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## Institutional Innovation in the EU: The Presidency of the European Council (ARI)

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**Theme:** Herman Van Rompuy's incumbency is likely to define the future content and scope of the position of President of the European Council.<sup>1</sup>

**Summary:** The short period of time that has elapsed since the designation of the first permanent President of the European Council makes it difficult to make any assessment so far. However, beyond the formal aspects, how the incumbent performs will be decisive for the posts future consideration. Furthermore, this initial moment is critical in that it will probably set the course to be followed in the future. How Van Rompuy manages is likely to affect the position's definition and scope as much as Javier Solana's incumbency shaped the post of High Representative.

### Analysis:

#### *The Organ's Genesis*

Differently to other institutional innovations in the EU, the Presidency of the European Council established by the Treaty of Lisbon has not been long in the making. It appeared on the agenda at the beginning of the Convention on the Future of Europe. According to Peter Norman's account of events (Norman, 2004, p. 138), Jack Straw was the first to moot the idea that rotating chairs at the European Council should be considered.<sup>2</sup> Subsequently, in March 2002, Jacques Chirac mentioned for the first time a 'President of the European Union' (*sic*), arguing that the current system of rotating Presidencies would not be viable in an enlarged Union and, hence, that the EU's leaders should elect a person to hold the office for a sufficient period of time and to represent the Union.<sup>3</sup> The Spanish Prime Minister José María Aznar added his own views shortly after: the President should not hold national office, should preferably be a former head of state and/or government and could be helped by a team of five to six heads of state on a rotating basis.<sup>4</sup> In his view, the powers of the European Council should be increased with some additional prerogatives such as the capacity to dissolve the European Parliament (EP) following the Commission's initiative. Finally, in November 2002, Tony Blair criticised the system of rotating Presidencies, claiming it had reached its useful limit and stood in the way of Europe being taken seriously, at the same time as limiting the development of a common foreign and security policy.<sup>5</sup> The proposal for a President of the European Council became known as the ABC in reference to its three proponents.

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<sup>1</sup> I am grateful to Richard Corbett for his comments on an earlier version of this paper.

<sup>2</sup> Speech in The Hague, 21/II/2002, [www.fco.gov.uk](http://www.fco.gov.uk).

<sup>3</sup> Speech 6/III/2002, [www.elysee.fr](http://www.elysee.fr).

<sup>4</sup> Speech at St. Antony's College, Oxford.

<sup>5</sup> Speech in Cardiff, 28/XI/2002.

At the Convention, the British representative, Peter Hain, pushed the case forward. Since the initial informal proposal hinted at a very powerful figure with a strong presidential character, less subject to parliamentary control, the opposition came from the smaller states and the EP's more federally-minded members. The former feared the domination of the big member states, while the latter mistrusted the lack of EP control and the proposal's hyper-presidential design. The maintenance of a rotating Presidency was defended on the grounds of its proximity to the Union's citizens and its socialising effects, while the well-run Presidencies of the smaller member states (such as Finland's in 1999 and Portugal's in 2000) were mentioned as a counter to the argument that the system was inefficient.

The first draft of the Convention mentioned the possibility of a Presidency of the Council and when later on a Franco-German paper on institutions in January 2003 picked the issue up, the most important governmental players had already been won over. The Franco-German paper<sup>6</sup> already contained the key aspects that appeared later on in the Treaty. Nevertheless, there was firm opposition from figures such as the German Minister of Foreign Affairs Joschka Fischer, the Christian-Democrat and Liberal leaders Hans-Gert Pöttering and Andrew Duff and the Commission itself. Criticism was mainly levelled at the weakening of the Commission's role, the growth of intergovernmentalism to the detriment of supranationalism, the eventual dominance of the big states and the continuing external cacophony that the new post would entail.

#### *Designation of the President*

As with other EU institutions, the post's final shape is the result of a compromise between different views. Two features are particularly important in establishing the institutional profile: the rules for the designation of the President and the functions assigned in the Treaty and specified in the European Council's rules of procedure.

The rules for electing the President are the basis of the Presidency's institutional legitimacy. The constituency directly electing the President is very limited: 27 heads of state and/or government with no direct connection to the citizens or to the institution directly elected by them –ie, the Parliament–. In this respect, the process is more reminiscent of the procedure for appointing the chairman of an institution than for the President of the Union (as the post has occasionally been termed). Some of the proposals discussed in the Convention specified that the President should be a former Prime Minister. Although the formal requirement never made it to the Treaty, in practice it would seem that such a rule will be applied in the selection process.

