

A MORE POWERFUL EUROPEAN COUNCIL

217

OLD AND NEW TRENDS

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- The importance of the European Council within the European Union's political system has increased significantly due to the multiple crises that the EU has faced in recent years.
- Yet its increasing role also reflects longer-term developments highlighting the importance of high-level policy coordination in the EU, and the member states' central role in the EU decision-making.
- In this context, a distinctly consensus-generating yet relatively powerful European Council presidency has emerged under Herman van Rompuy and Donald Tusk.
- Shifting power relations among the EU institutions, and efforts to steer the EU legislative agenda, have raised concerns of a greater than anticipated change, however.
- A degree of flexibility and adaptability concerning the role and functions of the European Council might provide efficacy, but could run counter to the objective to establish it firmly within the legal and institutional framework of the EU.

Introduction

To what extent do the current role and functions of the European Council reflect the key rationalities of the Lisbon Treaty reforms? The importance of the European Council within the European Union's political system has increased significantly in recent years. This top-level institution was further empowered by the Lisbon Treaty, which re-established it as a full-fledged EU institution. Importantly, the management of multiple European crises as well as the UK's objective to re-negotiate its EU relationship, and subsequently leave the Union, have underlined the role of the European Council in the EU's political system. Consequently, the institution is currently seen as the centre of political power in the EU.

As the second EU institutional cycle after the Lisbon Treaty has passed its mid-term, and with the benefit of hindsight in respect of two full-time presidents – Herman van Rompuy and Donald Tusk – this briefing paper aims to take a closer look at the role and weight of the European Council in the EU. It will first revisit the aspirations underpinning the Lisbon Treaty reforms concerning the European Council, and then discuss some of the older and newer development trends. In terms of the latter, the focus is largely on the role of the European Council in the EMU reform process, its impact on the EU legislative processes, and the continuing salience of the informal features of this top-level institution.

Aspirations and objectives of the Lisbon Treaty

The Lisbon Treaty reforms were the result of a long and thorny treaty-making process aimed at streamlining the EU and its decision-making system due to the deepened and expanded character of European integration. Their entry into force in 2009 has been seen as a pivotal moment in the evolution of the EU's political system, and the role of the European Council within it. The Treaty established this top-level body comprising the heads of state and government of the EU member states, the president of the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy as a full-fledged EU institution, and assigned it a permanent presidency with a specific role and tasks. It also restated the role of the European Council as the institution providing strategic guidance for the development of the EU and its key policies.

Importantly, it also clarified what the institution was not about by stating that it should not exercise legislative functions.

Two distinct yet ultimately related aspirations underpinned the reforms. On the one hand, the further institutionalisation of the European Council reflected the member states' aspirations to retain their position at the top of the EU's institutional design. Accordingly, the European Council was deemed important in forging the member states' ownership of the integration process, and in strengthening its legitimacy. The Lisbon Treaty underlines the democratic credentials of the European Council by stating that the heads are democratically accountable either to their national parliaments, or to their citizens. In terms of the EU's performance, the institution's role has been highlighted in creating consensus and avoiding disunity. Traditionally, it has played an important role in agreeing major EU reforms, as well as setting the general directions of the EU's foreign policy. Recently, its role as a consensus generator has been seen as imperative due to severe and multiple European crises.

On the other hand, the Lisbon Treaty reforms reflected aspirations to impose some restrictions on, or at least to clarify, the power and influence of the European Council and its most powerful members in the EU's political system. Accordingly, it was anticipated that the formalisation of this institution would provide a solid framework for dealing with potential challenges related to the asymmetrical power relations between the member states. Importantly, the treaty change clarified the legal status of the European Council, and positioned it firmly within the EU's institutional framework with its checks and balances. As a formal EU institution, the European Council's actions can be subject to review by the Court of Justice of the European Union upon a member state's request, for instance.

These distinct aspirations and related reservations were perhaps most clearly manifested in the debate concerning the role and functions of the (permanent) presidency of the European Council. The initial and far-reaching proposals introduced by the President of the Convention for the Future of Europe, Mr. Giscard d'Estaing, and backed up by some of the larger member states, were generally perceived to strengthen intergovernmentalism, and indicate

a move towards a presidential system in the EU's institutional architecture. Smaller member states were particularly concerned that the Commission, often seen as a protector against larger member states' interests and power, would lose influence to the European Council, partly due to its envisaged powerful presidency. The Parliament, on the other hand, largely strove for a political system based on parliamentarism, and resisted a move towards presidentialism.

