

**DISCUSSION PAPERS IN DIPLOMACY**

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*EU top level decision making at the beginning  
of a new century*

Peter van Grinsven

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**THE EUROPEAN COUNCIL UNDER CONSTRUCTION:  
EU TOP LEVEL DECISION MAKING AT THE  
BEGINNING OF A NEW CENTURY**

*Peter van Grinsven*

**Introduction**

“We cannot go on working like this”. These words of the British Prime Minister, Tony Blair, at the end of a chaotic European Council meeting in Nice in December 2000 say it all. This European Council summit ended late at night on the third day instead of early in the evening of the second day as planned. The European leaders had struggled on the so-called ‘Amsterdam left overs’, the necessary institutional reforms for an enlarged EU upon which at the Amsterdam summit in 1997 no agreement could be reached, for over three long days. During the Nice negotiations emotions rose high at times and eventually a meagre package deal of several compromises was agreed upon.

In retrospect the Nice summit seems to be a good example for providing insights into the decision-making of the highest political body of the European Union: the European Council. The poor result and the public fights between some of the European leaders in the aftermath of the Nice summit made painfully clear that, if it wanted to retain its important role within the European framework, the European Council needed to be restructured and even more preferably reformed.

The processes of deepening (expansion of policy areas) and widening (enlargement) of European integration have forced the European Council to tackle some tough challenges. The threat of a possible crisis in European top-level decision-making needs to be solved before actual enlargement with no less than ten new members takes place in May 2004. If the current generation of political leaders is not able to reach agreement on necessary reforms, future decision-making in the European Council could eventually turn out to be a mission impossible.

So, despite a successful record, the European Council seemed to have lost its grip on the integration process at the end of the 1990’s and the beginning of the new century. Adaptations of the decision-making process, still based on an unchanged negotiation structure since its creation in the 1970’s, are needed if the European Council wants to continue its guiding role in European integration.

Ever since Tony Blair showed his frustration with the internal proceedings of the European Council a lot has happened. Two parallel processes of European Council reform have been initiated or intensified and are to be finalised before actual enlargement of the European Union takes place. The first process deals with the operational settings of the European Council summits. These reforms were initiated at the Helsinki summit in December 1999 and were agreed upon at the Seville summit in June 2002. The second process deals with the institutional structure and the balance of power between the EU institutions. These reforms will most probably be finalised at the end of the Intergovernmental Conference (IGC) 2003/4, leading up to complete renewal of the EU Treaty, in which the position of the European Council will be strengthened once again.

The main purpose of this discussion paper is twofold. The first goal is to present some information on the historical evolution and the current functioning of the European Council. Although this top-level decision-making body has been very influential on the progress of European integration, paradoxically not much research has been done on its true record. The summits are still surrounded by a lot of secrecy and informal decision-making. This paper will try to give an outsider's view on the true decision-making processes of this very powerful body with special reference to the last years.

Secondly, an overview will be presented on the current reform processes that need to prepare the European Council for the upcoming enlargement. It is argued that the European Council, in line with current developments in international relations, has accurately overcome many of its problems and critics by ensuring a stronger institutional position in the future EU. The European Council will be in the driving seat more than ever before!

### **Historical evolution<sup>1</sup>**

The origins of European Council meetings can be traced to the strong influence of the President of the French Republic, Charles de Gaulle. De Gaulle's resentment of supranational dominance in international or European

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1 This section is an elaboration of: Peter van Grinsven, "The evolution of the European Council: from a serial summit to a permanent arena for leadership negotiations with some tough challenges ahead", paper presented at the Summitry Conference, Boston University, M.A., Department of International Relations, 19-20 March 2002.

relations made him instigate the first two summits in Paris in February 1961, and then in Bonn in July 1961. The European Council was made a success, though, by political leaders from the respective member states in the post-De Gaulle-era, who brought the European integration a lot further than the former French President would have ever expected or hoped for.

The first influential summit was not held until 1969 in The Hague. This summit was successful in two ways: agreement was reached upon British accession and, secondly, the idea of foreign political cooperation, the so-called European Political Cooperation, was formally initiated, thereby extending the integration process beyond economics. The positive European spirit made the French president Pompidou even speak of “complètement, approfondissement et élargissement” (completion, deepening and enlargement).

