

Zentrum für Europäische Integrationsforschung
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José Manuel Martínez Sierra

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Buying more than it can
choose?

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Zentrum für Europäische Integrationsforschung
Center for European Integration Studies
Rheinische Friedrich-Wilhelms-Universität Bonn

Walter-Flex-Straße 3
D-53113 Bonn
Germany

Tel.: +49-228-73-1880
Fax: +49-228-73-1788
<http://www.zei.de>

Prof. Dr. D. José Manuel Martínez Sierra, born 1971, is *Professor Titular* in Constitutional Law at Complutense University of Madrid since February 2002. After studies of Law, Political and Social science at Madrid, Alcalá and Amsterdam, Martínez Sierra wrote a LL.M dissertation on the European Parliament and a PhD dissertation on the structural problems in the Political System of the EU. He was a trainee at the Council of the EU and lecturer at La Laguna University (2000-2002).

His recent publications include: El procedimiento legislativo de la codecisión: de Maastricht a Niza, Valencia 2002; (with A. de Cabo) Constitucionalismo, mundialización y crisis del concepto de soberanía, Alicante 2000; La reforma constitucional y el referéndum en Irlanda: a propósito de Niza, *Teoría y Realidad Constitucional*, nº 7 2001; El debate Constitucional en la Unión Europea, *Revista de Estudios Políticos*, nº 113 2001; El Tratado de Niza, *Revista Española de Derecho Constitucional*, nº 59 2001; Sufragio, jueces y democracia en las elecciones norteamericanas de 2000, *Jueces para la democracia*, nº 40 2001.

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I. Introduction

The Spanish 2002 Presidency of the European Union set off on January, the 1st. During the six months of this Presidency, the Spanish Government attempted to harmonize its interest with the EU agenda. The EU Presidency is the highlight of any Member State in the Union life, though not being the owner of the Rolls Royce you drive. Thus temptations to get your way are high, even if your most desirable path goes against the wishes of other Member States or (even worst) against the common interest of the Union.

One may think that the common interest of the Union can easily be preserved by the Presidency, through multilateral state contacts at Coreper II or/and bilateral contacts with the institutions. But this may in fact not be so. Yet, in reality, we find discrepancies, resulting from problems that are rooted in the procedural and in the political realms. One should notice that the guidelines of a Presidency are put forward unilaterally long before the Presidency starts, normally without fully seeking other actors' opinions (states, institutions, national actors, etc.) in order to elaborate the agenda. For instance, the Belgium Presidency "priority program" came out on May, the 2nd. By then, one-third of the Swedish Presidency was still forthcoming and consequently, the theoretical "troika link" among presidencies could not be defined. Simply

because those last links of the chain were not in place. The same can be said about the Program of the Spanish Presidency of the EU: “More Europe”.¹

The agendas of Member States and the EU do not fully coincide, furthermore they can be partially contradictory. As far as Member States are concerned, this reality does not change for the simple fact of holding the Presidency of the Union, as the intrinsic nature of the State interest does not mutate. In short, one can say: the closer the agendas (EU-Presidency), the better the outcome of the Presidency.

During the Spanish Presidency one could detect a great variety of agenda scenarios, i.e. common high interest of both parties (Euro), high Presidency interest with moderate interest of the EU (terrorism, migration), a high interest of the EU with little of the Presidency (enlargement), High Presidency interest with little coming from EU (EU-Latin American relationship). These diverse agenda scenarios determined not only the agenda of the Presidency but also the workload and effort put in each item of the final agenda.

This paper, in its second and most significant part, will examine the main issues faced by the Spanish Presidency from a sectoral and global perspective. From there we will draft some observations about the concrete outcome of the Presidency as well as the feasibility of the current Presidency method in an enlarged Europe. This second dimension of the conclusions will also refer to the theoretical approach to the Presidency set up in the first part of this paper, The EU Presidency in its context.

1 “More Europe: Program of the Spanish Presidency of the EU”, 1-1/30-6-2002, Imprenta Nacional del Boletín del Estado, 2001. Here in after cited as “More Europe”.

II. The EU Presidency in its context: tasks and powers of a European President

General Remarks

The Treaties do not define the tasks of the Presidency, the same applies for the Council's Rules of Procedure. However, there are a number of specific indications to which the Council's Rules of Procedure, in a non-systematic way, add various procedural and technical details helping to define the duties of the Presidency.²

The main rule regulated in the Treaty is: “the office of President shall be held in turn by each Member State in the Council for a term of six months ...”. That rule has remained unchanged since it was established for six Member States, which means that a Member State now has the Presidency once every seven and a half years instead of once every three years; this will take place every 12 to 15 years in a Union with 25 to 30 Member States. Such a reality, as we will see, requires a serious reflection concerning the institutional dimension of the Presidency, since it calls for significant changes in order to keep a minimum efficiency standard. Simultaneously, the new scenario, shortening the total time in which a Member State will hold the Presidency chair, can facilitate a reform so far as to elude political resistance.

In the beginning, presidencies succeeded each other in alphabetical order. Since the Maastricht Treaty the Council unanimously decided the order that has to be followed, which provided greater flexibility in adapting to circumstances or requirements. The rationale of current rotation order tries to maintain one of the five biggest Member States in the Troika. With the exception of a few Council bodies that elect a chairman among their members, the Presidency is a single entity both horizontally, since it reaches all EC and EU areas of jurisdiction; and vertically, as it covers the Council, Coreper and all the Council's subordinated bodies. Once again, this second dimension, is

2 The Council's Rules of Procedure are published in OJ L 247, 12-6-1999.

not formally regulated in the Treaty, which, as we have seen, confines itself to lay down a six-monthly rotation only for the Council itself. Regardless of that fact, as a well-settled custom, every six months, not only does the Presidency of some 20 different Councils change, but so does the chairmanship of some 250 committees and working parties.

In its origin, the Presidency was purely formal and semi-honorary, mainly because of its lack of complexity: just six members, few competencies, and therefore really easy to control. Since the 1970s, its role has become increasingly substantial and “institutional” with successive enlargements and the expansion of powers. All these were accompanied by a proliferation of Council formations and its subordinated bodies and hence an increased need for coordination and leadership. Furthermore, there has been a parallel expansion in political cooperation, the functioning as well as the practical framework on which has depended the administrative apparatus of the Presidency.

Tasks and powers of a European President

In the highly recommendable ZEI working paper precedent to this one, so far EU presidencies are concerned, Hendrik Voss and Emilie Bailleul propose the readers the following distinction when contextualising theoretically EU presidencies: on the one hand, the President’s tasks, on the other, his powers.³ The authors describe the traditional tasks, namely: the President is in charge of organizational and administrative-technical affairs; lays down the agenda of the meetings; is expected to play a mediatory role; and has a representative function. In relation with the powers of the President, the authors take a minimalist approach focusing on the power to set up the agenda for the meetings. Also analyzing that unique power the minimalist approach remains predominant. In their view, a President can decide autonomously on the issues that will and will not be discussed. Yet in practice, this is hardly ever the case.

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“The daily running Europe cannot split up in six-month parts. It has its own dynamics, and these are to a large extent determined by the rolling programme. Especially in the so-called first pillar [...], a legislative proposal can be ‘pending’ for months, even years”.⁴

Certainly, the legislative machinery, as a Rolling Stone, generates a procedural inertia that cannot depend on presidencies. There is not much room (and never was) for initiating and approving any concrete legislative act in the period of six months: surely not in a field disciplined by unanimity in the Council, nor when facing highly technical matters, neither when the codecision procedure is involved. From the Commission legislative reports till the OJ publication of a Secondary Law act, the EC institutional framework does not hold its activities until a new Presidency comes on board. For a majority of ongoing portfolios life goes on. The Presidency is not a dictatorship, neither is it the unique actor in the decision-making process. In addition, one should bear in mind that every Presidency attempts to interfere *erga omnes* in any Pillar, not only in the first. The Member State agrees with the majority of the legislative dossiers. No country joins (not even Great Britain) a supranational organization so powerful as the EU to promote the *status quo*, and this rationale does not change for the fact of holding the Presidency. Hence, the Member State holding the Presidency concentrates in those fields of greater interest, which could be initiated at the beginning of his term, in order to promote positive actions. On the other hand, the Presidency in a negative dimension, can simply use his “enhanced power” to block or to delay the approval of a legislative act during his Presidency term.

Here I suggest a different analytical approach: every Presidency *task* can potentially turn into a *power*. There are two ways in which the Presidency actualizes such potentialities: a negative, acting as a break in the decision-making process and a positive, pushing it forward.

3 The Belgian Presidency and the post-Nice process after Laeken, ZEI Discussion Paper, C 102, 2002, pp. 5-8.

4 Ibid., p. 6.

III. The negative dimension

Once the Presidency identifies its priority items, it addresses its efforts to control their tempo. Here is when the President's *tasks* become his *powers*, each in its own dimension.⁵ As previously said, the President lays down the agenda of the meetings. It is not politically correct to ignore a Commission's proposal by not including it on the Council agenda. Legally it can be done and formal excuses to do so will not be scarce. Furthermore, a Commission's action before the Court of Justice (doing here abstraction of the complexity inherent in the action for failure to act)⁶ will simply be useless to prevent the blocking goal of the Presidency, due to the extensive period taken by the European Court on its rulings. Normally, blocking strategies are sharper and combine the "agenda freezing" with the following instruments.

The President, as we already know, is in charge of organizational and administrative-technical affairs. For instance, he determines the time that has to be devoted to an item of the agenda and in addition, when to proceed to the voting. One does not need much time in the Council Working Groups and Coreper to realize that to include a point in the "A list" can be a question concerning when and how to reach a consensus. Thus, to reduce the time devoted to an item (with 15 members, the more the better for this purpose) will narrow down the chances for reaching a fast agreement or will provoke a disagreement that will postpone the debate for other Working Groups or Coreper meeting. At this stage the "agenda freezing" will again find protagonists.

5 We follow here again the scheme put up by Hendrik Voss and Emilie Bailleul, *The Belgian Presidency and the post-Nice process after Laeken*, cit. pp., 5-6.

6 See for instance: Case 48/65, *Lütticke v. Commission* [1966] E.C.R., 19; Case 42/71, *Nordgetreide v. Commission* [1972] E.C.R., 105; Case 59/70, *Netherlands v. Commission* [1971] E.C.R., 639; Case 247/87, *Star Fruit v. Commission* [1989] E.C.R., 291; Joined Cases 166 and 220/86, *Irish Cement Ltd. v. Commission* [1988] E.C.R., 6473; Case 377/89, *Parliament v. Council* [1988] E.C.R., 4017.

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The same combination could be achieved through the President's mediatory role. For instance, the President can take advantage of the national delegation's consultants. As it is well-known, a national delegation can request the Presidency for the time before taking a definitive position about a disputed legal act in order to do compulsory consultations with its capital (headquarters of its Ministry). In these cases, the President will postpone the Working Group study of the pertinent legal act, waiting formally until the cited consultation takes place. The end of these consultations, usually object of written notification from the delegation to the Presidency (if the matter does not appear in coming meetings), will not necessarily be followed by an immediate inclusion in the agenda. This delaying tactic, being perfectly covered by a non-written Council's custom consisting in looking for the consensus, is applicable even, when at first view, the Member States asking for consultation cannot reach the block minority.

The last task-power exercise by the Presidency that demands a reflection in this context is the representative function. In its external dimension, it is necessary to consider the field affected. In the sphere of external economic relations, it rarely represents the European Communities, as this is generally a matter of the Commission. On the contrary, in CFSP matters, the Presidency always represents the European Union and where appropriate expresses the Union's common positions. Since the Amsterdam Treaty, the Council can request the Presidency to negotiate international agreements on behalf of the Union. In JHA affairs, a lesser external representation role was given. In addition, the Presidency is responsible, together with the Commission, for ensuring the consistency of the Union's action on the international level. Generally speaking, in the intergovernmental field, the principal boundary to the Presidency's influence appears with Mr. PESC. Currently, after three years observing the personal impetus that Javier Solana gave to the High Representative office (rarely recognized in its full dimension), we can affirm that the Presidency has less room for abusing the representative function.

In its internal-institutional dimension, the representative function offers interesting possibilities to the decision-making process. Particularly in the codecision procedure, which, after Nice, applies in almost half of the substantial EC Treaty legal basis. In this legislative procedure, the interaction between the Council and the European Parliament is essential and permanent. The Presidency, through the General Secretariat (Dorsal Codecision-DG F III) and/or its national civil servants at the Permanent Representation, interacts with the European Parliament on every level: with the rapporteur, in the pertinent Parliament Commission, at the Plenary sessions and in the *trialogues* that prepare the conciliation meetings. It is the only source of information about the Parliament, unless a conciliation procedure takes place and other Member States directly address the Parliament Members' part of the Conciliation Committee. At the same time, it is the only information source for the Council (in every of its organs) that covers the European Parliament state of mind surrounding the proposal at every stage of the procedure. The Commission does not cover the bilateral contacts between the co-legislators, and being a party in the process, its information may lack neutrality. The information control and the bargaining is precisely what can make the Member State holding the Presidency introduce (or delete) some (un)desirable aspects in (from) the legislative draft.⁷

All the possibilities mentioned in the negative dimension (allow me to repeat it once again) are not generally applicable, but concentrate in few dossiers of maximum interest for the Presidency in office. One should consider that the legislative *status quo* during six months in a concrete matter has significant political and economic implications. Imagine a six months delay in the Common Agricultural Policy reform. Why did Commissioner Fischer wait until the Spanish Presidency's term ended to present the CAP reform?

7 The assertion sketched here demands obviously greater argumentation, therefore I submit the 3rd chapter of my monography on codecision, *El procedimiento legislativo de la cocección: de Maastricht a Nizza*, Tirant lo Blach-Polo Europeo, Valencia forthcoming.

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Certainly not because of the lack of urgency. Actually, the Danish Presidency and the majority of Member States hold 2004 as deadline for the enlargement of the ten candidates. Whilst the positive contributors to the EU budget (except France) have urged for the deepest reform possible of the CAP in order not to block the enlargement. Then the answer is simple: the Spanish Presidency could have been able of vetoing, or even worst for the Commission, being capable to conduct the proposals into a Mediterranean reinforce minority (do not forget about Ireland) that could have changed the starting legislative scenario introducing a definitive slant.

