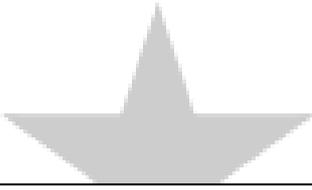




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EU Representation in Conflict Settlement:
Council-Commission Cooperation in the
Former Yugoslav Republic of Macedonia



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ABBREVIATIONS

CARDS:	Community and Assistance for Reconstruction, Development and Stabilisation
CFSP:	Common Foreign and Security Policy
EAR:	European Agency for Reconstruction
EC:	European Communities
ESDP:	European Security and Defence Policy
EU:	European Union
EUSR:	EU Special Representative
HR:	High Representative
OFA:	Ohrid Framework Agreement
SAA:	Stabilisation and Association Agreement
SAP:	Stabilisation and Association process
TEU:	Treaty of the European Union

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1. Introduction

The roots of the European Union (EU) lie in a peace project that had to end centuries of war between European states. This history of the EU has fundamentally shaped EU foreign policy and has placed conflict settlement high on the list of priorities the EU has abroad. Indeed, the European Security Strategy highlights the importance of the fight against regional conflicts. It classifies regional conflicts as one of the five key threats to the EU (CoEU, 2003a). Although an important objective of EU foreign policy, it has not always been clear who to send to represent the EU in those issues. The struggle between the Council and the Commission about who is to speak for the EU has become a clear example thereof. Many scholars have already studied the topic and have come to the general conclusion that it seems almost impossible for the Council and the Commission to cooperate (Stetter, 2004; Hillion & Wessel, 2009). Indeed, scholars have come to refer to their struggle as “turf wars” (Ioannides, 2006, p. 11). However, there exists one peculiar case where the Council and the Commission managed to cooperate very effectively: the 2001 Ohrid Framework Agreement in Macedonia¹.

To analyse why the Council and the Commission managed to cooperate in such a successful manner, this paper will focus on the following question *“Who Spoke for the European Union in the Different Stages of the Adoption of the 2001 Ohrid Framework Agreement?”*. In a second step the paper goes further to ask why that particular person or body spoke. The analysis will show that the Council and Commission are in fact able to cooperate in conflict settlement, especially in countries with EU membership prospective.

We perceive the adoption of conflict settlement agreements as a three-stage process, including a negotiation phase, an implementation phase and an operational phase. The negotiation phase is the “most significant in shaping the institutional design of the agreement, and consequently, the nature of the political process during both the implementation and operational phases” (Wolff, 2007, p. 1). The implementation phase refers to the “process of putting in place the institutions and procedures agreed upon during negotiations” (p. 1). The implementation phase oftentimes constitutes a long and extended process and therefore can run parallel to the operational phase for a considerable amount of time. Operation implies that the created institutions under the agreement start operating (p. 1). These phases will be analysed to see who it was that spoke for the EU. Furthermore, this paper will explain why it was this particular person or institution speaking at a given phase within the adoption process.

¹ For simplification, the paper uses the appellation ‘Macedonia’ when referring to the Former Yugoslav Republic of Macedonia (FYROM) as officially named by the EU. The paper is well aware of the ongoing name dispute regarding Macedonia and does not relate its choice of appellation to this debate.

The case of the 2001 Ohrid Framework Agreement (OFA) in Macedonia has been selected since it represents an atypical case which goes against earlier research that has been done on the topic of Council and Commission cooperation. Our research paper will be relevant for the broader academic debate because it seeks to show that despite the criticism of many scholars regarding the inefficient coordination of the EU institutions in the policy areas of the Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP), EU actors actually have proven to be able to speak with one (coordinated) voice, as in the case in Macedonia. Moreover, the struggles between the Council and the Commission did not disappear with the introduction of the Lisbon Treaty in 2009. The two institutions will still have to be able to cooperate effectively and combine their instruments to have the best possible outcome.

This paper will now first turn to a theoretical discussion of the different roles of the Commission and the Council, including a reference to their treaty bases. The paper will continue with a detailed case study of the OFA in Macedonia.

2. Who Speaks for the EU in Conflict Settlement? Council v. Commission

In 2001 Coss (2001) recognised that there was the “ongoing confusion over whether EU External Relations Commissioner Chris Patten or Council Secretary-General Javier Solana [was] the real voice of the Union's foreign policy”. Indeed, this refers to important intra-institutional tensions within the area of EU foreign policy. This chapter will explain the roots of these tensions, the competences of the different institutions, and will give possible explanations as to why a certain actor might take the upper hand.

