



**Semipresidentialism: an emerging pan-European model**

*Professor Adriano Giovannelli  
Dipartimento di Ricerche Europee  
University of Genova*

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University of Sussex, Arts A Building  
Falmer, Brighton BN1 9SH  
Tel: 01273 678578  
Fax: 01273 678571  
E-mail: sei@sussex.ac.uk

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## **Semipresidentialism: an emerging pan-European model**

Although the idea of semipresidentialism was theoretically elaborated on the basis of the French Fifth Republic model, there already existed in Europe, in previous decades, several systems of government bearing the fundamental elements of the model which we are going to consider in this paper.

The dissemination of this model grew after the success of the French experience (which rescued the semipresidential system from bad memories of the Republic of Weimar) and in the European Union today, with the exception of monarchies - the presence of which in the EU will decrease even more after the enlargement - all the States have a semipresidential system of government, except Germany, Italy and Greece; countries which had a negative authoritarian experience. Portugal also lived through a dictatorial phase during the Salazar period; however, since the centre of such authoritarian experience was the Prime Minister, it was also possible to introduce the direct election of the President of the Republic by the people in this country.

Even though we cannot scientifically speak of a combination between the parliamentary system of government and the presidential one, this is often the interpretation of semipresidentialism given by the political forces in the several countries.

The accord reached through the combination of a President elected by the people with a Prime Minister and a Government responsible vis a vis the Parliament, in fact frequently becomes the inevitable point of balance in societies where, during the phase of constitutional elaboration, the predominance of this or of that approach wasn't achieved, even though historically there are some different ways. For instance, think of Ireland where since the very beginning there was a preference for parliamentarism; or of Iceland, where this system derives from the republican transposition of the traditional dualistic logic, although adopted at a formal level, with a very clear intent to give in the facts a predominant role to the Parliament, which is considered the very symbol of national independence.

The concept and the definition of semipresidential government were introduced in constitutional and political sciences by Maurice Duverger in 1970, with the intent of legitimizing the French turning point of 1962, by demonstrating that the Fifth Republic wasn't the only country provided with such system and therefore this reform wasn't an anomaly in the context of European democracies. Such concept widely circulated in the European culture, even if later on, only France tried to give different definitions or to develop critical reflections upon the model elaborated by Duverger.

A system of government introducing the popular election of the President in a parliamentary framework was disseminated all over Europe, at the same time tending to differ from the French model, even though, numerous academics, always focus their attention on the Fifth Republic.

The scenery of European semipresidentialism today is indeed characterized by a *de facto* weakening of the formally stronger Presidents (think of the Austrian case), or by the approval of institutional reforms reducing the role of Presidencies, which have no reason to be too incisive anymore, once the internal and international causes justifying their strengthening have faded away.

For instance this is true with regard to Finland after the Cold War, as well as the countries which had a democratic transition, once they stabilized, as the events in Portugal and in the various States of Central and Eastern Europe confirmed.

The semipresidential system was in fact disseminated in most of the countries of the East of the Continent, after the fall of the Berlin wall. Often preceded, in several capitals, by the dedication to Charles De Gaulle of a big square (usually the former Stalin square), the adoption of the semipresidential system took place in Poland, Romania, Bulgaria, Croatia, Slovakia, Slovenia, Macedonia, Lithuania and also, between 1994 and 2000, in the Republic of Moldova.

Beyond appearances, the countries belonging to the former Soviet Union, with the exception of Lithuania, are not considered as real semipresidential systems, because in such countries the powers of the Head of State appear to be so strong that it would be possible to think of an unbalanced “presidentialist” model, derived from the concrete transfer to the President, elected by the people, of the function of political impulse and orientation which in the past belonged to the Communist Party.

In fact an institutional architecture with only the formal characteristics of semipresidentialism, appeared to be, in the East of the Continent, the best way to reabsorb the dualistic logic of democratic centralism in an institutional framework often deeply influenced by some charismatic leaders, who played a strong role in the phase of democratic transition.

The semipresidential system of government has become the most widespread all over Europe, by entering into competition with the monistic parliamentarism of British origin, which was, until some years ago, the leading one, especially in its rationalized version, the most representative of which seems to be the German interpretation.

