

Jean-Louis Dewost, The Presidency in the institutional framework of the European Communities (January 1984)

Caption: In an article published in January 1984 in the *Revue du Marché commun*, Jean-Louis Dewost, legal adviser to the French Conseil d'État and Director-General in the Legal Service of the Council of the European Communities, analyses the development in practice of the responsibilities of the Council since the mid-1960s and identifies a discrepancy between these responsibilities and the actual powers attributed to it by the treaties.

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The Presidency in the institutional framework of the European Communities *

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The Treaties include only very few provisions concerning the Presidency of the Council and its powers. Aside from the vital article governing questions of duration and rotation (second paragraph of Article 2 of the Merger Treaty), there are five provisions ⁽¹⁾ of which only three remain in force, although they are very rarely applied. They are the second paragraph of Article 236 of the EEC Treaty on convening the conference of representatives of the governments of the Member States for amending the Treaties and the second paragraphs of Articles 5 and 6 of the Statute of the Court of Justice concerning notification of resignations by Court of Justice judges.

It is, therefore, a very modest, not to say insignificant list. In fact, it was developments subsequent to the Treaties and based on established practice that gradually shaped the ‘statute’ of the Presidency. That quasi-accidental origin of the Presidency probably explains both the apparent paradox of responsibility without power and the need to find a better balance between its national component and its Community component.

I. — The apparent paradox of responsibility without power

1. Responsibility

That responsibility, or rather those responsibilities, have grown very markedly since the late 1960s and early 1970s, at both internal and external level.

At internal level, the Presidency’s responsibilities cover both procedure and substance.

As regards procedure, the Presidency is responsible for organising the Council’s work properly. That means that it is expected to draw up a calendar that is at the same time reasonably full, as stable as possible and well coordinated in the light of the rising number of Council bodies. The Presidency is also responsible for the smooth running of meetings: in that regard, it must ensure that the various delegations speak in the proper order and draw from the debate conclusions that are marked principally by clarity and neutrality. Regarding its responsibility for the proper organisation of the Council’s work, in recent years the Presidency has had to devote much effort to the problems of coordinating the various Councils and the various bodies that prepare them. ⁽²⁾ That vital coordination cannot, however, take the place of the essential national coordination of positions: that is why what are known as ‘jumbo’ Councils, meetings of Ministers belonging to two different Councils, have never been successful in cases where the positions of the various Ministries diverged within a same national delegation.

That would suffice to show that it is difficult to dissociate procedure from substance. As for substance, the Presidency is regarded as responsible for steering activities in the right direction, i.e. for ensuring that debates on specific topics culminate in the adoption of balanced solutions within a reasonable time. The growth of that responsibility, which Dr H. Wallace explains as resulting from a good number of factors (increase in the number of meetings, change in the economic environment, etc.), is linked above all to the development of the Community’s decision-making process, which is dominated by the search for consensus. Where no vote is taken, the Commission actually loses much of its room for manoeuvre when Article 148 is read in conjunction with Article 149 of the EEC Treaty. As guardian of the Treaty and concerned with championing its proposals, it would also be difficult for it to take the initiative in seeking compromises.

That responsibility therefore lies with the Presidency. The ‘Presidency’s compromise’, which has now become a genuine Community tradition, may take various forms. It may be written or oral, distributed in advance or distributed at the meeting. Which of those various procedures is chosen will depend on tactical considerations which must be inspired, above all, by the search for a successful outcome. It is a delicate task, one which, in most

cases, presupposes advance contacts with the delegations most concerned and with the Commission, without whose assistance there is little chance of a successful compromise being secured. Moreover, good compromises are generally the result of close cooperation with the Commission; in certain extreme cases, the Presidency merely acts as a kind of lever in this regard. Lastly, over the past few years, a certain trend has been noted towards the 'survival' of compromises beyond the six-month presidential term: in that event, the subsequent Presidency reviews them, and they come into effect several months later.

In addition to its role of formulating and presenting compromises, which has become essential to the life of the Community, the Presidency is expected to play another role, one which is even more delicate: it is expected to give 'political impetus'. That has, at times, taken the form of reviving forgotten issues and, at others, of focusing on a new subject that, it is hoped, will 'mobilise' the Community's political energy. When the 'presidential system' first appeared, that role was rather overestimated. Presidencies announced 'programmes' and presented themselves as the real driving force of the Community, hoping they could transpose their national priorities to Community level. Since then, they have gone back to a more realistic assessment of how much impetus they can give.

Lastly, the Presidency has recently found that, under certain circumstances, it has been given real powers of arbitration in the event of conflicts: that was the case, for instance, of the fisheries dossier that was, eventually, successfully concluded in late January 1983, thanks to two trilateral meetings between the Presidency, the Commission and the Danish delegation.

