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Background Vocals: What Role for the Rotating Presidency in the EU's External Relations post-Lisbon?

Erika Márta SZABÓ



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Erika Márta Szabó

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About the Author

Erika Márta Szabó holds a degree in International Relations from Corvinus University of Budapest, Hungary, including an exchange semester at the Catholic University of Leuven, Belgium. In 2011 she completed the MA in EU International Relations and Diplomacy Studies at the College of Europe in Bruges, Belgium. This paper is a shortened version of her Master's thesis submitted at the College of Europe in 2011 (Albert Einstein Promotion).

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Dijver 11 | BE-8000 Bruges, Belgium | Tel. +32 (0)50 477 251 | Fax +32 (0)50 477 250 |
E-mail info.ird@coleurope.eu | www.coleurope.eu/ird

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Abstract

The crucial changes brought about by the Lisbon Treaty to the institutions of the European Union have affected and re-structured the role of the rotating Presidency. This paper examines the extent to which the rotating Presidency still plays a role in the EU's external relations. First of all, the multiple roles of the rotating Presidency (agenda-shaper, consensus-builder, external representative) are identified based on former Treaty provisions and practice. Secondly, the paper focuses on the practice of the Belgian (second half of 2010) and the Hungarian (first half of 2011) Presidencies, highlighting specific cases during their terms which show that the transitional period of the Lisbon system is characterised by uncertain institutional questions that may result in controversial issues. The 'transitional' rotating Presidencies still have the possibility to shape new roles. The paper concludes that the role and influence of the rotating Presidency remain; however, a shift towards the EU's internal level through the important role of a consensus-builder can be observed.

Introduction

Among others, the role of the President of the European Council "clearly eats into what once belonged to the rotating EU Presidency, to which the Lisbon Treaty now assigns virtually no role in the domain of external action."¹

The Treaty of Lisbon (ToL) implemented crucial changes among the institutions of the European Union (EU) by appointing new actors with new tasks in the field of external relations. These changes affected and re-structured to a great extent the role of the rotating Presidency. Therefore, we can no longer talk of a "traditional rotating Presidency",² and the main question is to what extent does the rotating Presidency still play a role in the EU's external relations post-Lisbon?

Scholars elaborating on the changes of the ToL state that the Presidency's role, according to the ToL, has been reduced and transferred to different EU actors.³ Nevertheless, the EU's external relations are a complicated field divided usually along the lines of EU and member state competences. The incomplete institutional reforms following the adoption of the ToL have complicated the situation in the EU's external relations and it seems that the role of the Presidency depends not only on competences and Treaty provisions but also on other features such as member states' attitude and flexibility as well as internal and external uncertainty. In order to understand the diverse functions of the rotating Presidency, the paper applies different levels of analysis (member state, EU, international) and links these levels to various role definitions (agenda-shaper, consensus-builder, external representative) derived from former Treaty interpretations and practice.

Despite the new provisions, the ToL is fairly vague with regard to the new positions as well as the roles of the rotating Presidency in external relations.⁴ This entails that the first rotating Presidencies of Lisbon have the possibility to shape 'new roles' in the EU's external relations. This paper analyses the practice of the Belgian (second half of 2010) and the Hungarian (first half of 2011) semesters. Due to the two countries' similar weight in the EU, a comparison of their roles, attitude and flexibility, as well as the internal and external uncertainty, can provide a useful example of possible 'role finding', both for the upcoming Presidencies and other EU institutions.

¹ Joint Study of European Policy Centre & Egmont & Centre for European Policy Studies, "The Treaty of Lisbon: A Second Look at the Institutional Innovations", Brussels, September 2010, p. 142.

² Interview with Belgian Foreign Ministry officials, Brussels, 7 May 2011.

³ Among others Emerson, Kaczyński, Wouters, Duke, Missiroli, etc.

⁴ J.-C. Piris, *The Lisbon Treaty: A Legal and Political Analysis*, Cambridge, Cambridge University Press, 2010, p. 207.

The role of the Presidency varies with different fields of external relations. No major change in the Presidency's roles is expected under exclusive EU competence (trade); however, increased consensus-building efforts to get everyone on board and to involve the European Parliament in the process are required. The cases of shared competences prove that member states are sometimes reluctant to transfer competences to the EU and, therefore, many conflicting cases arise resulting in grey areas that have mainly to do with external representation. Due to the exceptional external events and the 'pre-mature' institutional structure, the Hungarian Presidency's role was of great importance in matters of Common Foreign and Security Policy (CFSP), even if only through its supportive and flexible attitude.

The paper concludes that the EU is still in transition and the Presidency's 'changing nature' is thus not yet fully developed in the post-Lisbon system. This 'transitional period' could serve as a possible *modus vivendi* for the future but most probably will not lead to permanent solutions in external relations. The rotating Presidency's role remains; its influence, however, is shifted more towards the EU's internal level in terms of its important role of consensus-builder. Although one of the main objectives of the ToL was to create more coherence and consistency in the EU's widening external relations, the transitional period shows that to gather momentum with this new set-up will require more time, more cooperation and clearer separation of powers.⁵

The EU Presidencies under the Lisbon system

The Presidency's roles under the Nice system⁶

The rotating Presidency has covered in its functioning the entire field of external relations.⁷ Its roles under the Treaty of Nice (ToN) consisted of a complex combination of drive, coordination, negotiation and representation, both at supranational and intergovernmental levels.⁸ The paper narrows down these roles into three main categories illustrative of the three different levels: (1) agenda-shaper on the member state level, (2) broker/consensus-builder on the EU level, and (3) external representative on the international level.⁹

⁵ Interview with EEAS officials, Brussels, 4 April 2011.

⁶ For more details see E.M. Szabó: "Background Vocals: The Role of the Rotating Presidency in the EU's External Relations Post-Lisbon", MA Thesis, Bruges, College of Europe, 2011.

⁷ R. Bengtsson, "The Council Presidency and external representation", in O. Elgström (ed.), *European Union Council presidencies: a comparative perspective*, London, Routledge, 2003, p. 56.

⁸ A.M. Fernandez, "Change and Stability of the EU Institutional System: the Communitarization of the Council Presidency", *Journal of European Integration*, vol. 30. no. 5, p. 629.

⁹ A. Schout & S. Vanhoonaeker, "The rotating Presidency: obstinate of obsolete", *Journal of Common Market Studies*, vol. 44, no. 5, 2006, p. 1055 (levels added by the author).

The Presidency had evolved continuously and has become an important actor of EU affairs through chairing the Council, managing inter-institutional relations and representing the EU in the international arena in the complex field of external relations.¹⁰ If the Presidency had a strong desire to give priority to the national dimension as an agenda-setter, its preferred issues usually appeared on the agenda while aiming rather for consensus on the EU level.¹¹ Despite the Presidency's overall authority, its role in external representation was not uniform as the EC also had powers on issues falling under exclusive and shared competences. Table 1 summarises the Presidency's role under the Nice system:

Table 1 – The rotating Presidency under the Nice system

| Level | Competence/Role | Exclusive | Mixed | CFSP |
|---------------|--------------------|-----------|----------|----------|
| Member state | Agenda-shaping | Moderate | Powerful | Powerful |
| EU – internal | Consensus-building | Moderate | Powerful | Powerful |
| International | Representation | None | Moderate | Powerful |

Source: author

The main changes of the ToL

The ToN failed to provide a clear distribution of competences between the pillars, which resulted in a significant amount of uncertainty in the system.¹² Therefore, the ToL was aimed at creating greater coherence in the EU's external relations.¹³ First, the 18-month Presidency trio has been formalised through the institutional changes of the ToL. The three Presidencies are now obliged to set-up a multiannual programme with common priorities, which requires increased coordination and preparation efforts from all parties.¹⁴

Second, a new type of Presidency system with two permanent chairs, at the level of the European Council and the ministerial meetings of Foreign Affairs (HR/VP), have

¹⁰ S. Bunse, *Small States and EU Governance*, Basingstoke, Palgrave Macmillan, 2009, p. 38.

¹¹ A. Schout & S. Vanhoonacker, "The rotating Presidency: obstinate or obsolete", in *From the convention to the IGC – Mapping cross-national views towards an EU-30*, Berlin, Stiftung Wissenschaft und Politik, 2003, p. 6.

¹² M. Cremona, "Defining competence in EU external relations: lessons from the Treaty reform process", in A. Dashwood & M. Maresceau (eds.), *Law and Practice of External Relations: Salient Features of a Changing Landscape*, Cambridge, Cambridge University Press, 2008, pp. 46-50.

¹³ ISIS Europe, "The impact of the Lisbon Treaty on CFSP and ESDP", *European Security Review*, no. 37, March 2008, p. 2.

