Is the European Council fit to govern?

Conditions for Acting as an Ultimate Decision Maker

Points of Discussion

- European Council as ultimate decision maker
  – claims and evidence
- Driving and blocking forces and factors
  – a checklist for success
- Improving the fitness: institutional reforms

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1. Introduction: puzzling claims and observations: the leadership of the European Council as ultimate decision maker

In contrast to the letters of the Treaty (Box 1, Art. 15(1) TEU) we observe that all generations of national leaders have – since 1975 – used the European Council to act as ultimate decision makers.

Box 1: Article 15(1) TEU

Article 15 (1) TEU
1. The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.

Following this observation and notwithstanding the concrete wording of the primary law politicians and academics alike characterise the European Council as

- 'supreme political institution' (Giscard d'Estaing as cited in Norman, 2003: 224)
- 'supreme political authority of the EU' (Hayes-Renshaw and Wallace, 2006: 173)
- 'single decision-making centre' (Tindemans, 1975: 14)
- 'informal centre of the big, strategic decisions' (Van Rompuy, 2010b: 4)
- 'provisional European Government' (Monnet, 1976: 592)
- 'European government' (Fischer, 2000, see also Gillissen, 2011)
- 'institutionalization of power at the heart of the European polity' (Foret and Rittelmeyer, 2014: 2–3)
- 'highest decision-making body' (Van Middelaar, 2013: 23)
- 'principal decision-maker' (De Schoutheete and Micossi, 2013: 1)
- 'the highest power centre within the Union' (Zielonka, 2006: 59)
- 'overall political leadership on all EU affairs' (Piris, 2010: 208)
- 'new centre of gravity' (Puetter, 2014: 68)
- 'top executive power' (De Schoutheete and Micossi, 2013: 6)
- 'the political executive of the Union' (Fabrini 2013: 1006)
- significant actor in a 'post democratic executive federalism' (Habermas, 2012: 12).

If we make use of assumptions from the 'liberal intergovernmentalist' approach (see especially Moravcsik and Schimmelfennig, 2009: 67), we can perceive governmental heads as the key actors who 'formulate a consistent set of national preferences', who bargain with one another in order to reach 'substantive agreements' and who finally 'choose to delegate and pool sovereignty in international institutions that secure the substantive agreements they have made' (Moravcsik, 1998: 20). Using a similar line of arguments the European Council is also characterised as the 'political centre of new intergovernmentalism' (Puetter, 2014: 62).

Conventional wisdom about the attitudes and behaviour of the European Council members would expect a series of internal fights and deadlocks which would destroy the weight and impact of this key institution and which would consequently reduce the interest and engagement of top national leaders in contributing actively to the European Council's success. Traditional views would expect a vicious cycle involving limited or no success, leading to a downgrading of engagement which in return would lead to an even poorer performance by the European Council. Contrary to such conventional wisdom, we argue that there is a surprising dynamism within the European Council. In line with this, we propose a counter-intuitive view that claims to observe a virtuous circle of success breeding success.

National leaders are faced with the dilemma between a problem solving instinct and a sovereignty reflex. In the former they seek EU institutions and the EU level to deal with challenges for their nation states. In contrast, out of the latter sovereignty reflex they aim at keeping national autonomy (as documented again in the fight against terrorism). Under specific conditions national leaders, as ultimate decision makers, have found complex solutions via the European Council (see for a related line of arguments Fabrini, 2013).

Following such an approach, it is of high importance to analyse the factors and forces for the European Council to govern efficiently and effectively. Which is the recipe to get to productive decisions?

2. Empirical Evidence: Observations over the last four decades

2.1 Framing and agreeing on Treaty revisions

Looking at the historical record the European Council has taken up the role of constitutional architect. The institution has provided the opportunity for several generations of national leaders to serve as 'treaty negotiators' (De Schoutheete, 2012a; Christiansen and Reh, 2009). Claiming to be 'the driving wheels of the European construction' (Paris, October 1972), the highest political representatives of the 'masters of the Treaties' (BVerfG, 2009: para. 150) have used the European Council to exercise a range of functions associated with convening and concluding an IGC and monitoring the ratification of treaty revisions. The Lisbon TEU has formulated into the treaty provisions (Art. 48 TEU) some of the functions that the European Council had already been exercising ever since its creation.

