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The European Union in International
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More clarity, more unity as a post-Lisbon syndrome? The European Union in international climate change negotiations

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Summary:

Analysing the EU's external representation in international negotiations, scholars have often called the European Union a "fragmented power." Such fragmented framework of the EU's external governance has sometimes prevented the European Union to speak in one voice in international negotiations. By opposing pre-Lisbon decision-making system of the EU external representation (international climate change negotiations in Copenhagen, 2009) to that of the post-Lisbon system (negotiations in Cancun, 2010), we will analyse impact of the Lisbon Treaty on the EU's actorness in the United Nations Framework Convention on Climate Change (UNFCCC). We argue that the Lisbon Treaty has brought more clarity and amplified the EU's capacity to speak in one voice in the UNFCCC (through the European Commission and not through the EU Troika). However, the main challenge are some EU Member States, who are reluctant to recognize the Commission as an EU's sole negotiator, and are further trying to lead.

Keywords: European Union, climate change

Větší srozumitelnost a jednota jako post-lisabonský syndrom? Evropská unie v mezinárodních vyjednáváních o změně klimatu

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Abstrakt:

Při analýzách vnější reprezentace Evropské unie v mezinárodních jednáních odborníci často EU nazývají „roztržštěnou velmocí“. Tento fragmentovaný rámec někdy znemožňoval EU mluvit jedním hlasem při mezinárodních jednáních. Srovnáním před-lisabonské struktury rozhodování ve vnějších vztazích EU (mezinárodní vyjednávání o změně klimatu v Kodani, 2009) a post-lisabonského systému (vyjednávání v Cancunu, 2010) budeme analyzovat dopad Lisabonské smlouvy na aktérství Evropské unie v rámci Rámcové úmluvy OSN o změně klimatu (UNFCCC). Argumentujeme, že Lisabonská smlouva přinesla větší srozumitelnost a zesílila kapacitu EU (prostřednictvím Evropské komise, ne Trojky) mluvit jedním hlasem při jednáních o UNFCCC. Hlavní výzvu však představují některé členské státy, které jen neochotně uznávají roli Komise jako výhradního vyjednavče EU a dále se snaží vyjednávání vést.

Klíčová slova: Evropská unie, změny klimatu

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Introduction¹

About thirty years ago, former US Secretary of State, Henry Kissinger, posed his famous question on the phone for Europe and in doing so, expressed his indirect critique regarding the EU's inability to speak with one voice and to present a unified approach to the world.

Since that time, the European Union has, through the means of five institutional reforms,² transferred ever substantial powers to EU institutions; powers which allegedly should have strengthened the EU's internal unity and ensured a better external representation in international negotiations. However, the past decade again witnessed harsh critique from international partners (the US, Russia, China, etc.) on the EU's internal discords and its inability to speak with one voice on many issues. As a result, nearly every EU Presidency since the mid-2000s has recognized the importance of the EU's internal unity regarding external representation and has made it a priority to attempt to strengthen the European Union by enhancing its ability to speak with one voice. This appeal has also been supported by prominent EU politicians (Barroso 2010), who called for Europeans to "stick to the script," (Christine Lagarde, see Beattie 2011) while "speaking with one voice" (Jean-Claude Juncker, see Carrel and Jones) or even with "one mouth" (Pascal Lamy, see Brussels Forum 2010).

Analysing past disagreements among the EU-27 MS,³ one can argue that it is only CFSP issues that cause disunity, though currently the European Union is again deeply divided on the question of Greek debt. This is surprising as economic policy has always been an area in which, despite divisions among the Euro-zone and non-Euro-zone Member States, a single position was able to be formed.

An additional clash of interests has been observed during the preparation for the UNFCCC⁴ negotiations in Copenhagen (2009). After a decade "of balanced interests of the MS regarding environmental issues and the EU's strong representation in international negotiations on climate change, in Copenhagen Europe spoke with many different voices. [...] A lot of Europeans in the room is

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² Single European Act (1987), Maastricht Treaty (1992), Amsterdam Treaty (1997), Nice Treaty (2001) and Lisbon Treaty (2009).

³ Disagreements on Iraq in 2003, lack of a common official position on Kosovo in 2008, divisions on the EU's common policy towards Russia, the Baltic States, the Balkans, Turkey, energy policy, etc.

⁴ United Nations Framework Convention on Climate Change

not a problem, but there is only an advantage if we sing from the same hymn sheet. We need to think about this and reflect on this very seriously, or we will lose our leadership role in the world”(EP 2010). Or as Guy Verhofstadt, leader of the liberal group in the European Parliament has put it: “Copenhagen may well have had a different outcome, had Europe been represented by a single person, instead of eight”(Verhofstadt 2010).

A year later in Cancuń, the European Union succeeded in gaining some of its lost ground in the environmental global arena, by “being a bridge-builder [...] while also advancing its positions” according to Joke Schauvliege, Flemish Minister for Environment, Nature and Culture (Europa 2010). Connie Hedegaard, European Commissioner for Climate Action, welcomed the Cancuń Agreement as a comprehensive framework for climate action for the period following 2012, and also stressed the importance of the European Union “in delivering the successful outcome the world expected and needed”(ibid.).

