



ISSN: 2036-5438

# A 'second youth' for the EU Speakers' Conference? A critical appraisal of its 'quasi-constitutional' role

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Perspectives on Federalism, Vol. 10, issue 3, 2018





## Abstract

The EU Speakers' Conference has experienced a 'second youth' after the entry into force of the Treaty of Lisbon by playing a 'quasi-constitutional' role in inter-parliamentary cooperation, and in particular by trying to exercise a rule-making function over the many inter-parliamentary venues of the EU's system of government. The fulfilment of such a function has certainly not been made any easier as a consequence of the constitutional constraints surrounding the positions of the Speakers and Presidents of the European and Member States' (MS) Parliaments, with a considerable variety in terms of powers and decision-making capacity among the MS and the EU. Despite these limitations, the 'quasi-constitutional' role of the EU Speakers' Conference has mainly consisted of approving guidelines, if not directly rules of procedure, for other inter-parliamentary venues. It has also been argued that the coordinating function of the EU Speakers' Conference can be much more effective when looking at its 'quasi-constitutional' role, and also in its function of joint parliamentary scrutiny in the EU, if it is aimed at enhancing the rational organisation of inter-parliamentary activities in terms of timing, agendas and *ex-post* supervision of the results, in the absence of any other possible alternative to the Speakers' leadership.

## Key-words

European Union, inter-parliamentary cooperation, Speakers, EU Speakers' Conference, comparative constitutional law



## 1. Introduction

The EU Speakers' Conference was the first inter-parliamentary conference to be set up in the EU back in 1975, when it started to meet every year on a regular basis. This conference, although lacking express acknowledgment in earlier EU Treaties and protocols,<sup>I</sup> has recently experienced a 'second youth' when, after the entry into force of the Treaty of Lisbon, new inter-parliamentary conferences were created (Heffler and Gattermann 2015). Indeed, thanks to the support of most national parliaments, the EU Speakers' Conference has taken up the function of coordinating inter-parliamentary activities and directing their development, right up to that of the approval of the rules of procedures of other inter-parliamentary conferences.

The article aims to assess the current role of the EU Speakers' Conference and its potential for leading inter-parliamentary cooperation in the EU, which is currently developing without a clear rationale and has seen the growth of several inter-parliamentary venues with uncertain if not overlapping mandates and very little coordination. The article claims that, following the Treaty of Lisbon, the EU Speakers' Conference has taken up a 'quasi-constitutional role': the activity of devising and defining, in most cases, the basic rules – i.e. the 'Constitutions' – under which the new inter-parliamentary conferences operate. This role can be fulfilled through the exercise of two main functions by the Speakers' Conference, that of coordination of inter-parliamentary activities in the EU, which today is rather limited, and most of all that of ruling over the organisation and operation of inter-parliamentary venues, a function that has grown steadily so far.<sup>II</sup> Is this role of the Conference effective and desirable at all? This contribution questions the current ability of the EU Speakers' Conference to lead an ordered and stable development of inter-parliamentary cooperation in the EU, thus casting doubts on its effectiveness. After having explored potential alternatives to the Speakers' leadership, it concludes that the two Speakers' Conference's functions should be re-balanced. In other words, rather than focusing almost exclusively on its 'rule-making' capacity, the Conference should ground its 'quasi-constitutional' role on its coordinating function, to enhance the rational organisation of inter-parliamentary activities in terms of timing, agendas and *ex-post* supervision of the results.



The article also considers the domestic powers of the Speakers and the asymmetric position of the European Parliament's President. Here it is argued that the function performed by this conference is somewhat *sui generis* compared to other emergent inter-parliamentary conferences and venues that are normally policy-oriented, follow cluster of interests or are geographically recognisable (Fromage 2016: 749-772). Indeed, the EU Speakers' Conference is neither meant to fulfil a joint parliamentary scrutiny role on the EU's fragmented executive (Curtin 2014: 1-32), i.e. a shared and collective scrutiny by the legislatures placed at the different levels of government (Cooper 2014: 2; Griglio 2016: 586-587; Eppler and Maurer 2017: 242-243; Griglio and Lupo 2018: 358-373) nor to create a sort of 'parallel' parliamentary diplomacy in the EU.<sup>iii</sup> Rather, it plays an overarching quasi-constitutional role in that it tries to establish order in the complex and chaotic world of inter-parliamentary cooperation in the EU by exercising both a coordinating function and a (sometimes questionable) 'rule-making' function (Fasone 2016: 269-289). In theory, this makes the EU Speakers' Conference a prominent actor in the wider set of interinstitutional relations in the EU, although in practice this potential is not fully exploited due to the peculiar features of the Conference itself.

It should be noted, in fact, that the very strength of this inter-parliamentary venue, namely its composition, is at the same time, a weakness. Indeed, while the Speakers of EU Parliaments and parliamentary chambers certainly hold the most important office within their own legislatures, they are characterised by very different powers across Member States and the European Parliament. Some Speakers must be impartial and, in theory, not affiliated to any political group: they cannot take a political stance nor vote; some others, instead, are a clear expression of the majority and tend to act in alliance with the Government. The first group of Speakers, when acting in the Speakers' Conference and, more generally, in supranational and international venues, are not entitled to vote on behalf of, or bind, their parliaments. This can prove to be a limitation to the effectiveness of the EU Speakers' Conference, which as it is dependent upon national provisions, is not easy to overcome.