We should remember that semipresidentialism also belongs to the family of parliamentary systems, whereas Continental Europe has been, so far, reluctant to experiment with presidential systems deriving from the American model.

We have observed by now the tendency to introduce the direct election of the President in many countries with a solid parliamentary tradition, also as a result (not always positive) of the rising role of the media and of the consequent personalization of politics, in a context characterized by the crisis of ideologies, by the weakening of the traditional forms of political aggregation and by a globalisation interlaced to some forms of localism.

Moreover, our Continent is crossed by more and more similar processes, as has also been shown, in these last years, by a certain analogy of the electoral trends between several countries, after decades characterized by their asymmetry. This is indeed an important moment in the process of construction of the European political system, because the citizens begin to give the same answers for problems they perceive more and more as similar.

The question whether the semipresidential way is, or is not, appropriate in order to ensure an adequate governance of the several new problems that are appearing in the European societies, still has to find a sure answer, as it significantly emerges from various symptoms of crisis existing in several semipresidential systems, such as the Fifth Republic itself, still considered by too many people as the paradigm of the institutional form under consideration.

Also the other form, the neoparliamentary one, experimented with in Israel by the introduction of the direct election of the Prime Minister in a parliamentary context, does not seem less problematic at present, as shown by the abolition of the popular election of the Prime Minister at the beginning of the Sharon government.

However, when I was asked to talk about: “Semipresidentialism: an emerging pan-European model”, this topic was not intended to remain in the borders of Constitutional comparative law, but meant to develop some reflections upon the interaction between national institutional forms and European governance, as well as upon the utility of the semipresidential model for the reform of the treaties, which now is a matter of the ongoing debate in the Continent, after the set up of the Convention chaired by Giscard d’Estaing.

We might then pose the following question: will the strong presence of semipresidential systems of government among the candidate countries for the enlargement of the Union, change the balances inside the European Council, so far characterized by the presence of Prime Ministers, apart from France and Finland, which are represented by their Presidents ?

As a matter of fact, when the candidate countries were invited to the meetings organised during the European Councils, only the participation of the Presidents of Romania, Lithuania and Cyprus was noticed, this latter insular State having a presidential system of government.

Therefore, at the moment, it seems unlikely that a club of Presidents could develop inside the European Council, which might be influenced by France (a country which, with the end of *cohabitation*, has abandoned the logic of the *tandem*). Let’s observe, moreover, that both in some of the present members of the EU –like Portugal and Austria- and candidate countries, the Presidents did not fail to demand legal opinions and to question themselves about the composition of the national representation in the European Council.

This question, for sure, could become even more delicate in those republican States where there arises the problem of representing, in the European Council, not only the central government but also strong territorial autonomies of constitutional relevance, provided with a direct access to the Council of Ministers of the Union.

If it is true that in several States with a semipresidential system, there is a tendency to give a more significant role in foreign policy to the President and that the Government takes on the control of European policies, the more the Union tends to deal with issues related to external relations and common security, the wider appears to be the political space for the Head of State and the higher becomes his expectation to be represented in the most important intergovernmental decision-making body of the Union.

With the justification that European choices are too mediated, this expectation can be higher in the countries characterized by the popular election of the President of the Republic, with possible future feedback in some Republican countries with a President elected by the Parliament.

For sure, the balance in the European Council will shift further to the benefit of the Presidents, if in the second round of enlargement, there enters into the European Union States which were born after the disintegration of the Soviet Union and until now are characterised, as I already mentioned before, by a much more incisive political and institutional role of the Head of State.

We can finally observe that, in any case, with the growth of the number of Presidents, the European Council would rather tend to evolve, *de facto*, towards a kind of collective Head of State, thus losing part of its capacity to get to the point of balance, that the configurations of the Council of Ministers couldn’t find in the different fields of European policies.

In conclusion, I would like to discuss briefly the issue of what kind of government would be suitable for the Union in the future.

The logic itself of the semipresidential system of government has in fact proved to be, at least partly, an interesting model for Europe. Various contributions to the debate on the reform of the institutions of the EU are, at present, based on the consideration of how the French system manages to combine two different legitimacies in a difficult balance, by providing helpful hints in order to shape a new and more rational balance between the supranational legitimacy and the intergovernmental one, both of which presently coexist in the Union.

