

## INSTITUTIONAL INNOVATIONS

# The Role of the General Affairs Council Revisited in the Light of the 18-month Experience with the Lisbon Treaty

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The first 18 months of the Lisbon Treaty – corresponding to the Spanish, Belgian and Hungarian Trio Presidency of the European Union (EU) – has left a rather bittersweet taste over the supposed positive effects of the new decision-making framework, which proved so difficult to agree on and then ratify. Over the past years, the treaty in and of itself did not allow Europe to resolve the big integration-process challenges: financial turbulences and recessions during 2008 and 2009, subsequent sovereign debt crises, or, more generally, Europe’s declining international position in a context of major geopolitical shifts and changing global economic competitiveness. However, the new Lisbon Treaty mechanisms did help the EU better address those issues where there was at least a minimum of political will. To give two examples: (i) the institutionalisation of the European Council was an advantage, rather than an added difficulty, in moving towards reinforced economic governance or the so-called Euro-Plus Pact; and (ii) the strengthening of the European Parliament has been a source of support, rather than hindrance, in the design and launching of the European External Action Service (EEAS).

Although it is premature to assess changes in the institutional balance as a whole, it is possible to say that the new tools improved the EU’s political performance with regard to policy-making continuity, visibility of decisions and accountability. This said, the treaty also makes for greater complexity in decision-making and this requires more political coordination among institutions. It is worth noting that in the previous edition of “Think Global, Act European”, four of the final recommendations dealt with the need for better coordination. In particular, the first recommendation made an appeal to “ensure that the new General Affairs Council – chaired by the Trio Presidency – fulfilled the role of a strategic coordinator of policy-making in the EU”.<sup>1</sup> Given that, nearly a year-and-a-half later, the need to develop

this function is more acute, the recommendation is even more compelling than before. The General Affairs Council (GAC) has not asserted itself politically and other possible coordinators, who are well established and permanently based in Brussels – such as the President of the European Council, the Committee of Permanent Representatives (COREPER) or even the Secretariat General of the Council, are not the ideal actors to carry out this function, which requires Member States to be politically involved at the ministerial level.

In late 2009, the GAC was created as a new configuration of the Council, splitting it from the former “General Affairs and External Relations Council”. The other part became the new Foreign Affairs Council. The idea was to clearly distinguish between the definition of the EU’s international action on the one hand, and the transversal coordination of all issues that the Council dealt with on the other. Thus, in the first case, the foreign ministers – and sometimes those responsible for defence, development or trade – acted, under the stable presidency of the High Representative, as representatives of the Member States on foreign and security matters. In the latter, the ministers of Foreign or European affairs – under the six-month rotating presidency – would have to carry out three functions. Firstly, because the Council still had nine vertical configurations, the first function involved the need to give consistency to sectoral work. Secondly, to the extent that some transversal issues were difficult to assign to the vertical councils – such as enlargement, for instance, it made sense for there to be a horizontal body in charge of these issues. The third function, in light of the separation between the European Council and the Council as different institutions, stemmed from the need to connect the former’s role as provider of political drive to the latter’s role, which is fundamentally legislative.

None of this was achieved during the first three presidencies conducted under the Lisbon rules. The GAC probably achieved the basic goal of guaranteeing a minimum of consistency in the work of the nine other Council configurations and it formally prepared and followed-up on the meetings of the European Council. However, it failed to become a powerful and distinctive actor with a strategic approach. Given that after the treaty came into force the rotating presidency’s clearly lost of functions and visibility, it is odd that neither Spain, nor Belgium, nor Hungary harnessed and strengthened the GAC, which, under the Lisbon Treaty, is the remaining instrument the Trio Presidency can use to maintain influence in EU policy-making. Some factors inherent to those presidencies help explain this weakness: that is to say, Spain’s relative state of confusion over the new treaty, during a semester that was considered transitional; Belgium’s management by an interim government; and the fact that holding the EU Presidency was a novelty for Hungary. Besides this, the difficult economic situation forced the Trio to hand over most politicised intergovernmental decisions to the European Council. In any case, it is not at all certain that during the next Trio Presidency – held by Poland, Denmark and Cyprus – the GAC will gain political strength or clarify of its functions.

Other, more structural factors also explain why, so far, the GAC is not living up to the expectations created by the Treaty of Lisbon, which in principle assigned it an important position

1. Elvire Fabry and Ga tane Ricard-Nihoul (eds.), Think Global, Act European, Notre Europe, March 2010, p. 276, available at: [http://www.notre-europe.eu/uploads/tx\\_publication/TGAE2010--EN.pdf](http://www.notre-europe.eu/uploads/tx_publication/TGAE2010--EN.pdf)

within the EU. These factors include the discontinuity inherent to semi-annual Presidencies, the departmentalisation intrinsic to the Council's functioning as an institution, and the foreign ministers' relative lack of interest – for it is the foreign ministers who, for the most part, make up the GAC.

