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**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**CONSTITUTIONAL AFFAIRS**

**The European Council and the Council:  
perspectives on new dynamics in EU  
governance**

**IN-DEPTH ANALYSIS**

**Abstract**

The European Council and the Council play a central role in policy-making within those new areas of EU activity within which intergovernmental policy coordination prevails over legislative decision-making such economic governance and foreign affairs. The emphasis on decentralised governance implies important changes to institutional design and the practice of inter-institutional relations.

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## LIST OF ABBREVIATIONS

<b>CFSP</b>	Common Foreign and Security Policy
<b>CSDP</b>	Common Security and Defence Policy
<b>ECB</b>	European Central Bank
<b>ECOFIN</b>	Economic and Financial Affairs Council
<b>EEAS</b>	European External Action Service
<b>EFC</b>	Economic and Financial Committee
<b>EMCO</b>	Employment Committee
<b>EMU</b>	Economic and Monetary Union
<b>EP</b>	European Parliament
<b>EPSCO</b>	Employment, Social, Policy, Health, and Consumer Affairs Council
<b>EPC</b>	Economic Policy Committee
<b>EWG</b>	Eurogroup Working Group
<b>OMC</b>	open method of coordination
<b>PSC</b>	Political and Security Committee
<b>SPC</b>	Social Protection Committee

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FIGURE 1: Working methods of lead policy coordination forums

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## **EXECUTIVE SUMMARY**

### **Background**

Since the late 1990s European Union (EU) governance has witnessed a significant increase in the role of intergovernmental bodies such as the European Council, the Eurogroup, the Economic and Financial Affairs Council and the Foreign Affairs Council in day-to-day policy-making. The prevalence of these forums in EU decision-making is detectable in the form of an increased frequency of meetings and in the way they assert themselves in relation to other core institutional actors such as the Commission and the European Parliament (EP). Moreover, repeated decisions by the European Council and instances of Treaty change have vindicated and codified the role of these intergovernmental bodies.

The Maastricht Treaty assigned central roles to the European Council and the Council in the new areas of EU policy-making: economic governance within the context of Economic and Monetary Union (EMU) and the Common Foreign and Security Policy (CFSP). Key coordination processes which were introduced by the European Council during the past two decades, such as the Luxembourg process on employment coordination, the Lisbon process and its successor the European Semester and the EU2020 strategy, too rely on a leadership role by the European Council and are based on a central role of the Council as a forum which equally concentrates ultimate decision-making powers during all phases of the policy cycle: initiation, adoption and implementation.

The central roles of the European Council and the Council are closely tied to the evolution of new prominent areas of EU activity which were established at Maastricht or later and which are based on the principle of policy coordination and intergovernmental agreement rather than legislative decision-making under the community method. Far from being a temporal or transitory phenomenon the proliferation of this governance model has become deeply enshrined in contemporary EU governance and coexists with legislative decision-making under the community method. The Lisbon Treaty has confirmed this dualism and has further institutionalised it by incorporating the European Council in the list of core EU institutions, through codifying the status of the informal Eurogroup as the lead euro area forum and by introducing a distinctive presidency regime which involves elected chairs for the European Council, the Foreign Affairs Council and the Eurogroup.

### **Aim**

The aim of this study is to answer the question of why this new intergovernmentalism in EU governance has emerged and has been consolidated over time. The study identifies the institutional dynamics associated with the new intergovernmentalism and traces the consequences for institutional design and inter-institutional relations. It offers new perspectives on the central role of the European Council and the Council by relating key contemporary governance and policy challenges to specific institutional choices which characterise the current institutional architecture of the EU.

In this the study aims at demonstrating that the lead role of the European Council within new areas of EU policy-making is linked to increased challenges in mobilising domestic political support for collective EU action. Moreover, the study shows how the decentralised governance structure of the areas of EU activity triggers increased demand for permanent consensus-seeking among member state governments and the Commission. This quest for consensus is reflected in repeated attempts at institutional engineering which are aimed at enhancing the consensus generation potential of intergovernmental bodies through a



reform of working methods. This is most visible in the Council environment within which the focus on policy coordination requires an adaptation of decision-making practices which are otherwise geared towards legislative decision-making.

The study seeks to identify key consequences for democratic control which emerge from the decision-making patterns. Notably, it reviews the EP's role in scrutinising non-legislative decision-making processes and highlights the restraints and opportunities national parliaments face within the new governance context. Finally, the constitutional implications of the new institutional dynamics are considered.

## 1. NEW INTERGOVERNMENTALISM: GOVERNANCE METHOD RATHER THAN TEMPORAL EXPERIMENT

### KEY FINDINGS

- Development of **new areas of EU activity** outside the traditional community methods marks an important expansion of the scope of integration.
- The rejection of competence transfers under the community method at times of expansion of integration constitute an **integration paradox which informs the EU's contemporary constitutional order**.
- The **Lisbon Treaty has confirmed** the post-Maastricht **dual constitutional order and has consolidated it**.

The **Maastricht Treaty** marked an important step in European integration as it substantially **expanded the scope of EU policy activity**. Yet, it did so by stipulating that a number of new EU activities would be governed differently than this was the case with established fields of single market integration. Though the Maastricht Treaty endorsed earlier political moves to base community method decision-making increasingly on qualified majority voting in the Council and started the transformation of the European Parliament (EP) into an effective co-legislator, it **favoured intergovernmental policy coordination over legislative decision-making as the key governance mode** when it came to several prominent **new areas of EU activity**.

