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## **Presidency of the Council of the European Union – Institutional Governance or Political Process?**

***Abstract:** The entry into force of the Treaty of Lisbon has brought about significant changes in the institutional system and decision-making process of the European Union, which have had an essential impact on the method and effects of holding the Presidency of the Council of the EU. The changes include, first of all, the institutionalisation of the European Council and the procedure for appointing the President of the European Council; the establishment of the institution of High Representative for Foreign Affairs and Security Policy; and changes in the scope and course of the ordinary legislative procedure, which is the most frequently used procedure in the EU's legislative work. The role of the Presidency in shaping European policies, as broadly understood, has significantly decreased in favour of the European Council. The appointment of the High Representative for Foreign Affairs and Security Policy and the strengthening of the Euro Group's power have also weakened the position of the country holding the Presidency of the Council of the EU. It should be emphasised, however, that owing to new and ever more frequently used legislative paths (e.g. informal trilogue with the European Parliament and the Commission), the importance of the actions taken by the rotating Presidency in the EU's decision-making process is growing.*

### **Introduction**

The supporters of European integration may perceive the Treaty of Lisbon as a failure of the federalist vision of Europe, while its opponents may see it as an example of too much interference by the European Union in national affairs. From the perspective of the proponents of strengthening and deepening integration, the entry into force of the Constitution for Europe would have been the optimal solution. However, as the Constitution was rejected by France and the Netherlands, the Treaty of Lisbon was an imperfect solution,

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but still acceptable to the EU Member States. The entry into force of the Treaty of Lisbon has brought about significant changes in the institutional system and decision-making process, which have had an essential impact on the method and effects of holding the Presidency of the Council of the EU. The changes include: the institutionalisation of the European Council and the procedure of appointing the President of the Council; the establishment of the institution of High Representative for Foreign Affairs and Security Policy; and changes in the scope and course of the ordinary legislative procedure.

As regards the European Council, it is worth stressing that until 2009 the countries holding the Presidency of the Council had a significant influence on European politics through the conclusions and treaties adopted at EU summits and related to individual Presidencies, e.g.: the Lisbon Strategy, the Copenhagen criteria, the Treaty of Maastricht, the Treaty of Nice, the White Paper of Cannes, and finally the Treaty of Lisbon. Gradually however the role of the Presidency has been limited: first by making Brussels the only venue for EU summits, then by introducing the permanent President of the European Council. Thus, the process of institutionalisation of the European Council, which at the beginning of the integration process was only a meeting of heads of state or government without any codified powers, has in fact been concluded. The role of the Presidency and its influence on the work of the European Council in its present form has been significantly limited, while at the same time the importance of the European Council itself has increased and its powers have been defined in detail, which is particularly evident in macroeconomic matters and the public finances of EU Member States.

As a result, the Council and its preparatory bodies has become the main institution putting into execution the previously set priorities, although this requires some additional comments as well. These regard in particular the establishment of the High Representative of the Union for Foreign Affairs and Security Policy (hereinafter sometimes 'HR') who, under Article 18(3) of the Treaty on European Union<sup>1</sup> chairs the Foreign Affairs Council. Consequently, these affairs are formally excluded from the direct competence of the rotating Presidency.

At the same time, the Treaty of Lisbon has significantly increased the importance of the ordinary legislative procedure (formerly the co-decision procedure<sup>2</sup>) by extending it from 44 to 85 areas. While this has not changed

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<sup>1</sup> OJ 2010, C 83.

<sup>2</sup> For more see: A.A. Ambroziak, *Instytucje Wspólnot Europejskich po Traktacie z Nicei. Implicacje dla Polski (EC Institutions after the Treaty of Nice. Implications for Poland)* in: *Stosunki Polski z Unią Europejską (Poland's Relations with the European Union)*, ed. E. Kawecka-Wyrzykowska, Jean Monnet Chair of European Integration, Collegium of World Economy, Warsaw School of Economics, Warszawa 2002.

the mechanism of the Presidency, it has significantly extended the scope of subjects in which the country holding the Presidency of the Council can influence the final shape and content of laws. Considering the nationalistic trends (from the political perspective) and interventionist trends (from the economic perspective), it seems relevant to analyse the practical execution of the Treaty of Lisbon and the federal concept of the European Union.

The aim of this article is to analyse the impact of the Treaty of Lisbon on the practical functioning of the Presidency of the Council of the European Union, both in terms of managing the decision-making process<sup>3</sup> in the Council, and in terms of its influence on the European Agenda, i.e. the areas which are the subject of interest of the Member States. It seems at first glance that prior to the entry into force of the Treaty of Lisbon, the country holding the Presidency had more political opportunities and instruments to influence the decision-making process and the final shape of legal acts, enabling it to advance – with the consent of the other states – its own interests. As a result of the changes introduced on 1 December 2009, the role of the Presidency has been reduced to managing the decision-making process, while having ever less influence on the actual content of many documents elaborated by the Council.

In this paper I have intentionally passed over the analysis of the legal basis and the theoretical discourse on the development of EU institutions and changes in their functioning and effectiveness brought about by the Treaty of Lisbon. Changes in the treaty provisions relating to the EU institutions, their composition, and procedures are the subject of analysis in many other commonly available publications.<sup>4</sup> My goal is to make a practical (not theoretical) review of the application of the treaty provisions concerning the functioning of EU institutions after the entry into force of the Treaty of Lisbon.

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<sup>3</sup> For more see: *Proces decyzyjny w Unii Europejskiej (The Decision-Making Process in the European Union)*, ed. A.A. Ambroziak, Polish Ministry of Foreign Affairs, Warszawa 2011.

<sup>4</sup> Cf. e.g. *Proces decyzyjny w Unii Europejskiej (The Decision-Making Process in the European Union)*, ed. A.A. Ambroziak, op.cit.; L. Jesień, *Prezydencja Unii Europejskiej. Zinstytucjonalizowana procedura przywództwa politycznego (EU Presidency. An Institutionalised Procedure of Political Leadership)*, Polish Institute of International Affairs, Warszawa 2011; R. Grzeszczak, *Prezydencja w Radzie i jej parlamentarny wymiar (Council Presidency and its Parliamentary Dimension)*, “Przegląd Sejmowy”, No. 2/2011, pp. 65–83. J. Barcz, *Prezydencja w Radzie Unii Europejskiej (Presidency in the Council of the European Union)*, Polish Ministry of Foreign Affairs, Warszawa 2010; *Prezydencja w Radzie Unii Europejskiej (Presidency in the Council of the European Union)*, ed. K. Wojtaszczyk, Oficyna Wydawnicza APRA-JR, Warszawa 2010; *The European Union Presidency: a Practical Perspective*, eds. T. Husak, F. Jasiński, National School of Public Administration, Warsaw 2011.