Why it is important to strengthen the GAC? And how to advance towards this goal over the next 18 months? Boosting this body is a good idea both in terms of institutional efficiency and democratic legitimacy. The GAC is potentially well-placed to help provide the European policy-making process with more coordination (efficiency) and more visibility (legitimacy). The idea would be to offset the myriad fragmented sources of power that now characterise the Council itself (specifically, the Trio Presidency, the High Representative, the Eurogroup and other specialised configurations under the rotating presidency) and the European Union as a whole (that is to say, the European Council, the European Commission, the European Parliament and national parliaments). Effective coordination and democratic transparency in the decision-making process must be accepted by Member States and as well as by EU institutions. It would seem that the GAC – inasmuch as it is a European institution and at the same time boasts an intrinsically intergovernmental nature – could be the ideal body for this purpose. The COREPER or the General Secretariat of the Council can certainly help the decision-making process be more consistent, but their technical nature prevents them from doing it with a strategic vision – and in any case, the General Secretariat of the Council operates in an opaque fashion, without any orientation toward public discourse or accountability. Of course, the European Council can, for its part, help achieve major political consensus on integration, however it is unable to get directly involved in the drafting or implementation of legislation, and therefore its relations with the European Parliament and the Commission are limited.

## Recommendations: How can the General Affairs Council be strengthened?

The GAC has room for political strengthening in each of the three major functions assigned to it by the Treaty and by Council's Rules of Procedure:

- Regarding coordination of all the configurations of the Council.
- Regarding transversal issues.
- Regarding preparation for, and follow-up of, the European Council.

### Regarding coordination of all the configurations of the Council

During the Constitutional Convention of 2002-2003, it was proposed that the new GAC concentrate on all of the Council's legislative activity, on the basis of prior deliberations carried out by its various specialised configurations. Because of the profound implications this would have for how the institution worked, this proposal, intended to guarantee coherence, was rejected at the intergovernmental conference of 2004. Since the outset of the integration process, it has been understood that the Council has been formally convened and enjoys all of

its attributions and prerogatives, regardless of whether it is made up of ministers for specific sectors or for foreign affairs. However, adopting a rather political than legal approach with regard to the goal of coherence, the GAC should have, nevertheless, efficient mechanisms for undertaking one of its main missions: guaranteeing consistency in the work of the Council. The success of its ties with the European Council also depends on this.

To this end, and in strict application of the principle of *primus inter pares* (first among equals), the GAC could thoroughly examine the nine other councils' activities and be able to express observations, suggestions or even – although obviously with caution – warnings, all based on the programme and priorities of the semester and / or of Trio Presidency. By the same token, in cases of doubt, the specialised configurations of the Council could encourage a political appeal to the GAC for it to set the position of the institution. It is not so much an issue of changing the rules governing the Council as having the members of the GAC embrace a certain degree of political authority over the rest of the other configurations, which, in any case, would continue to be, technically, equals. Otherwise, if the work of the GAC is limited to a routine review of what has been done by the other configurations, it will not be contributing any added value to the goal of consistency. In any case, the GAC would be contributing much less than that contributed by the ambassadors of the COREPER, which would not seem logical. What is more, looking to the specific rotating presidency function and considering that some governments do not have high-quality domestic coordination mechanisms, such a role for the GAC would be most welcome. Finally, if the rotating presidencies of the Trio decided to divvy up, by sector, the work of the different Council formations during the 18-month period, this role could become essential.

This said, it is no secret that this function would have a particularly delicate dimension in terms of the Foreign Affairs Council, assuming that in that case the High Representative assumes the permanent Presidency. However, precisely because the rotating presidency does not act here as leader of the meetings, the task of providing consistency to the work of the Council is even more necessary. Of course, the GAC would have to act here with special care and avoid any temptation to re-appropriate the Common Foreign and Security Policy (CFSP) dossiers. But it is also true that almost all the specialised councils have an external dimension: for instance, "Justice and Home Affairs" in issues of international terrorism, "Economic and Financial Affairs" (ECOFIN) in matters of global economic governance, "Environment" in issues of climate change, or the GAC itself, which is in charge of enlargement policy. This can trigger occasional inconsistencies or even conflicts that only the GAC – with the rotating presidency acting more than ever as an "honest broker" – can resolve.