IV. The positive dimension

In its positive dimension, the Presidency has the most privileged position to introduce new issues in the decision-making process machinery. Even if we take the most minimalist approach to the Presidency potentialities, we may agree that on that “chair” any Member State will be in the better position ever, particularly to “urge” the Commission to enact an initiative as allowed by EC Treaty after Amsterdam. Acknowledging that this new instrument was a small pay-off for those who attempted to remove the most precious weapon from the communitarian executive (the right to put forward proposals of Community acts⁸ and to alter or withdraw its proposals⁹), we should realize

8 Within certain limits basically defined by the European Court of Justice: Case 25/70, Köstner [1970] E.C.R. 1161; Case 16/88, Council v. Commission [1989] E.C.R. 3457.

9 Although, in Primary Law, there is no explicit provision enabling the Commission to withdraw a proposal that has been submitted to the Council (and Parliament in Codecision), it has been along the time generally agreed that, within certain limits, the Commission has such a power, see: Mégret et al., *Le droit de la CEE*, Editions de l’Université de Bruxelles, 1979, Vol. 9, pp. 135-136; D. Wyatt and A. Dashwood, *European Community Law*, Sweet and Maxwell, London, pp. 47-48.

that the Member State in charge of the Presidency is the most qualified to take advantage of that margin.

The most significant instrument of influence (I am not saying “force”) the Commission’s agenda did not come through a Primary Law reform, but through the evolution of the European Council. Since Giscard d’Estaing, after a long “romance” with Helmut Schmidt,¹⁰ pronounced his famous “*Le sommet européen est mort, vive le Conseil européen,*”¹¹ the European Council has become what larger Member States always cherished: the cornerstone of the EU political system. Article 4 of EU Treaty¹² places the Heads of State or Government at a political level,¹³ in the EU, above the EC institutional and legal system, empower them to give the EU (only) “necessary impetus” for its development and to “define” the general political guidelines. Regardless, the European Council has passed the borderline long time ago. During the German reunification, the European Council avoided any EC institutional interference in a process that should have followed the procedure of

10 J. Werts: “The European Council”, North- Holland, Amsterdam, 1992, pp. 44 and following.

11 See the “Communiqué Issued After the Meeting of the Heads of State and Government”, Bulletin of the EC, n° 12, 1974.

12 Literally: “The European Council shall provide the Union the necessary impetus for its development and shall define the general political guidelines therefore. The European Council shall bring together the Heads of State or of Government of the Member States and the President of the Commission. They shall be assisted by the Ministers of Foreign Affairs of the Member States and the President of the Commission. The European Council shall meet at least twice a year, under the chairmanship of the Head of State or of Government of the Member State that holds the Presidency of the Council. The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.”

13 Basically as its first inclusion in European Primary Law, article 2 of the Single European Act.

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enlargement.¹⁴ Furthermore, the European Council “modified” the Maastricht Treaty illegally¹⁵ before it came into force, allowing Denmark to introduce certain opt-outs and exceptions in order to make a second ratification referendum feasible, since it had an uncomfortable “No” in its record.

The European Council has a less aggressive face, which is not completely covered by the legal nature of Article 4 of EU Treaty. As it is well-known, the Presidency conclusions are, on a regular basis, the way in which the European Council “defines” the general political guidelines of the Union. In practice, one can appreciate that these conclusions are closer to a legal text than to a political guideline: for its precise delimitation of actions’ scope, its imperative wording, and eventually the inclusion of deadlines to achieve objectives. Thus, the EC institutions can find themselves not only with a political guideline, but with a concrete demand of action, and a fixed date to finish the given task.

14 This critic position about the European Council cannot be defended here, I remit to the second chapter of my PhD dissertation, *El sistema institucional de la Unión Europea: la problemática presente y futura*, U.C.M., 2000, pp. 109-188. Against my position in this concrete aspect, C. Tomuschat: “A united Germany within the European Community”, *Common Market Law Review*, number 27, 1990, pp. 417 and following; C.W.A. Timmermans: “German Unification and Community Law”, *Common Market Law Review*, number 27, 1990, pp. 439 and following.

15 The only path in the TEU to produce such a reform was article R, that is to say, a reopening of the signed but not ratified Treaty for all the Member states TEU. Instead, the European Council, during the Summit Meeting held in Edinburgh (11-12 December 1992), adopted the “Decision of Heads of States or Government, in the European Council, concerning certain problems raised by Denmark of the Treaty of the European Union” which in my view is simply nothing in the EC legal sources. See, Presidency Conclusions of the European Council held in Edinburgh, 12 and 13 December 1992, “Part-B-Denmark and the Treaty of the European Union”, Annex 1 to Part B: “Decision of Heads of States or Government, in the European Council, concerning certain problems raised by Denmark of the Treaty of the European Union”, *Bulleting of the European Communities*, Volume 25, number 12, 1992; also in *OJ of the EC*, number C 348, December 21st, 1992.

Hendrik Voss and Emilie Bailleul, analyzing this European Council dimension (concretely the deadlines), conclude that such a reality is another factor restricting the Presidency's control on the EU agenda:

“A President has no more impact on this ‘task’ than on the rolling programme, and the margin for adding a personal touch is quite narrow.”¹⁶

Agreeing on such a conclusion, it should be immediately added that the described dimension is just one side of the European Council-EU Presidency relationship. The Presidency holds, as in every Council, the European Council Presidency. There it enjoys the larger margin (more than in a legislative Council) to shape its meetings agenda, which is the cornerstone in shaping EU agenda. Furthermore, the European Council conclusions are, though agreed, the conclusion of the “European Council President”. In the end, the Presidency is the best location to generate the rolling programme that will be followed in the forthcoming presidencies, and that is a desirable trade-off for existing lack of margins provoked by previous European Council conclusions. Summarizing, here again, the Presidency's advantages compensate.

Last but not least, one should take into account the scope of action in the intergovernmental pillars. When, in the European Union Treaty, the CFSP and JHA were established as new areas for Union action, Member States opted to confer on the Presidency a series of tasks, which under the Community system would be entrusted to the Commission. The Commission's role deteriorates in these fields qualitatively and quantitatively. As a result, the Presidency is responsible for representing the Union in CFSP matters, implementing common measures and expressing the Union's position in international organizations and at international conferences. The Amsterdam Treaty embraced this role, by enabling the Council to instruct the Presidency to negotiate an international agreement on behalf of the Union and by entrusting the Presidency with the same tasks in JHA as well as in CFSP cooperation areas.

16 Hendrik Voss and Emilie Bailleul, cit., pp. 6-7.

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Therefore the Presidency does not need to bypass or press the Commission in order to get its initiatives through the EC machinery. In the intergovernmental pillars the manoeuvre margin is increased, since only Member States monopolize the agenda. In the second and third pillars, despite the EC Pillar when qualified majority voting governs, it is harder to approve a positive measure than to include it on the agenda. In the intergovernmental pillars, the decision-making process is governed by consensus-unanimity. As a consequence, Member States can afford to be less reluctant allowing the Presidency's autonomy in drafting the agenda. Thus, presidencies intensify and concentrate their agenda priorities in those pillars. The Spanish Presidency has been a paragon of such a reality.

V. *Presidency reform?*

Pro and contra

Member States observe the Presidency as their legitimate turn to take the steering wheel. It is better to have the opportunity to influence the agenda once in a while than never. This is particularly the case for smaller countries, that can hardly lead a majority supporting its agenda in a normal EU daily life. In such a direction, though in a more diplomatic way, Mr. Aznar pronounced before the Spanish *Congreso de los Diputados* presenting the Spanish Presidency's priorities: "The Presidency of the European Union settled down with the purpose that each Member State would have the opportunity to impel the politics of integration, giving their own impetus to the process and avoiding in this way that unbalances between the interests of the several States will take place."¹⁷ Therefore, the six-monthly rotation places the Member States on an equal footing, giving each of them the opportunity of influencing during the same period the course of Union business. In the previous section

17 Comparecencia del Presidente del Gobierno en el Congreso para explicar las prioridades de la Presidencia Española de la UE, (10/12/2001)

of this paper we dealt with the Presidency's "abuse". Here, on the contrary, we are dealing with the Presidency's "use" (normal-proportional use).

Another well-recognized advantage comes with the necessity to connect the EU with its Member States. With the six-monthly rotation system each Member State is periodically involved in Union's business giving members of the government, civil servants, national media and public opinion the opportunity of becoming familiar with the process of European integration. It should be taken into account that in national public's opinions to hold the Presidency normally regenerates a positive balance in terms of popularity and media coverage. As it has been underlined persistently by the Spanish media and political opposition: a Presidency can never go wrong for the Government. Here Member States find another reason to promote the *status quo*.

Furthermore, the system generates an impetus that concentrates the energies of each successive Presidency and thus provides the essential drive for making progress and achieving results. Certainly, the need to take advantage of a six-monthly turn foment a constant sum of partial impulses that globally generate a steady impetus, which pushes forward the EU agenda in the medium-term.

Lastly, it enables policies to be more consistent as a result of single political control over the whole Community machine. This undeniable advantage in highly complex political systems finds itself hindered by the term limitation and the Council interaction with other institutions. From a reform viewpoint, to break the single Presidency has shown to be a key and a boundary.

At this stage we should discuss the operational disadvantages. Firstly, it should be noticed that a six-monthly rotation represents a major handicap for the continuity of the Council's work, particularly for the committees and working parties. The examination of specific topics frequently stretches over a longer period than six months and demands a technical expertise, which can only be acquired with sufficient time. In addition, the Council is confronted with institutions that are more permanent than itself: both the European

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Parliament and the Commission have five-year mandates and their members work full-time for the Union. Besides the mandates continuity, there is another comparative disadvantage with other institutions, namely its competence: whereas the Council Presidency splits up into numerous specialist components, the EP and the Commission enjoy a horizontal distribution in their sphere of competence.

As well as the limited Presidency period can generate a general impetus beneficial for the EU as a whole, the pressure of having to take stock at the end of each six-monthly period sometimes causes a rush. Such a celerity can lead to the adoption of makeshift decisions or a proliferation of badly drafted or non-compulsory acts (resolutions, conclusions) when the Union's interests would have been better served by the adoption of a more binding act that, in turn, would have required more lengthy negotiations stretching over several Presidencies and on a high level of compatibility between national and EU agendas.

All these negative aspects that currently influence EU life (particularly on the Council level) demand certain concerns about the convenience to retain the principle of a six-monthly rotating Presidency for all the Council's preparatory bodies within an enlarged and increasingly complex Union. This forthcoming scenario might on the one hand lead to serious difficulties for the efficiency and continuity of the Council's work. On the other hand, it will increase the workload to an overwhelming extent for some Member States, particularly for future Member States whose administrations have no experience of the Community machinery and are relatively undeveloped.

In the external representative dimension attached to the Presidency, there is little room for optimism. The rotating Presidency tends to blur the outside world's image of the Union by impairing the visibility and effectiveness of its external representation, particularly in CFSP matters, for which the Treaty has conferred major responsibilities on the Presidency. Deepening in the daily life of the described reality it seems to arise a positive externally: the protagonism

of Mr. PESC who, so far, has found the way to enhance its representative role as the link among presidencies.

Lastly, I should refer once again to the Presidency's "abuse", already analyzed in detail (see above). The best confirmation of the power that the Presidency grants to the Member State in office, and of the general agreement to "share the cake", is the everlasting resistance to introduce changes in the institution. This fact, in its last evolution, should be analyzed together with the intergovernmental front currently composed of old and new elements. Among the first elements, the unstoppable protagonism of the European Council. Among the new elements, which appeared after Delors left the Commission to reduce the great power of the executive, can be underlined: the creation of the High Representative, the Agencies, the talks about Mr. Euro or the current rumors about a "President" for the Union. Once we underlined the context, let us focus in the last failed attempts to reform the institution.

The last serious attempt to change the Presidency came with the pre-Nice Intergovernmental Conference and will last, at least, until the 2004 IGC, particularly through proposals specifically addressing the Council reform. Let us summarize, from a critical perspective, the main contributions before and during the Spanish Presidency. This exercise will help us consider the necessity of a change in the institution.

The Trumpf/Piris Report

The European Council of Vienna, with a view to the future enlargement and on the basis of the informal debates celebrated in October in Pörtlach, dedicated point IX of its conclusions to "Improving the Functioning of the Institutions". There, the Heads of State or Government

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“note with satisfaction that the report from the Secretary-General on the functioning of the Council in the perspective of an enlarged Union will be presented at the beginning of 1999.”¹⁸

This report, presented in March of 1999, was carried out under the supervision of Mr. Jürgen Trumpf,¹⁹ at the time, Council Secretary General. Their objective was to assist the Council by abstracting the necessary conclusions in order to confront the institutional reform foreseen in Amsterdam and forced by the agreed enlargement. Maybe, because of being the testament of the last bureaucrat that occupied the office, in the face of the imminent arrival of Mr. PESC, the report shows a sufficient dose of technical knowledge and not so much daring. Explicitly was consecrated to those reforms that did not demand Primary Law modification, which should be located as accompaniment measures for the Nice and 2004 Intergovernmental Conferences. Among the avenues to be explored, the Trumpf/Piris report proposed the following:²⁰

VI. Improving the transition between Presidencies

In appropriate sectors, set up work programmes stretching over two six-month periods or more (beyond the Presidency) and in general provide for closer cooperation between the incumbent Presidency and the one(s) following. For instance, allowing the next Presidency to chair working parties preparing for

18 Presidency Conclusions of the Vienna European Council, 11 and 12 December 1998, point 81. European Council Presidency Conclusions are available in all the EU official languages at Europe web page, <http://ue.eu.int/es/Info/eurocouncil/index.htm>.

19 Operation of the Council with an Enlarged Union in Prospect - Report by the Working Party set up by the Secretary-General of the Council ('Trumpf/Piris Report'), Brussels, 10-03-1999, number 2139/99.

