

WHEN INTERNAL PRACTICES MOULD POWERS: THE PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION IN THE EUROPEAN PARLIAMENT

KIM FYHR*

This paper looks at the various forms of the functioning of the Presidency of Council of the European Union in the European Parliament. This interaction stems from EU legislation and practical inter-institutional arrangements. The overarching aim is to tackle the myriad of interaction in an analytical-descriptive way and shed light on the implications of these practices. The conclusion of this paper suggests that the internal rules of the European Parliament, most notably the rules of procedure, have had an impact on power relations at the expense of the Council although there is no EU primary law legal basis for Council accountability to the European Parliament. These mainly internally driven rules of the European Parliament have contributed to the practical environment for the functioning of the rotating Presidency in the European Parliament hence triggering spillover of tasks for the Presidency. The changes in the power relations may also have repercussions on the competence dimension in the longer term.

1 INTRODUCTION: COUNCIL PRESIDENCY ACTIVITIES IN THE EUROPEAN PARLIAMENT AND THEIR IMPLICATIONS

The Rotating Presidency of the Council of the European Union (Presidency)¹ represents the Council in the European Parliament (EP).² This paper aims at illustrating how the Presidency functions in the EP. Therefore, the main research question, which this paper aims to answer to, is: how does the Council Presidency function in the European Parliament during the six-month term of the Presidency? It strives for enlightening the legal basis of this important form of inter-institutional co-operation and sheds light on various practical aspects of this interaction. The main forms of Presidency functioning in the EP will be presented against this background. Furthermore, I attempt to approach the primary research question from the angle of power relations. With the concept of power relations, I am not directly referring to the legal notion of competence. This is because in the longer term the power relations

*LL.D. in constitutional law (University of Helsinki 2017). This paper does not in any way reflect or imply the views and positions of the employer of the author, the Ministry of Foreign Affairs of Finland.

¹ Pursuant to Article 1 (4) of the Council Rules of Procedure: "The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. The members of the team may decide alternative arrangements among themselves."

² In accordance with Article 26 of the Council Rules of Procedure "The Council shall be represented before the European Parliament or its Committees by the Presidency or, with the latter's agreement, by a member of the pre-established group of three Member States referred to in Article 1(4), by the following Presidency or by the Secretary-General. The Council may also be represented before European Parliament Committees by senior officials of the General Secretariat, acting on instructions from the Presidency".

tend to have an impact also on competence. In the end, conclusions will be drawn from this interaction in the context of inter-institutional setting of the policy and law-making of the European Union.

Given this big picture, one of the major objectives of this paper is to fill the gaps in relation to the Presidency functioning in the EP, which is not very well known. There are indeed bookshelves full of research on EP internal organization and work as well studies on policy and law-making co-operation between the institutions. Nevertheless, a comprehensive, academic outlook on Presidency duties towards the EP and the related practical implications has been lacking. In addition to the description of different forms Presidency interaction with the EP, also the efficiency and usefulness of such co-operation will be analyzed. In this context recommendations how to improve the co-operation will be set out.

The approach utilized is the analytical-descriptive method. The interdisciplinary analysis will hence be carried out by describing the normative framework and practical arrangements for the functioning of the Presidency in the EP. The analysis includes, however, also a theoretical layer, which sets the wider and systemic framework for the research question.

One way of explaining the development in inter-institutional relations has been neo-functionalism.³ The key issue in neo-functionalism is to emphasize the European integration in terms of process rather than outcomes.⁴ The fundamental issue in neo-functionalism has been the concept of spillover, which suggests that integration in one economic sector would create pressure for further economic and other forms of integration, and more capacity at the European level.⁵ I will try to explore if the concept of spillover can be transferred to this particular area of inter-institutional relations, the Presidency interaction with the EP. The EP has greatly contributed in practical terms to the neo-functional doctrine of EU integration during the last few decades. The supranational institutions, the Commission and the EP have emerged in a longer run as winners when it comes to the competence. Looking at it proportionally, the Council, which represents inter-governmentalism, has been on the losing side.

The objective of this paper is not only to provide a practical insight into the Presidency functioning in the EP.⁶ In particular, the EP has been able to extend its powers through various Treaty reforms over the time. Very often, the source of the changing of the Treaties has originated from the political struggles and practical arrangements for conducting EP business.⁷ It has been commonplace that interpretation practice of the Court of Justice of the European Union (CJEU) has confirmed the competences of the EP, which signifies the role of the Court in empowering the EP.⁸ The Parliament has often filled the political vacuum

³ See Ernst B. Haas, *Uniting of Europe: political, social, and economic Forces 1950-1957* (UMI books 1996).

⁴ Ben Rosamond, *Theories of European Integration* (MacMillan Press 2000), 55.

⁵ *ibid.*, 60.

⁶ An in-depth examination of the relation between the Presidency and the Commission has been excluded from the scope of the analysis. For insight into these aspects see Ana Mar Fernández Pasarín "The Reform of the Council Presidency: Paving the Way for a New Synergy with the European Commission?" *Politique européenne* 2011/3, n 3, 29-54.

⁷ See for example Julian Priestley, *Six Battles that shaped Europe's Parliament* (John Harper Publishing 2008).

⁸ See in particular case C-138/79, *SA Roquette Frères v Council* [1980], ECR 3333; case C-294/83, *Parti écologiste "Les Verts" v European Parliament* [1986], ECR 1339 and case C-70/88, *European Parliament v Council* [1990], ECR I-2041.

thus making it obvious that the political situation should be reflected in the division of competences.

In short, practices in inter-institutional issues do matter. The two supranational institutions, namely the Commission and the EP, which clearly have a special relationship in the forum provided by the EP to some extent leave the Council as a third wheel even more during the current legislative cycle. This is the case despite the fact that there is the highest political level, the European Council, which is also of intergovernmental nature having unanimity as the guiding principle in the decision-making.⁹

A key concept that I will be operating with throughout this paper is institutional balance.¹⁰ According to Thomas Christiansen, the basic understanding of the notion is that not any single institution of the three key institutions (the Commission, the Council, the EP) should have fundamentally more weight and influence in the EU politics than the other two.¹¹ This balance between the institutions is extremely important for the functioning of the European Union as it draws the lines between the roles of the institutions in line with the competences and tasks of these major actors shaping EU legislation and policies.¹² Similarly, this concept is useful for discussing the interactions of the institutions during the Presidency and for the analysis of their adequacy and efficiency.

2 PRESIDENCY IN THE PARLIAMENT: A FIRM LEGAL BASIS OR SIMPLY ESTABLISHED PRACTICES?

It is stipulated in Article 232 of the Treaty on the Functioning of the European Union (TFEU) that the EP shall adopt its rules of procedure. The RoP can be considered as the Parliament's operational rules and they function as the regulatory framework for the internal organization of the EP. This includes *i.e.* describing the rights and obligations of Members of European Parliament (MEP) and identifying the organs of the Parliament.¹³ Therefore, the RoP are the most important document for understanding the EP's internal, practice-oriented functioning. It must clearly be read in many respects together with the Treaties but it should be noted that the RoP are not EU primary law even though that is how EP may sometimes in political discussion presents the status of RoP in particular in relation to other institutions.

⁹ Pursuant to Article 15 (4) of TEU "Except where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus". In fact, exceptions to this general rule are few.

