

Editors

Tomasz Husak, Filip Jasiński

# The European Union Presidency:

## A Practical Perspective



NATIONAL SCHOOL OF PUBLIC ADMINISTRATION

**The European Union Presidency:**  
**A Practical Perspective**

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## Foreword

In the second half of 2011 - seven years after acceding to the EU - Poland is to hold the six-month Rotating Presidency of the Council of the European Union. Now it is true to say that the Lisbon Treaty has done much to change both the scope and character of the national Presidencies, ushering in as it has the institutions of the Permanent President of the European Council and the High Representative for Foreign Affairs and Security Policy (configured anew on the basis of the earlier post of High Representative for the Common Foreign and Security Policy), as well as extending still further the areas in which co-decision applies between the Council and the European Parliament. Hence, the December 1<sup>st</sup> 2009 entry into force of the Treaty provisions has made it necessary for the further countries that are to hold the Rotating Presidency to adapt their methods of work to the new institutional framework. However, what all this certainly does not mean is that the responsibility for leading work in most of the areas that are subject to joint action from the EU Member States has been lost.

Thus the period in the runup to the holding of the Polish Presidency is an interesting one - as they always are - and indeed this is in many ways all the more true in the light of the innovations already referred to. There is thus a (renewed) need for those concerned to become familiar with the fine details of the EU decisionmaking process, to assign matters to be pursued to given experts in Ministries and central offices, to acquaint themselves with the positions of the different Member States and the key institutions in respect of each issue, and - from the practical point of view - to participate as necessary in relevant courses of a substantive or linguistic nature (best of all those working on both areas simultaneously).

In truth, this far-from-straightforward list presents just some of the tasks awaiting officials and diplomats from Poland as 2011 approaches. In preparing for the Presidency, a person needs to tackle obligations arising continually out of the ongoing work of the EU, as well as the presentation

of Poland's position when it comes to acts of law or policy decisions that are under discussion.

Fortunately, all the intensive preparatory work in advance of a brief 6 months has its long-term, as well as short-term, dividends. A Poland well-prepared for the Presidency, and effective at running it, is at the same time a Poland whose administration is better able to use the chances for development that arise more generally out of EU membership.

I therefore hope most sincerely that the publication we have to offer here - as authored by three employees of Poland's Permanent Representation to the EU, plus one employee of the Council's General Secretariat - will turn out to be useful material from the informational, didactic and summarising/synthesising points of view, *i.a.* constituting a valuable augmentation of the workshops and lectures being offered in the period October 2009 to December 2010 at Poland's *Krajowa Szkoła Administracji Publicznej* (National School of Public Administration), within the framework of the programme of centralised training commissioned by the country's Ministry of Foreign Affairs for more than 1000 representatives of the domestic administration as Poland prepares for its Presidency.

In fact, the material on offer here arose out of a great many chats engaged in and interviews held with officials at the Community institutions, as well as other countries' "old hands" earlier involved in preparing for their own Member States' Presidencies. In the process, it has proved possible to assemble an eclectic mix of practical tips on the one hand, and legal or procedural explanations on the other. We trust that both will emerge as useful when it comes to preparations to chair Council Working Parties, as well as in the process by which new instruments of law are (or are not) negotiated into existence with the European Parliament.

Needless to say, this work has also taken account of the specific new context to the EU's daily operations that the Lisbon Treaty has ushered in.

It is my heartfelt wish that the course of Poland's EU Presidency - and the individual parts played by all working within the framework of that endeavour - will run smoothly, and indeed prove a source of personal and professional satisfaction and inspiration. This will after all be a historic event in which we are all important participants. Let us not forget that as we prepare for, and then go on to deliver, the Polish Presidency. After all, there will not be another chance like this for around another 14 years!

*Ambassador Jan Tombiński*  
*Permanent Representative of the Republic of Poland to the EU*

## **From the authors**

**Tomasz Husak, Filip Jasiński,  
Anna Piesiak and Richard Szostak**

This publication offers information gathered over the last few years in the course of talks with many experts from EU institutions and the Member States, who had previously worked on their own given Rotating Presidencies. Of course, such collected experiences in no way add up to a formal standpoint on the part of the Polish Government, or indeed any Ministry or central office, in regard to the subject. And nor should the points set out here be treated as official guidelines on how to implement tasks associated with the preparation for and running of the Presidency. However, what is on offer here may perhaps serve as a catalogue of good and bad practices, all the more so since its authenticity has been confirmed “the hard way”, “at the front”, by the experiences of many of our colleagues with whom we have had the opportunity and pleasure to cooperate, and who have agreed to share with us on the basis of anonymity. We are most grateful to these people for the help they have offered.

Our main aim here has been to draw attention to the institutional and legal context arising out of the Lisbon Treaty’s entry into force (this having a marked influence on the formula under which the Presidency operates, organisational matters where the running of meetings is concerned, and the negotiations over legal instruments and policy documents that take place among the institutions and in concert with the Member States). Beyond that, we offer a reminder of key elements to the decisionmaking procedures, in so doing drawing on experiences gained at work for the Council’s General Secretariat, as well as noting the Polish Permanent Re-

presentation in Brussels context (on the basis of which we find some worthwhile “short-cuts”, reiterations, recollections and injections of professional vocabulary all deriving from daily practice in the work of officials involved in the European process).

We know from our own experience just how much depends on experts being prepared well to take part at sittings, and that means not only from the substantive point of view, but also in terms of organisational matters, not least time management, the skill to access information, and a capacity to engage in timely consultations with “Warsaw” over standpoints.

The remarks we bring together here may emerge as helpful to the experts whose participation in the work of the Polish Presidency in the second half of 2011 is now anticipated. At the same time, it seems clear to us that much of the good practice detailed here might equally well find ready application in the daily work of Poland’s domestic administration, even when the all-too-brief period presiding over the work of the European Union is but a fading memory!

The formula underpinning our publication has remained an open one, in which tables and diagrams seek to offer as transparent a transfer to the reader of our large number of observations as it is readily possible for us to achieve. This at the same time denotes an avoidance of any temptation to theorise excessively, all the more so since we do take it as read that at least some abbreviations, names, terms, etc., are well-known to those involved (sometimes for many years now) in the European integration process. It is only to be hoped that this kind of pragmatic approach adopted proves acceptable to, and even desirable for, our readership.

# **The role of the Rotating Presidency in the Lisbon Treaty**

Dr Tomasz HUSAK

In December 2009, the *euractiv.com* website rather provocatively titled one of its articles *Time to Abolish the EU's Rotating Presidency*<sup>1</sup>. Is this kind of thing appropriate at a time and in a situation when the representatives of the Rotating Presidency will continue to have to chair nine formations/configurations of the Council and almost 270 Committees and Working Parties? Will Poland's 2011 Presidency really not have any more major role to play in the European Union?

It is true that any analysis of the conditions under which Poland will be holding its second-half-of-2011 Presidency must come to terms with the ongoing process by which Lisbon Treaty provisions are being put into effect. It was under the Spanish Presidency that an end was put to the first stage of this process, by which often ambiguous Treaty provisions were adjusted to the Brussels reality - a reality that depends, and is based, on many unwritten, informal rules and principles, as well as on what legal regulations provide for. Equally, while the Spanish Presidency was able to offer up answers to many of the questions that had been nagging us, one has to go along with the statement uttered widely in the corridors and vestibules of Brussels that it was the Belgian Presidency that left a legacy of more fully-grounded and founded principles for the EU's further functioning.

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<sup>1</sup> See [www.euractiv.com/en/future-eu/time-abolish-eu-rotating-presidency/article-110129](http://www.euractiv.com/en/future-eu/time-abolish-eu-rotating-presidency/article-110129).

Notwithstanding all that, it is possible to discern a couple of quite clear trends now taking shape. In the first place, the establishment of the post of President of the European Council and the “reimagining” of the High Representative for the Common Foreign and Security Policy into the High Representative of the Union for Foreign Affairs and Security Policy do clearly change many aspects of the way the EU operates. In the second place, organisational modifications do indeed arise out of the new division of roles where the triangle of the Rotating Presidency, the European Council President and the High Representative is concerned, as well as in regard to the EP, the Commission and the Council. But none of this means that there is nothing left for the old-style Presidency to play for. Rather, it is the thesis being advanced here that the scale, nature and success of the implementation of Presidency tasks will be very much dependent on pragmatic linkages taking shape between different actors at each level of governance. This reflects the fact that the informal side of things has gained, and will go on gaining, greatly in significance.

Our study thus analyses the role of the Rotating Presidency as provided for in Treaty provisions, pointing out the clearly-defined changes in the functioning of the EU introduced in the first months after the Lisbon Treaty took effect. In our opinion, the trends to be focused on above all are:

- ◆ the shaping of a new role for the European Council;
- ◆ the increasing significance of the position of the Council’s General Secretariat;
- ◆ more frequent resort to the instrument entailing tripartite talks with the EP (trilogues);
- ◆ the success of informal arrangements;
- ◆ the change in the leadership system when it comes to the CFSP.

In what follows, we analyse each of these changes from the point of view of the Polish Presidency’s work. But beyond all that, it remains clear that the above listing is not exhaustive. Indeed, as there is still rivalry between the different institutions, it is very possible that – by July 2011 – new phenomena exerting a greater or lesser influence on the role of the Rotating Presidency will have emerged.

## **1. Treaty provisions**

The Lisbon Treaty put in place a new system by which the European Council, the Foreign Affairs Council, the General Affairs Council and other

Council formations are to be presided over, as well as most of the Council Working Parties.

**The European Council.** The Rotating Presidency has here given way to the post of "Permanent" President of the European Council (the term in office for this person in fact being two and a half years, with the possibility of one second term). In accordance with the decision taken by the European Council on December 1<sup>st</sup> 2009, the incumbent President is Belgian ex Prime Minister Herman Van Rompuy. The President is answerable for his/her leading of the work of the European Council, while a further responsibility is to ensure that that work is properly prepared for and continued with. Furthermore, under Art. 15, para. 6 TEU, "The President of the European Council shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its Common Foreign and Security Policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy."

In turn, in accordance with the European Council's internal Rules of Procedure adopted by virtue of European Council Decision 2009/882/EU of December 1<sup>st</sup> 2009, the President shall be obliged to cooperate closely with the Rotating Presidency, in the following respects:

- ◆ he/she shall make known (at the latest one year in advance) the dates which he/she envisages for the meetings of the European Council during the given six-month period;
- ◆ he/she shall submit an annotated draft agenda to the General Affairs Council;
- ◆ he/she shall prepare draft guidelines for the European Council Conclusions and, as appropriate, draft conclusions and draft decisions of the European Council, which are to be discussed by the General Affairs Council.

Beyond that, the Rules oblige the Rotating Presidency:

- ◆ to report on the work of the Council to the European Council;
- ◆ to offer up the member of the European Council representing the Member State holding the six-monthly Presidency as a substitute for the President of the European Council, in the event of his/her death, or else the ending of his/her term of office in accordance with Article 15(5) TEU (*i.e.* due to some "impediment or serious conduct", as the relevant provision reads);

- ♦ to present to the EP its priorities, and the results achieved during the given half-year period.

**The Foreign Affairs Council (FAC)** is a new formation arising through the splitting of the old GAERC (General Affairs and External Relations Council) formation into the present-day General Affairs Council (GAC) and Foreign Affairs Council (FAC). The FAC is headed by the High Representative for Foreign Affairs and Security Policy. In accordance with European Council Decision No. 2009/880/EU of December 1<sup>st</sup> 2009, adopted with the consent of the President of the European Commission, the current High Representative is the former Member of the Commission with the Trade portfolio, the UK's Baroness Catherine Ashton of Upholland. Lady Ashton is dubbed HR/VP on account of the post of High Representative going hand in hand with that of Vice President of the European Commission. Here it is worth stressing that, when it comes to the HR/VP's presiding over the FAC, Art. 2, para. 5 of the Council's Rules of Procedure (under Council Decision 2009/937/EU dated December 1<sup>st</sup> 2009) provides that the High Representative may in fact "ask to be replaced by the member of that configuration representing the Member State holding the six-monthly presidency of the Council". Also of importance is Art. 26, which stipulates that the High Representative may "where necessary, ask to be replaced by the member of that configuration" (*i.e. the FAC*) "representing the Member State holding the six-monthly presidency of the Council."

