

The New 2007 Reform Treaty

Changing Competences of the Commission's External Delegations

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Table of Content

1. Introduction	4
1.1 Outline	5
1.1.1 National Embassies	5
1.1.2 Development of EC Delegations	6
1.1.3 Competences of the EC Delegations	6
1.1.4 Changes of the Lisbon Treaty	7
1.2 Conclusion	7
2. Embassies in nation states	7
2.1 Accountability	8
2.1.1 Definition of Accountability	8
2.1.2 Application of Accountability	9
2.2 Objectives of embassies	9
2.3 Conclusion	10
3. The History of the EC delegations	11
3.1 The origins in the 1950's	11
3.2 The 1960's	12
3.3 The 1970's	13
3.4 The 1980's	13
3.5 The 1990's	14
3.6 Current situation	14
3.7 Conclusion	15
4. European Commission's External Delegations in the current legal environment.....	15
4.1 The legal environment	16
4.1.1 The CFSP	16
4.1.2 International Agreements	17
4.1.3 External Trade Relations	17
4.1.4 International Organizations	18
4.2 Portfolio of Actions.....	18
4.3 Delegations and their international Image	19
4.4 Lacks of Accountability	20
5. Changes of the Treaty of Lisbon	21

5.1 The President of the Commission	22
5.2 The new High Representative	22
5.3 The Delegation's Portfolio.....	23
6. Conclusion.....	25
7. References.....	26

1. Introduction

In 2007 the 27 member states of the European Union have signed a new treaty, which is supposed, after being ratified, to amend the existing treaties. The full name of this new treaty is "Treaty of Lisbon, amending the Treaty on European Union and the Treaty establishing the European Community ", and it was signed at Lisbon, on the 13th of December in 2007 (ToL, 2007, p. 1). The Treaty of Lisbon will be referred to ToL, the Treaty on the European Union as TEU and the Treaty establishing the European Community as TEC.

The heads of state and government of the European member states have put strong efforts into this new legal document. Politicians expect the Union's capabilities and effectiveness to be improved by this treaty. *"The Treaty signed by the Heads of State or Government of the 27 Member States in Lisbon on 13 December 2007 will provide the EU with **modern institutions** and **optimized working methods** to tackle both efficiently and effectively today's challenges in today's world. In a rapidly changing world, Europeans look to the EU to address issues such as globalization, climatic and demographic changes, security and energy. The Treaty of Lisbon **will reinforce democracy in the EU** and its capacity to promote the interests of its citizens on a day-to-day basis."*(European Commission, 2009)

It is obvious, that this treaty will provide several changes to the European Union. In this research the focus will be on specific changes through the Lisbon Treaty. In particular the external actions and representation of the EU are considered. For the external actions of the EU, the Commission, the Council and the High Representative for the Common Foreign and Security Policy (HR CFSP), who is part of the Council, are the responsible institutions (Arts. 3, 14, 18 TEU). For this purpose the Commission has its own diplomatic service, the External Delegations. Currently there are over 130 delegations around the globe, which *"act not only as the eyes and ears of the Commission in their host countries but also as its mouthpiece vis-à-vis the authorities and the general population"* (European Commission, 2009).

These delegations present, explain and implement EU policies, analyze policies of their host-countries and conduct negotiations (European Commission Brochure, 2004, p. 6). The delegations are headed by the Commissioner for External Relations and act as embassies, without representing a state. That leads to problems in relation to the accountability of their actions, because in some cases the delegations are seen as speaking for the whole European Union (Bruter, 1999, p. 187) but they have no mandate to. This problem is not diminished by the fact, that the European Parliament has to be informed about their actions (Art. 39, Nr. 2, TEU).

The 2007 Reform Treaty brings about a number of changes in the legal system of the European Union/European Community. It will amend the existing treaties. The external delegations of the European Commission are not embassies, like those of nation states, but they are conducting the work of embassies, without representing a state. This research will analyze the impact of these legal changes on the external delegations of the European Commission. The historical

evolution and the competences of the delegations will be analyzed. This will be followed by an analysis of the changes the Treaty of Lisbon will provide.

Therefore the main research question is:

What is the impact of the 2007 Lisbon Treaty on the External Delegations of the European Commission?

One important introduction of this treaty will be the establishment of the High Representative of the Union for Foreign Affairs and Security Policies (HR FASP). The institution of the High Representative will be merged with the European Commissioner for External Relations under a new name of High Representative of the Union for Foreign Affairs and Security Policy. The new High Representative will also be a Vice-President in the Commission and chair the Council of Ministers in the Foreign Affairs configuration. The High Representative has to be substituted by the External Action Service (Art. 9E ToL). How this new institution will affect the accountability of the actions of the Commissions delegations, will be the task of this research.

In relation to the main research question the corresponding hypotheses is as follows: *It is expected that the Treaty of Lisbon will increase the accountability of the actions undertaken by the external delegations.*

1.1 Outline

To answer the research question, four specific sub-questions have to be answered, in order to achieve a structured solution. These specific questions are the basic framework for the further structure of this paper.

1.1.1 National Embassies

The first specific question is: How does the system of national embassies work? Bruter has stressed that the EC delegations are unique as representations. Therefore it is necessary to explain how the traditional system of national representation works, in order to uncover what makes the Commissions Delegations unique. National embassies are accountable to a national institution, which is controlled by the parliament. What additionally has to be considered is the portfolio of traditional actions, undertaken by embassies.

The core objective of those institutions is diplomacy (Bruter, 1999, p. 184-185). Within this section the first aspect to be considered is the concept of accountability. This means in short that there is no parliamentary control over the powers transferred to a political institution. In particular for the Commission this deficit can be explained as follows: The Commission is not subject to direct or indirect public accountability. Citizens have no opportunity to take part in its decisions and the European Parliament can only control a few actions (McCormick, 2005, p. 137-138). To be able to measure accountability a further definition of accountability will be used. According to that definition accountability is a relationship between an actor and a forum, to which the actor explains its actions (Curtin and Wille, 2008, p. 11). With this definition it will be possible to deduce why national embassies are accountable.

For the purpose of finding a portfolio of embassies the Vienna Convention (VC) and a definition by Plischke (1978) will be applied. At the end of this first section there will be an overview of what national embassies can do and why and how they are accountable to their citizens. This is an important step, because an ideal type of the embassies and their representational work will help to uncover important differences to the system within the European Union.

