

Two new leaders in search of a job description

Piotr Maciej Kaczyński & Peadar ó Broin

The first permanent European Council President and second High Representative for EU foreign policy have been chosen. After weeks of speculation, the question of *who* will occupy the roles has now been answered: Herman Van Rompuy will take office as European Council President on 1 January 2010; and Catherine Ashton will be appointed the EU's foreign affairs chief on 1 December 2009. The presidency of the European Council has until now been performed by the head of State or government of the member state holding the rotating presidency, but the Lisbon Treaty clearly stipulates that from its entry into force, the President of the European Council may not hold national office. The position of a High Representative had previously existed, but the function has been significantly re-written by the Lisbon Treaty. So, in addition to new faces, there are also new unknowns. The question of precisely *what* powers the President and High Representative will exercise remains largely unknown, as it is not yet clear how they will perform as individuals and in tandem. Nevertheless, the Treaties give at least a general indication of the powers these two leaders will wield.

President of the European Council

The new President's powers are mentioned in only five articles of the Treaties. The most comprehensive is Article 15 of the EU Treaty (TEU), which assigns the following tasks to the President:

- (a) to chair and drive forward the work of the European Council;
- (b) to ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council (GAC);
- (c) to endeavour to facilitate cohesion and consensus within the European Council;

(d) to present a report to the European Parliament after each of the meetings of the European Council.

The President can also, *at his level and in that capacity*, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative for Foreign Affairs and Security Policy.

The President will also convene meetings of the European Council at least four times a year (Article 15(3) TEU), and he possesses the *formal power* to convene a Convention to amend the EU treaties (Article 48(3) TEU).

In carrying out his functions, the President can draw upon the institutional support of the newly created General Affairs Council, one of whose tasks will be to prepare European Council meetings *in liaison* with the European Council President (Article 16(6) TEU). A potential problem arises from the fact that the General Affairs Council meetings will be organised and chaired by the rotating presidency, which could possibly provoke a clash of powers between the rotating presidency seeking to garner more powers and the President of the European Council. Moreover, at this stage, we do not know the extent of involvement by the President of the European Council in the working of GAC in preparing the European Council meetings. In principle, the President will be supported by the General Secretariat of the Council; which also provides support for the rotating presidency.

The circumscribed formulation of the President's powers could suggest that the newly selected President is to be little more than a mere facilitator of the will of the member states. However, there is an indication that a much larger political role is possible. First, the Lisbon Treaty refers to someone who would in fact become the dominant factor in "driving forward" the work of the

CEPS Policy Briefs present concise, policy-oriented analyses of topical issues in European affairs, with the aim of interjecting the views of CEPS researchers and associates into the policy-making process in a timely fashion. Unless otherwise indicated, the views expressed are attributable only to the authors in a personal capacity and not to any institution with which they are associated.

Piotr Maciej Kaczyński is Research Fellow at CEPS; Peadar ó Broin is Associate Research Fellow at CEPS. The authors would like to thank Maja Šoštarić for her input.

European Council. Second, the address before the European Parliament could become a mini-EU version of the American ‘State of the Union’ address contributing to the pan-European debate not only on what *is* being done, but what *should* be done. Third, the President could become Europe’s ‘face’ in international affairs in performing his role as external representative of the EU.

In doing so, however, the new President’s prerogatives need to be more precisely defined in the Rules of Procedure of the European Council, due to be adopted during the December 2009 meeting (first meeting of the European Council as a formal institution). This needs to be done to clarify the President’s relationship with other institutions, such as the High Representative (the issue of representation of the CFSP), the rotating presidency (the relation with the General Affairs Council) and the European Commission (the issue of representation of the Union towards citizens – who would be the EU’s face – and of non-CFSP-related policies at an international level). Inter alia, the Rules of Procedure need to specify who drafts the first version of Conclusions of the European Councils (GAC or the President), what will be the role of the head of state or government of the country holding the rotating presidency and how big will be the President’s team. The Council will have to decide on the President’s salary.

High Representative of the Union for Foreign Affairs and Security Policy

One of the objectives of the Lisbon Treaty was to improve the ‘coherence’ of the European Union’s actions, notably in terms of foreign policy. To this end, the Lisbon Treaty merges two pre-Lisbon Treaty roles: 1) the High Representative for the Common Foreign and Security Policy, who was appointed by the Council to represent and articulate common EU positions on foreign policy and defence matters; and 2) the Commissioner for External Relations, who had a larger budget at her disposal than the High Representative for the CFSP, but significantly less authority to speak on EU foreign policy matters.

