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The Council of Ministers of the European Union

After the Lisbon Treaty

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Abstract:

The Treaty of Lisbon has brought remarkable changes and innovations to the European Union. As far as the Council of Ministers of the European Union ("the Council" hereinafter) is concerned, there are two significant innovations: double qualified majority voting and new rotating Presidency scheme, which are considered to make the working of the Council more efficiently, stably and consistently. With the modification relating to other key institutions, the Commission and the European Parliament, and with certain procedures being re-codified, the power of the Council varies accordingly, where the inter-institutional balance counts for more research. As the Council is one of the co-legislatures of the Union, the legislative function of it would be probably influenced, positively or negatively, by the internal innovations and the inter-institutional re-balance. Has the legislative function of the Council been reinforced or not? How could the Council better reach its functional goal designed by the Treaties' drafter? How to evaluate the Council's evolution after Lisbon Treaty in the light of European integration? This thesis is attempting to find the answers by analyzing two main internal innovations and inter-institutional re-balance thereinafter.

Key words:

Lisbon Treaty, Council of Ministers of the European Union, Double Qualified Majority Voting, Rotating Presidency, Comitology, Legislative Procedure, EU budget, Inter-institutional Balance

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INTRODUCTION

The EU Council, to be called as “the Council” hereinafter in the thesis, is composed of the ministers from each Member States, representing the interest of national governments.

According to the Treaties, specifically article 16 of Treaty on European Union (TEU), the Council shall undertake the tasks mainly of the legislative and budgetary functions jointly with the European Parliament; it shall also carry out policy-making and coordinating functions as laid down in the Treaties. The former two functions are the core of EU decision-making power within its competence. They enable the Union functioning in a manner as an organism compatible with the general principle of rule of law, which not only deepens the never stopped economic integration but also tends to support the political integration and social solidarity of this largest regional economy in the world.

The story of the power, or the function, of the Council was not as present time when the predecessor of EU firstly came into form.

From the era of European Coal and Steel Community， it also undertook a role as a political coordinator at both high and low political levels. Since 1975, European Council had emerged as an entity as political communication among Member States. The heads of states or of government of Member States met in European Council on the Community’s affairs. Although, the European Council was considered as a distinct existence from the Council, the Council’s rotating presidency held the chairmanship of this supreme level political forum and coordinated high politics among the European leaders in order to reach an all-welcomed solution. At the meantime, low political coordination also occurred as day-to-day work within the Council when draft legislative acts were under examination by COREPER and the Working Groups. For almost half a century,

the Council and its presidency have acted as vital political role concerning both external and internal affairs of the Union / Community.

The Treaty of Lisbon confirms the European Council as a formal EU institution and creates the post for a permanent president of the European Council, which ends the high political function of the Council ever. There leaves the low political coordinating task in the internal deliberation in the Council no higher than ministers' level. The typical intergovernmental method seems to thoroughly transfer to the new born institution and its presidency, with the functional role has been the reinforced label attached on the Council.

Furthermore, the majority voting scheme has also been progressed to be a general rule which makes this legislative institution much closer to a half supranational method, although under the comparison with the Commission and the European Parliament, the Council would be concerned as an inter-governmental method.

As far as the legislature is concerned, before Maastricht Treaty, the Council was the sole institution as legislature, while the European Parliament was not able to have a final word in the Community law-making stage.

From 1993 when Maastricht Treaty came into force until time flies to the Lisbon Treaty, the law-making within the EU has undergone the process from co-operation to co-legislation, where the momentum of the balancing the decision-making power between the Council and the European Parliament has gradually inclined to the latter to reach onto equal footing with the former.

Nevertheless, the Council, at least, cannot be over weighted by the European Parliament's stance that far since the adopted pieces of legislation would be finally carried out in practice within each Member State, which makes the Member States still have that final say on the acceptance of a particular legislation in the Council.

As one of the three core institutions, vis-a-vis the European Parliament, the Council had exclusively pivotal influence upon the Commission at pre-Lisbon time, for instances, requesting particular studies and legislative proposals, entrusting non-binding legislation and also mandating international negotiation.

In post-Lisbon time, Commission began to officially have two mandators: the Council, and the European Parliament. Commission's president is elected by the EP. All the Commissioners as a whole are to be proved in the EP. In addition to the political control at this initiative phase, EP imposes the shadow upon the Commission by "censure" deriving from the Treaties and also series of derivatives such as being fully informed at all stages of policy making ruled by Inter-institutional agreement.

In this circumstance, the Council, firstly, is no longer the sole supervisor of the Commission. Co-legislatures both have the right to request of undertaking studies and of certain proposing draft legislative acts; both the Council the European Parliament could invoke delegations upon the Commission adopting non-legislative act, such as implementing act and delegating act, in which procedures the two institutions have the strengthened power of scrutiny that was uniquely controlled in the Council's hands before. Sometimes, particularly in the sphere of international agreement negotiation, it is the combination of the Council and the Commission to face the parliamentary inquiry.

Furthermore, from the view of Commission, the Council seems to be less attractive than the European Parliament because of the democracy and legitimacy providing by the latter, which has been the Commission's main deficiency long being criticized. However, the European Parliament is not the substitute where the supervision upon the Commission is concerned. The Commission still works with the Council in practice as almost the same as pre-Lisbon time.

The waning power of the Council deserves consideration on its genuine effect. Whether does it discourage the Council, or does it caters the entire operation between EU institutions and reinforce the legislative function of the Council in return?

To evaluate the legislative function of the Council, firstly, this thesis introduces the internal decision-making scheme.

The competence of the Council presidency has been limited to low political coordination, with handing over high politics to the President of European Council. The rotating presidency chairs concentrate the internal horizontal and vertical affairs. The general application of Qualified Majority Voting, instead of the unanimity, distinguishes the Council, even the EU, from the general inter-governmental instrument in the sense of classic international law. A standard good legislative functioning should obey the rule of procedure at all time and at all stages, where it should be of no doubt of its transparency. Most of the workload in the Council is handled by the permanent representatives or their deputies from Member States (COREPER), rather by the ministers who are the symbol of this institution. The COREPER frequently negotiate beyond the round table under the coordination of rotating presidency, and the voting at official ministers' level is rare or perfunctory. In this case, it may decline the impression of a good legislative functioning. Whereas, the EU is composed of each Member States who are the real actors implementing the EU legal text. Thus, to wipe out the controversy at the negotiation step might be the better path to make the legislative acts applying smoothly in the end. To this extent, that unusual law-making way, comparing to traditional intergovernmental legislative organ, seems to be better suitable for the Union. The legislative function of the Council therefore is evaluated as positive.

In the second and third chapters, the inter-institutional relationship is under

examination. Lisbon Treaty has re-balanced the power among EU core institutions: the Commission, the European Parliament and the Council.

The Treaties tend to better clarify the boundary of competence of each institution in order to draw a triangle check and balance. In this process, it is inevitable that the Council's power wanes while the European Parliament rises, placing the Commission at the very middle spot between the two.

It is not the latter robs the former. It is the aim of Lisbon Treaty in its first article writing that this Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. The integration has developed to a comprehensive stage concerning more on the self-identification of EU citizens. Therefore it is the time to spur the revolution of Parliamentary power in the Union. A powerful European Parliament actually promotes the functional role of the Council as one of the legislature operating in a fine way. Consequently, the democratic deficit would be filled. All the three interests existing in the EU are safeguarded all by strong representatives.

CHAPTER 1

INNOVATIONS BYT THE TREATY OF LISBON IN THE COUNCIL OF MINISTERS OF THE EUROPEAN UNION

SECTION 1. VOTING SYSTEM ---- QUALIFIED MAJORITY VOTING(QMV)

1. QMV as common rule

According to Lisbon Treaty, one of the innovations to the working procedure of EU Council is the new system of QMV ----a double majority system---- and the situation under which the QMV is used. The aim of this new system is to facilitate the decision-making in the Council in the ever enlarged membership.

For the situation under which the Council act by QMV, it has been existing for a considerable period and it is first time to be written in the Treaty become the common rule except where the Treaties provide otherwise. (Art 16(3) TEU) the areas of using QMV have increased by 45 or more, for instance: MS withdraw from EU, immigration, freedom to establishment. But still in some vital aspects or areas, there uses the "unanimity", for example the membership of the Union, taxation, finances of the union, citizenship and certain provisions in the field of justice and home affairs.

1. New calculating method of QMV

For the new method to calculate the qualified majority it has been discussed once during the IGC of Nice Treaty[1]but finally come to be formalized until Lisbon Treaty. In the TFEU, Article 238 gives the basic rules of the new

[1] "A double majority system (50per cent of Member States and 50 per cent of population at the time) had been advocated during the Nice IGC by the smaller Member States, Germany and the Commission, but had been opposed by the other large Member States, particularly France and Spain." Piris, with a foreword by Angela Merkel, The Lisbon Treaty: A legal and Political Analysis , Cambridge university press, 2010，p.220

calculation of QMV which considers the proportion of the members (votes) in favor together with the representing population proportion of the EU. Furthermore, the Protocol 36 of Lisbon Treaty lays down the Transitional Provisions which divide the transitional years into three periods, which gradually adapt the new system until March 31, 2017. (See Box 1)

Box 1	**proposal from the Commission or the HR**	**If not**	**Check / Request (by a member)**
Now to 31/10/2014	255 votes	255votes + 2/3 of the members	Check: + 62% of the population
1/11/2014 to 31/3/2017	55% of the members + 65% of the population	72% of the members + 65% of the population	Request: by the former method above
After 1/4/2017	55% of the members + 65% of the population	72% of the members + 65% of the population	NO

The new standard "population" means much more than wide-representing. It is a sign of politics and the ideal of democracy. For the EU was established on the base of the democratic agreement, it is not doubtable that the factor of population become a threshold sooner or later.

When Germany reunified the early 1990s, German population rocketed to the very top among the Member States. Since then, Germany never stops its step to ask for more voting weights and seats in the Council and also the Commission and the Parliament. Especially in the Nice IGC, "since the double majority

system being opposed by France and Spain, Germany requested and obtained an additional procedure "the population safety net", under which (art.205(4)TEC) a Council member may request verification that Member States constituting the qualified majority represent at least 62 per cent of the total population of the Union."[2]

Once population is mentioned, nationality always stands out as the standard. But, with the internal market policy (esp. free-movement-of-persons), EU citizens who have "moved" from their original countries, especially the ones are holding the resident permit for more than three months, have relatively fewer links with their home member states while more close relations with the host member states and may attain an interaction with the social, economic and even political life of the host member states.

There is the case whether the measurement should calculate these well social integrated persons as the "population" defined in the Treaties' provisions, who are increasingly representing the requirements of the host member state to a certain extent, which should not be ignored. In addition, the persons who hold dual-nationality may be another question on the population calculating. Then, the "residents with the EU citizenship" may be interpreted as the "population" in the light of Art.238 TFEU.

Besides, whether the people with foreign nationality who are legally reside in the EU can be concerned when the Council is making the decision caring about the ordinary EU affairs (not concerning about the border control or immigration law)?

A similar case in China, big cities, like Beijing and Shenzhen, have being embraced a huge number of persons from other provinces. And the people from

[2] Piris, with a foreword by Angela Merkel, The Lisbon Treaty: A legal and Political Analysis, Cambridge university press, 2010, p.220

"outside" have been a necessary and vital part of the development of the host cities, which force the government and Chinese Congress of People's Representatives to seriously concern about those group of people when they are making decisions about the country's or the cities' routing affairs.

Maybe the situations are different because of the distinction between a member state inside an international organization and a city inside a country, but the aim of social representing is the same. The quantity of persons which a member states contains at a certain time concerns lots of account on the social resources, the scale of functioning of the state regime and even the general state interests. More people, more state interest involves. Vice versa, if a member state have a large proportion of nationals living abroad (like Romania) where in the Council it still vote according to the original population statistic, how do other Member States react? Or even more in the case that if the Romanian migrants flood to another Member State (for example Italy) where the host Member State's population voting weight does not increase on behalf of the acceptance of the migrants, whether will the host Member State argue for change? In so far, we have not seen the rule of population measurement. But it should not be ignored in the soon coming implementation of the new Qualified Majority Voting system.

The new QMV has been "striking a compromise between the large and small EU member states".[3] Before the new QMV system, there are three voting method: Simple Majority Voting, Qualified Majority Voting and Unanimity.

The Simple Majority Voting gives each Member State the same weight in which the small Member States do not have different voting power comparing with their large counterparts.

[3] Gron and Wivel, Maximizing influence in the European Union after the Lisbon Treaty: from small state policy to smart state strategy, Journal of European Integration Vol. 33, No. 5, 523-539, September, 2011, p527

In Unanimity, any single Member State has a veto power to block the adoption of a draft act no matter the size of the country.

The ever existing Qualified Majority Voting has favored the large Member States more than the small ones. Because the voting weights varies according to the size and "it is easier for the large states to build a successful coalition,… and it also becomes impossible to form a blocking minority without the participation of the large member states"[4] In order to balance the voting power inside the Council, particularly with an ever enlarged and diversified EU, the new QMV system requires double thresholds, proportions of both members and population in favor, in every case requiring a qualified majority in support.

2. Majority and Minority

The process of negotiation to come to an agreement of the two threshold of QMV is another stage on which Member States take full use of their efforts to protect their national interests.

Larger states thought the population threshold was too low comparing the ever existing voting weight. While the smaller states argued that the standard of population proportion was too high for them to stop an act when the standard of members in favor was easily met.

In general, on one hand, Member States take into account of how to constitute a qualified majority and prevent being outvoted. On the other hand, they calculate how to achieve the blocking-minority power. In both of these two scenarios, Member States naturally think of an alliance among themselves to create a sort of power to protect their similar national interests. Although the negotiators may act as mathematicians on amending the Treaties, the group of majorities or minorities varies almost all the time according to national interests

[4] Gron and Wivel, Maximizing influence in the European Union after the Lisbon Treaty: from small state policy to smart state strategy, Journal of European Integration Vol. 33, No. 5, 523-539, September, 2011, p527

case by case.

Theoretically, on one hand, if we rank all the MS according to their population (See Box 2), the voting weights summed up of the top 5 MS (Germany, France, the UK, Italy and Spain) have already occupied a proportion of population of 62.4%. They are Member States with a long history of EU membership which have sailed the big ship full of experiences and they may in large chances have closer links and interests in common with each other rather than with the younger members into the EU. If they combine as a group and persuade another 10 Member States to vote on the same side, in the light of the great disparity in voting weight and population proportion and the probability of divergence among the others, they may easily lead the trend (or even dominate) in the Council.

However, at the same time, the blocking minority according to Lisbon Treaty is "at least four members". As far as the majority can come to collect much easier, there is still an easy remedy to block when some Member States may strongly oppose to an act.

As far as I am concerned, the scenario above may rarely happen.

For the European Council by now has been the role of political negotiation on high politics, the EU's priorities have been set largely upon it. When a controversial issue comes to the necessity of EU legislation, the heads of government or states will meet firstly to discuss and comprise in European Council. As a result of the agenda setting and framework idea agreed made by the European Council after that negotiation, the debate then in the Council will not be as severe as the Member States required to form a coalition of blocking minority.

In the case of low politics, the Council deals with the draft acts issue by issue, splitting the whole piece into points for the negotiation among Member States, to

find most largely support step by step. Consequently, the Council frequently can adopt the acts with the amendments on which almost all the members agree. The details of negotiation and working practice in the Council will be discussed in the following section.

On the other hand, new rule of QMV on the 55% majority of the members counts more favor for the small Member States. For the situation before the new rule applies, the majority in the Council is 255 votes out of in total 345votes. And from 1st of July 2013, Croatia came in to EU membership which alter the total votes from 345 to 352; qualified majority as 260 instead of 255. The voting-weight links to the population of the Member State. Although the voting power per capita of small Member States is over weighted than the larger ones, the majority voting counts the absolute number of votes of which small ones still possess fewer votes. When new rule comes into force, the voting weight will be waved off and the majority counts on the numbers of the Member States in favor, in which the voting power per state and the absolute number are the same between the larger Member States and the smaller ones, and the latter are considered to be well protected.

Box 2	**Transitional period of Lisbon Treaty**		**Lisbon Treaty after 1st Nov. 2014**	
MS	**votes**	**（%）**	**population**	**（%）**
Germany	**29**	**8.2%**	**80,523,700**	**15.9%**
France	**29**	**8.2%**	**65,633,200**	**12.9%**
United Kingdom	**29**	**8.2%**	**63,730,100**	**12.6%**
Italy	**29**	**8.2%**	**59,685,200**	**11.8%**
Spain	**27**	**7.6%**	**46,704,300**	**9.2%**
Poland	**27**	**7.6%**	**38,533,300**	**7.6%**
Romania	**14**	**4.0%**	**20,057,500**	**3.9%**
Netherlands	**13**	**3.6%**	**16,779,600**	**3.3%**

Belgium	**12**	**3.4%**	**11,161,600**	**2.3%**
Greece	**12**	**3.4%**	**11,062,500**	**2.2%**
Czech Republic	**12**	**3.4%**	**10,516,100**	**2.1%**
Portugal	**12**	**3.4%**	**10,487,300**	**2.1%**
Hungary	**12**	**3.4%**	**9,908,800**	**2.0%**
Sweden	**10**	**2.8%**	**9,555,900**	**1.9%**
Austria	**10**	**2.8%**	**8,451,900**	**1.7%**
Bulgaria	**10**	**2.8%**	**7,284,600**	**1.4%**
Denmark	**7**	**2.0%**	**5,602,600**	**1.1%**
Finland	**7**	**2.0%**	**5,426,700**	**1.1%**
Slovakia	**7**	**2.0%**	**5,410,800**	**1.1%**
Ireland	**7**	**2.0%**	**4,591,100**	**0.9%**
Croatia	**7**	**2.0%**	**4,262,100**	**0.8%**
Lithuania	**7**	**2.0%**	**2,971,900**	**0.7%**
Slovenia	**4**	**1.2%**	**2,058,800**	**0.5%**
Latvia	**4**	**1.2%**	**2,023,800**	**0.4%**
Estonia	**4**	**1.2%**	**1,324,800**	**0.3%**
Cyprus	**4**	**1.2%**	**865,900**	**0.2%**
Luxembourg	**4**	**1.2%**	**537,000**	**0.1%**
Malta	**3**	**0.9%**	**421,400**	**0.1%**
Total	**352**	**100%**	**505,572,500**	**100%**
Qualified majority	**260**	**74%**	**328,622,125**	**65%**

Sources from:
Protocol No. 36 of Lisbon Treaty;
For the time being, Croatia came in to membership from 1 July 2013, which alter the total votes from 345 to 352; qualified majority as 260 instead of 255 or 15 Member States not 14 anymore
(from "voting calculation" on the website of Council of EU: http://www.consilium.europa.eu/council/voting-calculator?lang=en)
The population statistics form origins from:
http://en.wikipedia.org/wiki/Council_of_the_European_Union

Comparing with the Commission, which stands for the general interest of the Union, the Council is representing the national interests. This existing phenomenon shows the scientific logic in the system of EU institutions. Since the Union is a union of states, to transfer parts of the sovereignty to the collective authority is truly necessary, and vice versa, the union calls for collecting the diverse interests of its membership to guarantee its stability of development. Then, the design of the Council is more like a link or so called a bridge between the Union and the government in the Member States----in the Union, members (exactly the COREPER and government-man) of the Council defend the interests deriving from their original states or more exactly the requests of their government who sets the national priorities and the casts political consideration on their internal competition; at the same time inside the states, the ministers who attend the Council may show the people their victory in the Council when an act adopted wins largely support by their people, or otherwise perform to be sorry and helpless to stop an action taken by that European institution in the case that the act attracts domestic critics.