¹⁰ The Treaties do not directly refer to institutional balance, although it is enshrined in Article 13 (2) of TEU that "Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation". The concept of institutional balance developed in the EU law mainly as a part of interpretation practice of the CJEU especially in landmark ruling *Meroni*, see C-9/56, *Meroni & Co., Industrie Metallurgische, S.p.A v High Authority of the European Coal and Steel Community* [1958], ECR 133.

¹¹ Thomas Christiansen 'The European Union after the Lisbon Treaty: An Elusive 'Institutional Balance' In Andrea Biondi, Piet Eeckhout and Stefanie Ripley (eds) *EU Law after Lisbon* (Oxford University Press 2012), 228

¹² For a comprehensive analysis on institutional balance see Craig Paul 'Institutions, Power and Institutional Balance' in Paul Craig and Grainn  de Burca *The Evolution of EU Law* (Oxford University Press 2011).

¹³ Parliamentary Rules of Procedure. An Overview. Office for Promotion of Parliamentary Democracy (European Parliament 2010), 6.

The Council RoP remain largely silent on the Presidency functioning in the EP.¹⁴ They, however, set out on many occasions rules for the duties and tasks of the Presidency as well as on the representation of the Council in co-operation with other institutions.

It is clear that the division of competence among the EU institutions is enshrined in the Treaties.¹⁵ Furthermore, secondary EU legislation may draw further demarcation lines when it comes to specific division of competences in relation to the different policy sectors. Very often, the specific roles of different institutions set out for example in Directives can further specify the practical responsibilities of the institutions and may hence have an impact on the competences, in particular in terms of the extent of competences.¹⁶

It is equally true that the practical arrangements of inter-institutional co-operation especially in the law-making process do not have an effect on the division of competence. One should, however, bear in mind that *modus operandi* may nevertheless be important for the practical conduct of legislative process and hence the outcomes of these procedures. The impact on the dynamics of the decision-making can be considerable. By assessing the framework consisting of legislation and practices it is possible to conclude that the EP has quite successfully utilized its internal norm-building exercises, most notably through the development of its RoP. These internal-driven rules have moulded the practices of inter-institutional co-operation in a way that has worked incrementally in the favour of the EP.

3 PLETHORA OF PRESIDENCY INTERACTION WITH THE EP

All collectivities need chairmanship and this holds true equally for the Council.¹⁷ Chairing the Council includes many duties and tasks, such as being a manager, promoter of political initiatives, honest broker and spokesman for the Council.¹⁸ These extracted roles of the Presidency often find their concrete expression in relation to the EP. The Presidency has various forms of interaction with the EP – all more or less essential for advancing the EU

¹⁴ Rules of Procedure of the Council of the European Union. Council Decision of 1 December 2009 adopting the Council's Rules of Procedure. OJ L 325/35, 11.12.2009.

¹⁵ Pursuant to Article 5 (1) of TEU "The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality". The EU competence can be exclusive competence but also, and more often, shared competence with the Member States. The Union exclusive competences are defined in Article 3 and shared competence with Member States in Article 4 of TFEU. There is also a third but minor category of competence, namely supporting competence that is set out in Article 6 of TFEU. The extent and limits of the EU competence are always defined in the Treaties and consequently it is the CJEU that is the ultimate interpreter of the limits of the EU competence on a case-by-case basis in light of the Treaty. In the context of this paper, the issue of competence is not strictly understood as a division of competence between the Union and the Member States. The aim is also to shed light on intra-Union legislative competence within the Union sphere including the different EU institutions, in this case most notably the Council and the EP. Practical arrangements for conducting the Presidency and their repercussions are presented in this institutional connection.

¹⁶ For the discussion on the legal basis of EU legislation and its institutional implications see in particular Annegret Engel *The Choice of Legal Basis for Acts of the European Union: Competence Overlaps, Institutional Preferences, and Legal Basis Litigation* (Springer Publishing 2018). See also Trevor C. Hartley *The Foundations of European Union Law: An Introduction to the constitutional and administrative Law of the European Union* (7th edn, Oxford University Press 2010), 118-121.

¹⁷ Martin Westlake and David Galloway, *The Council of the European Union* (3rd edn, John Harper Publishing 2004), 325.

¹⁸ *ibid*, 334.

law-making and policy agenda that is not always the easiest thing to do due to the inherent rivalry and tension between the institutions.¹⁹

If the functioning of the Presidency in the EP is so important does this mean that the Council and thus the Presidency is somehow accountable to the EP? There are different interpretations on this. Some scholars find that the Council is accountable²⁰ while others consider that this is not the case²¹. There is no black letter law or CJEU *praxis* based evidence on the potential accountability of the Council for the EP, except for the obligation, which applies to all institutions, namely sincere co-operation. Accountability is not the same thing as sincere co-operation.

It is stipulated in Article 14 (1) of TEU that “The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission”. The political control referred to in this provision must be interpreted to consist of political control of the executive, the Commission, and not the Council. Furthermore, there are very few statutory primary law provisions that could be interlinked with this kind of control.²² The practices of the interaction have been largely elaborated at much lower level, in the rules of procedure of the institutions. In the same vein, it should be mentioned that initiatives aiming at further empowerment of the EP, also vis-à-vis the Council, the right of initiative and the right of inquiry have not progressed by now.²³

It is of particular importance that with regard to the Parliament the Presidency sticks to the principle “underpromise, overdeliver”.²⁴ It is clear that the Parliament aims at getting Council representatives to promise, *i.e.* in Committee hearings, many things and later on the EP will take stock how these promises have been materialized. This may lead to a situation that may resemble a *de facto* state of affairs with the EP somehow controlling the Council through the Presidency activities in the EP. Another practical issue is that most of the

¹⁹ See Fiona Hayes Renshaw ‘The Council of Ministers’ In John Peterson and Michael Shackleton (eds), *The Institutions of the European Union* (2nd edn, Oxford University Press 2006), 73.

²⁰ For example Hayes Renshaw considers that “The Presidency, on behalf of the Council, is accountable to the EP”. *ibid.*, 77.

²¹ Walter Van Gerven *The European Union. A Polity of States and Peoples* (Hart Publishing 2005), 360. Van Gerven finds that “the Council of Ministers is, as a body, not politically accountable at the European level”.

²² It is set out in Article 230 of TFEU that “The European Council and the Council shall be heard by the European Parliament in accordance with the conditions laid down in the rules of Procedure of the European Council and those of the Council”.