Such consideration also suggests a way how to apply, in the future, the *communautaire* logic to the fields of international relations and external security. Fields which, to a large extent, coincide with what, in several semipresidential systems, is considered the “*domaine réservé*” of the Head of State. *Domaine réservé*, the management of which, is at the core of a complex system of balances, that might be, to some extent, proposed again with regard to the relationship between the Commission and the European Council.

All the experts who, in several countries, studied the most typical institutional aspects of our States in order to identify the “common constitutional traditions” of the members of the European Union, mentioned by the treaties, although discussing the relevance of other elements, identified the parliamentary system, both in its monistic and semipresidential form, as the most expressive model of the European idea of democratic legitimacy.

If I do not think it is advisable a total mimetism of the European institutional dialectic to the one prevailing in the States, such transposition of principles is -in my opinion- necessary when their lack or their contradictory and incomplete acceptance, with regard to the nature assumed by the Union and the way how citizens consider it, can have a negative influence on the perception of its very legitimacy.

Moreover, such transposition is necessary when the consequences of the European decision-making processes on national democracies the risk of weakening them too much, by jeopardizing the fundamental common principles, the respect of which is a precondition of continental integration. Precondition which, as William Wallace teaches us, can fade away, if we do not achieve a positive interaction between a possible European democracy and the currently declining national ones, by creating a virtuous circle in the process of legitimisation, which otherwise would reverse itself into the contrary.

The new role of the Parliament of Strasbourg is highly important, but it is not still sufficient to define the European system of government as a parliamentary one. The institution subject to the political control of the European Parliament has in fact only one part of the Executive power, in a distribution of competences which seems now too fragmented.

Unfortunately today, the parliamentarisation of the relationship between the European Parliament and the Commission is, at most, sufficient to qualify the European system of government as semiparliamentary, according to the definition given by Paul Magnette.

It is no coincidence that those who seriously reflect upon the problems of governance at European level almost always choose to adopt the institutional philosophy of one of the two main parliamentary experiences, which are the most significant examples of contemporary continental constitutionalism. The German experience, preferred by those who wish to leap forward to a federal Europe, or the logic of the French version of the parliamentary system, defined as semipresidential, which seems particularly appropriate to redefine more cautiously the balances of the institutional triangle which, for a long time to come, must continue, in my opinion, to express the difficult

equilibrium between two coexistent legitimacies: the former, based on the peoples, represented by the European Parliament and the latter, based on the States, represented by the Council.

This intergovernmental centre of power could appropriately focus on the fields of the second pillar, which are similar to the fields of the traditional French *domaine réservé* (or to the historical *domaine réservé* of the Finnish President during the age of the Cold war), even if, at the moment, for several aspects, the exclusive scope of the Council partly *de facto* reminds of the wider *domaine réservé* of some semipresidential systems of Central and Eastern Europe, such as those of Poland, Romania (and Lithuania), especially in the first period of their democratic stabilisation.

So – without considering the position of those who wish an impossible return of Europe to the intergovernmental logic of international relations – we find, in the institutional debate at the Union level, the alternative between the rationalised version of monistic parliamentarism and the dualistic approach, which today takes form in semipresidentialism. However, there is the tendency to focus rather on the more interesting institutional balances of this latter model than on the direct election of a European President, an idea, many years ago, supported by Giscard d'Estaing himself, within an intellectual framework with an evident French character (today very well expressed by the position of Alain Juppé).

If the German way is preferred – as we already mentioned – by those who imagine settling the problem of sovereignty with a federal big-bang, the dualistic model is generally chosen by those who, although admitting the need for far-reaching reforms of the Union, realistically want to keep the Commission at the centre of the dialectic between the supranational element and the intergovernmental one (dialectic which is the essence of the *communautaire* method).

Surprisingly, this vision was accepted by J. Fischer, who, in modifying his initial position and lastly admitting the unrealistic character of a federal outcome for the next years, proposed, in an interview on May 2001, redrawing the European institutional dialectic according to the logic of French bicephalism; an idea which furthermore was taken up by other people, amongst whom the Vice-President of the Convention Giuliano Amato.

