

## **Bachelor Thesis**

The High Representative for Foreign Affairs and Security Policy of the EU  
and the German Minister of Foreign Affairs.  
Different titles – Different Jobs?

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# Abstract

This research focuses on the High Representative of the Union for Foreign Affairs and Security Policy and national foreign ministers of EU-member states.

At first there will be a discussion of what foreign policy is and which policy areas it covers.

In the subsequent sections the powers of the High Representative and a Minister of Foreign Affairs, the German one, will be analysed in order to find out if there are any differences or if the High Representative is simply a Minister of Foreign Affairs under a different title.

In a comparison this thesis will find conclude that there are similarities between the High Representative and the German Foreign Minister. Therefore they can be compared to a certain extent. Nevertheless, there are still many differences as for example the High Representative is more restraint through legislation or is not equipped with a full fledged diplomatic service. Furthermore in most cases the High Representative has to cooperate with other actors in the EU institutions as well as with the member states, before taking action.

# 1. Section I – Introduction

## 1.1 Introduction and Literature Review

This introduction provides an overview about the topic addressed in this research. The reasons to discuss this topic are mentioned as well as the already existing literature on High Representative and Minister of Foreign Affairs.

The High Representative of the Union for Foreign Affairs and Security Policy (hereinafter called High Representative) is one of the actors involved in the external actions of the European Union. Both, national Ministers of Foreign Affairs, which in the EU each and every member state has, and the High Representative can be seen as the most important actors in the foreign policy of their particular entity. As the European Union is willing to play a more important role in the arena of global politics, the area of external actions and foreign policy is crucial. The position of the High Representative as it is at the moment has been established with the Treaty of Lisbon amendments to the Treaty of the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). However, there has been a so called 'High Representative for Common Foreign and Security Policy' before. Javier Solana held this post from 1999-2009.<sup>1</sup>

In the constitutional treaty, planned for the EU in 2005, the position that later became the High Representative was called the 'Union Minister for Foreign Affairs'.<sup>2</sup> After the rejection of this proposed constitution in referendums in France and the Netherlands, the name changed. Josifovic and Keskoski see the position of the High Representative as a successor to the post of a minister, which would have been established with the Constitutional Treaty.<sup>3</sup> But the High Representative is still sometimes called a 'Minister of Foreign Affairs'. So does Eckart D. Stratenschulte in his dossier about the High Representative for the bpb, the German Federal Agency for Civic Education. However, he uses inverted commas for naming her like this.<sup>4</sup> Thus, it is likely that the High Representative is in some way such a minister, but not in total.

The question is, if it still can be compared to a Minister of Foreign Affairs or even seen as one. If so, are there also differences to "normal" Ministers of Foreign Affairs? What are the powers and functions of the respective actors, especially in terms of foreign policy? And what is foreign policy after all?

These issues will be tackled in this research. A further explanation of the research question and its sub-questions can be found in the second part of this section.

In order to compare the two actors, it has to be known what their powers and functions are. Section III will focus on the powers of the High Representative. Subsequently the powers of a national Minister of Foreign Affairs will be discussed in Section IV.

Referring to the High Representative, it is her powers and functions that will be discussed. The term 'competence' will not be used here. This is due the fact that the term 'competence' has a special meaning in the European Union. The term 'powers' is used to describe what the legal provisions for the positions of the two actors are. In the Treaty on the Functioning of the European

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1 These information can be found under 'The post of High Representative of the Union for Foreign Affairs and Security Policy. History' on the website: [http://eeas.europa.eu/background/high-representative/index\\_en.htm](http://eeas.europa.eu/background/high-representative/index_en.htm)

2 Art. I-28 Treaty Establishing A Constitution For Europe, 2005

3 I. Josifovic and Z. Keskoski, 'European\Common Security and Defence Policy after the Lisbon Treaty: European but not Common', available at <http://eprints.ugd.edu.mk/15583/2/European%20but%20not%20Common.pdf>

4 E. D. Stratenschulte, 'Dossier. Die Europäische Union. Hohe Vertreterin für Außen- und Sicherheitspolitik', *bpb: Bundeszentrale für politische Bildung* (1 November 2014), available at: <http://www.bpb.de/internationales/europa/europaeische-union/42968/hohe-vertreterin-fuer-aussen-und-sicherheitspolitik>

Union (TFEU) 'competences' are the areas in which the EU is allowed to act. There are different types of competences. Article 2 (1), TFEU for example states that '*When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate [...]*'<sup>5</sup>. With the term 'powers' in this research, the tasks, responsibilities and duties of the two actors are meant, laid down in the respective regulations.

The position of the High Representative as it is now was established with the amendments to the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TEU) in the Treaty of Lisbon. Since then researchers have written about her role in these treaties. So did Missiroli in his work '*The New EU 'Foreign Policy' System after Lisbon: A Work in Progress*'. He discusses in that piece the High Representative as well as other actors and comes to the conclusion that the Lisbon Treaty is needed to make Europe more 'effective' on the world's stage (Missiroli, 2010).<sup>6</sup> Therefore his research outcome is in such a way important for this research, as it states that new provisions from the treaties changed the role of the European Union on the world's stage to the positive. His research focuses purely on the EU-level and its institutions.

Christine Kaddous explains in her article extensively the provisions for the High Representative, set up after the Treaty of Lisbon. In her conclusions she argues about the possible future of European external actions caused by the treaty. Interesting is that she does not think that the provisions of the treaty will lead to greater coherence of external actions. She points out that with High Representative, President of the European Council and European Commission there would be too many actors involved in the process, making coherent action very difficult.<sup>7</sup>

Sophie Vanhoonacker and Karolina Pomorska are focusing in their article on the first years of the term of Catherine Ashton as High Representative and analyse the position of the High Representative as an agenda-setter in European external action.<sup>8</sup> They come to the conclusion that the High Representative as the successor to the rotating President of the Council in terms of external action, had also the task to establish consistency in European External Action and is now one of the main contributors to the policy area of external action.<sup>9</sup>

Further authors researching about the topic of external actions of the EU also had a bit of a different approach. So had Pia Kerres and Ramses A. Wessel. In contrast to comparing the High Representative and Ministers of Foreign Affairs, they already compared in their article the tasks and competences of European Union Delegations and National Embassies.<sup>10</sup> The European Union

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5 Art. 2(1) Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) *Official Journal* [2012] C 326, P. 0001 – 0390, 26/10/2012, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

6 A. Missiroli, 'The New Foreign Policy System after Lisbon: A Work in Progress', 15 *European Foreign Affairs Review*, Issue 4 2010, pp. 427 – 452, available at: <http://www.kluwerlawonline.com/document.php?id=EERR2010033>

7 C. Kaddous, 'Role and position of the High Representative of the Union for Foreign Affairs and Security Policy under the Lisbon Treaty', 11 *Schriftenreihe der Österreichischen Gesellschaft für Europaforschung (ECSA Austria) / European Community Studies Association of Austria Publication Series*, 2008, pp. 205-221, retrieved from: [http://download.springer.com/static/pdf/513/chp%253A10.1007%252F978-3-211-09429-7\\_8.pdf?originUrl=http%3A%2F%2Flink.springer.com%2Fchapter%2F10.1007%2F978-3-211-09429-7\\_8&token2=exp=1455902593~acl=%2Fstatic%2Fpdf%2F513%2Fchp%25253A10.1007%25252F978-3-211-09429-7\\_8.pdf%3ForiginUrl%3Dhttp%253A%252F%252Flink.springer.com%252Fchapter%252F10.1007%252F978-3-211-09429-7\\_8\\*~hmac=245efb56c306d9abe8b153175bd444dce6750ff66e083592e43a8342e016bc5a](http://download.springer.com/static/pdf/513/chp%253A10.1007%252F978-3-211-09429-7_8.pdf?originUrl=http%3A%2F%2Flink.springer.com%2Fchapter%2F10.1007%2F978-3-211-09429-7_8&token2=exp=1455902593~acl=%2Fstatic%2Fpdf%2F513%2Fchp%25253A10.1007%25252F978-3-211-09429-7_8.pdf%3ForiginUrl%3Dhttp%253A%252F%252Flink.springer.com%252Fchapter%252F10.1007%252F978-3-211-09429-7_8*~hmac=245efb56c306d9abe8b153175bd444dce6750ff66e083592e43a8342e016bc5a)

8 S. Vanhoonacker and K. Pomorska, 'The European External Action Service and agenda-setting in European foreign policy', in *Journal of European Public Policy*, 20:9 (2013), pp. 1316-1331, DOI: 10.1080/13501763.2012.758446, retrieved from: <http://www.tandfonline.com/doi/pdf/10.1080/13501763.2012.758446>

9 supra note 8

10 P. Kerres and R.A. Wessel, 'Apples and Oranges? Comparing the European Union Delegations to National Embassies', *CLEER Papers*, 2015/2, retrieved from: [http://www.asser.nl/media/2847/cleer15-2\\_web.pdf?utm\\_source=MadMimi&utm\\_medium=email&utm\\_content=CLEER+Paper+2015%2F2+](http://www.asser.nl/media/2847/cleer15-2_web.pdf?utm_source=MadMimi&utm_medium=email&utm_content=CLEER+Paper+2015%2F2+)

Delegations are subordinated to the European External Action Service (EEAS) to which the High Representative is the chair. In their article they discuss traditional tasks of embassies and assess whether they are also tasks of the delegations. What they find out is that the delegations differ a lot from usual embassies and that most traditional tasks are not covered by them.<sup>11</sup> As they focus extensively on the tasks, not of Representative or Minister, but of the regional representations, there is still enough room to focus on the powers and functions of the High Representative, respectively the Minister of Foreign Affairs. Nevertheless their article provides interesting background information as there seems to be a rather big difference between the institutions on the two different sides.

Julia Schmidt instead focuses in her article *'The High Representative, the President and the Commission - Competing Players in the EU's External Relations: The Case of Crisis Management'* not only on the position of the High Representative, but also on the President of the Council and the question if they are able to make foreign policy and crisis management more coherent.<sup>12</sup> Her result after interpreting and analysing the legal provisions brought by the Treaty of Lisbon and focusing on the case of Libya in 2011, is that coherence will depend on what the institutions are willing to do for it in terms of cooperation as the High Representative is not the only actor involved.<sup>13</sup>

Next to analyses on the role of the High Representative, there has been research on the performance of the EU in terms of foreign policy. André Barrantin claims in his text that there is no coherent strategy for the external actions of the EU, which in his view is needed.<sup>14</sup> This is due to a at the moment existing 'ad hoc'-policy, as Barrantin calls it, with limited chances for success.<sup>15</sup> 'Ad hoc' in this case means that the responsible actors just respond unprepared to every incident, having no greater plan of how to tackle certain incidents or what to achieve on the long term. The limited success of such a policy could mean less influence for the EU a limited chance to solve a problem.

