

CHALLENGE EUROPE

Yes, we should!

EU priorities  
for 2019-2024

OUR  
FUTURE

IN  
YOUR  
HANDS

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# The role of the (European) Council: Practical improvements in volatile times

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**MAIN RECOMMENDATION** ▶ Make practical improvements to the (European) Council.

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**WHAT TO DO:**

- ▶ Fix the dysfunctional link between the high representative and the EUCO president.
  - ▶ Allow for a greater foreign policy role for the EUCO president.
  - ▶ Enhance the role of the General Affairs Council.
  - ▶ Reverse the decline in ministerial presence and promote active participation in EU work.
  - ▶ Systematically hold orientation debates at the start of the legislative procedure and before the start of negotiations with Parliament.
  - ▶ Increase transparency in the legislative procedure.
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The start of the next institutional cycle coincides with the 10<sup>th</sup> anniversary of the entry into force of the Lisbon Treaty (2009), which introduced major changes in the role and workings of both the European Council (EUCO) and the Council of Ministers. It is thus an appropriate time to take stock of the experience of the past decade and reflect on possible adjustments to the way the two institutions work and interact with each other and with other EU institutions. Since treaty change is unlikely to happen in the foreseeable future, the focus of this piece will be on practical improvements in the upcoming period.

# The European Council

The importance of the European Council, bringing together the heads of state and government and the European Commission president, has increased over the past decades. It is now broadly accepted as the institution where the ultimate power lies.

The frequency of formal and informal meetings has doubled (now averaging eight per year). But the European Council has managed to maintain the features that make it unique. It is still an 'exclusive club' (in contrast to the normal Council of Ministers): only its members, the High Representative

of the Union for Foreign Affairs and Security Policy (HR) and a handful of officials are present in the meeting room. Foreign Ministers, who previously participated, have been excluded.

The restricted setting is essential to preserve the decision-making capacity of the EUCO. In fact, it would even be better to remove the interpreters' cabins from the meeting room and instead make use of distance interpretation as is now the practice for dinner-discussions. It is important that EU leaders can look into the eyes of their colleagues.

## The semi-permanent president and the relationship with the Commission (president)

The introduction of a semi-permanent, full-time president of the European Council has changed the way the EUCO works. It has led to more continuity and more emphasis on the essential challenges facing the EU.

Who occupies the post is of prime importance. While weaknesses at the top of other institutions can be compensated by strong deputies (vice-presidents) the EUCO president has no substitute. Choosing the wrong kind of personality could wreck the functioning of the European Council. Personal qualifications, more than political affiliation, should be the main criteria for choosing the president.

The profile of the incumbent is likely to be discussed again, when a successor to Donald Tusk is appointed in November 2019. Should it be a high-profile politician (a Tony

Blair, Sarkozy or Merkel type) carving out a considerable degree of independence and freedom of action? Or a person that can bang heads together and find compromises, like the first two semi-permanent presidents – Herman Van Rompuy and Donald Tusk?

EU leaders prefer continuity. But in today's fast-changing world, the future president should be given some leeway in developing the job in a more presidential direction. This includes taking greater risks when putting forward solutions on divisive political issues as well as assuming a greater role in foreign and security policy.

Since there is little demand or support for a double-hatted president (combining the roles of European Council president and Commission president), it is more important than ever that the European Council and the

European Commission improve their cooperation, building on what has already been achieved.

The EUCO president and the Commission president now meet regularly (weekly) to coordinate their work. Likewise, mutual trust between top officials has improved since Jeppe Tranholm Mikkelsen became secretary-general of the Council Secretariat and it has continued after Martin Selmayr took over the top job in the Commission. The collaboration between both sides of the Rue de la Loi has been close to perfection on Brexit.

But there still are the occasional bouts of jealousy. With the ambition of a ‘political Commission’, the nostalgic vision of the Commission as the genuine seat of political leadership in Europe has sometimes taken the upper hand.

The future Commission president would do well to look to Jacques Delors’ relationship with the European Council as a source of inspiration. Delors fully understood that the power of the Commission president increases in line with a strong European Council. He did not need to be seen as the father of new ideas, and understood the benefits of the EUCO taking ownership. No one questioned whether the Delors Commissions were political. Engagement from EU leaders, pushed by the EUCO president, is indispensable to turn vision into reality.

## Crisis management tops the agenda

In the past decade, the European Council has made its most important contribution in the area of crisis management. During Herman Van Rompuy’s term, the sovereign debt crises (the so-called ‘euro crisis’) was the top priority, while for Donald Tusk the main task was to develop a coordinated and effective EU response to the influx of refugees and migrants in 2015, and to the Brexit vote in 2016.

Existential catastrophes have - so far - been avoided and a sense of some kind of stability has returned. However, the EUCO has failed to exploit the pressure of these multiple crises, to implement sustainable long-term solutions. Postponing more structural responses to the Union’s poly-crisis to a later date does not make things easier.

In crisis situations, or when the EU is faced with major disruption (like Brexit), the European Council and its president are the main

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actors. But they perform best, when they are part of a coordinated team effort.

