# Agent Interaction as a Source of Discretion for the EU High Representative

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## 1    INTRODUCTION

The principal–agent structures of the European Union's (EU) external action are extremely complex. The member states as the collective principal have delegated tasks of policy planning and implementation to various degrees to supranational and semi-supranational[1] Brussels-based agents. The main divide of EU external action is as old as the European integration project itself: on the one hand, the European Commission is in charge of policy planning and initiation in the area of exclusive competences of the EU, such as the common commercial policy. It is also the administration in charge of the EU-level action in the area of shared competences, such as development cooperation and humanitarian aid. In addition, the European Commission implements the heavy external financial instrument that guides actions with external partners, for example as part of the European Neighborhood Policy. On the other hand, the Lisbon Treaty created the High Representative of the Union for Foreign Affairs and Security Policy and put her in the driver seat of the otherwise intergovernmental organized Common Foreign and Security Policy (CFSP). An overall linchpin was supposed to connect the two spheres of external action, namely the so-called double-hatting of the High Representative as Vice-President of the European Commission. Under the first High Representative Catherine Ashton, whose term

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exactly overlaps with the investigation period of this research, the setup failed to deliver. Little additional coherence was achieved and the High Representative became double-"hated" rather than hatted.

This paradox is striking: on the one hand, the post of High Representative was given a far-reaching set of competences to guide and implement EU external action; on the other hand, the actual discretion of the incumbent during the first years was very limited. This chapter aims to find out how we can explain this paradox with the help of the principal–agent model. The classical principal–agent model offers two explanations. An explanation focused on the agent would see the low discretion of Catherine Ashton as an instant of agency slack where the hired agent turns out not being able to deliver on the expected tasks. Indeed, the public criticism of Catherine Ashton's performance was a constant feature of her term (one harsh example is Castle 2011). However, member states' criticism was low, with foreign ministers repeatedly publicly supporting her.[2] A second classical explanation from a principal–agent perspective would be that the low discretion of the new post is not a bug, but that it is a feature intended by member states. The rivalry between the Commission and the High Representative, following this line of argumentation, was intended by member states in order to keep both agents in check. This explanation, however, does not seem logical, as the main reason for the creation of the double-hatted post-Lisbon High Representative was to increase the coherence of the overall EU external action—an aim that would be more difficult to reach if trenches were dug in Brussels.

Offering an alternative explanation, this chapter suggests that the puzzle of the limited agency of the High Representative can only be solved in principal–agent terms by paying closer attention to the effects of agent interaction. As demonstrated in Fig. 1, this chapter puts forward that interaction between agents influences their discretion beyond the intent and control of the principal. In the case at hand, competition between the European Commission and the High Representative reduced the influence of the High Representative below the level intended by the member states. This chapter analyzes the relations between the two EU actors between 2010 and 2014. It is mainly based on 52 semistructured expert interviews in EU institutions (Commission, EEAS, Council, European Parliament) as well as in member state foreign ministries (Permanent Representations to the EU and the foreign ministries' headquarters in Helsinki and Berlin) carried out between May 2011 and
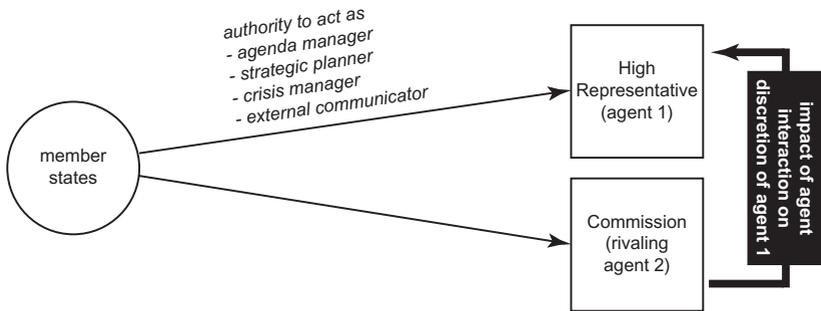
**Fig. 1** Visualization of the principal–agent relationship and agent interaction as a source of discretion

September 2013. In addition, the research draws on secondary literature as well as official documents.

## 2    THEORETICAL PUZZLE: THE EFFECT OF MULTIPLE AGENTS

The nature of interaction between agents can have a profound impact on their discretion. Especially in complex principal–agent arrangements, such as the setting of EU external action with a number of contractual relationships with multiple agents, agent behavior can have horizontal effects (Dür and Elsig 2011). The behavior of one agent can have a significant impact on another agent's ability to exert influence on policies. Specifically, the EU High Representative (supported by the EEAS) and the European Commission (in form of its President, individual Commissioners as well as supportive Directorate-Generals) are both agents of the Council with overlapping competences in the planning and conduct of EU external action.