In the procedure of the legislation in the EU, QMV itself is an essential characteristics differentiating EU from other international organizations. Then there exists the minority whenever there are negative votes. Thus, not the same as ordinary international agreements, acts may pass in the Council without consensus and this is a sort of national sovereignty under which circumstances national interests must be highlighted during the previous negotiation or there is no stage to request it any more on the issues concerned.

So the Council balances itself due to its nature of a show stage and game ground of national interests.

3. How and where to negotiate to reach a qualified majority?

The central negotiations take place among the COREPER (Committee of

Permanent Representatives of the Governments of the Member States[5]). The COREPER has been divided into two level: COREPER Ⅰ and COREPER Ⅱ. The former one is composed by of deputy permanent representatives, while the latter consists of permanent representatives of ambassadors. The tasks differ among the two as well. COREPER Ⅰ deals with "environment, social affairs, the internal market and transport"[6] and so on. COREPER Ⅱ is "responsible for more sensitive issues, such as economic and financial affairs and external relation".[7]

There are 250 working groups of national civil servants assisting the COREPER. When a Commission proposal is sent to the Council, it first comes before the working groups. After the analysis of the groups, a report would be handed over to certain COREPER level indicating which issues have been agreed in the groups and which are still calling for discussion in COREPER who will examine them and reach to agreements directly.

Indeed, real negotiations often take place inside at COREPER level in order to arrive at a text which is acceptable to all Member States, or at least to enough of them to reach a qualified majority when this is provided for.[8]

However, the COREPER and its working groups do not meet publicly or they achieve an agreement during the lunch time. Besides, "The minutes are not published and the COREPER is not accountable to any parliamentary assembly"[9]. Therefore the accountability and transparency are to be challenged with COREPER. Since the real "transparency" of the Council should be laid in

[5] Art.16 (7) TEU, Art. 240(1) TFEU
[6] Chalmers, Davies and Monti, European Union Law, second edition, Cambridge University Press, 2010, p74
[7] Ibid.
[8] Petrus Servatius Renoldus Franciscus, Guide to European Union law : as amended by the Treaty of Lisbon, Sweet & Maxwell, 2010, p.103
[9] Chalmers, Davies and Monti, European Union Law, second edition, Cambridge University Press, 2010, p75

COREPER, by now the true transparency for the Council has not come true.

4. Conclusion for the section

Although in the Council's daily decision-making practice, the consensus is the common situation among all the members in the Council, 1st November of 2014 is coming soon. No one can guarantee that under the new rule of voting, the consensus situation will still domain, since the cost of passing an act will be remarkably lower than before and the rational choice may drive Member States to consider the efficiency more than a big happy family.

However, as far as I am concerned, the effect of deterring of new QMV implementation is of much more significance than actually to vote. The trend to form majority and minority in a draft act becomes the barging counter in the negotiation before the real voting. On one hand, the tough minority could threaten to be the blocking minority when vote if their interests cannot be satisfied. On the other hand, the weak minority are afraid to be isolated so that they either draw their swaying counterparts by promising to exchange their support in another draft act which is more benefit for the latter; or trade their supportive votes with the majority Member States for some special offers.

So in general, the new innovation of double qualified majority voting may not be really implemented in the Council. Its effects are much more laid in the phase of pre-vote negotiation, for example it may alter the hardness of the Permanente Representatives or the Presidency to collect considerable supportive opinions.

The new QMV system benefits the fulfillment of the Council's legislative function. On one hand, the changes increase the in efficiency of decision-making in the Council in theory. On the other hand, it deepens the distinction of EU from ordinary international organization, and even dilutes the Council the tone of

inter-governmental institution, which makes the Council more like a functional organ to provide legislative services for the whole EU. However, if the gray area of COREPER negotiation still exist and the Member States are overly full of enthusiasm about votes trading, the functional role of the Council can be reduced.

SECTION 2. PRESIDENCY

Aiming to a greater effectiveness, continuity and consistency decision-making in the Council, new rotating Presidency has been modified by the Lisbon Treaty.

1. Introduction of the new Presidency framework

1.1 General structure according to the Treaties

Art. 16 of TEU, as the leading provision on the Council among the Treaties, generally offers another innovation, the new Rotating Presidency scheme.

Referring to Council's construction, Art.16 TEU rules that the Council shall contain different configurations and the Presidency shall chair all the configurations (other than Foreign Affairs) by way of rotation. (Art.16 (6), (9) TEU).

However, the details of the construction have been left to Art. 236 of TFEU which provides that European Council shall adopt decisions on these two detailed parts of construction of the Council.

Besides the provisions ruling on the Council itself, there are other provisions according to Lisbon Treaty helping to build the new framework of the Council by ruling on other actors within the EU.

Firstly, Art.15 TEU creates the permanent president of European Council. As a result, the Council's rotating Presidency framework will no longer include the chairing of the European Council as before.

Secondly, Art.18 (3) rules the chairing of the Foreign Affairs Council by the High Representative. That is the sign of divorce of the former General Affairs and External Relations Council into two configurations ---- General Affairs Council and Foreign Affairs Council. To be continuing, the Council's rotating Presidency loses the chairing power upon Foreign Affairs Council. In addition,

on behalf of Art 30(2) TEU, the power to "convene and extraordinary Council meeting" belongs to the High Representative, which formerly was within the Council presidency.

Therefore, the rotating presidency of the Council remains its rotating characteristics but loses previous presidency power over the European Council and the Foreign Affairs Council.

To be continued, the Euro Group, which is not a formal configuration of the Council, has its own president elected by the ministers of Member States where the currency is the Euro. That is to say that the rotating presidency of the Council does not preside this informal ministerial meeting either. (Art.1 and Art .2 of Protocol No. 14)

1.2 Arrangement of the Presidency list according to Decisions

Besides the legal basis in the Treaties above, due to Art.236 TFEU, we have got several Decisions prescribing the details on structure of the Council. For instance, European Council Decision of 1 December 2009 on the exercise of the Presidency of the Council (2009/882/EU) and then Council Decision of 1 December 2009 (2009/908/EU).

In the two Decisions above, 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. And as the meanwhile "each member of a group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration." (Art. 1(2) of European Council Decision of 1 December 2009 (2009/882/EU))

The principle to make up the groups is on basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union. (Art.1(1) of European Council Decision of 1 December 2009

(2009/882/EU)).

The method of settling the group of rotation presidency and its order lays down to the negotiation in the IGC before Lisbon Treaty and the following "pre-established groups of three Member States" which has been arranged in "Council Decision of 1 January 2007 determining the order in which the office of President of the Council shall be held (2007/5/EC, Euratom)" and has been reconfirmed in Annex I to Council Decision of 1 December 2009 (See Box 2).

Box 2. List of rotating Presidency of the Council		
Germany	January - June	2007
Portugal	July - December	2007
Slovenia	January - June	2008
France	July - December	2008
Czech Republic	January - June	2009
Sweden	July - December	2009
Spain	January - June	2010
Belgium	July - December	2010
Hungary	January - June	2011
Poland	July - December	2011
Denmark	January - June	2012
Cyprus	July - December	2012
Ireland	January - June	2013
Lithuania	July - December	2013
Greece	January - June	2014
Italy	July - December	2014
Latvia	January - June	2015
Luxembourg	July - December	2015

Netherlands	January - June	2016
Slovakia	July - December	2016
Malta	January - June	2017
United Kingdom	July - December	2017
Estonia	January - June	2018
Bulgaria	July - December	2018
Austria	January - June	2019
Romania	July - December	2019
Finland	January - June	2020

To examine the list of the rotation, within the recent years from the beginning of rotating presidency after the coming into force of Lisbon Treaty, there is no larger Member States in the groups of presidencies, except for Poland in the second half of 2011, which was ever assumed to dilute the "risk overshadowing the rise of the two new 'institutional' presidencies" [10](the European Council Presidency and the Council Presidency) and now proved to be a successful Presidency.

In this case, the two new born actors of EU ---- President of European Council and High Representative----may work on their position, at least in early years of power growing and the transitional phase of the Treaties, in a relative concentrated way without overwhelming pressure coming from the rotating Presidency.

1.3 Chairing the configurations and the preparatory bodies thereof within

[10] Joint study of CEPS, EGMONT and EPC, The Treaty of Lisbon: a second look at the institutional innovations, September 2010, p.72

the Council

Firstly, according to Art.16 TEU, the rotating Presidency in the Council chairs nine out of ten configurations, except for Foreign Affairs Council. Mentioning about the configurations in the Council, Lisbon Treaty has given a design to separate General Affairs and External Relations Council into two and only General Affairs Council and Foreign Affairs Council have been settled directly by the Treaties (Art.16 (6) TEU). The pre-existing list of the configurations was ruled in Annex I of Council Decision of 15 September 2006 adopting the Council's Rules of Procedure (2006/683/EC, Euratom) which has been latest published on 1 January 2009 (see Box 3.). Now, under Art.16 TEU and Art. 236 TFEU, the amendment of these configurations, other than General Affairs Council and Foreign Affairs Council, calls for the decision of European Council by QMV.

Box 3.LIST OF COUNCIL CONFIGURATIONS

1. General affairs;
2. Foreign affairs;[1]
3. Economic and financial affairs;
4. Justice and home affairs;
5. Employment, social policy, health and consumer affairs;
6. Competitiveness (internal market, industry and research);
7. Transport, telecommunications and energy;
8. Agriculture and fisheries;
9. Environment;
10. Education, youth and culture.

[1] After Lisbon Treaty, General Affairs and External Relations Council has been divided into two configurations: General Affairs Council and Foreign Affairs Council.

Secondly, by European Council Decision of 1 December 2009 (2009/882/EU) the presidency shall chair over the preparatory bodies, other than the ones of

Foreign Affairs Council. At the meantime, Annex II to Council Decision of 1 December 2009 (2009/908/EU arranges the chairing of almost all the key preparatory bodies of the Foreign Affairs Council to representative of the High Representative. Then the rotating Presidency transfers the chairing of these categories of preparatory bodies to the outside world of its own working schedule.

Article 2 of European Council Decision of 1 December 2009 (2009/882/EU) provides that "the Committee of Permanent Representative of the Governments of the Member States shall be chaired by a representative of the Member State chairing the General Affairs Council." So, the COREPER is still under supervision of the rotating Presidency, as mentioned in "How and where to negotiate to reach a qualified majority" of this paper, which plays a key role in examining the proposals and negotiation during the procedure of legislation which now is the key character of the Council. It is notable that although the affairs referring to CFSP mainly fall within the task of the High Representative and the EEAS, since the COREPER II still plays the important role of negociation on vital decisions and horizontal affairs, "this allows the rotating chair to exert its influence over the preparations of the Foreign Affairs Council meetings."[11]

Thus, the functional role of the presidency will be made full use inside the legislative institution on an essential level.

2. Influence by the changes of the new presidency

2.1 Internal effects

The rotation is not a consequence of collective leadership. Though there are

[11] Szabo, Background vocals: What role for the rotating presidency in the EU's external relations post-Lisbon? Department of EU International Relations and Diplomacy Studies, EU Diplomacy Papers, May 2011, p.9

groups on the list of rotation, which each contains three Member States each time, it is cooperation rather than transformation to a collective leadership. Until now, the first and the second Trio had not practiced to share all the 18 months. Since each Member States has a duty or a power to chair all the configurations for six months, the other two in the membership in the 18-months presidency group " 'assist' the Chair in all its responsibilities on the basis of a common program"(Art.1(2) European Council Decision of 1 December 2009 (2009/882/EU)). And at the same time, it is a real collective cooperation scheme under which the Presidential Trio makes decisions and implements on the requirements of continuity and consistency in a relative long term of 18 months.

For the detailed constituent and responsibility have not been codified in any legal instrument, the presidency Member States are contributing to the sample establishment. In practice, the members of the Presidency Trio have learned to cooperate and the civil servants from the three countries shall assist each other.

For example, one and a half years before the beginning of the first Trio after Lisbon Treaty, Spain, Belgium and Hungary started to draft the Trio program which resulted in a detailed document and later the final document of a strategic frame work and an operational program containing the Trio's priorities and so on[12]. As the same, also from 2008, the cooperation of the second Trio member states has been launched.

Both of the two Trio came into a "joint Presidency program" at the end of their preparatory period. It ought to be a good sign of cooperation and consistency of Trio Presidency. Unfortunately, once the formal term of Presidency began, "the perceived utility and salience of the joint program declined."[13] The reason was that it was too long from drafting the joint program

[12] Beke, Review of the Belgian rotating presidency: from political to administrative leadership), SIEPS, 27/1/2011, p.49

[13] Batory and Puetter, Consistency and diversity? The EU's rotating trio Council Presidency after the Lisbon Treaty, Journal of European Public Policy, 20:1 January 2013, p104

to the third rotating Member State to start its term, which seemed to be outdated for the actual EU's priorities.

One crucial question lays in the changes and reformation in General Affairs Council.

The chairpersons of Council preparatory bodies have been fixed by Annex III to Council Decision of 1 December 2009 (2009/908/EU). However, until now, the scheme of chairpersons in the Council configurations, especially General Affairs Council, has not been fixed like the preparatory bodies. According to existing legislation, Council Decision of 15 September 2006 adopting the Council's Rules of Procedure (latest published on 1 January 2009), it is for each Member State to determine the way in which it is represented in the Council, in accordance with Article 203 of the EC Treaty[14]; in the case of the General Affairs and External Relations Council, each government shall be represented at the different meetings of this configuration by the Minister or State Secretary of its choice, without saying which kind or level of Minister or State Secretary, vice or not, high or low ranking, Prime Minister or not, which may leave a vacuum for the coordination inside Council or between institutions.

Before Lisbon Treaty, most of the cases were that it was each Foreign Minister who attended the General Affairs and External Relations Council. Since the Foreign Affairs Council has been set as a separate configuration by Lisbon Treaty, Foreign Ministers of the Member States started to rarely attend the General Affairs Council. Instead, they fix their primary focus on matters in Foreign Affairs Council and "often delegate participation in the General Affairs Council to their deputies, state secretaries for European affairs, or even their permanent representatives"[15].

[14] Article 203 EC has been repealed by Article 2, paragraph 190 of Lisbon Treaty.
[15] Kaczynski and Byrne, The General Affairs Council: the key to political influence of rotating presidencies , CEPS, No. 246, July 2011, p.3

As far as situations on the rotating Presidencies after Lisbon Treaty, all of these presidency Member States have had their prime ministers or foreign ministers chair the Council presidency, which has not risked the functioning of rotating Presidency. However, until there is the legislative rule fixing the chairperson, discussions are necessary to avoid any negative impact on rotating presidency. Firstly, the participating membership instead of the Foreign Ministers don't have much experience of running the affairs in such a significant configuration which is the key preparatory role of European Council and the main actor in the horizontal coordination within the Council.

More exactly, due to the low ranking of these participants, "coordinating policy initiatives falling across several Council formations, since most of the other formations that the General Affairs Council would seek to coordinate are made up of more senior ministers"[16]. Although in fact within the Council's working practice it is the COREPER undertakes the coordination, it is a big question that in principle "coordination" should be the task of General Affairs Council. As a result, the rotating Presidency of the Council needs the General Affairs Council to be functional, at least to strengthen the political significance of the rotating Presidency itself.

The reformation is bound to be necessary. One of the possible solutions may be that "the rotating Presidency should have the opportunity for their prime minister or president to assume the chair of the General Affairs Council."[17] This solution could absolutely encourage all the other Member States to send higher ranking membership participating in General Affairs Council. Though we would have a more powerful configuration or even a more important institution, the faces on the rotating Presidency chairs will be observed again around the table in European Council. The double role may confuse the role of the Council between

[16] Kaczynski and Byrne, The General Affairs Council: the key to political influence of rotating presidencies , CEPS, No. 246, July 2011,p.3
[17] Ibid., p.4

a legislative one and a political one. Maybe it would be better to adopt a rule of fixing the chairpersons of the General Affairs Council strictly to the Ministers, forbidding delegating the participation to deputy or permanent representatives of the Ministers.

2.2 Inter-institutional effects

As the general observation above shows, the presidency of the Council will execute a role as the head of a legislative institution and as an associate with other institutions. And it "exchanged its former political and institutional role for a functional one, which might appear more prosaic, but is not insignificant."[18]

2.2.1 General review of EU external representation after Lisbon Treaty

Firstly, we had better to recall the situations before Lisbon Treaty.

Article 4 of TEU of the version of Nice Treaty gave the Rotating Presidency of the Council the power to chair the European Council; article 18(1) of the same version of the Treaty codified that the Presidency (of the Council)shall represent the Union in matters coming within the common foreign and security policy; last but not the least, article 24 of that Treaty conferred on the Council the power to authorize its Presidency, although assisted by the Commission as appropriate, to open negotiations of the agreements with one or more States or international organizations in implementation of common foreign and security policy (CFSP). In general, the old story was that the Council, or more exactly its Presidency, was one of the key players of the Union at the international stage, while the Commission had played a technical role on specific issues.

At present, on behalf of the entering into force of Lisbon Treaty, the Council has been suffering of losing both the chairmanship of the European Council and representing the Union at any level. The creation of President of European

[18] Joint study of CEPS, EGMONT and EPC, The Treaty of Lisbon: a second look at the institutional innovations, September 2010, p.72

Council shows to the outside world that EU has a unified representative at the highest CFSP level from now on, and he/she is the permanent actor in international scene (Art. 15(6) TEU); the EU's "foreign minister", the High Representative of the Union for Foreign Affairs and Security Policy, shall represent the Union on CFSP matters to conduct dialogue and express position on EU's behalf, which can be understood as a specific dealer on CFSP comparing with the President of European Council (Art. 27(2) TEU); the Commission shall ensure the Union's external representation with the exception of CFSP in general, which is always the institution dealing with high political but specific questions on the Union's part (Art. 17(1)TEU); the Union delegations, which are belongs to the system of European External Action Service (EEAS), shall represent the Union in third countries and at international organizations (Art. 221(1) TFEU).

As the consequence, there is no vacancy for the Council or its Presidency to represent EU externally in the primary law, which each actor concerning of the EU representation mentioned above has relatively clarified competence.

Therefore we can observe for instance that President Van Rompuy and Commission President Barroso were together as the EU's representation in G20; and also it was them who were appearing at the official meeting with the head of China in February 2012 in Beijing. The former represents the foreign policy's part and would shake hands firstly with heads of third countries, while the latter deals with the topics on trade and economic questions.

On the part of international agreement negotiation, the Council can never authorize its Rotating Presidency to undertake the task. Although the provisional expression is for the Council to nominate the Union negotiator or the head of the Union's negotiating team, regularly the Council chooses from the Commission

and the High Representative to open the negotiation, due to the discretion of the Council on the sort of subject policy concerned. According to Art. 218(3) TFEU, the Commission would be nominated as the negotiator on the subject matters other than CFSP which is the competence of the High Representative's.

