The European Council and the European Parliament.
Rivals or Partners in the Institutional Architecture of the EU?

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Points of Discussion

- Sources of Legitimacy
- Three Models of EP-EUCO-Relations
- An Uneasy – Contested Relation
- Rivals and Partners

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Introduction: Two Opposing Poles in the Institutional Architecture

In the evolution the institutional architecture of the EU, the relations between the European Parliament and the European Council are of specific importance – for political actors as well as for academic observers. Both institutions represent opposing poles in the constitutional balance – with each institution claiming its own specific democratic legitimacy. As the election of the Spitzenkandidat for the Commission President has exemplified, both institutions are rivals but, following the treaty rules, have also to cooperate in key procedures in the policy- and system-making of the EU.

Over the last decades treaty revisions have strengthened both institutions (see Box 1).

Box 1: Trends in the Procedural Provisions of Treaty articles, 1952–2009
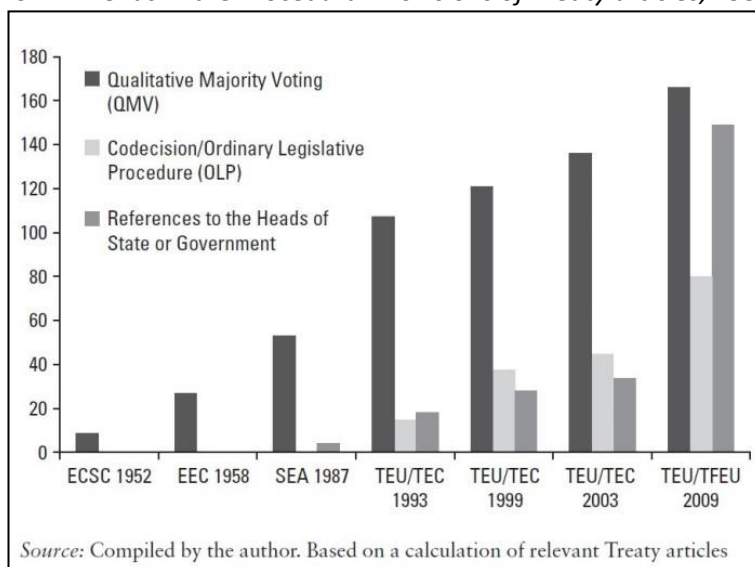
In political and academic debate we observe a high degree of contestation and controversy (see Box 2).

Box 2: Quotes concerning the relation between the European Council and the European Parliament

Defenders of the Community orthodoxy and European federalists claim that the 'European Council is worse than Papal Conclave' (**Duff**, 2013).

The present President of the European Parliament (EP) remarked that '[t]he plethora of summits … is severely diminishing the part played by the only directly elected Community institution, the political decisions taken by their leaders as nothing more than a series of dictates from Brussels' (**Schulz**, 2012).

The first permanent President of the European Council stressed the separation of power: he 'did not accept further formal commitments that would have exceeded the clear division of roles set out by the Treaty' (**Van Rompuy**, 2014: 125).

The European Parliament and the European Council in the Institutional Architecture: Three Models

The wording of the Lisbon TEU allocates distinct sources of legitimacy to these institutions (Art. 10 (1-2)); but either way they are based on representative democracy. In reflecting the tension between the supranational and intergovernmental dichotomy, both institutions are seen to occupy opposing positions, relying on 'different constitutional "lines of representation"' (Van Middelaar, 2013: 285).

Box 3: Article 10 TEU

Article 10 TEU

1. The functioning of the Union shall be founded on representative democracy.

2. Citizens are directly represented at Union level in the European Parliament.

Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

Both institutions are thus essential parts of the architecture of the EU. In the controversy about their respective roles and powers we find a differentiated set of views which can be summarized in three ideal type models.