1.1.2 Development of EC Delegations

The second specific question is: How have the delegations have developed to the situation of today? In general everything is a result of its history. Therefore important European reforms are to be analyzed and a detailed explanation of the current legal environment will be given. According to Bruter (1999), issue about the delegations is that they can only be seen as quasi-embassies, because of the legal conditions, and they have developed into a consumer-oriented diplomacy. Another view, by Spence, focuses on the development of the delegations during the past fifty years. The main argument is that the current delegations and the way they are acting is purely a result of all reforms within the European Union/European Communities.

Additionally, all the reforms are characterized by the struggle between intergovernmentalism and supranationalism (Spence, 2004, p. 63). Common to Bruter is the view, that the delegations are acting according to rules, which are imposed on them. In contradiction to that, Dimier analyzes a different view. In this research the main argument is that the delegations as institutions developed because of themselves. For example the delegations have given diplomatic status to themselves. This is the result of the institutionalization and bureaucratization of the European administration (Dimier and McGeever, 2006, p. 485).

The historic overview will be finished with an analysis of the status quo. The focus will be on how external representation is organized in the European Union. The Commission is not the only institution involved for the external actions of the EU. As it has already been described, the Council and the High Representative for the CFSP have also an important say in this respect. This sub-question is important because the External Delegations are working under the authority of the Commission and they can only conduct work, which the Commission has the authority to.

1.1.3 Competences of the EC Delegations

The second aspect in the first section is the portfolio of national embassies. Therefore third specific sub-question is: What actions are the EC-delegations conducting in the international sphere? It has to be considered what competences they have and this relates to the organization of the EU's external representation and therefore this section is connected to the second paragraph. Next to their competences their actual work will be analyzed. For this the concept of "*consumer oriented diplomacy*" is included. Whereas in the 2nd section the analyses stems from a more general perspective, with the consideration of the Commission as such, this section will analyze the EC external delegations in particular.

A comparison with the portfolio of traditional embassies will show that the EC delegations act quite similar to them. Additionally Bruter argues with analyses of newspaper articles, the delegations are seen as representing the European Union as a whole, including the opinions of all member states (Bruter, 1999, p. 187). In this relation the concept of accountability has to be considered. Although the delegations cannot represent the European Union, they are seen as representatives of the Union. This incidence can change under the new legal environment.

After the third section there will be a clear picture of the current situation. It will be shown what the differences between national and EU embassies / external delegations are. Furthermore, with the application of the concept of accountability, it will be clear which differences should be there.

1.1.4 Changes of the Lisbon Treaty

The next step is to analyze important changes through the new Reform Treaty. Therefore the fourth specific question is: What changes will the Reform Treaty provided for the competences of the EC-delegations? In 2007 the 27 member states of the European Union signed the Lisbon Treaty. This treaty should give more possibilities to act on a global stage to the Union. "The Treaty of Lisbon will give the European Union a clear voice in relations with its partners worldwide. It will harness Europe's economic, humanitarian, political and diplomatic strengths to promote European interests and values worldwide, while respecting the particular interests of the Member States in Foreign Affairs.

In particular, a new High Representative for the Union in Foreign Affairs and Security Policy (Art. 9D, ToL), also Vice-President of the Commission, will increase the impact, the coherence and the visibility of the EU's external action (European Union, 2009)." After the ratification of this treaty, the Union has a new political institution; the High Representative for the Union in Foreign Affairs and Security Policy. The External Delegations of the European Commission are likely to become at least a part of the new European External Action Service (EEA) (Art. 13a, Nr. 3, ToL). This new legal environment will increase the accountability of their actions in the international sphere.

1.2 Conclusion

Therefore, the new treaty will provided the Union with new norms, which also affect the EC delegations. Especially in relation to the High Representative of the Union for Foreign Affairs and Security Policy the issue of accountability is likely to change. Given the issues the prior mentioned authors have stressed, the Lisbon Treaty will also change the impacts of those problems. By answering these specific sub-questions, I will be able to give a concluding and summarizing answer to the overall, general research question.

2. Embassies in nation states

The major issue of concern during this project is the external representation of the European Union. But, before the delegations of the European Commission are analyzed, the first step is to evaluate the traditional system of national representation by nation states. That is necessary in

order to see why the EC delegations are unique. By analyzing the system of representation in states the differences to the system in the European Union can be uncovered. Every state has official diplomatic relations with several other states. To establish and maintain such diplomatic relations, states need official representatives, like the Head of State or Government, the Minister for Foreign Affairs and Embassies.

Two aspects are important for the comparison with and the evaluation of the external delegations of the European Commission. First, the concept of accountability is to be taken into consideration, because accountability for certain actions means legitimacy of certain actions (Bekkers, Dijkstra, Edwards and Fenger, 2007, p. 226). Thus, the actions of embassies can be legitimate if they are accountable for their conducts. Secondly the actions of embassies are of interest. These will be compared to those of the EC delegations. This step is important because actors can only be accountable for their actions.

2.1 Accountability

The first step in assessing and evaluating “traditional” embassies is to take into account the concept of accountability. It is obvious that embassies fulfill many tasks on behalf of a state. And such actions can have major implications for each individual. In this respect the concept of accountability has to be introduced, because if embassies conduct their work they need to have a mandate and someone to be responsible to, in order to conduct ultimately legitimate actions. It has to be mentioned that this concept is often used and seen as a “Good Thing”, we need to have as much as possible, and while it is unclear what different politicians mean by accountability. For example in the United States the term occurs in between 50 and 70 bills every two years. Furthermore the term is sometimes used interchangeably with “efficiency” and “transparency” (Curtin and Wille, 2008, pp. 157-159). These incidences imply on the one hand the broadness of the concept and secondly, that it is in the mind of many politicians, because using the label “accountability” seems to make bills more successful.

2.1.1 Definition of Accountability

For my further analyses a more concise and narrow definition of accountability is necessary. In this respect, the first important feature about accountability is that it ultimately means to provide legitimacy of certain actions (Bekkers, Dijkstra, Edwards and Fenger, 2007, p. 226). When accountability is applied, it is an act of an actor listening to criticism and also responding to questions about past and future actions, which can be put into practice by democratic institutions (Bekkers, Dijkstra, Edwards and Fenger, 2007, p. 234).

Using this abstract description, the definition of Bovens becomes useful. According to this author, accountability is a relationship between an actor and a forum, whereas the actor is obliged to explain and justify the conducts. Additionally, the forum can ask questions and give a judgment, while the actor also has to face consequences (Curtin and Wille, 2008, p. 161).

The first element in this definition is *an actor*, which can be individuals or organizations/agencies, like embassies.

