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## **Diplomatic and consular tasks of EU Delegations: theory in practice**

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### **Abstract**

This thesis investigates the similarities between the task description for the EU Delegations established by the EEAS Decision and the task description in the Vienna Convention on Consular Relations and the Vienna Convention on Diplomatic Relations, the framework for national representations. After a comparison, nine points tasks were found which are mentioned in the Vienna Conventions but are absent in the EEAS Decision. The thesis continues by analyzing how Delegations behave regarding these tasks. A literature review gives an indication of where the academic discussion regarding each point stands, and what role can be imagined for the Delegations. In order to test whether Delegations fulfill such tasks, a questionnaire was developed and sent to six Delegations. After analyzing the results, the thesis comes to the conclusion that the Delegations refrain from parting from their role as an information provider in eight of out the nine points. Regarding the ninth task, the promotion of bilateral relations, Delegations stated that they engage in this task and even believe it to be one of their most important tasks.

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## 1. Introduction

This thesis will look at the tasks of EU Delegations and national missions, as laid down in the respective texts, namely the Council Decision establishing the organization and functioning of the European External Action Service (hereinafter called EEAS Decision) and the Vienna Convention on Consular Relations (VCCR) and the Vienna Convention on Diplomatic Relations (VCDR) (together referred to as Vienna Conventions). The first part will take a look at the creation of the Delegations, their functions and involvement in different settings. The second section will show why the EEAS Decision should be compared to the international framework established in the Vienna Conventions, leading us directly to section 3, namely the research question of how similar the two texts are and how Delegations behave regarding tasks not specifically mentioned in the EEAS Decision. The investigation of the not-mentioned tasks will be done through a literature review in section 4 and a questionnaire in section 5. Results will be presented in section 6, leading to the conclusion in section 7.

### 1.1. From pre-Lisbon Delegations to the new Delegations under the EEAS

The European Union (EU) is a *sui generis* International Organization (R. A. Wessel, 2013) with 28 Member States, which chose to confer competences to the EU institutions. The EU is supported in its external actions by the European External Action Service (EEAS). In addition to the headquarters in Brussels, the EEAS has so-called EU Delegations in third countries.

The EEAS was created by the Lisbon Treaty in 2010 and became operational in January 2011. The Lisbon Treaty was developed with the main purpose of having a more coherent, effective and visible EU foreign policy (Balfour & Ojanen, 2011; Blockmans, 2012). Foundations were laid with the inclusion of the Common Foreign and Security Policy (CFSP) in the Maastricht Treaty. These developments had to be furthered due to an altering nature of national and European interests caused by European integration and globalization. Cross-border mobility, world-wide communication, and international business replaced the functions of traditional diplomacy. Furthermore, globalization challenges nation-state sovereignty, leading states to face similar problems which can only be solved effectively by common, multilateral action (Emerson et al., 2011; Fernández Pasarín, 2015). Another idea, or rather a hope, was that a common European diplomatic service will eventually lead to greater convergence among the positions of the Member States (Comelli & Matarazzo, 2011). This aiming at convergence and consistency is reflected in Art. 3(1) EEAS Decision:

*The EEAS shall support, and work in cooperation with, the diplomatic services of the Member States, as well as with the General Secretariat of the Council and the services of the Commission, in order to ensure consistency between the different areas of the Union's external action and between those areas and its other policies.*

The EEAS is designed as a functionally autonomous body under the authority of the High Representative of the Union for Foreign and Security Policy (Art. 1(1) EEAS Decision) (Helly, Herrero, Knoll, Galeazzi, & Sherriff, 2014; Vooren, 2011). The first High Representative was Baroness Catherine Ashton, who was in November 2014 succeeded by former Italian foreign minister, Federica Mogherini. The interconnectedness of the EU is also displayed within the EEAS. The High Representative is not only the head of the service, but also the vice-president of the Commission, the

chair of the Foreign Affairs Council and furthermore accountable to the European Parliament (Art. 18&35 TEU) (Blockmans, 2012).

The Delegations under the EEAS trace back to the Commission Delegations from the early 1950s, with the very first being established in Washington D.C. in 1954. In the 1960s and 70s many more followed, primarily in Africa (Austermann, 2012). These Commission Delegations were established to represent the European Commission only.

The work in the early days was mostly about low politics and developmental issues. From the 1980s on the Delegations became key institutions in enlargement negotiations, and took over certain traditional diplomatic tasks and competences. These included for example being the base for all visiting high level EU officials in the third state, as well as the Heads of Delegation gaining diplomatic immunities. Delegation work was to a great extent about managing technical and financial cooperation programs, and implementing trade and cooperation agreements.

Later, the involvement in economic diplomacy increased, together with the Delegation's political role. With the inclusion of CFSP in the Maastricht Treaty in 1992, Delegations were given the task to draft political reports together with the Member State embassies.(Austermann, 2015)

The cooperative work and coordination meetings with the representatives from national embassies were held and chaired by the embassy of the rotating Council presidency nation.

## 1.2. Functions of the EU Delegations

Post-Lisbon, the core functions of the EU Delegations are the reporting of developments on the ground and the analysis and information preparation for the EU institutions and Member States (Art. 5(9) EEAS Decision) (Helly et al., 2014; Koutrakos, 2011). This shall strengthen the EU's capacity to speak with one voice and ensure consistency in European external actions (Art. 3(1) EEAS Decision).

The Delegations, now called EU or Union Delegations, no longer only represent the European Commission, but the entire European Union (Art. 221 TFEU) (Comelli & Matarazzo, 2011). They represent the EU's foreign policy abroad, defend European values and interests, have responsibility over multi-annual development cooperation programs and provide logistical support, information and assistance to the EU institutions (Helly et al., 2014).

Their position towards the national embassies and consulates of the Member States has also changed. Delegations are required to follow the two provisions:

*Art. 5(9) EEAS Decision: The Union delegations shall work in close cooperation and share information with the diplomatic services of the Member States.*

*Art. 5(10) EEAS Decision: The Union delegations shall, acting in accordance with the third paragraph of Article 35 TEU, and upon request by Member States, support the Member States in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis.*

The cooperation task is clearly reflected by the fact that Delegations organize and hold the monthly coordination meetings in their premises, where they discuss with the Member State representatives, and represent the common position towards the third state, as soon as it is reached. The fluctuation which was created with the pre-Lisbon system of having the embassy of the rotating presidency

represent the EU position was stopped and the diplomatic face of the EU is now constant (Austermann, 2015). This important task will strengthen the reporting skills of the Delegation officials, which is one of the most traditional diplomatic tasks.

The constant representation is also advantageous for host officials, as the EU Delegations are better resourced than most national embassies, greater institutional memory is achieved, and both EU and host officials have more incentives to invest in a long term relationship.

On the other hand, a permanent presidency also implies less dynamism and enthusiasm than one that lasts for only six months. (Austermann, 2012)

### **1.3. Delegations to International Organizations**

In addition to the Delegations to third countries, the EU sends Delegations to the most important International Organizations, such as the UN, NATO, or the WTO (as laid down in Art. 35 TEU). Delegations to International Organizations have a hard stand, as there are significant discrepancies between the mechanisms of EU external representation and the working methods in International Organizations, mostly due to the fact that International Organizations are created for states and not for *sui generis* International Organizations such as the EU (Grevi, 2011; R. A. Wessel, 2013).

Whenever the working field of the accredited International Organization is within the exclusive competences of the EU, the EU serves as the main actor and Delegations have a pre-eminent position. Whenever shared competences are at stake the EU acts as an observer with participatory rights but no voting rights (Comelli & Matarazzo, 2011). Thus, each statement made in an International Organization requires tracing of who is competent for which area, to ensure that internal division is reflected externally. For matters under exclusive competence, Member States may complement a statement, but may not divert from the common EU position. This repetition of statements only serves the visibility of the national foreign minister (R. A. Wessel & Van Vooren, 2013).

Overall, it is noticeable that Member States are reluctant to recognize the stronger role by EU Delegations in International Organizations (Comelli & Matarazzo, 2011).

### **1.4. Staff in the Delegations**

The Union Delegations nowadays are affected by their past - they are hybrid administrative constructs that combine diplomatic tasks, coming from the EEAS, and operational tasks, a role inherited from the Commission Delegations (Helly et al., 2014). Generally, Delegation staff consists of Commission staff (mostly former DG RELEX personnel), Council Secretariat staff and seconded national diplomats (Art. 5(2) EEAS Decision) (Hemra, Raines, & Whitman, 2011). While national diplomats are good with foreign and security matters and negotiations, EU officials are good with managing large cooperation programs. This results in political staff mostly coming from the Council or the Member States as seconded national diplomats, whereas operational staff is often former Commission staff (Helly et al., 2014).

The Delegations are highly valued in Brussels and the Member State capitals for their insights and knowledge, but the exchange of information is far from being a two-way street, with Delegations suffering from the lack of coordination coming from Brussels.

The Head of Delegation receives instructions from the High Representative and the EEAS and is responsible for their execution. Yet, in line with Art. 5(3) EEAS Decision, the Commission may also issue instructions, in areas where it has competence. To prevent the above mentioned lack of coordination and possibly contradicting instructions, the Commission shall, when giving instructions to a Delegation, also send a copy to the Head of Delegation and the EEAS headquarters (R. Wessel & De Baere, 2015).

## **1.5. Delegations in crisis situations**

In the event of a crisis, special procedures apply, which include an extended role for EU Delegations. An ad-hoc crisis platform brings together all relevant EEAS, COM and Council services to share information and create coherence in EU external crisis action (Blockmans, 2012). The Delegations handle matters on the ground. They usually undertake three types of action to support unrepresented citizens: they function as an intermediate actor to communicate between citizens and local authorities, they bring citizens into contact with the authorities of their own State, and help citizens leave the country, for example by pre-financing transport (Wouters, Duquet, & Meuwissen, 2013).