As the High Representative is according to the treaties an actor, which shall ensure coherence in European external actions, she would be the logical choice to draft a proposal for such a grand strategy. She was ordered to do so and *'A Global Strategy for the European Union's Foreign And Security Policy'* has been published on 28<sup>th</sup> June 2016.<sup>16</sup> Due to time overlaps with writing this thesis, the strategy and its content will not be considered here.

The EU sees itself as a global actor is willing to become an even more important actor on the international level. Today foreign policy of the EU encompasses many more fields than traditional Common Commercial Policy, but for example the area of Common Foreign and Security Policy (CFSP) and other fields taken over from the member states.

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[%27Apples+and+Oranges%3F+Comparing+the+European+Union+Delegations+to+National+Embassies  
%27+by+P.+Kerres+and+R.A.+Wessel&utm\\_campaign](#)

11 P. Kerres and R.A. Wessel, supra note 10

12 J. Schmidt, 'The High Representative, the President and the Commission – Competing Players in the EU's External Relations: The Case of Crisis Management' in P.J: Cardwell (ed.) *EU External Relations Law and Policy in the Post-Lisbon Era* (The Hague: T.M.C. Asser Press 2012), pp. 161-180, retrieved from: [http://download.springer.com/static/pdf/755/chp%253A10.1007%252F978-90-6704-823-1\\_8.pdf?originUrl=http%3A%2F%2Flink.springer.com%2Fchapter%2F10.1007%2F978-90-6704-823-1\\_8&token2=exp=1456416556~acl=%2Fstatic%2Fpdf%2F755%2Fchp%25253A10.1007%25252F978-90-6704-823-1\\_8.pdf%3ForiginUrl%3Dhttp%253A%252F%252Flink.springer.com%252Fchapter%252F10.1007%252F978-90-6704-823-1\\_8\\*~hmac=ab10be752824b12121bad4c9e6f96e95c6d8ee9be2098bac8c74c4776b677529](http://download.springer.com/static/pdf/755/chp%253A10.1007%252F978-90-6704-823-1_8.pdf?originUrl=http%3A%2F%2Flink.springer.com%2Fchapter%2F10.1007%2F978-90-6704-823-1_8&token2=exp=1456416556~acl=%2Fstatic%2Fpdf%2F755%2Fchp%25253A10.1007%25252F978-90-6704-823-1_8.pdf%3ForiginUrl%3Dhttp%253A%252F%252Flink.springer.com%252Fchapter%252F10.1007%252F978-90-6704-823-1_8*~hmac=ab10be752824b12121bad4c9e6f96e95c6d8ee9be2098bac8c74c4776b677529)

13 supra note 12

14 A. Barrantin, 'Progressive realism and the EU's external actorness: towards a grand strategy?', *Journal of European Integration*, 2016, 38:4, pp. 441-454, DOI: 10.1080/07036337.2016.1141905, retrieved from: <http://www.tandfonline.com/doi/pdf/10.1080/07036337.2016.1141905>

15 supra note 14

16 Information on publication date and name retrieved from: <https://europa.eu/globalstrategy/en/shared-vision-common-action-stronger-europe>

Furthermore there are aspects that make the EU unique as an international actor. As an international actor it can only act in case member states have given it the competence or the permission to do so.<sup>17</sup>

The EU being an international actor can cause some problems when it comes to legal issues. This is due to the fact that the EU is neither a state nor an international organisation, such as NATO, and international law does not mention organisations like the EU.<sup>18</sup> The EU seems to give its own position as a global great importance. As Wessel and Van Vooren point out the legislation on external actions is tailored specifically in a way so that the EU can realise its foreign policy coherently.<sup>19</sup>

The research mentioned above mainly focuses on the High Representative, therefore some background is already provided. The research in this thesis would add to the so far known knowledge the insight, if the High Representative is actually a Minister of Foreign Affairs with a different title. One aspect that can and will not be discovered by this research is the question why the High Representative has its special name and what the reasons were for the EU member states when negotiating the treaties. Only speculations are possible. Maybe the negotiating parties were thinking, a Foreign Minister of the Union would be too much in terms of Integration and would imply giving up competences and passing them on to the EU-level.

## 1.2 Research-question:

As described above, playing a more influential role in the global arena is an important aim of the European Union. Taking the European Union, the High Representative can be seen as a kind of Foreign Minister for the 28 member states, although the member states are still sovereign states and foreign policy is not among the exclusive competences of the EU.<sup>20</sup> Still, it could be of interest to compare the High Representative to a Minister of Foreign Affairs. Due to issues of feasibility only one minister from the 28 member states of the EU will be picked. The German Foreign Minister, who is in the English translation officially called 'Federal Minister for Foreign Affairs' (hereinafter called the German Foreign Minister),<sup>21</sup> will be used as object of comparison. Germany, being a federal state, consists of 16 'Bundesländer'. But as foreign affairs are a competence of the federal government, the governments of the 'Bundesländer' do not include Ministers of Foreign Affairs. Therefore the minister is as the High Representative acting as a minister for a number of entities. Although a generalisation of the findings will not be possible, as only one Minister of Foreign Affairs is used for the comparison, there can still be differences in comparison to other countries. Thus, there could be more powers in common between the High Representative and another Minister of Foreign Affairs. Nevertheless, this study is seen to give an overview about one specific situation and suggesting that might be the same in different cases.

Building on that and the explanation of the general problem in the introduction, the overall research-question is as follows:

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17 B. Van Vooren & R. A. Wessel, 'EU External Relations Law. Text, Cases and Materials', Cambridge University Press, Cambridge, 2014

18 *supra* note 17

19 *supra* note 17

20 Art. 3 Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) *Official Journal* [2012] C 326, P. 0001 – 0390, 26/10/2012, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

21 This information is available at: [http://www.auswaertiges-amt.de/EN/AAmt/Leitung/BM-Lebenslauf\\_node.html](http://www.auswaertiges-amt.de/EN/AAmt/Leitung/BM-Lebenslauf_node.html)

*'To what extent can the powers and functions of the European Union's High Representative for Foreign Affairs and Security Policy be compared to the ones of a national Minister for Foreign Affairs?'*

As this research-question is too complex to be answered at once, it will be divided into a couple of sub-questions that together will form the answer to the overall question.

The first important point is to clarify in a conceptualization what foreign policy actually means. This definition ought to be found should ideally include what the European Union says about the policy area. Handbooks of Foreign Policy and other research will be a useful source of information in order to build an own definition on that. It is especially important to understand the different areas of foreign policy. As foreign policy is not exclusively in the hands of the European Union it is also important to see which parts of foreign policy are handled by the EU and which by member states. Therefore the first sub-question, addressed in Section II, is as follows:

Sub-question 1:

*'What is foreign policy?'*

In order to find out to what extent the High Representative's and the German Foreign Minister's powers and functions can be compared, it needs to be known what their respective powers and also functions are. Describing and explaining all the rules and regulations for both actors would be too much for one sub-questions. It will be much clearer to separate these parts from one another into two sub-questions. Therefore the second and third sub-questions, which are addressed in Section III and IV, have to be like this:

Sub-question 2:

*'What are the powers and functions of the High Representative within her institutional setting?'*

Sub-question 3:

*'What are the powers and functions of the German Federal Minister for Foreign Affairs within his institutional setting?'*

These second and third sub-questions are in a legal sense explanatory ones as they explain the law which is valid in the two cases, following a typology published in a book by van Hoecke.<sup>22</sup> However, they are descriptive in a sense as they describe the status quo.

Results of second and third sub-question are compared in a separate fifth section for which no additional sub-question is needed.

In the end the answers to the three sub-questions and the findings of section five together form the answer to the overall research question. That will be addressed in the Conclusion of this thesis.

### 1.3 Methodology:

The following part of this section deals with the methodology which will be used to conduct the research. A theory will be explained as well as an outline of how the actual analysis will look like. Texts and treaties to be used are mentioned as well.

As explained above, the general assumption is that with the amendments of the Treaty of Lisbon to

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22 M. van Hoecke (ed.), 'Methodologies of Legal Research. What Kind of Method for What Kind of Disciplin?' (Oxford: Hart Publishing Ltd, 2011, retrieved from:

[http://www.ius.bg.ac.rs/prof/Materijali/jovmio/DS\\_PrimeriMetodoloskihPristupa/van%20Hoecke%20%28ed.%29.%20Methodologies%20of%20legal%20research%20%20which%20kind%20of%20method%20for%20what%20kind%20of%20discipline.pdf](http://www.ius.bg.ac.rs/prof/Materijali/jovmio/DS_PrimeriMetodoloskihPristupa/van%20Hoecke%20%28ed.%29.%20Methodologies%20of%20legal%20research%20%20which%20kind%20of%20method%20for%20what%20kind%20of%20discipline.pdf)

the Treaty of the European Union and the Treaty on the Functioning of the European Union introduced powers of the High Representative are comparable to the powers of national Ministers of Foreign Affairs. In this case the latter one is the German Federal Minister for Foreign Affairs. Overall the approach of the research is a mixed one as the sub-questions require various directions.

The first sub-question is some kind of separated from the analysis described below, as answering it does not follow a particular approach of legal research, but simply explains the concept of foreign policy and delivers a definition.

Referring to the second and third sub-question of this research concerning the powers described in the legal texts, a comparative approach will be employed as two different legal systems are analysed. Therefore a textual analysis of the respective legal texts will be carried out. Differences and similarities between Germany and the European Union will then also be presented in a table. The powers of the High Representative are laid down in the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and further documents.

For the German Foreign Office the 'Gesetz über den Auswärtigen Dienst' (GAD), Law on Foreign Office, the 'Konsulargesetz' (KonsG), Consular Law, the 'Wiener Übereinkommen über diplomatische Beziehungen' (WÜD) and the 'Wiener Übereinkommen über konsularische Beziehungen' (WKD) are valid.<sup>23</sup> Generally valid for ministers is the law on federal ministers, 'Bundesministertgesetz' (BminG).

All sub-questions will be presented in separate sections of this thesis.

For reasons of simplicity and do-ability a table will be employed to compare the findings on sub-questions 2 and 3 in section 5.

The table that will be used will look like presented in the following:

<b>Power or Function</b>	<b>High Representative</b>	<b>German Foreign Minister</b>
	X	X
	-	X
	X	-
	-	X

Table 1.1: Example

In the left column there will be the powers or functions necessary for carrying out the office of High Representative respectively German Foreign Minister. Powers and functions will be derived from treaties and legislation. They will be generalised for reasons of simplicity. The two other columns will show in how far the two actors comply with these categories. 'X' means that the actor has the power or function, while '-' means that he/she has not.

Categories of powers and functions will be explained in the respective sections of the two actors. A table with the results for the respective actor can be found in the conclusion part of the sections of the High Representative and the German Foreign Minister in order to provide a short overview of the chapter.

The final table in section five provides the basis on which the conclusion can be drawn. In combination with answers to the all sub-questions it forms the answer to the general research question. That will be discussed in the conclusion part.