## 1. General Institutional Questions

### 1.1. The Presidency Trio: real teamwork or simulated support?

The Member States in turn hold the Council Presidency, except for the Foreign Affairs Council, for a period of six months each.<sup>5</sup> Three successive Presidencies form pre-established 18-month trios.<sup>6</sup> Therefore, it would be advisable to take a closer look at their composition, order of succession, and the potential consequences of these two factors for the development of the European Union (see Table 1).<sup>7</sup>

**Table 1. Schedule of Council Presidencies for 2007–2020**

Period of Presidency	EU Member State	Period of Presidency	EU Member State
January – June 2007 July – December 2007 January – June 2008	Germany Slovenia Portugal	July – December 2014 January – June 2015 July – December 2015	Italy Latvia Luxembourg
July – December 2008 January – June 2009 July – December 2009	France Czech Republic Sweden	January – June 2016 July – December 2016 January – June 2017	Netherlands Slovakia Malta
January – June 2010 July – December 2010 January – June 2011	Spain Belgium Hungary	July – December 2017 January – June 2018 July – December 2018	United Kingdom Estonia Bulgaria
July – December 2011 January – June 2012 July – December 2012	Poland Denmark Cyprus	January – June 2019 January – June 2019 January – June 2020	Austria Romania Finland
January – June 2013 July – December 2013 January – June 2014	Ireland Lithuania Greece		

Source: Own compilation based on Council Decision 2007/5/EC, Euratom.<sup>8</sup>

<sup>5</sup> European Council Decision No.2009/881/EU on the exercise of the Presidency of the Council, OJ 2009 L 315/50.

<sup>6</sup> In the European Coal and Steel Community the Presidency of the Council lasted three months, in the EEC the period was prolonged to six months.

<sup>7</sup> Council Decision 2007/5/EC, Euratom determining the order in which the office of President of the Council shall be held, OJ 2007 L 1/11.

<sup>8</sup> Ibidem.

Under the provisions of the Treaty, the trios are based on equal rotation of the Member States, taking into account their diversity (e.g. size), length of membership in the EU, and the geographical balance in the EU. There are a few specific patterns which can be identified when analysing the composition of the trios. First, each trio includes at least one Member State which joined the EU in 2004 or later, with Bulgaria and Romania – the two countries that joined the EU a bit later than the other countries of Central and Eastern Europe – being scheduled to hold the Presidency in the last two of the planned groups (i.e. in 2018 and 2019 respectively). This may be seen as an indication that the old Member States view the administrative capabilities of the new Member States to manage the work of the EU with guardedness and some degree of distrust. Second, the countries whose Presidency comes first in each trio had – in 2005, when the order of the rotation was set – a strong economy, significant GDP growth, and almost always a longer period of membership in the EU. The countries selected to be trio leaders were: Germany, France, Spain, Ireland, Italy, the Netherlands, the United Kingdom, Austria, and – as the only new Member State – Poland.

This selection was not a matter of coincidence. Since the trio is a group of states –including economically weaker countries having no experience in this sphere –which run their presidencies together, it was necessary to give the first Presidency in each trio to a country which would act as a ‘locomotive’ of European integration. The old Member States – relatively strong and dynamically developing – were suitable for this task. In the trio led by Poland, the two other members were countries who could not become leaders themselves – Cyprus because of its small size, and Denmark because of its opt-out clauses in internal matters.

The task of the leader should be simple: to ensure the right pace of integration by effective institutional governance, so as to mitigate the negative impact of the limited administrative capabilities of the new and small Member States on the development of the EU. However, effective performance of the Presidency tasks also depends on the European Agenda, on external circumstances, and on the other Member States’ willingness to cooperate and their flexibility. The European Agenda, i.e. a set of priority issues to be worked on in EU institutions, seems particularly important. Rather than a codified list of issues, it is a collection of the main directions of the work of EU institutions, created spontaneously by initiating and continuing debates in the European Council, and sometimes in the Council of the European Union; by preparing and executing the Commission’s work plans by putting forward legislative and non-legislative proposals; as well as by raising political questions at the meetings of the European Parliament.

When taking over the Presidency, a country has little influence on the scope of subjects which it will have to deal with and on the current progress of work in these areas, which makes the effective implementation of the Presidency priorities largely dependent on the efficiency and efforts of the previous country presiding over the Council. Even the countries best prepared for this role, when faced with many unfinished, tangled, and politically and socially sensitive problems, often giving rise to inter-institutional conflicts, are forced to first put in order the current work in the Council before they start introducing new ideas.

## **1.2. Presidency Programming – Pursuing Own Ideas or a Mandatory Agenda?**

Under Article 20(2) of the Council's Rules of Procedure, the Presidency should be assisted in all its responsibilities by the other members of the trio on the basis of an 18-month work programme of the three Presidencies. Proposals, setting forth priorities and the most important measures, are prepared by the members of each trio at least 10 months before the trio's first Presidency. During the next several months, the General Secretariat of the Council prepares a draft programme, which it later puts on the European Agenda, taking into consideration the opinion of the President of the European Council and the High Representative for Foreign Affairs and Security Policy. Six months before the first Presidency of the trio, the first draft version of the 18-month programme is presented. It is then modified and refined by a group of representatives of the members of the trio, the General Secretariat of the Council, and the Secretariat-General of the Commission. A month before the first member of the trio takes up the Presidency of the Council, a political debate takes place in COREPER II and in the General Affairs Council.<sup>9</sup> Eventually, the 18-month programme should be a synthesis of the national six-month programmes of the trio members.<sup>10</sup>

This approach has, however, several flaws which affect the quality of the programme. First of all, the countries making up a trio do not necessarily have common goals. Their interests may coincide in some areas and be com-

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<sup>9</sup> Article 2(6) Council's Rules of Procedure, Council Decision No. 2009/937/EU adopting the Council's Rules of Procedure, OJ 2009 L 325/35.

<sup>10</sup> See: 18-month Programme of the Council, From the future French, Czech and Swedish Presidencies to COREPER/GAERC, Council of the European Union, Brussels, 09.07.2008 (doc. ref. 10093/08), 18-month Programme of the Council, From the future Spanish, Belgian and Hungarian Presidencies to COREPER/Council, Council of the European Union, Brussels, 27.11.2009 (doc. ref. 16771/09), 18-month Programme of the Council, From the future Polish, Danish and Cypriot Presidencies to COREPER/Council, Council of the European Union, Brussels, 17.06.2011 (doc. ref. 11447/11).

pletely divergent in others, partly because of the pattern according to which the trios are composed – on the basis of economic and geographical diversity and different periods of membership. As a result, it is hard to find a common solution acceptable for all three countries, even if they do have some common characteristics (for example, access to the sea). While they may be able to find some common aims, in some areas their interests may be clearly different, or even quite opposite.

Second, and maybe more important, while the 18-month programme prepared on the basis of the national programmes of the trio members is subject to a debate at the meeting of the Committee of Permanent Representatives (COREPER II) and the General Affairs Council, in fact no changes to it are expected. The negotiations between the three states are conducted at the political and technical levels. The main initiative belongs to the country which is the first to hold the Presidency in the given trio. It usually has an already-prepared work plan for its Presidency, while the last country of the trio, which still has time before its turn, usually postpones the drafting of the final work plan of its Presidency. Thus the role of the leader, i.e. the first country to hold the Presidency, is in practice even greater than may be inferred from the provisions establishing the trio.

On the other hand, there are three problems to be considered when drafting the 18-month programme. The rotating Presidency does not chair the Foreign Affairs Council, and as a consequence it is the High Representative for Foreign Affairs and Security Policy who has the most influence on the content of the programme in this area, with the influence of the rotating Presidency being limited.

Another obstacle is the need to take into account the work plan of the European Commission, which contains the descriptions of the Commission's main objectives, a set of strategic initiatives, and an indicative list of planned actions. In some cases, this work plan is the basis of the whole 18-month programme. As a result, the Presidency programmes are not much different from the Commission's annual plan, and the order of priorities only signals to the Commission which legal acts and legislative documents the Presidency will focus on. Cooperation between the Commission and the Presidency is thus very important. On the one hand, the Commission decides whether and when to submit a proposal (either a legislative or non-legislative proposal, or a new version of amendments to said documents) to be debated in the Council. On the other hand, it is the country holding the Presidency that determines the pace of the work, as it seeks compromise within the Council and in relations between the Council and the European Parliament, and thus contributes to the progress of the decision-making process between the two co-legislators.