In contrast, the second group comprises Speakers that, despite being able to take a political stance in both EU and foreign affairs, nevertheless are unable to give voice to the pluralistic composition of their Parliament to also encompass the representation of opposition and minorities' interests. At the same time the position of the President of the



European Parliament is side-lined compared to national Speakers. After an historical excursus of the activity of the Speakers' Conference and a comparative analysis of the powers of the Speakers, the article offers an appraisal of the EU Speakers' Conference activity with regards to the functions it performs, and its contribution to inter-parliamentary cooperation. It evaluates what alternatives are available to fulfil the 'quasi-constitutional' role of the EU Speakers' Conference and concludes that, in their absence, it is more appropriate to strengthen the Conference's coordinating function.

## 2. History of the Conference

The first meeting of the EU Speakers' Conference was organised in 1963 in Rome at the initiative of the then President of the Parliamentary Assembly of the European Community, Gaetano Martino, and aimed to gather together the parliaments of Europe at an apical level. More than 10 years elapsed before subsequent meetings were called in Strasbourg and Rome in 1975,<sup>IV</sup> as, in a few years, the European Parliament (still called Parliamentary Assembly at that time) was to become a directly elected Parliament.

In its first period (1975–79) the Conference met on an annual basis, but besides the President of the European Parliament, it also involved the Speakers of the Parliaments from all Member States of the Council of Europe, also including the President of the Parliamentary Assembly of this international organisation. Subsequently, from 1980 to 1998, this enlarged format of the Conference, also called the 'Big Conference', alternated every two years with the 'Small Conference', which only comprised the President of the European Parliament and the Speakers of the national parliaments within the European Community. Hence every year either the 'Small' or the 'Big' Conference was convened. This peculiar arrangement made the Conference a sort of unique liaison at the parliamentary level between the two principal international-supranational organisations established in post-World War II Europe.

After the Treaty of Maastricht of 1992 and, even more so after the Treaty of Amsterdam of 1997, the European Parliament and national parliaments were accorded a much more prominent 'constitutional' role at the European level than in the past. In consequence, the 'Small Conference' was transformed into an autonomous inter-parliamentary forum regularly convened, at least on an annual basis. Furthermore, informal



and extraordinary meetings were organised, in particular on the occasion of celebrations, like the fortieth and sixtieth anniversaries of the entry into force of the Treaty of Rome, or in the aftermath of Treaty revisions, to agree on common positions among the parliaments while intergovernmental conferences were taking place.<sup>v</sup> The latter instances, namely the extraordinary meetings of the EU Speakers' Conference, convened while intergovernmental conferences on Treaty changes were in operation, possibly represent the only case of joint parliamentary scrutiny carried out by this Conference.

The Speakers' Conference was initially seen merely as a forum for discussion on topics such as parliaments and globalisation and the role of parliaments in the EU, and in the scrutiny of their executives. However, reforms of European Treaties, especially starting from the (failed) Constitutional Treaty of 2004, triggered the construction of a new 'institutional' role for the EU Speakers' Conference, oriented towards building the foundations of a coherent and coordinated development of inter-parliamentary cooperation in the EU under the Conference's supervision.

In 2004 the Speakers' Conference adopted the Guidelines for Interparliamentary Cooperation in the European Union, subsequently amended in 2008, defining the aims, framework, fields and instruments of cooperation. These Guidelines are still observed today in respect of the relationship between the many inter-parliamentary bodies in the EU. However, they have not been updated to include the most recent, and significant, developments in inter-parliamentary cooperation, like the creation of the Interparliamentary Conferences on CFSP and CSDP (on Stability, Economic Coordination and Governance) and the Joint Parliamentary Scrutiny Group (on Europol): these were not envisaged in the Guidelines, thereby making them only partially useful.

On 15 May 2010 the EU Speakers' Conference in Stockholm adopted the Guidelines for its activity, to date the 'rules of procedure' of the Conference. The Conference, composed of Speakers of national parliaments and the President of the European Parliament, acting on an equal basis, operates by consensus, with the assurance of the simultaneous translation into the EU official languages and the circulation of written texts in French and English only. The 'rules of procedure' reiterate the coordinating role of the Conference in EU inter-parliamentary cooperation. In addition to this, the mandate of the Conference is fairly limited, as a forum for the exchange of opinions, information and experiences, on parliamentary organisation and functions, and for fostering joint research



and common action. The Conference, even nowadays, only meets once a year, under the presidency of the Parliaments of the Member States holding the EU Presidency in the second half of the previous year, and in the absence of a permanent secretariat relies on the administrative support of the coordination of secretary generals. The Presidency is responsible for preparing the final draft agenda and the conclusions of the meeting with a view to reflecting the common position emerging in the Conference. Issues addressed in the conclusions can range from the Conference's stance on the EU neighborhood policy and prospective accessions to the UK withdrawal from the EU and the development of EU military capabilities and of a defence capacity.<sup>VI</sup> These are viewed from a parliamentary perspective; namely, in terms of the contribution that parliaments can make on the issue at stake and, with this regard, the conclusions are formulated in terms of guidelines and directions. Speakers are allowed to express their own opinions and to make it clear that the conclusions were not accepted by the Conference as a whole:<sup>VII</sup> should dissenting positions emerge they can be made explicit in the conclusions, typically through footnotes.

Ad hoc working groups, established on only a few occasions, can be set up to look after specific issues – for instance the quality of legislation. These only remain in operation for a limited, and pre-determined, period, so that these share no similarity to structured committee systems, with a specialisation by subject-matter, found in the EP and national parliaments. Thus, it is clear that the Conference is not a permanent body, i.e. it is not summoned or in session beyond its yearly meeting, nor does a permanent secretariat exist, and has limited decision-making capacity given the consensus rule, its internal organisation and the frequency of its meetings.