Also the accountability *forum*, the second element, can be an individual person, like a Minister, or agencies, like a parliament or a court. In politics the parliament as the forum can delegate its authority to a minister. The *obligation* for the actor can be formal or informal. It is formal, when explanations are delivered on a regular basis, and it can be informal in times of political crisis, when time matters. The obligation includes informing *about conducts*. This means that the actor has to provide sufficient and exhaustive information to the forum. Furthermore, the forum has the right to pose question about the information, the conducts and their legitimacy. Finally, the forum can make the actor subject to certain sanctions.

This element has a strong legal feature, because the forum needs to have the legal capacity to pose sanctions. For example the political institution of an ombudsman has in many countries not the legal possibility to formally sanction (Curtin and Wille, 2008, pp. 161-163). This definition allows researchers to evaluate a relation between an actor and a forum with the final aim to give a judgment about the degree of accountability. That is, because within this definition one can analyze different elements, and if there are no weaknesses, there is full accountability. One example is that there can be a relation between a governmental agency and the parliament, but without the obligation for the actor to deliver information, or without the possibility to pose sanctions for the forum. In such cases accountability could be improved.

2.1.2 Application of Accountability

In the political reality this definition can easily be applied. The focus within a governmental system is now on embassies and the legal examples will be taken from the German constitution (Grundgesetz (GG)). The traditional form of accountability is vertical and hierarchical. The democratically elected parliament delegates its powers to the Minister of Foreign Affairs. The Minister for Foreign Affairs, or in Germany the *Bundespräsident* (Art. 60, GG), appoints the ambassadors. For the conducts of an embassy the ambassador will be held accountable by the Minister for Foreign Affairs. The Minister will be held accountable for the conducts by the parliament. In Germany for example this is realized not with the whole parliament, but with the special committee for foreign affairs. According to Article 45a GG the German parliament needs to have this committee and it can only be aborted with a two-thirds majority in the parliament (Art. 79, GG). This shows that the participation of the German parliament in the foreign affairs is important and assured.

To put all in a nutshell it can be summarized that the definition of accountability is useful to evaluate specific accountability relations. Furthermore the traditional system has been outlined. An ambassador will be held accountable by the Minister for Foreign Affairs and the Minister will be held accountable by the democratically elected parliament. These theories will be helpful in the further research to analyze differences in the system of the European Union.

2.2 Objectives of embassies

The core objective of any embassy is diplomacy. This is a large concept and includes various tasks. According to Plischke, *“diplomacy is the political process by which political entities (generally States) establish and maintain official relations, direct or indirect, with one another,*

in pursuing their respective goals, objectives, interests, and substantive and procedural policies in the international environment; as a political process it is dynamic, adaptive, and changing, and it constitutes a continuum; functionally it embraces both the making and implementation of foreign policy at all levels, centrally and in the field, and involves essentially, but is not restricted to, the functions of representation, reporting, communicating, negotiating, and maneuvering, as well as caring for the interests of nationals abroad” (as seen in Bruter, 1999, p. 185).

From this definition several specific tasks of embassies can be deduced. One practical example of establishing and maintaining official relations is the conclusion of treaties. According to the Vienna Convention (VC) from 1969, Heads of States, Heads of Governments and Ministers for Foreign Affairs can conclude treaties for international relations (Art. 7, No. 2a, VC). Furthermore, heads of diplomatic missions, ambassadors, have the legal power and capacity to participate in this process (Art. 7, No. 2b, VC), because they are representing a state, in the sense that, ambassadors have a legal and therefore binding voice. A second objective of diplomacy is the articulation of a states goals, objectives and interests. That includes pursuing a foreign policy. For example the guiding principle of the German Foreign Policy is “Peace and Freedom” and one important concept for the Foreign Policies of the United States of America is “Smart Power”, which makes diplomacy more important than military intervention (Auswärtiges Amt, 2009). That indicates that national embassies have a clear foreign policy to represent. It is clear to the officials at the local spot how they should work and they can make concrete conducts out of abstract political statements; meaning an ambassador has not to talk to the Minister of Foreign Affairs in every single negotiation.

Therefore diplomacy is the core objective of embassies. This is a large concept, which includes many different tasks. But the essence is that all different tasks serve the main purpose of representing a state to other states and organizations.

2.3 Conclusion

It has been outlined that national embassies are responsible for the representation of a state. Two major issues have been concerned. First, the conducts of embassies are accountable. The applied definition of accountability indicates that the ambassador is accountable to the Minister of Foreign Affairs, who is then accountable to the national parliament. Both also have to face sanctions, in case of misconduct. Thus, there are no lacks of accountability. Secondly, it has been described that national embassies are conducting several tasks which can be put under the heading of diplomacy. There is a concrete national foreign policy and embassies are capable of taking part in international negotiations. In this respect the ambassador has a legally binding voice on behalf of the state which is represented.

These findings will be applied later, in order to compare national embassies to the EC delegations. It will be important to analyze whether the actions of the delegations are completely accountable and to evaluate on their concrete actions.

Since the EC delegations are unique when compared to national embassies, the next step is to describe their historic development. This is also important in relation to describe their portfolio of actions.

3. The History of the EC delegations

After the first section a general idea about how the representation of nation states is organized has been developed. Important issues are the accountability of conducts and the portfolio of embassies, which can be summarized as diplomacy and includes several different tasks. The main aim is to uncover differences between national embassies and the external delegations of the European Commission. To be able to analyze differences in accountability and the portfolios, the next step is to evaluate the historic development of the EC delegations.

In general everything is a result of its history. The need for coherent external representation of the European Communities / European Union emerged in 1951 with the first of the founding Treaties, the Treaty of Paris (ToP). This treaty established the European Steel and Coal Community (Art. 1, ToP). Directly after the signing of this treaty the foundation of the External Service of the European Commission, which was called High Authority during that time, has been established. In 1954 the first representation was founded in Washington DC. Till today over 130 European Commission delegations have been set up. These representations are important for the promotion of the European Union's interests (Dimier and McGeever, 2006, p. 484). Since the foundation of the first external representation the role of the delegations has changed constantly, so that they now carry out tasks relating to nearly all areas in which the European Union has a voice. Therefore the focus in the following section will be on the historic development of the EC delegations from the beginning onwards.

3.1 The origins in the 1950's

In 1954, when the first representation was about to be set up, Jean Monnet was concerned about the possibility that the US could interpret the proposed idea of a European Defense Community as a message that the power of the integration was increasing. It was his conclusion to send a sign to diminish this impression. Therefore the first delegation was founded eventually, which was at that time only an information office (European Commission Brochure, 2004, pp. 11-12). Later on, in 1959, the ECSC opened a liaison office in Santiago de Chile and the first full diplomatic mission was established in London, in the year 1956. Furthermore the delegation in Washington was joined by Mr. Kurt Heidenreich, who was a member of EURATOM (European Commission Brochure, 2004, p.12).