### **1.5.1 Lead state concept**

An additional source of coordination comes from the Lead State in the country, if the concept is in place. The Lead state, which is a Member State, will voluntarily take the lead in consular affairs in the third country in times of crisis and is in charge of coordinating and leading the assistance, possibly also the evacuation. States that volunteer often have either historical ties stemming from colonial times, or geographical, diplomatic or linguistic reasons. Further significant factors can be the resulting excellent knowledge of the area and the political regime and the likelihood that the citizens of that Member State form the largest group of Europeans living or travelling there. The benefits of the concept include saving costs, providing clarity to the receiving state and making operations more transparent. Beneficiaries include nationals of all EU Member States present in the territory of the third state at that time. (Council, 2008; Vermeer-Künzli, 2011; Wouters et al., 2013)

In 2011 the Lead state concept was established in 29 third countries out of the 146 countries worldwide, where at least one Member State is represented (Commission, 2011).

One Member State very vocal in the discussion about the Lead State concept is France, who wants a greater crisis coordination role for the Delegations and the EEAS. It carries a relatively heavy burden, as it is often operating as Lead state. Furthermore France promotes a compensation mechanism to regulate financial reimbursements by the other Member States (Raik, 2013).

The first instance where the Lead State concept came into action was by chance under the command of France in the Chad. French authorities evacuated more than 1.200 citizens from 12 Member States and several third countries adding up to citizens from 60 nationalities in total.

### **1.5.2. Examples of Delegations helping in crisis situations**

As stated before, EU Delegations can also be of great help during crisis situations, as illustrated by the following instances. One example where the EU Delegation was largely involved was in 2012, when most Member States closed their embassies in Syria, but the Delegation in Damascus stayed open, hosting national diplomats from four Member States (thus fulfilling diplomatic asylum tasks), assisting with evacuations of around 25.000 EU citizens and maintaining a crucial local presence

(Raik, 2013). During the Arab spring rebellions in the Northern part of Africa, EU Delegations carried out similar operations in Libya, Egypt and Tunisia.

A second example is the Union Delegation in Japan, which spontaneously assumed a coordination function when the nuclear disaster caused the official proclamation of an emergency situation in 2011 (Wouters et al., 2013).

In a third instance, during the Gaza crisis in January 2009, nearly 100 people were evacuated in armored buses thanks to EU Delegation support (Fernández Pasarín, 2015).

### **1.6. Increase competences and cooperation?**

As stated in a report by the High Representative, Delegations can play an important role in the future ‘as national diplomatic services are scaling back their resources to concentrate on national priorities, the value added of the delegations is ensuring the EU is properly represented throughout the world. This is not about replacing national diplomatic services, but in making a more effective and cost efficient use of resources’ (European External Action Service, 2011).

An opportunity of such efficient use of resource can be found in the economic section of each national embassy. Generally this section has three tasks: reporting on economic trends, reporting on aspects of trade policy, and assisting in support of national commercial interests. The first two tasks can be dealt with in the Delegations, as there is no added value in doing in 28+1 times (Emerson et al., 2011).

The premises of the Delegations could be used to create *Houses of Europe*. National services could work in co-location in the premises of the Union Delegations and profit from common security and other infrastructural elements, as suggested in the Green Paper by the Commission (Emerson et al., 2011; European Commission, 2006).

As shown in section 1.5. Member States are willing to cooperate and ‘to coordinate civil protection and assistance operations within a European framework, they were not, however, inclined fully to change the intergovernmental and voluntary nature’ of the Lead state concept (Fernández Pasarín, 2015, p. 363). Notwithstanding the increased Delegation competences during crisis situations, large Member States still defend the classical horizontal cooperation scheme. If Member States were to change their approach to cooperation, much room for the Delegations to help would be created.

Many more areas can be handled more efficiently by including the EU Delegations as additional support. Some of these areas (for example the issuance of visa, or consular assistance), will be dealt with in section 4.

## **2. Developing the research question**

The Union Delegations can be understood as the European counterpart to national embassies or consulates. The main international legal texts on all privileges, requirements, and tasks connected to national representations are the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. As mentioned in Art. 48 VCDR only states can become a signing part (United Nations, 1961). The EU as a *sui generis* International Organization, though having significant state-like features, cannot become part of the Vienna Conventions (Wouters et al., 2013).

In the international and European legal documents several categories are covered, such as the establishment of diplomatic relations, the competences of the Ambassador/Head of Delegation and the tasks accredited to national representations/Delegations.

The later analysis in section 4 will be comparing the list of the tasks of representations according to the Vienna Conventions with the description in the EEAS Decision. Using the example of the establishment of diplomatic relations it becomes clear that the Vienna Conventions are a suitable counterpart for comparing the EEAS Decision to.

### 2.1. Taking up diplomatic relations

Before any diplomatic relations can be established, it has to be noted that it is the exclusive competence of states to recognize other states (Wouters & Duquet, 2011). This preliminary condition for any further negotiations is retained by the Member States. Thus, as long as not all 28 Member States have recognized a third state, the EU cannot act.

When opening or closing a national mission in a third state, the decision is taken by the Head of State or Government. In the case of the EU, following Art. 5(6) EEAS Decision,

*The High Representative shall enter into the necessary arrangements with the host country, the international organization, or the third country concerned. In particular, the High Representative shall take the necessary measures to ensure that host States grant the Union delegations, their staff and their property, privileges and immunities equivalent to those referred to in the Vienna Convention on Diplomatic Relations of 18 April 1961.*

These arrangements are codified in the Establishment Agreement or Headquarters Agreement between the host State and the EU (EEAS Decision, 2010). The close connection between the texts becomes visible, through the reference in the Article to the VCDR. 'Other provisions of the Vienna Convention of 1961 on Diplomatic Relations shall be applicable mutatis mutandis' (Art. 3(2) EC-New Zealand Agreement, 2004), aiming at making 'the entire Vienna Convention govern the EU's diplomatic practice. In essence, it allows the Union to "contract-in" to the multilateral regime of the VCDR using a standard clause in a consistent set of bilateral agreements' (Wouters & Duquet, 2015).

An important notion in Art. 2 VCDR is the condition that the other state must replicate privileges and immunities. This reciprocity is necessary to guarantee protection to the own diplomats. But how can the EU as a non-state actor grant diplomatic status with privileges and immunities to foreign diplomats accredited to the EU? A solution was found in having the Member State in whose territory the EU has its seat, thus Belgium, accord to the customary diplomatic immunities and privileges to missions of third states accredited to the Union (laid down for example in Art. 3(3) EC-Norway Agreement).

Diplomats, when appointed by the Head of State, are named to the government of the receiving state in a Letter of Credence. The heads of a mission are acknowledged as such, when they have presented their credentials or notified the receiving states' foreign ministry of their arrival and presented a true copy of their credentials. In the context of the EU, these Letters of Credence of Heads of Delegations are co-signed by the Presidents of the European Council and the European Commission. Receiving states are asked to give credit to the Heads of Delegation, as they are tasked with the same authority as national heads of mission. Yet, the Heads of Delegation only hold a courtesy title of Ambassador, which they shall not use in reality. This unique standing is mirrored in

the *corps diplomatique*, the list of Ambassadors present in a capital. The Head of Delegation is listed in the first section after all national Ambassadors and not in the second section with the representatives of IOs. Usually, the position on the list climbs with seniority, but this rule does not apply for Heads of Delegation. (Bosilca, 2014)

When establishing diplomatic relations with a third state, the EU follows the procedures described in the Vienna Conventions very closely and directly refers to the text, thus behaves state-like. This is confirmed by several authors (Bosilca, 2014; R. A. Wessel, 2013; Wouters et al., 2013), saying that ‘although the EU is not a party to the Vienna Convention, the Convention is being applied to the widest extent possible in the EU’s bilateral diplomatic relations via multiple agreements’ (Wouters & Duquet, 2011, p. 3). It is therefore sensible to argue that the Vienna Conventions are suitable texts to compare the EEAS Decision to, as it is the main reference point used by the drafters themselves.

Yet, there are some instances where the EU has to deviate from the ‘regular procedure’ due to its nature as an International Organization. The EU cannot issue the Delegation officials a diplomatic passport. An alternative was found in the *laissez-passer* document. All Establishment Agreements include a provision with which the receiving state recognizes the document as a valid travel document (EC-Albania Agreement, 1993). Unfortunately, it remains unclear if other authorities recognize it, such as the authorities of a country which is a stop-over destination during the travels of a Delegation official (Wouters & Duquet, 2011). Secondly, the issue of granting diplomatic asylum: On the one hand EU Delegations are bound to the article on non-interference in the internal affairs of the receiving state (Art. 55(1) VCCR), while on the other hand they must uphold European values and humanitarian rules. Practically, they could grant a fugitive asylum, as their premises are inviolable (Bosilca, 2014).

### 3. Research question

Knowing from Section 2 that the Vienna Conventions are the appropriate text to compare the EEAS Decision to, the discussion can now move on to the actual question.

The guiding research question throughout the paper will be:

**How similar are the EEAS Decision and the Vienna Conventions in the task description for the representations and how do EU Delegations behave in instances not formally mentioned in the EEAS Decision?**

The question is designed for two subsequent chapters. In a first step we will compare the legal texts and name the similarities and differences found among them, and list all tasks which are mentioned in the Vienna Conventions but not in the EEAS Decision (section 4). The second part, which deals exclusively with the listed points, seeks to find out how Delegations behave concerning these tasks (sections 5 and 6).

## 4. Legal comparison of tasks

### 4.1. The European legal framework

Looking at the EEAS Decision regarding the work of the Delegations, the following provisions on the formal legal rights and proposed activities can be found:

Art. 5(8): *The Head of Delegation shall have the power to represent the Union in the country where the delegation is accredited, in particular for the conclusion of contracts, and as a party to legal proceedings.*

Art. 5(9): *The Union delegations shall work in close cooperation and share information with the diplomatic services of the Member States.*

Art. 5(10): *The Union delegations shall, acting in accordance with the third paragraph of Article 35 TEU, and upon request by Member States, support the Member States in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis.*

This article states that formally the Delegations (1) represent the EU in the receiving state, (2) the Head of Delegation may negotiate on behalf of the EU, (3) they shall support the national embassies by the Member States with information and (4) if necessary with consular protection for their respective national citizens or other Union citizens.

Representation can be achieved by means of flying the European flag. This area is one example where the EEAS and its Delegations generally face little complications. Abroad, the Union Delegations are limited (as any other state represented in that state) by the regulations of the host State. This also means that 'the Union flag has to be flown and the anthem has to be played in the same way as locally represented states'. 'Since all missions may simultaneously fly their own flag, it is unlikely that one of them should protest against similar usage by Union delegations. As a counterpart, states are guaranteed, on a reciprocal basis, the right to fly a flag in Brussels on the premises of their mission to the EU' (Wouters & Duquet, 2015). In this area, the Delegations are thus treated like any other national representation in the respective third state.