What has changed since the Copenhagen negotiations? Did the European Union learn “a lesson on unity” during these twelve months that has helped to reinvigorate its role in the environmental global arena? Considering the fact that the positions of other global actors (the US, China, Russia, Brazil, India, etc.) have remained fairly stable, one has to focus on the changes *within* the European Union. May one argue that the EU’s institutional system for external representation has become too obsolete, too ineffective and too inflexible for the current international landscape (Copenhagen case) Has the Lisbon Treaty put an end to the EU’s rivalry among its institutions and its Member States, helping the European Union to present a streamlined, clearly defined and unified position and therefore made it able to speak with one voice in Cancuń?

Going in line with the words of Connie Hedegaard and Guy Verhofstadt , who have emphasised importance of the EU’s internal unity and its ability to speak with one voice, this paper sets out to examine whether the Lisbon Treaty has resulted in more clarity and unity regarding the EU’s external representation in the UNFCCC negotiations, by opposing pre-Lisbon decision-making (international climate change negotiation in Copenhagen, 2009) to the post-Lisbon system (Cancuń, 2010).

The organization of the current paper is as follows: we start with the pre-Lisbon structure (Nice institutional set-up), then move on to the Lisbon structure and, finally, present preliminary conclusions. For both institutional set-ups (Nice and Lisbon) we will introduce two levels: domestic (EU) and international, whereas the latter will be subdivided into preparation and representation phases. In addition, having analysed the theoretical framework for each institutional set-up, we introduce our empirical findings for negotiations in Copenhagen and Cancuń, based on qualitative analysis of press coverage (Le Monde, Der Spiegel and EurActiv).

1. Pre-Lisbon Structure

1.1 Nice Institutional set-up

According to the “doctrine of parallelism” concerning the EU’s internal and external competences, the EU environmental policy is a shared competence, i.e. it automatically leads to mixed agreements “to which both the EC and one or more of its member states are parties”(Delreux 2006: 237).

Before the introduction of the Lisbon Treaty in December 2009, all global environmental agreements⁵ were made by qualified majority voting (QMV), which was a result of the co-decision procedure between the Council of Ministers and the European Parliament, with the Commission’s initiative.

Despite its right of initiative and capacities to monitor the implementation of *domestic climate change* measures, the European Commission has often been seen as the main loser in the aftermath of EU institutional reforms and the redistribution of power arrangements introduced with every new Treaty.⁶ In contrast, the main winner proves to be the European Parliament, steadily empowered with each treaty revision⁷ and gradually gaining an equal footing⁸ with the Council of Ministers in most policy areas. According to some scholars (Fernandez 2008, Lacasta et al. 2007, Szabó 2011), the latter can be seen as the prominent body for internal as well as for external climate policy-making, since the role of the rotating Presidency is a complex combination of drive, coordination and negotiation on the domestic level and representation on the international stage.

During preparations for international negotiations, the Presidency, as an agenda-setter, can prioritise certain issues and is responsible for the preparation of the EU mandate as well as its position regarding international climate change negotiations⁹. The Council’s decision-making starts with the Working Party on International Environment Issues (WPIEI), where preferences of the EU MS are aggregated and whose draft is further adopted by the COREPER I and the Environment Council. In case of financial issues involved, the problem is transferred to COREPER II and the draft decision is then adopted by the Economic and Financial Affairs Council (ECOFIN).¹⁰ If neither the Environmental Council nor the ECOFIN can agree on the mandate and the

⁵ Except marine biological resources (exclusive competence of the EU).

⁶ For more on this point, see – Emerson et al. (2011), Wessels and Bopp (2008).

⁷ From the SEA to the Maastricht, Amsterdam and Nice.

⁸ Co-decision procedure.

⁹ This fact has consequently increased the Council’s power of policy planning and has undermined Commission’s agenda-setting role.

¹⁰ For more on this point, see – Delreux (2006), Delreux and Van den Brande (2010) and Kaczyński (2010).

official EU position, the issue is further referred to the European Council and decided by the unanimity rule.¹¹

In addition to the fact that the Council authorizes the Commission to negotiate on the behalf of the European Union,¹² *during international negotiations on climate change*, the so-called “EU Troika”¹³ usually represents interests of the European Union and its 27 Member States. As the lead negotiator, the Presidency speaks for the EU and presents a common position, pre-agreed to by the EU MS in the Council and during the international negotiations (Delreux 2006: 244). The Commission’s informal role can be assessed as being bigger than its formal (van Schaik and Egenhofer 2005: 13). Additionally, considering the fact that all global environmental agreements are mixed, it creates the possibility for practically every head of the 27 EU MS to negotiate as UN members on the global arena.¹⁴ This option makes the EU’s external representation even more fragmented and ineffective, since “the member states acting individually and with different discourses have little or no chance of being effective at the level of strategic significance” (Emerson et al. 2011: 14).