The result is a *High Representative of the Union for Foreign Affairs and Security Policy*, who will chair the Foreign Affairs configuration of the Council of Ministers and will be Vice-President of the European Commission. This so-called ‘double-hatting’ of the High Representative in the Council and the Commission has no precedent in EU institutional affairs, so its precise operational effects remain to be seen. This new function – despite its name – differs substantially from the pre-Lisbon Treaty High Representative (see Table 1 below).

Table 1. Shifting and ‘beefing up’ the High Representative in the inter-institutional system

	Pre-Lisbon High Rep	Lisbon High Rep
Council Role 1: High Rep for CFSP	YES	YES (Art. 18 TEU)
Council Role 2: Secretary General	YES	NO (Art. 240 TFEU, ex Art. 207 EC)
Council Role 3: Chair of FAC	NO (rotating presidency)	YES (Art. 18(3) TEU)
Commission Role	NO (separate Commissioner)	YES (Vice-President responsible for external action (Art. 18(4) TEU)
CFSP Right of initiative	NO (exclusively EC, MSs)	YES (Art. 22(2) TEU, Art. 30(1) TEU)
CFSP Implementation	NO (new)	YES (Art. 24(1) TEU)
European External Action Service	NO (new)	YES (Art. 27(3) TEU)
CFSP Extraordinary FAC meeting	NO (rotating presidency)	YES (Art. 30(2) TEU)
Coordination in international organisations, internat’l. conferences and third countries	NO (rotating presidency)	YES (Art. 34(1) TEU) (Art. 221 TFEU)
UN Security Council Address	NO (new)	YES (Art. 34(2) TEU – when EU has a position)
CFSP interlocutor in EP	NO (rotating presidency)	YES (Art. 36 TEU)
Permanent Structural Cooperation in Defence	NO (new)	Consulted (Art. 46 TEU)
Initiate Agreements with Third Countries	NO (EC)	YES (Art. 218(3) TFEU – when agreement on CFSP matters)
Initiate Suspension of Agreements with Third Countries	NO (EC)	YES (Art. 218(9) TFEU)
Enhanced Cooperation in CFSP	NO (new)	Consulted (Art. 329 TFEU)

While the merger may seem logical – fusing the authority of the High Representative for the CFSP with the budgetary weight of the Commissioner for External Relations and thereby simplifying to some degree the Union’s foreign policy representation – it raises a number of critical institutional questions.

Added to the mix is not only the question of double-hatting, but also the sharing of responsibility for representing the Union’s foreign policy with a significant number of institutional actors (see Table 2).

Perhaps the most undefined element of the post will be ‘cohabitation’ with the President of the European Council. According to the Treaties, the President of the European Council “shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its foreign security and defence policy, without prejudice to the powers of the High Representative”.

The High Representative, on the other hand, is mandated to “conduct” the CFSP (which includes EU defence policy) and “contribute by [her] proposals to the development of that policy, which [she] shall carry out as mandated by the Council” (Art. 18(2) TEU). The use of the word “contribute” implies that the High Representative does not have exclusive responsibility for the development of CFSP and is simply one of several actors, albeit a prominent one.

Will the President of the European Council or the High Representative have the primary duty to represent the CFSP? Article 27(2) TEU states that the High Representative has this responsibility, but Article 15(6) TEU muddies the waters by giving an undefined responsibility to the President of the European Council to present the CFSP.

The real power, presumably, lies with the High Representative on this front, as it is the High Representative who has the power to both propose and implement the CFSP, subject to two conditions: 1) she may only *implement* those proposals on which the Council agrees; and 2) if joint proposals are to be made with the Commission, the High Representative will need to work with the whole College to secure backing for a proposal. There will be another major institutional innovation aimed at assisting the High Representative in the implementation of CFSP decisions – the creation of the European External Action Service (EEAS).

External representation of the Union on other matters, such as trade, development or enlargement policies and internal policies where there is an external dimension remains with the Commissioner responsible for the appropriate portfolio. There is also a grey area in which external representation will be decided on a case-by-case basis, such as G-20

meetings, energy treaties with third states and international environmental negotiations. In these instances, the EU may be represented by the European Council President, the representative of the member state holding the rotating presidency, a member of the European Commission (e.g. the Trade Commissioner in WTO talks) or the High Representative, or various combinations of these roles. An additional double role for the rotating presidency is envisaged when bilateral EU-third country summits are to be held in the EU.