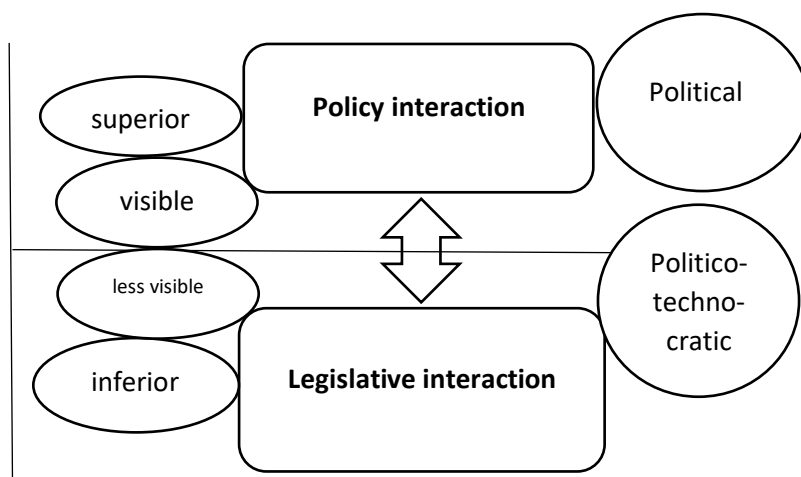
²³ In the speech of the then President of the Commission elect Von der Leyen in July 2019 and during the autumn 2019 Commissioners-elect hearings in the EP the Commission showed a great deal of understanding to the idea of EP right of initiative, which the EP has highlighted for a long time. It remains to be seen how this issue will be tackled above all in the Conference on the Future of Europe. Another important constitutional topic, which has already been concretized in an EP legislative proposal is the EP right of inquiry. The legal basis of the proposal adopted by the European Parliament on 23 May 2012 for a regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry and repealing Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission is Article TFEU 226 of TFEU. The Council has not by autumn 2020 either given its consent on the EP proposal or refused its consent. The inter-institutional handling of this particular file seems to be at the moment in a deadlock.

²⁴ This rule originating from business management fits particularly well to the Presidency interaction with the EP as it aims at controlling and managing the expectations for the results of law- and policy-making. This principle rather has a focus on eventual positive outcomes of inter-institutional co-operation and not their prospects.

negotiations such as trialogues physically take place in the EP more often than in the Council. This may give a “home game advantage” to the EP.

The Presidency interaction with the EP consists of legislative interaction and policy interaction. With the legislative interaction, I refer to the most concrete inter-institutional work on the preparation of EU legislation. This activity is crystallized especially in trialogues, both technical and political. Policy interaction is in this case all about high level political interaction, which occurs in the presentation of Prime Minister in the Plenary, the Council statements by the European minister in the Plenary, the meeting of the Conference of Presidents (CoP)²⁵ with the Government and the various ministerial appearances in the EP Committees. These two categories of interaction do not of course exist in a vacuum but are rather closely interlinked providing input to one another. One can discern between the features of these two typologies. The policy interaction is political, general and more visible in public while legislative interaction is political with technocratic elements, specific and less visible in public.²⁶ It is important to note that legislative interaction is subordinate to the policy interaction although these two layers are largely interdependent.²⁷ These elements are characteristic for the two types of interaction and they are illustrated in the figure below.

Figure 1. Two types of interaction between the EP and the Council



Why is this dichotomic model important from the point of EU law and especially the role of the Presidency? It sets the various practices of policy-making and law-making in the context main types of interaction between the EU co-legislators. It is central for the functioning of EU legislative process and it covers the whole life-cycle of a proposal for a legislative instrument up until the phase where the act concerned is adopted. This is why it can be of help for the discipline of European legislative studies.

²⁵ CoP is the highest political organ within the EP and it consists of the Chairs of the Political Groups. The President of the European Parliament has a pivotal role in CoP.

²⁶ In this context the concept of visibility has a stronger connotation of public attention than transparency.

²⁷ The terms superior and inferior refer to the hierarchy of the two forms of interaction. It is clear that the ministerial level interaction always is at the helm of interaction.

3.1 THE FACE OF THE PRESIDENCY TOWARDS THE PARLIAMENT – THE PRESIDENCY IN THE PLENARY

The Presidency programme will be presented in the EP Plenary usually during the first Plenary after the new Presidency has taken over. The programme and the Presidency priorities will be presented by the Prime Minister of the Presidency. Given this highest political level, the presentation will be a rather broad political outline of Presidency objectives for the new term. The presentation will be followed by comments of the Commission, usually the President of the Commission.²⁸ Then it is the turn of the EP political groups.²⁹ After the group interventions there will also be a possibility for individual MEPs to present comments and ask questions. The Head of Government presents at the end of this Plenary agenda item the concluding remarks and may answer questions. Previously the Prime Minister level conclusions of the Presidency were included on the agenda after the end of the Presidency to wrap up the results but currently this practice does not exist anymore.³⁰

When the CoP of the EP sets the agenda on Thursday preceding the Plenary, which starts on Monday³¹ it may ask the Presidency for Council statements and interventions on various agenda items. Furthermore, the Council is also expected to participate in dealing with the oral questions³² and topical debates³³. Moreover, it is also commonplace that the Presidency participates in the EP debate on the preparation of the European Council meetings on behalf of the President of the European Council.³⁴ In addition, the High Representative of Common Foreign and Security Policy may ask the Presidency to speak on behalf of him.

Before the CoP meeting, which sets the agenda the EP organizes a meeting of inter-institutional coordination group, which is a civil servant level meeting and is chaired by an EP high-level representative. The Presidency, the Council Secretariat, the Commission and the European External Action Service are also present in the meeting, which aims at discussing the proposed Plenary agenda and other topical inter-institutional issues. This configuration can be characterized as serving the purpose of information sharing, mainly

²⁸ It is worthy of noting that in the EP Hemicycle there are separate seating blocks for both Council and the Commission representatives, see for instance Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (8th edn, John Harper Publishing 2011), 190. This highlights the physical presence of the Council and the Commission in the Plenary.

²⁹ Pursuant to Rule 33 "a political group shall consist of Members elected in at least one-quarter of the Member States. The minimum number of Members required to form a political group shall be 23". The current political groups of the EP are European People's Party Group (EPP), Progressive Alliance of Socialists and Democrats (S&D), Renew Europe (RE), Identity and Democracy (ID), Greens-European Free Alliance (Greens-EFA), European Conservatives and Reformists (ECR) and European United Left-Nordic Green Left (GUE/NGL). In addition to these groups there are also non-affiliated MEPs not belonging to any of the groups.

³⁰ This is largely due to the fact that Prime Ministers' conclusions did not attract much attention among the MEPs that was also very visible in the attendance in in the chamber.

³¹ It should be noted that the Plenary may still in its opening session on Monday of the Plenary week make amendments to the Plenary agenda. This is the case with Strasbourg Plenaries and not the so-called miniplenaries in Brussels, which usually start on Wednesday afternoons.

³² On oral questions put to the Council, the Commission and HR, see Rule 136 of EP RoP.

³³ Rule 162 of EP RoP.

³⁴ The President of the European Council is present in the Plenary for the agenda item on the conclusions of the European Council meetings. See Rule 132 of EP RoP. It should be acknowledged that in the common discourse in the chamber MEPs often refer to the Council as a monolithic entity even though these are two separate institutions.

from the EP to the other institutions on the upcoming Plenary. The Inter-institutional Coordination Group also often discusses topical inter-institutional issues.

In the above-mentioned categories of Council interventions, the Council will usually be represented by the European Minister of the Presidency. Representative can also be another Minister or a political state secretary. Fundamental criterion is that the representative has to be a high-level political figure, which means that high-level civil servants, such as ambassadors, cannot function as the representatives presenting interventions on behalf of the Council. Being a politically elected representative is the key criterion for qualifying as the representative of the Council in this role.

