of member states as legitimate authors of the treaties and can thus be subject to a historical interpretation. Nevertheless, it is worth considering Convention materials as this will show what forms of ‘deputisation’ were devised.

The Convention opened its proceedings on 28 February 2002 and presented the final Draft Treaty Establishing a Constitution for Europe (DTCE) on 18 July 2003.⁷² Within the preparatory phase, eleven working groups were set up in order to focus on legal and technical problems.⁷³ It was notably Working Group VII, dealing with External Action, and Working Group VIII, concentrating on Defence, that discussed the shape of a future ‘Union Minister of Foreign Affairs’ and the ‘deputisation’ issue.

Working Group VII deliberated – among other topics – ways to upgrade the HR/SG’s ‘post’ as well as to reflect on adequate “human and financial resources [...] to match the scale of the [HR/SG’s] task”.⁷⁴ Already in the second meeting the question of ‘deputies’ was directly addressed, when the External Relations (RELEX) Commissioner Chris Patten⁷⁵ first raised concerns about the manageability of a ‘double-hatted’ HR/VP, created by combining the post of the HR with that of the RELEX Commissioner.⁷⁶ This entailed a debate among members of the working group about how such a ‘position’ could be designed and notably supported.⁷⁷ Supporters of the idea of ‘double-hatting’ argued that such a ‘position’ could be assisted by

⁶⁹ *Ibid.*, p. 64.

⁷⁰ Nugent, *op.cit.*, p. 69.

⁷¹ *Ibid.*, p. 87.

⁷² *Ibid.*, p. 70.

⁷³ P. Normann, *The Accidental Constitution*, Brussels, EuroComment, 2005, p. 51.

⁷⁴ European Convention, Secretariat, *Mandate of Working Group VII on External Action*, CONV 252/02, Brussels, 10 September 2002, p. 5, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00252.en02.pdf>.

⁷⁵ European Convention, Secretariat, *Summary of the meeting of Working Group VII held on 8 October 2002*, CONV 342/02, Brussels, 11 October 2002, p. 5, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00342.en02.pdf>.

⁷⁶ European Convention, *Summary of the meeting of Working Group VII held on 8 October 2002*, *op.cit.*, p. 5.

⁷⁷ *Ibid.*, p. 7.

“two deputies, one of which would focus on the HR role, the other on the Commission role”.⁷⁸

In the end, the Working Group’s final report presented four options for the possible institutional relation between the HR and the RELEX Commissioner.⁷⁹ Apart from the first two – rather extreme – options,⁸⁰ option three suggested the creation of a ‘European External Representative’ “as a compromise solution”,⁸¹ who would combine the functions of the HR and the RELEX Commissioner.⁸² Moreover, he or she would “be appointed by the Council”⁸³ with the consent of the Commission President and the European Parliament.⁸⁴

Only this third option provided for the setup of a ‘deputisation’ system, for which two alternative designs were suggested:

1. Some members advocated putting into place “a number of deputies/assistants for CFSP [...] who would be nominated by the Council on [... the HR’s] proposal and work under [...] her authority”.⁸⁵ At the same time, this scenario did not allot ‘deputies’ to the ‘Commission hat’.⁸⁶
2. Others favoured the idea of the HR having exactly two deputies, one of them being responsible for CFSP matters and the other one for tasks relating to her ‘Commission hat’.⁸⁷

Finally, a fourth alternative was introduced.⁸⁸ This proposal suggested to bring into being the office of an ‘EU Minister of Foreign Affairs’ who differed from the ‘European External Representative’ mentioned above in that he should be accountable to the European Council and preside the “external action Council”.⁸⁹ This alternative came closest to the ‘position’ of the HR/VP existing today. However,

⁷⁸ *Ibid.*

⁷⁹ European Convention, Secretariat, *Final Report of Working Group VII*, CONV 459/02, Brussels, 16 December 2002, pp. 19-23, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00459.en02.pdf>.

⁸⁰ These options consisted notably in maintaining a complete separation of the posts as well as in their full merger; *ibid.*, pp. 19, 20.

⁸¹ *Ibid.*, p. 20.

⁸² *Ibid.*, p. 21.

⁸³ *Ibid.*, p. 20.

⁸⁴ *Ibid.*, p. 21.

⁸⁵ *Ibid.*, pp. 21-22.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*, p. 22.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

although this scenario brings an accumulation of 'tasks' to an even larger extent than option three, no provisions were made with regard to 'deputies'.

Working Group VIII equally discussed how to enhance the "role of the [HR]",⁹⁰ but with regard to EU crisis management.⁹¹ In order to achieve more effectiveness in this area, some members argued in favour "of a Deputy HR responsible for Defence",⁹² which, however, gave rise to concerns on the part of those who worried about the setup of additional "posts".⁹³ As to the scope of responsibility of a "Deputy for Defence",⁹⁴ Alain Richard, former French Minister for Defence emphasised the necessity for the EU to enhance its military capabilities.⁹⁵ On the institutional side, he advocated notably a Deputy HR, who would be "responsible for the development of capabilities"⁹⁶ and be placed within the "intergovernmental structure of European defence policy".⁹⁷ Although discussed in several working documents,⁹⁸ the final report of Working Group VIII did not refer in one single clause to a Deputy for Defence.⁹⁹

After the submission of the final reports of both Working Groups, the ensuing plenary session was devoted to discuss their outcomes. Although President Dehaene underlined the Working Groups' preference for option three,¹⁰⁰ there was still general disagreement which is why it is not surprising that the question of eventual 'deputies'

⁹⁰ European Convention, Secretariat, *Agenda of the meeting of Working Group VIII on 14 October 2002*, CONV 340/02, Brussels, 10 October 2002, p. 1, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00340.en02.pdf>.

⁹¹ European Convention, Secretariat, *Summary of the meeting of Working Group VIII held on 14 October 2002*, CONV 349/02, Brussels, 18 October 2002, p. 2, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00349.en02.pdf>.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ European Convention, Secretariat, *Summary of the meeting of Working Group VIII held on 29 October 2002*, CONV 399/02, Brussels, 12 November 2002, p. 2, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00399.en02.pdf>.

⁹⁵ European Convention, Secretariat, *Summary of the meeting of Working Group VIII held on 4 November 2002*, CONV 405/02, Brussels, 14 November 2002, p. 1, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00405.en02.pdf>.

⁹⁶ *Ibid.*, p. 2.

⁹⁷ *Ibid.*, p. 3.

⁹⁸ e.g.: European Convention, Secretariat, *Working Group VIII: Working Document 17*, Brussels, 12 November 2002, p. 5, retrieved 17 March 2011, <http://european-convention.eu.int/docs/wd8/4847.pdf>.

⁹⁹ European Convention, Secretariat, *Final Report of Working Group VIII*, CONV 461/02, Brussels, 16 December 2002, pp. 17, 24, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00461.en02.pdf>.

¹⁰⁰ European Convention, Secretariat, *Summary Report on the Plenary Session held on 20 December 2002*, CONV 473/02, Brussels, 23 December 2002, p. 3, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00473.en02.pdf>.

was not subject to debate. In the end, the questions of the Minister's 'functions' and his/her eventual 'deputies' were not addressed any more in the remaining plenary sessions,¹⁰¹ and the Convention reached an agreement on the creation of an UMFA in art. 27 of the DTCE,¹⁰² leaving out provisions for 'deputisation'. Since art. 23(2) DTCE tasks this person to chair the FAC,¹⁰³ it can be concluded that the plenum in fact took over option four of Working Group VII, as outlined above. Although 'deputies' did not occur any more as a topic on the agenda, two out of 45 amendments overall, brought in by Dirk Roche¹⁰⁴ and Danuta Hübner,¹⁰⁵ still agitated for respective provisions and basically took up the proposals made earlier in Working Group VII.

Having retraced the work of the Convention on 'deputisation' for the intended UMFA from the very beginning, it is now possible to draw a number of conclusions: First, the creation of 'deputies' was in fact deliberated in the Working Groups 'External Action' as well as 'Defence', which were taking into account the high workload that would weigh on a single person due to the expected combination of the 'posts' of the RELEX Commissioner and the HR.

Second, two distinct main conceptions as to how future arrangements for 'deputisation' could look like were defended throughout the discussions. Apart from the institutionalisation of a particular 'deputy' for security and defence policy, the HR – respectively the UMFA – should either be supported by several 'deputies' exclusively responsible for CFSP issues or by one 'deputy' responsible for CFSP matters and another one for duties performed under the 'Commission hat'.

Third, the suggestions for amendments submitted at the plenary level show that 'deputies' should have been placed in an additional paragraph to art. 27 DTCE,

¹⁰¹ European Convention, Secretariat, *Summary Report on the Plenary Session held on 5 June 2003*, CONV 798/03, Brussels, 17 June 2003, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/03/cv00/cv00798.en03.pdf>; European Convention, Secretariat, *Summary Report on the Plenary Session held on 11 and 13 June 2003*, CONV 814/03, Brussels, 19 June 2003, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/03/cv00/cv00814.en03.pdf>; European Convention, Secretariat, *Note on the Plenary Session held on 4 July 2003*, CONV 849/03, Brussels, 14 July 2003, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/03/cv00/cv00849.en03.pdf>.

