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Top level negotiations in the European Union: the European Council

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Abstract

The European Council, the meeting of the Heads of State and Government of the member states of the European Union, has evolved into EU's most influential and powerful decision-making institution. However, the processes of deepening (expansion of policy areas) and widening (enlargement) of European integration have forced the European Council to tackle the potential threat of a crisis in European top-level decision making before actual enlargement with ten new members in May 2004. If the current generation of political leaders is not able to reach agreement on necessary reforms, future decision-making in the European Council could eventually turn out to be a mission impossible. Despite a successful record, the European Council seemed to have lost its grip on the integration process at the end of the 1990's. Adaptations of the decision-making process, still based on an unchanged negotiation structure since its creation in the 1970's, are needed if the European Council wants to continue its important and guiding role in European integration.

Two parallel processes of European Council reform have been initiated or intensified and are to be finalized before actual enlargement next year. The first process deals with the operational settings of the European Council summits. The second process deals with the institutional structure and the balance of power between the EU institutions.

The main purpose of this paper is twofold. The first goal is to present information on the evolution and current functioning of the European Council since the summits are still surrounded by a lot of secrecy and informal decision-making. Secondly, an overview and analysis will be presented on these current reform processes that need to prepare the European Council for the upcoming enlargement. It is argued that the European Council has accurately overcome many of its problems and critics by ensuring a stronger institutional position in the future EU. The European Council will be in the driving seat more than ever before.

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Top level negotiations in the European Union: the European Council¹

Peter van Grinsven

“We cannot go on working like this”. These words of the British Prime Minister, Tony Blair, at the end of a chaotic European Council meeting in Nice in December 2000 say it all. This European Council meeting ended late at night on the third day instead of early in the evening of the second day as planned. The European leaders had struggled on the so-called ‘Amsterdam left-overs’, the necessary institutional reforms for an enlarged EU upon which at the Amsterdam summit in 1997 no agreement could be reached, for over three long days. During the Nice negotiations emotions rose high at times and eventually a meagre package deal of several compromises was agreed upon.

In retrospect the Nice European Council seems to be a good example for providing insights in the current negotiation dynamics of the highest political body of the European Union. The poor result and the public fights between some of the European leaders in the aftermath of the Nice summit made painfully clear that the negotiation process within the European Council needed to be restructured and even more preferably reformed.

The processes of deepening (expansion of policy areas) and widening (enlargement) of European integration have forced the European Council to tackle some tough challenges. The threat of a possible crisis in European top-level negotiations needs to be solved before actual enlargement with no less than ten new members takes place in May 2004. If the current generation of political leaders is not able to reach agreement on necessary reforms, future decision-making in the European Council could eventually turn out to be a mission impossible.

So, despite a successful record, the European Council seemed to have lost its grip on the integration process at the end of the 1990’s and the beginning of the new century. Adaptations

¹ Parts of this paper will be published in: Peter van Grinsven, “Negotiating the European Council”, in: P.W. Meerts and F. Cede (eds.), *Negotiating European Union*, PIN-group, 2004 (forthcoming)

of the negotiation process, still based on unchanged working methods and structures since its creation in the 1970's, are needed if the European Council wants to continue its important and guiding role in European integration.

Ever since Tony Blair showed his frustration on the internal proceedings of the European Council many events have occurred. Two parallel processes of European Council reforms have been initiated or intensified and are to be finalised before actual enlargement of the European Union takes place. The first process deals with the operational settings of the European Council summits. These reforms were initiated at the Helsinki summit in December 1999 and were agreed upon at the Seville summit in June 2002. The second process deals with the institutional structure and the balance of power between the EU institutions. These reforms will most probably be finalised at the end of the Intergovernmental Conference (IGC) 2003/4, leading up to a completely renewed constitutional EU Treaty, in which the position of the European Council will be strengthened once again.

The main purpose of this paper is threefold. The first goal is to present information on the *historical evolution* and the current *functioning* of the European Council. Although this top-level decision-making body has been very influential on the progress of European integration, paradoxically not much research has been done on its true record. The negotiations are still surrounded by a lot of secrecy and informal decision-making. This paper will try to give an outsider's view on the true decision making processes of this very powerful body with a special reference to the last years.

Secondly, the European Council negotiations will be analysed from an international negotiations perspective. Attention will be paid to the *negotiation process* as such. The European Council will be analysed from an International Negotiation perspective with special attention to its unique characteristics.

Finally, an overview will be presented on the *current reform processes* that need to prepare the European Council for the upcoming enlargement. Over the last couple of years, since the negotiations leading to the Amsterdam Treaty, the future institutional structure of the EU has been one of the dominating issues on the political agenda. In fact, last June the European Convention on the Future of Europe proposed a 'blue print' on the future institutional EU structures. One of the most sensitive issues is the future role and position of the (president of the) European Council. Several proposals have already been put forward. Clearly, at the centre of these proposals is the manner in which decision-making takes places.

It is argued that the European Council, in line with current developments in international relations, has accurately overcome many of its problems and critics by ensuring a stronger institutional position in the future EU. The European Council will be in the driving seat more than ever before!

This paper will provide an outside-look at the negotiations in the European Council as such. The process and proceedings will be described, the current dilemmas and proposed reforms will be analyzed, the sources of main influence will be pointed out and, finally, some thoughts on the future of the negotiations in the European Council will be presented.

However, this paper will start with a short historical overview and institutional overview of the European Council, because knowledge and insights of this history is of pivotal importance to the current negotiation process and its dilemmas.

Historical evolution²

The creation of what was later to become the European Council meetings within the rather supranational community framework came into existence after strong insistence, if not compulsion, in the 1960's by the most influential European politician of that era: the President of the French Republic, Charles de Gaulle. De Gaulle's resentment to supranational dominance in international or European relations made him instigate the first two summits in Paris in February 1961, and then in Bonn in July 1961. The European Council was made a success, though, by political leaders from the respective member states in the post-De Gaulle-era, who brought the European integration a lot further than the former French President would have ever expected or hoped for. The first influential summit was not held until 1969 in The Hague. This summit was successful in two ways: agreement was reached upon the British accession and, secondly, the idea of foreign political cooperation, the so called European Political Cooperation, was formally initiated, thereby extending the rather economic focus of the integration process. The positive European spirit made the French president Pompidou even speak of "complètement, approfondissement et élargissement" (completion, deepening and enlargement).

² This section is an elaboration of: Peter van Grinsven, "The evolution of the European Council: from a serial summit to a permanent arena for leadership negotiations with some tough challenges ahead", paper presented at the Summitry Conference, Boston University, M.A., Department of International Relations, 19-20 March 2002

This Euro-optimism was soon to change in ‘Eurosclerosis’. After two pale summits in Paris (1972) and Copenhagen (1973) it was during the Paris summit in 1974 that the European political leaders decided to have regular meetings of what was formally called the ‘European Council’. This institutionalisation of the epitome of intergovernmentalism was needed for three reasons: the international economic crises had forced the member states to refocus their international economic policies, the community method had almost completely stagnated especially since the Empty Chair crisis in Luxembourg in 1965 which was in practice a blocking majority voting, and the Ministers of Foreign Affairs were finding it difficult to coordinate the activities of a growing number of Council formations, especially concerning the European Political Community³. A strong intergovernmental input was needed to bring European integration further: the European Council changed from an ad hoc informal gathering into a formal arena and was used by the political leaders for European negotiations. Paradoxically, this emergence of the European Council coincided with a gradual strengthening of supranationalism.

The two founders of the current setting of European Council meetings, the French President, Valéry Giscard d’Estaing, and the German Chancellor, Gerhard Schmidt, who continued to have bilateral meetings at a regular basis as well, opposed to this supranational tendency. They wanted to regain as much political power as possible. Therefore they decided to initiate the high-level meetings of the European Council. They preferred to have these meeting as informal as possible. Participation of high officials during these meetings was not appreciated. “But the other Member states insisted, in 1974, upon their limited participation”⁴. From the Dublin summit in 1975 onwards at least twice a year these meetings have been held. Dinan rightly argues “many meetings of the European Council stand out as turning points in the EU’s history.”⁵ The most important and successful European Councils were:

- The Hague (1969), foreign political cooperation and first wave of enlargement
- Paris (1974), “creation” European Council
- Milan (1985), convoking the IGC that led to the SEA

³ An interesting link with the present dilemmas can be witnessed here. One of the main reasons for the current crisis in the European Council stems from the malfunctioning of the Council of Ministers, in particular the General Affairs and External Relations Council (GAERC). This malfunctioning will be discussed in length later on in this contribution – PvG.

⁴ Werts, J., *The European Council*, Elsevier Science Publishers, 1992, p.98

⁵ Dinan, D., *Ever Closer Union – An Introduction to European Integration*, Palgrave, 1994, p. 237

- Maastricht (1991), agreement on the TEU
- Amsterdam (1997), conclusion of the Amsterdam Treaty
- Brussels (1998), selection of member states to join Stage III of the EMU
- Tampere (1999), third pillar issues and institutional reforms
- Lisbon (2000), ICT and economic development
- Copenhagen (2002) / Athens (2003), EU enlargement with CEEC's, Cyprus and Malta

This short list shows the enormous influence and impact the outcomes of the European Council negotiations have had on the European integration process.

Still, the status of the European Council and its decisions have been the object for many academic debates. "Part of this problem stems from the fact that for the first twelve years of its existence (1974-86), the European Council met, and exercised significant power, without any legal basis in the Treaties"⁶.

The European Council was given a constitutional and legal basis only in 1987 in the Single European Act (SEA). This stated in article 2:

The European Council shall bring together the Heads of State or of Government of the Member States and the President of the Commission of the European Communities. They shall be assisted by the Ministers of Foreign Affairs and by a Member of the Commission.

The European Council shall meet at least twice year.