While some principal–agent scholars paid attention to the interaction of agents and the effect on agents' discretion (most notably Klein 2010), the interaction between agents has been widely treated as a sideshow. Too often, activities of agents have been seen as defined by the act of delegation and subsequent control, instead of considering deliberate use of strategies of agents to extend their room for maneuver (Hawkins and Jacoby 2006). Outside the EU context, inter-agent relations have been framed as additional mechanisms of the principal to control the agent. Kiewiet and McCubbins (1991: 33ff), for example, describe the

establishment of multiple agents as "institutional checks." Following their interpretation, more than one agent with similar tasks is purposefully created in order to spark competition and mutual monitoring and thus to keep the discretion of the agents at bay. Additional agents thus function as a "fire alarm oversight" (McCubbins and Schwartz 1984: 166), as they draw attention to violations of their fellow agents in implementing the mandate of the principal.

This interpretation of multiple agent relationships as additional check and oversight mechanisms through competition has been adopted quite broadly in analyses of EU external relations. Kostanyan and Orbie (2013) identify institutional checks of the European Commission and other EU bodies in the Eastern Partnership framework that constrain the activity of the EEAS. Klein (2010) identifies that the Commission installed "horizontal controls" vis-à-vis the General-Secretariat of the Council in the area of EU crisis management.[3] The principal–agent literature concerned with the complex architecture of EU external relations thus reduces the role of a simultaneously active agent mostly to a control mechanism.

In the specific context of these studies, modeling additional agents as mechanisms for oversight can be a legitimate way of reducing complexity. However, it is questionable whether this simplified model accurately represents the real-world dynamism between agents. First, this type of modeling assumes specific preferences for the agents to be in favor of controlling or limiting each other's room for maneuver. In the above literature, this is explained with a tendency of competition between agents in face of scarce resources, as it has been put forward by bureaucratic politics theory (Allison and Halperin 1972; Down 1966). While the fight over resources might certainly be one of the motivations of agents under conditions of ambiguity and scarcity, it does not explain why sometimes agents cooperate. It is not improbable that under certain circumstances, several agents share the same preferences and have a tendency to cooperate in order to maximize their discretion vis-à-vis the principal. In the analysis at hand, it is not improbable to expect that the Commission and the EU High Representative work together to the effect that they gain unintended discretion vis-à-vis member states.

Second, control and restriction of activities between agents might not even be in the interest of the principal. Again, in some cases it seems plausible that the principal has an interest in limiting the discretion of agents as to avoid agency slack. However, the principal also has an

interest in a certain amount of discretion of an agent. For example, it cannot be in the preference of the principal that excessive rivalry between agents limits the scope of their maneuver to the extent that they cannot implement the delegated tasks efficiently. In the case at hand, it is questionable that the member states are in favor of a rivalry between the Commission and the High Representative. Instead, it seems feasible that member states allow for "deliberate discretion" (Huber and Shipan 2002) of agents, which allows them to function properly.

This chapter thus suggests taking a more detailed view on agent interaction. The argument is that the discretion of an agent is not just a function of the delegation and control relationship with the principal, but also of the interaction with other agents. Unlike previous works on interactions between agents, the effect on discretion can be negative, as well as positive. On the one hand, competition between agents can be seen to have a restrictive effect on their discretion, as each of the supranational agents restricts the other's range of possible actions. In order for this agent competition to emerge, two factors have to be present. There must be overlapping or at least ambiguous division of competences between the agents, and their preferences have to be diverging in order to spark horizontal controls between agents.

On the other hand, cooperation between agents can have an enabling effect, thus providing the agents with unintended discretion. Supranational agents have a genuine preference to widen their area of competence. In particular, Pollack (2003: 389) found that the Commission used its powers to extend the scope of its own actions in negotiations with the member states. In the absence of overlapping competences or diverging preferences, agents will cooperate with the aim of widening their competences on a specific matter. To that end, they will use possibilities of cooperation to enhance their position in relation to the principal. For example, the Commission and the High Representative could increase the costs of member state control by actively limiting the possibility of oversight with respect to their activities and coordination.

The theoretical model will be applied to the case of EU external action in the following way (see Fig. 1). The member states are the principal. Because member states define their relationship with the EU-level agents through the framework stipulated by the EU treaties and through jointly adopted Council Decisions, one can define them as a "collective principal" (Lyne et al. 2006). The agents in the empirical

case are the High Representative (supported by the EEAS) and the European Commission (including the College of Commissioners and the various DGs). The model is a simplified version of the reality to the extent that the EU High Representative is also a member of the Commission and responsible for its external relations since the Lisbon Treaty entered into force in 2009. Nevertheless, this chapter assumes that the High Representative is a sufficiently distinct agent from the Commission.[4]

The tasks that are delegated from the member states to the High Representative can be summarized in four categories: (1) As an *agenda manager*, the High Representative oversees the decision-making process in the area of EU external action, performing the role of Vice-President of the Commission and being in the chair of the Foreign Affairs Council.[5] (2) The task area of a *strategic planner* includes transformational decision-making beyond the management of the status quo as well as the framing of particular policy problems in light of long-term goals.[6] (3) In international crisis situations, the High Representative has to act as *crisis manager* and prepare and implement CSDP mission together with the Political and Security Committee.[7] (4) Finally, the High Representative is an *external communicator*, conveying the Union's position to outside audiences and coordinate statements with member states.[8]

The acts of delegation are thus mainly defined through primary law and build the institutional basis for the High Representative to get active. The following section analyzes the rationale of member states behind the above-stated delegated tasks and behind the creation of the High Representative with the Lisbon Treaty in general. Subsequently, the analysis turns to the politics of discretion and examines to what extent the two factors, the institutional context (overlapping agents' competences) as well as the preference distribution between agents, had an effect on the discretion of one of the agents, namely the High Representative of the Union.

