

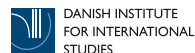


Think Global – Act European

# The Contribution of 14 European Think Tanks to the Spanish, Belgian and Hungarian Trio Presidency of the European Union

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## INSTITUTIONS

# Delivering on the Institutional Reform of the Lisbon Treaty and Looking beyond

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### Challenges of governance in the Lisbon Treaty framework

The new institutional set-up is the biggest promise of the Lisbon Treaty and the much awaited result of a reform that it has taken nearly eight years to approve. High hopes and expectations will be associated with the new institutional framework irrespective of the sense of exhaustion that accompanies the last leg of the Treaty ratification process. The key aspect will be the functioning of the new triad of the permanent President of the European Council, the President of the European Commission and the High Representative (HR) for Foreign Affairs and Security Policy as well as their relationship with the rotating presidency. The Treaty is far from providing all the answers as it creates a hybrid system with many intrinsic relationships still to be sorted out. It is the practice of the current three presidencies that will determine the functioning of the Lisbon framework.

The key question mark lies over the new permanent President of the European Council and the role he manages to carve out for himself. The permanent President is meant to “chair [the European Council] and drive its work” (Article 9b). On the basis of the work of the General Affairs Council, he shall also ensure the “preparation and continuity of the work of the European Council in cooperation with the President of the Commission”. Finally, he “shall, at that 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 HR of the Union for Foreign Affairs and Security Policy”. The way that President van Rompuy has launched his term in office, calling an extraordinary European Council on economic issues in February 2010, signals an activist approach with a strong commitment to shaping the EU agenda.

The HR receives a stronger mandate and role in the system as chair of the Foreign Affairs Council but the relationship with the rotating presidency and the permanent President of the European Council will also need to be worked out. The rotating presidency remains in charge of the new General Affairs Council and COREPER and by those means will continue

to have a bearing in the area of external relations. The personalities of the first duo of top leaders as well as the operational code that will be agreed at the time of the entry of Lisbon Treaty into force or immediately after will guide the eventual outcomes. One can assume that the first two-and-a-half year term of the President of the European Council will be a period of many adjustments. The rotating presidency will play the role of a critical intermediary given its responsibility for the work of the Council formations and especially the General Affairs Council as well as COREPER (Committee of Permanent Representatives). New competencies of the European Parliament will obviously also be an element of the equation. A pattern of cooperation, consultation and coordination will be indispensable.

The new institutional set-up will require a fresh discussion about the relevance of the programme of the Trio of successive Presidencies and their efforts to coordinate among themselves. The Brussels-centric view suggests that there will be less and less rationale for cooperation between the Trio to continue. On the other hand, the capitals will undoubtedly cling even more strongly to the remaining vestiges of power. The work of the Trio could be helpful in that process and is likely to be maintained.

The spirit of the Lisbon Treaty points to a functional system within which the High Representative and the supporting European External Action Service (EEAS) are given a clear role in the new chain of command on foreign policy issues. The one issue that still remains to be resolved is the chairmanship of the Council's preparatory bodies. Declaration 9 annexed to the Final Act makes it clear that the presidency of the COREPER is to be chaired by the rotating presidency and the Political and Security Committee (PSC) is to be chaired by a representative of the HR. Article 2 of the Declaration indicates that the preparatory bodies of the Foreign Affairs Council configuration should not be chaired by the rotating presidency ("the chair of the preparatory bodies of the various Council configurations, with the exception of the Foreign Affairs configuration, shall fall to the member of the group chairing the relevant configuration, unless decided otherwise in accordance with Article 4"). In its note to COREPER / Council, the Presidency has put forward a number of suggestions as to the chairmanship of the respective working parties and preparatory bodies (Presidency note on the state of work on the Chairmanship of the Council's preparatory bodies – Foreign Affairs Configuration, Brussels, 22 October 2009, 14852/09). These envisage that the rotating presidency would remain in charge in the trade and development area while the geographic and Common Security and Defence Policy (CSDP) related preparatory bodies will be chaired by representatives of the HR. A transitional period of 6-12 months was proposed during which the rotating presidency would remain in charge. Horizontal preparatory bodies should be chaired by a representative of the HR except for RELEX Counsellors (Working Party of Foreign Relations Counsellors), COTER (Working Party on Terrorism), COCON (Working Party on Consular Affairs), COJUR (Working Party on Public International Law) and COMAR (Working Party on the Law of the Sea), which should be chaired by the rotating presidency.