However, no tasks, functions or competencies were laid down in the Single European Act. These continued to evolve informally during the European Council meetings in the aftermath of the SEA. In the Treaty of the European Union that was agreed upon during the Maastricht European Council in 1991 the composition of membership and the frequency of meetings were restated and went even further by laying down in Title I, article D that "the European Council shall provide the Union with the necessary impetus for its development and shall

⁶ Schoutete, P. de, "The European Council", in: Peterson & Shackleton, *The Institutions of the European Union*, p.30

define the general political guidelines thereof". This formulation is a clear example of the intergovernmental primacy in the integration dynamics that has dominated the 1990's and in fact gained even more momentum in the first years of the current decade. For, the Treaty of the European Union can be seen as the final phase of the formal institutionalisation of the pure intergovernmental European Council. In the Treaty of Amsterdam the above-mentioned article was renumbered article 4 TEU. Here the article was reformulated:

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

The European Council shall bring together the Heads of State or Government of the Member States and the President of the Commission. They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a Member of the Commission.

The European Council shall meet at least twice a year, under the chairmanship of the Head of State or Government of the Member State, which holds the Presidency of the Council.

The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union."

Although, unlike the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors, the European Council is not legally an institution of the European Community. Nevertheless does it play a vital role in all European Union fields of activity whether by giving impetus to the Union or defining general political guidelines, or by coordinating, arbitrating or disentangling difficult questions⁷.

⁷ It should be noted that the Treaty on European Union stipulates that the "Council, meeting in the composition of the Heads of State or Government" exercises several functions: determining by unanimity the existence of a serious and persistent breach by a Member State of certain principles, such as the respect for human rights and fundamental freedoms; deciding to move to the third phase of the Economic and Monetary Union and determining which Member States meet the conditions for joining the single currency; and allowing "enhanced cooperation" in the Community field. The "Council, meeting in the composition of the Heads of State or Government" does not mean the "European Council": the President of the Commission is not for example a member of the former although he is a member of the European Council, and the decision-making rules are not the same. Similarly, a distinction should be made between the powers of the "Governments of the Member States at the level of Heads of State or of Government" (which intervene for example in the appointment of the President, Vice-President and other members of the Executive Board of the European Central Bank) and the term "European Council". See: <http://ue.eu.int/en/info/eurocouncil/sommet.htm>

From 2004 onwards it's very likely that a new chapter will be added to the evolution of the European Council. Last June the so-called Convention on the Future of Europe presented its proposal for a new constitutional EU Treaty, including reforms concerning the (institutional) position of the European Council. The ratification of this Treaty will have direct consequences for the position of the European Council, as will be argued at the end of this discussion paper. However, before going into detail on the future position of the European Council, first an overview will be presented on the current functioning and proceedings of this EU top-level decision-making body.

The current functioning of the European Council

Since the beginning of the 1990's as in the 1970's the European Council has received an ever-increasing amount of attention and media coverage. Most attention deals with the fact that the European Council is supposed to have become the most powerful EU institution. Indeed, the European Council is at the heart of the European balance of power. This top-level decision-making body is often described as the 'motor' of European integration. The European Council has evolved from an informal gathering of the political leaders of the E(E)C/EU-member states in the 1970's into what seems to be an influential and guiding institution of the European Union. A semi-permanent top-decision making arena has come into existence. Compared to top-level decision-making institutions of international organizations like the United Nations, ASEAN, G-7/8 and Mercosur the European Council takes a rather unique if not ambiguous position. On the outside the European Council looks to comply with all essential criteria of a top-level decision-making institution within an international organization: executive participation, diplomacy at the highest political level, long-term agenda setting, broker of interests, media exposure, et cetera. When given, though, a second glance, the European Council undoubtedly distinguishes itself in several ways: the institutional structure in which it needs to operate, its range of tasks and competencies and its working methods and decision-making procedures⁸.

⁸ Schoutete, P. de, "The European Council", in: Peterson & Shackleton, *The Institutions of the European Union*, Oxford University Press, 2002, p.33-39

It increasingly acts as the real broker for the most fiercely contended stalemate issues and usually solves them by package dealing⁹. In issuing manifold declarations and memorandums, it has become a major EU agenda builder giving the green light to the Commission, which usually acts quite responsively¹⁰. The highest authorities in the EU political system are these ‘summits’ of the EU heads of government and state. European Council meetings are where final agreements and compromises are reached on treaty reforms. It takes a central political leadership role, guiding the work of the lower meetings of the Council and the Commission, and setting the long- and medium-term objectives of the EU¹¹. In a way the European Council looks to be perceived as some kind of pandemonium that is solely responsible for the current direction of European affairs.

How then does this ‘pandemonium’ deal with all its tasks? How is it able to get to consensual decision-making in a dynamic environment, like the European Union? In other words, how does it operate? The following section will provide an overview at an operational level of the working methods of the European Council.

Working methods¹²: a general overview¹³

The meetings of the European Council usually take place over two days. Though some European Council meetings, like in Nice in December 2000, lasted four days. These two days provide a striking contrast between the privacy of the meetings and the enormous activity outside the rooms which nobody can enter without showing their credentials (a red pass); a contrast between the informal, flexible character of the meeting and the boundless ingenuity which the Presidency and the Secretariat must show in order to provide translations, security arrangements, secretarial assistance and information for the national delegations sitting in adjacent rooms and for upwards of two thousand journalists covering the event.

⁹ For an excellent analysis of the European Council until the Maastricht Treaty, see: Werts, J. *The European Council*, Elsevier Science Publishers, 1992

¹⁰ Schendelen, R. van, *Machiavelli in Brussels – The Art of Lobbying the EU*, Amsterdam University Press, 2002, p.75

¹¹ Hix, S., *The Political System of the European Union*, MacMillan Press, 1999, p.28-30

¹² The author has gratefully used the official website of the secretary-general for some “insight information” on the working methods of the European Council.

¹³ Other parts of this chapter are based on interviews with mostly Dutch diplomats who have attended European Council summits.

As De Schoutheete rightly argues, “this is the essence of the European Council: a limited number of political figures, headed by the chief executives of all member states, meeting in a closed room with no assistants”¹⁴.

The restricted composition of the European Council gives it a rather informal character. Some even compare it to a traditional chat around the fireside. Though this is definitely not the case, some of the working methods that are being used do stem from an era that seemed to have passed since the introduction of computers and the Internet. Though there is no formal set of agreed and legal binding Rules of Procedure as exists for the Council of Ministers¹⁵, the composition, setting and proceedings are usually as follows.

Composition

The formal composition of the European Council (art. 4 TEU) was already mentioned earlier in this chapter: two delegates per member state (the Head of State or Government and the Minister of Foreign Affairs), the President of the Commission and a member of the Commission. In practice, however, more people are directly involved in the European Council negotiations. Added to these thirty-two negotiators, over the years a growing, but still a limited number of officials is allowed to the conference room as well. This incline of EU officials is a direct consequence of the growing influence of the European Council of the process of European integration, as described in the first section of this paper. These officials are from the Presidency, the Commission and the Council Secretariat.

Since the merger of the functions of Secretary-general of the Council and the High Representative, this function has gained importance in the European decision-making structure, especially in the context of the European Council. The secretary-general, currently the former Spanish Foreign Minister Javier Solana, has become a (semi-) political function. He is closely involved in the preparation of the meetings and his secretariat is amongst others responsible for the drafting of the conclusions. This evolution of the Council Secretariat can also physically be witnessed at the negotiation table, since both the secretary-general and his deputy have been appointed a chair, next to the President of the European Council.

¹⁴ De Schoutheete, “The European Council”, in: Peterson e.a., *The Institutions of the European Union*, Oxford University Press, 2002, p.22

¹⁵ Jan Werts, *The European Council*, Elsevier Science Publishers, 1992, p.77

Furthermore, two delegates per member states are allowed to enter the conference room for surpassing notes or messages. They are explicitly not allowed to join the negotiations nor the stay in the room permanently.

However, some additional remarks have to be made. Sometimes an absent foreign minister is replaced by another minister (or state secretary) or, by exception, by the Permanent Representative of its country. Furthermore, the French President is sometimes replaced or assisted by the French Prime Minister. This is more often the case during a period of “cohabitation”, when both politicians are from different political backgrounds, like in the Chirac/Jospin era.

Setting

The main meeting room, to which access is limited, is isolated from the outside world. If a member of the European Council wishes to call upon one of his close assistants or on a Permanent Representative for clarification or advice about a dossier, he presses a button, which sends a signal to the adjacent room of the so-called Antici Group¹⁶. This Group's members are diplomats and close assistants of the Permanent Representatives, who stay close to the main meeting room at all times and pass messages to their respective national delegations, accommodated further away. It is their function to convey requests and keep delegations informed of how the discussions are progressing. Proceedings are relayed to the outside world by a system of note-takers. An official from the Council Secretariat is present during the discussions and he takes notes for about fifteen minutes after which another Council official replaces him. The official briefs, after having left the room, orally the Antici group in their separate room. De Schoutheete rightly argues “this indirect dissemination of informal guarantees that national delegations know something of the proceedings inside, but with a considerable delay and in a way which makes direct attribution of specific words to any participants nearly impossible. Such an extraordinary system would not have survived if heads of government were not happy with the result, namely that they operate at some distance, both in space and time, from the views and comments of their own civil servants”¹⁷.

¹⁶ This group was named after its Italian originator (1975) and was created to alleviate the workload of COREPER.

¹⁷ De Schoutheete, “The European Council”, in: Peterson e.a., *The Institutions of the European Union*, Oxford University Press, 2002, p.26-27

As all delegations are allowed to speak in their own language a lot of translators are present as well. They are situated at a side of the plenary room in a row of boxes. Their simultaneous translations are only accessible for the negotiators at the table. The national delegates in the adjacent rooms have no access to these direct translations and have to wait for the oral briefings by the civil servants of the Council Secretariat and the Antici group.

Furthermore, in the corners of the meeting room several seats are reserved for five different kind of professionals: officials from the Presidency, officials from the Secretariat-general of the Council, the Secretary-general of the Commission, the earlier mentioned note takers and, finally, some people of the technical staff. This all leads to the following overview of the meeting room itself¹⁸ (see figure 1).