The EU’s institutional design¹⁵ has thus been criticised for its predisposition to finding the lowest common denominator of all MS’ positions and for the lack of bargaining flexibility of the EU negotiators (Meunier 1998 and 2000, Paemen and Bensch 1995: 95) as well as for the EU’s multiplication of political representation¹⁶ and limited transparency towards third partners (Delreux and Van den Brande 2010, Kaczyński 2010, Van Schaik and Egenhofer 2003). Responding to this criticism, the pre-Lisbon system of the EU’s external representation in international climate change negotiations has tried to improve itself with the introduction of a system of “lead negotiators and issue leaders,”¹⁷ further reporting to the WPIEI. And so, between 2004 and 2007, each issue of the various institutional bodies working under UNFCCC was negotiated by a lead negotiator on behalf of the EU,¹⁸ though the EU’s official statements in the plenary meetings of the COP¹⁹ were still made by the Presidency. This

¹¹ Case of the EU mandate for Copenhagen negotiations, which has been adopted during the October 2009 European Council, see Council of the EU (2009: par. 4–25).

¹² Art. 300 TEC

¹³ Composed of the European Commission and two Presidencies (current and incoming).

¹⁴ However, there is no legal basis for joint member state participation in the mixed agreements.

¹⁵ Both of the domestic decision-making on climate change issues and of the EU’s preparation as well as external representation during the UNFCCC negotiations.

¹⁶ Problem of the EU Troika (who is speaking for Europe?) and rotating Presidencies.

¹⁷ The system of informal division of labour among the Commission and the EU MS has been introduced during the 2004 Irish EU Presidency (Delreux and Van den Brande 2010: 6, Oberthür and Kelly 2008).

¹⁸ More than 25 different lead negotiators have participated at that time, each representing the EU on a particular issue (Delreux and Van den Brande, 2010: 15).

¹⁹ Conference of the Parties.

innovation has guaranteed not only continuity of representation,²⁰ but also increased efficiency of decision-making, pooling of expertise and burden-sharing among the EU Member States and the EU institutions²¹ (Delreux and Van den Brande 2010). Apart of these benefits, the EU Presidency has always been well-prepared to deal with every issue on the complicated UNFCCC agenda while taking the final responsibility of the whole negotiation package.

However, the EU remained a target for criticism due to its complicated external representation. Following the creation of the Bali roadmap (2007),²² the European Union has modified its negotiating team to a two-track approach: AWG-LCA (Ad Hoc Working Group on Long-term Cooperative Action under the Convention)²³ and AWG-KP (Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol).²⁴ From this point on, the EU has been represented in each track by one lead negotiator, each being surrounded by a group of issue leaders (Delreux and Van den Brande, 2010). The latter has been responsible for the conversion of the EU position papers into practical input for the lead negotiator, thus creating a bridge between the EU's internal decision-making (the WPIEI) and its system of external representation in the UNFCCC negotiations (lead negotiators).

But despite such positive results produced by this new system, “even in the absence of a cacophony of voices (single voice), there was still a problem with a multiplication of political representations, which had effect of undermining of the official EU negotiator’s position” (Kaczyński 2010: 4).

1.2 Copenhagen negotiations (2009)

The EU’s overarching goal for the summit in Copenhagen has been to “achieve maximum progress towards finalisation of an ambitious and legally binding global climate treaty to succeed the Kyoto Protocol in 2013” (European Commission, 2009). Considering importance of this summit, the European Union has aimed to take a leadership role at the UNFCCC negotiations in Copenhagen, and the Swedish Presidency has clearly decided that addressing climate change would be one of its main priorities.²⁵

²⁰ “Climate change negotiations are a nonstop process going from COP to COP, each of them being prepared in multiple preparatory meetings” (Delreux and Van den Brande, 2010: 7).

²¹ In most cases, there are some representatives of EU MS and those of the European Commission.

²² After the UNFCCC COP 13 in Bali.

²³ Negotiated with all UNFCCC parties in the institutional framework.

²⁴ Negotiated among the Kyoto Protocol parties.

²⁵ As an agenda-setter, the Presidency has not only pushed the EU towards a more ambitious negotiating position, but also as a mediator, it has organized numerous bilateral meetings with the representatives of MS to agree on the EU negotiating mandate and with third

Notwithstanding the significance of negotiations in Copenhagen and the Swedish efforts, already *during the preparation of the EU mandate* and its common position for the COP15, **preferences of the EU Member States** proved to be too heterogeneous on a number of issues.²⁶

Member states were divided on the amount, modalities and type of aid and financial transfer, the 27 EU MS could not find an internal compromise concerning financial contributions to developing countries for adaption and mitigation mechanisms (September-December 2009). For example, being highly depended on nuclear power²⁷ that has curtailed its fossil fuel-related CO₂ emissions, France has eagerly focused exclusively on the level of emissions as a prerequisite for financial contributions. At the same time, polluting more than their neighbours in proportion to their wealth, Poland and Romania have completely refused such a formula as it might outweigh their public expenditures (Le Monde, 30 September 2009). Hence, resisting any financial contributions being assessed on the basis of their emissions as opposed to their GDP, Poland and other Eastern European countries have objected to providing any financial help to countries like Brazil, which they consider wealthier. Germany has been very reluctant to disclose any amount of its potential contribution, giving other MS a first-mover advantage in financial transfers to the developing countries.