In keeping with the previous versions of Treaty, Lisbon Treaty maintains the "special committee" composed of representatives from Member States in consultation when the negotiations are conducted (Art. 218(4) TFEU). The Commission or the High Representative shall consult this special committee constantly.

In practice, the content of the negotiation on the Union's position is not far reaching out of the Recommendations handed over by the Commission or the High Representative before the negotiator's nomination by the Council. During the negotiation, the special committee meets the negotiator quite regularly. Although, the special committee can not intervene in the conduct of the negotiation directly, or it cannot be understood as the double negotiator, the members of the committee often mediate and define a balance point among the Member States and also between the Member States and the third parties.[19] Therefore, the general position of the Council would not be ignored in the negotiation though there is no normal role for the Council; otherwise the agreements envisaged cannot be approved by the Ministers at the first phase within the EU legislative procedure thereinafter.

There is another type of situation when the subject matters of the international agreements are within the policies of shared competence for the EU and its Member States.

The primary law does not confer the negotiating power upon the Member

[19] Baroncini, L'Unione Europea e la procedura di conclusione degli accordi internationali dopo il Trattato di Lisbona, Cuadernos de Derecho Transnacional (Marzo 2013), Vol. 5, N º1, pp. 5-37, p.9

States, nor can the Article 218 of TFEU be interpreted as binomial negotiators to the Commission or the High Representative and the representative of the Council (like the Rotating Presidency). Furthermore, the Commission should definitely not negotiate on the Union's part as well as on the behalf of the Member States.

This problem came up during the negotiation of the Minamata Convention on Mercury. In May of 2010, the COREPER proposed to the Council to adopt a "hybrid act" to solve the question by authorize both the Commission and the Rotating Presidency in the negotiation concerning the policies of shared competence. The Commission was arguing the incompatibility with the Treaties. As a resolution and also a compromise, the Council adopted Decision 16632/10 addressed to the Commission: "to the extent that the subject matter of the agreement falls within the shared competence of the Union and of its Member States, the Commission and the Member States should cooperate closely during the negotiating process, with a view to aiming for unity in the international representation of the Union and its Member States". (Council Decision 16632/10, article 1(3))

In this way, the sample might be set that the representatives of the Member States would stand at the back of the Commission following the duty of loyal cooperation to ensure the unity in the international representation of the Union.[20] In practice, during the negotiations of the Anti-Counterfeiting Trade Agreement (ACTA), "the European Commission, which was responsible for conducting the negotiations, with the participation of the Presidency of the Council for matters under Member States' competence."[21]

[20] Baroncini, L'Unione Europea e la procedura di conclusione degli accordi internationali dopo il Trattato di Lisbona, Cuadernos de Derecho Transnacional (Marzo 2013), Vol. 5, N º1, pp. 5-37, p.13

[21] The Council of European Union, Preliminary Draft Reply to Written Question E-001791/2012 put by Martin Ehrenhauser (NI), paragraph 2

2.2.2 Relation with the President of European Council

Since the highest political function has been transferred to European Council and there seats now a permanent President, political negotiation shall mostly take place there and the Council does not hold in hands the process of command operating anymore. The fact of emerging the permanent President shall not be reversible, but the best way is to learn fast how to associate with Mr. President.

According to Art.15(6)(b) TEU, for the preparations for the work of European Council, the President of the European Council and the General Affairs Council (chaired by the rotating presidency of the Council) are on equal footing. That is to say that although to preside the European Council has become an old story for the rotating presidency, the rotating presidency still can influence the agenda-setting when prepare for the meeting of the European Council. And the logic of this association is that "the rotating Presidency retains full responsibility for the smooth operation of all Council configurations, apart from the Foreign Affairs Council, and that the smooth functioning of the European Council depends in large part on the functioning of the Council themselves"[22].

And in practice, at the early time of the new presidency "President Van Rompuy and the Spanish Prime Minister Zapatero were asked to prepare together the Union's position for the G20 meeting in Toronto on strengthening global financial discipline. Similarly, the six-month Presidency was associated ex officio with the remit to President Van Rompuy to improve economic governance.[23]"

Most successful was the situation of Belgian Presidency in 2010. As the fellow citizen of President Van Rompuy, the prime minister of Belgium acted supportively. As to the experience of Polish Presidency in the second half of year

[22] Joint study of CEPS, EGMONT and EPC, The Treaty of Lisbon: a second look at the institutional innovations, September 2010, p.72.
[23] Ibid, p.71

2011, Prime Minister Tusk and President Van Rompuy "were known to be conciliators and accommodating other perspectives. … Herman Van Rompuy's main task was the situation in the Eurozone, while Prime Minister Tusk focused on all other elements"[24] to lessen the burden of the former. As well as the other teamers in the second Trio, Denmark and Cyprus, "have supported the permanent chair holders and consequently no significant complications have occurred so far."[25]

In fact, both from the TEU provisions and the practice, the agenda-setting power of the European Council is quite forceful. Art.15 (1) TEU defines its function that *"*The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions." Though without legislative functions, the European Council sets the general priorities and thereafter the agenda for certain piece of legislation.

From President Van Rompuy came into the office, the European Council has been very active and they regular meet at least three times a semester. Especially the Lisbon Treaty came into force when the EU was exactly suffering the crisis. The high political forum has become more necessary in the crisis like a scheme dealing with emergency in order to seek effective solutions as soon as possible. In this light, the Council has to wait for the general deal achieved among the heads of Member States. Once there comes the framework agreement, the legislative task begins to walk into the workload of the Council.

For instance, the EU budget originally belongs to the business of the Council and the European Parliament. However, due to a lack of largely satisfactory draft act for the EU Multiannual Financial Framework from 2014, the crucial

[24] Kaczynski, Polish Council Presidency 2011: Ambitions and Limitations, SIEPS, 2011:op, p.55

[25] Najslova and Weiss, Who is afraid of the Cyprus EU Presidency? EUROPERM Institute for European Policy, Working paper,, June 2012, p3

negotiation happened in the European Council first. The Heads of government or states bargained the contribution of each Member States and each section of the budget as well, which would be the framework for the final legislative act adopted by the co-legislatures.

Other than the top issues in the EU, the Council can follow its own agenda setting by the Rotating Presidency or the Trio Presidency. For example, in the second Trio Presidency after Lisbon Treaty, President Van Rompuy dealt with Euro crisis while the Rotating Presidency worked on eastern partnership and so on.

The Council after Lisbon Treaty plays out to be the operation room for a giant factory which focuses on processing the draft act, which may probably be in the light of framework ideas by politicians in the European Council, by negotiations at low political or technical level to be legitimacy. But the Council is absolutely not the deputy of Presidency of European Council. Low politics does not mean "no politics". The design by Lisbon Treaty, which separates so much clearly than ever before the main political role and legislative functional role between the European Council and the Council, tends to attract the severe political competition mainly into the European Council and ease the ministers from the hotpot to concentrate on concrete legislative pieces. Only through the accomplishment of the Council's legislative function, the policy can become law.

To this extent, decision-making at a whole view would be more efficient on one hand; on the other, the legislative function and the accountability of the Council have been better perfected by waving off the high political role or at least by a consequence of collective decision rather than by individual politicians.

2.2.3 Relation with the High Representative of the Union for Foreign Affairs and Security Policy

Art. 2(5) of Council Decision of 1 December 2009 (2009/937/EU) Annex "Rules of procedure of the Council" states that "the High Representative…who may, where necessary, ask to be replaced by the member of that configuration representing the Member State holding the six-monthly presidency of the Council". That is the delegated power which the representative of rotating presidency may execute in the foreign affair field in the favor of EU.

The High Representative (now is Ms. Ashton) as a new official post assisted by EEAS, her workload is heavy and the EEAS is in the process of establishing and improvement, which Ms. Ashton and her team do not easily cope with such critical section of EU policies. The Council had the experience chairing the business on CFSP before. Either for the transitional period for the new distributing functions between the High Representative and the Council after Lisbon Treaty or for the better accomplishment on EU CFSP, it is without doubt that the Council Presidency is considerably qualified to be delegated when necessary.

The practice of this delegated power first happened within the Spanish Presidency that "the French minister represented HR Ashton at a conference in Montreal on aid for Haiti"[26]. The Hungarian Minister of Foreign Affairs Janos Martonyi "has replaced the High Representative on 14 different occasions during international meetings when Ms. Ashton was not able to participate."[27] When turning to Polish Presidency, Foreign Minister Radosław Sikorski chose to act as a loyalist to the High Representative. "He represented the Union not only in official meetings, but on official trips as well. He has been on a policy trip to

[26] Joint study of CEPS, EGMONT and EPC, The Treaty of Lisbon: a second look at the institutional innovations, September 2010, p.71

[27] Kaczynski, Polish Council Presidency 2011: Ambitions and Limitations, SIEPS, 2011:op, p.56

Afghanistan and Pakistan in that capacity, and on another occasion also to Libya."[28]

In general, the cooperation between the presidency of the Council and the European Council or the High Representative is not only for the purpose of continuity and cohesion at institutional level, but also a method through which the rotating presidency restores its lost power in the Lisbon Treaty. By dividing functions and responsibilities between the Council and the above mentioned actors, the Council's function has been emphasized on the EU internal managing, which makes the Council's legislative function prominent.

3. Case study ---- practice of the new rotating presidency

To examine the practice of the new rotating Presidency in the Council is a research of dynamic. Here takes Belgium and Poland as case study.

3.1 Belgium in the First Trio

Though started to prepare very early for the presidencies, the first Trio played a more transitional and administrative role. The outstanding performance was by Belgium, while Spain and Hungary were low-profiled.

Before Belgium took the chair in the rotating presidency, Spanish presidency did not achieve as a good starter for this new system. Spanish domestic situation was optimistic and stable. However, "after the first few weeks, Prime Minister Zapatero appeared detached to the outside world. This did not help the Spaniards in coordinating Presidency meetings"[29]. And Spain seemed not willing to pass the power to the president of European Council. The task of implementing the Lisbon Treaty to fulfill the obligation actively had been left to Belgium which was in the second turn thereafter.

[28] Kaczynski, Polish Council Presidency 2011: Ambitions and Limitations, SIEPS, 2011:op, p..
[29] Ibid.

Fortunately, Belgium has set a better sample. Firstly, known as an advocate of European integration, "Belgium is not only more maximalist than Spain's, but also different from the one Hungary seems to have in mind"[30], while Spain and Hungary are the group mates in the rotation. Belgian Presidency took its independent efforts to "full implementation of the Lisbon treaty and the realization of legislative output"[31].

Secondly, Belgian rotating Presidency deals with the institutional relations. The first rotating Presidency was Spain and it did not want pass its former power to the new permanent President of the European Union. As the first Rotating Presidency after Lisbon Treaty, Spain has undergone the bitter feeling of witness the permanent Presidency of European Council to undertake the competence which had been the Rotating Presidency's cup of tea. The mass media in Spain revealed this ironic tone that "Essentially, Zapatero's competences will be the same as those of the preceding 'rotating' Presidents with the exception that the Belgian will preside over all summits with the Spaniard on his side, according to the compromise adopted by both."[32] When times came to Belgian Presidency, Belgium naturally supported the permanent one not only because Mr. Van Rompuy is a national of Belgium, but also due to the domestic power vacuum which did not challenge the permanent Presidency or the High Representative where the government of Belgium at that time was a caretaker one resulting from the failure of forming a new government by election. An additional act, unlike its peer of Spain, was to make the High Representative a top priority to overcome any ambiguity on the EU's external representation and to support the High Representative in the challenging task of creating the External Action

[30] Drieskens, Van Hecke and Bursens, The 2010 Belgian Presidency: driving in the EU's back seat, SIEPS, 2010, p.12
[31] Ibid, p.10
[32] Batory and Puetter, Consistency and diversity? The EU's rotating trio Council Presidency after the Lisbon Treaty, Journal of European Public Policy, 20:1 January 2013, p105

Service.[33]

Last but not least, Belgium avoided the influence coming from its own domestic society. At the early days of Belgian Presidency, the internal difficulty of government changing resulted from the coalition parties losing significant support. The government changing had invoked doubt whether it would delay the decision-making in the rotating presidency in the Council, because in Belgium the cabinets belonged to the former national government who were the experts and "spiders" in the presidency web would be "replaced by new political appointees without much knowledge of the ongoing agenda"[34]due to the national political changing. Proved by facts, "Belgium was able to force breakthroughs and to manage severe crises. It seems to be a tradition that Belgium, as a small and pro-integration member state, often chooses to serve European goals rather than to defend its own interest. And it has no tradition of pushing hard for its own interests, but opts instead for supporting the common European interest"[35]. Belgium is a role as an advocator, but it is not always the case that other rotating Presidency Member States will do the same. Thus, the internal affair may probably affect the fulfilling of the Presidency.

However, Belgium has not set a blueprint of a typical Presidency. Though the chairing person of the rotating Presidency should have been the Prime Minister of Belgium, that person was one of the ministers in the government of former Prime Minister Van Rompuy. Second, chairing person was in a caretaker government who had a limited competence of administration, which had no power to challenge the permanent President of European Council.[36]

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[33] Beke, Review of the Belgian rotating presidency: from political to administrative leadership), SIEPS, 27/1/2011, p.4

[34] Drieskens, Van Hecke and Bursens, The 2010 Belgian Presidency: driving in the EU's back seat, SIEPS, 2010, p.46

[35] Ibid.

[36] Kaczynski, How to assess a rotating presidency of the Council under new Lisbon rules: the case of Hungary, CEPS, No.232, February 2011

3.2 Poland in the second Trio

Poland was undoubtedly the most powerful member in the second Trio of rotating Presidencies. Not because of its size of the country, but also for its ambition to become a heavyweight Member State in EU even though as one of the newer Member States. So as to its political ambition, before Polish Presidency, Mr. Mike Beke in his article predicted Poland might exercise a stronger political approach and challenge the role of the permanent President of European Council and of the High Representative.[37] In reality, Poland has performed much better than expected.

Above all, the government has been sang high praise widely for the long-time preparation on its presidency. Poland started to prepare for the Presidency since 2008. And one year before its turn, the entire Polish cabinet visited to Brussels in order to get known in advance. Then it "started with a tremendous cultural and political offensive with widely praised exhibitions across Europe, and a very well received speech on the EUs challenges in the European Parliament by Prime Minister Tusk"[38]. These activities helped Poland to go really smoothly at the beginning of its first time rotation.

Secondly, similarly as Belgium, "few national priorities have been pushed forward during the Polish Presidency"[39]. A national election in the mid-term of Polish Presidency has not distracted it from running a satisfactory Presidency. Better than Belgium, the parliamentary election was not out of the anticipation of people without changing the political situation in Poland, which helped to ease the possible impact coming from domestic aspect.

Furthermore, even outside the Eurozone, Poland set its priorities firstly on

[37] Beke, Review of the Belgian rotating presidency: from political to administrative leadership), SIEPS, 27/1/2011, p.4
[38] Kaczynski, Polish Council Presidency 2011: Ambitions and Limitations, SIEPS, 2011:op, p.44
[39] Lehtonen, Pro- European Presidency: Poland on the way to the club of heavyweight EU members, September 2011, P.8

economic growth of EU and treated European integration as a source of growth. However, the traditional giants in European Union was not waiting for their turns in the Presidency list quietly, but by exerting their impact in the Euro Group , since the integration of the Europe is still much more leaning to the economic (monetary) phase. Poland was very active to participate in dealing with the euro crisis, but finally "was not even invited to the extraordinary summit of the heads of state of governments of the Eurozone members of 21 July 2011."[40] The reason was simply because "while other members of Eurozone would to support the Polish Presidency to help in the adoption of 'Stability and Growth Pact', France vetoed the participation of Poland's Finance Minister in the Euro Group meetings." [41] Therefore, Poland turned to operate on other aspects, sincerely supporting President Van Rompuy dealing with the euro crisis, without neither challenging the permanent President nor becoming inactive. And also, the breakthrough in Euro zone actually lays in Germany and France. Mentioning these two greater powers, Poland was willing to cooperate with them, since closer relationship with greater powers within the member state of EU helps Poland to further grow its influence. Simultaneously, Germany and France require the support coming from Poland which is the eighth largest country and sixth most populated member state of EU, and is Germany's most important eastern trading partner after Polish membership of EU, also has the frontier with Ukraine (the largest country in the eastern Europe), last but not least, Poland was one of the few EU countries which have had positive economy growth during the difficult time for EU. Besides, Poland and other non-euro member states are waiting for the stability of Euro to intend to adopt the currency of Euro. It can be imagined therefore that it will be a win-win situation if Poland, as a powerful economy, becomes the member state of Euro Zone.

[40] Kaczynski, Polish Council Presidency 2011: Ambitions and Limitations, SIEPS, 2011:op, P.50
[41] Ibid p.50,51

Fourth, on the frontier of the eastern border of EU, Poland has held the strong will to act as an honest broker both in the free trade areas covered by Eastern Partnership and eastern enlargement of Schengen. Even following the veto to Schengen enlargement to Romania and Bulgaria during September 2011 in Justice and Home Affairs Council, Polish Presidency was still seeking to find a solution on the level of European Council.[42]

Last but not least, as mentioned in paragraphs of 1.2.2.1 and 1.2.2.2 above, Polish Presidency set a good sample of cooperation with the EU actors (President of European Council and the High Representative). Although Poland was unable to work out in the issue of euro crisis, its administrative role was impressive.

Although the some certain issues (e.g. economic crisis, enlargement of Schengen area) have not achieved at settled-down level in just six-month long Polish presidency, Poland has proved that her leaders and nationals are mostly positive towards Europeanization and also her desire to get involved deeper into the EU issues is benefit for both Poland's and EU's growth. Polish Presidency has indeed severed the aim of building her heavyweight in EU. More significantly, as one of the most pro-European Member States, Poland gives EU a great chance of growth in its competence. Polish presidency is rather a good beginning than an end of the Poland's performance as a rapidly growing entity.

3.3 Non-closed assessment of the third Trio

Before the conclusion of this section, for the time being, I would like to write down some non-closed assessment for the third Trio before its very end.

The third Trio began from January of 2013, lasting until June of 2014, composing Ireland, Lithuania and Greece. Comparing with the first two Trios,

[42] Kaczynski, Polish Council Presidency 2011: Ambitions and Limitations, SIEPS, 2011:op, p.55

this team seems to be less powerful from political or economic influence. In an overall view, within the third Trio, by now, the most significant remark is the adoption of the Multiannual Financial Framework 2014-20 (MFF) in December of 2013. Whereas, the MFF had been negotiated between the Council and European Parliament for two and a half years, which cannot be counted to the unique effort made by the third Trio.

In the mid-term of the Irish presidency, the chairman of the General Affairs Council complained about the absence of representatives from European Parliament for the negotiation with the Council. By stating the good faith of the Council itself, the chairman expressed regret for the uncooperative position of European Parliament at that moment. As far as the agreement reach within the European Council in February 2013, the Council was facing an optimal perspective by wiping out obstacle from Member States on behalf of the general mandate[43]from the former. However, the European Parliament seemed to be the tough stone on the way from the view of Irish presidency. The chairman strongly suggested the European Parliament not to combine the MFF together with the amending annual budget of 2013, and the Council itself had behaved quite cooperative for the communication with the former. By stressing the negotiation on the MFF should run in parallel with the amending budget 2013, the Council illustrated its innocent for the possible fruitless or delayed negotiation with the European Parliament.