## 3    EMPIRICAL ANALYSIS: HOW THE HIGH REPRESENTATIVE LOST ITS CLOUT

This chapter locates the interesting dynamics of agent interaction in the politics of discretion—after the act of delegation took place. However, as pointed out in the Introduction to this volume, the patterns of delegation already set the stage for the politics of discretion (Delreux

and Adriaensen this volume). The reasoning of member states behind entrusting the High Representative with foreign policy tasks—the politics of delegation—is worth exploring briefly.

### 3.1    *The Politics of Delegation: The Rationale Behind Creating the High Representative*

Before the member states created the EU High Representative with the 2009 Lisbon Treaty, the member state holding the rotating six-month Presidency of the Council was in charge of managing and representing the CFSP. In order to ensure some degree of continuity, the rotating Presidency was assisted by the institutionally weak High Representative for the CFSP. While the officeholder Javier Solana was generally seen to make most of the little powers that he held, it depended on the nature of the job or the mercy of the rotating Presidency to what extent he could influence foreign policy (Müller-Brandeck-Bocquet and Rüger 2011).

On the other side of the Rue de la Loi, in the European Commission, the Commissioner for External Relations was in charge of representing Community policies, such as the European Neighborhood Policy. Other members of the European Commission played an external role as well, such as the Commissioners for Trade or Development Cooperation. Over the years, the extent to which the President of the Commission coordinated the external relations of the Commission varied. Sometimes the President delegated the task to the Commissioner for External Relations (Missiroli 2007). For example, during his first term between 2005 and 2009, the Commission President José Manuel Barroso was strongly coordinating the Commission's external relations himself. By contrast, Romani Prodi entrusted his Commissioner for External Relations, Chris Patten, with the coordination role during his Presidency between 1999 and 2004.

During the Convention on the future of Europe of 2002–2003, the delegates from member states saw room for improving the external relations structures of the EU and drafted changes to the treaties that would alter the pattern of delegation. The aim of the changes was to improve continuity, visibility and coherence of the setup.[9] The role of the rotating Presidency in leading CFSP was seen as one problem, as the rotation hampered external and internal continuity. Every six months a new Presidency came in and—depending on the experience of the country—had to come up to speed with the tasks and challenges. Despite the

assistance of the High Representative for CFSP, international partners had to adjust to another interlocutor on the EU side every half a year as well. Despite some resistance of smaller and mid-sized member states, which feared losing this prestigious role in times of their Presidency,[10] member states agreed on the necessity to have the High Representative in charge for CFSP for a five-year term.[11]

For the purpose of this analysis, the discussion on improving coherence among member states was even more crucial. Some member states, especially Germany, Finland and the Benelux countries, were in favor of integrating the High Representative into the Commission. In order to eliminate the divide between the Community policies and the intergovernmental foreign and security policy, a Commission service would have been responsible for the planning and implementation of CFSP. The idea went a step too far for the intergovernmental-minded member states, such as Spain, Sweden and the UK, which did not want to compromise the sovereignty of member states' foreign policy choices too much. Eventually, Germany and France tabled a compromise that found its way into the Lisbon Treaty. In order to enhance the coherence between policies of the Commission and the EU Council, the job of Commissioner for external relations and of the enhanced High Representative would be assigned to the same person; in other words, the High Representative would wear a "double hat."

The overall net result of the politics of delegation was thus an increased room for maneuver for the foreign policy chief. While the integration-friendly countries did not succeed in their ambition to have a supranational foreign policy entity in the Commission, they nevertheless removed the High Representative's office from the firm control of the intergovernmental CFSP. The second "hat" as Commissioner for External Relations, as well as the delegation of agenda-setting powers in the Foreign Affairs Council, was deliberately designed in order to allow the High Representative an amount of functional discretion for optimal operation. After the deliberations in the European Convention, the aggregated preference of the member states was to increase the discretion of the High Representative. The officeholder should be able to effectively coordinate also the external relation policy areas of the Commission and to represent the EU as a whole abroad. However, the effect of the treaty reforms became only visible after the Lisbon Treaty entered into force and the first "double-hatted" High Representative Catherine Ashton moved into her office. Then it showed to what extent

the High Representative actually had the discretion to implement the tasks delegated by the member states. In the phase of politics of discretion, it became clear whether the intended discretion of the agents was realized in the day-by-day business of EU politics.

