

DESIGNING EUROPEAN “POLICIES FIT FOR THE FUTURE”: HOW ABOUT REVIVING THE IDEA OF A EUROPEAN FOREIGN MINISTER?

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ABSTRACT

On December 19, 2024, the European Council adopted a highly significant document, which represents a strengthened reflection of traditional visionary tendencies of the European project. In its Conclusions, this body reminded that European Union has a continuing obligation to re-inforce its global engagement. These official remarks should probably be taken seriously, because they seem to be entirely in line with the European Union's Strategic Agenda for 2024-2029, adopted earlier in 2024. The Agenda calls for “ensuring coherent and influential external action” of the European Union, reminding at the same time that its institutional structures are ripe for “the necessary internal reforms”. Re-imagining the European foreign policy can be based, at least partially, on thinking over an idea of creating the post of the European Minister for Foreign Affairs.

In this paper, the patterns for reforming the European foreign policy institutional structure and normative framework are explored. After the introductory part, crucial explanations why the Union's foreign policy is in dire need to be reformed are summed up. In the following section of the paper, some of the weaknesses of the existing foundations of the European diplomacy, personalized by the partly anachronistic office of the High Representative for Foreign Affairs and Security Policy, are exposed. The fourth part is dedicated to exploring potential roles of a unique European foreign minister in creating a more coherent European foreign policy, including the predictable challenges that might stand in the way of reviewing the existing European political and legal framework in this regard. The paper ends with conclusions that, in the field of its foreign affairs, the European Union may and should be rearranged to develop into a coherent entity representing more than just a sum of its parts.

Keywords: *Common Foreign and Security Policy, European Union, European Union foreign policy, European Foreign Minister, European Union institutions*

1. INTRODUCTION

“Boxer could not get beyond the letter D. He would trace out A, B, C, D, in the dust with his great hoof, and then would stand staring at the letters with his ears

back, sometimes shaking his forelock, trying with all his might to remember what came next and never succeeding. On several occasions, indeed, he did learn E, F, G, H, but by the time he knew them, it was always discovered that he had forgotten A, B, C, and D. Finally he decided to be content with the first four letters, and used to write them out once or twice every day to refresh his memory.”

(George Orwell, *Animal Farm*, 1945)

In George Orwell’s satirical novella, Boxer is a workhorse loyal to the master of the *Animal Farm*, whose whims tend to irritate the ever more sensitive animals. The horse obviously cannot take a *step more* to learn the letters of alphabet, an undertaking he (as it appears, *temporarily*) considers particularly valuable. As a result, Boxer concedes defeat and tries continuously only to preserve the limits of his hard-won “knowledge” of the first four letters. The comparison with the aspirations to change the institutional framework of the European Union (EU) in the field of Common Foreign and Security Policy (CFSP) may appear to some to be too radical, but the parallel remains appropriate to the author of this paper.

Global positioning of the EU has recently been leading to confusion as whether its structures are well-suited for brave international aspirations which are laid out in its basic documents. Striving for its greater global visibility, several founding treaties of the EU have steadily been calling for the establishment of an institutional and legal framework deemed necessary for it to captivate an adequate attention of other international actors. The EU Strategic Agenda for 2024-2029 (EUSA),¹ adopted by the European Council in June 2024 (the year in which the 35th anniversary of the fall of the Berlin Wall was marked), obviously aimed at designing innovative instruments for strengthening the values of the EU in a complex global environment. Thus, the EUSA calls for “ensuring coherent and influential external action” of the EU, reminding at the same time that its institutional structures are ripe for “the necessary internal reforms”. Perfectly in line with the EUSA’s aspiring wording, in December 2024, the European Council adopted the Conclusions,² stating that the world “has become more confrontational, transactional and uncertain”, which invites the EU to “adapt to the ever-evolving circumstances”, asserting its “ambition and role as a strategic global player in the new multipolar geopolitical context”.³

¹ European Union Strategic Agenda for 2024-2029 (hereinafter: EUSA), Brussels, 27 June 2024, [https://www.consilium.europa.eu/media/yxrc05pz/sn02167en24_web.pdf], Accessed 20 January 2025.

² European Council Meeting Conclusions, Brussels, 19 December 2024, EUCO 50/24, [<https://www.consilium.europa.eu/media/jhlenhaj/euco-conclusions-19122024-en.pdf>], Accessed 20 January 2025.

³ EUSA, *op. cit.*, note 1, p. 4.

Not much surprisingly, the two documents reflect a statement of grand ambitions carried by the EU in international arena. Both represent a potentially significant European response to the aggravating set of internal and external challenges shaped by numerous threatening events and tendencies. The latter include: a worsening climate change situation, the Brexit, a major ongoing war in the EU's immediate neighborhood (Ukraine), the apparent immigration compassion-fatigue, and potential immense security risks at the EU's eastern (Poland, the Baltic states) and south-eastern frontiers (the Western Balkans, the Israel-Hamas War). Engagements of European diplomacy appear to be suboptimal, in comparison with the ones conducted by the United States of America (USA), the Russian Federation (Russia), and China, to shorten the ever growing list of relevant actors. Actual international environment in Europe's close vicinity may safely be esteemed to be marked with a very high degree of instability. During the relative retreat of the USA from the global political scene during the first term of the President Donald Trump (2017-2021), the EU "failed spectacularly at seizing the role of world leader", whilst "a power vacuum" has gradually been filled by China, Russia, and other international actors.⁴

In law and politics, certain initiatives do not need to be invented from the scratch; they should sometimes only be reminded of. Thus, one of the possible remedies for the not-much-favorable global position of the EU had already been conceived in the first half of the opening decade of the 21st century. The medicine for most of the recognised risks contained in the formal *constitutionalisation* of the EU legal framework, *via* the adoption of the Treaty establishing a Constitution for Europe (the Constitution),⁵ signed in 2004. However, even before constitutional mechanisms for the ratification were employed in *all* of the member states, the Constitution was rejected.