<sup>23</sup> This information can be found at: [http://www.auswaertiges-amt.de/DE/AAmt/AuswDienst/Aufgaben\\_node.html](http://www.auswaertiges-amt.de/DE/AAmt/AuswDienst/Aufgaben_node.html)

## 2. Section II – What is Foreign Policy?

The following chapter of this thesis deals with the question of what foreign policy is. In order to understand the powers and functions of the two actors, examined later in this paper, it is essential to know about the field of foreign policy beforehand. Therefore not only a simple description will be delivered, but definitions will be reviewed and different perspectives on it will be presented. There will be made use of for example of Policy Handbooks etc.

According to the Encyclopædia Britannica, Foreign Policy consists of 'General objectives that guide the activities and relationships of one state in its interactions with other states'.<sup>24</sup> This is a rather broad definition, but it creates a basis on which further explanations can be build upon. It furthermore cannot be applied to the European Union as the EU is not a state, but a supranational organisation.

As a consequence of that it is important to look at how the European Union itself defines foreign policy.

### 2.1 Foreign Policy in the EU

The EU is often called a system '*sui generis*', a system of it's own kind, by political scientists.<sup>25</sup> Therefore it is to be expected that it has it's own special view on what foreign policy is and what it means in a European Union context.

As mentioned earlier in this thesis foreign policy is not one of the exclusive competences of the EU. Thus, their possibilities in foreign policies are somewhat limited. In general the EU differentiates between CFSP (Common Foreign and Security Policy) and CSDP (Common Security and Defence Policy). Both will be incorporated in this part as they encompass different areas of foreign policy, although there is some military aspect in CSDP.

On its own website the EU is giving a description of what the branch of CFSP includes: It encompasses a broad spectrum of policy areas from diplomacy, conflict solving up to trade policy and development aid.<sup>26</sup> Together with its neighbouring countries the European Union is working in a specially developed programme, called European Neighbourhood Policy (ENP). The EU is seeking for closer connections in terms of economy, mobility of people and associating these neighbouring third countries.<sup>27</sup>

CFSP decisions are taken by the Council with unanimity of the member states. This can be seen as a factor limiting the agenda-setting power of the High Representative, as she is delivering proposals for decisions beforehand. Researchers like Vanhoonacker and Pomorska see it this way.<sup>28</sup> When decisions in the area of CFSP are made, they are executed by the High Representative and the member states, while the Union is setting the guidelines for CFSP, as Article 24 (1) and Article 25 TEU provide.<sup>29</sup>

Scholars argue that the broad formulation in the treaty about what CFSP includes makes it difficult

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24 'Foreign Policy', *Encyclopædia Britannica Online*, this information is available at: <http://www.britannica.com/topic/foreign-policy>, retrieved on May 20, 2016

25 B. Zandronella, 'Pocket Europa. EU-Begriffe und Länderdaten', Bonn: Bundeszentrale für politische Bildung, 2005 (updated 2009), This information is available at: <http://www.bpb.de/nachschlagen/lexika/pocket-europa/16938/sui-generis>

26 This information can be found at: [http://europa.eu/pol/cfsp/index\\_en.htm](http://europa.eu/pol/cfsp/index_en.htm)

27 supra note 26

28 supra note 8

29 Art. 24 (1) TEU & Art. 25 TEU, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal*, [2016], Vol. 59, C202/01, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:202:FULL&from=EN>

to say whether some policy is part of CFSP.<sup>30</sup>

CSDP is the second part of the European Union's foreign policy. Before the amendments to the treaties with the Treaty of Lisbon, it has been a competence of the so called Western European Union and was called European Security and Defence Policy (ESDP). Now, being part of the European Union's foreign policy instruments it includes several different measures and instruments both civil and military. Crisis Management as part of CSDP includes training missions for police and administration of foreign countries, with which the EU is aiming to construct or reconstruct the rule of law.<sup>31</sup> Therefore not only police is employed, but also experts from the judicial and administrative system in Europe. In order to develop a common security and defence policy a number of different committees review what is happening on the world's stage and provide ideas how to solve conflicts and crises. The Political and Security Committee (PSC) does all that and delivers information to the Council of the EU.<sup>32</sup> Civil and military bodies counsel the PSC on their perspective on crisis management situations.<sup>33</sup>

According to the Foreign Affairs Council (FAC), the amendments of the Lisbon Treaty offered the possibility to promote interaction and co-action of the different foreign policy instruments of the EU. The FAC was furthermore willing to enhance the civil part in CSDP missions.<sup>34</sup> For this civil part, but also for the military one, experts from the member states are needed. Duke argues that this so called 'seconded personnel' is the resource CSDP is dependent on.<sup>35</sup>

Thus, in the end the member states of the EU decide on how they contribute to security and defence policy, what possibly has an effect on the success of that policy.

## 2.2 The Theorists' Views

Following the explanation of what foreign policy means in general and in specific situations, one also has to take a look on the more theoretical side of the coin. In the academic discourse different theories of foreign policy are existing.

Gideon Rose, reviewing theories of foreign policy, lists four schools under which different theories can be grouped. One of these schools is named '*Innenpolitik*' by Rose and is according to him the most common approach.<sup>36</sup> If foreign policy is organised according to this school, it would depend on the influences from within the state, for example the status of the state's economy or the ideas of the people in power.<sup>37</sup> What has been found as not being explained by theorists of this school is that there is no explanation why sometimes the actions of countries are different even if they have the same preconditions.<sup>38</sup> If foreign policy would work according to the theories of '*Innenpolitik*', the development policy of the European Union would be based on the ideologies of the majority European governments in this respect.

Additional schools are '*Offensive Realism*' and '*Defensive Realism*'. '*Offensive realism*' argues that

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30 Supra note 17

31 This information can be found at: [http://www.eeas.europa.eu/csdp/civilian-crisis-management/index\\_en.htm](http://www.eeas.europa.eu/csdp/civilian-crisis-management/index_en.htm)

32 This information can be found at: [http://www.eeas.europa.eu/csdp/structures-instruments-agencies/index\\_en.htm](http://www.eeas.europa.eu/csdp/structures-instruments-agencies/index_en.htm)

33 supra note 32

34 Council Conclusions on Civilian CSDP Capabilities, 3078<sup>th</sup> FOREIGN AFFAIRS Council meeting, Brussels, 21/03/2011, retrieved from: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/esdp/120058.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/esdp/120058.pdf)

35 S. Duke, 'The EU, NATO and the Treaty of Lisbon: Still Divided Within a Common City?' in P.J: Cardwell (ed.) *EU External Relations Law and Policy in the Post-Lisbon Era* (The Hague: T.M.C. Asser Press 2012), pp. 335-355, DOI 10.1007/978-90-6704-823-1\_7, retrieved from: [http://link.springer.com/chapter/10.1007/978-90-6704-823-1\\_16](http://link.springer.com/chapter/10.1007/978-90-6704-823-1_16)

36 G. Rose, 'Review: Neoclassical Realism and Theories of Foreign Policy', in *World Politics*, Vol. 51, No.1 (Oct., 1998), pp. 144-172, retrieved from: [http://disciplinas.stoa.usp.br/pluginfile.php/326196/mod\\_resource/content/1/Rose\\_Neoclassical%20realism%20and%20theories%20of%20foreign%20policy.pdf](http://disciplinas.stoa.usp.br/pluginfile.php/326196/mod_resource/content/1/Rose_Neoclassical%20realism%20and%20theories%20of%20foreign%20policy.pdf)

37 supra note 36

38 supra note 36

the world is in a state of anarchy. All countries' aim would be to achieve security by gaining a so called '*relative advantage*' over the other states.<sup>39</sup> This would be done by weakening potential opponents.<sup>40</sup> John J. Mearsheimer, one of the best known theorists of this school, explains the (almost) absence of war and military conflicts in Europe in the period between 1945 and 1990 using this theory. He argues that a situation of bipolarity, military equality and the presence of nuclear weapons has caused the peace as no party would have had the possibility to gain relative advantages over the other.<sup>41</sup>

'*Defensive Realism*' sees a state's foreign policy be driven by the responses to rare external threats in a world in which security for the specific state is mostly present.<sup>42</sup> This theory is based on the works and theories of Kenneth Waltz.

The fourth school mentioned by Rose in his review on theories of foreign policy is '*Neoclassical Realism*'. Like the other realist schools, neoclassical theories see anarchy as the given system. The states respond to anarchy by trying to control the other states' actions, respectively the anarchy.<sup>43</sup> The theory furthermore argues that this control can then be achieved with the help of power resources. But it does not really become clear how these power resources can be exploited. Limitations for the actions of a state occur according to the theory from the inside as well as from the outside.<sup>44</sup>

Nevertheless one can draw for Neoclassical Realism the conclusion that politicians in terms of foreign policy will not seek diplomacy. Foreign policy would rather look like a status of all countries furtively watching each other and trying to obtain some power resources. Additionally there would always be the possibility that for example economic limitations from the inside would constrain the actions in terms of foreign policy. That aspect of the theory seems to relate very much to the ideas of the school of '*Innenpolitik*'.

These theories develop an understanding of the reasons why foreign policy decisions are made in a specific way. The theories are of course not always in accordance with reality and one cannot say that one or the other is explicitly right or wrong.

## 2.3 Foreign Policy in Nation States

The following sub-paragraph deals with the issue of foreign policy in nation states. Especially Germany, but other member states of the European Union as well, will be in the focus. There will be a short description on who actually makes foreign policy and the roles ministries and diplomatic services do play.

Foreign Ministries or Ministries of Foreign Affairs are the entities in which foreign policy is made. Their head is usually called 'Foreign Minister' or 'Minister of Foreign Affairs'.

Nowadays most countries have a Foreign Ministry as part of their governments, often connected with the countries' diplomatic service.

In his article '*Ministries of Foreign Affairs*' Brian Hocking argues that the definition of making foreign policy and organising the external relations of a country is not enough anymore to describe the tasks of a Foreign Ministry. He says that there have been changes in recent years and decades due to the influence of the EU on its member states' foreign policy and a 'growing complexity' in policies relating to the international scope.<sup>45</sup> This might be due to interdependencies between

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39 supra note 36

40 J. J. Mearsheimer, 'Back to the Future: Instability in Europe after the Cold War', in *International Security*, Vol. 15, No.1 (Summer 1990), pp. 5-56 (The MIT Press), retrieved from: <http://www.jstor.org.ezproxy2.utwente.nl/stable/2538981>

41 supra note 40

42 supra note 36

43 supra note 36

44 supra note 36

45 B. Hocking: 'Ministries of Foreign Affairs', in K. E. Jorgensen, A. Kalland Aarstad, E. Drieskens, K. Laatikainen, B.

the EU member states and the influence of globalization on policy areas. But there are further reasons for a possible decline in the position of a Minister for Foreign Affairs. Another scholar sees an increasing number of summits at which the heads of governments meet and discuss foreign policy issues as a reason for a decline.<sup>46</sup> Thus, the heads of governments are depriving the power of negotiation from the Foreign Minister and executing it themselves.