The designation requires a two-thirds majority of the members of the European Council. The fact that unanimity is not necessary could stimulate concerted unilateral action by some governments and, in certain cases, could have the effect of alienating the support of certain Prime Ministers. In practice, however, it would be difficult to envisage a situation where there is no consensus in the sense of a reasonable degree of agreement and the absence of firm opposition to a winning candidate.

Maintaining a balance among the top EU posts is also one of the selection criteria. Declaration 6 of the Treaty of Lisbon establishes that when electing the President of the Commission, the President of the European Council and the High Representative, the need to respect the Union's geographical and demographical diversity must be taken into

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<sup>6</sup> CONV 489/03.

account. The EP demanded that criteria based on political and gender balance were also to be taken into consideration when selecting candidates for these positions<sup>7</sup> and these requirements also to have affected the selection.

The first President, Herman Van Rompuy, has been elected within a broader process that has also seen the appointment of the President of the Commission and the Minister of Foreign Affairs (Baroness Ashton). He was not among those considered most likely to get the job, with Tony Blair always appearing as one of the top contenders. However, the latter's candidature seem unacceptable to broad sectors of public opinion and some European leaders.<sup>8</sup> The appears to be the result of deal between Sarkozy and Merkel in which the opinion of other leaders was not taken into account, prompting critical reactions in certain countries (Poland) although the final decision seems to have been adopted by consensus.<sup>9</sup> Some press reports claimed Van Rompuy's designation was linked to his opposition to Turkey's accession to the EU.

Incidentally, Van Rompuy had toured several capitals (Dublin, Vienna, Bratislava, Budapest and Berlin) as part of a grand tour to prepare the 2010 Belgian Presidency. This meant that several Prime Ministers got to know him better while, at the same time, he presented his views on the EU agenda.

The appointment was presented as an ideological agreement within the Christian-Democratic family while the Socialists were left to nominate the High Representative. Being the largest group by far among the EU's current leaders (and in the EP), the outcome seemed natural and whether this was simply a useful alibi to cut off Blair or an honest ideological alignment remains a moot point. In any case, the ideological majority in the European Council during the President's mandate (two-and-a-half years, extendable to five) depends very much on national electoral cycles and it is not totally unlikely for there to be different initial and final ideological majorities in the European Council during Van Rompuy's mandate.

#### *Functions of the Presidency*

The President's functions are, by and large, the formalisation of the implicit functions traditionally associated with the rotating Presidency, and therefore have to be considered against the substantive increase in the role of the European Council itself after becoming an EU institution (for instance, the possibility of adopting decisions on the EU's external action, the imposition of sanctions to Member States that violate EU values or the examination of the right of withdrawal from the EU, just to quote a few). In his speech to the EP on 25 February 2010, Van Rompuy also presented his views on these functions.<sup>10</sup>

The functions of the President are spelled out in article 15.6 (Consolidated version) and further specified in the rules of procedure of the European Council (approved on 2 December 2009). These essentially repeat the wording of the treaty but add new features to the coordination functions (one of the new post's main weaknesses).

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<sup>7</sup> 'Draft Report on the impact of the Treaty of Lisbon on the development of the institutional balance of the European Union (2008/2073(INI)) Committee on Constitutional Affairs. Rapporteur: Jean-Luc Dehaene Doc. 2008/2073(INI) 26.1.2009'.

<sup>8</sup> The magazine *Foreign Policy* listed as many as 11 contenders, but Van Rompuy was not one of them (Annie Lowrey, 'European Idol', *Foreign Policy*, 9/X/2009).

<sup>9</sup> Ian Traynor, 'Franco-German deal on European Council President Causes Anger', *The Guardian*, 18/XI/2009.

<sup>10</sup> Speech by Herman Van Rompuy, President of the European Council at the European Parliament Brussels, 25/II/2010, PCE 32/10, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/113028.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/113028.pdf).

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(a) Agenda Setting and Management. The largest number of functions –which should rely to a great extent on the President’s personal skills and his ability to engage and mediate between members of the Council– refer to the internal management of the European Council. These include:

- Convening the meetings.
- Chairing and driving forward its work.
- Facilitating cohesion and consensus within the European Council.

Additionally, the rules of procedure (article 6.2) provide for the possibility of the President proposing a vote to substitute the consensus method.