Indeed, the appearances of the Presidency at the ministerial level in the Plenary can be regarded as a token of high-level commitment of the Council towards the EP. Ministerial level interaction is policy interaction *par excellence*. It is the most political level of inter-institutional co-operation. It also meets the criteria of this typology by being very visible as EP plenaries always attract a great deal of media attention. Plenaries also have the merit of transparency because they are open to general public *i.e.* Plenaries are web-streamed. Moreover, Presidency appearances in the Plenary are in hierarchic terms superior to the different forms of legislative interaction. It follows from the need to tackle the politically most important issues in different policy areas that the nature of policy interaction is rather general in comparison with legislative interaction. Despite the distinction between these two forms of interaction, one should not omit that these two layers are interdependent providing input to one another.

For the legislative process of the EU, the Plenaries include one important yet ceremonial fringe event that is the signing of EU legislation. In this so-called lex signing the President of the EP and the European Minister of the Presidency on behalf of the co-legislators, sign the recently agreed legal acts.³⁵ This step is necessary for the publication of the legal instruments concerned and their entry into force.³⁶

The added value of this presence can be found in the direct interaction of the Presidency with the EP and the Commission in a vast array of topical and substantive legislative and policy issues. Nevertheless, the way in which the Plenary presence of the Presidency is conducted can be criticized. The usual burden of Council interventions can be extremely heavy. Very often, the minister of the Presidency has to cover more than ten Council intervention items in one Plenary. One can very well ask if the ministerial presence could be utilized in a more effective way. It is namely not always the case that statements in official fora are the best way to co-operate in a fruitful manner. At least the number of the number of official Council interventions should be reduced and focus should be set on a limited amount of priority files. This would enable more time and resources to be utilized for advancing priority files of the institutions in informal settings. The decisive bodies in this respect are the political groups of the EP, which should consider if less could in this case in fact be more. Furthermore, the Council could be made aware of the topics that it is asked to cover earlier in order to foster a more fertile discussion.

³⁵ In accordance with Article 297 (1) of TFEU "Legislative acts adopted under the ordinary legislative procedure shall be signed by the President of the European Parliament and by the President of the Council".

³⁶ This is a very short event where the President of the EP and the European Minister of the Presidency sign Directives and other agreed legal instruments one by one. In the lex signing also the EP rapporteurs of Directives and other legal acts to be signed are present.

Generally, the Presidency presence in the Plenary works well but it would be possible with these practical improvements to ameliorate the interaction. Another more radical idea that could bring benefit to the inter-institutional co-operation in the Plenary could be to offer the Council and the Commission a possibility to be as proactive as the Parliament in the discussion. Now, the situation is characterized by an “active” Parliament, which requests interventions from the “passive” Commission and the Council. The Parliament asks and the Council and the Commission answer. By bringing even limited practical possibilities to the Plenary for the Council and the Commission for their part to proactively challenge the EP on topical policy and legislative files could have the potential to be explored. Right level of the EP to take over these EP interventions could be for example Committee Chairs, Rapporteurs or even the Vice Presidents or the President of the EP depending on topic. The EP as the bastion of direct European democracy would work well for this kind of public two-way communication and reinforced co-operation. This could also provide input and boost from policy interaction to legislative interaction, more specifically to the inter-institutional negotiations on legislative proposals.

3.2 PRESIDENCY IN THE EP COMMITTEES

The increase of powers of the EP during the last few decades has reinforced its position in the co-operation with other key EU institutions in the consideration of legislative proposals. The development has also given rise to the increase of the related contacts between the institutions.³⁷ The increase of competence of the EP in the latest Treaty amendments that has brought it on an equal footing with the Council in nearly all policy areas. This has hence further strengthened the EP interaction on legislative files with the Council.

This tendency of increased contacts can be identified in particular in the ministerial appearances of the ministers of the Presidency in the EP Committees. Already before the start of the Presidency co-operation in the axis the Council-the EP may have been strengthened with a visit of the respective EP Committee to the future Presidency Member State.

Ministerial appearances in the EP Committees clearly belong to the most prominent occasions where the Council Presidency is present. Sectorial ministers of the Member State holding the Presidency present – usually during the first month of the Presidency term – the substantive priorities of the Presidency in the policy field of the respective EP Committee. The way in which the ministerial appearance will be conducted may vary according to the Committee practices³⁸ and the chairman of the Committee, but usually they run as follows: After the chairman’s introductory remarks the minister makes the presentation on the Presidency priorities.³⁹ The focus will be on the most important policy initiatives and legislative dossiers but light can also be shed on horizontal Presidency objectives. This will be followed by a round of comments first from the political groups and then from individual MEPs. The minister will then comment and answer some of the most important questions.

³⁷ Corbett, Jacobs and Shackleton (n 28), 270.

³⁸ In fact, EP Committees are in practice very independent when it comes to their internal organization and working methods.

³⁹ It is important to notice that the ministers of the Presidency always function within the EP structures on behalf of – and as the voice of – the Council and not their national administrations.

The format may differ from one Committee to another. For instance, some Committees may take the interventions in one go while others may take more rounds of comments. Anyhow, after this the appearance will end. Some of the Committees may ask the minister to a follow-up session in the Committee before the end of the Presidency but the practical follow-up more often takes place in the context of the advancing policy and legislative files.

The ministerial appearances of the Presidency ministers form quite a significant part of the Committee work for some time and for the Presidency, it is also a considerable strand of work towards the EP during the Presidency as it sets the primary objectives within the remit of the Committee during the six months.⁴⁰ Further, the progress achieved will be very much assessed against the backdrop of priorities set out in the ministerial appearances and how these objectives were materialized.

One can conclude that contacts between the Committee chairs and rapporteurs and the Council President-in-Office, *i.e.* the minister of the Presidency have greatly increased over time.⁴¹ This facilitates and makes smoother the legislative work. At the apex of the law-making in practical terms is of course the co-operation between the institutions.

Ministerial appearances in the EP committees at the start of the Presidency can be considered mutually beneficial for both institutions as they launch the co-operation between the Council and the EP within the remit of the respective Committee. This form of interaction can be considered as an effective way for getting started with the most important substantive legislative files at the high political level. Organizational aspects of this interaction with limited time can always be challenging and the system may not be perfect, but it works.

A natural question is related to the follow-up of ministerial appearance afterwards. The EP Committees sometimes invite Ministers to a second appearance towards the end of the Presidency, but the Presidency is under no obligation to participate in a second such hearing. I do not deem a second hearing as useful because it may lead to a blame-game concerning the progress in the files. Instead of a second hearing, one should pursue for more constructive approaches, such as increased and reinforced contacts between the Presidency and the chairman or the rapporteurs of the Committee.

A significant fact is that there is no reciprocity in sense that sectorial Council meetings are not open to Members of the Parliament, such as rapporteurs of key files of the respective Council configuration. The same applies to the chairmen of EP Committees. In the light of the Treaties, I do not see provisions enabling this nor any practical need to engage in this kind of co-operation in the Council side. As I see it, the efforts should be harnessed to practical co-operation on concrete files between the major actors of the institutions. Further official structures and ceremonial arrangements run the risk of losing impetus in the practical work.