### 3. Weaknesses (and strengths) of the Conference's composition

Other limitations to the decision-making capacity of the Conference derive from EU and national constitutional law. Indeed, there are constitutional constraints that restrict what the Speakers and the European Parliament's President can actually do. Those limits are fixed at the domestic level, and in principle cannot be overcome when they act in the Conference at the supranational level. In other words, the way these Speakers can perform their tasks in the EU is inevitably shaped by the institutional standing and power enjoyed in their respective constitutional systems (Longo 2014: 367-374). Indeed, this principle is



expressly acknowledged by the Conference's Guidelines, in Article 1(2): 'The activities of the Conference respect the autonomy and the constitutional position of each participating Speaker'. This provision is further emphasised in Article 2, where the objectives of the Conference are listed, and it is specified that their fulfilment cannot violate the different powers vested in its members.

When looking at the constitutional status of the Speakers and the President, as anticipated in the introduction, two main models are used, that of Speakers actively involved in politics and in political decisions, like in France or Germany, and the Speakers who aspire to be neutral and independent from party affiliation, such as in the UK.

In the two Houses of the French Parliament, for example, the Speakers are prominent politicians who are certainly expected to apply the rules of procedure and standing orders impartially, but undoubtedly pursue the interest of the majority and are allowed to vote without special restrictions (Martin 1996; Avril, Gicquel and Gicquel 2014: 70ff.).

In Germany, the Speaker of the Bundestag traditionally is not a *super partes* actor either, and is typically elected amongst prominent politicians and former Ministers. Just to provide an example, the Speaker of the Bundestag elected in the 19<sup>th</sup> parliamentary term, started in 2017, is Wolfgang Schäuble, the former powerful Minister of Finance of the German Federation. Less significant, from a political point of view, is the position of the President of the Bundesrat, in light of the intergovernmental composition of this Upper House where the executives of the Länder are represented and where each delegation casts a block vote, weighted according to the size of the Land's population. According to the German Constitutional Tribunal, when presiding over a ballot the President of the Bundesrat can only try to bring about a clarification on the results of the vote and work towards making the vote effective, but has 'no right to strive to achieve a uniform vote [in a delegation] by means of measures he took as chairperson of the session'.<sup>viii</sup> Indeed, it cannot be denied that in bicameral legislatures, the case of 13 out of 28 of EU national parliaments, a further diversification may occur at the national level between the two Houses,<sup>ix</sup> where, in the light of their composition and powers, the two Speakers enjoy a different constitutional standing and autonomy. By contrast, the Speaker in the UK House of Commons is deemed to be an impartial arbiter of parliamentary proceedings, and cannot vote or take a stance in parliamentary and political debates in general – although sometimes the practice departs from this constitutional convention – and when running for the next Parliament the





election of the Speaker is (customarily) uncontested (with no other mainstream party fielding candidates) in her/his constituency (Torre 2000; Russell and Gover 2017: 151-152). In the Nordic countries the style of the parliamentary Speakership resembles the UK model much more than the French case (Iacometti 2001).

However, it appears that in the EU most parliaments have turned towards the French-German model of the politically active Speaker, as shown in most Eastern European countries and in Italy, possibly also as a consequence of their more frequent involvement in EU and foreign affairs, including the EU Speakers' Conference. The case of the Italian Speakers confirms this trend, in particular in the last few years: although they do not usually vote in parliament, they have considerable political (constitutional) influence and are not expected to be *super partes* (Manzella 1997: 110; Ibrido 2015: 180-193). In Italy, a constitutional convention has gradually become established that provides for the Speakers of either House, but most likely of the Chamber of Deputies, to be elected from among opposition MPs (1976–92) and, more recently (1994–2018), from among MPs elected within the second ranking party of the winning majority coalition, while the President of the Senate comes from the main ruling party of the governmental coalition.<sup>x</sup> In other words, the Italian Speaker's political role has definitely increased (Lupo 2010; Gianfrancesco, Lupo and Rivosecchi (eds) 2014) up to the point that towards the end of the 17<sup>th</sup> parliamentary term (2013-2018), the then Speaker of the Senate, Pietro Grasso, left the group and the party on whose lists he had been elected and announced the creation of a new political party, 'Liberi e Uguali', that would campaign for the next political election under his leadership and with the Speaker of the other House, the Chamber of Deputies, Laura Boldrini, joining the same party as a candidate.

In the EU, the President of the European Parliament, whose mandate lasts only half of the parliamentary term – hence two and a half years – is usually elected based on a political compromise between the two major European political groups, the socialists (S&D) and those of the people's party (PPE), depending on the context, with or without the support of the liberals (ALDE). While the President enjoys great visibility outside the European Parliament in the relationship with the other EU institutions and the media, inside the Parliament his role is rather weak and is overlooked by the decisions of political groups and the Conference of Groups' Chairpersons (Costa 2013: 143-162; Gianniti and Lupo 2016: 144-160).



The ability of parliamentary delegations to bind their own parliaments, through the position they adopt within inter-parliamentary conferences, is always problematic, according to whether a prior ‘mandate’ has been voted by the parliament to direct the delegation (which happens in few cases) or not. Normally, this ‘mandate’ could by no means be equated to that approved in some parliaments, like the Danish Folketing, towards their governments – i.e. there are no real accountability mechanisms among MPs, nor could their deviation from instructions be sanctioned. However, from time to time a committee competent on the subject-matter, or the plenary as a whole, expresses a certain stance on an issue to be discussed later on within an inter-parliamentary venue. For example, plenary votes or votes within the EU or constitutional affairs committees to instruct and direct the activity of national parliamentary delegations took place at the time of the Conventions on the Charter of fundamental rights and on the future of Europe, and in the European, German and Italian parliaments’ committees prior to COSAC’s meetings (Fasone 2009: 194-212).

