

# A New Top? The Lisbon Provisions for the Permanent President of the European Council

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## **A NEW TOP?**

# **THE LISBON PROVISIONS FOR THE PERMANENT PRESIDENT OF THE EUROPEAN COUNCIL<sup>1</sup>**

**WOLFGANG WESSELS**

### **1. Introduction: The relevance of a major institutional change in the Lisbon Treaty**

#### **1.1. On the European Council and its presidency – Some general findings as points of departure**

Looking at analyses of the institutional architecture of the European Union (EU), we are confronted with a strange picture: Whereas meetings of the European Council are in the centre of media attention, academic works on this club of the Heads of States or Government are relatively rare. Quite often introductory books put this body into a chapter with the Council (of Ministers); the description of the functions then repeats the basic provisions of the Treaty (Art. 4 Treaty of Nice; Art. 15 (1) TEU in the Lisbon version<sup>2</sup>). Thus we see a strong bias to take the legal words for the real world.

Taking up some useful contributions (Werts 2008, de Schoutheete 2006, Ludlow 2005, Ludlow 2002a, Ludlow 2002b, de Schoutheete and Wallace 2002), my basic assumption (Wessels 2010) is to see the European Council as the key to understand the emergence and evolution of the EU system: Beyond what relevant treaty articles (including also the Lisbon version) have formulated, the Heads of State or Government have taken – at least de facto – all major decisions with respect to deepening and widening the EU system. As “constitutional

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<sup>1</sup> I would like to thank Maria Schäfer and Oliver Höing for their support.

<sup>2</sup> In the following all references relate to the Lisbon Treaty.

architects” they have concluded intergovernmental conferences for treaty reforms; as to accessions they have monitored and concluded the process of enlargement. They have also reached labour-intensive and difficult agreements on the amount of “own resources” for the EU budget and – in the multi- annual financial frameworks – the distribution among major chapters of its expenditure. Besides these system-making functions the Presidency Conclusions of more than 100 sessions tell us that national leaders have intensively dealt with nearly all issues on their domestic or international agenda; they formulate guidelines for most public policies – see e.g. the Tampere and Stockholm Programme for the Area of Freedom, Security and Justice as well as the “Lisbon Strategy” and the “Europe 2020” programme for economic, employment and social policies. Their declarations mark also central positions of the EU on topical items of international politics. Finally, the European Council has again and again served as some kind of final and highest instance for taking decisions in extraordinary cases and on highly disputed issues. In times of internal crises and external shocks the demand for some kind of leadership has always turned to the European Council.

Looking more closely at the procedures and records of this body, the functions and skills of its presidency, rotating so far on a half-yearly basis, are of paramount interest (Schout and Vanhoonacker 2006, Tallberg 2003, Tallberg 2004, Hayes-Renshaw and Wallace 2006). The profile and performance at the top of this key institution and the procedural powers linked to it are thus subjects of major importance for the institution itself like for the EU in general.

Given the overall role of this body actors and observers have attributed specific roles and special responsibilities to the person in the chair of the European Council. Indeed the sessions of the European Council have often been referred to as the “hour of the presidency” (Hayes-Renshaw and Wallace 2006: 178). The chairperson’s handling of the delicate “responsabilité sans pouvoir” strengthened or weakened also his<sup>3</sup> national and European reputation.

Compared to attributions of a major role for this office the treaty provisions for the presidency of the Council so far and thus implicitly for the European Council were short and did not indicate any major functions and a very limited set of procedural powers. The tasks and functions of a President of the European Council have considerably evolved over time (see e.g. Hayes-Renshaw and Wallace 2006). Indeed, it might be one of those typical cases in

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<sup>3</sup> In order to improve readability, only the male form is used in the text; nevertheless all information is meant to refer to female and male persons equally.

which the real world has developed far beyond the limited wording of written provisions. The emergence and evolution of this office demonstrates that there are strong demands for some kind of leadership in the European Union and that ambitious national leaders are able and willing to offer their capabilities (Schout and Vanhoonacker 2006). Apparently, the pull and push for a larger role than just the formal chairing of the sessions became increasingly pressing – not at least also in view of the increased number of members around the table of an ever larger Union (Wessels 2008b). As to the strategy pursued by the Presidency government and the performance achieved for the top institution we observe a large degree of variations (Hayes-Renshaw and Wallace 2006: 167-169). Factors of success or failures are personal ambitions and profile, styles and resources of leadership as well as historical contexts and topics on the agenda. It is difficult to identify a clear magic formula for a successful presidency.

In view of the demands from inside the European Council itself like from outside this institution the challenges for the person in charge were considerable. Up till the Lisbon treaty the office holder for the European Council was nominated in the same way as the respective positions for the whole Council set-up: The Presidency of the European Council rotated half-yearly between the governments of the member states. The list was established well in advance “on the basis of equal rotation” – as Art. 16 (9) TEU repeats for the Council. The European Council itself adopted and adopts the decisions on the follow-up of presidencies (Art. 236 TFEU).