Similarly, to the Presidency presence in the Plenary, the ministerial presence in the EP committees is a part of policy interaction. As the Committee meetings are public, it also qualifies as transparent due to its visibility towards the general public.⁴² Compared with the

⁴⁰ During the Finnish Presidency (latter half of year 2019) altogether 17 ministerial appearances were held in EP Committees in the months of July and September 2019. Usually the appearances take place during the first month of the Presidency but year 2019 was exceptional in the EP due to the EP elections in spring and the subsequent phase of the EP getting internally organized.

⁴¹ Corbett, Jacobs and Shackleton (n 28), 270.

⁴² EP Committee meetings can also convene *in camera*, *i.e.* involving only members of the Committee and the relevant EP staff with no access by other institutions or the general public.

ministerial presence in the Plenary the ministers' hearings in the Committees dig deeper into the political outstanding issues of individual EU legislative and policy files but they are nevertheless still quite general. The interlinkage between policy and legislative interaction appears in these occasions much stronger. The discussion in the Committee takes stock of past interinstitutional negotiations and proffers guidance for further co-operation in different legislative files within the remit of the substantive Committee.

3.3 OTHER ESSENTIAL FORMS OF CO-OPERATION

There are some established practices, which have taken their shape over time and today are an important part of relations between the Council and the EP. If the Prime Minister of the Member State holding the Presidency of the Council presents the priorities of the Presidency in the Plenary equally important, but not so visible is the CoP visit to the capital of the Presidency. Usually, the visit of the Commission's college attracts more attention at least in the media but CoP visit is another high-level political meeting paving the way for the Presidency. It is particularly important for upcoming co-operation between the Presidency and the EP.

Like the visit of the college, the visit of the CoP usually takes place just before the Presidency starts. The participants from the EP are the President of the EP and the chairs of the political groups. The EP delegation also includes civil servants of the EP at the highest level. The CoP will discuss currently the most important political EU issues with the Government of the Presidency during the visit.⁴³ In addition to presenting the priorities of both institutions, discussions are focused on the most topical political and legislative initiatives.

CoP visit is an important political meeting between the EP and the Presidency and it above all serves the purpose of establishing political contacts between the Council and the EP for the new term at the highest political level. Moreover, it helps in understanding the main positions of the institutions in the most important EU files and hence facilitates further discussion on them.

It clearly falls within policy interaction due to its highest political level status and the general level of discussion. Compared with Presidency appearances in the Plenary and the Committees the level of transparency is inferior because discussions are confidential. In spite of this CoP visit is visible as it gets media attention.

The Conference of Committee Chairs (CCC) of the EP is an organ, which deals with the coordination of work between the Committees. It is of utmost importance for internal coordination of especially horizontal EU policy and legislative files where more than one EP Committee is involved. As it is today the case, several of the most important EU files are of horizontal and cross-sectorial nature and therefore the CCC has a key role to play.

The Presidency, namely the European minister or equivalent office holder, appears in front of the CCC once or twice during the Presidency. It is most common that the Presidency makes in the beginning of the Presidency an introductory appearance presenting the

⁴³ CoP usually also visits the Parliament of the Member State holding the Presidency and exchanges views with major political interlocutors in the national Parliament.

Presidency priorities. At the end of the six months Presidency the minister usually goes to the CCC for a wrap-up session *i.e.* presentation of the results of the Presidency.

The CCC appearances are not public. They are not web-streamed as most of EP meetings. They are often considered as the “Presidency’s substantive visit card” due to the strong substantive focus. The minister will first make a presentation on the Presidency priorities and after that, he or she will answer various questions of the Committee chairs that can come basically on any subject of EU policy. Given the very concrete approach, the issues raised in the CCC often have a close connection to the files, which are ripe for the trialogue phase. Because of this, the CCC has a great potential to work as a glue between policy and legislative interaction. Discussion in CCC gets closer to details of very concrete legislative dossiers and is therefore closely interlinked with dialogues.

It is important to note that not only contacts between the Government and European Parliament are significant. In addition, the co-operation between the EP and national parliaments is very important. This is highlighted by the reinforcement of the national parliaments in the Lisbon Treaty.⁴⁴ Furthermore, Protocol 1 included in the Treaty sets out important provisions on the role of national parliaments.⁴⁵ The most important structure between the national parliaments and the EP is COSAC (Conférence des Organes Spécialisés dans les Affaires Communautaires). COSAC discusses EU policy issues and the meetings are hosted by the Parliament of the Member State holding the Presidency.

It can be noted that there could well be an established follow up for the interaction between the CoP and the Presidency Government. It would not be necessary to make this an official or ceremonial interaction, but less formal contact could do. It could for example take the form of a meeting between the European Minister of the Presidency and the President of the EP somewhere in the halfway of the Presidency. The Government of the Presidency and the political groups of the EP could feed into this informal meeting on the most topical and important EU dossiers. This sort of established high-level meeting could politically take issues further despite the fact that each file moves in its own sectorial channel with the sectorial Presidency Minister, the responsible Commissioner and the responsible EP Committee stakeholders.

As regards the CCC, one could recommend the CCC to focus more on the most important EU issues on the desk of the institutions. The discussion should be much more focused and the number of the topics should be much more restricted. The rather short discussion does not need to cover all the policy issues dealt with in all committees but should be zeroed in on only a few most fundamental files. Should this kind of prioritization take place CCC hearing could have an instrumental value. It is of course clear that all the

⁴⁴ The contribution of the national parliaments to the good functioning of the EU has been acknowledged in Article 12 of TEU. Furthermore, the role of national parliaments has been strengthened in relation to the access to information by national parliaments and their role in the control of subsidiarity (*i.e.* the so-called yellow and orange cards) and proportionality. Key provisions of the Treaties on these aspects can be found in and in Protocol (No 1) on the role of national parliaments in the European Union and Protocol (No 2) on the application of the principles of subsidiarity and proportionality.

⁴⁵ The entry into force of the Lisbon Treaty on 1 December 2009 witnessed a significant empowerment of national parliaments. The EU system has sometimes been characterized even as tricameral instead of bicameral setting national parliaments on an equal footing with the European Parliament and the Council. See Ian Cooper ‘Bicameral or Tricameral? National Parliaments and Representative Democracy in the European Union’ (2013) *Journal of European Integration* (35:5), 531-546.

committees want to have their voice heard but a practical solution should be found to this issue.

4 LEGISLATIVE PROCESS AND TRIALOGUES

The so-called speed dates between the incoming Presidency and the EP take place usually just before the Presidency term starts. It is a series of very short meetings between the EP Committee Chairs and the representatives of the incoming Presidency. The participants in these preparatory meetings are the responsible Committee Chair of the EP, Permanent Representative or Deputy Permanent Representative of the Presidency depending on if the respective EP Committee finds its counterpart either under Coreper 2 or Coreper 1 and the representatives of the Commission.⁴⁶ It is a normal practice that also the next Presidency after the incoming Presidency attends the speed dates as an observer. One can conclude on the participation that the EP is represented at the political level although there are many EP civil servants present too, while the Council and the Commission representation consists of civil servants.