### 3.2    The Politics of Discretion: The High Representative's Struggle with the Commission

When Catherine Ashton took over the job as EU High Representative in late 2009, she probably was not aware how difficult it would be to implement the tasks delegated by the member states. Toward the end of her mandate, she admitted the difficulties in setting up and running the new service in a review document of the EEAS: "In one word, it was though" (European External Action Service 2013: 1). According to a closely involved diplomat, she became more vocal about the challenges of her tenure behind closed doors at the Gymnich meeting in March 2013. To her fellow foreign minister colleagues, she was reported to have said, "I won't miss the first three years," as there had been fierce competition between her and the service on the one side and the Commission on the other (Interview A). Whether, and to what extent, there was competition between the High Representative and the Commission in the various task areas will be analyzed more closely in what follows.

On paper, the High Representative's *agenda management role* is quite extensive and had been especially upgraded vis-à-vis the Commission in the area of external relations. Being the Vice-President of the Commission for external relations in theory would allow steering the work of other Commissioners with an external dimension. This was at least the intention of member states when they agreed on the new institutional arrangement. However, the institutional context between the High Representative and the Commission was not favorable for smoothly operating agent cooperation. Soon after Catherine Ashton took office, overlapping competences between her office and the one of the President of the European Commission Barroso became apparent. In particular, the High Representative's mandate to "be responsible within the Commission for […] external relations"[12] and the Commission President's task to "lay down guidelines" and "to decide on the internal organization of the Commission"[13] were clearly overlapping and a potential source of rivalry.

Soon after taking office, Barroso used his power as primus inter pares to strip the role of High Representative of its influence in the Commission. Barroso's assignment of the important portfolio of the European Neighbourhood Policy to Stefan Fuele as a separate Commissioner responsible for the neighborhood was largely seen as a preemptive strike to diminish the power of the EEAS and the High Representative (Behr et al. 2010). In her nomination hearing in the European Parliament, Ashton argued that she "worked together with the President of the Commission on the proposals that he has put forward."[14] Separate positions would ensure a better division of labor. Yet, even if that were the case, overlapping competences led to a situation in which the High Representative ended up with considerable less discretion as was originally intended by the member states.

The negative effect on the intended discretion of the High Representative became even more apparent after Barroso took further steps of limiting Ashton's coordination powers in the Commission. In April 2010, Barroso informed his Commissioners on the working modalities of the Commissioner groups, in which he claimed a key role for himself and the Commission Secretariat-General (Erkelens and Blockmans 2012). While a letter by Barroso set out the rules that would govern the working of all Commissioner groups, the effect on the group of Commissioners on external relations explicitly went against the nature of the Lisbon Treaty, which saw the High Representative as the coordinator of the Commission's external relations. According to the letter, the President and the Secretariat-General of the Commission instead received import agenda management competences. For example, each group was set to work on the basis of a mandate from the Commission President setting out the purpose of the group and the products to be delivered. The Secretariat-General was tasked to do the meeting reports, agendas and organization of the group meetings. The President and the higher echelons of the Commission also secured a right to participate in the group. For example, member of the President's cabinet and the Secretariat-General of the Commission would participate in all groups. The Commission President could also decide to attend any meeting, which he would then chair. Last but not least, the mandate of the Commission groups was in general reduced: the working groups should not take any formal decisions but only prepare the discussion and decision taking place in the College of Commissioners.

This move by Barroso even more strikingly highlights the negative effect of overlapping competences on the High Representative's discretion. The power grab of Commission President Barroso limited the discretion of the High Representative as an agenda manager throughout the five years of her term. In the first two years, the group responsible for external relations[15] would meet only five times, with some meetings chaired by the Commission President (Helwig et al. 2013). The malfunction of the coordination role of the High Representative became a key aspect in the run-up of the following 2014 European Parliament elections when all of the candidates for Commission Presidents pledged to give more responsibility to the High Representative (Dempsey 2014). When Federica Mogherini took over the office of High Representative in late 2014, she announced a more prominent role of the Commissioner group for external relations.[16] With the new Commission President, Jean-Claude Juncker and the new High Representative agreeing on a clearer division of tasks, the impact on the powers of the High Representative as an agenda manager was striking. Since December 2014, Mogherini held monthly meetings coordinating the external relations of the Commission. Member state diplomats started to report a higher engagement of the Commission in the CFSP (Interview B).

The agent interaction was less of a factor with regard to the High Representative's mandate to "contribute by his or her proposals to the development of [the Union's common foreign and security policy]."[17] The key issue *as a strategic planner* in the covered time period (2009–2014) was the question of whether to write a new European Security Strategy. The last security strategy, which at least in theory should inform how the EU conducts its foreign and security policy, had been written in 2003 and had only undergone a minor review in 2008. Ashton never carried out a comparable own strategic exercise for reasons that had little to do with the interaction with the Commission. As the EEAS argued in clear terms in a statement to the European Court of Auditors, "the EEAS could have outlined an overarching foreign policy strategy only if EU [member states] would have given a clear mandate to the [High Representative] to proceed in that direction, which has not been the case."[18] At the Gymnich meeting in March 2012, the member states decided against a mandate for a new strategy (Interview C). Other observers made the point that Ashton would have had the discretion to start a strategic process, given her general mandate to develop EU foreign policy further, but that she was of the opinion that the timing was

not right because member states' appetite for a strategic process was extremely low given the ongoing Euro-crisis and the pains of setting up the EEAS.[19] In any case, the evidence suggests that the limited role of the High Representative in articulating a strategy for EU foreign policy was a classical principal–agent problem of either missing delegation or agency slack. The evidence does not suggest that the interaction with the Commission as a separate agent had an effect.

