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The European Council – the new centre of EU politics

Abstract

If one looks at the media coverage of European Union (EU) politics, the European Council seems to have emerged as the new centre of EU politics. The top-level forum, which is composed of the heads of state and government, the Commission president and the High Representative and is chaired by a full-time president, increasingly shapes EU policymaking. Referring to data on agenda composition and expert interviews, this paper argues that the new centrality of the European Council, which has become increasingly evident ever since the end of the 1990s, is indeed not coincidental but due to the evolution of those new areas of EU activity that have been developed partially or fully outside the core community method ever since the 1992 Treaty of Maastricht. The expansion of European Council activity can be traced back especially to its role in economic governance, foreign, security and defence policy and the coordination of social and employment policies. Moreover, it is evident that the European Council has been transformed into a forum for ongoing top-level policy dialogue that no longer gathers only to make long-term decisions about the future of the Union but plays a decisive role in managing the day-to-day operation of core EU policies.

1 Introduction

In contemporary scholarship on European integration the European Council almost plays a role of secondary importance.¹ There is no shortage in accounts covering the roles of other prominent decision-making bodies. The Council's role as the main forum in which member states and the Commission negotiate controversial EU legislation has been studied intensively. During earlier phases of European integration the Commission and the Court of Justice received attention as novel supranational institutions that were able to push the integrationist agenda in a way that was not necessarily anticipated by all national-level actors. More recently, the rise of the European Parliament to the role of an effective co-legislator and powerful veto player equally attracted interest. Only a few scholars tried to conceptualise the

European Council as having a systemic function in EU governance. Bulmer and Wessels (1987) and Bulmer (1996) were most outspoken in this regard. They saw the European Council playing a central role in rallying top-level support for the integration project and the EU's core policies. Bulmer, in particular, related this role to what he conceived as the con-federal character of EU integration. According to this argument, the EU is conceived as a con-federation that does not have the status of a federal state but that features closely integrated domains of public policymaking that coexist with autonomous decision-making on the part of the member states in other areas and ultimate member state sovereignty. The inevitable quarrels between member states in EU legislative decision-making thus need to be embedded in a broader political consensus

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¹ The relative absence of research on the European Council – especially that which is grounded in theory – has already been highlighted by Jonas Tallberg (2007), who contributed one of the very few theory-based and more recent in-depth studies of European Council decision-making practices.

about the direction and character of EU integration without which there would be a risk of disintegration. The European Council, therefore, was seen to play an important problem-solving and consensus-generating role. The key role of the European Council in preparing the historic 2004 and 2007 EU enlargements and in keeping the cumbersome process of reiterated Treaty reforms on track are good illustrations of this role of the European Council.

What is interesting is that since the entering into force of the 1992 Maastricht Treaty the frequency of European Council meetings has kept increasing gradually – even after the EU’s historic enlargements and with the difficulties in ratifying the Constitutional Treaty all behind. The European Council developed from an institution that met three times a year to discuss major issues in EU integration and long-term reform moves into a body that is convened as often as some of the most senior formations of the Council. The new centrality of the European Council is reflected by the Lisbon Treaty, which clarified the status of the forum as a core EU institution and assigned it a full-time president.

Today the European Council is involved in regularly deciding concrete policy issues in core domains of EU policymaking such as economic governance and foreign and security policy. The forum is frequently convened even on an ad hoc basis to respond to domestic or external crisis situations. Today, European Council meetings are a routine feature of EU politics. What is equally interesting is that most European Council meetings are not occasions during which the heads adopt landmark decisions and agree about the long-term development of the EU. European Council meetings are watched increasingly closely in the capitals and other EU decision-making institutions for the impact they have on day-to-day policymaking. Attention may focus on new guidelines for how to conduct fiscal policy or deal with struggling banks, the clearance of a financial assistance package for a member state in difficulty, the common EU position at a global climate change summit or a G20 meeting, as well as the EU’s reaction to foreign policy crisis situations.

In the subsequent sections it is argued that the new centrality of the European Council is indeed not coincidental but due to the evolution of those new areas of EU activity that have been developed partially or fully outside the core community method ever since the Treaty of Maastricht and that require the constant

generation of consensus over policy decisions among Europe’s most senior decision-makers (section 2). With reference to European Council agenda data, it is demonstrated that the increased number of European Council meetings can indeed be traced back to the role of the forum in the new areas of EU activity such as economic governance, foreign, security and defence policy and social and employment policies (section 3). Examples are provided for how the European Council exercises a crucial consensus generation function in the policy process. Moreover, illustrations are provided for the process of ongoing institutional engineering, which is aimed at improving further the European Council’s consensus generation function by modifying the operation of the high-level forum (section 4). Finally, implications of the new role of the European Council for relations with other EU decision-making bodies and the further development of the EU are considered (section 5).