### 1.1. Expanding the scope of EU integration

These new policy domains included **economic governance** under Economic and Monetary Union (EMU), **foreign, security and defence policy**, as well as **justice and home affairs** matters. The approach to enlarge the scope of EU activity by identifying new policy domains which were to be made subject to a common coordination regime was continued by the Amsterdam Treaty, which added **employment policy**, and with the Nice Treaty, which added **social inclusion**.

The continuous expansion of EU policy activity is a key feature of EU governance in the post-Maastricht period. Also below the level of Treaty change **several European Council initiatives triggered EU intervention targeted at domestic policy approaches** in a wide range of policy domains. The **Lisbon agenda**, adopted at the beginning of the new millennium, as well as the **EU2020 strategy and the European Semester** are key examples for this.

What most of the **new areas of EU activity** have in common is that they not only represent an expansion of the scope of integration but that they also **affect policy domains which are at the heart of national sovereignty** and which tend to be **decisive for national governments** as regards domestic political competition and/or representation in international politics. The Maastricht formula to advance integration of these domains by avoiding further transfers of ultimate decision-making competences in the context of a supranational legislative process reflects the **ambition of national governments to stay in tight control of the policy process**.

In short, European integration after the Maastricht Treaty is marked by an **integration paradox**. Member states **pursue further integration** and have repeatedly agreed to an expansion of the scope of EU activities. However, they almost categorically **reject major new transfers of ultimate decision-making powers** to supranational actors such as the Commission and the Court of Justice following the model of the **traditional community method**<sup>1</sup>.

The **constitutional implications of the Maastricht Treaty's dual constitutional architecture**, which **distinguishes between community method governance and intergovernmental policy coordination**, may have been underappreciated for a very long time because the focus on policy coordination was seen as either temporary or as indicative of the impossibility of deeper integration.<sup>2</sup> Yet, the **post-Maastricht new intergovernmentalism has neither coincided with a period of integration fatigue**, as earlier experiences with an intergovernmentalist trend in EU integration might suggest, **nor were the relevant policy areas transformed into domains of traditional community method governance**.

## 1.2. Lisbon Treaty: consolidating a dual constitutional structure

The **Lisbon Treaty has endorsed and further consolidated the EU's dual constitutional structure** which had emerged at Maastricht. It once more highlighted the **distinctive character of policy coordination as opposed to legislative decision-making** under the traditional community method. The Lisbon Treaty has also acknowledged the political salience and inter-relatedness of the new coordination domains (see for example Article 5, TFEU Lisbon).

The Treaty has **explicitly denied the possibility of legislative action** in the case of the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) (Article 24.1, TEU Lisbon) and has ruled out that the Court of Justice would have jurisdiction over these policy domains.

Moreover, the Lisbon Treaty and the European Convention have confirmed the decentralised governance set-up within the domain of economic governance which relies only on a **very limited number of binding rules**. These rules, however, cannot be enforced unilaterally by either the Commission or the Court of Justice.<sup>3</sup> Legislative action in this domain is restricted to **regulate the process of policy coordination and surveillance**. Yet, it cannot be used to transfer ultimate decision-making competences to either the Commission or the Court.

Finally, the Lisbon Treaty makes a notable exception from the otherwise strengthened ordinary legislative decision-making model which prevails within traditional domains of European integration pre-dating the new areas of EU activity: Those aspects of **justice and home affairs** policy-making for which new legislative decision-making competences have been endorsed remain subject to a **modified pattern of decision-making which allows the Council and the European Council to control policy initiative**.

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<sup>1</sup> This study follows a definition of the community method as provided by the Commission's White Paper on European Governance. See European Commission (2001).

<sup>2</sup> This by no means implies that the institutional diversity introduced by the Maastricht Treaty remained unnoticed. Reference to the EU's pillar structure was extensive. Cf. among many others Denza (2002).

<sup>3</sup> On the work of the European Convention in the field of economic governance see European Convention (2002) and Puetter (2007).

## 2. INSTITUTIONAL DESIGN AND INTER-INSTITUTIONAL RELATIONS

### KEY FINDINGS

- **Policy initiation and implementation** are based on collective member state action as there is no central enforcement mechanism.
- **Intergovernmental bodies gain in importance** and enjoy procedural prerogatives and a greater public role within the new areas of EU activity.
- **Permanent consensus generation among member state governments and the Commission** becomes an imminent task.
- **Institutional engineering** is detectable at all levels of European Council and Council decision-making and **inter-institutional relations are reconfigured**.
- **Consensus orientation differs from other areas of EU decision-making** as agreements are not codified in EU law and require permanent renewal.

The rejection of new major competence transfers to traditional supranational actors has so far not resulted in a lack of ambition to pursue further integration. However, within the new areas of EU activity **collective action is reliant on the permanent mobilisation of consensus and self-commitment among member state governments**.

### 2.1. Growing importance of the European Council and the Council

The **Commission cannot drive policy initiative or supervise policy implementation unilaterally** as regards the new areas of EU activity. For example, within the CFSP framework the Commission commands important resources, as much as member states do. It is a **partner in the coordination process** rather than a steering institution. In economic governance the Commission commands considerable surveillance powers and can address far-reaching policy recommendations to individual member states. Yet, it relies on political endorsement from the Eurogroup and the European Council to make its voice heard.