So why do we return to the topic of a *defunct* project, as the Constitution is? The answer revolves around one important ingredient of the entire project – the introduction of the post of the EU Minister for Foreign Affairs (Minister) – a united, strong, and determined voice of Europe in international relations. Namely, the inter-governmental conference to which the task of drafting the Constitution was assigned assessed that it would be necessary to fuse the functions of the EU Commissary for Foreign Affairs with those pertaining to the Secretary General of the European Council and the High Representative for Foreign Affairs and Security Policy (HR), in order to create a single highest European diplomatic post – that of the Minister.

⁴ Bindi, F., *The Foreign Policy of the EU: Assessing Europe's Role in the World*, Brookings Press, 2022, p. 1.

⁵ Draft Treaty Establishing a Constitution for Europe [2003] C169/01.

The post of the Minister was envisioned to serve as a *major* institutional solution introduced by the Constitution. Destined to represent the intention of the EU to strengthen its international effectiveness and coherence of its external action, a never-delivered Minister (*Mr. Foreign Policy*, as Jean Monnet had predicted⁶) appears to be sorely missing in the current state of international affairs. Nevertheless, significantly less has been written and discussed about the post after the collapse of the Constitution project, although, arguably, certain elements of the current disillusionment with further political integration of the EU might have been thwarted if the topic had been kept living. The main purpose of this paper is to re-ignite the debate on the question whether the concept of *a politically stronger Europe* could be reinforced by introducing the post of its unique foreign representative.

The first part of the paper is devoted to exploring which elements of the CFSP are most urgently needed to be replaced in order to ensure a truly *Strong and Secure Europe*, the formulation adopted in 2024 by the European heads of states and governments to manifest Europe's ultimate priorities. An introductory analysis of the normative framework serves to prepare the reader for investigating the shortcomings of the current EU legal framework, including the somewhat underdefined position of the HR, particularly in the context of a complex international reality, even when it comes to the EU's immediate security, which the third part of the paper is addressing. In the third part, I reinforce the claim that the Minister might represent one of the instruments the appliance of which would help propel the EU to broaden its role in global affairs and transform the EU into a convincing international power. The paper closes with remarks intended to summarize the explanations in which way the long-running European foreign policy debate could and should be re-intensified by thinking again about the idea about introducing the post of the Minister, to the best possible interest of the EU and its member states.

2. EUROPEAN FOREIGN POLICY: WHY IS IT IN DIRE NEED TO BE REFORMED?

After the defeat of the Constitution's ratification, the EU moved on. Relatively soon after the Treaty of Nice (signed in 2001, came into force in 2003), which had already been approved at the time of the ratification of the Constitution, the Treaty of Lisbon was adopted (signed in 2007, in force since 2009).⁷ In comparison with the earlier Treaty of Amsterdam (adopted in 1997, entered into force

⁶ Lamassoure, A., *Histoire secrète de la Convention européenne*, Albin Michel, Fondation Robert Schuman, 2004, p. 37.

⁷ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/01.

in 1999), the former two documents have provided an institutional framework which would bestow a more prominent role of the CFSP. However, the content of none of the three mentioned acts could have competed with the institutional scope of the EU's international aspirations inspired by relevant provisions of the Constitution.

Institutional framework for the EU functioning has not been changed since 2007 (or – regarding the date of entry of the Treaty of Lisbon (the TEU) into force – since 2009, but it is all the same). The EU's normative framework was regularly modified, by the means of adopting a fully new treaty, in 1992 (the Maastricht Treaty), 1997, 2001, and 2007. Anyone might easily assess that any commitment of the EU institutions or its member states to reshape the European political and institutional order has resulted in a very limited outcome in previous two decades. During a period of 15 years, the basic framework of the functioning of the EU was changed four times. Nevertheless, in the following 18 years, no new treaty of a kind has been adopted, despite the need for a fervent resolution of important internal and foreign political issues. Thus, the EU institutional framework has been adapted to change once in a great while. Perhaps the time has come to diagnose a true *sclerosis* of the EU's institutional and legal structure.

In the meantime, serious international problems did not wait for the EU to consolidate. Although the invasion of Ukraine in 2022 has unequivocally undermined the security of the EU, its response to the crisis demanded “a rethink of the premises that have underpinned our understanding of collective European foreign policy-making over decades”.⁸ The obvious underperformance of the CFSP was very strikingly presented by the disturbing cover of the February 22, 2025 edition of the renowned British weekly political magazine, *The Economist*. Under the title “Europe's worst nightmare”, the cover presents a drawing in which the presidents of Russia (Vladimir Putin) and the USA America (Donald Trump) talk confidentially, while all the other chairs on the long table are kept empty. Obviously, the magazine illustrates a widely held concern that Europe will be completely excluded from the process of determining the post-war order once the conflict in Ukraine is concluded. The same may be the case with “another “hot” region in Europe's neighborhood, the Balkans”.⁹

Without a clearly defined set of effective roles between several institutional actors of the CFSP, Europe is expected to steer safely between a (at least relatively) untrustworthy USA, authoritarian Russia and an ascending China, the EU's “formi-

⁸ Maurer, H.; Whitman, R. G.; Wright, N., *The EU and the invasion of Ukraine: a collective responsibility to act?* International Affairs, Vol. 99, Issue 1, January 2023, pp. 219-238, p. 236.

⁹ Bindi, *op. cit.*, note 4, p. 1.

dable economic competitor”,¹⁰ and a “systemic rival”.¹¹ In an international setting which represents a blueprint for global instability, it seems that meddling through ordinariness is over. The EU’s institutional foreign policy and security frame must be changed, in order for the entity to stop being recognized as an actor enjoying “the privilege of irresponsability”.¹²

Part of the problem of an inactive CFSP is contained in the EU’s inward-focused approach. After the Brexit, as well as the continuing rise of deteriorating democracies within its borders and its immediate neighbourhood,¹³ the success of the EU has been defined in terms of its mere survival. Europe holding together has become the achievement in itself. Simultaneously, the sovereignists’ ascendancy in many of the EU member states – which “are central nodes/actors in this collective system” of the CFSP¹⁴ – represents another thorny topic when it comes to reasserting the EU’s regional and global role. Any meaningful tendency of achieving greater visibility of the EU in international relations cannot be realized while (some of) the EU member states “insist on the Westphalian approach to foreign policy”,¹⁵ expressing the heartbeats of “a traditional realist paradigm”.¹⁶ Additionally, the defensive approach of the CFSP is manifested by the emergence of the project of the so-called European Political Community – the proposition destined to torpedo aspirations and perspectives of several Eastern European countries to join the EU. Therefore, “without major reform the EU could face a situation where the advantages of the EU are smaller than the disadvantages, with the consequence of destroying the EU,” the process which could start with the EU’s implosion.¹⁷

¹⁰ García Herrero, A.; Grabbe, H.; Pisani-Ferry, J., *Adapt to a harsher world: Memo to the high representative for foreign and security policy*, Bruegel Policy Brief, No. 15/2024, p. 2.

