

The European Council as constitutional architect and crisis manager

‘Brexit’ as case study of a summit’s course

Points of Discussion

- The European Council’s multiple tasks as constitutional architect and crisis manager
- The negotiations before and at summits
- Negotiation and results: the new settlement for the UK
- ...

Dossier on the basis of: Wessels, Wolfgang (2016): The European Council, Palgrave Macmillan.

Compiled by Linda Dieke

April 2016

1. Introduction: Functions of the European Council and the ‘Brexit summit’

The relevance of the European Council as a decision-maker in the real world of the EU system is illustrated by a broad and varied set of activities, agreements and acts. The Heads of State or Government as ‘constitutional architects’ are responsible for systemmaking in pursuit of ‘deepening and widening’ as well as for policymaking in core areas of economic governance, external action and the area of freedom, security and justice. Besides pursuing its regular activities, the European Council has also on several occasions acted as crisis manager. Facing the financial and economic shocks from 2008 onwards and the subsequent sovereign debt turbulences that erupted in 2010, this role has become one of the main features of the institution’s profile. Via the European Council, the EU’s national leaders showed a high degree of personal commitment to tackling turbulences through coordinated activities.

The case of the United Kingdom (UK) possibly leaving the EU also represents a crisis for the Union’s current common action. A referendum of the British citizens in June 2016 will decide on the country’s stay or exit. This poses obstacles to further common EU policies, e.g. in the migration crisis, as a ‘provocation’ of UK voters shall be avoided. Most EU members perceive a ‘Brexit’ as considerable threat for the Union’s economy and integration.

2. The European Council as constitutional architect

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’ (German Federal Court of Justice, 2009: para. 150) have used the European Council to exercise a range of functions associated with convening and concluding an Intergovernmental Conference 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) |

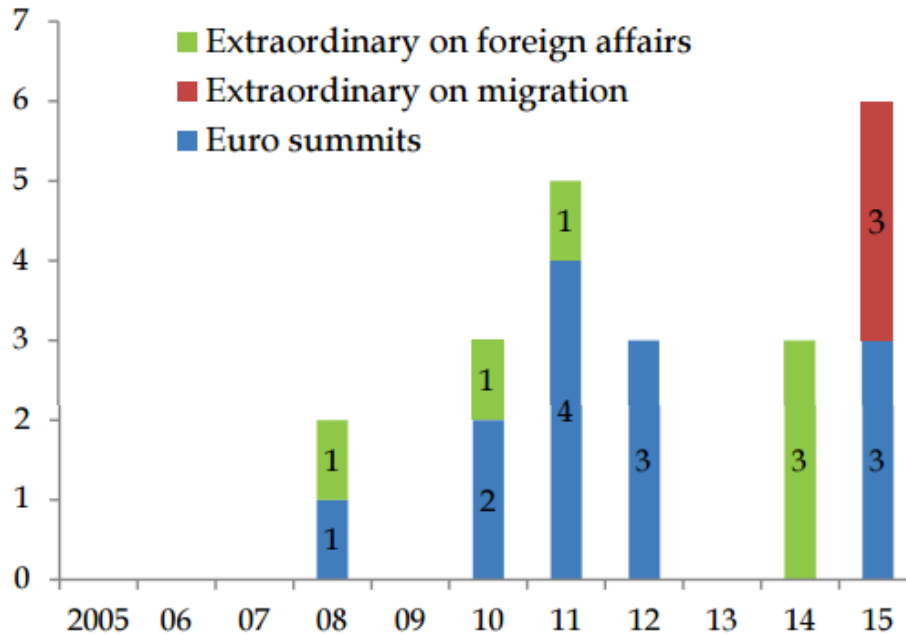
Source: *Wessels (2016): 164.*

3. 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 2).

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). The European Council, and increasingly the Euro Summit, met with unprecedented frequency during the crisis years 2010–2012.

Figure 2: Number of extraordinary meetings of the European Council and Euro Summit dealing with crisis management since 2005¹



Source: Anghel, / Drachenberg and de Finance (2016): 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.

The ‘Brexit’ is another case where the Heads of State or Government had to look for unconventional concepts. On the basis of Art. 50 TEU (see Figure 3), the European Council, which ‘shall define the general political directions’ of the Union (Art. 15(1) TEU), is the responsible institution:

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

Figure 3: Art. 50 TEU- Withdrawal from the European Union

| |
|--|
| <p>Article 50</p> <p>1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.</p> <p>2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.</p> |
|--|

2. The ‘Brexit summit’s’ course – negotiations before and at the meeting

The management of this development, which admittedly allowed more time in planning than some other external or economic crisis, is an interesting case study of how the European Council works both as constitutional architect and as crisis manager. The following timeline (see Figure 4) provides an overview of the events from June 2015, when UK Prime Minister David Cameron set out his plans for a referendum, to February 2016, when the Heads of State and Government decided on a new settlement for the UK in the EU to prevent a negative result of the June referendum. Commission President Juncker has mostly accompanied Tusk to the meetings.