Following the **Presidency Model**, the European Council, as it consists of the highest political representatives from the Member States, is the supreme authority of Europe. 'It is through intergovernmentalism that European integration develops' (Sarkozy, 2011). This perspective holds that the body of national leaders of sovereign states should not be subject to any legal constraints. Given the status of its members, the European Council would, therefore, be placed outside the treaty-based system of checks and balances, following the slogan 'Montesquieu did not make it to Brussels' (von Donat, 1987: 161). Notwithstanding the primary law's legal language, the European Council is held to be the key locus of power in the EU, exercising the prerogatives of leadership. As the institution set at the top of the institutional hierarchy of the EU's architecture, the European Council can be regarded in this model as the 'principal' (for the term see Pollack, 2003; Moravcsik, 1993; Kassim and Menon, 2003) vis-à-vis other institutions, which in turn serve as 'agents' of the political leaders, thus disposing merely of a derived form of legitimacy. The European Parliament – despite its

rival to the European Council. The assembly of parliamentarians just serves as a forum for exchanging positions which at the end are irrelevant for making vital decisions in and on the EU.

Box 4: The Presidency Model
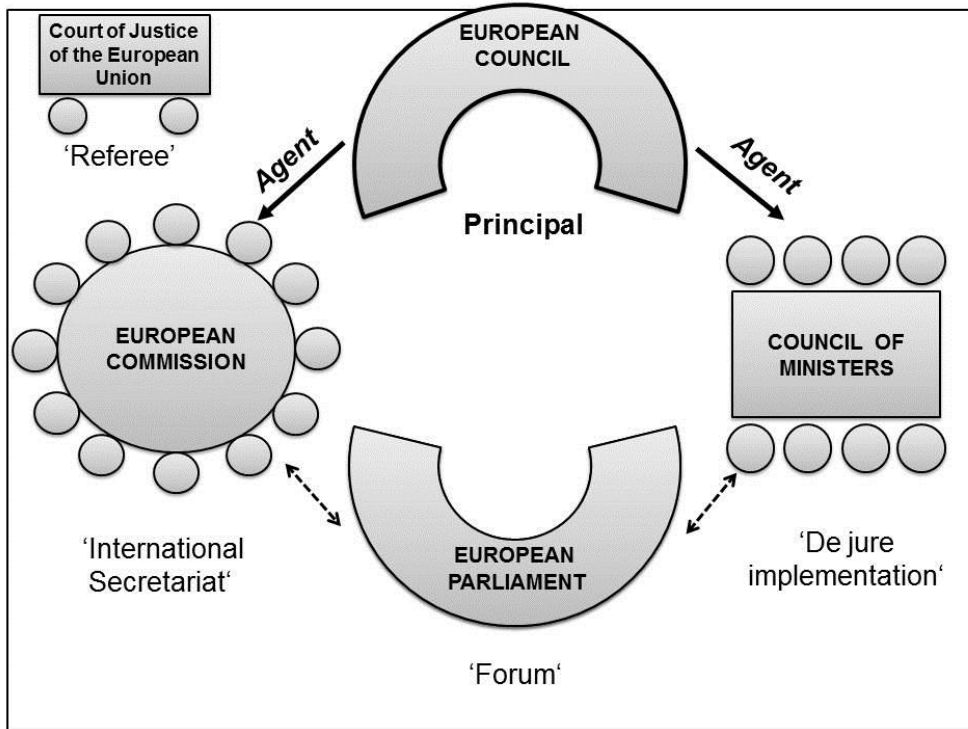
The **Council Model** starts from the concept that the Union's political leaders should not work in an institution of their own but use the institution created in the treaties for national governments: the Council of the European Union in the composition of the Heads of State or Government. One major function of such a 'Supreme Council' (Spinelli, 1972: 176) is then to 'ensure consistency'. The European Council, in this model, acts according to the relevant treaty rules which include using qualified majority voting. The European Council would be 'communitarised' and act with the European Parliament on an equal footing on all the issues for which the treaty provisions demand jointly exercised responsibilities.