¹¹ Müftüleri-Bac M.; Aydın-Düzgüt, S.; Uzun-Teker, E., *The EU’s global strategic partner(ship): a tool for thematuration of European foreign policy?*, European Security, Vol. 33, No. 3, 2024, pp. 426 – 448, p. 436.

¹² Terpan, F., *La politique étrangère et de sécurité commune de l’Union européenne*, Bruylant, Bruxelles, 2003, p. 25.

¹³ It is punctually noted that “democracies undermined by disinformation have reduced Europe’s self-confidence in defending its values abroad”: García Herrero, Grabbe, Pisani-Ferry, *op. cit.*, note 10, p. 2.-3.

¹⁴ Maurer; Whitman; Wright, *op. cit.*, note 8, p. 229.

¹⁵ Bindi, *op. cit.*, note 4, p. 1.

¹⁶ Øhrgaard, J. C.; Tonra, B.; Christiansen, T., *International relations or European integration: is the CFSP sui generis?*, in: Tonra, B., Christiansen, T. (eds.), *Rethinking European Foreign Policy*, Manchester University Press, 2004, pp. 26-44, p. 35.

¹⁷ Schneider, F., *Is a Minimal Federal European Constitution for the European Union Necessary? Some Preliminary Suggestions Using Public Choice Analysis*, Homo Oeconomicus (published online on June 20, 2022), p. 2. [doi.org/10.1007/s41412-022-00125-8].

The “essential innovation”,¹⁸ or “substantial changes”,¹⁹ brought by the TEU consisted in strengthening of the CFSP’s institutional capacities.²⁰ The High Representative was empowered with a number of new competences. Today, the HR is: Vice-President of the European Commission (the Commission), Head of the European Defence Agency, Head of the European External Action Service (EEAS), and is “responsible for the [EU] Special Representatives and participant in the meetings of the European Council when foreign affairs issues are discussed.”²¹ The HR conducts the CFSP, contributing also by his proposal to the development of the CFSP and of the Common Security and Defence Policy (Art 9E Para. 2 of the TEU). In accordance with Art 9E Para. 3, she/he also presides over the Foreign Affairs Council (FAC), one of the more than 20 various incarnations of the Council of Ministers. As one of the Vice-Presidents of the Commission, the HR “ensure[s] the consistency of the [EU’s] external action”, and is “responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the [EU’s] external action” (Art 9E Para. 4). On the other hand, some official initiatives have been proposed in order to consolidate the European international influence. Thus, the EU 2016 Security Strategy, prepared by the HR, is marked by “the vision” which “has changed from limiting the EU to being a soft power in the mission to spread democracy”.²² This “document of great importance” put the EU “on the path to metamorphosis into hard(er) power”, and introduced “a new approach to conflict and crises”.²³

The EU has already confirmed its readiness to take decisive steps in the direction of determining its own responsibility in certain fields for which it is entrusted with competence by the treaties, and which look like a truly super-state structure. This was the case with: 1) the EU citizenship, 2) the EU Agency for Criminal Justice Cooperation (*Eurojust*), 3) Frontex (The European Border and Coast Guard Agency), 4) the European Economic and Monetary Union, which created the progressively closer monetary integration of the member states, 5) the European Court of Justice, which convincingly serves as a true European Supreme Court, and: 6) the European Public Prosecutor’s Office, which is entrusted with initiating criminal proceedings for activities which endanger the EU’s financial interests.

¹⁸ Prolović, N., *Lisabonski ugovor: institucionalne izmene u oblasti spoljne politike Evropske unije*, Međunarodna politika LXI/1138, pp. 62-75, p. 63.

¹⁹ Duić, D., *EU Global Strategy on Foreign and Security Policy and the Role of High Representative of the Union For Foreign Affairs and Security* in: Primorac, Ž.; Bussoli, C.; Recker, N. (eds.) *Economic and Social Development – The Legal Challenges of Modern World*, 2016, pp. 289-299, p. 289.

²⁰ Prolović, *op. cit.*, note 18, p. 63.

²¹ Duić, *op. cit.*, note 19, p. 289.

²² *Ibid*, p. 296 and p. 289.

²³ *Ibid*.

When in deep crisis, the EU has manifested a surprising level of resilience and decisiveness. At the beginning of the 2020 Covid-19 pandemic, the EU's initial response to the ongoing crisis was marked by "chaos and ineffectiveness", but its "approach dramatically changed over the spring of 2020", resulting in "a joint EU approach to external engagement".²⁴ The comparison can be made with the strengthening of the EU coordinated counter-terrorism measures, adopted after the gruesome attack on *Charlie Hebdo* newspaper headquarters in Paris in 2015.²⁵ The establishment of these institutions has shown that the EU, when determined to do so, is capable of setting relevant frameworks for its own empowerment in various areas. If "Ensuring coherent and influential external action" is the title of the first part of the EUSA's chapter named "A Strong and Secure Europe",²⁶ the EU should *walk its talk* in the field of foreign policy as it has so done in other areas of its competence.