The prospect of quicker sanctions which was raised by the **six-pack and two-pack reform packages have not reduced this dependency on member state consensus** but rather increased it as the consequences for domestic politics are potentially far higher than before. Moreover, it is **often within the European Council**, the Eurogroup and the relevant Council formation in charge of a coordination dossier **that new policy initiatives emerge and gain political support**. This not rarely happens in response to **policy failure or crisis situations** as member state governments reassess options for collective action.

As **demand to deliver policy consensus increases** in relation to the EU's main intergovernmental bodies they gain in importance in terms of **procedural prerogatives and public attention**. Individual meetings of the European Council, the Eurogroup or the Foreign Affairs Council are closely watched by domestic and international audiences as to

whether they generate political backing for a particular EU or euro area policy stance. At these occasions **unanimous agreement among member state governments** becomes **indicative of what the Union is able to achieve**.

## 2.2. Demand for consensus and institutional design

The **generation of consensus** thus **becomes an imminent task**. The quest for deliberation and consensus is detectable in the form of a process of **institutional engineering** which since the late 1990s **has aimed at improving the consensus generation capacity** of the relevant forums for intergovernmental decision-making. Therefore the new intergovernmentalism in EU governance can be referred to as **deliberative intergovernmentalism** (Puetter 2014).

The **working methods** of the European Council and the Council are reformed and **political dialogue intensifies substantially** among the most senior representatives of member state governments (see sections 4 and 5 below). **Inter-institutional relations are reconfigured** so as to reflect the dependency on high-level political consensus in EU decision-making.

Thus, the **EU's dual constitutional structure**, within which legislative decision-making under the traditional community method coexists with intergovernmental policy coordination and agreement as an alternative governance model within the new areas of EU activity, **has important repercussions for institutional design** which may have not been fully apparent at the time when decentralised decision-making structures were adopted in the first place. The **European Council and the Council** as institutional environments for policy coordination **follow**, at least partially, **different institutional logics than legislative bodies**.

The explicit **quest for consensus is not a new phenomenon in EU politics** and it has been certainly associated with the work of the European Council and the Council (Bulmer 1996; Bulmer and Wessels 1987). However, **as regards the new areas of EU activity this quest for consensus is not restricted to particular moments in the legislative or constitutional cycle but has become a permanent feature of policy-making**. The requirement to reach unanimous agreement can hardly be circumvented, for example through the threat of qualified majority decision-making, as defection from previously agreed policy objectives is relatively easy.

As it is evident from core coordination routines, such as those established by the **Stability and Growth Pact** and the **European Semester political backing even of formally stated policy objectives and rules requires permanent renewal**. This has to do with changing domestic political constellations as much as with changing macro-economic conditions and external policy challenges which are interpreted differently by member state governments. In the field of **CFSP decision-making** political consensus is not a priori given even though EU member states share a vast catalogue of broad values and foreign policy principles. **Individual policy action is normally agreed as situations unfold**. Medium and longer term strategic approaches are almost impossible to sustain without continuous consensus building.

### 3. THE LEAD ROLE OF THE EUROPEAN COUNCIL

#### KEY FINDINGS

- Policy coordination issues have **far-reaching repercussions for domestic politics** and trigger **intervention at the highest political level**.
- The salience of the **new areas of EU activity** is reflected in the **composition of the European Council agenda**.
- There is a **considerable increase in the frequency** of meetings.
- The **European Council 'tasks' other institutional actors**.
- **A separate preparatory structure** emerges which leaves a **limited role for the General Affairs Council**.

The **European Council assumes a central role in the governance of the new areas of EU activity**.<sup>4</sup> This is not only manifest in the relevant Treaty provisions<sup>5</sup> but is also confirmed by the practice of European Council decision-making ever since the second half of the 1990s. The main reason for the centrality of the European Council is the **salience of most of the policy dossiers** as regards their implications for domestic politics and policies. Moreover, many policy issues are associated with concerns over sovereignty.

It is reported that the personal administrations of the heads of state and government aim for supervising more and more dossiers related to the new areas of EU activity. At the same time political consensus within the European Council is very often the **requirement for successful policy implementation at the domestic level**. Ministers and senior government officials in the Council often lack the political authority to enforce collective agreements domestically on their own.

#### 3.1. Agenda composition and meeting activity

The pivotal role of the European Council in governing the new areas of EU activity is reflected in the composition of the forum's agenda. Despite the fact that the last two decades of European integration involved complicated institutional and constitutional decisions by the European Council in relation to the 2004 and 2007 enlargements and repeated processes of Treaty reform, the **bulk of European Council agenda items is related to the new areas of EU activity**.

Nearly two-thirds of all European Council agenda items during the period of 1992-2013 were related to the new areas of EU activity. **Economic governance and foreign affairs** have been the only two agenda items to **feature on almost all European Council**

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<sup>4</sup> For a comprehensive analysis of the European Council's role in EU policy-making see Puetter (2014). Data on European Council activity and decision-making practice is based on the latter study unless referred to otherwise.