That indicates that the first delegations worked on behalf of the ECSC and the other organizations were able to join. Furthermore, in 1957, the European Commission was founded to replace the High Authority of the ECSC. Due to the Treaty of Rome a five-year development fund (FEDOM) was established. It included 580 million European Units of Account (ECU), which were to be managed by the Commission. The money was used for development of infrastructure. The people conducting the work on behalf of the Commission were only

“contract” persons, mostly recruited from engineering consultancies, doing mostly development aid. Although the Commission could have needed more representations, in the sense of increased staff, there was no political need for more diplomatic representations. At the end of this decade the European Communities had 18 foreign delegations, which were working mostly in African countries (Spence, 2004, pp. 64-65).

Thus, after the foundation of the European Communities the need for an external representation was recognized. Except for one diplomatic mission in London and the representation in Washington DC, the Commission’s delegations provided development aid. The funds came out of the FEDOM and the work at the local spot was done contracted engineers and not by diplomats.

3.2 The 1960’s

To increase the effectiveness, in 1960 and 1962 there were attempts to make the Commission’s delegations broader in that sense, that they should represent the ECSC, EURATOM and the EEC as single diplomatic representations (European Commission Brochure, 2004, p.15). But this did not happen. Here the struggle between intergovernmentalism and supranationalism can be uncovered, because the member states did not want to give away more powers to the European Communities.

For this period of time, two issues are important. First, there was no common external representation for the different European Communities and secondly, although the representations reached their staff-limit while mostly providing aids from the FEDOM, politicians thought that providing corporation aid would only be a job for a short time. This led to the effect that the staff was not increased. Instead, the European Agency for Cooperation (EAC) was founded to administer the funds. Till 1975 21 offices of the EAD were founded in ACP countries (European Commission Brochure, 2004, p.15). Therefore the member states were not willing to give further power to the Community and the new approach was more intergovernmental.

Therefore the role of the delegations was limited to providing development aid through the European Development Fund and to expand the delegations network (Spence, 2004, p. 65). But during this time period the development is not purely intergovernmental. The Director of the EDF has started to send his own delegates to the ACP countries in order to control the implementation. These delegates are known as delegates of the European Commission or Heads of Delegation from 1975 onwards. This process is called institutionalization and refers to the incident that an institution is not only task-oriented but develops its own identity. With not only contracted engineers working at the delegations, but also staff from the EDF, which is controlled by the Commission, the delegations developed their own identity as delegations of the European Commission (Dimier and McGeever, 2006, pp. 485+486).

Thus, during the 1960’s the delegations remained providing Community aid, but internally they have further developed.

3.3 The 1970's

It can be said that, although with little competences, in the early 1970s the future External Service had been created in "embryo". Around 150 European Commission staff doing mainly development and information functions were working in almost 30 missions around the globe. This increase of the number of delegations was a result of the accession of the United Kingdom in 1973, because delegations have been established in the former British colonies (Spence, 2004, p. 65). These missions were for mostly non-diplomatic and had restricted mandates and could hardly be compared to the diplomatic delegations of European Member States (European Commission Brochure, 2004, p.19). Till the beginning of the 1980's further delegations have been founded. Eight of them have been set up in southern and eastern Mediterranean countries, in order to open the way for cooperation. Because of a new EC development budget for Asian countries, also delegations in Bangkok, Delhi and Caracas have been opened.

From then on the external delegations have been administered by the Commission's External Relations DG. Next to this organizational change, the necessity for diplomatic protection increased. Therefore it was decided that if a delegation will be opened, an establishment agreement should be signed on the political level, granting full diplomatic status. Till 1980, there were 50 delegations around the world and the External Service was significantly helping the Community to develop the international personality (European Commission Brochure, 2004, p.25).

During this period it can be concluded that the Commission and the delegations gave the diplomatic status to themselves, because the necessity arose through the increased tasks, they had to fulfill (Dimier and McGeever, 2006, p. 485).

3.4 The 1980's

In 1981, the Commission wanted to open a delegation in Australia. There were many good reasons for that, among others the strong Australian need for nuclear reactors and the European need for raw materials (European Commission Brochure, 2004, p.27).

A problem that remained with the delegations was the number of people working in the delegations. The external policies of the European Communities were conceived in Brussels, and it was only later, that the need for a foreign presence was fully understood. The problem was that those contracted workers concerned with the EAC had no career opportunities in the Commission. (European Commission Brochure, 2004, p.28). This discussion took place during the negotiations for the Single European Act in 1981. Finally in 1987 Annex X was amended and these people were from then on civil servants of the Commission, with the needed money being granted (Spence, 2004, p. 67). With this reform, the number of officials serving in delegations increased from 165 to 440. The local staff complement at that time had reached 1440, and with 89 missions spread across the globe, the External Service had achieved a global scale (European Commission Brochure, 2004, p.34).

It can be deduced that during the 1980' the delegations have influenced their development themselves. Because the establishment of new institutions was not only limited to the ACP-country region and the delegation in Washington had become a full diplomatic mission (Spence, 2004, p. 66). Therefore the people working at different delegations had a different status; some were contracted people and only a few were officials from the Commission. The need for better career opportunities resulted in the reform that the whole staff was named as civil servants from the Commission (Spence, 2004, p. 67). This is a development of the institution itself and not forced by outside officials (Dimier and McGeever, 2006, p. 485). Additionally this is a supranational and not an intergovernmental approach, because the member states gave away influence (Spence, 2004, p. 67).

3.5 The 1990's

In the early 1990's new delegations have been established in the Eastern European Countries, for example in Czech Republic and Kazakhstan; due to the "Phare" program. In the following years the delegations assisted the countries in the accession process (European Commission Brochure, 2004, p.40). That became possible because of the collapse of several communist regimes in the early 1990's.

Furthermore nearly every of the external delegations had achieved full diplomatic status by 1990 (Spence, 2004, p. 67). The next important step was the signing of the Maastricht Treaty. Especially the European Common Foreign and Security Policy (CFSP) brought changes to the conduct of EU external relations. Foremost, the role of the External Service was for the first time specifically mentioned in a treaty text (Art. 20, TEU). Because of the new CFSP the need for the external representation of the European Union increased and therefore the importance of the EC delegations also increased.