Even more challenging, from a constitutional point of view, is the case of Speakers within the EU Speakers’ Conference. Not only do many of them have a degree of autonomy within their parliament that prevents other MPs telling the Speaker what to do, but besides this, where Speakers are considered as *super partes* arbiters under constitutional law, they cannot take a political stance abroad, i.e. voting within the EU Speakers’ Conference, that would result in a binding decision at the national level. In fact, the conclusions prepared by the Presidency of the Conference following the meeting are solely aimed at the disclosure of the content of the debates; they are by no means binding on individual parliaments (Article 5 of the Guidelines).<sup>XI</sup> Moreover, taking into account the fact that many Speakers do not cast votes in their own parliament, any decision in the Conference (for example, declarations) is adopted by consensus (Article 1(4) of the Guidelines).<sup>XII</sup>

Interestingly, and consistently with the *sui generis* status of the Speakers and the European Parliament’s President compared to ordinary MPs and MEPs as discussed above, the EU Speakers’ Conference is devoid of ‘standing orders’ or ‘rules of procedure’. It is, more exactly, based on very generic ‘Guidelines’, equally passed and amended by consensus, that only provide guidance for the Conference organisation and procedure so as not to legally constrain their members (Esposito 2014: 157-159).



All these features of the Conference, that are dependent on the special status of the Speakers, i.e. lack of binding determinations, of standing orders and of decision-making rules going beyond consensus, amount to a brake on further development of inter-parliamentary cooperation among the Speakers. In particular, they do not allow the politicisation of the debate in the Conference and, hence, do not help to fill the gap of the democratic disconnect between the national and the European levels of government and the citizens (Bellamy and Kröger 2016: 125-130 drawing on Lindseth's theory of democratic disconnect, see Lindseth 2010: 31). The remarkable differences between the Speakers and the President participating in the EU Speakers' Conference, in terms of their functions and autonomy in their own domestic sphere, also limit the Conference's leading role in inter-parliamentary cooperation in the EU and its ability to influence inter-institutional relations in the EU's system of government. Although the Conference might seem to be the perfect candidate to undertake this role, being composed of the highest authority in each parliament of the EU, the constitutional variation between the Speakers' institutional positions, coupled with the lack of decision-making powers outside their parliament, constitute a brake on the Conference's proper performance of this task.

Despite these problematic features of the Conference, however, there are also several elements that give it considerable influence both on the individual legislatures and on inter-parliamentary cooperation in general, as shown in section 4. Indeed, it cannot be neglected that if, on the one hand, domestic rules on the speakership condition the functioning of the Conference; on the other hand, this Conference, with its debates and documents (conclusions and declarations) adopted, affects the status a Speaker is accorded in her jurisdiction by making her inevitably less *super partes* and more political, even in the case of the Speaker of the UK House Commons.<sup>XIII</sup> So that a sort of two-way influence, between the style of speakership and activities of the EU Speakers' Conference, can start to be detected. National rules and practices concerning the role of Speakers affect the way in which the Conference performs its role; at the same time, however, participation in the Conference has contributed to reshaping the nature and place of Speakers at the domestic level. Indeed, the Conference is also an important vehicle of socialisation among Speakers about their activity at the domestic level and engenders a sort of mimesis of their role, looking for best practices and, most of all, for strengthening individual positions. The reinforcement of the Speakers' political position in their own country as a result of



Conference membership is triggered by the fact that in this venue they are the only ‘representatives’ of their parliament or chamber and they enjoy a considerable autonomy on the supranational stage, which in turn leads to their more visible politicisation nationally.

Moreover, as briefly mentioned above, members of this Conference stand at the apex of the hierarchical structure of their parliament or chamber and this feature provides the EU Speakers’ Conference with an institutional legitimation than all other inter-parliamentary venues probably lack. Indeed, national Speakers and Presidents lead parliamentary administrations and procedures and, thus, there is no higher authority beyond them in their own institutions and, likewise, in the development of inter-parliamentary cooperation.

A third strength of the EU Speakers’ Conference is its relatively homogeneous composition. Indeed, Speakers and Presidents of parliaments, with few exceptions linked to changes of the party system and of electoral legislation, are typically well-experienced politicians, with a notable *cursus honorum* and political influence on party members and often with an international standing or, at least, with some knowledge of EU institutions and of the dynamic in foreign affairs. This implies that, although the legal constraints to which they are subject are different, as highlighted above, the political profile of Speakers are similar across EU Member States, thereby favouring the consolidation of a close and cohesive community of politicians with comparable interests and background.

Finally, a fourth strength of the Conference is its small size: in a comparative perspective, no other inter-parliamentary conference or venue in the EU is composed of just 42 members, i.e. the Speakers of the 15 unicameral and 13 bicameral parliaments in the EU plus the President of the European Parliament, unless it gathers together the representatives of some national legislatures only (Fromage 2016). The limited dimension of the EU Speakers’ Conference, and thanks to the crucial support of the parliamentary Secretaries Generals meeting every year before the Speakers’ Conference, allows it to work much more productively, focussing on the points on the agenda so as to reach a common conclusion, than the plethora of sectoral inter-parliamentary conferences of over one hundred MPs recently established.

To conclude on the assessment of the strengths of the Speakers’ Conference, along with the significance of its peculiar memberships, the relatively homogeneous composition



and small size of the Conference are further elements that have made this body work relatively effectively compared to plethora forums like the Interparliamentary Conference on CFSP and CDSP and the Conference on stability, economic coordination and governance.