<sup>5</sup> Though the European Council was not part of the list of core EU institutions before the entering into force of the Lisbon Treaty and was not mentioned in relation to decision-making procedures specified for any of the classical areas of community governance, it assumes a prominent role in any of the new areas of EU activity according to the Treaties of Maastricht, Amsterdam and Nice. In this sense the Lisbon Treaty's new general provisions on the European Council and its status as a core Union institution (Article 13, TEU) can be read as a codification and recognition of a previously existing constitutional practice.

**meetings** during that time. The latter two policy domains are also those on which the heads spend most of their time during the summit meetings. The economic and financial crisis implied that European Council meetings were dominated almost exclusively by economic governance issues.

Yet, the **dominance of the economic governance portfolio is evident since the EU started to prepare for the introduction of the final stage of EMU** in the second half of the 1990s. The European Council's role in decision-making related to the Stability and Growth Pact, the European Employment Strategy, the Lisbon process and, most recently, the EU2020 strategy and the European Semester are just among the most prominent examples.

The shift of attention towards the new areas of EU activity is also reflected in the **increased frequency of European Council meetings**. Whereas the standard was to have three meetings per year in the early 1990s, this figure increased steadily with the roll-out of the new policy coordination activities. Since 2008 the **number of formal and informal gatherings of the heads has always been at seven or higher**.

The year 2011, when euro crisis management reached a peak moment, saw a total of eleven meetings of the European Council and of the euro area members of the European Council – a meeting format referred to as the **Euro Summit** since October 2011. Similarly, foreign policy crisis situations have repeatedly triggered extra European Council meeting activity. The Kosovo crisis in 1999, the terrorist attacks in the United States in 2001, the 2003 military intervention in Iraq, the 2008 and 2011 crises in Georgia and Libya respectively, and, most recently, the conflict in Ukraine are prominent examples in this regard.

### 3.2. Repercussions for inter-institutional relations

The lead role of the European Council can also be traced at the level of inter-institutional relations. It has become an established practice that the **heads 'task' the relevant Council formations, the Eurogroup and the Commission** to prepare and implement policy decisions. This may also lead to a **de facto modification of the Commission's right of initiative**.

The **European Council conclusions often contain detailed instructions as to how individual institutions should act**. There are prominent examples such as the 1999 Tampere European Council which asked for the creation of an area of freedom, security and justice, the 2005 reform of the Stability and Growth Pact and, most recently, the European Council's decisions on euro area institutional reforms which triggered legislative action by the Commission, the Council and the EP according to a catalogue of institutional reforms adopted by the heads. Yet, **European Council decisions can affect the work of other institutions with regard to much more narrowly defined policy issues**. The example of individual authorisations of financial assistance packages for euro area countries, which then were to be implemented by the Eurogroup, speaks to this point.

The lead role of the European Council is also reflected in the **emergence of a separate institutional infrastructure for the preparation and follow-up of meetings**. **Sherpa's – personal advisers or appointees of the heads – deal with agenda coordination and maintain close contacts in between European Council meetings**. They work closely together with the cabinet staff of the European Council president. This model deviates from

the idea that the General Affairs Council assumes the lead coordinating role with regard to European Council activity. The **reason** for this **is that the European Council** has evolved into a policy coordination forum which **is predominantly geared towards reaching personal agreement among the heads** on key policy dossiers within the new areas of EU activity. Policy dossiers are drawn into European Council decision-making as the heads prefer to tightly control repercussions for EU-level processes and domestic politics.



## 4. THE REFORM OF WORKING METHODS

### KEY FINDINGS

- European Council proceedings **give priority to confidential face-to-face debate** among the heads.
- Agenda-setting practices reflect the ambition to both establish **regularity** and allow for **ad-hoc discussions**.
- European Council **conclusions entail detailed policy prescriptions**.
- The **full-time president** acts as an **institutional engineer** and focuses on the **internal functioning of the European Council**.
- The president plays a **key role in inter-institutional relations** but **less so as an external or public voice of the EU**.

The European Council's focus on policy coordination dossiers has implications for institutional design. Though the rationale behind the creation of this high-level body has always been to foster direct debate between the heads of state and government, the growing **dominance of the new areas of EU activity for the European Council agenda makes it more pressing to reach concrete agreement among the heads on a regular basis**.

### 4.1. Face-to-face debate and personal agreement

An early indicator for this development is the gradual **exclusion of foreign ministers** from European Council meetings during the late 1990s and the early 2000s. Today, **long-term institutional decisions and general EU affairs only account for a smaller proportion of the overall work of the European Council**. Informal agreement among the heads on key policy moves within the new areas of EU activity and the common analysis of policy challenges such as in the context of crisis situations or the regular monitoring of the economic situation is the main objective of European Council meetings.

The **focus on confidential face-to-face debate** among the heads speaks to this point. Key issues are typically discussed in the second part of European Council meetings. The so-called 'dinner' takes place at the 80<sup>th</sup> floor of the Justus Lipsius building and **excludes any access to the discussion by diplomats or senior officials**, also not through headphones. Only interpreters are following the debate – though in a remote room.

**Agenda-setting practices too reveal the effort to facilitate consensus generation in relation to key policy issues** and enable a common interpretation of policy challenges. While there is an effort to represent the full spectrum of coordination issues through **scheduling debates in regular intervals** (for example on the analysis of the economic situation or strategic foreign policy issues), the European Council also has developed **crisis management routines and is now frequently convened on an ad-hoc basis**.