Such a kind of vision could imply, among other things, the decision to make the European Council a collective Head of State (a possibility which would further raise the expectation of the Presidents to belong to this body) and to redefine its relation with the Commission, on the basis of schemes similar to the relation between the Elysée and Matignon.

The French Quermonne Report in 1999, had already tried to find a way to modify the institutional architecture of the Union, by strengthening the interaction between the Commission and the Council, according to an *esprit de géométrie* partly going back to the model of the Fifth Republic during its cohabitation periods, even though not all of its logical conclusions were duly drawn.

At this point I question whether it is possible to take another step forward (by overcoming the too simplistic interpretation of the French model that – as Dieter Mahncke reminds us – may lead to strengthen the role of the Council rather than the one of the Commission) in order to reorganize the relation between Justus Lipsius and Breydel, according to the complex pattern of the semipresidential system (especially in the fields of the second pillar) which deal with the very core of State sovereignty and relate to what was the ancient gist of the powers of the King, without lacking similarity, in some cases, to the new semipresidential Head of State.

Incidentally, I take the liberty of pointing out that in France, the ratio between the administrative machinery of the Council and the one of the Commission reminds me of the ratio between the bureaucracies of the Elysée and of Matignon.

Moreover, if we look at the forms of the French *domaine réservé* in some historical moments, it would be possible to solve the difficult problem of the insertion of *Monsieur PESC* in the Commission - proposed several times by Romano Prodi - by defining a special relation with the European Council for this new Commissioner – or its President – similar to the connection that the Foreign Affairs and the Defence Ministers traditionally have with the Elysée (or similar to the connection, even stronger, between these Ministers and Lech Walesa, when the so-called Small Constitution of 1992 was in force in Poland), in a system bringing about mediation forms, rather than split loyalties.

It is also no coincidence that, frequently in France – as it happens today with Dominique de Villepin – the Minister of Foreign Affairs was one of the President's right-hand men and Secretary General of the Elysée, while *Monsieur PESC* (with his mandate circumscribed by the member States) is the Secretary General of the Council. This special relationship would imply the appointment of *Monsieur PESC* – or even better, in future, of two different persons, respectively competent for CFSP and ESDP, as the European Security and Defence Policy now tends to be defined – with a convergent act of the Presidents of the Commission and of the European Council or, possibly, it would imply the political control of this Commissioner (or these Commissioners) by the latter body, to which could be given in effect the concrete choice.

There is also the possibility of taking inspiration from some semipresidential systems, which, in reinterpreting the logic of the French *domaine réservé*, give to the Head of State the Presidency of the Council of Ministers, when foreign relations or security items are discussed.

Why not give, for example, the Presidency of the Commission to a more stable President of the European Council in the fields of the second pillar ?

As we know, the idea of overcoming the current system of six-month rotation was developed in particular, by Prime Minister Tony Blair, although in a framework focussing attention on the role of the Council, institution which shouldn't be deprived of its executive role but should rationalise it. This position has recently been taken in the U.K. by Minister for Europe Peter Hain, who sees a full-time President of the European Council, leading, for a relatively long period, a team made of different national Presidents of each Council configuration, in order to develop the strategic agenda of the European Council (a body whose role has already expanded significantly in these last years).

Romano Prodi, worried about a possible reduction of the role of the European Commission, has recently proposed – following a suggestion of the Belgian Foreign Affairs Minister Louis Michel – that the President of the European Council should chair the Commission as well. Such hypothesis would give a strong reward to the Council, for the integration of the functions relating to the second pillar, in the Commission, which is already putting a relatively large bureaucracy at the disposal of Mr Patten and is competent in some fields which border with international relations, such as commercial policy, development cooperation and humanitarian aid. Areas which are significantly gathered within the competences of the separate session of the General Affairs and External Relations Council; a session recently created at the European Council of Seville. This decision may be a prelude to the creation of a body which could, in the future, gain a role that in some constitutional systems, especially the semipresidential ones, belongs to the Supreme Council and is competent for the fields of defence and external relations.

The *ballon d'essai* launched by Romano Prodi in the debate, seems to go in the direction of a recomposition of the executive functions, now irrationally fragmented among several institutions; this hypothesis runs in a great difficulty though. The fusion of the Presidencies of the European Council and of the Commission, in fact, seems hardly compatible with the political responsibility of this latter one towards the European Parliament. A link which should be completed and improved, not eliminated or reduced, otherwise the deficit of legitimacy of the Union would increase.