2 The new role of the European Council in the post-Maastricht era

So, what has changed in the pattern of EU policymaking that would explain the growing importance of the European Council and its increased activity? Why are there more European Council meetings than ever before and why is it that decision-making in core areas of EU activity such as economic governance and foreign and security policy depends on European Council intervention? Is it just that the EU has become more complex and bigger, so that the European Council’s traditional functions require more time and effort to be fulfilled? Has the crisis contributed to the European Council’s bigger role? Or, is there a new role for the European Council in EU decision-making that could not be identified during earlier periods of the integration process? The argument here is that part of the answer to these questions can be found in the Maastricht Treaty, which entered into force about two decades ago.

At Maastricht the EU set out to widen the scope of its activities substantially, yet it did not do so in the way political integration was pursued previously. Apart from the introduction of the supranational domain of monetary policy, the other major new fields of EU activity were developed as areas governed through intensified policy coordination rather than through the introduction of supranational legislation under the classic community method. The economic governance arm of the Economic and Monetary Union (EMU), the new domain of the common foreign, security and defence policies and the field of justice and home

affairs all belong to this category. Moreover, in relation to the field of social policy, Maastricht represented an inauspicious compromise between calls for a stronger EU social dimension and fierce British opposition against any further intervention in the domain of welfare state decision-making. Although the Social Protocol and the Social Agreement allowed for some expansion of the EU's legislative powers for all member states but the United Kingdom by removing obstacles to qualified majority decision-making, the actual application of the new provisions remained more than modest throughout the 1990s. Instead, the wider area of social and employment policymaking, including social inclusion policy (Armstrong 2010) and EU monitoring of the reform of Europe's welfare states, became subject to a series of novel coordination efforts that eventually culminated in the EU's Lisbon agenda.

2.1 New intergovernmentalism and the quest for consensus

In fact, post-Maastricht EU integration reveals an integration paradox (Puetter 2012: 168). Member states are constantly pushing for an expansion of EU activity but are careful not to transfer further legislative competences to the EU level.² While they are committed to fostering the further integration of domestic policies and the levelling of new policymaking resources through aggregating national-level capacity, member states carefully avoid moves that would formally constitute

the EU as a federal state.³ This is all the more important as the EU's new areas of activity all relate to core domains of state sovereignty and reflect the ambition to expand political integration beyond market integration. It is this paradoxical attitude towards contemporary European integration that contributes to the rise of a **new intergovernmentalism** in EU politics (ibid.: 166-67). This term refers to the contemporary practice of member state governments playing a central role at all stages of the EU policy process when it comes to the above-listed new areas of EU activity. Agreeing policy moves on a step-by-step basis, member states prefer the coordinated use of decentralised national resources over the delegation of such resources to the supranational level. For example, member states deliberately avoided the creation of an EU-wide resolution fund under the authority of the Commission when they agreed on EMU in the first place, nor did they delegate ultimate sanctioning powers to the Commission in the sphere of budgetary policy. Even the financial crisis did not trigger the creation of such an institution but rather led to the establishment of stabilisation instruments that are subject to intergovernmental decision-making (Hodson and Puetter 2013). Yet, the term 'new intergovernmentalism' also signals that the new preference for intergovernmental decision-making is not accompanied by signs of a general integration fatigue.⁴ This aspect is particularly striking as it distinguishes the new intergovernmentalism from earlier forms

² The 1992 Maastricht Treaty added three major new areas of EU activity that were based exclusively or primarily on the principle of policy coordination: economic governance under EMU, foreign, security and defence, and justice and home affairs. Only the latter policy area was later partially shifted to the field of legislative decision-making under the community method. The Amsterdam and Nice Treaties further added employment policy and social inclusion to the catalogue of new EU activities that were to be governed by policy coordination and were not to include a transfer of legislative decision-making competences. The Lisbon Treaty provisions related to the area of foreign, security and defence policymaking and even introduced language that explicitly excludes the possibility of legislative decision-making (Article 24, TEU Lisbon). Moreover, the European Convention process confirmed the decentralised character of economic governance under EMU and resulted in a clear rejection of stronger supranationalisation of this policy area through a delegation of further legislative and executive competences to the EU level (European Convention 2002; Puetter 2007).

³ The Lisbon Treaty, which followed the failed ratification of the Constitutional Treaty, can serve as an example here. The new treaty carries over almost the entire catalogue of substantial provisions related to institutional and policy issues that were originally contained in the Constitutional Treaty but avoids reference to constitutional symbolism in its title.

⁴ This is illustrated by statements from leading politicians in Europe. For example, in a much quoted interview, German chancellor Angela Merkel categorically rejected calls for increased powers for the Commission in EU policymaking just to state a sentence later that she and French president François Hollande would launch a new initiative to foster close coordination of all aspects of socio-economic governance to respond to the consequences of the economic and financial crisis (interview with *Der Spiegel*, 3 June 2013, p. 28).

of European Community intergovernmentalism that were associated with standstill.⁵ Moreover, the new intergovernmentalism by and large revolves around the new areas of EU activity that were launched at Maastricht and beyond. It develops in addition to existing policy activities that are governed under the community method and does not replace these activities.⁶