#### **4.2. The international legal framework**

When looking at the Vienna Conventions, a significantly longer list of tasks, divided into consular and diplomatic tasks, can be found.

Article 3 VCDR states that the functions of a diplomatic mission consist in:

*Art. 3(1.a): representing the sending State in the receiving State*

*Art. 3(1.b): protecting in the receiving State the interest of the EU and of its nationals, within the limits permitted in international law*

*Art. 3(1.c): negotiating with the government of the receiving State*

*Art. 3(1.d): ascertaining by all lawful means conditions and developments in the receiving state, and report thereon to the government of the sending State*

*Art. 3(1.e): promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations*

Continuing with Article 5 VCCR, consular functions consist in:

*Art. 5(a): protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law*

*Art. 5(b): furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promote friendly relations between them in accordance with the provisions of the present Convention*

*Art. 5(c): ascertaining by all lawful means conditions and developments in the receiving state, and report thereon to the government of the sending State*

*Art. 5(d): issuing passport and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State*

*Art. 5(e): helping and assisting nationals, both individuals and bodies corporate, of the sending State*

*Art. 5(f): acting as a notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the law and regulations of the receiving state*

*Art. 5(g): safeguarding the interest of nationals, both individuals and bodies corporate, of the sending State in cases of succession mortis cause in the territory of the receiving State, in accordance with the laws and regulations of the receiving State*

*Art. 5(h): safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons*

*Art. 5(i): subjecting to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of the nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests*

*Art. 5(j): transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the law and regulations of the receiving State*

*Art. 5(k): exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respects of vessels having the nationality of the sending State, and of any aircraft registered in that State, and in respect of their crews*

*Art. 5(l): taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents occurred during the voyage, and settle disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the sending State*

*Art. 5(m): performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the EU and the receiving State*

### **4.3. Comparison**

When comparing the list of tasks of the Delegations with the tasks of national representations according to the Vienna Conventions several overlapping provisions can be found. Both texts include as tasks of the mission (1) being an information provider for the sending State/the EU and its

Member States, (2) representing the sending State/the EU in the receiving State and (3) having the capacity to negotiate with the government of the receiving State.

The EEAS Decision does not mention various traditional consular and diplomatic tasks. Therefore, it has to be discussed if EU Delegation may provide the following list of tasks:

(1) Provide EU citizens with travel documents (see Art. 5 d VCCR)

(2) Issue visas to non-EU citizens (see Art. 5 d VCCR)

*The two provisions in Art. 5d VCCR will be split for the rest of the paper, as the discussions surrounding the topics are very different. Thus one point is on the issuance of short-term visa for non-EU citizens, while the other point is on the issuance of travel documents for EU citizens.*

(3) Provide consular assistance (see Art. 5 a, e, f, m VCCR)

*It has to be noted from the start here, that this point is to be understood as consular assistance to EU citizens by initiative of the EU Delegation. Currently, EU Delegations may according to the EEAS Decision only engage in consular assistance if the support is requested by a Member State mission (Art. 5(10) EEAS Decision).*

(4) Provide diplomatic protection (see Art. 3.1. (b) VCDR)

(5) Represent EU citizens before court (see Art. 5 i, j VCCR)

(6) Safeguard interests in case of succession mortis cause (see Art. 5 g VCCR)

(7) Assist minors and other persons lacking full capacity (see Art. 5 h VCCR)

(8) Assist during investigation of vessels

(9) Promote bilateral relations (see Art. 5 b VCCR, Art. 3.1. (e) VCDR)

#### **4.4. Explanation of tasks**

The nine points identified in section 4.3. are most relevant for the upcoming analysis part. Therefore, they will now be clarified regarding their content and the academic discussion surrounding them, including examples of a possible role for EU Delegations.

##### **4.4.1. Provide EU citizens with travel documents**

Decision 96/409/CFSP establishes the possibility for any national representation by a Member State in a third country to issue an emergency travel document (ETD) to a citizen of the EU, whose Member State of origin has no permanent diplomatic or consular representation in the territory of the third country. These ETDs may be issued when the passport is lost, stolen, destroyed or temporarily unavailable. They are only valid for the duration of a single journey to the country of origin. (Member States of the European Union, 1993)

For the issuance of an ETD the EU Delegations are currently not included as a possible point of help. With increasing numbers of EU citizens travelling abroad, and reducing numbers of Member State representations around the globe, it could be argued in the favor of including the EU Delegations as additional support. There are worldwide approximately 30 countries where a Union Delegation and only up to three national embassies exist (e.g. Fiji, Cape Verde, Madagascar) (Raik, 2013). In countries like these, EU Delegations could play a crucial role for EU citizens, as they could function as an extra service point for citizens in distress. A positive side effect could be the increased visibility of the EU and its Delegations among the public.

#### 4.4.2. Issue visas to non-EU citizens

Since 2009 the EU Member States follow the Community Code on Visas, defining the procedures for application and the conditions for admission. With the Visa Code a common legal framework for the delivery of uniform visas to third country nationals was created (Wouters et al., 2013). Persons travelling to the EU receive a visa to travel the Schengen area, as the Code is based on the Schengen acquis. When checking the regulation for the role of the EU Delegations (at the time of writing the Visa Code, they were still Commission Delegations), they are merely to be informed of any representation agreements among the Member States, and the termination of such (Art. 8 (8)) (European Parliament and European Council, 2009).

When applying for a visa, applicants must follow the guidelines. When the travel includes solely one country of destination, the Member State whose territory constitutes the sole destination is competent. When the visit includes more than one country, the Member State whose territory constitutes the main destination in terms of length of stay is competent. In case no main destination can be determined, the Member State through which the visitor seeks to enter the Schengen area is competent (SchengenVisaInfo, 2014). If a Schengen country does not have a representation in the country of origin of the visitor, or if the present embassy or consulate is not issuing visas, a Schengen visa application may be submitted to the Member State which represents this country for visa matters as laid down in bilateral representation agreements (CARE, 2010).

Currently there are local Schengen cooperation meetings in third states among the Member State missions in place, whose purpose 'is to deal specifically with operational issues in relation to the application of the common visa policy'(European Commission, 2010). 'The meetings shall be convened within the jurisdiction by the EU Delegation, unless otherwise agreed at the Commission's request'(European Commission, 2010).

Due to the open border nature of the Schengen area, a common interest is produced on which visa decisions are made. It could therefore be argued towards placing a common interest under a common administrative procedure, which could be handled by the EU Delegations (Emerson et al., 2011).

Arguments against an involvement of the Delegations, may include that it is still 'a sensitive matter as Member States like to keep a certain level of control over the influx of migrants into their country' (Wouters et al., 2013). A further issue is the fact that the Schengen area excludes the United Kingdom and Ireland as members. Furthermore Wouters et al. argue that the issuance of visa by EU Delegations exceeds what can be understood as a supporting role, as stipulated in the EEAS Decision, and that from the standpoint of the EEAS this extra task would not add much value (Wouters et al., 2013).

#### 4.4.3. Provide consular assistance

An important part in the work of a national representation is the consular assistance to citizens. There are several provisions in the EU Treaties for this area. Most importantly, Art.23 TFEU states that:

*Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that*

*State. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection.*

This right is linked to an accessibility criterion: if it is impossible to reach the own embassy or consulate and return to the place of departure via means of transport commonly used in the third country at least in the same day, the Union citizen may go to any Member State representation closer to him or her. This protection primarily applies in cases such as death, serious accident or illness, arrest or detention, loss or theft of identity documents, and does not include tasks such as the authentication of documents which would be a purely administrative consular assistance task (European Parliamentary Research Service, 2012). These day-to-day consular assistance functions are handled differently to consular protection actions during times of crises. As stated by Wouters et al. 'intergovernmental European cooperation as well as support by the EEAS and Union Delegations in these everyday situations is more limited' (2013).

The European Charter of Fundamental Rights includes consular protection in its list of fundamental rights, and with its codification in the Lisbon Treaty, the right to consular protection became a legally binding fundamental right for every Union citizen (Wouters et al., 2013).

But, this right is problematic in the light of international law. While Member States feel that they should give priority to EU law over international law (*Gemeinschaftstreue*), EU law is not binding on third states (R. A. Wessel, 2013). The EU thus cannot establish Article 23 TFEU unilaterally, as there is no concept of European citizenship (established in Art. 20 TFEU) outside the legal framework of the EU treaties. The important link between intervening state and protected citizen is missing, in the eyes of third states.

Bilateral agreements are thus necessary, but so far only a limited number of treaties were concluded by a Member State with a third state, which provide for an extension of their exercise of consular protection to other Union citizens. The only countries to have included such clauses in agreements are Italy and Portugal (CARE, 2010). 'The fact that the Member States have not started negotiations for conclusion of international agreement with third countries for recognition of the exercise of consular protection by EU countries for unrepresented nationals of other EU countries is not in itself capable of denying this right to the Union nationals, however it is likely to impede its effectiveness' (CARE, 2010, p. 22).

The VCCR includes in Article 8 the option of taking-over the exercise of consular function on behalf of a third state (United Nations, 1963). It can therefore be argued that this provision supports the right established under Art. 23 TFEU.

Member States have experienced little to no objection by the receiving states to the exercise of consular services on behalf of a third state (CARE, 2010, p. 35), as currently an unopposed notification suffices (Vermeer-Künzli, 2011). Thus the consular assistance methods of the Member State consulates are working, but they are (nearly) not at all reflected in the legal arrangements. Preferably, a clause would be included into international agreements, securing the right to provide consular assistance to any EU citizen.

Internally, some Member States oppose to Article 23 TFEU because reciprocity is unequal. Those states having more representations also need assistance for their nationals by others less often, so there will be no 'returning the favor' (Wouters et al., 2013).