A separate instance of strategic thinking during Ashton's tenure was the review of the strategic partnerships of the EU. In this case, the relation between EU agents was more relevant for the outcome of the exercise. Following the failed 2009 climate change summit in Copenhagen, there was a strong push by the European Council President, Herman Van Rompuy, as well as by some of the member states and the High Representative to review the strategic partnerships of the EU. The European Council in September 2010 mandated "the High Representative, in coordination with the Commission and the Foreign Affairs Council, to evaluate the prospects of relations with all strategic partners, and set out our interest and possible leverage to achieve them" (European Council 2010: 9). For a number of reasons, the following review process failed and the partnership dropped from the agenda. Interviewees commented that diverse preferences of the member states instigated a long shopping list of strategic partners and priorities (Interview H), that the discussions with foreign ministers—especially the Gymnich meeting in autumn 2012—were ill-prepared (Interview I) and that other topics, such as the Euro-crisis, took over the attention of heads of state and government pushing the partnership out of the top five priorities (Interview A).

However, the difficult relations between the Commission and the High Representative were also not a source of support for the review process. Even though the strategic partnerships with third countries touched on many policy issues administered by the Commission, such as energy or trade relations, there was only limited consultation from the part of the High Representative's office. "This is the prime example were the High Representative lost a good opportunity of playing the Vice-President's role, driving the agenda, taking everybody with them, taking and respecting the input," a Commission official remarked at the time, as a result "on the substance these papers [given for discussions to the foreign ministers] were weak in areas other than CFSP" (Interview J). This episode highlights the importance of agent interaction for the ability of an agent. Yet, the failure of the process in this case did not go back

to ambiguous division of competences (it was clear that the Directorate-General for Energy would have relevant input for the paper on Russia, for example), nor was there a sign of diverging preferences.

A traditional task of the High Representative is to *lead EU crisis management efforts*. This role of the High Representative was one of the key reasons the post was in the first place created in the late 1990s with the Treaty of Amsterdam. For example, member states were eager to delegate the diplomatic footwork during the crisis in the Western Balkan to Javier Solana, the first pre-Lisbon High Representative for the CFSP, as they "found it too arduous to keep up with, or give the time to, fast moving, complex situations" (Crowe 2005: 14; on conflict resolution, see Plank and Niemann 2011). Subsequently, the High Representative played a leading role in the crisis management efforts of the EU. However, his actual power was limited, as resources in form of manpower for missions or money for projects were in the hands of either member states or the Commission (Rueger 2011; Helwig 2015b). The Lisbon Treaty manifested the role of the High Representative in crisis management on paper, as a deputy now chairs the Political and Security Committee (PSC) in charge of preparation and implementation of decisions and missions. Yet, how did the treaty improve the relations with the Commission, as an important partner for crisis management efforts?

The EU's response to the crisis in Libya marked one of the first litmus tests for the post-Lisbon crisis management of the EU and is here used as a key example. The Libya crisis in 2011 unfolded after a violent crackdown on the opposition by government forces that caused a reaction of the West and Europe. In the course of the crisis, the EU and Catherine Ashton were criticized for being slow and cumbersome in reacting to the unfolding civil war and failing to agree on a recognition of the opposition or on a no-fly-zone over Libya (Koenig 2011). Much of the missing discretion of High Representative Ashton in this case was due to disagreement among member states as the collective principal.

Yet, also missing cooperation with the Commission limited her room for maneuver. The coordination with the humanitarian aid and civil protection mechanism in the Commission (DG ECHO) was challenging. An official of the Commission was outspoken on the topic: "we are not going to make humanitarian aid decisions subject to a political coordination led by the High Representative […]. If we wait until all of this coordination is endorsed by member states in the PSC we have probably a couple of hundred or thousands of people dying" (Interview K).

It was clear from interviews that the Commission services and the High Representative had different preferences on the immediate actions to be taken. While the humanitarian aid officers stressed the political independence of their work, which was directly aimed at reducing the suffering of people without taking sides in a conflict, the High Representative had to consider the wider political picture of the crises including possible support of opposition forces. The difference was most notable, when Catherine Ashton sent the EEAS Managing Director for Crisis Response on a humanitarian fact-finding mission in Libya to report to the European Council (Reuters 2011). For the officials in the Commission, this was highly problematic: "That could jeopardize a full humanitarian operation because all of a sudden someone with an EU flag says that he has a humanitarian mandate but he doesn't go to talk to the legal authorities in Tripoli, he goes to one side of the conflict" (Interview K). The further coordination between the High Representative remained difficult. The setup of a new crisis platform comprising relevant actors from the EEAS and the Commission only slightly improved efforts. The participants from the Commission regarded the platform rather as a possibility to share information on the activities and not as a place where they could be told what to do from the High Representative.