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Box 5: The Council Model
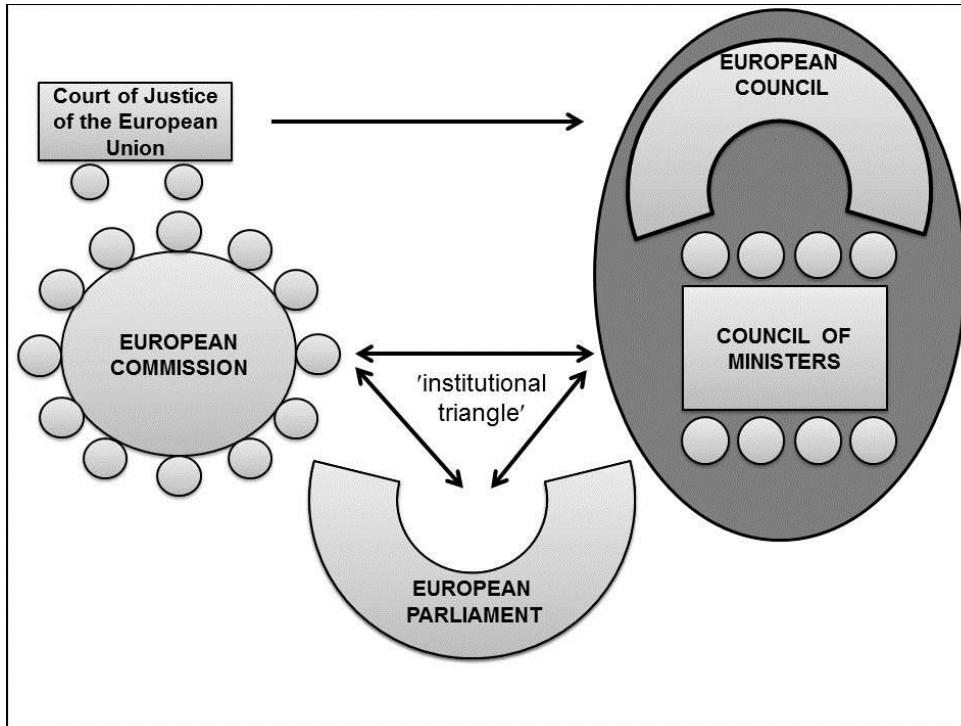
According to the **Fusion Model**, the European Council can be regarded as the centrally located and pivotal player in both a vertical multilevel constellation and in a horizontal multi-institutional architecture of the EU system. Within the multi-level game, each Head of State or Government wears 'two hats' as the members of the European Council act within both the national and the European arena. By linking their key positions at both levels, national leaders gain additional power within both the domestic power game and the architecture of the EU. However, their dual role demands a high degree of skills in order to face 'the tensions between the coercion of the table' and the 'voice of the voters back home' (Van Middelaar, 2013: 308). The European Council is characterised as a pro-active institution within the transformation process of the multi-level EU polity. From this perspective, the main impact of the European Council can be described and analysed as a process of vertical and horizontal fusion (for the terms see Miles, 2011; Mittag, 2011; Wessels, 2010: 760; Tanil, 2012). In a vertical direction, the Heads of State or Government merge domestic and European agendas and pool national and EU instruments. This particular process leads to the formation of a state-like European Council agenda that covers a range of public policies, as broad as that of nation states themselves. In a horizontal direction, the European Council also impacts on the institutional balance of the architecture of the EU. As an unintended consequence, this process leads to a joint exercise of 'shared competences' (see Art. 2 and 4 of the TFEU) as well as to a common management of transferred and pooled instruments and responsibilities (see Van Rompuy, 2014: 104).