The third problem is the diversity, or even conflicts, between the priorities set within the trio. So far, finding compromise solutions which would be satisfactory to all three countries of a given trio has been a very difficult task – especially considering the fact that the final goal should be to ensure cooperation, and not to compete between each other. Therefore, in practice most provisions are drafted by the officials in the General Secretariat of the Council on the basis of the contributions of the interested Member States. The final version of the programme is agreed upon and accepted by the members of the trio and then submitted to COREPER II and the General Affairs Council, in practice only for information purposes and as the basis for a brief discussion.

In consequence of the problems mentioned above, the 18-month programme has a relatively limited value. Whereas it is undoubtedly a good starting point for a debate in the country which is soon to take up the Presidency, at the European level it is seldom the basis for an assessment of the work planned during the Presidency.

In this respect, the most important element is the speech<sup>11</sup> delivered by the head of state or government in the European Parliament at the start (and end) of a Presidency, which is essentially based on the national programme of the Presidency, but due to its nature and the recipients also includes precise indications of the political priorities of the given country. It is in fact this speech, and not the long technical text of the 18-month programme, that is the subject of debates in the European Parliament and commentary in government circles and scientific centres around Europe and in the world. Therefore, it constitutes a political manifestation of the presence of the country holding the Presidency of the Council and it indicates the suggested actions which are within its sphere of interests. On this basis, the EU Member States, the European Parliament and the European Commission are able to identify those areas which will be particularly important for the beginning Presidency, and which will require their support.

### **1.3. Relations with EU Institutions and Member States**

The effectiveness of the Presidency – not only in management, but also in achieving concrete results – depends to a large extent on the quality of its cooperation with the institutional environment: the General Secretariat of the Council, the European Commission and its relevant Directorates-General, the European Parliament, and the other Member States. Some of these rela-

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<sup>11</sup> Cf. *Prime Minister in the European Parliament: Europe needs more solidarity* at: <http://pl2011.eu/en/content/prime-minister-european-parliament-europe-needs-more-solidarity>

tions have been regulated,<sup>12</sup> but the most important elements of the cooperation are based on traditional customs and solutions.

As regards the General Secretariat of the Council, it is worth stressing that it is the officials working there who prepare the draft programme of each Presidency trio, taking into account the requests of the states of the trio, the Commission's schedule of work, and the political expectations of the EU Member States. Knowledge of the areas in question and institutional memory – i.e. knowledge of the positions and attitudes of the Member States on and towards various issues – may prove very helpful in governing the decision-making process in the Council.

It is important to keep in mind that the politicians and experts in the European Commission and the European Parliament usually work on specific subjects of interest to the EU for much longer than the six-month Presidencies, and thus their knowledge, expertise and skills, accumulated over many years, may be a great support for the country holding the Presidency, if used properly.

Considering the above, the representatives of the country holding the Presidency of the Council should not only be familiar with the theoretical procedural aspects and the substantive scope of a given *dossier*, but should also know the people responsible for the *dossier* in each institution, including e.g. the political advisers in Commissioners' Cabinets. These representatives of EU institutions may be good partners for talks, provided that the position of the Presidency is strong enough. If it is not, the more experienced officials of the Secretariat General of the Council, the relevant Directorate-General of the European Commission or the experts from parliamentary committees and political factions may take over the role of the Presidency by moving the discussion in the desired direction and preparing compromise solutions. In such instances the Presidency is left only with the task of giving the floor to the other EU Member States at the meetings of the Council bodies and has very little influence on the content of the discussion. On the other hand, in this way the process of European integration is not obstructed or slowed down by

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<sup>12</sup> Cf. European Parliament Decision of 20 October 2010 on the revision of the framework agreement on relations between the European Parliament and the European Commission, doc. ref. P7\_TA(2010)0366, 2010/2118(ACI); Inter-institutional agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management, OJ 2006 C 139; Inter-institutional agreement on better law-making, OJ 2003 C 321; Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, OJ 2002 C 77; Inter-institutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation, OJ 1999 C 73; Inter-institutional Agreement of 20 December 1994 – Accelerated working method for official codification of legislative texts, OJ 1996 C 102.

a particular Presidency. The above solution is sometimes consciously applied by smaller Member States, especially in areas in which they do not have sufficient expertise or a stake in the result of the work. It should be stressed, however, that although under Article 23(3) of the Council's Rules of Procedure the General Secretariat is in fact 'closely and continually involved in organising, coordinating and ensuring the coherence of the Council's work and implementation of its 18-month programme', it does so only 'under the responsibility and guidance of the Presidency', by assisting it in seeking solutions.<sup>13</sup>

## **2. Operational Governance in the Preparations of the Council's Work**

### **2.1. Directing or conducting Council meetings?**

Debates in the Council preparatory bodies and at the Council meetings can be planned to a large extent, or even strictly directed. First of all, before a meeting the Presidency usually prepares a new version of the document under discussion, taking into account all the proposed changes which are most important or sensitive for the individual Member States. It is rather unlikely to introduce new solutions which have never before been proposed by the other participants of the debate. As mentioned before, as a rule the country holding the Presidency should refrain from submitting changes with respect to its own interest and should instead strive for compromise solutions acceptable to all, or at least most, EU Member States. However, the Presidency will not introduce any changes to the text if they are against its national interest. The final version of the document, prepared in cooperation with the General Secretariat of the Council, is often called the 'well balanced presidential compromised text' and contains exclusively the solutions which are not contradictory to, and often consistent with, the interest of the country holding the Presidency.

Second, it is worth emphasising that formally the Presidency should not consult the documents in question with selected Member States before meetings of the Council preparatory bodies or of the Council, as the states not consulted might perceive such a practice as discriminatory. In reality however, before the documents are presented at a formal meeting they are subject to bilateral discussions and negotiations with the other members of the trio and with the countries which have the most reservations to the previous version

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<sup>13</sup> Article 23(3) of the Council's Rules of Procedure, Council Decision No. 2009/937/EU, *op.cit.*

of the document. In this way the Presidency can eliminate the most sensitive problems in bilateral talks and show its strength, efficiency and prospective thinking. As a consequence, the Member States with reservations are then less likely to contest the content of the text prepared by the country holding the Presidency – especially if many of their demands are already included or taken into account.

Third, apart from modifying the document, the Presidency can prepare the framework scenario of the debate. Before launching the work on a legislative or non-legislative proposal, the representatives of the Presidency get in touch with the officials from the Directorate-General of the European Commission working in the relevant department, as well as with the General Secretariat of the Council, in order to obtain detailed knowledge concerning the given *dossier*. This helps them plan the work in the Council, and possibly the consultations with the European Parliament, as well as identify potential problems and those Member States which might raise them.

Fourth, half an hour before a meeting of any working party, COREPER, or the Council itself, there is a briefing for the representatives of the Presidency, the General Secretariat of the Council, and the European Commission, at which they determine the form of the meeting, the strategy (if cooperation goes well) and present the institutions' opinions on the changes proposed by the Member States. The briefings are also the right moment for the Commission to present its opinions, comments and its own amendments, if it has not done so previously. The effectiveness of these briefings depends on the participants' mutual trust and openness to cooperation. In some cases, especially towards the end of the six-month period, the representatives of the next country to hold the Presidency are sometimes allowed to participate in the briefings as observers.