Proper coordination between agents in crisis situations can fail because of different objectives of the High Representative, who represents the political position of the member states, and of the Commission, which rather follows independent goals, such as humanitarian relief or eradication of poverty in the area of development cooperation. As a consequence of the difficult experiences in Libya, Catherine Ashton started promoting the comprehensive approach to crisis management, whereby a better coordination of all EU instruments over the course of a particular crisis, ranging from peace mediation to long-term aid, was supposed to be better coordinated (European Commission and High Representative 2013). Following the assumptions of this chapter, a framework, such as the comprehensive approach, might help clarifying the division of competences between several agents, which in turn might have a positive effect on agent cooperation and discretion.

Finally, the High Representative is the *communicator of the EU and its member states abroad*. The new diplomatic system introduced with the Lisbon Treaty brought significant changes to the communication of EU policies. Under the pre-Lisbon system, the EU had three messengers: the

Commissioner for External Relations delivered messages in the area of Community competences, the rotating Presidency was in charge of CFSP statements, and the High Representative could issue personal statements. After Lisbon, the rotating Presidency lost its role in CFSP matters, thus making the double-hatted High Representative on paper the main communicator of EU positions (bar the member states, which obviously kept their national foreign policies; see Dijkstra this volume). In practice, however, the "cacophony" of the EU remained to some extent. Just as national governments, the EU has different hierarchical levels and various policies with external effect administered by other organizational entities (see Table 1).

Judging from this overview, the division of competences between the agents seems fairly clear despite the number of actors involved. The High Representative is clearly in charge on ministerial level in matters of the CFSP. The delimitation of competences gets however more complicated and blurry when the representation takes place in a non-CFSP area. Once again, it is the unclear division of competences between the Commission President and its Vice-President that is a potential source for agent competition. As Article 17(1) of the EU treaties clarifies, the Commission "with the exception of CFSP and other cases provided for in the treaties […] shall ensure the Union's external representation." This had practical implications for the organization of the Commission

**Table 1** Representation of EU external action

|  | *CFSP* | *Non-CFSP* | |
|---|---|---|---|
|  |  | *External action (part five TEU)* | *External action of sectoral policies* |
| Heads of state or government level | President of the European Council | President of the Commission | |
| Ministerial level | High Representative | Commissioners (including the High Representative acting as Vice-President) | |
| Administrative level | EEAS | Commission services EEAS HQ services | |
| In third countries/at international organizations | ———————————— EU Delegations ———————————— | | |

No role for the member state holding the rotating Presidency in EU external representation (unless acting on behalf of the High Representative)
*Source* European Commission 2011

because it usually was the central press service of the Commission that provided guidance to Commissioners' speakers. Eventually, the central press service refrained from interfering into Ashton's communications. In the daily routine, it was too tedious to determine when the High Representative "wears the hat" of the CFSP or of the Commission (Interview J). Missing cooperation, however, often led to several EU representatives sending out similar press releases simultaneously, for example concerning the developments in Libya (Koenig 2011). While the statements did not significantly vary in content, the public and media audience were all the same confused about the multitude of voices.

## 4   THEORETICAL ARGUMENT

The aim of the case study was to test the theoretical argument, whether the interaction between agents can have an effect on the agents' discretion independent of the activities of the principal. It was suggested that agent interaction can affect the discretion of an agent in both directions. While agent cooperation widens the discretion of an agent, agent competition has a restrictive effect. Two conditions were specified, which determine whether agents cooperate or compete. It was assumed that the absence of a clear delimitation of competences between agents and diverging preferences are necessary conditions for agent competition. In the absence of either overlapping competences or a clash of preferences, agents would seek to cooperate. Table 2 presents the data on the conditions, independent variable and dependent variable of the analysis of the EU High Representative and the European Commission between 2010 and 2014.

What do the data reveal about the impact of the interaction between the agent and a rivaling agent on the first agent's discretion? First, there were two instances where both conditions for agent competition were met. In the role of an agenda manager and as a crisis manager, the High Representative's competences were not clearly distinct from the one of the Commission. In addition, in each of these two task areas, the High Representative and the Commission also had different preferences. This was especially striking in the case of the crisis management efforts during the Libya crisis, where the objectives of the Commission service in terms of humanitarian aid stood in contrast to the political considerations of the High Representative and the EEAS. In both of these cases, the effect

**Table 2** Summary of the data on interactions between the HR and the European Commission (2010–2014)

| Tasks of the Agent | Conditions of agent interaction | | Independent variable: Interaction between agents | Dependent variable: HR's discretion |
|---|---|---|---|---|
| | Overlapping competences | Diverging preferences | | |
| Agenda manager | ✓ Commission President vs. HR coordination of Commission's ext. rel. | ✓ Commission controlled ext. rel. vs. political CFSP priorities | Competition | Below member states' intention: limited coordination in Commission |
| Strategic planner | ✗ Distinct areas of the expertise of Commission DGs & EEAS/HR | ✗ No evidence of diverging preferences | No competition, no cooperation | No effect (positive or negative) of agent interaction on discretion |
| Crisis manager | ✓ DG ECHO vs. HR/EEAS | ✓ Humanitarian relief vs. political goals | Competition | Below member states' intention: no swift activation of Commission resources |
| External Communicator | ✗ Clear division of competences between Commissioners, HR, President of Commission/European Council | ✓ Need of different actors to react to current events | Limited cooperation | Corresponds to member states' intentions: no "one voice" foreign policy, but coordination on one message. |

on the discretion of the agent (the High Representative) was negative. The negative effect of agent competition can thus be confirmed.