Figure 1: European Council and Treaty-Making: Main Agreements 1985–2013

Year and Place	Topic and entry into force
December 1985 Luxembourg	1987 Single European Act
February 1992 Maastricht	1993 (Maastricht) Treaty on European Union
October 1997 Amsterdam	1999 (Amsterdam) Treaty on European Union
December 2000 Nice	2003 (Nice) Treaty on European Union
December 2001 Laeken June 2004 Dublin October 2004 Rome	Treaty Establishing a Constitution for Europe (failed in 2005)
June and December 2007 Brussels	2009 (Lisbon) TEU and TFEU
December 2010 Brussels	Amendment of Art.136 TFEU
February 2012 Brussels	2012 Treaty Establishing the European Stability Mechanism (ESM)
March 2012 Brussels	2013 Treaty on Stability, Coordination and Governance (TSCG)

Source: Wessels (2016): 164.

One remarkable feature is that as constitutional architect the European Council has not shifted the institutional balance in a clear intergovernmental direction as, nor is there a clear shift towards 'communitarisation'. Instead, from a medium-term perspective, a significant shift towards a mixture of power-sharing and rivalry reflecting trends of horizontal and vertical fusion can be observed.

Figure 2: Trends in the Procedural Provisions of Treaty articles, 1952–2009
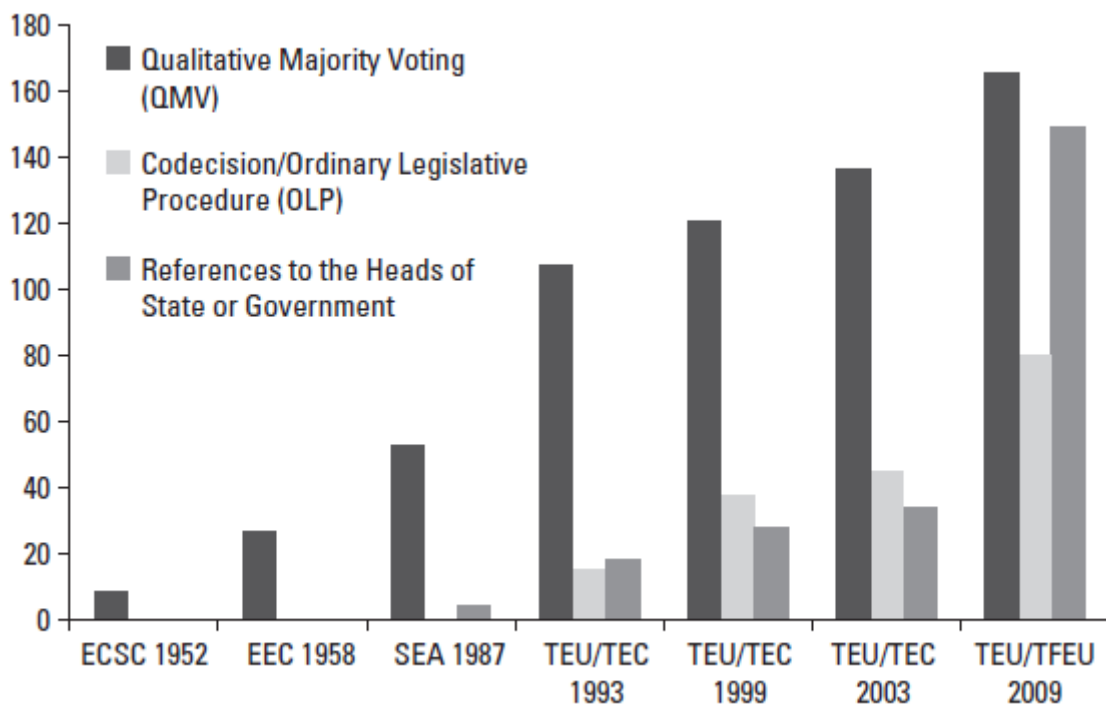

Source: Wessels (2016): 88.

2.2 .A reinforced leadership as crisis manager

Looking at the historical record, the European Council on several occasions acted as crisis manager – e.g. when dealing with the consequences of German unification 1989/1990. One indicator of such a performance is the number of extraordinary meetings (see Figure 3).