Stetter (2004) argues that there has been the “emergence of a cross-pillar politics setting in EU foreign affairs” (p. 724). A cross-pillar setting replaced the original pillar design as it was established by the Maastricht Treaty², without officially abolishing it. Consequently, not only the Council and member states, but also actors such as the Commission or the European Parliament, could shape seemingly ‘intergovernmental’ bargains across the pillars (p. 724). Hillion and Wessel (2009) argue that the “fuzziness” of the borders between the EU’s three pillars could have been anticipated, since it had been clear from the start that the EU would need a single institutional framework in order to ensure consistency and continuity of the different EU activities (p. 551). However, the cross-pillar setting did not mean that existing frictions between the Council and the Commission vanished. Indeed, Stetter (2004) argues that “EU foreign policies are characterised by a remarkable institutional fragmentation which cannot be grasped from a mere pillar perspective” (p. 728). The new and diverse challenges that were posed to the EU by the international system often

² This paper analyses a pre-Lisbon situation. Thus, this paper still analyses the three-pillar situation and is based on the old Amsterdam (the situation until 2003) and Nice (situation from 2003 until 2009) treaty.

fell within a grey area between the Community and intergovernmental responsibilities. Whereas, this heightened the importance of consistency in EU foreign policy and the good cooperation between the different institutions, the promotion of self-interest and bureaucratic tensions limited the success that could be produced by good cooperation (Duke, 2006, p. 1; Dijkstra, 2009a, p. 1). The introduction of the ESDP under the CFSP further complicated the situation. The Commission's role was increased with the ESDP since it started to play a great role in the civilian areas of crisis management. The substantial competences of the Commission in development and assistance, trade and enlargement, gave it a highly significant role in using its collective tools for, e.g. conflict prevention (Duke, 2006, p. 2; Duke & Ojanen, 2006, p. 483).

Dijkstra (2009a) argues that the difficult relationship between the Council and the Commission in the pre-Lisbon system stemmed from their mandates which the member states delegated to them. The Council, and especially the High Representative (HR) Javier Solana, tried to fill the political vacuum that was left by the relative absent Commission in the area of EU foreign policy. However, at the same time the European Commission tried to increase its competences within the CFSP. Consequently, these tensions lead to a competitive environment between Council and Commission in the CFSP (p. 2). Surprisingly, "the much awaited bureaucratic battle between the Council and the Commission did not occur" in Macedonia (Piana, 2002, p. 213). Piana argues that the relationship between the two institutions turned out to be so effective since both institutions and their actors stayed within their competences (pp. 213-214). The Prodi Commission in 2001 was still trying to recover from the 1999 debacle of the Santer Commission. Therefore, under Commissioner Patten, DG External Relations did not try to push for more visibility within the field of CFSP. Rather, they tried to protect the competences they had acquired in the past and to deliver efficient and effective policies (p. 214).

Competences of the Commission within CFSP were indeed limited, but they did exist. The Treaty on European Union (TEU) established in article 27 that the Commission would always be "fully associated" with the work carried out in the field of CFSP. This meant that Commission officials were involved at every level of CFSP with the overall objective of ensuring consistency in the external relations of the Union as a whole, safeguarding the *acquis communautaire* and the EC Treaties (Duke, 2006, p. 8). Moreover, it provided that the Council would "ensure the unity, consistency and effectiveness of action by the Union" (TEU, art. 13(3)). Thus, the Council was given the obligation to cooperate with the Commission to allow for a foreign policy that would be effective and coherent. Nevertheless, the Council only superficially responded to the need for consistency. It only rested upon the narrow definition of 'external activities', arguing that CFSP is not akin to Union's external relations as a whole (Duke, 2006, pp. 6-7). Nevertheless, several grey areas remained, such as development cooperation. In spite of the full association of the Commission with CFSP and, arguably,

its growing influence on CFSP matters, its influence remained far from the one it enjoys in the Communities (p. 7).

The main role in CFSP was for the Council. However, also within the institution itself there were tensions over who was allowed to represent the EU. Indeed, Council representation was based on two main actors: the Presidency, the HR. Moreover, there was the HR's staff: the Special Representatives (EUSR) or the Special Envoys (Keukeleire & MacNaughtan, 2008, pp. 77-83). Based on the treaty mandates, the HR and the Presidency were the main actors to represent the EU externally. It was the role of the Presidency to "represent the Union in matters coming within the common foreign and security policy" (TEU, art. 18(1)). The HR assisted the Presidency, as was laid down in article 18(3) of the TEU. Moreover, the TEU further specified that the HR "shall assist the Council in matters coming within the scope" of the CFSP, "and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties" (TEU, art. 26). Thus the position of the HR was created to support the Presidency. This was mainly due to several limitations which were inherent in the position of the Presidency, e.g. the six-month rotation and a heavy workload (Keukeleire and MacNaughtan, 2008, p. 78).

An important actor in the staff of the HR was the Special Representative (EUSR). The EUSR, appointed by the Council, helped the HR to collect information from abroad and deliver key messages to third parties (Grevy, 2007, p. 1). To ensure consistency, most mandates contained a clause that reflected the need to coordinate between the different institutional actors. Nevertheless, one of the main constraints on the effective work of the EUSR remains to be the "sometimes dysfunctional" division of competences between the EU actors (Grevy, 2007, p. 4).

