The elusive quest for continuity? Legislative Decision-Making and the Council Presidency before and after Lisbon

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One of the major innovations in the institutional set-up of the European Union enacted by the Lisbon Treaty was the establishment of an elected Presidency to head the European Council. This office was set up to ensure the coherence and continuity of the Council’s work. Indeed, for decades observers have lamented the lack of an office ensuring the continuity of the Council’s work, not least in the legislative field. The reform of the Council and the question of a longer term of the Council Presidency was also an important topic in the Convention on the Future of Europe, which laid the groundwork for the Lisbon Treaty. The result was, however, a hybrid. While the Presidency of the European Council was extended, the Presidency at the ministerial and working group level continues to rotate every six months between member states (with the exception of foreign policy). This change is unlikely to markedly increase the continuity of the Council’s legislative activities.

Since its founding in the 1950s, the European Union has faced an increasingly complex legislative environment. The scope of its competences has increased drastically, its membership has risen nearly fivefold and the set-up of its legislative decision-making procedures has become more sophisticated. In light of the near-doubling of its membership in 2004, the Union embarked on a major overhaul of its institutions. Tony Blair aptly summarized a common feeling before enlargement: ‘… we cannot do business like this in the future’ (cited in Norman 2005: 16). Throughout the history of the Union, the Council of Ministers has been the crucial linchpin through which all legislation has to pass to be enacted. Consequently, all discussion on institutional reform included changes to the workings of the Council.

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1 For ease of exposition, I am referring to both the European (Economic) Community and the European Union established by the Maastricht Treaty as “European Union”.

Final Meeting
June 5, 2012, Brussels

DECISION-MAKING IN THE EUROPEAN UNION BEFORE AND AFTER LISBON (DEUBAL)

Policy Brief

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A report of the Secretary-General in June 2001 on preparing the Council for enlargement commented on the “lack of continuity witnessed between Presidencies” due to the “temptation experienced by each Presidency to stamp their particular priorities on the Union during their stewardship” (Council Document 9518/01: 12). This temptation would increase as enlargement would increase the interval between presidencies of a member state: “This will lead to sharp swings in the Union’s priorities from one six month period to the next, with the attendant risk of undermining the coherence, continuity and impact of Union policies.” (Council Document 9518/01: 12). Extending the term of the Presidency to one year was a potential remedy that has been proposed repeatedly in this context. Even before the discussions on treaty change started, several changes were agreed upon to increase the continuity of the Council’s work at the Seville summit in (Council Document 13463/02: Annex 2). In particular, it made a number of changes regarding the programming of Council activities and the cooperation between presidencies. The European Council would issue a multiannual strategic program (covering three years). In line with the multiannual program, the two Presidencies concerned would draw up an annual working program, including an indicative agenda for the different Council formations for the first half of the year. An indicative agenda for the second half of the year would be presented, after consultations with the following Presidency, before the beginning of July. The annual program would be discussed in the General Affairs Council. If a dossier would primarily be discussed during the following Presidency term, a member state could take over the chairmanship of working parties concerned with that particular dossier in the six-month period preceding its term in office. The presidency was charged with ensuring the smooth conduct of Council session and for that purpose could limit the time of speakers, set the order of speakers, ask delegations to present their proposals in writing before a given date and ask delegations to prepare a joint proposal if their positions were similar or close. The debate in the Convention on the Future of Europe also took up the issue of ensuring continuity in the work of the Council. The option of extending the term of office of the Council Presidency was discussed, but due to concerns regarding the equality of member states ultimately rejected (Bunse, Magnette, and Nicolaids 2005). Instead, the new office of an elected President of the European Council was adopted in the Lisbon Treaty while the rotating Council Presidency stayed in place. A previous innovation - implemented by a change of the rules of procedures in 2006 - was also adopted in a declaration annexed to the Lisbon Treaty, namely the team presidencies of three member states, covering an eighteen month period.