The pattern of EU-level decision-making thus becomes less determined by the logic of legislative decision-making and follows much more the logic of policy coordination. Most importantly, the Maastricht Treaty and, indeed, all subsequent treaties commit the member states to closer policy coordination but refrain – with a very few exceptions – from identifying concrete policy objectives. The outcome of the coordination process is deliberately left open and can be minimalist or maximalist. In the absence of delegated enforcement powers on the part of the Commission and the Court of Justice, as well as pressure to resort to qualified majority voting, the generation of self-commitment to commonly agreed policy objectives thus remains a constant challenge. In this context, the quest for consensus formation among member states becomes an inherent feature of day-to-day policymaking. The provision of particular mechanisms and contexts for collective policy debates that are intended to facilitate such self-commitment has indeed become a key focus of post-Maastricht institutional reform as there is agreement in principle that contemporary public policy challenges require greater levels of collective EU action. This institutional dynamic – the drive for fostering intergovernmental policy coordination through consensus formation among member state governments – is referred to as **deliberative intergovernmentalism** (Puetter 2012).

2.2 The centrality of the European Council

The post-Maastricht EU decision-making infrastructure underwent considerable transformation in this regard. It saw the proliferation of forums and mechanisms for consensus formation among top-level representatives

of member state governments and the EU institutions – notably the Commission and the European Central Bank. The novel Economic and Financial Committee (Grosche and Puetter 2008) and the Political and Security Committee (Bickerton 2012; Cross 2011; Howorth 2011; Juncos and Reynolds 2007), the informal Eurogroup of euro area finance ministers (Puetter 2006) and the intensified deliberations of EU foreign ministers that are now presided over by a full-time chair – the High Representative – as well as the role of novel expert committees in the area of social and employment policies (Jacobsson and Vilfell 2007) are key examples of this new infrastructure.

The point here is not to portray EU policy coordination as a harmonious exercise. Rather the emphasis is on the attempts at institutional engineering that have been made to facilitate agreement among bureaucrats and top-level political decision-makers alike. It is suggested that this institutional dynamic should be understood as a function of the above-described integration paradox: member states adhere to their intention of substantially expanding the scope of EU activity to new policy areas (see section 1) but refuse to grant new legislative and executive decision-making powers to the EU level. Given this paradoxical attitude towards political integration, successful collective EU action depends on constantly renewed intergovernmental agreement.

The European Council plays a particularly prominent role when it comes to fostering intergovernmental agreement in post-Maastricht EU decision-making. With the scope of EU activity expanding to core areas of national sovereignty such as macroeconomic policy, foreign affairs, security and defence and crucial elements of the welfare state, policy coordination increasingly relies on the constantly renewed agreement among what can be described as Europe's most senior decision-makers – the heads of state and government. Collective policy decisions tend to have major implications for domestic politics. Technocrats as much as ministers increasingly lack the authority to conclude final decisions, though they may play

⁵ In particular, the so-called 'empty chair crisis' in the mid 1960s, during which French president De Gaulle refused to take part in collective decision-making so as to prevent further integration, highlighted the centrality of intergovernmental decision-making in European integration. The crisis was interpreted as evidence for the ability of member states to bring a self-propelled process of supranationalisation to a halt by exercising control over integration by intergovernmental decision-making. See Hoffmann (1966) and Haas (1968: xi-xxx).

⁶ Cf. Bickerton, Hodson and Puetter (forthcoming) for a further discussion of how the new intergovernmentalism affects traditional domains of community method decision-making and the EU's supranational institutions.

an important role in preparing them and overseeing implementation. The quest for top-level leadership is exacerbated by the fact that national policymakers can no longer rely on the so-called permissive consensus in relation to European integration (Hooghe and Marks 2009). This means that it cannot be presumed that the public takes little or no interest in EU policymaking and because of this does not interfere with elite-driven decision-making. Yet, as stated above, and this constitutes part of the post-Maastricht integration paradox, there is little that suggests that political elites currently lack the conviction that stronger EU action is required to resolve contemporary policy challenges (Bickerton et al. forthcoming). This gives the heads of state and government a central role in EU politics not only in relation to long-term decision-making and major institutional reform but quite importantly in relation to the regular coordination agenda. It is hardly conceivable that the EU would make headway in addressing issues such as economic reform, financial assistance, military intervention or a common position for G20 coordination without the intervention of the European Council.

To conclude, the key point of this analysis of the role of the European Council in EU decision-making is to understand the increasingly dominant role of the institution in the post-Maastricht era as a reflex of a changed EU decision-making agenda that expands the scope of EU integration while at the same time diverting from the path of classic community method decision-making. This changed approach requires a particular emphasis on ongoing consensus generation on a wide range of policy issues among the EU's heads of state and government – an institutional dynamic that is referred to as **deliberative intergovernmentalism**. The analysis thus focuses on tracing the expansion of European Council activity as well as attempts at institutional engineering that are aimed at adapting the European Council to its new role.