Second, there were two possible cases of agent cooperation. As a strategist, following the above-made assumptions, the High Representative could have cooperated with the Commission. The delimitation of competences between the Commission and the High Representative was not an issue and both had—as far as the interviews could reveal—no clash of preferences on the development of strategic partnerships as such. However, agent cooperation did not take place. There was no positive effect on the discretion of the High Representative. The same applied to the tasks of a communicator, where little cooperation on statements took place. The positive effect of agent cooperation thus could not be shown within this empirical analysis.

The results require further discussion. Why was there no agent cooperation? The timeframe could play an important role in this context. The analysis was looking at the timeframe right after the entry into force of the Lisbon Treaty during which the treaty letters had to be implemented into practice. On the one hand, this had the effect that in some of the cases, such as the agenda management, the conditions for cooperation were negative from the start. The overall context in Brussels was marked by turf battles between the established Commission and the new players, such as the EEAS. On the other hand, even in cases where the conditions were favorable, agents did not reach out and did not start to cooperate more closely. A longer timeframe of the study, however, could possibly show other results, as after the turn of the institutional circle of the EU institutions in late 2014 and in 2015, there were signs of closer cooperation for example in the agenda management of EU foreign policy. Personality might play a strong role as well. Indeed, the new Commission President Juncker and High Representative Mogherini vowed to cooperate more on external policies than their predecessors.

Nevertheless, the cases of agent competition remain interesting in their own right. One of the main observations here is that the negative effect of agent competition on the discretion of the agent is independent of his relation with the principal. For example, the member states delegated the task of agenda management to the High Representative and as part of this delegation implicitly granted a certain amount of deliberate discretion to the High Representative in order to implement the task. The ability of the High Representatives to manage the agenda of

the Commission as far as external affairs were concerned was explicitly part of this act of delegation. However, unaffected by these preferences of the member states, the Commission President reduced the discretion of the High Representative as Vice-President of the Commission, reducing thereby the discretion of the new post below the discretion intended by the principals.

As a consequence, it is not logical to see the restrictive effect of the Commission on the discretion of other agents as a way of horizontal control in the interest of the member states that aim to avoid excessive unintended discretion. As the short analysis of the member states' rationale of creating the "double-hatted" High Representative showed, the preference of the collective principal was precisely to encourage cooperation between agents to enable greater coherence and effectiveness of EU external action. Thereafter, member states repeatedly stressed the need for cooperation between the two institutional entities, for example in a letter of 14 member states to the High Representative in early 2013: "Close coordination between the HR/VP and other members of the Commission is crucial to ensure coherence of external action within the Commission."[20] In the complex setup of the EU, the unintended agency gains of one of the agents (here of the Commission, which aimed at extending its competences) can mean an unintended agency loss of another agent (here the High Representative).

When can we expect agent interaction to play a role independently of the control of the principals? The presence of two conditions suggested in this chapter, overlapping competences as well as diverging preferences, seems to fairly well predict agent competition and thus pressure on the discretion of agents. Therefore, the complex structures of the EU, which often leave the exact responsibility of actors open, seem to be a fertile breeding ground for agent competition. The likelihood of competition is heightened further because of the open-ended and constantly changing structures of the EU framework, which is exemplified by the fact that the current architecture is fairly young. Yet, the constant change of the working methods can equally put agents in a better position for cooperation. For example, as mentioned earlier, the change of the institutional cycle in 2014, which brought new personnel to the European Commission, changed also the working procedures of this organization and gave the High Representative a bigger clout. In short, agent competition and agent cooperation are factors to consider in the complex principal–agent structure of the EU.

# 5    Conclusion

The member states had clear ideas of a more coherent EU foreign policy in mind when delegating tasks of agenda management, strategic planning, crisis management as well as communication to the High Representative of the Union. This research gave some insights into why a coherent EU foreign policy failed, despite some good intentions on the side of the member states. To make it possible for the post to implement the above functions effectively, they deliberately allowed for discretion of the High Representative, which included a coordinating role in the European Commission. However, this chapter comes to the conclusion that agent competition between the Commission and the High Representative, independent of member states' politics of discretion, caused a situation in which the High Representative enjoyed less room for maneuver than originally granted by member states.