Proceedings

It has been practice since 1987 to begin the proceedings with a speech by the President of the European Parliament. Before the European Council's work officially begins, he informs the European Council of the Parliament's position on the main issues at stake, and after a short discussion, he leaves the room. The heads of state and government of the applicant member states are usually invited to join this first day opening session as well. The first day of work, sometimes called the "plenary session", is devoted to an exchange of views on the current concerns of the European Union.

At the close of the day, the proceedings are suspended for dinner. The Heads of State or Government and the President of the European Commission continue to discuss on their own issues they have decided to address. The Foreign Ministers dine in another room, and add final touches to certain dossiers. The Heads of State or Government and the President of the Commission then adjourn for the least formal part of the proceedings, the fireside chats, and where they can broach whatever subjects they wish, in strictest confidence. Meanwhile, in the light of the day's discussions, the Presidency and the secretary-general of the Council tidy up the conclusions, which will be made public the following day, and the Foreign Ministers discuss current issues, and where necessary, prepare declarations on CFSP matters.

¹⁸ This picture is primarily based on the press photos on the website of the European Council: <http://ue.eu.int/en/Info/eurocouncil/index.htm> - PvG

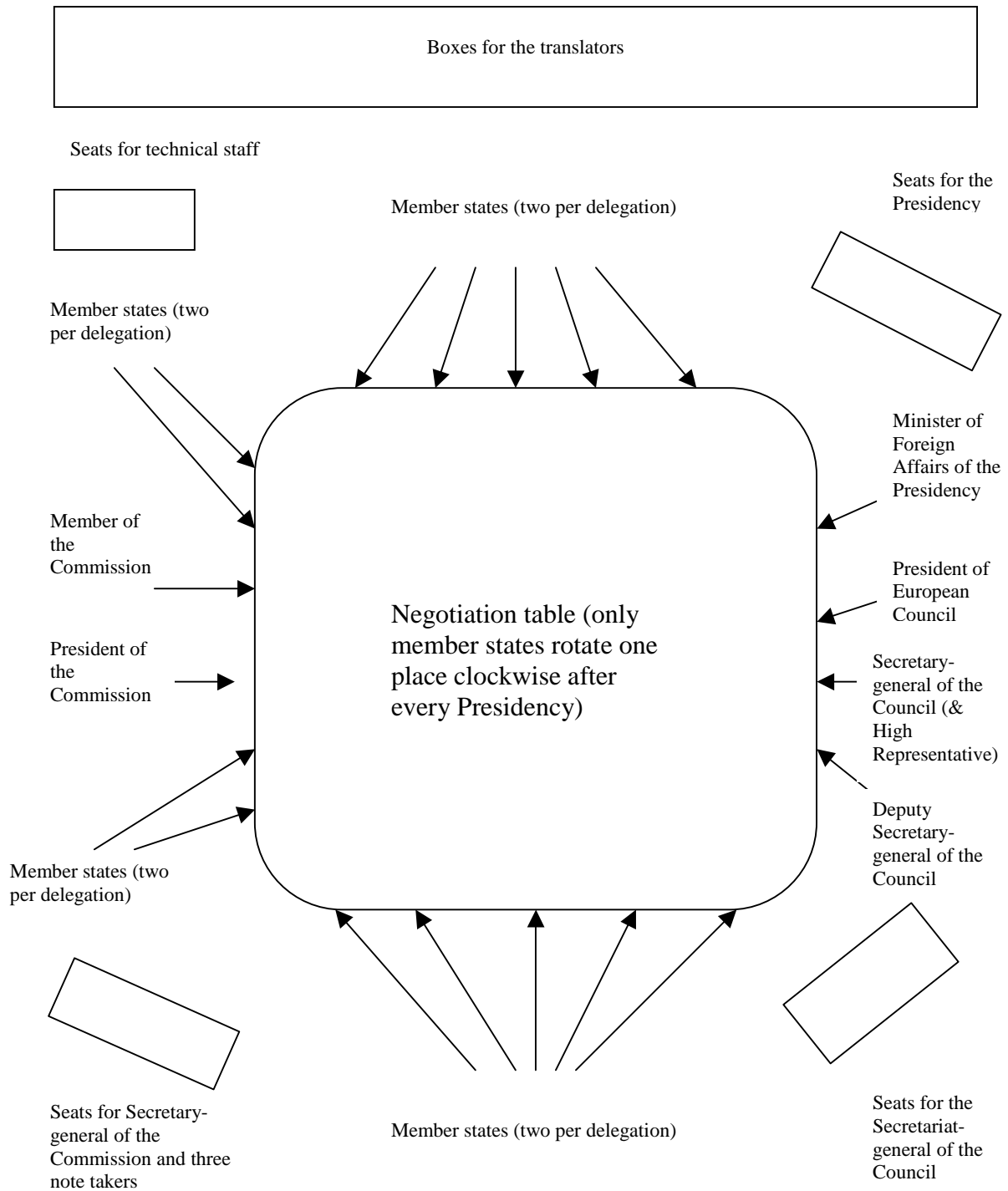


Figure 1: The plenary negotiations room – a schematic overview.

The next half-day's work is preceded by a working breakfast for each delegation, when informal bilateral contacts can be made where appropriate. Once the traditional "family photo" has been taken, the last plenary session is devoted to finalization of the conclusions. The drafting of this text sometimes involves prolonging discussions into the afternoon or

simply omitting lunch, with consequent last-minute changes to the time of departure of the delegations.

The final part of the proceedings is the system of press conferences. After the final discussions of every European Council all parties involved (Presidency, all member states, Commission and Secretary General of the Council) give separate press conferences in which they put forward their positions, their “successes” and perhaps most importantly their interpretation of the discussions. This circus of media attention is first and foremost a public relations offensive used by the political leaders to communicate to their peoples and legitimize their actions. An interesting aspect of these press conferences stems from the sometimes-different explanations of some politicians. These differences are due to the fact that during the European Council meetings no formal notes are taken which gives room for different interpretations of the substance. This example of ‘public diplomacy’ par excellence is the closing piece of the negotiating puzzle on the European Council proceedings.

The Presidency

The ‘amongst equals’-character of the European Council does not apply to the position of the Presidency. The member state holding the Presidency is clearly more equal than others. Main advantage deals with the fact that the Presidency is allowed to have two kinds of (national) negotiators at the conference table: the technical chairman of the meeting (the Head of State or Government) and the actual negotiator (Minister of Foreign Affairs) who will defend the national positions. The history of negotiations in the European Council has made clear that one can hardly speak of a ‘technical’ and ‘neutral’ chairman. Two essential characteristics, therefore, need to be mentioned for a complete overview of the proceedings: ‘agenda setting’ and the (drafting of) conclusions of the Presidency.

The setting of the agenda is in all negotiations an important tool for the chair to influence the proceedings and the outcomes. The sequence and number of the respective points on the agenda make or break the negotiations. The sequence is in case of the European Council determined by the Presidency. The chair, hereby, is able to directly influence the contents of the negotiations. One of the main critics on the current system of the rotating Presidency is the ‘natural’ reflex of most member states to (mis)use their term in office as EU Presidency to put or even push through national interests on the agenda. The agenda of the European Council changes, as a consequence, every six months slightly. As in all negotiations: it is easier to get

an issue on the agenda than to remove it. This process of broadening the agenda is one of the main dilemmas in the current crisis.

Another source of influence deals once again with the tight time schedule. The Presidency is rather autonomous in filling in the actual negotiating time left. It is the Presidency that decides to percentage of time being spent on certain issues. It is the Presidency that decides when and with whom to arrange the ‘confessionals’.

The European Council in International Negotiations literature: a theoretical perspective

Now that the working methods and procedures haven been described, this paper will analyse the current dynamics of the European Council from a more theoretical International Negotiations-perspective. Attention will be paid to the negotiation process in order to distinguish the factors of influence. What are the characteristics of European Council negotiations? How can the negotiation process of the European Council best be described from an IN-perspective? How does the total negotiation process look like?

The European Council negotiations as a process

To understand the above-described phenomenon, the European Council, it is important to identify the basic and minimal characteristics that define and distinguish the European Council from other multilateral decision-making. Zartman argues that ‘within the standard definition of negotiation as the process by which conflicting positions are combined to form a common decision, six characteristics with their relevant implications define the multilateral version of the process’¹⁹: multiparty, multi-issue, multi role, variable values, parties and roles, consensus and rule making, and finally, coalitions.

In short, this means that international multilateral negotiations are *multiparty* negotiations: ‘although any party may agree with any other party, [...], the multiparty assumption implies

¹⁹ Zartman, I.W., “Two’s Company and More’s a Crowd – The Complexities of Multilateral Negotiation”, in: I.W. Zartman (ed.), *International Multilateral Negotiation – Approaches to the Management of Complexity*, IIASA (PIN), Jossey-Bass, 1994, p.4-7

autonomous entities each with interests and interest groups of its own to underpin its separate position'²⁰, trying to achieve a reconciliation of multifaceted interests.

Furthermore, these negotiations have a *multi-issue* character, which provides both the means and the subject of agreement, because it allows the negotiating parties to make trade offs that provide the path for a single outcome. 'They also create texture in the negotiations, because not all of the many parties have the same intensity of interest on any issue, any more than they have the same substantive interest'.²¹ In other words, 'the more items at stake can be divided into goods valued more by one party [or parties] than they cost to the other[s] and goods valued more by one party [or parties] than they cost to the first, the greater the chances of a successful outcome'.²²

The third characteristic deals with the *multirole* nature of the negotiations. Negotiating parties tend to select their approach from a limited list of roles that differ in nature. Sjöstedt²³ and Yukl²⁴ have distinguished at least the following roles: driving (leaders/interest), conducting (managers/neutral), defending (single issue/promoting), braking (blocking/protective), or cruising (no strong interest/follower). These differing roles enable the parties to combine all issues and party complexities into an agreeable outcome. The respective choice for a role is mainly based on the interest of the negotiator in the specific issue. This means that negotiators tend to change their roles depending on the agenda and the topics at stake.