Although the failure of the Constitution rendered discussions of its contributions rather hypothetical, the document went a bit towards "addressing issues key to [the EU] concerns".²⁷ To speak with one single voice, Europe could return to a previously proposed solution for the problems of its global visibility, by introducing the institution of the Minister. The primary need for the establishment of the Minister has come about through the absurdity of the current arrangement. Perpetuating the duality between a commissioner in charge of external relations and the HR only serves to maintain the already existing confusion. In the words of the former Commissioner for Development Poul Nielsen, the CFSP needs to become more a truly "common", than a "convenient" foreign policy.²⁸ According to the Isaac Newton's first law of motion, a body continues to uniformly move forward until "it is compelled to change its state by the forces impressed". The involvement of the EU in the field of expanding its powers has always, like Pavlov's reflex, represented a response to the increasingly numerous challenges, both in terms of its internal organization and in the area of its international recognition. The European Council recognised this need when it promised to "undertake the necessary

²⁴ Badanjak, S. *EU External Action and Development Spending in a Time of Covid-19, The Peace and Conflict Resolution Evidence Platform School of Law*, Old College, The University of Edinburgh South Bridge, Edinburgh, available at: <https://peacerep.org/wp-content/uploads/2023/08/Badanjak-2023-EU-External-Action.pdf>, 5.], Accessed 23 February 2025.

²⁵ Bindi, *op. cit.*, note 4, p. 3.

²⁶ EUSA, note 1, p. 4-5.

²⁷ Walker, N., *The Place of European Law*, in: De Búrca, G.; Weiler, J. H. H. (eds.), *The Worlds of European Constitutionalism*, Cambridge University Press, 2012, pp. 57-104, p. 99.

²⁸ Lamassoure, *op. cit.*, note 6, p. 270.

internal reforms to ensure that our policies are fit for the future”, and “that the EU institutions continue to function and act effectively”.²⁹

3. HIGH REPRESENTATIVE FOR FOREIGN AFFAIRS AND SECURITY POLICY: LEGAL FRAMEWORK AND OBSTACLES TO ITS APPLICATION

The post of the HR was created by the Treaty of Amsterdam (Article J (8.3), and Article J (16)) in 1997, and it represented the Treaty’s profound innovation. Created on the initiative of France, the position of “‘Mister’ or ‘Madame’ PESC” had the “role of animation and representation” in the field of European foreign policy, and enjoys the “advantage of stability” in comparison with rotating presidencies of the EU.³⁰ The new institution was established “because the [EU] wanted to be a stronger actor on the global stage”,³¹ and was, thus, destined to become “the post that is in charge of strategic planning”.³² We should remember that in the Jacques Santer’s Commission (1995-1999) no less than *four* out of 21 of its members were responsible for the EU’s external relations.³³ The introduction of the HR probably reflected the intention of the European leaders to overcome such sloppiness in the institutional management of the EU foreign policy.

Although the innovations brought by the Treaty of Amsterdam, a number of authors rose concerns about the efficiency of institutional framework for the European foreign policy. Basically, the emergence of the HR increased confusion in the distribution of tasks within the current institutional framework,³⁴ and the legitimacy of the post which has yet to represent “the embodiment (*l’incarnation*) of Europe“ was disputed, because it remained under the “political direction” of

²⁹ EUSA, *op. cit.*, note 1, p. 5.

³⁰ Terpan, *op. cit.*, note 12, p. 359.

³¹ Herber, F.-R., *The Legal Constitution of the European Union*, European Scientific Journal August 2018, Special Edition, pp. 103-128, p. 107.

³² Duić, *op. cit.*, note 19, p. 289.

³³ The names and portfolios were: 1) Manuel Marin (External relations with the Mediterranean (South), Middle and Near East, Latin America and Asia (except Japan, China, South Korea, Hong Kong, Macao, Taiwan); 2) Sir Leon Brittan (External relations with North America, Australia, New Zealand, Japan, China, South Korea, Hong Kong, Macao, Taiwan, Common commercial policy, and Relations with OECD and WTO); 3) Hans van den Broek (External relations with the countries of Central and Eastern Europe and countries of former Soviet Union, Turkey, Cyprus, Malta and other European Countries, CFSP, External service); 4) Joao de Deus Pinheiro (External relations with the countries of Africa Caribbean and Pacific (ACP), South Africa, Lomé Convention). The list of portfolios and the commissioners is available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip_94_1002], Accessed 20 January 2025.

³⁴ Terpan, *op. cit.*, note 12, p. 360.

the Presidency and the European Council.³⁵ Although the Preamble of the TEU declares that member states are ‘resolved to implement a [CFSP], the EU institutional framework in the field of foreign policy is marked by confusion, overlapping of jurisdictions, and visible inefficacy. The CFSP had already in past been condemned as “a declaratory diplomacy, which reacts rather than acts”, and is “reduced to decisions taken on the basis of the lowest common denominator”.³⁶

Framing of the CFSP is nowadays assured by the European Council, with the HR taking part in its work (Article 15 (2) of the TEU). Its President ensures the “external representation” of the EU, “without prejudice to the powers of” the HR (Article 15 (6. 2)). In addition, the European Council lays down “strategic guidelines” on which the FAC elaborates the EU’s “external action” (Article 9C (6.3)). Finally, with the *notable* exception of the CFSP, the Commission ensures the EU’s “external representation” (Article 9D (1)), as the body which is authorized to pivot all the main policies of the EU.

Due to its international composition, the European Council represents the highest political authority of the EU, while, thanks to its regular, often informal, sessions, it remains the EU’s essential decision-making body. Its Secretary-General (the HR) plays a role of proposal, coordination and representation. As from November 2014, the Commission *also* encompasses the HR (Article 17 (4) of the TEU). Under the TEU, the EU’s decision-making in the area of foreign policy area remains dominated by the bodies in which the Member States are represented – the European Council and the Council of Ministers, but now in coordination with an important new post of the President of the European Council, as well as within the context of expanded powers of the HR. Additionally, the Commission has been granted major powers in the field of the EU’s broader external action.³⁷

On the other hand, the EU expressed its determination to “ensure consistency between the different areas of its external action and between these and its other policies”, which is ensured by the European Council and the Commission, in which task they are “assisted” by the HR (Article 21 (3.2) of the TEU). In the field of the CFSP, the European Council identifies “the strategic interests and objectives” of the EU (Article 22 (1)). The CFSP is “defined and implemented” by the European Council and the Council of Ministers, which act “unanimously”, except otherwise provided by “the Treaties”. At the same time, it is “put into effect” by the HR and the Member States (Article 24 (1.1), while the HR contributes “through

³⁵ *Ibid*, p. 360.