¹⁰² European Convention, Secretariat, *Draft Treaty establishing a Constitution for Europe*, CONV 850/03, Brussels, 18 July 2003, p. 23, retrieved 17 March 2011, <http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>, p. 1.

¹⁰³ *Ibid.*, p. 18.

¹⁰⁴ European Convention, *Suggestion for amendment of Article 19 [sic] by D. Roche et al.*, (no date of update), p. 1, retrieved 17 March 2011, <http://european-convention.eu.int/Docs/Treaty/pdf/419/19Roche%20EN.pdf>.

¹⁰⁵ European Convention, *Suggestion for amendment of Article 19 [sic] by D. Hübner*, (no date of update), pp. 1-2, retrieved 17 March 2011, <http://european-convention.eu.int/Docs/Treaty/pdf/419/19Hubner%20EN.pdf>.

which is relevant in so far as it indicates which article has to be subject to interpretation in order to allow for an argumentation in favour of 'deputisation'.

Fourth, two reasons were provided why 'deputies' for the UMFA might not have been considered in the DTCE: on the one hand, as highlighted above, Working Group VII forwarded four alternatives for the HR's future job description to the plenum, which then however simply advocated for the creation of an UMFA, for whose 'position' no 'deputies' were envisaged. On the other hand, it should not be neglected that the plenum spent most of its relatively scarce time on discussing details about the UMFA's 'tasks' and accountability, on which quite divergent views were held. There may simply not have been enough time to sufficiently address the question of 'deputies', and it finally may have been disregarded because of its relatively minor importance.

Apart from the analysis of the documents produced during the Convention, the work of the subsequent IGCs was equally scrutinised in the context of the research for this paper. However, with regard to the IGC 2003/2004, no evidence was found that the issue of 'deputies' for the UMFA had come up during these negotiations.¹⁰⁶ Concerning the IGC 2007, the only notable modification as to this contribution was the renaming of the UMFA as High Representative of the Union for Foreign Affairs and Security Policy,¹⁰⁷ whereas 'deputies' for this 'position' had not been discussed at all.¹⁰⁸

Beyond the IGCs, 'deputies' and the entourage of the 'Minister' were not discussed among member states until 2008,¹⁰⁹ as it was agreed that this "decision [...] should be made only after the entry into force of the Treaty [of Lisbon]".¹¹⁰ However, after the Treaty's signature, during the Slovenian Presidency of 2008, it was

¹⁰⁶ For verification, see IGC working documents: Council of the European Union, Official Homepage, *IGC 2004: Search IGC documents*, (no date of update), retrieved 17 March 2011, <http://www.consilium.europa.eu/App/Igc/DocRegister.aspx?content=DOC&lang=EN&cmsid=754>.

¹⁰⁷ Council of the European Union, General Secretariat, *IGC 2007 Mandate*, 11218/07, Brussels, 26 June 2007, p. 3, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/07/st11/st11218.en07.pdf>.

¹⁰⁸ For verification, see IGC working documents: Council of the European Union, Official Homepage, *IGC 2007: Preparatory Documents*, (no date of update), retrieved 17 March 2011, <http://www.consilium.europa.eu/showPage.aspx?id=1314&lang=EN>; Council of the European Union, Official Homepage, *IGC 2007: Database*, (no date of update), retrieved 17 March 2011, <http://www.consilium.europa.eu/App/Cig/Cig2007.aspx?modeCIG=register&lang=EN&cmsid=1300>.

¹⁰⁹ Interview with Jean de Ruyt, Permanent Representative of Belgium to the European Union, via email, 30 April 2011.

¹¹⁰ *Ibid.*

considered that the “issue of deputies to the HR had been settled by the Convention and that it could not be relaunched” [*sic*].¹¹¹

At last, given that the screening of IGC documents did not reveal the merest hint which would permit to assume that it was the intention of the Constitutional Treaty’s authors to establish ‘deputies’ for the newly created UMFA, it has to be concluded that an argumentation in favour of ‘deputisation’ cannot be built upon a historical interpretation of the Constitutional Treaty. On the other hand, however, no evidence was found that the establishment of ‘deputies’ was considered as strictly illegitimate or forbidden. This conclusion is of considerable relevance for the further analysis, since it excludes that the lack of regulation of ‘deputies’ is an intended gap in EU legislation, which would preclude its filling by means of interpretation.

Consequently, the next section seeks to find out to what extent a systematic interpretation provides for an argument for the legality of ‘deputies’.

3.2 *Article 18 TEU in relation to the Treaty’s legal framework: a systematic approach*

Being the most frequently applied method by the ECJ,¹¹² a systematic interpretation – also referred to as contextual interpretation¹¹³ – consists in the placing of the word, paragraph or article in question¹¹⁴ “in its context and [in interpreting] it [either] in relation to”¹¹⁵ the surrounding text of the word, other “paragraphs of the article or to other articles of the same section”.¹¹⁶ It may also be that the ECJ “refers to other parts of the Treaty or the Treaty as a whole”.¹¹⁷ Having demonstrated above that ‘deputisation’ would have been probably framed in today’s art. 18 TEU, this article shall now be subject to further interpretation. As none of the paragraphs in art. 18 TEU explicitly refers to ‘deputies’ or concedes to the HR/VP an authorisation or responsibility that would imply the capacity to set up a ‘deputisation’ arrangement, the examination of the surrounding articles within Title III TEU, dealing with institutions, is next in line. Here, the immediately preceding art. 17

¹¹¹ *Ibid.*

¹¹² Brown & Kennedy, *op.cit.*, p. 324.

¹¹³ Although in the literature, the terms ‘contextual’ (Brown & Kennedy, *op.cit.*, p. 334) and ‘systematic’ (Brown & Kennedy, *op.cit.*, p. 335; Dann, *op.cit.*, p. 1462) are both used to refer to the same interpretation method, this paper will hereafter adopt the latter term in order ensure a consistent denomination.

¹¹⁴ Bredimas, *op.cit.*, p. 43.

¹¹⁵ Brown & Kennedy, *op.cit.*, p. 334.

¹¹⁶ Bredimas, *op.cit.*, p. 43.

¹¹⁷ *Ibid.*

TEU appears particularly relevant since its (6) includes provisions with regard to the President of the Commission. Within the Treaty of Lisbon, this position – aside from the President of the European Council – is the most evident point of reference when trying to make any kind of “deductions”¹¹⁸ to the HR/VP’s profile because they bear several – albeit broad – resemblances to each other: First, in terms of their institutional importance in the Lisbon Treaty’s legal framework, due to the entirety of their ‘tasks’ throughout the Treaty as well as their various entanglements in relevant decision-making processes, the President of the Commission and the HR/VP are silhouetted against the other few individuals that are designated by the TEU – irrespective of the President of the European Council. Second, both assume tasks of a similar nature, internally (e.g. chairing the College,¹¹⁹ respectively the Council¹²⁰) as well as externally, given that, for example, together with the President of the European Council they form the “new troika” of the EU’s external representation.¹²¹

Having justified the reasons for this attempted legal deduction, (6) of art. 17 TEU shall be discussed: While lit. a) can be disregarded in this particular case, lit. b) gives the President of the Commission the right to “decide on the internal organisation of the Commission, ensuring that it acts [...] efficiently”,¹²² meaning notably the allocation and reshuffling of portfolios.¹²³ Thus, it can be stated that the President has an organisational or ‘institutional capacity’ at least in so far as it allows him to shape the internal organisation in a way that the ‘tasks’ of the institution, for which he is responsible, are assumed in an efficient way. Given that the HR/VP’s ‘tasks’ are at least not less comprehensive and important as those of the President of the Commission, it should be valid to argue that a similar degree of institutional capacity should be conceded to the HR/VP with regard to her own internal organisation. How, for example, can it otherwise be imagined that her coordination ‘function’ within the College¹²⁴ would be fulfilled efficiently if she cannot attend a meeting and is at the same time unable to send a ‘deputy’? Thus, granting the HR/VP sufficient institutional capacity with regard to her own internal organisation, including notably the appointment of ‘deputies’, could prevent such situations and ensure the efficient assumption of her various ‘tasks’.

¹¹⁸ *Ibid.*

¹¹⁹ Art. 15(6) lit. a) TEU.

¹²⁰ Art. 18(3) TEU.

¹²¹ De Ruyt, “A Minister for a European Foreign Policy”, *op.cit.*, p. 16.

¹²² Art. 17(6) lit. b) TEU.

¹²³ Art. 248 TFEU.

¹²⁴ Art. 18(4) TEU.