Yet another step would be to allow the EU Delegations to provide consular assistance to Union citizens. Delegations so far have the obligation to support consulates in this task, if required so by the Member State (Art. 5(10)) (EEAS Decision, 2010). While the EEAS Decision foresees the option of consular assistance by the Delegations themselves (Art. 5(3)), Article 8 VCCR does not cover this case of exercise of consular function by an International Organization. Thus, if EU Delegations were to increase their scope, agreements with third States should cover this option. For any involvement that is not covered by an article in an agreement, the specific consent by the receiving state will be necessary, as the nationality claim does not cover European citizenship (R. A. Wessel & Van Vooren, 2013).

Because consular matters are still under the competence of the Member States, the only option for the EU to conclude agreements including an increased role for the EU Delegations, would be through a 'mixed' agreement, as established with the Open Skies agreement (Van Vooren & Wessel, 2014). In such mixed agreements, the Member States are necessarily included as parties. This method is the preferred option, as elaborated in the Green Paper (European Commission, 2006).

When looking at the discussion surrounding the idea of upgrading the role of the EU Delegations for the provision of consular assistance there are diverse opinions.

The European Parliament and several small and medium-sized Member States (most actively the Netherlands) spoke themselves out for a greater role of the Delegations in consular affairs. The European Parliament for example proposed amendments to the Commission proposal for a Directive on consular protection of unrepresented Union citizens which pushes for an increased role for EU Delegations in the field of consular services. Arguments for an extended role include that this would help increase burden-sharing, save national public budgets, provide sufficient support for the increasing number of Union citizens living/travelling abroad, bring the EU closer to its citizens, help smaller Member States through co-location, and generally have more coordination and greater institutional memory (Austermann, 2012; Balfour & Ojanen, 2011; CARE, 2010; Emerson et al., 2011; Helly et al., 2014). This extra service point could help the approximately 40.000 unrepresented citizens per year (CARE, 2010).

Contra this development are large Member States, especially the UK. They argue that consular affairs are national affairs, consular assistance by EU Delegations is not practical on a resource-neutral basis as required by the EEAS Decision (Art. 5(10)), EU Delegations have very limited expertise, and it would lead to a loss of national visibility (Austermann, 2012; Raik, 2013; R. A. Wessel & Van Vooren, 2013).

Nevertheless, as illustrated in section 1.1.5., EU Delegations can play an important role in the coordination of evacuations of EU citizens and that pragmatic solutions can be found on the ground. Due to these reasons and the increasing awareness of the added value of joint strategies that include the EU Delegations, several Member States have demanded to strengthen EEAS capabilities which shall provide operational support in large-scale threat situations (Fernández Pasarín, 2015) .

#### **4.4.4. Provide diplomatic protection**

Diplomatic protection can only be relied on after all local remedies have been exhausted and injuries have occurred from an internationally wrongful act. Diplomatic protection is strongly linked to the

requirement of nationality as established in the Panevezys-Saldutiskis Railway case<sup>1</sup>. Diplomatic protection is distinct from consular assistance insofar, as it represents the interests of a state, rather than a national and is more of a remedial nature (Künzli, 2006).

Article 20 and 23 TFEU state that citizens of the Union shall have

*the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that state.*

The article provides for both consular assistance and diplomatic protection, which was arguably not intended by the drafters (Künzli, 2006). Künzli argues that EU citizenship is 'not sufficient to fulfill the requirement of nationality of claims for the purpose of diplomatic protection' and that 'EU member states cannot be forced to exercise diplomatic protection' (Künzli, 2006, p. 346). In line with this understanding Wessel argues that 'Art. 23 forms a deviation from general international law' (R. A. Wessel, 2013). The CARE report opposes this understanding and argues that 'the Union clearly provides a right to diplomatic protection for the Union citizens which must be exercised by another Member State than the State of nationality of the Union citizen is not represented on the spot by his/her own Member State' (CARE, 2010, p. 27). In their understanding, Art. 20 TFEU establishes 'a right of the citizens, not a right of the State, and for the exercise of diplomatic protection by the Member States to non-nationals, the Union has developed its own concept of diplomatic protection, which does not go against the rules of public international law' (CARE, 2010).

Decision 95/553/EC picks up on Art. 20 TFEU and states that every Union citizen is entitled to consular protection of any Member State's diplomatic or consular representation, if the state of origin has no representation, or the representation is not accessible. Among the actions included in such protection are assistance in cases of death and assistance in cases of arrest or detention. Drafters clearly intended to mean consular assistance, but assistance in cases of arrest or detention can likely give rise to diplomatic protection (Künzli, 2006).

While it remains unsure to what extent other Member States may help in consular matters (see section 4.4.3.), it is even more unlikely that other Member States can take over in diplomatic protection matters. 'The consular or diplomatic agent (of the other Member State) will not be entitled to take action with the local authorities in a way that would amount to diplomatic protection due to the requirement of nationality of claims' (Künzli, 2006, p. 348). Thus, the issue is strongly connected to the status of EU citizenship. As long as EU citizenship does not equate nationality in the eyes of third states, the EU Member States will face difficulties providing diplomatic protection on behalf of an EU citizen coming from another Member State. For any involvement by the Delegations, the specific consent by the receiving state will be necessary, due to the same reasons as elaborated above.

There have been arguments that the EU should be able to provide diplomatic protection in cases concerning a breach of an agreement between it and a third state for the benefit of individuals, as occurred in the Odigitria case<sup>2</sup>. While such instances are limited and only concern cases in which the

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<sup>1</sup> Panevezys-Saldutiskis Railway case (Estonia vs. Lithuania), PCIJ; Series A/B, No. 76 (1937)

<sup>2</sup> Judgment of the Court of First Instance (First Chamber) of 6 July 1995. Odigitria AAE v Council of the European Union and Commission of the European Communities. Case T-572/93.

EU is the holder of the right violated and not the individual Member State, they do happen. (Vermeer-Künzli, 2011)

#### **4.4.5. Represent EU citizens before court**

As stated in the paragraph 4.4.4., this kind of representation belongs to diplomatic protection which has even stricter requirements than consular assistance, making it highly unlikely for EU Delegations to be able to act.

One could merely imagine a situation in which the EU Delegations act as a form of consulate and 'have a particular role in assisting national in distress with regard to, for example, finding lawyers, visiting prisons and contacting local authorities, but they are unable to intervene in the judicial process or internal affairs of the receiving state or give legal advice or investigate a crime' (Shaw, 2003). The Delegation staff would not have the power to intervene in a judicial process to prevent a denial of justice, they could only have a representative character in cases where the individual is unable to attend a trial him- or herself (Künzli, 2006, p. 332).

If the Head of Delegation or any Ambassador were to get involved in the judicial process, he would represent the EU or his state of origin, thus his actions would no longer count as (consular) assistance but as diplomatic protection. Yet in the case of a Head of Delegation, the Ambassador title is only a courtesy title, therefore the actual power in the judicial process is questionable. Furthermore, a scenario where the Head of Delegation would go to such lengths is unlikely. Most probably, the Delegations would contact the responsible embassy as soon as possible and thereby support the EU citizen in distress.

#### **4.4.6. Safeguard interests in case of succession mortis causa**

Currently, Regulation 650/2012, becoming effective after a period of transition on August 17, 2015, deals with all matters related to succession with cross-border elements. It establishes that 'a given succession is treated coherently, under a single law and by one single authority; citizens are able to choose whether the law applicable to their succession should be that of their habitual residence or that of their nationality; parallel proceedings and conflicting judicial decisions are avoided; and mutual recognition of decisions relating to succession in the EU is ensured' (European Commission Justice, 2013). The new regulation fosters faster, easier and cheaper procedures by establishing a common European framework. Problematic is the fact, that Denmark, Ireland and the UK are not part to the framework, but the latter two reserved for them the right to adopt the Regulation later (European Commission Justice, 2013).

Taking into account that there is already an EU regulation in place, the Delegations can help to enforce the Regulation and cooperate with citizens and Member States.

#### **4.4.7. Assist minors and persons lacking full capacity**

There is very limited literature and information on any discussion regarding the assistance of minors or persons lacking full capacity. Solely, in response to a petition by an EU citizen whose son was abducted in Egypt, the EEAS released the following statement. 'Defending the rights of their citizens in a third country is primarily the task of the concerned EU Member States and, regrettably, the EU has neither the capacity nor the competence to follow each individual case. Nevertheless, the

European Union is working on the multilateral track in order to improve the international legal framework that would apply to all EU countries' (Head of Division, 2012).

An imaginable position for the EU Delegations could be that of a service point, enabling EU citizens to get into contact with authorities from their country of origin to organize amongst other issues the transport back home.

#### **4.4.8. Assist during investigation of vessels and aircrafts**

The instances described in these provisions, which could necessitate the EU Delegations to act, are seldom. The only scenario applicable is when ships with either the EU flag or a Member State flag are stopped and investigated, whilst carrying out actions falling under the exclusive competences of the EU. Examples are fishing agreements concluded by the EU and certain third states. In the agreement between the EEC and the Republic of Côte d'Ivoire on fishing off the coast of the Republic, the following two provisions are included. (1) In case of seizure of fishing vessels flying the flag of a Member State, this shall be notified to the Delegation and simultaneously to the consular agent of the Member State of the flag and (2) before any judicial procedure is started an attempt shall be made to resolve the presumed infringement through an administrative procedure. (Govaere & Poli, 2014)

By informing the Delegation and actively involving it in the process, the Delegation could support and coordinate the administrative procedure through its connections to all Member States and Brussels, and provide information whenever needed. The benefit of such involvement could be a faster resolution of the case.

#### **4.4.9. Promote bilateral relations**

While the promotion of relations is not specifically mentioned in the EEAS Decision, it is very well mentioned in the Establishment/Headquarters Agreements and on the Delegation websites as an important part of their mission. According to the mandates listed on the respective Delegation websites, Delegations may for instance be 'responsible for the conduct of official relations' (Delegation of the European Union to China, 2015) and 'enhance bilateral relations in the political, economic, commercial, environment, social and cultural fields, including new opportunities for cooperation' (Delegation of the European Union to Australia, 2015). According to a selection of Establishment Agreements, the EU and the third state establish the Delegations 'desirous of further strengthening and developing the friendly relations and cooperation' (EC-Norway Agreement, 1987). Relations almost always date back to before Delegations even existed and therefore just need to be continued and fostered.