There is broad agreement in the literature that the Council Presidency provides the member state that is holding it with an opportunity to press policy initiatives and influence decision outcomes, subject to some constraints (Dinan 1999: 241; Hix 1999: 66; Kirchner 1992: 80 and 86; Peterson and Bomberg 1999: 34-5; Schout 1998; Sherrington 2000: 41; Westlake 1999: 46-7 and 63). By deciding on the format, frequency and content of (formal and informal) meetings the Presidency might be able to prioritize topics (Kirchner 1992: 90-1 and 106; Tallberg 2003, 2004). Within the meetings the Presidency can fast-track items by going into bilateral talks (Hayes-Renshaw and Wallace 1997: 147) or use indicative votes to put pressure on recalcitrant member states (Westlake and Galloway 2004: 41). The Presidency’s clout is constrained by the effects of external events, the need for consensus (or a sufficient majority) to adopt laws, the limited time span of its term in office and the on-going legislative programme (Hayes-Renshaw and Wallace 1997: 146; Wallace 1985: 14-5). Consequently, the Council Presidency sets priorities and – to some extent - manages to steer the legislative agenda according to its own national priorities (Tallberg 2006: Ch. 4; Warntjen 2007). For example, the end-of-life car directive did not make any progress during the German Presidency in 1999 and discussions on the working-time directive were put on hold during the British Presidency in 2005 (Bunse 2009: 49-51). The Council Presidency can also increase the effectiveness of negotiations by providing leadership. It can steer negotiations by deciding on the frequency and format of meetings, giving impetus to stalled negotiations and orchestrating events to push recalcitrant member states towards an emerging compromise. Presidency proposals can serve as focal points (Schelling 1960: 70) and the Presidency can act as an “honest broker” in negotiations receiving private information from all bargaining parties to work out a compromise acceptable to all (Hopmann 1998: 232-3; Lax and Sebenius 1986: 172-3). A discontinuity of leadership in negotiations inevitably leads to a loss of momentum. Some progress is lost even in a well-prepared hand-over of the leadership. In the best circumstances, this only leads to a barely noticeable delay. However, if the hand-over occurs in a
critical phase of negotiations it can have a major impact. Furthermore, the prospect of a new Presidency taking over soon diminishes the impact of the current Presidency. While this might not have a crucial impact on routine matters, it would affect the progress of controversial or technically complex dossiers. In contrast, if several Presidencies share a priority and thus if increased attention is given to a dossier for an extended period of time, progress is possible even for previously gridlocked dossiers (Warntjen 2012).

The Lisbon Treaty adopted a hybrid. A longer term President was adopted for the European Council, whereas the six-monthly rotation continues at the level of the Council. The European Council, by virtue of its composition of the heads of governments, has from its very inception acted as the final arbiter and as the forum which could give broader political impetus to the Union. The Lisbon Treaty has codified and further strengthened this role. The elected Presidency, covering at least a 2 ½ year period, can also give its work more coherence and continuity (Blavoukos, Bourantonis, and Pagoulatos 2007). One should note, however, that the actual powers of the new office are not clearly defined in the treaty and will only develop over time. Furthermore, changes to the working of the European Council are more likely to affect the topics that are decided in an intergovernmental manner at the European Council itself, but not necessarily all legislative proceedings in the supranational area (Monar 2005: 212-4). At the level of the ministerial and working group meetings, where the negotiations on legislative dossiers take place for the most part, the system of half-yearly rotation continues. A substantial proportion of legislative dossiers, however, are not decided upon in half a year (see Table 1). Overall, about 40 per cent of legislative dossiers are discussed for more than six months in the Council. In fact, less than 15% of directives are decided upon in six months. And nearly a quarter take more than 2 years to resolve. Thus, a substantial amount of legislative dossiers are not concluded within the term of a single Presidency.