Fifth, the positions of Member States in fundamental issues do not change, so the general outline and direction of their opinions can be predicted to a large extent. Moreover, the representatives working in the Council's preparatory bodies and in the Council itself usually act under instructions from their countries, prepared on the basis of the country's position on the original proposal (for example, of the Commission), which decreases the likelihood of radical changes in their opinions.

Sixth, as a rule the representatives of the country holding the Presidency should act like observers and refrain from voicing their opinion. There are exceptions to this rule, e.g. when the representatives express the opinion of their own country, although this happens quite rarely. The other states of the trio, or other countries whose opinion is not extremely different, may propose changes which have previously been discussed with the country holding the Presidency, and thus become the voice of this country.

Seventh, before the Council meeting there is always a meeting with the Commission, at which both sides set out the scope and procedure for the meeting. In this way the Presidency learns about the Commission's view on the amendments submitted by the Member States, and as a result it is better prepared to moderate the debate by emphasising the opinions of the Commission which are consistent with its own views. Usually, after the representatives of all Member States have expressed their opinions on a given provision, paragraph, article or group of articles of a document, the Commission replies to the questions and doubts raised and presents its own opinion in order to defend its proposal. Of great importance is the fact that, in the ordinary legislative procedure, if the Commission's opinion on the proposed changes in the first reading is negative, the Council is required to act unanimously. Both the Presidency and the other Member States try to avoid such a situation.<sup>14</sup>

Eighth, during technical and lunch breaks the Presidency often holds informal talks with some Member States in order to gain their support for the proposed solutions or to work out a compromise. This is another way for the country holding the Presidency to include its own position in a prepared document. By using institutional partners, unofficial channels of communication with EU institutions and Member States, as well as by skilled management of documents, the Presidency may be able – under the pretext of ensuring efficient progress of meetings and institutional governance – to effectively pursue its own objectives, which may not be explicitly stated in its six-month national programme.

## **2.2. Council Working Parties – in Search of a Compromise?**

### *Chairing the meetings of Council working parties*

The rotating Presidency is held both in the Council itself and in the Council preparatory bodies, including working parties. The principal aim of these bodies is to work out compromises at the technical level as regards the legislative and non-legislative proposals to be finally adopted by the Council. The working parties and the committees of the Council are composed of experts in a specific field or diplomats from the Permanent Representations from all Member States. The participants of these meetings also include a representative of the relevant Directorate-General responsible for the *dossier* under discussion.

As a rule, these meetings are chaired by a representative of the country holding the Presidency of the Council, assisted by the representatives of the

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<sup>14</sup> I will elaborate on this problem in the section devoted to the Committee of Permanent Representatives (COREPER).

General Secretariat of the Council. Those meetings of the working parties which concern the relations between the EU and groups of third countries are chaired by representatives from the European External Action Service (EEAS), which performs the tasks held by the Presidency in other working parties (see Table 2). The individual Council committees and working parties, which are also important in this process, are presided over by permanent chairs selected from among the representatives of EU Member States or appointed by the General Secretariat of the Council.

**Table 2. List of the Council's Committees and Working Parties not chaired by representatives of the rotating Presidency**

	Group No.	Group's Name
Chaired by a representative of the High Representative for Foreign Affairs and Security Policy.	A.5	Political and Security Committee
	A.10	Committee for Civilian Aspects of Crisis Management
	C.4	United Nations Working Party
	C.5	Working Party on OSCE and the Council of Europe
	C.6	Working Party on Human Rights
	C.7	Working Party on Transatlantic Relations
	C.9	Working Party on Eastern Europe and Central Asia
	C.11	Working Party on the Western Balkans Region
	C.13	Middle East/Gulf Working Party
	C.14	Mashreq/Maghreb Working Party
	C.15	Africa Working Party
	C.17	Asia-Oceania Working Party
	C.18	Working Party on Latin America
	C.20	Working Party on Non-Proliferation
	C.21	Working Party on Conventional Arms Exports – Arms Trade Treaty
C.22	Working Party on Global Disarmament and Arms Control – Space	
C.25	Politico-Military Group	
C.36	Nicolaidis Group	
Chairs elected from among their members from the EU Member States.	A.2	Economic and Financial Committee
	A.3	Employment Committee
	A.7	Social Protection Committee
	A.9	Military Committee (EUMC)
	A.11	Economic Policy Committee
	A.12	Financial Services Committee
	C.26	Military Committee Working Group (EUMCWG)
	D.5	Code of Conduct Group (Business Taxation)
A.13	Security Committee and its sub-areas	
Chaired by a person appointed by the General Secretariat of the Council.	B.9	Working Party on Information
	B.21	Working Party on E-Law
	B.11	Coordination Committee for CIS (CCCIS)
	B.12	Working Party on Codification of Legislation
	B.13	Working Party of Legal/Linguistic Experts

Source: List of Council preparatory bodies, Brussels, 4 July 2012, doc. ref. ST 12223/12

**Table 3. Chairing of certain Working Parties by delegations from other Member States**

<b>Country holding the rotating Presidency</b>	<b>Name of the working party</b>	<b>Country chairing the working party</b>
Slovenia	C.33 Working Party on Commodities J.2 Working Party on International Environment Issues F.23 Codex Alimentarius Working Party (except for milk and milk products) F.23 Codex Alimentarius Working Party (only milk and milk products)	France France Germany  Austria
The Czech Republic	B.6 Working Party on Outermost Regions C.3 Working Party on the Law of the Sea H.2 Working Party on Shipping J.2 Working Party on International Environment Issues C.2 Working Party on Public International Law – International Criminal Court	Sweden Sweden Sweden Sweden France
Hungary	A.16 Friends of the Presidency Group for Integrated Maritime Policy B.6 Working Party on Outermost Regions C.3 Working Party on the Law of the Sea H.2 Working Party on Shipping	Belgium  Spain Spain Belgium
Cyprus	C.33 Commodities F.16 Forestry F.17 Agricultural Questions F.23 Codex Alimentarius J.2. International Environment Issues	Denmark Denmark Denmark Denmark Denmark

Source: Presidency Documents.<sup>15</sup>

<sup>15</sup> See: Slovenian Presidency – Chairing of certain Working Parties by other delegations at the request of the Slovenian Presidency, Brussels, 7.01.2008 (doc. ref. 5040/08); Czech Presidency – Chairing of certain Working Parties by other delegations at the request of the Czech Presidency, Brussels, 16.12.2008 (doc. ref. 17342/08); Hungarian Presidency – Chairing of certain Working Parties by other delegations at the request of the Hungarian Presidency, Brussels, 16.12.2010 (doc. ref. 18002/10); Cyprus Presidency – Chairing of certain Working Parties by other delegations, at the request of the Cyprus Presidency 15.06.2012 (doc. ref. 11454/1/12 REV 1).

Exceptions from the rule that the country holding the Presidency chairs the working parties result mostly from individual arrangements between the Member States and, after the Treaty of Lisbon, mainly within the trio. Under Article 20(2) of Council's Rules of Procedure,<sup>16</sup> *'the six-monthly Presidency shall be assisted in all its responsibilities by the other members of the pre-established group of three Member States [...] on the basis of the 18-month programme or pursuant to other arrangements agreed between them'* and *'at the Presidency's request and acting on its instructions, [...] a member of that group shall replace it as and when required, shall relieve it, where necessary, of certain tasks [...]*'. The information concerning which working parties will be chaired by representatives of other Member States than the one holding the Presidency is notified to COREPER II or to the General Affairs Council. Small states usually give over the chair of the working parties in which they have no interest to larger states (see Table 3) below. In some cases, when there is a need to ensure continuity in negotiations in some particularly sensitive areas (e.g. the annual budget discussed in the Budget Committee) over a period of time, a working party may also be chaired by delegations from another Member State.