The head of the Foreign Ministry, the Foreign Minister, is according to an analysis by George Modelski a member of an international elite.<sup>47</sup> All the ministers together form such an elite. However, his analysis is rather old (1970) and it is not clear if this still holds true in times of a change in the definition of the tasks of a foreign ministry, Hocking describes in his article.

Three different guidelines for foreign policy that are still valid today can be derived from the German constitution, 'Grundgesetz', as Stefan Bierling points out. At first it has to be the aim of German foreign policy to preserve peace and to not start wars.<sup>48</sup> Secondly Germany shall integrate itself and be active in the international system, for example by engaging in the UN and especially on EU-level.<sup>49</sup> As the third guideline Bierling names the commitment to respect and work on the realisation of human rights inside and outside the country.<sup>50</sup> However, it is the government's responsibility to decide on how to achieve the goal and to decide on what these principles mean.<sup>51</sup> This can be seen as a weak factor, especially when it comes to cooperation with other countries which maybe have a different, more strict or less strict, view on human rights. On the other hand it can be seen as a positive factor as the government has still the possibility to develop it's own ideas on how to tackle special issues. Even if the government can decide itself on how to deal with the provisions, the commitment to respect human rights can be seen as a positive factor as it can limit a potential danger that a government of Germany would act against human rights.

The actual responsibilities of the German Ministry of Foreign Affairs, the Foreign Office, are put together by Eberlei and Weller into different categories. These are bilateral diplomatic tasks, multilateral diplomacy in international organisations, peace and security policy, direct operations like humanitarian aid, consular service and the coordination of the international activities of the other ministries.<sup>52</sup> A detailed explanation of tasks and responsibilities of the Foreign Office and the German Foreign Minister can be found in section four of this thesis.

## 2.4 Conclusion

Foreign Policy encompasses a number of different aspects. It is on the one hand the actions states and supranational organisations, such as the EU, do in order to maintain relationships with other countries or organizations. EU foreign policy in terms of CFSP and CSDP differs from the foreign policy of nation states. While in CFSP and CSDP aspects like trade or military missions are

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Tonra [ed.]: 'The SAGE Handbook of European Foreign Policy', (SAGE Publications Ltd., 2015), retrieved from: <https://books.google.nl/booksid=4fiICwAAQBAJ&pg=PA331&lpg=PA331&focus=viewport&dq=foreign+policy+hand+book&lr=>

46 S. Bierling: 'Die Außenpolitik der Bundesrepublik Deutschland: Normen, Akteure, Entscheidungen', 2nd edition, Walter de Gruyter GmbH & Co KG, 2005, retrieved from: [https://books.google.de/books?hl=en&lr=&id=eYO\\_28jzFeUC&oi=fnd&pg=PA1&dq=aufgaben+au%C3%9Fenminister+deutschland&ots=ACm7T3efgh&sig=IISsvdvHqRkj6nW3DnXISOHNaQ0#v=onepage&q=au%C3%9Fenminister%20deutschland&f=false](https://books.google.de/books?hl=en&lr=&id=eYO_28jzFeUC&oi=fnd&pg=PA1&dq=aufgaben+au%C3%9Fenminister+deutschland&ots=ACm7T3efgh&sig=IISsvdvHqRkj6nW3DnXISOHNaQ0#v=onepage&q=au%C3%9Fenminister%20deutschland&f=false)

47 G. Modelski, 'The World's Foreign Ministers: A Political Elite', Vol. 14, No. 2 (Jun. 1970), pp. 135-175 (Sage Publications Inc.) retrieved from: <http://www.jstor.org.ezproxy2.utwente.nl/stable/173261>

48 supra note 46

49 supra note 46

50 supra note 46

51 supra note 46

52 W. Eberlei & C. Weller: 'INEF REPORT. Deutsche Ministerien als Akteure von Global Governance. Eine Bestandsaufnahme der auswärtigen Beziehungen der Bundesministerien', Heft 51/2001, Gerhard-Mercator-Universität Duisburg, 2001, retrieved from: <http://edoc.vifapol.de/opus/volltexte/2013/4555/pdf/report51.pdf>

included, those are often part of other ministries than the Ministry of Foreign Affairs on the national level. These are Ministry of Economy respectively Ministry of Defence. Foreign Policy does not follow always one particular theory, but the theories sometimes seem to hold true.

There are differences between foreign policy on EU level and on nation-state level what leads to the assumption that there are also differences between the High Representative and the German Foreign Minister in terms of their powers and functions.

### 3. Section III – The Powers of the High Representative

The following section deals with the powers and functions of the High Representative, also taking into account her duties and responsibilities which stem from the respective treaties. But further documents will be included in this descriptive chapter as well. Therefore there is a division into sub-sections, each focussing on different aspects, which are the legal provisions of the Treaty on the European Union (TEU), with the Treaty on the Functioning of the European Union (TFEU) and finally with documents outside the treaties.

#### 3.1 The Powers according to the TEU

The different areas in which the High Representative shall work are mentioned in Article 18 of the TEU. Some researchers refer to her top-positions as 'double-hatting' as they say she had two of them. But Jean-Claude Piris analysed correctly that she in fact has three of them to which he refers as triple-hatting, now united in one person.<sup>53</sup> She is head of the EEAS, a high-ranking member of the Commission (Vice-President) and also head of the Foreign Affairs Council. Brian Cowe, back in 2005, when the post that is now the High Representative was planned as a EU Minister for Foreign Affairs, referred to a triple hatting accountability to the Commission, the Foreign Affairs Council and the President of the European Council.<sup>54</sup> Due to that he saw the risk of what he called 'institutional schizophrenia' because of being accountable to different institutions with presumably differentiating opinions.

As a member of the European Commission, the High Representative can be seen as a member of a quasi-cabinet. Although the Commission is not itself a government, it shares some powers with national governments such as the power to initiate legislation. Being a member of a cabinet can be seen as an important factor for a Minister for Foreign Affairs. Only in such a way he or she can influence the policies of the government and without being a member he/she would not be a minister. Therefore 'In some way member of a cabinet' will be the first category for analysis.

But the High Representative is not only an ordinary member of the Commission, she is its Vice-President and therefore Deputy Head of the Commission. Being in some way a Deputy head of a government is not a special characteristic of a Minister for Foreign Affairs, but it can serve as a category for the comparison between the two posts.

On the different tasks of the High Representative will be elaborated in the following.

Concerning foreign policy, she is responsible for carrying out CFSP and CSDP, which is determined by the the Council and the Commission (Art. 24).<sup>55</sup> Therefore she needs to rely on the mandate of the Council. Article 18 (2) is setting out these rules.<sup>56</sup> Implementing the CFSP, the High Representative is allowed to make use of the resources of the member states of the European Union (Art. 26 (3)).<sup>57</sup> In terms of the CFSP, she is also acting as a representative and negotiates with third countries or organisations on these topics (Art 27(2)).<sup>58</sup> This regulation in Article 27 (2) is somewhat contradicting other articles in which it says that also the President of the European Council has a certain role to play in representation. Thus, there is a bit of an unclarity which is not resolved to the full extent in the treaties.

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53 J-C Piris, 'The Lisbon Treaty: a legal and political analysis', Cambridge University Press, Cambridge, 2010, retrieved from: <https://books.google.de/books?hl=en&lr=&id=X-wgAwAAQBAJ&oi=fnd&pg=PR14&dq=Piris,+J-C:+The+Lisbon+Treaty:+a+legal+and+political+analysis&ots=rOa7mKgdF8&sig=kBTvVPwiyS20Ss-YFoCE8JhLhks#v=onepage&q=triple&f=false>

54 B. Cowe, 'Foreign Minister of Europe', The Foreign Policy Centre, London, 2005, retrieved from: [http://kms1.isn.ethz.ch/serviceengine/Files/ISN/23670/ipublicationdocument\\_singledocument/039270B2-9B5A-427E-872C-D8E10C3D06F8/en/Foreign\\_Ministers\\_Europe.pdf](http://kms1.isn.ethz.ch/serviceengine/Files/ISN/23670/ipublicationdocument_singledocument/039270B2-9B5A-427E-872C-D8E10C3D06F8/en/Foreign_Ministers_Europe.pdf)

55 Art. 24 TEU, supra note 29

56 Art. 18 (2) TEU, supra note 29

57 Art. 26 (3) TEU, supra note 29

58 Art. 27 (2) TEU, supra note 29

For her work inside the Commission, Article 18 (4) of the TEU is laying out what has to be done.<sup>59</sup> It for example gives her the power to execute external relations within the responsibilities the Commission has in this field. In her role she is responsible for consistency in European External Actions, while Article 21 (3) mentions that in order to ensure consistency, the High Representative has to cooperate with the Council and the Commission.<sup>60</sup> For her job of ensuring consistency between the different policies, permanent contact with the rest of the Commission and the Council is essential. This one of the High Representative's tasks is seen as extremely important. In their article on the European External Action Service, Blockmans and Laatsit even call her '*the big coordinator of the EU external policy*'.<sup>61</sup> That suggests that she is the most important European actor in external policies, although there is some amount of dependence on the other actors. Only in carrying out her work in the Commission, as mentioned in Article 18 (4), she is bound to the regulations valid for the actions of the Commission. What the High Representative is responsible for inside the Commission are its external abilities.<sup>62</sup>

Being head of the EEAS, the High Representative receives assistance from the diplomatic services of member states and also from staff of the Council and the Commission (Art. 27 (3)).<sup>63</sup>

According to Vanhoonacker and Pomorska in the EU as a complex arena staff with knowledge on how such institutions work and skills in terms of negotiations are helpful.<sup>64</sup> The High Representative has such staff with her EEAS. She can use that on the EU level and also for negotiations on the world's stage. But the German Foreign Minister has also staff supporting him with his ministry, the Foreign Office.

Although there are numerous partly conflicting institutions and the EU is a supra-national building, it can be assumed that the Foreign Office and the Minister also act in such a complex arena like the EEAS does. Both namely act on the world's stage.

Being head of the EEAS, the High Representative is in some way also head of a diplomatic service, essential for a Minister for Foreign Affairs in terms of staying in contact with other countries and maintaining good relationships. Thus, she partly fulfils the category 'Head of a diplomatic service'.

The High Representative is next to her other jobs also the head of the Foreign Affairs Council (FAC).<sup>65</sup> Meetings take place on a regular basis every month. All the Ministers for Foreign Affairs discuss together with the High Representative the issues of Foreign Policy on the EU level. As the EU says, the aim is to make sure that external actions are effective and consistent.<sup>66</sup> In addition the FAC is working on the common commercial policy and transforms the decisions of the Council on CFSP into political action.<sup>67</sup> Here common approaches are discussed and coordinated by the High Representative and the ministers of the member states, as mentioned in Article 32 of the TEU.<sup>68</sup> Thomas E. Henökl reviews the High Representative's position inside the FAC as the one of a '*primus inter pares*'.<sup>69</sup> That means that she is the first among equal actors. In principle all ministers and the High Representative in the FAC have the same rights. But among them the High Representative is somehow outstanding, maybe due to her function as the head of the FAC.