With the considerable delay between the advanced fixing of the list and the actual presidential semester the political fortune might not provide optimal opportunities for the respective Head of State or Government. The President needs to run his own government and present it in international affairs also outside the immediate EU context. National leaders might be under intensive domestic pressure because an election might take place before, during or after his presidency. That means the President in office might not possess the time and energy to invest enough attention into the job as the functions of the President of the European Council might demand in the respective historical context; the person in office might also be un-experienced in moderating the club of peers. The last and telling example of this mismatch between the demands of the institutional role and internal national difficulties was the Czech presidency in 2009, when the prime minister was replaced in the middle of his term and his successor did not have any personal experience in the body he was supposed to

chair. The experience with weak performances of office holders in unfavourable constellations was one reason to replace the rotating by a permanent presidency.

Due to these considerations and assessments it is not surprising that the new provisions in the Lisbon Treaty establish the office of a permanent President by defining that he “shall not hold a national office” (Art. 15 (6) TEU) at the same time.

## **1.2. My arguments: Strings for the top: More a manager than a master of the procedure**

With this assessment in mind it is of high political relevance to study the changes in the legal text which the Lisbon Treaty introduces for this key institution and then to speculate what one of the major institutional amendments might mean for the real role of the Presidency and for the overall institutional equilibrium in the living architecture of the EU – System (see generally Wessels 2008a).

In the so called “Reform Treaty” (now Lisbon Treaty) the Heads of State or Government as highest representatives of the “masters of the treaty” (Bundesverfassungsgericht 1993; 2009) have introduced several and considerable changes concerning their own body; thus the new provisions integrate the European Council into the list of institutions (Art. 13 TEU) and proscribe major tasks excluding “legislative functions” (Art. 15 (1) TEU). The treaty allocates some additional rights now *de jure* to this institution, which it had always exercised *de facto* in the decades since its creation in 1974; one example is the launching of intergovernmental conferences for treaty revisions (e.g. Art. 48 (2) and (3) TEU). But even this latest version of the treaty reform does not institutionalise all functions of the European Council which it has performed in the real world. With path dependency in mind (Pierson 1996) we can expect that the European Council will continue to take major decisions and positions in many cases and constellations in which the treaty provisions still do not include the European Council *expressis verbis*. One essential area might be decisions about own resources and the multi-annual financial framework.

With one major change the members of the European Council have given themselves a new office for organising their own work: Replacing the rotating presidency among the members of the European Council the Lisbon Treaty has introduced in Art. 15 (5) and 6 (TEU) a permanent or full-time President (see box 1).

**Box 1: Relevant paragraphs of Article 15 TEU****Article 15 TEU**

5. The European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end the President's term of office in accordance with the same procedure.

6. The President of the European Council

(a) shall chair it and drive forward its work;

(b) 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;

(c) shall endeavour to facilitate cohesion and consensus within the European Council;

(d) shall present a report to the European Parliament after each of the meetings of the European Council.

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.

The President of the Council shall not hold a national office.

*Source: Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Official Journal of the European Union, 09/05/2008, retrieved from: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2008:115:SOM:EN:HTML>, last accessed: 03/05/2010.*

This permanent Presidency of the European Council is a major innovation in the institutional architecture of the EU. It is of considerable academic interest. Not only do we start from the general assumption that “institutions matter“, but by referring to the pivotal role of the presidency we expect that the use (or non-use) of the new provisions will be one major factor (though certainly not the only one) to influence the performance of the European Council and beyond also the work of other EU institutions. As this body is a key for the success or failure of the EU, the real role of the office holder will thus also influence the future of the whole EU-system as such. The political controversy about this key element of the institutional reform and about the election of the first office holder indicates the political significance attributed to this position at the top.

My basic argument starts with the theory based assumption (Wessels and Hofmann: 2008) that the masters of the treaty as constitutional architects have been in a dilemma constellation: On the one hand, at least most of them apparently wanted to increase the efficiency and effectiveness of their body to improve their common problem-solving capability - not at least by taking the enlarged Union into account. On the other hand following both a sovereignty reflex of some member states and the preference for the Community method of others they did not want to really strengthen the position of a

permanent President of the Council as some leaders of larger member states and the President of the Convention on the Future of Europe Giscard d'Estaing had originally in mind (see below). The result is a menu of considerable expectations with a restricted set of means to fulfil them. The members of the European Council have put strong procedural strings on their top representative. The “principals” created an office to serve them as an “agent”, and directly installed a mechanism to defend themselves against a “drift” of this servant towards a too powerful position of his own (see for the term in general e.g. Kassim and Menon 2003, Pollack 2003, Pollack 1997 and for a more detailed argumentation below). My assessment is in a short formula: The members opted for a ‘manager’ and not for a ‘master’ of the procedure for their club.