The other possibility is to opt for a fully presidential model, rather unsuitable for the Union today, which sooner or later would lead to the direct election of a Head of the European executive; an election which, by the way, would give a big advantage to Germany, because of its demographic weight, thus contrasting with the current logic of State equality in the European Council and whose President, without any strong institutional innovations, would run in the risk of playing a merely formal role, similar to the one of the President of the Federal Council of Switzerland (a country which is, moreover, characterized by a consociational political system which doesn't differ too much from the European one).

In any case, I believe that it is necessary today to maintain, the distinction between the two Presidencies of the European Council and of the European Commission. If there is to be an institutional price to pay for the integration of *Monsieur PESC* into the Commission, much more rationally than leaving the role of Secretary General of the Council to this Commissioner, this price should be the attribution of the Presidency of the whole Commission to the President of the European Council, but only in the strictly defined areas relating to international relations and external security (whereas in France the Head of State always chairs the Council of Ministers - a body in which the Prime Minister is also included - and in other countries, such as Croatia during the Tudjman period, the President could also chair it).

The hypothesis to which I would like to draw your attention, in a way reminds one of the Finnish semipresidential experience, where the Council of Ministers meets in two different sessions: the former, chaired by the Prime Minister and the latter, chaired by the Head of State and also including the Prime Minister. This session, so called "Presidential session", meets in particular when topics of foreign policy and defence are discussed.

Such a proposal, though, reminds one also of the interpretation of the semipresidential model given in Romania, where the Head of State, obviously together with the Prime Minister, may participate in Government meetings when the Government has to decide upon issues of foreign policy, defence and home security. However, this latter aspect shouldn't be taken on at the European level (especially, if, as I hope, the process of communitarisation of the third pillar will go further).

My proposal, although trying to achieve the maximum possible integration between the institutions, realistically aims at keeping a certain distinction between the high role of political orientation and the operational level in the fields of international relations and external security. The former role has to be recognized to the President of the European Council within his relationship with the European Council itself, an intergovernmental institution to which also the President of the Commission belongs.

The operational role has to be given to the Commission, to its President and to *Monsieur PESC* and integrated therein, or, in future, to the competent commissioners for CFSP and ESDP, who, in case, might take part in the workings of a body similar to the Supreme Council existing in many systems. An institution which, as we said, could also derive from the evolution of a specialized session of the General Affairs and External Relations Council, although its profile may seem a little inadequate and we could better think about a different body, including the President of the European Council,

the President of the Commission and maybe other representatives with proper technical competences in the above-mentioned fields.

The alternative hypothesis of integration between the Council and the Commission, developed by some academics and French research groups, by taking into account the relationship between Ministers, Councils and committees in the Fifth Republic, although interesting, does not appear to be fully convincing. The idea that the configurations of the Council of Ministers should be chaired by the relative commissioners (with a prior structural readjustment), in fact runs the risk of reducing the coordination powers of the President of the Commission too much; powers which are meant to gain even more importance, in a body which could become even more complex and plethoric in the future, as a result of the enlargement.

How could the President of the Commission play an efficient role of impulse and orientation vis a vis a commissioner who, with the complicity of a specialised configuration of the Council, would try to become too independent, by using an alibi not very different from the ones of the State Governments when they want to elude the control of national Parliaments ? Neither could such role of political impulse be efficiently played by the European Council, which would run in the risk of becoming similar to the Committee of States in the fragile experience before the U.S. Constitution of 1787, a confederal model which was characterized by a heavy confusion of powers, in a system of government by committees, which faded the responsibilities and made inefficient the decision-making processes in many important political fields, including international relations.

I believe we could deepen the complex technical hypothesis I have just outlined to you during the discussion, by pragmatically thinking of some typical aspects of the semipresidential model, whose flexibility (an expression I prefer rather than “institutional uncertainty”, which was used by Sir Stephen Wall and reminds one of “constructive ambiguity”, typical of the diplomatic logic) gives useful suggestions for a European institutional dialectic which could assume variable geometries, depending on the circumstances, the political balances and the course of time.

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