The Presidency's external responsibilities have also grown. They cover interinstitutional relations, where there have been some new developments, particularly in the budgetary field: for example, the joint declaration of 30 June 1982 (known as the 'trialogue') was drafted by the three Presidents of, respectively, the European Parliament, the Council and the Commission, signed by all three and then submitted to each of the institutions for its approval.

The Presidency has also gained a certain stature in the field of international relations. ⁽³⁾ For example, since 1965, the President of the Council, like the President of the Commission, receives the letters of accreditation of the ambassadors of third countries appointed to the Community. The Presidency also acts as the Community's spokesman in many international contexts. In principle, it does so in the case of 'joint' agreements or shared competences (i.e. between the Community and Member States). The Presidency then shares that role with the Commission on the basis of its competences, although sometimes the situation is more flexible, depending on the technical nature of the subject in question. That applies, in particular, to discussions on development issues and matters relating to commodities (UNCTAD, etc.).

2. No power

Naturally, the Presidency has some procedural powers conferred on it by the treaties or by established practice. Accordingly, the Council's Rules of Procedure provide that the President of the Council convenes the Council, draws up the provisional agenda of each meeting, signs the minutes, etc. It has also become established practice for the President to be responsible for the practical organisation of the Council's work and for the procedure, usually after consulting his colleagues — in emergencies, for example, the Presidency might decide to apply the written procedure after consulting the delegations at the level of the Committee of Permanent Representatives.

Over and above those few procedural powers, the Presidency has no real power over the substance of what is to be discussed. It cannot put any constraint on reluctant delegations, even in the extreme event of simple common sense requiring that a particular solution be adopted. It merely has the power to exert political or moral 'pressure' on them. In fact, as Dr Wallace puts it so well in his report, it has to set out the conditions for consensus.

It was after these weaknesses became clear that, over the last decade, a great many studies and reports have been drawn up on the strengthening of the Presidency's powers. They have produced few tangible results. It is worth

asking why there is such a disparity between those efforts and the results. Perhaps they were on the wrong track? Perhaps they attached too much importance to a certain ‘model’ of power?

II. — A balance still needs to be found between the national and the Community component of the Presidency

1. Research follows the wrong track after the noting of systemic weaknesses

All these reports and studies rightly note the weaknesses of the Presidency of the Council of Ministers which result mainly from the fact that the Presidency does not exercise power for an adequate term (six months) and that the matters dealt with are highly technical. Having established that, reformers began looking in directions that, in our view, were bound to lead nowhere. That is very probably because the proposed reforms were all more or less based on a certain national model of political and administrative power, which reflected a hierarchical command structure rather than a concept of power as a power of influence based on prior consultation with the Presidency’s partners.

For instance, it was initially proposed that the Presidency’s term of office be extended, either directly by increasing it to one year, or indirectly, by adopting the model of the rolling ‘triumvirate’ (with each current Presidency supported and assisted by the preceding one and the subsequent one, as is the case in political cooperation). The idea of extending the term of the Presidency was finally rejected for a number of reasons relating both to the workload that this would represent for a national administration and to the fact that it would greatly slow down the rate of rotation of delegations following enlargement of the Community. In fact, a six-month term would seem quite satisfactory, were it not for the constraints that force a Presidency to hold one if not more Councils in their various configurations (energy, environment, transport, research, etc.), even if the background work on the matters under consideration is not yet complete. That has led to an increasing number of specialist Councils, ⁽⁴⁾ often not adequately prepared, at the end of each six-month term of office, a solution which does not necessarily promote the successful handling of the issues under discussion. As for the idea of a ‘triumvirate’, it was rejected for simple reasons, such as the need for a controlling body to ensure sound administrative organisation.

A number of ideas were put forward with a view to overcoming the technical difficulties. One suggestion was that a full-time President should chair the various Councils, in whatever configuration; another was that the Secretary-General should chair the Council of Ministers, as was the custom in NATO and the OECD; it was even suggested that the Commission chair the Council of Ministers ... All those proposals came up against serious political or institutional difficulties. It would, indeed, be hard to imagine a Minister withdrawing entirely from national political life for six months in order to devote himself exclusively to the Presidency, and it is not even certain whether that would benefit the Community. As for the idea of the Secretary-General in the chair, that refers to a type of international organisation that has no institution corresponding to the Commission. Lastly, as we said earlier, merging the Presidency and the Commission would, by involving the Commission directly in seeking compromises, totally deprive it of its role, which is to define a certain Community ‘ideal’ and to ensure compliance with the provisions of the Treaty.

2. Close association between the Presidency and the General Secretariat of the Council

There was one obvious solution in the view of those involved in the day-to-day running of the Community: a close association between the Presidency and the General Secretariat of the Council. It is, in fact, clear that the General Secretariat has the necessary technical know-how (knowledge of custom and procedures) and temporal competence (given that it is the living memory of the Council and has at its disposal texts in which precedents were set). On the other hand, simply because of its structure and the fact that it has no external network, it will generally have less political information than that available to a national Presidency. Conversely, those same national Presidencies will have that information available but may not have all the technical know-how required to put that information to full use in the conduct of debates and the organisation of the Council’s work.