These functions are at the core of the new organ and Van Rompuy has made efforts to further define his role: while he concedes that the President does not have an executive character since he only has only been given the power to translate the agreements of the European Council, he argues that the possibility he has of preparing and following up meetings goes beyond the functions of a mere chairman.<sup>11</sup>

(b) Institutional Coordination. Although this is a key function, the range of instruments it is provided with seems insufficient. The Treaty assigns the President the function of ensuring 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. The rules of procedure specify a little further this function: thus, the President is mandated to held regular meetings with the Presidents of the Council and the Commission (art. 2 RP). Additionally, the agenda of the meetings of the European Council and the draft conclusions are to be prepared by the President in cooperation with the General Affairs Council (art. 3.1 RP).

One of the unclear points of the design is the relationship between the Prime Minister of the country holding the rotating Presidency and the President. While the respective ministers of the rotating Presidency have a clear role as presidents of the respective sectoral councils, the Prime Minister is the big loser in the new design. In fact, his only role is described in the rules of procedure (not the Treaty), a fact that in itself downplays it. Thus, the Prime Minister of the country holding the rotating Presidency, named as the ‘member of the European Council holding the rotating Presidency’ reports to the European Council (art. 4.1 RP). He retains the function of presenting the priorities of the rotating Presidency to the EP (art. 5 RP). Perhaps the most significant (potential) function is acting as a substitute for the President in the event of illness or a similar situation (art. 4.2 RP).

Resolving this issue may have been greatly assisted by the attitude of the first rotating Presidency under the permanent President, helping to consolidate the new post. The Spanish Prime Minister declared a number of times that he was prepared to yield the leading role to the President and, at least in the February summit, he did so. Rodríguez Zapatero did not convene the informal meetings during the European Council and only participated in the first of them (with Durão Barroso, Van Rompuy, Trichet and Juncker). While this set the course, it will be necessary for this practice to continue if the permanent Presidency is to be a success, although it is easy to believe that certain strong European personalities might not be so willing to accept a secondary role.

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<sup>11</sup> Speech at the EP.

(c) Reporting to the EP after every session of the European Council. Although this could be considered a coordination function, it has a potentially wider political meaning. Strictly speaking, this responsibility relates to the sessions held with the rotating Presidencies. However, the EP's leverage might be greater: since the President is a specific EU post and not an 'in-office Prime Minister', the Parliament could be tempted to demand political responsibilities to the European Council. Van Rompuy anticipated the commencement of this function and, although the February European Council was an informal meeting with no conclusions, he took the opportunity to report to the EP when he outlined the parameters of his relationship with the EP. He argued that his presence was not appropriate in *ad hoc* plenary sessions and that he would not report on informal meetings (the one held in February being the exception) in order to avoid a work overload, since between six and 10 European Council meetings could be expected each year. In turn, he initiated contacts with the EP group leaders and a monthly meeting with the EP President.

(d) External representation. The attribution of functions of external representation to the President does little to clarify the Union's traditional external cacophony. The EP suggested a division of functions between the three posts with a foreign dimension (President of the European Council, President of the Commission and High Representative) along the following lines:<sup>12</sup>

- The President of the European Council represents the Union at the level of Heads of State or Government in matters concerning the CFSP, but does not have the power to conduct political negotiations in the Union's name, which is instead the task of the High Representative/Vice-President; he may also be called upon to fulfil the specific role of representing the European Council at certain international events.
- The President of the Commission represents the Union at the highest level in relation to the Union's entire external relations or to any specific sectoral policies falling within the scope of the Union's external action (foreign trade, etc); the High Representative/Vice-President or the competent/mandated Commissioner may also assume this role under the Commission's authority.
- The High Representative/Vice-President represents the Union at the ministerial level or at international organisations concerning CFSP matters (negotiation and execution) or the Union's overall external action, as well as in other specific sectors of the Union's external action (but is then subject to the decisions of the College of Commissioners); he also assumes the functions of external representation as President of the Foreign Affairs Council.

Van Rompuy's action so far seems to be based on assigning tasks by levels rather than by specific areas or topics. In his speech to the EP, he anticipated that meetings with Heads of State and/or government came under his remit whilst meetings at the ministerial level would be Ashton's. In fact, Van Rompuy has played the role of host to heads of state and/or government from third countries visiting EU institutions in Brussels.