¹⁴ S. Van Hecke & P. Bursens, "How to study the (Belgian) EU Presidency? – A Framework for Analysis for the Research Network 2010 Belgian EU Presidency", Workshop 'Governance in/of the EU', Politicologenetmaal 2010, Leuven, 27-28 May 2010, pp. 7-8.

been introduced.¹⁵ An important change is the division of the former GAERC Council into two new formations; the Foreign Affairs Council (FAC) is chaired and led by the HR/VP and the European External Action Service (EEAS), while the General Affairs Council (GAC) remains under the auspices of the rotating Presidency.¹⁶ As for the preparatory bodies, the former system very much remains as the Working Groups, the COREPER and nine out of ten Council formations are prepared and conducted by the rotating Presidency (all except for the FAC).

Third, the role of the HR/VP has become more complex, taking over from the Presidency as Chair of the FAC, CFSP extraordinary FAC meetings, the coordination in international organisations, international conferences and third countries (Art 34(1) TEU, Art 221 TFEU), and as CFSP interlocutor with the European Parliament.¹⁷ In addition, the HR/VP is partly responsible for harmonising and coordinating external action between the Council and the Commission, simultaneously enjoying significant representative and participatory roles in CFSP matters.

The introduction of a catalogue of competences (exclusive, shared, parallel, Art. 2-4 TFEU) and of a legal personality for the EU (Art. 47 TEU) seeks to enhance its capacity to enter into relations with other states and to strengthen its status in international negotiations.¹⁸ In the absence of EU competence, the competence remains with the member states and the rotating Presidency should be in charge of such negotiations.¹⁹ As the CFSP is "subject to specific rules and procedures"²⁰, the former second-pillar was basically retained in its special status.

The changes of the ToL rewrite the traditional roles and tasks of the Presidency as the new 'chiefs' are taking over some tasks and roles of the rotating Presidency and therefore challenging the old practice.²¹ The real functioning of the Treaty, however, may rest on the practices and precedents set during the transitional period, which will be highlighted through various cases during the Belgian and Hungarian Presidencies' mandate.

¹⁵ S. Duke, "The Lisbon Treaty and External Relations", *EIPASCOPE*, Maastricht, 2008/1, p. 2.

¹⁶ A. Missiroli, & J. Emmanouilidis, "Implementing Lisbon: the EU Presidency's other (rotating) half", *European Policy Centre Policy Brief*, Brussels, December 2009, p. 1.

¹⁷ P.M. Kaczyński & P. ó Broin, "Two new leaders in search of a job description", Brussels, Centre for European Policy Studies, no. 200, 25 November 2009, p. 2.

¹⁸ M. Emerson&R.Balfour&T.Corthaut&J.Wouters&P. M.Kaczynski,&T.Renard, *Upgrading the EU's Role as Global Actor. Institutions, Law and the Restructuring of European Diplomacy*, Brussels, Centre for European Policy Studies, 2011, p. 22.

¹⁹ P.M. Kaczyński, "Single voice, single chair? – How to re-organise the EU in international negotiations under the Lisbon rules", no. 207, Brussels, Centre for European Policy Studies, March 2010, pp. 2-3.

²⁰ Cremona, *op.cit.*, p. 64.

²¹ Missiroli & Emmanouilidis, *op.cit.*, p. 1.

Agenda-shaping

The ToL has narrowed down the agenda-shaping roles of the rotating Presidency, since the introduction of permanent chairs has replaced the former practice of the rotating Presidency. As the European Council remains responsible for the political leadership of the EU at heads of state and government level, the Presidency has suffered serious losses.²² The other permanent chair, the HR/VP, took over most of the roles of the Presidency on CFSP issues.²³ The EEAS assists and supports its work as well as the agenda-setting. Nevertheless, the two new permanent chairs do not imply that the Presidency is excluded from the external area.²⁴ As the rotating Presidency is still in charge of certain meetings²⁵, it can still exert its influence on the agenda via its chairing position.²⁶ The only remaining body under the chairmanship of the rotating Presidency in CFSP is the COREPER II, which has an important bridging function to ensure coherent action.²⁷ In the case of trade and environment, not much has changed with regards agenda-shaping: working groups and the COREPER level are both chaired by the Presidency. Table 2 shows the chairing roles of the Presidency according to competences.

Table 2 – The Presidency in external relations

| | Trade | Environment | CFSP |
|------------------------------------|-------------------------------|-------------------------------|-------------------------------|
| European Council | Chair of the European Council | Chair of the European Council | Chair of the European Council |
| FAC | <i>Rotating Presidency</i> | HR/VP | HR/VP |
| PSC | - | - | HR/VP Representatives |
| COREPER II | <i>Rotating Presidency</i> | <i>Rotating Presidency</i> | <i>Rotating Presidency</i> |
| Preparatory bodies, working groups | <i>Rotating Presidency</i> | <i>Rotating Presidency</i> | Mainly EEAS |

Source: Vanhoonacker & Pomorska, *op.cit.*, p. 10 (environment added by author)

The possibility for the Presidency to shape the agenda in external relations has suffered further setbacks as the main tasks (both organisational and agenda-setting)

²² S. Vanhoonacker & K. Pomorska, "The EU Diplomatic System: Who is at the helm?", Paper presented at Workshop 'The EU Diplomatic System After Lisbon: Institutions Matter', Maastricht, 18-19 November 2010, p. 9.

²³ Kaczyński & ó Broin, *op.cit.*, p. 2.

²⁴ Vanhoonacker & Pomorska, *op.cit.*, p. 10.

²⁵ GAC, FAC – Trade, COREPER II, ANTICE, and Preparatory bodies in trade and development are still chaired by the Presidency. See Council Decision 16517/09.

²⁶ Council of the EU, Council Decision laying down measures for the implementation of the European Council Decision of 1 December 2009 on the exercise of the Presidency of the Council (2009/881/EU)", *Official Journal of the European Union*, Annex II, p. 2.

²⁷ Vanhoonacker & Pomorska, *op.cit.*, p. 10.

have been taken over by the EEAS. The right of initiative in CFSP matters has been delegated to the HR/VP. In areas other than CFSP, the Commission has preserved the exclusive right of initiative. As a result, it is expected that the Presidency will no longer leave visible marks in foreign policy issues; however, the rotating Presidency is still involved to some extent in the process of strategic planning via the trio programmes.²⁸

Consensus-building

The rotating Presidency enjoyed a very influential consensus-building role under the Nice system, before seeing its role as an internal broker somewhat reduced under the ToL.²⁹ Nevertheless, it is important to see that these changes once again concern primarily the CFSP area where the role of consensus-builder has been taken over by the HR/VP and the EEAS.³⁰ Otherwise, the role of the rotating Presidency as consensus-builder remains the same under exclusive and shared competences. Consensus-building takes place both within the Council of Ministers and with other EU institutions.

With this change in CFSP matters, the Presidency lost its role both as contact point for member states³¹ and as 'liaison officer' among other EU institutions. The Presidency is no longer in charge of the FAC preparations, information-gathering and finding compromises. The same applies to the European Council, which is led by the permanent president. This basically suggests that the only remaining position for the Presidency as a chair is in the COREPER II where important decisions are discussed (especially horizontal issues)³² before forwarding the dossiers to the ministerial level. This allows the rotating chair to exert its influence over the preparations of the FAC meetings.³³

The important new Council formation chaired by the rotating Presidency, the General Affairs Council, ensures consistency and continuity, the preparations for the European Council, the drafting of conclusions and decisions of the European Council.³⁴ As the rotating Presidency is still in charge of the chairing and leading of the GAC and its working groups, the Presidency thus retains some room for manoeuvre at the EU level; however, its real influence remains to be seen.

²⁸ Vanhoonacker & Pomorska, *op.cit.*, p. 15.

²⁹ S. Vanhoonacker, K. Pomorska & H. Maurer, "The Council presidency and European Foreign Policy – Challenges for Poland in 2011", Warsaw, Center for International Relations, p. 21.

³⁰ Vanhoonacker & Pomorska, *op.cit.*, p. 12.

³¹ *Ibid.*

³² Vanhoonacker, Pomorska & Maurer, *op.cit.*, p. 22.

³³ Interview with Péter Balázs, *op.cit.*; Missiroli & Emmanouilidis, *op.cit.*, p. 2.

³⁴ Joint Study of European Policy Centre, Egmont & Centre for European Policy Studies, *op.cit.*, p. 17-18.

Besides CFSP issues, one must bear in mind that the rotating Presidency remains in charge of nine Council configurations, including that of trade and environment.³⁵ The rotating chair presides all levels of the Council formations in these fields and, according to the Council's rules of procedure, when trade issues are on the FAC agenda, the HR/VP will ask to be replaced by the rotating Presidency.³⁶ The consensus-building role of the Presidency under shared competences does not change.

Despite the many simplifications in the ToL, the multitude of new actors complicates the institutional set-up; as a result, the institutional balance is also expected to change.³⁷ The HR/VP and the EEAS have also taken over the CFSP role of the rotating Presidency in inter-institutional arrangements. Nevertheless, its remaining involvement is not to be ignored, especially as the ToL has formalised the operation of the trio Presidency system.