Lithuania became membership of EU in 2004. It was the first time for it to take the turn as rotating presidency from July to December of 2013. This Balitic sea country was demonstrating its sincerity to be involved in EU affairs. As an eastern European country, just like Poland, Lithuania willed to show its

[43] Eamon, A Mid-Term Assessment of Ireland's Presidency of the Council of the EU, Brussels, 25 April 2013,
http://eu2013.ie/media/eupresidency/content/speeches/Tanaiste-at-CEPS-25042013.pdf , p6

supportive gesture to the EU rather than the historical influence from Russia. The main intention of Lithuania can be considered as promoting its national culture, economy and being well known by the rest in the Union. As the same with Poland's situation mentioned above in the case study, Lithuania was out of the decision-making center of Euro Group, but set such as Eastern Partnership and regional cooperation in Baltic region as the ones of the key priorities. To this extent, Lithuania was more or less the same role as Poland who winded away from euro crisis but to contribute to the eastern neighborhood policy of EU and to "strengthen its position in the EU as a reliable Member State"[44].

Greece took over the torch from January 2014. Although Greece intended to "promote the idea that the country is an equal partner in the EU system of governance" [45], its presidency has been anticipated as "cannot be the standard-bearer for a pro-European message"[46]. This is not only because that it has been in the swirl of euro crisis for a considerable time, but also for its poor leadership resulting from internal political and social implosion.

For the running of office as rotating presidency, Greece would cost 50 million euros. Although this presidency budget was pretty lower than that of Ireland (60 million euros), the amount of money seemed to be a burden where the Greek government is facing with more than 300 billion worth of debt[47]. German had stressed that Greece should resign from its rotating presidency. Nevertheless Greek presidency came into office on schedule. Due to the low amount of the presidency budget, the Greek government has to employ no more

[44] Guide to the Lithuanian Presidency of the EU Council, Designed & produced by: Hill+Knowlton Strategies Brussels in conjunction with the Permanent Representation of Lithuania to the European Union, May 2013, http://static.eu2013.lt/uploads/documents/PDF_dokumentai/Lithuania%20Presidency%20Guide_HR%20red%20small.pdf, p12

[45] Chatzistavrou, Defying the Oracle? The 2014 Greek Presidency of the EU Council, EPIN working paper, No.36, February 2014, Abstract

[46] Ibid.

[47] Ibid, p3-4

than 150 employees, and "the Office of the Greek Presidency employs a total of 27 people to meet the needs of the presidency concerning the planning, coordination and promotion of all activities at national the European level during its tenure" [48]. Furthermore, the staff secondments supporting the operation of Permanent Representation's office took place without always using the appropriate selection procedure [49]. Besides, as a coincidence, the parliamentary and regional election will be held in May 2014 when will be also the election period for European Parliament (EP8). In this sense, EU legislative activity will be actually just last for three months before April, which has shortened the legislative period for Greek Council presidency, on one side; Greece cannot provide strong leadership due to its internal political situation from the point of view of Doctor Filippa Chatzistavrou in her article[50] on the another side. For the trapped economy, Germany, as the main contributor for rescuing Greek crisis, "was excluding any discussion about the haircut of some official debt obligations and postpones potential negotiations about the reduction of interest rates on aid loans and/or the substantial extension of the period of their repayment until after the EP election, thereby elimination any chance for Greece to open this discussion and outline possible trade-offs during the presidency tenure" [51]. In addition, together with highest rate of unemployment in EU, Greece's status cannot help to promote public confidence for its rotating presidency. However, maybe it is too early to be pessimistic at present. In the program of Greek rotating presidency, it is ambitious that employment, maritime policy, migration policy and integration of Euro zone were listed in the priorities. One can only draw the conclusion when time goes to the very end of Greek rotating presidency. In any way, Greece and Greek

[48] Chatzistavrou, Defying the Oracle? The 2014 Greek Presidency of the EU Council, EPIN working paper, No.36, February 2014, p4
[49] Ibid, p5
[50] Chatzistavrou, Defying the Oracle? The 2014 Greek Presidency of the EU Council, EPIN working paper, No.36, February 2014
[51] Ibid, p3

people have set a sincere sample to undertake their own duty to run for office in the EU even if they are struggling for their own life.

4. Conclusion for the section

According to the presidency practice until Greece, we may draw conclusion as following.

Firstly, the time of membership of EU (old or new membership) does not matter the achievement. Spain, Belgium and Denmark have relatively long history of membership, while Hungary, Poland and Cyprus are new ones due to the recent years' enlargement. Situations are differ from the national desires that the ones, who link the well development of the Union to its own improvement or who consider a good presidency as a chance to get known and better involved, may most likely to dedicate themselves to the Union's issue..

Secondly, national political stability does not decisively impact the process of rotation in the Council either. Belgium held the chairmanship in the Council while its national government was just a caretaker one. Poland was running her presidency in the Council together with her national election in the middle term of presidency. Even worse, Cyprus was facing a really fragile national economy, a sudden forced bailout package to salvage its ailing banking system and long lasting complicated controversy with Turkey. However, these member states have played out satisfactory presidency. On the contrary, Spain and Hungary had relatively stable internal politics, which did not result in diligent chairmanship.

Thirdly, neighborhood relationship and policy may influence the priorities of rotating presidency agenda. For instance, priorities set by Poland represented the topics of vital importance also for her neighborhood Romania.[52] In addition, the geopolitics also could result in policy tilt, which can be proved by the Poland's efforts in the free trade areas covered by Eastern Partnership and eastern enlargement of Schengen.

[52] Piekło, Nicolescu and Szekely, Perspectives of Polish-Romanian bilateral cooperation prior to the Polish EU presidency, July 2011, EIR Working Papers Series, no.30, p.7

Furthermore, high level chairperson shall lead to greater coordination ability and political appeal with the precondition of active performance. Vice versa, passive high level chairmanship depresses the confidence both in the public and institutions. Nevertheless, the same faces appearing in different institutions, the Council and the European Council may confuse to the outside world between the roles of legislature and political negotiator. Whereas, until the adoption acts on fixed chairpersons of the Council configurations, any attempt thereof is worth testing and is the valuable experience for the future legislation.

Last but not the least, there calls for a high level coordination system or authority for the participation or involvement of the rotating presidency when not all the member states are concerned in certain issues, especially the Euro Zone issue. In practice, Poland and Denmark are not members of Euro Group and were not able to have a word in the meeting of the latter. Cyprus is the membership of Euro Group but itself was the object of the meeting dealing with Euro crisis. Moreover, the largest Member States, Germany, France and Great Britain "have eclipsed the potential influence of the Council presidency"[53]. At present time, it is of low possibility for "the small and new Member State Presidency to accomplish, other than keeping bread-and-butter issues on the right track and achieving a few minor 'priorities'"[54]. Euro crisis has a close link to the future of EU as a whole. As one of the legislatures, the Council shall be involved at the presidency level into the issues dealing with the crisis at least to guarantee the multiannual finical framework and effective horizontal coordination. There are 10 member states which are not the members of Euro Zone. As a result, in the following presidency in the Council, it is necessary to build a bridge dealing with the relation between existing legislation and practical needs.

[53] Linders and Blockmans, The Cyprus Presidency pragmatism amid European anxiety, CEPS COMMENTARY, 24 January 2013, p2
[54] Ibid, p2-3

By now, the only constraint on active presidency practice is the reputation. It is the internal determinant to realize the importance of interdependence between member states and EU, as the case of Poland that "without the EU and European solidarity Poland would not now be a prosperous country and without a Polish EU presidency the word 'solidarity' would not have quite the same meaning".[55] Obviously, the Council is not the classical community method of EU. Therefore a political concern does exist and is inevitable during the rotating presidency. And although the Council does not have the competence of proposing, an active presidency of it may effectively promote the new proposals by strategic program and its implementation. The design of the Presidency Trio is to decrease the impact from internal difficulties onto minimum level, with the purpose of enhancing the consistency and quality of rotating presidency in order to serve the legislative function of the Council. There is more consistency, the more legislative function to be displayed. For the presidency Member States themselves, rational choice may drive them to present differentiated policy direction and priorities due to the state interests, such as internal economy and politics, geographic relations and historical culture. To overcome the unproportionate domestic input, the Trio Presidency should either share all the 18 months' term or meet regularly to adjust the Joint Presidency Program according to the varying reality and the political priorities set by the European Council.

[55] Ochmann, The new EU. The consequences of the Polish EU presidency, spotlight europe, January 2012, p.6

CHAPTER 2

RELATION OF THE COUNCIL WITH THE COMMISSION

SECTION 1. NON-MONOPOLY ON PROPOSAL MAKING BY THE COMMISSION

Relations between the Council and the Commission in the legislation aspect have changed. The Commission was always the exclusive role of proposal maker. While, the Treaty of Lisbon gives other bodies the right to make a proposal. Art 17(2) TEU, as the leading rule, provides that the task of proposal making in the framework of EU legal order mainly lays on the Commission, except where the Treaties provide otherwise. After analyzing the provisions in the Treaties, here we have found the examples of the new proposal makers other than the Commission:

A group of certain number of Member States

Art 76 TFEU At least a quarter of the Member States may initiative the acts referred to judicial cooperation in criminal matters and police cooperation.

Art 48(2) TEU The Government of any Member State may submit the proposals for the amendment of the Treaties.

European Parliament

Art 48(2) TEU The European Parliament may submit the proposals for the amendment of the Treaties.

Article 225 TFEU The European Parliament may request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. If the Commission

does not submit a proposal, it shall inform the European Parliament of the reasons.

High Representative of the Union for Foreign Affairs and Security Policy

Art18, 28, 30, 41, 42(4) TEU, Art. 218, 331, 354 TFEU Proposals on CFSP

HR, jointly with the Commission, submits joint proposal

22 TEU, 215,222 TFEU Proposals on the strategic interest and objects of the Union relating to CFSP and other aspects of external action, or on the economic and financial relations with third countries, or on the reaction to terrorist attacks or natural or man-made disaster in a spirit of solidarity.

Other than the above mentioned new comer in the field of proposal making, **Art** 11(4) TEU confirms a Citizen initiative right that not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission to submit any appropriate proposal for the purpose of implementing the Treaties. Even though the Commission, however, is not obliged to do so and the citizens shall not be considered as proposal maker, it is a noteworthy democratic mark to EU law-making that the EU citizens may have the opportunity to request new legislation.

Although President Barroso ever indicated in 2009 that the position and the importance of the Commission are beyond doubt[56], changes in the legislative

[56] President Barroso maintained in his 2009 political guideline to the European Parliament that "Only the Commission has the authority, the administrative capacity and the technical expertise to make proposals that take the interests of all Member States and all citizens into account, and the long term view needed to tackle the big issues we face today. Only the Commission has the authority and the independence to ensure the equal treatment of all Member States in the enforcement of treaty obligations and legislation. "*

*Barroso, "Political guidelines for the next Commission", 3 September 2009, p 37. Online: http://ec.europa.eu/commission_barroso/president/index_en.htm

proceeding brought by the Treaty of Lisbon have indeed made the make the Commission weaker than before.

Firstly, proposals on CFSP are now be made mainly by the High Representative. The Treaties draw a quite clear line to distribute proposing powers to the certain body according to the specified duty of him/her.

Secondly, the Commission shares with the Member States the priority on making proposal in the field of AFSJ. AFSJ once belonged to the third pillar and now is within the community method aspect. Confirming the proposing power on the Member States is respecting them in the traditional sovereignty-linked policy field.

Moreover, the initiative powers by the citizens and European Parliament add democracy tune to Union's legislative proceeding, by which the author of the Treaties intends to get the EU more legitimacy and support from its citizens.

Besides, due to Art 208 TEC, the Council may request the Commission to undertake any studies… and to submit to it any appropriate proposals. Now, in addition, by Art 241 TFEU, if the Commission does not submit a proposal, it shall inform the Council of the reasons. To some extent, the Treaties give the Council an indirect power of making proposal.

At the same time, the European Parliament now has the exactly same arm (Art. 225 TFEU). On one hand, the impacts on the Commission by the two legislatures have been balanced; on the other hand, the control over the Commission is stricter, which even more pushes the Commission to focus on technical role rather than political player.

Even though the Commission is not obliged to propose under request of the co-legislatures as the provisions cited above, it is for the Commission to ponder when it's under certain political pressure.

In the field concerning the international agreements, the negotiators on the Union's behalf are the ones actually propose the legislative acts signing and concluding the agreements. Besides the analysis in Chapter 1 Section 2 of this paper, which contains that the Commission is almost the main negotiator other than the sphere of CFSP, the Commission is not the only negotiation player of course with the international agreements concerning monetary or foreign exchange regime matters. The European Central Bank must be the competent one to fully associate and to be consulted as necessity. (Article 219(3) TFEU) Although the unique negotiator role of the Commission has been reduced after Lisbon Treaty, it benefits in exerting the specialized functions of all the institutions or actors involved. The Union would operate in a better way if the powers are distributed to more actors in a rational way.

SECTION 2. "COMITOLOTY" (QUASI-LEGISLATION)

1. General introduction of "Comitology"

Comitology started to emerge in the 1960s in the field of Common Agriculture Policy (CAP), "when the Council realized that it lacked the resources to make all necessary implementation rules and decided to delegate implementing powers to the Commission." [57] Since the implementing of legislation is totally different with the legislating itself, in order to facilitate the procedures of uniformity of the implement, "to keep speedy pace with the ever changing events, science or markets"[58], to make full use of the professional and technical talent human resources in the Commission and even to evade the

[57] Online resource: http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/comitology.htm

[58] Hardacre and Kaeding, Delegated and Implementing Acts: the New Comitology, EIPA Essential Guide, 4th edition, December 2011, p.7

sensitive issue during the legislative procedure[59], the legislators have to entrust an agent, the Commission, to push European law into realization. From the very start point, "Comitology" has become a widely used procedure in the EU decision-making system.

Before the Treaty of Lisbon, Art 202 TEC provided that "the Council may confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down". That is to be explained that the Council, then as the EU legislator "may find it necessary to entrust the Commission with the adoption of certain implementing rules in respect of EU legislative act to insure that it is applied in a uniform and consistent manner. And when entrusting the Commission, the EU legislator will provide for a system of control over the exercise of such implementing powers by the Commission."[60] The system of entrusting and control the execution over the Commission is "Comitology".

After the Treaty of Lisbon, "Comitology" system has been codified in art 290 and 291 of TFEU, which provide the control of Commission's "delegated powers" and "implementing powers".

The former one provides that a legislative act (adopted by the European Parliament and Council through co-decision procedure) may delegate to the Commission the power to adopt "delegated act" that will supplement or amend certain non-essential elements of the basic act, which is confirmed as a Treaty provision for the first time where it has been exiting in practice before Lisbon Treaty.

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[59] Due to relative complicated legislative procedures, which usually contains the negotiation and conflicts concerning on political interests, legislation may be the result of the compromise of political deal and may be only a framework. Further, the detailed decisions and implement measures need the help of the Commission, which gets over the political deadlock.

[60] Piris, with a foreword by Angela Merkel, The Lisbon Treaty: A legal and Political Analysis, Cambridge university press, 2010, p.98

According to the latter one "where uniform conditions for implementing legally binding acts are needed, those acts shall confer implementing powers on the Commission (or on the Council in certain cases)"[61] though the Treaties respect the principle that the power of implementing the EU law basically belongs to the Member States, which "will continue to be subject to the same Comitology regime" [62].

In theory, according to Art. 290 and Art. 291 of TFEU, the distinction between the two acts mentioned above lays in that: "delegated acts" do not need a separated legislative act to delegate power; while, the "implementing acts" needs an extra regulation [63]in advance through the co-decision procedure by the Council and European Parliament (more specifically, the ordinary legislative procedure) to lay down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[64].

However, in practice, the difference is not easy to define.

In general, according to Mr. Anders Neergaard of the European Parliament's legal service, "Policy orientations should be delegated acts and technical applications of rules should be implementing acts". [65] Or Professor Thomas Christiansen and Dr. Mathias Dobbels introduce in their article that "what Member States should do, which constitutes a delegated act, as opposed to 'how' Member States are to act to carry out the obligations set by a legislative act,

[61] Piris, with a foreword by Angela Merkel, The Lisbon Treaty: A legal and Political Analysis, Cambridge university press, 2010,, p.103

[62] Chalmers, Davies and Monti, European Union Law, second edition, Cambridge University Press, 2010, p122

[63] for instance Regulation 2011/182

[64] Art 291 (3) TFEU

[65] Online resource: http://www.euractiv.com/future-eu/eu-lawyers-struggle-new-comitolo-news-502310

which would constitute an implementing act." [66] Commission experts Mr. Mario-Paulo Tenreiro agreed: "The key issue is going to be how to distinguish between an implementing and a delegated act. This is a legal question, not a political one. If we get it wrong it will have to be settled in court".[67]

In implementation, the distinction lies in aspects as following:

Firstly, the degree of formalization of the legal basis differs.

Implementing act, according to the treaty norms, is based on a legislative act as the common rule of procedure which is "Regulation No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers". This regulation codifies detailed procedures about the entire accomplished system of implementation of implementing act: the aim, the subject matter, selection of procedures, rules of Advisory procedure and examination procedure, voting rules in committees, appeal procedure in the appeal committee and also the right of scrutiny by the Council and the European Parliament and so on. The high degree formalization method leaves the Commission less leeway to execute autonomously, which on the other hand prevents the institutional grey zone in horizontal relationship.

Delegated act is built on each legislative act's special indication where in itself may define the objectives, content, scope and duration of the delegation of power. This case by case mode imposes "delegated act" certain uncertainty in practice. There is no legal rule of procedure coordinating horizontal inter-institutional competence. There is no working pattern for the internal

[66] Christiansen and Dobbels, Non-Legislative Rule Making after the Lisbon Treaty: Implementing the New System of Comitology and Delegated Acts, European Law Journal, Vol. 19, No. 1, January 2013, p. 44

[67] Ibid.

operation in the Commission. As well, there is no standard for the executing the right of revoking delegation or veto power by the Council or the European Parliament. Without a doubt, the primary law confers on the co-legislatures the veto power and the revocation right under no condition, which can be considered as the strong control of legitimacy over the delegation. However, it can also be treated from the other side of this coin, if in practice these two hanging stones are to be abused as tools of soft power of amendment the draft delegated acts. The only existing inter-institutional text, endorsed by the Commission, the Council and the European Parliament, is the "Common Understanding of European Parliament, Council and Commission on delegated acts on 4 April 2011", which hasn't a legally binding nature and is broadly recognized as a "gentleman's agreement" and solely guaranteed by the principle of loyal cooperation. Besides this text, the practice of the co-legislature since 2006 Comitology reform is also the soft-law. In 2006 Comitology reform, "regulatory procedure with scrutiny" was introduced into the scheme of implementing delegated power upon the Commission. Comparing with the Lisbon Treaty provision of article 290, regulatory procedure with scrutiny is the most likely working method may be followed in delegated act's practice, since that procedure highlights the right of scrutiny by the Council and the European Parliament than any other Comitology procedures which do not involve both of the co-legislatures on equal footing. In fact, both the Council and the European Parliament have already followed that procedure for three years before Lisbon Treaty and they are quite experienced. Consequently, the implementation of delegated act has followed the three-year practice, a gentleman's agreement and the principle of loyal cooperation since Lisbon Treaty came into force.