This Euro-optimism soon changed to ‘Eurosclerosis’. After two pale summits in Paris (1972) and Copenhagen (1973) it was during the Paris summit in 1974 that the European political leaders decided to have regular meetings of what was formally called the ‘European Council’. This institutionalization of the epitome of intergovernmentalism was needed for three reasons: the international economic crises had forced the member states to refocus their international economic policies; the community method had almost completely stagnated especially since the Empty Chair crisis in Luxembourg in 1965; and the Ministers of Foreign Affairs were finding it difficult to coordinate the activities of a growing number of Council formations, especially concerning the European Political Community.<sup>2</sup> A strong intergovernmental input was needed to bring European integration further: the European Council changed from an ad hoc informal gathering into a formal arena and was used by the political leaders for European negotiations. Paradoxically, this renaissance of the European Council coincided with a gradual strengthening of supranationalism.

The two founders of the current format of European Council meetings, the French President, Valéry Giscard d’Estaing, and the German Chancellor, Gerhard Schmidt, were opposed to the supranational tendency. They wanted to regain as much political power as possible and therefore decided to initiate the high-level meetings of the European Council. They preferred to have these meeting as informal as possible. From the Dublin summit in 1975 these

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2 An interesting link with the present dilemmas can be witnessed here. One of the main reasons for the current crisis in the European Council stems from the malfunctioning of the Council of Ministers, in particular the General Affairs and External Relations Council (GAERC). This malfunctioning will be discussed in length later on in this contribution – PvG.

meetings have been held onwards at least twice a year. Dinan rightly argues “many meetings of the European Council stand out as turning points in the EU’s history.”<sup>3</sup> The most important and successful European Councils were:

- The Hague (1969), foreign political cooperation and first wave of enlargement
- Paris (1974), “creation” European Council
- Milan (1985), convoking the IGC that led to the SEA
- Maastricht (1991), agreement on the TEU
- Amsterdam (1997), conclusion of the Amsterdam Treaty
- Brussels (1998), selection of member states to join Stage III of the EMU
- Tampere (1999), third pillar issues and institutional reforms
- Lisbon (2000), ICT and economic development
- Copenhagen (2002), EU enlargement with CEEC’s, Cyprus and Malta

This short list shows the enormous influence and impact the outcomes of the European Council negotiations have had on the European integration process.

The status of the European Council and its decisions have been the subject of academic debate. “Part of this problem stems from the fact that for the first twelve years of its existence (1974-86), the European Council met, and exercised significant power, without any legal basis in the Treaties”.<sup>4</sup> The European Council was given a constitutional and legal basis only in 1987 in the Single European Act (SEA). This stated in article 2:

*The European Council shall bring together the Heads of State or of Government of the Member States and the President of the Commission of the European Communities. They shall be assisted by the Ministers of Foreign Affairs and by a Member of the Commission.  
The European Council shall meet at least twice year.*

However, no tasks, functions or competencies were laid down in the Single European Act. These continued to evolve informally during the European Council meetings in the aftermath of the SEA. In the Treaty of the European Union that was agreed during the Maastricht European Council in 1991 the

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3 Dinan, D., *Ever Closer Union – An Introduction to European Integration*, Palgrave, 1994, p. 237.

4 Schoutheete, P. de, “The European Council”, in: Peterson & Shackleton, *The Institutions of the European Union*, p. 30.

membership and frequency of meetings were restated. Indeed Maastricht went even further by laying down in Title I, article D that “the European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof”. This formulation is a clear example of the intergovernmental primacy in the integration dynamics that has dominated the 1990’s and in fact gained even more momentum in the first years of the current decade. For, the Treaty of the European Union can be seen as the final phase of the formal institutionalization of the intergovernmental European Council. In the Treaty of Amsterdam the above-mentioned article was renumbered article 4 TEU. Here the article was reformulated:

*The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.*

*The European Council shall bring together the Heads of State or Government of the Member States and the President of the Commission. They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a Member of the Commission.*

*The European Council shall meet at least twice a year, under the chairmanship of the Head of State or Government of the Member State, which holds the Presidency of the Council.*