Footnote 3 in the Council Rules is also highly relevant from the Rotating Presidency point of view, insofar as it stipulates that: "When the Foreign Affairs Council is convened to discuss Common Commercial Policy issues, its President will ask to be replaced by the six-monthly Presidency as provided for in Article 2(5), second subparagraph".

**The General Affairs Council (GAC)** and other formations/configurations of the Council. In accordance with rules devised prior to the Lisbon Treaty's entry into force, formations other than the FAC are to be presided over by representatives of the Member State holding the Rotating Presidency.

The GAC here assumes a particular role, in that - as Art. 16, para. 6 TEU stipulates - it "shall ensure consistency in the work of the different Council configurations. It shall prepare and ensure the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission." It is further responsible for general policy coordination, for institutional and administrative issues, for horizontal issues relevant to several EU policies, notably the multiannual budget perspective and the EU enlargement, as well as for all matters

conferred upon the Council by the European Council, including the principles underpinning EMU activity.

An important element which the Lisbon Treaty introduces into the Council Rules of Procedure is the concept of the Council being presided over by three Member States jointly - as falling within the scope of an 18-month "trio" (Poland comes within a trio with Denmark and Cyprus). This has significant connotations in that it might theoretically allow a given trio to arrive at the internal decision that one Member State may preside over a given Committee or Group for the entire 18-month period concerned.

**The Preparatory Committees and Council Working Parties.** The Committee of Permanent Representatives (in fact as COREPER II plus COREPER I) is responsible for preparing the work of the Council, and will be presided over by the representative of the Member State presiding over the GAC, *i.e.* the Rotating Presidency. In the case of COREPER II this will therefore be the given state's Permanent Representative to the EU, and in the case of COREPER I its Deputy Permanent Representative.

The Political and Security Committee (PSC or COPS in French) is in turn responsible for all matters linking up with the Common Foreign and Security Policy. It is presided over by the HR/VP, as are most of the Working Parties in the CFSP field. Other WPs and Committees will continue to be run by the Rotating Presidency.

Thus, from the point of view of any legal analysis of the Treaty, many of the former tasks of the 6-month Rotating Presidency remain unchanged. It will continue to play an important role within the new institutional architecture of the Union, in particular presiding over the General Affairs Council and COREPER, both still with major decisionmaking roles to play.

The GAC not only ensures cohesiveness of action of all the Council formations, but also plays a major role in preparations for the European Council; Art. 15, para. 6, point b TEU providing that the President of the European Council "shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council". This denotes that the GAC and other formations of the Council will continue to have wide-ranging responsibility for preparing European Council sittings.

And the role of the Rotating Presidency is not confined to the European Council, the General Affairs Council and other Council formations, since it will first and foremost continue to exert an influence where external relations are concerned, with COREPER remaining responsible

for the preparation of FAC sittings. It is also very possible that the Minister of Foreign Affairs of the state holding the Presidency will substitute for the HR/VP in respect of certain dossiers. Ultimately then, the scope and form of the responsibility the Rotating Presidency assumes for matters of external policy will doubtless go on being a controversial and much-debated matter.

## 2. From a bottom-up approach to a top-down approach

The Treaty of Lisbon's first months in effect were marked by attempts on the part of President Herman Van Rompuy to strengthen his position. Taking advantage of the circumstances offered by the economic crisis, as well as the start being made to work on the *EU 2020* Strategy, he decided to reverse the practice up to that time where the European Council-Council relationship was concerned, experts summing this process up by referring to a change of approach from "bottom up" to "top down". The said "bottom-up" system in place previously had assumed that it was the Rotating Presidency that could exert a direct influence on the pursuit and achievement of both its own priorities and the tasks arising out of the EU's ongoing agenda. Legislative work commenced with discussion in the Council Working Parties, with the results obtained there being taken up by the sectoral Councils, before the final complex negotiations took place - where necessary - at sittings of the European Council. A key example of "bottom up" took in the negotiations on the October 2008 energy/climate package.

However, in his first weeks of activity, the European Council President gave everyone to understand that that body should not be a place for detailed discussion on particular provisions contained in conclusions<sup>2</sup>. The Van Rompuy conceptualisation instead had the European Council as the source of tasks for the Council, this activity perhaps then being followed up by evaluation of implementation and the supplying of guidelines for further work. This top-down approach gained full application as work was being done on the *EU 2020* Strategy, as well as on matters of European economic governance. In that last case, Van Rompuy was even able to prevail with a suggestion that an additional special Task Force be set up, mainly comprising Ministers of Finance from the Member States, the aim being for these to engineer the circumstances under which concrete solutions might be available for adoption by October 2010.

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<sup>2</sup> See *The Economist* of 11.03.2010

“Top down” gains yet a further ideal illustration in respect of point 13 among the Conclusions of the Brussels European Council of June 17<sup>th</sup> 2010, which reads: “The European Council invites the Task Force and the Commission to rapidly develop further and make operational these orientations. It looks forward to the final report of the Task Force, covering the full scope of its mandate, for its meeting in October 2010.”

A further step taken by Mr Van Rompuy - with a view to the top-down principle being yet-more-fully entrenched - concerns the determination in advance of the main subjects different sittings of the European Council are to address. It was planned that there be five formal sittings each year, and that the subjects up for consideration would resemble the following:

- ◆ September 2010, with the participation of Ministers of Foreign Affairs, mainly on relations between the EU and its main partners around the world;
- ◆ October 2010, current affairs (at present with the Task Force), as well as preparations for the Climate Change Conference in Cancún;
- ◆ December 2010, innovation-related issues;
- ◆ February/March 2011, energy, and matters economic and financial<sup>3</sup>.

Such precise detailing of the main issues to be addressed at each European Council sitting may indeed denote a further attempt to impose the top-down approach. This is thus one of the most important contemporary processes seen to characterise the struggle between the institutions following the entry into force of the Lisbon Treaty.

It needs to be anticipated that, in the course of the Polish Presidency, some legislative tasks will continue to be pursued by way of a bottom-up approach, while other matters (especially those in the economic policy field in which President Van Rompuy is evidently so keen to play a leading role) will above all be taken up by the European Council, from where tasks for the Council of the European Union - and simultaneously also for the Committees and Working Parties - will emerge.

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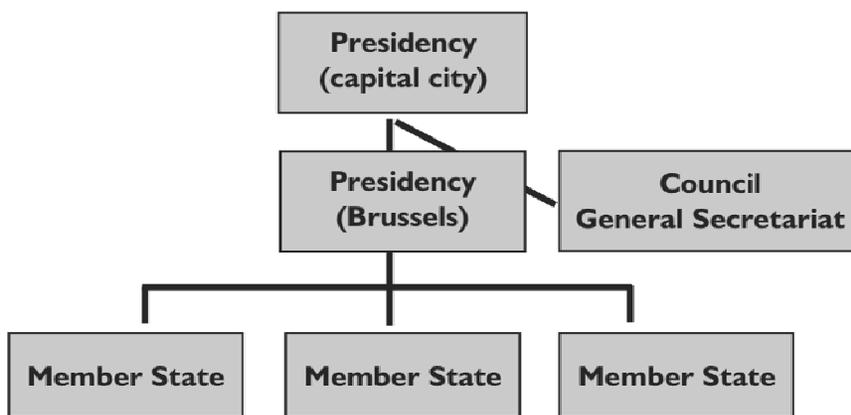
<sup>3</sup> See *L'Express* of 30.06.2010.

### 3. The growing significance of the Council’s General Secretariat

A direct consequence of the introduction of a permanent Council Presidency is the change of balance ushered in between the actors directly influencing preparations for the European Council sessions and the organisation of their agendas, as well as familiarity with what goes on at the margins of negotiations. In short, from being the main broker of final decisions, the Presidency has now become just one participant in the decisionmaking process. Under the pre-Lisbon system, all political guidelines at European summits were established by the Head of State/Government leading the Rotating Presidency. The Council’s General Secretariat obviously helped out in a technical sense here, as at the levels of all other formations and bodies, but the key decisions were those along the capital city-Presidency line at COREPER II (see Fig. 1).

Fig. 1.

**The role of the Council’s General Secretariat in Nice-System preparations for a European Council**

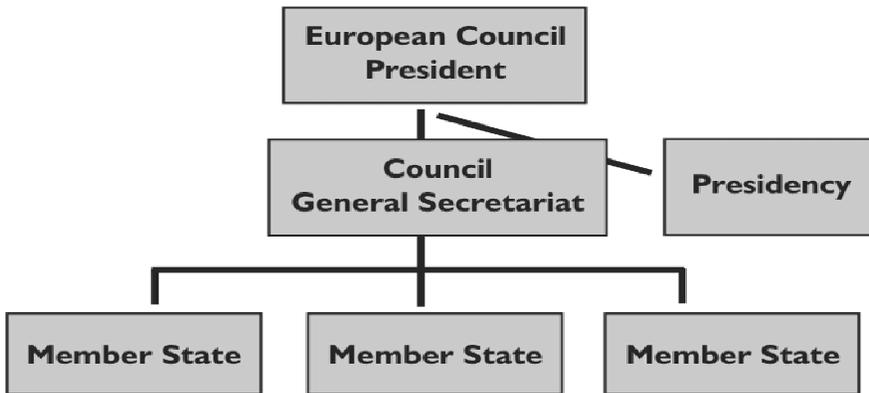


In the new institutional reality, the main initiative when it comes to setting European Council policy lines and agendas will be with the President thereof, if in the close cooperation with the Rotating Presidency that the Treaty provides for. In practice, of course, the daily work that will influence the dynamic to preparations for a given summit will be a matter for the Office of the President of the European Council on the one hand and the Council’s General Secretariat on the other. The Rotating Presidency will certainly keep a privileged position in comparison with all the other EU Member States at the given time, but it will also come within the group of

“petitioners” (as it were) when it comes to the final content of conclusions. The above scenario would seem to encapsulate what is one of the most important indirect changes to arise out of the new Treaty (*see Fig. 2*).

Fig. 2.

**The role of the Council’s General Secretariat in Lisbon-System preparations for the European Council**



For the Rotating Presidency, the new situation will again depend on the pragmatics of interpersonal relationships. In the past, the Presidency entered into various forms of cooperation with the Council’s General Secretariat. However, it was a rule for large and experienced countries to limit the latter’s influence on the decisionmaking process, to the extent that technical functions were all that were left. In contrast, smaller, inexperienced Member States have tended to make use of the Secretariat’s human resources, as well as its legal and institutional knowledge. And in the new institutional context, the Rotating Presidency effectively has no choice but to be “friends” with the Secretariat.

#### 4. Trilateral/Tripartite meetings

The Treaty of Lisbon modifies the classical Co-decision Procedure, introducing in its place the Ordinary Legislative Procedure entailing the forwarding of a proposal by the Commission, followed by the Council and Parliament’s joint adoption of the given instrument (Regulation, Directive or Decision).

Co-decision procedure continues to be applied in all the previous areas, such as the environment, transport, the internal market and four freedoms (of movement of goods, services, capital and persons), employ-

ment and social policy, education and training, health and consumer protection, and some areas of freedom, security and justice.

Moreover, the scope of co-decision has now been extended to include a large number of important areas of activity wherein the European Parliament's previous role was confined to that of consultative body. The fields in question include agriculture and fisheries, police and judicial cooperation in criminal matters, the liberalisation of services in given sectors and cooperation with third countries.

For the Rotating Presidency this denotes a need at all levels for more frequent meetings with the European Parliament under the so-called "trilogue" arrangement<sup>4</sup>. The trilogue meetings have as their aim the negotiation of compromise texts and the finding of solutions where legislative proposals are concerned. However, the practical side to the running of trilogues has never been codified, and so is inclined to change from one Presidency to another. The Joint Declaration on practical arrangements for the co-decision procedure (dated June 13<sup>th</sup> 2007) provides that trilogues "are usually conducted in an informal framework" and "may be held at all stages of the procedure and at different levels of representation, depending on the nature of the expected discussion." Equally, it needs to be noted that the person presiding over a Council Working Group, or over COREPER, only commences with his/her participation in a trilogue where he/she is in receipt of a mandate to do so from the remaining Member States.

## 5. The triumph of informal discussion

Even in the pre-Lisbon reality, informal discussion represented a very important element by which final decisions and other outcomes in the European Union might be influenced. Often not needing to be reported on in any greater detail, supported by nothing more than general communiqués with no binding status, these kinds of mechanisms have proved a very attractive means of problem-solving, not least also because they are bereft of any more penetrating assessment on the part of the public. The system whereby frequent informal European Councils took place was markedly overused when the financial crisis erupted at the end of 2008, and this continued under the 2009 Czech and Swedish Presidencies.