³⁶ *Ibid*, p. 7.

³⁷ Novičić, Ž.; Lađevac, I., *Evropska služba spoljnih poslova*, Evropsko zakonodavstvo, X/35–36 (2011), pp. 164–183, p. 166.

his proposals towards the preparation of the [CFSP]” and ensures implementation, in this regard, “of the decisions adopted by the European Council and the Council” (Article 27 (1)). The HR represents the EU “for matters relating to” the CFSP, and conducts “political dialogue with third parties on the [EU’s] behalf”, and expresses its “position in international organisations and at international conferences” (Article 27 (2)).

Although the TEU introduced certain improvements in terms of representing the EU in international area, there is room for criticism of certain solutions contained in it. At the first place, the document creates very real possibilities of continuous political *skirmishes* between the HR and some other institutional actors in the field of the CFSP.

Although nominally the President of the European Council ensures the external representation of the EU “without prejudice” to the HR’s responsibilities (as mentioned earlier in the paper), “such wording surely speaks in favour of the [HR], but instead of bringing harmony among foreign relations actors, it paves the way for further tension.”³⁸ The mere *existence* of the post of the President of the European Council “implies that [the HR] will not be alone in the international representation of the organization”.³⁹ The menacing competition between the two posts appears to have been verified during the first half of the 2010s, when “the circumstances (...) indicate[d] that the President of the European Council has established himself more as the face of EU foreign policy, whereas the [HR] has positioned herself as more of an operative who is not the face of EU foreign policy but rather carries out her work ‘on the field’ (visits regions that are experiencing difficulties, conducts peace talks etc.)”, which represents a “state of affairs” which is “contrary to the [TEU]”.⁴⁰

Relations between the HR and the Commission have also been proven to be complicated, to say the least. The importance of the fact that the HR is one of the Commission’s Vice-Presidents is undeniable, because the relevant provision of the TEU may be crucial “for the strengthening of coherence” within the Commission, but “it is also one of the causes of interinstitutional tension”.⁴¹ The current state of affairs “requires a clear division of labour with other commissioners whose portfolios have an external dimension”.⁴² Additionally, Article 17 (6.2) of the TEU stipulates that if the President of the Commission so requests, the HR “shall resign”,

³⁸ Duić, *op. cit.*, note 19, p. 294.

³⁹ Prolović, *op. cit.*, note 18, p. 67.

⁴⁰ Duić, *op. cit.*, note 19, p. 294-295.

⁴¹ *Ibid.*, p. 295.

⁴² García Herrero; Grabbe; Pisani-Ferry, *op. cit.*, note 10, p. 2.

in accordance with the procedure stipulated by Article 18 (1). This provision indicates that the President of the Commission and the European Council have a very significant tool for influencing the HR, who is not free to develop her/his own mechanisms to strengthen the CFSP, even though being the Head of such an important structure as the EEAS is. Finally, Article 17 (7.3) states that members of the Commission – including its President *and the HR* – are subject “as a body to a vote of consent” by the European Parliament. This means that the HR is put in the position to be simultaneously responsible for his/her actions to the European Council, the President of the Commission, and the European Parliament.

It is also useful to mention that the TEU does not set any qualifications for the post of the HR. Under its Article 18 (1), the HR is appointed (and dismissed) by the European Council, voting by the means of a qualified majority, and with the agreement of the President of the Commission. However, the Treaty stipulates no detailed qualifications for the post of the HR.⁴³ A preferred option, and perhaps a necessary one in order to strengthen her/his position, would consist in providing for a truly reputable HR by requiring that the candidate for the post should have a measurable political (preferably *executive*) or diplomatic experience on national, European, or international level.

Perhaps HR should not be a member of the Commission anymore. In one academic *memorandum* sent in 2024 to the HR, it was noted that “the job of [HR] and Vice-President of the [Commission] was designed for a different world than the one the [EU] now grapples with: a world built on principles and governed by law, in which the EU was a force of attraction because of its mass, prosperity and good governance”.⁴⁴ A fine proposal consists in amending the TEU in order for the HR *either* be “relieved of the duties relating to representing the [EU] for matters relating to the CFSP”, while “the said power [should be attributed] to the President of the European Council”, or (the HR) should be removed from the Commission.⁴⁵ Alternatively, in “a world dominated by intimidation and brute force”, the European Council should give the HR “a stronger mandate to act on matters on which member states have decided to take common action”, which “would require stronger legal and financial capabilities to coordinate relevant policies in the EU institutions”; in this way, the HR “would be ‘first among equals’, both among the foreign ministers and among all commissioners”.⁴⁶

⁴³ Duić, *op. cit.*, note 19, p. 293.

⁴⁴ García Herrero; Grabbe; Pisani-Ferry, *op. cit.*, note 10, p. 3.

⁴⁵ Duić, *op. cit.*, note 19, p. 295.

⁴⁶ García Herrero; Grabbe; Pisani-Ferry, *op. cit.*, note 10, p. 2.

Simultaneously, some member states remain set on protecting what they see as their sovereign right to conduct their own foreign policy. This is strongly resembling of the old ruling by the Supreme Court of Ireland, in *Crotty v An Taoiseach* (1972), in accordance to which the ratification of the Single European Act (adopted in 1987), the first extensive revision of the Treaty of Rome (1957), “would unconstitutionally fetter the freedom of the Government to conduct foreign policy on behalf of the state”. The Court’s minority (as if almost ironically) “dissented on the basis that [the Single European Act] was too aspirational and vague to constrain the Government in any meaningful way”.⁴⁷ Related to the subject of the paper, one may claim today that certain provisions of the TEU are also *too aspirational and vague*, and, thus, not sufficient for establishing a truly *common* foreign policy of the EU. The same skepticism can be attached to the 2024 promise of the European Council members who claimed that they “will leverage (...) external EU policies in the best interests of the [EU] in a well-coordinated manner”.⁴⁸ For example, it can be mentioned that France, one of the EU founders, remains the only permanent member of the United Nations Security Council (UNSC) from the ranks of the EU member states, with no visible intention to propose that, for example, the EU take the place in its stead at this highly influential forum. At the same time, national politicians from predominant member states of the EU (France included) endangered the public authority of the HR, who “had little difficulty to compete with the foreign minister, or even the prime minister, from for example Slovenia for media attention”, but “national politicians from France, Germany and the United Kingdom in the seat of the Presidency, on the other hand, were difficult to ignore”.⁴⁹