*The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.*

Unlike other EU institutions such as the Parliament, the European Council is not legally an institution of the European Community. Nevertheless it plays a vital role in all European Union fields of activity whether by giving impetus to the Union or defining general political guidelines, or by coordinating, arbitrating or disentangling difficult questions.<sup>5</sup>

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5 It should be noted that the Treaty on European Union stipulates that the “Council, meeting in the composition of the Heads of State or Government” exercises several functions: determining by unanimity the existence of a serious and persistent breach by a Member State of certain principles, such as the respect for human rights and fundamental freedoms; deciding to move to the third phase of the Economic and Monetary Union and determining which Member States meet the conditions for joining the single currency; and allowing “enhanced cooperation” in the Community field. The “Council, meeting in the composition of the Heads of State or Government” does not mean the “European Council”: the President of the Commission is not for example a member of the former although he is a member of the European Council, and the decision-making rules are not the same. Similarly, a

From 2004 onwards it is likely that a new chapter will be added to the evolution of the European Council. Last June the so-called Convention on the Future of Europe presented its proposal for a new constitutional EU Treaty, including reforms concerning the (institutional) position of the European Council. The ratification of this Treaty will have direct consequences for the position of the European Council, as will be argued at the end of this discussion paper. However, before going into detail on the future position of the European Council, first an overview will be presented its current functions and procedures.

### **The current functioning of the European Council**

Since the beginning of the 1990's the European Council has received an ever-increasing amount of attention and media coverage. Most deals with the fact that the European Council is supposed to have become the most powerful EU institution. Indeed, the European Council is at the heart of the European balance of power and is often described as the 'motor' of European integration. It has evolved from an informal gathering of the political leaders of the (E)EC/EU-member states in the 1970's into what seems to be an influential and guiding institution of the European Union. A semi-permanent top-level decision-making arena has come into existence. Compared to top-level decision-making institutions of other international organisations like the United Nations, ASEAN, G-7/8 and Mercosur the European Council takes a rather unique if not ambiguous position. On the outside the European Council looks to comply with all essential criteria of a top-level decision-making institution within an international organisation: executive participation, diplomacy at the highest political level, long-term agenda setting, brokering of interests, media exposure, etc. When given a second glance, however, the European Council undoubtedly distinguishes itself in several ways: the institutional structure in which it needs to operate, its range

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distinction should be made between the powers of the "Governments of the Member States at the level of Heads of State or of Government" (which intervene for example in the appointment of the President, Vice-President and other members of the Executive Board of the European Central Bank) and the term "European Council". See: <http://ue.eu.int/en/info/eurocouncil/sommet.htm>

of tasks and competencies and its working methods and decision-making procedures.<sup>6</sup>

It increasingly acts as the real broker for the most fiercely contended stalemate issues and usually solves them by package dealing.<sup>7</sup> In issuing manifold declarations and memoranda, it has become a major EU agenda builder giving the green light to the Commission, which usually acts quite responsively.<sup>8</sup> The highest authorities in the EU political system are these ‘summits’ of the EU heads of government and state. European Council meetings are where final agreements and compromises are reached on treaty reforms. It takes a central political leadership role, guiding the work of the lower meetings of the Council and the Commission, and setting the long- and medium-term objectives of the EU.<sup>9</sup> In a way the European Council looks to be perceived as some kind of pandemonium that is solely responsible for the current direction of European affairs.

How then does this ‘pandemonium’ deal with all its tasks? How is it able to get to consensual decision-making in a dynamic environment, like the European Union? In other words, how does it operate? The following section will provide an overview at an operational level of the working methods of the European Council.

*Working methods:*<sup>10</sup> a general overview<sup>11</sup>

The meetings of the European Council usually take place over two days, although there are some exceptions such as the Nice meeting in December 2000 which lasted four days. The standard two days provide a striking contrast between the privacy of the meetings and the enormous activity outside the rooms which nobody can enter without showing their credentials (a red pass); a contrast between the informal, flexible character of the meeting

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6 Schoutheete, P. de, “The European Council”, in: Peterson & Shackleton, *The Institutions of the European Union*, Oxford University Press, 2002, p. 33-39.

7 For an excellent analysis of the European Council until the Maastricht Treaty, see: Werts, J. *The European Council*, Elsevier Science Publishers, 1992.