On the basis of the Slovenian, Hungarian, Czech and Cypriot Presidencies, it seems that the chairs of various working parties were given over to other countries both for administrative reasons and because of the relatively low level of knowledge and interest of the country holding the Presidency. However, it should be stressed once again that as a rule, the Presidency ought to act for the benefit of the integration process and not for its own national interests. In this context, it is surprising that some states are replaced with others solely for administrative reasons or, what is even more common, because the Presidency has no interest in some areas. The other Member States chairing the working parties usually have their own precisely defined positions and interests in given areas and their intentions and objectivity may be questioned.

#### *Selecting the working party*

Documents to be discussed by working parties are sent to them upon request from the Presidency, following consultations with the General Secretariat of the Council. In most cases, it is clear to which group a particular document should go; however, in some cases the Presidency may prefer to discuss a given problem from a specific point of view – e.g. with a focus on competitiveness instead of environmental protection, therefore the document is sent to the group dealing with economy instead of environment. By appro-

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<sup>16</sup> Council Decision No. 2009/937/EU, op.cit.

appropriate management of the distribution channels and designating the relevant preparatory bodies of the Council to work on the *dossier*, the country holding the Presidency can also influence the final content of the document to encompass its own national interests.

A particularly interesting body is the Friends of the Presidency Group, which is re-established upon the request of and chaired by the country holding the Presidency. This group works on issues which are most important for the Presidency from the EU perspective and which are not within the competence of any sectoral working party (e.g. during the Presidency trio of Poland, Denmark and Cyprus: the Multiannual Financial Framework, the Integrated Maritime Policy, and the European Patent). Although the name of the group suggests that it sympathises with the Presidency, it actually operates according to the same rules as the standard working groups, dealing with all the various clashing interests of the Member States. It is comprised mainly of the diplomats of Permanent Representations, which ensures flexibility. Formally, the group is directly subordinate to COREPER II, which helps provide quicker and more effective political impetus to the directions of its work and prevents the stalling of negotiations over less important technical matters.

#### *Controlling the pace of work in a working party*

Under the Council's Rules of Procedure, meetings of committees and working parties are called at the request of the chair through the General Secretariat. Usually, at the beginning of its term, the country holding the Presidency announces its intentions and prepares the schedule of work for each working party, as well as the topics and *dossier*. This gives the other Member States, the European Parliament, and the Council a hint of how important a given area is to the country holding the Presidency. By observing how determined the country is to swiftly conclude the work in a given area, they can assess its willingness and flexibility to accept comments and changes. If the country shows no interest in finishing the work, they can expect that the *dossier* will not be closed by the current Presidency.

Before each working party meeting, the Presidency sends to the Member States, through the General Secretariat of the Council, the meeting agenda and the documents which will be discussed at the upcoming meeting. The Presidency can use this opportunity to give the desired direction to the meeting's agenda. If the Member States have too much time to analyse it before the meeting, the discussion might become fragmented. On the other hand, giving them too little time might be perceived as an attempt to accelerate the decision process without any deeper debate. In the latter case, the representatives of the Member States may hold scrutiny reservations, under which the

discussion is carried on at the next meeting of the working party or COREPER.

Whether the Council conducts work on a given legislative or non-legislative proposal usually depends on the political will of the Presidency and on its priorities. As already mentioned, both the national plans of the rotating Presidency and the 18-month programme of the trio must be consistent with the work plan of the European Commission. Apart from that, the Commission determines when a given proposal is adopted by the College of Commissioners and sent to the Member States by the General Secretariat of the Council to be discussed in working parties. As a result, if the Presidency fails to agree with the Commission on the date of submitting a proposal, it might lose the opportunity to work on it, even though it has been planned in the six-month or 18-month programme.

Another way for the Presidency to influence the pace of work is by setting the dates and frequency of the meetings of Council working parties. Consequently, some working parties meet regularly (two or three times a month), and others much less often. Yet another aspect which helps in managing the working parties is that the experts belonging to these groups do not necessarily have to come to each meeting from their countries – instead, they may send an *attaché* from the Permanent Representation. This flexibility as regards the participants of the working parties makes it possible to organise additional meetings if required to keep the right pace of the decision-making process or if the Presidency so wishes. Meetings involving *attachés* can be called in a relatively short time (e.g. on a few hours' notice) and do not require the experts to come from their countries, thus involving fewer additional costs (flight costs are covered by the General Secretariat of the Council, but accommodation costs and daily allowances are covered by the delegating institutions from the Member States). This approach accelerates the work of the working parties and makes the Member States less reluctant to proceed swiftly. Furthermore, if a proposal discussed in a working party is among the priorities of the Presidency, the other Member States rarely cause obstruction, although this does not mean they resign from defending their own interests.

The Presidencies consider each document adopted during their term a success (and rightly so, in my opinion), even if the preceding Presidencies have worked on it as well. It might seem that the Presidency, in concluding the work on a document, only does what must be done anyway; however, swift conclusion of these final phases may be considered a political success. This was the case with the Polish Presidency, which frequently called meetings of the Friends of the Presidency Group working on Croatia's Accession Treaty and made it possible to be signed already in December 2011.

On the other hand, if the Presidency does not accept a given document and therefore is not interested in working on it, meetings of working groups are rare and not very constructive. As a rule, the Presidency cannot openly contest the content of the discussed documents, but it can slow down the pace of work. Only after the end of its Presidency can the country openly express its opinions and defend them.

The freedom to set the pace of work in the working parties is not, however, unlimited. From the legal perspective, there are no time limits in the first reading under the ordinary legislative procedure, and therefore work can be substantially prolonged. Sometimes, when there is no political will, such works may last over 20 years (e.g. the European Patent). However, after the second reading under the ordinary legislative procedure the Council has only three months to make a decision, and after the third reading – six weeks. Work in the working parties becomes much more intensive at this stage, and the Presidency has practically no possibility to avoid acting with respect to the *dossier* in question.

Moreover, if a legislative proposal has just been sent by the European Commission to the General Secretariat of the Council, the Member States usually present their positions on articles and parts of the document at the meetings of the relevant working party, chaired by a representative of the Presidency. In such cases, the country holding the Presidency usually only collects the proposed changes and moderates the debate, together with the General Secretariat of the Council. After six months, the Presidency usually presents a progress report, i.e. a description of the positions of the Member States. During the next Presidency term, the country which held the preceding Presidency can submit its amendments or requests regarding the proposal and commence discussing it with the European Parliament within the framework of trilogues.

### **2.3. COREPER – preparatory work or political bargaining?**

The Committee of Permanent Representatives (COREPER) is composed of the Permanent Representatives of Member States. COREPER II consists of heads of mission, while COREPER I consists of their deputies. It was divided into two according to the subjects prepared for discussion for various Council configurations. As a consequence of this division, the level of involvement of the rotating Presidency and the extent of its competence in the two groups of areas differs, as does its influence on the final decisions of the Council.

The members of COREPER are not politicians like members of the Council, but are also not solely technical experts in specific areas either. They have a broad knowledge on many topics which are the subjects of the decision-making process in EU institutions, and thus are more capable of finding com-

mon interests and arranging common support in several, sometimes very different, areas which are very important for the Member States. Although it is true that they have to act under the instructions from their governments, they have a considerable influence on the final form of these instructions, as they take part in their creation. Neither the experts in the working parties nor the ministers participating in the Council have as much knowledge and negotiation possibilities as they do. As a result the Presidency, which is represented by a Permanent Representative or his/her Deputy, has the most influence on the effects of the decision-making process in EU institutions.