Second, the concrete working methods are of difference.

Implementing act inherits the traditional Comitology's scheme where there stands the committee for consultation and voting at all procedures. Furthermore,

Regulation 182/2011 has introduced the appeal committee as the last resort dealing the draft implementing acts. Due to this committee model, the Commission cannot depart away very much from the intention of legislatures.

Delegated act does not involve any committee. It is of large possibility to consult the experts from national level or from the European Parliament, while it is not the obligation of the Commission to take account of the experts' opinion. Since there is no formal rule of procedure, the Council and the European Parliament haven't found a legal path to intervene the undergoing drafting process. The Commission is always declining to reject the input before it accomplishes the draft delegated acts. After finishing the drafts, the Commission would hand them over to both of the legislatures. If there is no objection or no opinion within three months, the delegated acts adopt. Comparing with implementing act, delegated act provides the Commission much leeway and relevant larger scope of discretion.

Last but not the least, the role and the competence of the Council and the European Parliament are not alike.

Implementing act relies in large scale on the committee. The committee, also the appeal committee, is composed of national representatives who are safeguarding the national interest as their counterparts do in the Council. In practice, before Lisbon Treaty, the Comitology procedure involves the Council as the supervisor and last resort. Although after Lisbon Treaty the appeal committee takes the place of the Council, the membership of appeal committee always shares the same group of representatives in COREPER Ⅰ in the Council. Whereas, the European Parliament does not have substantial role in practice, although the right of scrutiny confers the power upon it.

Delegated act makes the European Parliament manage to function on equal footing with the Council. It was the European Parliament striving for the

scrutiny power in 2006 Comitology reform. And MEPs have operated the "regulatory procedure with scrutiny" in a quite experienced way since then. Furthermore, since there is not any committee role in delegated act, the European Parliament has the competence as it shares in co-legislation procedure with the Council equally through the whole process.

Most remarkably, the Treaties do not confer the legislatures the right of amendment, however, either of the Council or the European Parliament has a veto power and the right to revocation under no condition. While in the "regulatory procedure with scrutiny", there are three legal criteria that can invoke the veto power by the legislatures: the draft measures proposed by the Commission exceed the implementing powers provided for in the basic instrument or that the draft is not compatible with the aim or the content of the basic instrument or does not respect the principles of subsidiarity or proportionality[68]. As a result, the present "primary law based" decisive power simplifies the institutional interaction as a "take it or leave it" model.

It is less confused after the analysis of the distinction between the two instruments of non-legislative acts. Whereas, in practice, the institutions are not willing to wipe out the grey zone in selection either of them. Each of them has a preference.

The Council is committed to the implementing act. As described above, the implementing act maintains the committee as the traditional Comitology scheme. The practice does not change much comparing with pre-Lisbon era. The Council controls the envisaged implementing acts directly or indirectly by the national representatives in the committee and appeal committee.

The Commission is in favor of delegated act. Implementing act is highly formalization and supervised under the committees. The Commission cannot

[68] Art 5a of the Decision 2006/512

produce any creative or autonomous work within implementing act system. On the contrary, the delegated act is still lack of legal binding basis as general framework to procuduralize the horizontal relationship among EU institutions. The Commission could insist on the ex post deliberation by the Council and the European Parliament in order to preclude the institutional intervention in half way of drafting.

The European Parliament prefers the delegated act as well, although the reason is not coincident with the Commission. Lisbon Treaty leads the European Parliament to a way of revolution in its power, both in legislative procedure and in non-legislative arena. The above discussed unconditional veto power and revoking power on draft delegated acts spurs the MEPs to deliberate the drafts much actively than ever. This is because that the competence and the substantial impact of the European Parliament in delegated act are in larger scope and with less restraint. It is to be easier for the MEPs and the key actors in the European Parliament to input their positions if they incline to dissent the draft as a whole solely due to one or two articles.

As a consequence, since there are no precise criteria to define the margin between the implementing act and delegated act, the institutional conflict would be triggered at any occasion. The remedy shall be the referral to European Court of Justice. However, until there is a hard-law legal basis, the vagueness and the grey zone still exist

2. The logic of “Comitology” and its development

The Commission is well-known as the watch-dog of the interests of the Union. Although the first to implement are the Member States, the interest of good implementation of the EU law is right laid down in the scope of the Commission’s task.

2.1 Before the Treaty of Lisbon

Council Decision 1999/468/ of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (amended by Decision 2006/512/EC) ruled the Comitology in a detailed way.

By this Decision, firstly, in all the procedures therein, the Commission shall be assisted by committees composed of the representatives of the Member States.

Secondly, the Advisory procedure gave the Commission more flexibility on adoption of implementing acts, with the Commission taking the utmost account of the opinion delivered by the committee (Art 3 of Decision 1999/468).

Thirdly, in the Management procedure and Regulatory procedure, which were the most used operations in practice, closely involved the voting of the committees. If the committees were happy with the draft measures, the measures would be adopted. When the draft measures are not in accordance with the opinion of the committees, by QMV in favor of referral (Art 4 of Decision 1999/468) or failed to adopt the draft by QMV (Art 5 of Decision 1999/468), the draft measures would be submitted to the Council for deciding. The Council then had the power to control over the drafts of the Commission whether to re-examine, amend, adopt or non-adopt.

The logic was: the actors of implementing the EU law are the Member States at the basic level, which is the principle that the Union leaves the freedom and rights to the Member States. So even if the implementation is basically the business of the Member States, then, when the Commission is entrusted, the committees should be made up of the representatives of the Member States as the consequence, seeking to control over the procedures undergoing within the Commission.

However, the mechanism led to a legal and logical error. The measures taken by the committees should not be called "legislative act" since the committee were not a legislative authority and played only as a consultative role. But the measures adopted were the ones implementing the legislative acts, which "actually modified the basic legislative act itself"[69]. "This did not hold for scrutiny of cases where the legislature authorized the Commission to amend a legislative act. The power to amend a legislative act lies with the legislature itself, not with the Member States. Scrutiny of this delegation of powers should therefore belong to the legislature, not to the Member States". So mentioning the lack of scrutiny, Comitology was considered as lack of legitimacy.

As well as in practice, the European Parliament had been struggling for more influence and involvement in the law-making proceedings. In the aspect of Comitology, "the Parliament had become increasingly uneasy during the 1990s about delegating powers to the Commission that it thought would be better exercised by the co-decision procedure. It was agreed that regulatory measures based on a parent instrument adopted under co-decision procedure would be notified to the Parliament and it could object through a Resolution if it considered they exceeded the implementing power granted by the parent instrument." [70] Then the Art.8 of the Decision 1999/468 had demonstrated the involved controlling on the Commission's draft measures by the Parliament.

Furthermore, the European Parliament continued to claim its un-fully involvement in Comitology by indicated that the Commission "failed to respect Parliament's rights under Comitology"[71]. As a result, Decision 2006/512 amended the Decision 1999/468, introducing the Regulatory procedure with

[69] Piris, with a foreword by Angela Merkel, The Lisbon Treaty: A legal and Political Analysis, Cambridge university press, 2010, p.10

[70] Chalmers, Davies and Monti, European Union Law, second edition, Cambridge University Press, 2010, p120

[71] Bradley, Halfway House: The 2006 Comitology Reforms and the European Parliament, 2008 31 WEP 837, 842-3

scrutiny. Besides the ever existing voting by the committees, the Council and the European Parliament would additionally keep an eye on the Commission's draft measures where either of the former can veto the draft on the ground that the draft measure exceeds the implementing powers provided for in the basic instrument, or the draft is not compatible with the aim or the content of the basic instrument, or does not respect the principles of subsidiarity or proportionality[72].

2.2 After the Treaty of Lisbon

In the Treaty of Lisbon, "delegated acts" and "implementing acts" shall be analyzed separately. What these two arms in common is that they both require to be called to start within co-decided legislative acts and be controlled over under scrutiny by the Council and the European Parliament on equal footing.

In the situation of "delegated acts", it is a new comer in the Treaties in provisional sense, but it has been operated quite a time before Lisbon Treaty with the "look appearance" as Regulatory Procedure with Scrutiny due to 2006 Comitology reform.

There is no committees' role in "delegated acts" procedure, just with the broad consulting by the Commission to some certain groups composed of experts from Member States "in order to ensure that the delegated acts will be properly applied later on by the Member States' authorities."[73] The consultation is always a rather sensitive topic de facto. The Council is keen on arrange an experts team just as the committee in implementing act scheme. The European Parliament also emphasis on the necessity of consultation, but insists the involvement of experts assigned by itself as a must. Whereas, the Commission considers this sort of intention as the back door of intervening in its drafting autonomy. It also

[72] Art 5a of the Decision 2006/512

[73] Piris, with a foreword by Angela Merkel, The Lisbon Treaty: A legal and Political Analysis, Cambridge university press, 2010, p.103

indicates that it is not obligatory to follow the experts' opinion and it is not necessary to consult them all the time.

This ex ante defence, however, if over used, may probable lead to the reluctant non-objection in the legislatures. The co-legislatures could definitely let the three months' period flow with no opinion, which may delay the adoption of the delegated act in a legal way. If the Commission could open to the two legislatures at a certain occasion during drafting process, it is of great chance that the former may get "early non-objection"[74] as reward.

Additionally, according to Art 290(2) TFEU, either the Council or European Parliament has the rights of objection and revocation on any ground. As a result, first of all, it is conclusive that where there is more power of delegation and flexibility, there is more power of scrutiny. In this case, the essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power, which restates that the Commission has no power to legislate. And consequently the original intention of the legislature cannot be distorted.

Secondly, the new norms clarify the principle of "indirect administration"[75] and exception of this fundamental principle by stating that Member States will enjoy the main powers of implementing with the association of the Commission by "implementing powers" under rules made through the ordinary legislative procedure by the European Parliament and the Council. To this extent, it convinces the citizens that the Commission is supervised by two genuine legislatures with increased power. On the other hand, the veto power or the revocation power could also be transferred as amendment power in a soft form,

[74] See, Kaeding and Hardacre, The European Parliament and the Future of Comitology after Lisbon, European Law Journal, Vol. 19, No. 3, May 2013, p.391

[75] The principle of "indirect administration" means that the power to implement Community law lies primarily with the Member States, under the supervision of the Commission, of the national courts and of the Court of Justice. See, Ibid, p.97

which squeezes the leeway of the Commission.

While in the "implementing acts", the former Comitology regime applies, with the adoption of Regulation 2011/182 on behalf of Art 291(3) TFEU under the ordinary legislative procedure by the European Parliament and the Council as the updated secondary legal resource's support.

Within the new Comitology, above all, the "committees" still exist and moreover the "appeal committee" has been introduced with which the draft implementing acts will be decided after the committee holds negative opinion towards it when the Commission is willing to adopt the original draft rather than submit an amended version.[76]

To be followed with, Advisory procedure has been codified as "general rule"[77], which leaves more autonomous space for the Commission. The Commission is not strictly obliged to follow the opinion of the committees, only taking utmost account of it[78].

Thirdly, the former Management procedure and Regulatory procedure are replaced by a single procedure named "Examination procedure". The replacement simplifies the classifying the drafts to certain policy fields. Moreover it speeds up the procedure of voting on the adoption of the draft implementing acts. According to previous Regulatory procedure, the envisaged acts may be adopted after obtaining qualified majority votes **in favor** in the committee[79]. In present Examination procedure, the requirement varies to be that the draft shall not be adopted if the committee delivers **negative** opinion by qualified majority voting, where the draft may adopt when even if there is no

[76] Art 6 of Regulation No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers
[77] Ibid. Recital (15), Art. 2
[78] Idid. Art. 4(2)
[79] Art. 5(2) of Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission

opinion[80]. The threshold for approving is decreased indeed.

Furthermore, when Examination procedure applies, there disappears the control by the Council who was involved and was supervising in former Management procedure and Regulatory procedure. Instead, the Commission may submit an amended version of draft implementing act to the same committee or deliver the draft to the appeal committee. Only where a basic act is adopted under ordinary legislative procedure and either the European Parliament or the Council indicates to the Commission that, in its view, a draft implementing act exceeds the implementing powers provided for in the basic act, the Commission will be under the pressure by those two institutions to review the draft, taking account of the position expressed, informing the European Parliament and the Council whether it intends to maintain, amend or withdraw the draft implementing act[81], which is called the Right of Scrutiny. While in practice the right of scrutiny has been used in a very small proportion of operations.

3. Institutional triangle relations by "Comitology"

In the system of "Comitology", in the earlier days, the Council (solely) conferred the delegate powers to the Commission to help implement the EU law with one of the motivations of protect the interests of the Member States. Since if build a set of institutions especially focusing on the implementation of the EU law, there would be truly huge administrative sessions, which could be controversy to the will of the Member States who always hope that the central administrative body maintains as smaller as possible.

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[80] Art. 5(3), (4) of Regulation No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers

[81] Art. 11 of Regulation No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers

Presently, the European Parliament, which stands for the interests of the citizens and also participates in the decision making on the "Comitology", doesn't will to see a too large and too powerful central body in the EU either.

Furthermore, the Council loses its previous exclusive control over the Commission. Before the Treaty of Lisbon, in most cases, it was the Council who decided by itself to start the delegate procedure and it was also the Council to define the details of the delegate powers. Moreover, before 2006 "Comitology" reform, the Council had been having the power to accept or send back the draft of Commission by QMV, while the European Parliament only had a right of passing a non-binding resolution on its non-satisfactory of the Commission's delegation power[82]. In 2006, the European Parliament started to seek for equal footing with the Council. In the Regulatory procedure with scrutiny, the European Parliament shares the same veto power with the Council within the "Comitology" system. By now, as a result of Lisbon Treaty, the co-decision procedure covers the relative "Comitology" and the Council is no more the sole start engine and monitor of the Commission's delegate powers. In addition, the policy fields using "Comitology" has been broaden due to co-decision spreads into 45 more new policies. The parliamentary control power seems to bloom.

At the same time, as mentioned above, the Council has been only left the right of scrutiny which is the same power as the European Parliament has, but loses the former power of examination on the Commission's draft measures most probably once the committees were unhappy with the draft[83]. In this sense, the Council is largely weaker than before and its influence among the Commission has been cut to half.

Why can the European Parliament break the single link between the Council and the Commission in "Comitology"?

[82] Art.5 of Council Decision 1999/468
[83] Art 4, 5 of Decision 1999/468

Firstly, the ordinary legislative procedure impacts on "Comitology". After Lisbon Treaty, the European Parliament frequently puts pressure on both the Commission and the Council, threatening to withhold its support for a substantive legislative matter in the co-decision and/or budgetary and thereby indirectly influenced the shaping of "Comitology" rules. This has been the main driver of change in the shaping of "Comitology" rules as regards the role of the Parliament. It led to a co-equal position of the European Parliament with the Council under delegated acts. In "Comitology", a clear pattern emerges: once the Parliament had obtained a veto power under co-decision, it successfully used the latter to obtain substantive policies in return for more institutional power under "Comitology".[84]

Moreover, the Commission is willing to tolerate more control from the European Parliament because firstly the Commission prefer to escape from the controversy of being lack of legitimacy and democracy by getting itself closer to another Community measure entity and declaring to dedicate itself to the right and benefit of the EU citizens, which is the view the European Parliament holds from the very beginning. Commission begins to pay more attention to satisfy the European Parliament instead of its previous "boss", the Council.

But what is the most important, in light of Art 17(7), (8)TEU, the Commission is voted by the European Parliament at the beginning of the 5-year term; the Commission is also overshadowed by the European Parliament with the motion of censure with which the latter may "fire" the Commission as a whole. This political control draws the Commission closer to the European Parliament and the parliamentary input thereof, rather than to the Council.

In short, inevitably the relationship between the Council and the Commission can be strongly influenced by the European Parliament. At least, though together

[84] See: Héritier, Institutional change in Europe: Co-decision and Comitology transformed, JCMS 2012 Volume 50. Number S1. p. 48-49

with the European Parliament, the power of the controlling on the Commission by the Council as legislature has been improved. The delegation has been better over sighted so that the European Union legislative acts will be supplemented, amended and implemented in a way of European level, with least influence from national level. In a long term, the reform and power transaction are of great importance for the division of work among the institutions and furthermore for the political integration of the European Union.

CONCLUSION OF CHAPTER 2

Since Lisbon Treaty has brought several new ideas about the initiative entities, the Commission seems to be not lonely. However, it is rather the increase in the democratic concern than the actual facts have been happening. The Commission is still the principal proposal maker in EU from internal policies to international agreements.

As far as the political agenda setting competence has been transferred to the European Council, the Council of ministers has to wait until the general mandate from the former. Usually, when the European Council adopts certain mandate or agreement among its members, it is the Commission to press the start engine for the actual legislative activity by proposing draft acts. Therefore, the legislative agenda in the Council lays largely on the agenda of the Commission. Before Lisbon Treaty era, the situation was reverse, since the Council chaired the European Council as well.

Besides that changing character mentioned in above paragraph, the inter-institutional relationship on proposal making between the Council and the Commission does not transform in any factual way after Lisbon Treaty.

In the phase after proposal making but before the first reading, the increasing influence from the European Parliament as co-legislature drives the Commission to stress on the opinion of the former more than ever before. Within ordinary legislative procedure, the Commission passed the draft acts onto both the European Parliament and the Council. It is the European Parliament has the right to firstly express its own opinion or amendment on the draft. And then the legislative working procedure in the Council, in the sense of the Treaty norms, begins on the basis of Parliamentary opinion.

Due to the European Parliament Rules of Procedure[85], the European Parliament is able to "detect substantial amendments mad by the Council, early on in the process"[86]. At the same time, the Commission has always been invited to the meetings of the Council. From both the Council itself and the Commission, the European Parliament could anticipate rather accurate the intention of the Council before its own opinion or amendment to the draft acts early before Plenary procedure, which "to some degree limits opportunities for strategic behavior of the Council presidency towards the European Parliament"[87]. In between the co-legislatures, the Commission plays the role as a "one-way" informing tube directing to the European Parliament. To this sense, the Council is losing driving power in the relationship with the proposal maker due to the shifting favor of the latter to the European Parliament.

Other than the institutional re-balancing in legislative procedure mentioned above, the Council reencounters a passive situation in Comitology under the Parliamentary shadow in comparison with the story before Lisbon Treaty. The preference in common by the Commission and the European Parliament has set the Council a bit aside when the former two entities insist on the choice of "delegate acts". Before Lisbon Treaty, the Comitology was in the sole pocket of the Council, and the European Parliament could not imagine any genuine decisive power in this area. Lisbon Treaty raises the Parliamentary scrutiny

[85] Rules of Procedure, 7th parliamentary term:

Rule 39: Access to documents and provision of information to Parliament

1. Throughout the legislative procedure Parliament and its committees shall request access to all documents relating to proposals for legislative acts under the same conditions as the Council and its working parties.