20 All the propositions here summarized and comments can be found in the Part II, Chapter 11: The Presidency of the Trumpf/Piris Report.

meetings of certain Councils to be held at the beginning of that next Presidency (in accordance with the existing Rules of Procedure).²¹

VII. Asking the Member States exercising the Presidency to provide the necessary means, particularly, personal means²²

It proposes to ensure the greater availability of those chairing committees and working parties, by avoiding, as a general rule, a situation where one person has to chair several working parties or committees with a large workload, in order to facilitate contacts with the General Secretariat, Commission, European Parliament and delegations between meetings.

In order to avoid the “delegation gaps” and its negative repercussion in the decision-making process technique and timing,²³ it is proposed to endeavor to second the people, who will be chairing committees and working parties with a heavy workload to the Permanent Representations in Brussels, not only for the six months of the Presidency but also, if possible, during the preceding months so that they can already take part in the proceedings of the committees or working parties for a reasonable period, to familiarize themselves with the matters in hand and with the other members and the operating procedures. Also to ensure that those chairing committees and working parties are adequately trained and have prior experience, particularly with regard to the Council’s decision-making procedures and working methods.

21 Concretely, during the months of May-June and November-December. Remember that currently, by that time, the forthcoming Presidency has normally articulated its Presidency guidelines.

22 One should not forget that presidencies are held by national administrations and the Member State permanent representation in Brussels.

23 Problem that, as we have noticed before affects also to every delegation, especially at working parties, though eventually Coreper. Even in the Council the representative has not more option than to let the dossier pass until the European Council will take it on board.

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From a most administrative-political perspective,²⁴ it is suggested to ensure, particularly during the Presidency, the best possible allocation of responsibilities between the capital and the Permanent Representation in Brussels. The latter is closer to the other delegations and the Commission and is better placed to understand their positions and rapidly point the Council in the right direction. It should have as much room for manoeuvre as possible. Give a Presidency official sufficient authority to plan working party meetings in close cooperation with colleagues from the “Antici” and “Mertens” Groups and with the General Secretariat of the Council.

VIII. Developing the Presidency’s external support mechanisms

Establishing, for instance, the formal office of Vice-president for each Council formation with responsibility for relieving the President of the Council of certain representational duties (relations with other institutions, chairing committees set up under cooperation and association agreements etc.), helping the President to find compromise solutions and acting as a replacement should the President be unavailable. The Vice-president could be either the Minister of the Member State due to hold the next Presidency or be chosen by the Council from among its members (excluding the Minister of the Member State holding the Presidency) for a period of two or three years. Introducing a degree of continuity in the Presidency by spreading more equally tasks, which become too onerous for a single Member State.

24 One should take into account that the administrative logic supporting this suggestion, underlying the qualities of the Permanent Representation in Brussels, forgets that this Permanent Representation depends on the Ministry of Foreign Affairs, while the Working Parties delegations rest normally on the “capital” headquarters, but on other Ministries. Consequently, especially in national governments held by parties coalition, hostilities to relocated competencies in the Permanent Representations from capitals will remain high.

In this specific and transcendental field, the Report moves between the need of changes and the need to preserve national interest at stake, let say: in the border of self-contradiction. So, it is considered that changes could be made to the practice of extending the rotation system to every one of the 250 or so committees and working parties, in order to achieve greater continuity of work and a more rational allocation of tasks; and at the same time, they consider it necessary to preserve the political impetus given by the rotating Presidency, that is with due regard to the Treaty rules on the six-monthly rotation of the Council Presidency.

Entrust the chairmanship of certain temporary working parties dealing with a specific subject covered by a well-defined political brief to a person appointed for the time it takes to complete the work. In the area of the CFSP: appoint the future Secretary-General/High Representative for the CFSP to the chair of the Political Committee; appoint a senior official in the General Secretariat to chair any permanent body (for example the Political Committee at deputy level) responsible for monitoring the day-to-day implementation of Council decisions; appoint General Secretariat officials to chair the European Correspondents' Group and the Policy Planning Working Party; give the chair of certain geographic working parties to any "special envoys" that there may be.

In general, consider the possibility of giving the chair of committees and working parties to persons elected by their peers for a period of two or three years with due regard to geographical balance (under Coreper supervision). However (here comes the need for preserving national interest, which appears in a mixture with the positive side of the current system), to avoid fragmentation, which would dilute the political authority of the incumbent Presidency: the six-monthly rotating Council Presidency would retain political responsibility for and control over the organization of work (timetable, agendas, etc.); six-monthly rotation would be retained for all the Council's preparatory bodies based in Brussels which act as feeders to the political level or which play a vital part in the coordination of work (Coreper I and II, SCA,

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Friends of the Presidency, etc.); each person elected (or appointed permanently) to chair a working party would be assisted by a deputy representing the rotating Council Presidency, in order to ensure the overall coordination of work in the light of the Presidency's political priorities.

In addition to the latest dimension comes the monopoly of the chairmanship. For the Council's preparatory bodies, the chairmanship of which would remain subject to six-monthly rotation, establishes the office of Vice-Chairman (to be chosen among the members but excluding the member from the Member State holding the Presidency); this function of Vice-Chairman would be particularly useful in the case of Coreper I as a means of dealing with the growing obligations arising under the co-decision procedure.

The Finish Presidency: An effective Council for an enlarged Union.

The Finish Presidency, after the command of the European Council of Colony, assumed the challenge of pushing forward the proposals for the Council reform. Being the only new Member State directly involved in the Nice IGC, it showed the audacity frequently taken of the hand of ignorance. Ignorance not about the processes but in regard to the actors involved. Those of us who lived the first Finish Presidency in Brussels did not stop being surprised by their perplexity in the face of the community reality: it is not a question of proposing the best solution to solve the problems, it is many times about proposing acceptable solutions.

With the mentioned spirit the Finish Presidency carried out two proposals. These contributions are to our understanding essential in order to understand the problem at stake. The first, "An effective Council for an enlarged Union", was linked to the possible internal reformation of the Council without demanding a Primary Law reform. The second, the report "Efficient Institutions after the Enlargement", approached the IGC debate, as much for their content as for their vocation to be part of the Nice Treaty.

The cited contributions to the CIG was unequal luck. The guidelines for the reformation of the Council, “An effective Council for an enlarged Union” (object of this study), were, in their last version, approved by the European Council of Helsinki, though without implementation until the Spanish Presidency. Its second contribution, “Efficient Institutions after the Enlargement” (which does not demand our attention), had little final repercussion. The IGC left more of its key proposals aside: due to the partiality of certain proposals, orientated to please the small Member States; as well as for the lack of political support in the most progressive ones.

The Finish Presidency’s approach to the internal reform of the Council shared the same rationale as the Trumpf report, that is: the negative repercussions of the enlargement together with current deficiencies of the Council are too deep to be solved only with a Primary Law reform. They demand a global reform. Despite of the capability to carry out a deep reformation of the power allotment in the Council, the institution demands a revolution in its internal organization.

The first project of report presented in November of 1999²⁵ met in the Coreper II with those who take the decisions and the report suffered the first reduction of contents. These reductions gave birth to the report project dated on December 3, 1999.²⁶ This report faced the General Affairs Council preparatory of the Helsinki European Council (December 1999), held in Brussels this month. There the Spanish Secretary of State for European Affairs, Mr. Ramón de Miguel Egea, carried out an allegation of the traditional States rights, which are radically opposed to any new spirit needed in any deep change in Council working methods. Its intervention, with the explicit support of their

25 Un Consejo eficaz para una Unión ampliada-proyecto de informe- directrices para la reforma y recomendaciones operativas, 22 -11-1999 (26.11) (OR. en) SN 3678/99. From now on cited as Un Consejo eficaz I.

26 Un Consejo eficaz para una Unión ampliada-proyecto de informe- directrices para la reforma y recomendaciones operativas, 3-12-1999 (OR. en) 13635/99 LIMITE POLGEN 3. From now on cited as Un Consejo eficaz II.

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Portuguese counterpart (for that time future and competent Presidency in order to activate the IGC), impeded to reach a consensus on the report's general guidelines to Helsinki. According to Spanish Secretary of State his delegation could just “ take note of the report”.

The mentioned Council provoked the last and deeper report cut before the final version approved by the European Council of Helsinki.²⁷ In Helsinki, the Head of State and Government, though recognizing that “it is necessary to introduce deep changes in the Council's working methods” eliminated the better substance in relation with the reform of the Presidency opting for approving some toned down operative recommendations.²⁸ In the forthcoming, I will analyze the approved report in relation with our interest topic, pointing out those significant proposals not considered or eliminated. Certainly, the methodology of draft comparison serves our interest by noticing also the explored roads.

Going into the concrete reforms of the Council Presidency, the Finish Presidency shared the analytical picture offered in the Trumpf report. With the course of the years the Council work has increased considerably and will continue to increase when the enlargement takes place. In the face of such reality the Finish Presidency took the path of taking advantage of the diverse forms of support available with a view to facilitate the work of the Presidency. For instance the future Presidency and the Troika. It is also assumed that the reality of the growing number of the Council members and the increment of

27 Un Consejo eficaz para una Unión ampliada-directrices para la reforma y recomendaciones operativas, included in annex III of the Presidency Conclusion of the Helsinki European Council, 10 and 11 December 1999. From now on cited as Un Consejo eficaz III.

28 “Es preciso introducir cambios sustanciales en los métodos de trabajo del Consejo y ello debe hacerse de modo gradual desde ahora para que, en el momento de la ampliación, el Consejo pueda adaptarse sin contratiempos al aumento del número de Estados miembros. El Consejo Europeo ha aprobado las recomendaciones operativas que figuran en el Anexo III”(Emphasis added). See point 20 of the Presidency Conclusion of the Helsinki European Council, 10 and 11 December 1999.

the Presidency's responsibilities, will require an adult and clearer support to the Council and to the Presidency on the part of the General Secretary.

The report finally approved in Helsinki did not leave rake of the most innovative proposals. The initial report started from the appropriate premise: the work saturation and the Presidency's "abuse" are problems that cannot be solved with good intentions of collaboration. Starting from the reality of the Presidency's monopoly, it was proposed to convert the future Presidency into a Vice-presidency:

"the future Presidency will act like Vice-presidency in order to support the Presidency [...]. The Vice-presidency tasks, which will be realized following instructions of the incumbent Presidency, will be to substitute the Presidency in the form and in the moment in which it is necessary, assist it in their administrative work and reinforce the continuity of the work of the Council. The Presidency and the Vice-presidency will adopt the necessary measures in order to guarantee an appropriate transition from a Presidency to the following".²⁹

The proposal did not only aim to share tasks, but to further "democratization and transparency" of the transition between presidencies. Because of the Vice-presidency involvement in the last period of the incumbent Presidency term, the monopoly exercised for the latter will be reduced and the transition facilitated. Moreover, the potentialities of a co-Presidency, in punctual and/or important questions like an IGC, should be considered. The mention to the "future Presidency" finally carried out, instead of the Vice-presidency, will give rise to nothing innovative. Like those Member States that rejected the well-known formula, only the Vice-presidency, by having recognition and juridical status in the incumbent Presidency semester, would influence in a real change. On the contrary, to continue referring to the future Presidency signifies that everything remains the same.

The proposal, with the same logic and luck, was extended to the different levels of the Council. Thus, it was considered that the Coreper could decide to

29 Un Consejo eficaz I, G. LA PRESIDENCIA DEL CONSEJO, point 23.

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name a person, who would preside a Working Group or a Specialized Committee during the period dedicated to a concrete file or a proposal. Also when it would be justified for other reasons, always during a fixed period. Equally, it was proposed to enlarge the period, in which the person entrusted of presiding over a Group or a specialized committee could continue carrying out that function. This proposal was linked to the Vice-presidency: “in such cases, the function of the person entrusted of the Vice-presidency of the Group or of the specialized committee in question will carry out the representative of the Presidency of the Council”. The objective of such a revolutionary measure would be to avoid that the incoming Presidency capable of pushing aside certain topics considered as priority matters by the majority, for its particular interest in the paralysis or delay for adopting the act.

The paralyzing mentality with relationship to the Presidency affected to most important qualitative jumps, and not exclusively to the reduction of the Presidency monopoly. In fact, it also affected aspects addressing the reinforcement of the institution. In the context of the necessary improvement of the legislative function of the Council, the possibility of using the Presidency as a link during the period in which a proposal continues alive, or as a springboard to reopen delicate files in the future (or files blocked by a minority) was rejected.

Concretely it was proposed that

“in absence of legislative proposal, or in intermediate phases of the negotiation surrounding a proposal, the results of a debate of the Council should, as a general rule, remain reflected in some ‘Presidency conclusions’ of a simple character and not negotiated previously. The Council will abstain of adopting resolutions, declarations or any another form of not normalized act”.³⁰

In Helsinki, rejecting such a proposal, the Member States affirmed their intention of continuing paralyzing the legislative procedure. With the approved measures, the Presidency continued being incapable to filter the

30 Ibid., D. la función legislativa del consejo, point 14.

interest of a single State. The State would continue being capable of maintaining alive the most marginal of the positions independently of its foregoing success and the negative repercussions of the declaration in the whole process.³¹

The Spanish Presidency and the reform of the Presidency

The last Report of the Finish Presidency was approved by the Helsinki European Council in December 1999. However, until the Spanish Presidency, those measures were not fully implemented. Thus, the Seville European Council

“gave a reminder of the importance which it attached to the effective implementation of all the guidelines and operational recommendations adopted by the Helsinki European Council”.³²

Although this first agreed step in the Council reform process was not yet implemented, some new steps were taken, particularly during the Swedish Presidency in the context of the so-called “Modernizing Institutions” chapter. The Göteborg European Council received a new Report of the Council Secretary General.³³ The Report evidenced that additional (to those adopted in Helsinki) reforms of the Council’s structures and working methods are necessary. The European Council took on board that necessity and requested the General Secretary to present “detailed suggestions for further actions to ensure an effective Council, based on a better preparation of the Council meetings, effective coordination between different council formations and more effective working methods.”³⁴

31 See the version definitively approved: Un Consejo eficaz I, D. la función legislativa del consejo, points 15 y 16.

32 Presidency Conclusions of the Seville European Council, 21 and 22 June, 2002, point 6.

33 “Preparing the Council for the Enlargement”, Council Doc. 9518/01 + ADD 1 REV 1.