3 A new mandate and a more prominent role in EU policymaking

The new role of the European Council in the post-Maastricht era is already evident from the treaties. The Maastricht Treaty assigned the European Council a

leading role in each and every new area of EU activity and was charged with supervising the various coordination processes. The Amsterdam Treaty, and most recently the Lisbon Treaty, confirmed this centrality of the European Council in policy coordination.⁷ The relevant provisions on the European Council are 'hidden' in the policy-area specific provisions of the relevant treaties and were not articulated in the general institutional provisions that until the entering into force of the Lisbon Treaty only provided a vague characterisation of the status and the role of the European Council in EU decision-making. Moreover, reference to the European Council is absent from other policy-area specific provisions of the treaties that relate to the sphere of community method governance. Indeed the Lisbon Treaty clarifies that the European Council "shall not exercise legislative functions" (Article 15.1, TEU). All this suggests that the European Council's role in the new areas of EU activity is indeed not identical with the role the top-level forum plays in relation to classic domains of community method decision-making. Moreover, governing the new areas of EU activity involves a whole range of responsibilities. This new role thus adds substantially to previously acknowledged functions of the European Council such as its role in major institutional and personnel decisions or enlargement.

The new mandate of the European Council has also been further developed and defined by the body itself. For example, in the field of EMU economic governance the European Council defined its own role in much broader terms than the treaty clause on its role in formulating the Union's economic policy guidelines suggests (Article 121.2, TFEU). For example, the European Council assigned itself a central role in operating the Stability and Growth Pact (European Council 1997a), which includes the modification of the pact itself as well as intervention in controversial decision-making (Hodson 2011). The Lisbon agenda is perhaps the most prominent example of the European Council giving itself a broad mandate for policy coordination that cuts across and extends beyond the domains of European Council activity as they are specified by the treaties (European Council 2000). The European Council also unilaterally moved to create the informal Eurogroup of euro area finance ministers, the Commission and the

⁷ Cf. on EMU economic governance Article 121.2, TFEU, Lisbon, on CFSP and CSDP Articles 18.1, 22.1, 24.1, 26.1, 31.2, 32, 42.2 TEU, on justice and home affairs Article 68, TFEU and on employment policy coordination Article 148, TFEU. The first three new domains of European Council activity were already established at Maastricht. The European Council's role in employment policy coordination was codified first by the Amsterdam Treaty.

ECB in 1997 (European Council 1997b) and oversaw from then on the group's activities as well as those of the ECOFIN Council of all EU finance ministers. The European Council's supervisory role in the field of economic governance was further expanded with the creation of a euro area offspring of the top-level forum – the Euro Summit (Euro Summit 2011; European Council 2011) – which mandated itself to oversee relevant policy decisions even more closely than in the past and to assign tasks to the Eurogroup and the Commission wherever this is deemed necessary.

3.1 Changes in agenda composition

Interviews with senior EU and government officials who are in charge of European Council preparation confirm the growing involvement of the European Council in policymaking related to the new areas of EU activity.⁸ What emerges from these interviews is that this aspect of European Council activity increased substantially from the late 1990s until today. Officials attribute this to the political ramifications that contemporary moves in EU policy coordination have for domestic politics. They see an increasing interest on the part of the heads in exercising close control of EU policy coordination dossiers such as economic governance or major foreign affairs issues as these dossiers are seen to determine electoral success or failure as well as the fate of coalition governments. It is also highlighted that decisions are increasingly perceived as impinging on national sovereignty and therefore cannot be delegated to the Council.⁹

The new role of the European Council in post-Maastricht EU decision-making can be further demonstrated with reference to European Council agenda data of the last two decades.¹⁰ While the European Council's involvement in major institutional decisions, in particular in relation to Treaty reform and the preparation of the 2004 historic enlargement, represents an important activity in the post-Maastricht era, it is far from representing the biggest share in overall European Council activity. Instead, this is true for European Council deliberations related to the new areas of EU activity. With policy coordination related to these areas gathering momentum in the second half of the 1990s, European Council activity increased considerably.¹¹ The new areas of EU activity came to dominate the European Council agenda both in relative and absolute terms.

Already by the end of the 1990s we can hardly find a meeting of the European Council for which the block of agenda items related to the new areas of EU activity did not account for the most important share of the meeting agenda. This is true even against the background of other major challenges in European Council decision-making such as enlargement and Treaty reform. If one looks at the complete period of the two decades of post-Maastricht European Council deliberations, debates related to the new areas of EU activity that are based on policy coordination rather than classic community method decision-making account for more than 65% of the total number of agenda items during this period.¹²

⁸ Unless noted otherwise, all interviews quoted in this text were carried out by the author and his research assistants in Brussels and member state capitals between April 2009 and March 2013. The group of interviewees includes EU officials from the General Secretariat of the Council, the Commission, the cabinets of the European Council president and the High Representative, as well as member state officials from the personal offices of heads of state or government, the Permanent Representations and ministries of foreign affairs and finance. The interview pool comprises more than 60 individuals, some of whom were interviewed more than once. All interviews were carried out on the basis of anonymity. Interview documentation remains on file with the author.

⁹ Anonymous interviews as referred to in fn. 9 carried out on 7 April 2009, 9 December 2009, 3 June 2010 and 4 July 2011.