That the right to 'deputisation' could indeed be comprised by such an institutional capacity is demonstrated by art. 17(6) lit. c) TEU, by which the President of the Commission is entitled to "appoint Vice-Presidents [...] from among the members of the Commission".¹²⁵ Reading this provision together with art. 25 of the Commission Rules of Procedure, according to which the President's "functions shall be exercised by one of the Vice-Presidents [...] in the order laid down by the President"¹²⁶ in case of his absence, it can be concluded that the President is enabled to choose the Commissioner who shall deputise for him. Given that this Commissioner is at least to some extent placed under the authority of the President, in view of the latter's prerogatives,¹²⁷ one can indeed speak about 'deputisation' in this case, which is confirmed by the headline of art. 25 of the Rules of Procedure.¹²⁸

It is worth noting here that the above argument of considering the HR/VP not as a physical person can equally be found in the literature. For instance, Chalmers *et al.* argue that "whilst the HR/VP is presented as person, it could equally be thought of as an organisation".¹²⁹

The entire argument, however, implies necessarily that the HR/VP is not purely read as a single physical person but as an institutional entity, or organisation itself, which is problematic in so far as art. 13(1) TEU determines the "Union's institutions"¹³⁰ expressly and exhaustively, thereby not mentioning the HR/VP.

A further and simpler argument in support of the above takes into account the whole set of articles within the framework of Title III TEU. Therein, each article in principle comprises the entire core rules and 'tasks' for one particular institution, and art. 18 TEU, in fact, does the same with regard to the HR/VP. Moreover, both the preceding as well as the article following art. 18 TEU establish foundations of European institutions.¹³¹ In the light of this legal environment and the fact that the HR/VP also has its own article, it would only be logical to place the HR/VP on equal footing with the European Parliament, the European Council, the Council, the Commission and the Court of Justice in terms of institutional status. However, this argument, aiming equally at acknowledging the HR/VP as an organisation, faces the same valid objection, based on art. 13 TEU, as the above.

¹²⁵ Art. 17(6) lit. c) TEU.

¹²⁶ European Commission, "Commission Rules of Procedures", *op.cit.*, p. 67, art. 25.

¹²⁷ *Ibid.*, art. 3.

¹²⁸ *Ibid.*, p. 67.

¹²⁹ Chalmers, Davies & Monti, *op.cit.*, p. 62.

¹³⁰ Art. 13(1) TEU.

¹³¹ Art. 17 TEU and Art. 19 TEU, respectively.

Having presented ways to argue in favour of the legality of the establishment of 'deputies' for the HR/VP – albeit not without frictions – the following subsection will verify whether a teleological interpretation will result in a less contested outcome.

3.3 *No 'deputies', no consistency and effectiveness: does a teleological interpretation help?*

Teleological interpretation is "based on the purpose or object of the text facing the judge"¹³² and often applied in combination with the contextual method. It draws upon the idea that "Treaties mainly provide a broad programme"¹³³ that might lead to further integration "rather than a detailed blueprint".¹³⁴ Being understood as a way to respond to "changing economic, political and social"¹³⁵ circumstances, this method better takes into account the "[dynamic character] of European integration"¹³⁶ and at the same time contributes to the dynamic nature of EU law itself.¹³⁷

Objectives found in "opening articles" of the Treaty as well as "titles, chapters and headings" are central 'elements' in the application of the teleological method.¹³⁸ In the case at hand, art. 13(1) TEU sets out the objectives of Title III on the institutions. Among the objectives, common to all institutions is most notably the aim to "ensure the consistency [and] effectiveness [...] of [the Union's] policies",¹³⁹ which – in case of the HR/VP – are the policies relating to the Union's external action. It can be argued that without 'deputies' the HR/VP is not, or only to an insufficient extent, able to assure the consistency and effectiveness of the EU's external action. Using the example above, how can one imagine that the HR/VP without deputies is able to assume effectively her coordination function in the Commission according to art. 18(4) TEU, by which she ought to ensure the consistency of the Union's external action? Given that the Treaty is silent about 'deputies', the legal order as laid down by the Treaty has to be considered as "unsuitable to the [objective] sought to be achieved".¹⁴⁰ Therefore, in view of this insufficiency, art. 18 TEU should not be interpreted as forbidding the creation of 'deputies' because their establishment

¹³² Brown & Kennedy, *op.cit.*, p. 339.

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ Bredimas, *op.cit.*, p. 70.

¹³⁶ *Ibid.*, p. 80.

¹³⁷ Dann, "Thoughts on a Methodology", *op.cit.*, p. 1460.

¹³⁸ Bredimas, *op.cit.*, p. 71.

¹³⁹ *Ibid.*

¹⁴⁰ Bredimas, *op.cit.*, p. 71.

would effectively contribute to make the system work in a more consistent and efficient way.

However, the application of the teleological method is not entirely unproblematic. First, it should not be disregarded that the teleological method was particularly "appropriate in [former] Community law",¹⁴¹ especially with regard to economic law, in the context of which it was developed.¹⁴² It is at least questionable whether the teleological method can be applied in the same dynamic way to purely institutional provisions of today's TEU, as it was used for interpreting mainly single market law so far. Second, resorting to a teleological interpretation in order to argue in favour of 'deputies' legality cannot effectively refute the above objection that again, in this case the HR/VP can hardly be read as a physical person but must rather be seen as an organisation.

Nevertheless, it should be uncontested that the outcome of this method represents a pragmatic response to the challenge, which is posed by the job profile of art. 18 TEU.

Given the absence of 'deputies' in EU primary law, it is assumed that mainly other forms of 'replacement' are in place. These forms might be laid down in secondary EU law as well as political agreements, which will be examined in the next section.

4. The arrangements for 'replacement' of the HR/VP in her relations to EU institutions

4.1 European Parliament

The HR/VP's relation to the European Parliament with regard to her 'replacement' is dominated by the question of her political accountability and framed by four documents. These are in particular the TEU itself,¹⁴³ the Declaration by the HR/VP on Political Accountability,¹⁴⁴ the Inter-institutional Agreement between

¹⁴¹ Brown & Kennedy, *op.cit.*, p. 339.

¹⁴² Bredimas, *op.cit.*, pp. 73-74.

¹⁴³ Art. 17 (7) and (8) TEU; Art. 36 TEU.

¹⁴⁴ C. Ashton, High Representative for Common Foreign and Security Policy, "Declaration by the High Representative on Political Accountability", annexed to European Parliament, *Resolution of 8 July 2010 on the proposal for a Council decision establishing the organisation and functioning of the European External Action Service*, P7_TA-PROV(2010)0280, Brussels, final version 8 July 2010.

the European Parliament and the Commission¹⁴⁵ and the Rules of Procedure of the Council of the European Union.¹⁴⁶

The TEU links the 'position' of the HR/VP and the European Parliament notably in its art. 17, where (8) TEU gives the European Parliament the power to dismiss the HR/VP, however, only with regard to her 'Commission hat'.¹⁴⁷ On the contrary, the European Parliament's powers in relation to the CFSP area are basically scaled down to "advisory, monitoring and holding-to-account roles".¹⁴⁸ In this regard, art. 36 TEU lays down the HR/VP's accountability by stipulating that the HR/VP has to "regularly consult the [European Parliament] on the main aspects [...] of [CFSP]"¹⁴⁹ and to assure that the European Parliament's positions are "taken into consideration".¹⁵⁰ The assurance of this accountability has been a major concern of the European Parliament since the importance of the new 'position' of the UMFA began to appear during the Convention on the Future of Europe. Therein, respective institutional provisions were suggested at the level of working groups¹⁵¹ as well as at plenary level.¹⁵²

More recently, during the process of shaping the form of the EEAS, the European Parliament was in doubt that the HR/VP – given her multiple 'tasks' – would manage to sufficiently "report back on her actions".¹⁵³ Therefore, the European Parliament requested a 'replacement' system stating that for issues related to external relations handled by the Commission, the HR/VP should be replaced by the Commissioner in charge of the respective dossier.¹⁵⁴ As to intergovernmental policy

¹⁴⁵ European Parliament & European Commission, "Framework Agreement on relations between the European Parliament and the European Commission", *Official Journal of the European Union*, L 304, 20 November 2010, p. 47.

¹⁴⁶ Council of the European Union, "Council Joint Action (2009/937/EU) of 1 December 2009 adopting the Council's Rules of Procedure", *Official Journal of the European Union*, L325, 11 December 2009, p. 35.

¹⁴⁷ Piris, *op.cit.*, p. 245.

¹⁴⁸ Nugent, *op.cit.*, p. 392.

¹⁴⁹ Art. 36 par. 1 TEU.

¹⁵⁰ *Ibid.*

¹⁵¹ See: European Convention, Secretariat, *Final Report of Working Group VII*, *op.cit.*, p. 29.