To discuss this thesis my approach starts from the legal words: In the written treaty provisions national leaders have formulated ambitious objectives for the role of their President. The text enumerates several key tasks - such as related to “preparation and continuity”, “cohesion and consensus” and “external representation”. At the same time they offer only restricted procedural powers. The treaty articles and even more the respective rules of procedure for the European Council (European Council 2009) which have been intensively debated in the Council machinery, enable the President to manage the policy cycle of the European Council, but tend to prevent him from running the relevant procedures by his own preferences. The written rules put the office holder into an institutional and procedural straitjacket which does not offer large opportunities to act autonomously or develop an ambitious catalogue of own preferences. The inherent logics and the spirit, derived from the texts, point at a low profile for the office holder, while aiming at a high performance. Such an expectation/capability gap (see for the term Hill 1993) does not need to be a shortcoming per se. Such a low profile might be seen as adequate and appropriate for the body with major controversies on vital issues on their agenda.

However, the legal words might not determine the real world performance. Demands and pressures from within and outside the EU, might lead the office holder to a different interpretation of his role. The pursuit of their problem-solving instinct by members of the European Council might be stronger than their sovereignty reflex. Thus they might push in practice their President to take up some more pronounced leadership functions. In any case the treaty text does not exclude that the office holder might develop a stronger role in the living architecture.



## **2. The presidency: New opportunities and new constraints: Neither *Président* nor *chairperson***

### **2.1. Creating a new position: A controversial debate**

In the quasi-constitutional debates from the signing of the Treaty of Nice over the “Treaty establishing a Constitution for Europe” to the (“Reform”) Treaty of Lisbon one major issue for the European Council itself and for the entire institutional architecture of the EU was the creation of the office of a permanent President and its tasks and powers. We witness a highly controversial debate in the “Convention on the Future of Europe” which formulated the relevant provisions now in place in the Lisbon Treaty (see especially Laffan 2006: 76, Scholl 2006b: 186-188, Norman 2003: 137-140, 179-181, 224-235). Following suggestions put forward by Prime Minister Aznar, Prime Minister Blair and President Chirac in 2002 (the so called “ABC” proposal), the president of the Convention Giscard d’Estaing (one of the founding fathers of the European Council (Bulmer and Wessels 1987: 41-46) put forward a catalogue of functions for the European Council “as highest authority” and a list of task for the “European Council Chair”, however with few procedural constraints (see Art. 15 of Giscard’s Draft Institutional Proposals, in: Norman 2003: pp. 343). After “the smalls revolt” (Norman 2003: 179) the European Convention adopted the present formulations. Based on a French-German compromise (Scholl 2006a, Lamassoure 2004, Magnette and Nicolaïdis 2004, Norman 2003: 174-181, Hänsch 2002) the article for the President of the European Council was reformulated and put into a larger political package aiming at an upgraded institutional equilibrium with strengthening both so called supranational and intergovernmental elements (Wessels and Hofmann 2008: 10).

The list of pro arguments stressed the intended ameliorations of the functioning of the European Council: Having more time at his disposal and by a higher degree of continuity the office holder was expected to fulfil major tasks in the European Council more efficiently and more effectively. The first office holder himself stressed: “I will endeavour to put the continuity at the heart of the European Council’s action” (van Rompuy 2010: 6). With no national interest to defend the person in the chair is supposed to act more convincingly as an honest broker with a low personal profile. However, some others – especially the media – expected some kind of charismatic leader who would act within the EU and to the outside world as a “M. ou Mme Europe” (Lamassoure 2004: 61, Waterfield 2009).

Arguments against this office pointed at the de-motivation of the national leaders of the rotating presidency as they would no more invest their personal reputation and national assets into the common endeavour; especially in view of achieving history-making decisions an office holder with nothing but good will is seen to be less powerful to move members towards a packed deal as a necessary basis for more fundamental agreements. References were made to experiences with Merkel and Sarkozy in 2007 and 2008; both, acting – in different ways – on the basis of their national positions were successful in leading their peer group to consensus in several areas of high sensitivity.

Beyond these more functional arguments discussing potential effects on the performance of the European Council we can observe a more fundamental controversy about expected consequences for the institutional equilibrium and - with that – for the implied distribution of power positions. Representatives of small countries calling themselves “friends of the community method” (Rovná 2006: 40) and members of the EP voiced their opposition: they expressed their worries that this office would act only in the interest of the bigger EU member states; following such an argument the President would then work as an “agent” for the “directoire” of great EU powers trying to dominate the EU architecture from the top. This school of thought was especially worried that the Commission, perceived as a protection against the big countries, would lose influence.

The first office holder himself highlighted these controversies linked to his position: “The Treaty text ... was a compromise between those member states who wanted a strong, French-style presidential figure, and those member states who did not want a permanent President at all and preferred keeping the rotating presidency at all levels and feared a diminished role of the Commission” (van Rompuy 2010: 5). With these divergent expectations in mind he also defined his own role: “The two extreme role models should be discarded: the permanent President is not meant to be a *Président* (Italics in the original), nor is he meant to be only a *chairman* (Italics in the Original)” (ibid.).

