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The European Council

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Introduction

The European Council is the meeting of heads of state and government of the EU Member States which is the primary EU institution, bound by the treaties to set the political direction for the whole organisation.¹ It also determines the principles governing the EU's foreign and security policies, the direction of its policies on freedom, security and justice and decides whether the treaties of the EU will be amended, and if so, by what procedure.

This paper explains the development of the European Council and its composition, powers and responsibilities.

History

There was no provision in the Treaty of Rome for the prime ministers and other heads of government to meet together in the context of the European Communities. At de Gaulle's instigation the first such meeting was held in 1961 but it did not become a regular event. Further informal "European summits", as they became known, were held in 1967, 1969, and 1972, all attended by heads of state or government and the President of the European Commission. Because its meetings were informal, outside the framework of the institutions, its decisions had no legal force and were in effect politically rather than legally binding recommendations to the Council or the President of the Commission.

The Hague meeting in 1969 agreed to start enlargement talks in 1970 with the UK and to resolve a long-standing dispute about the funding of the CAP. Britain was represented for the first time at the October 1972 Paris summit where the heads of state and government first established the objective of achieving a European Union and agreed to achieve full economic and monetary union by the end of 1980. At a further informal summit in September 1974 in Paris, at the suggestion of President Giscard d'Estaing, it was decided that the heads of state and government should meet three times a year as the "European Council".

The first such meeting took place in March 1975 in Dublin but although this marked a new direction for the EC, this was still a meeting which had no formal basis in the treaties. The 1986 Single European Act changed that by referring in Article 2 to the existence of the European Council, its composition and stated that it should meet at least twice a year. But, crucially, it did not make the European Council an institution of the EC, give it a specific role or, therefore, change the merely politically binding nature of its decisions. The Treaty on European Union in 1992 set down the role of the European Council for the first time:

¹ It should not be confused with the Council of Europe, which is wholly separate from the EU, or the Council of Ministers, the legislative and policy-making body of the EU which operates at a lower level

The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.

This was a statement of the political reality in a larger and more influential EU – Member States did not want to allow the Commission and its President to drive the EU's agenda. This was reinforced by the 1997 Treaty of Amsterdam, which gave the European Council the duty to:

define the principles of and the guidelines for the common foreign and security policy, including for matters with defence implications
[Art. J.3 (1)]

The logical development of that shift in the power relationships within the EU came in the Treaty of Lisbon with the European Council being made an institution of the EU for the first time and with the appointment of its first full-time president (it also abolished the system of rotating presidencies at that level). This was a step-change in the relationship between the European Council and the other institutions of the EU. Although it did not take place in isolation from other institutional changes within the EU, such as the increase in the power of the European Parliament over the EU's legislation, it nonetheless amounted to a shift in power within the EU's leadership to the Member States working together in the European Council.

Composition & Meetings

Article 15 of the Treaty on European Union, as modified by the Lisbon Treaty, sets out the basic rules concerning the composition, powers and role of the European Council. Its second paragraph says that the members of the European Council will be the Heads of State or Government of the Member States together with the President of the Commission and the President of the European Council; the latter two have no vote. The Treaty does not describe the High Representative for Foreign Affairs & Security Policy as a member of the European Council but says that she will "take part in its work". After the treaty of accession has been signed a representative will also be from a country that is to join the EU but they do not have a vote until the formal date of accession. The Lisbon Treaty removed Foreign Ministers from European Council meetings, which hitherto they had always attended alongside their head of state or government.

Meetings must now be held twice every six months, according to the treaties – *i.e.* four times a year. The President can call additional meetings if he thinks it necessary to do so, including for international developments (Article 26 (1)). The European Council used to meet in the country of the Member State holding the presidency but it now meets in Brussels.

There have been disputes within Member States between the president and prime minister as to who should represent their country at a European Council meeting. These have risen particularly when there is a coalition government. The Treaty of Lisbon only permits the attendance of the Head of State or Government for each Member State unless the European Council as a whole agrees that they would like the assistance of a Minister. In practice, the European Council has been understanding of differences within Member States and would be likely to allow two representatives to attend for a specific reason.

The political allegiance of members of the European Council is of considerable relevance to their discussions. At present (2012), the largest group of heads of state or government are those from the European People's Party (15), the second largest from the Socialists (5) and then there are two each from the European Conservatives (including David Cameron), the Liberals and the independents and one from the European Left.² It is common for the political groups to hold a pre-meeting in advance of the European Council; the EPP invariably does so. The current presidents of the European Commission and the European Council are also EPP members.

The President of the Parliament speaks at the opening of each European Council giving the Parliament's views of the issues before the council but he or she is not a member and does not stay for the business part of the meeting.

For many years the conclusions of the European Council were only drafted and circulated to delegations at the end of the first day of the European Council meeting. The drafting was exclusively in the hands of the rotating presidency, of the Commission and of the Council Secretariat. More recently the draft conclusions are distributed in advance of the meeting by the President of the European Council and are often lengthily discussed and pre-negotiated before the Council meets. This shift in procedures had greatly added to the bureaucracy of the whole process.

The treaties only give a partial picture of the role of the European Council. It is essentially a forum for the most senior political leaders in the EU to debate and try to find common solutions to the important issues of the moment. Their agenda usually ranges widely over economic, foreign policy and internal EU questions. They tend to focus more on economic questions at their March and October meetings.