Figure 4: Timeline of the new settlement for the UK in the EU

| | |
|-----------------------------|---|
| 25-26 June 2015 | <p>European Council UK Prime Minister, David Cameron, set out his plans for an (in/out) referendum in the UK. The European Council agreed to revert to the matter in December. Ahead of the meeting, President Tusk holds a bilateral meeting with Cameron.</p> |
| 24 September | <p>Bilateral meeting Following the informal meeting of EU leaders on 23 September 2015 on migration and refugees, Tusk and Cameron had a bilateral meeting to discuss the state of play on the UK in/out referendum.</p> |
| 15 October | <p>European Council The European Council was informed about the process ahead concerning the UK plans for an (in/out) referendum. Cameron indicated he will set-out the UK's specific concerns in writing by early November. The European Council decided to revert to the matter in December.</p> |
| 10 November – 7 December | <p>Letter by PM Cameron to President Tusk On 10 November 2015, in a letter to Tusk Cameron set out the four areas where he is seeking reforms.</p> <p>Letter by President Tusk to the European Council On 7 December, Tusk addressed a letter to the European Council on the issue of the UK in/out referendum and the concerns of the British people over UK membership of the European Union: "All in all it is my assessment that so far we have made good progress.</p> |

17 December

We need some more time to sort out the precise drafting on all of these issues, including the exact legal form the final deal will take. We also have to overcome the substantial political differences that we still have on the issue of social benefits and free movement." He also announced a timeline for decision: "The December European Council should address all the political dilemmas related to this process. Based on a substantive political discussion we should be able to prepare a concrete proposal to be finally adopted in February."

European Council

The December European Council debated the UK plans for the in/out referendum and agreed to find solutions in all the four areas of concern (economic governance, competitiveness, sovereignty, social benefits and the free movement of persons) at their February meeting.

In his remarks following the debate on the UK issue, Tusk announced that he will keep on working closely with Cameron and the European Commission to draft a proposal in the run-up to the February European Council.

2 February 2016

Towards a new deal for the UK in the EU

President Tusk put forward a proposal for a new settlement addressing all the concerns raised by Prime Minister Cameron.

This was the basis to negotiate a compromise with all 28 member states and to reach an agreement at the European Council on 18-19 February.

Intense consultations

➤ **With Prime Minister David Cameron**

Discussions on the deal continued at all levels. President Tusk met again with Prime Minister Cameron in the margins of a conference on Syria, in London on 4 February and they spoke on the phone on 15 February.

➤ **With the envoys (sherpas) and permanent representatives of all 28 member states**

Meetings also took place between Tusk's team and the envoys (sherpas) and permanent representatives of all 28 member states on 5 and 11 February. They discussed the details of the proposal in order to seek to reach an agreement among all member states at the February European Council.

2-18 February

A meeting was held on 12 February between President Tusk and the EP's representatives, Guy Verhofstadt, Elmar Brok and Roberto Gualtieri

➤ **With the European Parliament (EP)**

A meeting was held on 8 February between President Tusk's negotiating team and the EP's representatives, Guy Verhofstadt, Elmar Brok and Roberto Gualtieri. President Tusk also spoke with President Schulz on 10 February and met the three representatives on 12 February.

➤ **With other EU leaders**

As of 12 February, President Tusk has also been meeting several other EU leaders (Belgium, France, Germany, Greece, Romania and Czech Republic, who holds the presidency of the Visegrad Group).

The aim of his consultations was to secure a broad political support for his proposal and find solutions to all unsolved issues.

18-19 February

European Council

Following intense negotiations, EU leaders achieved a deal which strengthens Britain's special status in the EU. It is a legally binding and irreversible decision by all 28 leaders.

Source: <http://www.consilium.europa.eu/en/policies/uk/2016-uk-settlement-process-timeline/>

3. Consensus building and the role of the permanent president: the confessional procedure

There is a general consensus that the Presidency of the European Council (Art. 15(5) TEU, see Figure 5) is supposed to play a set of crucial functions (see Figure 6).

Figure 5: 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.