34 Presidency Conclusions of the Göteborg European Council, 15 and 16 June 1999, point 17.

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As a result of the Göteborg European Council mandate, the General Secretary elaborated another Report (“Preparing the Council for the Enlargement”),³⁵ which was finally addressed to the Barcelona European Council. In its consideration about the Presidency reform, the General Secretary proposed two “possibilities for discussion”: reforms that following the Helsinki strategy will not demand Treaties’ amendments; and, on the other hand, formulae requiring amendment of the Treaties. The formulae applicable without amendment of the Treaties recuperated some of the possibilities explored in the first Finish reports. For instance to improve cooperation between successive Presidencies by forwarding longer scheduling of meetings, opening ways for creating functions for subsequent Presidencies. Also exploring ways to break the monopoly in those presidencies not regulated by the Treaties: appointing the chairmen of certain working parties or committees for a period longer than 6 months; giving the General Secretariat of the Council the chair of certain specific committees or working parties.

As far as the formulae applicable requiring amendment of the Treaties are concerned, the opposite logic was followed, namely to focus on those presidencies regulated in the Treaties. In relation with the European Council Presidency, it was proposed to discuss the possibility of electing the President by its members for a term of over 6 months. In relation with the other Council Formations, the same term extension was proposed (for some Councils or all), opening two possibilities for the President’s appointment: by election or on the basis of a rotation between five or six groups of States which would hold the Presidency concurrently.

The Barcelona European Council, after hearing the report’s presentation by the Secretary-General,

“instructed the Presidency, in close cooperation with the Council Secretary-General, to make all appropriate contacts on that basis with the members of the

35 “Preparing the Council for the Enlargement (Report by the Secretary-General)”, Brussels, 11 March 2002.

European Council [...], with a view to submitting a report at the Seville meeting proposing specific measures for adoption”.³⁶

The Presidency jointly with the General Secretariat of the Council presented its report titled “Measures to prepare the Council for the Enlargement”.³⁷

The report followed the twofold approach to the Presidency’s reform depending on the necessity of Primary Law modification, though emphasizing that part of the Member States were not in favor of a deep reform of the institution, at least to the extent of modifying the Treaties. In relation with the proposed modifications requiring amendment of the Treaties, this report, added two points to those included in the report elaborated by General Secretary (previously referred to).³⁸ One, granting the possibility to take *ad hoc* solutions,³⁹ independently of the general formula adopted (collective Presidency, elected, etc.). This approach would be valid for concrete cases, particularly for specialized committees (article 133, employment, in the JHA field) and for formations in the external relations and ESDP field (Council, Political and Security Committee, working parties). Secondly,⁴⁰ the possibility to maintain (whatever the general system is decided upon) at least some elements based on the six-monthly rotation. The following cases are mentioned: the Council’s “backbone” (European Council, General Affairs

36 Presidency Conclusions of the Barcelona European Council, 15 and 16 March 2002, point 51.

37 “Measures to prepare the Council for Enlargement, Report by the Presidency to the European Council (drawn up jointly with the General Secretariat of the Council)”, Brussels, 13 June 2002, Council Doc. 9339/02.

38 “Preparing the Council for the Enlargement (Report by the Secretary-General)”, cit., point III.

39 “Measures to prepare the Council for Enlargement, Report by the Presidency to the European Council (drawn up jointly with the General Secretariat of the Council)”, cit., point II. 1.2.

40 “Measures to prepare the Council for Enlargement, Report by the Presidency to the European Council (drawn up jointly with the General Secretariat of the Council)”, cit., point II. 1.3.

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Council and Representatives Committee), informal Presidency meetings, and Vice-presidencies in some areas.

Despite Spanish Presidency interest, due to the disagreement between Member States, the Seville European Council did not take any positive decision. Like the Presidency report reflected, the great majority of the delegations believe that the current system will not be able to function in an enlarged Union and that maintaining this system will have negative consequences on the functioning of the Council. However,

“according to some other Member States, it has not been objectively proven that maintaining the current system without any amendment would pose difficulties”.⁴¹

Due to such a divergence between Member States, more time was needed in order to reach an agreement for the reform of the Presidency, particularly on breaking the six-monthly rotation in every level, as well as for modifying the Treaties to affect the Council’s “backbone”. Finally, the Seville European Council

“asked the future Danish Presidency to take appropriate steps to continuous discussion with a view to an initial report to the European Council in December 2002”.⁴²

41 Ibid., point II. 2, p. 7.

42 Presidency Conclusions of the Seville European Council, 21 and 22 June, 2002, point 5. Actually this point refers to a concrete report on the reform of the Presidency. It should be noticed that, although point II of the “Measures to prepare the Council for Enlargement, Report by the Presidency to the European Council (drawn up jointly with the General Secretariat of the Council)”, was dedicated to the reform of the Presidency, the Spanish Presidency also worked in a specific report on the Presidency reform. This report being object of important disagreements on the same explained ground, was not attached to the Seville European Council (see the “List of supporting reports for the European Council”, annex VIII of the Conclusions) but was addressed to it. The European Council simply took note of the report and realized the cited address to the Danish Presidency.

On the contrary, some modifications drawn up in the Presidency report, which do not require amendment of the Treaties,⁴³ were approved in the Seville European Council,⁴⁴ concretely within the “Measures Concerning the Structure and Functioning of the Council”.⁴⁵ Within the specific measures relating to the Presidency, two aspects were developed. On the one hand, the chairing of certain working parties by the General Secretariat of the Council.⁴⁶ From this point, in addition to the working parties where the General Secretariat already acts as a chairman, the following should be added: Working Party on Electronic Communications, Working Party on Legal information, Working Party on Codification of Legislation, Working Party on Information, and Working Party on New Buildings.

The cooperation between presidencies was the second field that considered the specific measures relating to the Presidency. The Presidency’s monopoly will be broken when it is clear that a dossier will be dealt with during the next six-months period. In these cases, a representative of the next Presidency will chair the working parties and the meetings. This new measure will be valid for any meeting other than Coreper. A second potential limitation is that

43 See them in “Measures to prepare the Council for Enlargement, Report by the Presidency to the European Council (drawn up jointly with the General Secretariat of the Council)”, cit., point I. 1, pp. 6-7.

44 “In the light of a summary, accompanied by detailed proposals, submitted in Seville by the Presidency, the European Council held a detailed discussion and gave its agreement to a series of specific measures applicable, without amendment of the Treaties, to the organization and functioning of the European Council (see Annex I) and the Council (see Annex II).” Presidency Conclusions of the Seville European Council, 21 and 22 June 2002, point 5. I will not deal here with the measures adopted in relation with the European Council (Annex I, “Rules for Organizing the Proceedings of the European Council”) since they do not affect the Presidency structure or functioning.

45 “Measures Concerning the Structure and Functioning of the Council”, Annex II of the Presidency Conclusions of the Seville European Council, 21 and 22 June 2002.

46 Ibid., point 9.

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“the practical implementation of this provision shall be the subject of an agreement between the two presidencies concerned”.⁴⁷

The two presidencies concerned could also apply this arrangement to the chairing of the Council meetings at the time when the items in question are discussed.⁴⁸ Lastly, for the preparation of the meetings of the Council configurations meeting once every six months, where such meetings are held during the first half of the six month period, working parties and the meetings (other than Coreper) taking place during the previous Presidency, shall be chaired by a delegate of the Member State, which will chair the Council meetings in question.⁴⁹

Apart from the specific measures relating to the Presidency, in concrete under the measures dedicated to achieve a better programming of the Council activities, certain measures have been taken that will affect the Presidency. They will reduce the monopoly enjoyed by the incumbent Presidency in drafting the agenda and will facilitate the linking between consecutive presidencies. From this stage, a Presidency agenda will be defined by a “multiannual strategic programme” and an “annual operating programme of the Council activities”.

The “multiannual strategic programme” lasts 3 years and will be adopted in the following manner.⁵⁰ First, the new General Affairs Council will make a recommendation to the presidencies involved, 9 Member States out of 30 in an enlarged Europe.⁵¹ Secondly, the presidencies concerned, after consulting the Commission, will draw up a joint proposal that will be addressed to the European Council. Finally, the European Council, supposedly within the role conferred to it by article 4 of EU Treaty (to define general political

47 Ibid., point 7, 1st paragraph.

48 Ibid., point 7, 2nd paragraph.

49 Ibid., point 8.

50 Ibid., point 4.

51 This recommendation will not make much sense in current circumstances, where the GAC will be dominated by the Member States affected by the GAC’s recommendation.

guidelines), will adopt the “multiannual strategic programme”. The first programme will be adopted in December 2003.

The “annual operating programme of the Council activities” is a yearly concretion of the “multiannual strategic programme” and due to that it is taken in its light.⁵² Firstly, an initial draft programme will be proposed jointly for the two presidencies involved in the coming year. In elaborating this programme, the two presidencies in line shall take regard, *inter alia*, to relevant points arising from the dialogue on the political priorities for the year conducted at the Commission’s initiative. Secondly, the presidencies will submit the programme to the General Affairs Council of December where it will be discussed. Thirdly, a final version of the programme shall be drawn up by the involved presidencies on the basis of the General Affairs Council’s discussions.

This final “annual operating programme of the Council activities” will be accompanied by a “list of indicative agendas” for the various Council configurations for the first six months of the year. So, though nothing is specifically said about the authorship of this first term’s “list of indicative agendas”, certain factors indicate that the list elaboration should be done in coordination with both presidencies. These factors are the spirit of the measures, the event that comes together with the “annual operating programme of the Council activities” and the reference made in the second term’s list (see below). For the second half of the coming year the same list should be submitted by the Presidency concerned before July, the 1st. In doing so the Presidency concerned shall act “following the appropriate consultation, in particular with the following Presidency.”⁵³

Summarizing and concluding, if one takes into account the considerations realized about the negative influence that the Presidency monopoly has in the EU agenda, the reforms included in the “Measures to prepare the Council for

52 “Measures Concerning the Structure and Functioning of the Council”, cit., point 5.

53 Ibid., point 6.

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the Enlargement” (adopted by the Seville European Council) take their full dimension. They narrow down the capacity of “abusing” the Presidency by a single Member State. Even more significant, they introduce a more federal-democratic logic within the Council. I am not speaking about introducing a more federal-democratic logic within the EU agenda, since a significant contribution of the European Parliament in this field is not even formalized. In relation with the Commission, at least at first hand, it seems that its legislative initiative and particularly the margin enjoyed when drafting the Annual Legislative Programmes will be negatively affected. It should also be taken into account that the European Council is clearly reinforced, having a closer influence on the EC legislative making process when adopting the “multiannual strategic programme”. The interpretation given by the Seville decision places almost no limits to the term “general political guidelines” indicated in article 4 of the EU Treaty.

However, taking into account the previous scenario, the fact that more States (the number depends on the procedural stage) will take part in drafting the agenda, is a democratic plus in the Council’s decision-making. This will have a direct positive efficiency output, which always comes together with the institution legitimacy. In logic, the coordination between the 9 Member States involved and the previous consensus in the General Affairs Council in defining the agenda, will give a greater guarantee for its implementation. The “multiannual strategic programme” involves drafting the agenda the same States normally implicated in implementing the drafted items. It is well-known that six months is not enough to include a topic on the agenda and to reach the approval of a legislative measure, but three years (the time taken by the “multiannual strategic programme”) is more than enough to realize such a process, particularly when transitions and connections between presidencies are improved, like it is the case with the “annual operating programme” and the “list of indicative agendas”.

X. *The agenda of the Spanish Presidency*

The Spanish Presidency, from the very beginning, in the official guidelines document, as well as in several political speeches,⁵⁴ established six fields of priorities: combating terrorism in an area of freedom, security, and justice; success introducing the Euro; impetus of the Lisbon Process at the Barcelona European Council: a more prosperous, dynamic Europe at the service of citizens; European Union enlargement; external relations: More Europe in the world; debate on the future of Europe.

Combating terrorism in an area of freedom, security, and justice

Spain is currently at one year from local and regional elections. In the preliminaries of the event, the most discussed theme is the convenience (possibility) that the two main national parties (People Party and Socialist Party)⁵⁵ will present a joint list in the Basque Country local election.⁵⁶ This reality, impossible to understand if one attends exclusively to the ideological cleavages of both parties, can turn perfectly coherent if one introduces terrorism in the picture. More than a thousand murders within the ETA curriculum speak for themselves: soldiers, policemen, university professors, children, etc., and lately a representative of non-nationalist parties in the Basque Country.

After 25 years of democracy one does not need much discourse to realize that terrorists reject democratic forums, and that Spanish Government and citizens cannot solve the problem on their own. Both realities remain, at least until a

54 As an illustration see Comparecencia del Presidente del Gobierno en el Congreso de los Diputados para explicar las prioridades de la Presidencia Española de la UE, 10-12-2001.

55 Both part of their respective International and European party families, moreover of their respective EP parliamentary groups.

56 Regional pull will not take place in the Basque Country as in other Comunidades Autonomas since they have different timing from the very beginning of their constituency.

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certain extent, because the terrorist problem has also been an European problem. For instance, excuses before hand for being politically incorrect, some EU states (for instance France) have supported ETA terrorism in an active or passive way in order to gain political or economic profit. Others (for instance Belgium) did maintain a legal framework that allowed judges to treat terrorists (with a criminal record) as political refugees, therefore placing the Spanish democratic rule of law at the level of Pinochet's Chile. The money laundry, facilitated by certain banking systems, did not help much either.

Since Spain joined the common European house, developments in this field were as slow as possible for Spanish interest: until September 11, terrorism never was an EU priority issue. Since then, it has been at the top of the agenda, certainly more for the interest of the United States than for the Spanish. The Belgium Presidency, being shocked by the course of the events, had to take the challenge and to lay the foundation for the basis of a new EU architecture in the struggle against terrorism. The Spanish Presidency, despite Belgium's conquests, did everything in its power to maintain the starting objectives,⁵⁷ to keep the topic at the highest point of the agenda,⁵⁸ and lately, to positively fill in the gaps of the architecture previously designed, taking particular attention to those aspects sensitive to their interest.