In the case of Macedonia it was EUSR François Léotard that was present during the negotiations of the OFA. After the adoption of OFA, new EUSRs have been appointed in Macedonia almost every two years., e.g. Le Roy, Jessen-Petersen and Sahlin. This changed with the appointment of Erwan Fouéré, whose mandate has been running since November 2005 (CoEU, n.d.³). The appointment of Fouéré as EUSR was a historic moment for the EU, since it was for the first time that the EUSR also became Head of the Commission Delegation (Keukeleire & MacNaughtan, 2008, p. 83). This union of Council and Commission showed that the EU was aware that effective cooperation was needed and also showed that the EU was willing to take steps in the right direction. Wolff (2007) rightly argues that the combination of Council and Commission in one person "effectively gave the EU a clearer and stronger voice" (p. 6).

So far this paper described the actors involved in European foreign policy and especially in conflict settlement. However, what are possible explanations for why a certain actor is speaking for the EU or why certain actors decide to cooperate? The relations between the Council and the Commission can be explained based on the formal Treaty competences. Even though there was the

emergence of a cross-pillar system, the pillar structure does still continue to affect the distribution of capabilities among the various actors involved in decision-making (Stetter, 2004, p. 733). Regarding the question of who speaks for the EU within the Council, a possible answer is the size of the Presidency (Dijkstra, 2009b). This may explain why in some situations it is the Presidency that acts, while in others it is the HR. Moreover, there are possible explanations that shed light on the question why the actors would decide to remain within their competences, and would not search for opportunities that could expand their influence. Possible explanations include a coordination reflex based on the willingness not to fail, EU history in the region and a sense of urgency.

This paper will now turn to a detailed case study on the adoption of the OFA in order to analyse which actors spoke for the EU in the case of Macedonia. The paper will also attempt to apply the above mentioned explanations to the situation in Macedonia.

3. Case Study on Macedonia: the 2001 Ohrid Framework Agreement

The 2001 OFA was introduced as a solution to the armed conflict between Macedonia and Albania that had started in Macedonia in early 2001. During the different phases of the adoption of the OFA there was a need for constant mediation from the international community. In fact, Popetrevski and Latifi (2004) underline that the “role of the international mediation in the dialogue, and an ongoing international commitment to guaranteeing compliance with the agreement, were key factors in persuading the negotiating teams from both sides to accept the proposed compromises that the agreement represented” (p. 29). The EU was one of the most important mediators in the conflict and was present during all the stages of the adoption of the OFA. This paper will now analyse who spoke for the EU in each of these stages.

3.1 Negotiation

The negotiation phase in the adoption of conflict settlement agreements is a crucial phase, since it will influence all future phases. The EU played an important role in this phase since it was capable to exert influence on the Macedonian government through its “conditionality-principle” (Ilievski, 2007, p. 15). The ‘carrot’ of full EU membership was used to assure that the Macedonian government put all its efforts to a peaceful solution since the Ohrid negotiations, and later the implementation, were designated as a critical precondition for Macedonia’s EU membership prospective (Ilievski & Taleski, 2009, p. 355). Thus, the role of the EU was crucial to the negotiations. However, who was it that spoke for the EU?

It was Sweden that held the presidency when the conflict started, however its role was limited. Piana (2002) relates this to the fact that Sweden did not have an embassy in Macedonia. Therefore, Swedish interests had to be represented by the British Ambassador in Skopje. Due to the

fact that Sweden was holding the Presidency, the British Ambassador was not capable of representing the entire EU. Moreover, the ambassador in office at that time was rather young and inexperienced; thus being rather incapable of handling the crisis (p. 214). Therefore, the Presidency was not the one representing the EU, as is laid down in the TEU, in Macedonia during the first months of the crisis.

Due to the lack of representation by the Presidency, it was up to Javier Solana, the HR, to take over this role. In February 2001 Solana for the first time in the period leading up to the OFA visited Macedonia. When the conflict escalated in mid-March, Solana visited Macedonia even more regularly. He continued to visit the country at least twice a month until the OFA was signed (CoEU, n.d.^b). Indeed, Piana (2002) underlines that the role of Javier Solana was “invaluable” in the negotiations leading up to the OFA (p. 211). She argues that the post of the HR brought the visibility and continuity element that had been lacking in the CFSP (p. 211). Although Solana was actively involved in the conflict, he argued that the EU’s role was the facilitation of the political dialogue, rather than being an active mediator in the conflict. Thus, he meant to provide a framework for negotiations, but did not intend to become an active part of the negotiation process itself (p. 31). Nevertheless, Solana’s presence was of major importance to the progress of the negotiations since every time that he left Skopje, relations between the two conflicting parties immediately dropped to a low level, requiring his return in order to put the political process back on track (Piana, 2002, p. 211). In the final two months before the signing in of the OFA, July and August, the Council appointed EUSR Léotard. The EUSR took over work from Javier Solana and acted as a part of a joint EU-US-mediation team in Macedonia (Schneckener, 2002, p. 34). Solana returned to Macedonia to be present during the first day of the peace negotiations in Ohrid. He also returned on the day that the document was officially signed, thus acting as the face of the EU during the finalising of the OFA (European Council, n.d.^b).