#### **4. The ‘quasi-constitutional’, though controversial, role of the EU Speakers’ Conference**

The ‘quasi-constitutional role’ taken up by the EU Speakers Conference in ruling the (dis)order of inter-parliamentary cooperation (Cooper 2017: 236), has, for some time at least, been driven by, among other things, the persistent disagreement between the European Parliament and national parliaments and amongst national parliaments on the design, organisation, scope of action and powers of the Interparliamentary Conference of CFSP and CDSP (Raube and Fonk 2018, in this Special Issue) and of the Conference on Stability, Economic Coordination and Governance of the EU (Kreiling 2018, in this Special Issue). The clearest way through which the leadership of the EU Speakers’ Conference on inter-parliamentary cooperation has manifested itself is by means of the influence exerted on the rules of procedure of new inter-parliamentary conferences.

In the case of the Interparliamentary Conference on CFSP-CDSP, the new body was set up following decisions taken at the EU Speakers’ Conference in Brussels, 4–5 April 2011, and in Warsaw, on 20–21 April 2012. In the meeting of 2011 the Speakers had diverging views on some aspects of the new conference, like the size of the delegations, but did establish principles regarding, for example, the frequency of the conference’s meetings, its decision-making rules, the Presidency, and the role of the High Representative for Foreign Affairs and Security Policy. Those principles were defined in the conclusions of the EU Speakers’ Conference’s Presidency as rules by which the new Interparliamentary Conference had to abide in adopting the rules of procedure and working methods. One year later, and as the Interparliamentary Conference for CFSP-CDSP had yet to hold its first meeting (which eventually took place in Nicosia in September 2012), the EU Speakers’ Conference convened in Warsaw and supplemented those principles, by eventually defining the composition of the delegations and the arrangements for the secretariat. Furthermore, the Speakers’ Conference recommended that the future CFSP-CDSP



Conference carry out a review of those principles and rules subsequently adopted, after two years, and to submit the results of such review (again) to the Speakers. The first meeting of the new inter-parliamentary conference, held a few months later, strictly followed the principles set out by the Speakers' Conference and entrenched two provisions in the rules of procedure that enhanced the rule-making authority of the Speakers. Article 8(2) affirmed that any amendment to those rules 'must be in accordance with the framework set out by the Conference of Speakers of the EU Parliaments' and Article 9 assigned to the EU Speakers' Conference the final say over the recommendations adopted within 18 months by the ad hoc review committee on the rules of procedure.

When the review took place, however, the final decision on updating and amending the rules of procedure was taken by the Interparliamentary Conference on CFSP-CDSP itself, at its meeting in Rome on 6–7 November 2014; a decision that was later on also endorsed by the EU Speakers' Conference in Rome, on 20–21 April 2015.

The fact that the new inter-parliamentary conference regained jurisdiction over its own rule-making demonstrates that this body enjoys autonomy and is able to make the choices that are more consistent with the features of the peculiar field in which it is called upon to operate and that it aims to scrutinise. The EU Speakers' Conference can help to coordinate the activity of the Interparliamentary Conference on CFSP-CDSP with the remaining inter-parliamentary activities of the Union,<sup>xiv</sup> but, from a normative point of view, it may not be appropriate that the Speakers 'usurp' members of the sectoral conference by ruling on its organisation and functioning years after its initial establishment.

The setting up of the Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU has proved to be even more controversial.<sup>xv</sup> Its first meeting took place in Vilnius in October 2013 and since then the Conference has been unable to adopt its rules of procedure, causing a series of spillover effects on the performance of this body, lacking any basic standards for its operation. Because of the gridlock, the EU Speakers' Conference stepped in to try to address the problem of the delay in the adoption of the rules of procedure.<sup>xvi</sup> The Italian Parliament, holding the Presidency in the second half of 2014, proposed its own draft rules at the Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU of October 2014, and, following the amendments submitted by other legislatures, prepared a compromise text in December 2014. At the EU Speakers' Conference in April



2015 the revised draft rules were expected to be finally adopted, since they could count on the support of the European Parliament, the French and the German Parliaments, among others. However, other parliaments – for instance, the UK, Polish and the Dutch – stood against the approval of the new conference’s rules of procedure by the EU Speakers’ Conference, which would have required the consensus of all the Speakers. They objected that the Speakers’ Conference would have acted beyond its mandate, if it had adopted the rules of another conference. The debate on whether to defer the decision to the next Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU entailed a reflection on the right balance to strike between the rule-making function of the Speakers’ Conference and the sectoral inter-parliamentary conferences’ autonomy; in the end the latter prevailed. In line with the conclusions of the Speakers reached in 2011 and 2012 on the Interparliamentary Conference for CFSP and CDSP, the Speakers’ Conference in Rome only agreed on a set of principles to ‘be transposed in detailed Rules of procedure by the next Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU’, as in fact happened in Luxembourg on 9-10 November 2015.<sup>xvii</sup> The Speakers addressed issues such as the participating parliaments (from all the Member States and not just the contracting parties of the Fiscal Compact), the focus of the Conference, the timing and the linguistic regimes, but they did not touch upon the most debated questions of the size of the delegations and the relationship between the European Parliament and the national parliaments in the new forum.