57 Defined in: the Declaration that the Head of State and Government forty-eight hours after the terrorist attacks of September 11; and the Plan to combat terrorism drawn up by the extraordinary European Council of 21 September 2001; the Agreement reached in the Laeken European Council. Outside the EU arena, the United Nations Security Council Resolution 1372/2002.

58 The Spanish Presidency has literally held along all its Presidency and after that "terrorism [is] the principal and most immediate threat for the European building process, its values and future outlining, furthermore one of the main worries of European citizens." See Conclusiones del Gobierno español sobre la Presidencia de la Union Europea, point II, a).

XI. Strengthening the instruments of the rule of law throughout the Union

A good example of the cited undesirable gaps is the existence of the so-called “terrorist sanctuaries”,⁵⁹ which, in Spanish view, existed in Belgium. In order to eliminate them, the front “Strengthening the instruments of the rule of law throughout the Union” was designed. There the following framework decisions were taken: on the Fight Against Terrorism, which included a common definition of terrorism and a beginning of penalties harmonization; on Goods Seize and Evidences Securing; on Euro-order, which substitutes the old extradition system. Seven Member States (Belgium, France, Luxembourg, Portugal, United Kingdom, Germany and Spain) have already agreed that the Euro-order will come into force by the 1st semester of 2003. Together with these four framework decisions, Eurojust has been formally set up. Lastly, among the failures, one should regard the Decision for the Application of Specific Measures of Judicial and Political Cooperation to the terrorist organizations (included those in the European List of Terrorist Groups, approved during the Belgium Presidency). Since no legal act was taken, the Spanish Presidency reached a political agreement to enact such a decision in the near future.

With all these measures, the Spanish Presidency considers that the prosecuted enhanced European Rule of Law has been reached, particularly because ETA will be considered a terrorist organization in every country. Thus, it will be more difficult to allege, before a Court, “political crimes” (instead of “terrorist

59 “More Europe”, cit., point 1.1.

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murders”) or pointing out Spain as a “suspect democracy”⁶⁰ in order to avoid the judging of terrorists.

XII. Greater cooperation between security bodies of the Member States

As States have national jurisdictions, criminality does not. In other words, the police arm finds in national borders operational limitations, terrorism takes advantage of this situation to settle logistic and supportive means beyond borders. That has been the historical case of ETA and Grapo in France or IRA in Ireland.

Suffering this reality, the Spanish Presidency tried to reduce terrorists scope to take advantage of the existing variety of security bodies through fomenting preventive and operational cooperation. Among the outputs worth to be emphasized is the amplification of the Europol Convention, in concrete the authorization to create Investigation Working Teams; creating the faculty to request the aperture of investigations; the terrorist task force and the contact point with the FBI were also evaluated. Another contact point (outside the Europol Convention) was established between Eurojust and Europol. In relation with the European Police School Copenhagen was selected as a provisional headquarter, which in factual terms (as usual in seat battles) implicated to unlock its program and budget. Lastly, a weak political agreement was reached to improve Schengen in the future: in cross-border inspection and to elaborate a catalogue of recommendations and practices.

60 In relation with the obsession of Spanish Governments with certain rulings coming from Belgium courts in favor to ETA terrorist interest, it should be underlined that a Socialist Home Affairs Minister and his Secretary of State has been found guilty of “state terrorism” by the Spanish Supreme Court in the GAL case. In other cases (as Lasa y Zabala) the same with: civil servants, a Province Governor, a Civil Guard General, etc.

XIII. Responses to the current wave of terrorism

The “war” declared against terror by the USA, and adopted *mutatis mutandis* by the EU, is a global one. It covers a big spectrum of activities, from aircraft security to financial operations. The need to link financial and police aspects (money laundry, asset freezing, cooperation between intelligence unit of the Member States, etc.) demanded to put together both JHA and Ecofin Councils. The Spanish Presidency, with a long experience in the struggle against terrorism, was aware of such a necessity from the very beginning.⁶¹ It placed both Councils to work in a twofold measures package: to avoid that terrorists continue having support infrastructure (financial or logistic); avoiding the possibility of terrorists to take advantage of legal vacuums created by plurality and disparity of systems in order to try covering up infrastructure of that kind.

The concrete measures taken were the following. Firstly, a common position in asset freezing and a specific regulation on that matter was approved. Secondly, a group of measures addressing the establishment of a Common System of Visa Information Exchange was authorized. Lastly, the approval of a program to improve the cooperation in population protection in case of bacteriologic, chemical or nuclear attack was taken. In a less binding legal fashion, the European Union List of Terrorist Elements, Organizations and Entities (adopted during the Belgium Presidency) was revised including new 20 groups and 8 individuals. Within this legal realm extent a report on evaluation risk in air transportation was elaborated.

XIV. International cooperation

The same rationale was applied to promote intra-communitarian cooperation: the internationalization of terrorist organizations demands international and intra-EU cooperation in the battle against terrorism. Regardless, the main impulse to develop this branch comes from USA’s interest. This is true for

61 As it was reflected in “More Europe”, point 1.3.

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most parts of the EU Member States, but particularly for Great Britain (unnecessary to explain why) and Spain. The reasons for Spain are more pragmatic: exchange of favors in the Al-Qaeda-ETA scope. To Spain it is interesting to play a role in the Latin-American popular-guerrillas front, as the voice of Latin-American Governments in the EU, including for instance the Colombian's FARC or the Peruan' *Sendero Luminoso* in the EU terrorist list.

Three actions were underlined by the Spanish Presidency in this field.⁶² Firstly, the EU supported the conclusion of a Global Convention against International Terrorism in United Nations. Secondly, the introduction of cooperation against terrorism in the Council of Europe as well as in the accession negotiations of European States that are currently involved. Thirdly, it introduced the “anti-terrorist” clause in every new cooperation agreement with third countries.

Common Policy on Asylum and Immigration

In “More Europe”, the official document in which the Spanish Presidency presented its priorities, the aim we will discuss was included within the point Combating terrorism in an area of freedom, security, and justice. Taking into account the four precedent points, it is obvious that little has been said about the so-called “area of freedom, security, and justice”. The development of this area was left aside, as a last aim of the priorities document, titled “Fulfilling Tampere”.⁶³ Afterwards, due to a personal commitment of President Aznar, not without his honeymoon partner Premier Blair, the policy took a most conservative and restrictive orientation that one could have expected in its original foundation.⁶⁴ Finally, the Seville European Council re-baptized it as Common Policy on Asylum and Immigration.

62 See Conclusiones del Gobierno español sobre la Presidencia de la Union Europea, point 2 A) 4.

63 “More Europe”, point 1.5.

64 A formulated expression of a personal understanding and their idea to determine the Spanish Presidency Agenda took place in a joint article titled “More Europe, better Europe”, 22-11-2002.

The location of the aim “Fulfilling Tampere” and of four topics fully tied to the police side of the policy shows a rather conservative approach to the problem, which tends to link both sides of the policy (police and justice) forgetting about its nature. The Ministry of Justice, to say it in graphic terms, is the constitutional voice in the Government. It facilitates the judicial power facing the Home Affairs impetus to cover its agenda stepping on constitutional fundamentals. This is the reason why both governmental branches should remain in opposite benches. This constitutional rationale, overlooked in many modern countries,⁶⁵ suffered a great threat on September 11. Almost no Government resisted to take advantage of public opinion sensibility to enact more restrictive legislation in many of its home affairs competencies.

Tampere, at least formally, pretends to cover the problem at hand from a broad perspective: Freedom and Justice were at the same level of the Security side. Without ever mentioning (“social justice” as fundamental as formal justice), Tampere, and to a certain extent Laeken, seek full recognition of fundamental rights and legitimate social aspiration of third countries emigrants. Spain from the very beginning of its Presidency, despite recognizing that Tampere’s impulse covers much more than security, announced that “current exceptional circumstances require putting security first.”⁶⁶ The final balance shows that “putting security first” meant to monopolize the agenda.

The Seville European Council articulated, closed and summarized the Spanish Presidency contribution in this field.⁶⁷ The set of measures presented by the

65 In Spain, during the last socialist Government, both Ministries joined in one; in the last governmental reform (July 2002), the former Minister of Justice became Home Affairs Minister letting his former Justice Secretary of State as Ministry of Justice, seeking for reaching a de facto free way between both ministries. In Great Britain the Prime Minister has become himself the best guarantee of interaction among ministries, even including the Defense Minister if one considers his proposal to use Army Ships against pateras.

66 “More Europe”, point 1.5.

67 See Presidency Conclusions of the Seville European Council, 21 and 22 of June 2002, II. Asylum and Migration, points 26-39.

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Spanish Presidency on immigration and asylum are divided into four pillars. The first introduced a series of measures enabling the EU to tackle illegal immigration. The Council indicated that some of the measures contained in the Global Plan, approved during the Spanish Presidency, repelling illegal immigration, need to be implemented as a matter of priority. Accordingly, Seville European Council established that before the end of 2002 the list of third States, whose nationals are subjected to or exempted from visa requirements, should be reviewed; to introduce a common system of visa identification as soon as possible; to speed up the conclusion of the readmission agreements currently being negotiated and the negotiation of new agreements; and to adopt the elements of a repatriation programme and to approve the Framework Decisions on trade and illegal trafficking in human beings.

The second Pillar consists of introducing a coordinated and integrated management of the Union's external borders. As it is well-known, the Member States' real borders are the external borders of the Union, at least through maritime and ground transportation, still many illegal emigrants come to Europe through airports. The goal of the Spanish Presidency here was that Member States start managing their borders as the territorial limits of the Union in a coordinated way, since this is the manner to get effective results. Furthermore, it was considered to be the first step towards a border policy for the European Union.

Weeks before the Seville European Council the Plan for management of Member States external borders, which aims to achieve a better control of migration flows, was authorized. To support that, the Heads of State or Government decided that before the end 2002 (during the Danish Presidency) the following measures should be enacted: the joint operations at external border; the creation of a network of Member State immigration connection police; the commencement of a pilot project of border management. In a second wave of measures, before the end of June 2003: to establish the core

curriculum for border guard training; to examine the possibilities to establish a regime of border-sharing between Member States and the Union.

The third group of measures consists of, diplomatically called, “integrating immigration policy into the Union’s relations with third countries”. In a straight formulation, to press third countries to second EU interest in this matter. In that direction it was agreed to include a clause on common management of migratory flows and compulsory readmission in the event of illegal immigration, into all its future agreements with third countries. Spain together with Britain spoke openly about sanctions to countries collaborating with illegal immigration (for instance Morocco). Other countries, like Benelux and France, rejected extreme measures. The final agreement reduced the wording to the pre-threat boundaries. In the eve of a manifest lack of cooperation by third countries, the Council, with unanimity, may adopt measures or positions under the Common Foreign and Security Policy and other EU policies,

“while honoring the Union’s contractual commitments and not jeopardizing development cooperation objectives”.⁶⁸

Finally, the Spanish Presidency, not being able to approve concrete measures to create a common policy on asylum and immigration, was forced to fix the legislative deadlines for some measures initiated during its Presidency. Thus, the Seville European Council agreed that: by December 2002, the conditions will be approved for determining, which countries are responsible for processing requests for asylum; before June 2003 rules will be adopted on the requirements for qualification and status as refugees, as well as provisions on family reunification and the status of long-term permanent residents; by December 2003 common standards will be adopted for asylum procedures.

68 Ibid., point 36.

Successful introduction of the Euro

The beginning of the Spanish Presidency, as contemporary history will remember, coincides with a much more important event: the birth of the Euro as a single currency for 12 EU Member States. Since the creation of the European Communities the Euro has been the most important event in the European history: as the biggest act of national sovereignty cession, or if preferred the strongest act of EU faith; and for being, as will turn out thanks to the “spill over” method, the biggest political impulse in EU history.

Everything was meant to be ready on January the 1st. The stabilizing of a single currency, and the substitution of 12 national currencies (not to forget other non-member countries attached to the DM) is the accumulation of a long preparation process and efficiency in meeting a goal, which was fulfilled ten years after the inclusion of the European Monetary Union in European Primary Law. Right before the Spanish Presidency took the leading EU role, the Ghent European Council enacted a statement on combating fraud and forgery with the occasion of the Euro entry into force. Therefore, it is not surprising that few leftovers, except the strictly necessary issues, were pending for the Spanish Presidency on this matter. These issues turned out to be related with the factual entry into force of the Euro and with aspects that address to facilitate the Euro future. Particularly that the Euro will acquire its full potential inside and outside the Eurozone.

The first priority was to guarantee an orderly transition while the Euro is being introduced, ensuring that the fight against forgery and fraud is effective. The Spanish Presidency monitored the whole process in detail, in close collaboration with the Commission, the European Central Bank and the resting Members States.⁶⁹ For instance the coordination of the very complex technical aspects, guaranteeing a tidy transition. In order to facilitate that coordination

69 This reality was duly recognized by Spanish Premier Mr. Aznar, see Comparecencia del Presidente del Gobierno ante el Pleno del Congreso de los Diputados para informar sobre las Conclusiones del Consejo Europeo de Sevilla, 20-5-2002.

the Information Exchange Net among Member States was developed. The adaptation of the Framework Decision about the Protection Strengthening with the aim to avoid fraud and forgery was put into practice.

The second goal defined by the Spanish Presidency was to promote the role of the EU on the international level and enhancing the visibility of the single currency. The EU is comparable with the USA in terms of its economic size, at the same time it is consolidating its position as the world's largest trading power. For the Spanish Presidency, this economic and commercial standing on the international level should start to have a noticeable effect on the political level.⁷⁰ Since the very beginning of European Monetary Union, in political and scientific fields, along with the idea of a single currency has always come the question of its representation. During the preliminaries of the Nice Intergovernmental Conference certain Members States upheld the idea of creating a Mr. Euro linked to the Ecofin. Romano Prodi addressed the European Parliament expressing its concern about such a possibility and stressing the Commission's opposition to any new turn into a more intergovernmental EU.⁷¹

Nice did not introduce Mr. Euro and the external representation remains (so far) in the President of the Ecofin together with the European Council President. I cannot deal here with the difficulties that the multi-speed Europe creates: relations Euro 12 – Ecofin 15; Presidency rotations when the Member State holding the Presidency is not in the Euro 12, etc.⁷² Regardless whoever takes the Presidency, there are two international forums where Euroland should be heard as such and not as a accumulation of States: international financial fora and multilateral financial organization. In the first group, the Spanish Presidency obtained its biggest achievement being present in the last

70 "More Europe", point 2.3.