However, the initial phase of the new system faces many difficulties and, until it is entirely in place, further problems could easily arise. The main idea behind the creation of the EEAS was the need to better coordinate external policies of the Commission, the Council and the member states.³⁸ But fragmentation remains, as trade, development and enlargement policies belongs to the Commissioner in charge rather than the EEAS. These exceptions show that the HR/VP does not have exclusive responsibility for the whole scope of the Union's external actions.³⁹

The ToL assigns a passive role to the rotating Presidency that greatly depends on the attitude of the incumbent in the driving seat.⁴⁰ At EU level, relations between the work of the GAC and the European Council President, and the possible delegation of powers⁴¹ from the HR/VP, seem to be opportunities to be seized.⁴²

³⁵ Piris, *op.cit.*, p. 235.

³⁶ Vanhoonacker, Pomorska & Maurer, *op.cit.*, p. 10.

³⁷ Joint Study of European Policy Centre, Egmont & Centre for European Policy Studies, *op.cit.*, p. 189.

³⁸ R.G. Whitman, "Strengthening the EU's External Representation: The Role of the European External Action Service", European Parliament, DG for External Policies Policy Department, Brussels, February 2010, p. 3.

³⁹ *Ibid.* p. 5.

⁴⁰ Joint Study of European Policy Centre, Egmont & Centre for European Policy Studies, *op.cit.*, p. 156.

⁴¹ This privilege, however can concern other countries as well, not only the rotating President, but in general the rotating Minister is the first to contact. Examples occurred already under the Spanish presidency when the French Minister represented Ashton in Montreal at a conference on aid for Haiti, some uneasiness. *Ibid.*, p. 71.

⁴² *Ibid.*, p. 174.

The European Parliament is the biggest winner of the ToL, both in internal and external policy areas.⁴³ Art. 36 TEU states that

The HR shall regularly consult the European Parliament on the main aspects and the basic choices of the CFSP and CSDP and inform it of how those policies evolve. He shall ensure that the views of the European Parliament are duly taken into consideration.

It has also become a more influential institutional player while taking a big bite in the creation of the EEAS in trying to have a say in policy guidelines.⁴⁴ Concerning trade issues, the European Parliament gained a lot as it has now the right to approve or reject international agreements. The Commission and the Council both have to consult the European Parliament regularly on aspects of the CFSP as well as CFSP issues.⁴⁵ Moreover, the European Parliament has to give its consent to Council decisions when concluding international agreements.⁴⁶

To sum up, we can state that the new system of external relations has created a more centralised and Brussels-based form of EU governance.⁴⁷ Nevertheless, one must take into consideration that the newly nominated permanent chairs co-exist with the 'remnants' of the old system (COREPER, GAC), which could result in grey areas and competition with the Commission (trade, enlargement, development, environment issues)⁴⁸ or with the rotating Presidency that is considered the protector of member states' interests.⁴⁹ A high degree of inter-institutional coordination therefore seems to be necessary.

External representation

The EU's external representation happens both at high level (summits, conferences and international organisations) and at the level of every-day practice (delegations). When deciding on external representation, both the former arrangements concerning competences and the status of the EU in different organisations have been taken into account.

⁴³ Piris, *op.cit.*, p. 235.

⁴⁴ Joint Study of European Policy Centre, Egmont & Centre for European Policy Studies *op.cit.*, p. 158.

⁴⁵ W. Wessels & F. Bopp, "The Institutional Architecture of CFSP after the Lisbon Treaty – Constitutional breakthrough or challenges ahead?", *CHALLENGE Liberty & Security Research Paper*, no. 10, June 2008, p. 14.

⁴⁶ J. Wouters, D. Coppens & B. De Meester, "The European Union's External Relations after the Lisbon Treaty", in S. Griller & J. Ziller (eds.), *The Lisbon Treaty; EU Constitutionalism Without a Constitutional Treaty?*, Vienna, Springer, 2008, p. 184.

⁴⁷ Missiroli & Emmanouilidis, *op.cit.*, p. 3.

⁴⁸ *Ibid.*

⁴⁹ Interview with Gábor Baranyai, Ministerial Commissioner, Ministry of Foreign Affairs, EU Affairs, COREPER I, Brussels, 30 March 2011.

Now that the EU has legal personality, it can conclude (in case of competence) international agreements in the CFSP (Art. 37 TEU) and Common Commercial Policy (Art. 207 TFEU) (exclusive EU competence) areas.⁵⁰ Former cases of the European Court of Justice seem to be supportive of broad EU external action, but there are still areas where the Union has no competence (no internal action yet or external action is not necessary to achieve its objectives) and member states thus remain in charge.⁵¹

Changes also concern the appointment of the Union negotiator or head of team. Under Nice, the Commission represented the Community in negotiations; yet, with the abolition of the pillar system, the nomination mainly depends on the subject matter and the competence.⁵² In trade issues the Commission remains the main negotiator; in CFSP, however, the role of the Presidency disappears. Under mixed agreements (shared competence) the question is again more complex as the Council appoints the head of the team.⁵³ Table 3 summarises the relevant aspects for external representation.

Table 3 – External Representation under ToL

| | Exclusive EU competence | Shared Competence | CFSP |
|--|--------------------------------|--|---|
| Decision-making body | Council formation | Council formation | FAC, European Council |
| Possible negotiator of international agreements | European Commission | The Council decides | HR/VP |
| External representation | European Commission | Rotating Presidency, HR or Commission | HR/VP; European Council President; EEAS |
| On the ground | EU Delegation | Embassy, rotating presidency or EU Delegation? | EU Delegation |

Source: Drieskens & van Schaik, *op.cit.*, p. 10 (negotiator added by author)

Different levels of representation

High-level representation is led by the heads of state and government and at ministerial level.⁵⁴ According to the ToL, there is not much place left here for the former rotating Presidency, but the game will be mainly played among the HR/VP, the President of the European Council and the European Commission.⁵⁵ The main

⁵⁰ Wouters, Coppens & De Meester, *op.cit.*, p. 169.

⁵¹ *Ibid.*, pp. 179-180, and Interview with Gábor Baranyai, *op.cit.*

⁵² *Ibid.*, p. 181.

⁵³ *Ibid.*

⁵⁴ Vanhoonacker & Pomorska, *op.cit.*, pp. 15-16.

⁵⁵ *Ibid.*, p. 15.

question to be answered is the role of the Commission which, as the Treaty states in Art. 17 (1) TEU, “[w]ith the exception of the common foreign and security policy, and other cases provided for in the Treaties, shall ensure the Union’s external representation”. In addition, the Commission remains active in sectorial policies, such as trade and enlargement, and will be represented by its own Commissioner.⁵⁶ This means an increase in the Commission’s involvement in foreign policy issues.

At lower levels, the Union will be represented by the former Commission Delegations, now transformed into Union Delegations under the auspices of the EEAS and the HR/VP.⁵⁷ These changes in the Delegations’ work also seem to be problematic as member states are sometimes reluctant to transfer competences to the EEAS, which is also responsible for the overall strategy with third countries.⁵⁸ Due to this enhancement of competences to CFSP ⁵⁹, the rotating Presidency loses its representative role both in third countries and international organisations.

Fading roles of the Presidency under Lisbon

To conclude, the adoption of the ToL significantly changed the institutional set-up of EU external relations, as the Presidency conferred its former tasks to the new actors.⁶⁰ Table 4 shows the main changes in role perceptions of the rotating Presidency under the Lisbon system.

Table 4 – The role of the Presidency under ToL

| Level | Competence/ Role | Exclusive – Trade | Shared - Environment | CFSP |
|---------------|--------------------|-------------------|----------------------|------|
| Member state | Agenda-shaping | Moderate | Powerful | None |
| EU - internal | Consensus-building | Moderate | Powerful | None |
| International | Representation | None | Moderate | None |

Source: author

The paper puts forward the following hypotheses with regard to the ToL:

Hypothesis 1 (exclusive competence): The roles of the rotating Presidency remained the same with more focus on consensus-building.

⁵⁶ J. Paul, “EU Foreign Policy After Lisbon”, *Center for Applied Policy Research*, No. 2, June 2008, p. 19.
⁵⁷ Paul, *op.cit.*, p. 28.
⁵⁸ E. Drieskens & L. van Schaik, “The European External Action Service: Preparing for Success”, The Hague, Netherlands Institute of International Relations ‘Clingendhal’, December 2010, p. 9-13.
⁵⁹ Vanhoonacker & Pomorska, *op.cit.*, pp. 15-16.
⁶⁰ Emerson et al., *op.cit.*, p. 30.

Hypothesis 2 (shared competence): The rotating Presidency's roles partially changed under the Lisbon system and have been challenged in external representation.

Hypothesis 3 (CFSP): The rotating Presidency has lost its roles on all levels of CFSP matters.

The practice of the Belgian and the Hungarian rotating Presidencies will show that some *room for manoeuvre* still exists for the rotating Presidency in the EU's external relations.