## **2.2. The election procedure: Strong anticipatory control by the principals**

It is remarkable that suspicions against a too strong or independent office holder are clearly documented in the Treaty text in the provisions for the election of the person in charge. The respective article 15(5) TEU (see box above) already sets limits to a potential drift away from the interests and opinions of the members of the European Council; they might sanction a

personality with a too ambitious profile already after a rather short delay: In contrast to the President of the Commission and the High Representative of the Union for Foreign Affairs and Security Policy this office holder is only elected for two and a half years. Though the person in office does not necessarily need unanimity in the European Council, following the provisions of qualified majority (see Art.16 (4) TEU) he needs to get a large support by smaller and larger countries for a second term in office. In case of neglect of any group within his constituency the President risks being not reappointed. In order to prevent that a President might misuse a longer experience and a deeper organisational memory than his national colleagues, the office holder's overall term is even limited to a cycle of five years – again in clear difference to other top positions. Disappointed members of the European Council might even use the rules for some variation of an “impeachment light” (see the second sentence of Art. 15 (5) TEU) during the President's term, though they are linked to some kind of objective and not just subjective political reasons – as this is the case with the High Representative (Art. 18 (1) TEU). To put this constraint in perspective, it is worth mentioning that the European Council does not have any right to dismiss the President of the Commission during his term.

### **2.3. Tasks, functions and power of the presidency**

One major starting point for a deeper analysis is to study the set of written tasks and the functions intended by them. With a close view to the evolving practice the academic literature has elaborated an accepted though slightly varied list of general functions of presidencies in the Council (see e.g. Werts 2008: 62, Schout and Vanhoonacker 2006). Also involved actors themselves, especially the first office holder (van Rompuy 2010: 5-7), have contributed to this long list.

My method of identifying these functions is primarily based on the formulations of the official document. The provisions of the Lisbon Treaty for the permanent President of the European Council (see Art. 15 (6) TEU, see box 1) and the Rules of Procedure define a set of tasks that formulate rather extensively the role expectation linked to the presidency. However, we will also recognise major inbuilt constraints and strings.

A major set of enumerated tasks in the treaty concerns the role of what I called above the function as the ‘master’ or the ‘manager’ of procedures: The office is designed to prepare, run and implement the work of the European Council. Like other groups this club needs some kind of procedural guidance which could also be labelled as the need for an “organiser”

(Schout and Vanhoonacker 2006: 1053-1056). Via the Rules of Procedure the members have entrusted their President with such a task: “The President shall be responsible for the application of these rules” (Art.4 (4) Rules of Procedure). These allocated “responsibilities” give the President a derived authority which transfers a certain degree of procedural power to the office. The members of the European Council have agreed to follow his way and skills of handling major parts of their work and deliberations. This commitment allows the office holder to exercise a certain degree of flexibility and discretion. Most of these rules are typical procedures within groups or committees. Thus, as other office holders, the President generally has to gain personal respect from exercising the derived procedural power. Success in his office, thus, reinforces the office holder’s personal authority and enlarges his power of influence.

The treaty provisions start with the President’s tasks during the meetings: “The President of the European Council shall chair it (the meeting) and drive forward its work” (Art. 15 (6a) TEU, see box 1). Following the task description set by the European Council itself the President has to ensure that “business is conducted smoothly”, taking measures to promote “the best possible use of the time available, such as organising the order in which items are discussed, limiting speaking time and determining the order in which contributors speak” (European Council 2002: 8). The new Rules of Procedure confirm this task (European Council 2009: Art. 4 (4)). This procedural power is more important than this routine rule might look like: It enables the presidency to call interruptions of meetings for his brokering function to achieve consensus positions (see below). These rules imply or even demand that the chair can shape the way discussions develop and when and in which way breaks are organised. Given the composition of the body the person must develop his own way and style – more than ministers in the more formalised ‘normal’ Council meetings. It depends on his diplomatic skills to get the work underway and finish it in a way which seems acceptable to 27 leaders. For such a large group of persons, each of them feeling prominent, the debate can seldom run freely but needs to be carefully structured and orchestrated.

A second set of tasks is of major importance, but its formulations raise also specific interests: The President “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” (Art. 15 (6b) TEU).

Without any doubt a major task of the President is to prepare the agenda for the sessions of the European Council and to draft the texts for the (presidency) conclusions and decisions. The space for autonomous priority setting was already limited in the last years of the rotating presidencies. Main agenda points are quite often fixed in advance by the body before the scheduling of the official calendar itself. Thus the Heads of State or Government have earmarked certain sessions to deal regularly with the same issue areas – thus e.g. the Spring European Council revisits regularly the economic and social situation of the EU. The President also had to take into account the suggestions by either Council formations and by the Commission. In special cases the presidency in office might have pushed members well in advance to give the country a specific mandate. Thus the German presidency in the first half of 2007 had one year in advance – during the Austrian presidency – initiated a mandate to revisit the fate of the Constitutional Treaty.

Even with an optimal preparation unpredictable events and crises might capture the well designed plans for the presidency of the European Council. Thus, starting with a long list of priorities the French President in the second half of 2008 had to deal with issues on the agenda which were not expected: the “No” in the Irish referendum on the Lisbon Treaty in June, the Georgian war in August and the consequences of the financial and economic crises in autumn.