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<sup>12</sup> Dehaene Report, *op. cit.*

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### *Performance under Stress*

Van Rompuy began his term of office in the midst of an economic crisis and he has responded with initiative and a clear sense of purpose. He has visited all of Europe's capitals and has repeated systematically what he believes to be the EU's two priorities: the possible strategies to deal with the economic crisis and climate change. To address these issues he unexpectedly convened an informal extraordinary European Council for 11 February.

As the crisis turned towards Greece's fiscal problems, there were two effects on the President's agenda: a new problem was introduced with a certain degree of urgency and additional players (both institutional and governmental) were prompted to play a role, somewhat reducing the President's visibility and, at the same time, increasing the demand for coordination while finally reducing the time available for the initial agenda. Any assessment of how the President has performed so far must therefore be considered against this background.

The fact that the Greek fiscal crisis was likely to mainly affect the euro area led to the activation of the monetary union's governance mechanisms. The main one is the Eurogroup, which has its own President (currently Juncker, the Luxembourg Prime Minister), who rapidly convened consultations (a tele-conference) between the 16 Finance Ministers of the zone just before the European Council. But the ECB also played a leading role and participated in some of the meetings at the European Council.

National players were brought in with unexpected intensity. Germany particularly feared the effects of an eventual Greek bailout (and its spill-over effects on other EU-area members) not only because of the exposure of some of its banks to Greek bonds but also because of the possible effect on the entire euro area. Whether she wanted to or not, Angela Merkel was prompted to act and a summit with Sarkozy offered them the opportunity to voice what was perceived as the European position on the issue. Prior to the summit, the Greek Prime Minister attended a bilateral meeting with Sarkozy in Paris on 11 February. Apparently, they discussed the agenda of the European Council meeting. Sarkozy took on a mediating role by telephoning Merkel and Van Rompuy. Thus, the situation brought to the fore the traditional Franco-German partnership and this, again, may have downplayed the President's role.

Thus, the context (ie, the Greek drama) conditioned the agenda and the Franco-German leadership and Eurogroup Presidency somehow diminished Van Rompuy's visibility. The President had to rapidly adjust to a different environment: instead of informal discussions on the scheduled topics, what was expected was tough bargaining on the Greek question. Apparently, he managed the situation well. First, he managed to liaise with the President of the Eurogroup despite the fact that the Lisbon Treaty did not contain provisions for this specific relationship. Here, experience and personal relations would have been the cue for the relationship between the two. Secondly, Van Rompuy played an important role in reconstructing the consensus: according to Peter Ludlow, Angela Merkel rejected the eurogroup Finance Ministers' draft declaration barely 15 hours before the Council was due to begin.<sup>13</sup> Then, he mounted a well-camouflaged rescue operation whose central piece was producing a finely-crafted statement<sup>14</sup> that satisfied Angela Merkel's political and constitutional reservations but that, at the same time, offered the Greek Prime

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<sup>13</sup> Peter Ludlow, *Eurocomment Briefing Note*, nr 7.6.

<sup>14</sup> See *El País*, 14/II/2010, p. 21.

Minister a glimmer of hope. Before the plenary started, Van Rompuy hosted the two preparatory meetings: one with Juncker, Rodríguez Zapatero (the rotating President), Durão Barroso and Trichet, and a second one that brought in the political leaders and actors (ie, Sarzkozy, Merkel, Papandreu, Van Rompuy, Trichet and Durão Barroso).

According to Peter Ludlow, the statement –that Merkel, Papandreu and Sarkozy accepted without amendments– was much more than a mere stop-gap solution, since it redefined the terms of the debate about what could or could not be done and added fresh momentum to the European Council’s increasingly intense discussions about economic government in Europe. Above all, it demonstrated that Van Rompuy was in charge. Consensus can therefore be attributed to his personal skills. Ludlow’s comment is that Herman Van Rompuy’s first European Council as President turned out to be Van Rompuy’s Council. This was in some respects rather surprising, because the Greek crisis hijacked the meeting and reduced the time available for the discussion of the Council’s original agenda to little more than two hours. It was precisely the crisis that made both the meeting and the man, however.

**Conclusions:** The new post has three real advantages: (1) its permanence; (2) the full-time dedication of its incumbent; and (3) the election process. Its functions have brought about little innovation and it will be the performance of its first incumbent (probably lasting five years) that will decisively shape the post’s contents and scope. First indications show that Van Rompuy’s political skills have allowed him to adapt the changing environmental demands but also that his ability to conduct a long-term agenda could be highly contingent upon unforeseen circumstances. In this second scenario, a managerial rather than political role can be expected.

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