

**INTERVIEW GRANTED BY MARIUS HÎRȚE, *Director with the General Secretariat of the Council of the European Union*: ”The EP represents the political discourse, while the Council has to face the realities of implementing actual policies”**

*Marius Hîrțe is Director with the General Secretariat of the Council of the European Union responsible for Environment, Climate Change, Education, Youth, Culture, Audiovisual and Sport and has granted an interview for the EuroPolity team with regard to the Council of the European Union work procedures, institutional methodology, political decision and the relation with the European Parliament under the ordinary legislative procedure. Also, a particular mindfulness was given to the role of Permanent Representatives Committee (COREPER) in the context of Council’s Presidency mandate, the influence of lobby, the cooperation between multiple working committees and the role of the professional experience detained by permanent officials in the Council.*

**Disclaimer**

This disclaimer applies to all the following opinions and comments. **These opinions are strictly personal and DO NOT represent the position of the Council of the European Union (Council), the General Secretariat of the Council (GSC), one of the member states (MS) or one of the other European Union institutions such as the European Commission, the European Parliament (EP) etc.**

**I. The step by step procedure of drafting a position in COREPER I starting with committees and working groups to COREPER negotiations**

Comments about institutional methodology

*a) Levels within the Council*

The Council should be seen as a whole, or unitary as it used to be called. It is composed of a political level and a preparatory level. COREPER and the working parties (WP) represent the latter. They prepare the decision but it is taken by the political level even it ends up being only a formality. These are the ‘A’ points on the Council agenda.

As such, I would rather say that there is only one ‘Council position’ which envelops whatever happens at other levels, even if this means that it was reached in the preparatory stage, at working party or COREPER level.

*b) Political consensus on legislative text in the Council*

On the other hand - and I hope that this does not raise confusion – one needs to distinguish between the Council’s formal position, which only the Council reaches, and the political consensus on a text, which is reached before the ministers formalize it. Political consensus on a text can happen at WP level, the text then passes as a point I on the COREPER agenda and ‘A’ point in the Council. At the same time, political consensus on a text can be reached at COREPER level. The ministers confirm this political consensus as a point ‘A’ on the agenda in the following Council meeting.

*c) Collaboration with the European Parliament*

Point b) requires further clarification. Generally, the Council’s legislative activity is not autonomous, which means that it does not only concern the Council. This activity takes place under the framework of the ordinary legislative procedure or under some other procedure, and involves a future negotiation with the EP.

In certain situations, each co-legislator’s activity is autonomous for a given timeframe because there are no conditions for a negotiation to take place but together with the European Commission. For example, after EP elections and until EP committees are formed, assigning rapporteurs, etc.

However, in many cases, the Council's position is negotiated *ad hoc* in relation with the EP. For example, if there is a chance of reaching consensus during the first reading, politically speaking, then after the Council examines the Commission's proposal in the WP, its negotiating position practically means preparing a position for informal dialogues. It will draw up a stance towards the EP's final amendments as drafted by the special committee but before they are formalized in the EP plenary session.

On the one side, the EP represents the political discourse, while the Council has to face the realities of implementing actual policies.

The EP has competencies but it is not responsible for them. It can propose legislative amendments without bearing their responsibility. In a way, it could be seen as a national parliament, which is not responsible for what it says. In addition to this, the EP does not work as a whole on a given piece of legislation but as parliamentary commissions. Because the discussion takes place according to groups of interests the vote is permeable. As such, one can speak about the EP's democratic deficit because it is not sufficiently accountable for the responsibilities it has.

As opposed to this, the Council works permanently through its bodies and through the member states. It is closer to a given policy because it has the ability by means of the member states to implement it. MS bear the obligations of a legislative project and they are responsible for implementation.

#### *d) About the mandate of the Council Presidency*

The Presidency's<sup>1</sup> mandate during informal dialogues is discussed in COREPER if there is no consensus at WP level or it is confirmed as point II, with debate, if there is consensus at WP level. There are situations when the Council itself is convened to decide by adopting a "General Approach".

#### *e) Influence of lobbying*

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<sup>1</sup> The Presidency of the Council represents the Council during informal dialogues.

The Council is composed of COREPER, the General Secretariat of the Council and the Council itself, which is divided into several formats.

There is no lobby at GSC level because it is well known that it is not the Council. It has no decision-making power. It can only assist the Council in its works. GSC is responsible with respecting procedure and with considering all opinions.

As opposed to the GSC, the EP is fertile ground for lobbying, especially the rapporteur, the shadow rapporteur or the president of the commission which manages the respective dossier. At the level of the Council of the European Union, lobbyists only target WP. The points WP agree on are not reopened at COREPER level. These are the best access points for lobbyists.