The focus on personal agreement among the heads which is central to the above outlined attempts at institutional engineering has also been reflected in changes made to the practice of compiling the **European Council conclusions**. The 1999 Helsinki European Council agreed to make conclusions **more concise and more focussed on political agreement reached at the relevant meeting**.<sup>6</sup>

## 4.2. The president

The office of the **full-time president** provides another **crucial step in the reform of European Council working methods**. Contrary to expectations which saw the European Council president mainly as an external spokesperson for the EU or as someone who would use his or her formal leadership role to set an own political agenda, the evidence of the two terms of Herman Van Rompuy suggests that the president primarily acts as a **chief institutional engineer**.

The president plays a key role in facilitating agreement among the heads through **bilateral discussion** and by using the assigned **agenda-setting powers**. Rather than pursuing an own political agenda, Van Rompuy sought to **structure and foster debates among the heads with the aim of facilitating agreement on collective policy action** in the short or medium term. For example, Van Rompuy actively sought to refocus orientation debates on foreign affairs issues as the EU started to exit from the most intensive period of euro crisis management in 2012 and 2013. Similarly, **strategic topics at the intersection of traditional community method decision-making and the core coordination portfolios** such as energy policy and energy security were pro-actively pursued by the president.

In contrast the **external representation role of the European Council president is not very pronounced**. Though Van Rompuy participated in G7/8 and G20 meetings as well as EU summits with third countries and regional blocs, he did not aim for a strong public and international profile as a spokesperson of the EU. He also **left CFSP-related communication and external representation commitments mainly to the High Representative**. With regard to domestic European audiences it is probably fair to say that the president of the Commission president is by far more important in this regard.

Similarly, the European Council president kept his representation function in relation to the EP to a minimal level. Instead of becoming a key interlocutor for the EP plenary he focused on relations with the EP president as much as he entertained close contacts with other key representatives of the EU institutions, notably the presidents of the Commission, the European Central Bank (ECB) and the Eurogroup.

The above outlined practice is not in contradiction to the leading role of the European Council president as an institutional engineer as projected here. Quite to the contrary, it reflects the European Council's focus on direct agreement between the heads regarding collectively shared policy objectives and their implementation against the background of a decentralised governance architecture.

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<sup>6</sup> See Annex III, European Council (1999).

## 5. THE COUNCIL AS A COORDINATOR

### KEY FINDINGS

- The key focus of Council activity within the new areas of EU activity is **to coordinate and not to legislate**.
- This **requires revised working methods** which are different than those chiefly used within the context legislative decision-making.
- The creation of the **Eurogroup as an informal forum** for euro area coordination, the **informal ECOFIN breakfast** and the role of the **High Representative as chair of the Foreign Affairs Council** reflect this dynamic.
- **Hybrid Council formations** which combine a pronounced legislative profile with a lead role in policy coordination **may be less successful in steering policy change**.
- **Dedicated high-level policy coordination committees** underpin the activities of the European Council and the Council.

The Council as a forum for the representation of member state governments always has exercised multiple roles simultaneously. Yet, in the post-Maastricht period and with the launch of new major areas of EU activity, which are based on policy coordination rather than legislative decision-making, the **internal functioning of the Council has been subject to a series of institutional adjustments**.

### 5.1. A two-tier Council architecture

Since the late 1990s a process of **institutional diversification** which involves the **emergence of a two-tier Council structure with distinctive decision-making routines and meeting formats** can be observed. Dedicated forums and working methods are introduced for those aspects of the Council agenda which primarily are related to policy coordination within prominent new areas of EU activity. Institutional design differs from those Council formations and working methods primarily focused on legislative decision-making.

This is especially visible with regard to **three of the most frequently convened forums for collective policy debate among EU ministers and the relevant member of the Commission**: the Eurogroup, the Economic and Financial Affairs Council (ECOFIN) and the Foreign Affairs Council.

The decision in 1997 to constitute the **Eurogroup** as an **informal coordination forum** for the euro area marked an important departure from the standard working method of the Council (Puetter 2006). The Eurogroup is based on the minister-plus-one approach and excludes delegations. It has played a **crucial role in the political management of the euro area** and has de facto replaced ECOFIN as the lead political forum for euro area governance as it was originally envisaged by the Treaty. Though the Eurogroup is formally not a configuration of the Council it is treated in inter-institutional relations as such. The **Lisbon Treaty has codified this status of the Eurogroup**, an act which documents the further **institutionalisation of a two-tier constitutional structure**.

The Eurogroup was the first group of ministers to introduce the office of an **elected president**. The role of the Eurogroup chair is highly similar to the one of the European Council president. The Eurogroup model is equally geared towards **confidential face-to-face debate and direct agreement** among ministers and the participating commissioner.

**ECOFIN** too has enhanced its institutional capacity to foster EU-wide policy coordination. Its **informal breakfast meeting** has become a **key venue for policy dialogue at the level of all EU member states**. The early phase of EU's management of the financial crisis from 2008 onwards triggered this revival of ECOFIN. The **coordination of the EU's position for G20 meetings** or responses to instances of the bankruptcies in the banking sector can serve as examples here (Puetter 2012). The importance of the coordination role is further documented by the fact that **many EU finance ministers no longer attend the formal part of ECOFIN meetings** but leave representation during this part of the meetings to deputy finance ministers or secretaries of state.