71 See Speech/00/352, Plenary Session of the European Parliament, Strasbourg, 3 October 2000, especially "The danger of fragmentation," p. 5.

72 I have dealt in detail with this problem in "La Cooperación Reforzada tras Niza", *Revista de las Cortes Generales*, number 50, 2001, pp. 75-81.

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G-7 (+ Russia) meeting, objective attempted and not reached by other presidencies, which, as Spain, are not part of the forum.

The third objective was defined as bolstering coordination of economic policy against the backdrop of stability. To achieve Euro's full potential indoors, making out of it a key stability factor that instills confidence at the financial market and among consumers. In the Spanish Presidency's view,⁷³ the way to fulfill that goal has a fundamental pre-requisite that national economic policies must be monitored and coordinated more closely in every respect (not just from the budgetary point of view) in order to give more than the economic policy decision requires, as to minimize any possible negative repercussions of reduced economic growth.

This broad picture was linked to the Lisbon economic recipe and the long-term strategy (until 2010) attached to it. The economic agenda was basically articulated around the Barcelona European Council.

The “spring” European Council of Barcelona European Council

The Barcelona European Council as said, started somehow in Lisbon. The European Council of Lisbon was the most important summit in modern history, it meant the conversion of the EU into the predominant economic thought: the liberal, in its traditional conservative or in its more modern “third way” fashion. Aznar and Blair, significant representatives of this business way of dealing with politics, pushed forward the “conversion” in a context of eminent decline of progressive leaders. It is significant that Antonio Guterres hosted the Lisbon Summit while being, beside Portugal's Prime Minister and President of the European Council, President of the International Socialist. His conversion to the third way was certainly not so important as the one played by the German Premier and its government. The only serious global alternative discourse came from Lionel Jospin, pretty limited by its national

73 “More Europe”, point 2.2.

cohabitation, particularly in the European Council (foreign affairs). To this alternative agenda the “Nordic Social-Green” sensibility, supported partially by Germany, due to its Governmental coalition was added.

The final result of the Lisbon summit was an economic liberal agenda (between Berger and Giddens) until 2010 with some social and environmental concessions. The Heads of State or Government, in order to guarantee Lisbon guidelines to be implemented, agreed that every spring European Council would be dedicated primarily to economic affairs. Barcelona arrived two years later, in the Report addressed to the summit by the Commission, the European executive considers that the key aspect of the Lisbon agenda was not fulfilled according to the predetermined schedule and deadlines.⁷⁴

Despite of the general agreement reached at Lisbon, grounded in a shared economic view, specific dossiers find (especially in those fields governed by unanimity) national interests resistance and consequently vetoes, for instance: energetic liberalization for France, fiscal harmonization for Great Britain, etc.

Aznar, once again with Blair’s support,⁷⁵ was fully committed to re-inject impetus to the Lisbon agenda. Not only pushing forward concrete dossiers, but reasserting its economic ideological dimension for the future. This latter aspect was the main reason why the Spanish Presidency invited the Heads of State or Government from accession countries, in President Aznar wording: “to involve and compromise our future partners with the Lisbon strategic”,⁷⁶ that is to say: to bless the “unique economic thought” before hand, avoiding

74 “Comunicación de la Comisión al Consejo Europeo de primavera en Barcelona, La estrategia de Lisboa-hacer realidad el cambio”, Bruselas, 15-1-2000, COM (2002) 14 final, see “Summary” and point 2 of the Report “Progreso hacia los objetivos de Lisboa”, p. 8 and following.

75 Their vision on the Barcelona European Council agenda was spoken up as early as in November 2001, see their joint article “More Europe, better Europe”, cit.

76 “Carta del Presidente del Consejo Europeo, José María Aznar, a los Países Miembros de la UE con motivo del Consejo Europeo de Barcelona”, 11-3-2002.

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surprises after the enlargement.⁷⁷ The working meeting among EU and candidate States leaders took place during the second half of the first session.⁷⁸ In parallel two meetings took place, among Economic and Financial Ministers, on the one hand; and among Foreign Minister, on the other. These meetings agreed not only on the assumption of Lisbon strategy once candidates will be in the EU, but on the incorporation of its philosophy in current structural economic changes.

Going into the concrete measures adopted in Barcelona, taking note of the impossibility to reflect all,⁷⁹ I will outline those achievements declared more important by the Presidency along the lines of its five priority fields. With regard to the financial services, the main efforts referred to speed up the regulatory procedures, with implementation of the so-called “Lamfalussy proposals”, and on specific initiatives to fulfill the Financial Services Action Plan: the regulation on the approval of international accounting norms was adopted; 2003 was fixed as a deadline for a full integration of stock markets; and 2005 for the services markets.

In relation with the liberalization of the energetic single market, the main objectives were to open up the markets and to integrate them on the European level by means of relevant interconnections. The economic rationale underneath the liberal one: more liberalization, more competition, lower rates

77 It should be underlined that with similar intention, the “Social Meeting of Barcelona” took place, one day before the official summit. Laeken agreed to formalize these summits linked to the “Spring European Council Meetings”. The “Social Meeting of Barcelona” was divided in two parts. In the first, under the direction of the President of the European Council, consecrated itself to the Lisbon strategy and the Barcelona approach to it. In the second, the social interlocutors had the opportunity to address their opinion about the Commission working documents for the European Council. Being in the eve of the summit one can see the impossibilities of factual repercussions of the mentioned contributions.

78 See “Programa del Consejo Europeo de Barcelona”, 15-16/03-2002.

79 For a deeper view: see part I and II of the Presidency Conclusions of the Barcelona European Council, 15 and 16 of March 2002; Conclusiones del Gobierno español sobre la Presidencia de la Union Europea, point B) 2.

and more efficient markets. The concrete measures: 70 % of the gas and electricity market (except domestic consumption) will be open to consumers election; a modest political agreement to reach 10 % of the cross-border electricity interconnection will be liberalized; accordingly, by 2002, to establish simple, clearer and non discriminatory tariffs in electric cross-border transactions.

Another key issue has been the transport and communication agenda, which tries to link Europe up more efficiently. Here, agreement was reached on the review of the trans-European transport networks with new projects in regions, such as the Pyrenees and the Alps, two of the greatest bottlenecks in Europe. The “European Single Sky” will be adopted before 2004 in this context as a previous step: the Eurocontrol system will be an impulse and norms for the time zones assignation will be enacted by the end of the year. In the communication area political impetus was given to developing broad-bands networks at both European and national level: a Telecommunications Legislative Package was approved; as well as a political agreement to use broad-bands networks by 2005 was reached. The highlight in this field was the go-ahead given to the Galileo Programme.

Fifthly, employment and education were put together by the Spanish Presidency agenda without results. In Lisbon the Heads of State or Government pointed out their intention to get full employment by 2010, which will imply to create 20 million new jobs by that date, keeping in mind current employment destruction. This ambitious goal was seconded by the “Employment Strategy” approved in Luxembourg. During the Spanish Presidency, the Luxembourg Strategy was linked to Lisbon guidelines and 2010 horizon. Continuing in the liberal rationale, the agreement is focused on the need to remove the barriers that make it difficult for people to enter the labor market, barriers deriving from tax systems, social security systems and the mobility of workers within the Union. President Aznar emphasized as a positive fact that such reforms have already been taken in some Member

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States,⁸⁰ but he forgot to say that after being approved, they were followed by general strikes in Italy and Spain.

The concrete agreements are: the creation of a European Health Card; to raise the average age of retirement; to facilitate women incorporation to the labor market (infant infrastructure); the creation of a Web Page of labor mobility. At the educational front, much to do about nothing: political agreement on the need to facilitate that European citizens can speak a language other than their mother tongue; a vague and abstract agreement was reached to achieve by 2003 transparent titles and qualification recognition.

The Enlargement

After the Euro, the Enlargement was the most defined theme of the Spanish Presidency. The enlargement schedule and road map were defined at the Stockholm and at the Göteborg European Council summits. Together with them, the Berlin European Council defined the financial guidelines that were necessary in order to reach a successful enlargement: mainly imposing not to develop new EC policies that could imply further difficulties for the accession states and the whole enlargement process, provoking a potential delay.

The cited enlargement schedule foresaw the celebration of a special European Council in autumn 2002 during the Danish Presidency that commenced after the Spanish. This European Council will indicate, which countries can complete their negotiations by the end of the Danish Presidency and which will have to wait until the demanded requirements are fulfilled. Those selected will sign their respective Accession Treaties at the beginning of the forthcoming year,⁸¹ so that new Member States will participate as fully-fledged members in the European Parliament elections in June 2004. This road

80 Comparecencia del Presidente del Gobierno ante el Pleno del Congreso de los Diputados para informar sobre las Conclusiones del Consejo Europeo de Sevilla, cit.

81 The Committee of Accession Treaties Drafting was constituted during the Spanish Presidency.

map and fixed schedule placed the Spanish Presidency as the first of the final steps, therefore with the obligation to tackle some compulsory objectives.

In its priorities, the Spanish Presidency expressed that its intention would be to make a decisive contribution to ensuring that negotiations with all those candidate States which are prepared can be concluded by the end of 2002, as provided in Göteborg.⁸² The main problems for the 15 Member States to reach common positions were already known, besides the most complicated chapters of the *acquis*,⁸³ those chapters with greatest financial implications: agriculture, regional polity, financial and budgetary provisions, drawing upon the current financial perspectives of Berlin. Once the fulfillment of political criteria were clear by the 12 directly affected countries, economic criteria had to be the cornerstone and will continue to be so until the end of the enlargement process and beyond.

The Spanish Presidency official discourse reflected the official EU discourse: “Spain and the Spanish public opinion have always whole-heartedly supported [the enlargement]”.⁸⁴ No comments on the supposed support of Spanish public opinion to the enlargement process, the same was said by the Irish Government before the “NO” to the Treaty of Nice.⁸⁵ About the Spanish political support many reflections can be made. If we remember, during the Nice Intergovernmental Conference, one of the most significant victories in Spanish Governments view,⁸⁶ was to keep unanimity where needed to renew

82 “More Europe”, point 4.

83 During the Spanish Presidency the first evaluation of the current application of the *acquis* for candidates countries took place.

84 “More Europe”, point 4.

85 Despite of Irish Government and EU institutions opinion about the Irish referendum, I have defended that the Irish people’s rejection was, among other reasons, due to concerns about the negative economic consequences that the enlargement will imply. J.M. Martínez Sierra, “La reforma constitucional y el referendun en Irlanda: a propósito de Niza”, *Teoría y Realidad Constitucional*, number 7, 2001, pp. 306-307.

86 In such a way was emphasized by the former Spanish Ambassador before the EU Javier Elorza, in his article “La UE después de Niza”, *Política Exterior*, number 79, 2001, p. 85.

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the current financial perspective (beyond 2005) avoiding Germany (and rest of “payers”) intentions to use the enlargement to drastically change the current system.⁸⁷ But cohesion funds are not the only topic that caused Spain to be reluctant towards the enlargement. We have already mentioned how its position in relation with the CAP and fishing did not facilitate important steps towards fulfilling the enlargement in due time. Thus, deep inside, Spain supports the enlargement as long as it does not negatively affect its essential interest. Therefore, the Spanish Presidency was not the best political option for holding the Presidency in charge to close the negotiations. Being the prior one, it could adapt itself to the enlargement road map demands particularly because, as it is already known in accession process, until everything is closed nothing is definitely locked.

Going into a brief summary of concrete achievements, the Spanish Presidency reached common positions in the entire chapter assigned to it: Regional Policy, Budget and Financial Dispositions, Institutions and Agriculture. In this later field, it was impossible to reach an agreement about payments modalities, hence it will have to be fully tackled by the Danish Presidency.

Summarizing, during the Spanish Presidency, 96 chapters were negotiated in total, 56 of them were provisionally closed, 22 chapters were open for the first time since negotiations started.⁸⁸ Among the chapters provisionally closed, some consider the following as sensitive for national interest: free movements of Capital in Poland, Energy with Lithuania and Justice and Home Affairs with many candidates. From 30 chapters in total, attending to the record of the 10 initial candidates, the following were closed: 28 with Lithuania and

87 In deeper detail, J.M. Martínez Sierra, “El Tratado de Niza”, *Revista Española de Derecho Constitucional*, number 62, 2001, pp. 241-242.

88 See Resultados de las Conferencias de Adhesión a nivel de Suplentes con los Países Candidatos, Data obtained from the 4th and last round of negotiations closed in Brussels, 28 June 2002.

Cyprus,⁸⁹ 27 with Slovenia and Latvia, 26 with Slovak and Estonia, 25 with Poland and the Czech Republic, 24 with Hungary and 23 with Malta. After the Spanish Presidency Bulgaria and Rumania continue at the very back of the train. The only record presented by the Spanish Presidency was the opening of the chapters still closed. This should not be considered as a failure, as it is well-known, the hope in Bulgaria and Rumania was lost during the Treaty of Nice, when they were implicitly left out in the institutional transitions periods.⁹⁰

Debate on the future of Europe.

The Spanish Presidency gave a twofold dimension to the so-called debate on the future of Europe: on the one hand, the European Convention in the preliminaries of the next Intergovernmental Conference; on the other, the reform of the Council of the Union. These two combined factors were so far formally kept in different scenarios attending to their objectives. The European Convention is part of an emerging *sui generis* constitutional power. It aims to reform Primary Law and is already involved in a process that potentially could end up in formal Constitution.⁹¹ On the contrary, the reform of the Council of the Union came from the genesis (Trumpf Report-Finish 1999 Presidency) linked to an operational institutional reform. Precisely, one of the main characteristics in that reform is not to attempt Treaty modification. It was never linked to a deeper constitutional process and debate, but to concrete measures to enable the enlargement. About the reform of the Council I refer to the first part of this paper.

89 In relation with Cyprus political problem, the Spanish Presidency just supported United Nations efforts.

90 See J.M. Martínez Sierra, “El Tratado de Niza”, cit., pp. 224-234.

91 About this process I have already articulated in detail, “El debate Constitucional Europeo”, *Revista de Estudios Políticos*, number 113, 2001, pp. 197 and following.