Given that “the Europeans became mired in petty disputes concerning individual contributions of the Member States towards a financial package for developing nations” (Müller-Kraenner, 2010: 2), a common EU position could not be agreed to; neither within in the Environmental Council nor in the ECOFIN. As the result, the issue has been referred to the European Council (October 2009) and further decided on the unanimity rule.

Apart from disunity on financial contributions, the EU Member States have initiated a series of exclusive bilateral talks that have endangered the EU’s capacity to speak in one voice to the world. For instance, having traditionally had extensive influence upon the Commonwealth countries, during the Copenhagen negotiations, the United Kingdom reinforced its bilateral relations with those 54 states. Moreover, in summer 2009 the British Prime Minister Gordon Brown presented his climate finance package for developing nations, which found only lukewarm support from other EU MS. The same reaction was

countries (an EU-Brazil summit, 06 October 2009, and an EU-USA summit, 3 November 2009) to clarify positions prior to Copenhagen.

²⁶ Commitment to 30% of CO₂ reduction goal, issue of land use, land use change and forestry (LULUCF), issue of ‘hot air’ and financial contributions. In this paper, however, we will analyse only the latter issue due to the limited format.

²⁷ In 2004, 78.8% out of the country’s total production of electricity was from nuclear power. France is also the world’s largest net exporter of electric power, exporting 18% of its total production to other EU countries

observed when France began to closely cooperate with the African Union (AU) in order to provide financial support for renewable energies and African tropical forest protection; another example was when Germany and France provided support to Brazil through the Amazon Fund (Müller-Kraenner, 2010: 4). In these ways, having divided the world map into their spheres of influence,²⁸ this “Big-3” have been actively competing for attention before and during the Copenhagen summit with their national initiatives and individual bilateral negotiations.

The same lack of a unified approach yet abundance of unilateral actions characterized the *Copenhagen negotiations* as well. Whereas the UK and France became involved in a finance package to protect international tropical forests (as a part of the Copenhagen package), Germany preferred to act alone in employing its own bilateral instruments.²⁹

On the whole, during negotiations in Copenhagen, the European Union was represented by the “EU-Troika:” the rotating Council Presidency in the lead position (Sweden), the incoming Presidency (Spain) and the Commission (with the Environment Commissioner Stavros Dimas) with assistance of the Secretariat of the Council. Moreover, using their right to negotiate in their own names, heads of Germany, France and the UK also represented the EU during the Copenhagen negotiations. In total, 8 individuals spoke on behalf of the European Union.³⁰ Such “multi-voiced representation” of the European Union has been additionally constrained with the EU’s inflexible mandate, stemming from the unanimity requirement.³¹ The latter has consequently affected the EU’s ability to act in a unified way in Copenhagen, even with daily EU coordination meetings at all negotiation levels.

Considering all these facts, one can clearly understand why President Obama decided to conclude the “Copenhagen Accord”³² with China, India and Brazil during negotiations in Copenhagen: there were simply too many European leaders to negotiate with. The EU did not reach its goal of playing a leadership role at the summit in order to make as much progress as possible towards a full ambitious treaty to succeed the Kyoto Protocol in 2013.

²⁸ France – winning over Francophone Africa, the UK - responsible for the Commonwealth, and Germany has taken a role of a “supervisor” of the Pacific islands (Müller-Kraenner, 2010: 4).

²⁹ Like funds approved by the Germany Chancellor at the UN Conference on Biodiversity for the protection of tropical forests.

³⁰ Another two – Denmark as an organizer of the Summit and Catherine Ashton as the HR.

³¹ “EU negotiators were not permitted to deviate from the mandate before the 27 EU Member States has unanimously approved the changes” (Groen and Niemann 2011: 13).

³² The Copenhagen Accord seeks to limit a rise in temperatures to below two degrees Celsius above pre-industrial levels and sets a goal of \$ 100 billion a year in aid for developing nations from 2020 to help confront climate change (EurActiv, 2 February 2010).

Tab. 1: Nice institutional set-up for the climate change negotiations (internal and external)

		Institution	Role in international climate change negotiations
1. Domestic climate change policy, exported to the international level		Commission	Right of initiative Proper implementation and enforcement Monitoring domestic climate change measures
		Rotating Presidency Council of Ministers European Parliament	Consensus-building among national governments and EU institutions Co-decision on domestic climate change action
2. International negotiations	Preparation	Council of Ministers (rotating Presidency)	Agenda-shaping capacity Mandate for international negotiations managed within the Council
		COREPER I and Environment Council COREPER II and ECOFIN	Working parties prepare draft proposals
		European Council	Complex issues referred for final decision (e.g. Copenhagen, 2009 negotiations)
	Representation (Copenhagen Summit, 2009)	“EU Troika” consisting of:	rotating Presidency (Sweden), incoming Presidency (Spain) and the Commission (Stavros Dimas)

Source: Modified table from Barnes (2011: 14–15).