The EU Presidencies of Belgium and Hungary

"Everything is in flux. Nothing is cast in stone. We are in transition and it is still trial and error."⁶¹

Having introduced the main roles, competences and changes of the rotating Presidency system in the EU's external relations, the paper now examines the practice of the Belgian (second half of 2010) and the Hungarian (first half of 2011) Presidencies. The comparison of the two countries is interesting because they share many similarities and will help to show that other features have to be taken into account when analysing the roles of the rotating Presidency under the Lisbon system.

Belgium and Hungary in comparison

When talking about the rotating Presidency under Lisbon, a closer cooperation between the trio members is crucial. The trio of Spain, Belgium and Hungary was a good mix as they all had their own priorities and managed to co-operate in an effective manner.⁶² However, only the last two members of the trio will be covered, since the terms of the Belgian and Hungarian Presidencies constitute a later stage in the implementation of the Treaty and the two countries share more in common. Bengtsson states that each rotating Presidency faces uncertainty and complexity during its term.⁶³ The type and extent of the problems, however, can change the expected attitude of the leader.⁶⁴ Table 5 shows the main differences and similarities of the two countries.⁶⁵

⁶¹ Bruno Angelet cited in European Policy Centre, "The implementation of the Lisbon Treaty – one year on", *op.cit.*, 12 January 2011.

⁶² Interview with Dr. Péter Balázs, *op.cit.*

⁶³ Bengtsson, *op.cit.*, p. 56.

⁶⁴ *Ibid.*

⁶⁵ At the time of writing, the Hungarian Presidency passed only half-time of its term, this is why the full assessment of its practice relies to a large extent on interviews.

Table 5 – Comparison of the Belgian and Hungarian rotating Presidency

| | BELGIUM | HUNGARY | |
|------------------------------------|----------------------------------|---------------------------------|-----------------------------|
| Domestic environment | Caretaker government | Stable government | National level |
| Former experience | 12 th time Presidency | 1 st time Presidency | |
| Expected attitude | Very cooperative | Cooperative | |
| Lisbon system | Premature | Premature | EU level |
| Other actors (EU) | Mr Van Rompuy but no EEAS | Both in place | |
| Institutional maturity (EU) | Underdeveloped | Slowly developing | |
| External events | No real crisis situation | Crisis – North Africa | Inter-national level |

Source: author

Domestic attitude, former experience and expected attitude

Holding the rotating Presidency has always been a demanding task for any country, but it also provides an opportunity for gaining political influence and national image-building.⁶⁶ As the country at the helm usually comes under the limelight of the media, domestic issues also become relevant in terms of expectations. If there is political instability in the country, it often risks losing face and consequently losing the trust of EU institutions and member states.⁶⁷

As for the Belgians, problems occurred concerning the ongoing political crisis. The EU had never been led by a caretaker government, for which they were widely criticised at the start of the Belgian semester.⁶⁸ Controversially, Hungary had a stable government, but economic difficulties, the change of the government in the middle of the preparatory phase, and some controversial political decisions created uneasy moments at the start.⁶⁹

The degree of experience was clearly higher on the Belgian side, being in the driving seat for the 12th time 'at home', which also increased the level of effectiveness to a

⁶⁶ M. Beke, "Review of the Belgian Rotating Presidency: From Political to Administrative Leadership", Madrid, Real Instituto Elcano, 27 January 2011.

⁶⁷ *Ibid.*

⁶⁸ H. Vos, "The Belgian Presidency of the European Union in Retrospect", Heinrich Böll Stiftung, 27 January 2011.

⁶⁹ P.M. Kaczyński, "How to assess a rotating presidency of the Council under new Lisbon rules - The case of Hungary", no. 232, Brussels, Centre for European Policy Studies, February 2011, p. 3.

great extent. While Hungary had a lot to learn from EU leadership, as it was holding its first Presidency ever and is a newer member state.⁷⁰

The 'patterns of expected behaviour', defined as roles, depend on domestic, inter-institutional and external developments. Expected behaviour is mainly determined by the perceptions the country communicates (programme) and how the other actors expect it to behave.⁷¹ The external relations sections of the Presidency programmes show mainly the same attitude highlighting the importance of the two new actors and close cooperation with them.⁷² Nonetheless, a slight difference is visible, as Belgium clearly refers to its commitments towards "the smooth application of the new measures introduced by the Treaty",⁷³ while the Hungarian side is more reserved by mentioning the possible need for the rotating Presidency's help.⁷⁴

While a cooperative attitude was expected from both sides, it proved much stronger from Belgium due to its very pro-integrationist attitude, supportive stance and broad Treaty interpretation. By giving such an example, Belgium created and promoted precedents which will be difficult to reverse by other rotating Presidencies (lock-in effect).⁷⁵ However, the aforementioned controversial issues show that a considerable amount of tension and vagueness is still in the system resulting in quarrels on issues like the Mercury and the Forestry cases (see below).⁷⁶

Challenges, uncertainty and complexity

Due to internal and external difficulties, both Presidencies had to face critical challenges. The premature institutional set-up of the Lisbon system, the economic crisis and the vagueness of the relationship with other actors in field of external relations required a high degree of flexibility, initiative and self-adaptation. As Table 5 also shows, the internal problems mainly dominated the Belgian semester when facing the challenge of establishing the EEAS.⁷⁷

The Hungarian Presidency had similar problems, facing a yet underdeveloped institutional set-up and many unpredictable arrangements.⁷⁸ An important difference is, however, the launching of the EEAS and the appointment of its staff both at the EU level and in the EU Delegations. Being inventive and flexible in this

⁷⁰ *Ibid.*, p. 1.

⁷¹ Elgström, Ole, "The Presidency: The Role(s) of the Chair in European Union Negotiations", *The Hague Journal of Diplomacy*, vol. 1, no. 2, 2006, pp. 172-175.

⁷² Belgian Presidency of the EU Council, *EUTrio.be*, Presidency Programme, July-December 2010, p. 46.

⁷³ *Ibid.*

⁷⁴ Hungarian Presidency, *EUTrio.hu*, Presidency Programme, January – June 2010, p. 53.

⁷⁵ Teló, *op.cit.*,

⁷⁶ Interview with Gábor Baranyai, *op.cit.*

⁷⁷ C. Brand, "Implementation of Lisbon bedevilled 'by paradoxes'", *European Voice*, 9 December 2010.

⁷⁸ Interview with a Hungarian diplomat, Brussels, 7 April 2011.

new type of cooperation is crucial; nevertheless, it is not without tensions. As opposed to the Belgian attitude, the Hungarians seemed to be more competitive in these matters, emphasising the importance of the member states' delegations in the biggest centres of international organisations.⁷⁹

On top of the internal 'institutional chaos'⁸⁰, external events significantly affected the first semester of 2011. Due to the unexpected North African crisis, the EU's global credibility was put at stake.⁸¹ These examples show that the two Presidencies were both exposed to challenges, uncertainty and complexity, but in a different context.

In the subsequent sections, the paper analyses cases showing that, despite the limitations of the ToL in the field of external relations, there is some *room of manoeuvre* left for the rotating Presidency.

Case of exclusive competence – EU-Korea Free Trade Agreement

Hypothesis 1 suggests that the roles of the rotating Presidency remained the same with more focus on consensus-building.

The negotiations of the EU-Korea FTA on the EU level were led by the Belgian Presidency and required increased efforts to get the support of all the member states. Evaluations of the Belgian Presidency all highlight the importance of the agreement where the mediation and leadership of the Belgian diplomats were crucial as Mr Van Rompuy was mainly struggling with the European Council preparations.⁸²

Trade issues were generally very important for the Belgian Presidency.⁸³ It was already pinpointed in the programme that coordination of these issues in the FAC will continue to be provided by the rotating Presidency.⁸⁴ The HR also encouraged Belgian efforts as the semester was full of other trade-related matters.⁸⁵ The question of the EU-Korea FTA had been on the agenda for a while, but the resistance of Italy⁸⁶ and the objections of the car industry⁸⁷ put the conclusion of the agreement on the EU level into jeopardy. Although the negotiations with Korea were led by the Commission, the Presidency had a hard time reaching a deal with the member states at EU level.⁸⁸ According to Belgian officials, the negotiations required a careful

⁷⁹ Emerson et al., *op.cit.*, p. 31.

⁸⁰ Interview with Belgian officials, *op.cit.*

⁸¹ H. Van Rompuy, "Our global credibility at stake", *EU2011.hu*, 12 March 2011.

⁸² S. Taylor, "Van Rompuy's summitry fails to convince", *European Voice*, 23 September 2010.

⁸³ Interview with Belgian officials, *op.cit.*

⁸⁴ Belgian Presidency Programme, *op.cit.*, p. 46.

⁸⁵ Interview with Belgian officials, *op.cit.*

⁸⁶ S. Taylor, "Pressure on Italy to sign South Korea trade deal", *European Voice*, 13 September 2010.