As the FAC is a meeting point and arena of discussion and decision-making for the Ministers for Foreign Affairs of the EU's member states, it can be considered as important that the High

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59 Art. 18 (4) TEU, supra note 29

60 Art. 21 (3) TEU, supra note 29

61 S. Blockmans and M-L Laatsit, 'The European External Action Service: Enhancing Coherence in EU External Action?' in P:J: Cardwell (ed.) *EU External Relations Law and Policy in the Post-Lisbon Era* (The Hague: T.M.C. Asser Press 2012), pp. 135-159, DOI 10.1007/978-90-6704-823-1\_7, retrieved from: [http://link.springer.com/chapter/10.1007%2F978-90-6704-823-1\\_7](http://link.springer.com/chapter/10.1007%2F978-90-6704-823-1_7)

62 Art. 18 (4) TEU, supra note 29

63 Art. 27 (3) TEU, supra note 29

64 supra note 8

65 Information retrieved from: <http://www.consilium.europa.eu/en/council-eu/configurations/fac/>

66 supra note 65

67 supra note 65

68 Art. 32 TEU, supra note 29

69 T.E. Henökl, 'How do EU Foreign Policy-Makers Decide? Institutional Orientations within the European External Action Service', in *West European Politics*, 38:3 (2015), pp. 679-708, DOI: 10.1080/01402382.2014.1000652, retrieved from: <http://www.tandfonline.com/doi/abs/10.1080/01402382.2014.1000652>

Representative is also a member. Therefore 'Member of the FAC' is a category for comparison. The High Representative is furthermore a member of the Commission. This and her rank as a Vice-President of the Commission is fixed in Article 17 (4) of the TEU.<sup>70</sup> It is one of her top positions and offers the possibility to be informed about all the policy areas, but also work as connection between the Council and her other offices.

From her title one could think that the High Representative is the European Union's sole representative to third countries when it comes to foreign policy and especially their European form as CFSP and CSDP. However, she is not alone. Article 15 (6) of the TEU gives the main power in external representation in terms of CFSP to the President of the European Council.<sup>71</sup> Thus, there is a share in powers and the High Representative is only taking one part in that. But most important is that the President of the Council has representational powers concerning CFSP '*without prejudice to the powers of the High Representative [...]*'.<sup>72</sup> The problem that there is no clear definition of which representational powers who of the two actors has, has already been described. Christine Kaddous draws in her article the conclusion that in order to achieve consistency and coherence in external actions, too many actors are involved.<sup>73</sup> As she notes there is a third actor in external relations which is the European Commission. Nevertheless Article 17 (1) of the TEU excludes the field of CFSP from these powers.<sup>74</sup> Furthermore the High Representative, being a member of the Commission, is involved in its part of executing external actions.

Being a representative abroad can be considered as an important task of a Foreign Minister, taking into consideration that he/she is normally also the head of a diplomatic service there is a further category for the later comparison. This is 'Representative for Foreign Policy abroad'. As explained above the High Representative is only one of the actors who do this representation, although she represents the EU in international organisations and in dialogue with third countries. Even when considering the restrictions through the involvement of other actors, some scholars say that the High Representative is the most important actor in the EU's foreign policy.<sup>75</sup>

In terms of CFSP, the High Representative is allowed to deliver proposals to the Council (Art. 22 (2)).<sup>76</sup> With the help of these proposals she should according Article 27 (1) make a contribution to the development of the Common Foreign and Security Policy.<sup>77</sup> The Council decides on these proposals by qualified majority.

The High Representative again comes into play when a member state rejects the proposal because of vital interests of the state. Then according to Article 31 (2), she is allowed to negotiate with that particular member state in order to find a solution.<sup>78</sup>

Delivering such proposals, the High Representative is seen as a policy entrepreneur by Vanhoonacker and Pomorska.<sup>79</sup> The introduction of the power to deliver proposals, introduced with the Lisbon amendments to the EU-treaties, are seen by these authors as a strengthening of the High Representative. They say that she can therefore be partly seen as an autonomous player.<sup>80</sup> Nevertheless the High Representative does not seem to be fully autonomous as policy proposals have to be made in cooperation with either the member states or the EU Commission.

As delivering proposals on CFSP, and therefore playing an active role in foreign policy, is essential for a Minister for Foreign Affairs, this aspect is important for the later comparison. The category will be called: 'Delivering in proposals on Foreign Policy'.

Furthermore she shall ensure that the principles of loyalty to the foreign policy of the European Union are accepted and satisfied (Art. 24 (3)).<sup>81</sup> In case that all countries speak so to say with one

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70 Art. 17 (4) TEU, supra note 29

71 Art. 15 (6) TEU, supra note 29

72 Art. 15 (6) TEU, supra note 29

73 supra note 7

74 Art. 17 (1) TEU, supra note 29

75 supra note 17

76 Art. 22 (2) TEU, supra note 29

77 Art. 27 (1) TEU, supra note 29

78 Art. 31 (2) TEU, supra note 29

79 supra note 8

80 supra note 8

81 Art. 24 (3) TEU, supra note 29

voice, the credibility and external image can be increased and improved. Article 34 (1) of the TEU can be seen in relation to the former one. It adds to observing the loyalty the permission to coordinate the common opinion and appearance of the member states in international organisations and at conferences.<sup>82</sup>

Carrying out her policies the High Representative is committed to regularly meet with the European Parliament and its members in order to take into account their views (Art. 36 TEU). There are also regular debates on the process of CFSP and CSDP.<sup>83</sup>

When it comes to decision-making, the High Representative is allowed to call for a meeting of the European Council within 48 hours. As Article 30 of the TEU says this holds true when a decision has to be made quickly.

In terms of crisis management the High Representative also plays an important role. She has the responsibility for the actions the EU takes in such a situation. Therefore she is a member of the Political and Security Committee (Art. 38 TEU).<sup>84</sup> According to Article 43 such a situation of crisis management exists and the Committee begins to work when the Council has decided so (Art. 43).<sup>85</sup>

Next to CFSP, the High Representative also has powers concerning the CSDP. As Article 42 TEU provides, she is allowed put forward proposals on CSDP missions abroad to the Council.<sup>86</sup> In case that such missions are applied the High Representative is responsible for the military and civic coordination as provided in Article 43 TEU.

Not focusing directly on the High Representative's powers in terms of external relations there are some rather common provisions in the treaties. As the High Representative is also a member of the Commission, holding the rank of a Commissioner, she is according to Article 17 (3) of the TEU allowed to act independently without interference from any government.<sup>87</sup> Therefore she is responsible for her actions and what is done within her portfolio. A characteristic, which normally applies to ministers. Thus, 'Responsible for own Portfolio' will serve as a category for comparison.

There are also provisions about the way the High Representative comes into office. Generally speaking the High Representative is appointed and can also be dismissed by the European Council acting together with the President of the Commission, as noted in Article 18 of the TEU.<sup>88</sup>

Although the High Representative is not only member of the Commission, she is treated in the legislation just as a part of the body of the Commission. Article 17 (7) of the TEU notes that the whole Commission as an entity has to be passed by the European Parliament.<sup>89</sup> As Article 17 (8) says, the whole Commission has to resign when a so called 'motion of censure' is passed by the Parliament.<sup>90</sup> The High Representative is partly an exception of that. She only has to resign from her office inside the Commission. She is still allowed to carry out her other tasks.

## 3.2 The Powers according to the TFEU

The following sub-section deals with the legislation related to the powers of the High Representative that can be found in the Treaty on the Functioning of the European Union, TFEU. While the legal provisions laid down in the articles of the TEU are quite specific and extensive about the High Representative, there is less information provided by the TFEU.

Concerning negotiations Article 218 (3) provides the possibility for the High Representative to give

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82 Art. 34 (1) TEU, supra note 29

83 Art. 36 TEU, supra note 29

84 Art. 38 TEU, supra note 29

85 Art. 43 TEU, supra note 29

86 Art. 42 TEU, supra note 29

87 Art. 17 (3) TEU, supra note 29

88 Art. 18 TEU, supra note 29

89 Art. 17 (7) TEU, supra note 29

90 Art. 17 (8) TEU, supra note 29

a recommendation to the Council.<sup>91</sup> This does not sound like it was much but the opinion of the High Representative is maybe not an opinion without any weight or influence.

As in other fields mentioned above in the first sub-section, the High Representative is committed to regularly inform the European Parliament on enhanced cooperation as stated in Article 328 (2) TFEU.<sup>92</sup> She has additionally the possibility to check whether a policy of enhanced cooperation, a member state is willing to implement is consistent with other policies of the EU and deliver an opinion on that to the Council (Art. 329 (2)).<sup>93</sup>

But there is also something about responsibilities of the High Representative in external relations. Article 220 TFEU commits her to set up good relations with international organisations such as the UN or the OECD.<sup>94</sup> She is therefore responsible for contact with international organisations and is furthermore the EU's representing the EU there. That aspect being a part of external relations can be a category for the comparison with the German Foreign Minister. This category, named 'Responsible for relations with International Organisations', is fulfilled by the High Representative.

As the head of the European External Action Service the High Representative is the authority for the Union delegations (Art. 221 (2)).<sup>95</sup> These delegations are not really embassies but some sort of as Wessel and Kerres note in their article.<sup>96</sup>

### 3.3 Powers and Functions outside the treaties

There are some powers and functions of the High Representative which are not explicitly mentioned in the treaties. Nevertheless, they are of importance as they are maybe to some extent different or the same compared to those of the German Foreign Minister.

In terms of CSDP, the European Union's Common Security and Defence Policy, she is the head of the so-called 'Politico-Military Group' (PMG). This is principally a body discussing military and partly military aspects of CSDP from a political point of view and supporting the Political and Security Committee (PSC).<sup>97</sup> Furthermore it has a certain influence on the European Union's relation towards other states and organisations.<sup>98</sup>

A part of the European External Action Service, which the High Representative is heading, deals with military matters. The European Union Military Staff (EUMS) offers advice on military aspects of the CSDP and is coordinating the military CSDP operations.<sup>99</sup> She, as the head of the EEAS and therefore of the EUMS, is involved in the coordination of the military missions under CSDP. The High Representative has with that some military influence on the European Union's foreign policy. But of course this influence is limited to a certain level as the military of the member states is still under their control and the European Union can not decide on its own how to deploy forces.

But nevertheless 'Coordinating Military Missions (through agency)' can serve as a category for the comparison in the end. It is of course not a classical task of a Minister for Foreign Affairs and points out the differences between the High Representative and the German Foreign Minister, who is not coordinating military missions.