2. Lisbon structure

2.1 Lisbon institutional set-up

The EU has in the past been highly criticized for its tendency of over-representation as well as for its complicated decision-making procedures. Yet with the introduction of the Lisbon Treaty, the EU’s representation system in climate change issues has been fundamentally changed.

Despite the Lisbon Treaty’s primary focus on the EU’s external dimension, some changes have also occurred on the level of *domestic climate change policy*.³³ Although the shared competence has not been modified, the European Parliament has been given the right to veto future international agreements³⁴

³³ Which is further exported to the international level.

³⁴ The EP has already used its veto power to reject the SWIFT agreement. For more on this point, see – Nugent and Rhinard (2011: 18–19) and EurActiv (18 November 2010).

(including climate agreements) and its co-decision procedure has been significantly extended, together with the application of the majority rule vote in the Council.³⁵ Groen and Niemann argue that this new provision reduces the chance of lowest common denominator positions and it will, consequently, “increase the likelihood that negotiation outcomes develop into a more favourable direction for the European Union” (2011: 29).

Additionally, the procedure of *launching negotiations on international agreements* has been slightly changed due to the introduction of two new posts: the High Representative (HR) and the President of the European Council (PotEC).³⁶ Whereas some scholars (Grøn and Wivel 2011) argue that the introduction of the second post has marginalised the importance of the rotating presidency, which has been traditionally seen as an important agenda-setter and consensus-builder both on the EU and international levels (2011: 527); other researchers state that following the introduction of the Lisbon Treaty “the consensus-building role of the Presidency under shared competences has not changed” (Szabó 2011: 10).

Art. 218(3) TFEU has established a procedure when on the basis of a recommendation from the HR or the Commission,³⁷ the Council takes a decision “depending on the subject of the agreement envisaged, nominating the Union negotiator, or the head of the Union’s negotiating team.” According to the Art. 17(1) TEU, this negotiator can only be the European Commission or the HR³⁸ “ensuring the Union’s external representation.” Hence, from now on, the only recognized negotiator in any environmental and climate change negotiations is the European Commission, with the new Commissioner for Climate Action, Connie Hedegaard, who is responsible for leading the EU in international negotiations on climate change as well for “helping the EU to meet its targets for 2020 and beyond to reduce greenhouse gas emissions” (EC 2009).

Despite such a clear-cut description of the Commission’s negotiating role (Art.17 TEU), during recent negotiations in the UNEP mercury case, the Council contested the strong position of the Commission in this mixed agreement. After a lengthy inter-institutional debate, the Council accepted the Commission as a “negotiator on behalf of the Union [...] in consultation with a special committee of representatives of Member States” and appealed for both parts to “cooperate closely during the negotiating process, with a view to aiming for unity in the international representation of the Union and its member states”

³⁵ The new rule of “double majority” voting in Council (at least 55% of Member States, representing at least 65% of the EU’s population) should make the finding of majorities, and hence the passing of legislation, easier (Lee 2008).

³⁶ Currently occupied by Baroness Ashton and Herman van Rompuy.

³⁷ Depending whether CFSP or other issues are on stake.

³⁸ In case of the CFSP issues.

(Council of the EU 2010). Consequently, the mercury case has created a precedent for any other international negotiations with shared competence.³⁹

Quite striking is that already on this stage, the Lisbon Treaty attempts to bring more unity into the EU's negotiating system by excluding the representatives of the EU Member States from participation in a negotiating team.⁴⁰ The only way they can participate in the preparation of the EU's negotiating mandate and official position is through the system of "lead negotiators and issue leaders" as well as through involvement in the Environmental Council⁴¹ and contribution from the ECOFIN in case of financial issues. Both of these systems remain unchanged.

The main modifications introduced by the Lisbon Treaty concern predominantly *the EU's external representation in international negotiations*. Numerous mainstream scholars (Couré and Pisani-Ferri 2007; Delreux 2004, 2006 and 2011; Egenhofer and van Schaik 2005; Kaczyński 2010; Lacasta et al 2002; Lee 2008) state that the Treaty has conferred a legal personality upon the European Union⁴², and this fact enhances the EU's "capacity to enter into relations with other states" and to participate in international institutions of any type.

Additionally, the newly established European External Action Service (EEAS) under the auspices of the HR should lead simultaneous bilateral negotiations with third partners (TEU 1992: Art. 27 (3)), drawing on expertise from the Commission experts as well as those of the Council of Ministers. This fact should ensure greater efficiency of the EU's external representation and strengthen the EU's capacity to speak with one voice in international negotiations on climate change (Kaczyński 2010, Van Schaik 2009).