In contrast to all constraints due to the normal procedures, worries of their partners and external shocks Presidents of the European Council have a long history of setting bold goals for their respective semester. Many presidencies tried to lead the Union to a history-making event, e.g. concluding an intergovernmental conference for a revision of the treaties which could be linked to the city of the final summit. Also, final decisions on accession of new members belonged to this type of system-shaping or even history-making heritages of presidencies. Thus, the Danish President in 2002 declared the decision of the European Union to enlarge to 25 member states as his major objective. Often governments approached their semester launching initiatives with special orientations. The Spanish government looked to increase the links to Latin America and to the Mediterranean countries leading to the ‘Barcelona Process’. The Finish President was granted a “northern dimension” of the EU. The German presidency in 2007 put its priority on drafting and concluding a far-reaching pre-version of the ‘Reform Treaty’. The French presidency in 2008 proposed several initiatives, thus on ‘L’ Union pour la Méditerranée’ as for a migration pact of the Union. Quite often

observers got the impression that Presidents propose political initiatives by which they try to give national interests and priorities a European label.

The provisions of the Lisbon Treaty (Art. 15 (6b) TEU) and even more of the new Rules of Procedures (Art. 3 Rules of Procedure) confirm the essential task of the President to propose the agenda and prepare the documents on the table including drafts of text for the decision to be taken by the European Council. It is however remarkable that at the same time the legal words limit the autonomy of the permanent President to launch an initiative without the support and agreement of the President of the Commission and – even more – the General Affairs Council: “Except for imperative and unforeseeable reasons linked, for example, to current international events, no other configuration of the Council or preparatory body may, between the session of the General Affairs Council at the end of which the provisional agenda for the European Council is drawn up and the European Council meeting, discuss any subject submitted to the European Council” (Art. 3 (2) Rules of Procedure). Beyond the treaty provisions the Rules of the Procedure also gives a relevant task to another head: “The member of the European Council representing the Member State holding the Presidency of the Council shall report to the European Council, in consultation with its President, on the work of the (General Affairs (W.W)) Council” (Art. 4 (1) Rules of the Procedure).

These provisions clearly reveal the limits of the procedural powers of the President. Following previous practices these rules increase the constraints for his actions. The wording of article 15 (6) (b) indicates the political significance attributed to this process. In the European Convention and in the IGC preparing the Lisbon Treaty smaller states pushed to insert the wording “in cooperation with the President of the European Commission, and on the basis of the work of the General Affairs Council” (Art. 15 (6) (b) TEU; Art. 2 (1) Rules of Procedure). The intention is clear: Given experience with the way Presidents had used their prerogatives, most governments wanted to establish or keep a dense system of concrete checks to reduce unexpected, unintended and uncontrollable moves by the President.

This very wording of the text let us expect that the office holder is supposed to act more as a ‘manager’ than as a ‘master’ of the procedures. In view of expectations and controversies about the fundamental change in the institutional equilibrium the written text thus does not transfer any kind of hierarchical primacy vis-à-vis the President of the Commission or the General Affairs Council.

Linked with the intensive and tiring preparation process the office holder is expected to get into contact with each of his colleagues in the peer club. In former times, Presidents undertook a “tour of capitals” before a session of the European Council, or – since enlargement – many partners were invited to talk with the President in his office. The President is to establish or deepen direct personal links to his peers and to take up major points of dispute already before the session itself starts. This established pattern can be characterised as a form of “multiple bilateralism” (Bulmer and Wessels 1987: 54-55). The advantage of the new permanent President is that his time budget is much larger than that of a member who also holds a top national office at the same time. Also for the inter-institutional relations the time budget is increasingly important: “The President shall establish close cooperation and coordination with the Presidency of the Council and the President of the Commission particularly by means of regular meetings” (Art. 2 (3) Rules of Procedure). In view of the demands for intensive preparation the first office holder stresses: “The potential strength of the permanent Presidency lies in the time it disposes of” (van Rompuy 2010: 6).

As a further task in the same article the treaty asks the President to “ensure continuity of the work of the European Council” (Art. 15 (6b) TEU). This part of the list of duties addresses a major weakness of the rotating presidency: After the final summit at the end of each semester in which normally the rotating presidency had sufficiently prepared major agreements, decisions were taken by the European Council but their follow-up was not assured. Instead, the next presidency most often set and followed its own priorities. In the debate on the creation of a permanent presidency this lack of continuity was perceived as a major problem in respect of an effective action of this key body. Thus, arguments for the office of a permanent President with a longer tenure stressed the need to observe a proper follow-up of the work of the European Council. This function of a watch dog for observing the implementation of and compliance with the decisions of the European Council is seen to be “fundamental” (van Rompuy 2010: 6). The first office holder wants “to put the continuity at heart of the European Council’s action” (ibid.) which “makes a basic difference to the rotating presidency” (ibid.). The new Rules of Procedure however do not indicate how the President is enabled to fulfil this task which he has also to pursue in cooperation with the President of the Commission and the General Affairs Council.