¹⁰ European Council agenda data was analysed by the author for the period from July 1992 until June 2012 on the basis of European Council conclusions, Agence Europe reporting and other media sources. Agenda items were coded and grouped according to so-called activity areas. These areas included 'economic governance', 'CFSP and CSDP', 'employment and social policy coordination', 'justice and home affairs', 'environment' and 'energy policy' as well as major institutional (Treaty reform and enlargement), personnel decisions, and budget and finally intervention in processes of legislative decision-making. The analysis covers all formal and informal European Council meetings as well as the so-called Euro Summit meetings and logs the quantitative occurrence of agenda items. This information was complemented with own interview data and media sources to extract details about the duration of discussions on individual agenda items and their relative importance in overall European Council activity. The author would like to thank his research assistant Adina Maricut at the Central European University for her help with compiling the European Council agenda data set.

¹¹ Own agenda data analysis as referred to in fn. 10.

¹² Own agenda data analysis as referred to in fn. 10.

This group includes economic governance, foreign, security and defence policy, social and employment policy coordination and justice and home affairs. The latter policy area gradually came under community method governance, yet in a modified form. Under the relevant Treaty provisions the European Council continues to play a lead role and effectively acts as (co-)initiator of legislative decision-making alongside the Commission by defining periodic guidelines for the overall development of this policy area. Finally, a few already existing policy fields that are subject to community method decision-making but that feature an increasingly important coordination dimension became subject to regular European Council intervention. Environmental and energy policy are to be mentioned here, a domain that also includes the coordination of a common EU position on climate change policies. In contrast, European Council interference with EU legislative decision-making plays almost no role in overall European Council activity unless legislative issues are specifically related to particular coordination domains. Financial market regulation, as well as the above-mentioned field of justice and home affairs, is a good example of this.

Moreover, agenda data¹³ shows the particular importance of two new areas of EU activity: economic governance and foreign affairs including security and defence policy. It is evident that from the mid 1990s onwards there has hardly been any European Council meeting during which both policy domains have not featured on the agenda. Interview data further confirms the dominance of these two agenda items in European Council discussion. Officials who are familiar with European Council agenda planning and are debriefed about European Council meetings estimate that economic governance occupies 50-65 % of the total time the heads spend debating within the European Council.¹⁴ Foreign policy is quoted to be the second most time-consuming agenda item, though considerably less time is spent on it than on economic governance issues. Especially since the outbreak of the economic and financial crisis in Europe in 2008, the heads are said to have spent less than 20 % on external affairs issues, though this share is expected to gradually increase again.¹⁵

3.2 Expanded meeting activity

The European Council's role in governing the new areas of EU activity is also clearly reflected in the overall expansion of European Council activity. Until the mid 1990s, the European Council met three times a year. From the mid 1990s, the number of yearly meetings went up to four. From the end of the 1990s and throughout the first half of the 2000s, additional meetings in the form of special summits, single-issue gatherings or ad hoc meetings were scheduled again and again so that there were five, six or seven meetings instead of four. With the outbreak of the financial crisis in 2008, seven meetings per year became the baseline figure, and in 2011 the European Council and its euro area offspring the Euro Summit were convened on a total of ten occasions. This figure was sustained in 2012. In October 2012, French president François Hollande called for a regular schedule of monthly meetings at least of the euro area heads of state and government instead of scheduling more and more extra European Council meetings at short notice.¹⁶

4 Institutional engineering

The new role of the European Council in EU decision-making is also reflected in the reorganisation of the forum's internal procedures and working practices. As argued in section 2.1 above, the centrality of the European Council in contemporary EU policymaking is understood as a function of the post-Maastricht integration paradox. Governing the new areas of EU activity that are constituted outside the classic community method demands a lead role for the European Council and informs the quest for consensus generation among the heads of state and government. Personal agreement among the heads is the key decision-making method of the European Council. Though the forum issues increasingly detailed conclusions there is little that binds the heads other than their own personal agreement. This is different from legislative decision-making in the Council. This circumstance deserves particular attention with regard to the decisions taken in relation to the new areas of EU activity. Other than agreement that precedes the accession of new member states to the EU or an act of Treaty reform, policy decisions by the European Council are often not subject to immediate formalisation. Instead, the

¹³ Own agenda data analysis as referred to in fn. 7.

¹⁴ Anonymous interview as referred to in fn. 9 carried out on 4 July 2011.

¹⁵ Anonymous interview as referred to in fn. 9 carried out on 8 July 2011.

¹⁶ François Hollande, interview with *Le Monde*, 17 October 2012.

European Council aims to generate agreement to pursue policy reform, to assume a particular stance in EU and member state relations with a third country or a region, or to develop collective policies in a particular domain of EU activity in a certain way in the next 12 or 24 months. Moreover, European Council agreements are typically intended to trigger decentralised decision-making within the context of various EU institutions as well as within the different member states. This means that the heads of state and government as well as the Commission president as members of the European Council commit themselves to undertake certain steps within their respective field of competence. All this helps to understand why European Council deliberations are focused on generating personal agreement among the heads. Three examples of institutional engineering aimed at (re)focusing the forum's proceedings towards this objective are briefly discussed here so as to illustrate this deliberative dimension of European Council decision-making and the process of institutional change that is related to it.