Further important issues are the defence of European values, such as democracy and rule of law, and the maintenance and increase of awareness, visibility and understanding of the EU among the public in the receiving state (Delegation of the European Union to Kazakhstan, 2015).

The promotion of bilateral relations is most effective when the Head of Delegation and the team of diplomats are familiar with the local customs and ideally speak the host country's official language fluently (Helly et al., 2014).

## **5. Methodology**

To investigate out how Delegations behave regarding the identified points, a questionnaire was developed covering all nine tasks. The questionnaire includes both questions on the tasks and room

for the Delegation official to present a personal opinion on where the Delegations should move to. The questionnaires can be found in the appendix (Appendix 1).

## **5.1. Case selection**

The selection of cases, thus the Delegations to be asked, was done with regard to the following criteria. The sample population is limited to the number of Delegations under the EEAS. Currently, according to the EEAS website (European External Action Service, 2015a), there are 139 Delegations and offices around the world, including also Delegations to International Organizations. These will be excluded from the possible cases, leaving a sample of 131 Delegations.

Another criterion is the number of national embassies by Member States in the specific country. In the final case selection, there will be three Delegations in countries with many representations and another three in countries with few. There are only three countries in which all 28 Member States have a mission: in the US, China and Russia. Then there is a high number of receiving states where only around three Member States have a mission (Raik, 2013), in addition to the EU Delegation. The underlying consideration for this criterion is the increased need for help by the Delegations in case the own Member State is not represented.

Apart from the questionnaire, the websites of the Delegations will be consulted for information, excluding Delegations with a website in any other language than English. Most states in South America and Africa have websites in French, Spanish or Portuguese and will therefore also be excluded.

According to these selection criteria, six cases were chosen. To show the individual characteristics of each, a short introduction is included below.

## **5.2. Short introduction to the Delegations**

### **5.2.1. Delegation to the United States**

The Delegation is located in Washington, DC since 1954 and is thereby the first overseas representation of the EU. It is also one of the largest Delegations with 90-100 people in staff, whereof 30 are EU diplomats and the remaining personnel are seconded national diplomats or locally engaged staff (Delegation of the European Union to the United States, 2015b). The Delegation works in close cooperation with the missions of the 28 EU Member States and 'presents and explains EU policy to the U.S. Administration and to Congress, and analyzes and reports on the political, social, and economic situation in the U.S. to its headquarters in Brussels' (Delegation of the European Union to the United States, 2015a). Apart from the EU representations nearly every country in the world has a diplomatic mission here. The only city to have more diplomatic missions than Washington is Brussels.

The Lead State concept is not in place, as all EU Member States are represented in the United States. The United States is one of three countries worldwide where all 28 Member States have a mission.

### **5.2.2. Delegation to Canada**

The Delegation to Canada was established 1976 and currently employs around 25 Delegation officials, divided in Political and Public affairs, Economics and Trade, and Administration. The Delegation differs to others with regard to the lacking assistance section. This can be explained by the fact that Canada was always on a similar industrial development process as the EU, which also

indicates the safety level of Canada. Due to this stability, the EU Delegation was never required to get involved in a crisis situation and the Lead State concept is not in place.

Apart from the Delegation 25 Member State missions are present. While the embassies of Slovenia and Lithuania have the same address as the Delegation, the three representations do not work in co-location.

### **5.2.3. Delegation to Peru**

The Delegation to Peru is located in Lima since 1991 and moderately big with around 40 people working in the Delegation. Next to the EU Delegation 14 Member State missions are present in the State. 'The Delegation in Peru has a diplomatic status similar to that of those countries with established diplomatic relations in the country and as such enjoys a regime of privileges and immunities, contained in a Headquarters/Agreement signed with the Peruvian Government in 1990' (Delegation of the European Union to Peru, 2015).

The Delegation works in close cooperation with the EU Member States in all areas, and Delegation officials have an 'excellent relationship with colleagues in EU MS Embassies' (European Diplomat Peru, 2015).

### **5.2.4. Delegation to Belarus**

The Delegation to Belarus in Minsk opened in 2008 and is thereby the youngest case, and rather medium-sized with around 30 people in staff. Of the 28 EU Member States, 16 Member States have missions present. Belarus is part of the European Neighborhood Policy (ENP), and therefore benefits from EU-funded assistance and cooperation programs. ENP was initiated in 2004 with the goal of 'avoiding the emergence of new dividing lines between the enlarged EU and our neighbours and instead strengthening the prosperity, stability and security of all. It is based on the values of democracy, rule of law and respect of human rights' (see also Art. 8 TEU) (European External Action Service, 2015b).

Belarus differs from all other cases with respect to the Lead State concept. In Belarus the concept is in place and under the leadership of Poland.

### **5.2.5. Delegation to New Zealand**

The Delegation was established in 2004, and is therefore the second youngest Delegation compared to the other cases. The Delegation is also extremely small, with a total staff number of 8. Apart from the Delegation 8 Member State missions are present in New Zealand, and another 15 missions are based in Canberra, Australia which are also accredited to New Zealand.

'The Delegation acts as a provider of information to New Zealanders about the European Union, its policies and activities; and as a conduit for regular exchanges with the New Zealand government' (Delegation of the European Union to New Zealand, 2015).

### **5.2.6. Delegation to Zambia**

This Delegation was opened in 1975 following Zambia's signing of the first Lomé Convention. Under the Lomé Convention, development cooperation activities were initiated, which were implemented by the Delegation in close cooperation with the Government of Zambia (Delegation of the European

Union to Zambia, 2015). Due to its membership to the African, Caribbean, Pacific countries (ACP), Zambia and the EU share special relations.

In recent times, the role of the Delegation has changed from coordinating cooperation programs to playing 'an essential role in providing information on the policies and institutions of the EU. In doing so, the Delegation works closely with' the 7 Member States' missions in Zambia (Delegation of the European Union to Zambia, 2015). The Delegation is medium-sized with 55 staff.

## 6. Analysis of findings

In order to provide a better overview, the nine tasks will be grouped together as follows. Under the notion of consular assistance, assistance to minors, succession in case of death, issuance of travel documents and visa, and inspection of vessels are included. Under the notion of diplomatic protection, is the representation before court included. A third category is on the promotion of bilateral relations.

### 6.1. Consular assistance

Regarding the issuance of travel documents to EU citizens, all six Delegations responded that they do not and never have issued travel documents to EU citizens in distress. They are willing to find out the responsible representation, but no more. We can conclude that this task is neither mentioned in the EEAS Decision nor applied in reality.

When looking at the task of issuing visa to non-EU citizens, the Delegations also responded that they do not issue any visa. They will provide information on which Member State embassy or consulate is responsible, following the visa application rules explained in section 4.4.2.. We can conclude that the task is neither mentioned in the EEAS Decision nor applied in reality.

Third is the issue of consular assistance. Delegations stated that they will provide guidance with the tools they have, and provide the citizen with information and contact to the responsible mission (European Diplomat Belarus, 2015). The Delegation official from Peru reports going beyond the call of duty by helping a non-represented citizen through personal contacts. He spoke 'with a Colleague of that particular MS working in the EU Delegation in Mexico', to 'find out the responsible Embassy (Brasilia) and establish the contact. Then it is up to the person to get in touch' (European Diplomat Peru, 2015). Apart from their role as an information provider, the Delegations organize the monthly consular meetings with the representatives from the national embassies and consulates, which are chaired by the Member State holding the rotating presidency. The Delegation participates in these meetings, and is therefore well informed on all issues connected to the 'Schengen agreement and bilateral visa waiver agreements between host country & MS' (European Diplomat New Zealand, 2015). We can conclude that the task is not mentioned in the EEAS Decision, and Delegations cannot formally act but they are involved as an information provider for citizens and meeting point for Member State embassy and consulate officials.

Now looking at the assistance regarding safeguarding the interests in case of succession mortis causa, all Delegations reported that they do not get involved in such instances but rather 'expect EU MS Embassies / Consulates to handle these situations' (European Diplomat Peru, 2015). We can conclude that the task is neither mentioned in the EEAS Decision nor applied in reality.

Same goes for the assistance of minors and persons lacking full capacity. Delegations claim to have 'no administrative responsibility' (European Diplomat Canada, 2015) and therefore just provide basic

support until the Member State representations take over. We can conclude that the task is neither mentioned in the EEAS Decision nor applied in reality.

Regarding the involvement of the Delegations during the investigation of vessels, most Delegations do not seem to be aware of this issue (European Diplomat United States, 2015), and were therefore never involved in a situation, where the Delegation took up such tasks. We can conclude that the task is neither mentioned in the EEAS Decision nor applied in reality.

As shown in the explanations of the different tasks under section 4.4., the EU Delegations at this moment in time have no responsibility in each of the points under the category of consular assistance. There is room for development towards a greater role of the Delegations, as for example in the issuance of travel visa. While the increase of competence in the latter example depends highly on the Member States and their (change of) opinion on the utility of the Delegations, other areas such as the provision of consular assistance face certain complex legal issues.

Consular protection is a universal right to all EU citizens which has to be fulfilled by the Member States. In the light of public international law, consular protection is linked to nationality. For any State to provide consular protection to a citizen, this nationality claim must exist. The right to consular protection needs to be included in agreements with third states, which Member States have not done so far. Due to this lack of formal legal agreements, Member States have to rely on the consent by the receiving state for their execution of this protection. Practice shows that Member States rarely face problems with the receiving state.

The EU Delegations are currently assisting the Member State missions after a request for help, provide EU citizens with information, and organize and hold the monthly consular and Schengen meetings with the representatives from the Member State missions present in that country. If Delegation were to extend their role in consular assistance, this would need to be included in all bilateral agreements with third states. The Delegations cannot provide consular assistance without such an agreement, as the nationality link is missing due to the fact that European citizenship does not equal nationality.

There is a broad discussion on the added support by the Delegations with arguments ranging from: consular assistance being at the core of sovereignty, and Delegations being unable to provide assistance on a resource-neutral basis, to saving national budget, bringing the EU closer to its citizens and reacting to the increasing number of EU citizens travelling/living abroad.

Interestingly, the literature and the Delegations stated roughly the same points. We can argue that while the points are not mentioned in the EEAS Decision they are also not applied in reality. Delegations stay close to their role as an information provider, just this time more directly in contact with the EU citizens and less so with the EU institutions in Brussels.