Figure 6: 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):*

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)

Current European Council President Donald Tusk had indeed an extensive role during the negotiations with the member states regarding the new settlement of the UK. Bilateral meetings of President Tusk took place in order to build consensus among Member States.

Foto 1 and 2: President Tusk, Commission President Juncker and PM Cameron at the negotiation table



Source: <http://tvnewsroom.consilium.europa.eu/event/european-council-february-2016-day-2/european-council-bilateral-meetings-of-president-tusk-19-02-16#/gallery/0> ;

<http://www.efe.com/efe/english/portada/e-u-struggles-to-reach-agreement-with-london/50000260-2844514>

The president tries to propose comprehensive and concrete package deals to create a win-win situation for all Member States. Certainly, the political context and the time factor, e.g. through internal and external pressures influence the success of these efforts.

One of the President's most important negotiating devices is the so-called 'confessional procedure' (Hayes-Renshaw and Wallace, 2006: 150). When this occurs plenary sessions of the European Council are interrupted and under the direction of the President, those members with divergent interests are asked to gather for a separate meeting, within which consensus will be sought. The other members are not involved in these restricted consultations.

Foto 3: European Council President Donald Tusk's schedule until late night hours

A foto of a journalist shows the President's schedule on the summit days, which includes 8 meetings with PM David Cameron. Additionally, he met some HoSG, as Hollande, several times, because they had a representative function for certain areas of the new settlement.

Source: <http://www.politico.eu/wp-content/uploads/2016/02/TUSK-SCHEDULE.jpeg>

| | |
|---------------------|---------------------------------|
| 18/02/2016 | |
| 11:00 | PM Oreskovic |
| 15:00 | PM Cameron |
| 16:30 | PM Rutte |
| <i>After dinner</i> | |
| 2:45 | PM Cameron |
| 3:00 | President Hollande |
| 3:20 | PM Cameron |
| 3:50 | President Hollande |
| 4:05 | PM Sobotka |
| 4:36 | PM Michel |
| 5:10 | PM Cameron |
| 19/02/2016 | |
| 11:00 | PM Sobotka |
| 11:30 | President Hollande |
| 11:45 | PM Cameron |
| 12:10 | Federal Chancellor Faymann |
| 12:20 | Danish PM Rasmussen |
| 12:45 | Federal Chancellor Merkel |
| 13:05 | PM Renzi |
| 16:10 | President Hollande |
| 16:30 | President Hollande + PM Cameron |
| 16:45 | PM Cameron |
| 17:15 | PM Szydło |
| 18:20 | PM Cameron |
| 18:46 | PM Bettel |
| 19:35 | PM Szydło |
| 19:50 | PM Sobotka |
| 20:10 | President Schulz + 2 MEPs |
| <i>End at 21:00</i> | |
| 21:35 | Dinner starts |
| 22:30 | Deal done |

Foto 4: Media attention to summits and personal condition of Heads of State or Government: Some leaders had a good time during their breaks.

Employee of the famous Belgian Fries restaurant 'Maison d'Antoine' takes a selfie of himself with German Chancellor Angela Merkel when she orders fries for herself and her delegation



on the 19th at around 6pm. The restaurant is close to the Justus Lipsius building, where negotiations of the European Council take place until the Europa building is completed. European Council meetings usually generate high media attention.

Source: Bild Zeitung, 22. February 2016

4. Results: The new settlement for the UK

The result of the European Council meeting on 18-19 February is, as it is common, written down in the 'Conclusions'. The contents displayed in Figure 7 show that other regular topics on the European Council's 'state-like' agenda, as migration or the European Semester, only took a small part in this rather exceptional summit.