In short, the overall objective of the speed dates is to pave the way for upcoming negotiations on concrete legislative and policy initiatives in different policy sectors. Another goal of these meetings is that key stakeholders get to know each other and especially the general positions of the institutions. Knowing the positions of the actors both in the Council and in the EP as well as their interaction is crucial for comprehending the EU legislative politics.⁴⁷ The Parliament chairs these meetings and it is very much up to each chair how to run the meeting in practical terms. For the organization of the speed dates, there is no legal basis. Speed dates are rather a practice that has evolved over time with the view of facilitating the negotiations on main legislative dossiers. These closed meetings positioned in our scale in the sphere of legislative interaction be considered as an important step for the preparation of future inter-institutional negotiations, most notably the trialogues and keeping abreast of the evolution of institutions' positions on different EU policy files.

Trialogues are without a doubt the single most important phase of EU legislative process.⁴⁸ In the trialogues the EP, the Council and the Commission negotiate on the compromise texts for EU legislative instruments. The Council is represented in these negotiations by the Presidency, which is assisted by the Council Secretariat.⁴⁹ For matters

⁴⁶ Coreper stands for Committee of Permanent Representatives of the Member States of the European Union. It is stipulated in Article 16 (7) of TEU that "A Committee of Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council". The tasks of Coreper are defined more specifically in Article 19 of the Council RoP. For practical reasons related to its preparatory role Coreper has been divided in two formations, Coreper 2 chaired by the Permanent Representative and Coreper 1 chaired by Deputy Permanent Representative of the Presidency. Coreper 2 is responsible for the substantive preparation in the fields of economic and financial affairs, foreign affairs, general affairs and justice and home affairs while Coreper 1 deals with agriculture, fisheries, competitiveness, education, youth, culture, sport, employment, social policy, consumer affairs, environment, transport, telecommunications and energy (meaning the issues falling under the old Community pillar).

⁴⁷ Simon Hix and Bjørn Høyland, *The Political System of the European Union* (3rd edn, Palgrave MacMillan 2011), 73.

⁴⁸ For a brief outline of trialogues, see Kim Fyhr, *Making Fundamental Rights a Reality in EU legislative Process. Ex ante Review of Proposals for EU legislative Measures for their Compatibility with the Charter of Fundamental Rights of the European Union* (Unigrafia 2016), 82-85.

⁴⁹ The Council Secretariat indeed is an important actor in the functioning of the rotating Presidency. Nevertheless, for example research on the impact of the Council Secretariat on the law-making and policy-

falling under Coreper 1 the leading negotiator is the Deputy Permanent Representative of the Permanent EU Representation of the Presidency. For Coreper 2 files usually the Council side negotiations are led by the chair of the respective Working Party, which remit the file in question falls within. In some cases, the negotiator in the Council side can be the minister or political state secretary. The counterparts, which the Presidency will face on the other side of the negotiation table, are the rapporteur and very often the Committee chair of the EP and the responsible Commissioner or Director General from the Commission.

The trialogues are the single most important part of legislative interaction. The trialogues are not public although during the last few years steps have been taken towards a greater transparency in the access to dialogue documents.⁵⁰ Trialogues include a strong legal-technical element even though they carry the political guidance all the way throughout the process.

Nowadays, the inter-institutional prioritization of legislation has been chiefly set out in the Joint declaration on legislative priorities agreed upon by the three institutions.⁵¹ This declaration very much steers the legislative efforts of the EU. Similarly, in accordance with paragraph 5 of the inter-institutional agreement on better law-making, the institutions will also agree on the multiannual programming of legislation, which aims at enhancing continuity and predictability of EU legislation in a longer term.⁵² Those two pertinent documents have an impact on the Presidency functioning in the EP.

5 PRESIDENCY AND THE COUNCIL

Coreper is the indispensable forum for the preparation of Council negotiating mandate for the next dialogue. The Working Party level can also be used for more technical examination of proposals to be presented later to the Coreper, but it is Coreper that decides on the negotiating mandate within the Council. As the Working Party level handling of a given file has reached the phase when the Presidency starts preparing a draft negotiating mandate the dossier will soon need to be taken to the Coreper. Especially in the Coreper 1 the negotiating mandate of one piece of legislation, especially in harder cases, can be discussed in Coreper in different blocks. This means that in the exploratory talks, which can also be called trialogues, the institutions identify for example four main, substantive negotiation blocks in the draft legislation, *e.g.* a Directive, at hand and in the Council side, the Presidency will start preparing mandate texts for these blocks. When the Presidency gets the mandate approved, it goes to the trialogues for negotiations with mandate as the guideline. The Presidency then returns to Coreper to report back on the outcome of the dialogue. Then there will be another

making processes has been relatively scarce. The Secretariat is a significant stakeholder also in terms of ensuring continuity of the Council work. On the role and tasks of the Council Secretariat, see for instance Westlake and Galloway (n 17), 348-354.

⁵⁰ T-540/15, *De Capitani v European Parliament* [2018], ECLI:EU:T:2018:167. In this judgment the General Court held that trialogues constitute a decisive phase in the EU legislative process and this is why public access to the so-called four column documents utilized in the dialogue negotiations cannot be refused.

⁵¹ Joint Declaration on the EU's legislative priorities for 2018-19. Available at https://ec.europa.eu/commission/sites/beta-political/files/joint-declaration-eu-legislative-priorities-2018-19_en.pdf. COVID-19 crisis has postponed the adoption of a new Joint Declaration but the discussions on the new Joint Declaration are ongoing between the institutions.

⁵² Interinstitutional agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-making of 13 April 2016, OJ L 123/1.

round of preparation in the Coreper, then a triologue, to be succeeded by another report, then the preparation and so forth until the Coreper is facing a take it or leave it situation with regard to the final text negotiated by the three institutions. In practical terms, the processes can be different depending on the file. In Coreper 2, it seems to be more common than in Coreper 1 to agree on broader negotiating mandates for the Presidency, to conduct negotiations on a rolling basis and to revert back to Coreper when necessary.⁵³

The Coreper agenda includes every time after the EP Plenary an item titled “Relations with the European Parliament”, which is a routine-like update by the Presidency of the major developments in the latest EP Plenary. It seldom triggers any discussion given the fact that Member States are very well aware of what has happened in the Plenary usually the week before the Coreper.

In spite of the extremely important role of the Coreper level one should not turn a blind eye to the importance of the ministerial level of different Council configurations, which of course in their substantive policy areas deal with a multitude of different forms of interaction with their EP counterparts. For inter-institutional co-operation, the most important Council configuration is the General Affairs Council (GAC) due to its coordination role within the Council.⁵⁴ GAC is very often chaired by the European Minister of the Presidency who also represents the Council in the EP. These facts highlight the weight of the GAC in the Presidency highest level preparation for both the Council and the EP. From the point of view of inter-institutional relations, it is important to note that European Council preparation within the Council takes place in the GAC channel. Furthermore, the level below the Coreper, the working group level also has a significant role to play in the co-operation with the EP.⁵⁵

If one thinks about how the consecutive Presidencies are organized, the trio Presidency has become more important than it used to be. The trio consists of a group of three Member States having Presidencies back-to-back.⁵⁶ Before the new trio takes over the three Member States in co-operation with the Council Secretariat draft the trio programme, which largely reflects the Council work programme.⁵⁷ In this context it should be borne in mind that it is the Council legislative and policy agenda that sets the Presidency agenda and not vice versa. This is despite the fact that the Presidency does have the opportunity steer the Council work according to its priorities and have an effect on the angle from which

⁵³ The processes presented above are simplified models and distinction between i.a. first and second readings of ordinary legislative procedure have not been made.