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<sup>4</sup> The tripartite/trilateral meeting known as the trilogue is referred to as a *trilog* in the everyday Polish used in Brussels, notwithstanding the fact that the main Polish dictionary *Słownik Języka Polskiego* makes no reference at all to such a word!

Since the time Mr Van Rompuy was appointed European Council President, there has been a great deal of speculation that this body might start to meet on a monthly basis, mainly by way of informal meetings. However, thus far at least, this step has not been taken, as we noted earlier, the preferred solution being a transparent calendar of subject-related summits with dates agreed well in advance. That said, we might recall that even the formal summits offer plenty of opportunities for decisions to be arrived at in informal circumstances. There might be a breakfast or supper for Heads of State or Government, or else other meetings of a bilateral, tripartite or four-party nature, and so on.

Thus, when we apply the headline "The triumph of informal discussion", we do not necessarily imply an increase in the numbers or frequencies of such meeting opportunities, but rather success with the transfer of the decisionmaking function from the arena at which all 27 Member States have something to say, to one in which the main interested parties are invited. Today, researchers dealing with EU matters are inclined to see this as a new phenomenon characterising EU negotiations, even though it in truth draws on classical solutions in bilateral manifestations of international diplomacy.

In the context of the Polish Presidency, an awareness of the above fact denotes a need for a base of contacts as wide as possible to be built up with potential decisionmaking centres, such as the offices of the President of the Commission, individual Commissioners and the President of the European Council, the various DGs of the Commission, the directorates of the Council Secretariat and so on. This is especially important if there is to be a possibility of this kind of meeting being convened (and of receiving an invitation to attend), all the time keeping fully in mind that formal sittings often just rubber stamp what has already been worked out "in the corridors" or even within the confines of somebody's private office. Equally important is the devising of effective rules by which to test or sound out various kinds of initiative, in this way ensuring that the real interests of different players are "read off" and a truly effective negotiating strategy is developed.

## **6. The Presidency and the CFSP sphere**

The area of the Common Foreign and Security Policy will be of major importance when it comes to the Rotating Presidency's completion of its tasks. All matters linking up with European Security and Defence Policy come within the remit of the HR/VP. The Political and Security Committee will also be presided over by a representative designated by

the HR/VP, and the same will be true of such Council Working Parties as the PMG, CIVCOM and COARM, as well as other horizontal formations like Nicolaidis, COHOM, COSCE, CONUN, COADM, CODUN and COARM, in line with Council Decision 2009/908 of December 1<sup>st</sup> 2009.

Representatives of the HR/VP will also be heading geographical groups like MAMA, COEST, COWEB, COMME/MOG, COASI, COLAT, COTRA and the COAFR. It will also be a matter for the High Representative to decide who obtains the nominations to chair the different groups. However, the Military Committee will go on being headed (in line with currently-binding rules) by a General chosen by the Member States for a three-year term.

It nevertheless needs stressing that Annex II to the aforementioned Council Decision obliges the HR/VP to enter into close cooperation with the 6-month Rotating Presidencies, in order to ensure cohesive action of all bodies preparing the Foreign Affairs Council meetings. It remains a matter for the Rotating Presidency to preside over such Council Working Parties as RELEX, COTER, COCON, COJUR and COMAR. The Rotating Presidency will also head the groups dealing with policy on trade and development.

Furthermore, High Representative Ashton will have exceptionally strong backup at her disposal, thanks to the European External Action Service (EEAS) now being brought into being in line with Council Decision 2010/427/EU dated July 26<sup>th</sup> 2010. As of now it is hard to determine what state the Service will be in in 2011, but we may be sure that it will already have enough possibilities for action to leave it able to compete with many diplomatic services and corps around the world. When it comes to developing stances towards world events, considerable advantage (*i.a.* advantage over the Rotating Presidency) must obviously accrue from the possibility of being briefed by more than 130 EU Delegations throughout the world, and then having that information provided analysed by some 1500 officials.

Those heading up the Rotating Presidency are thus faced with a very specific situation in which they no longer preside over meetings, but must nevertheless speak up for the Presidency. The practice in this regard was to have been devised and put in place in the second half of 2010, when the majority of “Permanent Chairs” were to have been appointed. We may venture to presume that the tasks of the Rotating Presidency as of the second half of 2011 might include:

- ♦ serving as a go-between as regards the Member States on the one hand and the HR/VP and the EEAS on the other - and

hence *de facto* taking on the same role as once pertained between the Member State and its own Minister of Foreign Affairs;

- ◆ care to ensure concordance between the debates a given group holds and the Presidency priorities, as well as the activity engaged in by other groups and at other levels presided over by the Presidency;
- ◆ active engagement in the search for compromise between the Member States (it is certain that more in this regard will be expected from the Presidency than from other EU Member States);
- ◆ the steady exchange of information and proposals on a more or less informal basis between those presiding over Council Working Parties and the representative of the Presidency;
- ◆ substitution in the event that a “Permanent Chair” is not able to run a session (and hence a need for others to be familiar with a given dossier and be ready to head it up if necessary).

The above list makes clear just how much will depend on representatives of the Rotating Presidency carving out a position for themselves and determining the role they seek to play where the work of a given Council Working Party is concerned. This is all the more true in light of the fact that we cannot expect cohesive practice to have been worked out by mid 2011, since the European External Action Service will still be in the process of being created at that not-far-off point in time.

## Summary

The entry into force of the Treaty of Lisbon provoked a great deal of comment heralding the end of the Rotating Presidency. However, while the new institutional architecture has certainly represented a serious challenge to the Member States serving in the role, there is no question that the Rotating Presidency remains an important element of the said architecture, if one in a different form than hitherto. The Presidency continues to head nine formations of the Council and more than 270 Committees and Working Parties, but it will now have to play second fiddle when it comes to running European Councils and Foreign Affairs Councils. Of course, it cannot be denied that the latter are the fora at which the key decisions are taken, so that makes it essential that the new situation be adjusted to by the Presidency, in order that the “struggle” for an appropriate position in respect of the inter-institutional equilibrium can get underway. This is all

the more necessary in light of the fact that many questions on the place of the Rotating Presidency in the new institutional architecture have continued to go unanswered up to now.

However, if we analyse what has been said by a representative of the Belgian government, we may well come away with the idea that the Belgian Presidency has witnessed the obtainment by both Van Rompuy and Ashton of a considerable degree of autonomy that will now prove very difficult to rein in again. Under the circumstances, it will not be difficult to turn the President of the European Council into a *de facto* manager of affairs, as well as an effective figurehead-cum-visionary. And that, by the way, denotes a far tougher time than pre-Lisbon when it comes to countries' seeking to pursue their own particular priorities during their Presidency. After all, the Member States have experienced a partial loss of direct control over the legislative process.

While a permanent presiding role has been opted for in most areas falling under the Common Foreign and Security Policy banner, this does not mean the end of any more important role for the Rotating Presidency, because:

- ◆ in the first place, the commercial policy side to the work of the Foreign Affairs Council will continue to be presided over by the RP, in the name of the High Representative/Vice President, while it is highly likely that the latter will also confer responsibility upon a Foreign Affairs Minister for political dialogue with third countries, for leading the sessions of the FAC (more rarely) and for appearing before the European Parliament (sporadically);
- ◆ in the second place, it remains the purview of the RP to preside over the RELEX, COTER, COCON, COJUR and COMAR Working Parties. It is hard to say whether all the Permanent Chairs of the Working Parties will have been selected by mid 2011, but this will depend on the rate at which the European External Action Service takes shape.
- ◆ in the third place, the Rotating Presidency at Brussels level will be required to take on the role of intermediary between the European External Action Service and other Member States, by means of ongoing consultation and assistance with the search for a compromise. Furthermore, it will have to ensure the concordance of work as regards the Common Foreign and Security Policy with the Presidency's overall priorities. In these

circumstances, COREPER II will find itself in a particularly strategic position.

Under the circumstances of the European Council working more and more within a top-down system, with the Foreign Affairs Council presided over by the HR/VP basing its work more and more on analyses furnished by the EEAS, it is clear that the significance of the Rotating Presidency's informal activity can only grow. It will doubtless prove a major challenge to ensure cohesion of the work done with the Presidency priorities. Ways of proceeding agreed informally with the Permanent Chairs and with other key players will thus be of key importance if the proper influence over the legislative process is to be exerted. For the Rotating Presidency has found itself in a situation in which it may not decide on the manner in which consensus is to be reached, but must nevertheless be in a position to influence that process, if its proposals are to find a place there at all. Furthermore, the influence in question must make itself felt at each level, all the way through from Head of Government and ministerial level, via the Permanent Representation through to departmental experts. Contacts in the offices of the Commission and Council Presidents, at the Council's General Secretariat and in the Commission DGs will thus be of still-greater significance than was the case before the Lisbon Treaty entered into force.

# The Ordinary Legislative Procedure

Anna PIESIAK

The Lisbon Treaty has turned the Co-decision Procedure given first form by the Maastricht Treaty into the Ordinary Legislative Procedure, in this way extending the scope of the former. The OLP, whose course is as set out in Article 294 TFEU, has application in no fewer than 80 fields now<sup>1</sup>. Activity on the part of the EP and Council at the behest of the Commission is provided for, but the Treaty also anticipates legislative initiative on the part of a group of Member States in several cases, as well as even the launching of a legislative procedure on receipt of an application therefor from the European Central Bank or European Court of Justice<sup>2</sup>. In this way, the European Commission will be taking on a rather different role from that seen hitherto, inasmuch as it will tend to become an opinion-giving institution.

It also needs to be recalled that the Treaty provides, not only for co-decision (parallel involvement of Council and Parliament in the legislative process), but also for many special procedures in which the co-legislators will not be enjoying corresponding influence.

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<sup>1</sup> See [http://ec.europa.eu/codecision/docs/Legal\\_bases.pdf](http://ec.europa.eu/codecision/docs/Legal_bases.pdf).

<sup>2</sup> Art. 76 TFEU envisages legislative initiative on the part of the Member States when it comes to Judicial Cooperation in Criminal Matters and Police Cooperation. Art. 129 TFEU in turn allows the Council to adopt provisions via the Ordinary Legislative Procedure on the basis of a recommendation from the ECB, while Arts. 257 and 281 TFEU concern action at the request of the European Court of Justice.

## 1. Preparing the draft of a legal act

Priorities for the European Commission in a given term of office are as set out in Policy Guidelines from its President, these later finding their reflection in various Commission Work Programmes. The Work Programme for 2010 also presents the commitments the Commission intends to take on in successive years of its tenure. With a view to greater transparency and predictability of action being achieved, the Commission appends to its Programme a list of strategic initiatives and planned legislative proposals. More precise information on legislative initiatives whose launch the Commission is proposing may be found in the White Papers or Communications it has issued, devoted to the given subject matter. Work may also be taken on where a legal instrument in force contains a review clause.

The form an act assumes is the result of consultations the Commission holds with interest groups, and with the administrations in the Member States. The involvement of interest groups is to be noted, not only in the form of consultations over Green and White Papers, and in participation in debates open to central and local administration as well as the social and business partners, but also in more overt lobbying activity.

In the early stages of work on a draft act, it is the officials of the Commission who are subjected to the most intensive lobbying. Later on, however (in further phases of the legislative process), lobbyists make their presence felt with the Representations of the Member States. Beyond that (and contrary to what is mostly claimed), there are Commission officials from given Member States who really do remain loyal to their own country first and foremost, and hence continue to be ready to cooperate with the administrations back home. It is thus particularly important during the Presidency period that we be open to informal exchanges of opinion with Commission officials. While this may not provide for any influence on the text of the draft to be exerted, it will at least ensure that information on such a text is obtained at an earlier stage than would otherwise be the case.

Within the Commission, a draft emerges by way of consultations representatives of the coordinating DG (of substantive relevance to the subject matter) have with other DGs more or less concerned, and with the Commission's own legal services. Once made ready, the draft is sent to the office of the relevant Member of the Commission (Commissioner), who is ultimately answerable for what is contained there. A final stage in the process involves acceptance of a draft by the full Commission.