**Figure 1: Working methods of lead policy coordination forums**

	European Council/ Euro Summit	Eurogroup	ECOFIN	Foreign Affairs Council	EPSCO Council
<b>meetings per year</b>	7+	13+	10+	13+	6-
<b>presidency</b>	elected full-time	elected part-time (full-time possible)	rotating	appointed full-time	rotating/multiple portfolios
<b>informal methods</b>	"80 <sup>th</sup> floor"/informal sessions	entire meeting	breakfasts lunches	lunches Gymnich format	lunches two 'mega' informals
<b>committees</b>	EFC-EWG PSC	EFC-EWG/EPC  full-time chair  Brussels based sub-groups	EFC/EPC  full-time chair	PSC  full-time chair  Brussels based	EMCO/SPC  part-time chair

The **Foreign Affairs Council** has been developed into the **main coordination forum for CFSP and CSDP matters**. It equally applies a **full-time presidency regime** which follows the same model than the one of the European Council and of the Eurogroup. The **role of the High Representative is to facilitate the coordination process** by ensuring continuity and consistency, for example through using agenda setting powers and maintaining bilateral coordination efforts in between meetings.

In comparison to the European Council and Eurogroup presidents, however, the **High Representative by default assumes a stronger external representation role**. Concerns about the possibility to effectively fulfil both functions at the same time reflect the relevance of the internal coordination function. Similar to the presidents of the European Council and the Eurogroup the High Representative **has so far avoided to pursue an own political agenda other than the one emerging from Council debates**.

The **institutional separation of the CFSP and CSDP coordination portfolios from general EU affairs issues**, which used to constitute an important domain of EU foreign ministers, further confirms the institutional **trend to create dedicated forums for policy coordination** among ministers.<sup>7</sup> This EU-level reorganisation of existing governance structures inevitably impacts on the domestic organisation of portfolios of line ministries at the member state level. Foreign ministers can but do not necessarily have to play a role as coordinators of general EU affairs. This leaves **the question of who populates the separated General Affairs Council** open (see section 6.2. below).

The relevance of institutional engineering for developing EU-level coordination regimes is also evident from the case of the Employment, Social, Policy, Health, and Consumer Affairs Council (EPSCO). **EPSCO** can be seen as an example of a Council formation which **so far has been exempted from more radical institutional engineering with an aim to create a dedicated coordination forum for social and employment policy**. Despite the massive expansion of coordination routines in this field since the late 1990s (Zeitlin and Vanhercke 2015) many of the so-called social open methods of coordination (OMC) failed to obtain greater political visibility.

The existing **EPSCO format which is largely dominated by legislative decision-making** and comprises various policy portfolios which are represented by different line ministries at the member state level **so far failed to support the routinization and substantive expansion of high-level political dialogue around the social OMCs** more effectively. The case illustrates how the lack of further institutional engineering can result in lacking political impetus for collective policy initiatives.

## 5.2. The growth of the administrative infrastructure

The growing institutional separation of policy coordination and legislative affairs is also clearly visible in the **proliferation of senior expert committees which are primarily focused on the main coordination dossiers**. The Economic and Financial Committee (EFC), the Eurogroup Working Group (EWG), the Political and Security Committee (PSC), the Employment Committee (EMCO), the Social Protection Committee (SPC) and the Economic Policy Committee (EPC) all fall in this category. All committees were set-up at the

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<sup>7</sup> The trade policy portfolio formally too is a responsibility of the Foreign Affairs Council and it follows the community method approach. However, meetings on trade are attended by trade ministers and are much less frequent than those of the foreign affairs ministers.

moment when the scope of the policy coordination process was expanded and have a Treaty base.<sup>8</sup> They stand for a **new type of EU-level comitology which closely integrates senior representatives of the member states' administrations and the Commission without focussing on legislative decision-making.**

The committees play a crucial role in preparing political decision-making in the Council, the Eurogroup and, increasingly also, within the European Council. Especially the **EWG, the EFC and the PSC function as lead preparatory bodies for policy debates related to the dominant coordination portfolios.** Their work is characterised by a high frequency of meetings and constitutes a focal point of the preparatory work of national administrations, the Commission services and the European External Action Service (EEAS). The PSC has a **Brussels-based administrative infrastructure** and is composed of resident ambassadors. The EWG can now rely on a growing Brussels-based administrative backbone and has a **full-time president** who functions as an interlocutor for the presidents of the Eurogroup and the European Council.

The growth of a distinct administrative infrastructure for supporting policy coordination processes located within the Council, the Eurogroup and the European Council together with the newly created personal office of the European Council president and the larger-scale EEAS activities in support of the High Representative **constitute an important reconfiguration of the original institutional design of the EU bureaucracy** which was based on the concentration of resources under the roof of the Commission.

The **new infrastructure also transcends the classical role of the Council Secretariat** as the new committees have an **explicitly expressed political role**, especially with a view to their centrality within policy initiation and implementation processes. Moreover, the **new institutional arrangements diminish the central role of COREPER** as the final pre-coordination body for Council and European Council decision-making within the new areas of EU activity.