Closely related to this characteristic is the following. Multilateral negotiations are composed of '*variable values, parties and roles* – that is, participants can, and therefore must, play at all three levels of interaction, working to shape not only the values attached to various outcomes and the outcomes themselves but also the parties and their roles in order to come to an agreement'²⁵.

The final two characteristics deal with the outcomes of the negotiations. Multilateral agreements are mostly based on the principle of *consensual* decision-making. All parties have to agree (or at least do not oppose) on the final outcome, otherwise there is no final agreement. The outcomes of multilateral negotiations are mainly a *matter of rule making*. Its

²⁰ *ibidem*, p.4

²¹ *idem*, p.4

²² Homans, C., *Social Behavior*, San Diego, Calif., Hartcourt, Brace Jovanovich College Division, 1961, p.62

²³ Sjöstedt, G., *International Environmental Negotiations*, Newbury Park, California, Sage, 1993

²⁴ Yukl, G., *Leadership in Organizations*, Englewood Cliffs, New Jersey, Prentice-Hall, 1989

²⁵ Zartman, p.5

main goal is to harmonize national legislation and policies or to establish a set of rules to can be applied by and to the member states themselves²⁶. This means that the negotiations do not focus on the (re)distribution of goods, but on the set of rules that is based on a earlier agreed upon formula (see later on in this paper).

Finally, multilateral negotiations are based on *coalitions*. Constructing coalitions of the willing and able have two main advantages: decreasing the level of complexity during the negotiations and strengthening your negotiation position beforehand. Coalitions imply clustered (and thus less) actors, more consensus at the start of the final negotiations, pre-negotiations and strategy.

Zartman's definition of multilateral negotiations seems in general terms clearly applicable to the European Council. Nevertheless, here it is argued that the European Council has some additional features that distinguish it from all other multilateral negotiations: the European Council as a unique negotiation arena. To what extent can these general characteristics then be applied to the European Council? Based on the above described proceedings the following conclusions can be drawn.

It is quite clear that the European Council negotiations are *multiparty*. The negotiations take place between currently fifteen (and from next year twenty-five) member states that are being represented by their political leaders. However, the European Council distinguishes from other multilateral negotiations in at least two ways: the negotiators themselves and the kind of negotiating parties. First of all are the negotiators the political leaders of their countries. Some additional features characterize this so-called top-level decision-making. For instance, political leaders are less bound to their mandate as they represent the highest political authority. Secondly, they tend to prefer their *inter pares* meetings. In other words, they're more willing to get to an agreement as they consider themselves amongst equals. The second feature stems from the fact that the negotiations are purely intergovernmental. So interest groups or non-governmental organizations are not present at the negotiations. Whereas the negotiations in e.g. the WTO tend to take into account the opinion of NGO's, this is not the case at the European Council negotiations.

The second characteristic of multilateral negotiations, *multi-issue*, is also applicable to the European Council. In fact, one could argue that the European Council is 'multi-issue-plus'.

²⁶ Winham, G., Kizer, K., *The Uruguay Round: A Midterm Review, 1988-1989*, Washington, D.C., Foreign

Since European integration has reached such a high level, containing all policy areas, the European Council, as guiding institution, has become responsible for decision-making on all those policy areas. There seems to be no single policy area that is not being negotiated upon in the European Council. This distinguishes the European Council from other multilateral negotiating arenas once again. Most international organizations have a single or a limited issue focus, where the European Union expands all areas of cooperation and integration. The scope of the European Council negotiations is therefore much wider. In fact, here it is argued that one of the reasons of the potential crisis in the European Council negotiations stems from this ever-expanding agenda. The European Council has been forced to negotiate on too many issues; partly due to the moderate functioning of other EU institutions. Within a vast context, multi issue apparently has its limits.

The *multi role* nature of the negotiations is much wider than is the case in other multilateral negotiations, because of the interconnectedness of the negotiations dossiers and the multi layered character of the negotiations. During its relatively short history the European Council has fulfilled an increasing number of roles. In European studies literature the most common features are²⁷: giving impetus to European integration ('motor' behind integration), agenda setter, final decision making institution/court of arbitration', defining main political guidelines, external representation, ultimate negotiator (on Treaty changes), and solemn ratification of significant documents.

Furthermore, the negotiators themselves need to simultaneously operate at three different levels. First of all they are acting political leader of their respective member state, trying to preserve their national interests as good as possible (national level). Secondly, they are the front man of their own government (positional level). One can witness an increasing strengthening and growing stature of the position of the Prime Minister and President within the setting of the cabinets and governments. Finally, they are all members of the highest authority of one of the leading international organizations in the global political arena that needs to preserve, if not strengthen, its position in the world (international level).

Policy Institute, Johns Hopkins University School of Advanced International Studies, 1993

²⁷ See e.g.: Werts, J., *The European Council*, Elsevier Science Publishers, 1992; Dinan, D., *Ever Closer Union – An Introduction to European Integration*, Palgrave, 1994; Schoutete, P. de, "The European Council", in: Peterson & Shackleton, *The Institutions of the European Union*

Closely related to this issue are the *modus* of decision-making and the *outcomes* of the negotiations. The European Council takes decisions by consensus, like most other multilateral negotiations, based on common burden sharing. It is good practice that member states, which have indicated to consider a topic of national concern, will have a large influence on constructing the consensus. National 'left outs' are exceptionally granted. The broad agenda of the European Council negotiations forces the political leaders to equally share the burden. As negotiations are all based on trust, it is necessary that all member states involved have their relative say in the outcomes. Furthermore, the composition of the European Council, besides occasional changes due to national elections, hardly changes dramatically. This implies that the negotiators know they will meet again in short-term notice: playing too many roles is not an option.

The outcomes are, in case of the European Council, per definition a matter of *rule making*. First and foremost, the European Council negotiations do not stand-alone. They are a significant part of a larger process of interrelated decision-making that involves other institutions as well. Every analysis of the negotiation process in the European Council should, therefore, take into account the distinct institutional position of this top-level decision-making body within the unique European structure. Formally, the European Council is not part of the so-called community structure (Commission, Council, Parliament, Court of Justice and Court of Auditors). In fact, legally, almost no competencies or tasks of the European Council have been laid down in the Treaties. The European Council has evolved from an informal ad hoc gathering into the most powerful institution of the European Union. It is a far more political body than the 'other' EU institutions, like the Commission or Parliament. This distinct, more distant and political position have made that the negotiation process during the meetings of the European Council differs from those in the formal EU institutions. The evolution of the negotiations in the European Council has proven to be rather reactive, mostly due to its high level of informality and secrecy surrounding the meetings.

So, the European Council has proven to be highly dependent on the functioning of other EU institutions, the Council of Ministers in particular. In international negotiation literature the decision making process is often described as a six stage cyclic development: pre-negotiation, agenda setting, negotiation for formula, bargaining on details, agreement, and implementation/post-negotiation.

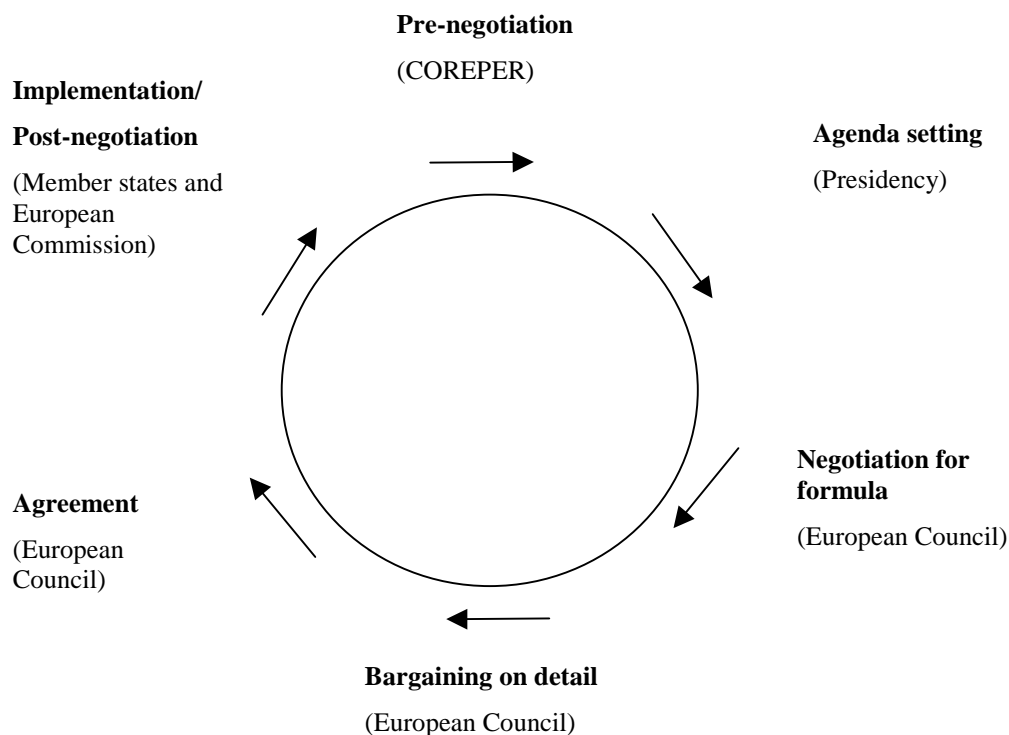


Figure 2. Process of International Negotiations in a Multilateral Context applied to the European Council

This cyclic process is perfectly applicable to the European Council. It is clear that in case of a malfunctioning Council of Ministers in the preparatory phase, the entire chain of European Council decision-making starts to stagnate. The dependency on the functioning of other EU institutions has made the European Council institutionally vulnerable. This vulnerability has led to what is called here a ‘delivery deficit’. The European Council has persisted in showing a high level of ambition in its decisions and presidency conclusions. In fulfilling its function of giving impetus to the integration process the European Council has launched several ambitious plans over the last couple of years in different policy areas. However, as the Council of Ministers has not been able to live up to these initiatives an widening gap can be witnessed between top level decisions and the actual implementation of EU policies. In other words, the EU cannot practice what it preaches!