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The fact that the Spanish Presidency attached both aspects,⁹² had to do essentially with organizational reasons. Certainly not with any intention of the Spanish Presidency to increase the European Convention agenda. Much on the contrary, if something should be underlined from the Spanish contribution to the future of Europe, it is the absence of “European spirit”, surely inspired by Aznar’s “grown national pragmatism”. If one examines some of the main political contributions to the constitutional debate (Chirac,⁹³ Fischer,⁹⁴ Ciampi⁹⁵) and compares them with Aznar’s speech at the Center for European Studies of St. Anthony’s College,⁹⁶ the meaning of euroscepticism will be

92 See for instance: the Presidency Guidelines, the Presidency Results Report and the Seville European Council Conclusions.

93 “Plusieurs formules sont envisageables, du Comité des sages à un modèle inspiré par la Convention qui rédige notre Charte des droits fondamentaux. Et à l’issue de ces travaux qui prendront sans doute quelque temps, les gouvernements puis les peuples seraient appelés à se prononcer sur un texte que nous pourrions alors consacrer comme la première ‘Constitution européenne’ ”, Notre Europe, Speech of the French President Jacques Chirac before the German Bundestag, 27-6-2000, <http://www.presidence-europe.fr/pfue/page-ossier6.htm?dossier=00383&nav=6&lang=6&rubrique=-1&page=1>.

94 “Fragen über Fragen, auf die es allerdings eine ganz einfache Antwort gibt: den Übergang vom Staatenverbund der Union hin zur vollen Parlamentarisierung in einer Europäischen Föderation, die Robert Schuman bereits vor 50 Jahren gefordert hat.[...] Diese Föderation wird sich auf einen Verfassungsvertrag zu gründen haben.” Vom Staatenverbund zur Föderation: Gedanken über die Finalität der europäischen Integration, Speech of the German Foreign Minister Joschka Fischer at the Humboldt University of Berlin 12-5-2000, http://www.jeanmonnetprogram.org/papers/00/joschka_fischer_ge.rtf.

95 Discorso del Presidente della Repubblica Carlo Azeglio Ciampi in occasione del conferimento della laurea Honoris Causa dell’ Università di Lipsia, 6-6-2000. <http://www.quirinale.it/Discorsi/Discorso.asp?id=12587>.

96 “Permítanme comenzar con una declaración de principios que ya he hecho en otras ocasiones pero que creo que debe ser la base de toda reflexión sobre el futuro de nuestro continente: la Unión Europea es, y deberá seguir siendo, una Unión de Estados Nacionales que tienen personalidades distintas, historias distintas y culturas diferentes entre si, Estados diferenciados que han encontrado una formula de conseguir mayor seguridad y mayor bien estar para sus ciudadanos, a base de integrarse, de hacer cosas juntas en beneficio de todos.” Discurso del Presidente del Consejo Europeo en el St. Anthony’s College, 20-05-2002.

better understood. One will see the difference between a political and a bureaucratic speech, and certainly feel the self-contradiction involved in the unbalanced Europe discourse: economic giant but political dwarf; federal decision-making and legal order but national-intergovernmental legitimacy.

Once asserted that the European Convention was during the Spanish Presidency the centre of the debate on the future of Europe, it is necessary to describe its contributions, if any. The Declaration on the Future of Europe, annexed to the Treaty of Nice, drew up an initial agenda for 2004 Intergovernmental Conference and gave the Belgium 2001 Presidency the mandate to implement it.⁹⁷ The fourth chapter of the Belgium priorities note was entitled “The future of the European Union: towards an ambitious Declaration of Brussels-Laeken,”⁹⁸ which concluded in the Laeken Declaration. There, the European Convention was chosen as the method to follow and where the agenda is defined in a broad and flexible manner. To finish the Convention architecture, during the Belgium Presidency the Convention composition⁹⁹ and the Presidium were decided.¹⁰⁰ Therefore little margin was left for the Spanish Presidency.

The first measure taken by the Spanish Presidency was to approve the Convention financing, through a Decision and an Inter-institutional agreement. Secondly, on 28 February 2002, the Convention was constituted holding its first meeting with the participation of the Spanish Premier as

97 J.M. Martínez Sierra, “El debate Constitucional Europeo”, cit., 194-196.

98 “The Belgian Presidency of the European Union, 1 July-31 December 2001: Priorities note”.

99 One representative of each national Government, two representatives of every national parliament, two representatives of the Commission and 16 representatives of the European Parliament. Candidate Member States are involved in the Convention proceedings without having full representation. Observers from other parties are presented: Economic and Social Committee, the European social partners and Committee of Regions.

100 Valéry Giscard d’Estaing (former French President) was appointed as Chairman of the Convention; two Vice-chairmen completed the Presidium: Jean Luc Dehaene (former Belgium Prime Minister) and Giuliano Amato (former Italian Prime Minister).

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President of the European Council. The Spanish Presidency committed itself to two aspects. Firstly, to promote the synergy between the European Convention and the European Council, particularly to keep the second informed of facilitating the Presidium for such an action. Thus, during the Seville European Council, the President of the Convention presented to the Heads of State and Government an oral report on the evolution of the Convention's works and about the forums articulated to facilitate civil society contributions. It should be noticed that during the 3 months that the Spanish Presidency lived together with the Convention, the latter was basically committed to the exposition stage, and passed after the Seville meeting to a deeper study of the items put previously. As this was exposed by Valéry Giscard d'Estaing to the European Council, it is not surprising that the Heads of State and Government at Seville showed their general support to the evolution followed so far.¹⁰¹

The second aspect to which the Spanish Presidency committed itself was to chair the coordination meetings of the governmental representatives in the Convention. The Convention is a new method in the constitutionalization process and it appears, at least at first sight, in its composition and spirit independent. Therefore a clear question arises: why and how do the Member States coordinate themselves before the Convention? The answer has to be found in the Convention method and its potential danger for Member States in the fate of the next Intergovernmental Conference.

The Convention method, despite being new in the EU constitutionalization process, had an important precedent in the elaboration process of the Charter of Fundamental Rights. The Convention, after its long debating period came up with a Charter of Fundamental Rights completed in every dimension. A deep consensus was created around it among Convention members, which to a similar extent involved some EU institutions and generally "EU lobby"

101 Presidency Conclusions of the Seville European Council, 21 and 22 of June 2002, point 2.

(scholarly, relevant politicians, social figures, etc.) All this, as a snow ball rolling down the hill, drove the European Council into a “take or leave it” plot, pretty far from the “pick and choose” comfortable scenario expected in the beginning. This was a feared scenario by Member States when confirming the Convention as part of the constitutional method.

In order to avoid such a situation, the European Council introduced the following mechanism.¹⁰² In the first place, they elected the Presidium, and as President they elected the father of the European Council: no comments on that. Secondly, the Laeken Declaration left clear that the Convention will not come up with a compulsory document: the Convention “will draw up a final document which may compromise either different options, indicating the degree of support which they received, or recommendations if consensus is achieved.” Thirdly, in Spanish Presidency wording there will be

“a long enough period of reflection between completion of the Convention’s work and the beginning of the IGC, so that the Convention’s results can be discussed in the framework of the national debates and in the national parliaments.”¹⁰³

Together with this coherent provision and objective, taking into account the complexity of the EU constitutional implications (national and supranational), the European Council

“also hoped that by inserting this break, a number of Convention decisions will be ‘forgotten’, or at least toned down.”¹⁰⁴

There are reasons for European Council concerns, the European Convention within the European constitutionalization process can turn into a Pandora’s box. So that the Spanish Presidency has, right from the start, emphasized that the consolidation of the Convention in the constitutional architecture, in the

102 See in more detail Hendrik Voss and Emilie Bailleul, *The Belgian Presidency and the post-Nice process after Laeken*, cit., pp. 21-23.

103 “More Europe”, point 6, pp. . 17-18.

104 Hendrik Voss and Emilie Bailleul, *The Belgian Presidency and the post-Nice process after Laeken*, cit., p. 21.

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future as a “preparatory instrument” for the IGC, will depend on its success.¹⁰⁵ Clarifying that the IGC has the last word and that Convention’s future will depend on its capacity (will) to remain within the written screenplay. To ease the process, the European Council took the above mentioned measures to narrow down Convention freedom.

The last and definitive measure, applicable since the Spanish Presidency, is the coordination of the governmental representatives in the Convention, whose objective it is to generate a homogenous group capable of avoiding consensus in those fields that are more sensitive for Member States. Creating a “shopping scenario”; or, in negative, eluding the possibility of seeing themselves in front of a full Constitution and an “all or nothing” scenario. During the Spanish Presidency, as previously explained, the course of the Convention debates did not have time to reach sensitive negotiations areas. Hence, we will have to wait and see. I personally do not have big expectations, but the existing depends on two related aspects: the capacity of European Members of Parliament to seduce national representatives (parliamentarian and governmental);¹⁰⁶ and the capacity of governmental representatives to take conscience of their historical opportunity, shielding themselves from their “Ambassadors role”.¹⁰⁷

External relations: “More Europe” in the world

A well-known international newspaper once published a kind of ingenious joke about Arafat’s unstoppable world tour, the text read something like: “join

105 “More Europe”, point 6, p., 17.

106 Remember for instance how they did it in the Rome Assises.

107 Though in a different context, but also transcendental, I would like to remember how this process was produced in the Committee that drafted the Euro/European Central Bank Report, composed by the Commission President (who planned the operation and chaired the Committee) and the Presidents of the Member States Central Banks. Despite some national governmental pressures to make it fail, the Members generated a synergy and signed the Report which turned out to be so significant for the European Monetary Union strategy.

the peace process and see the world.” In its priorities the Spanish Presidency promised that the Union would visit part of the world and the rest would come to visit the Union. In “More Europe” one can find the following 11 points:¹⁰⁸ Transatlantic relations, the situation in Afghanistan, the Middle East Peace Process, the Euro-Mediterranean Association, Russia, Western Balkans, Latin America, Asia, Sub-Saharan Africa, United Nations and Development cooperation. That mega activity, in the Spanish’s Presidency view, was justified and related to the September 11.¹⁰⁹ When the Presidency was finished and the reflection time started, the Spanish agenda showed itself far too ambitious. Such a conclusion is implicitly presented in the official balances presented by the Spanish Presidency, which simply left out some of the above mentioned points, or simply can underline vague political agreements as significant achievements.¹¹⁰ Regardless, along the way, agreements had been reached and important exploring efforts were made. The most significant are summarized immediately below, along the lines of the Spanish Presidency conclusion.

XV. The Fifth Euro-Mediterranean Conference

Beyond the foreign relations connected with the fight against terrorism, the Mediterranean and Latin America are the Spanish natural sensitive areas within international relations. During the Spanish Presidency the Fifth Euro-Mediterranean Conference took place at a ministerial level (Valencia, 22-23 April).¹¹¹ The Conference tried to follow the impulse given by the Barcelona Conference. There, being the genesis of the process, the Minister of Foreign

108 “More Europe”, point 5, pp. 14-16.

109 Comparecencia del Presidente del Gobierno en el Congreso de los Diputados para explicar las prioridades de la Presidencia Española de la UE, 10-12-2001.

110 Conclusiones del Gobierno español sobre la Presidencia de la Union Europea, point D), pp.14-18; Address of the President of the European Council to the European Parliament on the Spanish Presidency, Strasbourg, 2-7-2002.

111 See Programa de la V Conferencia Ministerial Euromediterranea, 22/23-4-2002.

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affairs enacted the foundational “Declaration of Barcelona”, agreeing on meeting periodically in order to follow the realization of cited declaration and to define new goals to achieve collaboration objectives.¹¹²

Though the Euro-Mediterranean cooperation historically has a broad perspective, its major achievements came in the economic-regional field.¹¹³ The agenda of the Valencia Conference explored a wide range of economic, political and cultural aspects.¹¹⁴ Finally, attending to the Presidency Conclusions of the Conference,¹¹⁵ and to the political environment, the following aspects deserve to be underlined. The Valencia Action Plan¹¹⁶ was approved, which pretends to be a new impulse to the process in its three historical dimensions: political, economic and cultural. This is the first document of that range adopted in the conferences. Some decisions were taken besides the Action Plan but certainly in relation with those fields. In the economic field, the following was adopted: a political agreement to fix for 2010 an Euro-Mediterranean free market area; agreement to promote inversions in infrastructure and interconnections of transports, energetic and telecommunications networks. Within the political context, the creation of an Euro-Mediterranean parliamentarian Assembly, so promising as the many existing, was agreed. In the cultural sphere, it was agreed: the extension of the

112 See the point “Actuación consecutiva a la conferencia”, Declaración de Barcelona, adoptada en la Conferencia Euromediterránea, 27/28-11-1995.

113 For instance the so-called MEDA actions, see the “Reglamento (CE) No 1488/96 del Consejo, relativo a las medidas de acompañamiento financieras y técnicas (MEDA)” de las reformas de las estructuras económicas y sociales en el marco de la colaboración euromediterránea”, OJ L 189, 30-7-1996; modified by Council Regulation (CE) No 780/98 , OJ L 113, 15-4-1998; and Council Regulation (CE) No 2698/2000 , OJ L 311, 12-12-2000.

114 See “Comunicación de la Comisión al Consejo y al Parlamento Europeo de preparación de la reunión de ministros euromediterráneos de asuntos exteriores”, SEC (2002) 159 final.

115 Conclusiones de la Presidencia de la Conferencia Euromediterránea, 22/23-4-2002.

116 The Valencia Action Plant is included as annex II of the Conclusiones de la Presidencia de la Conferencia Euromediterránea, *ibid*.

Tempus program for not candidate partners and the creation of an Euro-Mediterranean observatory for professional formation and employment.

Terrorism, of course, was included for the first time in the Euro-Mediterranean agenda with the approval of the Framework Document including: regional cooperation programme in the field of justice, in combating drugs, organized crime and terrorism as well as cooperation in the treatment of issues relating to the social integration of migrants, migration and movement of people.¹¹⁷

Thirdly, the Euro-Mediterranean Conference hosted the signature of both association agreements with Algeria and Lebanon, which was a success owed to previous presidencies.