Figure 3: Number of extraordinary meetings of the European Council and Euro Summit dealing with crisis management since 2005[1]
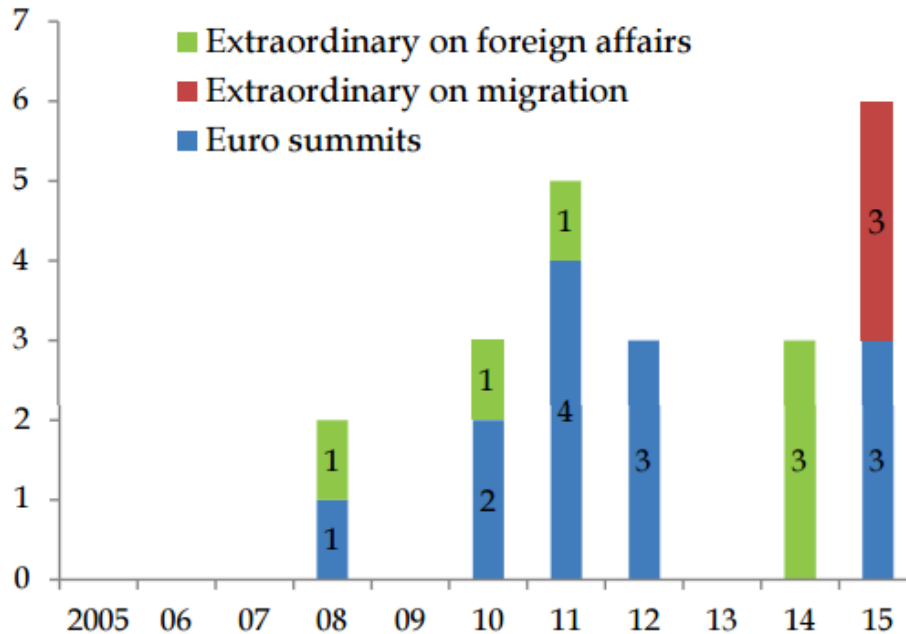
Source: Anghel, / Drachenberg and de Finance (2016): 4.

Facing the financial and economic shocks from 2008 onwards and the subsequent sovereign debt turbulences, the role of a crisis manager has become one of the main features of the institution's profile. In the crisis years, '[s]afeguarding the eurozone's financial stability was … the overriding objective' (Van Rompuy, 2012a: 6). Via the European Council, the EU's national leaders showed a high degree of personal commitment to tackling the dramatic turbulences through coordinated activities. The European Council, and increasingly the Euro Summit, met with unprecedented frequency during the crisis years 2010–2012 (see Figure 4). These summits at the highest level served its members – often also including the President of the European Central Bank (ECB) – as the key arena in which to react to the serious challenges posed by the unravelling of worsening economic conditions (see Van Rompuy, 2014: 16–38). As an unintended consequence of earlier acts of treaty-making, the members of the European Council were forced to take decisions reaching, in both scope and depth, far beyond the conventional concepts and doctrines of European economic policies before the crisis.

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[1] 3 Libya and Syria were also considered in two out of three extraordinary meetings on migration in 2015.

3. Analysing the recipe for fitness: of driving and blocking forces and factors

For analysing the conditions which lead to an efficient and effective decision making we offer a checklist of factors and forces which are conducive for achieving a consensus (see Figure 4). With limited variations such a checklist could also be used for testing the success rate for treaty revision.

Figure 4: EU crises – Checklist for fitness to govern

	German Unification	Constitutional crisis	Sovereign debt and euro crisis	Foreign policy Crises	Refugee crisis
Facilitating Presidency	?	?	?	?	?
Package deals	?	?	?	?	?
Internal and external pressure	?	?	?	?	?
Power of smaller and larger states	?	?	?	?	?
Leadership	?	?	?	?	?
Esprit de Corps	?	?	?	?	?

Source: compiled by the author.

The factors of the vertical column are considered more precisely in the following.

Formal voting rules: keeping the national vetoes

Box 2: Article 235(1) TFEU

Article 235 (1) TFEU

1. Where a vote is taken, any member of the European Council may also act on behalf of not more than one other member.

Article 16(4) of the Treaty on European Union and Article 238(2) of this Treaty shall apply to the European Council when it is acting by a qualified majority. Where the European Council decides by vote, its President and the President of the Commission shall not take part in the vote.

Abstentions by members present in person or represented shall not prevent the adoption by the European Council of acts which require unanimity.

The facilitating role of the Presidency

There is a general consensus that the Presidency is supposed to play a set of crucial functions (see Box 3).

Box 3: Tasks and Functions of the Rotating Presidency

– Agenda setting (including priorities)
– Promoting initiatives
– Drafting clear and accurate conclusions
– Being an honest broker and mediator
– Being a business manager/ organiser/ administrator
– Undertaking external representation
– Undertaking (collective) representation
– Providing transformative and managerial leadership
– Representing national interests

Source: Compiled by the author (see Wessels (2016): 111: Based on Van Hecke and Bursens (2014); Foret and Rittelmeyer (2014a); CEPS et al. (2010); Schout (2008); Hayes-Renshaw and Wallace (2006); Schout and Vanhoonacker (2006); Shackleton (2006); Tallberg (2004); Three (Wise) Men Report (1979).