¹⁵² See: European Convention, Secretariat, *Summary sheet of proposals for amendments concerning external action, including defence policy*, CONV 707/03, Brussels, 9 May 2003, p. 80, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/03/cv00/cv00707.en03.pdf>.

¹⁵³ "Elmar Brok on the European External Action Service", *European Parliament*, Official Homepage, 08.06.2010, retrieved 17 March 2011, <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRESS&reference=20100607STO75581>.

¹⁵⁴ *Ibid.*

areas, member states should nominate “people from the Council”¹⁵⁵ who could be subject to reporting duties towards their domestic parliaments. By contrast, the European Parliament deemed EU “officials”¹⁵⁶ inappropriate for this ‘task’ because of a lack of direct accountability towards a parliamentary assembly.¹⁵⁷

The Declaration by the HR/VP on Political Accountability effectively complies with these requests. Its (6) determines that if the HR/VP should be unable to attend a plenary session, it is left to her discretion to decide whom to send to the European Parliament.¹⁵⁸ This discretion is only restricted by the issue in question in so far as ‘replacement’ will be assured “by a Commissioner for issues falling exclusively or prevaillingly into Commission competence”.¹⁵⁹ In case the issue “[falls] exclusively or principally in the area of CFSP”,¹⁶⁰ it is either “the rotating Presidency”¹⁶¹ or one of the other two Ministers forming together with the rotating Presidency the “trio [Presidency]”.¹⁶²

Apart from the provisions in the Declaration on Political Accountability, the HR/VP is equally subject to the rules of the Inter-institutional Agreement between the European Parliament and the European Commission due to her ‘Commission hat’. Art. 45 par. 2 establishes indeed the principle that members of the Commission “shall ensure [their presence] at plenary sittings for agenda items falling under their responsibility whenever the Parliament so requests”¹⁶³ but is silent about the question of an eventual ‘replacement’ or ‘deputisation’. Only on the level of parliamentary committee meetings, art. 50 par. 3 mentions that when a Commissioner’s presence “is not explicitly required”,¹⁶⁴ the Commission is asked to send “a competent official at an appropriate level”.¹⁶⁵ Since the provision does not further specify the official’s status, and given that the former DG RELEX and parts of DG Development were integrated in the EEAS,¹⁶⁶ it seems only logical that this can equally be an EEAS

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ Ashton, High Representative, “Declaration”, *op.cit.*, (6).

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*; see also: Council of the European Union, “Council Rules of Procedure”, *op.cit.*, art. 26 par. 1.

¹⁶³ *Ibid.*, art. 45 par. 2.

¹⁶⁴ *Ibid.*, art. 50 par. 3.

¹⁶⁵ *Ibid.*

¹⁶⁶ Council of the European Union, Council Decision establishing the EEAS, *op.cit.*, p. 40.

official, if the respective issue falls within the competence of the EEAS. This would then in fact result in 'deputisation'.

Finally, art. 26 par. 2 of the Council Rules of Procedures even increases the HR/VP's burden by making her responsible to "represent [the FAC] before the [European Parliament] or its committees".¹⁶⁷ While for plenary meetings of the European Parliament, the HR/VP can ask the rotating Presidency to ensure her replacement, she can instruct senior officials of the EEAS or the General Secretariat to represent the FAC in committee meetings.¹⁶⁸ As the Council Rules of Procedure were adopted on 1 December 2009 – at a time when the final shape of an EEAS was not yet decided upon¹⁶⁹ – and since parts of the Council Secretariat were transferred to the EEAS,¹⁷⁰ it can well be that an EEAS official is to represent the FAC before a European Parliament committee, which would again add up to 'deputisation'.

In sum, with regard to European Parliament plenary sessions the choice was made for 'replacement' instead of 'deputisation', whereas on the level of European Parliament committee meetings 'deputisation' can effectively occur.

4.2 *European Council and Council of the EU*

With regard to the European Council, neither the Lisbon Treaty nor the Rules of Procedure of the European Council comprehend rules stipulating whether or how to 'replace' the HR/VP in case of her absence. This lack of provisions can be explained by two reasons. First, she is not a full member but only invited to "take part in its work",¹⁷¹ which means that her absence is not an obstacle for convening the European Council. Second, the European Council meets at Heads of State or Government level,¹⁷² which implies that the HR/VP herself, who acts and represents on ministerial level, is hierarchically subordinated to all other participants of the European Council. Thus, there is simply no personality left that could adequately 'replace' her.

The HR/VP's 'replacement' as chair of the FAC is a clear-cut case: the Council Rules of Procedure determine expressly in art. 2(5) par. 2 that in the event of her

¹⁶⁷ Council of the European Union, "Council Rules of Procedure", *op.cit.*, art. 26 par. 2.

¹⁶⁸ *Ibid.*

¹⁶⁹ The Council decision establishing the EEAS was only adopted more than six months later, on 26 July 2010, Council of the European Union, Council Decision establishing the EEAS, *op.cit.*, p. 30.

¹⁷⁰ Council of the European Union, Council decision establishing the EEAS, *op.cit.*, pp. 39-40.

¹⁷¹ Art. 15(2) s. 2. TEU.

¹⁷² Art. 15(2) s. 1. TEU.

impediment, the HR/VP is to be 'replaced' by the rotating Presidency.¹⁷³ Thus, the Council does not provide for an opportunity to 'deputise' for the HR/VP.

4.3 European Commission

As to the European Commission, 'replacement' provisions are laid down in its Rules of Procedure and further detailed in the Decision of the President of the European Commission on the organisation of responsibilities of the Members of the Commission. In art. 25 of the Rules of Procedure, the President of the Commission is granted the right that in the event of his absence his "function [...] shall be exercised by one of the Vice-Presidents [...] in the order laid down by the President".¹⁷⁴ However, there is no comparable provision with regard to absences of the HR/VP. Very interestingly, the Decision of the Commission President in its art. 3 par. 1 s. 2 takes explicitly into account "the specific functions of the [HR/VP], notably in the Council",¹⁷⁵ but only in the context of relieving her of the burden of 'replacing' "the President in his absence".¹⁷⁶ On the contrary, it does not provide for a rule allowing for her to be 'replaced' either.

In addition, art. 5(3) of the Rules of Procedure imposes the principle of mandatory attendance at weekly College meetings on Commissioners, from which, however, they can be exempted from by the President.¹⁷⁷ Indeed, art. 10(2) permits that in this case an absent Commissioner can send his or her Head of Cabinet to the meeting,¹⁷⁸ which would thus suggest the possibility of 'deputisation'. However, the paragraph at the same time delimits the rights of the supposed 'deputy' by only granting him the right to state the view of the absent Commissioner, if the President asks him to do so.¹⁷⁹ Thus, since the Head of Cabinet does not enjoy the same rights (e.g. the right to cast a vote¹⁸⁰) as the Commissioner, it is not a case of 'deputisation'. Given this rigid procedural framework, one may rightly wonder how, in the case of Ashton's absence, her Head of Cabinet can ever be able to

¹⁷³ Council of the European Union, "Council Rules of Procedure", *op.cit.*, p. 38, art. 2(5) par. 2.

¹⁷⁴ European Commission, "Commission Rules of Procedures", *op.cit.*, p. 67, art. 25.

¹⁷⁵ European Commission, *Decision of the President of the European Commission of 10 February 2010 on the organisation of responsibilities of the Members of the Commission*, COM (2010) 1000 final, Brussels, 17 February 2010, p. 4, art. 3 par. 1 s. 2.

¹⁷⁶ *Ibid.*

¹⁷⁷ European Commission, "Commission Rules of Procedures", *op.cit.*, p. 62, art. 5(3).

¹⁷⁸ *Ibid.*, p. 63, art. 10(2).

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*, p. 62, art. 8(2) and (3).

effectively defend her position, let alone to coordinate positions of Commissioners who are responsible for policy areas related to external relations.

This section has shown that the extent to which the HR/VP is allowed to 'deputise' or 'replace' in case of her absence differs from one institution to another and is thus dependent on the environment. Moreover, it has to be admitted that 'replacement' is not in all cases possible and 'deputisation' quasi inexistent. The next section will verify whether and to what extent the HR/VP's 'replacement' in practice is in line with the formal provisions that have just been expounded.

5. The HR/VP's 'replacement' in practice: The consequences of no 'deputisation' in- and outside the European Union

5.1 European Parliament

According to EEAS officials, the HR/VP's 'replacement' within the European Parliament in practice works in principle according to the Declaration on Political Accountability.¹⁸¹ One small difference in practice, compared to the document, however, is that it was originally decided that if the rotating Presidency 'replaces' Ashton before the plenary of the European Parliament, the respective Minister is accompanied by the Executive Secretary-General of the EEAS, Pierre Vimont.¹⁸² The advantage seen in this established practice by both, the European Parliament as well as the HR/VP, is that on the one hand, Vimont is directly responsible to Ashton and thus institutionally closer to her than the rotating Presidency.¹⁸³ On the other hand, he regularly attends the FAC meetings with Ashton, which makes him particularly able to report about developments in the FAC.¹⁸⁴ Given that Vimont is a direct subordinate to Ashton, this case can effectively be considered as 'deputisation'.