The above outlined changes may be considered as an expansion of the own administrative resources of the Council. However, the evidence provided in this study also highlights that one should be careful **not to understand the new institutional arrangements in terms of new unitary bureaucracy which mirrors the supranational design of the Commission services.** The new infrastructure is essentially based on **decentralised administrative resources** and is tailored towards the coordination of administrative processes within national administrations and the Commission services. It may be best described as an **intergovernmental bureaucratic infrastructure** (Puetter 2014: 189).

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<sup>8</sup> Some of the new committees were based on existing committee structures which underwent restructuring with the aim to tailor committee activity to the newly defined coordination agenda (e.g. the EFC and the EPC), others did not exist before (e.g. the PSC and the SPC).



## 6. DEMOCRATIC CONTROL AND CONSTITUTIONAL OPTIONS

### KEY FINDINGS

- The **salience of intergovernmental executive bodies** in EU decision-making raises new questions about democratic control.
- The **EP** plays an important role in providing **public scrutiny but cannot exercise its major procedural prerogatives** which it enjoys within the EU legislative process.
- **National parliaments** have so far **only partially appreciated the increased importance of the European Council** and the Council in non-legislative EU decision-making.
- The current **constitutional structure has emerged partially by design and partially through practice**.
- A potential **harmonization** of the constitutional structure **at this point may risk adverse consequences** for traditional domains of community method decision-making as much as for policy coordination within the new areas of EU activity.

The salience of intergovernmental bodies in governing the new areas of EU activity raises fresh questions about democratic control. As member state governments increase coordination at the EU-level, decisions by the European Council, the Eurogroup and the Council relating to the new areas of EU activity have **often immediate repercussions for domestic politics**.

The wider **question of how the EU can ensure effective and legitimate governance within the context of a two-tier constitutional structure**, which combines dedicated institutional procedures and arrangements for intergovernmental policy coordination and agreement, on the one hand, and legislative decision-making following the approach of the traditional community method, on the other hand, remains open. Yet, ad-hoc attempts to harmonise the existing procedures are neither in line with the approach of the Lisbon Treaty to consolidate the duality of institutional routines nor are they likely to solve the underlying main institutional paradox of contemporary EU governance.

### 6.1. The role of the EP and national parliaments

Though it has gained substantial co-decision-making powers related to the EU legislative process, the **EP cannot rely on its major procedural prerogatives** when it attempts to control the work of the EU's most prominent forums for intergovernmental policy coordination.

However, the **EP has stepped up its efforts to provide public scrutiny** for decision-making **within the new areas of EU activity substantially**. The activities of its Economic and Monetary Affairs Committee as well as the EP's public role in debates over the EU's foreign and security policy speak to this point.<sup>9</sup> In this context the increase of

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<sup>9</sup> See on this point especially Deirdre Curtin's (2014) discussion of the role of enhanced scrutiny procedures as an institutional response to the growing influence of executive forums such as the European Council and the Eurogroup in EU governance.

**public scrutiny extends well beyond the practice of hearings with the presidents of the relevant coordination forums but includes the development of broader political claims in relation to the relevant institutional actors.**

The latter role of the **EP as an institutional actor, which may challenge the European Council, the Eurogroup and the relevant Council formations** and through this the collective stance of **member state governments**, is most likely to be expanded further over the medium term. The reasons for this are two-fold. First, the **EP is next to the European Council the institutional actor which benefitted most from adjustments to the EU's institutional architecture** ever since the entering into force of the Maastricht Treaty and equally benefited from the consolidation of its powers by the Lisbon Treaty.

Second, the instrument of EP committee or plenary hearings with the **presidents of the European Council and the Eurogroup as well as the High Representative** is also not without limitations. In contrast to the president of the Commission the former three representatives stand not for an own policy agenda and thus **have limited leverage to react to criticisms of their forum's activity beyond public justification of prior activities.**

The **record of national parliaments in adjusting their internal procedures** to the increased importance of the European Council and informal forums for policy dialogue among ministers **is mixed and so far limited.** Some parliaments enjoy the prerogative to mandate their relevant head of government prior to European Council meetings, others have introduced the practice of hearings ahead of and after European Council gatherings. Yet, many national parliaments cannot rely on special scrutiny procedures.<sup>10</sup>

It is **unlikely that enhanced democratic control within the context of the new areas of EU activity can solely be provided either at the EU or national level alone.** Whereas the EP can scrutinize decision-making output, its **ability to hold the relevant presidents of the different intergovernmental bodies personally accountable is limited.** National parliaments in turn may find it **difficult to react to the inter-institutional dynamics at the EU level,** which undoubtedly play into European Council and Council decision-making, when scrutinizing their own executives. Yet, **national parliaments may have more leverage in correcting or preventing particular decisions,** in case they consider this necessary.

A particular role in this context is played by the **EP president who functions as a key interlocutor with the European Council.** Not only does the EP president enjoy the de facto prerogative to address the members of the European Council at the beginning of each meeting, the **EP president also entertains close bilateral links with the president of the European Council.**<sup>11</sup> Whether this relationship will help enhancing the public scrutiny role of the EP in relation to key forums for intergovernmental policy coordination or will contribute to a presidentialisation of the relevant inter-institutional relationships remains to be seen.

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<sup>10</sup> For a comparative analysis of democratic control procedures focused on the European Council and the Euro Summits see the study directed by Wolfgang Wessels and Olivier Rozenberg (2013).