Box 6: The Fusion Model
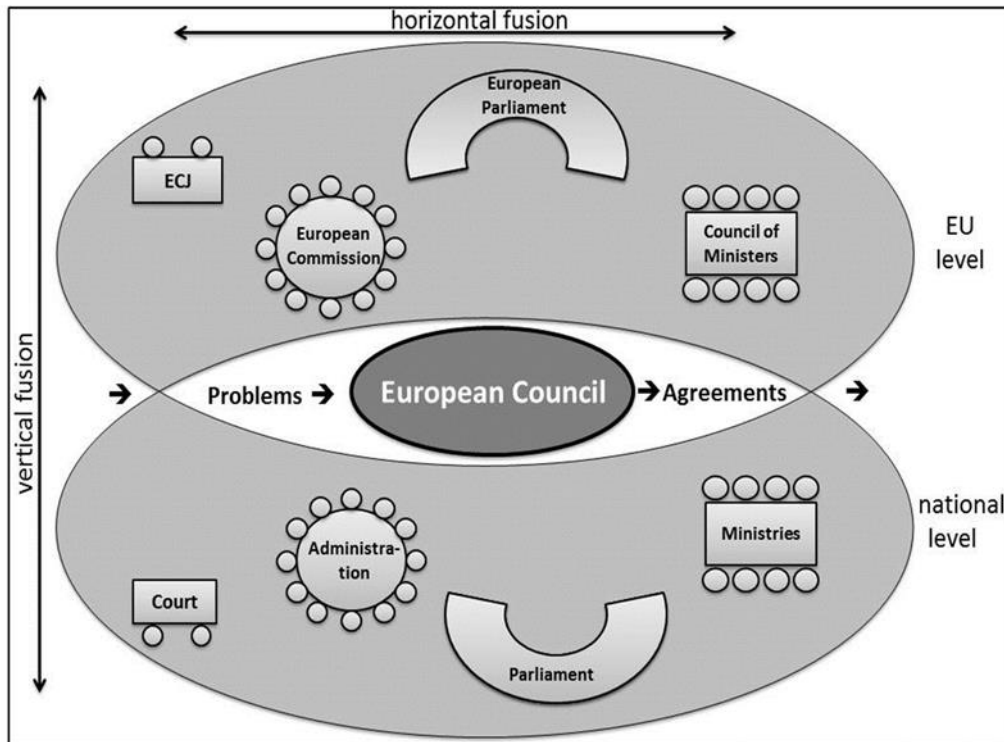
A Typology of Relations

For a closer analysis of the relation of the European Council to the European Parliament, it is useful to identify four basic forms of inter-institutional relations.

Separation of procedures

The first form is characterised by a separation of procedures: Both institutions are supposed to work within two unrelated and distinct modes of governance. It applies to the cases in which the European Council 'shall not exercise legislative powers' (Art. 15 (1) TEU) or in which the powers of the EP are limited. Where the Community method places the EP in one of the central positions, the intergovernmental procedure assigns the key role to the European Council. This relation can be characterised as coexistence without interference. Nevertheless, each institution demands actions of the other: the European Council 'invites' the EP to pass legislation, while the EP formulates positions on meetings of the European Council.

Dialogue

The second form of inter-institutional relations involves direct interaction between the European Council and the EP. The European Council invites the President of the European Parliament to present the EP's position in the beginning of each session of the European Council (Art. 235 (2) TFEU),

'followed by an exchange of views' (e.g. Brussels, October 2002) as the Conclusions state. The dialogue at the sessions is relatively short. Since after a few questions the EP President is obliged to leave the room, it is rather an act of diplomatic courtesy than an effort to discuss substantial issues. Exceptions occurred whilst discussing the multiannual financial framework. EP President Martin Schulz (2012-16) has been more outspoken than his predecessors; he tried to enter a meaningful dialogue with the members of the European Council in a range of issues.

On the other hand, the permanent President of the European Council is obliged to present 'a report to the European Parliament after each meeting of the European Council' (Art. 15(6) TEU). The first President of the European Council perceived his position in the EP as 'a question of one against all' (Van Rompuy, 2014: 126). In fact, the EP has no authority to ask questions to the European Council, a right that it does have *vis-à-vis* the Council and the European Commission. The TEU provisions do not establish any direct accountability for the European Parliament (Eggermont, 2012: 141-145). Van Rompuy underlined that he 'did not accept further formal commitments that would have exceeded the clear division of roles set out by the Treaty' (Van Rompuy, 2014: 125).

Sharing responsibilities

In a third form of inter-institutional relations, both institutions share responsibilities. An increasing number of binding acts require joint decision-making with the consent of both institutions being needed. Legal obligation to agree can lead to power battles between the institutions involved. Exemplary can be the election of the Commission President and the collegial body of Commissioners, as the process 2014 showed. The European Parliament challenged the European Council by designating so-called 'Spitzenkandidaten' for the elections 2014, of whom the winner should become President of the Commission. Thus, the EP interpreted the treaties (see Art. 17 (7) TEU) to its own favour and took the competence to nominate the President of the Commission away from the European Council. National political leaders lost their power to act as the ultimate elective body.