Although the introduction of the post of the HR by the Treaty of Amsterdam represented a step towards creating a true *foreign ministry* of the EU, the main question remains, almost thirty years later – “is the EU considered a relevant international actor?”⁵⁰ With many of the EU institutions’ overlapping tasks and somewhat confusing procedures in the field of the formulation and implementation of the CFSP, the EU is destined to often be misunderstood by its partners and rivals, in terms of the clarity of its attitudes. Thus, European diplomacy remains limited for structural reasons related to complex and confusing procedures of the EU, including the fact that the institutional position of the HR is not clearly defined, and that the post

⁴⁷ Doyle, O., *Constitutional Identity, Legal Autonomy, and Sovereignty: Costello v Government of Ireland [2022] IESC 44*, European Constitutional Law Review, Vol. 19/4 (2023), pp. 715-737, p. 722.

⁴⁸ EUSA, *op. cit.*, note 1, p. 4.

⁴⁹ Dijkstra, H., *EU External Representation in Conflict Resolution: When Does the Presidency or the High Representative Speak for Europe?*, European Integration online Papers (EIoP), Vol. 15, No. 1, 2011, pp. 1-23, p. 5.

⁵⁰ Bindi, *op. cit.*, note 4, p. 2.

suffers from vulnerability from other institutional actors. Maybe, simply, after two and a half decades of its existence, the post of the HR has come of age.

If it aims to promote a more efficient and coherent European foreign policy, the EU must take a more integrationist approach. This means, among other things, that it should start weaning itself from being overly sensitive to national diplomatic priorities and methods, particularly of the bigger (and therefore more influential) member states. Creating a Europe which would be more than a sum of its parts is not that much of a Sisyphean task. To comprehend that, the EU leadership is invited to recall the earlier historical crises of the EU and decisive self-confidence-building measures that represented an adequate response to many of the historical challenges. Truly, “the EU legal order has been remarkably adept at responding to processes of political change”,⁵¹ and the impressive task of constructing a *Strong and Secure Europe* fits conveniently in patterns of this decades-long historical evolution.

At the present moment of the development of the European project, one of the first steps in the favored direction would be to simplify the structure of the EU foreign policy bodies. To become a unified actor in the international scene, the EU must change its consisting set of foreign policy mechanisms and procedures and introduce one which would be truly *responsible* for its diplomacy. In this regard, the Constitution envisaged essential ameliorations, including outlaying *an old idea about a new post* – that of a European Foreign Minister (and not just in name).

4. A EUROPEAN FOREIGN MINISTER FOR AN HONESTLY ‘STRONG AND SECURE EUROPE’

With experience accumulated for twenty years, for some, the rejection of the Constitution reveals as a regretful misjudgment. For others, it looks like an announcement of justified resistance to attempts to centralize EU powers. Regardless of which position the reader of this paper is attached to, it is crucial to remind how the idea of one of the most important innovations of the Constitution came about in the first place, as well as how this topic has been esteemed in the previous two decades.

The idea of creating the Minister obviously arrived from the necessity to answer to the famous question of Dr. Henry Kissinger, former USA National Security Adviser and Secretary of State: “Europe, what telephone number?”⁵² Current in-

⁵¹ Dawson, M., *The Changing Substance of European Law*, European Constitutional Law Review, Vol. 20, Issue 3, September 2024, pp. 451-482, p. 479.

⁵² Constantinesco, V. ; Gautier Y. ; Michel V., *Le Traité établissant une Constitution pour l'Europe: analyses et commentaires*, Strasbourg, Centre d'Etudes Internationales et Européennes, Presses Universitaires de

adequacies of European foreign policy are best exposed by reminding that “who speaks for Europe is one of the major questions in European integration”, because the continent “has a plethora of external representatives”.⁵³

The Constitution laid the foundations for a more coordinated European foreign policy. Its authors proposed to merge the posts of the HR and of the Commissioner for External Relations in order to create a *single* post of the Minister. Maybe one of the origins of this idea was contained in the fact that “the coexistence of the two political roles and the communication of their bureaucracy was difficult and made the foreign political action ineffective”.⁵⁴ Understanding the concept of the Minister and his roles in strengthening the CFSP has in the meantime become a somewhat sidelined topic. This tendency takes place despite the existence of “a confusing and contested institutional structure in which multiple external representatives speak on behalf of Europe and control different external instruments”,⁵⁵ while, at the same time, the EU remains nominally loyal to its devotion of promoting “an international system based on stronger multilateral cooperation and good global governance” (Article 21 (2. “h”) of the TEU).

The CFSP was one of the principal issues in the debate that evolved around the Constitution. This probably had a lot to do with the fact that the constitutional process occurred simultaneously with the “EU’s very public display of disunity before and during the 2003 Iraq war”.⁵⁶ It is useful to remind that the EEAS was the innovation proposed by the Constitution (Article III-197(3)), and created after the adoption of the TEU. The competences of the *Union Minister for Foreign Affairs* were laid out in Article 27 of the Constitution, and its Chapter II, dedicated to the CFSP (Article III-195 to Article III-214), but are also scattered throughout the document.

When it comes to making comparisons between the posts of the Minister and of the HR, there are many parallels to be found between the Constitution and the TEU. Thus, the Constitution assured that the Minister takes part in work of the European Council (Article 20 (2)), whose President ensures the external representation of the EU “without prejudice” to the responsibilities of the Minister (Article 21 (2.2)). The Minister chairs the FAC (Article 23 (2) and Article III-197

Strasbourg, 2005, p. 11.

⁵³ Dijkstra, *op. cit.*, note 49, p. 2 and 3.

⁵⁴ Duić, *op. cit.*, note 19, p. 292.

⁵⁵ García Herrero; Grabbe; Pisani-Ferry, *op. cit.*, note 10, p. 5.