Also, with regard to the differences between the six selected Delegations, we can conclude that the number of national representations by the EU Member States does not seem to have an influence on the behavior of the Delegations regarding these tasks.

Even more interestingly may be the responses by the Delegations on the discussion of an extension of competences. While the opinions among the scholars and the Member States are widespread, there is a clear trend among the Delegations. They seem to have a generally positive attitude that in

the medium- to long turn Delegations will be given the competence to act in consular matters. They are aware that for this to happen, the Member States need to want a change (as this is still a strict Member State competence) (European Diplomat Canada, 2015), need to harmonize their views (European Diplomat New Zealand, 2015), and need to strengthen the capacity/human resources of the EU Delegations (European Diplomat Belarus, 2015). When these steps are taken, which according to a Delegation official could be in the next four to six years (European Diplomat Peru, 2015), Delegations are able to help in cases involving unrepresented citizens.

### **6.1.1. Position of the Delegations on the Member States**

When asking the Delegations where they see the Member States in the possible process of acquiring more consular competences, the position of the Delegations can be summarized by saying that 'Member States would have to decide such development is desirable; it would be for the Member States to decide if they continue to play their role as at present, or transfer some tasks to the EU' (European Diplomat Belarus, 2015). A supporting argument for an enhanced role of EU Delegations is the fact that 'EU MS close more of their Embassies' (European Diplomat Peru, 2015). 'If they have withdrawn their missions from third country X, then they would expect greater assistance from EU Delegation' (European Diplomat New Zealand, 2015).

## **6.2. Diplomatic protection**

Regarding diplomatic protection, all Delegations stated that they cannot provide this sort of protection to an EU citizen, and never have. The sole instance in which the Delegation would become active is if one of the Delegation officials had problems with his diplomatic visa (European Diplomat Canada, 2015). We can conclude that the task is neither mentioned in the EEAS Decision nor applied in reality.

Next, is the issue of representation of EU citizens before court. Delegations stated that if no responsible Member State is represented in the third country, they would provide support with the basic tools they have, and as soon as possible contact the responsible Member State to take over. Furthermore, the Delegation official from the US stated that his Delegation is not involved in 'such services in the United States because all 28 EU MS are represented in the United States' (European Diplomat United States, 2015). We can conclude that the task is neither mentioned in the EEAS Decision nor applied in reality.

As predicted in the literature, Delegations currently do not act regarding these two tasks. They fulfill a supporting role, but are limited in further action by legal difficulties.

According to the literature, diplomatic protection goes beyond consular matters as it represents the interests of a state in a conflict between states. While the EU provides its citizens in Art. 20/23 TFEU with the right to diplomatic protection by the embassy of any Member State on the same conditions, as a national of that Member State, this right is troublesome in the light of international law. Diplomatic protection is strongly linked to nationality, wherefore the specific consent by the receiving state for any sort of diplomatic protection by a state which is not the state of origin is necessary. According to scholars it is unlikely that third states will accept the provision under Art. 23 and even more unlikely that EU Delegations will be included in these actions. Delegations can merely take on a 'consular'/supporting role by representing the EU citizen in case he cannot attend the court proceedings and enabling the contact to the responsible national embassy. But, Delegations should be given a larger role in cases including a breach of a right under exclusive EU competence.

The Delegations' standpoint elaborated above is widely supported by academics, stating that the EU Delegations do not fulfill such tasks. The literature review shows a rather negative picture when thinking about the extension of the provision of diplomatic protection by Delegations. The Delegations on the other hand are moderately positive by stating that it could happen in the future (but not in the short-term) (European Diplomat Peru, 2015), provided that the Member States wish so (European Diplomat Zambia, 2015), Member State embassies increase their cooperation with Delegations (European Diplomat Canada, 2015) and the human resources of the Delegations are stocked up (European Diplomat Belarus, 2015). A supporting factor could be the instance when no Member State is present in a third country (European Diplomat New Zealand, 2015).

### **6.3. Bilateral relations**

All six Delegations answered clearly that an important part of the Delegation's work is the promotion of friendly relations, according to one official even 'the primary work of the Delegation's sections' (European Diplomat United States, 2015). Delegations try to stimulate relations through activities, which may include conferences, presentation and discussions (European Diplomat Canada, 2015). Five out of six Delegations reported that relations were already good before the Delegation was established, with the exception of Belarus which stated that 'relations were at times strained' (European Diplomat Belarus, 2015).

The literature remains largely silent on the issue, whereas the mandates published on the websites and the Establishment Agreements do mention the topic. Relations can be of political or economic nature, may include trade, transport or scientific cooperation, can be with the goal to further education or external assistance, and can also involve the defending of European values.

To conclude, the information from the websites and Establishment Agreements is the same as the insights from the questionnaire.

While the EEAS Decision does not specifically mention the maintenance of bilateral relations as a task of the Delegations, Delegations do engage in this task. This point is therefore the only point in which the Delegations act, even though the task is not specifically mentioned under Art. 5 or at another point in the EEAS Decision.

## **7. Conclusion**

To repeat the research questions now; How similar are the EEAS Decision and the Vienna Conventions in the task description for the representation and how do EU Delegations behave in instances not formally mentioned in the EEAS Decision?

As shown using the example of 'Taking up diplomatic relations', the Vienna Conventions functioned as an orientation point for the EEAS Decision drafters. Because the EU as an International Organization cannot become a signing party to the treaty, the Conventions are applied to the widest extent possible in the EEAS Decision (see Art. 5(6) EEAS Decision and Headquarters Agreements).

When checking both the Conventions and the EEAS Decision for the list of tasks for representations, it became clear that the previous list is significantly longer than the EU text. While both texts include as tasks of the mission (1) being an information provider for the sending State/the EU and its Member States, (2) representing the sending State/the EU in the receiving State and (3) having the capacity to negotiate with the government of the receiving State, the EEAS Decision lacks nine other traditional tasks. We can therefore argue that while the texts are closely related in several aspects

(for example taking up diplomatic relations), with regard to the tasks of representations they are different in respect to the missing nine points in the EEAS Decision. This conclusion is the answer to the first section of the research question.

The nine identified tasks were dealt with in detail through a literature review, which indicated for several tasks only a minor interest or discussion, but most importantly for the provision of consular assistance and diplomatic protection a great interest. The main discussion subjects for consular assistance were the right to consular protection by any Member State mission in the territory of a third state for an unrepresented Union citizen (Art. 23 TFEU), the lacking inclusion of this right in the agreements by the Member States (only Italy and Portugal have fulfilled their duty to include the provision), and the (rarely contested) acceptance by third states for the execution of this right. Important for the discussion is also the lacking nationality claim, due to the fact that EU citizenship does not equate nationality in the eyes of international law. If the EU Delegations were to receive increased competences by the Member States, bilateral agreements with the third states would still be necessary to make the right legally binding. As long as neither of the two sorts of agreements exist, it is up to the discretion of the receiving state whether a Member State mission or a Delegation may perform the duty they were tasked with under EU law.

Same goes for diplomatic protection. This sort of protection only arises after an internationally wrongful act has occurred, necessitating the State to act. This is thus no longer about representing the citizen, but rather the state. While consular assistance can be relied on after an uncontested notification to the third state, diplomatic protection needs the specific consent by the third state. Yet again EU citizenship is not sufficient in international spheres, as it does not equate nationality.

To find out how Delegations behave regarding these nine points, a questionnaire was created and sent to six selected Delegations. From the responses several conclusions can be drawn. Firstly, Delegations do not issue travel documents, issue visas, provide consular assistance, provide diplomatic protection to EU citizens, represent EU citizens before court, safeguard interests in case of succession mortis causa, assist minors or persons lacking full capacity, or assist during investigation of vessels. Secondly, Delegations stated that they would in all instances provide support with the basic tools they have and facilitate the contact to the responsible Member State mission. Through their participation in monthly consular and Schengen meetings they are well informed. Thirdly, the promotion of bilateral relations stood out. While the EEAS Decision does not formally mention it, both literature (or rather the websites and Agreements) and Delegations agree that it is part of the Delegation work.

We can therefore conclude and answer the second part of the research question by saying that Delegations behave in the instances not formally mentioned in the EEAS Decision rather conservative. They do not actively engage in eight out of the nine points, but stay close to their role as an information provider. Only regarding one point do the Delegations deliberately behave differently, as they make it one of the most important parts in their daily work.

Connecting the research done in this paper with the overall question in the literature of how 'embassy-like' the EU Delegations are, we can give, thanks to the responses by the Delegation officials, a clear indication.

One Delegation official summarized that 'In many ways, this Delegation does function like an embassy. The sections of the Delegation reflect the scope of its work, much of which mirrors that of

an embassy. From a public diplomacy perspective, we do the same sort of work as Member State embassies, promoting the European Union and its policies. What makes the European Union unique is that it is based on its 28 Member States and we frequently engage in work to enhance their collective and individual visibility. But of course in several key respects, the Delegation is not an embassy. We do not engage in consular activity' (European Diplomat United States, 2015), and another stating more directly that 'The EU Delegation is an Embassy and acts as such in all circumstances' (European Diplomat Peru, 2015). Thus, according to the view of the Delegations, they are indeed very much 'embassy-like'.

Regarding a possible future for the Delegations in consular matters or other areas, one might argue with the functionalist theory of spill-over effects. Coordination and cooperation in one area will eventually spill over onto other areas, making it a linear process of integration. This development can be achieved as stated by the Delegations, if the Member States harmonize their views, together give the required competences to the EU and allow for the necessary human resources. This process is needed in light of decreasing public budgets and closing representation on the one hand, but increasing numbers of EU citizens travelling and living abroad on the other hand. The consulted Delegations would support such a development.