3.6 Current situation

Till today the European Commission has 130 external delegations around the world. Taking the prior history into account it can be concluded that the Commission has developed into an important actor in the international sphere, because they have increased the visibility of the European Communities through their work at the local spot. Additional examples for this importance include the membership in the G8, the status as a signatory of treaty arrangements, and the role as a donor of development aid and technical assistance (Spence, 2004, p. 69).

The next major and significant changes have been made under the Prodi Commission, which came into office in 1999. During that time the composition of staff working in the delegations changed. The institutional origins of the officers have broadened. The Directorate General "Trade" sent more officials to delegations, because several countries increased their trade with the European Union and more and more countries were entering the World Trade Organization. Additionally other DG's, like "Justice and Home Affairs" and "Research and Technology" and also Ministries for Foreign Affairs from the member states sent staff to the delegations (Spence, 2004, pp. 69-70). This process resulted in an increased number of staff

working in the delegations and, because the number of DG's, where the staff came from, increased, the delegations have increased their overall capabilities. This is called the process of "Deconcentration", which means that the project managers from several DG's are no longer just seated in Brussels, but in the countries where the specific projects are carried out (Spence, 2004, p. 70).

Thus, the reform and restructuring process of the Commission as a whole had major implications for the external delegations, foremost because the number of working-staff has been increased. This leads to the implications that, although the delegations are not representing a state, the institutions increase in importance and are granted the necessary funds.

A second milestone in the development since the year 2000 was the so called "Chene Report". This report emphasized the role of the Head of Delegation as representative of the Commission as a whole and as the official responsible person for the organization of the Delegation, for the first time (Spence, 2004, p. 70). The fact that the staff of the delegations stems from several different DGs of the Commission increased the overall number of employed people but a second result was the different career opportunities within the delegations. To cope with this problem the "Chene Report" proposed to manage the complete staff only within the DG RELEX. This reform was fully implemented in 2004 (Spence, 2004, p. 71).

3.7 Conclusion

Since the foundation of the first delegations in the 1950's the external service of the European Commission has grown in size and importance. The first delegations had the purpose of informing about the European Communities and providing development aid to the ACP countries. As a result of the struggle between supranationalism and intergovernmentalism a single external service for the three European Communities has not established in the early 1960's (Spence, 2004, p. 63). In the further development the status of the staff has changed from just contracted people to civil servants of the European Commission and all the delegations have gained full diplomatic status. These are developments which have their foundations in the delegations themselves. Therefore this is an instructional phenomenon, where institutions develop their own identity (Dimier and McGeever, 2006, p. 485). Bruter describes this phenomenon as an autonomous emancipation of the delegations to become real embassies (Bruter, 1999, p. 197). The new identity also increased their diplomatic importance. Today the delegations still provide development aid (consumer-oriented diplomacy) and inform about the European Union but they also implement European policies. How this is organized legally is the main focus of the following section.

4. European Commission's External Delegations in the current legal environment

From the historical development it can be deduced that the EC delegations have grown in size and importance. Foremost their diplomatic importance has increased significantly. There are

two major issues where EC delegations and national embassies differ; accountability and their portfolio of actions. To make the accountability comparable to national embassies the legal environment of the embassies has to be analyzed. This has also implications for the delegations actions. Therefore the current legal situation will be evaluated. To conclude this section a comparison to national embassies will be given.

4.1 The legal environment

In general the Commission and the Council are responsible for coherent and consistent external action of the European Union as a whole (Art. 3, TEU). Additionally, the general impetus, in the form of guidelines, comes from the European Council (Art. 4, TEU). For a detailed analysis of the legal framework of the European Union's external representation there has to be a distinction between the various fields of action concerning the external representation of the Union. Those are the Common Foreign and Security Policy, International Agreements, External trade Relations and relations with International Organizations.

4.1.1 The CFSP

The European Commission has to share the overall competences with the Council within the field of the Common Foreign and Security Policy (CFSP). This policy was introduced in the Treaty establishing the European Union (TEU), also known as the Treaty of Maastricht (Art. 11 ff, TEU). The CFSP can be considered as the most important policy for external actions, because it is the first and most broad approach to develop a coherent and consistent common European foreign policy. Within this policy field the European Council provides the general guidelines and the Council takes the necessary decisions to implement the CFSP (Art. 13, TEU).

To make consistent decisions, the Council can request proposals from the Commission for joint actions (Art. 14, TEU). Through this provision there is room to conduct activities for the external delegations. If the delegations analyze and report about the policies and developments of their host countries, this information will be used in the Commission, specifically the SG RELEX, if they are to make a proposal to the Council. From this perspective, it is a task, which the delegations fulfill everyday (European Commission Brochure, 2004, p. 6), but for major political decisions, this work is only used, if the Council decides to use the information.

That makes the delegations distinctive to national embassies and their work has less impact. In this respect, the problem becomes more obvious, that the delegations are seen as representing the European Union as a whole (Bruter, 1999, p. 186). They are analyzing the politics of their host country, in order to assist in the implementation of the CFSP, but only the Presidency can represent the whole Union in matters of the CFSP. The Presidency is supported by the High Representative for the Common Foreign and Security Policy (HR CFSP), who is a member of the Council, and the Commission is "only" fully associated (Art. 18, TEU), meaning that the Commission has not the sole power. For the overall work the Commission's delegations shall cooperate with national embassies to implement joint actions and common positions (Art. 20, TEU). This provision indicates that the European Union wants a coherent CFSP, because what the national embassies are conducting ultimately ends up in the Council and what is conducted

in the EC delegations ends up in the Commission. If they cooperate there should be huge differences in the works.

The HR CFSP assists the Council, especially through contributing to the formulation, preparation and implementation of policy decisions, and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties (Art. 26, TEU). To this extent, the only institution, which is capable of speaking for the whole EU is the Presidency, while the Council, and the HR CFSP, can act on the Council's behalf. The Commission has a limited and assisting role, which can also be derived from Article 24 of the TEU.

From the legal point of view the delegations cannot speak for the whole European Union in the CFSP, they can only contribute to the political decisions, through the deployment of information and analyses. This is a difference to national embassies, because ambassadors can act on behalf of a government or state. This is an example of why the EC delegations are unique, because they do not represent a state (Bruter, 1999, p. 184).

4.1.2 International Agreements

A second sphere in which the Commission has only a limited and shared competence is the conclusion of agreements between the European Union and third countries or international organization. The guiding legal provision is Article 300 in the Treaty establishing the European Community (TEC). According to this provision, the Commission can make proposals for agreements with several possible contracting parties. The Council delegates the power to open negotiations to the Commission and provides, if appropriate, guidelines for the negotiation process (Art. 300 (1), TEC).