### Regarding transversal issues

A second line of strengthening is closely linked to the goal of achieving consistency in the Council's work. Along with the need to coordinate sectoral issues is the need to take the lead in issues that are transversal by definition and affect several Council formations, without

clearly being the responsibility of any specific one of them. These dossiers intrinsically involve European integration politics, such as reform of the Treaties, enlargement policy, negotiation of financial perspectives, or the structural reform agenda, now known as the Europe 2020 Strategy. All of these issues affect the rest of the formations: depending on the cases, especially the ECOFIN, the Competitiveness Council and the Foreign Affairs Council. However, due to its horizontal nature, only the GAC can manage consistently and with strategic vision the agenda-setting process and the final decision-making. Otherwise, many dimensions of these transversal dossiers – germane to European integration – could slip into limbo. In all of these cases, however, the final word rests with the European Council. Thus, from a functional standpoint, it is necessary to channel in an orderly fashion the upward conduit – in other words the decision-making process, the descending one – in the application of what the Heads of State and Government decided, and those decisions which go from one institution to another.

For this same reason, the Council's institutional relationship with the Commission, the European Parliament, the Court of Justice and national legislatures should be channelled through the GAC. The rest of the Council's formations would of course continue to deal with the Commission or the European Parliament in legislative work or in specialised political matters. But the actual management of the policy of inter-institutional balance, of political dialogue and the job of acting as spokesman of the Council – except in foreign affairs – must belong to the GAC. Furthermore, this will give the institution projection in the media and thus among the citizenry of Europe. Here, it is not a matter of adding more complications to the image of the EU as a whole, which in principle should be concentrated in the president of the European Council, the President of the Commission and the High Representative. Rather, the idea is to add consistency and visibility to the Council's now-fragmented voice. This would entail presenting the priorities and conclusions of the semester before the European Parliament and other circumstances that require the Council as such to speak. For the Member State holding the rotating presidency, this relative personification of the Council could also be useful from a domestic point of view.

### Regarding preparation for and follow-up of the European Council

As we have stated, the Council's ties to the European Council – now that the Treaty of Lisbon has separated the two institutions – are maintained at the administrative level by the General Secretariat, which is common to both, and at the political level by the GAC, at least in theory. In practice, keeping in mind what has been said so far, this function has only been carried out formally during the first months after the Treaty came into force. For this reason, if it managed to improve the GAC's ability to coordinate vertical issues and lead the horizontal ones, it would, along the way, achieve a third element, namely the political strengthening of the Council. In other words, the establishment of a strategic position for the Council and the production of consistent legislative work will facilitate the GAC's political preparation of European Council meetings, will substantially fuel its conclusions and will ensure effective

continuity in the legislative implementation of the politically-driven decisions made by Heads of State and Government.

Besides what has been discussed so far, in order to achieve this result, it would be necessary to boost the GAC's ties with the European Council via two channels: on one hand with the permanent President, and on the other with the Heads of State and Government. Concerning the former, the idea is to strengthen internal relations and do so both for formal meetings of the European Council and for increasingly frequent informal meetings. So far, President Herman Van Rompuy has acted in a loyal fashion and organised efficient contacts and prior meetings – usually in the format of dinners. Perhaps it would be a good idea to go a step further. For example, now that it seems clear that the prime ministers of the countries holding the rotating presidency have discarded the possibility of chairing GAC meetings, it may be interesting to invite to the European Council – along with the prime minister who it is to speak first to his / her colleagues – the national government member who has effectively presided over the GAC.

As for boosting ties between the GAC and the Heads of State and Government, the way to go is not within European institutions, but rather through national capitals. For this reason, achieving this goal depends on progress that can only be completed through an indirect and probably slow process of changing the current GAC. Here, it is a matter of connecting GAC members, in a more or less formal, way with Member States' prime-ministerial or governmental offices. In an implicit way, this connection should mean that the makeup of the GAC would no longer be one of foreign ministers, who should concentrate on the Foreign Affairs Council, but one of European affairs ministers. This does not necessarily mean that European policy would no longer be linked to the 27 Member States' foreign ministries, but it would in fact mean that the European minister – even in cases in which they are junior figures – would also have domestic authority, which only comes if they, apart from being still connected to the foreign ministries, are very close to the prime minister.

It is unclear if this network of top national officials' tasked exclusively with European affairs will be created. Nevertheless, the post-Lisbon EU seems to require that key Member States political representatives, who are domestically close to the 27 Heads of State and Government, may lead the ever more complex national formation of European policy and, therefore, may monopolise their countries' participation in the GAC. This is already the case for some Member States, such as Sweden or Slovenia, but it remains to be seen whether the GAC is gradually consolidated or not as a true European network of politicians whose strategic role – of coordinating and serving as a liaison between the EU and the Member States – is key to the future of European integration. The next Trio Presidency will run the GAC over the next 18 months and can contribute in a critical way to reaching this goal.