The first example concerns the changed composition of the European Council and the emphasis on secrecy. Originally the European Council was composed of the heads of state and government and the Commission president plus the EU foreign ministers. This arrangement reflected the role of foreign ministers in coordinating general EU affairs and overseeing decisions related to the institutional development of the Union. The Lisbon Treaty formally changed the membership of the European Council so as to only include the heads, the Commission president, the High Representative and the European Council president.¹⁷ The new Treaty provision in fact codified a practice that had emerged much earlier. Discussions that are only attended by the heads and the Commission president were for the first time acknowledged as a European Council working method in a statement annexed to the June 2002 Seville European Council conclusions. It stated that European Council meetings were to be split into two parts – one for so-called restricted discussions and one for joint debates of the heads and the foreign ministers.¹⁸ Concern about the effective functioning of the European Council and the Council, including

worries about the fact that debates among member state representatives sometimes lacked sufficient focus, had for the first time been formally aired by a background report on European Council and Council reform that was annexed to the December 1999 Helsinki European Council conclusions (European Council 1999, Annex III). The document quoted enlargement but also, quite importantly, “the wider scope of the Union’s action” (ibid.: 6) as the main sources of reform pressure.

Moreover, European Council debates are strictly confidential. The discussions are only attended by the heads themselves and no advisers are allowed into the room. Only for some part of the sessions – which normally involve the exchange of views with the president of the European Parliament – one senior diplomat per member state is allowed to follow the proceedings via headphones in a separate room and to take notes. Normally all important policy debates, for which a frank exchange of views is essential, and difficult negotiations take place under a further tightened confidential scheme, which ensures that nobody except the heads has access to the discussion.¹⁹

Second, it is worth noting when and under what circumstances European Council meetings are convened. Traditionally, European Council meetings were prepared by the rotating presidency long in advance as they were considered to constitute focal points of the respective presidency. This pattern is compatible with the notion of the European Council being an institution dealing with long-term planning. What is remarkable is that in the analysed period of the last two decades of European Council activity altogether 15 meetings were convened less than one month in advance. A further three meetings were announced less than three months in advance. The practice of convening such ad hoc meetings started to emerge in the second half of the 1990s. The majority of these meetings are related to economic and foreign affairs crisis situations. The occurrence of such meetings is event driven so that for some calendar years no such meetings are detectable while during other years several of them may occur – sometimes in quick succession. For example, starting in 2008, the economic and financial crisis triggered a whole

¹⁷ Cf. Article 15.2, TEU Lisbon. See for the previous definition of European Council membership Article 4, TEU Nice.

¹⁸ Annex to the European Council (2002) conclusions, para. 6 and 10.

¹⁹ Anonymous interview as referred to in fn. 9 carried out on 4 March 2013.

series of such meetings over a period of about three and a half years. This practice reveals a new flexibility in European Council agenda setting. Managing the new areas of EU activity such as economic governance and foreign affairs is at times incompatible with a too rigid and highly formal approach to agenda planning. External events and unforeseen crisis situations necessitate swift consensus-building efforts among the heads without which the EU is unable to act.

This new practice also largely explains the adoption of new European Council procedures and decisions to improve the logistical infrastructure for European Council meetings. As highlighted above, another institutional strategy to respond to the fact that the European Council agenda is becoming more event driven is to plan for more regular European Council meetings. Effectively, this has already been the case in the past three years as the European Council president has reacted to the increased base workload of the institution by scheduling more regular European Council meetings. It is again a phenomenon associated with European Council decision-making in the post-Maastricht era that the agenda of regular European Council meetings is almost always subject to last-minute changes due to unforeseen policy developments to which the heads want to react.

This leads to the discussion of the creation of the office of a full-time European Council president by the Lisbon Treaty as the third and final example of institutional engineering aimed at improving the consensus generation capacity of the European Council as a forum for top-level policy dialogue among the EU's main political leaders. The idea initially received mixed reactions as smaller member states feared an attempt by bigger member states to control the European Council by installing a president of their liking instead of having to deal with rotating presidencies from mostly smaller member states.²⁰ In relation to the appointment of the first European Council president, there were also discussions about the lack of ambition with regard to using the permanent presidency to assert EU demands more forcefully in the international arena.

The first years of Herman Van Rompuy's presidency, however, revealed the relevance of the new office for the internal functioning of the European Council. When it came to public statements and external representation functions, the typically soft-spoken former Belgian prime minister became a key facilitator of consensus formation among the heads through his role in pre-coordinating European Council discussions and through structuring and adjusting the work of the European Council itself.²¹ This applies especially to the areas of economic governance and foreign affairs as the main domains of European Council activity.²² For example, the European Council president uses his agenda-setting powers to convene regular orientation debates on key issues of strategic importance to the EU in order to strengthen awareness among the heads and to facilitate the convergence of views over a long period of time. In the last two years, Van Rompuy especially sought to refocus attention on foreign policy issues – a domain that did not receive enough attention from the heads during the peak period of economic crisis management.²³ The president also seeks to schedule so-called single-issue or special summit meetings to focus discussion on topics that require more attention and further strategic development. During such meetings the aim is to reserve as much time as possible for one priority topic and to keep other discussions to a minimum. The European Council meeting on energy policy of May 22, 2013 may serve as an example for this approach.