The Commission did not play a major role on the foreground. However, its presence in the background was of major importance and assistance to Solana. The Stabilisation and Association Agreement (SAA) between Macedonia and the EU was signed in April 2001, in the midst of the armed conflict. Thus, as mentioned earlier, the Stabilisation and Association Process (SAP) and the SAA were used as a conditionality principle in the negotiation phase.³ Moreover, political parties in Macedonia could not ignore the prospect of closer ties to the EU since 90 percent of the Macedonian population

³ Through the Stabilisation and Association Process (SAP), the EU formally granted Macedonia political and financial assistance as well as human resources. The aim of the SAP is to prepare Macedonia for future EU membership by through incentives and obligations. The latter include creation of regional-cooperation, respect for fundamental human rights and ethnic minorities. The SAA, signed on 9 April 2001, is the main document of the SAP constituting the contractual relationship between the EU and Macedonia setting out the mutual rights and obligations (EU, 2010).

were in support thereof. Confronted with this situation, it was hard for Macedonian political elites to ignore the wishes and terms of the EU (Ilievski, 2007, p. 17).

From the analysis above, it appears that primarily the Council and not the Commission was speaking for the EU. The Commission's role was limited to the background; however it should not be underestimated. The Commission's instruments under the SAP were a valuable asset to the Council. Nevertheless, the fact that it was more the Council than the Commission to represent the EU may stem from the formal Treaty basis. Stetter (2004) rightly argues that even though there was the emergence of a cross-pillar structure, the pillar structure still determined the actions of the actors (p. 733). Consequently, the Council remained to be the main actor in the second pillar. The Commission became involved in all regimes across the different pillars, but remained to be most powerful with regard to most first pillar topics (p. 733). Indeed, our case study points out that the Commission remained within its first pillar activity regarding the SAP to support the Council. The Council, on the other hand, took it upon itself to represent the EU as is defined in the TEU. This implies that the behaviour of the actors is still strongly determined by the Treaty and their competences therein. However, this does not explain why the actors would decide to remain within their competences, and would not search for opportunities that could expand their influence. In the case of Macedonia a good explanation would be the history of the EU's involvement in the Balkan region. The failed experiences in Bosnia and Kosovo in the 1990s could have put pressure on both the Council and the Commission to produce better results, consequently leading to a coordination-reflex (Piana, 2002, pp. 213-214). Moreover, there was a sense of urgency, since Macedonia was on the brink of civil war, which could threaten stability in the EU neighbourhood.

Within the Council it was the HR and not the Presidency that was speaking for the EU. This can be explained through the size of the Presidency. The relationship between the Swedish Presidency and the HR is best defined by the "competition model" (Dijkstra, 2009b, p. 4). This model refers to a situation where both the Presidency and the High Representative compete for competences. Thus, it will be the strongest actor that will represent the EU (p. 4). Indeed, in the case of Macedonia both the Presidency and the HR could have represented the EU. However, the Swedish Presidency lacked the resources – the embassy in Skopje – to compete with Javier Solana for competences. Consequently, Solana turned out to be the stronger actor in this case and was thus the one to represent the EU. Once again one should also not underestimate the sense of urgency that was present and the willingness not to fail. These two factors also made it relatively easy for the member states to come to the consensus to delegate authority to Solana (Piana, 2002, p. 214).

3.2 Implementation and Operation

When dealing with the implementation and operation phase, Wolff (2007) emphasizes that both processes often run in parallel as implementation is mostly “far from complete” when the operational phase begins (p. 1). This interdependence between the two stages may be troublesome since insufficient or partial implementation can have negative impacts on the operation. Due to the close interplay of implementation and operation, this paper will handle both phases simultaneously. To see who speaks for the EU, it will divide its analysis into three time periods: 1) August 2001 to the end of 2002; 2) 2003 to 2005; 3) 2005 to Dec. 2009. It will become clear that in the period of 2001 to 2005, the Commission focuses more on assistance in long-term structural changes while Council activities focus primarily on ESDP crisis-management missions. From 2005 onwards the Council and Commission increasingly shared their areas of competence.

Representatives of both Council and Commission agree that the implementation of the OFA constitutes a vital precondition for EU accession. Former External Relations Commissioner Patten stated that EU policy “amounts not to an exit strategy, but to an entry strategy” (EU, 2002a) for the Balkan countries, while EUSR Erwan Fouéré explicitly remarked that “the road to Brussels goes through Ohrid” (Fouéré, 2010). Since the 2001 SAA includes all provisions of the OFA, EU assistance to Macedonia has made the implementation of the OFA a condition for further EU integration of Macedonia, as has been elaborated earlier with regards to EU conditionality (Ioannides, 2006, p. 2).