## **2. Laying a legislative proposal before the Council and Parliament**

The Commission forwards a draft act together with accompanying justification to the Council and Parliament simultaneously. Where the Treaty envisages consultations with the Economic and Social Committee and/or Committee of the Regions, these bodies also receive copies of the draft. The European Commission, Council and Parliament supply the Committees with a deadline for the submission of opinions, though non-performance of this duty does not hinder further steps in the process.

The Lisbon Treaty has strengthened the national parliaments' role in the legislative process. As it lays a draft law before the Council and Parliament, the European Commission is also obliged to send it to the national parliaments, which then have eight weeks to report their view regarding the draft's compliance with the subsidiarity principle. The "yellow card" mechanism provides that, should opinions that the draft fails to meet subsidiarity criteria be submitted by national parliaments accounting for one-third of votes assigned to their countries, the Commission will be constrained to subject the draft to renewed analysis. It may then decide to withhold, amend or withdraw the proposal. An "orange card" - *i.e.* opinions alleging a lack of accord with the principle of subsidiarity equating to a simple majority of the votes enjoyed by the national parliaments - obliges the Commission to make the repeat analysis and - should the draft be held up - to present a reasoned opinion outlining the reasons for its decision. The Council and Parliament are then obliged to engage in First-Reading consideration of the legislative proposal's concordance with the principle of subsidiarity. Furthermore, if the legislator makes it clear that it does not consider concordance with the principle of subsidiarity to have been achieved (by way of the votes of 55% of Council members or a majority of the votes in the EP), the motion will not be analysed further.

## **3. Simultaneous work in the Council and European Parliament**

In agreement with the Presidency, the General Secretariat of the Council of the European Union directs a draft to the Working Party relevant to the given subject matter. It emerges in practice that an urgent need for agreement to be reached may incline the Presidency to direct a draft to a WP of a more political than expert nature, or else to send it directly to COREPER. Such decisions are sometimes criticised by the Member States,

however, since they have in the past led to the adoption of legal acts that fail to meet technical requirements or to comply with better legislation principles. The freedom to choose a Working Party represents an instrument by which the Presidency may indeed influence quite significantly the timetable and dynamic to negotiations.

There are occasions (especially when Work Programmes are looking full) on which the Commission engages in the *a priori* presentation of what is known as a “non-paper” to a Council Working Party. Alternatively, a draft may even be presented by word of mouth, in such a way that the main assumptions are outlined. All of this serves to allow delegations to begin preliminary work on their stances. However, it is by no means obvious that the Commission will present the draft of a legal act in advance to the Presidency. In this case, a great deal depends on the personal contacts that have been cultivated by the Presidency vis-a-vis the officials piloting the given dossier through the Commission.

The Treaty offers no deadline for First-Reading adoption of positions by the European Parliament and Council (separately). In practice, the achievement of an agreement at this stage takes some 15 months on average. In the first place, it is in the interests of the Presidency that an agreement is arrived at in the First Reading, since the framework here is far more flexible than in later stages of the legislative procedure. Second, the effectiveness of action of a Presidency is very often measured simply, in terms of the number of dossiers closed.

#### **4. The First Reading in the European Parliament**

The President of the European Parliament forwards a draft supplied by the Commission to the Parliamentary Committee of relevance in line with the subject matter, which then selects from among its Members and Alternate Members the Rapporteur for the given Commission motion. The Rapporteur is responsible for drawing up a report that will include the draft of the legislative resolution and a recommendation that the Commission submission be adopted, amended or rejected, as well as possible drafts of amendments in the form of a table. The lead Committee may seek the opinions of other Committees, the latter being appended to the report. However, amendments may derive, not merely from the lead Committee or opinion-giving Committee, but also from the EP’s political groupings, or from 40 individual MEPs assembled together.

The draft version of the report is the subject of debate and voting in the Committee, prior to its providing the basis for discussion and voting

at a Plenary Session of the EP. Both the given Committee and the Plenary take votes on the basis of simple majorities. Where the Committee stage sees adoption of the report with fewer than one-tenth of Members voting against, this will then in principle become a point on the parliamentary agenda that is to be adopted without debate. The President of the Parliament submits to the Council and Commission the position of the Parliament, this being a text with the wording that has proved acceptable to it, along with the resolution.

Since work on a legislative text from the European Commission is ongoing at the same time in the relevant Council Working Group, it is important that the EP be kept informed of progress being made. Certain mechanisms for cooperation are foreseen in the Parliament's Rules of Procedure. For example, in circumstances in which the Commission, having become acquainted with the report adopted by the Parliamentary Committee, announces that it does not intend to accept all Parliament's amendments, the Rapporteur then applies to the EP for debate on the matter to be suspended, and addresses the proposal to the Commission once more. At this stage, the only permissible work is on amendments making compromise with the Commission more attainable. The platform for exchanges of views here is the tripartite meeting (trilogue) involving a Commission representative, the Presidency's chair of the relevant Council Working Party and the EP Rapporteur.

Where it does prove possible for an understanding to be reached in the course of the informal tripartite negotiations, the Head of COREPER informs the Chair of the relevant Parliamentary Committee in writing that the Council is now ready to adopt the text with the wording agreed upon, provided that the EP's approval is obtained by means of a vote held in Plenary Session. In this context, it is impossible to overestimate the importance of the activity of the Presidency, as it remains in contact with both the Rapporteur and the so-called Shadow Rapporteurs (other Eurodeputies pursuing the given issue within other political groupings).

## **5. Possible Commission modifications to a legislative text**

Adopted in 2007 (still by reference to the then Article 251 TEC), the Joint Declaration of the European Parliament, Council and Commission on Practical Arrangements for the Co-Decision Procedure obliges the European Commission to "exercise its right of initiative in a constructive

manner with a view to reconciling the positions of the European Parliament and the Council.”

The Commission may thus respond to the opinion arising out of the EP’s First Reading by making such changes in its draft legislative text as will draw on Parliament’s proposed amendments so as to make it more rather than less likely that the Council will accept the draft.

## **6. The First Reading in the Council**

While work is ongoing in the European Parliament, discussions are also taking place in the Council. However, the latter institution may only adopt its stance after having received the opinion of the former. If the Council accepts a legal text with the original wording proposed by the European Commission, to which the Parliament has made no amendments, or else with amendments that are all acceptable to it, then the given text is adopted and the legislative procedure is at an end. Alternatively, the Council adopts its common position at the First Reading, this then being forwarded to the Parliament with the justification known as the statement of reasons.

The Council decision to adopt a legal act or common position is preceded by Working Party negotiations. Sometimes the discussion at this stage is informed by guidelines that COREPER or the Council have adopted. The Presidency may decide to include a draft on the agenda of COREPER or the Council as early as at the preliminary stage of the legislative process. The meeting involved may take the form of an exchange of views if this is a first, preliminary reaction to the draft from the Commission, or else a directed debate if the aim is to resolve matters perceived as controversial, and hence direct the deliberations of the Council Working Party. The role of the Presidency is to furnish a given meeting with an appropriate framework, thanks to which points or questions for discussion are formulated. The state holding the Presidency quite often uses the role of moderator to ensure that its own political interests are achieved. A Council Working Party also passes a draft to COREPER level when its text has already been agreed to, or when all that remain to be agreed on are matters patently in need of political agreement. When such an agreement is reached, COREPER may direct the draft back to Working Group level or decide to submit the draft to the Council, whether it has been agreed already or is still in need of further negotiation.

Council preparatory work (which may involve repeated transfers of a draft between the levels of Working Party, COREPER and Council) is

targeted at the adoption of the so-called “political agreement”, setting out the general framework for the subsequent common position. Where agreement in the Council comes before the EP’s delivery of its opinion, a political agreement is preceded by the so-called “general approach”.

The general approach often takes into account compromise amendments agreed at informal tripartite sittings. Where an agreement is reached at this stage, the head of the relevant Parliamentary Committee uses the medium of a letter to the Head of COREPER to present recommendations to the effect that the Parliament’s Plenary Session should accept the common position from the Council without making further amendments, of course on the condition that the Council approves the common position so that agreement might be reached rapidly in the Second Reading. The Ministers meeting in the Council may adopt a common position as an “A point” (decision capable of being made without debate) or “B point” (where debate is still needed and the decision cannot be known in advance). The common position then passes to the European Parliament.

Under the Ordinary Legislative Procedure, the Council engages in qualified majority voting, save where the decision concerns amendments that have been the subject of a negative opinion from the Commission (in which case unanimity is required). The Lisbon Treaty has in fact redefined the QMV system as well, but the changes will only go into effect after November 1<sup>st</sup> 2014. Thus, remaining in place until October 31<sup>st</sup> 2014 inclusive is the system of weighted voting whereby a qualified majority in respect of a proposal made by the Commission is of 255 votes cast by a majority of Member States. The replacement (post-October 31<sup>st</sup>) system will in turn apply the double majority principle, in line with which the passing of an act requires the votes of 55% of Council members cast by states representing 65% of the EU’s population (in the case of a resolution adopted on a proposal from the European Commission). Up until March 31<sup>st</sup> 2017, a member of the Council will enjoy the right to demand that a vote be taken by means of the weighted voting system.

All that said, it is in fact an extremely rare event for voting to even take place. Rather, the Chair assesses the positions of the Member States by reference to the statements of their representatives alone. This culture of consensus is justified in historical terms, notably through the invoking of the so-called 1966 Luxembourg Compromise, as well as ongoing negotiations among the same partners. As they are forever negotiating in a number of fields simultaneously, Member States are ready to link matters up into packages, giving way in matters of lesser importance in order to curry support in other areas.

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## **7. The Commission Communication on the Council common position**

By means of the Communication, the Commission informs the Parliament and Council of its opinion on the Council common position, as well as of its opinion on the Council's reaction to the EP amendments which it is positive about.

## **8. The Second Reading in the European Parliament**

Parliament is informed of the common position of the Council during the former's first Plenary Session following adoption. There then begins the three-month period provided for in Art. 294, para. 7 TFEU, during which Parliament is to give its opinion at Second Reading. The Treaty allows for the length of this period to be increased by one month, although, in the light of Declaration 34 appended to the Amsterdam Treaty, this situation should only arise where such a prolongation is imperative.

The Second-Reading procedure repeats mechanisms present during the First Reading, the difference being that the subject of analysis of the relevant Parliamentary Committee is no longer the draft from the European Commission but the Council's position. It is the task of the Rapporteur (in principle the same one as was responsible for the draft in the First Reading), plus the Committee, to prepare recommendations for the Second Reading, proposing at the same time that the Council's position be adopted, amended or rejected.

Where the Parliament either votes in favour of the Council's position by an absolute majority or else takes no decision prior to expiry of the deadline for that action, the text of the act is deemed to have been adopted with the wording proposed by the Council in its common position, and the legislative procedure is at an end. It is also possible for there to be early Second-Reading agreement, where at an earlier stage the Parliament undertook in a letter from the Head of the relevant Committee to adopt the Council's position in the wording agreed in the course of tripartite meetings. In turn, should the EP reject the Council's position (and this has never in fact happened so far), the legislative process is again considered to be at an end.

The remaining option is for the Eurodeputies to propose amendments to the Council's position, these being adopted by simple majority at the relevant Committee, and then by an absolute majority of

MEPs meeting in Plenary Session. Amendments set out in a recommendation regarding the Second Reading, or else tabled in Plenary Session by at least one political grouping or by a minimum of 40 Eurodeputies, must have as their aim the retention of the draft in the form the Parliament proposed at the First Reading or the achievement of compromise with the Council, or else must relate to those elements of the Council's position that were not the subject of the First Reading in the EP. Once again then, it is informal tripartite meetings that are of key significance when it comes to reaching agreement.

As at the First Reading, the Council may - by means of a list from the Head of COREPER to the person presiding over the main Parliamentary Committee of relevance to the given issue - undertake to adopt a text agreed to informally, on condition that the EP votes to accept it in Plenary Session. For the Parliament, amendments are signed up to by the Rapporteur as well as the Shadow Rapporteurs, in order that a majority can be assured at the Plenary. Following the plenary vote at which the EP adopts the amendments in the compromise version, the Council adopts the law and the legislative procedure is again at an end.

The Council's position as amended by the EP constitutes the latter's opinion in the Second Reading and is conveyed to the Council and Commission.