During the euro-crisis, the Eurogroup and the ECOFIN Council paved the way for the heads of state and government to make the final decisions. Likewise, President of the European Central Bank (ECB) Mario Draghi has been a key actor. In fact, in matters related to the common currency, the ECB president has become a quasi-member of the European Council.

The refugee and migration crisis was an example of failed cooperation between the EUCO and the Council. The Justice and Home Affairs Council did little to bring viable solutions to the table, and often served as a mere echo-chamber for widely diverging national views. It was left to the EUCO to take all the strategic decisions. Over the course of 2015 and 2016, EU leaders gradually abandoned their original idea of solving the crisis by sharing the burden. Instead, they doubled down on efforts aiming to reduce the irregular influx of migrants and refugees, and on engaging with countries in the Mediterranean in a joint effort to stop the flow.

The lack of thorough preparation of the EUCO meetings by the justice and home

affairs ministers often led to improvisation and the floating of half-baked ideas among EU leaders, which had little to no chance of being implemented. It is natural that an issue, which directly affects citizens and is politically explosive at the national level, quickly ends up on the table of the EUCO. But experience has proven that a more effective preparatory structure has to be put in place.

The Brexit process is an illustration of how it can be done – trust and continuity are key. The confidence between the European Council and Chief Negotiator Michel Barnier and his team was of crucial importance in maintaining a solid EU27 position throughout the process. The permanent chairmanship by the Council Secretariat of the Article 50 group and the leading role played by the Secretary-General in COREPER (Committee of the Permanent Representatives of the Governments of the Member States to the EU) created continuity and avoided the shifting of priorities due to the rotating presidencies (the migration crisis is an example in case). The Prime Minister of Denmark, Lars Løkke Rasmussen, expressed the thoughts of many members of the European Council when calling for the appointment of a personality like Michel Barnier as the EU migration minister.

## Relations with the European Parliament

The European Parliament (EP) has de facto accepted the role of the European Council as *primus inter pares* among EU institutions. The link between the two institutions has been strengthened considerably by a higher level of ‘face-to-face’ interaction; the EUCO President frequently comes to the Parliaments to speak about the latest developments and discussions in the European Council; individual members of the European Council show a growing interest in

appearing before the EP; and the Parliament president addresses national EU leaders before EUCO meetings begin and engages in a short debate with the heads of state and government. The Brexit negotiations have broken new ground in EUCO-EP relations by inviting the Parliament’s Brexit negotiator (Guy Verhofstadt) to participate in the SHERPA/COREPER meetings that prepare EUCO meetings. This practice could be used again in the future.

# Priority setting by the European Council

The European Council has struggled to provide long-term strategic guidance for the Union's development. It is doubtful whether serious long-term planning is even possible when new 'disruptions' and crises situations keep coming up. Texts produced by the EUCO, such as the 'Strategic Agenda for the Union in times of change' (June 2014) or the Rome Declaration (March 2017), which aim to set strategic priorities, tend to be too general and age quickly. The aspiration of the Romanian Council Presidency and the Commission to fix the European agenda for the next five years at the Sibiu Summit is overblown and will likely lead to deflated expectations.

Donald Tusk's so-called 'Leaders' Agenda', which he launched in October 2017, is a more realistic effort. It provides an overview of the main issues that the European Council president intended to put before the EU leaders until 2019, alongside a detailed roadmap (time-schedule). It has been a useful tool for agenda management, and has

inserted some predictability and order into the work of the European Council.

Experience has shown that strategic priority setting becomes much more tangible when it takes the form of fixing financial priorities for the future. The launching of the European Defence Fund by the Commission in 2017 has, for example, done more to promote EU defence cooperation than many aspirational political texts on defence, which often failed to lead to any tangible result.

The agreement on the next Multiannual Financial Framework (MFF) for the period 2021-2027 is the best opportunity for the European Council to prove they can set strategic priorities. However, this will only be the case if EU leaders approach the finalisation of the MFF as an exercise aiming to set EU policy priorities and not as an attempt to secure the best possible budgetary position for their member state, as we have too often witnessed in the past.

## The European Council and foreign policy

At national level, prime ministers (or presidents) have gradually become the main foreign policy actors, overshadowing foreign ministers. In some countries, this has led to a downgrading of foreign ministries. But elsewhere an increased focus on intelligence-gathering and the development of policy proposals to be used by the prime minister's department has resulted in the raising of foreign ministries' profiles. The EU has to adapt to this new reality.

The EUCO has, on many occasions, played an important role in foreign policy. One recent example is the annexation of Crimea and the subsequent imposing of sanctions on Russia. Agreement among EU leaders has ensured that the Union stood firm despite divergent views among member states.

But when moving from decision-making to concrete implementation the record is less convincing. In 2016, the EU Global Strategy

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prepared by the High Representative Federica Mogherini was briefly discussed and endorsed by the European Council – but it never became a serious, implementable tool.

Foreign policy issues are regularly discussed at EUCO dinners, particularly the relationships with key strategic partners or regions such as Russia, the United States, China, or the Middle East. This creates a mutual understanding among EU leaders, but the follow-up is often missing. The EU, for example, still lacks a common strategy on China.

