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Abstract

Following the entry into force of the Lisbon Treaty, the Common Foreign and Security Policy of the European Union remains intergovernmental in nature, similar to the former European political cooperation in the second pillar, but with some new administrative and institutional changes in the way it is formulated. The most important question is the relationship between the Coreper - permanent representatives in Brussels and the Intergovernmental Political Committee. In this context, the research is aimed at analyzing the mutual relations between the Committee of Permanent Representatives and the Political and Security Committee in forwarding questions to the Council of the European Union regarding the Common and External Security Policy of the European Union.

Keywords: Committee of the Permanent Representatives, Political and Security Committee

1. INTRODUCTION

The evolution of the cooperation between the Member States of the European Community in the field of foreign and security policy dates back to 1954 with the creation of the European Security Community on high-level policy issues taking place outside the Community institutions. However, the divisions resulting from World War II were so great that foreign policy issues were not discussed at all at the sessions of the Council of Foreign Ministers. A new serious attempt, despite the existing international diplomatic relations, was made in 1970 with the creation of the European political cooperation and a set of rules and procedures governing the cooperation of the member states in the field of foreign policy and security.¹ This creates a culture of cooperation that results in the creation of the second pillar of the 1992 Maastricht Treaty.² The separation into different pillars is aimed at creating non-binding rules governing the former European political cooperation - the forerunner of the EU Common Foreign and Security Policy. The legal rules are not subject to review by the European Court of Justice, but from the point of view of the international public law the treaties are binding because they have been ratified by the member states of the Union. All three pillars have the same institutional framework, but the balance of

power in the second pillar is significantly shifted in favor of the Council and its subordinate bodies. It is the central decision-making and implementation body of the EU's foreign and security policy. Hence, the manner of decision-making and functioning of the EU foreign and security policy should be analyzed in detail in the bodies and procedures of the Council of the Union.

2. POLITICAL AND SECURITY COMMITTEE

The Political and Security Committee (COPO), also known as the Political Committee, is a body that analyzes international developments in the field of the Common Foreign and Security Policy of the European Union and submits an opinion to the Council at its request or on its own initiative. The Committee also takes care of the implementation of the agreed policies, without affecting the responsibility of the Presidency and the Commission. It is composed of political directors of the foreign ministries of the member states, and lower-level officials may also participate in its work. The Directors are assisted by Correspondents to the Member States' Ministries of Foreign Affairs, who are responsible for maintaining day-to-day communication between Brussels and the Member States' governments through the COREU (EU Correspondent) and CORTESU Information Exchange Networks as an upgrade after 2000. The committee meets at the beginning of the week preceding the monthly general affairs council and, if necessary, at the beginning of the council to reconcile issues in the event of changed circumstances. Opportunities are also left for the Committee to meet between Council meetings or to exchange information through the COREU network. The conclusions of the meetings are considered final after 4 days after circulating through the COREU network. This network enables the so-called "written" procedure by which the Council can decide or implement decisions by written vote, which accelerates the Union's response to emergencies. It follows from the constellation of obligations that the Political Committee has a dual role. On the one hand, it appears as a consultative body that prepares the materials for the meetings of the Council, and on the other hand, as a decision-making body in cases when diplomatic actions and measures are taken that do not require collective decision-making by the Council of Ministers. This raises the question of overlapping the competencies of the Political Committee and COREPER. Therefore, the Council adopts a decision by which the competencies of the two bodies are divided, by which the Political Committee makes the political analysis of the agenda, while COREPER has a legal and technical analysis of the agenda before being forwarded to the Council. All this is done because the cooperation between the political advisors in the permanent representations of the member states and the European correspondents is of great importance for setting the agendas of the higher institutions of the Council and the final outcome of the whole process.

5 After the Amsterdam Treaty.
6 CORTESY was established in 1997, with a central hub installed in the EU Council building in Brussels.
7 The number of exchanged information - telexes from 1970 with 5000 per year increased to 25000 in 2020.
3. COMMITTEE OF PERMANENT REPRESENTATIVES - COREPER

Coreper stands for the 'Committee of the Permanent Representatives of the Governments of the Member States to the European Union'. The name derives from French Comité des représentants permanents, which is the Committee of Permanent Representatives in the European Union; it consists of the head or deputy head of mission from the EU member states in Brussels. Coreper is the Council's main preparatory body. Its main task is to coordinate and prepare the work of the different Council configurations, work out agreements and compromises which are then submitted for adoption by the Council and ensure consistency of the EU's policies. Its defined role is to prepare the agenda for the ministerial Council of the European Union meetings (except for some agricultural matters). All items to be included into the Council's agenda must first be examined by Coreper, unless the Council decides otherwise. It may also take some procedural decisions. It is not an EU decision-making body, and any agreement it reaches can be called into question by the Council, which alone has the power to make decisions.