5 Conclusions and implications for EU development

In the post-Maastricht era the European Council has developed into the new centre of EU politics. This is mainly due to its role in leading policy coordination processes in those new areas of EU activity that were constituted by the Maastricht Treaty and by subsequent treaties and that are developed partially or fully outside the classic community method. Data on European Council agenda composition covering the last two decades very clearly shows the surge in importance of the new areas of EU activity for European Council deliberations. In particular, economic governance and

²⁰ Cf. Crum (2009: 686) and Tallberg (2006: 225).

²¹ Anonymous interviews as referenced above.

²² Van Rompuy himself declared early on in his first mandate that the internal development of the European Council as a forum for fostering agreement on policy decisions in these two domains was his priority. See Herman Van Rompuy (2010).

²³ Anonymous interviews as referenced above.

foreign policy have become the dominant agenda items of European Council discussion. Together with the other new areas of EU activity they account for nearly two-thirds of the overall activity of the top-level forum. This also explains the increased frequency of European Council meetings. The body now meets almost as often as some of the most senior Council formations. These findings do not suggest that increased European Council intervention implies a standstill or decrease in integration efforts. It is rather the growing importance of policy coordination in domains such as economic governance and foreign policy that has triggered a more prominent role for the European Council.

The analysis presented here is compatible with earlier accounts on the systemic role of the European Council in EU politics as an institution charged with rallying vital top-level consensus without which the Union cannot function. Yet, the analytical framework of deliberative intergovernmentalism (Puetter 2012), on which this analysis is based, starts from the particular policymaking role that the European Council assumes in the post-Maastricht era and that is informed by the integration paradox as defined in section 2.1. As Europe's top decision-makers seek to reconcile their rejection of new formal transfers of ultimate decision-making powers to the supranational level – notably to the Commission under the classic community method – with their conviction that only collective EU responses can address major challenges in contemporary public policymaking, the European Council becomes the central venue for directing processes of intensified policy coordination. European Council deliberations thus have far-reaching implications for domestic politics. It is this changed agenda of European Council decision-making that also explains reinforced processes of institutional engineering that are aimed at improving the capacity of the forum to stimulate personal agreement among the heads as well as the Commission president and the High Representative. The changed participation regime and the introduction of the office of a full-time European Council president are particularly relevant in this regard.

5.1 The Commission and the community method

The above analysis of the changing role of the European Council in EU decision-making invites a number of further reflections on the repercussions for inter-institutional relations with other EU bodies, the EU's wider institutional architecture and the path of

European integration. An obvious question is how the growing importance of the European Council impacts on the role of the European Commission. The immediate answer is that it does so negatively. It is hard to ignore the fact that the European Council increasingly seizes policy initiative and intervenes in major decision-making in areas such as economic governance and foreign policy. Yet, it would be wrong to interpret the relation between the European Council and the Commission as an ongoing struggle for influence. The present analysis has tried to demonstrate that the new role of the European Council is rather the consequence of major structural decisions at Maastricht and beyond with regard to the development of major new areas of EU activity outside the classic community method. Scepticism on the part of member state executives towards a strong role of the Commission in EU politics indeed pre-dates the Maastricht Treaty discussion.

There is little evidence that the European Council orchestrates such scepticism so as to advance its own position. It rather seizes the political space that was created for it in Maastricht and beyond. Such a view could be further sustained by looking more closely at the contemporary practice of Commission and European Council cooperation. Though such an analysis is well beyond the scope of this paper, it should be noted that since the late 1990s, with the rise of the new areas of EU activity, numerous internal Commission processes have been launched that effectively cater to European Council decision-making either because the Commission replies to specific requests by the European Council or provides support to European Council decision-making through background analysis and reports. Especially in the areas of economic governance and foreign policy, the Commission has become an actor besides rather than above the member state executives that commands some of the relevant resources for policy development and implementation. The integration of such resources into collective policymaking efforts constitutes a core aspect of European Council coordination activity. As a member of the European Council, the Commission president commits himself and his own administration as much as this applies to the other members of the forum.