As a compromise, the further institutionalisation of the European Council took place within a broader institutional reform package, which also strengthened the role of the European Parliament and the Commission. Relatedly, a more constrained presidency of the European Council was established.

Towards a centre of political gravity – old and new trends

The collapse of the Constitutional Treaty in 2005 due to unsuccessful ratification processes in France and the Netherlands resulted in modifications to the followed process, which led to the Lisbon Treaty. The changes were modest in terms of substance, but extensive concerning the form of the Treaty. Relatedly, the level of ambition related to the reforms in general was lowered. The member states and the EU institutions highlighted continuities in, and rather modest changes to the EU system. In terms of the European Council, reforms were argued to consolidate its functions and enhance its efficacy, rather than change its role in the EU's institutional system.

This line of argumentation also resonates with the suggested turn towards new intergovernmentalism in the EU's political system, which had arguably gathered pace over a longer period of time. Accordingly, the increasingly powerful position of the European Council in the EU's political system reflects the 'dual constitutional structure' of EU decision-making that was already laid out in the Maastricht Treaty. This structure has been seen as symptomatic of an 'integration paradox', that is, the EU member states' aspiration to pursue further integration and expand the scope of EU activities, and at the same time reject major new transfers of

ultimate decision-making powers to supranational EU institutions.¹

The recognition of this dual structure is based on a distinction between the traditional community method law-making and intergovernmental policy coordination of the EU. Whereas the EU's competences have been gradually expanded in various treaty reforms, and the community method now referred to in the current Treaty as an 'ordinary legislative process' has been extended, the intergovernmental decision-making mode of policy coordination in the EU has expanded and grown stronger in the Council and European Council concurrently.

The delegation of decisions to the highest political level is also linked to the interconnectedness of the EU policy sectors. This trend has also been identified beyond the EU in an increasingly interconnected and globalised world. Stefan Lehne notes that the international policy agenda has expanded massively beyond the capacity of any single national institution (such as ministries), requiring the involvement of the whole government.² Because of the need to deal with multi- and cross-sectoral issues, the involvement of the heads of state and government is often required as they can assume responsibility for the whole government or administration. Within the EU's political system, the interconnectedness of different policy sectors thus highlights the role of the European Council.

In light of these trends, it comes as no surprise that the multiple crises the EU has faced in recent years have emphasised the role of the European Council in EU decision-making. First, the ultimate decision-making powers in fiscal and economic policies still lie within the member states, and the strengthened economic coordination at the EU level has highlighted the role of the Euro Group and the Euro Summit in the EU's political system. Second, the management of the multi-dimensional migration crisis has been based on a mix of intergovernmental

1 Puetter, Uwe (2014), *The European Council and the Council: New intergovernmentalism and institutional change*, Oxford University Press: Oxford.

2 Lehne, Stefan (2015), *Are Prime Ministers taking over EU foreign policy?* Brussels: Carnegie Endowment for International Peace, available at http://carnegieendowment.org/files/prime_min_for_policy.pdf, last accessed 14 March 2017.

policy coordination and supranational community decision-making. Third, the drastic changes in the European security landscape have also underlined the political leadership of major member states, and the role of the European Council in forging consensus and unity in the EU. In this context, the European Council has also played an important role in attempts to reinvigorate defence cooperation in the EU. Finally, the UK government's aspiration to first re-negotiate and reform its EU relationship, and subsequently to leave the Union, has also directed attention towards the European Council.

Importantly, the European Council has also encountered some difficulties in generating consensus and establishing unanimity among the member states. Examples include the UK prime minister blocking the EU Treaty change known as the 'fiscal compact' in 2011, and the need to resort to (qualified) voting when proposing Jean-Claude Juncker for the post of president of the European Commission in 2014, as both the UK and Hungary opposed him. Most recently, the European Council elected Donald Tusk for a second two-and-a-half-year term despite the objection of his own country, Poland. The move towards qualified majority voting when allowed by the treaties, and overcoming the UK veto on the fiscal compact through an intergovernmental treaty might indicate a novel development in the evolution of the European Council. Notwithstanding its consensus-generator function, the European Council seems to be departing from the unanimity rule, which could speak for 'qualified intergovernmentalism' typical of the Council in the EU.