Two changes would help to improve the European Council's role in the realm of foreign policy:

- ▶ the dysfunctional link between the high representative and the president of the European Council needs to be fixed. Contrary to the situation today, the European Council president and the high representative should work as a team, while the European External Action Service (EEAS) should give high priority to providing intelligence and preparing policy proposals for the EUCO president;
- ▶ the European Council should allow for a greater foreign policy role for its president. High-level diplomacy increasingly takes place among state and government leaders. The high representative is not at that level. In international groupings such as, for example, the Minsk process, the European Council president should represent the EU. This does not exclude the participation of member states with particular interests at stake.

## The role of the Council of Ministers

The functioning of the European Council often dominates the debate, while little attention is paid to the work of the Council of Ministers, as the main chamber representing the member states. The Council deserves more recognition, both for its role in preparing European Council meetings and as a legislative body.

### THE GENERAL AFFAIRS COUNCIL

The European Council is prepared by the General Affairs Council only in formal terms. The fact that the General Affairs Council

plays a very limited role has led President Tusk – in contrast to President Van Rompuy – to skip most of the meetings. This has left the preparation of EUCO meetings in the hands of officials at the joint meetings of COREPER and SHERPAs (European advisors to the heads of state and government). The former practice of having separate preparatory meetings has fortunately been abandoned.

Preparations could improve if the General Affairs Council was composed of ministers or state secretaries that were directly attached to the prime ministers/presidents responsible for national EU coordination. They could step in when preparations in other Council formations are stalling. The Council could also be given greater political weight to ensure that summit conclusions are followed up on. However, this innovation will only take place under the impulse of national leaders.

For the rest of the Council formations (i.e. the ten specialised Council formations) the main challenge is to reverse the decline in ministerial presence and active participation in EU work. Too many issues are now pushed upwards to the European Council or downwards to officials (COREPER and the Council working parties).

Apart from legitimacy and transparency issues, the lack of ownership in EU affairs by ministers also reduces the amount of attention paid to Union matters in national administrations. It adds to the perception that the EU is «Brussels» instead of a joint effort by all member states. The Council's ability to deal with new political issues is often slow compared to the EP. Two glaring examples are the belated reactions to the popular call for EU action on tax avoidance or control over IT giants.

## **THE COUNCIL AS A LEGISLATIVE BODY**

The Council's legislative role needs to change as well. While the EP has adapted its

structures and working methods to reflect its increased legislative power, little has changed in the Council, which continues to be inspired by how national ministerial cabinets are functioning.

The overall performance of the EU's legislative bodies in terms of efficiency is not bad. The number of complex political files that have been brought to a successful conclusion during the present legislature is quite impressive. They outperform the US Congress by a wide margin. This is one of the reasons why the EU continues to be a leader in the setting of global norms. The challenge for the Council is to ensure that citizens feel that their national interests are defended at the EU level and that they understand why it is necessary to look for compromises.

The Council's legislative work is predominantly handled by officials. Political control is ensured to some extent, given that officials follow instructions coming from the capitals and work under the authority of a minister. But political issues could arise if ministers are absent from the legislative process. The Commission currently accompanies its proposals with an impact assessment, including the administrative burden. But once the proposal is passed to the Council, it enters into a 'tunnel' and only reappears – often as a very different product – at the final decision point. An obvious improvement would be to systematically hold orientation debates at the start of the legislative procedure and before the start of negotiations with Parliament. This happens today, but it is not yet institutionalised.

More than 80% of EU legislation is currently adopted through the so-called first reading procedure, where an informal dialogue (or trilogue) takes place between the responsible members of the EP and an official from the rotating presidency, supported by the Council Secretariat and the Commission. The procedure increases



the efficiency of the legislative process but raises transparency questions.

The Ombudsman, the European Court of Justice and national parliaments have all voiced their concerns about the present practice. It would thus be a welcome development if the Council took the initiative to increase the transparency in the legislative process before it is forced to do so by others. This can be done in ways that do not unduly complicate the legislative procedure and leave sufficient political space – away from the public eye – to find compromises.

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## Conclusions

In the space of two decades, the European Council has become the Union's supreme political authority due to its capacity to cut the Gordian knot when needed and to set out a general direction for the Union. This is unlikely to change in the foreseeable future. But the European Council's capacity to deliver depends on the engagement and willingness of EU leaders to reach compromises that are in the interest of the Union as a whole. Success also depends on whether or not the meetings are properly prepared through solid input from other institutions and bodies. A stronger role for the EUCO president, better preparation by a reformed General Affairs Council and reinforced cooperation with the Commission will improve the chances of success.

The performance of the ordinary Council of Ministers has been less than impressive. Change is needed for it to remain an equal partner to the EP in the legislative process. This calls for a greater level of participation and engagement of national ministers. Without their more active involvement, the Council will quickly lose out to the EP and the Commission. This would please European federalists – but it might not be the direction in which most citizens want the European Union to go.