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91 Art. 218 (3) TFEU, Consolidated Version of the Treaty on the Functioning of the European Union, *Official Journal*, [2012], C326/47, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

92 Art. 328 (2) TFEU, supra note 91

93 Art. 329 (2) TFEU, supra note 91

94 Art. 220 TFEU, supra note 91

95 Art. 221 (2) TFEU, supra note 91

96 supra note 12

97 This information can be found at: [http://www.eeas.europa.eu/csdp/structures-instruments-agencies/index\\_en.htm](http://www.eeas.europa.eu/csdp/structures-instruments-agencies/index_en.htm)

98 supra note 97

99 supra note 97

### 3.4 Conclusion

The two treaties TEU and TFEU provide different provisions on the powers of the High Representative. While a lot of possible activities of her are described in the first one, the latter is rather less extensive. However, it also gives information on how the salary is determined or similar information which do not play a role in this analysis.

The following table shows the categories that will be used for the comparison in section five and how the High Representative scores in these.

<b>Power or Function</b>	<b>High Representative</b>
Representative for Foreign Policy abroad	(X)
Conducting bilateral relations	?
In some way member of a cabinet	X
Responsible for own Portfolio	X
In some way Deputy in the Government	X
Head of a diplomatic service	(X)
Member of the Foreign Affairs Council (FAC)	X
Involved in Negotiations of International Treaties	(X)
Responsible for relations with International Organisations	X
Delivering in proposals on Foreign Policy	X
Chosen by the Head of Government	-
Chosen by some kind of regional governments and the Head of Government	X
Has to be in line with government's positions	(X)
Officially signs international treaties	-
Coordinating Military Missions (through agency)	X

Table 3.1: Powers and Functions of the High Representative

On the first view the High Representative has some powers also classic Ministers of Foreign Affairs have. For example she is representing the EU in international organisations or representing its foreign policy abroad. Still she has to compete with a couple of other actors who are also involved in EU foreign policy, what could make her actions more difficult. Additionally it does not really become clear if she is the only actor responsible for bilateral relations. Due to that it is likely that there are some differences in contrast to a normal minister, which will be clarified in a comparison with the German Foreign Minister. It will be elaborated on that in the following section.

## 4. Section IV – The Powers of a Minister for Foreign Affairs

### 4.1 An Introduction to the German Foreign Minister

The following section deals again with a mostly descriptive issue, the powers and duties of a Minister of Foreign Affairs. As explained above, the focus in this part of the research lies on the German Foreign Minister.

Before explaining the legal provisions, some general information about the office and the people who held the position should be given. The office of the German Federal Minister for Foreign Affairs was established in 1951, when some powers concerning foreign policy were given to the Federal Republic by the allies.<sup>100</sup>

As described above, foreign policy is a competence of the federal level of government and not of the 16 German 'Bundesländer'. Among the ministries of each 'Bundesland' there is none in charge of foreign affairs.<sup>101</sup> Instead of Ministries of Foreign Affairs, there are departments responsible for federal affairs, thus regulating the relations of the 'Bundesland's' government with the federal government. A 'Bundesland's' only representation outside Germany is normally a Representative Office to the European Union. North Rhine-Westphalia for example wants to achieve with its representation that the regions of Europe get more influence.<sup>102</sup> But such representations are not genuine for the German regions. An article on 'EurActiv.com' states that this is a rather common for the member states' regions.<sup>103</sup> Therefore it can be disregarded for this research.

In today's Germany the Foreign Minister is usually highly respected in the population, maybe thanks to the popularity of the office. Incumbent Minister Frank-Walter Steinmeier is according to a recent poll of the 'ZDF Politbarometer' on second position in a ranking of the most popular politicians. In this poll conducted by the institute 'Forschungsgruppe Wahlen' for the public broadcaster ZDF, Steinmeier is, on a scale from -5 to +5, rated with a 2.0.<sup>104</sup>

A very exception from the rule that politicians become very popular in the office, such as Hans-Dietrich Genscher or Joschka Fischer, is Guido Westerwelle. In his term from 2009-2013 he and his liberal party suffered from an immense loss in support. Zacharias Zacharakis analysed on 'ZEIT Online' that a Minister for Foreign Affairs especially needs both trustworthiness and credibility.<sup>105</sup> Therefrom one can draw the conclusion that Westerwelle seems to be lacking at least one of the factors in contrast to Steinmeier.

As Federal Governments in Germany are governments of coalitions, the position of the Foreign Minister has often been given to the smaller coalition party. In fact it was the case ever since the first grand coalition in 1966.<sup>106</sup> In addition to that the Foreign Minister often also was Vice-Chancellor. That position is in German Basic Law referred to as the '*Stellvertreter des Bundeskanzlers*', the Deputy of the Federal Chancellor. Vice Chancellor is an in-official term, which is nevertheless often used. In Art. 69 of the Basic Law it says that the Deputy of the Federal Chancellor has to be a cabinet minister and is nominated by the Federal Chancellor to deputise

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100 K. Schubert & M. Klein: 'Das Politiklexikon', 6th updated and extended edition, (Bonn: Dietz 2016), Lizenzausgabe Bonn: Bundeszentrale für politische Bildung, retrieved from: <http://www.bpb.de/nachschlagen/lexika/politiklexikon/17130/auswaertiges-amt-aa>

101 See for example 'Bundesland' North Rhine-Westphalia's website 'WIR IN NRW. Das Landesportal': <https://www.land.nrw/en/departments-and-representative-offices>

102 Information retrieved from: <https://www.land.nrw/en/departments-and-representative-offices>

103 EurActiv.com, 'The evolving role of regional representations in Brussels' at EurActiv.com, 25/02/2008, retrieved from: <http://www.euractiv.com/section/public-affairs/opinion/the-evolving-role-of-regional-representations-in-brussels/>

104 Information retrieved from Politbarometer of 03/06/2016: <http://www.heute.de/grosse-mehrheit-fuer-verbleib-grossbritanniens-in-der-eu-deutschland-wird-europameister-das-glauben-39-prozent-43784108.html>

105 Z. Zacharakis, 'Außenminister: Das Steinmeier-Miraculum' at ZEIT ONLINE, 07/02/2014, retrieved from: <http://www.zeit.de/politik/deutschland/2014-02/frank-walter-steinmeier-angela-merkel-beliebtheit-guido-westerwelle>

106 This information can be found at: [https://de.wikipedia.org/wiki/Liste\\_der\\_deutschen\\_Außenminister](https://de.wikipedia.org/wiki/Liste_der_deutschen_Außenminister)

him or her on several occasions.<sup>107</sup> Incumbent Foreign Minister Steinmeier is not the vice-chancellor. This means that the category 'In some way Deputy of a Government' can apply to the German Foreign Minister, but does not necessarily do so. It does not in their current situation when writing this thesis.

For the German Foreign Minister a number of different laws are valid. At first there is Germany's constitution 'Grundgesetz', Basic Law, established in 1949. Next to that the 'Gesetz über den Auswärtigen Dienst' (GAD), Law on Foreign Service, the 'Wiener Übereinkommen über diplomatische Beziehungen' (WÜD) and the 'Wiener Übereinkommen über konsularische Beziehungen' (WKD) are valid and regulating the work of the minister and his staff. Generally valid for ministers is the law on federal ministers, 'Bundesministergesetz' (BminG). Next to these there are special regulations. These include 'Gemeinsame Geschäftsordnung der Bundesministerien' (GGO), Joint Rules of Procedure of the Federal Ministries, and the 'Geschäftsordnung der Bundesregierung' (GOBReg), Rules of Procedure of the Federal Government. The 'Konsulargesetz' (KonsG), Consular Law, however regulates the work in embassies and other representations abroad and of the employees working there.

## 4.2 The Basic Law and the Law on Foreign Service

The German Foreign Minister is a member of the cabinet and being that he has the same voting power there as the other ministers.<sup>108</sup> Therefore he fulfils the category 'In some way member of a cabinet'.

Like the other ministers, he is the head to one of the federal ministries in Germany. The German Ministry for Foreign Affairs is called 'Auswärtiges Amt' (Foreign Office) and is, like most of the ministries, located in Berlin. Together with the embassies and other representations worldwide it forms the so called 'Auswärtiger Dienst', a diplomatic service.<sup>109</sup> Thus, the category 'Head of a diplomatic service' is fulfilled for the German Foreign Minister.

In his function as the head of the diplomatic service, the minister can negotiate with other states on relations between the two states in terms of mutually establishing permanent consular and diplomatic missions.<sup>110</sup> Especially mentioned as third states in that paragraph are the other members European Community. This might be due to the fact that this part of the legislation is rather old, August 1990, and therefore not up to date anymore. Nevertheless, negotiating on diplomatic missions can be considered as one of the most important powers of the German Foreign Minister and a Minister of Foreign Affairs in general.

The above mentioned is part of bilateral relations towards other states, which is a topic within the responsibility of the Foreign Minister as Eberlei and Weller point out.<sup>111</sup> Thus, 'Conducting bilateral relations' can work as a category for the comparison.

Like the other ministers, the German Foreign Minister is nominated by the Federal Chancellor and after that officially appointed by the President in accordance with Art. 64 of the Basic law.<sup>112</sup> Chosen by the head of government is in this case the way of coming into the position of a minister. Thus, it will serve as a criterion in the comparison of the two actors. As the High Representative does not fulfil this criterion, in order to illustrate the difference, the following will be used: 'Chosen by some kind of regional governments and the Head of Government'. In case of the High Representative this means that she is jointly chosen by the President of the Commission and the

107 Art. 62 GG, 'Grundgesetz für die Bundesrepublik Deutschland in der im Bundesgesetzblatt Teil III, Gliederungsnummer 100-1, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 1 des Grundgesetzes vom 23. Dezember 2014 (BGBl. I S.2438) geändert worden ist', Bundesgesetzblatt Teil III [2014], BGBl. I p.2438, available at: <http://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf>

108 supra note 107

109 § 2 GAD, 'Gesetz über den Auswärtigen Dienst', BGBl I 1990, 1842, consolidated version 20/06/2002, available at: <http://www.auswaertiges-amt.de/cae/servlet/contentblob/372200/publicationFile/3802/GAD.pdf>

110 § 4 GAD, supra note 109

111 supra note 52

112 Art. 64 GG, supra note 107

member states' governments.

Although the Federal Chancellor as the head of government determines the guidelines of the government's politics, the Foreign Minister is still responsible and accountable for his policy field. Inside that area, and within the guidelines made by the chancellor, he can act independently, as stated in article 65 of the Basic Law.<sup>113</sup> Therefore he fulfils the category 'Responsible for own Portfolio'. Nevertheless there might be cases in which the Chancellor has a greater influence on foreign policy. In case the Foreign Minister is rather new in his office or inexperienced, the chancellor can try to increase his influence.<sup>114</sup> That would be a further reason for a possible decline of influence of Foreign Ministers, which some scholars see and which was mentioned above.