## The European External Action Service

The bringing into life of the European External Action Service is perhaps the greatest single promise of the institutional order introduced by the Lisbon Treaty. In line with Article 27 (3) TEU, the EEAS is meant to assist the HR in fulfilling his mandate. Its formation is bound to be the most extensive merger operation ever undertaken in Brussels and a taste of things to come if the experiment is successful. The EEAS is to comprise officials from the General Secretariat of the Council and the Commission as well as seconded from the national diplomatic services in the member states. The activities of the EU Special Representatives will also fall within the area of responsibility of the EEAS.

The October 2009 European Council invited the future HR to present a proposal for the organisation and functioning of the EEAS as soon as possible after the entry into force of the Lisbon Treaty, with a view to its adoption by the Council at the latest by the end of April 2010. It should be a service of a *sui generis* nature separate from the Commission and the Council Secretariat with autonomy in terms of administrative budget and staff. Officials from all three categories of personnel will be equally treated and will be able to assume all positions within the Service. With their status as temporary agents, staff from the member states will be in the same position as staff coming from the two other sources of origin.

The preparatory work on the EEAS has been carried out by the Presidency, the member states, the Commission and the Council Secretariat and endorsed by the European Council. It has already been decided that the scope of the EEAS should allow the HR to “carry out his / her mandate as defined in the Treaty”.<sup>1</sup> In order to avoid duplication and ensure cohesion, the EEAS is also to assist the President of the European Council and the President of the Commission in their external relations functions. Crucially, it has also been decided that the EEAS will be composed of single geographical and thematic desks bringing together tasks performed separately by the Commission and the Council Secretariat today. They are meant to play “a leading role in the strategic decision-making”.

The red lines for the future scope of the EEAS have been drawn by reference to enlargement, trade and development policy as the continued prerogative of the Commission. On the other hand, the CSDP structures, including the Crisis Management and Planning Directorate (CMPD), the Civilian Planning and Conduct Capability (CPCC) and the Military Staff (EUMS) will be integrated into the EEAS. The Situation Centre will also be part of the EEAS while continuing to service the European Council, the Council and the Commission.

Operational problems are bound to be experienced in the field of financing where the HR is expected to prepare actions related to the CFSP budget and the Instrument for Stability

1. Presidency report to the European Council on the European External Action Service, Brussels 23 October 2009, 14930/09.

but the decisions will be taken by the Council and the Commission respectively with the Commission running the technical implementation. Achieving clarity between the Commission and the EEAS on the division of labour with respect to the geographical and thematic instruments will be extremely important.

Undoubtedly, cooperation and consultation between the HR, the EEAS and the relevant directorates in the Commission as well as EU delegations will be crucial throughout the programming and implementation activities. Consultation will need to be streamlined with the services of the Commission which have external responsibilities. The EEAS will also have to explore ways of strengthening communication with the European Parliament, given that the HR will need to regularly consult the Parliament on key CFSP issues.

The EEAS will need to strike an equilibrium between the different components of the service, with at least one third coming from the member states, including in senior positions and in delegations. It is already decided that the HR will be the appointing authority while representatives of the member states, the Commission and the General Secretary Council (GSC) will be associated in the recruitment procedure. There will be a rotation inside the service, including between Brussels and the delegations, between the EEAS and the national diplomatic services as well as between the EEAS and the Commission and the GSC. This will require a solid degree of joint training.

Transitional arrangements with respect to the financing of the EEAS will be a challenge. The EEAS should aim at avoiding unnecessary duplication of tasks, functions and resources with other structures. Apart from direct transfers from the Commission and the GSC, transformation of temporary posts in the Commission and the Council Secretariat will be necessary, as will the filling of posts freed up through retirement and other means. The October 2009 decisions speak of “a limited number of additional posts for member states temporary agents” that will need to be financed within the current financial perspectives.