As the next task the text aims at a traditional function of the presidency, which is normally characterised with labels such as ‘honest broker’ or ‘integrative moderator’. The



President's official task is to "facilitate cohesion and consensus within the European Council" (Art. 15 (6) (c) TEU). The office holder is supposed to steer and lead members of the European Council to an agreement – without having a position of his own on the substance of the matter at stake. In contrast to the President of the Commission the provisions do not even ask him to "promote the general interest of the Union" (Art. 17 (1) TEU). With the increase in numbers of members and – linked with the enlargement – the increase in the scope of diverging interests the chairperson's brokering function has become even more important (Wessels 2008b).

For this function of "integrative bargaining" (da Conceição-Heldt 2006) the presidency may use several tactics; one of the most important is the so-called 'confessional procedure' (Hayes-Renshaw and Wallace 2006: 150): During such a period, plenary sessions of the European Council repeatedly split up into smaller groups. Under the direction of the presidency only those members necessary for reaching consensus are asked to get involved. Outside the plenary, the President informally and confidentially interviews each of the protagonists about their real preferences, the bottom or red line of their demands and puts them under direct pressure to adapt their pre-established positions. The goal is to prepare compromise formula and package deals which are finally perceived as a fair solution for each member of the group. This kind of agreements is supposed to help national leaders to save face in front of the national media and thus electorates. Following such an informal procedure the President will elaborate a position of which he expects to get a general approval around the conference table. As part of this consensus building process the chair – often with the help of the secretariat – has to draft compromise texts which might be acceptable to all members. The President might invent formulations which lead to consensus due to their ambiguities, left-outs and postponements. His skill might also include some kind of so called "mumbling auctioneer tactic" (Werts 2008: 29) by which the chairperson pronounces some kind of compromise in a way that not everybody understands but at the end no one wants to put it to debate again. One illustrative example was apparently the decision by President Chirac on making Brussels the permanent location of the European Council sessions at the end of the Nice summit. In these cases Presidents use the authority given to the office and the general willingness of members to accept some kind of agreement. This form of consensus building can only be used when no member is really sensitive and attentive.



For a limited number of cases Article 6 of the new Rules of Procedure allocates a procedural power to the office: “In those cases ... where the European Council ... holds a vote, that vote shall take place on the initiative of its President” (Art. 6 Rules of Procedure). With this right the President may be able to move members who tend to remain in a minority position to work towards and accept a compromise. Without being directly used this rule might serve as a whip for the President to strengthen his role as a broker as this is a recurrent pattern in the Council (Hayes-Renshaw and Wallace: 2006: 147-149). However, the cases of qualified majority votes in the European Council are limited to decisions on electing or nominating office holders; normally “decisions of the European Council shall be taken by consensus” (Art. 15 (4) TEU).

The President also disposes of a further procedural power to move an item forward: “Decisions of the European Council on an urgent matter may be adopted by a written vote where the President of the European Council proposes to use that procedure” (Art. 7 Rules of Procedure).

For pursuing this integrative function the President’s most valuable asset is the reputation to be ‘an honest broker’ which means that he is not an involved and concerned party in a conflict of interest. This person not holding “a national office” (Art. 15 (6) TEU) is supposed to be more successful than a President who is under the suspicion to wave a national flag. The permanent President’s strong source of influence is to moderate between diverging positions without being seen as having some kind of bias for the country of his origin. For mediation the office holder can rely on the above-named procedural powers, a potential personal authority due to respect gained in former cases and a supply of expertise from the Secretariat General. Thus, the President can offer major services which are supposedly high in demand in peer groups like the European Council. The choice of the first office holder by the members of the club underlines this desire to have a President who might be especially good in consensus moderation given his experiences as prime minister of Belgium and – at least at the start – a reputation of being a personality with a high degree of modesty (see below). Following this argument a low profile serves to achieve a higher rate of performance.

Compared with Council presidencies of member states, especially those of the more resourceful ones, the permanent President’s weakness is the lack of concrete offers to unblock a stalemate. The motto “présidence oblige” does not work anymore for a President without a carrot to offer to unwilling members. Thus, the de-nationalized office holder might fulfil the

in-borne demand for leadership only to a limited degree. He does not dispose any resources or institutional opportunities for some kind of hegemonic leadership.

Beyond internal functions the President is supposed to act as the representative of the European Council and – at least partly – of the Union itself. As some kind of spokesperson the President's task is to inform the European Parliament after each session. This obligation takes up a long practice of the rotating presidencies. The EP was quite often not satisfied with these reports as the Presidents so far mainly repeated what they had already said to the press immediately after each session. The new office holder wants to “interpret correctly” the few rules for the relationship with the EP (van Rompuy 2010: 7). The informal relations will be an interesting subject for further studies.

One major function presidencies performed was the external representation of the European Union on the highest level. Thus, wearing the “EU hat” the President in office spoke with other world leaders. During the German presidency in the first half of 2007 the chancellor chaired four bilateral EU summit meetings, thus with the USA, Canada, Japan and Russia. The President of the European Council normally looked for a high visibility of this position and thus of the EU in general. Even leaders of larger member states regard their “EU hat” as important for power politics and for symbolic reasons.