⁸⁷ R. Jozwiak, "Car firms unhappy as Korea talks continue", *European Voice*, 12 February 2009.

⁸⁸ Interview with Belgian officials, *op.cit.*

and intensive approach both at ministerial, COREPER and working group levels.⁸⁹ In addition, the Presidency organised formal sessions with the member states' trade ministers, which usually rarely take place.⁹⁰

During the strongly criticised European Council of September 2010 on the relations with strategic partners, the EU-Korea FTA was also on the table of the foreign ministers.⁹¹ As Italy did not want to drop its objections, the Presidency, in constant contact with the Italian side, organised a separate meeting in the margins of the summit to get Italy on board as well.⁹² Thanks to the Belgian efforts, an agreement was finally reached in the FAC in the form of a package deal incorporating the Italian demand on delaying the start of the agreement for six months and starting in July 2011.⁹³

Due to the changes of the ToL, the European Parliament was granted an important role in trade policy, as its approval is now required for concluding of international agreements.⁹⁴ This is why a more intensive dialogue with a more assertive and powerful post-Lisbon Parliament was necessary at EU level. This is a clear difference to the Nice system.⁹⁵ With the leadership of the foreign minister of Belgium, Mr Vanackere, the Presidency and the European Parliament started to negotiate safeguard measures in order to deal with the concerns of the European industry. These clauses are included in the FTA and had to be agreed upon before the agreement could come into effect.⁹⁶ Although some MEPs were still unhappy⁹⁷ with the FTA, they did not block the final approval and the 2011 February EP plenary voted in favour of the deal.⁹⁸

As we have seen, the conclusion of the agreement was not without difficulties, but due to the active involvement, the diplomatic experience and consensus-building skills of the rotating chair, a successful conclusion of the first FTA under the Lisbon system was reached.⁹⁹ It was also an important signal to Asia that the agreement

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ Taylor, "Van Rompuy's summitry", *op.cit.*

⁹² C. Brand, "EU leaders to discuss relations with strategic partners", *European Voice*, 15 September 2010.

⁹³ S. Taylor, "EU agrees trade pact with South Korea", *European Voice*, 16 September 2010.

⁹⁴ Belgian Presidency of the Council of the European Union, "Vanackere signs free trade agreement with South Korea", *Eutrio.be*, 6 October 2010.

⁹⁵ Brand, "Implementation of Lisbon", *op.cit.*

⁹⁶ Taylor, "EU agrees trade pact", *op.cit.*

⁹⁷ Greens and Italian and French Socialists and Democrats (S&D)

⁹⁸ C. Brand, "Parliament to approve free-trade deal with South Korea", *European Voice*, 10 February 2011.

⁹⁹ Interview with Belgian officials, *op.cit.*

was reached in the Council on the same day that EU leaders were discussing the EU's relations with its strategic partners.¹⁰⁰

Cases of shared competence – UNEP Mercury, Cancún and UNFF Forestry

Hypothesis 2 suggests that the rotating Presidency's roles partially changed under the Lisbon system and have been challenged in external representation.

In order to examine this hypothesis the paper first highlights three cases (UNEP Mercury negotiations, Cancún Conference, UNFF Forestry case), which are seen as possible test cases¹⁰¹ for potential future solutions for issues under shared competences.¹⁰²

Cases of shared competences have often been subject to competition and tensions between member states and EU institutions, especially on issues relative to external representation and participation in conferences and international organisations.¹⁰³ During the interviews, many officials rejected to give inside information on debated matters, which constituted a significant limitation for research.

The ToL aimed at enhancing the EU's role on the international arena. However, it became clear quite soon after its adoption that member states would have some reservations about topics falling under shared competences.¹⁰⁴ Environmental issues are such cases on which the EU does not have the exclusive right to act but various internal regulations can be treated as conferred powers. Furthermore, the EU is already considered an important global actor in the field of international environmental policy, so more active external representation remains in the EU's overall interest.

UNEP Mercury case

The UNEP Mercury case (INC) was first raised as a problematic issue under the Spanish term, but the final format of negotiations was agreed upon under the Belgian and Hungarian semesters and used in the INC-2 in January 2011. The negotiations aim at limiting the discharge of mercury into the environment via the creation of a binding instrument by 2013 at the latest.¹⁰⁵

The question in this case was whether the EU should exercise its internal competence externally and whether this would affect common rules.¹⁰⁶ The Commission interpreted the ToL as giving it exclusive competence in Art. 17(1) to represent the EU

¹⁰⁰ Taylor, "EU agrees trade pact", *op.cit.*

¹⁰¹ Mainly requiring case-by-case solutions.

¹⁰² P.M. Kaczyński, "A Gordian Knot or Not? On EU Representation in UN Climate Negotiations", *EUCE Conference Paper*, p. 10.

¹⁰³ Emerson et al., *op.cit.*, pp. 30-32.

¹⁰⁴ Interview with Belgian officials, *op.cit.*

¹⁰⁵ Emerson et al., *op.cit.*, pp. 80-81.

¹⁰⁶ *Ibid.*, pp. 28-29.

in non-CFSP matters and head the negotiation team (Art 218.3). Its proposal to be the sole negotiator in the matter¹⁰⁷ was strongly opposed by the Council, arguing that the mandate concerning financial assistance belongs to the member states' competence.¹⁰⁸ Therefore, it is the member states who have the right to decide how and by whom their external competence will be exercised.¹⁰⁹ In response, the Commission brought up the issue of withdrawing the proposal, which would have led into a serious impasse, even more so as the possibility to turn to the European Court of Justice was also mentioned.¹¹⁰ At that time "[d]ifferences over the mercury talks have become so heated that individuals from the Commission and Council have been seen arguing over which of them would sit in a particular seat at one international meeting".¹¹¹

In the end, the Commission withdrew its proposal and no agreement was reached on the issue. However, without a Commission recommendation the Council cannot adopt a position; as a result, an EU position was lacking during the conference, which constituted a serious loss of face for the EU.¹¹² Time was not on the Presidency's side since the Commission's Directorate General for Environment made it explicit that problems "had to be solved by January 2011" until the second round of talks (INC-2).¹¹³ After long negotiations, the Council stated in December 2010¹¹⁴ that some parts of the matter are either of shared or exclusive competence, which means that both the Union (the Commission) and the member states (Presidency) had the right to participate. The decision also refers to the special committee¹¹⁵ of representatives of member states which the Commission should consult regularly during its negotiations.¹¹⁶

The second round (INC-2) of the conference was held in Chiba, Japan, in January 2011. In several preparatory documents for the INC-2, the Commission and the member states (Presidency) are mentioned separately for the preparations and practical arrangements. As the Hungarian diplomat Gábor Baranyai stated in an interview, it was a great success that the decision had finally been reached.¹¹⁷

¹⁰⁷ *Ibid.* p. 5.

¹⁰⁸ J. Rankin, "Row over who gets to take charge at environment talks", *European Voice*, 15 April 2010.

¹⁰⁹ Kaczyński, "A Gordian Knot", *op.cit.*, p. 10.

¹¹⁰ *Ibid.*

¹¹¹ Rankin, "Row over who", *op.cit.*

¹¹² ENDS Europe, "Internal EU wrangling over global mercury talks", 7 June 2010.

¹¹³ J. Rankin, "Commission defends lead role in international talks", *European Voice*, 26 June 2010.

¹¹⁴ Council of the EU, Decision on the participation of the Union in negotiations on a legally binding instrument on mercury further to Decision 25/5 of the Governing Council of the United Nations Environment Program (UNEP), 16632/10, 6 December 2010.

¹¹⁵ This committee is necessary for all non-CFSP working groups and led by the rotating Presidency.

¹¹⁶ Emerson et al., *op.cit.*, p. 82.

¹¹⁷ Interview with Gábor Baranyai, *op.cit.*

During the negotiations in Japan the Commission and the Presidency were delivering statements alternately according to a list stating the preferences and the competences.¹¹⁸ Creating this format was not easy and, even during the INC-2, many controversial issues appeared as the member states sometimes felt excluded from the process.¹¹⁹ Further preparations for the INC-3 conference with the involvement of the Hungarian Presidency, the incoming Polish Presidency and the Commission already started in March and the EU would like to “continue playing an active and constructive role in the process.”¹²⁰

Cancún climate change case

The Belgian Presidency assessed the situation after the EU’s highly criticised involvement in the Copenhagen Summit of 2009 and tried to find ways of overcoming the impasse of the talks. The adoption of the ToL gave the possibility to re-examine the decision-making system and to start with finding an operational and functional format to improve the EU’s external representation and therefore its influence in climate change negotiations.¹²¹ This was in the interest of the Belgian Presidency. In Copenhagen, the negotiations were conducted by the rotating Presidency and the Commission.¹²² The incoming Presidency (as a member of the Troika) was also present at all formal and informal meetings. While overall responsibility for the negotiations were taken up by the Commission and the Presidency, certain specific tasks were delegated to so-called issue leaders (volunteering experts from member states).¹²³ With the legal personality of the Union, however, the European Commission also has the right to represent the EU when the EU has competences without any reference to the rotating Presidency.¹²⁴

Nevertheless, a new team was established for Cancún and the Belgian Presidency, following extensive debates, negotiated a new format in which the internal coordination was ensured by the Presidency, while the Commission and the Presidency took the floor during the negotiations behind a common EU nameplate.¹²⁵ As both the member states and the EU would be contracting parties to any UNFCCC agreement,¹²⁶ the Belgian Presidency was aware of the fact that this

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ Council of the European Union, “Second session of the Intergovernmental Negotiating Committee to prepare a global legally binding instrument on mercury (Chiba, Japan, 24-28 January 2011)”, 7501/11, Brussels 9 March 2011.