XVI. The Transatlantic relations

As it has already been explained, as far as the EU-USA relationship is concerned, the main interest of the Spanish Presidency was focused on terrorism. In addition to the battle against terrorism, the Spanish Presidency pointed out the following priorities: environmental protection, the struggle against poverty in the developing countries and the multilateral increase of trade.¹¹⁸ The Summit EU-USA, held in Washington on the 2nd of May, was meant to reach substantial achievements in those fields, however nobody found reason for enthusiasm about the summit and generally about the Presidency since only political compromises were reached.

In the battle against terrorism, it was not possible to elaborate a common terrorist list. As a substitute, a political agreement was reached to move towards a progressive convergence of both lists. The Summit, also in the terrorist context, showed the parties' will to negotiate an agreement for Judicial Cooperation in the Penal and Extradition Fields. Coordination in "all" international affairs (Balkans, Afghanistan, relation with Russia, etc) was also

117 The Framework document is included as annex II of the Conclusiones de la Presidencia de la Conferencia Euromediterránea, Ibid.

118 "More Europe", cit., point 5.2.

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agreed. Finally it was agreed to keep a constructive dialogue in matters such as environmental and international trade.

In the Spanish Presidency's view, those agreements and the EU-USA Summit were a reason to be satisfied and to deny any critic of unilateralism to the USA.¹¹⁹ Such a conclusion seems extremely optimistic taking into account recent developments, which simply reassert what was always known: the coordination and collaboration with USA goes until the perimeter of its interest. Examples can be found in almost every of the cited fields: Kyoto, International Criminal Court, Iron trade, Israel-Palestinian conflict, Iraq, etc.

The relation EU-Canada was concentrated on at the Summit held in Toledo, 8th of May. It was scheduled 4 days after the United States-European Union Summit, establishing an agenda link before hand. That dependency, together with the small pre-existent bilateral relationship, determined the modest output of the Summit. Again, only political compromises were found. In the battle against terrorism, some contacts were reinforced in relation with Eurojust and Europol without reaching concrete agreements. Impelling force without factual decisions was also given to cooperation in the fields of research, science and technology development.

XVII. The Summit between EU and Latin America and Caribbean Countries

The first Summit of the Heads of State or Government of the countries of the EU, Latin America and the Caribbean Countries took place in Rio on 28 and 29 June 1999. There, a Declaration and a Plan of Action were adopted and it was already agreed that a second summit would take place in Spain in 2002. The Rio Summit framed the guidelines of this new inter-regional relationship,

119 Conclusiones del Gobierno español sobre la Presidencia de la Union Europea, pp. 15-16.

as wanted by the EU,¹²⁰ in three fields: political dialogue, economic and financial relationship and cooperation. From those 11 key priorities were subsequently selected in Tuusula by a bi-regional group of high officials with a view to give more focus to the overall process. Later, the Commission, in the view of the 2002 Spanish Summit, proposed to step up its actions in the following three priority issues: the protection and promotion of Human Rights, the promotion of the information society, and the reduction of the social imbalances.¹²¹ Meanwhile, the Tuusula priority issues will continue to be dealt with existing cooperation instruments, including decentralized horizontal programmes.¹²² The Rio Summit also adopted a bidimensional Summits' format reflecting two strategic fronts: a global, taking the whole two regions; and a bilateral, taking separately existing Regional Organizations and main countries.

The Madrid Summit (17 and 18 May 2002) followed the mentioned summit format being actually a summits' marathon. Beside the central Summit of the Heads of State or Government of the EU, Latin America and the Caribbean Countries, the following bilateral summits took place: UE¹²³-Comunidad Andina, UE-Centroamérica, UE-México and UE-Mercosur.

Starting with the global dimension, the II Summit between EU and Latin America and Caribbean Countries approved the so-called Madrid Commitment. In it the Heads of State or Government decided to prepare a second Rio Declaration. Instead of looking for the practical approach intended by the Commission, fulfilling progressively some of the Rio goals, another broad political statement was made. Therefore the Heads of State or

120 See the Commission Communication "On a new EU-Latin America partnership on the eve of the 21st Century" (COM (1999) 105 final) and compare it with the "Rio Joint Declaration".

121 "Communication from the Commission to the Council and the European Parliament Follow-up to the First Summit Between Latin America, the Caribbean and the European Union", COM (2000) 270 final, pp. 5 and 14.

122 In particular the ALINVEST, ALURE, ALFA and URBAL.

123 In the bilateral summits the EU was represented by the Troika.

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Government agreed to undertake to develop a solid bi-regional strategic partnership, for instance, with the following commitments: to strengthen the multilateral system; to reinforce our democratic institutions and the rule of law, strengthening judicial systems ensuring equal treatment under the law and promoting and protecting respect for human rights; to combat terrorism in all its forms and manifestations; to strengthen co-operation to combat the scourges of illicit drugs and related crimes, corruption and organized crime, by enhancing co-ordination mechanisms; to eradicate racism, racial discrimination, xenophobia and related intolerance; to promote and protect the well-being of each child; to reinforce bi-regional political dialogue in international fora and consultations in the UN system and in major UN Conferences on the main questions of the international agenda. Therefore the Madrid Commitment mixed objectives with declarations and merely dissertations.

EU-Chile relation has formally been the most successful one within the bi-regional realm. During the Spanish Presidency the negotiations for an Association Agreement EU-Chile were closed, being signed during the Madrid Summit. It is one of the so-called “fourth generation” free trade agreements. If one takes into account that the first meeting of the Negotiation Committee took place in April 2000,¹²⁴ the Spanish Presidency achievement shows itself undeniable.

The second remarkable country, as far as legal instruments are concerned, is Mexico. Mexico is the first country in Latin America with which the EU has a privileged partnership based on common interests and values of democracy and human rights. It is enshrined in the Economic Partnership, Political Co-ordination and Co-operation Agreement (the “Global Agreement”) signed in 1997 that came into force on 1 October 2000. The agreement provides for regular high-level political dialogue on bilateral and international issues. It is

124 See “Conclusion First Meeting of the EU-Chile Negotiation Committee”, Santiago de Chile, 10 and 11 April 2002.

intended to define the framework for this bilateral relationship. It opens new prospects in terms of politics (institutionalization of the dialogue), economics and trade, with the establishment of a free trade area for goods and services (FTA), as well as in terms of corporations. During the Spanish Presidency the “Mexico Strategy” 2002-2006 has been defined.¹²⁵ For the rest, EU priorities of the Madrid Summit were: human rights, information society and social equality.¹²⁶ The 2nd Joint Council of 13 May 2002 and the EU-Mexico Summit of 18 May 2002 simply underlined the convenience of developing such fields, particularly emphasizing the need of maintaining an open dialogue with Mexican and European civil society to exchange information and views on how best to avail of the opportunities offered by the Global Agreement.

The relations with EU-Mercosur started back in 1992 with the Agreement for Inter-institutional Cooperation. Three years later the Agreement for Inter-regional Cooperation was signed. The first Summit EU-Mercosur (Rio, June 1999) gave mandate to open the negotiations for the Association Agreement. One year later the negotiations were open around three basic issues: political dialogue, economy and cooperation.¹²⁷ Before the Madrid Summit seven negotiation rounds took place, the latest in Argentine in April 2002. The intention of this meeting was to make a substantial progress before the Madrid Summit on 17 May 2002. Despite of the Spanish Presidency interest, many aspects were not so full-grown as to close the negotiations during the six months period. Finally the Summit simply reaffirmed the political support to the negotiations, it also convoked a special Ministerial EU-Mercosur meeting for July 2002.

The rest of the bilateral relations are still far from reaching any of the described scenarios. Thus, the informal Summit UE-Centroamérica was the first ever. In Madrid only the compromise was reached to negotiate political

125 “Country Strategy Paper 2002-2006-Mexico”, European Commission, 2002.

126 Ibid., p. 5.

127 In detail about the historical process and the current compromise, “Una asociación para el futuro”, Comisión Europea, Montevideo, Mayo de 2002, pp. 6-11.

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and cooperation agreements with Centroamérica and the Andean Community, as well as to enhance commerce and financial cooperation in the view of impelling regional development.

XVIII. The Summit between EU and Russia

The relation EU-Russia does not have a brilliant history, neither was it the main priority of the Spanish Presidency. Regardless of that, the interest of some Member States¹²⁸ and the concrete interests of Spain, terrorism-justice and home affairs, made it gain some impetus. As a consequence, the first meeting of Ministers of Justice and Home Affairs (UE-Russia) took place. Those matters remained on top of the agenda at the Summit UE-Russia held in Moscow on 29th of May: the fight against terrorism was included in the bilateral relationship and contact points for information exchange were created. Compensating Russia's interests: a basis for a future agreement on Kaliningrad was established; the EU showed its disposition to recognize Russia as a market economy, previous step for a future WTO membership. Beside those fields, the Summit was filled up with political declarations: Moscow Declaration which defines the bilateral future framework, Declaration on the Middle-East, on Energetic dialogue, on Political dialogue, and on Cooperation in crisis management and security affairs.

XIX. The European Security and Defense Policy (ESDP)

The Spanish view tried from the very beginning to link the ESDP with the September 11 hoping to push it forward.¹²⁹ In its view, the international

128 Particularly important was the position of Chirac, who after meeting with Vladimir Putin during the beginning of the Spanish Presidency, asked personally Aznar to introduce main important points for Russia in the Presidency agenda: cooperation in security affairs, entrance of Russia in the WTO, Kaliningrado. See EFE report on UE-ESPAÑA/FRANCIA, 18-1-2002 (EFE).

129 See "More Europe", point 5.1

situation in the wake of the crisis of September 11 has made it even more important that the ESDP becomes operational as soon as possible. It was a priority to take this chapter of the EU building further forward, since without it there can be no real dialogue of a Europe with its own identity in the international community. Another key priority was to launch a debate aimed at including the battle against terrorism as an ESDP objective, and providing ESDP means that are required to fulfill that objective.

Despite the fact that the European Council in Laeken also shared the necessity to make ESDP more operational, no operational agreement in the cited field was reached, certainly not about the Spanish interest of linking ESDP to the battle against terrorism. In other fields more of the same, no further agreements, yet cooperation in armament or military capabilities. The attempts to reach an agreement to replace UN police in Bosnia by January 2003 failed. The same in relation with the replacement of NATO protection to international envoys in FYROM. In the positive balance the compromise should be counted found on financing the PSD, pending since the Swedish Presidency. The first “formal” Council of Defense Ministers was held and the first exercise of crisis management was realized, successfully using the ESDP decision-making structures and process.

XX. Conclusions

In the Report addressed by the Council Secretary-General at the Barcelona European Council,¹³⁰ one can find a precise description of the main problems facing the current Presidency system. National and European pressures force presidencies to take both agendas as their priorities. So normally every EU Presidency buys more than it can choose. The pressure of having to take stock at the end of each six-monthly period sometimes causes a rush. Such a celerity can lead to the adoption of makeshift decisions or a proliferation of badly

130 “Preparing the Council for the Enlargement (Report by the Secretary-General)”, Brussels, 11 March 2002.

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drafted or non-compulsory acts (resolutions, conclusions) when the Union's interests would have been better served by the adoption of a more binding act that, in turn, would have required more lengthy negotiations stretching over several presidencies and on a high level of compatibility between national and EU agendas. This has clearly been the case of the Spanish Presidency, as we have seen in detail in every field except in relation with the Euro. There, precisely the Spanish Presidency simply had to implement what was previously defined.

Member States observe the Presidency as their legitimate turn to take the steering wheel. It is better to have the opportunity to influence the agenda once in a while than never. This particularly is the case for smaller countries, which can hardly lead to a majority supporting its agenda in a normal EU daily life. This reality can lead to what we defined as Presidency's "abuse". The best confirmation of the power that the Presidency grants to the Member State in office, and of the general agreement to "share the cake", is the everlasting resistance to introduce changes in the institution. These changes are required not only for the current negative functioning but also for the forthcoming enlargement.

The forthcoming enlargement, besides being an objective reason for changing the institution we are dealing with, is facilitating the change of subjective perceptions. As we know "the office of President shall be held in turn by each Member State in the Council for a term of six months ...". This will mean every 12 to 15 years in a Union with 25 to 30 Member States. This new scenario will drastically change the current national benefits, to an extent that the everlasting resistance to introduce changes in the institution are progressively reduced. The national profit will not compensate the system inefficiency any longer. A paragon of that change is Spain. If we remember, when the Finish report faced the General Affairs Council preparatory of the Helsinki European Council (December 1999), the Spanish Secretary of State for European Affairs, Mr. Ramón de Miguel Egea, carried out an allegation of the traditional States rights, which are radically opposed to any new spirit

needed in any deep change in the Council working methods. Such a position desired to maintain the system until the Spanish Presidency would take place. During the Spanish Presidency, Spain has become an advocate of deep institutional changes. In his speech at St. Anthony's College, Aznar promoted the creation of an elected "President" for the EU. This is, no room for doubts, a revolutionary change, independently that he was thinking about his political career when making this proposition.

Changes are needed and changes have already been introduced, especially during the Finish and Spanish Presidency. At first view, those changes basically affect the functioning of the institution: link between presidencies, agenda programming, etc. However, taking into account the leftovers of the Seville European Council (Council Backbone Presidents' election and term, President of the Union) and its decisions (particularly the "Measures Concerning the Structure and Functioning of the Council"), a deeper transformation can be foreseen: another step towards a more intergovernmental Union. Actually, the only new actor introduced in the process is the European Council. In the new system the European Council will adopt the "multiannual strategic programme". Consequently, the Heads of States or Government will increase their control on the EC legislative agenda.

In Seville, the Heads of States or Government agreed that the European Council would develop this new role within the powers conferred to it by article 4 of EU Treaty. Thus, the "multiannual strategic programme" can be adopted within the power to define "general political guidelines"; that an EU (meta-juridical) institution can be an actor in the EC without being object of any political accountability or ECJ control. The opted path is far from being promising. To link such an EC structural reform to the European Council, without a previous full constitutionalization of the institution, will imply certain damage in the essential cornerstone of every political system, namely the rule of law. This could not only steer to the decisions' illegitimacy, but to the deligitimation of the system.

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