In view of the new office many observers assess the respective task attribution as the most important one; it is worth to quote the whole sentence: “The President of the European Council shall, at his level and in that capacity, ensure the external representation of the Union (only (W.W.)) on issues concerning the common foreign and security policy, without prejudice (!! (W.W.)) to the powers of the High Representative of the Union for Foreign Affairs and Security Policy” (Art. 15 (6) TEU). Some observers – especially the media – interpret this task as enabling or promoting the President of the European Council to become some kind of “President for the Union” as such or even for Europe at large (see above).

The first office holder clearly defined his reading: “The permanent President is the person to receive and visit other Heads of state and government in the name of the EU” (van Rompuy 2010: 5-6). Although perhaps in some kind of rivalry with the Head of State or Government from the rotating presidency the President put himself into the top position. Part of this activity might be considered as a protocol task which might lead to a function which could be called “symbolic” as it represents the “dignified part” of the Union's polity. The office holder might – willingly or not – personalise some kind of EU identity.

Beyond such a protocol function my reading of the text leads to an interpretation which stresses the limits of this role as the *active* representative of the EU as an international actor. The President's powers to speak and act for the Union are restricted; in expressing the stand of the Union the office holder will be bound to the positions taken by the European Council (in that capacity) and he will only be able to speak on issues of the CFSP and – even in this part – only after clarifying the relations with the High Representative. In this interpretation the President will not be authorised to speak for the Union at many international conferences. It is remarkable that the new Rules of Procedure do not address the open conflict about the future attributions of tasks among the persons responsible for the EU's external representation. Comparing this narrow legal provision with some expressed demands for a “single voice” and “one face” of Europe in the world we clearly identify another “capability-expectation gap” (see for the term Hill 1993). Though designed to simplify the work of the institutions especially in its external representation, “the situation has become rather complicated ... and complex” (van Rompuy 2010: 6). Coordination has to take place between the permanent President, the Head of the rotating presidency, the new High Representative, the President of the Commission and perhaps also with the President of the Euro-Group whom the Lisbon Treaty has also officialised (Protocol No. 14, Art. 2). Though everybody “of course” does “not want a war of institutions” and does not see “any time for rivalries between institutions and their leaders” (van Rompuy 2010: 7), these new treaty provisions of the legal architecture leave much room to find a sustainable division of labour in the living architecture.

Another rivalry is obvious when we take a look at national capitals – especially of the larger countries. We expect governmental leaders to be very reluctant to give ‘their’ President an exclusive or even only a prominent role as an international player when they deem an international appearance as appropriate for themselves. To document this generally cautious attitude of member states, declaration 13 and 14, annexed to the final act of the intergovernmental conference, underline that the new provisions “do not affect the responsibilities of the member states as they currently exist”. Though both texts deal with the treaty provisions for the High Representative of the Union for Foreign Affairs and Security Policy and for the new European External Action Service the spirit of this interpretation leads to some kind of norms of appropriateness which might also limit the room for manoeuvre of the President in the external representation on issues which are considered as vital by member states.

Against this expectation a second scenario points at silent or hidden power resources based on being available for a longer period and developing one's own reputations. Given changes in national governments the office holders might gain a benefit from continuity, but exactly to prevent such an effect of gaining weight by experiences in the job the duration of the tenure was fixed to a maximum of five years (see above).

Beyond the treaty formulations we know that the role of the presidencies was never just limited to the normal role attributions of proposing goals, chairing meetings, achieving consensus and representing the Union vis-à-vis the outside world. In cases of crises politicians and media have turned their attention to the European Council and there especially to its President. The new office holder is similarly confronted with the expectation that this body under his guidance will be able to react or act adequately for the Union. External shocks and internal crises will stimulate a high demand for leadership in the Union which will then put pressure on the President to take up a role beyond the wording and – as I read it – the original spirit of the treaty text. This is some kind of “fall back” or “reserve” function of this position. So far leaders of the presidency countries liked to seize such opportunities of the office to develop their own profile vis-à-vis their domestic voters as well as in the European and international arenas. The performance in these emergency cases strengthened or weakened the reputation of the respective politician in the peer club.

As a procedural instrument for pursuing such crisis function the permanent President “shall convene a special session of the European Council” (Art. 15 (3) TEU). Therewith he disposes the right to call an emergency session of the key institution on short notice. In other relevant cases the President might even use the written procedure for getting a common position. For the permanent President the first international shock which is generally perceived to constitute a major challenge for the EU will be a considerable test for the leadership function of this new office. Events in the ‘real world’ may indeed lead to unintended and unexpected consequences. Success stories might upgrade his reputational authority but failures might also reduce his role to that of a mere chairperson.

### **3. Conclusions: Taking up perspectives for debate**

The legal words of the treaty provisions do not determine the factual behaviour of the office holder in the 'real world'. Based on theoretical perspectives we should discuss the way(s) the President might work in the day-to-day practice. At the beginning of his period in office the debate about possible roles are by nature speculative, but nevertheless useful.