To this point, there is again a room for actions for the delegations of the European Commission, if there is one in the contracting country. The delegations can conduct the negotiations on behalf of the Commission at the local spot. It is obvious that this constellation can lead to a misinterpretation in the contracting country that the delegations are acting on behalf of the whole European Union. But the final agreement can only be made by the Council, on a proposal of the Commission (Art. 300 (2), TEC).

Again, the Commission, and therefore its delegations, has only an assisting role, although it is not surprising, that the delegations can be seen as representatives of the whole EU, because they conduct the work at the local spot (Bruter, 1999, p. 187).

4.1.3 External Trade Relations

With trade being one of the major driving forces for European Integration, this is also important for the external relations. In this field the Commission also has certain powers, which also lead to the involvement of the delegations. Based on Article 133 TEC, the path for action is similar to that within the CFSP. The Commission can make proposals, which have to be approved by the Council. The negotiation process is up to the Commission and its delegations (Art. 133, TEC). Examples for such conducts are negotiations within the World Trade Organization, and informal exchanges between the Commission and the USA about world agricultural trade or exchanges

with Japan about access to each other's markets (Nugent, 2006, p. 186). The role for the delegations is again providing information to the Commission and making analyses of the host countries. They have a limited power because delegations cannot speak on behalf of the European Union and because of the limited power of the Commission itself. Basically those actions are also governed by Article 300 TEC.

4.1.4 International Organizations

Finally, the Commission is also responsible for the relations to international organizations. Examples include the United Nations (Art. 302, TEC), the Council of Europe (Art. 303 TEC) and the Organization for Economic Cooperation and Development (Art. 304, TEC). For this purpose the Commission has also external delegations to those international organizations and the Commission can act on behalf of the whole European Union in this field (Nugent, 2006, p. 186).

4.2 Portfolio of Actions

It has been described, in how far the Commission has powers to participate in the external actions of the European Union. The external delegations of the Commission play a crucial role in the external actions of the Commission. With the legal framework the portfolio of their actions can be derived. This will be compared to the actions of traditional embassies.

As is has been explained, the Commission is fully associated with the actions and policies undertaken within the framework of the CFSP. The Council, including the HR CFSP, can request the Commission to deliver proposals for the CFSP. In the preparation of those proposals the external delegations participate. For this purpose the delegations analyze and report about the policies and developments in their host countries (Bruter, 1999, pp. 199-200). Thus, the first package of tasks is the analyses of the host countries, in which the delegations reside. This task is also fulfilled by national embassies.

Secondly, the delegations can also take part in negotiations, either in CFSP-matters or before a conclusion of an international agreement. National embassies also have the legal power and capacity to participate in this process (Art. 7, No. 2b, VC), because they are representing a state, in the sense that, ambassadors have a legal and therefore binding voice. In this respect, there are two differences between the national and the European embassies. National embassies represent a state, because the ambassador is the personal representative of the head of state or government. The European Union is no state and there is no head of government. The delegations have the legitimacy to represent an institution which cannot be understood as a government in state doctrine terms, because in the nation states embassies represent the executive branch, the government, which has the power over the foreign policies.

In the European Union the delegations represent the Commission, which is similar to an executive branch, but the power over the foreign policies is at most at the Council, which belongs partly to the legislative branch (Bruter, 1999, p. 190). The second difference is that national embassies have a general mandate, based on a state's foreign policy, to conduct their tasks, and the Commission's delegations can only get a mandate for negotiations, if the Council

requests it. Thus, there can only be a mandate from case to case. At the local spot and in the single-case-perspective, EC delegations and embassies undertake equal tasks; conducting negotiations. But national embassies have a broader legitimacy to undertake these actions.

A third package of tasks for the delegations is presenting, explaining and implementing European Union's policies. With respect to the history of the delegations, this is the traditional main task of the delegations. Presenting the European Community was the reason for establishing the first delegations in the United Kingdom and in the United States of America, and implementing the EU policies in mainly related to the provision of technical assistance and development aid. This is still today the most important action, undertaken by the Commission's foreign delegations (Auswärtiges Amt, 2009). The provision of development aid, which is a part of implementing EU policies, is what can be called "Consumer-Oriented Policy". That is the work with local non-institutional actors, who get technical assistance and project guidance from the delegations. Especially in the early beginning of the EC delegations, this was their most important task (Bruter, 1999, p. 200).

The difference to national embassies is that the European Union has no coherent external foreign policy. There are matters concerning the CFSP, but international trade issues are guided by another legal framework. There is no foreign policy, which national embassies represent in their host countries. Furthermore, the delegations provide a "consumer-oriented" diplomacy. That is because the staff in the delegations contains many different specialists, instead of pure diplomats. The result is that the delegations are more concerned with managing projects and do not work with foreign political institutions (Bruter, 1999, p. 200). It is clear that such a situation is the result of the fact that the delegations can only work with national institutions, if they have a mandate from the Council.

On the one hand the external delegations of the Commission have full diplomatic status. Partly they have attributed this status to themselves but it is also indicated by the Vienna Convention. From this point of view, the delegations can conduct "diplomacy" in full range. But there are certain limitations, which result in clear differences to national embassies. The delegations are legitimized but cannot represent a legitimized government or even a state. Secondly, the European Union has no coherent foreign policy, although the CFSP is a far reaching approach. Therefore there are differences to national embassies, originating the legal framework of the European Union and striking through to the local working conditions.

4.3 Delegations and their international Image

Mainly because of the work at the local spot, the wrong conclusion arises in several foreign countries that the delegations are representing the whole European Union. Bruter has conducted a study to affirm this hypothesis and deliver empirical evidence. Newspapers have been analyzed, which reported about the Commission's delegation in Mexico. The time span was the first Semester of 1995. During that half year 6 major newspapers have been studied and the outcome was as follows. He found 91 articles, which mentioned the Commission's delegation and 59 articles, which mentioned the head of the delegation. The result was that in

73% of those articles the delegation or the head of delegation was perceived as being an embassy or ambassador of the whole European Union or Europe (Bruter, 1999, p. 187).

This implication is only concentrated on one country and therefore it cannot be understood as being representative for all countries. But taking this incidence into account will be an aspect which could be changed by the Treaty of Lisbon.