3.2.1 Commission in Focus: 2001 to 2002

When analysing who speaks for the EU within the implementation and operation phase of the OFA, Annex C of the OFA itself gives a first indication of their different areas of activity. Art. 1.1 formally invites the EU to “facilitate, monitor and assist” the implementation of the OFA provisions and to coordinate all international efforts. The Commission is explicitly asked for election observation and financial assistance (Art. 3.3), which both clearly fall under its competences. Both the Council and Commission are invited to assist refugee return and reconstruction (Art. 3.1); to help in the establishment of a decentralized government (Art. 4.1); to help reform the judicial system and police (Art. 5.2-5.4) (OFA, 2001)⁴. One reason for the strong involvement of the Commission, as evident in Annex C, was its early engagement in Macedonia through the SAp in 1999 as well as through the signing of the SAA in Macedonia on 1 April 2001. This gave the Commission a strong role from the start, playing its part in parallel to the Council. In practice a first symbolic sign of this co-operation occurred shortly after the signing of the OFA, when the Commissioner for External Relations Patten and HR Javier Solana jointly visited Skopje to meet with Macedonian government representatives in

⁴ For more detailed information about the EU’s mandate under Annex C of the OFA, please see Annex 1.

September 2001. This may have served to signal a unified and committed EU approach to the country (EU, 2001a, p. 1).

Commission assistance in post-conflict situations focused at first on humanitarian and emergency aid as well as on restoring infrastructure and the return of refugees (EC, 2010). This also becomes visible in the case of Macedonia. The Commission, under the 2001 CARDS National Programme, committed € 45 million to Macedonia for reconstruction and institution building including programmes on housing reconstruction, reparation of electricity supply network as well as police and judicial reform (EU, 2002b, p. 1).⁵ The EU also coordinated in conjunction with UNHR a programme for internally displaced people and refugees with a budget of €12 million (ibid.). Besides the EAR, Commission assistance may also be led by the EC Delegation, including macro-financial, humanitarian, and democratisation programs (EAR, 2010).

Besides this financial assistance, the Commission also started carrying out other obligations as mandated by Annex C of the OFA. It helped drafting a law on local-self government, which was then adopted on 24 January 2002 by Macedonian parliament (Mace, 2004, p. 478). This adoption was a prerequisite for the international donor conference, which was to be organised partly by the Commission under the OFA and which took place in March 2002 in Brussels (EU, 2002a, p. 1).

The observation mission as mandated to the Commission under Art. 3.3 OFA/Annex C was also put into practice. Here, the Commission in conjunction with the Council of Europe and the Macedonian government conducted an International Observation and Monitoring Mission of the 2002 Census. It had as its aim the validation of a fair and impartial counting of the population and the assessment of the method used by the Macedonian authorities in the census preparation (EU, 2002c, p. 1). The Commission also monitored the parliamentary elections held on 15 September 2002 which put a multi-ethnic government coalition into place, being one condition of the OFA (EC, 2003, p. 5). It becomes clear that the Commission formed a vital part in the implementation and initial operation of the OFA.

When turning to the activities of the Council to help implement and operate the OFA, the Council installed a EUSR to Macedonia since June 2001. After Léotard, the new EUSR Alain Le Roy had been appointed by the Council in October 2001. to (CoEU, 2001b). The mandate required him to coordinate all international assistance to Macedonia, to be the point of contact for the Macedonian authorities, and to foster the implementation of the OFA (CoEU, 2001a).

Although the EU had introduced ESDP instruments in its external relations since the Nice Treaty, it was not yet sufficiently developed to deploy an independent EU mission. This is why NATO

⁵ The Community and Assistance for Reconstruction, Development and Stabilisation (CARDS) Programme was the main instrument for Community assistance until 2007 carried out by the European Agency for Reconstruction (EAR) in Skopje (EAR, 2010).

took care of international military presence in Macedonia until early 2003. Nevertheless, NATO's first operation 'Essential Harvest' (Aug. 27 - Sept. 26 2001), which served to disarm ethnic Albanian insurgents, was essentially European as most of the troops came from EU Member States lead by the UK (Mace, 2004, p. 479). The follow up NATO operations of 'Amber Fox' (26 Sept. 2001 - 15 Dec. 2002) and 'Allied Harmony' (15 Dec. 2002 - 31 March 2003) were mainly European missions as well, indicating that NATO was slowly transferring military responsibility to the EU (ibid.).

In this first period after the signing of the OFA, the Commission, through its Commission Delegation to Macedonia, the External Relations Commissioner and through the EAR, played an active part in the implementation of the OFA. The Council, represented by the HR and the EUSR also played an active yet to a lesser extend visible part. One reason for this subordinated role may be its absence in the area of security and defence policy in Macedonia, which belongs to exclusive Council competences. Though EU Member States formed the biggest part of the NATO military missions, the EU itself did not operate. Consequently, it seems that the Commission played a more prominent role because it used its areas of competence extensively, which include assistance in humanitarian aid and development. This is in line with Stetter's (2004) argument that the pillar structure of the EU has a significant impact on the allocation of tasks and capabilities (p. 733).