Foreign relations are a competence of the federal level, but the German Foreign Minister is under international law not the official representative of the Federal Republic abroad.<sup>115</sup> That role is taken by the President, who's office is mainly representative, but who also concludes treaties in the name of the Federal Republic.<sup>116</sup> Nevertheless he is completely bound to the guidelines the government provides for him in terms of foreign policy, even speeches on foreign issues are written together with the Foreign Office.<sup>117</sup>

If a Foreign Minister leaves his office, he is legally bound to stay as an acting minister until the successor is appointed, if so requested by the President or the Chancellor. This regulation is fixed in article 69 of the Basic law.<sup>118</sup>

There are also provisions regulating what a German Foreign Minister is not allowed to. Maybe in order to avoid possible corruption or conflicts of interest he is not allowed to work in any paid job next to his office.<sup>119</sup> A further side effect of that is that the minister has to focus on his work as a member of government instead of having side jobs.

Furthermore there are provisions not directly connected with foreign policy.

For example the minister has to attend sessions of the two chambers of parliament, the Bundestag and the Bundesrat, and their respective committees, if so requested.<sup>120 121</sup> This can be seen as a measure for the parliamentarians to stay in contact with the minister or to convince him of a certain idea. In contrast to that the above mentioned articles also include the possibility for the minister himself to attend the sessions and speak there, so that he can explain the policies of the government and in particular his ministry.

Together with the whole cabinet, proposals for legislation can be put forward by the government in accordance with Article 76 of the Basic Law (Art. 76 GG).<sup>122</sup> After the proposals have been passed by the cabinet, they are first sent to the Bundesrat and after that also to the Bundestag.

§ 35 of the 'Gesetz über den Auswärtigen Dienst' says that the German Foreign Minister is allowed to establish the administrative provisions which are needed to implement the law.<sup>123</sup>

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113 Art. 65 GG, supra note 107

114 G. Hellmann, W. Wagner & R. Baumann: 'Deutsche Außenpolitik: Eine Einführung', VS Verlag für Sozialwissenschaften/Springer Fachmedien, Wiesbaden, 2014, retrieved from: [https://books.google.de/books?id=pL8lBAAQBAJ&pg=PA54&lpg=PA54&dq=repr%C3%A4sentant+der+deutschen+au%C3%9Fenpolitik&source=bl&ots=Udopn2GcXQ&sig=eZTWFVzGKpnAPRj\\_Sd7806uH\\_g&hl=en&sa=X&redir\\_esc=y#v=onepage&q=repr%C3%A4sentant%20der%20deutschen%20au%C3%9Fenpolitik&f=false](https://books.google.de/books?id=pL8lBAAQBAJ&pg=PA54&lpg=PA54&dq=repr%C3%A4sentant+der+deutschen+au%C3%9Fenpolitik&source=bl&ots=Udopn2GcXQ&sig=eZTWFVzGKpnAPRj_Sd7806uH_g&hl=en&sa=X&redir_esc=y#v=onepage&q=repr%C3%A4sentant%20der%20deutschen%20au%C3%9Fenpolitik&f=false)

115 Art. 32 (1) GG, supra note 107

116 Art. 59 GG, supra note 107

117 supra note 46

118 Art. 69 GG, supra note 107

119 Art. 66 GG, supra note 107

120 Art. 43 GG, supra note 107

121 Art. 53 GG, supra note 107

122 Art. 76 GG, supra note 107

123 § 95 GAD, supra note 109

### 4.3 The Rules of Procedure

Next to the formerly mentioned legislation there are furthermore so called 'Geschäftsordnungen', Rules of Procedure. One regulates the cooperation between the ministries and towards other institutions and another one the work within the federal government. As these mention and give powers to the German Ministry of Foreign Affairs, the Federal Foreign Office, it also affects the leader of that house, the German Foreign Minister.

The document regulating the cooperation of ministries and towards other institutions is called 'Gemeinsame Geschäftsordnung der Bundesministerien' (GGO). In the following it will be referred to as GGO.

Paragraph 3 (3) states that the ministries, and with that of course the German Foreign Minister, should work in such a way to present a picture to the outside which is in line with the work of the whole government.<sup>124</sup> This can be used as a category for comparison with the High Representative because it is part of what the German Foreign Minister is allowed to do and what not. He has to represent his government's opinion to the outside and must not deviate from it in his actions. Therefore he fulfils the category 'Has to be in line with government's positions'. On the contrary this can only be partly fulfilled by the High Representative, due to the fact that she is not only a member of a quasi-government, but also has other posts.

The above mentioned and the other aspects are mainly general provisions valid for all ministries. When taking part in sessions of the Bundestag, the federal parliament, or in meetings of its committees, the ministers, and as a consequence also the German Foreign Minister, have to advocate the government's opinion on the discussed topics in these meetings.<sup>125</sup>

Concerning politics relating to the European Union, ministries have to work together in case the specific policy field is in the area of a number of ministries. This is to ensure coherence within the policy of the federal government.<sup>126</sup> Next to that this is also valid for EU related matters. Ministries are allowed to work together with institutions of the EU in their specific policy field. But when it comes to decisions on general matters, the Federal Foreign Office has to be involved to ensure coherence in Germany's EU policy.<sup>127</sup> The Foreign Office and with that its chair the German Foreign Minister is responsible for the country's relations with international organisations like the UN, NATO and others, and represents Germany at the UN level.<sup>128</sup> Therefore he fulfils the category 'Responsible for relations with International Organisations'. Due to this representation and his responsibilities in other foreign policy areas, the German Foreign Minister can also be considered to fulfil the category of 'Representing Foreign Policy abroad'.

A power of the Federal Foreign Office is to mediate between the missions abroad and German ministries and institutions.<sup>129</sup>

Paragraph 72 lays down some provisions for negotiating on the international level. If treaties under international law are negotiated, the negotiating ministry has to check if there is not a possibility to achieve the aim of the treaty without a treaty under international law.<sup>130</sup> In such negotiations the Federal Foreign Office is often involved. That follows from sub-paragraph 2 of the same paragraph. In that it says that before negotiations with international organisations and institutions start, the ministry in charge has to contact the Federal Foreign Office to formulate a joint approach.<sup>131</sup> Generally when making treaties which are dealing with international relations, the Federal Foreign Office has to take part in the process of negotiating and formulating the treaty.<sup>132</sup> This means that the German Foreign Minister as the head of the Federal Foreign Office can have a say and be

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124 § 3 (3) GGO, 'Gemeinsame Geschäftsordnung der Bundesministerien', Bundesministerium des Innern, 2011, available at: [http://www.bmi.bund.de/SharedDocs/Downloads/DE/Veroeffentlichungen/ggo.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/DE/Veroeffentlichungen/ggo.pdf?__blob=publicationFile)

125 § 27 (2) GGO, supra note 124

126 § 19 GGO, supra note 124

127 § 37 GGO, supra note 124

128 supra note 52

129 § 26 GGO, supra note 124

130 § 72 (1) GGO, supra note 124

131 § 72 (2) GGO, supra note 124

132 Anlage 6 GGO, supra note 124

involved when it comes to making international treaties on behalf of Germany.

Concerning the cooperation within the federal government, the 'Geschäftsordnung der Bundesregierung', in the following mentioned under its official abbreviation GOBReg, sets the principles under which the ministers and the government as a whole are working. The formulations are often rather general and apply to a lot of the ministries.

All the ministers have to inform the chancellor in case of plans and intends which affect the political guidelines of the government (§ 3 GOBReg).<sup>133</sup> Therefore also the German Foreign Minister has to inform the chancellor when in his policy area some issues emerge or some plans of his ministry are not in line with the official political line of the government. The GOBReg also clarifies that the portfolio of the German Foreign Minister and all other ministers is determined by the chancellor.<sup>134</sup> GoBReg provides provisions especially on the German Foreign Minister and his Federal Foreign Office, too. Before a member or representative of a foreign government is welcomed in Germany, the Federal Foreign Office has to be consulted.<sup>135</sup> This is presumably to prevent diplomatic irritations or because the Federal Foreign Office has much more knowledge on foreign governments than other ministries, such as the Federal Ministry of Transport and Digital Infrastructure. Generally a minister from a foreign country has to be welcomed by the corresponding minister of the German government.<sup>136</sup> If the Dutch Minister of Foreign Affairs travels to Germany for an official visit or negotiations, the German Foreign Minister would welcome him. Similarly to the GGO the GOBReg provides a regulation on the negotiation of international treaties. The Federal Foreign Office, and with that the corresponding minister has to allow negotiations abroad or with foreign representatives and his ministry has to take part in such negotiations.<sup>137</sup> The involvement in negotiations of international treaties can be seen as an important characteristic for a Minister for Foreign Affairs. When it comes to these issues, diplomacy is needed and that normally is what such a Minister for Foreign Affairs is good in. 'Involved in Negotiations of International Treaties' should therefore be used for the comparison and is fulfilled by the German Foreign Minister.

Voting powers in government are not stated in the GOBReg-document, but from § 24 it can be derived how much voting power the German Foreign Minister has. It says that the cabinet, of which the German Foreign Minister is a member, decides by majority vote. Although it is not clear if that means by absolute majority or by super majority, the first is more likely as it also says that in case of a draw, the chancellor would have the casting vote.<sup>138</sup> In daily work a principle of equality is in force between all ministries. Thus, it would be logical if the German Foreign Minister had the same voting power as the other federal ministers when it comes to cabinet decisions.

#### 4.4 Vienna Provisions and the EU level

In contrast to the legal provisions in the German legislation, in the international agreements of Vienna on diplomatic relations and consular relations are only a few provisions relating to the powers and functions of the German Foreign Minister and his Federal Foreign Office. Nevertheless these are also part of German law.

A Ministry of Foreign Affairs of any country signing the 'Wiener Übereinkommen über diplomatische Beziehungen' (WÜD) has to be informed when new members of a foreign representation are their

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133 § 3 GOBReg, 'Geschäftsordnung der Bundesregierung', Consolidated Version, in der Fassung der Bekanntmachung vom 21.11.2002, GMBI. p.848, available at:

<https://www.bundesregierung.de/Content/DE/StatischeSeiten/Breg/regierung-und-verfassung-geschaeftsordnung-der-bundesregierung.html>

134 § 9 GOBReg, supra note 133

135 § 11 (1) GOBReg, supra note 133

136 § 10 GOBReg, supra note 133

137 § 11 (2) GOBReg, supra note 133

138 § 24 GOBReg, supra note 133

relatives arrive.<sup>139</sup> Thus, the ambassador of the Netherlands in Germany would have to inform the Federal Foreign Office, if an employee is replaced by a new one. According to Article 19 of this agreement a Ministry of Foreign Affairs would have to take this job of informing in case the head of a diplomatic mission is not available.<sup>140</sup> Thus, the Federal Foreign Office would have to inform the Netherlands, if a new ambassador would arrive and the former one is not able to tell that to the Dutch Ministry of Foreign Affairs.

Article 41 states that the official duties of a diplomatic mission have to be conducted with the Ministry of Foreign Affairs of the host country.<sup>141</sup> This means that the Federal Foreign Office of Germany talks for example with the Dutch diplomatic mission in Germany about their work.