Since the High Representative will be present in the Council as chair of the Foreign Affairs Council (FAC), she will also chair meetings of national ministers on international trade and development policies, which fall under the responsibility of the FAC (see Draft Council Decision laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, 16 November 2009, 16086/09). This may allow for the High Representative to exert some indirect influence over the Commissioners for Trade and Development.

The High Representative is to be a member of the European Commission, taking over the former role of Commissioner for External Relations. It is likely that the High Representative will also be responsible for European Neighbourhood Policy, but is unlikely to subsume any further responsibilities from existing Commission portfolios. But as the High Representative will head the new European External Action Service, there may be further scope for influencing EU external action that is not strictly related to the CFSP.

In the Commission, the High Representative will nominally be one of several Vice-Presidents under the authority of the President of the Commission. Vice-Presidents have no formal hierarchy over other Commissioners in the College, but because of its position in the FAC, there might be a *de facto* hierarchy vis-à-vis the Trade and Development Commissioners.

The High Representative has a special status as regards the appointment and firing process: her role, along with that of President, is one of only two posts in the Commission that are permanent according to the Treaties – all other portfolios may be established and abolished by the President. She is appointed by the European Council directly into office, like the President. But unlike the President and like all other Commissioners, she does not face an individual vote of appointment by the European Parliament (although possibly politically difficult hearings in the Parliamentary Committees); she is subject to appointment along with all other Commissioners as a body.

As regards firing, however, she may only be forcibly removed from office by the European Council with the agreement of the President of the Commission. If the College of Commissioners is censured by the

European Parliament, she must resign from the European Commission, but remains High Representative of the Union.

Table 2. Individuals involved in representation of EU external action

1. President of the European Council (but formally only for the CFSP)
2. High Representative of the Union, supported by the EEAS
3. President of the European Commission (on a number of dossiers, excluding CFSP – cf. presence in summits, esp. G-8, G-20 and EU-third country summits)
4. Members of the European Commission (depending on the issue and presumably only with the consent of the President of the Commission)
5. Presidency of the Council (individual ministers, changing depending on Council formation)
6. Head of State or Government of the member state holding the rotating presidency – would they differ completely to the President of the European Council in external representation? (plan minimal: involvement as host when meetings in EU)
7. President of the European Central Bank (where appropriate, such as in G-20 talks)
8. President of the Eurogroup (where appropriate on currency issues and presumably on economic coordination among eurozone states)

About CEPS

Founded in Brussels in 1983, the Centre for European Policy Studies (CEPS) is among the most experienced and authoritative think tanks operating in the European Union today. CEPS serves as a leading forum for debate on EU affairs, but its most distinguishing feature lies in its strong in-house research capacity, complemented by an extensive network of partner institutes throughout the world.

CEPS' funding is obtained from a variety of sources, including membership fees, project research, foundation grants, conferences fees, publication sales and an annual grant from the European Commission.

Goals

- To carry out state-of-the-art policy research leading to solutions to the challenges facing Europe today.
- To achieve high standards of academic excellence and maintain unqualified independence.
- To provide a forum for discussion among all stakeholders in the European policy process.
- To build collaborative networks of researchers, policy-makers and business representatives across the whole of Europe.
- To disseminate our findings and views through a regular flow of publications and public events.

Programme Structure

CEPS carries out its research via its own in-house research programmes and through collaborative research networks involving the active participation of other highly reputable institutes and specialists.

Research Programmes

Economic & Social Welfare Policies
Energy, Climate Change & Sustainable Development
EU Neighbourhood, Foreign & Security Policy
Financial Markets & Taxation
Justice & Home Affairs
Politics & European Institutions
Regulatory Affairs
Trade, Development & Agricultural Policy

Research Networks/Joint Initiatives

European Capital Markets Institute (ECMI)
European Climate Platform (ECP)
European Credit Research Institute (ECRI)
European Network for Better Regulation (ENBR)
European Network of Economic Policy Research Institutes (ENEPRI)
European Policy Institutes Network (EPIN)
European Security Forum (ESF)

In the context of its research programmes and networks, CEPS organises a variety of activities, involving its members and other stakeholders in the European policy debate, national and EU-level policy-makers, academics, corporate executives, NGOs and the media. These activities include task forces, conferences, lunchtime membership meetings, briefings, training seminars and major annual events (e.g. the CEPS Annual Conference).

Website: <http://www.ceps.eu>