Table 1: Duration of Council Decision-Making

<table>
<thead>
<tr>
<th></th>
<th>½ Year</th>
<th>1 Year</th>
<th>1 ½ Years</th>
<th>2 Years</th>
<th>More</th>
<th>Sum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision</td>
<td>2,393</td>
<td>933</td>
<td>232</td>
<td>113</td>
<td>1,013</td>
<td>4,684</td>
</tr>
<tr>
<td></td>
<td>(51%)</td>
<td>(20%)</td>
<td>(5%)</td>
<td>(2%)</td>
<td>(22%)</td>
<td>(100%)</td>
</tr>
<tr>
<td>Directive</td>
<td>263</td>
<td>261</td>
<td>151</td>
<td>181</td>
<td>1,197</td>
<td>2,053</td>
</tr>
<tr>
<td></td>
<td>(13%)</td>
<td>(13%)</td>
<td>(7%)</td>
<td>(9%)</td>
<td>(58%)</td>
<td>(100%)</td>
</tr>
<tr>
<td>Regulation</td>
<td>6,188</td>
<td>919</td>
<td>249</td>
<td>145</td>
<td>1,377</td>
<td>8,878</td>
</tr>
<tr>
<td></td>
<td>(70%)</td>
<td>(10%)</td>
<td>(3%)</td>
<td>(2%)</td>
<td>(16%)</td>
<td>(100%)</td>
</tr>
<tr>
<td>Sum</td>
<td>8,844</td>
<td>2,113</td>
<td>632</td>
<td>439</td>
<td>3,587</td>
<td>15,615</td>
</tr>
<tr>
<td></td>
<td>(57%)</td>
<td>(14%)</td>
<td>(4 %)</td>
<td>(3%)</td>
<td>(23%)</td>
<td>(100%)</td>
</tr>
</tbody>
</table>

Source: Häge (2010), own calculations

Joint (multi-)annual working programs and team presidencies can ameliorate but not entirely overcome the negative effects of this discontinuity of leadership in the Council. A consequence of the requirement of having to draw up a joint program is a closer cooperation between the respective presidencies in their preparation. For example, as part of their preparation for their presidencies in 2006, the Austrian and Finnish governments organized a symposium in Vienna April 2005, as well as several follow-up meetings, to coordinate their priorities. According to a Finnish civil servant, Finland did not have a pre-defined set of national priorities in the legislative sphere but was mainly trying to advance dossiers that were ripe for decision in line with a common European interest (interview, Finnish civil servant, 24 May 2012). However, the provisions on closer cooperation are no guarantee for smooth proceedings as it very much depends on the interests of the actors involved. For example, the relationships within the trio of France, the Czech Republic and Sweden in 2007/8 are reported to have been strained due to the attempts of the French to dominate the group and the skeptical position of some actors and the difficult domestic politics in the Czech Republic at that time. Similarly, according to German and Slovenian civil servants, Portugal was only contributing to a limited degree to the efforts of having a coherent 18-month program which would then be implemented as a team.
effort (Batory and Puetter 2011: 8). What the (multi)annual programs are meant to do is very much up to the interpretation of the actors involved in drafting them. A Portuguese civil servant, discussing the potential of team presidencies in 2005, described joint programs as an “eclectic list” of national priorities (interview, 22 June 2005). In contrast, civil servants involved in the Spanish, Belgian and Hungarian Trio in 2010/11 highlighted the joint aspect of their adjacent presidencies (Batory and Puetter 2011: 9). The provision on taking over the chairmanship of a working group prior to the start of the Presidency term has not been formally invoked so far (personal communication, General Secretariat, Council of the European Union, 31 May 2012). However, on some dossiers there has been a more informal “flexible change-over” in terms of the leadership of particular working groups in 2006 (interview, Finnish civil servant, 30 May 2012).

The continuity of the work in the Council has been a concern throughout the history of the Union. A longer term Council Presidency was repeatedly discussed as a possible remedy. The Lisbon Treaty, however, established a more permanent leadership for the European Council but not for the Council, where legislative decisions are taken. Whether or not closer cooperation between the Council Presidencies in the form of team presidencies can ensure coherence and continuity in the legislative work of the Council remains to be seen. The experience so far is mixed as the success of the multi-annual programs very much depends on the willingness of the involved member state governments.

REFERENCES