The fact that the EU Speakers’ Conference is now managing with care its rule-making powers vis-à-vis other inter-parliamentary venues was confirmed by the Conclusions of the Conference of 22-24 May 2016 in Luxembourg<sup>xviii</sup> and of the Conference of 23-25 April 2017 in Bratislava as pertaining to the Joint Parliamentary Scrutiny Group on Europol – JPSG (Annex I to the general Conclusions).<sup>xix</sup> In fact, there were no other alternative legal options. The Europol JPSG is already regulated in part by EU legislation, Regulation 2016/794 of 11 May 2016 concerning the European Union Agency for Law Enforcement Cooperation (Europol), so the EU Speakers’ Conference could not alter its mandate and powers, in particular its prospective nature of a scrutiny and monitoring body as well as the chosen format, initially in opposition to the Conference model. The Speakers’ Conference’s recommendation was that the constituent meeting for the Europol JPSG be held as soon as possible (which indeed happened on 9-10 October 2017). As far as the adoption of rules



of procedure is concerned, the Speakers' Conference gave some guidelines for its setting up: for example, on the maximum size of a national delegation (4 members), with up to two members per Chamber in case of bicameral legislatures, and the size of the European Parliament's delegation (up to 16 members); the joint presidency; and the frequency of the meetings, at least twice a year.

In light of the amendments proposed, in particular by the French and German Parliaments, to establish an ad hoc secretariat, create the Troika presidency and enhance the scrutiny powers of the Group, the JPSC, in its meeting in Sofia on 18-19 March 2018 adopted, first of all in compliance with the EU Regulation, its detailed rules of procedure.<sup>xx</sup> According to Article 6.2, these rules will be subject to review after two years, in line with the recommendations of the EU Speakers' Conference of Bratislava in 2017, and the Presidency of the EU Speakers Conference will be informed about the outcome of the review. Indeed, in the rules of procedure the Conclusions of the 2017 EU Speakers' Conference of Bratislava are regarded as a point of reference and as a standard with which to comply, although it does not appear that, despite high expectations (Griglio 2016; Kreilinger 2017), the JPSC will be shaped in a radically different manner compared to sectoral inter-parliamentary conferences (Fromage 2017). Here, the directions provided by the EU Speakers' Conference on the setting up of the JPSC seem to have decisively conditioned the future shape of this inter-parliamentary venue in a way that is consistent with the standard configuration of the sectoral conferences, the (partial) regulation of which the Speakers had already contributed. In other words, and despite the legal framework provided by EU Regulation 2016/794 on the JPSC, over the years the EU Speakers' Conference may have triggered a sort of 'harmonisation' of the configuration of inter-parliamentary forums in the EU, lacking a strong autonomous ability of these forums to independently define their structure, composition and activity.

## 5. The (unsatisfactory) alternatives to the leadership of the EU Speakers' Conference

Having examined the current state of affairs of the EU Speakers' Conference and at its 'quasi-constitutional' role in inter-parliamentary cooperation – its limited impact on the side of the coordination and of the joint parliamentary scrutiny in the EU, but the





significant, though controversial, rule-making and function over the other inter-parliamentary venues – it appears worth exploring if there are any real alternatives to the leadership of this Conference, both from a practical and a normative perspective, i.e. what is the appeal of other options.

First of all, neither the European Parliament nor the Parliament of the Member State holding the six-month presidency of the EU can individually play the coordinating role of the EU Speakers' Conference, both from a legal and from a political point of view.<sup>xxi</sup> From a legal point of view, the exclusive leadership of the European Parliament or of a national parliament (on a rotating basis) would contravene the prescription of Article 9, Protocol 1, which demands the co-determination of inter-parliamentary cooperation by the European and national parliaments. From a political point of view, the monopoly of coordination of inter-parliamentary cooperation, either by the European Parliament or by a national parliament acting autonomously, would be politically unsustainable as national parliaments would never accept the exclusive leadership of the European Parliament and the European Parliament that of national parliaments.

Second, the Conference of the Parliamentary committees on EU affairs (COSAC), once the best candidate to fit this purpose, in principle, according to Article 10, Protocol 1, would then be the main competitor of the EU Speakers' Conference in taking the lead in the coordination of inter-parliamentary cooperation in the EU; for both conferences are generalist inter-parliamentary bodies, i.e. they do not have a sectoral-policy oriented specialisation. Indeed, COSAC shall promote the exchange of information and best practices between national parliaments and the European Parliament and may organise inter-parliamentary conferences on specific topics, in particular CFSP and CDSP (Dias Pinheiro 2018, in this Special Issue). However, a 'catch-all policies venue' like COSAC, devoid of the former coordinating function on the early warning mechanism, has suffered an identity crisis from which it has not yet been able to recover (Cygan 2016; Van Keulen 2016). This has come about as a result of the strengthening of the process of European integration on many (new) policies, increasing specialisation by policy domain and the need to carry out an effective scrutiny especially in areas of shared competence (Article 4 TFEU), and fields where the EU supports, coordinates and supplements the action of the Member States (Articles 5 and 6 TFEU). Therefore, the legal basis for the setting up of new inter-parliamentary conferences has been article 9 rather than article 10 of Protocol 1,



which has further undermined the authority and prestige COSAC once enjoyed. Indeed, article 10 set out the COSAC model of inter-parliamentary cooperation, based on the participation of the European Parliament on an equal footing with national parliaments and on overcoming the strict enforcement of consensus formation and of the unanimity rule of decision-making. However, in contrast, article 9 is a more flexible legal basis only requiring national parliaments and the European Parliament to jointly determine the organisation and the promotion of effective and regular inter-parliamentary cooperation in the Union. The choice of Article 9 for the new conferences therefore strengthens the power of the European Parliament, and ultimately undermines COSAC's design and procedures as a model of inter-parliamentary cooperation.

Third, the two sectoral inter-parliamentary conferences already established, given their limited scope of action on certain policies, are not placed in the best position to play a coordinating role among the many venues and forums of inter-parliamentary cooperation.