8 Schendelen, R. van, *Machiavelli in Brussels – The Art of Lobbying the EU*, Amsterdam University Press, 2002, p. 75.

9 Hix, S., *The Political System of the European Union*, Macmillan Press, 1999, p. 28-30.

10 The author has gratefully used the official website of the secretary-general for some “insight information” on the working methods of the European Council.

11 Other parts of this chapter are based on interviews with mostly Dutch diplomats who have attended European Council summits.

and the boundless ingenuity which the Presidency and the Secretariat must show in order to provide translations, security arrangements, secretarial assistance and information for the national delegations sitting in adjacent rooms and for upwards of two thousand journalists covering the event.<sup>12</sup> As De Schoutheete rightly argues, “this is the essence of the European Council: a limited number of political figures, headed by the chief executives of all member states, meeting in a closed room with no assistants”.<sup>13</sup>

The restricted composition of the European Council gives it a rather informal character. Some even compare it to a traditional chat around the fireside. Though this is definitely not the case, some of the working methods that are being used do stem from an era that seemed to have passed since the introduction of computers and the Internet. Though there is no formal set of agreed and legally binding Rules of Procedure as exists for the Council of Ministers,<sup>14</sup> the composition, setting and proceedings are usually as follows.

#### *Composition*

The formal composition of the European Council (art. 4 TEU) was already mentioned earlier in this paper: two delegates per member state (the Head of State or Government and the Minister of Foreign Affairs), the President of the Commission and a member of the Commission. In practice, however, more people are directly involved in the European Council negotiations. Added to these thirty-two negotiators, over the years a growing, but still limited number of officials have been allowed into the conference room as well. The increased presence of EU officials is a direct consequence of the growing influence of the European Council over the process of European integration, as described in the first section of this paper. These officials are from the Presidency, the Commission and the Council Secretariat.

Since the merger of the functions of Secretary-General of the Council and the High Representative, this function has gained importance in the European decision-making structure, especially in the context of the European Council. The Secretary-General, currently the former Spanish Foreign Minister, Javier Solana, has adopted a (semi-) political function. He

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12 Schoutheete, P. de, “The European Council”, in: Peterson & Shackleton, *The Institutions of the European Union*, Oxford University Press, 2002, p. 33-39.

13 De Schoutheete, “The European Council”, in: Peterson E. A., *The Institutions of the European Union*, Oxford University Press, 2002, p. 22.

14 Jan Werts, *The European Council*, Elsevier Science Publishers, 1992, p. 77.

is closely involved in the preparation of the meetings and his secretariat is amongst others responsible for the drafting of the conclusions. This evolution of the Council Secretariat can also physically be witnessed at the negotiation table, since both the secretary-general and his deputy have been appointed a chair, next to the President of the European Council. Furthermore, two delegates per member state are allowed to enter the conference room to relay messages. They are explicitly not allowed to join the negotiations nor to stay in the room.

### *Setting*

The main meeting room, to which access is limited, is isolated from the outside world. If a member of the European Council wishes to call upon one of his close assistants or on a Permanent Representative for clarification or advice about a dossier, he presses a button, which sends a signal to the adjacent room of the so-called Antici Group.<sup>15</sup> This Group's members are diplomats and close assistants of the Permanent Representatives, who stay close to the main meeting room at all times and pass messages to their respective national delegations, accommodated further away. It is their function to convey requests and keep delegations informed of how the discussions are progressing. Proceedings are relayed to the outside world by a system of note-takers. An official from the Council Secretariat is present during the discussions and he takes notes for about fifteen minutes after which another Council official replaces him. The official orally briefs the Antici group in their separate room. De Schoutete, a former Belgian Permanent Representative to the EU, rightly argues "this indirect dissemination of informal guarantees that national delegations know something of the proceedings inside, but with a considerable delay and in a way which makes direct attribution of specific words to any participants nearly impossible. Such an extraordinary system would not have survived if heads of government were not happy with the result, namely that they operate at some distance, both in space and time, from the views and comments of their own civil servants".<sup>16</sup>

As all delegations are allowed to speak in their own language numerous translators are also present. They are situated at a side of the plenary room in