## **9. The Commission's opinion on the EP's Second-Reading amendments**

In its Art. 294, para. 7, letter c, the TFEU obliges the Commission to deliver an opinion on Parliament's amendments introduced during the Second Reading. The Commission's opinion - which in practice takes the form of a statement from the relevant Commissioner read prior to the Parliament's voting in Plenary Session - is of decisive importance when it comes to the type of voting on the EP amendments that is engaged in by the Council. If even one of the said amendments is opined upon negatively by the Commission, then the Council will have to achieve unanimity in its voting on the matter.

## **10. The Second Reading in the Council**

The Council Second Reading is something of a rerun of what happened with the First, except that the decision to adopt or reject the EP's amendments to the position must be taken within three months. As

with that in Parliament, the Council's Second Reading may - in exceptional circumstances - take four months instead of three. The amended position is again made ready by the relevant Working Group, before being transmitted to COREPER and the Council for a decision.

If a tripartite meeting allowed Council and Parliament to arrive at a compromise text, and if that text has now been adopted by the Parliament in the Second Reading, then the Council may act in line with the commitment it made in the letter from the Head of COREPER and adopt the legal act, thereby bringing the legislative procedure to a close. In the opposite situation, the President of the Council shall - in agreement with his/her opposite number in the Parliament - have a sitting of the Conciliation Committee convened within the space of 6 (or at most 8) weeks.

## 11. Conciliation procedure

The Conciliation Committee is convened by the Presidents of the Council and of the EP, within six weeks of the conclusion of the Council's Second Reading. Under certain specific circumstances, the time limit for this may be extended to eight weeks. The Committee is made up of Council Members or their representatives, plus the same number of Eurodeputies. The EP delegation in fact includes three permanent members chosen from among the Vice Presidents for a 12-month term. Otherwise, with a view to their properly reflecting the overall political complexion of the Parliament, members are appointed on a case-by-case basis by the floor groupings, in numbers that are determined by the Conference of Presidents. The Member of the Commission for the relevant domain also takes part at sittings of the Conciliation Committee. The Presidents of the Council and Parliament preside jointly over the Committee, changing places at each successive sitting.

The Committee is required to reach agreement within six weeks, if the given legal instrument is to be adopted at all. Since the complexity of the matters in question is often such that the period allotted is likely to be too short, conciliation procedure is prepared for in advance, during the Second Reading in the Council - as soon as there is any sign that it is not going to prove possible for agreement to be reached. This takes place in the course of tripartite meetings at the political or technical levels. In the former case, the Council is represented by the Head of COREPER or appropriate Minister, while Parliament is represented by the Head of the Delegation to the Conciliation Committee, the Head of the relevant Parliamentary Committee and the Rapporteur. Each delegation mostly also in-

cludes representatives of the relevant General Secretariat and the legal services. The European Commission is in turn represented by the Director-General relevant to the issue, or else by the Commissioner him/herself. The participants at the tripartite meetings engage in negotiations on the basis of instructions received from their delegations, to which they also report on progress with the work. These meetings have as their goal to arrive at a joint text which is then to be laid before the Conciliation Committee. This text most often takes the form of a table which indicates the position of the Council from its First Reading, the amendments the Parliament has adopted in the Second Reading, compromise proposals from the Council, and the opinion of the EP delegation in respect of the latter.

Delegations to the Conciliation Committee take decisions as regards a common text by QMV in the Council and by a simple majority in the delegation representing the European Parliament. If the Committee has proved unable to approve a joint draft six weeks after being convened, the given act is deemed not to have been adopted. In turn, if the Committee is able to approve a joint draft within the time limit, the Parliament and Council then have six weeks to adopt the given act in accordance with the draft, albeit by simple majority in the case of the EP and a qualified majority in the case of the Council. If this does not happen, then the proposed act is again regarded as not adopted.

## **12. The signing and publication of a legal act**

Legislative acts adopted under the Ordinary Legislative Procedure are signed by the Presidents of the European Parliament and Council, before going on to be published in the *Official Journal of the European Union*. They enter into force on the day detailed specifically in them, or else - should such a date be absent - on the twentieth day after publication.

The linguistic and terminological correctness of all language versions of a given instrument is a matter for the so-called jurist-linguists or lawyer-linguists, i.e. experts brought together by the Council General Secretariat. Prior to the adoption of a given text by COREPER and the Council, the group checks the version in the language in which it has been negotiated, later assuring concordance between the remaining versions. It is therefore particularly important that the person presiding over a given Council Working Group who knows the agreed legal text best is present at the sitting of the group of lawyer-linguists. This helps prevent disparities arising between the text negotiated and the one adopted by the lawyer-linguists.

An interesting example here is the Defence Procurement Directive negotiated during the French Presidency in the second half of 2008. The text in French obtained after the First Reading in the EP departed slightly from that adopted by COREPER in terms of its general approach. The provisions of the Directive were the subject of tough negotiations, while a lack of precision looked like undermining the intended effect. Though they reflected the principles underpinning legislative technique, as well as matters of a purely linguistic nature, the changes made by the lawyer-linguists wrought a major change of balance in the text agreed upon. It was the presence of the former French head of the Working Group on public procurement at the sitting of the group of lawyer-linguists that saved the day, ensuring a return to what had been agreed originally.

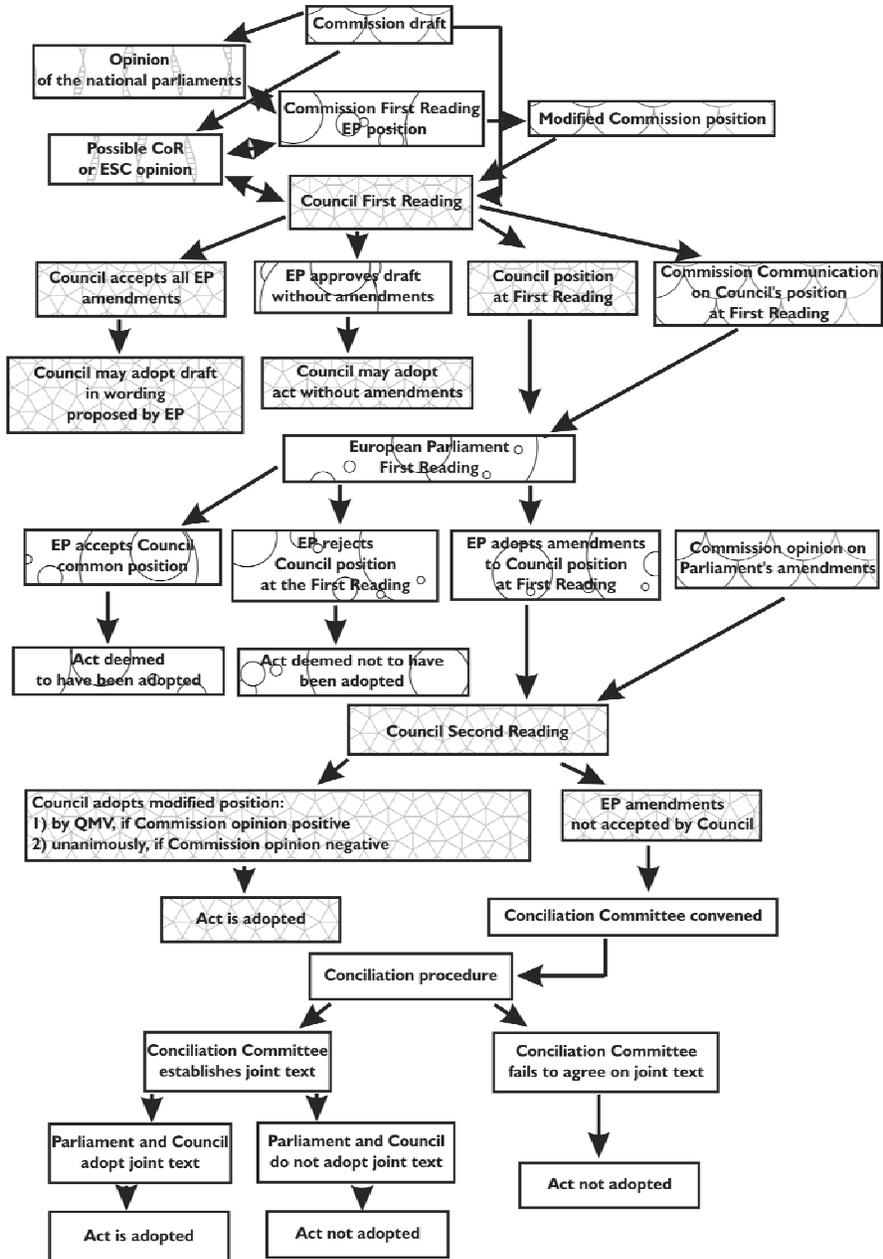
### **To sum up**

As Fig. 3 shows, the legislative process in the form of the Ordinary Legislative Procedure ends in a legal instrument being published in the *Official Journal of the European Union*. The Member States have the opportunity to shape the instrument as they negotiate it in a Working Party, as well as at the COREPER and Council levels. Informally, impacts may also be exerted on deputies, with the aim of their supporting the position of their own country's government in the European Parliament. The instrumentation available to the Presidency is much stronger. After all, the Presidency leads the debate in the Council, sets the dynamic therefor and represents the Council at tripartite meetings. This allows for the possibility that emphasis can be placed in line with the priorities the given Presidency has set.

The phase in which legislative acts are implemented also needs to be borne in mind. The system of committees comprising experts from the Member States aiding the European Commission in the process - as provided for in Art. 202 TEC - has now given way to a new one under Art. 291 TFEU. Nevertheless, the mechanisms by which the Member States control the Commission's exercise of its implementing powers remain the subject of negotiations, as does the Presidency's role in this process.

Fig. 3.

Schematic representation of decisionmaking procedures in the European Union



# **The Presidency's role within the Ordinary Legislative Procedure framework**

Dr Richard SZOSTAK

## **1. The players in the procedure**

### **The General Secretariat of the Council of the European Union**

This body supports both Council activity and the work of the Presidency. The Secretariat comprises:

- ◆ eight Directorates-General at which the experts present gather together a wealth of well-established collective experience and knowledge, supporting the Presidency in matters of the different stances of the Member States, political possibilities, negotiating tactics and formal Council procedures;
- ◆ the "Co-Decision Unit" in the Secretary-General's office responsible for matters of the Ordinary Legislative Procedure, in which the officials possess relevant knowledge on the procedure itself, and the EP, as well as providing direct expert input at the Conciliation Committee stage;
- ◆ a Legal Service responsible for all matters of law and procedure arising in the course of the OLP, and also including the team of lawyer-linguists within the Directorate for the Quality of Legislation framework, these checking the formal and linguistic rectitude of drafts approved by the Council.

## The European Commission

The Treaty of Lisbon resembles its predecessors in declaring that the European Commission enjoys sole right of initiative. However, there are certain closely defined circumstances in which other institutions or the Member States are entitled to come forward with a draft legal instrument (Arts. 76, 129, 257, 281 TFEU).

The Commission's sole right of initiative is associated with that institution's formal role during the negotiations inherent in the Ordinary Legislative Procedure:

- ◆ The rule that a text be voted on by the Council is dependent on the opinion from the European Commission. At the First Reading, the Council needs unanimity to adopt a position that has been in receipt of a negative Commission opinion. In turn, during the Second Reading, the Council does or does not engage in the unanimous adoption of the amendments that the Commission has been negative about (cf. Art. 293, para. 1 and Art. 294, para. 9 TFEU).
- ◆ A row is in fact ongoing between the Commission and Council as to the possibilities for the former to withdraw one of its proposals. In the view of the Commission, such a right to withdraw a proposal is linked directly with the right to come forward with one. For its part, the Council feels that the Commission may not enjoy the right to withdraw a proposal, since that would then denote a restricting of possibilities for the Council and Parliament to modify the said proposal. Thus far, the European Court of Justice has not had occasion to deal with such matters.

The European Commission does play an important informal role in the procedure on account of the fact that:

- ◆ it has experts in every field of EU policy and law - a resource of expertise that ought to be drawn on by the Presidency;
- ◆ it maintains constant contacts with Eurodeputies and with the Council's General Secretariat.

Bearing in mind the Commission's key role in the procedure, the stances of the Presidency and Commission should, as far as is possible, be identical - any differences of standpoint just ask to be taken advantage of by the Member States or the EP. Hence:

- ◆ regular, informal contacts between the Presidency and Commission officials have been found to be essential;

- ◆ coordination of appearances and interventions by the Presidency and the Commission on Council Working Parties is very important (the two should agree on positions and suggestions for compromises with the Parliament capable of being achieved, while in some cases it may also be worthwhile for possible disparities as regards positions to be accounted for);
- ◆ between sittings of Working Parties, it is worth organising editorial meetings with the Commission, in order that successive versions of documents can be prepared - invitations should also be extended to representatives of the Council's General Secretariat and the Legal Service thereof. Each Presidency has its own way of proceeding with the preparation of drafts (with a greater or lesser input from the Commission and the Council's General Secretariat).