Powers

The powers of the European Council are laid down in the treaties. Article 15 (1) states that it does not have legislative functions; where legislation is necessary to implement a decision of the European Council it will be drawn up by the Commission and then enacted in accordance with the normal legislative procedures of the EU (*i.e.* by the Council and by the Parliament).

Article 15 (5) provides for the European Council to appoint its own President (see below) while Article 17 (7) sets out the procedure for the appointment of President of the Commission and the members of the Commission by the European Council. The European Council chooses a candidate for the Commission Presidency by QMV "taking into account the elections to the European Parliament" and after holding "consultations" (with whom is not specified). The Parliament then decides by simple majority to accept or reject the European Council's nominee; if the nominee is rejected (so far this has not happened) then the European Council goes through the same procedure to nominate a second candidate.

The High Representative for Foreign Affairs & Security Policy is appointed by the European Council under QMV with the agreement of the President of the Commission. There is no separate vote of approval by the Parliament for the High Representative but all members of the

² The independents are Prime Minister Mario Monti (Italy) and President Grybauskaitė (Lithuania)

Commission including the High Representative must be approved *en bloc* by the Parliament and then the entire Commission is appointed by the European Council under QMV.

The President, Vice President and members of the European Central Bank (ECB) are also appointed by the European Council, in this case acting by QMV after the Parliament and the Governing Council of the ECB have been consulted (Article 238, TFEU).

The EU's growing role as an actor in foreign affairs is recognised by the specific provisions in the Treaty on European Union concerning the EU's foreign and security policies. Article 22 requires the European Council to "identify the strategic interests and objectives of the Union" and Article 26 requires them to define the general guidelines for the Common Foreign & Security Policy (CFSP) of the EU and for defence matters. Article 21 says that other areas of external action (*e.g.* international trade, development assistance and bilateral relations with third countries) are covered by this duty to identify strategic interests and objectives. The European Council acts by unanimity when adopting decisions in this area and it works with the Council of Ministers (and of course Member States) in implementing the agreed CFSP measures.

The leadership role of the European Council is reinforced by the requirement on it in Article 68 to "define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice".

The remaining powers of the European Council cover a number of issues:

- proposals to amend the treaties of the EU have to be submitted to the European Council and it has the power to decide whether they will be considered further; it can agree by unanimity to change the voting procedures in the Council from unanimity to QMV with the consent of the Parliament and provided there are no objections from national parliaments; all treaty changes, including to voting methods, require each Member State to approve them in accordance with their own constitutions;
- under Article 7 it may decide unanimously that a Member State is in "serious and persistent breach" of the values of the EU as laid down in Article 2 provided it has the consent of the European Parliament (if it does so, voting rights in the Council maybe suspended by the Council);
- under Articles 48 (social security for migrant workers), 82 (3) (mutual recognition of judicial decisions and 83 (mutual recognition of offences) of the Treaty on the Functioning of the EU, a Member State can object to a proposed piece of legislation because of the particular and serious consequences for their country and it is then referred to the European Council to reach a consensus on a way forward;
- under Article 86 failure to reach unanimity on a proposal to establish a European Public Prosecutor can be referred to the European Council if nine Member States agree for it to try and reach consensus (so far there has been no such proposal); if such a prosecutor were established, extending the offences for which it was responsible would require unanimity in the European Council as well as the consent of the Parliament.

Role of the President

The Lisbon Treaty made the role of the President of the European Council, hitherto held by the head of state or government of the Member State holding the six-monthly rotating presidency, a full-time one. Under Article 15 (5) the European Council elects its President by QMV for a term of two and a half years, renewable once. Although it is not in the treaties, the consensus is that the holder of the post should have held national office as prime minister or president prior to their election (they cannot hold any national office whilst serving in the role of President).

Article 15 gives five duties to the President:

- to chair the European Council and to “drive forward its work”;
- to ensure the preparation and continuity of the work of the European Council, in co-operation with the Commission and the basis of the work of the general affairs council;
- to “facilitate cohesion and consensus” within the European Council;
- to report back to the European Parliament after each meeting;
- to represent the EU externally at the level of head of state or head of government on issues concerning CFSP but “without prejudice to the powers of the High Representative”.

In practice, the role of President is still developing. There is potential for the holder to come into conflict with the President of the Commission and/or the High Representative. This has not happened yet but there have been tensions over who should lead on the eurozone crisis.

Effectiveness

One of the arguments against making the European Council an institution was that it would result in greater inter-governmentalism – *i.e.* power would shift from the Commission making policy recommendations independently of party politicians which benefit the whole EU to national leaders indulging in a process of horse-trading largely determined by domestic political factors rather than the best interests of the community as a whole. Quite a few national politicians would see that argument against as being very much the best argument for increasing the role of the European Council in the face of a European electorate less enamoured of integration than in the past.

The decision of the eurozone states to make the President of the European Council also the president of the euro summit raises questions about whether a politician from a non-eurozone Member State could occupy the presidency of the European Council in future.

Whatever the arguments of the past, the Lisbon Treaty has reshaped the leadership of the EU, giving greater authority and power to the European Council. This enables Member States, acting together, to provide leadership to the EU.

July 2012



Senior European Experts

The Senior European Experts Group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, and former officials of the institutions of the EU.

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