Box 4: Article 15 TEU

> **Article 15 (TEU)**
>
> (5) The European Council shall elect its President, by a 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 the President's term of office in accordance with the same procedure.
>
> (6) The President of the European Council:
>
> > (a) shall chair it and drive forward its work;
> > (b) shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;
> > (c) shall endeavour to facilitate cohesion and consensus within the European Council;
> > (d) shall present a report to the European Parliament after each of the meetings of the European Council.
>
> The President of the European Council shall, at his 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 powers of the High Representative of the Union for Foreign Affairs and Security Policy.
>
> The President of the European Council shall not hold a national office.

The first office-holder defined the demanding role of honest broker as follows:

> '[m]y aim is to involve everybody, to find compromises that respect the interests and sensitivities of each Member State, the prerogatives of the institutions, and also the interests of the Union as a whole' (Van Rompuy, 2012b: 5)

Comprehensive and concrete package deals: to create a win-win situation

One way of trying to understand the way consensus is formed is to look at the preparation and conclusion of 'big bargains' (Laffan, 2005: 474; Moravcsik, 1998: 1) which require comprehensive 'package deals' (see Werts, 2008: 30–31). For such bargains it is necessary to involve those policy-makers at the top of national hierarchies who are in a position to reach agreements that entail demands and concessions in a broad range of policy areas. Only the governmental heads have the authority and power to combine side payments and inter-sectorial linkages and thus to link together detailed decisions for several issues on the political agenda. In such a process of 'horse-trading' national leaders do not necessarily alter or reverse the pre-formulated preferences of their government, but they can aggregate and pool them in a laborious and time-consuming exchange in order to arrive at a win-win situation. This consensus building is based on the simple recognition inside the group that

members need to 'sell' the final agreement of the European Council to their domestic constituencies. So, given their esprit de corps, they share the recognition that the overall package needs to appear as a positive-sum game. Accordingly, the distribution of gains and losses must be framed in a way which will ultimately need to be acceptable to all national leaders.

The political context and the time factor: internal and external pressures

To study conditions of consensus formation we need to analyse the political context and the time factor: Looking at the context the pressure might be self-imposed – such as setting deadlines e.g. for accessions – or inflicted by (asymmetric) external shocks such as the refugee crisis.

In order to put pressure on themselves to reach agreement, the Heads of State or Government have often set deadlines by which to achieve a final agreement. The culmination of such a process is often referred to as a 'night of the long knives' (De Schoutheete, 2002: 41–43) or as the 'end-game' (Dyson and Featherstone, 1999: 245). In hectic and tiring sessions that often run into the night, members have to decide on compromise proposals linking several different items on the agenda. In these circumstances governmental heads have to adopt specific wordings without experts sitting next to them. Sometimes they have found consensus in a meaningless but face-saving formulation. Members have also had to find solutions during late night sessions in emergency cases involving external shocks. Thus, confronted with strong pressures from financial markets, they have negotiated rescue packages for the euro during weekends and into the early hours of the following day.

The power factor: of smaller and larger states

Beside the institutional and context factors we should look at the power factor. Of particular interest are the relations between large and small Member States, which may lead to a division into a restricted group of leaders in a directorate like club or network and a large group of followers. Contrary to conventional wisdom, we argue that the European Council serves the interests of smaller states: This body provides the political leaders of less powerful

states with the opportunity to have their voices heard and thus reduces any trends towards a directorate dominated by the larger members.

Although members from larger states bring more resources and leverage into negotiations, the distribution of influence is far more complex and subtle than this crude thesis of asymmetric power suggests. Moreover the group of larger countries that constitute a potential directorate does not automatically arrive at a coherent position which would lead to a 'cooperative hegemony' (see Pedersen, 2002).

Franco-German leadership: a benevolent Hegemony

Studying the impact of power of the Franco-German tandem and the potential power of Germany as a 'reluctant hegemon' (Bulmer and Paterson, 2013; see also Krotz and Schild, 2013) are highly relevant: In spite of deep and ongoing controversies over significant issues of system- and policy-making over the whole life of the European Council, there has consistently been a deep-rooted instinct in both Berlin and Paris to reach a satisfactory accord at the end of any long drawn out and intense dispute. The more important and disruptive the issue, the stronger has been the potential pressure to cooperate. Both capitals usually aim at a compromise in bilateral meetings before and during the sessions of the European Council (Krotz and Schild, 2013: 240–241). From the perspective of other members, the consensus between the conflicting interests of the two countries seems to have been useful because their own preferences have lain somewhere between the two positions and thus their own interests were not violated. In many circumstances an agreement between the two members has been regarded by their partners as highly desirable and necessary (see Van Rompuy, 2014: 118–119).