#### *COREPER I*

The Committee of Permanent Representatives I (COREPER I) deals largely with social and economic issues and prepares the meetings of the following Council configurations: Employment, Social Policy, Health and Consumer Affairs, Competitiveness, Transport, Telecommunications and Energy, Agriculture and Fisheries (in questions related to fisheries and veterinary and phytosanitary matters), Environment, and Education, Youth and Culture.

The main documents prepared by COREPER I, and then discussed by the Council, consist of both non-legislative and legislative proposals. This distinction is particularly important for the analysis on the position of the Presidency after the entry into force of the Treaty of Lisbon.

As regards non-legislative acts, most of them are the conclusions of the Council, in which the Council expresses its opinion on a given subject, usually in reply to a communication from the Commission. The Council uses them to communicate with the other EU institutions, Member States, as well as the EU's external actors. The content of the conclusions is usually prepared by a Council working party on the basis of a proposal put forward by the Presidency. Conclusions usually require unanimity, so the chair of the working party must strive to win the acceptance of the representatives of all Member States. Conclusions are often treated as steps in the process of European integration,<sup>17</sup> and therefore they are listed as successes of the Presidency. As a result, the country holding the Presidency usually precisely specifies the work plan of the working group and indicates the date of submitting the draft document to COREPER and the Council.

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<sup>17</sup> Under Article 7.5 of the Council's Rules of Procedure No. 2009/937/EU, *op.cit.*, during negotiations on legislative proposals the Council must refrain from adopting any acts – even of a political nature – without applying the legislative procedure provided for by the Treaties, if the subject of these non-legislative acts concerns matters falling under the scope of the legislative proposal. There is no formal procedure for adopting conclusions in EU law. In practice, the Council adopts them by consensus, which means that there is no voting, and the document cannot be adopted if any of the Council members objects.

The working parties sometimes fail to reach an agreement – particularly in issues which are politically sensitive for the Member States. COREPER often makes no special effort to reach a consensus in those problematic issues, leaving the final decision to the ministers in the Council. In these cases, the role of COREPER is only to precisely identify the problem and the positions of the Member States. The text of the conclusions is not written in legal language, therefore it is often easier for the ministers from governments of the Member States to find a solution than it is for the experts or representatives of these states at the ambassadorial level.

The procedures with regard to legislative acts are quite different. They are adopted either by the Council itself or in cooperation with the European Parliament. With the strengthened role of the European Parliament in the decision-making process, the informal tripartite meetings (trilogues) have gradually become more popular.<sup>18</sup> These meetings are attended by representatives of the European Parliament, the Council, and the Commission. The Council is represented by the Permanent Representative, the Deputy Permanent Representative, or the chair of a working party from the country holding the Presidency. The European Parliament is represented by a rapporteur and the chairperson of the relevant committee, and the Commission sends a representative of the Directorate-General responsible for the *dossier*.

This procedure has made it possible to adopt more legislative acts in the first reading, both in the ordinary legislative procedure and in the special legislative procedures.<sup>19</sup> Although it may last around 18 months, which means that two or three subsequent Presidencies might have influence on it, in practice, as mentioned before, the first six months are spent on learning the positions of the Member States and identifying the main divergences and potential problems. Usually only within the next six months does the state holding the Presidency commence cooperation with the European Parliament in the form of tripartite meetings (trilogues). The country holding the Presidency at the time when the negotiations with the Parliament are concluded, or when there is a vote in the Council and the Parliament, usually has much less influence on the shape of the legislative act. The country may contribute to reaching a compromise in issues still unresolved, but at this stage these are purely political decisions.

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<sup>18</sup> The legal basis for these activities is the Inter-institutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation, OJ 1999 C 73/1 and the Joint declaration on practical arrangements for the co-decision procedure, doc. ref. PE 384.711v01-00.

<sup>19</sup> European Parliament, Activity Report, 1 May 2004 to 13 July 2009 (6th parliamentary term) of the delegations to the Conciliation Committee presented by R. Kratsa-Tsagaropoulou, A. Vidal-Quadras, M. Rothe, doc. ref. PE427.162v01-00, p. 8/41 ff.

Before every informal tripartite meeting, the Presidency must prepare and discuss the legislative proposal in the relevant Council working party as a condition to starting talks with the European Parliament. Proposals are often politically accepted by the Committee of Permanent Representatives (COREPER). Although the Permanent Representatives and their Deputies do not discuss the proposals, the Presidency sounds them out about the opinions of their Member States. After gaining the support necessary to adopt the proposal in the Council (by unanimity, qualified majority, and ordinary majority respectively), the Presidency treats the document as a basis for negotiations with the representatives of the European Parliament.

Although the trilogue is also hosted by the representatives of the competent committee of the European Parliament, the Presidency of the Council has a potentially large influence on the final version of the legislative proposal. Firstly, the tripartite meetings are confidential, although to ensure transparency, the members of the working party involved and of COREPER are informed about the results. Sometimes, especially in the last weeks of the six-month period of a Presidency, trilogues are attended also by the representatives of the state which is to next hold the Presidency. This is not a rule, however, since the formats and procedures of the meetings are not formally regulated. As a result, in the negotiations with the Parliament the Presidency can highlight those issues it considers more important for its own interest, and does not have to focus on defending the areas which it considers less important. The result of the trilogue depends, therefore, on the Presidency's negotiating skills, involvement, and acute sense of the political climate. The main difficulty arises from holding the negotiations both in the Council working party and in the trilogue, while at the same time trying to incorporate the Presidency's own position as a Member State.

Second, while the document containing the results of the negotiations in the trilogue is commonly known, it is the Presidency – or in fact the chair of the Council working party or of COREPER – which ultimately decides how and with what commentary the results of the negotiations with the Parliament will be presented. The country holding the Presidency can use this opportunity to introduce passages consistent with its national interest to the document. If it is in the final stage of talks with the Parliament, the Presidency will try to convince all Member States to accept the compromise, as the Parliament is ready to adopt the document only in the presented version, and the Parliament and the Council play an equally important role in the ordinary legislative procedure. Further talks are naturally still possible, but may lead to even less acceptable conclusions. Consequently, many Member States do not attempt to negotiate further changes and accept the compromise.

As a rule, problems resolved at the COREPER level are not raised again at Council meetings, although there are some exceptions. The quasi-political solutions worked out by COREPER should not, however, be contested and changed by the ministers sitting in the Council. As a consequence of this method of work and the character of COREPER I, the Presidency may strongly contribute to the final version of the proposed act at this level of the decision-making process.

### *COREPER II*

COREPER II prepares the meetings of the General Affairs Council, the Foreign Affairs Council (FAC), the Justice and Home Affairs Council, and the Economic and Financial Affairs Council. Its character and procedures are different than those of COREPER I, particularly since the entry into force of the Treaty of Lisbon, which has established the new positions of the President of the European Council and the High Representative of the Union for Foreign Affairs and Security Policy. Since the meetings of some Council configurations – e.g. the General Affairs and External Relations Council (GAERC), the Economic and Financial Affairs Council (ECOFIN), as well as of the European Council – were prepared by Permanent Representatives (and not their Deputies), COREPER II is perceived as a more political and influential body than COREPER I. The subjects which COREPER II has been dealing with and the rank of its members predestined it to settling the political issues submitted to the European Council by the GAERC. Before the entry into force of the Treaty of Lisbon, the Presidency had substantial influence on the work of the working parties, COREPER II, GAERC and the European Council itself. It could determine the frequency and scope of debates at each stage of the decision-making process in these bodies, and thus controlled the pace of works.