## **II. How committees' and working parties' positions and opinions influence political decisions**

Definitions are essential to any European piece of legislation. For this matter, I would start with the notion of “influence”, which I think may be too soft a term. The Council’s “unitary” character also means that the position (text) the Council understood as the ministers adopts is roughly 90-95% agreed upon in WP<sup>2</sup>. Of course, each MS delegation which takes part in WP has a mandate from its Capital. This leads one to assume that the agreed upon text implies each capital’s approval. Around 5-10%<sup>3</sup> are decided upon in COREPER. If the decision reaches the level of ministers then it is a big political issue. In many cases, ministers have a political debate on a legislative project to identify the main areas of interest, including “red lines” for each MS and/or the Commission.

Two things worth mentioning:

i) With the exception of running the text by each Capital, the texts agreed upon in WP are NOT reopened in COREPER. What is established in WP is final and if COREPER decides to

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<sup>2</sup> I am referring to quantitative.

<sup>3</sup> Usually 3-5 are politically sensitive issues but these do not represent 10% of the volume of text.

reopen certain elements, than it casts a negative light on the delegation responsible for the dossier. COREPER only discusses what has not been agreed on in WP and it tries to solve the dossiers at its level. Similarly, ministers do not reopen what has been agreed upon in COREPER or in WP but only those issues which are still “open”. Of course, until the ministers formalize the decision “nothing is agreed until everything is agreed”. This means that agreements between WP and COREPER are both politically and procedurally provisional and partial.

ii) The ordinary legislative procedure implies a decision based on qualified majority voting. However, at all levels the initial approach in terms of spirit and atmosphere is of consensus. The procedure for voting commences only if there is no consensus. In practice, making a decision in WP takes a very long time even for short texts. The point is to try and please everybody.

### **III. How tensions between the Parliament and the Council manifest themselves**

Each time two institutions are involved, irrespective of administration or bureaucracy, there is a fight for territory. I believe that the EP’s main interest is not in legislation because it shares equal<sup>4</sup> competences with the Council.

Another thing to notice is that debates in the Council, regardless of the level at which they take place, are based on the administration’s ability to implement the legislative document. In other words, MS, which are obliged to implement legislation, think about whether to include or not a provision from this perspective: can they apply it? Of course, this holding back should be compensated by an overarching political vision of promoting an EU objective despite costs.

Finally, I have the subjective sensation that the EP is much more media friendly and especially new media friendly if one can say so. As opposed to the EP, the Council is still a

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<sup>4</sup> Equal in the case of ordinary legislative procedure but not in other areas of competence where the EP and Council are different, for example in international affairs.

little known institution and it is seen as intergovernmental, which surprises me because of qualified majority decision-making in the Council.

#### **IV. How the country which holds the Council Presidency influences COREPER I as opposed to strong MS**

As opposed to the previous situation, when we talked about “influence”, I’d say that when it comes to the Presidency<sup>5</sup> the term is more appropriate in a procedural sense.

The Presidency establishes the agenda for Council reunions, including political priorities and issues up for debate. Of course, these priorities are also self-imposed exercises, which cannot exclude a certain member state’s situation. However, the Presidency has significant room for manoeuvre when deciding the political priorities up for debate.

Also, the Presidency can decide which legislative subjects are brought up by ministers, especially in terms of political orientation. In extremely rare cases, it is mandatory for the Presidency to put an item on the Council’s agenda if consensus has not been achieved at other levels.

The situation is even more “substantial” with regard to WP and COREPER, where the President leads negotiations and has the role of proposing compromises on text legislation. Attention! The President acts as a “primus inter pares”, facilitating negotiations and bearing responsibility for success or failure because compromises are subject to the rules of the ordinary legislative procedure.

What is significant is that, as opposed to political debates at Council level, where the Presidency can propose issues in its own interest, when it comes to legislative debates it must propose acceptable compromises. I have seen cases when the delegation of the MS holding

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<sup>5</sup> Rotational, which applies to 9 of the 10 Council formats, as well as to COREPER and working parties.

the Presidency had to publicly distance itself from the Presidency's text. This happens because the compromise affects the interests of the MS holding the Presidency.

Strong member states' votes weigh more, they know the rules and procedures better and they are able to form qualified majorities in the Council or at least blocking minorities. The Presidency must take such parameters into account when drafting compromise proposals. This is normal.

#### **V. Collaboration between multiple working parties/committees and harmonizing diverging positions**

A legislative or political text is discussed in one working party, one COREPER and one Council. The Presidency decides to which working party and thus to which COREPER and Council to attribute the dossier.

#### **VI. The professional experience of permanent civil servants**

Generally, working parties are formed of civil servants from the concerned ministries which are grouped within the Permanent Representation. COREPER is largely composed of diplomats. Thus, Permanent Representations have dual nature as both MS diplomatic offices and parts of the Council's mechanism for decision-making. I am subjective but it is precisely this second nature that makes them unique as opposed to other diplomatic offices. The latter retain a classical form whether they are multilateral or bilateral.

*Interview processed by Andrei Moraru*