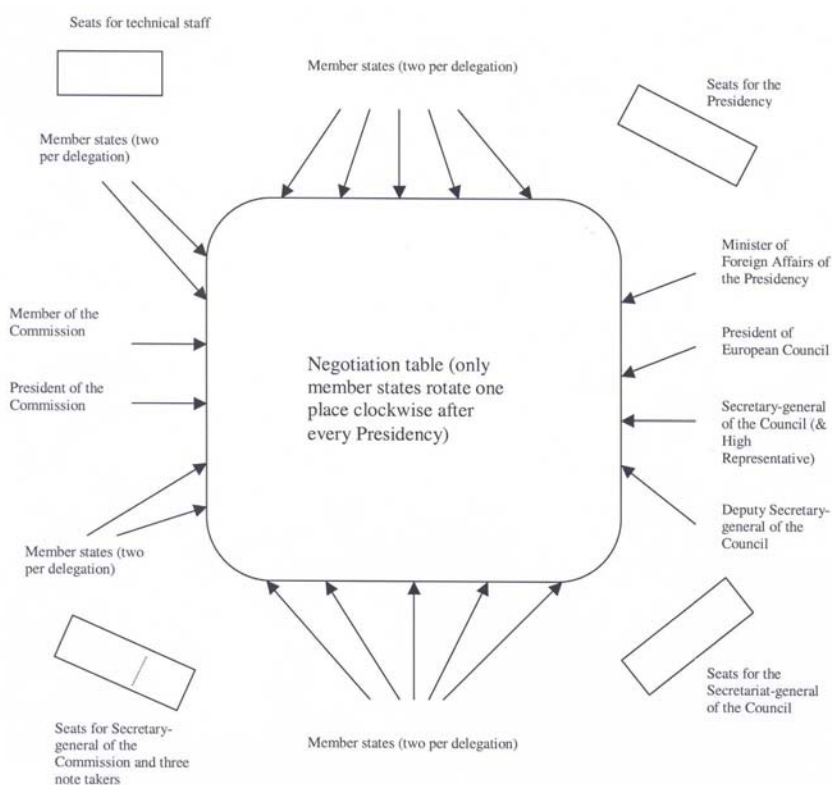
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15 This group was named after its Italian originator (1975) and was created to alleviate the workload of COREPER.

16 De Schoutete, "The European Council", in: Peterson e.a., *The Institutions of the European Union*, Oxford University Press, 2002, p. 26-27.

a row of boxes. Their simultaneous translations are only accessible for the negotiators at the table. The national delegates in the adjacent rooms have no access to these direct translations and have to wait for the oral briefings by the civil servants of the Council Secretariat and the Antici group. In the corners of the meeting room several seats are reserved for five different kind of professionals: officials from the Presidency, officials from the Secretariat-general of the Council, the Secretary-general of the Commission, note takers and, finally, the technical staff. This leads to the following overview of the meeting room itself<sup>17</sup> (see figure 1).

Figure 1: The plenary negotiation room – an schematic overview



17 This picture is primarily based on the press photos on the website of the European Council: <http://ue.eu.int/en/Info/eurocouncil/index.htm> – PvG.

### *Proceedings*

It has been practice since 1987 to begin the proceedings with a speech by the President of the European Parliament. Before the European Council's work officially begins, he informs the European Council of the Parliament's position on the main issues at stake, and after a short discussion, he leaves the room. The heads of state and government of the applicant member states are usually invited to join this first day opening session as well. The first day of work, sometimes called the "plenary session", is devoted to an exchange of views on the current concerns of the European Union.

At the close of the day, the proceedings are suspended for dinner. The Heads of State or Government and the President of the European Commission continue to discuss on their own issues they have decided to address. The Foreign Ministers dine in another room, and add final touches to certain dossiers. The Heads of State or Government and the President of the Commission then adjourn for the least formal part of the proceedings, the fireside chats, where they can broach whatever subjects they wish, in strictest confidence. Meanwhile, in the light of the day's discussions, the Presidency and the secretary-general of the Council tidy up the conclusions, which will be made public the following day, and the Foreign Ministers discuss current issues, and where necessary, prepare declarations on CFSP matters.