In their 1979 report on the three institutions, the ‘Three Wise Men’ had already noted that ‘the Secretariat of the Council has resources that it would be advantageous for all the Member States to use on a more regular and more complete basis. It knows the procedures, has an overview of the machinery and an ability objectively to evaluate the attitude of the other Member States unmatched even by the most powerful national administrations.’ In its turn, when it appointed the current Secretary-General, Niels Ersbøll, ⁽⁵⁾ in 1980, the Council preceded its decision to appoint him by recitals that follow the same line and refer in particular to the need for ‘a higher degree of continuity’ and ‘a better coordination’ of the work of the Council, to the need for efforts ‘to produce more Council decisions by compromise through preparatory contacts with delegations’ and reaching ‘preliminary agreement’ in the Committee of Permanent Representatives in order to alleviate the Council’s workload. In that decision, the Council also noted that ‘the task of the Secretariat of the Council is to assist the Council in general and the Presidency in particular in the performance of their tasks’.

The implementation of those good principles presupposes total mutual trust between the Presidency and the General Secretariat. Trust, however, is based on knowledge. That means that this association would work very well in relatively permanent bodies: Foreign Affairs Council, Agriculture Council, Committee of Permanent Representatives (I and II), and the standing working parties set up by them. Conversely, it would work much less satisfactorily in more specialised bodies which hold less regular meetings, such as Councils that meet once every six months. In that event, preparations for the Council meeting will usually be made in the relevant capital city, and the President will naturally tend to be advised by his own national officials rather than by unknown officials of the General Secretariat. It is, therefore, questionable whether an increased number of special Council configurations would be advisable.

Conclusion

The Presidency’s powers have developed, as we have seen, over the past fifteen years or so. While the initial illusions that the Presidency might steer the Community on the basis of certain national priorities have now been dissipated, the Presidency’s role remains fundamental to the smooth running of the Community’s activities, to the successful conclusion of debates on issues that can be resolved with a certain effort of imagination and a real spirit of compromise and to protecting the common Community *acquis* from any centrifugal trends that might emerge in the absence of spectacular progress.

If matters continue to evolve in this manner, might there be a risk that one day, after the paradox of responsibility without power, we see the new paradox of an irresponsible power? We do not think so. Aside from the fact that the Presidency’s ‘power’ is still very modest, there are signs of a slow but gradual development of relations between the Presidency and the European Parliament, in the form of the presentation of the ‘programme’, the minutes of the meetings of some Councils — in particular the European Council — and, finally, the appearance of Council Presidents before specialist committees. What looks far more important, however, than relations with a Parliament that, at all events, has no legal means of constraint *vis-à-vis* the Presidency, is the Presidency’s political responsibility *vis-à-vis* the other Member States and *vis-à-vis* public opinion.

Although, in politics as elsewhere, people are more willing to share responsibility for successes than for failures, presidential ‘good conduct’ is always noticed and, even from a strictly national point of view, represents an investment for the future, given the six-month rotation of the Presidency. In effect, any momentary advantage that might be gained from misusing that office would usually be cancelled out during subsequent negotiations. Moreover, it would affect the public image of the country in question as a result of the media coverage. With the creation of the European Council, the highest authorities of a national state now head the political and administrative team that becomes responsible for six months for conducting the business of the Community. At a time when the Community is uncertain of its *raison d’être*, it is, in the final analysis, history that will judge the Presidencies.

NB: The opinions expressed in this article reflect the author's personal views and in no way commit his institution.

* Text of a speech given at the colloquy organised by the European Institute of Public Administration in Maastricht on 18 November 1983.

(1) Second paragraph of Article 236 of the EEC Treaty, Article 243 of the EEC Treaty, second paragraphs of Articles 5 and 6 of the Statute of the Court of Justice, and Article 46 of the Statute of the Court of Justice.

(2) In principle, this had been regulated by the 1965 Merger Treaty, Article 4 of which provides that: 'A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council.' But that 'monopoly', which had no longer been absolute since the creation in 1960 of the Special Committee on Agriculture (SCA), was increasingly undermined when the special Council set up the 'High-Level Groups' under the direct authority of the Ministers.

(3) Regardless of its growing international role in the field of political cooperation, although, de facto, they mutually strengthened each other.

(4) The number of which is, in fact, growing, with the most recent 'creations' being the 'Internal Market' Council and the 'Consumer Protection' Council'.

(5) See Council Decision of 26 September 1981 appointing the Secretary-General of the Council of the European Communities, OJ L 261, 4.10.1980.