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## 9. Appendix

### Appendix 1: Questionnaires

#### United States

##### General information

1. What is your job in the Delegation?
  - a. *Programs Officer, Press and Public Diplomacy Section. I manage grants programs under the Partnership Instrument and lead on the EU's relationships with universities, think tanks, and civil society organizations in the United States.*
2. How many national missions are present in your country?
  - a. *All 28 EU Member States are present in the United States and nearly every country in the world has a diplomatic mission here. The only city to have more diplomatic missions than Washington is Brussels.*
3. Do you initially come from the Commission, the Council or from your country of origin as a seconded diplomat?
  - a. *None of the above. I am a locally engaged member of staff or "local agent" (US citizen). Many Delegations and Embassies around the world employ local staff like me.*
4. How large is your Delegation?
  - a. *We have somewhere between 90 and 100 staff.*
5. Does the EU follow the Lead State concept in your respective receiving State?
  - a. *This is not necessary as all EU Member States are represented in the United States.*
6. Were you as a Delegation ever involved in coordination and rescue operations after a crisis situation?
  - a. *Not to my knowledge.*
7. How clearly do you divide between exclusive EU competences and shared EU-MS competences in your daily work?
  - a. *In my word, this divide is not a significant concern as the EU can and does engage in public diplomacy around the world as do many of the member states. That being said, the EU and member states meet on a monthly basis (sometimes more often) to find areas in which they can coordinate and collaborate on their public diplomacy work. Counsellors from member state embassies with responsibility for press/public diplomacy and culture meet at the EU Delegation here once a month. The same is true across other areas of policy – Deputy Heads of Mission, Political Counsellors, Trade Counsellors, Science Counsellors, etc.*

##### Interview questions on tasks

1. Do you issue passport and travel documents to citizens of the EU?
  - a. *No.*
  - b. If yes, how often does that approximately happen per year?
2. Do you issue visas or appropriate documents to persons wishing to travel to the EU?
  - a. *No.*
  - b. If yes, in the form of Schengen visa?
  - c. What do you do in instances where persons wish to travel to the UK and Ireland?
3. Do you provide consular assistance to EU citizens?
  - a. *No.*
  - b. If yes, can you give an example of a service?
  - c. What is your relationship with national missions regarding this aspect?

4. Do you provide diplomatic protection to EU citizens?
  - a. *No.*
  - b. If yes, can you give an example of an instance when you had to take on such a task?
5. Do you subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the EU before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of the nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests?
  - a. *I assume here you're talking about a range of consular services which embassies frequently provide their citizens. The EU does not provide any such services in the United States because all 28 EU MS are represented in the United States.*
  - b. Can you give an example of an instance where you had to take on such tasks?
6. Do you safeguard the interest of nationals, both individuals and bodies corporate, of the EU in cases of succession mortis cause in the territory of the receiving State, in accordance with the laws and regulations of the receiving State?
  - a. *See previous answer.*
  - b. If yes, do you follow the guidelines as described in Regulation No. 650/2012?
7. Do you safeguard, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the EU, particularly where any guardianship or trusteeship is required with respect to such persons?
  - a. *See answer to number 5.*
8. Do you promote friendly relations between the EU and the receiving State, and develop their economic, cultural and scientific relations?
  - a. *Yes, this is the primary work of the Delegation's sections: Political, Security, & Development; Trade; Economic & Financial Affairs; Food Safety, Health, & Consumer Affairs; Science, Technology, & Innovation; Press & Public Diplomacy. More information about our work can be easily accessed via our website, [www.euintheus.org](http://www.euintheus.org). I would also recommend that you read the "[Guide for Americans](#)" produced by the Delegation.*
  - b. Did the EU and your receiving country already have good relations, before the Delegation started its work?
  - c. *Yes. The US and European Community had relations through the middle 20<sup>th</sup> century, but the [1990 Transatlantic Declaration](#) formalized relations between the EU and US. That document may be very helpful for your research.*
9. Do you exercise rights of supervision and inspection provided for in the laws and regulations of the EU in respects of vessels having the nationality of the EU, and of any aircraft registered in that State, and in respect of their crews?
  - a. *I don't know – if we do, then I'm not aware of this. We do have a representative from the European Aviation Safety Agency here at the Delegation.*
  - b. Do you take statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents occurred during the voyage, and settle disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the EU?
  - c. *To my knowledge, the Delegation has not ever done so.*

#### Interview questions on personal opinion

1. Do you see a future for consular assistance by the EU Delegations?
2. Do you see a future for diplomatic protection by the EU Delegations?

3. Where do you see the Member States in this development?
4. Would you say that your Delegation has ever behaved like an embassy?
  - a. *In many ways, this Delegation does function like an embassy. The sections of the Delegation reflect the scope of its work, much of which mirrors that of an embassy. From a public diplomacy perspective, we do the same sort of work as Member State embassies, promoting the European Union and its policies. What makes the European Union unique is that it is based on its 28 Member States and we frequently engage in work to enhance their collective and individual visibility (for an example see our #MemberStateMonday campaign on Twitter and the EU Open House event on May 9<sup>th</sup>). But of course in several key respects, the Delegation is not an embassy. We do not engage in consular activity because all 28 Member States are represented in the United States. I cannot speak for the work of other Delegations around the world where this is not the case.*

## Canada

### General information

1. What is your job in the Delegation? *Minister Counsellor, Political and Public Affairs section, political advisor (similar to job in a MS) political analysis, interface between Brussels and Canada*
2. How many national missions are present in your country? *25*
3. Do you initially come from the Commission, the Council or from your country of origin as a seconded diplomat? *Commission, from 87, late 80s external affairs*
4. How large is your Delegation? *25 staff, incl. interns and admin*
  - a. *Political and public affairs*
  - b. *Economics and trade*
  - c. *Administration*
  - d. *No separate assistance section (development/cooperation etc.), but new partnership for industrialized states*
5. Does the EU follow the Lead State concept in your respective receiving State? *NO*
6. Were you as a Delegation ever involved in coordination and rescue operations after a crisis situation?
  - a. *Not really -> very stable country*
7. How clearly do you divide between exclusive EU competences and shared EU-MS competences in your daily work?
  - a. *Mindful of competences of MS, and shared competences. Not very compartmentalized approach*
  - b. *Cultural -> can take initiative, but require strong involvement of MS*
  - c. *Help coordinating*

### Interview questions on tasks

1. Do you issue passport and travel documents to citizens of the EU? *No, provide basic information*
  - d. *If yes, how often does that approximately happen per year?*
2. Do you issue visas or appropriate documents to persons wishing to travel to the EU? *NO, provide basic information/advice*

*Person who is dealing with the protocol department for diplomatic visa*

  - a. *If yes, in the form of Schengen visa?*
  - b. *What do you do in instances where persons wish to travel to the UK and Ireland?*
3. Do you provide consular assistance to EU citizens? *No*

*'Lead state' for consular activities -> the current presidency, Delegation participates in meetings, not chairing the meeting, not many consular issues arising*

- a. If yes, can you give an example of a service?
- b. What is your relationship with national missions regarding this aspect?
4. Do you provide diplomatic protection to EU citizens? *If it affects one of the diplomats, they would consult with Foreign Affairs department,*
  - a. *Spanish passport, stamped with diplomatic visa of the EEAS, rarely used laissez-passer*
  - b. If yes, can you give an example of an instance when you had to take on such a task?
5. Do you subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the EU before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of the nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests?  
NO
  - a. *If no MS there, provide support with the basic tools they have*
  - b. *Then contact MS to take over*
  - c. Can you give an example of an instance where you had to take on such tasks?
6. Do you safeguard the interest of nationals, both individuals and bodies corporate, of the EU in cases of succession mortis cause in the territory of the receiving State, in accordance with the laws and regulations of the receiving State? NO
  - a. If yes, do you follow the guidelines as described in Regulation No. 650/2012?
7. Do you safeguard, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the EU, particularly where any guardianship or trusteeship is required with respect to such persons? *NO, no administrative responsibility, just provide basic support*
8. Do you promote friendly relations between the EU and the receiving State, and develop their economic, cultural and scientific relations? *YES, try to stimulate political, economic, cultural and scientific relations, many activities related (eg. Conferences, presentation, discussions)*
  - a. Did the EU and your receiving country already have good relations, before the Delegation started its work? YES
9. Do you exercise rights of supervision and inspection provided for in the laws and regulations of the EU in respects of vessels having the nationality of the EU, and of any aircraft registered in that State, and in respect of their crews? NO
  - a. Do you to take statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents occurred during the voyage, and settle disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the EU?

#### Interview questions on personal opinion

1. Do you see a future for consular assistance by the EU Delegations? *A developing area, changes in the future, will not happen overnight, still strict MS competence, questions about unrepresented citizens, lacking the experience and tools to issue documents or go abroad*
2. Do you see a future for diplomatic protection by the EU Delegations? *In the future more cooperation between Delegations and MS embassies, just starting*
3. Where do you see the Member States in this development? *Excellent cooperation with the MS -> keeping up the good work*

4. Would you say that your Delegation has ever behaved like an embassy? *Part of our work is very similar to MS embassy, political reporting and economic analysis similar to MS, not consular activities at all*

## Peru

### General information

1. What is your job in the Delegation? Head of Political, Press and information Section
2. How many national missions are present in your country? 14 EU Member States' Embassies
3. Do you initially come from the Commission, the Council or from your country of origin as a seconded diplomat? Commission
4. How large is your Delegation? Around 40 staff.
5. Does the EU follow the Lead State concept in your respective receiving State? No
6. Were you as a Delegation ever involved in coordination and rescue operations after a crisis situation? No
7. How clearly do you divide between exclusive EU competences and shared EU-MS competences in your daily work? Basically we work according to the Lisbon treaty and maintain close coordination with EU MS in all areas. There is an excellent relationship with colleagues in EU MS Embassies.

### Interview questions on tasks

1. Do you issue passport and travel documents to citizens of the EU? NO
  - e. If yes, how often does that approximately happen per year? n.a.
2. Do you issue visas or appropriate documents to persons wishing to travel to the EU? NO
  - a. If yes, in the form of Schengen visa? n.a.
  - b. What do you do in instances where persons wish to travel to the UK and Ireland? UK Embassy and Consulate deal with these cases.
3. Do you provide consular assistance to EU citizens? In terms of information and contacts with the Embassy dealing with that respective nationality, either in Lima or in a concurrent Embassy, normally in another Latin American Capital.
  - a. If yes, can you give an example of a service? A citizen of Slovakia, a non-represented EU MS in Lima, has a problem (passport lost, e.g.) and through personal contacts with a Colleague of that particular MS working in the EU Delegation in Mexico, we find out the responsible Embassy (Brasilia) and establish the contact. Then it is up to the person to get in touch.
  - b. What is your relationship with national missions regarding this aspect? The issue is discussed from time to time in Schengen / Consular monthly Coordination meetings.
4. Do you provide diplomatic protection to EU citizens? No case recorded yet in Lima.
  - a. If yes, can you give an example of an instance when you had to take on such a task? n.a.
5. Do you subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the EU before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of the nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests? No case recorded yet in Lima.
  - a. Can you give an example of an instance where you had to take on such tasks? N.a.
6. Do you safeguard the interest of nationals, both individuals and bodies corporate, of the EU in cases of succession mortis cause in the territory of the receiving State, in accordance with

the laws and regulations of the receiving State? No case recorded yet in Lima, and I expect EU MS Embassies / Consulates to handle these situations.