Political leadership and the European Council – EMU reforms

One of the most interesting questions underpinning the implementation of the Lisbon Treaty reforms was the level of political authority assigned to the permanent presidency of the European Council. The appointment of Herman van Rompuy, the former Belgian Prime Minister, was seen to reflect member states' reservations in setting up a politically powerful and visible office. The management of multiple European crises, which have required politically difficult reforms as well as the acceptance of extraordinary financial liabilities, has further highlighted the role of the member states in the EU's political system. When it comes to tackling the problems related

to asymmetrical power relations, and forcing joint ownership of, and unity among, the member states, the Lisbon Treaty reforms have clearly proved beneficial. It is within this context that Van Rompuy's successor, former Premier of Poland Donald Tusk, inherited an office with considerable political authority. Van Rompuy's experience in the politics and processes of EU decision-making enabled him to manoeuvre in terms of inter-institutional power struggles related to the implementation of the treaty reforms, as well as crisis decision-making. In so doing, a distinctly consensus-generating yet relatively powerful presidency emerged during Van Rompuy's era.

The management of the euro crisis is perhaps the most important political process through which the powerful permanent presidency was founded. The European Council and its president have clearly assumed political leadership in the management of the euro crisis, and the Economic and Monetary Union (EMU) reform process since 2009.³ First, a specific 'Van Rompuy task force' was set up to work on a set of proposals to reform the institutional design of the EMU in 2010. The task force included representatives of all member states, the Commissioner for Economic and Monetary Affairs, and the president of the European Central Bank (ECB) and president of the Euro Group, an informal body established in 2004 consisting of the financial ministers of the euro area governments. As such, it gave the European Council president direct access to and oversight over the Council (i.e. EU finance ministers), the Commission, and the ECB. Even if the Commission was an important member of the task force, member state representatives were equally important in generating consensus in a process through which the European Council president obtained a leading position in managing the EU-level consensus-building in EMU affairs.

His report, adopted by the European Council in the same year, outlined key steps in institutional reform, and included a revision of the existing legislation. Second, the task force paved the way for the so-called four presidents' approach. In 2012, the European Council mandated Van Rompuy to

3 For more, see Puetter, Uwe (2014), *The European Council and the Council: New intergovernmentalism and institutional change*, Oxford University Press: Oxford, pp. 117–20.

develop a specific and time-bound road map for the achievement of a genuine EMU in close collaboration with the presidents of the Euro Group, the Commission, and the ECB. This process resulted in institutional changes, revision of the policy coordination framework and important proposals for legislative changes. Importantly, the outcome differed in part from the position taken by the Commission. This points to the conclusion that the president of the European Council was clearly in control of the agenda, led the negotiations, and supervised the implementation.⁴ In order to do that, he needed the backing and trust of the member states.

In light of these developments, and at the outset of the new institutional cycle in 2014, it is noteworthy that the European Council mandated European Commission President Juncker, and not Van Rompuy's successor, former Polish Prime Minister Donald Tusk, to work on the subsequent steps for EMU reforms in collaboration with the presidents of the European Council, Euro Group, European Parliament and ECB. This mandate resulted in the so-called five presidents' report, which was welcomed by the European Council on the eve of the re-escalation of the Greek crisis in the summer of 2015. The report suggested rather modest reforms in the short term. Yet the acknowledgement of the possible (temporary) departure of Greece from the euro area again emphasised the need to work on deeper and longer-term reforms; to this end, the Commission has promised to publish a discussion paper on EMU reforms in May 2017.