⁵⁴ Pursuant to Article 2 (2) of the Council RoP “The General Affairs Council shall ensure consistency in the work of the different Council configurations. It shall prepare and ensure the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission. It shall be responsible for overall coordination of policies, institutional and administrative questions, horizontal dossiers which affect several of the European Union's policies, such as the multiannual financial framework and enlargement, and any dossier entrusted to it by the European Council, having regard to operating rules for the Economic and Monetary Union.”

⁵⁵ This paper does not present the internal preparatory proceedings of the EP and the Commission. It has been important to illustrate, however, the internal proceedings of the Council due to the significance of the necessary support from the Council to the Presidency, which is needed for the effective functioning of the Presidency in the EP.

⁵⁶ The current trio for the period 1 July 2020-31 December 2021 consists of Germany, Portugal and Slovenia.

⁵⁷ See the present trio programme of Germany, Portugal and Slovenia in Council of the European Union, Taking Forward the Strategic Agenda, 18-month Programme of the Council. 8086/20, Brussels, 5 June 2020. In addition to the trio programme each Presidency prepares a Presidency programme of its own.

different policies are approached. The trio format could also bring some further added value to the Council interaction with the EP if developed properly. With a strengthened trio programme and trio involvement in interaction it could be possible to tackle one major shortcoming of the rotating Presidency system: the relatively short duration, which leads to the need to re-invent the wheel every six months despite the existing best practices and coordination among consecutive Presidencies. This could provide a longer-term perspective and more predictability to inter-institutional co-operation of the Presidency in the EP.

6 RE-THINKING THE INTER-INSTITUTIONAL SETTING

The EP is without a doubt an important forum for the rotating Council Presidency. In terms of publicity the EP is very visible and part of the Council Presidency publicity and visibility will come through Presidency's activities in the Parliament. A question that occurs is whence this institutional setting derives? How does it relate to the institutional balance? For the Commission vis-à-vis the EP the situation is quite clear. If the Commission loses the political trust of the Parliament, it can discharge the Commission.⁵⁸ Therefore, the Commission must enjoy the trust of the EP. In this relation, parliamentarism is all about controlling the executive.⁵⁹

For the relation between the Council and hence the Presidency the situation is fundamentally different. The Parliament does not – in light of European constitutional law – have any kind of legal nor political predominance or hegemony over the Council. This is the case despite the fact that the Parliament often seeks an upper hand towards the Council and aims to illustrate the Council as politically subordinate to the EP. This does not have any legal basis.

The Council functioning in the EP is based above all on sincere co-operation enshrined in Article 4(3) of the Treaty on European Union (TEU).⁶⁰ This applies especially to legislative proceedings, which in concrete terms are materialized in dialogues and other negotiations involving the EP and the Council. Many appearances such as ministerial hearings in the Committees and the Prime Minister's presentation in the Plenary of course also deal with legislation despite the more general nature of these activities. Thus, they are also one expression of sincere co-operation. Nevertheless, these activities are practices, which do not stem from EU primary or secondary law, but have simply evolved over time. There are, however, no equal practices for the presence of the EP in the Council. The Council has been somewhat reluctant to involve the EP in the activities taking place within the Council structures.

The on-going preparatory work on the Conference of the Future of Europe includes many important institutional topics, which will without a doubt have an impact on inter-

⁵⁸ In accordance with Article 17 (8) of the TEU: “The Commission, as a body, shall be responsible to the European Parliament. In accordance with Article 234 of the Treaty on the Functioning of the European Union, the European Parliament may vote on a motion of censure of the Commission. If such a motion is carried, the members of the Commission shall resign as a body and the High Representative of the Union for Foreign Affairs and Security Policy shall resign from the duties that he carries out in the Commission”.

⁵⁹ Teija Tiilikainen, ‘The Concepts of Parliamentarism in the EU's political System. Approaching the Choice between two Models’ (2019) FIIA Working Paper, 4-7.

⁶⁰ Moreover, pursuant to Article 13 (2) of TEU “each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation”.

institutional relations, maybe even on the balance of power between the institutions.⁶¹ One such issue to be discussed in this exercise will probably be the EP right of initiative that has been on the EP wish list. In this question the Commission has shown a great deal of understanding for the Parliament's position.

Nonetheless, it is clear that there cannot be major inter-institutional shifts without Treaty amendments. As shown, it is possible to alter the practices that have an impact on inter-institutional relations and how the co-operation between the institutions is carried out. For bigger changes there would need to be changes in the competences that can only be made by amending the Treaties. The on-going process of the Conference on the Future of Europe does not exclude this possibility although engaging in large-scale reform of EU primary law seems at least at the moment unlikely.

Placing organizationally the inter-institutional co-operation in EP as described above does have some pros. These advantages include a greater visibility due to the open nature of EP activities in particular when it comes to the plenary and most of the Committee debates. This enhances the transparency and enables EU citizens and media to follow these activities. In that sense, the EP as forum for inter-institutional co-operation can be regarded as a transparent and hence also legitimate arena for such activities.

If one considers the framework of inter-institutional co-operation consisting roughly of two dimensions – policy and legislative – interaction, we can notice that the EP has succeeded in making the Parliament a publicly visible forum for policy interaction. Different types of exchanges in this category take place in the Parliament. This system has mainly been created by EP internal decisions, most notably the RoP. One looks largely in vain for EU primary and secondary law provisions on how to arrange inter-institutional co-operation at the practical level and this is where the EP has come in with its related internal decision-making.

The position of the EP is different in the field of legislative co-operation with less such arrangements highlighting the role of Parliament. The explanation for this is that approving the EP as a forum for inter-institutional co-operation in the field of policy interaction is easier than for legislative interaction. It is easier to accept this arrangement for more general and visible political discussion than for legal drafting of EU legislation where the devil is in details.

In practical terms the EP as a central forum for policy interaction basically remains the only option, as the Council does not offer reciprocity in the participation of the EP in the Council meetings. There simply is no systematic way for the EP to participate in the Council work. This does not offer much leeway for more fundamental adjustments to the institutional setting.

For understanding the significance of the Presidency in co-operation with the EP one cannot overemphasize the importance of dialogues. The vital role of the Presidency in running the negotiations of the Council with the EP and the Commission is against the backdrop of interinstitutional setting a remarkable element. The Presidency possibility to impact the final outcome of the legislative negotiations is largely crystallized in this phase of law-making.

⁶¹ See Communication from the Commission to the European Parliament and the Council: Shaping the Conference on the Future of Europe. COM(2020) 27 final. Brussels, 22.1.2020.

An important issue to be observed in connection to the role of the Presidency within the frame of inter-institutional relations is the functioning in the axis of the Council and the European Council. Since the outbreak of the economic and financial crisis in 2008, the most important decisions of EU policy have been vested more and more tightly in the European Council. The immigration crisis back in 2015 and now the COVID-19 crisis have further underlined the importance of European Council. This shift has to some extent happened at the expense of sectorial Council formations and it has also had implications on the Council and the Presidency functioning in the EP.⁶²

A crucial question from the perspective of EU law is can the current system of inter-institutional co-operation produce efficiently enough the necessary EU decisions and acts necessary for the smooth functioning of the Union? I strongly believe that the various forms of policy and legislative interaction can indeed successfully fulfill this objective. However, there is still room for improvement.