As a Minister of Foreign Affairs the German Foreign Minister is also a member of the Foreign Affairs Council (FAC) of the European Union, which is headed by the High Representative.<sup>142</sup> An explanation of this Council can be found above in the section on the High Representative. Being a member, the Minister fulfils the category 'Member of the FAC'.

## 4.5 Conclusion

To sum up the German Foreign Minister is in the German public opinion a highly respected member of the federal government, in most cases independently from who takes over the post.

As it was expected, the German Foreign Minister has the basic powers and functions which presumably most Ministers for Foreign Affairs have. He is the head of his own federal ministry and therefore also of the diplomatic service. In this function he is responsible for the relationships with other countries, but is somehow limited as other actors like the President are the official representative of Germany. Within his policy area he can act on his own responsibility, but he is accountable to the chancellor. The German Foreign Minister is conducting bilateral relations with other countries and their Ministers of Foreign Affairs. Doing that he is also the representative of Germany's foreign policy abroad. Next to that he is involved in negotiating international treaties and represents his country in organisations like the UN.

The following table displays the categories of powers and functions and how they apply to the German Foreign Minister.

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139 Art. 10 WÜD, 'Wiener Übereinkommen über diplomatische Beziehungen, 18/04/1961, Consolidated Version of 12/06/2014, available at: <https://www.admin.ch/opc/de/classified-compilation/19610070/201406120000/0.191.01.pdf>

140 Art. 19 WÜD, supra note 139

141 Art. 41 WÜD, supra note 139

142 supra note 65

<b>Power or Function</b>	<b>German Foreign Minister</b>
Representative for Foreign Policy abroad	X
Conducting bilateral relations	X
In some way member of a cabinet	X
Responsible for own Portfolio	X
In some way Deputy in the Government	(-)
Head of a diplomatic service	X
Member of the Foreign Affairs Council (FAC)	X
Involved in Negotiations of International Treaties	X
Responsible for relations with International Organisations	X
Delivering in proposals on Foreign Policy	X
Chosen by the Head of Government	X
Chosen by some kind of regional governments and the Head of Government	-
Has to be in line with government's positions	X
Officially signs international treaties	X
Coordinating Military Missions (through agency)	-

Table 4.1: Powers and Functions of the German Foreign Minister

All in all the German Foreign Minister has a number of different powers and functions related to foreign policy and not directly related to foreign policy. Both do play a role in the following section of comparison between the minister and the High Representative.

## 5. Comparison

The following section of this thesis is dedicated to a comparison of the powers and functions of the two above analysed actors in foreign policy, the German Foreign Minister and the High Representative. The findings in the two previous descriptive sections will be compared. This section is different to the conclusion in several ways. Although it seems to give an answer to the overall research question by comparing the findings, it only is a further step in developing a final answer.

In order to compare the results a table will be used as presented in the methodology section, combining the results of section three and four. It lists a power or function connected to the two actors. In boxes on the right an 'X' means the respective actor has the power or holds this function, while '-' means that he or she has not. For reasons of simplicity and do-ability powers and functions will be generalised in the table. Next to that some of the rather unimportant aspects will be left out. The categories used were already mentioned in the respective sections. Justifications for specific cases can be found.

Both actors are in a way representatives of their particular entity's foreign policy abroad. Nevertheless the High Representative is not the only representing actor of the EU. The German Foreign Minister can sometimes be restrained by the actions of the chancellor as he sets the policy guidelines.

Furthermore both actors do represent their entities in international organisations. The German Foreign Minister for example at UN or NATO-level and the High Representative at NATO-level.

But it is not really clear if the High Representative is the only actor to conduct bilateral relations and which role the Presidents of Commission and Council play here. Thus, there is a difference to the German Foreign Minister.

Both actors are in some way members of a cabinet. The German Foreign Minister as a minister in the federal government and the High Representative as member of the European Commission. Although this cannot be seen as a government or cabinet, there is in some way a similarity. Both institutions can initiate legislative regulations and the Commissioners respectively Ministers are responsible for individual portfolios.

As cabinet and Commission are somehow comparable also the actor's positions in these institutions can be compared. According to the treaties the High Representative is always Vice-President of the Commission. Therefore she is some kind of the deputy-leader of a European 'government'. The German Foreign Minister instead can be the Vice-Chancellor, but he needs not to be.

Both actors are in some way head of a diplomatic service. However, the High Representative only chairs the European External Action Service, which is according to scholars like Wessel and Kerres not a full fledged diplomatic service. They say the European Union Delegations do not do the same work as national embassies.<sup>143</sup> Therefore there is some difference, but to a small extent the actors can be compared.

Next to that both are members of the Foreign Affairs Council (FAC). Again they are not really the same here. While the German Foreign Minister is an ordinary member, the High Representative, with being the Chair of the FAC, possesses some kind of outstanding position. But to a small extent they are comparable there, as both influence CFSP and CSDP through their seat in the FAC.

When it comes to the negotiation of international treaties, the German Foreign Minister, respectively his ministry, is always involved in negotiations. The High Representative instead is not always involved, only if she has a mandate. Therefore there is a difference between both actors.

The German Foreign Minister is appointed by the head of the government, the Federal Chancellor, who can also ask the President to dismiss him. In contrast to that the High Representative is chosen by the President of the Commission and the Head of States of the EU member states. In her position inside the Commission, she is dependent on both the President of the Commission

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143 supra note 10

and the European Parliament. If the President of the Commission resigns, she has to resign from her duties inside the Commission only. The same is true if the Parliament denies the Commission its confidence. The difference to Germany is that if the Chancellor retreats or loses a motion of confidence, the German Foreign Minister loses all parts of his job.

Another important difference is the control of military missions. For CSDP military missions the coordination is the job of the High Representative. In Germany the Foreign Minister is not involved in coordinating military missions.

The German Foreign Minister has to be in line with its government's policies to the outside.

In contrast to the High Representative, the German Foreign Minister does in some cases sign international treaties. But both actors are involved in negotiating international treaties. The High Representative in treaties on EU matters and the German Foreign Minister on behalf of his country although he sometimes only gives advice in case a special ministry is responsible for a specific treaty.

Lastly, but most importantly, both actors do in some submit proposals on the shape of foreign policy to a superior body of decision making. The High Representative for example in terms of CFSP and the German Foreign Minister for example by initiating legislation, within the policy guidelines the chancellor is setting.

The table below shows the different categories explained above with the respective results for the High Representative and the German Foreign Minister.

<b>Power or Function</b>	<b>High Representative</b>	<b>German Foreign Minister</b>
Representative for Foreign Policy abroad	(X)	X
Conducting bilateral relations	?	X
In some way member of a cabinet	X	X
Responsible for own Portfolio	X	X
In some way Deputy in the Government	X	(-)
Head of a diplomatic service	(X)	X
Member of the Foreign Affairs Council (FAC)	X	X
Involved in Negotiations of International Treaties	(X)	X
Responsible for relations with International Organisations	X	X
Delivering in proposals on Foreign Policy	X	X
Chosen by the Head of Government	-	X
Chosen by some kind of regional governments and the Head of Government	X	-
Has to be in line with government's positions	(X)	X
Officially signs international treaties	-	X
Coordinating Military Missions (through agency)	X	-

Table 5.1: Powers and Functions of High Representative and German Foreign Minister

There are, naturally, some sorts of conflicts between the High Representative and the German Foreign Minister in their daily work.

When putting forward policy proposals for CFSP actions, the High Representative has to rely on the member states as they need to make the decisions in the Council, as already described above. Before taking the decisions, the governments of each member state will probably discuss on what to do. In such consultations the respective Minister for Foreign Affairs would be likely to have

influence, too. With that potential conflicts could arise between the High Representative and the German Foreign Minister.

A conflict between the authority of the EEAS and the minister's Foreign Office is not likely to occur at the moment. As Kerres and Wessel pointed out, European Union delegations and national embassies do not have conflicting tasks.<sup>144</sup> Potential conflicts could arise in the future with further integration and the possible conversion of the EEAS into a Ministry or the High Representative into a Minister for Foreign Affairs.

All in all there are some differences between the two actors mainly in terms of their process of entering the office. Differences also occur with respect to military matters and the negotiation of international treaties. Furthermore there are minor differences, which do show that both actors are not the same.

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144 supra note 10

## 6. Conclusion

After answering all the sub-questions, finally the main research question can be answered. The conclusions of all sections together form the answer to the issue powers and functions of the High Representative and the German Foreign Minister.

The question asked: *'To what extent can the powers and functions of the European Union's High Representative for Foreign Affairs and Security Policy be compared to the ones of a national Minister for Foreign Affairs?'*

Foreign policy is a matter of many different aspects in the broad definition of the actions concerning the relationships with other states or organisations as described in the conclusion of section II. The differences between foreign policy on EU level and on nation-state level lead to the assumption that there are also differences between the High Representative and the German Foreign Minister in terms of their powers and functions.

Referring to sub-question two and three one can say the following. Both actors do have a variety of powers and functions which they share, but also powers and functions that seem to be typically for the EU or typically for a nation state.

The findings on sub-questions two and three were compared in one extra section.

To answer the main research question in total, it has to be said that the High Representative's powers and functions can be compared to those of a national Minister for Foreign Affairs. But not to the full extent. Both actors, the High Representative and the here described German Foreign Minister, are in a certain way 'Ministers for Foreign Affairs'. They share many powers and competences, such as representation in international organisations or being the representative of their entity's foreign policy abroad. But the High Representative is limited much more by a number of issues. At first she is limited by the governments of the European Union. Next to that she is limited in her actions due to a division of tasks in the area of CFSP and CSDP as the President of the European Council and the Commission in general also have a say in that. A division of tasks is to some smaller extent also visible in Germany as for example the Federal Chancellor sets the guidelines for the government's policy and there are different levels of external representation. Concerning the diplomatic apparatus already Wessel and Kerres analysed that the European External Action Service is not as developed as the one of the European member states. There are fields like the military in which the German Foreign Minister is not active as well.

As an overall conclusion maybe a rephrasing of a quote of Alexander Wendt in his 1992 article on a constructivist approach on international relations theory:<sup>145</sup>

A Minister for Foreign Affairs is what the High Representative make of it.

According to the treaties the High Representative seems to have some possibilities to act as a Minister for Foreign Affairs, although she does not have all the powers, the title and is to a certain extent limited by regulations.

Bierling sees a decline in the influence of the German Foreign Ministers and Minister for foreign affairs in general. As one of the reasons he names an increasing number of international summits on which the heads of government meet and their discussion of foreign policy issues.<sup>146</sup> Thus, this may lead to more diplomacy on the head of government's level. But this does not necessary hold true for the High Representative.

But that is just a comparison between the High Representative and one national foreign minister. Future researchers could focus on the other Ministers of Foreign Affairs in the European Union. Maybe there are smaller or larger differences.

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145A. Wendt, 'Anarchy is what States Make of It: the Social Construction of Power Politics', *International Organization* 46, no. 2 (Spring 1992): pp.391-425.

146 supra note 46

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