At a certain point in time, however, this arrangement reached its limits and needed an upgrade. When it turned out that the HR/VP did not manage to present herself before the European Parliament twice a month due to her agenda, the Polish Presidency, more precisely its Minister of Foreign Affairs, was confronted with

¹⁸¹ Interview with official (#2), EEAS, Brussels, 1 April 2011 ; Interview with official (#1), EEAS, Warsaw, 3 March 2011.

¹⁸² Interview with official (#2), EEAS, *op.cit.*

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

handling those meetings additionally.¹⁸⁵ Although the Polish pretended not to consider assuming this 'task' on a regular basis, they were unable to hand over this considerable workload since the European Parliament does not accept to be briefed only by Vimont as an official, given that it requests the presence of a politician.¹⁸⁶ In order not to end up in the uncomfortable situation of the Polish Presidency, who had to stand in before plenary sessions at short notice and with a minimum of briefing, the current Danish Presidency has backed up the Polish pretention by establishing basic conditions that have to be met if they take over the HR/VP's responsibilities before the European Parliament.¹⁸⁷ Today, those conditions notably consist in stating a formal request within a certain early warning threshold, forwarding all necessary files and giving a debriefing beforehand by the EEAS and, finally, ensuring a personal assistance to the Presidency by a competent EEAS official in the meeting.¹⁸⁸ Due to this development, it can be concluded that the establishment of an efficient 'deputisation' system has required the setting up of new working procedures between the EEAS and the rotating Presidency in form of a sophisticated, yet informal coordination process.

5.2 *European Council and Council of the EU*

With regard to European Council meetings, the impossibility of 'replacing' Ashton is more of a theoretical nature and not practically relevant.¹⁸⁹ Normally, summits only take place more or less quarterly,¹⁹⁰ and meetings where issues of external relations are debated are given the highest priority by the HR/VP.¹⁹¹ Furthermore, she will vice versa be highly criticised if she dares to miss them.¹⁹² Thus, the practical exigency for the creation of a 'deputy' is limited because of the relative unlikelihood of Ashton's absence.

As to the FAC, officials confirmed that the HR/VP's 'replacement' works in line with the explicit arrangement of the Council's Rules of Procedure, which calls the

¹⁸⁵ Interview with official (#4), EEAS, Brussels, 6 January 2012 ;

¹⁸⁶ *Ibid.* In addition, the possibility for this 'function' to be regularly assumed by the Commissioners for Enlargement and Neighbourhood or Development Policy is quite limited as well, given their temporal availability or suitability in terms of the issues at hand.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ Interview with official (#2), EEAS, *op.cit.*

¹⁹⁰ *Ibid.*; see also art. 1 (1) par. 1, European Council Rules of Procedure, *op.cit.*, p. 52.

¹⁹¹ Interview with official (#2), EEAS, *op.cit.*

¹⁹² *Ibid.*

Minister of the rotating Presidency to chair the FAC instead of Ashton.¹⁹³ The 'deputisation' by an official is impossible, since their seniority does not correspond to the ministerial level.¹⁹⁴

Given that the chair is said to have particular influence on the decision-making process, it was admitted that it could indeed be problematic to yield such an important 'post' to the Presidency,¹⁹⁵ if the member state holding the Presidency uses this opportunity to pursue its national foreign policy interests by pushing its preferred agenda.¹⁹⁶ Moreover, a too frequent rotation of the Presidency can risk a shortcoming in the FAC's policy continuity.¹⁹⁷ However, it was instantly emphasised that, generally, there exists a considerable degree of respect towards the HR/VP's position on the part of the rotating Presidency.¹⁹⁸ Furthermore, in the event of Ashton's absence, the FAC meeting is either postponed¹⁹⁹ or the EEAS forwards her priorities and agenda items to the rotating Presidency in order to make sure that policy continuity is secured as far as possible.²⁰⁰ Finally, since FAC meetings usually take place only once a month²⁰¹ and are considered a priority, it is mostly manageable for Ashton to ensure her attendance.

In light of these pro's and con's, although this 'replacement' provision apparently does not present a threat to the efficient assumption of this particular 'task' in general, the risk of negative consequences remains, which is why a request for true 'deputisation' appears justified. This would also correspond to the established practice among national delegations, which occasionally send "representatives [...] that can differ in terms of their status" to meetings at ministerial level.²⁰²

5.3 European Commission

For two reasons the HR/VP's 'replacement' in the weekly meetings of the College of Commissioners is a much more considerable problem than in the other

¹⁹³ Interview with official (#1), EEAS, *op.cit.*

¹⁹⁴ Interview with official (#2), EEAS, *op.cit.*

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ Interview with official (#4), EEAS, *op.cit.*

²⁰⁰ Interview with official (#2), EEAS, *op.cit.*

²⁰¹ Nugent, *op.cit.*, p. 144; Council of the European Union, "Provisional agendas for Council meetings during the first semester 2011(Hungarian Presidency)", 16030/10, Brussels, 22 December 2010, p. 2.

²⁰² Nugent, *op.cit.*, p. 143.

institutions. First, Commission and EEAS officials confirmed that it is most often the Head of Cabinet or – if not available – another member from her cabinet who attends the meetings in case of the HR/VP's absence.²⁰³ In line with the Rules of Procedure, however, these officials only state the position of the HR/VP if they are requested to do so.²⁰⁴ Moreover, they do not sit around the College table but at the back and do not take part in debates.²⁰⁵ Given their quasi inexistent leverage in meetings, these representatives are hardly able to assume the External Relations Commissioner's functions that the Lisbon Treaty assigned to the HR/VP or to effectively defend her position.²⁰⁶

Second, the HR/VP absence occurs frighteningly often since the Commission's organisational nature and its working methods are difficult to reconcile with the 'tasks' under her other two 'hats'.²⁰⁷ Meetings of the Commission's College usually take place every Wednesday morning, while meetings of the FAC tend to be scheduled for Mondays and Tuesdays and European Councils for Thursdays and Fridays.²⁰⁸ Commission officials interviewed indicated that during weeks where neither a FAC nor a European Council meeting takes place, the HR/VP theoretically would have time from Wednesday afternoon until the following Tuesday evening to perform her numerous, travel-intense diplomatic 'tasks' without having to absent herself from the College meetings.²⁰⁹ Yet, this view was rejected by the EEAS officials interviewed, by pointing to the practical incompatibility between the demands of the different 'tasks'.²¹⁰ Moreover, it was highlighted that since priority is already given to the attendance of Council, European Council and European Parliament plenary meetings, it is impossible to equally prioritise the College, if she is expected to perform in international representational duties.²¹¹ Without entering further into these inter-institutional arguments, Ashton's absence rate for Commission meetings, which

²⁰³ Interview with official (#2), EEAS, *op.cit.*; Interview with official (#3), European Commission, Brussels, 11 March 2011; Interview with official (#5), European Commission, via email, 27 January 2012.

²⁰⁴ *Ibid.*

²⁰⁵ Interview with official (#5), European Commission, *op.cit.*

²⁰⁶ Interview with official (#3), European Commission, *op.cit.*; Interview with official (#2), EEAS, *op.cit.*

²⁰⁷ *Ibid.*; Interview with official (#2), EEAS, *op.cit.*

²⁰⁸ Interview with official (#3), European Commission, *op.cit.*

²⁰⁹ *Ibid.*

²¹⁰ Interview with official (#1), EEAS, *op.cit.*; Interview with official (#2), EEAS, *op.cit.*

²¹¹ *Ibid.*

in 2010 amounted to 40 percent,²¹² makes a clear case for the practical difficulty for one person to successfully manage the combination of the three 'hats' and it demonstrates that the need for 'deputisation' is nowhere as urgent as within the Commission.

According to an official interviewed, the Commission for the time being does not envisage deviating from the principle of mandatory attendance or amending its Rules of Procedure.²¹³ Yet, given the problematic situation at least a practical arrangement should be found which allows for the HR/VP's 'deputisation' or at least 'replacement' in a way that an efficient performance of her duties is guaranteed.