Finally, an interesting proposal put forward recently seems to suggest that perhaps there is no need to have a sole and final authority to rule the developments of inter-parliamentary cooperation. Rather, the 'order' of inter-parliamentary cooperation relies on the internal rationalisation of the three main stances of cooperation in the EU, namely: the two inter-parliamentary conferences and the Joint Parliamentary Scrutiny Group thus far set up according to a functional specialisation; the EU Speakers' Conference; and the 'Parliamentary dimension' of the Council Presidency (Cooper 2017: 243-245). To these dimensions a third can be added as a complement: the 'hidden' coordinating role of the European Parliament. This has emerged in several instances of cooperation, from the experience of the European Assizes of 1990 to those of the two Conventions, on the Charter of fundamental rights (1999-2000) and on the future of Europe (2002-2003) (Pinelli 2016) and, more recently, the organisation of joint committee meetings; however, it has not always been well tolerated by national parliaments (Fasone and Lupo 2016: 349-351). Indeed, the European Parliament alone, as said above, could never monopolise the coordination of inter-parliamentary cooperation in the Union, should its mode of election and composition remain unaltered. It suffers from the distrust of national parliaments (and governments), it is also one of the many subjects of inter-parliamentary cooperation, and is a member of the EU Speakers' Conference, so its potential leadership could trigger a sort of 'conflict of interests' (should it become, at the same time, a member and the leader of



this cooperation). Its further strengthening in this domain would be understood through a conception of inter-parliamentary cooperation as dominated by the EU level of government and, possibly, inspired by a federalist view on the direction the European integration process should take, which does not appear close to reality today. The persistent lack of a uniform electoral procedure for the European Parliament and concrete avenues for further differentiation within the EU (Leruth, Gänzle and Trondal 2017) do not reinforce the position of this institution in the complex picture of inter-parliamentary cooperation either.

## 6. Conclusion

Year on year, since the entry into force of the Lisbon Treaty, the EU Speakers' Conference has taken up and been able to strengthen its 'quasi-constitutional' role in inter-parliamentary cooperation, a role that aspires to settle a well-ordered and stable development of inter-parliamentary activities in the EU. It appears that there is no effective alternative to this role sitting with the EU Speakers' Conference, especially looking at the other options at stake, and despite the potentiality of the European Parliament and COSAC in particular.

Playing a 'quasi-constitutional' role in inter-parliamentary cooperation, however, as the most recent experience of the EU Speakers' Conference reveals, should not only mean its extensive exercise of a rule-making function towards other inter-parliamentary venues, not least as not all inter-parliamentary forums are alike. Indeed, the Europol JPSG was expected to be established according to a competing model compared to the existing conferences – although this has probably not happened in practice – and finds its legal basis in a purely EU law source, in contrast, for example, to the Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU. In fact, a wide use of the rule-making function by the Speakers' Conference runs against the very nature of this forum, where many of its members enjoy a special constitutional autonomy and are forbidden to bind their own parliaments when acting inside the Conference. That means that the EU Speakers' Conference cannot do much more than issue guidelines for the adoption of rules of procedures and make them subject to (light) review.



The coordinating activity of the EU Speakers' Conference should, by contrast, be strengthened. Coordination was the founding function of this Conference when it was established, in a context in which very little inter-parliamentary cooperation was in place. Thus, a renewal of the coordinating function of the EU Speakers' Conference should primarily consist of easing the contacts and the relationships between the many EU inter-parliamentary venues, in terms of timing of meetings, consistency of the respective agendas and *ex-post* supervision of the results. With this regard, a closer collaboration with the other main 'agents' of inter-parliamentary cooperation in the EU, such as the European Parliament and the 'Parliamentary dimension' of the Council Presidency, would be beneficial for the rational deployment of inter-parliamentary activities in order to avoid duplication, overlapping and confusion of tasks and activities.

Additionally, although for the reasons described above it is not directly involved in the exercise of joint parliamentary scrutiny in the EU (Griglio and Lupo 2018), the EU Speakers' Conference can indirectly and positively contribute to its fulfilment. Indeed, the closer coordination and collaboration with EU institutions just advocated, with the European Parliament, or with instances of cooperation, like the 'Parliamentary dimension' of the Council Presidency, both key actors in their own domains, of joint parliamentary scrutiny, could help to make this function more effective.

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<sup>I</sup> Article 9, Protocol 1, indeed, can be considered as a weak legal basis for the role taken up by this Conference. The article refers to the co-determination by the European Parliament and national parliaments of the 'organization and promotion of effective and regular interparliamentary cooperation within the Union'.

<sup>II</sup> As described in this paragraph, the 'role' refers to the actual operation of the EU Speakers Conference, while by 'function' it is meant a set of activities and tasks in principle ascribed or conferred to the Conference.

<sup>III</sup> On parliamentary diplomacy as para-diplomacy outside in the EU context see Stavridis 2017: 368-387.

<sup>IV</sup> On the gradual engagement of national parliamentary assemblies with European affairs through the Speakers' Conference, see the Keynote speech given by Elia (1975) and now re-published (2009: 465), alongside the editorial note by Cannizzaro (2009: 457).

<sup>V</sup> See, for example, Conférence informelle des Présidents des Parlements des États Membres et du Parlement Européenne, *La situation actuelle de l'Union européenne et les tâches des Parlements nationaux qui en découlent concernant la démocratisation et les réformes institutionnelles. Rapport de L Legendries*, 1 December 1998, 11. For an overview of the history of the EU Speakers' Conference and its meetings, see EU Speakers' Conference, *The History of the EU Speakers' Conference*, available at: [www.ipex.eu](http://www.ipex.eu).