These findings are of relevance for the further development of the principal–agent model, as interactions between agents were traditionally only seen as control mechanisms purposefully installed by principals to avoid runaway agents. Interpreting agent interaction as a process happening between agents on a purely horizontal level allows for a widened scope of analysis. First, it allows us to consider agent interaction as processes independent of the rationale of the principal, but as a byproduct of complex institutional structures. Second, it allows us to consider positive effects of agent cooperation as well, which could allow the agents to acquire unintended discretion.

Next to the interaction between the High Representative and the European Commission, it seems feasible to apply the concept of agent interaction to other empirical cases. The relationship between the President of the European Council and the President of the European Commission seems to be fruitful cases to analyze as these two agents time and again either compete or cooperate on a wide range of policy issues, for example regarding EU migration policy or on economic and financial policy. Additional insights could come from an analysis of the interaction between EU agents and those of other international organizations, such as with the administration of NATO or the UN. In addition, it is worth considering looking at the High Representative's interaction with other agents over a longer time frame, as lately the new setup agent cooperation between the High Representative and the Commission has intensified. The first member states are already

complaining behind closed doors about too much independent influence of the High Representative Federica Mogherini and her colleagues in the Commission on the CFSP (Interview B). In any case, while member states in general keep EU foreign policy agents on a short leash, it might pay off to look closer into the effects of competition and cooperation between the agents and the unintended consequences they cause.

## Notes

1. These are agents operating on EU level, but outside of the area of exclusive competences of the European Union.
2. Public expressions of support of government officials for Ashton was a regular feature. Rumors of a planned mid-term replacement never turned out to be true, even though this would have been an effective way for the principal to sanction a shirking agent. See press report, EUobserver, "Germany plays down Ashton criticism," Brussels, May 30, 2011, https://euobserver.com/institutional/32420 (consulted May 2016).
3. The units of the General-Secretariat of the Council have since then been moved to the EEAS.
4. The assumption is supported by the formulations of the EU treaties. Despite the parallel assignment of the job of High Representative and the Vice-President of external relations to the same office-holder, the treaties keep the two offices legally separated. For example, a vote of no confidence from the European Parliament regarding the College of Commissioner does not affect the EU High Representative other than having to let go of the job in the Commission. Given the continuous existence of separate decision-making pillars of EU external action, the High Representative acts legally either as CFSP representative or as Commission representative (Piris 2010). Of course, the institutional connections between the High Representative and the Commission are dense, as she is part of the College of Commissioners and even has a legally assigned role in coordinating its external relations. This institutional context will play a significant role in the following analysis.
5. Article 18(3&4) TEU.
6. Article 18(2) TEU.
7. Articles 42 and 43 TEU.
8. Article 18(2&4) TEU.
9. For a detailed discussion, see Helwig (2015a): 79–113.
10. Especially Finland, Ireland and Sweden.
11. The Convention on the Future of Europe still proposed the title "EU Foreign Minister," but most of the provisions made it into the Lisbon

Treaty under the less state-like title "The High Representative of the Union for Foreign and Security Policy."

12. Article 18(4) TEU.
13. Article 17(6) TEU.
14. Author's transcript of a video recording of the hearings of Vice-President designate Catherine Ashton at the Foreign Affairs Committee of the European Parliament on January 11, 2010, available online at http://www.europarl.europa.eu/ep-live/de/other-events/video?event=20100111-1531-SPECIAL (consulted May 2016).
15. This group consisted of Commissioners responsible for Development Cooperation, Enlargement and Neighbourhood Policy, International Cooperation, Humanitarian Aid and Crisis Response, Trade and Economic and Monetary Affairs.
16. Opening statement of Mogherini in the European Parliament confirmation hearing, October 7, 2014, http://www.eeas.europa.eu/top-stories/2014/071014_mogherini-heraing_en.htm (consulted May 2016).
17. Article 18(2) TEU.
18. See European Court of Auditors (2014): Special Report. The establishment of the European External Action Service, Luxembourg: Publications Office of the European Union, p. 26.
19. The view that member states were largely not interested in a new strategic exercise at the time was stated by five different interviewees (C, D, E, F, G) from the EEAS, the Council Secretariat and member state foreign ministries between mid-2012 and mid-2013. An initiative by Sweden, Spain, Poland and Italy to write an EU Global Strategy remained an exercise on think tank level.
20. Non-Paper: Strengthening the European External Action Service by the Ministries of Foreign Affairs of Austria, Belgium, Denmark, Estonia, Finland, Germany, Italy, Latvia, Luxembourg, Netherlands, Poland, Slovakia, Spain, Sweden, February 1, 2013.

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|---|---|---|---|
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| C | Member state diplomat | July 2012 | Berlin |
| D | EEAS official | May 2012 | Brussels |
| E | Council Secretariat official | July 2013 | Brussels |
| F | EEAS official | May 2012 | Brussels |
| G | Member state diplomat | July 2012 | Berlin |
| H | European Council, Cabinet | August 2011 | Brussels |
| I | Member state diplomat | March 2012 | Helsinki |
| J | Commission official | July 2011 | Brussels |
| K | Commission official | August 2011 | Brussels |

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