<sup>11</sup> The EP president is formally not a member of the European Council and does normally only attend the first part of European Council meetings. Yet, there is little doubt that the current practice of an exchange between the members of the European Council and the EP president is widely accepted as a standard feature of European Council proceedings.



## 6.2. Constitutional options

The new dynamics in EU governance outlined in this study raise **a number of constitutional questions**. Notably whether the observed institutional trend of a continuously developing two-tier institutional structure was triggered by the **weakness or ambiguity of current or previously existing Treaty provisions** and/or whether the rise of the European Council, the Eurogroup and specific Council formations became possible because of a **weak Commission**.

Moreover, related to the above discussed sub-set of questions on democratic control there are **concerns that the practice to govern key policy domains within EU governance through policy coordination within powerful intergovernmental bodies violates core legal principles** which have been established within the context of European integration so far, notably the possibility of judicial review (cf. Dawson/ de Witte 2013).

The argument presented in this study suggests that the empowerment of key intergovernmental actors according through a new pattern of policy coordination and intergovernmental decision-making is closely tied to the **evolution of those new areas of EU activity which were established at Maastricht or beyond** and for which member states did not agree a transfer of new major legislative decision-making competences to the EU-level. The **lead roles of the European Council, the Eurogroup, ECOFIN and the Foreign Affairs Council are not solely attributed to the provisions of the Lisbon Treaty** which partially assign these formations an enhanced role in decision-making.

It was rather argued that the Lisbon Treaty codified a previously emerging practice which can be traced back to the end of the 1990s when the EU started to move to the final stage of EMU and CFSP activities were reinforced. The growing **importance of the European Council and the Council** as lead forums for high-level intergovernmental policy coordination **is less a question of the formal constitutional empowerment of these actors**. The most obvious example in this respect is the rise of the Eurogroup which did not have a constitutional mandate until the entering into force of the Lisbon Treaty.

In other words, the **identified institutional trend also has developed to a considerable degree through practice** and is mainly based on the attempt to foster the integration of policy-making processes without relying on a further substantial delegation of ultimate decision-making competences and policy-making resources. Not surprisingly the simultaneous **co-existence of two alternative governance mechanisms and the emergence of an increasingly differentiated institutional structure leads to tensions**.

However, this **study cautions against expectations that this tension can be easily mitigated through constitutional engineering in relation to the definition of institutional roles at the level of Treaty provisions** unless member state governments would decide in favour of new substantial transfers not only of formal decision-making powers but also of policy-making resources to the supranational level. The latter would notably include a concentration of fiscal, diplomatic and military resources at the EU-level, a scenario which currently does not have the backing of member state governments.

In this context it is worth noting that the **attested dualism and the related constitutional ambiguity is not unusual for developed systems of multi-level governance**. Contrary to arguments that the new institutional dynamics in governance are

signs of lacking evidence for closer European integration this study sees the diagnosed trends as a reflection of **the fact that the EU has reached a very high level of integration which makes constant challenges and reconfigurations of authority relationships between the centre and the constituent units inevitable**. As, for example, the experience of Canadian federalism illustrates, strong intergovernmental relations between the provinces with regard to certain policy domains are in no contradiction to the rejection of formal transfers of authority to the federal level.

In the same vein the study was careful not explain the rise of the European Council and specific Council formations as lead forums for intergovernmental policy coordination primarily in terms of a weakness of the Commission. Scepticism of member state governments towards a further empowerment of the Commission along traditional lines goes far back to the period before the entering into force of the Maastricht Treaty. Yet, the **role of the Commission in contemporary EU governance cannot be primarily understood in terms of the maximisation of autonomous decision-making competences** (Bickerton et al 2014).

Evidence from the new areas of EU activity, notably economic governance under EMU and CFSP decision-making, rather suggests that the **Commission has been complicit in developing the new governance structures and has played a crucial role in the policy-making process** according to the mandate assigned to it by the Treaty. This is not least reflected in the leadership structures of the two previous Commissions and the new Commission of 2014 which emphasise the further **presidentialisation of internal Commission governance**. This leadership model **supports the role of the Commission president within the European Council as a key interlocutor for member state governments** rather than as an opponent to them in the context of the coordination of joint member state and Commission activity.

Though there is little doubt that the Lisbon Treaty codified and further consolidated the two-tier institutional architecture of contemporary EU governance it is likely that there will be further important deviations from the formal constitutional practice in terms of the day-to-day operation of inter-institutional relationships. The **General Affairs Council is unlikely to perform its role as a new forum for horizontal and vertical coordination and the preparation of European Council meetings**.

This is in part because the envisaged **institutional profile of the General Affairs Council is at odds with the diagnosed institutional dualism**. As it was shown in the previous sections the focus on face-to-face agreement and contemporary policy issues within European Council discussions limits the room for a highly formalised preparatory process. Heads of state and government are eager to concentrate decision-making in their hands and, thus, unlikely to delegate preparatory powers. The growing importance of Sherpa coordination speaks to this point.

Finally, the **rotating presidency** model which applies to all Council formations other than the Foreign Affairs Council and the Eurogroup **has effectively involved into a presidency of the Council as far as it acts as a legislator** though overlap continues to exist – as the case of EPSCO illustrates. Here again, it may be too early to foresee how the practice of the two co-existing presidency regimes will unfold and whether there will be further differentiation in the way individual Council formations operate.

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