<sup>VI</sup> See the Conclusions of the EU Speakers Conference held in Tallin on 23-24 April 2018, available at <https://www.parleu2017.ee/sites/default/files/2018-04/Final%20Conclusions%20Conference%20of%20Speakers%20Tallinn.pdf>.

<sup>VII</sup> This has been further confirmed by the Conclusions adopted on the occasion of the last meeting of the EU Speakers Conference held in Tallin on 23-24 April 2018, cit., under the 'Preliminary remarks'.



<sup>VIII</sup> See German Constitutional Tribunal, Judgment of the Second Senate of 18 December 2002, 2 BvF 1/02 - Voting procedures in the Bundesrat, 'Immigration Act (Zuwanderungsgesetz) case', § 120 and the commentary by Kommers and Miller 2012: 110-114.

<sup>IX</sup> On this point and, in particular, in relation to the EU, see Romaniello (2015) and Baraggia (2016).

<sup>X</sup> In the XVIIIth term of the Italian Parliament, started in 2018, the representation of the ruling parties and of the opposition by the Speakers of the two Houses has instead been inverted: while the Speaker of the Italian Chamber of Deputies, Roberto Fico, is a representative of the Five Stars Movement, part of the ruling coalition, the President of the Senate, Maria Elisabetta Alberti Casellati, has been elected as a senator of Forza Italia, currently in the opposition. At the moment of the election of the two Speakers, on 24 March 2018, however, the political situation was very blurred and the formation of the new government yet to come.

<sup>XI</sup> The conclusions are drafted in such a way as to ascribe them to the individual Speakers rather than to the Conference as a whole.

<sup>XII</sup> The only exception is represented by the decision to convene an extraordinary meeting of the Conference, to be proposed by one of the Speakers and to be seconded by two-thirds majority of the members (Art 3(6) of the Guidelines). Under Art 5(2) of the Guidelines, any member of the Conference is entitled to disclose their disagreement with the position endorsed by the majority of the Conference and should state clearly that that opinion has not been confirmed by the Conference as a whole. An interesting case of 'dissenting opinion' emerged in the aftermath of the EU Speakers' Conference held in Rome on 20–21 April 2015. The Speaker of the Hungarian National Assembly sent a letter to the Speakers of the Italian Chamber of Deputies and Senate contesting the fact that the conclusions of the Conference had been really adopted by consensus, according to the Conference's Guidelines. In particular this Speaker objected to the allegation contained in the conclusions addressed against Hungary of the violation of fundamental rights.

<sup>XIII</sup> For example, during the current speakership of Hon. John Bercow (2009- ), on which see Torre (2013).

<sup>XIV</sup> An actual problem of coordination lies in the fact that while the Presidency of the EU Speakers' Conference is assigned to the parliament of the Member State holding the EU Presidency in the second half of the calendar year, the organisation of the new interparliamentary conference, every six months, mirrors the rotating Presidency of the EU.

<sup>XV</sup> The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union entered into force on 1 January 2013. Next to this Treaty, the EU legal basis for the creation of the Conference has been acknowledged in Article 9, Protocol 1, annexed to the Treaty of Lisbon. What triggered discussion was also the prospective position of the Parliaments from the non-contracting parties of the Treaty within the Conference, namely, the Czech Republic and the UK. See, at length, Kreiling (2015 and 2018) and Cooper (2016).

<sup>XVI</sup> After the first meeting, three more meetings of the Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU were organised under the Greek and Italian Presidencies in 2014 and the Latvian Presidency in 2015 without the rules of procedure being adopted.

<sup>XVII</sup> See EU Speakers' Conference, 'Conclusions of the Presidency', Rome, 20–21 April 2015, 5, available at: [www.ipex.eu/IPEXL-WEB/euspeakers/getspeakers.do?id=082dbcc54a393144014a4d75e8690dec](http://www.ipex.eu/IPEXL-WEB/euspeakers/getspeakers.do?id=082dbcc54a393144014a4d75e8690dec). See also the Rules of procedure of the Interparliamentary Conference on Stability, Economic Coordination and Governance in the European Union available at: <http://www.ipex.eu/IPEXL-WEB/conference/getconference.do?type=082dbcc5420d8f480142510d09574e02>. Interestingly Article 7(2) of the Rules of procedure of this Conference mirrors Article 8(2) of the Interparliamentary Conference for CFSP and CDSP's Rules of Procedure, since, as strongly requested by the European Parliament at the meeting in Luxembourg in November 2015, it provides that any amendments to these new Rules 'must be in accordance with the framework set by' the EU Speakers' Conference.

<sup>XVIII</sup> The Conclusions are available here: <http://www.ipex.eu/IPEXL-WEB/conference/getconference.do?id=082dbcc54d8d4eaf014d9095cb270339>.

<sup>XIX</sup> The Conclusions and their Annex I are available here: <http://www.ipex.eu/IPEXL-WEB/conference/getconference.do?id=082dbcc55898c90b01589abb37500fa>.

<sup>XX</sup> The Rules of procedures of the Joint Parliamentary Scrutiny Group on Europol are available here: [https://www.senato.it/application/xmanager/projects/leg18/file/RoP%20adopted%20Sofia%20JPSG\\_190\\_32018.pdf](https://www.senato.it/application/xmanager/projects/leg18/file/RoP%20adopted%20Sofia%20JPSG_190_32018.pdf)

<sup>XXI</sup> Despite the growing number of interparliamentary meetings promoted in the framework of the 'parliamentary dimension' of the Council Presidency: see Cooper (2017: 243-245).



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