5.4 External representation

Ideas for a 'replacement' system within the Commission could be taken over from the arrangements in place for the HR/VP's 'replacement' in ministerial political dialogues with third parties. In principle, the HR/VP is required to attend around 80 of such meetings a year.²¹⁴ These, however, are far too many given her various other appointments within the EU's institutional environment, which is why the conceptualisation of this task creates an impossibility in practice.²¹⁵

In the beginning of her term, the HR/VP's 'replacement' in dialogue meetings was run on a case-by-case basis, which had the disadvantages of being non-transparent and of leading to potential inter-institutional turf wars for the right to representation.²¹⁶ Consequently, the challenge was to delegate representational duties to other EU interlocutors in such a careful manner that diplomatic relations with dialogue partners, who naturally tended to strive for the highest ranked interlocutor they could possibly get, were not compromised.²¹⁷ Therefore, the EEAS in the first half of 2011 presented a blueprint aiming to enhance the EU's predictability in its third country representation by proposing four different options for the HR/VP's

²¹² B. Waterfield, "Absent Ashton leaves Britain without a voice", *The Telegraph*, 5 January 2011, retrieved 17 March 2011, <http://www.telegraph.co.uk/news/worldnews/europe/eu/8242363/Absent-Baroness-Ashton-leaves-Britain-without-a-voice.html>.

²¹³ Interview with official (#5), European Commission, *op.cit.*

²¹⁴ Interview with official (#4), EEAS, *op.cit.*

²¹⁵ *Ibid.*

²¹⁶ Interview with official (#2), EEAS, *op.cit.*

²¹⁷ *Ibid.*

'replacement'.²¹⁸ Following the discussion at Coreper level, an agreement was reached on two options, which are currently applied in practice.²¹⁹

The first option consists in the chairing of meetings by the rotating Presidency together with a Commissioner, which applies to most Stabilisation and Association as well as Cooperation Council meetings.²²⁰ In case the Presidency is unable to replace the HR/VP, option two foresees that a ministerial representative from another member state is asked to take over this task.²²¹ This systematic downgrading of certain ministerial political dialogue meetings does not mean that the HR/VP would attach a minor importance to these meetings.²²² Such a downgrading responds rather to the need to adapt the logic of the EU's external representation to the Lisbon Treaty era: While in the pre-Lisbon system, the rotating Presidency had an interest to chair as many meetings as possible during its six-monthly term in office, the HR/VP during her five-year term in principle does have sufficient time to meet with all of the other countries' interlocutors.²²³ In light of her numerous other commitments, however, the HR/VP only prioritises a Stabilisation and Association or Cooperation Council meeting, in order to discuss important and current issues that demand her personal involvement, while it would not be rational to attend meetings for the only sake of maintaining the pre-Lisbon practice of regular, six-monthly meetings without any substantial reason.²²⁴

In this context, it is also worth highlighting that this blueprint was not granted the status of a formal or even legal document in order for the options to be effectively applied and not to become subject to criticism from dialogue partners.²²⁵ In order to identify well in advance those meetings in which the chair should be assumed by the Presidency, the EEAS has established and progressively refined²²⁶ a

²¹⁸ *Ibid.*

²¹⁹ Interview with official (#4), EEAS, *op.cit.*

²²⁰ *Ibid.*

²²¹ The two options not considered were actually cases of 'deputisation' in so far as option three stipulated that a Commissioner flanked by a senior EEAS official should chair dialogue meetings, and option four allotted this task exclusively to EEAS Secretary-General Vimont. Member States rejected these options by arguing that it was legally problematic if representation was not assured by a formal member of the FAC. *Ibid.*

²²² *Ibid.*

²²³ *Ibid.*

²²⁴ *Ibid.*

²²⁵ *Ibid.*

²²⁶ The improvement is reflected in the time needed to elaborate the list of meetings to be delegated: While the Hungarian Presidency received the finalised list only three months after the beginning of its term, the Danish Foreign Ministry could be provided with this document already one and a half month before the country took over the Presidency from Poland. *Ibid.*

coordination procedure between the Policy Coordination, the individual EEAS services, Executive Secretary-General Vimont, the HR/VP herself and the Ministry of Foreign Affairs of the respective rotating Presidency.²²⁷

Thus, it can be concluded that even if, for the time being, 'deputisation' is not an option for the 'replacement' of the HR/VP in political dialogue meetings, other forms of 'replacement' are applied in practice, which are characterised by a high degree of informality and a progressive enhancement of the coordination procedure by the EEAS.

6. Conclusion

The first aim of this paper was to assess to what extent the Lisbon Treaty legally allows for 'deputisation'. By applying established interpretation methods to the TEU, it has been shown that the historical interpretation is inadequate to overcome the legal constraints of the Lisbon Treaty. Yet, it is able to reveal that the institutionalisation of different forms of 'deputies' was considered during the Convention. Moreover, the systematic interpretation provides indeed some good arguments for imputing to the 'position' of the HR/VP an institutional capacity, which allows her to provide for its 'deputisation'. However, frictions arising from the fact that the HR/VP is not an institution in itself impede a wholly satisfying solution to the problem. Finally, by arguing that only by the setup of a 'deputisation' structure the HR/VP can assure the fulfilment of the objectives set out in the Treaty, the teleological interpretation – albeit not without obstacles – offers the best solution. Thus, it can be concluded that the establishment of 'deputies' is legally possible without amending the Lisbon Treaty.

The second question asked whether – in absence of an explicit legal basis – other EU institutions permit the HR/VP to 'deputise' or to be 'replaced'. A scrutiny of the Rules of Procedure and political agreements has shown that the European Parliament is the only actor in the Union's institutional environment that allows for 'deputisation' and only to a very limited extent on the level of parliamentary committee meetings. While this institution and the Council rather favour forms of 'replacement', the European Council and the Commission *de facto* also preclude this possibility.

Finally, a third objective was to examine how the HR/VP's 'replacement' is working in practice and whether it can be considered as efficient. It has been affirmed that in the EU's internal environment, practice generally functions

²²⁷ *Ibid.*

according to the rules presented in section 4. Contrary to this rule, an informal practice of 'deputisation' is applied before the European Parliament, where the EEAS Executive Secretary-General or a competent EEAS official is supposed to perform the 'deputy' function even in plenary sessions. On the other hand, 'deputisation' had been discussed for the conduct of ministerial political dialogue meetings but was rejected by EU member states. In these meetings, it is up to a Commissioner and the rotating Presidency to 'replace' the HR/VP, which also means that the rotating Presidency continues playing a role in the EU's external representation in the Lisbon era. As to the efficiency of 'replacement' arrangements, it has been revealed that the extent to which these practices are able to mitigate the difficulties, which arise from the lack of a possibility of 'deputisation', differs from one case to another. Provided that in the case of meetings of the FAC and the European Council the HR/VP manages to ensure her presence by giving priority to these meetings, the 'replacement' provision in the FAC would be sufficient and the impossibility to be 'replaced' in the European Council tolerable. Consequently, the need for 'deputies' would be limited with regard to these institutions. Moreover, the elaborated arrangements for the HR/VP's 'replacement' before European Parliament and in ministerial political dialogue meetings promise to be good long-term solutions that can ensure the assumption of her respective 'tasks'. However, provisions made for 'deputisation' or 'replacement' have proved to be particularly urgent in the case of the Commission, where it has been evidenced that the cabinet member sent to meetings of the College is unable to assume the HR/VP's 'tasks' due to his limited procedural rights. Therefore, the establishment of a practical arrangement for 'deputisation' or at least 'replacement' in the Commission College is certainly the most recommended reform measure at present. As to the future of the 'deputisation' concept in the whole EU institutional environment, it should be further promoted and progressively extended to other areas since it can offer a pragmatic solution to the challenge of making the HR/VP's job work in an efficient way. The case of 'deputisation' before the European Parliament demonstrates that such a solution is most likely to be successful if it is based on an informal agreement and a sophisticated coordination procedure.

Bibliography

- Ashton, Catherine, High Representative for Common Foreign and Security Policy, declaration, "Declaration by the High Representative on political accountability", annexed to European Parliament, *Resolution of 8 July 2010 on the proposal for a Council decision establishing the organisation and functioning of the European External Action Service*, P7_TA-PROV(2010)0280, Brussels, final version 8 July 2010.
- Bredimas, Anna, *Methods of Interpretation and Community Law*, Amsterdam, North Holland, 1979.
- Bretherton, Charlotte & John Vogler, *The European Union as a Global Actor*, London, Routledge, 2006, 2nd edn.
- Brown, L. Neville & Tom Kennedy, *The Court of Justice of the European Communities*, London, Sweet & Maxwell, 2000, 5th edn.
- Chalmers, Damian, Gareth Davies & Giorgio Monti, *European Union Law*, Cambridge, Cambridge University Press, 2010, 2nd edn.
- Charter, Davod & Graham Keeley, "Baroness Ashton under fire for missing European defence summit", *The Times*, 26 February 2010, retrieved 17 March 2011, <http://www.timesonline.co.uk/tol/news/world/europe/article7041984.ece>.
- Council of the European Union, "Provisional agendas for Council meetings during the first semester 2011(Hungarian Presidency)", 16030/10, Brussels, 22 December 2010.
- Council of the European Union, "Council Decision (2010/427/EC) of 26 July 2010 establishing the organisation and functioning of the European External Action Service", *Official Journal of the European Union*, L 201/30, 3 August 2010, pp. 30-40.
- Council of the European Union, "Council Joint Action (2009/937/EU) of 1 December 2009 adopting the Council's Rules of Procedure", *Official Journal of the European Union*, L325, 11 December 2009, pp. 35-61.
- Council of the European Union, General Secretariat, *IGC 2007 Mandate*, 11218/07, Brussels, 26 June 2007, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/07/st11/st11218.en07.pdf>.
- Dann, Philipp, "Thoughts on a Methodology of European Constitutional Law", *German Law Journal*, vol. 6, no. 11, 2005, pp. 1453-1473.
- De Ruyt, Jean, Permanent Representative of Belgium to the European Union (#5), interview via email, 30 April 2011.
- De Ruyt, Jean, "A Minister for a European Foreign Policy", *Robert Schuman Centre for Advanced Studies Policy Paper*, no. 5/03, Florence, European University Institute, November 2005.
- "Elmar Brok on the European External Action Service", *European Parliament*, Official Homepage, 08.06.2010, retrieved 17 March 2011, <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRESS&reference=20100607STO75581>.
- European Commission, "Commission Decision (2010/138/EU, Euratom) of 24 February 2010 amending its Rules of Procedures", *Official Journal of the European Union*, L55, 5 March 2010, pp. 60-67.
- European Commission, *Decision of the President of the European Commission of 10 February 2010 on the organisation of responsibilities of the Members of the Commission*, COM (2010) 1000 final, Brussels, 17 February 2010.
- European Convention, Secretariat, *Draft Treaty establishing a Constitution for Europe*, CONV 850/03, Brussels, 18 July 2003, retrieved 17 March 2011, <http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>.