The next half-day's work is preceded by a working breakfast for each delegation, when informal bilateral contacts can be made where appropriate. Once the traditional "family photo" has been taken, the last plenary session is devoted to finalization of the conclusions. The drafting of this text sometimes involves prolonged discussions into the afternoon or simply omitting lunch, with consequent last-minute changes to the time of departure of the delegations.

The final part of the proceedings is the system of press conferences. After the final discussions of every European Council all parties involved (Presidency, all member states, Commission and Secretary General of the Council) give separate press conferences in which they put forward their positions, their "successes" and perhaps most importantly their interpretation of the discussions. This circus of media attention is first and foremost a public relations offensive used by the political leaders to communicate to their peoples and legitimise their actions. An interesting aspect of these press conferences stems from the differing explanations of politicians. These differences are due to the fact that during the European Council meetings no formal notes are taken which gives room for different interpretations of the

substance. This example of ‘public diplomacy’ par excellence is the closing piece of the negotiating puzzle on the European Council proceedings.

### *The Presidency*

The ‘amongst equals’-character of the European Council does not apply to the position of the Presidency. The member state holding the Presidency is clearly more equal than others. Main advantage deals with the fact that the Presidency is allowed to have two kinds of (national) negotiators at the conference table: the technical chairman of the meeting (the Head of State or Government) and the actual negotiator (Minister of Foreign Affairs) who will defend the national positions. The history of negotiations in the European Council has made clear that one can hardly speak of a ‘technical’ and ‘neutral’ chairman. Two essential characteristics, therefore, need to be mentioned for a complete overview of the proceedings: ‘agenda setting’ and the (drafting of) conclusions of the Presidency.

The setting of the agenda is in all negotiations an important tool for the chair to influence the proceedings and the outcomes. The sequence and number of the respective points on the agenda make or break the negotiations. The sequence is in the case of the European Council determined by the Presidency. The chair, hereby, is able to directly influence the contents of the negotiations. One of the main criticisms of the current system of the rotating Presidency is the ‘natural’ reflex of most member states to (mis)use their term in office as EU Presidency to push their own national interests onto the agenda. As a consequence the agenda of the European Council changes slightly every six months. As in all negotiations it is easier to get an issue on the agenda than to remove it. This process of broadening the agenda is one of the main dilemmas in the current crisis. Another source of influence derives from the tight time schedule. The Presidency is rather autonomous in filling in the actual negotiating time left. It is the Presidency that decides the of time spent on certain issues. It is the Presidency that decides when and with whom to arrange the ‘confessionals’. Clearly, a complex, unique and informal set of proceedings and working methods has come into existence. However, it is questionable if these practices will be applicable to an enlarged EU with at least twenty-five member states.

### ***A potential crisis in European top-level negotiating? The need for reforms***

Since the second half of the 1990's a mounting number of critics could be heard on the functioning of the European Council, both from within the European Council itself and from other EU institutions as well. Main critiques dealt with a decreasing sense of giving direction to European integration, an overload of low level decision making, an ever growing gap between European Council guidelines and the actual policy making by the other institutions and, finally, increasing difficulties in getting to consensual decision making.

The ever changing political agenda of the European Union is currently largely dominated by two different immense challenges: the unique upcoming enlargement with the countries in Central and Eastern Europe on one hand and the constitutional debate on the future institutional settings of the European Union on the other hand. Both challenges require decision-making at the level of the European Council. Ever since the Maastricht Treaty (1992) the European leaders have tried to reach agreement on both topics. So far, they have not been able to sufficiently do so and they running out of time.

So, despite its rather unique and potentially powerful position, the European Council currently has to deal with these tough challenges. Top-level European decision-making seems to be in heavy weather. In fact, it seemed that the European Council had partly lost its control on the integration process at the end of the 1990's. If it wants keep up its image of most important source of European leadership, it needs to reform.<sup>18</sup> So far, the European Council has been struggling to come up with a satisfying response to the increasing number of critics from both national politicians and European citizens. However, things are changing for the better: the likely consensus on the provisional constitutional Treaty could turn out to be the ideal solution to this dilemma.