4.4 Lacks of Accountability

Within the following section the definition of accountability, which has been developed in paragraph 2.1, will be applied again, in order to uncover differences between national embassies and the Commission's delegations. Accountability is a relationship between an actor and a forum, whereas the actor is obligated to explain and justify the conducts. Additionally, the forum can ask questions and give a judgment, while the actor also has to face consequences (Curtin and Wille, 2008, p. 161). The traditional form of accountability is vertical and hierarchical. The democratically elected parliament delegates its powers to the Minister of Foreign Affairs. The Minister for Foreign Affairs appoints the ambassadors. For the conducts of an embassy the ambassador will be held accountable by the Minister for Foreign Affairs. The Minister will be held accountable for the conducts by the parliament.

In the European Union the Parliament is the democratically elected accountability forum. To evaluate the accountability of the delegation's actions the specific actor can be different institutions, because of the institutional structure.

The first and most obvious actor is the Commission, because the delegations are part of the Commission and act according to the Commission's orders. In particular, the external delegations are under the authority of the Commissioner for External Relations. To have full accountability, the parliament should have the power to ask questions, about the delegation's work, deliver judgments and pose sanctions. The Commission has to deliver an annual report about the actions of the European Union, which also includes information about the external actions (Art. 212, TEC), which is to be discussed by the parliament (Art. 200, TEC). If there are questions, the Commission is obliged to answer (Art. 197, TEC). But this procedure has never produced significant results and has only little consequences (Nugent, 2006, p. 253). When considering power of sanctioning the European Parliament possesses little possibilities. This is the case, when the parliament cannot support the foreign actions of the Commission and sees major mistakes by the Commission. In such cases the EP can dismiss the whole College, but not a single Commissioner (Art. 201, TEC). Till today, a College has never been dismissed (Nugent, 2006, p. 252). Furthermore, the Parliament has to approve a new College (Art. 214, TEC). In the case that a College has to be re-elected after 5 years and the Parliament does not want the Commissioner for External relations to re-assign, the parliament can make a new Commissioner a condition for approving the whole College (Nugent, 2006, p. 252).

In the relation between the European Parliament and the European Commission it can be concluded that there is no ultimate accountability. The Parliament can ask questions and make

recommendations, but with little effect. Furthermore the possibility of sanctioning is very little and almost limited to a 5 year term, because of the elections.

Because also the Council is involved in the EU's external actions, this institution can also take the role of an actor in the accountability relation; still, the EP in the accountability forum, because the Council cannot send the Commission home. Like in the relation to the Commission, the Parliament can only investigate on the Council's actions in a general way. The Presidency of the Council, which changes every 6 months, participates in a plenary session of the EP. During these sessions the priorities are explained and the work of the Presidency is assessed. The members of the parliament can ask questions during these meetings. Furthermore, national Ministers, in their function of being a member of the Council, visit the parliamentary committee meetings of their profession. Here MEP's can start informal discussions. Finally the President of the European Parliament can ask questions to the Council every time (Nugent, 2006, pp.255+256).

There are two important reasons for this situation. On the one hand the members of the Council should be accountable to their national parliaments and not to an EU institution. It has to be mentioned that this does not prevent the national Ministers from hiding behind the EU institution when they are held accountable before their national parliament. Secondly, because the composition of the Council is regularly changing and the Presidency changes every half year, there is no possibility for continuous relations between the Parliament and the Council (Nugent, 2006, p. 255).

It can be concluded that the accountability relation between the European Parliament and the Council is even weaker than the relation with the Commission. Concerning the external actions and the delegations, there is no possibility for the parliament to hold the responsible institutions accountable and scrutinized their actions. That means that the delegations are legitimate, without representing a legitimate political institution and without being fully accountable for their conducts. Nevertheless the staff of the delegations is internally accountable. The Commissioner for External Relations can dismiss heads of delegations. Additionally the President of the Commission can force the Commissioner for External Relations to resign (Art. 217, TEC).

5. Changes of the Treaty of Lisbon

With the signing of the Treaty of Lisbon the heads of state or government of the 27 Member States want to provide the EU with modern institutions and optimized working methods to tackle efficiently and effectively current challenges in today's world. The Treaty of Lisbon should reinforce democracy in the EU and its capacity to promote the interests of its citizens on a day-to-day basis. Within this section the focus will only be on changes of the Lisbon Treaty which ultimately affect the Commission's delegations and are supposed to tackle the problems the delegation's portfolio and the lack of accountability.

It is amended in the new treaty that the European Union shall be a representative democracy (Art. 8A, ToL). In this relation the Commission will be responsible to make the EU's actions coherent and transparent (Art. 8B, ToL). Additionally there are other legal provisions, which concern the delegations and the lack of accountability.

5.1 The President of the Commission

After the ratification of this treaty, the European Parliament will elect the President of the Commission (Art. 9A (1), ToL). This is the first time that this is literally stated in the treaty framework. This provision increases the parliament's power of sanctioning. The President of the Commission can be elected solely. That means that if the parliament does not like the Commissions work, it has the power to not re-elect the President of the Commission.

There is still not the possibility of dismissing the Commissioner for external relations, in case of the delegations doing not the right work, but the parliament has increased powers. This possibility has only the President of the Commission. The President can force a Commissioner to resign, with the approval of the whole College (Art. 217, TEU and Art. 6, ToL).

Now the European Parliament can put pressure on one single member of the Commission every 5 years. Although only little, but this provision means an increase in accountability. For the other members of the Commission, including the new High Representative, the procedure remains equal as under the TEU. Furthermore, the accountability of the President of the Commission will be increased in relation to the Council. The Council can end the President's term of office in the event of a serious misconduct (Art. 9B (5), ToL).

5.2 The new High Representative

The European Union will get a new political institution, which is the High Representative of the Union for Foreign Affairs and Security Policies (Art. 9E, ToL). This new High Representative will be elected by the Council, including the agreement of the President of the Commission. He will be responsible for the CFSP and for that this person will be a member of the Council and a Vice-President of the Commission. The second position includes the functioning of the External Relations Commissioner (Art. 9E, ToL). Therefore the CFSP and the external delegations get a new double-head.

Through this institution the connection between the Commission and the Council is strengthened. Because both institutions have powers in the field of external relations the double head will increase the effectiveness. Concerning the external delegations, it can be deduced that they will get their orders with more input from both institutions.

But it is questionable, whether this will increase the accountability of the delegations work. The general event of a misconduct of the delegations remains in the focus. The new High Representative will represent the European Union in all matters related to the CFSP and he is supposed to be assisted by a new "European External Action Service (EEA)" (Art. 13a, ToL). It can be likely, that the external delegations of the Commission will be inverted to this new EEA. This problem will be discussed below, and for the current issues, this is taken for granted.