2. During the examination of a proposal for a legislative act, the committee responsible shall ask the Commission and the Council to keep it informed of the progress of that proposal in the Council and its working parties and in particular to inform it of any emerging compromises which will substantially amend the original proposal, or of the author's intention to withdraw its proposal.

[86] Brandsma, Hidden parliamentary power: Informal information-sharing between EU institutions from agenda-setting to execution, Utrecht University, presentated to UACES 41st Annual Conference, Cambridge, 5-7 September 2011, p14

[87] Ibid, p15

power in Comitology system and re-balances the institutional relationship as the one of more legitimacy.

Last but not the least, in parallel with Comitology system, recently the European Court of Justice (ECJ) case-law has confirmed the delegation to EU agencies, bodies or offices by the co-legislatures. In case C-270/12, the Council and the European Parliament delegated a sort of executive power to an EU agency called "European Securities and Markets Authority"(ESMA) on regulating short selling and certain aspects of credit default swaps which is of concern on the financial market in EU. The United Kingdom argued the lack of legitimacy of such delegation in four grounds, among which it was challenging the compatibility with the article 290 and article 291 of TFEU (Comitology system). ECJ distinguishes the delegation to ESMA from the one to the Commission, implying that the delegation to EU agencies could run parallel with Comitology system. ECJ stresses on what have not been written by Treaty norms and delivered that the Treaties have already presuppose the possibility of delegation to EU agencies[88]. In addition, ECJ illustrates the existence of several legal procedures, such as annulment procedure, failure of act and preliminary procedure, in which the subject matter includes the EU bodies or agencies and also theirs adopting acts[89]. In light of the possibility to be pursuing to judicial review, ECJ confirms vesting EU agencies or bodies with certain decision-making powers in an area which requires the deployment of specific technical and professional expertise.[90]From this case-law, the Council (and also the European Parliament) could have an additional choice where requires delegation on technical concern. And it is of necessity because the Commission itself is not able to undertake a huge number of technical tasks in EU. From ever existing practice, the EU agencies, bodies or offices are of swifter response than

[88] ECJ case: C270/12, paragraph 79
[89] Ibid, paragraph 80
[90] Ibid, paragraph 82

the Commission. The Comitology should apply to certain rule of procedure, whereas delegating to EU agencies, bodies or offices has not any procedural constraint yet. As a result, this case-law has already granted the existence of such an agency-delegation in parallel with Comitology. From now on, the co-legislatures have to consider about the establishment of a complete system of delegation to EU agencies, bodies or offices, in so far as that would be another quasi-legislative power like Comitology which should run in a legal way.

CHAPTER 3

RELATION OF THE COUNCIL WITH THE EUROPEAN PARLIAMENT

SECTION 1. CO-LEGISLATURES

When the European Economic Community was found in 1957, the legislator was solely the Council. The Assembly (European Parliament's predecessor) was weak and of little actual function.

The Single European Act had introduced the so called "co-operation procedure". The European Parliament started its first step to have powers in legislative activities, although the "co-operation" procedure only applied to limited aspects of policy making[91], for instance: anti- discrimination on the grounds of nationality, free movement of workers, freedom of establishment, mutual recognition of diplomas, certificates and other qualifications, and the approximation of Laws, etc. The procedure composed of two readings in which the Council dominated. The European Parliament's Opinion could only possibly increase the difficulty of voting in the Council from Qualified Majority to Unanimity, but impossible to block the adoption of acts.[92]

The Maastricht Treaty widened the application of the co-operation procedure which shall apply to where reference is made in the Treaty to this procedure. The European Parliament then shall act jointly with the Council in legislative acts making[93], not only increasing the voting difficulty of the Council, but also acting as a block power on the draft acts. The procedure had also been accomplished further into three readings scheme with Conciliation Committee procedure[94],

[91] Single European Act, Article 6
[92] Ibid, Article 7,
[93] TEC of Maastricht Treaty version, Article 189
[94] Ibid, Article 189b

which was rather similar with the presently used co-legislative procedure. However, in this procedure, the first reading did start from the Council's part, and if the European Parliament agreed with the Council's common position, the act was adopted, which was the reverse situation with present co-legislative procedure. The second reading was more or less the same with procedure nowadays except for a possible direct delivery to the Conciliation Committee at this phase. After the third reading, the so called Conciliation Committee procedure, if there was no joint text, the Council still might have one chance to adopt the act on the wording of its common position before the Conciliation Committee procedure by qualified majority voting. Therefore, the domain role still inclined to the Council.

Though the Nice Treaty eliminated the possibility for the Council to adopt the act after the Conciliation Committee ending with no joint text[95], the European Parliament had not become to equal footing with the Council in legislation.

Codified by the Treaty of Lisbon, "ordinary legislative procedure" (co-decision) procedure has become the main legislative procedure in EU, by Art 16 TEU, Art 289 and 294 TFEU. The European Parliament joint with the Council acts the roles of legislature and adopt most of the legislative acts all together. In this case, the relations between these two actors lay in two different legislative procedures as follows.

1. Ordinary legislative procedure

According to the Treaty of Lisbon, this kind of procedure dominates the field of the legislation, which combines the two legislative institutions to work on equal foot on the proposals submitted by the Commission. With the amendment made by the Lisbon Treaty, the Council has to learn to share much more powers with the European Parliament in almost thirty more cases of variable importance

[95] Article 251(6) TEC of Nice Treaty version

and provided for in fourteen new legal bases.[96]

When examining the provisions on ordinary legislative procedure, we could draw two main features on the balance between the co-legislatures.

Firstly, the European Parliament has the veto power twice. One may happen in the second reading on the draft with the amendment of the Council. The other lays in the approval on the joint text by the conciliation committee. Although the European Parliament rarely uses the veto power in legislative practice[97], the veto power is as a hanging stone to safeguard the parliamentary input.

Second, the Council is required the "unanimity" when itself is willing to amend the draft. This point is not firstly come out by the Treaty of Lisbon. From Rome Treaty, the "unanimity" has been the necessity if the Council tends to amend the draft act. Yet, with the wide spread of the ordinary legislative procedure, the balance between the two legislatures has been leaning to the European Parliament. Because it is the European Parliament who may actually improve the draft on its position and "if the Commission agrees with the Parliament, it is easier for the Council to accept parliamentary amendments than to produce its own"[98].

Though the provisions seem to be rather complicated, in practice, most acts are adopted in the first reading. Although the drafts have to undergo the continuing second reading, the debates are very focus on the amendments or position of the Council where no new questions are posed, which increases the speed of legislation. The European Parliament has been very cooperative with

[96] Piris, with a foreword by Angela Merkel, The Lisbon Treaty: A legal and Political Analysis, Cambridge university press, 2010, p.118

[97] This is because the Parliament considers "imperfect EU legislation is better than no legislation. And regular exercise of the veto would also be bad politics. Other parties also will not communicate with the Parliament if its position is inflexible as there is nothing to talk about." Quoted from Damian Chalmers, Gareth Davies and Giorgio Monti, European Union Law, second edition, Cambridge University Press, 2010, p105-106

[98] Chalmers, Davies and Monti, European Union Law, second edition, Cambridge University Press, 2010, p106

the Council in fact, rarely blocks drafts by its predicted powers. By now, only in two cases the European Parliament blocked the draft acts and let the Commission to submit new drafts: one was on the infrastructure in Arab, and the other was on the passengers' personal data.

There are three compromises in the legislative practice: in the Council, in the European Parliament and a super compromise between the two. Technical questions in the draft acts have been transformed into political ones which are the real controversy points implied in the proposals. In the Council, discussion and negotiation between different positions occur at COREPER level coordinated by the Rotating Presidency. In the European Parliament, the real works to compromise among political groups are in the Committees rather than in the Plenary of European Parliament where is only a theater. The coordinator in the Committees is the chosen Rapporteur who is together with the president of COREPER promotes the super comprise between the co-legislatures. All those debate and compromise frequently are ahead of voting. Besides, informal Trilogues involving the Commission could be hold in the early phase of co-legislation to obtain a common sense among the three institutions. So far, the Trilogues and the political priorities of the Rapporteur and the Rotating Presidency could speed up the process on one hand, and invoke the criticism of democratic deficit on the other. For the daily life of EU, compromising process should attach importance to the minorities' interest. While in the face of urgency, imperfect legislation is better than no legislation. The fast track solves the principal issues to serve the EU Law system avoiding non legitimacy of measures coping with the newly come situations. Nevertheless, the implementation of fast track in urgency should enact the conditions which set a limit of application period, group of people or certain crisis issues. Once the conditions are not fulfilled any more or the urgent situation is ending, the co-legislatures should re-exam the piece of act whether to amend or annul.

2. Special legislative procedure

Special legislative procedure, also codified in art 289 TFEU, requires the adoption of legislative acts by the Council alone or with the European Parliament. Here we discuss about the "consent" procedure. Under "consent" procedure, on one hand, if the legislative acts are adopted by the Council with the consent of the European Parliament, then the latter holds a sort of "veto power". As a traditional legislative institution, the Council held the legislative power from very early time and it has used to control the key process of law-making, while the European Parliament is a new comer, compared with the Council. Therefore the Council again loses its power and consequently the European Parliament step up further. This important change brought by the Treaty of Lisbon is purely an art of balance in itself, which is just subversion to the traditional legislative institution.

SECTION 2. RAISING POWER OF THE EUROPEAN PARLIAMENT ON INTERNATIONAL AGREEMET'S STAGE

1. Analysis through treaty norms

As the quasi same situation above in the legislative procedure, the European Parliament has been witnessed from a consulting role to a consent role.

Within the Treaty of Rome, international agreements shall be concluded by the Council acting by means of a unanimous vote and after consulting the Assembly[99] .

The Single European Act raised the power of the European Parliament one step forward that the association agreements should be concluded by the Council

[99] Article 238(2) EEC

after receiving the assent of European Parliament[100].

Maastricht Treaty broadened the scope of assent power's application. Besides the association agreements, there were three more situations applying to Parliamentary assent: the agreements establishing a specific institutional framework by organizing co-operation procedures, the agreements having important budgetary implications for the Community and the agreements entailing amendment of an act adopted under the co-operation procedure[101].

Lisbon Treaty has conferred on the European Parliament the most spread power in concluding international agreements. Article 218(6) TFEU lists five categories of international agreements which call for the "consent" of European Parliament. These are not five single types of agreements, but almost all the international agreements the EU may conclude with the exception of agreements relate exclusively to the CFSP. Although the European Parliament cannot have a say on the CFSP relating agreements, it shall be immediately and fully informed at all stages of the procedure which means including the CFSP agreements' proceeding.

Furthermore, the European Parliament Committee on budgetary control is particularly concerned in verifying how the EU budget, specifically the Multiannual Financial Framework (Article 312 TFEU), is spent on external relations, in particular regarding CFSP[102].

On the background of significant changes after Lisbon Treaty, the Council and the Commission are under the pressure to conduct with much more considerations on the Parliamentary position.

It is probably too much stressed about the newly born strong parliamentary

[100] Article 9 Single European Act
[101] Article 228(3) subparagraph 2 TEC in the version of Maastricht Treaty
[102] Passos, The European Union's external relations a year after Lisbon: a first evaluation from the European Parliament, CLEER working papers 2011/3, p49-56, p49

veto power, the Council quite hastily concluded the SWIFT Agreement with the US just several hours before the entry into force of Lisbon Treaty in 2009. However, the European Parliament finally managed to reject that agreement by the reason of protection of fundamental rights specifically protection of personal data. International agreements' negotiation have to be more transparency to the European Parliament and to the public, otherwise they may be probably rejected on the ground of the secrete negotiation behind a closed door.

The ACTA failed mainly due to the severe lack of access to the information by the European Parliament. As well, most of EP Committees have never given consent to international agreements before Lisbon Treaty, so that they are attaching much importance to their role and responsibility to conduct the consent power. In practice, they are very cooperatively and actively. They may, however, veto the agreements envisaged for the reasons of protection human rights, of fundamental rights, of justice, of the Union's consumers or farmers etc. As a result, this consent power also attracts more concerns from third countries on the positions or the conditions addressed by the European Parliament, which is "a sort of a second mandate for negotiations"[103].

The role of the Council here seems to be passive and defensive, and it seems to be combined with the Commission at the confrontation of the European Parliament. Once the negotiation is open, the Council's position is more or less the Commission's. Because of the precondition of opening a negotiation with third parties is the approval by the Council on the Recommendation from the Commission. As long as the negotiation is ending with a draft agreement, the Council and the Commission have to resort to the examination by the European Parliament. The Council also has to reply the oral and written questions from MEPs in order to step forward towards the final conclusion.

[103] Passos, The European Union's external relations a year after Lisbon: a first evaluation from the European Parliament, CLEER working papers 2011/3, P55

2. Case studies

2.1 ACTA

The case of ACTA agreement is typical for the parliamentary power after Lisbon Treaty.

ACTA is the abbreviation of “Anti-Counterfeiting Trade Agreement between the European Union and its Member States, Australia, Canada, Japan, the Republic of Korea, the United Mexican States, the Kingdom of Morocco, New Zealand, the Republic of Singapore, the Swiss Confederation and the United States of America”.

ACTA was firstly developed by Japan and the United States in 2006. EU joined the preliminary talks throughout 2006 and 2007. Official negotiations began in June 2008. From 2008 to 2010, the negotiation had lasted three years on the international framework for improving the enforcement of intellectual property right laws and creating improved international standards for action against large–scale infringements of intellectual property. On 16th of April 2010, the negotiating countries had reached unanimous agreement to make the consolidated text.

Nevertheless, for three-year negotiation, the public, as well as the European Parliament, had not been informed for any words about ACTA or been provided any channel of accessing to the documents. Although on 10th of March 2010, the European Parliament adopted a resolution on the transparency and state of play of the ACTA negotiations, the ACTA was still behind that closed door. The final text was released on 15 November 2010.

In the scope of European Union relevant legal procedure, on 24th of June 2011, the Commission delivered its initial legislative proposal. On 23th of August 2011, the Council published the legislative proposal for the conclusion

on the ACTA agreement. Although the EU has signed the agreement on 26 January 2012, the signature did not mean the entry into effect of the agreement upon EU. Later on, the debate in the European Parliament had launched a broad discussion around ACTA.

Under this high pressure of protesting ACTA, on 22 February 2012, the Commission decided to refer ACTA to the European Court of Justice, according to Art. 218(11) TFEU, on the compatibility of it with the Treaties, especially with the Chart of Fundamental Right.

22 June 2012, EP addressed Recommendation indicating to decline to give its consent. In December of 2012, Commission withdrew its referral to the ECJ.

On 4th of July 2012, the European Parliament voted on ACTA with 478 votes against, 39 for and 165 abstentions, rejecting the approval of this agreement. The failure in Parliamentary voting announced the death of ACTA in the EU.

Before the very end of ACTA's fate in EU, the key EU institutions held diverse positions of their own.

The Commission in its initial legislative proposal maintained that "Although ACTA does not modify the EU acquis, because EU law is already considerably more advanced than the current international standards, it will introduce a new international standard, building upon the World Trade Organization's TRIPS Agreement (adopted in 1994). Thus, it will provide benefits for EU exporting right holders operating in the global market who currently suffer systematic and widespread infringements of their copyrights, trademarks, patents, designs and geographical indications abroad. At the same time, ACTA is a balanced agreement, because it fully respects the rights of citizens and the concerns of important stakeholders such as consumers, internet providers and partners in

developing countries."[104]

The Council adopted a resolution in support of ACTA on 25 September 2008. After the explosion of mass protesting ACTA, the Council chose to take stock of the situation awaiting the judgment of ECJ, without any substantial debate at their meetings after the Commission's referral. When replying the written questions by the MEPs, the Council referred the transparency to the conduction of the Commission during the negotiation and evaded the questions on Council's position onto the discussion at COREPER level.[105]

The key points on the European Parliament's side were the concerns on the lack of transparency to the European Parliament and to the public, vagueness of the identifications and text of ACTA, also on the protection of free access to internet and protection of personal data etc.[106]. Concretely, the European Parliament indicated that:

"International agreements dealing with any aspect of criminal sanctions, online activity or intellectual property must clearly define the scope of the agreement and the protection of individual liberties, in order to avoid unintended interpretations of the agreement.

Unintended consequences of the ACTA text is a serious concern. On individual criminalization, the definition of "commercial-scale", the role of internet service providers and the possible interruption of the transit of generic medicines, the rapporteur maintains doubts that the ACTA text is as precise as is necessary.

The intended benefits of this international agreement are far outweighed by

[104] 2011/0167 (NLE), Brussels, 24.6.2011 COM(2011) 380 final. Para.1,2,3.
[105] See the Council of EU, Draft Reply to Written Question E-012661/2011 put by Christian Engstrom (Verts/ALE), Preliminary Draft Reply to Written Question E-001791/2012 put by Martin Ehrenhauser (NI)
[106] A7-0204/2012, Recommendation on the draft Council decision on the conclusion of the ACTA, (12195/2011 – C7-0027/2012 – 2011/0167(NLE)), Rapporteur: David Martin, 22 June 2012

the potential threats to civil liberties. Given the vagueness of certain aspects of the text and the uncertainty over its interpretation, the European Parliament cannot guarantee adequate protection for citizens' rights in the future under ACTA."[107]

Mainly due to the lack of information and participation of the European Parliament and the uncertainty of interpretation of the text, the atmosphere all over the Europe was to reject ACTA. This trend possibly lead to the Commission's withdraw the referral to the ECJ, considering the final death of ACTA in European Parliament.

Besides of the lack of transparency to the European Parliament and the public, what was actually wrong with ACTA?

There are the examples showing two of the main deficiencies of ACTA from the legal point of view of the EU. I would like to cite the excellent analysis from European Data Protection Supervisor and EDRI as following[108]:

1. ACTA ruled with an extremely low threshold for imposing criminal sanctions and unproportionality[109].

Art.23(1)[110] set the model that a "willful offences" of trademark counterfeiting or copyright or related rights piracy plus an undefined "commercial scale" shall definitely generate the criminal procedures or criminal penalties. Even worse, the "willful offences" includes those acts: direct commercial advantage and undefined "indirect economic advantage" or "aiding

[107] A7-0204/2012, Recommendation on the draft Council decision on the conclusion of the ACTA, (12195/2011 – C7-0027/2012 – 2011/0167(NLE)), Rapporteur: David Martin, 22 June 2012.
[108] http://edri.org/ACTA_Week/
[109] http://www.edri.org/files/EDRI_acta_series_2_20120117.pdf
[110] Art. 23 (1) of ACTA: Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale16. For the purposes of this Section, acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage.

and abetting" [111]

If this article may come into force, the practical implication would probably as following[112]:

Person A unintentionally poses copyright–protected images on his non-commercial website, for example the "Facebook" or "twitter". Due to the personal influence, for instance a politician or a pop star, a considerable number of persons visits his webpage. The "large numbers of visits" to this page leads to a "commercial scale" reproduction of the image.

Person A receives an "indirect economic advantage" by not paying for these images.

A's service provider, person B, "aids and abets" the infringement by not taking action.

ACTA treats both A and B as criminal.

To the legal aspect, the sample indicates this article is forming a contradiction with international law and with the existing position of the European Parliament.