Outcomes of the negotiation process: factors of influence (approach and actors)

How then to weigh the outcomes of the European Council negotiations? What are the possible factors of influence? In International Negotiation literature six approaches can be distinguished that are helpful in analyzing negotiations in general: decision analysis, strategic analysis, organizational analysis, small group analysis, power-coalition analysis and, finally, leadership analysis²⁸. The applicability of each of these approaches is directly determined by the negotiations themselves. In case of the European Council one could argue that the following approaches are applicable: organizational analysis, power-coalition analysis and leadership analysis.

In this paragraph the negotiations will therefore be further analyzed on three levels: the institutional, the operational/practical and, finally, the individual level. In other words the negotiations in the European council can be analyzed from the perspective of the institutional position within the EU negotiation framework, from the formation of coalitions on specific dossiers or from the level of the negotiators themselves. The following factors of influence can be distinguished.

Europe's most exclusive club: a locus of power

The main difference between the European Council meetings and the negotiations within the other EU bodies deals with the far more political character of the former. The modus operandi of the political leaders needs to be substantiated from the working methods in the more technical and diplomatic negotiations of e.g. the Council working groups or the Parliamentary committees. The members of the European Council are, like all men and women in the higher echelons of international politics, “people readers rather than paper readers, and therefore place more faith in their own direct personal impressions than in more traditional, written forms of diplomatic communication”²⁹. This people readers mentality

²⁸ Zartman, I.W., “Two’s Company and More’s a Crowd – The Complexities of Multilateral Negotiation”, in: I.W. Zartman (ed.), *International Multilateral Negotiation – Approaches to the Management of Complexity*, IIASA (PIN), Jossey-Bass, 1994, p.7-9

²⁹ Jan Melissen, “Summitry over the Top”, in: *The Cannons and Canons of International Relations*:

Clingendael's Views of the World, Clingendael Institute, Van Gorcum Press, 2003 (forthcoming)

combined with the earlier described informal setting of the meetings make that the political leaders feel more at ease and are more willing to get to an agreement with their counterparts.

It is lonely at the European political top. The agenda of any European political leader is increasingly dominated by their (diplomatic) performances on the international stage. The process of globalization has made the position of the Head of Government within his national cabinet increasingly important. Even in countries that are led by coalition governments. The political leaders prefer to have meetings *inter pares* to share their common experiences, which explains their willingness to sometimes abandon their national position in favour of a settlement with their counterparts. The wide range of different kinds of negotiations (private consultation, confessionals, plenary sessions, coalitions talks, et cetera) within the rather flexible setting of the European Council, by-passing some bureaucratic and diplomatic layers, make it all the more difficult to predict the outcomes of these meetings.

The formation of ad hoc and changing coalitions

The European Council has no fixed set of rules and procedures. Therefore, no strict rules need to be applied to the actual decision-making. The European Council takes 'decisions' by consensus opposed to the over thirty decision-making procedures of the Community method. Consensual decision-making implies a different approach of "getting to yes"³⁰, than for instance qualified majority voting (qmv).

However, this different approach should in case of the European Council not be overestimated. The often-political character of the actual decisions urges the negotiator more intensively to reach agreement than on the technocratic dossiers in the other EU institutions, like the Council of Ministers. In his report, the secretary-general argues that "[m]edia coverage ... leads to over-dramatization and creates a pressure to produce results which adversely affects the quality of proceedings"³¹. This increased pressure to keep momentum in European integration implies the need to form coalitions with like-minded member states. The necessity of trying to find coalition partners will only rise after enlargement: more actors imply more complex decision-making. The construction of these coalitions is largely done in the process leading to the European Council meetings (COREPER and Council), but the

³⁰ An elaborate overview of these different kind of decision-making procedures is given in: Kremenyuk, V.A.(ed.), *International Negotiations – Analysis, approaches, Issues*, Jossey-Bass, 2002

³¹ Council of the European Union, General-secretariat, *Preparing the Council for Enlargement*, Brussels, 11 March 2002, S0044/02, p.4

special character of the negotiations, in particular the strong personal element, makes that the flexibility of these coalitions tends to be higher than in the other EU institutions.

One of the cornerstones in the formation of coalitions is the power positions and ties between member states. These ties can be defined on several bases: historical (founding member states vs 'new' member states), economical (GDP, contributors vs recipients), geographical (North vs South, Benelux vs Scandinavian countries), size (large vs small(er) member states), security (EU-orientated vs transatlantic), personal (allies/political friends vs opposites), constitutional (supranational/federal vs intergovernmental/presidential), et cetera. The composition of the coalitions changes continuously. Depending on the actual dossier, the political climate, or national considerations the member states seek different partners. As Van Schendelen made clear in his chapter, the negotiations in "Brussels" all narrow down to optimizing national interests in the European arena. Like the negotiations in the Council of Ministers, the negotiations in the European Council take place in a multilevel playing field.

The consensual character of the meetings makes that even the smallest member states can have a decisive role in the negotiations.

The gladiators themselves: individual skills, constitutional position and seniority

Another very important source of influence on the negotiation process can be found at the individual level of the participants. As already mentioned the European leaders prefer the "amongst equals"-setting of the European Council above most others. However, as in all arenas in which fights take place: some equals are more equal than others. The success of the outcomes of the negotiations is largely influenced by qualities of the individual participants. Another important source for the individual effectiveness of the negotiator is determined by some national bounded characteristics.

Firstly, one of the most influential factors on the outcomes of the European Council negotiations are the *personal and individual qualities* of the main actors. The individual capabilities to convince the counterparts, to have enough knowledge of the negotiation dossiers, to physically endure the long sessions of negotiations and to get to the essentials of the different discussions have proven to be of pivotal importance in ensuring the necessary consensus.

As Melissen argues top-level negotiating “can be an energizing experience, away from the daily chores of the highest office, but it can also drain on the participants’ energy.... Particularly in the European Council, political leaders have expressed their disgust with all-too frequent and long drawn multilateral meetings where much of the deliberations ... are in fact about matters of minute detail”³². A well-known example is the tirade of German Chancellor, Helmut Kohl, who didn’t want to negotiate any longer into the night at the closing session of the Amsterdam summit in 1997. In the end, he was persuaded by his fourteen colleagues to stay. His bad temper, however, had a clear impact on the progress of the negotiations (and on the press conferences following this session).

Next to these emotional and physical capabilities, the more intellectual and rhetoric qualities of the negotiators play an important role. Those with convincing debating skills and an excellent knowledge of the present dossiers have a lead on their more reactive counterparts. Here, the relationship with the national permanent representative can prove to be of decisive importance. He is the final link between the dossiers and the negotiator. This top-level diplomat needs to submit the substance in a, for his political superior, comprehensible manner. The way in which the political leaders know to make the dossiers their own is a quality in itself.

The *size, population and economic performance* are important determinants of the negotiation positions of individual political leaders in the European Council. The negotiators of the large member states have more impact and influence during the process than the representatives of the smaller member states. Furthermore, the historical ties with the EU play a pivotal role. The German-Franco axis, and the status of the founding member states still colour the most crucial negotiations within the European Council. It is, however, clear that the former is a more influential characteristic than the latter. As was shown at the Nice summit, where the Dutch government threatened to veto the negotiations, if no extra vote in the Council was awarded during the negotiations on the reweighing of votes in the Council of Ministers after enlargement of the EU. Since the Treaty of Nice the Netherlands have thirteen votes, compared to twelve votes of more or less comparable countries like Belgium and Austria. To put this in perspective: this battle for a single extra vote on a total of 345 almost

³² Jan Melissen, “Summitry over the Top”, in: *The Cannons and Canons of International Relations*:

Clingendael's Views of the World, Clingendael Institute, Van Gorcum Press, 2003 (forthcoming), p.17

stagnated European Council negotiations in Nice! Apparently the Dutch deemed the status of “largest of the smaller member states” to be more important than a continuation of their long-term co-operation with its closest European ally, Belgium.

In other words, “the fact that some participants have in fact more power (because they represent a bigger country) is immediately apparent and implicitly understood by all”³³.

Equally important seems to be the *constitutional position* of the Head of Government or State. Some Prime Ministers are little more than a *primus inter pares*, others have fairly unlimited power in their own national government. Furthermore, leaders of a coalition government are more bound to their starting positions and more compromise-minded than leaders of a single-party-government. On the other hand, some political leaders of coalition governments have seized the setting of the European Council meetings to strengthen their internal position in government.

Thirdly, there is the practice of *seniority*. The unique institutional setting, the small number of negotiators and the *inter pares*-character of the meetings the negotiation process is dominated by seniority as well. This is especially important for the Heads of Government of the smaller member states. They can, because of their years of experience in the European Council, gain relatively more power than they would have on basis of their country’s size. Clearly, newcomers will have large difficulties in trying to pull their weight. Once again, the familiarity and trustworthiness turn out to be an important factor of influence.

Role of the presidency

As mentioned earlier, the Presidency has many opportunities to directly influence the proceedings of the negotiations. The way it sets the agenda, chairs the meetings, uses the possibility of suspending the plenary sessions and convenes the ‘confessionals’ have a direct impact on the outcomes of the negotiations. The way the French President, Jacques Chirac, for instance led the negotiations during the Nice summit in December 2000 was publicly criticized by some of the other members of the European Council. Chirac had taken the opportunity, as do many EU-Presidencies, to push through his national interests. However, normally the Presidency is expected to give in first to achieve a breakthrough when

³³ De Schoutheete, “The European Council”, in: Peterson e.a., *The Institutions of the European Union*, Oxford University Press, 2002, p.26-27

negotiations are in a deadlock. The opposite approach was the case in Nice. This French stubbornness is one of the reasons the outcomes of Nice “were not that nice after all”.

Another source of influence are the way the Presidency deals with the drafting of the (preliminary) conclusions. These conclusions constitute the basis for the negotiations. These conclusions are drafted in close cooperation with the Council Secretariat. However, the Presidency remains responsible for the contents. The formulation of phrases and the diplomatic language being used are of pivotal importance to the continuity of the process. Paradoxically, these conclusions haven proven to be both the key to the success of negotiating in the European Council and the main source for discord between member states, due to different interpretations of the often-woolly formulations.