In the case of the external delegations doing a misconduct, the new High Representative can dismiss delegations. Between those two institutions there is no accountability lack. The next level is the relation between the new High Representative and his disciplinarians. The Council can start end his term of office at any time (Art. 9E (1), ToL).

Furthermore, the President can also propose the procedure lay down in article 9E (Art. 9D (6), ToL). Up to this point, the High Representative is accountable to the President of the Commission and the Council. In comparison to the former Commissioner for external relations, the new High Representative has a second accountability forum. This is an increase in accountability, only on the one hand, because there is a power imbalance in favor of the Council. If the President of the Commission wants the High Representative to resign, maybe because of pressure from the EP, the Council can still neglect this request. Thus, next to increased accountability from the HR perspective, this legal framework has also the potential to result in tensions between the Council and the Commission.

A second important issue is the influence of the European Parliament. A new invention of the Treaty of Lisbon is that this treaty literally states, that the Commission is responsible to the EP (Art. 9D (8), ToL). According to this article, the EP has the power of a motion of censure against the whole College. In such a case the High Representative shall resign from all its duties related to the Commission. Because of Article 9E (1) ToL the High Representative could keep the responsibilities in the Council. The result would that the double head is not in place. After the motion censure a new College has to be formed, with the proposals from the European Parliament. But it is important to notice that the "old" proposed High Representative will be a member of the new College, if the Council does not dismiss him, because otherwise the double-head is impossible with the same candidate.

Thus, the importance of this institution to the Council becomes obvious. The Council has the most power in determining the High Representative of the Union Foreign Affairs and Security Policy. This means an increase in the accountability of the High Representative, because of the second accountability forum, but a decrease at the same time, because the European Parliament has less power over this institution.

So far it has been explained that the Treaty of Lisbon will increase the accountability of the external delegations of the European Commission. Only small increases can be found, with the applied definition. In the following section the second issues of the delegation's portfolio is to be addressed. This is also important, because the future of the delegations is unsafe, with respect to the proposed EEA.

5.3 The Delegation's Portfolio

The Lisbon Treaty foresees the establishment of the High Representative of the Union for Foreign Affairs and Security Policy. He will represent the Union to other international organizations and third countries in matters concerning the CFSP. For this purpose, the European External Action Service will be installed, in order to assist the HR FASP (Art. 13a, ToL).

While writing this project the concrete look of the EEA is not clear, but the Reform Treaty gives some implications for the future. One possible and also likely outcome could be that the existing External Delegations of the European Commission will become the EEA. This is likely, because there are existing organizational structures and facilities in foreign countries. Thus, time and money can be saved in comparison to setting up a complete new institutional framework of the EEA. In this case, the portfolio of the then former External Delegations will be increased. Why such a transformation could be likely and what the increased portfolio could look like is the focus in this section.

According to Article 13 a III of the Treaty of Lisbon, there are not many details about the future structure of the Union's Delegations, but it can be deduced that their future is connected to the role of the HR FASP (Carta, 2008, p. 488), because he is to be assisted by the EEA. This EEA could be a further development of the current External Delegations of the Commission. The reason is that the Commissions Delegations are re-named to Unions Delegations (Art. 20, ToL). They shall represent the Union under the authority of the HR FASP (Art. 188 Q, ToL). Because the HR FASP is responsible for representing the Union and will be assisted by an, so far unclear, EEA, the conclusion is that the External Delegations will have at least a crucial role within the new EEA.

That means that their portfolio will be broadened. As they have developed from just informing about the EU in the 1950's to providing technical assistance and development aid, the Delegations will then be capable of representing the whole Union. This increase in the portfolio would make the Delegations even more similar to national embassies, but still without representing a state.

But this discussion has not ended till today and within the Commission there are currently many doubts on how the service will be organized, as technical and personnel issues, the composition of the delegations and budgetary questions are still not clarified. Till today the Commission avoids to enter a public discussion about this issue but there are fears of some observers that the reform could result in a fight between officials from the Member States, the Commission and Council in order to get the most important posts within the delegations. One point of concern is that the Commission would like to offer a career opportunity to become a head of delegation and another issues is the fear of the Commission that the delegations will be occupied by officials from the member states, which will result in the Commission losing influence and independence (Carta, 2008, p 488). In particular, some officials think that the most important posts, such as Washington, Moscow or Beijing, the head of delegation will be devolved to diplomats of Member States; thus marginalizing the Commission and its officials (Carta, 2008, p. 489).

It can be concluded that there are some implications from the Treaty of Lisbon that the External Delegations could become the new EEA. Even without this result, the Delegations have the legal capability to represent the whole Union, within the limitations of the power of the HR FASP.

Therefore their portfolio will increase to more diplomatic tasks and the Delegations will be more comparable to national embassies.

6. Conclusion

The initial research question is what the impact of the 2007 Lisbon Treaty on the External Delegations of the European Commission is. In the first section the system of national representation has been outlined. Major issues are that the national embassies are representing a state, they fulfill diplomatic tasks, like negotiations on treaties, and they are fully accountable to superior disciplinarians. Based on these evaluations, the external delegations of the European Commission have been compared to the national embassies.

For this comparison purpose the history of the EC delegations was the first analytical step. The original tasks of those delegations were providing information about the European Communities to their host countries and the deployment of development funds through local projects. During time the delegations have developed into a service which can be compared to diplomatic institutions of states. They are implementing European policies, which also include the provision of development aid, and participate in the development of new policies and strategies in the European institutions.

The result is that the EC delegations are seen as speaking and representing the whole European Union. But till today they can only represent the European Commission.

With the Treaty of Lisbon the competences of the delegations will change. A symbolic implication is that the delegations will then be called Union delegations instead of Commission's delegations. Additionally the Union delegations will represent the whole European Union. With the new HR FASP their work will be more accountable to higher institutions and more closely connected to the Council, which has the most important power in the EU's external actions.

This leads to the conclusion that the diplomatic importance of the delegations will increase. The future will show how the delegations will be incorporated into the new EEA but it is likely that they will get an important role.

So far the competences of the delegations or the EEA will get legal recognition through the Treaty of Lisbon, instead of being increased substantially. That is because even today they fulfill diplomatic tasks, like negotiations on international agreements, without having the final say. Still under the Lisbon Treaty the final say will be at the Council but the work of the delegations is better connected to the Council through the HR FASP.

Thus, the competences of the external delegations of the European Commission will change in that sense, that these are legally notified and the diplomatic importance will increase.

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