### **The European Parliament**

Under the Ordinary Legislative Procedure, the scope for participation by the Parliament and Council is equal:

- ◆ In the case of each matter up for consideration, the Parliament chooses an MEP who will serve as Rapporteur, in that the given deputy has as his/her task the preparation of a report and the presentation of amendments. The Rapporteur will be the Presidency's main contact in the EP; hence the relationship between these parties must be a good and mutually beneficial one (if one that is in fact even more critical on the Presidency side, on account of its time-limited circumstances). As some Eurodeputies accept meetings organised at the political level only (with the appropriate Minister or Ambassador to the EU), they will send an assistant to meetings of a technical or expert profile. In accordance with Art. 70, para. 2 of the EP Rules of Procedure, this requires the agreement of the Committee responsible, as well as a determining by it of "a mandate, orientations or priorities" for further negotiation.
- ◆ The so-called Shadow Rapporteurs present other political groupings in the Parliament that are not of greater significance where the given matter is concerned. Direct negotiations with these are possible, without the consent of the main Rapporteur. The political risks associated with them are proportional to the numbers of votes the given group has.

- ◆ The person presiding over the given Parliamentary Committee exercises overall political management in respect of a given draft.
- ◆ Since certain Eurodeputies are only interested in the main political questions, officials at the European Parliament Secretariat assigned to given Parliamentary Committees often have an influence on the wording of other regulations. The Secretariat has its own team of jurist-linguists (or lawyer-linguists) under the Directorate for Legislative Acts framework, these people being involved in checking the correctness of amendments made to drafts.

It is worth noting that there is a marked difference in the rules under which the Council and Parliament work. The internal organisation of the Council and its preparatory groups serves mainly in the achievement of agreement between the Member States (recalling that votes are actually held but rarely). The EP's work is much more confrontational, the role of the Rapporteur in practice being to find the necessary majority in support of amendments, in order that quick voting on a draft can be assured.

### **The national parliaments**

The role of the national parliaments is as set out in Art. 12 of the post-Lisbon TEU, as well as in Protocols 1 and 2 to the Treaty. Under the new scheme, the Commission is responsible for forwarding draft legislative acts to the 27 national parliaments. There then follows a period of eight weeks before the Council is able to adopt the said act, though a shorter period may be applied in urgent and justified situations. The particular role of the parliaments is to see to it that the principle of subsidiarity is being respected.

## **2. The First Reading – a bureaucratic phase**

The European Commission sends the draft of a new legal instrument to the Council and Parliament simultaneously, the two latter institutions then working on it in parallel. The Treaty does not foresee any time restrictions on the First Reading.

From the formal point of view, it is the EP that oversees the draft, as appropriate tabling amendments approved by a majority of the deputies present in Plenary Session. The procedure has ended in a success if the Council confirms the standpoint adopted by the Parliament with a wording

of the act that “corresponds to the position of the European Parliament.” (Art. 294, para. 4 TFEU).

In practice, the Council and Parliament negotiate at tripartite meetings (trilogues) involving a delegation from the EP (comprising the Rapporteur, an assistant, the political advisor from a given grouping, and a representative of the Secretariat); the European Commission (officials) and the Council (the head of the relevant Working Party or the Ambassador to the EU, a representative of the Council’s General Secretariat and a member of the Co-Decision Unit). The parties sound out one another’s positions and come forward with “wish lists”. The Commission seeks to defend its draft and to look for areas of possible agreement between Council and Parliament.

The Presidency’s role lies in intermediation between the Member States and the Parliament. It presents the EP position to the Member States at the Working Party meeting, as well as the positions of the Member States to the Rapporteur in the course of the trilogue (without identifying the particular stances of particular delegations). The Presidency joins the Commission in seeking possible inter-institutional agreement.

The First Reading is by nature a bureaucratic one, and it certainly seems to lack transparency when seen from the standpoint of the ordinary EU citizen.

Prior to the agreement of a final version of the draft there is no formal voting in either the Council or the Parliament’s Plenary Session. This is also why the Parliament’s rules for the Ordinary Legislative Procedure indicate that the visibility of negotiations on a draft should reflect the political import of the matters under discussion (see the EP’s Rules of Procedure, Annex XX: The Code of Conduct for Negotiating in the Context of the Ordinary Legislative Procedure).

All that said, the parliamentary Plenary’s debate-free agreement at First Reading is not very likely in politically-significant matters. Nevertheless, the years 2004–2009 saw as many as 72% of procedures end successfully at the First Reading stage<sup>1</sup>.

Should the Council and Parliament achieve agreement, the procedure applied is as follows:

- ◆ The Head of COREPER sends a letter to the Chair of the relevant Parliamentary Committee confirming the possibility of agreement.

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<sup>1</sup> See precise statistics on this at [http://ec.europa.eu/codecision/statistics/index\\_en.htm](http://ec.europa.eu/codecision/statistics/index_en.htm).

- ◆ Agreement is dependent on formal and linguistic verification of the entire draft by the lawyer-linguists of Council and Parliament. In the course of the verification process, the Presidency's interlocutors are the lawyer-linguists of the Council's General Secretariat. This process lasts about 7 weeks.
- ◆ Parliament takes its vote in Plenary Session, its procedures not allowing for the rapid formal adoption of a legal act. In accordance with Art. 70 of the Parliament's Rules, achievement of an agreement with the Council must be followed by renewed discussion of the text by the relevant Parliamentary Committee. The Conference of Presidents has in fact decided that a month's so-called "cooling-off period" must pass between the final vote in the relevant Parliamentary Committee and voting in Plenary Session.
- ◆ It is the Co-Decision Unit that prepares for formal adoption of an act by the Council.

The average duration of the Ordinary Legislative Procedure is 2 years, so the ambitions of the six-month Presidency have to be adjusted accordingly. It is worth confining the Presidency's goals to, for example, the achievement of political agreement in a given matter, without the formal adoption of a legal act that may often even then pass without leaving much trace.

The procedure will not end in success if the Council fails to approve of the Parliament's First-Reading position:

- ◆ The Parliament adopts its position at First Reading (Art. 294, para. 3 TFEU).
- ◆ The Council first arrives at a political agreement in respect of a draft.
- ◆ The political agreement is subject to verification from the formal and linguistic points of view (7 weeks).
- ◆ If the Council does not approve the EP's position, it adopts its own First-Reading position and communicates it to the Parliament (Art. 294, para. 5 TFEU).
- ◆ The Council briefs the Parliament exhaustively on the reasons that led it to adopt its First-Reading position (Art. 294, para. 6 TFEU).
- ◆ The Second Reading is commenced with.

### 3. The Second Reading – a political phase

There are two possibilities for an agreement to be reached during the Second Reading, i.e. the so-called early or normal agreements. In the years 2004–2009, around 8% of procedures ended successfully at the early Second-Reading stage, while 15% achieved success with a normal Second Reading.

An early agreement being arrived at in the Second Reading entails the Presidency and Parliament negotiating the Council’s future stance in the course of the First Reading. The Presidency becomes involved in negotiations following a vote against at the EP’s Plenary Session, but still in advance of the Council adopting its First-Reading position. The aim of the Presidency is to have Parliament approve without amendment the position of the Council “in the wording which corresponds to the position of the Council” (Art. 294, para. 7 point a) TFEU).

Once negotiations with the EP have been completed:

- ◆ the Head of COREPER sends a letter to the head of the relevant Parliamentary Committee confirming the possibility that agreement will be achieved.
- ◆ Agreement depends on the formal and linguistic verification of the draft in its entirety, by the Council’s lawyer-linguists.
- ◆ Parliament approves the position of the Council at the First Reading without amendments.

Early Second-Reading agreements are a rarity, appearing in such specific circumstances as arise when, for example, there is a change of Presidency or the start of a new term for the European Parliament. The normal process of achieving agreement in the Second Reading sees the Parliament come up with proposals for amending the Council’s First-Reading position (Art. 294, para. 7, point c TFEU). The procedure ends successfully where the Council accepts all the said amendments (Art. 294, para. 8, point a TFEU).

It is harder to achieve agreement during the Second Reading than the First, since the activity of both Council and Parliament is now subject to deadlines. The Parliament must suggest its amendments within three months of the moment the Council forwards its position. The Council in turn has three months to approve the Parliament’s amendments. There is in fact a dispute between the Council and Parliament as to when the first of the three-month periods begins. The Council considers that the period begins the moment it conveys its First-Reading position, while the Parlia-

ment is of the view that day 1 is that on which the Plenary taking note of the Council's stance takes place. The European Court of Justice has not yet had occasion to rule in this matter.

The three-month periods may be extended by at most a month, where this is requested by either the Parliament or the Council (Art. 294, para. 14 TFEU).

At the Second Reading, a majority of the Parliament's component members must vote in favour (Art. 294, para. 7, point c TFEU). The majority is thus more difficult to achieve than at the First Reading. The Commission gives its opinion on the Parliament's amendments, and may deliver a negative one in respect of particular amendments. The Treaty stipulates that the Council is to act unanimously where amendments have received a negative opinion from the Commission (Art. 294, para. 9 TFEU). Unanimity in the Council is harder to achieve for this reason. However, the Commission, appearing here in the role of mediator between the two legislating institutions, rarely gives a negative opinion.

#### **4. Conciliation procedure - the Third Reading**

"If the Council does not approve all the Parliament's amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee" (Art. 294, para. 8b TFEU). The remaining part of the Second-Reading period is then devoted to the preparation of work for the Committee, whose aim is to ensure that an agreement between the Council and Parliament is reached within six weeks of its being convened (Art. 294, para. 10 TFEU). The possibility of an agreement being reached in the Committee does not revolve solely around amendments proposed previously: "The wording of Article 251 EC does not therefore itself include any restriction as to the content of the measures chosen that enable agreement to be reached on a joint text." (see case C-344/04 IATA, para. 57).

The Committee comprises Council and Parliament delegations with the same number of members (27 + 27). In general, the work is participated in by Permanent Representatives to the EU or their deputies. In the years 2004-9, 5% of procedures ended successfully at the Third Reading stage.

- ◆ In practice, negotiations are run by means of tripartite talks that differ only in the level of the representative.
- ◆ In principle, the head of the Council delegation should be a Minister.

- ◆ His team includes the relevant Director General at the Council's General Secretariat and a member of the Co-Decision Unit.
- ◆ The head of the Parliament delegation is a Vice President thereof, while further members include the Rapporteur, the head of the relevant Parliamentary Committee and representatives of each political grouping.
- ◆ A Commissioner represents the Commission.
- ◆ Representatives of the Member States wait nearby.
- ◆ Negotiations with the Parliament are among the tasks of the Presidency, as is the job of keeping Member States informed at regular intervals, the aim here being to ensure that the agreement reached with the Parliament is not then rejected by the Council. It remains for the Commission to bring the Parliament and Council stances into line with one another, *i.e.* to "reconcile" them (Art. 294 para. 11 TFEU).

Once the negotiators confirm achievement of a political agreement, the official Conciliation Committee (27 + 27) meets and votes by qualified majority on the part of the members from the Council and by a majority of votes from representatives of the Parliament. Following the Committee's approval of a text, the Parliament and the Council have six weeks at their disposal for the adoption of the instrument in the version of the text agreed upon (Art. 294, para. 15 TFEU). Four weeks are in practice needed for the joint formal and linguistic verification. The six-week deadlines may be put back by a maximum of two weeks, if this is requested by either Parliament or Council (Art. 294, para. 14 TFEU).

Notwithstanding their tight deadlines and relatively fixed negotiating positions, the Conciliation Committees do emerge as effective instruments when it comes to achieving agreement. The Committee negotiations represent the last chance for the Procedure to end successfully. However, the rapid speed at which action is taken by the Committees does not always allow for the more insightful analysis of amendments.

### **To sum up...**

The Ordinary Legislative Procedure is a protracted one, making it highly unlikely that any given six-month Presidency will be able to encompass:

- ◆ the First Reading (not subject to time limits at all).