3.2.2 Council in Focus: 2003-2005

Council involvement in Macedonia shifted significantly with its military presence through the EU military operation Concordia in 2003 and its subsequent civilian police mission Proxima. Both missions, launched under the new ESDP umbrella, further assisted the implementation of the OFA. They also strengthened the EU's integrated CFSP, which was put into practice jointly by Commission and Council (Wolff, 2007, p. 3).

The EU conducted Concordia from 31 March 2003 until 15 December 2003 at the request of the Macedonian government (CoEU, 2002, p. 4). The aim of Concordia was "to further contribute to a stable, secure environment, to allow the Macedonian Government to implement the Ohrid Framework Agreement" (CoEU, 2003b). The HR and the EUSR were to be the main contact points to the Macedonian authorities in all areas relating to the mission and involving their areas of competence. The presidency in turn was to be kept updated on these contacts under Art. 6 (ibid.).

With the expiration of Concordia in December 2003, the EU consented at the Macedonian government's request to operate a follow up mission. This is why the EU Police Mission was put into place on 15 December 2003 until 14 December 2005 to further stabilise the country and its security situation (ibid.). The mission's specific aim was to contribute to the reform of the Ministry of Interior including the police, training of local police and consolidation of law in line with the OFA (Art. 3). The head of mission, appointed by the Council was given the operational control of the mission and

obliged to be in close contact with the Commission. The EUSR in turn was to guide the Head of mission politically (Art. 5). Invested with this guiding task, the EUSR was said to have been “critical in supporting the implementation” of the OFA (EC, 2004, p. 34).

In contrast to the Council’s short-term crisis management and the tackling of “urgent needs” (Ioannides, 2006, p. 3), the Commission focuses on the long-term structural assistance, such as reforms of government institutions and legislation. Parallel to Proxima, it was also active in the field of police reform through its European Commission Justice and Home Affairs Team (ECJHAT). ECJHAT operated from 2003 to 2004 to help creating key strategies for police reform in Macedonia. Furthermore, the Commission put in place the European Commission Police Reform Project (ECPRP) under its CARDS 2004 National Programme which assisted police reforms at the Macedonian ministry of interior (ibid.).

Since both Commission and Council were active in Macedonia, they coordinated their activities through weekly informal meetings, which were chaired by the EUSR. Participating institutions included the EU Presidency and the head of Concordia/Proxima mission on the one hand and the head of the Commission Delegation and the EAR on the other (p. 9). Yet Ioannides points out that EU inter-institutional cooperation suffered on the field. One point of contention was the perceived unclear distribution of competences between the EAR and the EC Delegation as well as the imprecise role of the EUSR (ibid.). Regarding the Proxima Mission in particular, a direct conflict between Commission and Council was that the Commission had apparent difficulties in seconding police officers from Member States to its projects in Macedonia because member states rather sent their police officers to the Council Proxima mission. As a result, ECJHAT and ECPRP were launched belated (ibid.).

It becomes clear that with stronger involvement of the Council in the implementation and operation of the OFA, the division of Council-Commission competences and of who actually speaks for the EU become less apparent. This is in line with the general dilemma of mandate distribution and ‘full association’ of Council-Commission competences in conflict settlement as mention earlier. Stetter’s (2007) argument that the Council is still the main actor in external relations (second pillar under TEU) thus holds (p. 733). With the Council’s military involvement and its legal competences in the ESDP area, the Council proved to be much more visible than in the previous period. Especially the EUSR as link to the Macedonian authorities retained a prominent role and was regarded as having been “critical in supporting the implementation” of the OFA (EC, 2004, p.34). It can be concluded that when ensuring implementation of conflict settlement agreement and its operation, the Council uses its military crisis management capabilities, while the Commission focuses on institutional reforms. Although, these activities could be intersecting and conflicting at times, they did not influence the overall successful outcome.

3.2.3 Commission and Council Cooperation: 2005 to November 2009

From 2005 onwards it became clear that the Council and the Commission opted for a “genuinely joint approach”, which gave the EU “a stronger voice and a wider range of instruments to make itself heard” (Wolff, 2007, p. 3). The Council and Commission included its CFSP objectives successfully into the accession strategy for Macedonia by giving the carrot of EU membership (*ibid.*). This integrated approach was further emphasized with the appointment of Erwan Fouéré double-hatting for the first time the EUSR and the Head of the Commission Delegation to Macedonia, thereby acting officially as the single representation of Council and Commission in Macedonia. Fouéré (2007) himself stated that his new mandate “breaks new ground in the EU’s institutional system and ensures greater coherence and impact for the EU’s external action out in the field” (p. 198). As EUSR, he is the contact person for Macedonian government officials and helps guiding the political processes. He also is in charge of fostering the implementation process of the OFA by for instance critically paying attention to inter-ethnic issues. As head of the Commission Delegation, he additionally monitors Macedonia’s reform progress in achieving the EU membership criteria as well as in implementing the SAA (*ibid.*).