A directly related question concerns the fate of the classic community method. The answer is very similar. There is little doubt that the new intergovernmentalism in EU politics, which is embodied in the lead role of the European Council, impacts negatively on the relative

importance of community method decision-making in EU politics. Yet, it was argued above that the new role of the European Council essentially reflects the emergence of new areas of EU activity at Maastricht and beyond that were developed outside the classic community method. This move did not imply rolling back previously established domains of community method decision-making.²⁴ There is indeed little evidence that European Council activity is particularly focused on interfering with existing domains of legislative decision-making under the community method. The analysis of the European Council agenda in section 3.1 rather showed that this is an issue of minor importance if compared to the bulk of other European Council activity. An exception may be legislative activity that is closely related to one of the new areas of EU activity. The field of justice and home affairs serves as a case in point. In this domain the Treaty links the introduction of new legislative competences to the assignment of supervisory competences by the European Council. Financial regulation and banking supervision in the wake of the financial and economic crisis may be quoted as another example. Yet, in both cases this would rather strengthen the argument put forward throughout this paper that the emergence of the new areas of EU activity is the main trigger for the expanding role of the European Council in EU policymaking.

5.2 Power and influence in the European Council

The question of relative influence over European Council decision-making did not constitute part of the core research on which this analysis is based. This issue has been systematically addressed elsewhere (cf. Tallberg 2007). What can be said, however, is that it would be wrong to understand the new role of the European Council in EU decision-making predominantly as an attempt by bigger member states to dominate EU decision-making by means of further intergovernmentalisation of EU politics. Rather deliberative intergovernmentalism as an analytical framework (see section 2.1) points to the systemic features of post-Maastricht EU decision-making

that imply a quest for ongoing consensus generation around policy coordination processes among the EU's most senior decision-makers. Against this background, the observation that large EU member states such as Germany and France seek to heavily influence European Council decision-making should come as no surprise. Similarly, the introduction of the office of a full-time European Council president can be explained by the changes in the systemic role of the European Council in EU decision-making. The Lisbon Treaty indeed grants the European Council president important agenda-setting powers. Yet, evidence from the first two terms of the presidency of Herman Van Rompuy (see section 4) suggests that these powers are used to further develop the particular consensus generation function of the top-level forum in the two most important new areas of EU activity – economic governance and foreign policy – rather than to advance a particular policy stance.

5.3 Democratic control

Finally, the new role of the European Council in EU decision-making triggers the question of how to ensure democratic control. Somewhat ironically, the growing attention that heads of state and government devote to European Council proceedings is a reaction to the repercussions that EU-level policy coordination has for domestic politics. The EU's responses to the economic and financial crisis showed this quite clearly. The concentration on resolving some of the most difficult policy decisions in contemporary EU governance within the context of confidential face-to-face discussions runs counter to calls for increasing the transparency of EU decision-making.²⁵ The problem of transparency translates into a bigger problem of democratic control given the consequences European Council decisions have for Europe's citizens. For example, the European Council's decisions in the field of economic governance may have redistributive implications. They directly and indirectly impact on member states' ability to operate, for example, social security systems. In a recent contribution, Mark Dawson and Floris de Witte (2013) highlight this dimension of European Council decision-making and warn that the institutional constellation in EU politics that is emerging after the euro crisis with the

²⁴ Renaud Dehousse (2010) and associates do not find evidence of declining EU legislative activity since the early 2000s.

²⁵ For example, the European Council safely escaped reforms to increase the transparency of Council decision-making by making public the minutes of formal Council meetings and televising debates about legislative decisions. That these transparency rules are habitually diluted by the practice of holding important Council discussions outside the context of the formal part of Council sessions is another matter for discussion.

European Council at its centre may further weaken “the EU’s ability to be politically responsive” (ibid.: 842). Emphasis on consensus formation among top-level member state and Commission decision-makers, which is a core feature of the EU’s new intergovernmentalism (see section 2.1), not only implies the proliferation of particular institutional mechanisms and working methods aimed at facilitating agreement in confidential face-to-face discussions; such practice also constitutes a challenge to the idea of a competition of opposing policy ideas in an open political arena. This is all but a novel problem in EU politics. The analysis of contemporary European Council decision-making, however, shows that the European Council’s central role in governing the new areas of EU activity adds a new dimension to this problem. Alternatively, it could be argued that the new centrality of the European Council in EU decision-making and the body’s visibility in the current media coverage on EU affairs rather reinforce politicisation around European issues at member state level. What seems to be clear is that tensions are emerging in respect to both of the above scenarios. It is difficult to see how these tensions may lead to further institutional changes both at the supranational and member state level.

An interesting role is played by the European Parliament in this regard. Next to the European Council it may be considered the other main institutional actor that gained most from post-Maastricht EU institutional reforms. Some of the rhetoric of leading parliamentarians used in reaction to the growing importance of the European Council in EU decision-making suggests that the main cure for the lack of democratic control is still seen in the application of the community method across all domains of EU decision-making. Yet, the European Parliament has been quite inventive in using publicity and indirect influence to influence European Council decision-making. Its very strong role in the domain of legislative decision-making helps these efforts. Also, the new office of the full-time European Council president can be considered as another access point for the European Parliament that allows for informal negotiation with the European Council. Whether the latter practice increases or decreases democratic control, as can be equally suspected of undermining transparency, remains a matter for debate. At present, it is at the national level where many parliaments still struggle with adjusting to the new prominence of the European Council in EU decision-making. While some member states institutionalised reinforced scrutiny procedures, others did not.

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