- ◆ the Second Reading (for which there are 3+1 months for Parliament's amendments and 3+1 months for the Council's response thereto).
- ◆ the work of the Conciliation Committee: 6+2 weeks for convening, 6+2 weeks for arriving at an agreement and 6+2 weeks for formal adoption of an act.

However, while the OLP (ex Co-Decision) is an involved one, it is effective. Failures are rare, the latest of the 3 cases known to date arising in 2009 in connection with the revised version of the Working Time Directive. Overall, it needs to be reiterated that:

- ◆ the Presidency's role is that of go-between where the Member State-EP relationship is concerned.
- ◆ since the Commission is obliged to pursue all initiatives that could bring the Parliament and Council positions closer together; it is a natural ally of the Presidency. It is nevertheless possible that "hidden" relationships between the Commission and Parliament may come to light.
- ◆ effective work by a Presidency entails effective cooperation with the Commission and the maintenance of good relations with the Parliament (and its Rapporteur in particular).
- ◆ the Council's General Secretariat is there to support the Presidency, so it is worth making use of the attendant opportunities for cooperation.

# Participation at meetings during the Presidency

Dr Filip JASIŃSKI

## 1. First preparations – assistance online

Apart from assimilating the working rules of the different institutions and the content of the Treaties, we may also gain much from various other materials online. Selected suitable information for delegates concerning the tasks of the Presidency, the making of statements and speeches and the pursuit of the decisionmaking process is all to be found at the following websites:

- ♦ [http://czso.cz/csu/eu.nsf/i/co\\_decision\\_guide/\\$File/Co-decision%20Guide.pdf](http://czso.cz/csu/eu.nsf/i/co_decision_guide/$File/Co-decision%20Guide.pdf),
- ♦ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:325:0035:0061:EN:PDF>,
- ♦ [www.europarl.europa.eu/code/information/guide\\_pl.pdf](http://www.europarl.europa.eu/code/information/guide_pl.pdf),
- ♦ [www.consilium.europa.eu/App/calculette/default.aspx?lang=en&cmsid=1690](http://www.consilium.europa.eu/App/calculette/default.aspx?lang=en&cmsid=1690) (to calculate qualified majorities),
- ♦ [www.calliope-interpreters.org/en/call\\_movie\\_uk.htm](http://www.calliope-interpreters.org/en/call_movie_uk.htm) (it is also worth practising speeches and other kinds of address at home!).

Contact details for employees of the Commission and Council General Secretariat, as well as Eurodeputies and their assistants, may prove valuable, the sites to consult being:

- ♦ [http://ec.europa.eu/staffdir/plsql/gsys\\_tel.display\\_search?p-Lang=EN](http://ec.europa.eu/staffdir/plsql/gsys_tel.display_search?p-Lang=EN),
- ♦ <http://europa.eu/whoiswho/public/index.cfm?lang=en>
- ♦ [www.europarl.europa.eu/members/expert/alphaOrder.do?language=EN](http://www.europarl.europa.eu/members/expert/alphaOrder.do?language=EN),
- ♦ [www.europarl.europa.eu/members/expert/assistantAlphaOrder.do?language=EN](http://www.europarl.europa.eu/members/expert/assistantAlphaOrder.do?language=EN),

The Communications of the European Commission need to become regular reading matter, as do "open" documents from the Council's General Secretariat, as well as the *Official Journal of the EU*:

- ♦ <http://ec.europa.eu/transparency/regdoc/recherche.cfm?CL=en>,
- ♦ <http://register.consilium.europa.eu/servlet/driver?typ=&page=Simple&lang=EN&cmsid=638>,
- ♦ <http://eur-lex.europa.eu/JOIndex.do?ihmlang=en>.

## 2. Strategic and tactical preparations

Where strategic preparations are concerned, a matter of key importance will be the Action Plan for 18 months of the Presidency trio, which will have something to say about every single sector. Cohesion between the national priorities and those of the trio will have to be maintained in respect of the general programme and the different task areas. As our own actions are being planned, it is necessary to recall how pretty much nothing is always on time, while European Commission agendas may quite often be delayed by 6 months!

Cooperation with the European Parliament will be very much dependent on given individuals there who serve in the role of Rapporteurs or Shadow-Rapporteurs. There will be a great deal of work here for employees of the Permanent Representation, and numerous contacts with deputies and the coordinators of the political groupings.

Questions put by deputies for Ministers (whose presence the MEPs are notorious for requesting) may be of every possible kind: of substantive relevance or not, philosophical, personal or cynical, or even supportive and offering thanks for cooperation entered into. A further matter of significance will be cooperation with the Secretariats of the given Parliamentary Committees. It is not unknown for deputies to confront

Ministers with subjects not lying within their remits, but of importance to them themselves (one issue being made hostage to another).

The good news is that the Council's General Secretariat extends support to Member States holding the Presidency when it comes to the preparation of documents for different meetings (outcomes of proceedings, reports, references to the *acquis*, briefs for Council and COREPER).

Member States may deal with such tasks by themselves if they so wish, however, though it needs to be recalled that our partners in the EU institutions might "get offended" if we do not elect to cooperate with them openly and in a friendly spirit. Such a way out usually works out very negatively for the Presidency, especially where the potential for working with the Secretariat is not made use of.

### **3. The most important tasks associated with the Presidency:**

- ◆ The running of sittings in the Council Working Parties (though not in all cases, since some are to be presided over by the European External Action Service, while some Groups have been abolished and some could in theory at least be led by other Member States within the trio framework) - see Document No. 5869/1/10 REV (pl), *i.e.* an ongoing list of the Council's preparatory bodies.
- ◆ Internal representation of the EU - at times split, as in the case of tripartite talks, at times real in the context of participation at other meetings (*i.a.* those organised with the EP) and external representation (to be limited in future as the EEAS takes up the role).
- ◆ The conferment of direction upon the work of the PRES trio, a particular role being assigned to the "first among the three".
- ◆ The extension of consideration to subjects and tasks announced by other Member States and by the European Commission.
- ◆ The maintenance of constancy when it comes to subject matter, and the non-avoidance of partners to the negotiation process (in truth, the working agenda is not solely in the hands of the trio, depending instead on what is taken up from predecessors, as well as what originates with institutions other than the Council (mainly the Commission and Parliament) and possibly even the European Council »even in June 2011«).

- ◆ A real influence on the agendas of sittings and the subjects raised in the course of contacts with the EU institutions, but also an assuming - for a period - of responsibility for the direction and effectiveness of the activity the entire EU is to engage in.
- ◆ The assuming of the role of (apparent) first point of contact in the EU for third parties and international organisations - there may be genuinely increased interest on the part of numerous commercial and lobbying institutions, as well as the media and the world of academe.
- ◆ Promotion of the Presidency and the Member State holding it (a particular role and personal responsibility for this being laid upon each delegate) - we need to bear in mind the historical context to the upcoming task and the requirement that it fulfil the hopes invested in it by politicians in the capital city.
- ◆ The devising of information sheets (so-called battleplans) for each dossier - as plans for further activity, including ones that take account of timetabling and indicate the experts who are to be responsible (in a one-off effort continuing to pertain for a long period).

#### **4. The organising and running of sittings of Council Working parties:**

- ◆ Meetings usually last 1-3 days, during which time a change of room or even worse a change in the timing of sittings is seen in a very negative light and is costly (not least on account of arrangements made in advance with interpreters/translators). Should the person due to preside be taken ill, a substitute needs to be found, even in the Permanent Representation (there is a general rule that an “empty” Presidency chair is forbidden).
- ◆ Meetings are preceded by briefings with the European Commission and with the General Secretariat of the Council, the aim being to present a main outline of the upcoming discussion, as well as the directions that might be taken as compromise in a given area is sought - such meetings usually take place the day before a Working Party convenes, or else on the morning prior to the sitting, and a “good” one lasts 30-45 minutes and not longer. Debriefings are also sometimes

organised, mainly when work has concerned written documents that are to be modified or amended, though this is not actually a rule.

- ◆ Any meeting - of any EU institution - may of course be interrupted by a fire alarm, hence the need for efficient preparation for and pursuit of evacuation procedures. Logistical difficulties on the part of the Council General Secretariat, the European Commission or the European Parliament may also give rise to a need for a meeting room to be changed.
- ◆ No more than two people should speak in the name of the Presidency, *i.e.* the Chair and an expert (if the topic under consideration demands that) - it is the opinion of other Member States that more speakers than this merely cloud the picture. The speed of the work (fast or slow) depends on political need, but also on the charisma and style of the President - other delegations will be quick to divine whether the Chair has something interesting to say or not (sometimes it may be better to say nothing and merely take note of partners' stances). Furthermore, the Member States should not be given too many questions to answer at the same time, since this again threatens injecting chaos into the discussions.
- ◆ Since the Union's 2004 enlargement, it has in general been necessary to avoid the time-consuming process whereby the opinions of every single Member State are sought, in favour of a *tour de table*, in line with which silence is taken to imply support. That said, there is no limit on the number of delegates and experts who may be present at a sitting from a given country. It must also be recalled that a Polish delegate must continue to be present (not behind the Presidency table), this person's possible intervention relating to the domestic standpoint, and certainly not being the opinion of the Presidency (in line with the principle of neutrality).
- ◆ The only exception to the rule that serious, elegant clothing is to be worn applies to informal meetings, at which certain "free" elements may be introduced.
- ◆ It is necessary for information on the interpreting/translation regime to be read out at the beginning of the sitting, in line with information supplied by the services of SCIC (DG Interpretation) - no polemic with the Member States should be indulged in at this stage, since - should translation from or

into their own languages be as yet unavailable – delegations may become irritated and react angrily to what they perceive to be discriminatory treatment.

- ◆ As the floor is given to different people in the room, we may consider using names (these having been noted – and practised for pronunciation – in advance) or else make use of the names of the Member States only. While it is the Council’s General Secretariat that notes who is seeking to speak, the decision to give the floor to one speaker or another is a matter for the Presidency Chair alone.
- ◆ If there should appear on the agenda for our work some legislative proposal (e.g. from the European Commission) that is hard to repress or stifle internally and is in an area or on a subject undesirable to us, we may:
  - say that it will be pursued during the next Presidency (though it must not come as a surprise to it);
  - organise a limited number of sittings or keep these short (a risky move since the Member States and different EU institutions need to be kept “sweet”);
  - commence with simultaneous detailed discussion of many aspects of the same issue, (since this is both time-consuming and liable to remain inconclusive) or perhaps bring discussions down to overall, political or signal assessments (with further matters being left for the agendas of later sittings);
  - decide on a (temporary or permanent) transfer of discussion on a given issue to the forum of another Working Party (though this may require prior consultation with partners there);
  - focus on “displacement” subjects, artificially developing lists of AOB points, organising frequent coffee breaks or extending the length of the lunch break (at least 1.5 hours);
  - “conceal” a markedly negative ministerial or parliamentary position which shows that we do not consent to a given project in a given form, possibly by saying that the given subject need not be discussed at a higher political level (COREPER).

- ◆ A matter of equal importance to the opening of a sitting (*i.e.* the offering of a reminder as to the main items on the agenda, as preceded by, for example, the circulation of the annotated agenda) is its summing up, which is obviously dependent on the details of the debate, but also by its very nature short and clear (if necessary supported by extra information e-mailed to delegates later on, especially where there are deadlines involved), and usefully also including a reminder of the dates of forthcoming sittings (most especially where possible changes are involved).
- ◆ In the reporting process, it is worth recalling the official abbreviations of the Member States (which are of course different in the Council and Parliament!) The Council's General Secretariat supports the Presidency in drawing up the reports that follow Working Party meetings, reports intended for the higher political levels, reports of meetings with third countries and international organisations, working documents, notes and briefs.
- ◆ The Presidency documents are not a luxury, but a condition and requirement if there is to be an effective decisionmaking process - it is for the Presidency to decide if there will be many or few of these, and whether they will be, for example, descriptive, report-like, theoretical or political. Care needs to be taken not to abuse or overuse the EU logo in documents made ready domestically. The most secure and speedy channel by which to supply information to the Member States and the European Commission is that involving the Council's General Secretariat. Each dossier should be clear, written in simple language (the Secretariat being in a position to support the Presidency with proof-reading services) - the aim being to identify the main problems and pose so-called outstanding questions. It is worth submitting documents already drawn up in English to the Secretariat, since translation from Polish is always time-consuming.
- ◆ At Council level a separate question concerns relationships with the media. Journalists demand meetings with the main Minister, as well as responses to questions asked; and that means being in possession of up-to-date information sheets and lists of possible speaking points (that are capable of being delivered in the native language). Absence from press briefings

may be viewed very negatively by the media, leading to disinformation that may be uncomfortable for the Presidency.