There are several possible reasons for the change of leadership position (from the European Council presidency to the Commission presidency) in the preparation of EMU reforms. First, Tusk came from a member state outside of the euro area. Although it was reasoned that a president from a newer yet major member state, which is not a member of the euro area, would diminish some of the political dividing lines in the EU, such as the one between euro ins and outs, Tusk had not been closely involved with the earlier process. However, he

was also appointed president of the Euro Summit, namely the summit of heads of state and government of the EU member states whose currency is the euro, a practice that emerged during Van Rompuy's tenure when the Euro Summit was generally accepted as a necessary addition to the euro area governance. Second, Juncker had vast experience in euro area governance and reforms. As the previous president of the Euro Group, Juncker had been at the centre of the management of the euro crisis since its inception. Moreover, and as Juncker was concurrently the Prime Minister of Luxembourg, he fully participated in the European Council meetings in his own right during the crisis. Finally, concerns related to the arguably changed balance among the EU institutions, and diminished role of the European Commission, might explain the change as an attempt to underline the Commission's role as the key initiator and architect of EMU reforms in a more stable context.

No legislative functions?

The Lisbon Treaty states that the European Council should not exercise legislative functions. This limitation is aimed at protecting the privileges of the other EU institutions charged with legislative functions. These include the Commission, with the exclusive right to initiate new legislation, and the Council and the Parliament as co-legislators. As the European Council is, however, requested to provide strategic guidance for the development of the EU and its key policies, its direct and indirect influence on the EU's legislative processes has been increasingly discussed recently. In the Lisbon Treaty, a pre-legislative function is explicitly noted in conjunction with justice and home affairs. In other policy fields, the strategic guidance provided by the European Council plays a notable part in setting up the EU's political agenda and priorities, and hence it has an indirect impact on the EU's legislative agenda. Moreover, the European Council has a tendency to lend further legitimacy to the decisions adopted by other EU institutions by welcoming or reaffirming them. These actions can also include the outcomes of the EU's legislative processes.⁵

4 De Schoutheete, Philippe (2015), "The European Council after van Rompuy", *Tribune*, Jacques Delors Institute Notre Europe: Paris, available at <http://www.institutdelors.eu/media/european-council-deschoutheete-jdi-april15.pdf?pdf=ok>, last accessed 14 March 2017.

5 See Wessels, Wolfgang (2016), *The European Council*, London: Palgrave, pp. 69–75.

In the midst of the severe economic crisis, the European Council has increasingly adopted the role of ‘tasking’ the Commission and the Council with enacting and preparing reforms, policies, and new legislative changes. The so-called six-pack and two-pack legislations – aimed at reinforcing the fiscal rules of the euro area, as well as enhancing macroeconomic surveillance and economic coordination in general – were envisaged by the reform package agreed by the European Council and led by its president. Moreover, the UK’s demand to renegotiate a new settlement with the EU resulted in an agreement in the European Council, with some implications for the EU’s legislative processes in the field of the free movement of people, for instance. If the UK referendum had delivered a different result, these elements of the agreement would now be implemented according to the formal law-making process of the EU.

The Commission has (de jure) retained its exclusive right to initiate new EU legislation. Moreover, it is represented in the European Council, and thus closely involved in the preparation of the conclusions of the European Council. In practice, it would be rather challenging for the European Council to formulate detailed guidance or a decision to be implemented without the technical expertise of the Commission. However, this type of ‘direct tasking’, with legislative implications also indicates a development in which the European Council has (de facto) steered new legislation in the EU. This might also partly explain the lead role assigned to the Commission in the preparation of the EMU reforms since 2014.

Flexibility and adaptability: A formal institution with an informal twist

The further institutionalisation of the European Council within the legal and institutional framework of the EU has been generally viewed as a positive development also in light of the severe crises of recent years and their management. The need to address the crises and reform the EU would have underlined the role of the European Council in the EU’s political system despite the Lisbon Treaty reforms. Yet the reforms have enabled greater legality for this institution as well as established checks and balances, as its rules and procedures have been clarified in conjunction with the implementation of

the Lisbon Treaty. However, some of the informal characteristics of the European Council have also grown stronger, which makes the picture more complicated.