¹²¹ S. Vanackere, “An assessment of the Belgian Presidency of the Council of the European Union (1 July-31 December 2010)”, *EUTrio.be*, pp. 2-3.

¹²² Emerson et al., *op.cit.*, p. 83.

¹²³ Interview with Gábor Baranyai, *op.cit.*

¹²⁴ Kaczyński, “A Gordian Knot”, *op.cit.*, p. 5.

¹²⁵ Emerson et al., *op.cit.*, p. 83.

¹²⁶ *Ibid.*, p. 84.

practice would not be easy to implement in the future.¹²⁷ Problems with the issues appeared at all levels (from working groups to COREPER and even higher), showing that a 'one fits all' solution was not possible.¹²⁸

However, some grey zones still remain in shared competences requiring further models usually decided upon on a case-by-case basis. The Commission also realised that these inter-institutional negotiations are quite complex and controversial, so the current state of play is that the Chiba and the Cancún formats are likely to prevail.¹²⁹ It took almost one year to come up with these models, which, however, can be problematic. The EU's image and position is in danger as more of these issues are likely to appear on the fore; in addition, some member states are not always pleased that the Presidency sits behind the 'EU nameplate'.¹³⁰

UNFF-9 Forestry case

As the models above show, there is still some hope to find possible solutions to these delicate issues. The transitional period is, however, filled with further tensions in the EU Delegations.¹³¹ The ToL states that all Commission Delegations become 'EU Delegations' under the authority of the HR and turn into components of the EEAS structure.¹³² This changes again the role of the rotating Presidency, as, even for the every-day coordination of the Delegations, the HR and the EEAS are in charge of speaking with third countries and of chairing the coordination meetings with the member state embassies.¹³³ EU Delegations will also increase in number of personnel to fulfil their roles, which, however, can result in the extension of EEAS 'competences' into fields which do not necessarily belong to the EEAS's auspices.¹³⁴ Although the Treaty says that the rotating Presidency should help the HR perform these tasks,¹³⁵ the ongoing tensions, especially in the biggest hubs of international organisations such as Geneva and New York, do not seem to disappear easily.¹³⁶ The 'UNFF-9 arrangement' is one of the most recent examples of these cases.

The problems with the Delegations mainly appeared under the Belgian and the Hungarian semesters as, firstly, the EEAS became operational, and, secondly, the common policies of the EU (agriculture and environment in this case) were on the table of UN negotiations in forestry.¹³⁷ As these competences are shared, member

¹²⁷ Interview with Belgian officials, *op.cit.*

¹²⁸ *Ibid.*

¹²⁹ Emerson et al., *op.cit.*, pp. 82-83.

¹³⁰ Interview with Gábor Baranyai, *op.cit.*; Interview with Belgian officials, *op.cit.*

¹³¹ Interview with Gábor Baranyai, *op.cit.*

¹³² Piris, *op.cit.*, p. 255.

¹³³ Emerson et al., *op.cit.*, p. 59.

¹³⁴ Interview with Belgian officials, *op.cit.*

¹³⁵ Piris, *op.cit.*, p. 255.

¹³⁶ Emerson et al., *op.cit.*, p. 5.

¹³⁷ Interview with Gábor Baranyai, *op.cit.*

states were not willing to give up their roles to the EEAS personnel, pointing out that the EEAS has no *sui generis* power to act in these field and that they also constitute cases where the experts from the member states (usually from agricultural and environmental ministries) were more competent than 'only' general diplomats'.¹³⁸

The main clash emerged over the issue of who delivers statements on behalf of the EU and who convenes and chairs the coordination meetings, as the EU Delegation to the United Nations claimed to have rights for both.¹³⁹ The rather dominant attitude of the EEAS was harshly criticised by most of the member states' diplomats and led to tensions in the EU Delegation between national and EU diplomats,¹⁴⁰ especially because former negotiations were prepared and led by the rotating Presidencies.¹⁴¹

In the run-up to UNFF-9 the Legal Service of the Council referred in its opinion to the fact that the UNFF-9 covered subjects of national or shared competence, due to which the presentation "could be done through the Presidency, EU DEL or any other Member State" (in the form of the "EU Team").¹⁴² Therefore, the Legal Service saw no obligation for the EU Delegation to represent the EU at the UNFF-9.¹⁴³ National delegations also started to disagree on the matter, requesting clarifications from Brussels on the "EU Team", the nameplate and the role of speaking for the EU and chairing the EU coordination meetings.¹⁴⁴ As for the Commission, similar arguments have been made. The Commission indicated that the EU is a full participant in the UNFF, that EU coordination meetings might be co-chaired by both institutions and that in some contexts the EU Delegation experts can conduct informal meetings, especially concerning implementation matters.¹⁴⁵

Ultimately, member states chose to support the leading role of the rotating Presidency and the EU was represented by the Presidency. Its work, however, was supported by the EU Delegation, and Delegation members also spoke on behalf of the EU and its member states on issues related to implementation.¹⁴⁶ After the conference, the Presidency informed the Council of the outcome of the UNFF-9

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ "With a view to the EU participation in UNFF-9, the Belgian Presidency prepared draft Council conclusions, which were discussed several times by the Working Party on Forestry. At the meeting of the Working Party on 11 January 2011, the Hungarian Presidency noted that consensus was reached on the final version of the conclusions, which took account of the written comments sent by delegations after the meeting of the Working Party on 20 December 2010." Council of the European Union, "Ninth session of the United Nations Forum on Forests (UNFF-9)", 5122/11, Brussels, 11 January 2011.

¹⁴² Council of the European Union, „Summary of discussion of the Working Party on Forestry on 11 January 2011“, 5395/11, Brussels 20 January 2011. p. 2.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*, p. 3.

¹⁴⁶ See statements on the website of UNFF-9, 24 January – 4 February 2011, United Nations, New York.

sessions in New York, which “might be deemed as a success for the EU and its Member States”.¹⁴⁷

Interpretations of the ToL differ as some say that if there is a need for unified EU position, member states should give priority to EU action and let the EU institutions work.¹⁴⁸ This was the case under the Belgian Presidency, which, even before the creation of the EEAS, made it clear that it acts in some cases on behalf of the HR.¹⁴⁹ Some member states, however, contested this view and tried to emphasise the importance of the rotating Presidency, and thus the competence of the member states.¹⁵⁰ Additionally, Belgian officials stated that Belgium followed the community way although it became quite clear that others would probably choose different practice,¹⁵¹ which we have seen in the Forestry case and the attitude of the Hungarian Presidency. The Belgians wanted to set standards (lock-in issues) and managed to play a guiding role on many issues.¹⁵² Changing the standards, however, is not easy for the upcoming Presidencies; this is the reason why already under the Hungarian term, many new conflicting matters appeared on the agenda.¹⁵³

Having seen these cases, we can state that the rotating Presidency faces new challenges in its former external representational role, as the Commission and the EEAS strive for more involvement under shared competences. Its agenda-shaping and consensus-building role, however, remained and even increased to some extent on the EU-level.

CFSP case – Libya

Hypothesis 3 suggests that the rotating Presidency has lost its roles on all levels of CFSP matters.

The last case study covers the area of CFSP competence. The Belgian and the Hungarian Presidencies gave full support to the work of the EEAS in CFSP matters.¹⁵⁴ Although all actors accepted the Presidency’s subordinate role, the gravity of external events, the institutional ‘chaos’ and uncertainty required the support of the Presidency as well.¹⁵⁵ In the following section, the paper will highlight some issues regarding the Libyan crisis and the involvement of the Hungarian Presidency; the aim

¹⁴⁷ Council of the European Union, “Press Release, 3070th Council meeting Agriculture and Fisheries”, 6655/11, Brussels, 21 February 2011.

¹⁴⁸ Emerson et al., *op.cit.*, pp. 30-31.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*, p. 31.

¹⁵¹ Interview with Belgian officials, *op.cit.*

¹⁵² *Ibid.*

¹⁵³ Interview with Gábor Baranyai, *op.cit.*

¹⁵⁴ *Ibid.*

¹⁵⁵ Interview with a Hungarian diplomat, *op.cit.*

is not to cover the background and the roots of the North-African crisis, but rather to focus on the relationship between the Presidency and the EEAS.