We have already referred to Art. 17(1) TEU as well as to the decision of the Council of the EU concerning the mercury case, both of which authorize the Commission to represent the European Union externally in all matters except CFSP. The rotating Presidency is no longer mentioned in the Lisbon Treaty with the regard to external relations (Emerson et al. 2011). This means that the external system of the EU's representation (the "EU-Troika") disappears, and the renewed focus is currently placed on another "troika" concept: three consecutive rotating presidencies coordinate priorities in the 18-month programme, which "requires increased coordination and preparation efforts from all parties" (Van Hecke and Bursens, 2010: 7–8). It definitely brings more

³⁹ For more on this point, see – Emerson et al. (2011: 80–82) and Kaczyński (2010: 10).

⁴⁰ Acc. to Art. 218(4) TFEU, if the Council decides, the Member States can be part of a special committee with a consultative role.

⁴¹ The working groups and the COREPER I are further both chaired by the rotating Presidency.

⁴² Art. 47 TEU confers upon the European Union legal personality and Art. 1 TEU says that the EU replaces and succeeds the European Communities.

continuity, clarity and coherence into the EU's external representation, as the European Union is expected to speak with only one voice (that of the Commission).

Despite the fact that the delegation is optional and voluntary in case of a mixed agreement, the EU Member States usually mandate the Commission to negotiate on their behalf and by doing so, they have to refrain from "taking any measure which could jeopardize the attainment of the Union's objectives" (TEU 1992: Art. 4 (3)). But can large countries such as France, Germany, the UK, etc. agree not to take the lead and to be content with such a supplementary role of the external representation in the UNFCCC negotiations? Or does the tendency described by Heliskoski (2001) remain?

Another potential challenge or danger of "turf fighting" among the institutions, as Barnes (2011) describes it, may be the fact that both Presidents (that of the Commission and of the European Council)⁴³ are equally responsible for consensus-building and mediation among the national interests of the EU MS. Such overlapping of competences may constrain the unifying actions taken either by the Commission or by the European Council (Barnes 2011: 22) and that will consequently result in the EU's complicated, inefficient and fragmented representation on the international level.

2.2 Cancun negotiations (2010)

Having analysed its weak performance during negotiations in Copenhagen⁴⁴ and considering the complicated nature of the upcoming negotiations in Cancun,⁴⁵ the European Union has developed a new strategy based on the new institutional-set up, provided by the Lisbon Treaty.

Firstly, the President of the European Commission has nominated the first Commissioner for Climate Change, Connie Hedegaard, who has actively started to push Europe to continue global negotiations and to pursue deeper emission cuts by "taking tangible and determined action domestically to become the most climate-friendly region in the world" (EurActiv, 10 March 2010).

Secondly, despite the efficiency of the EU negotiators during UNFCCC negotiations in Copenhagen, the Spring European Council under the Spanish Presidency (26 March 2010) has decided to play it safe and has established a new

⁴³ Barroso and van Rompuy, accordingly

⁴⁴ For more on this point, see "EU looks beyond weak Copenhagen climate deal," (December 2009 – January 2010).

⁴⁵ Negotiations in Cancun have been held in tracks: extension of the Kyoto Protocol and cooperation between developed and developing countries to fight climate change: Long-Term Cooperative Action (LCA).

team of negotiators for the Cancuń summit.⁴⁶ The precise preparation for Cancuń at the level of COREPER I has been further defined by the Belgian Presidency,⁴⁷ who re-established a system of “lead negotiators and issue leaders” throughout UNFCCC negotiations.

As if confirming the arguments of some authors (Missiroli and Emmanouilidis 2009, Vanhoonacker and Pomorska, 2010) who claim that the Lisbon Treaty has marked the end of a whole era concerning the rotating Presidency’s involvement in the EU’s external representation regarding international negotiations, during preparations for the UNFCCC negotiations in Cancuń, the Council Legal Service stated it was “illegal to claim for the rotating Presidency⁴⁸ a general role to represent the EU on all matters of shared competence” (Emerson et al. 2011: 31). Agreeing with this approach, the Belgian Presidency has modestly given itself the title of “internal coordinator” for negotiations in Cancuń, but nevertheless included itself together with the Commission “to speak on behalf of the EU and its 27 member states [...] behind the “EU” nameplate.”⁴⁹

As a result, at the Cancuń summit the European Union was represented by a new hybrid mixture of the rotating Presidency and the Commission, with the latter taking a lead and speaking for the European Union with the voice of Commissioner for Climate Change, Connie Hedegaard. Hedegaard is highly dedicated to reaching commitment from all developed nations to a binding Treaty; she has largely devoted her efforts to getting other big players on-board through new climate diplomacy.⁵⁰ Her efforts in those action-oriented decisions have been highly praised both by the European and international observers⁵¹ who considered it to be “the most logical way for the EU to play a positive and proactive role in reinvigorating the UN talks” (EuroActiv, 10 March 2010).

In contrast to Copenhagen summit, in Cancuń no leaders from the EU MS were involved into the negotiation process during the summit. By mandating the European Commission to represent their interests in the UNFCCC negotiations, the Member States have already demonstrated unified position on the global arena, though with “some objection ... palpable on the side of the member states” (Szabó, 2011: 30). For instance, this objection was observed

⁴⁶ A new team for the LCA track consists of the UK (lead), Poland, France and Germany (Emerson et al. 2011: 83).