7 CONCLUSION

From the findings of this paper, it is possible to draw some overarching conclusions. First, the Presidency presence in different fora of the EP is a fundamental pillar of inter-institutional co-operation. It would be very hard to imagine co-operation between the institutions without a strong involvement of the Presidency in the EP.

Second, we have made a distinction in the inter-institutional cooperation between policy interaction and legislative interaction. The topics covered in this paper mainly fall within the scope of policy interaction, which can be considered to include most of Presidency activities in the EP. These ways of interaction are largely political and more visible to the general public. It is also an arena for EP to utilize different internal practices aiming at increasing its practical powers. Even though legislative interaction is subordinate to policy interaction it is extremely important for EU policy-making. EP internal practices have not been that successful in influencing this layer of inter-institutional co-operation.

Third, the general rules guiding the Presidency interaction with the EP have been stipulated in broad terms in EU law, but many of the practices have taken their current shape because of the evolution of different practices. The main driver in this regard have been the EP RoP. It follows from this that with these practices the EP has been able at least to create an image in the public as if the Council was somehow accountable to the EP in policy interaction. This is not naturally legally speaking the case. This has at least slightly tilted the balance in power relations in favour of the EP. Approaching the issue from a theoretical point of view, it is possible to identify that a sort of spillover from the domain of practices to that of powers has taken place. It is often the case that when certain practices already exist these can well be at a later stage incorporated in the legislation, even in the Treaties. Practices tend to get a formal status.

Fourth and consequently, it might be clearer for all the institutions if the practices of regulating inter-institutional co-operation were set out in the Treaties in a more detailed way. A window of opportunity could be open should the EU go down the road of amending the

⁶² The trend underscoring the role of the European Council has given rise to criticism from the EP mainly because of the generally applied unanimity requirement in the European Council. The EP generally is a strong proponent of qualified majority voting in the Council.

Treaties in the near future. Another and much easier solution would be to regulate this in the EU secondary law or in an inter-institutional agreement codifying the various practices in inter-institutional co-operation. This would bring legal certainty to this domain governed so far mainly by internal decisions of the institutions. Regulation could be useful in containing the spillover of increasing Presidency duties towards the EP. However, one should not step into the pitfall of making this regulation too rigid.

Fifth, the Lisbon Treaty has decreased the role of the rotating Presidency especially in relation to the European Council and the Common Foreign and Security Policy.⁶³ This can also be seen in the inter-institutional co-operation in different arenas of the EP. Even though there is now less role for the Presidency in light of the Treaties, the EP work offers a possibility for six months to play a fully-fledged role in shaping EU legislation and policies. Looking at things through lenses of the Presidency involvement in EP, such as ministerial presence in many configurations of EP work, the role of the Presidency may look even bigger than it is.

Sixth, the Lisbon Treaty has also brought new significant policy areas to ordinary legislative procedure placing the EP on an equal footing in these sectors with the Council in the EU legislative process. Most commentators consider that the winner in the Treaty reform has been the EP.⁶⁴ This has inevitably brought an extra flavour also to the work of the Presidency.

Finally, from all this we can see that the Presidency interaction with the EP is constantly evolving and the current ways of co-operation are subject to change. The impact of corona crisis has been significant also on the co-operation of Council and the EP in different fora of the EP.⁶⁵ Should this have wider consequences for the ways of co-operation of the Presidency in the EP remains to be seen.

⁶³ Christiansen (n 11), 238-239.

⁶⁴ Jean-Claude Piris *The Lisbon Treaty. A Legal and Political Analysis* (Cambridge University Press 2010), 235-236.

⁶⁵ In spring 2020 the EP decided to hold the Plenary sessions until July in Brussels instead of Strasbourg due to COVID-19. The plenary agendas were significantly shortened and many inter-institutional topics were temporarily dropped, which had an impact on the work of the Presidency in the EP. Organizing the Plenaries in Brussels has also been the case in autumn 2020.

LIST OF REFERENCES

Christiansen T 'The European Union after the Lisbon Treaty: An Elusive 'Institutional Balance' In Biondi A, Eeckhout P and Ripley S (eds) *EU Law after Lisbon* (OUP 2012)

DOI: <https://doi.org/10.1093/acprof:oso/9780199644322.003.0011>

Cooper I 'Bicameral or Tricameral? National Parliaments and Representative Democracy in the European Union' (2013) *Journal of European Integration* (35:5)

DOI: <https://doi.org/10.1080/07036337.2013.799939>

Corbett R, Jacobs F and Shackleton M, *The European Parliament* (8th edn, John Harper Publishing 2011)

Craig P 'Institutions, Power and Institutional Balance' in Craig P and de Burca G *The Evolution of EU Law* (OUP 2011)

Engel A, *The Choice of Legal Basis for Acts of the European Union: Competence Overlaps, Institutional Preferences, and Legal Basis Litigation* (Springer Publishing 2018)

DOI: <https://doi.org/10.1007/978-3-030-00274-9>

Fernández Pasarín A M 'The Reform of the Council Presidency: Paving the Way for a New Synergy with the European Commission?' *Politique européenne* 2011/3, n 3

DOI: <https://doi.org/10.3917/poeu.035.0029>

Fyhr K, *Making Fundamental Rights a Reality in EU legislative Process. Ex ante Review of Proposals for EU legislative Measures for their Compatibility with the Charter of Fundamental Rights of the European Union* (Unigrafia 2016)

<https://helda.helsinki.fi/bitstream/handle/10138/168098/MAKINGFU.pdf?sequence=1&isAllowed=y>

Haas E B, *Uniting of Europe: political, social, and economic Forces 1950-1957* (UMI books 1996)

Hartley T C, *The Foundations of European Union Law: An Introduction to the constitutional and administrative Law of the European Union* (7th edn, OUP 2010)

DOI: <https://doi.org/10.1093/he9780199566754.001.0001>

Hayes Renshaw F 'The Council of Ministers' In John Peterson and Michael Shackleton (eds), *The Institutions of the European Union* (2nd edn, OUP 2006)

Hix S and Høyland B, *The Political System of the European Union* (3rd edn, Palgrave MacMillan 2011)

DOI: <https://doi.org/10.1007/978-0-230-34418-1>

Office for Promotion of Parliamentary Democracy: *Parliamentary Rules of Procedure. An Overview* (European Parliament 2010)

Piris J-C, *The Lisbon Treaty. A Legal and Political Analysis* (CUP 2010)

DOI: <https://doi.org/10.1017/CBO9780511762529>

Priestley J, *Six Battles that shaped Europe's Parliament* (John Harper Publishing 2008)

Rosamond B, *Theories of European Integration* (MacMillan Press 2000)

Tiilikainen T, 'The Concepts of Parliamentarism in the EU's political System. Approaching the Choice between two Models' (2019) FIIA Working Paper

https://www.fiaa.fi/wp-content/uploads/2019/04/wp109_eu-parliamentarism_2.pdf

Van Gerven W, *The European Union. A Polity of States and Peoples* (Hart 2005)

DOI: <https://doi.org/10.5040/9781472563279>

Westlake M and Galloway D, *The Council of the European Union* (3rd edn, John Harper Publishing 2004)