WTO rules define "commercial scale" in relation to the "typical or usual commercial activity with respect to a given product in a given market". While, ACTA does not specify this definition to a precise threshold and a narrow sense, which leads to criminal procedure directly without resorting to the first remedy such as civil compensation or administrative procedure. It is concerning copyright offence almost equal to murder or robbery at this extremely low threshold into crime.

In the European Parliament's previous position on exciting EU secondary

[111] See: http://edri.org/actafactsheet/
[112] Ibid.

law[113]:the definition of "act" excludes those "carried out by private users for personal and not-for-profit purposes" be excluded[114]; "fair use" of works for comment, criticism, news reporting, teaching, scholarship and research also are exclusive in determination the constitution of a crime concerning intellectual property rights[115].

2. ACTA allows mass surveillance that was in violation of the Charter of Fundamental Right of the European Union[116].

Art.27 (4)[117] requires Internet intermediaries to disclose the personal information of alleged infringers to rights-holders along the lines of the current IPR Enforcement Directive, which is to identify the person behind the IP address.

No one can imagine that all the personal operation online would be supervised, like browsing the webpages, chatting with friends, watching a movie, replying an e-mail and so on, which leaves no way for the privacy, personal expression freedom and security of person data.

In Charter of Fundamental Right of the European Union, article 7 is titled with respect for private and family life; article 8 is the primary legal basis of protection of personal data; and article 11 guarantees the freedom of expression

[113] P6_TC1-COD(2005)0127, Position of the European Parliament adopted at first reading on 25 April 2007 with a view to the adoption of Directive *2007/.../EC* of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights

[114] Ibid. Art.2 (b)

[115] Ibid. Art. 3

[116] http://www.edri.org/files/EDRI_acta_series_1_20120116.pdf

[117] Art. 27(4) of ACTA: A Party may provide, in accordance with its laws and regulations, its competent authorities with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right holder has filed a legally sufficient claim of trademark or copyright or related rights infringement, and where such information is being sought for the purpose of protecting or enforcing those rights. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy.

and information.

Although this article is aiming to protect the interests of rights-holders, it is over the line too much further, placing an economic right ahead of fundamental rights. As the Charter is within the legal framework of the Treaties, any international law incompatible with treaty norms should not be concluded in EU unless the revision of the Treaties.

Moreover, the object under the article is including the infringers and the "alleged infringers". The latter has placed innocent users in a presumption of guilty and leads to unnoticed monitoring of mass of individuals and all users, irrespective of whether they are under suspicion.

In the last phrase of this article, there is the remedy for the defendant with "fair process". However, it is doubtable the effectiveness and the operability of it. The reference to "fair process" is vague, without demanding the mandatory process or ensuring concrete and effective remedies against such interferences with fundamental rights.

From the case of ACTA, the domain condition on European Parliament's part, first of all, is the democracy, or the true participation of it. Other reasons, like concern on protection of personal data, are side dishes. The Council and the Commission have really learnt a lesson. The parliamentary guarantee shall function in the responsible way so that the Union and its citizens would truly benefit.

2.2 EU- Mauritius sea piracy agreement

EU- Mauritius sea piracy agreement is the "Agreement between the European Union and the Republic of Mauritius on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after

transfer ".

In December 2008, the EU launched the "European Union Naval Force (EU NAVFOR) Somalia", within the framework of the European Common Security and Defence Policy (CSDP) and in accordance with relevant UN Security Council Resolutions (UNSCR) and International Law in response to the rising levels of piracy and armed robbery off the Horn of Africa and in the Western Indian Ocean.[118]

The mandate it to protect vessels of the World Food Program (WFP)carrying humanitarian aid to displaced persons in Somalia, as well as "the vulnerable vessels cruising off the Somali coast, " up to the Indian shore.[119]

Where and for the activities of the Union naval force to succeed in the deterrence, prevention and repression of acts of piracy and armed robbery, the question arises as the identification of states willing to activate the criminal proceedings and the definition of the relevant discipline for the treatment to be accorded: a)persons suspected of wanting to perform such acts or thefts, committing or having them committed , which have been stopped by the vessels belonging to the EU mission; b)the goods seized by the units of the EU military operation which are used to carry out acts thwarted , or that which constitutes the proceeds.

The European Union agreed with the Republic of Mauritius the very conditions for the transfer and the treatment of suspects and assets affected by the enforcement actions piracy.

For the agreement was based on Council Joint Action no. 2008/851/CFSP, it is within the field of CFSP that the Council is alone to decide to conclude a CFSP agreement.

[118] See: http://eunavfor.eu/mission/
[119] Ibid.

However, the European Parliament considered the agreement as mixed nature. In article 7, for an example, the contents expand to the financial assistance, technical and logistical assistance to Mauritius to allow it to set up the structures, legislation, training of investors and prosecutors[120]. The European Parliament contends these as the external dimension of AFSJ, where the cooperation in criminal matters, police cooperation and development cooperation belong to the ordinary legislative procedure. Thus the European Parliament should have a consent power on this agreement.

The Council insists on the nature of CFSP of the agreement. Without any effective political resolution, the European Parliament referred to the European Court of Justice to rule out (C-658/11). For the time being, there has not come out the judgment.

If the ECJ rules the agreement as a mixed nature one, the European Parliament would take advantage of this case-law to have more broadened scope of consent power over international agreements. The only reserved zone of CFSP solely to the Council would shrink accordingly.

2.3 Suspension the SWIFT

SWIFT is the abbreviation of "Agreement between the EU and the USA on the processing and transfer of Financial Messaging Data from the EU to US for purposes of the Terrorist Finance Tracking Program" concluded by EU on 13 July 2010.

SWIFT was applying to EU finely when US National Security Agency

[120] Art.7(3) of EU- Mauritius sea piracy agreement: As far as such resources are not provided through other financial donors, the Parties shall develop, subject to the applicable procedures, implementing arrangements on financial, technical and other assistance to enable the transfer, detention, investigation, prosecution and trial of transferred persons. These implementing arrangements shall also aim at covering technical and logistical assistance to Mauritius in the fields of revision of legislation, training of investigators and prosecutors, investigative and judicial procedures, and particularly, arrangements for storage and handing-over of evidence and appeal procedures.

surveillance scandal explored in the summer of 2013. The press released the surveillance program also included spying EU, also on SWIFT.

Almost one week later, the European Parliament adopted a resolution of 4 July 2013 on the US National Security Agency surveillance program, surveillance bodies in various Member States and their impact on EU citizens' privacy (2013/2682(RSP)), with which it Instructs the Commission gathering all relevant information and evidence from both US and EU sources (fact-finding); investigating the alleged surveillance activities of US authorities as well as any carried out by certain Member States (mapping of responsibilities); assessing the impact of surveillance programs as regards: the fundamental rights of EU citizens; actual data protection both within the EU and for EU citizens outside the EU[121] and so on.

Afterwards, due to its serious "concern about recently revealed documents on the NSA's activities as regards direct access to financial payment messages and related data, which would constitute a clear breach of the Agreement"[122], and due to the fact that "no Member State has launched, or asked for, an investigation, in the absence of which the facts cannot be verified" after the European Parliament previously called for a full on-site technical investigation into allegations that the US authorities have had unauthorized access or created possible back doors in the SWIFT servers, the European Parliament adopted resolution of 23 October 2013 on the suspension of the TFTP (SWIFT) agreement as a result of US National Security Agency surveillance (2013/2831(RSP))

The MEPs treated NSA interception of SWIFT data as a mockery of the EU's

[121] Point 16 of European Parliament Resolution of 4 July 2013 on the US National Security Agency surveillance program, surveillance bodies in various Member States and their impact on EU citizens' privacy (2013/2682(RSP))

[122] Point 4 of European Parliament resolution of 23 October 2013 on the suspension of the TFTP agreement as a result of US National Security Agency surveillance (2013/2831(RSP))

agreement with the US. So that EU cannot continue to remain silent in the face of ongoing revelations

Although Parliament had no formal powers under Article218TFEU (art. 218 (9)) to initiate the suspension or termination of an international agreement, Members considered that "the Commission would have to act if Parliament withdrew its support for a particular agreement"[123]. They pointed out that, "when considering whether or not to give its consent to future international agreements, Parliament would take account of the responses of the Commission and the Council in relation to this Agreement"[124].

As the response, the Commission refused the Parliamentary calls for suspending the SWIFT on 27 November 2013. The Commissioner Cecilia Malmstrom, for home affairs, said she had found no proof of U.S. wrongdoing, either in the sharing of flight passenger records or in the tracking of international payments; and she had received written assurances from the U.S. authorities[125].

News releases the criticism on Commission's move from MEP that "they are putting diplomatic relations ahead of citizens' rights. The Commission is being extremely timid to the Americans; they have done an investigation and concluded that everything is hunky dory. This is not serious. Taking the United States at its word was naive."[126]

The European Parliament implements its power diligently, both legal and political, into almost all aspects of EU external relations. The Council was quite silent on the SWIFT issue, awaiting the outcome of confrontation between the Commission and the European Parliament. It is not legally blamed, since the

[123]Point 14 of European Parliament resolution of 23 October 2013 on the suspension of the TFTP agreement as a result of US National Security Agency surveillance (2013/2831(RSP))
[124] Ibid.
[125] See: http://www.reuters.com/article/2013/11/27/us-eu-us-security-idUSBRE9AQ0F120131127
[126] Ibid.

Council may suspend an agreement only after receiving the proposal from the Commission according Art.218 (9) TFEU. However, the Council should or may indicate a mandate to the Commission at appropriate time as the same as when launching an international negotiation.

From the view of institutional position, the Council had been willing to adopt the SWIFT since the Eve before the day Lisbon Treaty came into force until it promoted the SWIFT Ⅱ (present TFTP) finally adopted. The suspension of SWIFT would have negative impact to its political reputation and legislation function. So that the Council didn't step forward as the European Parliament behaved.

As the check and balance to the relatively supranational institution, he European Parliament fulfilled its competence of protecting the interests of the citizens. The Parliamentary pressure imposed on the Commission was actually contesting the mass surveillance conduct of the US. It is probably one of the dominant reasons for that President Barak Obama announced significant changes on 17 January 2014 to the way the government collects and uses telephone records, particularly forbidding eavesdropping on the leaders of allied countries[127]. He has to ponder the huge side effect of the mistrust of the US by the EU institutions and EU citizens.

The reaction of the European Parliament towards the US NSA scandal has not imposed negative factor to the legislative function of the Council. They stand for different interests, thus it's of no use to compare the two. Rather, the complimentary positions represented by three core institutions benefits the EU by a welcomed outcome that the US has to show its respect to the EU and EU's fundamental principles. Also, this triangle check and balance demonstrates the comprehensive strength of EU, which is necessary for enhancing the external

[127] See: http://www.nytimes.com/2014/01/18/us/politics/obama-nsa.html?_r=0

and internal credibility when negotiating and implementing the international agreements.

To conclude on the three case studies, European Parliament's power is revolutionary after Lisbon Treaty. It is well aware of the significant role and has implemented it concretely and diligently, functioning as one of the gatekeepers for the protection of general principles and fundamental rights in EU's international agreements.

Democracy and transparency are of essence to give it legitimacy of International Agreements from the aspect of EU. Thus the Commission and Council have to respect the primary legal obligation to have the European Parliament being well revolved.

2.4 Updated idea before concluding case studies

In January 2014, EU has just opened the negotiation with China on the foreign direct investment agreement. Early in July of 2010, the Commission communicated the necessity of negotiation with China for a stand-alone investment agreement. February 2012, heads of EU and China agreed to move forwards and prepare to set the agenda for the negotiation. One year later, both the Council and European Parliament published their opinion/ resolution on this issue.

On the side of the European Parliament, it devoted to open the negotiation with China, since China has been of significance on the trade and investment strategy of EU. Although the Parliamentary Resolution[128] was not of binding effect, the European Parliament took it truly serious listing down a variety of concerns. Those concerns were generally categorized into two parts: "market access" and "investor protection". For the first category, the European

[128] B7-0436/2013, European Parliament resolution on the EU-China negotiations for a bilateral investment agreement (2013/2674(RSP)), 9th October 2013

Parliament mainly stressed on: the openness of China's investment market, reformation of the form of joint venture and eliminating the dominant position of state owned enterprises. For the second, the Parliamentary concerns are: protection of business confidential, protection of intellectual property right, protection of small and medium size enterprises, protection against direct and indirect expropriation.

Beyond the concrete opinion, the European Parliament expressed the criticism of the unreliability of China's judicial system. And also it implied the existing legal instrument to be the obstacle for full protection of European investigator and even may derogate the industrial interest of EU in a long term. The European Parliament also treated the resolution tackling the "solar panels" distribute as a sample or a pre-condition for the upcoming investment negotiation.

To sum up all the "concerns" above, one can immediately realize that they are the parliamentary mandate on the Commission. Therefore, once again, the European Parliament demonstrates its potential input to an international agreement, which would have actual binding result without a legally binding nature.

On the other side of the Council, situation was not alike ACTA or SWIFT. It took the Council almost two years to give it official mandate to open the negotiation. The reason is the nature of the envisaged agreement. This EU-China investment agreement will be the first investment agreement concluded only on the stand of the Union, where there have been 26 bilateral investment agreements between EU Member States and China. After the entry into force of Lisbon Treaty, Common Commercial Policy has been ruled falling into the fields applying co-legislative procedure (article 207 TFEU) and EU exclusive competence (article 3 TFEU). Furthermore, foreign direct investment, for the

first time as well, becomes within Common Commercial Policy (article 207 TFEU). That means the newly concluded international agreements on investment by the EU shall not need the conclusion by each Member State and it is within the Union's exclusive competence to negotiate. As the result, the EU investment agreement will replace all the bilateral agreements between the Member States and third party. It is not the harmonization of national rules, but is over-riding and replacing the latter. Besides, according to the treaty norms (article 207 (4) 2nd subparagraph), investment agreement requires unanimity voting in the Council.

These facts, with no doubt, trigger much more debate or negotiation inside the Council. Each Member State has the veto power. Foreign direct investment is extremely sensitive for almost all the Member States, because they all have to consider the large scale of benefit from the ever vast market in China on one hand; meanwhile, they shall be confronted with the legal system of this developing country on the other hand. Opportunity lives with the risk. This is why the Council gave the Commission the negotiating mandate until 18th October 2013.

From the case of EU-China investment agreement, the relationship between the Council and the European Parliament does not reflect any changing character: the Council would respect and take into account the Parliamentary opinions; the latter will keep an eye at all phases of negotiation. The only subtle fluctuation is the changing nature of investment policy referring to Union's competence. Therefore, in this case, people will witness the debate and compromise more in the Council rather than between the institutions.

SECTION 3. EUROPEAN PARLIAMENT'S "HEARING POWER"

Art 230 TFEU imposes the obligations of the Commission to reply orally and

in writing the questions put to it by the European Parliament. Likely, art 36 TEU provides that now the Council also has to response to the questions or accept the recommendations made by the European Parliament mentioning the common foreign and security policy. In addition, "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." (Art 230 TFEU) It can be observed that European Parliament's power has indeed increased and it control the Council as close as possible.

SECTION 4. BUDGETARY BATTLE FIELD

Budgetary power has been a "hot" topic for quite a long time. There are several steps which build up the budgetary edifice altogether: the Own Resources, the Financial Perspectives (now the Multiannual Financial Framework), the Annual Budget and the Financial Regulation. Here we examine them one by one to find out what are changed by the entry into force of Lisbon Treaty.

1. The Own Resources

The "Own Resources" indicates that the EU is financed on its own, or to say on the direct contribution from the Member States. The concept has not been changed by the Treaty of Lisbon. The procedure adopting regulations on Own Resources does not changed as well, remaining subjected to unanimity voting in the Council after consulting the European Parliament and the approval by the Member States in accordance with their respective constitutional requirements[129]. It is not surprising that the relation between the Council and the European Parliament does not change. Because before 1970s the European Parliament had already started to struggle for the involvement and the first secondary law on

[129] Art 311 TFEU

own resource was the fruit of that struggling. What is new by the Treaty of Lisbon is the "implementing measures" adopted by the Council after obtaining the consent of the European Parliament[130], in which the procedure only needs QMV in the Council since there is no indication of unanimity voting. In this sense, the Council has more power on putting forward the measures on the Member States' contribution which gives chances to the Member States to fully negotiate on the specific items according to diversified situations.

2. The Financial Perspectives

The "Financial Perspectives" was the measure to settle down the Union's financial framework valid for five to seven years, providing annual ceiling for the total maximum expenditure and separated ceiling for each category of expenditure. It was reached through inter-institutional agreement by the Commission, the Council and the European Parliament and did not derive from the EU legal order. It just could have legal binging effects between the three institutions. After the Treaty of Lisbon, the Multiannual Financial Framework has been codified in the Treaties (Art 312 TFEU), which is almost the same core content as the former Financial Perspectives. Comparing with the situation pre-Lisbon, the legal nature shifts to a primary law provision; in the Council, unanimity should be reached while the parliamentary consent is also necessary for the adoption; there is the measure of safeguarding the stability by which the "last year provisions" shall be extended when the new financial framework has not been adopted. (Art 312(4) TFEU) These creations enhances the role of two legislatures especially the European Parliament by codifying it as a truly co-legislature in this significant policy field.

3. The Annual Budget

The "Annual Budget" is another real battle field. The Council originally was

[130] Art 311 TFEU.

the exclusive institution enjoying the power to budget by the Treaty of Rome. Since 1970s until before the Treaty of Lisbon, the European Parliament has obtained the final say on “non-compulsory expenditure”, while the Council keeps the last word on “compulsory expenditure”. The Treaty of Lisbon abolishes the classification of “compulsory expenditure” and “non-compulsory expenditure”. To the consequence, the European Parliament has obtained ever powerful strength controlling over the whole budgetary policy, for instance, the common agricultural policy was “compulsory expenditure” under the control of the Council before while now the European Parliament also share the equal footing on it. Other than the victory on the policy fields, the new procedure adopting the final acts on EU budget again favors the European Parliament. Comparing with the provisions in TEC, TFEU adds new features to budgetary legislation. After the reading by both of the two budgetary authorities, the meeting of Conciliation Committee may be convened. As similar with the conciliation committee phase in the ordinary legislative procedure, the conciliation committee composes of representatives from the Council, equal number representatives from the European Parliament and the Commission. Its task is to agree on a joint text. Afterward, the approval of the joint text witnesses the growing power of the European Parliament. On one hand, the European Parliament has a unique veto power (rather than the Council) to call for a new draft budget submitted by the Commission when the Council approves the joint text but the European Parliament rejects. On the other hand, when the European Parliament approves but the Council rejects, the former one firstly has the opportunity to still confirm on its amendment which is the version before the conciliation committee and may adopt the budget according to that version, or otherwise the version with accordance to the joint text shall be adopted. Basically, in the Conciliation Committee, the representatives of the Council are the COREPER who are the central negotiators and decision makers inside the

Council. As far as the joint text being reached by the COREPER, it is not likely that the Council will reject on that ground. Nevertheless, "more unpredictable is the vote of the Plenary of the European Parliament on the results that its representatives have achieved at the Conciliation Committee; if negative, such a vote leads to the rejection of the budget."[131] Although by the failure of approval by the European Parliament will not lead to an amendment solely by the latter, within the new draft budget by the Commission it is possible contains the parliamentary input by whatever reasons such as the political-control pressure by the European Parliament on the Commission. Obviously, the European Parliament totally is the winner over the Council throughout the provisions on the abovementioned procedure.