Active role and flexibility in Libya

The lack of institutional arrangements and the exceptional external challenges required a more active involvement from the rotating Presidency. Although the Hungarian Presidency played no explicit role, there were some steps missing from the EEAS's side, which were covered by the Presidency.¹⁵⁶ As the situation in Libya was very severe, the role of the European Council was extended quite early.¹⁵⁷ However, from the start of the crisis, the Presidency managed to fill in the gaps and took an active and supportive stance with the Commission, the European Council, the HR and the EEAS.¹⁵⁸

The most important issue was to ensure the safety and security of EU citizens, which was mainly organised by the Hungarian embassy in Tripoli.¹⁵⁹ As there is no EU Delegation in Libya, the Hungarian embassy represented the EU locally. The role of the embassy was crucial for information gathering and evacuation, which obviously also enhanced the involvement of the Presidency.¹⁶⁰ EEAS officials stated that the personnel of the embassy did a "tremendous job on the ground",¹⁶¹ but it would not be appropriate to see its role as an institutional kind¹⁶² since their responsibility for the representation was purely coincidental. This fact, however, does not reduce the merits of the very active involvement.¹⁶³

For the evacuation of EU citizens, the European Union's Civil Protection Mechanism¹⁶⁴ was triggered on behalf of Hungarian Presidency by Foreign Minister János Martonyi on 23 February 2011.¹⁶⁵ Here, we can see again a very active behaviour from the Presidency; nonetheless, it is important to add that the preparatory work was carried out commonly by the EEAS and the Commission.¹⁶⁶ Although the Presidency report states that "the EEAS and the Commission have confirmed support for the Presidency in its efforts",¹⁶⁷ it is not entirely clear whether it was in line with the ToL as it is not

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ Hungarian Presidency of the EU Council, "Hungarian Presidency's contribution to the EU's response on the events in the Southern Mediterranean", *Eu2011.hu*, Press Release, Brussels, 23 February 2011.

¹⁵⁹ *Ibid.*

¹⁶⁰ Interview with EEAS officials.; Interview with a Hungarian diplomat.

¹⁶¹ Interview with EEAS officials.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*, Interview with a Hungarian diplomat.

¹⁶⁴ The Presidency basically requested all member states to help the evacuation of EU citizens with providing their capacities. Hungarian Presidency, "Libya: Hungarian Presidency facilitates evacuation of EU citizens", *Eu2011.hu*, Press Release, Brussels, 25 February 2011.

¹⁶⁵ *Ibid.*

¹⁶⁶ Interview with a Hungarian diplomat.

¹⁶⁷ Hungarian Presidency, "Libya: Hungarian Presidency facilitates", *op.cit.*

specified anywhere.¹⁶⁸ In spite of this, EEAS officials shared the opinion that the initiative behaviour of the Presidency was important in this case.¹⁶⁹ Moreover, “the rotating Presidency stayed well within their limits of competences”.¹⁷⁰

The complex nature of the crisis necessitated a comprehensive approach from the EU, which meant that other Council configurations also speeded up their involvement. As one of the most pressing issues was the problem of immigration, the Presidency immediately commenced discussions in the Justice and Home Affairs Council in the framework of which the Joint Operation Hermes 2011 was launched.¹⁷¹ Moreover, the GAC started preparations of the March European Council and development ministers also gathered for a meeting with the leadership of the Presidency.¹⁷² In addition, the EU interior, energy and defence ministers took action while the Hungarian Minister of State Enikő Győri visited the Libyan-Tunisian border together with the Commissioner for humanitarian aid.¹⁷³ As a Hungarian diplomat stated: “We seized the arising opportunities during the crisis but we were focusing mainly on horizontal dossiers.”¹⁷⁴ In other words, the Hungarian Presidency did not want to reach any specific outcome but rather show a flexible and supportive attitude which was positively welcomed.¹⁷⁵

Another achievement related to the work of the rotating Presidency was the quick adoption of sanctions during the Transport, Telecommunications and Energy Council’s session which was chaired by the Hungarian minister.¹⁷⁶ The decision was reached in light of the UN Resolution, but also comprised separate EU sanctions to implement travel restrictions, an arm and ammunition ban and freezing measures.¹⁷⁷ The promptness and efficiency of the Presidency was appreciated by other member states, especially because preparations were conducted in close cooperation with other EU institutions.¹⁷⁸ Further restrictive measures were also proposed by the working groups.¹⁷⁹

¹⁶⁸ Interview with EEAS officials.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ Hungarian Presidency, “Presidency: EU unity needed on Libya”, *Eu2011.hu, Press Release*, Brussels, 11 March 2011.

¹⁷² Hungarian Presidency, “Hungarian Presidency’s contribution”, *op.cit.*

¹⁷³ Hungarian Presidency, “Developments in Libya: an overview of the EU’s response”, *Eu2011.hu, Press Release*, Brussels, updated 1 April 2011.

¹⁷⁴ Interview with a Hungarian diplomat.

¹⁷⁵ *Ibid.*

¹⁷⁶ Hungarian Presidency, “Libya: Council adopts sanctions”, *Eu2011.hu, Press Release*, Brussels, 6 March 2011.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ Hungarian Presidency, “Presidency: EU unity”, *op.cit.*

Any role left for the Presidency in CFSP?

The reduced competence of the rotating Presidency in CFSP matters does not allow it to exert much influence.¹⁸⁰ Although the general working environment among CFSP actors during the transitional period was very hectic, much more emphasis has been given to horizontal issues and to logistical assistance from the very beginning, already under the Belgian Presidency's term.¹⁸¹

As most of the member states insisted, however, the ToL kept the chairing of the COREPER II with the rotating Presidency, leaving some opportunity for them to exert influence and control over the work of the FAC, the EEAS and working groups.¹⁸² Although the COREPER II is a crucial moment where preparations for the FAC take place, its role has substantially changed and other levels of preparations have become more important in CFSP matters.¹⁸³ In addition, the case of Libya also showed that the COREPER II level was not the most decisive, but clearly appeared to be the lower, working group levels which are all chaired and led by the EEAS.¹⁸⁴ Therefore, the COREPER II is rather a place to pose questions to the EEAS.¹⁸⁵

On the other hand, the role of the Presidency is crucial on the so-called horizontal issues (immigration, financial instruments, sanctions, energy etc.) where CFSP meets 'former first pillar' issues that have not yet been discussed by the foreign ministers. Inter-institutional relations are also important with the European Council where the role of the GAC appears to be essential due to its ability to ensure cohesion across EU policies.¹⁸⁶

Soon after the adoption of the ToL it had become obvious that the job of the HR would be quite demanding, making assistance to its work highly desirable, especially in the uncertain initial moments.¹⁸⁷ The EEAS is still in the phase of testing models, finding out practices that everybody can follow. In addition, the lack of clarity of the Treaty on the arrangements in external representation has allowed the Presidency to remain involved to some extent in the work of the EEAS.¹⁸⁸ For instance, on enlargement issues, the Presidency has a more prominent role based on customs rather than law, and its role is even more explicit in association and cooperation agreements.¹⁸⁹ Therefore, according to the Council's rules of procedure, it is usually the task of the rotating Presidency to fill in for the High Representative when the latter

¹⁸⁰ *Ibid.*; and Interview with a Belgian Foreign Ministry officials, *op.cit.*

¹⁸¹ Interview with a Hungarian diplomat, *op.cit.*

¹⁸² *Ibid.*, and Interview with EEAS officials, *op.cit.*

¹⁸³ *Ibid.*

¹⁸⁴ Interview with EEAS officials, *op.cit.*

¹⁸⁵ *Ibid.*; and Interview with a Hungarian diplomat, *op.cit.*

¹⁸⁶ Interview with a Hungarian diplomat, *op.cit.*

¹⁸⁷ *Ibid.*

¹⁸⁸ Interview with EEAS officials, *op.cit.*

¹⁸⁹ *Ibid.*

is unavailable.¹⁹⁰ Examples of these replacements are Association Council meetings with Croatia, Israel, Turkey and Montenegro.¹⁹¹ The EU was also represented by Mr. Martonyi during the Central-Asia ministerial meeting in Tashkent 7 April 2011.¹⁹² Even though these replacements are not institutionalized and settled,¹⁹³ the Presidency is “more equal than others” when it comes to these types of arrangements.¹⁹⁴

The supportive attitude of both Belgium and Hungary made it possible for the HR and the EEAS to start with the new arrangement and find their leadership role in the EU’s system. Neither the Belgians nor the Hungarians tried to contest the leading role of the EEAS in CFSP matters.¹⁹⁵ The real problem, however, was with the separate system inside the EEAS as the dominant role of the Commission is quite visible, which is not always welcomed by other, mainly bigger member states.¹⁹⁶ Neither the Belgian nor the Hungarian Presidency was pushing for more involvement, but both used the tools they had at their disposal to contribute to the work of the HR and the EEAS under extremely difficult internal and external circumstances. However, the hypothesis is partially contradicted by the fact that the rotating Presidency still has a *modest* role to play at the EU level since issues are still very much interrelated in CFSP matters with other Council configurations.