The chain of national EU policies coordination

Another important source of influence has to deal with the national coordination of EU policies. Most dossiers involve the participation of several national Ministries. So, before a certain point of view can be put forward as a ‘national’ point of view in the European Council, it has already been through a process of national EU policies coordination. In most member states the Ministry of Foreign Affairs or the Prime Minister’s Office is responsible for this process of coordinating. In general, several clusters of ‘like minded’ Ministries can be distinguished, like e.g. financial policies (Foreign Affairs, Economic Affairs, Treasury), environmental policies (Foreign Affairs, Environmental Affairs, Agricultural Affairs, Ministry of Transport/Public Works) et cetera. It has proven to be of pivotal importance to propagate the national message *unisono* in all respective meetings (working groups, Councils of Ministers, COREPER I & II) leading up to the European Council meetings³⁴: an unanimous line of argumentation in earlier negotiations in the negotiations concerned leads to a stronger the position in the European Council³⁵.

So, in the end, summit preparation by sherpas and other experts is a necessary condition of success in multilateral negotiations, but not an sufficient condition to effective negotiating. The main sherpas in European Council negotiations are the permanent representatives and the General Affairs and External Relations Council (GAERC). The most important advisors to

³⁴ See e.g.: Ministry of Foreign Affairs, *Agenda200 – Hoe Nederland onderhandelt met Europa*, IOB evaluaties, No. 290, The Hague, May 2003

³⁵ See e.g.: M. van Keulen, “What Happens at Home – Negotiating EU Policy at the Domestic Level”, in: P.W. Meerts and F.Cede (eds.), *Negotiating European Union*, PIN-group, 2004 (forthcoming)

the negotiators in the European Council are the so-called Permanent Representatives. These 'EU Ambassadors' are the main linkage between the process of national EU coordination and the political leaders and act as the Brussels 'eyes and ears' of their national political leaders. One of their most important tasks is to decide upon the negotiation strategy (high stakes, strong stakes, creating coalitions, trade off, et cetera). The relationship, especially the level of trust, between these members of COREPER and the political leaders has proven to be crucial. The same goes for the functioning of the Permanent Representatives themselves. They are responsible for the coordination of national EU policies and have to make the first shifts in narrowing down the bulk of dossiers the European Council has to decide upon.

One of the most important reasons for the current crisis in EU negotiations is the rather moderate functioning of the Council of Ministers, in particular the General Affairs and External Relations Council (GAERC). The broadening of the EU-agenda and the hardening positions of the member states have slowed down the decision making in this specific Council. Under the Spanish Presidency in 2002 the first reforms of the negotiating process in the Council of Ministers were introduced. It is expected that part of the earlier mentioned problems have already been solved. However, in the provisional Treaty of Convention on the Future of Europe the institutional structure is partially being reconstructed, including the General Affairs and External Relations Council and its Presidency. Most important changes deal with the way the GAERC should fulfil its preparatory and coordinating role in EU decision-making.

A potential crisis in European top-level negotiating? The need for reforms

Since the second half of the 1990's a mounting number of critics could be heard on the functioning of the European Council, both from within the European Council itself and from other EU institutions as well. Main critiques dealt with a decreasing sense of giving direction to European integration, an overload of low level decision making, an ever growing gap between European Council guidelines and the actual policy making by the other institutions and, finally, increasing difficulties in getting to consensual decision making.

The ever changing political agenda of the European Union is currently largely dominated by two different immense challenges: the unique upcoming enlargement with the countries in Central and Eastern Europe on one hand and the constitutional debate on the future institutional settings of the European Union on the other hand. Both challenges require decision-making at the level of the European Council. Ever since the Maastricht Treaty

(1992) the European leaders have tried to reach agreement on both topics. So far, they have not been able to sufficiently do so and they running out of time.

So, despite its rather unique and potentially powerful position, the European Council currently has to deal with these tough challenges. Top-level European decision-making seems to be in heavy weather. In fact, it seemed that the European Council had partly lost its control on the integration process at the end of the 1990's. If it wants keep up its image of most important source of European leadership, it needs to reform³⁶. So far, the European Council has been struggling to come up with a satisfying response to the increasing number of critics from both national politicians and European citizens. However, things are changing for the better: the likely consensus on the provisional constitutional Treaty could turn out to be the ideal solution to this dilemma.

The sources for this potential crisis in European top-level decision-making are twofold. On an operational level the negotiation procedures and methods seem to have reached their limits. The current proceedings of the European Council meetings, as described earlier in this paper, remain hardly applicable to a EU 15, and will simply not be applicable to a European Union with twenty-five or more member states. In other words, the negotiation methods used during the European Council meetings need to be reformed.

However, there is another practical source for the current discussion on the functioning of the European Council. This deals with the malfunctioning of the Council of Ministers, the General Affairs and External Relations Council (GAERC) in particular. As earlier argued the European Council meetings are part of a larger cyclist negotiation process in which other institutions play an important role as well. One of the most important links in the EU negotiation chain is the preparation of the European Council meetings by the Council of Ministers. This Council is supposed to take most decisions within the community method. If the Council fulfils its task properly, the European Council can primarily focus on its own main task: giving impetus to the European Union and taking political decisions on 'high politics' issues. However, the last couple of years the Council of Ministers (the General Affairs and External Relations Council in particular) has decreasingly been able to fulfill its function properly. Decision making in this Council has increasingly stagnated: on a large number of negotiation dossiers the Council has not been able to reach sufficient agreement.

³⁶ Peter van Grinsven en Jan Melissen, "Europese Raad tussen marginale aanpassing en radicale hervorming", in: *Internationale Spectator*, September 2002, LVI, p. 421-426

As a direct consequence these undecided dossiers have been past on to the European Council; transforming the European Council in some sort of final court of appeal. It is increasingly asked to 'spend time on laborious low-level drafting work, which adversely affects normal community procedures'³⁷. In other words, the European Council has been sidetracked from its original and most important purposes.

These two dilemmas, the old fashioned methods and proceedings on one hand and the malfunctioning of the General Affairs and External Relations Council on the other hand, are clearly linked, as was recognized by both the European Council and the Secretary-General of the Council of Ministers, Javier Solana. At the Helsinki summit in December 1999 they jointly started a process of operational reforms of both the European Council and the Council of Ministers that was completed in June 2002 during the Seville summit (see later on in the paper).

The second source of potential crisis stems from the ongoing debate in the EU on institutional reforms. Since the creation of the European Union, as was agreed upon during the Maastricht summit in 1991, a (semi) permanent discussion on the institutional structure has been taking place. This year we will witness already a third Intergovernmental Conference (IGC) in less than ten years time that will deal with the question of the 'balance of power' between the institutions (and the member states). Since the beginning of the 1990's a semi-permanent round of negotiations on the institutional structure has been taken place both within and outside the setting of the so-called Intergovernmental Conferences (IGC's). Ever since the creation of the European Union in the Maastricht Treaty in 1992 (that was also preceded by an IGC) already two IGC's have been finalised and a third will take place before actual EU enlargement in 2004: IGC 1996/1997, IGC2000 and IGC 2003/4. Not to mention the extra-institutional Convention on the Future of Europe in 2002/3. This Convention was created after the European Council recognized that it was unable to solve these dilemmas itself. Therefore, in December 2001 at the Laeken summit in Belgium it was decided to create this Convention, which main goal was to smoothen the way in such a way that the European Council would be able to reach agreement before actual enlargement takes place in May 2004.

³⁷ Council of the European Union, General-secretariat, *Preparing the Council for Enlargement*, Brussels, 11 March 2002, S0044/02, p.2

At the end of the 2003/4 IGC the European Council is expected to reach agreement on the third Treaty revision in those same ten years.

This institutional process deals primarily with the (re)distribution of the balance of power between the EU institutions. Undoubtedly the European Council has played an important role in this process. In fact, as will be argued later on in this paper, the European Council has used this institutional process in order to strengthen its position in the EU negotiation process. Next year, it will most probably decide on a complete overhaul of its own structure, the Presidency in particular. The consequences of these reforms will be crucial for future European Council negotiations. Before presenting an assessment of both the reform processes, the above-mentioned sources of conflict will be presented in length.

The outdated working methods and proceedings: a 'number game'

The working methods currently used are still mainly based on the initial European Council meetings of the six founding member states in the 1970's. Ever since, as described above, the European Council has gradually evolved from these informal, ad hoc 'chats around the fireside' into the most powerful institution of the European Union with hundreds of directly involved politicians, civil servants and diplomats. Leaving aside the hundreds of journalists covering the multimedia event.

The example on the opening of the Gotthard-tunnel is an excellent example on this second problem as well: the current working methods and proceedings. As Gerhard Schröder's critique twofold: the fact that this issue was at the agenda of the European Council at all and, secondly, the time it took to discuss this issue. It took over an hour for the fifteen political leaders to reach agreement on this rather 'low politics' issue. The often used 'tour de table' (in which every delegation is given the opportunity to have its say on the topic) will after the enlargement have been *quadrupled* in time spent. Even if given only two to three minutes per delegation, this would lead to a 'tour de table' of over one hour on each topic. Not to mention the following discussions. The same line of argumentation can be applied to the so-called 'confessionals'.

The enlargement of the EU will lead to an increase in the number of official languages. Currently the EU has eleven official languages. As every negotiator is allowed to speak in his own language, an enlarged European Council will demand more translators and more trapped-

translations with implies an increased margin of error and misunderstanding. This will slow down the negotiations and creates a potential source of irritation.

The number game can also be witnessed in the size of the delegations. Currently the European Council meetings involve hundreds of national diplomats and civil servants, who play their role in facilitating and co-ordinating the processes from a national perspective. The European Council has evolved from an informal ‘chat around the fireside’ into a pandemonium of national delegations of sometimes over thirty civil servants and diplomats per member state. The media often makes the comparison with a travelling circus.