European Convention, Secretariat, *Note on the Plenary Session held on 4 July 2003*, CONV 849/03, Brussels, 14 July 2003, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/03/cv00/cv00849.en03.pdf>.

European Convention, Secretariat, *Summary Report on the Plenary Session held on 11 and 13 June 2003*, CONV 814/03, Brussels, 19 June 2003, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/03/cv00/cv00814.en03.pdf>.

European Convention, Secretariat, *Summary Report on the Plenary Session held on 5 June 2003*, CONV 798/03, Brussels, 17 June 2003, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/03/cv00/cv00798.en03.pdf>.

European Convention, Secretariat, *Summary sheet of proposals for amendments concerning external action, including defence policy*, CONV 707/03, Brussels, 9 May 2003, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/03/cv00/cv00707.en03.pdf>.

European Convention, Secretariat, *Summary Report on the Plenary Session held on 20 December 2002*, CONV 473/02, Brussels, 23 December 2002, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00473.en02.pdf>.

European Convention, Secretariat, *Final Report of Working Group VIII*, CONV 461/02, Brussels, 16 December 2002, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00461.en02.pdf>.

European Convention, Secretariat, *Final Report of Working Group VII*, CONV 459/02, Brussels, 16 December 2002, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00459.en02.pdf>.

European Convention, Secretariat, *Summary of the meeting of Working Group VIII held on 4 November 2002*, CONV 405/02, Brussels, 14 November 2002, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00405.en02.pdf>.

European Convention, Secretariat, *Working Group VIII: Working Document 17*, Brussels, 12 November 2002, retrieved 17 March 2011, <http://european-convention.eu.int/docs/wd8/4847.pdf>.

European Convention, Secretariat, *Summary of the meeting of Working Group VIII held on 29 October 2002*, CONV 399/02, Brussels, 12 November 2002, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00399.en02.pdf>.

European Convention, Secretariat, *Summary of the meeting of Working Group VIII held on 14 October 2002*, CONV 349/02, Brussels, 18 October 2002, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00349.en02.pdf>.

European Convention, Secretariat, *Summary of the meeting of Working Group VII held on 8 October 2002*, CONV 342/02, Brussels, 11 October 2002, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00342.en02.pdf>.

European Convention, Secretariat, *Agenda of the meeting of Working Group VIII on 14 October 2002*, CONV 340/02, Brussels, 10 October 2002, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00340.en02.pdf>.

European Convention, Secretariat, *Mandate of Working Group VII on External Action*, CONV 252/02, Brussels, 10 September 2002, retrieved 17 March 2011, <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00252.en02.pdf>.

European Convention, *Suggestion for amendment of Article 19 [sic] by D. Hübner*, (no date of update), retrieved 17 March 2011, <http://european-convention.eu.int/Docs/Treaty/pdf/419/19Hubner%20EN.pdf>.

European Convention, *Suggestion for amendment of Article 19 [sic] by D. Roche et. al.*, (no date of update), retrieved 17 March 2011, <http://european-convention.eu.int/Docs/Treaty/pdf/419/19Roche%20EN.pdf>.

European Parliament & European Commission, "Framework Agreement on relations between the European Parliament and the European Commission", *Official Journal of the European Union*, L 304, 20 November 2010, p. 47.

European Union, "Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union of 13 December 2007", *Official Journal of the European Union*, C 115, 9 May 2008.

Kaczynski, Piotr Maciej *et al.*, "The Treaty of Lisbon: A Second Look at the Institutional Innovations", *Joint CEPS, EGMONT and EPC Study*, Brussels, Centre for European Policy Studies, EGMONT Institute & European Policy Centre, September 2010, pp. 139-162.

Kaddous, Christine, "Role and Position of the High Representative of the Union for Foreign Affairs and Security Policy under the Lisbon Treaty", in Stefan Griller & Jacques Ziller (eds.), *The Lisbon Treaty: EU Constitutionalism Without a Constitutional Treaty?*, Vienna, Springer, 2008, pp. 205-221.

Keukeleire, Stephan & Jennifer MacNaughtan, *The Foreign Policy of the European Union*, Basingstoke, Palgrave Macmillan, 2008.

Nugent, Neill, *The Government and Politics of the European Union*, Basingstoke, Palgrave Macmillan, 2010, 7th edn.

Normann, Peter, *The Accidental Constitution*, Brussels, EuroComment, 2005.

Official (#1), EEAS, interview in Warsaw, 3 March 2011.

Official (#2), EEAS, interview in Brussels, 1 April 2011.

Official (#3), European Commission, interview in Brussels, 11 March 2011

Official (#4), EEAS, interview in Brussels, 6 January 2012.

Official (#5), European Commission, via email, 27 January 2012.

Piris, Jean-Claude, *The Lisbon Treaty: A Legal and Political Analysis*, Cambridge, Cambridge University Press, 2010.

"Solana Leaves Ashton Impossible Job Description", *Euractiv*, 10 December 2009, retrieved 17 March 2011, <http://www.euractiv.com/en/future-eu/solana-leaves-ashton-impossible-job-description/article-188183>.

"The EU's High Representative for Foreign and Security Policy", *European Union Centre of North Carolina*, 31 March 2010, retrieved 17 March 2011, http://www.unc.edu/depts/europe/business_media/businessbriefs/Brief1004-high-rep.pdf.

Vanhoonacker, Sophie & Reslow, Natasja, "The European External Action Service: Living Forwards by Understanding Backwards", *European Foreign Affairs Review*, vol. 15, no. 1, 2010, pp. 1-18.

Waterfield, Bruno, "Absent Ashton leaves Britain without a voice", *The Telegraph*, 5 January 2011, retrieved 17 March 2011, <http://www.telegraph.co.uk/news/worldnews/europe/eu/8242363/Absent-Baroness-Ashton-leaves-Britain-without-a-voice.html>.

Waterfield, Bruno, "Is absent Ashton a part-timer?", *EUObserver*, 10 January 2011, retrieved 17 March 2011, <http://blogs.euobserver.com/waterfield/2011/01/10/absent-ashton-a-part-time-eu-foreign-minister>.

Wouters, Jan, Dominik Coppens & Baart De Meester, "The European Union's External Relations after the Lisbon Treaty", in Stefan Griller & Jacques Ziller (eds.), *The Lisbon Treaty: EU Constitutionalism Without a Constitutional Treaty?*, Vienna, Springer, 2008, pp. 143-203.