4. The Financial Regulation

The "Financial Regulation" is the secondary law on behalf of the Treaty, implementing the budget. Before Lisbon, the adoption of this legal instrument was on the basis of consulting procedure[132]. A new change brought by the Treaty of Lisbon is the application of ordinary legislative procedure[133] which the European Parliament continues to share the authority with the Council when the budget comes to the implementing phase. The only ease for the Council here is the replace of former "unanimity" by now the "QMV".

SECTION 5. INSTITUTIONAL TRIANGLE IN THE LIGHT OF INTER-INSTITUTIONAL AGREEMENTS

In the triangle of these three institutions, the relation between the European Parliament and the Council "should rather be seen as political co-operation and

[131] Piris, with a foreword by Angela Merkel, The Lisbon Treaty: A legal and Political Analysis , Cambridge University Press, 2010, p299
[132] Art 279 TEC
[133] Art 322 TFEU

partnership"[134] while the relation of European Parliament and Commission is "one of political supervision and co-operation". The latter sometimes becomes a conspiracy against the Council which after all, in certain cases still wields the ultimate legislative power within the Union"[135]the main competitors finally appear to be the European Parliament and the Council. The best example in this sense is the Framework Agreement signed by the European Parliament and the Commission. On 20th October 2010, the European Parliament adopted another new framework agreement after 5 year from 2005 and the Commission immediately signed on it. This version of framework agreement (to be called "Commission-EP 2010" hereinafter) gained wide attention on it because it is the first one after the Treaty of Lisbon. The characteristics of the Commission-EP 2010 is worthy of discussion.

Firstly, the Commission-EP 2010 is not a multilateral inter-institutional agreement. Multilateral inter-institutional agreements hold the aim of facilitating the work and wide consent among the institutions. Under the principle of "sincere cooperation" early stated by Article 10 TEC, the institutions often resort to inter-institutional agreements to compensate for the shortcomings of the Treaty, or to enhance their powers indirectly, or to avoid inter-institutional conflict, or to find an easier way to implement the Treaty rather than amend the Treaty. They can compensate for the shortcomings of the Treaties and facilitating inter-institutional relations, prepare the content of future treaties and put an end to conflict between institutions.[136] In a word, "according to the Declaration No 3 annexed to the Nice Treaty, inter-institutional agreements could only enforce the provisions of the Treaty and had to be signed by all three institutions. However,

[134] Petrus Servatius Renoldus Franciscus, A Guide to European Union law : as amended by the Treaty of Lisbon, Sweet & Maxwell, 2010, p.74
[135] Ibid.
[136] Palayret, Building Parliament: 50 Years of European Parliament History 1958-2008, European Communities, 2009, p. 193-195

this declaration was a political one, without any binding legal effect."[137] But it gave the label to this kind of agreements of "requiring the consent of the three institutions"[138]

Secondly, the Commission-EP 2010 signed by the European Parliament and the Commission does not own the same aim as the typical inter-institutional agreement mentioned above. Above all, the Commission-EP 2010 is bilateral not multilateral, which triggered the criticism of the Council by claiming alternatives of the institutional balance as laid down in the Treaties. To be followed, these Commission-EP 2010 "are made at the beginning of a new parliamentary term to govern relations between the Commission and the newly elected European Parliament, and are not designed to enforce a particular provision of the Treaties." [139]

Last but not the least, from the Commission-EP 2010, the European Parliament still keeps obtaining new pledges from the Commission so that the European Parliament will be better informed or consulted, and then its views and demands will be taken more to the initiative phase and gains ever stronger political control power in the legislative procedure. Similarly, the Commission gets more political support from the European Parliament rather than be "fired" as a whole under the motion of censure by the latter as a result of being lack of trust between the two.

To view the text of the Commission-EP 2010, the written aim of it is to improve the flow of information between the two institutions and to improve cooperation on procedures and planning extended constructive dialogue. In the view of the European Parliament, the necessity of Commission-EP 2010 lays in its fully involvement as the same as the manner of the Commission treating with

[137] Palayret, Building Parliament: 50 Years of European Parliament History 1958-2008, European Communities, 2009, p. 197
[138] Ibid, p. 194
[139] Ibid, p. 196

the Council in any step of decision-making process, which is called the basic principle of equal treatment for Parliament and the Council in paragraph 9 in that text[140]. In exchange, the European Parliament promotes itself to the Commission that it would offer the strengthened political responsibility and legitimacy of the latter.

The most frequently used words are "in good time", "immediately", "in due time", "fully informed". They are, not the least, the requirements ensuring the European Parliament in control over the entire pace through the Commission. The parliamentary supervision starts before the Commission is formed. The nominated President of the Commission shall present the European Parliament his/her political guideline before the assent given by the latter. And the European Parliament also requests the full information of every designed Commissioner before their officially coming into competence. The Commissioners have duty to keep close responsibility with competence parliamentary Committees. When the European Parliament withdraw the confidence of any Commissioner or desire to replace them, the President of the Commission shall "seriously consider" the parliamentary opinion, where the European Parliament may exert political pressure on the Commission President to conduct the his/her power conferred by the TEU in paragraph 2 of Article 17(6). In the process of legislation, the Commission undertakes the duty to notify the European Parliament its position and initiative from the intention of proposal until the adoption. Even in the area of the CFSP, the Commission shall take measures to better involve the European Parliament in such a way as to take Parliament's views into account as far as possible. (Paragraph 10 of Framework Agreement on relations between the European Parliament and the European Commission, 2010)

On the accession to confidential documents, the European Parliament may

[140] see also paragraph 1 of Annex Ⅲ to the Framework Agreement on relations between the European Parliament and the European Commission,2010

request on all the classified information of EU, including classified and non-classified information[141]. The classified information composes four types which the EU TOP SECRET is also listed, according to Annex Ⅱ to the Commission-EP 2010. Although the access to information is supported by primary EU law (Art. 218(10) TFEU) and it is truly an obligation respected by the institutions, it is still a sensitive issue to conduct the handing over of the confidential information. The balance of political support and protection of confidential information may drive the Commission into dilemma.

At the aspect of international agreements, in primary law, there is no delegation power for the European Parliament in the negotiation or in the international conference. The only possibility of parliamentary involvement is the right to be immediately and fully informed at all stages of the procedure (Article 218(10) TFEU). The European Parliament gives its own understanding of this provision, relying on inter-institutional agreement for the purpose of better transparency on international agreements negotiation and for avoiding institutional structure clashes which is very negative for the credibility and effectiveness of international action. In addition, EP holds serious attitude to its raised power on international agreements. EP is really active in negotiating inter-institutional agreements serving its conducting of its veto power upon envisaged EU international agreements after Lisbon Treaty.

In the Commission-EP 2010, the European Parliament is requesting seats for the delegation of MEPs as observers and the rights to access to all EU delegation facilities, by adding duties on the Commission to provide facility to the former.[142] In addition, the European Parliament's view or Recommendation,

[141] Point 1.2.1 of Annex Ⅱ to "Framework Agreement on relations between the European Parliament and the European Commission, 2010".
[142] Subparagraph 2 of paragraph 25 and paragraph 27 of "Framework Agreement on relations

after being fully informed by the Commission of the progress of negotiation, seems to be duly supported in the Commission. If the Commission fails to support the parliamentary Recommendation for important reasons, the Commission shall explain in Plenary or relevant Committees (Paragraph 28,29 of Framework Agreement on relations between the European Parliament and the European Commission,2010, and paragraph 3,4 of Annex Ⅲ to this Framework Agreement). It implies that other than important reasons, the Commission would corporate the parliamentary input rather than trapping in political trouble.

Besides Commission-EP 2010, it is of necessity to refer to another inter-institutional agreement-"Inter-institutional Agreement between the European Parliament and the Council concerning the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of the Common Foreign and Security Policy 13 September 2012" (to be called "Council-EP 2012" in short hereinafter). Council-EP 2012 is a supplemental version of a similar Council-European Parliament inter-institutional agreement signed in 2002 ("Inter-institutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defense policy", to be called "Council-EP for CFSP 2002" in short hereinafter). The difference lays in the subject matter. The earlier dated one only refers to the confidential documents on CFSP, while the more recent one provides solution on access to all the other confidential files with the exception of the ones of CFSP.

Council-EP 2012 less restricts the regime than the mode of the Council- EP for CFSP 2002. The version of 2002 provided the EP the right to accession to CFSP confidential information, but only at the headquarters of the Council. It

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between the European Parliament and the European Commission, 2010"

was inconvenience of the MEPs to travel to Brussels when they were in the plenary session in Strasbourg[143]. Now the 2012 one facilitates the European Parliament that the latter could access to confidential information other than CFSP just at the headquarters of the Plenary.

In a word, the Commission-EP 2010 tends to combine the Commission upon the European Parliament as "special partnership" through both the political pressure and legitimacy reward, in order for the latter to keep at least equal pace with the Council.

Commission-EP 2010 and Council-EP 2012 both give priority to transparency. In this sense, with the raising power of EP, international agreements are not concluded behind closed doors. Democracy, represented by the EP, will be the essence and necessity.

[143] Passos, The European Union's external relations a year after Lisbon: a first evaluation from the European Parliament, CLEER working papers 2011/3, p49-56, p52

CONCLUSION OF CHAPTER 3

To build the co-legislature relationship with the European Parliament indeed benefits the Council's legislative function.

At the first glance at the changes in the Lisbon Treaty, the Council's power declines and it has to share the competence on equal footing with the European Parliament. And the European Parliament gets much power and makes itself a strong polar to establish an institutional triangle.

However, there are reasonable factors for this arrangement. For example, "all the Member States agreed that something had to be done in order to convince the EU citizens that the EU is a democratic entity and that its decision-making process is effectively in the hands of elected politicians."[144]

It is the combination of inter-governmental and community method, rather than the politicians' deal, that fills the gap of democratic deficit so as to promote the legitimacy of legislative function of the Council.

[144] Piris, with a foreword by Angela Merkel, The Lisbon Treaty: A legal and Political Analysis, Cambridge university press, 2010, p.122

CONCLUSION

The Council is one of the first established institutions along the history of European Union (European Community). The main designed competence of the Council has been the legislation for the Union (Community) and inter-governmental coordination. During the practice of legislation, to accord on the legislative intention and to amend the envisaged acts, negotiation among Member States is inevitable. National interests are diverse; internal legal orders are of difference; the economic, history, social, cultural and even religious factors could probably turn into the central debate in inter-governmental negotiation. Within a considerable period, the Council has been playing the role of the forum for political communication. Even if large Member States in this region would differ this political process (in way of delay or promoting[145]), the rotating presidency Member States are the chief propellers for the achievement of negotiations inside the Council in a large scale in history and in the sense of legal competence.

Alongside with the deepened economic integration, the requirement of the EU (EC) political coordination became prominent, especially in the sphere of internal market and finance where may lead to certain political issue. Beyond the legal competence, politicians preferred to negotiate above all. Only when they drew the conclusion on certain policy-making idea, the legislative procedure was launched officially in the Council. The ministers' level meeting in the Council could not fulfill the high political communication, which accelerated the establishment of European Council in 1975 as the political club for the heads of states or governments in EU (EC). Even though the two "councils" are of different concepts, the rotating presidency of the Council chaired the operation

[145] For example, the French ex-President Charles de Gaulle brought the Community into an awkward dilemma by "empty-chair" crisis; Chancellor of Germany Angela Merkel advocated the Single Currency of Euro with strong mind and efforts.

in European Council at the same time. That was the Council possessed both legislative competence and political communication role at the highest level. The double role of the Council has been maintained until the entering in to force of Lisbon Treaty. For this days and the age, the Council has to be confronted with the fact of losing chairmanship of the European Council and transferring its previous high political role to the latter which has been confirmed by the Treaties as an official Union institution, where leaves the functioning role for the Council. It calls for the Council to wait for general mandate or inter-government agreement from the European Council at almost all the time, until the Council could commence the legislative procedure as its own functional competence. Neither the Council's rotating presidency nor could the ministers of Member States impose remarkable influence upon the substantial decision in the European Council.

This changing role of the Council is revolutionary. The former double role has been cut to half and the influential power of the Council cannot be mentioned in the same breath with the situation before Lisbon. The only focal point that may attract attention is the inter-governmental debate on technical issue and at low political level, which constructs the functional role rather than political importance as before the Lisbon Treaty.

On the internal decision-making scheme, there are remarkable changes on treaty norms. The Treaties list the Qualified Majority Voting as a general rule and sum up the proportion of population as a second threshold. The normative changes ease the difficulty of adopting decisions, on the one hand; also, those new norms protect the smaller Member States and increase the democratic tone where the EU citizens would feel like being involved, where "what was once the so called 'democratic deficit' has been progressively filled.… there needs to develop a vision of Europe which also offers to the EU citizens the ground for a

European identity."[146]

However, from the entry into force of Lisbon Treaty until now, regardless the transitional provisions, there has been no difference of the working procedure and method in the Council: Working Groups analyze the draft acts at the first step, categorize and pass them to the central section ---- COREPER level; COREPER I and II exam the acts according to the policy field or level those issue may relate to, where the draft acts are under through the substantial discussion and debate; to the very end, the meetings of ministers' level would decide on a small proportion of issues, which is rare, and vote just as an procedural performance. The custom formed from long-time practice in COREPER is like that: the draft act would be amended until it receives agreement from all the representatives from each Member State, or at least can gather sufficient supporting votes which are necessary for the potential majority voting. Therefore, even though the treaty norms bring reformation to voting system in the Council, most of the decisions will still be adopted in the way of unanimous. The new "double majority voting system" would act as the hanging stone to be actually applied when Member States negotiate before drawing any resolution. Most Member States do not decline to become the minority at any time, unless the situation is of gravity concerning national interest, when the majorities endorse the adoption. As a result, even if the deadline of 1st November 2014 for the application of new voting method is approaching, the de facto working practice in the Council would not differ largely.

It is the most complicated and subtle situation of the inter-institutional relationship.

Back to the early age of the creation of EU (EC) institutions, the Council,

[146] Rossi, A new inter-institutional balance: supranational vs. intergovernmental method after the Lisbon Treaty, Global Jean Monnet- ECSA WORLD Conference the European Union after the Treaty of Lisbon, Brussels 25-26 May 2010, p11

the Commission (High Authority) and European Parliament (the Assembly) were the main organs on decision-making. The inter-institutional relationship was not similar as nowadays. The Commission was powerful with strong executive competence; the Council provided with political mandate and legislation for all policies in the Union (Community); the European Parliament was the weakest institution at that time because the treaty norms did not vest it with decisive policy-making power. This mode of institutional relation has maintained until the Maastricht Treaty which for the first time provided the European Parliament with a block power in co-operation legislative procedure. Although the fields applying co-operation rules were not so widespread, the European Parliament was right on the high way to seek equal-footing with the Council.

Lisbon Treaty promoted the European Parliament with the milestone in the EU legislative history that the European Parliament shall be one of the co-legislatures and, as a common rule, shall always have a say in EU policy-making process. In order to play well as a pure legislature, the Council has to compromise, to some extent, to safeguard the legislative and budgetary arena, even though the European Parliament is digging the wall to gain more power.

In the details of procedural provisions, the European Parliament even possesses more opportunities of veto voting as an overwhelmed blocking force ever. For example, in the first and second reading in ordinary legislative procedure, Council cannot cast veto votes to terminate any draft act where it can solely deliver amendment to the Commission's proposal or the Parliamentary opinion, while the European Parliament can deny the adoption of the draft acts.

In the field of international agreements concluded by the EU with third parties, the European Parliament remains the final decisive power on almost all

the international agreements due to the side-effect of general application of co-legislative procedure.

Besides the treaty norms, the European Parliament, by its Rules of Procedure and Inter-institutional Agreements with the Commission and with the Council, not only has the right to be fully informed in all phases of international negotiation and in the legislative procedure, but also is able to access to confidential documents on CFSP. The European Parliament could seize the approximately accurate intention of the Council, and the latter would be considered as lack of transparency if avoiding the former from being detected.

This first ever structural reformation leads the Council to be less strategic when referring to the Parliamentary bird's eye. This passive news for the Council is not the negative one for the Union. The vast information flow between institutions, especially before the decision made by each of them, do reduce the possibility of controversy or at least cut to short the time consuming tackling the institutional compromise, which is beneficial for enhancing the Union's legislative interest and for promoting the quality of legal acts adopted by Union institutions.

The Commission, as an advocator to the Union, is undertaking more workload on non-legislative act making. As one of the initiators and scrutinizers, the Council eases itself from the complex technical questions in order to keep energetic force on essential legal and low political issues, which pushes up its legislative function to be concentrate and efficient.

The relationship between the Council and the Commission has transformed due to the raising power of the European Parliament. The European Parliament possessed more political control power upon the Commission than that deriving from the Council. This is the main reason why the European Parliament can break the line linking the Council and the Commission which has been existed

for dozens of years.

Before Lisbon Treaty, the Council was the only main legislative operator both upstream and downstream from the Commission. After Lisbon, the European Council became the one seating upstream while the European Parliament joins in the downstream side. In addition to the legislative relations, the European Parliament uniquely support the Commission in way of both politics and democracy, from coming into office of the Commission's president and all the Commissioners to the censure motion during Commission five-year term. The Commission prefers to fill the democratic deficit by obeying the Parliamentary supervision. Whereas, this string is what the Council does not possess. To utilize the Commission, the European Parliament wins over the Council on information flowing, which has been discussed above, and also on final deciding power. The Council seems to fade after Lisbon Treaty. If the rotating presidency Member States are not the ones of relatively great influence, such as Greece who is trapped with economic and social morass, the Council's power would decline much more.

The 2014 European Parliament election is on the near schedule. If more seats are for the centre-left coalition, the European Parliament will perform more Parliamentary power against the collective will of Member States (the Council) if the MEPs consider it is necessary.

Without a doubt, indeed, the European Parliament is not the rival of the Council. To the practice after Lisbon Treaty, the former has been quite cooperative in EU law-making. The high quality level of Parliamentary input safeguards the legal instruments with democratic basis and transparency, which convinces the EU citizens with the accomplished protection for them.

The evolution of the Council's function is a process to do subtraction. In the light of deepened European integration, political integration requires institutions

with clarified, differentiated and specialized competences.

The Lisbon Treaty stresses the nature of the Council's function as legislative and budgetary ones, which should be the only essence for a legislative institution.

The Council stands for the states' interests and diversity national voices. And it is an irreplaceable efficient institution to swiftly foster Member States' positions and feedbacks, and to find a relatively largely supportive solution for the daily decision-making of the EU. Although in practice there is still criticism on its true transparency, "efficiency" could somewhere prevail with the principle of proportionality since there is the European Parliament symbolizing the "democracy".

We are witnessing the decline of an inter-governmental method. At the meanwhile, we had better to celebrate for the rise of community method. After the re-balancing, the inter-institutional relationship proves to be reasonable and legitimate.

The Treaty of Lisbon never defines the winner or the loser among the institutions, but gives impetus to the evolution of them. The dominate objective is to enhance the present EU integration and to draw it up to a higher level, in order for this largest regional economy to sail safe and sound in a globalized scale.

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