⁵⁶ Tonra, B.; Christiansen, T., *The study of EU foreign policy: between international relations and European studies*, in: Tonra, B.; Christiansen, T. (eds.), *Rethinking European Foreign Policy*, Manchester University Press, 2004, pp. 1-9, p. 9.

(1)), *conducts* the CFSP, *contributes* “by his or her proposals” to the development of the CFSP (Article 27 (1-2)), and proposes “European decisions on the implementation” of the CFSP (Article 40 (4)). She/he is appointed by the European Council, “acting by qualified majority, with the agreement of the President of the Commission”, and can be dismissed by the European Council (Article 27 (1)). The Minister is one of the Vice-Presidents of the Commission, and is “responsible there for handling external relations and for coordinating other aspects of the Union’s external action” (Article 27 (3)). The Minister is authorized to propose decisions in the area of the CFSP, which can only be adopted unanimously by the European Council and the Council of Ministers. Finally, under the Constitution it was envisaged that “in the case requiring a rapid decision”, the Minister would be authorized to convene an extraordinary meeting of the European Council, acting so either on his own initiative or at the request of a member state (Article III-299 (2)). The CFSP is “put into effect” by the Minister “and by the Member States, using national and EU resources” (Article 39 (4) of the Constitution, and, for the HR, Article 11 (1.2) of the TEU). The Minister was to be entrusted with the “political dialogue with third parties” (Article III-296 (2)), and is assisted by the EEAS (Article III-197 (3)), as the HR is today.

Obviously, many solutions introduced by the TEU and related to the HR are modeled after the provisions of the Constitution dedicated to regulating the position of the Minister. However, there also provisions that set the basis for *a stronger influence* of the Minister, in comparison with the position of the HR. Hence, in exercising hers/his “responsibilities within the Commission, and only for these responsibilities, the [Minister] shall be bound by Commission procedures”. It is obvious that, in relation to other members of the Commission (and its President), the Minister is entrusted with greater autonomy than is given to the HR. Further, the Constitution ensures an important position for the Minister by conferring on her/him the duty of close cooperation with the member states, and of their coordination within international organisations and during multinational conferences. He is always regularly informed by the member states on any issue of common interest (Article III-305 (2)). An important new feature compared to the Treaty of Nice was the fact that “when the [EU] defines a position on a topic on the agenda of the [UNSC], the member States that sit on it request that the [Minister] be invited to present the position of the Union” (Article III-300 (2)). Together with the Council of Ministers, the Minister ensures the compliance of member states with the principles of the CFSP (Article III-195 (2.3)).

The European leaders *meant business* when they put their signatures on the Constitution which guaranteed a more coherent foreign policy of the EU. Concrete arrangements have already been made. They agreed at the European Council meet-

ing of 29 June 2004 that Javier Solana, the then HR, would be appointed Minister as from the entry into force of the Constitution.⁵⁷ When making the decision, they certainly had a high regard to Solana's previous political expertise as a mediator in conflict resolution processes.⁵⁸ It is useful to note that, within the consultations which led to the drafting of the Constitution, more *modest* titles for the post were proposed: "the Representative of the EU for Foreign Affairs", and (following the US example) the "EU Secretary for Foreign Affairs". Finally, the title of the Minister was finally chosen in order to "raise the status" of the post.⁵⁹

The EUSA might serve as a method for renewing the promise the European Council offered slightly more than two decades ago. If the EU's position in global environment is already plainly visible, orderly, and in good shape, why would then the document claim that only "a strong and sovereign Europe" would represent the EU's response to "growing global instability"?⁶⁰ Certainly, some responsibility for the current state of the CFSP must rest in its actual institutional framework. I suggest that it should be, and just in a symbolic way, reconstructed so that it includes the Minister.

Naturally, the rearrangement of the CFSP represents a reform deemed to be divisive. The thorny issue of relative centralization of the EU's foreign policy cannot be avoided without properly managing certain member states' resistance and procedural difficulties, posed primarily by the necessary ratification of the amendments to the TEU, or, preferably, of *a completely new treaty*, although this (again) might appear as moving off from an international treaty pathway on to a constitutional pathway. Arguably, a sensible adaptation of the TEU might do the job and deliver the goods in the field of ensuring a *Strong and Secure Europe*, and it is not inevitable that suggested innovations should be contained within the frame of "a constitutionalized Europe",⁶¹ for, in 2003, a *mere* "treaty amendment has been

⁵⁷ Priollaude F.-X.; Siritzky, D., *La Constitution européenne: Texte et commentaires*, Paris, La documentation française, 2005, p. 98.

⁵⁸ Dijkstra, *op. cit.*, note 49, p. 5. "As it often is the case with political functions, the personality of an individual plays a role in the development of the function he or she holds. Owing to [Solana's] hard work and a network of international relations, the EU foreign policy managed to leave a mark on the international scene for the first time (and to this day the only time)" (Duić, D., *op. cit.*, note 19, p. 292). As the head of the European Defense Agency (which was founded in 2004), Solana "led political dialogues with third parties" on behalf of the European Council, and he "also represented the EU in the Middle East Quartet (a four-member group that mediates the peace process in the Middle East conflict, along with the USA, Russia and the UN)", Prolović, *op. cit.*, note 18, p. 66.

⁵⁹ Priollaude; Siritzky, *op. cit.*, note 57, p. 98.

⁶⁰ EUSA, *op. cit.*, note 1, p. 2.

⁶¹ Weiler, J. H. H., *On the power of the Word: Europe's constitutional iconography*, International Journal of Constitutional Law, Vol. 3, Issue 2-3, May 2005, pp. 173-190, p. 180.

given the grand name of Constitution”.⁶² This part of the paper serves to lay out the concept that an individual post of the Minister might serve as a true center of EU’s foreign ambitions.

From the political point of view, the Constitution was an *undercooked* project – a confusing, long document, which was served to rather unapproachable and distanced audience, while arousing grave concerns about national sovereignty. These anxieties might be relieved with arguments about the continuation of particular influences of member states, as well as possibilities of engaging in different degrees of the CFSP integration (*opting-out* provisions). Just as the European Constitutional Convention process “was intended as a way of smoothing the passage of the instrument, as well as bringing a broader range of national political and civil society voices to the table”,⁶³ the introduction of the Minister in the EU’s set of bodies has to be done cautiously and in a transparent way, continually reminding the voters that a *Strong and Secure Europe* cannot be achieved by the already existing instruments for implementing the CFSP.