List of EU Diplomacy Papers

1/2006

Karel De Gucht, *Shifting EU Foreign Policy into Higher Gear*

2/2006

Günter Burghardt, *The European Union's Transatlantic Relationship*

1/2007

Jorge Sampaio, *Global Answers to Global Problems: Health as a Global Public Good*

2/2007

Jean-Victor Louis, *The European Union: from External Relations to Foreign Policy?*

3/2007

Sieglinde Gstöhl, *Political Dimensions of an Externalization of the EU's Internal Market*

4/2007

Jan Wouters, *The United Nations and the European Union: Partners in Multilateralism*

5/2007

Martin Konstantin Köhring, *Beyond 'Venus and Mars': Comparing Transatlantic Approaches to Democracy Promotion*

6/2007

Sahar Arfazadeh Roudsari, *Talking Away the Crisis? The E3/EU-Iran Negotiations on Nuclear Issues*

1/2008

Yann Boulay, *L'Agence Européenne de Défense : avancée décisive ou désillusion pour une Europe de la défense en quête d'efficacité ?*

2/2008

Pier Carlo Padoan, *Europe and Global Economic Governance*

3/2008

Sieglinde Gstöhl, *A Neighbourhood Economic Community - finalité économique for the ENP?*

4/2008

Davide Bonvicini (ed.), *Playing Three-Level Games in the Global Economy – Case Studies from the EU*

5/2008

Fredrick Lee-Ohlsson, *Sweden and the Development of the European Security and Defence Policy: A Bi-Directional Process of Europeanisation*

6/2008

Anne-Claire Marangoni, *Le financement des opérations militaires de l'UE : des choix nationaux pour une politique européenne de sécurité et de défense ?*

7/2008

Jing Men, *EU-China Relations: from Engagement to Marriage?*

8/2008

Giuseppe Balducci, *Inside Normative Power Europe: Actors and Processes in the European Promotion of Human Rights in China*

1/2009

Monika Tocha, *The EU and Iran's Nuclear Programme: Testing the Limits of Coercive Diplomacy*

2/2009

Quinlan Carthane, *A Misleading Promise? Rethinking European Support for Biofuels*

3/2009

Joris Larik, *Two Ships in the Night or in the Same Boat Together? Why the European Court of Justice Made the Right Choice in the Kadi Case*

4/2009

Alice Serar, *Tackling Today's Complex Crises: EU-US Cooperation in Civilian Crisis Management*

5/2009

Judith Huigens & Arne Niemann, *The EU within the G8: A Case of Ambiguous and Contested Actorness*

6/2009

Mathias Dobbels, *Serbia and the ICTY: How Effective Is EU Conditionality?*

7/2009

Hugo de Melo Palma, *European by Force and by Will: Portugal and the European Security and Defence Policy*

8/2009

Paul Meerts (ed.), *Negotiating with the Russian Bear: Lessons for the EU?*

9/2009

Anne Tiedemann, *EU Market Access Teams: New Instruments to Tackle Non-tariff Barriers to Trade*

1/2010

Severin Peters, *Strategic Communication for Crisis Management Operations of International Organisations: ISAF Afghanistan and EULEX Kosovo*

2/2010

Sophie Lecoutre, *The US Shift towards 'Smart Power' and its Impact on the Transatlantic Security Partnership*

3/2010

Herman Van Rompuy, *The Challenges for Europe in a Changing World*

4/2010

Camilla Hansen, *Non-Governmental Organisations and the European Union's Promotion of Human Rights in China: NGO Influence or NO Influence?*

5/2010

Egemen Bağış, *Turkey's EU Membership Process: Prospects and Challenges*

6/2010

Jan Steinkohl, *Normative Power Rivalry? The European Union, Russia and the Question of Kosovo*

7/2010

André Ghione, *Pushing the Boundaries: DG Enlargement between Internal and External Environments*

8/2010

Athanasia Kanli, *Is the European Union Fighting the War for Children? The EU Policy on the Rights of Children Affected by Armed Conflict*

9/2010

Jan Weisensee, *Measuring European Foreign Policy Impact: The EU and the Georgia Crisis of 2008*

10/2010

Mario Giuseppe Varrenti, *EU Development Cooperation after Lisbon: The Role of the European External Action Service*

11/2010

Nicole Koenig, *The EU and NATO: Towards a Joint Future in Crisis Management?*

1/2011

Mitja Mertens, *The International Criminal Court: A European Success Story?*

2/2011

Mireia Paulo Noguera, *The EU-China Strategic Partnership in Climate Change: The Biodiversity Programme*

3/2011

Bart van Liebergen, *American War, European Struggle? Analyzing the Influence of Domestic Politics on the ISAF Contributions of EU Member States*

4/2011

Dieter Mahncke, *Post-modern Diplomacy: Can EU Foreign Policy Make a Difference in World Politics?*

5/2011

Erika Márta Szabó, *Background Vocals: What Role for the Rotating Presidency in the EU's External Relations post-Lisbon?*

6/2011

Charles Thépaut, *Can the EU Pressure Dictators? Reforming ENP Conditionality after the 'Arab Spring'*

7/2011

Jannik Knauer, *EUFOR Althea: Appraisal and Future Perspectives of the EU's Former Flagship Operation in Bosnia and Herzegovina*

8/2011

Paul Quinn (ed.), *Making European Diplomacy Work: Can the EEAS Deliver?*

9/2011

Nathan Dufour, *Thinking Further about EU-Russia Cooperation: Drug Trafficking and Related Issues in Central Asia*

10/2011

Anselm Ritter, *The EU's Gas Security of Supply: Risk Analysis and Management*

1/2012

Malthe Munkøe, *The 2011 Debacle over Danish Border Control: A Mismatch of Domestic and European Games*

2/2012

Martin Schmid, *The Deputisation of the High Representative/Vice-President of the Commission: Making the Impossible Job Work*



College of Europe Studies

Series Editors:

Govaere I. / Gstöhl S. / Hanf D. / Lannon E. /
Monar J. / Pelkmans J.

Order online at www.peterlang.com

PIE - Peter Lang Bruxelles



Europe is in a constant state of flux. European politics, economics, law and indeed European societies are changing rapidly. The European Union itself is in a continuous situation of adaptation. New challenges and new requirements arise continually, both internally and externally. The *College of Europe Studies* series seeks to publish research on these issues done at the College of Europe, both at its Bruges and its Natolin (Warsaw) campus. Focused on the European Union and the European integration process, this research may be specialised in the areas of political science, law or economics, but much of it is of an interdisciplinary nature. The objective is to promote understanding of the issues concerned and to make a contribution to ongoing discussions.

vol. 14 Lannon, Erwan (ed.), *The European Neighbourhood Policy's Challenges / Les défis de la politique européenne de voisinage*, 2012 (491 p.), ISBN 978-90-5201-779-2 pb.

vol. 13 Cremona, Marise / Monar, Jörg / Poli, Sara (eds.), *The External Dimension of the European Union's Area of Freedom, Security and Justice*, 2011 (434 p.), ISBN 978-90-5201-728-0 pb.

vol. 12 Men, Jing / Balducci, Giuseppe (eds.), *Prospects and Challenges for EU-China Relations in the 21st Century: The Partnership and Cooperation Agreement*, 2010 (262 p.), ISBN 978-90-5201-641-2 pb.

vol. 11 Monar, Jörg (ed.), *The Institutional Dimension of the European Union's Area of Freedom, Security and Justice*, 2010 (268 p.), ISBN 978-90-5201-615-3 pb.

vol. 10 Hanf, Dominik / Malacek, Klaus / Muir Elise (dir.), *Langues et construction européenne*, 2010 (286 p.), ISBN 978-90-5201-594-1 br.

vol. 9 Pelkmans, Jacques / Hanf, Dominik / Chang, Michele (eds.), *The EU Internal Market in Comparative Perspective: Economic, Political and Legal Analyses*, 2008 (314 p.), ISBN 978-90-5201-424-1 pb.

vol. 8 Govaere, Inge / Ullrich, Hans (eds.), *Intellectual Property, Market Power and the Public Interest*, 2008 (315 p.), ISBN 978-90-5201-422-7 pb.

vol. 7 Inotai, András, *The European Union and Southeastern Europe: Troubled Waters Ahead?*, 2007 (414 p.), ISBN 978-90-5201-071-7 pb.

vol. 6 Govaere, Inge / Ullrich, Hanns (eds.), *Intellectual Property, Public Policy, and International Trade*, 2007 (232 p.), ISBN 978-90-5201-064-9 pb.

vol. 5 Hanf, Dominik / Muñoz, Rodolphe (eds.), *La libre circulation des personnes: États des lieux et perspectives*, 2007 (329 p.), ISBN 978-90-5201-061-8 pb.

vol. 4 Mahncke, Dieter / Gstöhl, Sieglinde (eds.), *Europe's Near Abroad: Promises and Prospects of the EU's Neighbourhood Policy*, 2008 (318 p.), ISBN 978-90-5201-047-2 pb.

vol. 3 Mahncke, Dieter / Monar, Jörg (eds.), *International Terrorism: A European Response to a Global Threat?*, 2006 (191p.), ISBN 978-90-5201-046-5 / US-ISBN 978-0-8204-6691-0 pb.

vol. 2 Demaret, Paul / Govaere, Inge / Hanf, Dominik (eds.), *European Legal Dynamics - Dynamiques juridiques européennes*, Revised and updated edition of *30 Years of European Legal Studies at the College of Europe*, 2005 / 2007 (571 p.), ISBN 978-90-5201-067-0 pb.

vol. 1 Mahncke, Dieter / Ambos, Alicia / Reynolds, Christopher (eds.), *European Foreign Policy: From Rhetoric to Reality?*, 2004 (381 p.), ISBN 978-90-5201-247-6/ US-ISBN 978-0-8204-6627-9 pb.