Coreper is composed of the 'permanent representatives' from each member state, who, in effect, are their country's ambassadors to the EU. They express the position of their government. Coreper manages and coordinates the work of some 250 committees and working parties made up of civil servants from the member states who work on issues at technical level to be discussed later by COREPER and the Council. It is chaired by the Presidency of the Council of the European Union.

The ministerial agenda is divided into three categories:

- **I** points which are for information and no ministerial decision is needed;
- **A** points where the decision can be made without debate (but it has to be put off the agenda of this meeting if any national delegation opposes it being decided) and is often on a subject outside the detailed responsibility of the particular group of ministers;
- **B** points where debate is needed and the decision may not be known in advance.

An item may be described internally as a false B point - this is to give the public impression as a B points out that ministers are actively debating it because of its importance when in fact it could have been treated as an A point because negotiation and compromise has already taken place in COREPER. Relatively few decisions are taken by ministers on true B points: they are usually sent back to COREPER until they can be returned as an A point or a false B point.

The deliberations and decisions of the Council under the co-decision procedure, unlike all other Council meetings, include COREPER and Council working group meetings, public. Weekly meetings are held in private. Representatives of the Council Secretariat from the relevant Directorates and from the Legal Directorate are also present. The two configurations of Coreper (two committees Coreper I and II) meet every week.

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11 Its role and different formations is explained in article 240(1) of the Treaty on the Functioning of the EU.
3.1. Coreper I

Coreper I is composed of each country’s deputy permanent representatives, comprising and dealing largely with social and economic issues. Its meetings are chaired by the deputy permanent representative of the country holding the presidency of the General Affairs Council. The role of Coreper is to prepare the work of 6 configurations of the Council:

1. Employment, Social Policy, Health and Consumer Affairs;
2. Competitiveness (internal market, industry, research, space and tourism);
3. Transport, Telecommunications and Energy;
4. Agriculture and Fisheries (only financial issues or technical measures on veterinary, phytosanitary or food legislation);
5. Environment;
6. Education, Youth, Culture and Sport (including audio-visual);

The work of Coreper I is prepared by the ‘Mertens Group’. Established in 1993 and named after the first president, Vincent Mertens de Wilmar, it is a group of high-ranking diplomats from the permanent representations in Brussels, assisting Coreper in the preparation of compromises among the member states. This informal group helps to form the initial idea of the positions that the various member state delegations will take at the Coreper meeting.

3.2. Coreper II

Coreper II consists of heads of mission-Permanent Representatives (Ambassador Extraordinary and Plenipotentiary); it deals largely with political, financial and foreign policy issues and prepares for the other Councils configurations:

1. General Affairs;
2. Foreign Affairs (including European security and defence policy and development cooperation);
3. Economic and Financial Affairs (including the budget);

It is chaired by the permanent representative of the country holding the presidency of the General Affairs Council. The work of Coreper II is prepared by the ‘Antici Group’. This informal group helps to form an initial idea of the positions that the various member state delegations will take at the Coreper meeting.

Both Coreper I and Coreper II are, consecutively, prepared by two other groups of high-ranking diplomats. Coreper I is prepared by the Mertens Group, while Coreper II is prepared by the Antici Group. The Antici Group (named after its Italian founder) is made up of representatives of the Permanent Representatives, the European Commission, the General Secretariat of the Council and the European External Action Service, and a member of the Council Legal Service. The Group is responsible for deciding on the organisation of Coreper II proceedings. The meeting, which usually takes place on the morning of the day before Coreper, is chaired by the ‘Antici’ Presidency. Members of the

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13 Decision of the Council of 1 December 2009 lays down the measures for the implementation of the Decision of the European Council for the exercise of the Presidency of the Council, as well as of the presidency of the preparatory bodies of the Council. Official Journal of the EU L 322, 2009/12/09, pp. 28-34
4. CONFLICTING COMPETENCES BETWEEN COREPER AND THE POLITICAL AND SECURITY COMMITTEE

The Committee of Permanent Representatives (Permanent Correspondents), as a body of ambassadors composed of senior representatives of the Member States, prepares the work of the Council. Pursuant to Article 240, a Committee composed of Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council. The Committee may take decisions concerning the rules of procedure in cases provided for in the Rules of Procedure of the Council. The Council shall be assisted by a Secretariat-General headed by the Secretary-General appointed by the Council. The Council shall, by a simple majority, decide on the organization of the General Secretariat. Regarding the procedural issues and the adoption of the Rules of Procedure, the Council decides on them by a simple majority. With the adoption of the Maastricht Treaty, the European Union's foreign and security policy remains intergovernmental in nature. On the other hand, the new administrative and institutional organizations of the Union create a change in the way policies are formulated. This raises the question of whether the analysis and forwarding of foreign and security policy issues to the Council of Ministers (EU Council) shall be forwarded to the current Political Council or to the newly established Brussels-based COREPER (Committee of Permanent Correspondents).