One interesting and telling perspective to analyse and assess the working of the President of the European Council is to apply the principal-agent approach (see e.g. Kassim and Menon 2003, Pollack 2003, Pollack 1997). From the general assumptions of this approach we could pursue several readings of the office of the President of the European Council; they take up arguments from the political debate and are not necessarily contradictory.

One interpretation assumes that the newly installed person is the "agent" of the member states who are the "principals". This approach then also highlights a fundamental dilemma of member states between what I call the "problem-solving instinct" and the "sovereignty reflex" (Wessels and Hofmann 2008).

The inherent logics of this approach state that the Heads of State or Government as representatives of the 'masters' of the treaty delegate a set of tasks which they cannot pursue themselves adequately to some kind of office which is expected to handle the needs and demands of their institution. After negative experience with the functioning of their institution under the rotating presidency they hope to improve the working of their club. Thus this position is supposed to improve the performance of this body for increasing the problem-solving capability of the Union. However, they are also aware of a potential agent drift by which governments would lose control of the actions and the direction of the office holder whom they themselves put in such a top position. So they might worry that a dynamic person would incrementally move his profile in the direction of a dominating and charismatic leader. In pursuing the sovereignty reflex, the 'masters' of the treaty delimited the powers of the new office.

This reading might argue that the High Contracting Parties formulated this article with a mental reserve in mind based on what is generally called the "law of unintended or unexpected consequences" (see e.g. Tsebelis and Garrett 2001: pp. 360). As they want to prevent any development outside their own control they gave only narrow powers to their

agent. Thus the capability-expectation gap is the product of the dilemma illustrated by the principal-agent approach: Heads as members of their institution want to have a successful agent to serve their overall purposes, but as national leaders they do not want to give this agent too strong powers for achieving this goal. Following this argumentation, a low profile is considered as sufficient to increase the procedural efficiency. Following this approach the treaty formulations thus indicate that the members of the European Council looked for a 'manager', not for a 'master' of the procedure.

A second reading is closely linked. It starts from the worries of smaller states. Following the history of the proposal by the ABC group and the proposal by Giscard d'Estaing (see above) they assumed that the President of the European Council would be the agent of the bigger countries as principals. They saw a specific logic at work: This office would not only or even mainly act to facilitate the organisation and working of the European Council itself, but by using his function as the "master of the procedure" – related to the "preparation" and especially "continuity" – the President was perceived as an agent installed by the "big" to control other EU institutions especially the European Commission and perhaps also the Council of Ministers. To prevent the weakening of the Commission was seen as defending the interests of smaller members and their own role. Following this line they were able to constrain the activities of the President by a strong institutional straitjacket. The procedural strings on the presidency should thus prevent any major shift of the institutional equilibrium towards the European Council and its presidency.

Both readings can be seen as documented by the election of the first President. The European Council did not elect any of the more experienced and prominent candidates who were mentioned before: In the assumed competition between the former British prime minister Blair with his international profile and the long-serving Luxemburg prime minister with his European charisma, the Belgian prime minister was finally elected as a widely unknown candidate in European and international affairs. With short term experiences in the business of running the European Council and apparently limited personal political ambitions his peers apparently wished to reduce the risk of unintended consequences which they might have expected by electing a more experienced personality. In line with the role as formulated in the treaty text the members of the European Council preferred a person who – at least at the start – had only a low key profile. They seem to expect a modest way to exercise the enumerated tasks and perform the implicit overall functions without developing an

independent reputation which could reduce their own reign. The characteristics of this first office holder fit adequately to the profile which the treaty provisions design.

The nomination of a person from a smaller country reinforces the arguments of the second reading. It gives evidence to the worries of smaller countries that a personality from a bigger country might tend too strongly to contact just few capitals of the larger countries.

Thus in both variations of the principal-agent approach the legal wording and the choice of the first office holder documents the dilemma of national leaders who then opted for a solution which can be generally characterised as “intergovernmental” as it preserves a large role to national decision-makers.

With this interpretation of the treaty provision and the appointment of the first office holder the analysis is not closed but just has one point of departure and orientations for studying the living performance of the person in the chair. Real world events might upgrade the position in a way which the treaty formulations tried to prevent. With clear intentions or perhaps also following some fundamental instincts implied in his role the office holder might push or be pulled to pursue a more active role. External shocks and internal crises might lead to a higher demand for an outspoken leadership signalling an agent drift. In such a scenario European citizens, the media but also members of the European Council itself expect and hope that someone takes up responsibilities in constellations for which the treaty did not foresee any or only low key responsibilities. Furthermore, inbuilt developments might upgrade his position. The President might use neo-functional spill-over pressures or federalist demands to de facto extend the pursuit of his tasks. Thus we might witness an evolution to a more supranational role interpretation of this office holder than the treaty provision would let us expect.

As examples in institution building demonstrate, the first years of exercising the role and the respective performance will set precedents for the profile, performance and the direct and indirect power of the real world role. The acts and activities of van Rompuy will test the opportunities and constraints of his office. Thus the empirical research just begins.



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