Figure 7: Contents of European Council Conclusions, 19 February 2016

| European Council Conclusions, 19 February 2016 |
|--|
| I. THE UNITED KINGDOM AND THE EUROPEAN UNION |
| II. MIGRATION |
| III. EXTERNAL RELATIONS |
| IV. EUROPEAN SEMESTER |
| ANNEX I. DECISION OF THE HEADS OF STATE OR GOVERNMENT, MEETING WITHIN THE EUROPEAN COUNCIL, CONCERNING A NEW SETTLEMENT FOR THE UNITED KINGDOM |
| WITHIN THE EUROPEAN UNION |
| SECTION A. ECONOMIC GOVERNANCE |
| SECTION B. COMPETITIVENESS |
| SECTION C. SOVEREIGNTY |
| SECTION D. SOCIAL BENEFITS AND FREE MOVEMENT |
| SECTION E. APPLICATION AND FINAL PROVISIONS |
| ANNEX II. STATEMENT ON SECTION A OF THE DECISION OF THE HEADS OF STATE OR GOVERNMENT, MEETING WITHIN THE EUROPEAN COUNCIL, CONCERNING A NEW SETTLEMENT FOR THE UNITED KINGDOM WITHIN THE EUROPEAN UNION |
| ANNEX III. EUROPEAN COUNCIL DECLARATION ON COMPETITIVENESS |
| ANNEX IV. DECLARATION OF THE EUROPEAN COMMISSION on a subsidiarity implementation mechanism and a burden reduction implementation mechanism |
| ANNEX V. DECLARATION OF THE EUROPEAN COMMISSION On the indexation of child benefits exported to a Member State other than that where the worker resides |
| ANNEX VI. DECLARATION OF THE EUROPEAN COMMISSION on the Safeguard Mechanism referred to in paragraph 2(b) of Section D of the Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union |
| ANNEX VII. DECLARATION OF THE EUROPEAN COMMISSION on issues related to the abuse of the right of free movement of persons |

The reform package being offered to the British public was considered as neither transformative nor trivial: However it is the largest single shift in a member state’s position within the EU. The changes help supplement the reforms which have already happened – notably the double majority for Eurozone ins and outs on EU banking rules – and the opt outs which the UK already has on the Euro and Schengen. Figure 8 contains four examples of decisions of the European Council.

Figure 8: Examples of decisions of the European Council to prevent the ‘Brexit’

| European Council Conclusions, 19 February 2016 |
|--|
| <p>Economic governance</p> <p>The European Council agreed on a set of principles which outline that <u>those outside the Eurozone/Banking Union should not be discriminated against, will not participate in Eurozone bailouts, can keep their own financial supervision/macro prudential regulation and will have visibility on all pertinent Eurozone talks.</u></p> <p>‘Ever closer Union’</p> <p>The deal sets out the various areas in which the UK already enjoys a semi-detached relationship inside the EU, as noted above. In light of these exceptions, it notes that “It is recognised that <u>the United Kingdom, in the light of the specific situation it has under the Treaties, is not committed to further political integration into the European Union</u>” and envisages that “The substance of this will be incorporated into the Treaties at the time of their next revision.”</p> <p>It adds that ever closer union does “not offer a legal basis for extending the scope” of the EU and that it is “therefore compatible with <u>different paths of integration</u>” and does “not compel all Member States to aim for a common destination”.</p> <p>Migration and access to welfare</p> <p>The package on migration contains <u>measures on benefits, the rights of non-EU family members, the right to refuse entry to EU migrants, and free movement rights for those countries that join the EU in the future. For example:</u></p> <p>The deal states that the <u>amounts paid in child benefit to children living in other EU countries can be limited</u> by indexing payments to the standard of living in the receiving country. This will apply to new arrivals straight away and will apply to EU citizens already in the UK from January 2020.</p> <p><u>All member states will be able to take advantage of this change to EU law.</u></p> <p>Red cards for national parliaments</p> <p>The deal includes a ‘Red Card’ which would allow 55% of the EU’s national parliaments (each member state gets the same voting weight) to object to draft legislation if the objection is submitted within 12 weeks. EU ministers agree to drop the legislation if the concerns of national parliaments are not met.</p> |

Source: Open Europe 21 February 2016

The settlement represents a significant movement considering that all Member States had to approve in the European Council. The reactions in UK to the settlement were mixed.

Whereas David Cameron took the EU deal he secured to Members of Parliament and made his case that Britain is better off staying in the EU, fellow Tory politician and media darling Boris Johnson, mayor of London, announced that “after a huge amount of heartache” he was backing the leave campaign.

The decision of British voters will be seen in the referendum called for 23 June.

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Against the background of the existing research and teaching gap concerning the European Council, SUMMIT aims to contribute to the promotion of European Union studies by providing the latest research-based knowledge of this key institution. The project seeks to disseminate research and teaching experience as well as in-depth knowledge of the European Council by addressing academia, the general public and the educational sector. Concretely and particularly, in the course of SUMMIT, the project team will produce online learning material, and organise various transnational seminars for Master students, a public roundtable series all over Europe and two conferences. The project’s

lifetime is from September 2015 to February 2017. For more information on and results of the project please visit the website: www.summit.uni-koeln.de or contact a member of the project team listed below.

Imprint

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Disclaimer

This project has been funded with support from the European Commission. This publication reflects the views of the authors only. The Commission cannot be held responsible for any use which may be made of the information contained therein.

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