As it has been already mentioned, by establishing the position of High Representative for Foreign Affairs and Security Policy, the Treaty of Lisbon essentially changed the architecture of the EU institutions – the European Council, the Council of the European Union, and some of its working parties. COREPER II is chaired by an ambassador from the country holding the Presidency, but in foreign affairs, which belong to the competence of territorial working parties, it is the EEAS, not the Presidency, which presents the results. At this stage, the chair's task is thus only to ensure the swiftness of debates, without any substantial involvement in their content.

As regards the documents concerning security issues, before being submitted to COREPER II and the relevant Council configuration (usually the FAC), they are discussed by the Political and Security Committee (PSC), which consists of ambassadorial level representatives of the EU Member

States from their Permanent Representations. The PSC is presided over by a permanent chair appointed by the HR,<sup>20</sup> which further limits the role of the Presidency. When it is impossible to reach a consensus within the PSC, the controversial issues are handed over to COREPER II, and then to the Council. If a consensus is reached within the PSC, COREPER II and the Council only formally accept its decisions.

Another, seemingly unshakeable competence of COREPER II, should be the negotiating of political positions of the EU requiring the consent of the European Council. The Treaty of Lisbon and the Council's Rules of Procedure have left the existing formal mechanism for preparing the meetings of the European Council unchanged.<sup>21</sup> However, the practical action undertaken by the present President of the European Council have in fact limited the freedom of action of COREPER II. From the procedural perspective, meetings of the European Council are prepared by the General Affairs Council, which is chaired by the Presidency. It prepares the draft conclusions of the European Council after they have been discussed in COREPER II. The President of the European Council does not have at his disposal any formal body which could prepare the meetings of the heads of state or government and which would be chaired by his representative. Striving to strengthen the position of the European Council, he has developed a new channel of communication between Brussels and the Member State governments, passing over COREPER II and involving the 'Sherpas', i.e. the advisers of heads of state or government for European affairs.

There is also an unofficial working lunch of the General Affairs Council, attended by the President of the European Council, which is yet another channel through which the President can present to heads of state or government his expectations regarding the directions of debate at the next EU summit. Thus, the President of the European Council ensures direct communication with the ministers responsible for European affairs in the governments of the Member States and tries to obtain information on the positions of their heads on the most politically sensitive matters. We should keep in mind, however, that the ministers for European affairs sitting in the GAC are not always Sherpas. Nevertheless, the system helps the President of the European Council identify the substantive and personal scope of possible further direct contacts with the members of the European Council. The above mechanism, introduced on the basis of the Treaty of Lisbon by Herman Van Rompuy, the present President of the European Council, has radically limited the powers of COREPER II.

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<sup>20</sup> Article 2 of the European Council Decision No. 2009/881/EU, *op.cit.*

<sup>21</sup> Article 3(3) of the Council Decision No. 2009/937/EU, *op.cit.*

In economic and financial matters, the work of the Presidency in COREPER II looks a bit different. First, after the establishment of the Economic and Monetary Union at the EU summit in December 2000, there was a decision on a possible informal meeting between the finance ministers of those Member States which adopted the euro, representatives of the European Commission, and the European Central Bank (called the 'Euro Group').<sup>22</sup> At first, it was presided over by the rotating Presidency, but in 2005 a permanent president was appointed.<sup>23</sup> As a result, the influence of the Presidency of the Council has significantly decreased, particularly with respect to those states which do not have the euro as their currency.

Second, due to the economic and financial crisis, the role of the Economic and Financial Committee (EFC), appointed for dealing with EMU affairs, has substantially increased. Considering the fact that it includes high officials from the Member States, and that the permanent president has been entrusted with preparing the agenda of its meetings and conducting the meetings, the tasks of COREPER II have again been largely limited. Although most documents are still presented to COREPER II before the meeting of the Economic and Financial Affairs Council (ECOFIN), it is rather more to set the structure of the debate in ECOFIN than to allow a discussion on macroeconomic matters, which have already been discussed, sometimes even agreed upon, by the vice-ministers of finance (often with the involvement of vice-presidents of national central banks) from the Member States sitting in the EFC.

The situation is somewhat different in the Justice and Home Affairs Council. This specific area also requires specialised preparatory bodies: the Standing Committee on Operational Cooperation on Internal Security (COSI) and the Coordinating Committee in the area of Police and Judicial Cooperation in Criminal Matters. These Committees are chaired by the rotating Presidency, and consequently the Presidency has similar influence on the content of the discussed documents as in COREPER I.

The above analysis shows that the Treaty of Lisbon has taken the governing of the decision-making process in all matters within the competence of the HR away from the rotating Presidency, not only in COREPER II, but in fact in all Council preparatory bodies and in the Council itself. COREPER II also has little influence on the political questions discussed by the European

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<sup>22</sup> Resolution of the European Council on Economic policy Co-ordination in the stage 3 of EMU and on Treaty Articles 109 and 109 b, Presidency Conclusions, Luxembourg, 12–13 December 1997.

<sup>23</sup> The position was assumed on 1 January 2005 by Jean-Claude Juncker, and his term of office has been renewed twice. Currently, the president is elected from among the euro countries pursuant to Article 2 of Protocol no. 14 to the Treaty on the Functioning of the European Union. OJ 2010 C 83.

Council. To sum up, we could say that in consequence of the implementation of the Treaty of Lisbon, and the strengthening and reinforcing of the new decision-making and executive bodies in EU institutions, the role of COREPER II has been significantly weakened, and thus the influence of the rotating Presidency on the ongoing political process has been largely limited.

### 3. Council Meetings

Before the entry into force of the Treaty of Lisbon, there were 10 Council configurations. However, under Article 16(6) of the Treaty on European Union the General Affairs and External Relations Council was divided in two new configurations: the Foreign Affairs Council (FAC) and the General Affairs Council (GAC). As it has already been mentioned, the HR is a member and the chair of the Foreign Affairs Council. The only exception to this rule are the FAC meetings regarding the Common Commercial Policy, which are chaired by a minister from the country holding the Presidency of the Council.<sup>24</sup> In addition, the HR is invited to the meetings of other Council configurations if they indirectly concern issues within the competence of the FAC. As a result, the influence of the country holding the Presidency on the agenda of the FAC, on the way the meetings are held, on the conclusion process, and on the results of its works has been quite substantially reduced<sup>25</sup> as compared to the other configurations.

All Council configurations other than the FAC are chaired by a minister from the country holding the Presidency of the Council. From the formal viewpoint, all legislative and non-legislative acts are adopted (e.g. legislative acts – under the ordinary legislative procedure in the first, second or third reading) as a result of a debate at the ministerial level. In fact, all documents submitted to the Council are first discussed and negotiated in the Council preparatory bodies. Therefore, the problems to be settled at the Council meeting are mainly political, and the actual subject matter is much less discussed at this stage. The role of the Presidency is, first of all, to ensure the successful

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<sup>24</sup> Article 2(5) of the Council's Rules of Procedure No. 2009/937/EU, op.cit.