Conclusion and implications

“The real success of the Presidency lies in the small achievements when we are able to sit at the same table with all relevant parties from the EU’s side and agree on a new form of arrangement.”¹⁹⁷

The aim of this paper was to examine the extent to which the rotating Presidency still plays a role in the EU’s external relations post-Lisbon. In order to answer this question the paper defined the notion of ‘role’ as exercised under the Nice system under which the rotating Presidency, among others, took over the roles of an agenda-shaper, consensus-builder and external representative. Back then, however, the roles of the rotating Presidency in external relations were already mainly assigned along legal competences. This is the reason why the paper applied a framework of the

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² EEAS, “Joint Press Release following the European Union – Central Asia Ministerial Meeting in Tashkent”, European External Action Service, 7 April 2011.

¹⁹³ Very ad hoc usually. Interview with a Hungarian diplomat, *op.cit.*

¹⁹⁴ Interview with EEAS officials, *op.cit.*

¹⁹⁵ Interview with a Hungarian diplomat.

¹⁹⁶ *Ibid.*

¹⁹⁷ Interview with Gábor Baranyai, *op.cit.*

presidential roles along the lines of competences and observed the changes in light of the post-Lisbon structure.

Scholars argued that the ToL significantly reduced the rotating Presidency's role in the EU's external relations. The paper, however, pointed out that this statement is valid mainly for the field of CFSP, as in other areas of competence (exclusive and shared) the rotating Presidency kept its former powers. Although the ToL specified and implemented major changes in the roles of the rotating Presidency, the practice of the Belgian and the Hungarian Presidencies in 2011 demonstrates that it is too early to draw long-term conclusions concerning the role of the rotating Presidency in the EU's external relations.

The analysis of the cases have shown that, besides the competences, other features (attitude, flexibility, environment) have to be taken into account when looking at the contribution of the country at the helm. Belgium, as a very experienced and pro-EU rotating President, clearly favoured the 'more EU' approach in external relations, while considering trade an important issue on its agenda. As the areas of external relations differ to a great extent, the paper adopted three hypotheses related to exclusive, shared and CFSP competences.

The first hypothesis concerning exclusive competence suggested that the roles of the rotating Presidency would not change significantly. This was also confirmed by the case of the EU-Korea FTA where the Belgian Presidency took an influential role by organising separate formal and informal meetings in order to convince the member states in the Council. The mediator (consensus-builder) role had to be *more intensive* as the ToL involves the European Parliament in the conclusion of international agreements at the EU level. Therefore, keeping the European Parliament fully informed about the process also necessitates a high level of *flexibility* from the rotating Presidency.

The second hypothesis referred to the area of shared competence and assumed that the ToL challenged the rotating Presidency's external representative role. The paper analysed three very recent cases in the area of environment policy, demonstrating that shared competence offers most of the conflictual cases despite the ToL's aim of creating coherence in external representation. Due to the Treaty changes and the increasing internal EU power spilling over to the external fora, there is a tendency of expanding EU competences. This expansion of power, however, can have controversial effects for member states. Although Art. 17(1) TEU suggests an enhanced representative role both for the Commission and for the 'newly transformed' EU Delegations, member states often question the EU's competence. The forestry case is a clear example of this.

The cases showed that some of the Treaty's new provisions often result in long debates about competences, especially concerning external EU representation. In

the case of Cancún, the Belgian Presidency was pushing for more EU involvement in the negotiations but some objection was palpable on the side of the member states, as the EU had no exclusive competence in this area. Despite the success of the Presidency in achieving a common EU position, the difficulties of concluding the arrangements anticipate complicated prospects for the future. The Forestry case highlighted the difficulties regarding the changes in EU Delegations when the Council, with the leadership of the Hungarian Presidency, did not approve the request of the EU Delegation to deliver statements on behalf of the EU and convene coordination meetings.¹⁹⁸ These two cases showed that the Belgians preferred more EU involvement while the Hungarian approach differed to some extent. Therefore, in cases under shared competence it is possible in the future that the *attitude* of the Presidencies might have an important influence on the outcome of issues similar to the ones mentioned above.

Having experienced these problems, it is very probable that specific arrangements will have to be made on a case-by-case basis in order to set up new formats of external representation that might challenge the Presidency's role. The long debates concerning the UNEP Mercury case is usually seen as a test case for establishing a specific format that will probably be used during future international conferences, too.

The third hypothesis suggested that the rotating Presidency has lost its roles in CFSP matters. The paper also confirms that the ToL left very little *room for manoeuvre* by keeping only the chairing role in COREPER II for the Presidency. Therefore, the former roles of the Presidency have been fully taken over by the EEAS, the President of the European Council and the High Representative. It is worth mentioning that the very active participation of the Hungarian Presidency during the Libyan crisis, however, was highly appreciated by the responsible EU institutions. Whether we can consider the Libyan case as representative in CFSP involvement is questionable but this experience reflects an important issue which also shows that in case of high uncertainty and underdeveloped institutional set-up, the Presidency's support can have a high added value for the work of the EU as a whole.

On top of that, the case of Libya directed attention to important features in the field of CFSP. Since CFSP issues are very often interwoven with other policy areas where the Presidency conducts the various Council configurations, it has a major role to play before these issues are transferred to the FAC level. Therefore, the cohesion of these issues is difficult to ensure and the Presidency can play a crucial role at EU-level arrangements. As the newly formed GAC formation has direct links both with the preparations for the FAC and the European Council, the Presidency can establish important links with Mr Van Rompuy while supporting his preparatory work. As in the

¹⁹⁸ Interview with Gábor Baranyai, *op.cit.*

case of Libya, the Presidency was involved in the work of the EEAS and demonstrated high-level cooperation, although not in an institutionalised format. Despite the lack of competence, we can state that the hypothesis is partially falsified as the Presidency can give its support to the work of the HR, the President of the European Council and the EEAS, especially during the transitional period when the set-up and the clear separation of powers still seem to be problematic. Future developments will therefore further depend on the *attitudes* of the upcoming Presidencies and relationship with the HR, the President of the European Council, the Commission and the EEAS.

To sum up the results of the analysis, we can state that the role of the rotating Presidency is still influential in the EU's external relations in the post-Lisbon system. As the field of external relations includes also issues belonging to exclusive and shared competences, the representative of member state interests remains to be the rotating Presidency whose roles, however, have changed. The main decline can be observed in the external representative role, showing that the former very *powerful* role (especially in CFSP) has disappeared. The Belgian and the Hungarian examples also showed that issues under shared competence have become more controversial and therefore can challenge the already *moderate* role of the rotating Presidency. The role of a consensus-builder, however, will remain and a more *intensive* role in exclusive competence is expected due to the enhanced powers of the European Parliament. Therefore, keeping and finding compromise with more actors at the EU level will be the key responsibility of the upcoming Presidencies under exclusive and shared competence.

As for CFSP, the path-searching of the EEAS still creates problems but, already under the Belgian and the Hungarian terms, many arrangements have been cleared up and the Presidency understands better where it can support and balance the work of the HR and the EEAS.¹⁹⁹ The rotating Presidencies chose to stay behind the curtains and acted as 'honest brokers' without chairing the meetings. Much also depends on the Presidency's attitude: this 'honest broker' role can change with countries aiming for more influential roles, especially on CFSP issues. There are signs that the Polish Presidency, for instance, would also like to play an influential role in CFSP and CSDP matters.²⁰⁰

To conclude, we can state that the Presidency's 'changing roles' have not yet fully developed in the post-Lisbon system. Although the 'transitional period' could serve as a possible *modus vivendi* for the future, it will most probably not lead to permanent solutions in external relations. The rotating Presidency's role remains; its influence, however, is shifted more towards the EU's internal level, assuming the

¹⁹⁹ Interview with a Hungarian diplomat, *op.cit.*

²⁰⁰ Interview with Belgian officials, *op.cit.*

important role of a consensus-builder in many controversial issues. Flexibility and collaborative attitude towards the still premature institutional arrangements seem to be both welcome to create an appropriate 'code of conduct' among the main actors of the EU's external relations.

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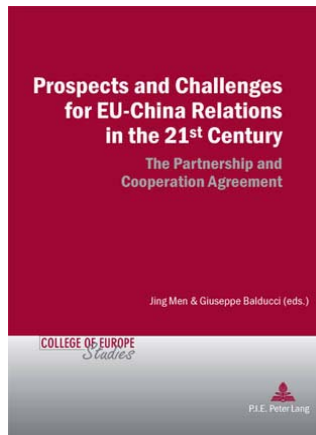
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