These hundreds of national delegates have all a certain role to play in the multi-layered and complex proceedings surrounding the actual negotiations by the political leaders. This implies a complex and non-transparent web of co-ordination, deliberation and consultation structures (national delegations, COREPER, Council, secretariat, et cetera) in the margin of the European Council meeting. The direct consequences of the ever expanding number of indirect participants are visible in the current problems of the drafting of (presidency) conclusions and the process of co-ordinating national positions during the negotiations in the European Council: the political leaders have to wait too long for answers on their direct questions, too many diplomats have to study the drafts of the Presidency conclusions, more delegates imply more differing opinions to discuss, et cetera. In other words, to increase the efficiency and effectiveness of the total process of European Council negotiations a limitation of the number of delegates is hardly needed.

The expansion of tasks and competencies has led to an increase to the so-called ‘third party meetings’, meetings with important political institutions or persons during the European Council summit, like political leaders of the applicant member-states, political figures from outside the EU, et cetera. This mounting number of meetings is squeezed into the already tight time schedule of the entire meeting of normally two days. These time consuming activities leave less time for actual negotiating. This frustration of the (potential) outcomes of the negotiations is, finally, from the ‘number game’ perspective negatively influenced by the broadening of the agenda.

The increased influence of the European Council on the successful process of post-war European integration has led to a growing number of competencies on a growing number of (national) policy areas. Nowadays, the European Union has an impact on almost all policy areas, including foreign and defence policies: the Europeanisation of the national policy

agenda. This expansion of EU influence on national decision-making has broadened the European negotiation agenda. The increased number of negotiating points combined with the limited time available has complicated the negotiation process as such. The earlier mentioned malfunctioning of the GAERC has broadened the negotiation agenda only further. The European Council should reform to refocus on its core business: strategic and political decision-making instead of concrete policy dossiers.

The malfunctioning of the General Affairs and External Relations Council (GAERC)

One of the most important functions of the General Affairs and External Relations Council (GAERC) is to coordinate EU policies and dossiers in preparation of the European Council meetings. The last couple of years, however, the GAERC has decreasingly been able to fulfil this function properly. In fact, it seems that the GAERC has used the European Council as a kind of final court of arbitration. As a consequence the European Council has lost its most important function as ‘motor’ behind the integration by giving guidance to the process and determining the political direction of the European Union. More and more, the European Council has become the replacement of the GAERC by primarily taken decisions on tough and specific policy dossiers.

An interesting example is the speech of Gerhard Schröder at the Den Uyl-lezing in Amsterdam in the aftermath of the Barcelona European Council in 2002. The German Chancellor publicly showed his frustration on the proceedings of the Barcelona European Council where the leaders of the fifteen member states had a round the table discussion on the reopening of the Gotthard tunnel. Schröder cynically stated “this could not be not the task of the European political leaders”.

This sign of frustration of the German Chancellor seems to be the tip of the iceberg of general concerns on the negotiating process in the Council of Ministers. The widening gap between the political statements of the European Council and the decreasing decision-making in the Council of Ministers have forced the European political leaders to negotiate on an ever-expanding agenda within a unchanging, two-day time schedule.

The consequence of this process is a shift from the actual decision making on policy dossiers from the General Affairs and External Relations Council to the European Council. The European Council should cease working out the details of policies at this level and focus on its main strategic tasks. One could argue that in a way the European Council has taken

over an important task of the Council, which takes too much of its valuable time. In case of policy decisions the European Council should only function as the institution of final resort.

Safeguarding European Council negotiations: processes of reforms

In order to avoid the earlier mentioned threat of stagnation EU top-level negotiations, the European Council for the first time since its creation in 1974 is subject of reforms itself. Based on the above-described analysis the European Council needs to tackle the following five dilemmas:

1. The main task of the European Council is to provide the EU with the necessary impetus for its development and to define the general political guidelines thereof (art. 4 TEU). The implication of this task is that the European Council will primarily focus on European *high politics*. High politics implies a high sensitivity surrounding the issues. In other words, the European Council has to decide upon policy areas in which the member states are very hesitant of handing over power and sovereignty to the EU (e.g. defence, taxes, social policy, voting power in the institutions). Therefore, it is difficult to produce satisfying outcomes on a regular basis.
2. The bulk of European decision-making takes place within the so-called community structure of the Commission, Council and Parliament. The European Council has almost no interference with this process. In other words, a large part of European decision- and policymaking takes place outside the direct influence of the European Council. Therefore, it is not possible to look at the European Council as the sole leading institutions in the centre of European politics. In fact, the other EU institutions, the Commission in particular, play an important role as well.
3. Closely linked with these first two remarks, it should be noted that the European Council has no direct influence or power on the implementation and control of its own decisions. The implementation and control of EU policies are autonomous competencies of the other EU institutions (Commission, Council, Parliament *and Court*).

4. One of the main problems seems to be the malfunctioning of the Council of Ministers, the General Affairs and External Relations Council (GAERC) in particular. This Council is decreasingly able to reach consensus on actual policy decision-making. Over the last couple of years this GAERC has increasingly used the European Council as a final court of appeal. All actual policy dossiers that could not be decided upon within the community structure were put on the agenda of the European Council meetings. This overload of work has led to such an extended agenda that European Council decision-making is in real danger of stagnation. The European Council itself has realized this potential threat and has already launched an internal reform, based on two reports of its secretary-general.
5. The main internal dilemma stems from the old fashioned working methods, the unchanged structure of negotiating, and the ever-increasing number of participants. The summit meetings of the European Council seem to disrupt resulting in insufficient decision-making. Reforms are needed before actual enlargement takes place.

The European Council has initiated two different, but closely linked processes of internal reforms: an operational one, focussing on the day to day functioning of the European Council and an institutional one, focussing on the future power position. Both processes started some years ago and will be finalised before the actual enlargement takes place. Both processes will be discussed now in length.

The operational process: Helsinki (1999) – Seville (2002)

The European Council at its Helsinki summit at 10 and 11 December 1999 already recognized the potential dark clouds of the upcoming enlargement. In its conclusions the European Council put two important issues high on the agenda: effective institutions and transparency. In its Presidency conclusions it stated that ‘the scale of the coming enlargements coupled with the wider scope of the Union’s actions could well slow the Council down, and ultimately paralyze it. That risk is already perceptible now and represents a threat to the smooth operation of the Union, given the Council’s central role in Union

decision-making'³⁸. The Göteborg European Council (December 2001) has subscribed these problems once again. The secretary-general was mandated to present suggestions for improving the way the European Council (and the Council of Ministers) operates.

In his report of 11 March 2002 Javier Solana presented a clear analysis of the current problems of the EU-negotiating process³⁹. His analysis and recommendations formed the basis of the reforms on the future constellation of the European Council proposed at the Barcelona and Seville European Council meetings in 2002 that have come effectively into practice since January 1st of 2003.

According to the secretary-general the main problem is the following: "The European Union is the Union's supreme political authority. It possesses a legitimate power of decision. It represents the unity between the Union, on the one hand, and its Member states, on the other, in its closest form. Its task is 'to provide the Union with the necessary impetus for its development and define general political guidelines'. That presupposes clarity of objectives, transparency of decisions, continuity of action. For some years now, the European Council has been sidetracked from its original purpose. Owing to malfunctioning of the Council, it is increasingly asked to spend time on laborious low-level drafting work, which adversely affects normal Community procedures. The drift in the working of the Presidency has reduced its meetings to report-approval sessions or inappropriate exercises in self-congratulation by the institutions"⁴⁰.

The European Council meeting in Barcelona (15 and 16 March 2002), however, once again turned out to be a clear example of the internal difficulties between the heads of government to reach agreement on the reform of their negotiating processes. Even with the help of two reports by the Secretary-general of the Council, Javier Solana, the European Council was not able to present its first prudent steps on the path of internal reform. Eventually, partly based on the mounting pressure of the proceedings in the Convention, it was decided, "the European Council instructed the Presidency, in close cooperation with the Council Secretary-General, to make all appropriate contacts [...] with a view to submitting a report at the Seville meeting

³⁸ Helsinki European Council, 10-11 December 1999, Presidency conclusions, see: http://europa.eu.int/council/off/conclu/dec99/dec99_en.htm

³⁹ Council of the European Union, General-secretariat, *Preparing the Council for Enlargement*, Brussels, 11 March 2002, S0044/02

⁴⁰ *ibidem*, p.1-2

proposing specific measures for adoption.”⁴¹ In other words, the path of no return looked to be taken!

The Seville summit, a couple of months later, turned out to be more successful. For the first time in its history the European Council was able to reach agreement on some initial internal reforms of the working methods and proceedings. The Spanish Presidency, in cooperation with the Secretary-General/High Representative, Javier Solana, argued in its report of 13 June 2002 that “the view is widely held that, following the next enlargement, the European Council will have increasing difficulty in fulfilling its task with the authority and efficiency expected of the highest political authority of the Union. It is also generally admitted that one way of improving the functioning of the European Council, by refocusing it on its essential tasks, would be set precise and binding rules for the *preparation, conduct* and *conclusions* of its proceedings”⁴². The most important changes are⁴³:

- The European Council shall in principle meet four times a year. Only in exceptional circumstances it may convene an extraordinary meeting.
- The meetings shall be prepared by the newly formed General Affairs and External Relations Council (GAERC), which shall coordinate all the preparatory work and draw up the agenda (draft agenda's, brief outlines).
- The proceedings shall last for one full day, preceded the day before by a meeting restricted to Heads of State or of Government and the President of the Commission.
- Meetings in the margins with representatives of third States or organizations may be held in exceptional circumstances only. They must be approved in advance by the agenda setting General Affairs and External Relations Council.
- The Presidency is given more tools and competencies (e.g. order of contributors) to influence the agenda and to streamline the discussions. Furthermore, a new timetable will come into effect during the sessions (limiting speak-time)
- Delegations shall receive summary briefings on the outcome and substance of the discussions on each item as proceedings continue in such ways that confidentiality is safeguarded.