With the new Barroso Commission that came into office on 22 November 2004, Macedonia was officially transferred from DG External Relations to DG Enlargement, which set a clear sign that Macedonia would be seriously integrated into the enlargement process. Olli Rehn became the new Commissioner for Enlargement and only four days after his inauguration, Rehn paid his first official visit to Skopje (EU, 2004, p. 1). He met with the then Macedonian President, senior members of the government and leaders of political parties, to inform himself amongst others about the implementation and operation status of the OFA (*ibid.*).

It becomes also clear that Commission and Council jointly use enlargement instruments to amongst others advance the implementation and operation of the OFA. On 16 December 2005 Macedonia was officially granted candidate status for EU membership by the European Council. The latter acknowledged in Art. 4 of the Presidency Conclusion “the substantial progress made in completing the legislative framework related to the Ohrid Framework Agreement” (CoEU, 2005). Also regarding the subsequent adoption of the European Partnership between the EU and Macedonia one month later, the Council had followed the Commissions recommendation. This document, which reaffirmed the EU’s guiding role in the Macedonian reform process, listed key reform priorities with one short-term key priority being the full implementation of the OFA (CoEU, 2006, p. 4). In order to foster these developments, Commission President Barroso paid his first official visit to Skopje in February 2006 in the company of Enlargement Commissioner Rehn, reemphasizing the importance of further reforms listed in the European Partnership for next steps in the enlargement process. Barroso in fact clearly stated that “any possible problems in the election process could take the country away

from the negotiations on membership in the EU” (EU, 2006, p. 1). As the creation and maintenance of a multi-ethnic government is a key objective of the OFA, Barroso’s statement demonstrates that the implementation and operation of the OFA forms a key part in the accession process to the EU. Their visit to Skopje also exemplifies the Commission’s crucial and pressing role next to the Council’s.

Another significant indicator of Council-Commission cooperation is found in their assistance coordination. Since 30 October 2007 until 2010, all Commission financial assistance to Macedonia is handled by the new single Instrument for Pre-accession Assistance (IPA), covering the same activities as earlier instruments (CARDS) (EU, 2007, p. 4). Furthermore, Commission assistance to Macedonia will not be channelled through the EAR anymore but through the Commission Delegation under Fouéré (EC, 2007, p. 6). Fouéré’s important role regarding EU financial assistance is also visible in that he is in charge of signing the relevant documents with Macedonia in the name of the EU.

The latest EU activities in Macedonia have circled around Commission initiatives in the enlargement process. The 2008 Commission ‘Communication on Western Balkans for further steps in accession process’, presented by Rehn in Skopje, reiterates that the key priorities of the Accession Partnership must be fulfilled before a start of EU accession negotiations, one of them being the persistent implementation of the OFA with special focus on inter-ethnic confidence building (CoEU, 2008, Art. 3.1).⁶ A second Commission initiative was the recommendation in October 2009 to open the accession negotiations with Macedonia, again presented to Macedonian authorities by Commissioner Rehn (EU, 2009, p. 1). Though Rehn remarked that the OFA as crucial part of democracy and rule of law reform in Macedonia has been progressively implemented (law on languages, decentralisation, equitable representation), he added that “further efforts in a constructive spirit are needed to fulfil the objectives of the Agreement” (ibid.). Beyond these developments, the Council has also issued a Decision on 19 December 2009 to lift the Schengen visa obligation for Macedonia. Thus, both Commission and Council have stayed involved in the country within their areas of competence.

Since the focus was progressively put upon the inclusion of Macedonia into the EU, efforts of Council and Commission were more coordinated. This is indicated by the appointment of Fouéré representing both institutions simultaneously as well as the referral of Commission competences to the Commission Delegation (e.g. IPA). With the Commission as a main actor in the enlargement process and the Council having to unanimously decide on the Commission’s proposals, both actors are involved in the process. The fact that both institutions stayed within their competences may again be one possible explanation for who spoke for the EU in this period. Moreover, the overall pressure not to fail in Macedonia kept influencing the two institutions. The latter factor played an

⁶ The Council had adopted the Accession Partnership on 18 February 2008, renewing the 2006 European Partnership.

important role during the negotiation phase, but continued to do so in the two later phases as well. In the later phases this was not only as a result of the EU's history in the Balkan and the need to show that they were able to act successfully in their neighbourhood. Their cooperation was also influenced by Macedonia's increased inclusion into the EU. Both institutions knew that they had to succeed in order to stabilise the country before EU full membership. The accession process therefore was a major driving force behind successful Council-Commission cooperation.

4. Conclusion

This paper set out to analyse who spoke for the EU in the different stages of the adoption of the 2001 OFA. In a second step it also asked why this particular body or person was speaking. In its subsequent analysis, the paper focused on the Commission and Council interaction during the negotiation, implementation and operation phase of the OFA. It argued that in Macedonia, Commission and Council cooperated surprisingly well and largely stayed within their areas of competence. This validates our overall claim that Commission and Council can cooperate smoothly in external conflict settlement, especially in countries with the prospect of EU accession.