## 5. Guidelines for those speaking at meetings (very important remarks from DG Interpretation-SCIC)

- ◆ Speak directly into the microphone, keeping earphones as far away from it as possible. Place the microphone directly in front of you, to avoid broadcasting such extraneous sounds as adjacent conversations, the rustling of pages, or the sound of typing. If earphones are too close to a switched-on microphone, feedback is only to be expected, and this can be louder than your voice.
- ◆ Speak in your own native language, since this is obviously the one you can achieve most fluency with and be most at ease with. The work of the conference interpreters ensures that all participants at a sitting receive equal treatment, and are fully able to make use of their own language.
- ◆ Speak naturally, at a sensible speed, not raising the pace even if remaining time is short. However, it is hard for us to gain an objective assessment of the speed at which we are talking. Try to maintain a "calm" rate of delivery, even if the impression is one of evidently slow speaking. More effective understanding will depend on the most important elements being stressed using appropriate intonation. The key theses will need repeating at the end of an address or intervention.
- ◆ Avoid reading. If you have no choice but to, then please convey the text to the interpreters appropriately in advance. If you have prepared something on paper, send it to the e-mail address of the Polish interpreters/translators, and also show it to them in the cabin before a given meeting starts. The language of a spoken text differs markedly from that of a spoken intervention; hence it is very helpful for an interpreter to take a look at a text that it is to be read from in advance. Best of all is avoiding reading altogether and formulating freely and rather simply what one wants to say, resisting the temptation to digress and to employ more complex sentences more than is necessary.
- ◆ Proper nouns, numbers, abbreviations and names need to be said very clearly, best of all twice. These often distract the

attention of the listener. Sometimes it is enough to give approximate figures - around 10% may be better than 9.873%. If many numbers, names and so on are to be presented, the listeners will need to receive them on paper also, with copies also being given to the translators.

- ◆ Explain abbreviations and more rarely-used terms. Remember that specialist acronyms and terms that you know well may be entirely unknown to both your audience and interpreters. In particular, remember to account for these terms as they appear for the first time.
- ◆ If you wish to change languages in the course of an address or speech, make a pause and declare your intention to make the change. This reflects the fact that a change of language often denotes a change of translator. The speaker's short pause prior to a change of language ensures smooth continuation of the translation into all languages.
- ◆ In making reference to a particular document, give its name, number, article, paragraph, etc. But please note that different language versions of the same document are often numbered differently. Thus, if article and paragraph are supplied (where possible), it will be easier for listeners to find the right part and keep pace with what you are saying.
- ◆ Make materials available to interpreters/translators. As far as possible, tell them what you will be saying, even if you do not intend to read a prepared speech. Familiarity with key terminology, facts, numbers, dates, etc. will help the interpreters to convey what you have to say better and more fully. Documents can be e-mailed to the Polish cabin, and you are also encouraged to pay a visit there before a meeting begins.
- ◆ Leave it to the interpreters/translators. Translation provides for efficient communication between representatives of different languages and cultures. Translators are well-educated specialists in the fields of multilingual and multicultural communication, and they are bound by professional secrecy. By cooperating with them, you improve the reception of what you have to offer by listeners using languages other than your own.

## 6. “A Presidency shopping list” or list of tasks to be performed before arriving at a meeting

Some of the matters raised here would seem to speak for themselves - e.g. remembering to take an umbrella, one’s badge, relevant documents and the plane ticket. Yet it is an almost daily happening for the office of the Polish Delegation in the Council’s General Secretariat to be visited by people in need of help after having forgotten some key item. To avoid similar problems arising in Poland’s key year of 2011, it is worth checking if matters detailed below have been attended to, and the things required for the trip to Brussels or other venue packed and brought along. Hence the following “Presidency shopping list” of an entirely practical nature:

- ◆ Be sure to secure for yourself a good photograph (with a smile) for the traditional rectangular-shaped information booklet on the Presidency, which will be distributed widely before all the chairing begins.
- ◆ Check the validity of your pass to enter the Council’s General Secretariat. New passes are again of one-year validity and it is worth getting a new one well in advance of the expiry date. Help with this is available from employees of Poland’s Permanent Representation in Brussels. In case of a pass being invalidated, destroyed or lost, it is best to also have a passport or other ID card, as well as a printed agenda for the sitting.
- ◆ Draw up and regularly update a personal list of e-mail addresses (along with cellphone numbers) to the main partners in the Council Secretariat and Commission; to Rapporteurs and Shadow Rapporteurs in the Parliament, to the Presidency trio, to the Permanent Representation to the EU and to travel agents and your choice of hotel(s). This all allows for ease of contact before and after sittings, this being critical if we want to achieve the effective preparation of documents and policy stances back home.
- ◆ In the context of tripartite meetings being preceded by a “know your opponent” phase, it is a good idea to collect together information on MEPs, their interests and activity - the process maybe even extend to read-ups of what Eurodeputies have said in the chamber, and familiarisation with the latest positions of their different political groupings (the need to remain in constant contact with Euro-MPs and their assistants

is clear, and it is also possible that a Rapporteur in a given case may be Non-Attached, in which case the nature of contacts with the EP groupings changes markedly).

- ◆ Bring with you (full) texts of the Treaties in Polish, English and perhaps also French; copies of the Council Rules of Procedure, and maybe also information on the most important Court of Justice rulings and the results of comitology; as well as the texts of key EP resolutions; the previous dossier along with any possible linked dossier (electronic versions are mostly enough) and materials to be distributed at a given meeting, speaking notes and sheets concerning the subject matter.
- ◆ Take a laptop with a fully-loaded battery, as well as (silenced) cellphone (if absolutely necessary a Vice Chair or Assistant may take a call, though not the Chair) and memory sticks.
- ◆ It may prove useful to have with you a bottle of your favourite mineral water, an umbrella (since the weather in Brussels in the second half of the year is particularly unpredictable), a Presidency tie or scarf, a map of Brussels and shoe polish!
- ◆ It is worth acting to gain information of less formal significance to the preparation of sittings: texts of Commission Communications prior to their publication, information on the stances of the political hierarchies in the EU institutions (including in the General Secretariats and offices), the content of plans of work for the institutions in the upcoming year (which may be subject to change) and details of planned conferences and seminars that might be of significance to the Presidency's work.

## 7. In place of a summary

It is for sure that what has been written above by no means exhausts the broad range of tasks needing to be undertaken in connection with the Presidency. After all, each Ministry and central office pursues its own specialised tasks in its own field and in line with its own remit. Nevertheless, a well-rested expert (given leave frequently) and one accessible to others is more useful when it comes to contacts with people from the other Member States than a tired individual lacking enthusiasm for anything.

As we head for the summing up, here are a couple more remarks and suggestions worth taking account of as sittings of Council Working

Parties and other meetings taking place in the Presidency context are being prepared for:

- ◆ Involve yourself in the honest admission and recognition of your state of nerves (anxiety is inevitable for everyone, after all); remember to maintain a smile, a sense of humour and calmness (never too much of that), as well as to strive for elegance (if not to the point of ostentation);
- ◆ Cultivate an understanding for (if not necessarily an acceptance of) the “national idiosyncrasies” and problems of others, maintain a prohibition on “undermining the opponent”, do not resort to cynicism in the course of statements and interventions and do not “go off” on hobby-horse issues of our own;
- ◆ Do be in a position to “phone a friend”, *i.e.* a Director or Minister (where there is something more urgent to be agreed);
- ◆ Do organise informal meetings, working lunches and suppers, with frequent chats over coffee with “friend and enemy alike”;
- ◆ Do engage in the constant updating of the timetable of planned meetings domestically and across the EU, informing others - also by e-mail - in advance, of times and ways of proceeding further (e.g. when a dossier comes before a COREPER meeting); do take account of all unforeseen occurrences that might exert any more major influence on the direction the Presidency’s work might take (these extending to terrorist attacks, economic or humanitarian crises, outbreaks of armed conflict, etc.), as well as - in the event of problems - engaging EU President Van Rompuy and HR/VP Ashton in the matter at once;
- ◆ Note the importance of liaison officers at informal meetings of Ministers organised in the Presidency country - these coordinate the visits of the given Member State’s delegation, involving themselves in all the logistical and technical aspects;
- ◆ Avoid “left-right” political connotations as the standpoints of the Presidency are presented; take trouble to ensure that in each utterance of the Presidency it is the EU interest that is most clearly to the fore (in line with the principle of neutrality);
- ◆ Constantly monitor the *Official Journal*, the case law of the ECJ and the agendas of Working Parties or groups other than your own, as well as meetings and conferences organised beyond

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the EU institutions, all in line with the unwritten rule that “the Presidency must be omnipresent”;

- ◆ Work discreetly and quietly towards achieving agreement with the delegations (each interpersonal misunderstanding or clear lack of understanding during a discussion is extremely visible and then commented on later in the corridors and lobbies);
- ◆ Work on your assertiveness – how to say no in a polite and gentle way, how to repeat questions and suggest reconsideration, etc. – in order that communication may be favoured, and passivity (like the acceptance of somebody else’s undesirable view) avoided; make as limited use as possible of the word “I”, opting instead for “we” or “The Presidency” (and hence reinforcing the implied neutrality);
- ◆ Put as many questions as possible to other participants, in order to obtain a sufficiently precise knowledge of the range of opinions being held by the Member States, Commission and Parliament (please note here the view of communication specialists that a non-direct approach is better able to reach listeners than a direct one);
- ◆ Be aware that everyone, even one’s “best friend” may at any moment change political fronts (thanks to a national-level decision, rather than a personal one); moreover each promise (even one made more or less *ad hoc*) will be noted down precisely by other delegations – and that also goes for fears, moments of anger and all kinds of substantive errors too;
- ◆ Be clear that nobody (with the possible exception of Denmark and Cyprus) is going to sympathise with our having too much work – NB a common position of the trio always strengthens the credibility of the Presidency opinion); in turn everything we say at a sitting may be used against us later (in the EU or at home);
- ◆ Remember that the legal services of the Council may serve as an important ally for the Presidency – since their opinion may, for example, silence criticism from some Member States, it is worth getting to know lawyer colleagues in advance, settling with them the matters that are legal in nature (please remember here that there is no such thing as a stupid question). Equally, it needs to be recalled that a request for the written standpoint of the legal services is a rather final matter, since it

then formally binds the Council Secretariat and must become the subject of protracted analysis.

## 8. How others see us

In the course of contacts with the Council’s General Secretariat, we obtained (in confidence, in English) the contents of the following table, offering a somewhat tongue-in-cheek presentation of the main sins committed by delegates, as seen from the point of view of the EU institutions. It is true to say that these do not apply to Polish experts alone, and it is also true that the list was first compiled many years ago. Nevertheless, it is worth taking a look to see if our delegates do not by any chance do one or more of the following things.

No.	Sin	Examples of what the officials do...
1.	Pride	1. They do not make friends with other officials and avoid corridor talks. 2. They present their views only in their own language (and very fast) irrespective of how important it is that others understand them.
2.	Avarice	1. They confuse strong position with rejection of compromise! 2. They avoid inter-ministerial consultations!
3.	Lust	1. They still confuse EU institutions and applicable procedural steps. 2. They lack knowledge of the division of ministerial competencies at national level. 3. They usually do not know who is in charge of a particular dossier. 4. They are not aware of the ECJ/EP agenda. 5. They cannot speedily consult the capitals, wait for days to get the ‘green light’!
4.	Envy	6. They keep information to themselves, rarely sharing it with others. 7. They do not share written non-papers with their positions with other Member States (one has to guess what they meant). 8. They do not at all, or only at a very late stage, provide instructions/reports for/after a meeting!

5.	Gluttony	9. They take part in numerous external meetings (conferences, seminars) and do not provide any coherent follow-up afterwards!
6.	Wrath	10.They are susceptible, taking others' opinions personally. 11.They dislike being advised on what to do!
7.	Sloth	12.They leave the meetings before they end, sometimes prolong the coffee breaks. 13.They avoid contact with their PermRep, or - on the contrary - leave all the work to it. 14.They have different working hours than others and do not care about delivering dossier late.

## About the authors

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