The entry into force of the Lisbon Treaty will transform the existing Commission delegations into EU delegations under the authority of the HR and as part of the EEAS structure. They will contain both regular EEAS staff and staff from the different Commission services, although in a clear chain of command under the Head of Delegation. Since delegations will take instructions from both the HR and the different services of the Commission, there will continue to exist a margin for disagreement. The Delegations should stay in close touch with the diplomatic services of the member states. There should be an active exchange of information between the EEAS, the delegations and the member states. The HR is meant to draw up a roadmap and timeframe for upgrading the EU delegations in close coordination with the incoming Presidency, so that they assume the role and functions of the rotating presidency in terms of local coordination and representation. The EU delegations should play a supporting role when it comes to diplomatic and consular protection of Union citizens in third countries. Modalities for the EU delegations to be accredited to international organisations still need to be worked out.

The European Council has already endorsed a roadmap for the preparation of the EEAS which envisages three stages:

- From the entry into force of the Treaty to the adoption of the Council Decision on organisation and functioning of the EEAS, when preparatory work should be carried out. A small preparatory team composed of representatives of member states, Commission and the GSC should assist the HR in this function right from the start.
- From the adoption of the Council Decision onwards, with the first status report in 2012.
- Several years into the functioning of the EEAS, when a review could be carried out (most likely in 2014).

## The future of the Treaty reform in the European Union

Whatever the challenges of implementing the provisions of the Lisbon Treaty, it may be the last for a generation. One reason for which it has been so difficult to agree is its all-embracing character. The Lisbon Treaty is a typical revision treaty which aims to modify aspects of nearly all areas of the EU's activity. It reflects the conclusion that was drawn from the failed French and Dutch referenda on the Constitutional Treaty, that citizens did not accept a high level of ambition for Europe. As a result, a lot of attention went into pricking the bubble of Europe's constitutional aspirations, much less into having the public on board.

It seems that holistic Treaty reforms, in the course of which all issues are open and re-examined, are no longer feasible in the EU of twenty-seven members with the requirement of ratification by all. They are an invitation to all sorts of populism which exploits the complexity of the European process. The answer is not only to try to write treaties in a more understandable fashion. As a community of law, the European Union needs contracts to be concluded between the member states. These are bound to be complex and unreadable for the general public.

The way forward for the EU is to accept the current Treaty base as having constitutional nature and envisage thematic treaties comparable to the United State style constitutional amendments, rather than today's fully-fledged Treaty reforms. Surgical precision will help the public debate and improve understanding of what Europe is trying to achieve. Future Treaty reforms should be about single issues such as energy and climate, or foreign policy. This would mean referring back to the point of departure and in particular to the European Coal and Steel Community, which had a clear emphasis on an area of vital importance to Europe's future at the time.

Single issue treaties would contribute to better communication with the citizens by tackling one question at a time. Such an approach would make life difficult for governments since they can now pick and choose what aspects of an EU treaty they want to communicate to

the citizens. As a result, public debates in the member states often run in opposite directions. Single issue treaties would mean that the citizens are taken seriously and considered partners in the discussion. Importantly, the integration project would advance on substance rather than merely on the institutions as in the last decade. A commentator said after the 1997 Treaty of Amsterdam was passed that “fudge is the necessary condition of progress in Europe”. This does not need to be the case. Fudge is not the condition of progress; it is a condition of regression. The sooner we realise it the better.

## **Recommendations to the Spanish, Belgian and Hungarian Trio Presidency**

The first Trio Presidency taking place under the Lisbon Treaty has a special responsibility for implementing the document’s institutional innovations and living up to its spirit. It needs to agree with the new permanent President of the European Council and the reformed HR the new *modus operandi* and the functional division of labour. The patterns of consultation, cooperation and coordination that emerge in the course of 2010 and 2011 are likely to be binding for future presidencies.

The Trio Presidency should assist in the creation of a strong EEAS. The logic of this institutional innovation points to a Service with a vital role to play, both in representing the EU externally and in forging a strategic culture in the EU. The Trio Presidency should ensure that the establishment of the EEAS takes place in a conducive environment, not troubled by excessive rivalry with the other institutions and with the member states.

The issue of the future of Treaty reform in the European Union should not be cast aside as irrelevant or unnecessarily divisive. The EU needs a serious discussion about the methodology of improving and modernising its legal basis. The ground for this needs to be prepared in the near future, regardless of the sense of exhaustion surrounding the Lisbon Treaty.