⁴¹ *Presidency Conclusions* – Barcelona, 15 and 16 March 2002, p.23

⁴² Council of the European Union, Report by the Presidency to the European Council (drawn up jointly with the General-Secretariat-General of the Council), *Measures to Prepare the Council for Enlargement*, Brussels, 13 June 2002, 9939/02, POLGEN25

⁴³ *Presidency Conclusions* – Seville, 21 and 22 June 2002, Annex I, p.19-21

- Each delegation shall have two seats in the meeting room. The total size of delegations shall be limited to twenty (!) persons for each Member State and for the Commission. That number shall not include technical personnel assigned to specific security or logistic support tasks.
- The Presidency conclusions will only set out policy guidelines and decisions, placing them in their context and indicating the stages of the procedures.
- An outline of the conclusions shall be distributed on the day of the meeting before the start of the proceedings with the distinction of those parts that have been approved and those parts that need to be discussed.

Most of these changes have been put into practice from the Danish Presidency in the first half of 2003 onwards.

The institutional process: (post) Nice (2000) – IGC2003/4

As mentioned before, the institutional implications of the enlargement of the European Union have been high on the political agenda for over ten years. Ever since the creation of the European Union (1992), on which agreement was reached at the Maastricht summit in 1991, the member states have tried to reach agreement on their future position of power. At the Amsterdam summit in 1997, the European political leaders were not able to construct a satisfactory new balance of power for an enlarged European Union. Though a new EU Treaty was established, no agreement was reached on what later became known as the ‘Amsterdam left-overs’: the future national weights in European decision-making (size Commission, voting weight in Council of Ministers, seats in Parliament, etc.).

These ‘Amsterdam left-overs’ were the main issues during the IGC2000 that was concluded with the Nice summit in December 2000. At this summit some consensus was agreed upon on the institutional left-overs, resulting in the Nice Treaty. However, that same European Council recognized that the Nice Treaty would not sufficiently prepare the EU decision-making process for enlargement.

Therefore, it was eventually the European Council itself to set up the unique European Convention at its Laeken summit in December 2001. This Convention, consisting of 105 members⁴⁴ and being presided by the former French President and co-founder of the European

⁴⁴ For additional information on the Convnetion, see: http://www.europa.eu.int/futurum/index_en.htm

Council, Valéry Giscard d'Estaing, was an extra-institutional EU body that was requested to deal with a very specific task: preparing a new constitutional EU Treaty for an enlarged European Union⁴⁵. One of the fundamental reasons behind this decision to convene such a constituent, extra institutional assembly was 'the realization that previous intergovernmental conferences had failed to produce reforms bold enough to prepare the EU adequately'⁴⁶. Another reason stemmed from the criticism 'levelled against the EU that treaty reforms had hitherto been closed shops where political and bureaucratic elites decided on Europe's future without involving the European public or their parliamentary representatives'.

On the European Council the provisional EU Treaty contains the following articles that will most probably be approved and ratified without any changes:

Article 20: The European Council

1. The European Council shall provide the Union with the necessary impetus for its development, and shall define its general political directions and priorities. It does not exercise legislative functions.
2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Union Minister for Foreign Affairs shall take part in its work.
3. The European Council shall meet quarterly, convened by its President. When the agenda so requires, its members may decide to be assisted by a minister and, in the case of the President of the Commission, a European Commissioner. When the situation so requires, the President shall convene a special meeting of the European Council.
4. Except where the Constitution provides otherwise, decisions of the European Council shall be taken by consensus.

Article 21: The European Council Chair

1. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end his or her mandate according to the same procedure.
2. The President of the European Council:

⁴⁵ The topics the Convention had to deal with were defined at the Laeken summit and laid down in the Annex IV of conclusions of this summit.

⁴⁶ Michalksi, A. (ed.), *An Assessment of the European Convention: The Political Dynamics of Constitutional Reform – Seminar Report*, The Clingendael Institute The Hague, 5 June 2003, p.3, see: www.clingendael.nl

- shall chair it and drive forward its work,
- shall ensure its proper preparation and continuity in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council,
- shall endeavour to facilitate cohesion and consensus within the European Council,
- shall present a report to the European Parliament after each of its meetings.

The President of the European Council shall at his or her level and in that capacity ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the responsibilities of the Union Minister for Foreign Affairs.

3. The President of the European Council may not hold a national mandate.

How then to assess both these processes with their respective reform proposals? What will be the consequences for the functioning of the European Council? Will the proposals prove to be sufficient? Has the European Council been able to turn around the threat of stagnation in EU decision-making or has it even improved its position?

The future of the European Council: leading the way in Europe!

The operational process has already been put into practice. The Danish Presidency applied most of the reform proposals during the first half of 2003. This has so far led to shortened meetings (limited in time), more concentrated presidency conclusions, and a renewed functioning of the General Affairs and External Affairs Council. One could argue that the operational reforms are rather successful. However, it is questionable whether the reforms are sufficient for the functioning of a European Council of twenty-five member states. The limitation to a maximum of twenty delegates per member state would still lead to *five hundred* surrounding the European Council summits. Furthermore, EU history tells that difficult issues cannot be solved within the setting of a single summit. So what will happen, if the European Council has to decide on politically sensitive issues?

The European Convention appears to have found the solution to this question by presenting some additional reforms. However, some other operational reforms have made it into the provisional constitutional Treaty of the European Convention as well. The summits will be held quarterly and will eventually all take place in Brussels. The General Affairs and External

Relations Council will be split up and will be given clearer guidelines. In fact, the GAERC will be presided by a newly created function of a European Minister of Foreign Affairs.

Judging the reform proposals, it is argued that the European Council has been able to tackle three of the five earlier defined dilemmas: the working methods have been modernized, the procedures and tasks of GAERC will be changed, and the European Council will be stronger imbedded in the institutional EU structures.

What remains are the interdependency of the functioning (and especially implementation) of the other EU institutions and the question of high politics. However, these two dilemmas are inherent to the current system of EU top-level decision-making. The 'new' European Council will have to deal with these dilemmas and keep giving guidance to European integration.

It seems that the European Council reforms perfectly fit in some current global developments in top-level negotiations. These changing international relations, especially in the post-Cold War era, have had a clear impact on the system of international decision-making. The process of globalisation, leading to a growing interdependence between nation-states, and the rise of international organizations and regional cooperation, made them 'grow in number, become more complex technically and politically, and acquire new dimensions, such as being an alternative to coercive solutions of disputed problems'⁴⁷.

The scope of issues on the agenda has increased immensely as well. Some international organizations tend deal with almost all policy areas, like in the case of the European Union. An increasing number of dossiers and negotiations in the respective international organizations get interlinked, leading to a growing complexity in decision making as its direct consequence. On the other hand, this expanding scope lowers the threshold of (total) package deals and intensifies the contacts between the parties involved, which in itself facilitates the possibility of the necessary creation of consensual decision-making.

Finally, one could argue that international *top level* decision making gets more and more institutionalised. They are no longer just a mean in order to reach the ultimate goal of getting to an agreement, but have become an autonomous part of the decision making process. Many international summits take place at permanent places and are being prepared by an own secretariat.

⁴⁷ Kremenyuk, V.A., "The Emerging System of International Negotiation", in: V.A. Kremenyuk, "*International Negotiation*", PIN, Jossey-Bass, 2002, 2nd edition, p.22-23

The European Council, therefore, is an excellent example to underline these latest developments in international decision-making. First, one can witness a significant increase in the *number* of European Council summits over the last years. The average number of meetings per year has doubled from two summits in the first half of the 1990's to four summits at the beginning of this century⁴⁸. Furthermore, over the years several kinds of European Council summits have come into existence. The Presidency conclusions speak of *normal* and *extraordinary* meetings, like in case of the September 11th attacks (2001) and the war in Iraq (2003). De Schoutheete rightly mentions a third kind of meetings: *informal* meetings of which no official notes, conclusions or decisions are published, like the first informal European Council summit in September 1995 on the ongoing proceedings of the IGC⁴⁹.

These different kinds of meetings coincide with the ever-expanding agenda of the European Council. As mentioned in the historical overview, the European Council has been involved in an *ever-expanding number of policy areas*. In fact, the European Council is currently considered as the guiding EU body in almost EU policies, especially on foreign policy, institutional developments, justice and home affairs, and external representation. In this sense the European Council's *expanding agenda* reflects the ongoing process of European integration, characterised by a high level of interdependency and complexity.

Finally, some remarks on the institutionalization of the European Council. Ever since its creation in 1974 the European Council has imbedded more and more into the EU structures. It is very likely that with the new constitutional Treaty the European Council will take the final step towards being a formal, powerful EU institution, including a permanent President and an own staff and secretariat (see later in this paper). In fact, it already decided on some preliminary steps at its Nice summit in December 2000. Here was laid down in the 'Declarations adopted by the Conference' in article 22:

*"Declaration on the venue for European Councils: As from 2002, one European Council meeting per Presidency will be held in Brussels. When the Union comprises 18 members, all European Council meetings will be held in Brussels"*⁵⁰.

⁴⁸ For a complete overview of all European Council meetings, see: http://europa.eu.int/european_council/conclusions/index_en.htm

⁴⁹ Schoutheete, P. de, "The European Council", in: Peterson & Shackleton, *The Institutions of the European Union*, Oxford University Press, 2002, p.29

⁵⁰ See for the Treaty of Nice: http://europa.eu.int/eur-lex/en/treaties/dat/nice_treaty_en.pdf

This means that the European Council will be given a *permanent seat* with all opportunities of building up an own secretariat and diplomatic staff.

In other words, the European Council has been able to bend a potential threat in its decision-making process into a strengthened position within the European Union. As soon as the new Treaty is ratified the European Council will have an indirectly elected President, who can start building up a secretariat and who can lean on a stronger institutional position than ever before. One could argue that under the leadership of Giscard d'Estaing, he almost personally has been able to fulfil the final phase of his political intentions of the seventies: creating a strong, powerful, formal intergovernmental top level institution that can counterbalance too much supranational influence by the European Commission and Parliament.

However, one particular international relations reflex should not be forgotten. Changes in procedures and methods always lead to unexpected new problems and dilemmas. No one can tell how the European Council will actually operate once twenty-five member states will be represented. Undoubtedly, new reforms will be needed in future to keep the European Council in its EU driving seat.

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