In general we can conclude that the pillar structure still greatly determined the areas of competence of both Council and Commission. Moreover, cooperation was enhanced through the sense of urgency, the need not to fail and the fact Macedonia was considered as a potential candidate from the very start in 2001. This also led to the fact that the Commission was involved very early vis-à-vis the Council.

The paper showed that in the negotiation phase it was mainly the Council and more specifically the HR that was speaking for the EU. Here the size of the presidency and its rather limited resources led the HR Solana to take over. Furthermore, the urgency of the situation in Macedonia and the willingness not to fail did not allow for internal institutional twists between Council and Commission. In the subsequent implementation and operation phase the paper remarked that in the period of 2001 to 2002, it was mainly the Commission that spoke for the EU. One reason for the Council's apparent absence was that its newly established ESDP mechanism had not yet been sufficiently developed. The strong involvement of the Commission can be explained by the fact that it had been involved in Macedonia already through the SAp and SAA which were to prepare Macedonia for possible EU membership. In the period of 2003 to 2005, the involvement of the Council became much stronger through its two ESDP missions Concordia and Proxima since its legal competences under the second pillar were the driving force. Through the Commission's involvement in civilian crisis management, Council-Commission distribution of competences was at times unclear and led to sometimes troubled cooperation and coordination. This however did not significantly influence the overall success of their involvement in Macedonia. From 2005 onwards, the efforts of the

Commission and the Council seemed more coordinated. With the double position of Fouéré and Macedonia's prospect of EU membership, Council and Commission had to coordinate their efforts more consistently in order to further progress in Macedonia. The need not to fail can also in the later phases explain why the Council and the Commission kept cooperating. Whereas it would have been possible for the Council and the Commission to fall back into traditional turf-wars, both institutions were well aware of the pressure to succeed in Macedonia. The country needs stability before further progress in the EU accession.

Due to the scope of this paper, it was only possible to focus on 'main events' and 'main actors' within the adoption period of the OFA. Another limitation concerns the choice of one qualitative case study. The paper was only able to look at one specific case of EU involvement in conflict settlement. Further research needs to be done in the area of EU representation in conflict settlement in order to obtain a quantitative overview of how Commission and Council interact and if the pattern here analysed can be validated in other countries and areas of cooperation.

With the Lisbon Treaty in force, it remains to be seen whether Council-Commission representation and interaction in conflict settlement will change with the new post of the HR introduced and the structure of the EU external services changing. It also remains to be seen whether the *team-work* as in the case of Macedonia, will replace *turf wars* of Council-Commission interaction on a broader scale in EU foreign policy in the future.

5. Annex 1

EU Competences as Defined in the Ohrid Framework Agreement

Implementation and Confidence-Building measures (Annex C)
○ International Support
▪ 1.1 The parties invite the international community to facilitate, monitor and assist in the implementation of the provisions of the Framework Agreement and its Annexes, and request such efforts to be coordinated by the EU in cooperation with Stabilization and Association Council
○ Census and Elections
▪ 2.1 The parties confirm the request for international supervision by the Council of Europe and the European Commission of a census to be conducted in October 2001
▪ 2.2 International organizations, including the OSCE, will be invited to observe the parliamentary elections held on 27 January 2002.
○ Refugee Return, Rehabilitation and Reconstruction
▪ 3.1 The parties invite the international community to assist the efforts of ensuring the return of refugees who are citizens or legal residence of Macedonia and displaced persons to their homes within the shortest possible timeframe.
▪ 3.3 The parties invite the European Commission and the World Bank to rapidly convene a meeting of international donors after adoption in the Assembly of the Constitutional amendments to support the financing of measures to be undertaken for the purpose of implementing the Framework Agreement and its Annexes.
○ Development of Decentralized Government
▪ 4.1 The parties invite the international community to assist in the process of strengthening local self-government.
○ Non-Discrimination and Equitable Representation
▪ 5.2 The parties invite the international community to assist in ensuring that the police service will generally reflect the composition and distribution of the population in Macedonia through sending expert teams.
▪ 5.3 The parties invite the OSCE, the European Union, and the United States to increase training and assistance programs for police, including: technical assistance for police reform; development of code of police conduct; deployment of international monitors and police advisors in sensitive areas.
▪ 5.4 The parties invite the international community to assist in the training of lawyers, judges and prosecutors from Macedonian minority groups.
○ Culture, Education and Use of Language
▪ 6.1 The parties invite the international community, including OSCE, to increase assistance for projects in the area of media, including Albanian language and multi-ethnic media, media training for Macedonian minority groups, and project to improve inter-ethnic relations
▪ 6.2. Parties invite international community to provide assistance for the implementation of the Framework Agreement in the area of higher education.

OFA (2001)

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