- a. If yes, do you follow the guidelines as described in Regulation No. 650/2012? No case yet.
7. Do you safeguard, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the EU, particularly where any guardianship or trusteeship is required with respect to such persons? No case recorded yet in Lima.
8. Do you promote friendly relations between the EU and the receiving State, and develop their economic, cultural and scientific relations? Yes.
  - a. Did the EU and your receiving country already have good relations, before the Delegation started its work? Yes.
9. Do you exercise rights of supervision and inspection provided for in the laws and regulations of the EU in respects of vessels having the nationality of the EU, and of any aircraft registered in that State, and in respect of their crews? No.
  - a. Do you to take statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents occurred during the voyage, and settle disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the EU? No.

#### Interview questions on personal opinion

1. Do you see a future for consular assistance by the EU Delegations? Possibly, though in the medium to long term, 4-6 years ahead.
2. Do you see a future for diplomatic protection by the EU Delegations? Not in the short-term.
3. Where do you see the Member States in this development? If EU MS close more of their Embassies, there will possibly be an enhanced role of EU Delegations in Consular matters.
4. Would you say that your Delegation has ever behaved like an embassy? The EU Delegation is an Embassy and acts as such in all circumstances.

## **Belarus**

#### General information

1. What is your job in the Delegation? Political officer
2. How many national missions are present in your country? 16
3. Do you initially come from the Commission, the Council or from your country of origin as a seconded diplomat? The Commission
4. How large is your Delegation? App. 30 people
5. Does the EU follow the Lead State concept in your respective receiving State? Yes, Poland
6. Were you as a Delegation ever involved in coordination and rescue operations after a crisis situation? No
7. How clearly do you divide between exclusive EU competences and shared EU-MS competences in your daily work? EU Del leads on subjects on exclusive EU competence, on other subjects – EU Member States present and EUDEL decide who is in lead

#### Interview questions on tasks

1. Do you issue passport and travel documents to citizens of the EU? No
  - f. If yes, how often does that approximately happen per year?
2. Do you issue visas or appropriate documents to persons wishing to travel to the EU? No
  - a. If yes, in the form of Schengen visa?

- b. What do you do in instances where persons wish to travel to the UK and Ireland?
3. Do you provide consular assistance to EU citizens? No but if addressed, we would advise which Consulate to contact
  - a. If yes, can you give an example of a service?
  - b. What is your relationship with national missions regarding this aspect? EU Del organizes EU Consular meetings chaired by one Member State
4. Do you provide diplomatic protection to EU citizens? No
  - a. If yes, can you give an example of an instance when you had to take on such a task?
5. Do you subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the EU before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of the nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests? No
  - a. Can you give an example of an instance where you had to take on such tasks?
6. Do you safeguard the interest of nationals, both individuals and bodies corporate, of the EU in cases of succession mortis cause in the territory of the receiving State, in accordance with the laws and regulations of the receiving State? No
  - a. If yes, do you follow the guidelines as described in Regulation No. 650/2012?
7. Do you safeguard, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the EU, particularly where any guardianship or trusteeship is required with respect to such persons? No
8. Do you promote friendly relations between the EU and the receiving State, and develop their economic, cultural and scientific relations? Yes
  - a. Did the EU and your receiving country already have good relations, before the Delegation started its work? The relations were at times strained
9. Do you exercise rights of supervision and inspection provided for in the laws and regulations of the EU in respects of vessels having the nationality of the EU, and of any aircraft registered in that State, and in respect of their crews? No
  - a. Do you to take statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents occurred during the voyage, and settle disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the EU?

#### Interview questions on personal opinion

1. Do you see a future for consular assistance by the EU Delegations? Yes provided that Member States so wish, and the capacity / human resources of the EU Delegation are strengthened.
2. Do you see a future for diplomatic protection by the EU Delegations? Same as above
3. Where do you see the Member States in this development? Member States would have to decide such development is desirable; it would be for the Member States to decide if they continue to play their role as at present, or transfer some tasks to the EU
4. Would you say that your Delegation has ever behaved like an embassy? EU Delegations are diplomatic missions and in this sense behave like Embassies, but not in Consular matters

## **New Zealand**

### General information

1. What is your job in the Delegation? Chargé d’Affaires
2. How many national missions are present in your country? 8
3. Do you initially come from the Commission, the Council or from your country of origin as a seconded diplomat? Commission
4. How large is your Delegation? 8 including the driver
5. Does the EU follow the Lead State concept in your respective receiving State?
6. Were you as a Delegation ever involved in coordination and rescue operations after a crisis situation? No
7. How clearly do you divide between exclusive EU competences and shared EU-MS competences in your daily work? Very

#### Interview questions on tasks

1. Do you issue passport and travel documents to citizens of the EU? No
  - g. If yes, how often does that approximately happen per year?
2. Do you issue visas or appropriate documents to persons wishing to travel to the EU? No
  - a. If yes, in the form of Schengen visa?
  - b. What do you do in instances where persons wish to travel to the UK and Ireland?
3. Do you provide consular assistance to EU citizens?
  - a. If yes, can you give an example of a service? Advice regarding the Schengen agreement and bilateral visa waiver agreements between host country & MS
  - b. What is your relationship with national missions regarding this aspect? Discussed at Local Schengen Coordination meetings
4. Do you provide diplomatic protection to EU citizens? No
  - a. If yes, can you give an example of an instance when you had to take on such a task?
5. Do you subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the EU before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of the nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests? No
  - a. Can you give an example of an instance where you had to take on such tasks?
6. Do you safeguard the interest of nationals, both individuals and bodies corporate, of the EU in cases of succession mortis cause in the territory of the receiving State, in accordance with the laws and regulations of the receiving State? No
  - a. If yes, do you follow the guidelines as described in Regulation No. 650/2012?
7. Do you safeguard, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the EU, particularly where any guardianship or trusteeship is required with respect to such persons? No
8. Do you promote friendly relations between the EU and the receiving State, and develop their economic, cultural and scientific relations? Yes
  - a. Did the EU and your receiving country already have good relations, before the Delegation started its work? Yes
9. Do you exercise rights of supervision and inspection provided for in the laws and regulations of the EU in respects of vessels having the nationality of the EU, and of any aircraft registered in that State, and in respect of their crews? No
  - a. Do you to take statements regarding the voyage of a vessel, examining and stamping the ship’s papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents occurred during the

voyage, and settle disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the EU?

#### Interview questions on personal opinion

1. Do you see a future for consular assistance by the EU Delegations? Possibly in the distant future – MS must harmonise their views further before possible for EU Delegations to take a larger role AND/OR if no MS present in third country
2. Do you see a future for diplomatic protection by the EU Delegations? Only if no MS present in third country
3. Where do you see the Member States in this development? If they have withdrawn their missions from third country X, then they would expect greater assistance from EU Del.
4. Would you say that your Delegation has ever behaved like an embassy? Unspecific question

## Zambia

#### General information

1. What is your job in the Delegation? Head of Political, Press and Info
2. How many national missions are present in your country? 7 EUMS
3. Do you initially come from the Commission, the Council or from your country of origin as a seconded diplomat? Initially Commission Official
4. How large is your Delegation? Around 55 Staff
5. Does the EU follow the Lead State concept in your respective receiving State? Not aware of this concept
6. Were you as a Delegation ever involved in coordination and rescue operations after a crisis situation? No
7. How clearly do you divide between exclusive EU competences and shared EU-MS competences in your daily work? Mostly relevant on trade related issues

#### Interview questions on tasks

1. Do you issue passport and travel documents to citizens of the EU? No
  - a. If yes, how often does that approximately happen per year?
2. Do you issue visas or appropriate documents to persons wishing to travel to the EU? No
  - a. If yes, in the form of Schengen visa?
  - b. What do you do in instances where persons wish to travel to the UK and Ireland?
3. Do you provide consular assistance to EU citizens? No, apart from guidance
  - a. If yes, can you give an example of a service?
  - b. What is your relationship with national missions regarding this aspect?
4. Do you provide diplomatic protection to EU citizens? No
  - a. If yes, can you give an example of an instance when you had to take on such a task?
5. Do you subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the EU before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of the nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests? No

- a. Can you give an example of an instance where you had to take on such tasks?
6. Do you safeguard the interest of nationals, both individuals and bodies corporate, of the EU in cases of succession mortis cause in the territory of the receiving State, in accordance with the laws and regulations of the receiving State? n/a
  - a. If yes, do you follow the guidelines as described in Regulation No. 650/2012?
7. Do you safeguard, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the EU, particularly where any guardianship or trusteeship is required with respect to such persons? n/a
8. Do you promote friendly relations between the EU and the receiving State, and develop their economic, cultural and scientific relations? Yes
  - a. Did the EU and your receiving country already have good relations, before the Delegation started its work? The Delegation was established in 1975, with first EU-ACP partnership agreement.
9. Do you exercise rights of supervision and inspection provided for in the laws and regulations of the EU in respects of vessels having the nationality of the EU, and of any aircraft registered in that State, and in respect of their crews? n/a
  - a. Do you to take statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents occurred during the voyage, and settle disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the EU?

#### Interview questions on personal opinion

1. Do you see a future for consular assistance by the EU Delegations? This is up EUMS to decide
2. Do you see a future for diplomatic protection by the EU Delegations? This is up EUMS to decide
3. Where do you see the Member States in this development? This is up EUMS to decide
4. Would you say that your Delegation has ever behaved like an embassy? Surely in the maintenance of relations with host country, including carrying out of demarches