However, the power relations between the two countries have changed, with a 'bilateral asymmetry' having grown over decades and particularly during the crisis years since 2009 (Krotz and Schild, 2013: 244–245). Looking at the economic situation of the countries involved, the issue of Germany's 'reluctant hegemony' has become a controversial issue (The Economist, 2013; Paterson, 2011; Bulmer and Paterson, 2013). As a sign of her strong position, statements made by the German Chancellor have been awarded special attention in the deliberations of the European Council, in particular when the stabilisation of the eurozone was on the agenda. As with Chancellor Kohl before her, Merkel was also to the fore

in promoting compromises on a broad range of issues. Some voices in Brussels even characterise her role and influence as a *primus inter pares.* Such leadership role has been put to test when dealing with the refugee crisis.

Esprit de Corps and limits of collegiality

It is of considerable interest to see whether generations of members have developed some kind of esprit de corps which helps political leaders to work together. For example, the first permanent president has on several occasions mentioned an 'attitude of compromise' (Van Rompuy, 2014: 113–116).

4. Improving the fitness – Which institutional strategy to follow

To improve the performance of the European Council we should discuss strategies to pursue institutional reforms.

Strengthening the Presidency

One strategy of enforcing the role of the permanent presidency is the possibility of giving one office-holder a 'big double hat', by combining the offices of the President of the Commission and the European Council (De Schoutheete and Micossi, 2013: 5). In this way the office holder would turn into a Monsieur l'Europe, a real leader dominating the body which he is chairing and raising major objections by the national leaders.

Differentiation in membership

One way to make the European Council more efficient is to extend the experiences of the Euro Summit: i.e. to reduce the number of participants to those who take obligations and keep the 'opt outs' out. A radical reform would be to keep the membership just to the big players, the mighty few. This 'directoire' then takes decisions that are universally binding even for those not present.

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Reinforcing the European Council – experimental considerations

Going beyond adaptions compatible with the Lisbon treaty we might discuss – as a thought experiment – revisions in the existing treaties, which would strengthen the power of the European Council. The President of the Convention on the Future of Europe, Valéry Giscard d'Estaing, one of the founding fathers of the European Council, submitted in the last phase of the Convention a draft institutional proposal with far-reaching suggestions for both the European Council and its chair (Giscard d'Estaing as cited in Norman, 2003: 344–349; see also Craig 2011). His proposal placed the European Council at the apex of the institutional architecture as the 'highest authority', which was to 'maintain oversight of the unity, consistency and efficiency of union action' (Art.15 (4) of the Draft).

One of his radical reforms suggests a new form of team Presidency. This 'European Council board', with a Vice President and additional members of the European Council as well as the Presidents of relevant Council formations, was intended to 'ensure the continuity' in the Council's work (Art.15a(4) of the draft). of the President and Vice-President (Art. 15a(3)of the Draft). Such a core group would have led to a quasi-collective government by and for member governments and would thus clearly have downgraded the role and position of the Commission. The proposals by Giscard d'Estaing were generally perceived as reinforcing the intergovernmental direction of the EU's institutional architecture.

Box 6: Giscard d'Estaing's Draft Institutional Proposals, Article 15: The European Council

Article 15a

1. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. **The person elected must be, or have been for at least two years, a member of the European Council.**

On issues concerning its common foreign and security policy he shall ensure that the Union at his level is effectively represented in the wider world.

2. The President of the European Council shall prepare, chair and drive its work ensuring continuity. **He shall give an annual report on the state of the Union to a Congress of representatives of the European Parliament and national Parliaments, and participate in its subsequent debate.** He shall be assisted by a Vice-President, elected for the same term and by the same procedure. The President and Vice-President of the European Union may not be members of another European Institution.

3. **The European Council may decide by unanimity, that its President and Vice-President shall be elected by the Congress.** In this case, the provisions of Article X, paragraph 7 of the Title VI concerning the Congress shall apply.

4. **The European Council Board** shall consist of its President and Vice-President, two European Council members chosen in equal rotation, and the Presidents of those formations of the Council defined in Article 17a, paragraphs 3 and 4. The Board shall ensure continuity in the Council's work

The European Council Board may meet with the participation of the Presidents of the European Parliament and the Commission to ensure consistency across the whole range of Union activities.

Source: Valéry Giscard d'Estaing as cited in Norman, 2003: 343-349, accentuations by the author.

The factors considered above show that we should be careful not only to focus our considerations on institutional features. The checklist forces us to deal with conditions for fitness in a comprehensive and dynamic view.

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