COREPER is a body close to the European Administration and strictly bound by a legal form and procedure, which in decision-making takes into account the broader views that are outside of purely diplomatic considerations. Permanent Representatives are career diplomats whose views on foreign policy issues are as authoritative and professional as those of Political Directors. Legally - formally, it is in a stronger position than the Political Committee in forwarding the materials to the Council as provided for in the Community Treaty (Article 151) and the Rules of Procedure of the Council (Article 19). The Council Report of 27th October 1993 further strengthens the position with the obligation of the Political Committee to submit its conclusions and recommendations to the Council beforehand to the Committee of Permanent Representatives. To the Committee shall add its own comments and recommendations which it deems necessary, insisting at its level at the same time that an agreement shall be reached and submitted to the Council for approval. The directors held meetings in the evening or in the morning before the meeting of the Council, so that COREPER could not always give its full opinion on all issues.

If it deems it necessary, COREPER may set up committees of specialists in specific fields, ad hoc committees or working sessions composed of experts from the Member States. Meetings are usually attended by over 100 members, and staff members and experts can be added. The subordinate role of the Political Committee arises from the fact that each of its actions depended on and relied on the instruments of the Union, thus

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14 Former Article 207 TEC
15 Article 151 of the Lisbon Treaty.
making it dependent on the bodies that could use that instrument. In order to avoid a conflict of competencies, there is a "Gentlemen's Agreement" between the two institutions, where COREPER reserves the right to carry out a final check on communal matters, institutional and financial nature before being forwarded to the Council, but refrains from the right of political assessment of the Political Committee. The political and substantive aspects remained to be considered and agreed upon by the political directors of the Political Committee. Both committees have the right to attend meetings of the Council of Ministers, a right previously held only by political directors.

COREPER discusses exclusively the issues of the third pillar - justice and home affairs, thus the overcrowding of the agenda in this area contributes to the issues of foreign and security policy being finalized by the Political and Security Committee - PKB. The Political Committee reserved a certain right to directly influence the management of the CFSP on issues that do not have to be coordinated at the ministerial level.

5. CONCLUSION

COREPER is deeply embedded in the institutional structure. The institutional set-up in the field of EU foreign and security policy is organized, not random, with different institutions having different competencies and different weights. Its task is to bring the first and second pillars into line and to reconcile the differences between the Member States and the institutions of the Union. The Permanent Representatives are also engaged in influencing the European Commission, as foreign and security policy decisions are often linked to the Union's initiatives and require it to take action to ensure that they are taken. Thus, the Common Foreign and Security Policy of the European Union can no longer be considered only as cooperation in the field of diplomatic relations, because after the Lisbon Treaty it has undergone a serious transformation in establishing itself in the overall system of the European Union, as a subsystem of the legal framework of the Union. However, the Council and its subsidiary bodies Coreper and the Political Committee continue to have a decisive position in the formulation and implementation of foreign and security policy, while the supranational bodies, the Commission and the Parliament, have very little and limited influence. Parliamentary control is weaker in the second than in the first pillar, although it quite skillfully uses its budgetary powers to secure influence in the formulation and implementation of the Common Foreign and Security Policy. This development encourages the application of the doctrines of the first pillar and direct effect on the law that is created in the second pillar. Another major drawback is the lack of judicial review by the European Court of Justice in the EU's foreign and security policy. However, even in this field, the court has an important task to guarantee the border between the first and the second pillar in order not to contaminate the communal law from the acts of the second pillar. There is no a prescribed procedure, no mechanism by which the Council would first detect non-compliance by an act of a particular State, nor is there a mechanism available to sanction a Member State which has committed an infringement. Also, the commitments from Article 1 of the TEU that the decisions are made transparently and closer to the citizens are not respected, which is reduced to a minimum in the CFSP. Hence the conclusion that the Council alone cannot ensure respect for the primary and secondary law in foreign policy without the participation of all existing institutions of the European Union. Thus derives the conclusion that the Council alone cannot ensure respect for the
primary and secondary law in foreign policy without the participation of all existing institutions of the European Union.

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