<sup>25</sup> For a similar approach see: S. Vanhoonaeker, K. Pomorska, H. Maurer, *The Council Presidency and European Foreign Policy – Challenges for Poland in 2011, Report and Analyses*, Centre for International Relations, Konrad Adenauer Stiftung, p.3. However, the literature on this subject contains opinions that the Treaty of Lisbon has not changed the overall architecture of the Common Foreign and Security Policy in any significant way – cf. U. Puetter, *Consolidating Europe's New Intergovernmentalism. European Council and Council leadership in economic governance and CFSP under the Lisbon Treaty*, paper prepared for the UACES Conference "The Lisbon Treaty Evaluated: Impact and Consequences", London, 31.01-01.02.2011, p.6–7.

adoption of a compromise solution acceptable to all Member States and encompassing, if possible, its own national interest.

It is an informal obligation of the minister from the country holding the Presidency, originating from tradition rather than any written laws, to try to find a compromise. Moreover, closing each stage of the decision-making process at the Council level is considered a success of the Presidency, therefore it is in the best interest of the person presiding over the Council to end the debate positively. The minister is assisted by either the ambassador or the deputy ambassador, depending on which COREPER was engaged in the preparations, as well as by the chair of the relevant working party. Thus the Presidency obtains a full view of the arguments of the Member States – those presented by the experts as well as the technical and political ones.

Solutions acceptable to most or all Member States are sought by the submission of successive compromise versions of a given document. This procedure is additionally supported by bilateral talks between the states involved and the Presidency, both during the Council meeting and before it. By individually consulting the delegations of other Member States, the Presidency, represented by a minister from its national government, acts as mediator and strives to achieve two goals: the successful adoption of the document in question, and ensuring that it is consistent with its own interest. The final effect depends, to a large extent, on the previous actions of the Presidency, its efficiency and openness to the views of other states, and naturally on the position of the country holding the Presidency. Essentially, the Treaty of Lisbon has not changed anything in this respect, apart from the fact that before 1 December 2009 it was easier for the Presidency to include a given point in the agenda of the European Council, leaving the final decisions to the highest political level and expecting to still gain the credit for these final decisions. Since the appointment of the President of the European Council, this solution has been applied much less commonly, as it might suggest that the Presidency is not able to handle difficult issues by itself.

At this point we shall once again focus on the concept of the Foreign Affairs Council. The FAC is chaired by the High Representative for Foreign Affairs and Security Policy, who may be replaced, when necessary, by a member of the Foreign Affairs Council from the country holding the Presidency. Furthermore, when the FAC meets to discuss matters related to Common Commercial Policy, it is chaired by a minister from the country holding the Presidency. As was already mentioned in the chapter on the competences of COREPER II, the Treaty of Lisbon essentially separates foreign affairs and security policy from those areas in which the rotating Presidency of the Council might have significant influence on the EU's final position. It seems that this approach is a consequence of the EU's efforts to maintain consis-

tency in international relations. Before the Treaty of Lisbon, Presidencies were often inclined to emphasise their country's role in the process of integration and strengthen the relations with certain regions of Europe and the world on the basis of their own political situation, history, or geographical location.<sup>26</sup> Changing the direction of the EU's foreign policy every six months made it impossible to effectively conclude the initiatives of each successive Presidency, although on the other hand it gave the Presidency the possibility to introduce issues to the European Agenda which could be realised in the following years.

## Conclusions

The Treaty of Lisbon has significantly modified the role of the Presidency in the European Union. By finalising the institutionalisation of the European Council and establishing the position of the President of the European Council, the Treaty took away from the rotating Presidency the possibility of influencing major political and economic aspects of European integration. As a result, the main area of activity for the country holding the Presidency is now in the Council and its preparatory bodies. Considering the fact that during the economic crisis the Member States have been increasingly putting their national interests before the general interest of the European Union as a whole, the role of the Presidency has probably been limited at the right moment. Otherwise, a slowdown of the integration processes at the economic and political level could have occurred, as happened in the times of 'eurosclerosis' just after the economic crisis at the end of the 1960s and the beginning of the 1970s. The interventionist trends of that time, securing national interests and hampering the integration process in Europe in the long term, would quite likely have been revived.

Under the provisions of the Treaty of Lisbon, the Presidency should be held jointly by the three countries forming the Presidency trio. In practice,

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<sup>26</sup> Cf. Conclusions of the Presidency, European Council, Copenhagen, 21–22 June 1993 (adopting the criteria of EU membership for countries of Central and Eastern Europe); Conclusions of the Presidency, European Council, Essen, 9 December 1994 (accepting the pre-accession strategy for the countries of Central and Eastern Europe); Conclusions of the Presidency, European Council, Amsterdam, 16 June 1997 (adopting the Treaty of Amsterdam); Conclusions of the Presidency, European Council, 24 March 2000 (adopting the Lisbon Strategy); Conclusions of the Presidency, European Council, Nice, 8 December 2000 (conclusion of the negotiations of the Treaty of Lisbon); Conclusions of the Presidency, European Council, Copenhagen, 12–13 December 2002 (conclusion of the accession negotiations of Central and Eastern countries); and Conclusions of the Presidency, European Council, Brussels, 14 December 2007 (signing of the Treaty of Lisbon a day before, on 13 December 2007 in Lisbon).

however, it is hard to find any common goals beside the 18-month programme written in Euro-jargon. From the perspective of the countries holding the Presidency, the order in the trio might be an important factor in building their position, as the first country of the trio might be able to impose some actions on the others, but in fact every country must take into account the European Agenda, which includes the work plan of the European Commission, the decision-making procedures initiated earlier, the main political subjects discussed by the European Council, and many current problems of European and global importance which impact on the functioning of the European Union. Therefore, such conclusions should not be drawn without careful consideration. Paradoxically, it is not the 18-month programme of the trio that is most important for building a strong position of the Presidency, but the political address of the head of state or government to the Parliament at the beginning of each six-month period. A strong position of the Presidency is necessary both for political and institutional reasons. It must cooperate with experienced actors: members of the European Parliament, Commissioners, experts from all EU institutions, e.g. the General Secretariat of the Council, who have been involved in the decision-making process and in creating European policy for many years. Therefore, the country holding the six-month Presidency must be well-prepared to take over the institutional governance in the Council and its subsidiary bodies and effectively manage the decision-making process, while trying to introduce at the European level those subjects which are particularly important for it as a country.

As regards governing, the rotating Presidency still has many unique tools which, if applied skilfully, may help it achieve its goals. From choosing the working parties through to setting the date and frequency of their meetings and controlling the flow of information and documents, the Presidency can ensure the effective realisation of its own objectives. Naturally, the above conclusion applies only to those working parties chaired by the representatives of the Presidency. It does not apply to the preparatory organs dealing with financial and macroeconomic issues or the Common Foreign and Security Policy.

The Committee of Permanent Representatives (COREPER) has remained an essential centre of the Presidency's involvement, although this applies primarily to COREPER I, which is particularly involved in the negotiations with the European Parliament and institutional governance in the Council. COREPER I deals with a broad range of subjects, which allows its chair – a Deputy Permanent Representative from the country holding the Presidency – to negotiate whole package solutions between the Member States. The role of COREPER II, on the other hand, has been greatly limited by the establishment of separate legislative procedures for the areas within the competence

of the Foreign Affairs Council and the Economic and Financial Affairs Council and the new position of the European Council.

As regards actions at the Council level, due to the institutionalisation of the European Council the rotating Presidency has only some degree of influence on the political decisions taken at some of the ministerial meetings. However, procedural efforts, bilateral talks, and managing the meetings may be very helpful in fulfilling the objectives of the Presidency. This does not relate to either the FAC or ECOFIN, as the former is presided over by the High Representative of the Union for Foreign Affairs and Security Policy, and the latter has an additional decision-making body called the Euro Group, chaired by a permanent president from a country of the euro area.