⁴⁷ Presidency non-paper of 20 October 2010, “Practical arrangements for external representation of the EU at the 16th session of the Conference of the Parties (COP 16) to the UNFCCC and the 6th session of the meeting of the Parties to the Kyoto Protocol (CMP 6), Cancun,” 29 November to 10 December 2010.

⁴⁸ At that time – the forthcoming Hungarian one

⁴⁹ See footnote 46.

⁵⁰ Personal visits to the US, Mexico, China, India and Japan.

⁵¹ According to Barroso, these bilateral talks have helped for the EU to understand “where the Americans [...] (and other countries) stand, how far they can go, with what state of mind they are going to Cancun” (EurActiv, 18 November 2010).

when the UK unilaterally attempted to extend the Kyoto protocol beyond 2012 (EurActiv, 1 April 2010),⁵² whereas the European Union⁵³ has pushed for a new treaty to replace the Kyoto Protocol, including all countries under a single framework (EurActiv, 4 May 2010).

In spite of the apprehension of even more complicated external representation of the European Union in the UNFCCC negotiations,⁵⁴ none of the newly nominated officials (neither the HR nor the PoTEC) was present at Cancuń to speak for the EU.

Considering all these factors, it certainly seems as if the European Union was speaking with one voice in Cancuń. However, it is only the external representation which has undergone this change. If one examines a lower stage (from the UNFCCC negotiations to the preparation of the EU's mandate and its position on Cancuń), the image of the EU's internal unity becomes blurred once again.⁵⁵

Initially, in order to satisfy the interests of all 27 EU MS and to avoid deadlocks of Copenhagen, the European Commission decided to be overcautious with its unilateral target of reducing CO2 emissions and has consequently promoted only a 20% cut by 2020 (EurActiv, 10 March 2010). This aim has provoked deep discords among the EU MS as well as amidst the European Commission. For example, whereas Denmark, the Netherlands, Sweden and the UK have been ardent advocates of the 30% target, Eastern European states⁵⁶ led by Poland as well as Italy and Finland have strongly opposed this measure (EurActiv, 15 March 2010). The discords concerning the 30% target have been observed not only among the EU MS, but also among the Commissioners. While Connie Hedegaard has argued that it is “in Europe's own interest” to raise its target to 30% unilaterally, as it “will enhance our competitiveness, strengthen our energy security, stimulate green economic growth and innovation... and create new jobs” (EurActiv, 10 March and 4 May 2010), Energy Commissioner Oettinger has openly demonstrated his opposition to shift the EU target from 20% to 30%, because this shift will lead to industry relocations away from the EU. His opinion has been echoed by the German Minister for Economics and Technology, Rainer Brüderle (FDP), and the CEO

⁵² Energy and Climate Change Secretary Ed Miliband has stated that the UK will be willing to sign a new Kyoto Treaty in a unilateral move “provided there is a separate legal treaty covering all other countries” (EurActiv, 4 May 2010)

⁵³ Together with the US and other rich nations.

⁵⁴ For more on this point, see Barnes (2011)

⁵⁵ Apart from the ‘old’ issues of discord (30% target, land use, LULUCF, ‘hot air’ and carbon tariffs at EU borders), some MS and the EU institutions have been divided on the issue of extension of the Kyoto protocol and on the implementation of the fast-start funding.

⁵⁶ The Eastern European countries argue that the EU must first analyse how other countries’ pledges compare before making the move (EurActiv, 15 March 2010).

of the Federation of German Industries (BDI), Werner Schnappauf, who have both expressed their concern that Germany and the EU will lose jobs and suffer from outsourcing if the European Union insists on a 30% reduction target (Der Spiegel, 13 and 17 December 2010).

Furthermore, under immense pressure from the empowered European Parliament and some environmentally-minded MS,⁵⁷ the Commission has presented a communication on affordability and the technical feasibility for the EU to move to a 30% target (May 2010). However, this thorough review has argued against moving unilaterally from the 20% to a 30% emissions reduction target.

As in the case of a 20% reduction target, the European Union arrived at Cancun with the lowest common denominator for every issue on the agenda.⁵⁸ Though the EU has to lower its aspirations in order to assure unity among its MS, such a balanced approach has “provided something for everybody but does not attempt to solve the whole puzzle of negotiations” (EurActiv, 30 November 2010). Despite the modest expectations which nevertheless have given way to promising results,⁵⁹ during the Cancun summit the European Union “succeeded in speaking with one voice” and “is willing to do its fair share of the global effort” (European Commission, 2010).

⁵⁷ A group of Western MS including the UK, Denmark, the Netherlands and Sweden

⁵⁸ See critic of the MEPs, environmental NGOs, consultancies, etc. (EurActiv, November – December 2010).