Another procedure concerns the strengthened role of the EP in the 'ordinary [treaty] revision procedure' (Art. 48 (2) and (3) TEU) and the 'simplified revision procedures' in so far as the '*passerelle*' clause is concerned (Art. 48 (7) TEU). Although the European Council still holds a dominant position in certain phases and cases of treaty revisions , it now needs the consent of the EP. By concluding intergovernmental treaties outside those of the Union within the recent years of the crisis, the European Council excluded the EP which consequently saw itself as being marginalised in this form of system-making.

A further area where political agreement between the two institutions is required by the Lisbon provisions concerns the own resources and the multi-annual financial framework (MFF) (Art. 312

TFEU). Given the strong legal power of consent which the TFEU now allocates to the EP and in view of the 'power of the purse' which the governmental heads have *de facto* taken up when fixing the EU's income (own resources) and the categories of expenditure in multiannual financial framework, increased conflicts with respect to the size and distribution of the Union's budget are unavoidable.

Indirect rivalry

A fourth form of inter-institutional relation arises in contexts of indirect or hidden rivalries. Members of the European Parliament are generally concerned that the EP's treaty powers are eroded if the European Council's *de facto* decisions pre-empt the formal decision-making within the institutional triangle. Such an indirect confrontation is especially virulent when the European Council exercises its powers as ultimate decision-maker on procedures where the EP has a strong treaty-based voice. An example of interventions by the European Council in the ordinary legislative procedure is the decision on the energy and climate package in 2008 (see Eggermont, 2012: 138).

Another case of indirect inter-institutional conflicts concerns the relative influence of each institution on the Commission President, which has changed over time. While Commission President Delors looked for European Council support, the EP has increased its potential influence over succeeding presidents.

Cases of Conflicts: the European Council as Crisis Manager and Ultimate Decision-Maker

In times of the national debt crisis and the Euro crisis, the European Council and the Eurogroup have held several meetings and concluded different treaties to deal with the crisis. The Heads of State or Government established new treaties outside the legal framework of the EU – effectively excluding the European Parliament. Whilst the EP President tried to address the European Council, the Eurogroup and other main actors in the crisis by way of giving public statements and speeches in the EP, his voice remained nearly unheard. The European Council acted as the ultimate decision-maker.

In exercising policy-making functions, EU leaders make use of their institution to claim and exert political and procedural leadership as well. The European Council regularly gives mandates and instructions to EU bodies, and acts as the highest instance of political appeal on the most controversial and contested issues that cannot be settled at a lower level. The European Council maintains its predominance in settling fundamental issues regarding the Union's budget. In pursuing such a strategy political leaders have tried to put their institution at the top of the decision-making

pyramid. The possible impact of such a position of the European Council has been intensively disputed.

Partners AND Rivals – Institutional Adaptations Needed?

Overall, the inter-institutional relations between the EP and the European Council are increasingly characterized both by the need to cooperate and by significant inbuilt rivalries at the same time. We observe considerable moves towards an uneasy sharing of powers indicating a horizontal fusion of responsibilities.

In view of the contentious and ambiguous constellation, academic and political debates offer proposals for reforming the relationship between the European Council and the European Parliament:

- The President of the EP should participate at sessions of the Heads of State or Government.
- The presidencies of the European Council and the European Commission should be merged into one position.(the 'big double hat')
- The President of the European Council should be elected by a *Congrès* of members of the European Parliament (one-third) and the national parliaments (two-thirds), as proposed by Giscard d´Estaing (Norman, 2003: 344-345).

None of these proposals look convincing to reduce the inbuilt tensions. Whereas these proposals aim at tightening the relation between the European Council and the European Parliament in order to reduce conflicts, the institutional separation of powers - including a mixture of rivalry and cooperation - could also be seen as a key element for a constitutional balance which is appropriate for the architecture of the EU. According to this assessment, there is no need to modify the status quo.

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