



BULLETIN

No. 76 (76) • December 18, 2009 • © PISM

Editors: Sławomir Dębski (Editor-in-Chief), Łukasz Adamski, Mateusz Gniazdowski,
Beata Górka-Winter, Leszek Jesień, Agnieszka Kondek (Executive Editor),
Łukasz Kulesa, Ernest Wyciszkievicz

New Positions in EU Institutional System: High Representative and European Council President

by Aleksandra Kreczmańska

The establishment of the new senior posts comes as the major innovation in the EU's institutional architecture under the Lisbon Treaty. It has considerable consequences for the system of EU presidency and external representation, one of the motives being the elimination of the adverse aspects of the rotating presidency. The new positions have the potential for streamlining the EU's decision-making process and its external actions, but obviously much will depend on how the political practice will shape the new institutional relations with the Commission, the Council and, especially, with the rotating presidency. These dilemmas have not been resolved by the nominations of Catherine Ashton and Herman Van Rompuy.

High Representative (HR) and the European Commission (EC). The High Representative sits in the Commission, as EC vice-president in charge of coordination of its external activities, including enlargement, trade, development policy and humanitarian aid. In his coordinating capacity, he will presumably also be responsible for the external aspects of such policies as environmental or agricultural. The coordinating powers suggest an increasing importance of the Commission vice-president, previously a largely symbolic position. But given the EC's traditional collegiate nature, it is not yet clear if he will hold an overriding position over other commissioners. Which interpretation prevails may influence the future directions of the Commission's internal reforms, resulting perhaps in a stronger role of the vice-president or a greater weight of groups of commissioners within the EC. In the first Barroso Commission, five informal commissioner groups were formed, with the aim of improving the Commission's internal coordination but, with group heads lacking any special powers, the arrangement failed to bring about the expected results. Given that plans for a future reduction of the number of commissioners were abandoned in December 2008 (as part of guarantees for Ireland), there is a pressing need for the EC internal reform, making the broad college of commissioners more effective.

The High Representative's relations with the Commission president will be crucial, given the potential for conflict under the provisions of the Article 17.1 TEU: "With the exception of the common foreign and security policy, and other cases provided for in the Treaties, [the Commission] shall ensure the Union's external representation." In the past, it was the Commission president that played a major role in external activities such as trade or development policy. It is very likely that he will have the final say and arbitration powers if disputes or differences of opinions arise between the HR and other commissioners. Another question not yet settled is about chairing the group for external relations. The EC president may seek to keep that role so as to accentuate his responsibility for ensuring that the Commission, in accordance with the Article 17.6 TEU, "acts consistently, efficiently and as a collegiate body."

High Representative and the EU Council. The HR presides over the Foreign Affairs Council and is responsible for the pursuit of the CFSP, where member states' unanimity is required. He is also supposed to ensure the implementation of Foreign Affairs Council and European Council decisions. The treaty however does not introduce any new mechanisms to encourage conformity of member states' actions or to enforce the fulfillment of their assumed obligations. With unanimity still the

starting point for any EU action in this field, the HR will have to demonstrate consensus-building skills and the ability to win member states' trust.

The General Affairs and External Relations Council (GAERC) will be split up into the Foreign Affairs Council (FAC), to be chaired by the High Representative, and the General Affairs Council (GAC), presided over by member states on a rotating basis. The FAC's terms of reference will cover the entirety of the EU's external action, including trade and development policies, but enlargement will be covered by the GAC. The division of competences between the presidency and the HR is different regarding the chairmanship of preparatory bodies that previously reported to the GAERC. The treaty only stipulates that the Political and Security Committee is chaired by a representative of the HR, and the Permanent Representatives Committee (Coreper) by the presidency. As decided by member states, the rotating presidency will chair the working parties dealing with trade and development, as well as horizontal working parties unrelated to the EU's foreign policy (e.g. consular affairs). The HR representative will chair geographical preparatory bodies, as well as most of the horizontal working parties and the ones dealing with the Common Security and Defense Policy. The separation criterion with regard to the preparatory bodies reflects the EEAS arrangements and is based on the division into Community-method areas, such as trade or development policy, and those managed in an inter-governmental manner.

The Lisbon Treaty intention is that the rotating presidency will lose its external representation function, the reason being the changing nature of individual presidencies' external priorities and their diversified capacity to influence international relations. Although this dimension of the reform now worries many member states, upholding the previous external representation roles by the rotating presidency's foreign minister and prime minister would undermine the Lisbon Treaty's reform aimed at greater transparency and continuity in the EU's external activities.

European Council President. The key competences of the European Council president are related to the European Union's internal affairs, including agenda-setting, coordination and mediation (cf. Article 15 TEU). Although the treaty describes the president's powers in general terms, he may potentially play an important role in the conduct of the EU policies and activities—it is primarily where the position's value-added lies in. The greatest hurdles to the European Council president's smooth functioning arise from the mixed system of presidency under the treaty—a compromise solution which involves elements of permanent presidency (European Council, Foreign Affairs Council) and rotating presidency (the Council's other configurations). For that system to operate effectively, the permanent president, the High Representative, and the rotating presidency must cooperate on all functions of EU presidency: coordination, planning and mediation.

The Lisbon Treaty does not specify the exact division of the competences and responsibilities between the High Representative and the European Council president in the field of the EU's foreign policy. But although the permanent president is expected to ensure the Union's external representation "at his level and in that capacity," it may be noted that, unlike the High Representative, actually he is not assigned any specific competences and tasks in that field, and will very likely be performing representative functions. It is possible that the High Representative will not approach his function in a narrow, operational manner, and will rather be willing to act as the EU's main representative in external relations. Moreover it will be the High Representative who will head the EEAS, which will provide an administrative and conceptual basis in this area also for the European Council's permanent president.

Conclusions for Poland. The Polish presidency in 2011 will be held in an initial period of functioning of the two new senior posts. It is, therefore, very important to observe closely the emerging political practice and cooperate with the presidency trio that starts in 2010 (Spain, Belgium and Hungary). Also, when setting the presidency priorities, the competences of the permanent president of the European Council and the High Representative will have to be taken into account, the more so as under the treaty the rotating presidency loses the functions of foreign policy planning and representation. The practice of cooperation between the High Representative and the rotating presidency will have to be specified in greater detail.