First, the need to address the specific euro area political agenda has highlighted the role of quasi-formal bodies, namely the Euro Group at finance ministers’ level, and the Euro Summit at the level of heads of state and government. While informal meetings of the Euro Group are stipulated in the Lisbon Treaty, the first informal Euro Summit only took place in 2008 in the wake of the global financial crisis. It was later provided with a legal basis in the Treaty on Stability, Coordination and Governance (TSCG) in the Economic and Monetary Union in 2012. Due to the UK’s opposition to the EU Treaty change, the TSCG was agreed outside the EU treaty system as an international treaty, although interlinks with the EU system have been made explicit.

These developments reflect a broader turn towards member states’ recent willingness to enhance integration in some areas outside (or at the margins) of the EU framework. In addition to the TSCG, the intergovernmental agreement creating a Single Resolution Fund in the context of a banking union, and the establishment of the European Stability Mechanism, all point in this direction. Importantly, these arrangements are ultimately governed from the top by the Euro Group and the Euro Summit.

However, the fact that presidents of the European Council have chaired the Euro Summit speaks for an attempt to highlight its role as an integral part of the European Council, and to avoid excessive differentiation, as well as incoherence or fragmentation of the EU institutional and legal framework. The position and functions of the Euro Summit might feature in the future EU Treaty reforms, as well as the incorporation of the arrangements based on international treaties in the EU’s legal framework.

Second, the UK’s decision to leave the EU has also highlighted the informal characteristics of the European Council. Article 50 of the TEU provides the legal basis for a member state to withdraw from the EU, and defines the European Council as the responsible institution for setting the guidelines for the exit negotiations. The remaining 27 member states’ decision to launch a political reflection process on the future of the EU has, however, brought some

more informal features of the European Council to the fore once again.

This process is in line with the function of the European Council to provide strategic guidance for the EU's development and key policies. Yet the looming departure of the UK has required the European Council to work on the reflection process without the UK. This consequently led to a practice to discuss the UK exit and the future of the EU in an informal 'EU27' format in conjunction with the European Council meetings in June and December 2016. Relatedly, an informal meeting of the EU27 was organised in the Slovakian capital of Bratislava in September 2016 to launch the political reflection process. The meeting was called by Slovakia as the holder of the rotating presidency of the Council, and chaired by European Council president Tusk. While Tusk was in charge of the agenda and pre-meeting consultations among the 27 member states, media and public interest centred on the member states' activities in the run-up to the summit. Chancellor Angela Merkel of Germany met all her peers in different formats, and she was largely seen as the key interlocutor of the approaching Bratislava summit.

Importantly, the Bratislava declaration of the EU27 called for the swift implementation of agreed decisions as well as the adoption of new ones in the fields of economy, migration and security, in order to forge citizens' trust in the EU. It also provided the impetus for the European Council meetings in October and December 2016, and the Bratislava process is expected to shape the political agenda of an EU now faced with disintegration resulting from the expected invocation of Article 50 of the TEU by the UK government in March 2017. The second informal summit of the EU27 took place in January 2017 in Valetta, as Malta is the current holder of the presidency of the Council.

These developments are in line with Article 1 of the TEU, which assigns the European Council a role to 'define the general political directions of the Union'. Yet the 'informal' features related to the EU27 format and the Euro Summit, as well as the recent move back to national capitals as meeting sites, speak for a degree of agility and innovation within the European Council. This might be welcomed in terms of the efficacy of the institution, but it is not fully in line with the objective to place it firmly within the legal and institutional system of the EU.

Conclusion

The recent and more long-term developments have pointed to a conclusion suggesting an increasingly prominent role for the European Council in the EU's political system. The institution's powerful position is based on its role as a nexus of interconnected areas of integration, and the increased need to delegate issues to the highest political level in the EU and forge consensus among the member states. When consensus has not been established, the leaders have also resorted to qualified majority voting when the treaties have allowed it.

Overall, the further institutionalisation of the European Council has largely been deemed a positive development, as it has enabled efficacy and placed this top-level institution more firmly within the EU's institutional framework. At the same time, its increasingly powerful position has had implications for the balance of power among the EU institutions, and has also cast a shadow over the traditionally powerful position of the Commission. Relatedly, the European Council has also steered the EU's legislative processes by 'tasking' other EU institutions with acting according to its guidance. Moreover, as the informal characteristics of the European Council have also grown stronger, the objectives of the Lisbon Treaty reforms have been only partially met.

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