The logic of restructuring the CFSP is deeply interconnected with the partial re-definition of the post of the EU’s foreign representative – let us call it the Minister – when it comes to its relations with other EU institutions. Thus, the European Council, as the implicit guardian of member states’ sensibilities and the body with the highest legitimacy within the set of the EU bodies, should become a *sole* actor in the procedure of electing the Minister, and would continue to control his/hers official activities. As noted earlier in the paper, it would be more than welcome to set official qualifications for the election of the Minister, including appropriate experience in the field of diplomacy, and, potentially, to introduce the condition that the elected person has not held an elective office at the national level for a certain period of time in the previous period (in order to avoid any conflict of interests between the function of the Minister and the interests of some of the member states, especially the more influential ones among them). Member States, which remain *masters* of the EU treaties, could along these lines continue to control the way in which the CFSP is effectively conducted.

The mentioned solution might contribute to avoiding the effectiveness of current critics in accordance to which the HR, as “an actor in his own right”, represents the reflection of “the bureaucratic politics model”.⁶⁴ In order to counter these observations, it would be preferable to introduce a one-time renewable term of office for the post of the Minister. This suggestion is perfectly in line with a proposition that

⁶² *Ibid*, pp. 172-173.

⁶³ Walker, *op. cit.*, note 27, p. 100.

⁶⁴ Dijkstra, *op. cit.*, note 49, p. 2 and 5.

“the President of the European Council should keep the power of external representation of the Union, whereas the [HR]⁶⁵ should expand his or her influence with a view to strengthening the position of the [EU]” in the area of the CFSP.⁶⁶

The latter proposition naturally suggests that the Minister should be officially detached from the Commission. There is no visible need to maintain the current state of affairs within which the EU’s foreign policy representative is the member of the Commission. Although it seems that the key motive for the existing solution reflects an attempt to raise the reputation and institutional status of the Minister, it is subject to arouse constant (although mostly tacit) competition between the Minister and his colleagues from the Commission, including its President. The Minister (or, as the very author of the suggestion mentions – the HR) “should be dismissed from the post of the Vice-President of the Commission”, while her/his role as President of the FAC and Head of the EEAS “should be strengthened”.⁶⁷ Alternatively, if the HR (or the Minister) should remain within the Commission, its President “should have a greater role in the selection” of the HR (the Minister).⁶⁸

Of course, amendments to the TUE should provide that the Minister maintains constant consultations with the President of the Commission and with the commissioners whose responsibilities are directly related to the EU foreign policy, in order to ensure its coherency and future continuity. Within the same line of reasoning, there is no need to claim that any connection with the European Parliament and the Minister is necessary. Thus, as a representative of the policies formulated and controlled by the European Council, she/he should be relieved from responsibility to a 720-members’ body, which, as might be assumed, is only partially versed in the daily variable global politics.

The introduction of the post of the Minister would not reflect a deviation from the traditional gradualist approach to the European construction. Representing a synthetic figure of external representation of the EU, and speaking in the name of 450 millions of the EU citizens, the Minister, as a highly legitimized representative of the European Council, could make help Europe to be observed more cautiously by other relevant actors in the area of international policy. The post of the Minister may also represent a proof of the desire of the EU leadership to contribute to future avoidance of inter-institutional quarrels and conflicts between key actors in the field of CFSP.

⁶⁵ I would humbly suggest: ‘the Minister’, instead of the ‘HR’.

⁶⁶ Duić, *op. cit.*, note 19, p. 295.

⁶⁷ *Ibid.*, p. 297.

⁶⁸ *Ibid.*

The final verse of the first stanza of the text of the anthem of the EU (and of the Council of Europe) contains an admiring expression (in Latin): *pacem mundi augeat*, meaning that Europe declares itself responsible for augmenting “the peace of the world”. At the current moment, the list of most dangerous ongoing international conflicts includes the war in Ukraine – a country which in 2022 submitted application to the membership in the EU – as well as several other armed conflicts or political antagonisms in the EU’s immediate vicinity. In order to maintain (or regain) the status of a respected and widely understandable international actor, the EU must take a more active approach to resolving these – and many other – risks to global stability. This *will* require certain re-arrangements in its institutional framework, potentially in line with those proposed by authors of the Constitution (whose ideas were perhaps brought forward before their time). The creation or, more accurately, the *re-imagination* of the office of the Minister might represent a formidable advantage in that direction.

5. CONCLUSION

This paper argues that the EU’s strategic determination to reinforce its active role in international relations needs to be reflected in designing an innovative approach to its institutional framework. A long-desired more coherent European external action demands taking creative steps, including bringing up again the topic of introducing a visible representative of the EU in its foreign policy. If wisely designed and carefully developed, the establishment of the post of the EU Minister for Foreign Affairs might represent a key contribution to assert the EU’s “ambition and role as a strategic global player”, as it was announced in the EU Strategic Agenda for 2024-2029. The main goal of this paper is to steer the discussion of the existing mechanisms for conducting EU foreign policy in the direction of a partial return to the solutions proposed by the Treaty establishing a Constitution for Europe.

Deteriorating global security circumstances, which endangered the very boundaries of the EU, call for re-considering whether the post of the High Representative, included in the complex and somewhat confused system of the European foreign policy, satisfies European international ambitions, interpreted beyond its strategic rhetoric. Seen from the institutional point of view, a more efficient system of adoption and enforcement of the Common Foreign and Security Policy could be established by making one noticeable step forward.

In this paper, it is asserted that the EU Foreign Minister should be appointed by the European Council, in accordance with relatively clearly defined criteria. She or he should not be a member (one of the Vice Presidents) of the European Commission, although this does not mean that the two influential actors should not

cooperate in their mutual relations. The key alteration which could be brought by introducing the post of a single foreign representative of the EU consists in reducing the field for possible inter-institutional conflicts, without imperiling democratic control of the ways in which the European foreign policy is conducted.

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