⁵⁹ The parties have agreed to set up the Green Fund, established an Adaptation Framework, and agreed on some parameters for the process of boosting forest protection in developing countries. For more on this point, see UNFCCC (2010).

Tab. 2: Lisbon institutional set-up for the climate change negotiations (internal and external)

		Institution	Role in international climate change negotiations
1. Domestic climate change policy, exported to the international level		Commission	Right of initiative Proper implementation and enforcement Monitoring domestic climate change measures
		Rotating Presidency	Consensus-building among national governments and EU institutions
		Council of Ministers	Co-decision on domestic climate change action
		European Parliament	Right to consent to international agreements
2. International negotiations	Preparation	European Council with the President	Mediator among the national interests Agenda-shaping capacity Mandate for international negotiations
		Rotating Presidency	Internal coordination and agenda-shaping
		COREPER I and Environment Council COREPER II and ECOFIN	Working parties prepare draft proposals
	Representation (Cancun Summit, 2009)	Commission + rotating Presidency (Belgium)	Commissioner for Climate Change Action (Connie Hedegaard)

Source: author's own compilation (secondary and primary literature as well as qualitative analysis of press coverage).

Conclusion

The Lisbon Treaty has been introduced as a response to the shortcomings in the EU's institutional set-up, decision-making procedures as well as its external representation. The changes briefly described in this paper aim to not only streamline EU decision-making and to increase transparency and democratic accountability, but also to create a more unified European Union, speaking with one voice and assuming a stronger global role.

Whereas on the level of domestic climate change policy (further exported to the international level), only minor changes have occurred, the main reforms are to be found on the level of the EU's international involvement; in particular, the EU's representation in the UNFCCC negotiations (see Table 3).

Tab. 3: An overview of governance arrangements in environmental issues (Nice and Lisbon systems)

Environment	Decision regime	External representation	Delegation and coordination mechanisms
Pre-Lisbon <i>(Nice system)</i>	QMV ⁶⁰	Generally Council Presidency with Commission support	Mix of supervised delegation to Presidency and coordination
Post-Lisbon <i>(Lisbon system)</i>	QMV ⁶¹	Commission with Council Presidency support	Mix of supervised delegation to Commission and coordination

Source: Coeuré and Pisani-Ferry (2007: 35) for Nice system and author's own compilation (secondary and primary literature) for Lisbon system.

In contrast to the Nice system with its established arrangement of the “EU-Troika,” after Lisbon the EU’s external representation has been limited to only two actors (rotating Presidency and the Commission), with the Commission taking the lead in this process. Such hybrid external representation has completely excluded the incoming rotating Presidency. Furthermore, by appointing new actors with new tasks in the field of external relations, the role of the rotating Presidency has been reduced. From now on, Member States authorize only the Commission, and not the Council (according to Nice system), to represent their interests regarding international climate change negotiations and must refrain from taking the lead in negotiations or representation, even if this competence is a shared one. The Cancún summit has proven that the representatives of the 27 EU MS have undoubtedly accepted this enhancement of the Commission’s role in the UNFCCC negotiations at the expense of the rotating Presidency. However, we may argue that the new system of the EU’s external representation is still in the transitional period, in the so-called “learning-by-doing-process,” in which all actors involved still have to redefine and reshape their roles in this new surrounding inspired by the Lisbon Treaty. It remains to be seen whether practices and precedents set during the transitional period will become norms for future UNFCCC negotiations, or as Maria Otero, US Under-Secretary of State of Democracy and Global Affairs, argues: “there might be a period of time in which some pieces of it will be a little more difficult [...] it will take some time to put into place all the pieces of the EU’s diplomatic puzzle” (EurActiv, 18 November 2010).

In general, we can come to the conclusion that the changes in the EU’s external representation introduced by the Lisbon Treaty have made it possible for the

⁶⁰ About 73.9% of the votes plus a majority of MS (or 2/3 in certain cases).

⁶¹ From 2014 onwards the new rules for QMV will apply. It means that majority is obtained if 55% of the EU MS support the proposal, which represents a least 65% of the population (Egenhofer et al. 2011: 15).

European Union to speak more often with one voice in negotiations on climate change, as the EU has obtained a more flexible mandate to act. This, in turn, has increased its efficiency and leverage in the global arena. The analysis of press coverage proves that the European Union has definitely accomplished its post-Copenhagen mission; that is, to speak with one voice in Cancún. However, due to internal divisions among the MS on certain issues, it's quite questionable that Lisbon has also enhanced the EU's unity. The observed discords among the EU MS have demonstrated that compromise-building among the Member States can be assured only on the lowest common denominator. Therefore, future research is highly needed in order to establish whether the new rules for QMV (from 2014 onwards) will have any effect on the EU's internal unity. In addition, considering the short format of this paper, we could not analyse the position of every EU institution, each issue on the Cancún agenda, nor the positions in each stage of the negotiations (from the negotiating mandate on the EU level, representing the EU in the global arena and further implementing international agreement on the national level) in order to demonstrate the level of the EU's internal unity. Therefore, these points will need to be addressed in the future.

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