The sources for this potential crisis in European top-level decision-making are twofold. On an operational level the negotiation procedures and methods seem to have reached their limits. The current proceedings of the European Council meetings, as described earlier in this paper, remain hardly applicable to a EU 15, and will simply not be applicable to a European Union with twenty-five or more member states. In other words, the negotiation methods used during the European Council meetings need to be reformed.

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18 Peter van Grinsven en Jan Melissen, "Europese Raad tussen marginale aanpassing en radicale hervorming", in: *Internationale Spectator*, September 2002, LVI, p. 421-426.

However, there is another practical source for the current discussion on the functioning of the European Council. This deals with the malfunctioning of the Council of Ministers, the General Affairs and External Relations Council (GAERC) in particular. As earlier argued the European Council meetings are part of a larger cyclist negotiation process in which other institutions play an important role as well. One of the most important links in the EU negotiation chain is the preparation of the European Council meetings by the Council of Ministers. This Council is supposed to take most decisions within the community method. If the Council fulfils its task properly, the European Council can primarily focus on its own main task: giving impetus to the European Union and taking political decisions on 'high politics' issues. However, the last couple of years the Council of Ministers (the General Affairs and External Relations Council in particular) has decreasingly been able to fulfil its function properly. Decision making in this Council has increasingly stagnated: on a large number of negotiation dossiers the Council has not been able to reach sufficient agreement. As a direct consequence these undecided dossiers have been past on to the European Council; transforming the European Council in some sort of final court of appeal. It is increasingly asked to 'spend time on laborious low-level drafting work, which adversely affects normal community procedures'.<sup>19</sup> In other words, the European Council has been sidetracked from its original and most important purposes.

These two dilemmas, the old fashioned methods and proceedings on one hand and the malfunctioning of the General Affairs and External Relations Council on the other hand, are clearly linked, as was recognized by both the European Council and the Secretary-General of the Council of Ministers, Javier Solana. At the Helsinki summit in December 1999 they jointly started a process of operational reforms of both the European Council and the Council of Ministers that was completed in June 2002 during the Seville summit (see later on in the paper).

The second source of potential crisis stems from the ongoing debate in the EU on institutional reforms. Since the creation of the European Union, as was agreed upon during the Maastricht summit in 1991, a (semi) permanent discussion on the institutional structure has been taking place. This year we will witness already a third Intergovernmental Conference (IGC) in less than ten years time that will deal with the question of the 'balance of power' between the institutions (and the member states). Since the beginning of the

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19 Council of the European Union, General-secretariat, *Preparing the Council for Enlargement*, Brussels, 11 March 2002, S0044/02, p. 2.

1990's a semi-permanent round of negotiations on the institutional structure has been taken place both within and outside the setting of the so-called Intergovernmental Conferences (IGC's). Ever since the creation of the European Union in the Maastricht Treaty in 1992 (that was also preceded by an IGC) already two IGC's have been finalised and a third will take place before actual EU enlargement in 2004: IGC 1996/1997, IGC2000 and IGC 2003/4. Not to mention the extra-institutional Convention on the Future of Europe in 2002/3. This Convention was created after the European Council recognized that it was unable to solve these dilemmas itself. Therefore, in December 2001 at the Laeken summit in Belgium it was decided to create this Convention, which main goal was to smoothen the way in such a way that the European Council would be able to reach agreement before actual enlargement takes place in May 2004. At the end of the 2003/4 IGC the European Council is expected to reach agreement on the third Treaty revision in those same ten years.

This institutional process deals primarily with the (re)distribution of the balance of power between the EU institutions. Undoubtedly the European Council has played an important role in this process. In fact, as will be argued later on in this paper, the European Council has used this institutional process in order to strengthen its position in the EU negotiation process. Next year, it will most probably decide on a complete overhaul of its own structure, the Presidency in particular. The consequences of these reforms will be crucial for future European Council negotiations. Before presenting an assessment of both the reform processes, the above-mentioned sources of conflict will be presented in length.

*The outdated working methods and proceedings: a 'number game'*

The working methods currently used are still mainly based on the initial European Council meetings of the six founding member states in the 1970's. The European Council has gradually involved from these informal, ad hoc 'chats around the fireside' into the most powerful institution of the European Union with hundreds of directly involved politicians, civil servants and diplomats. The opening of the Gotthard-tunnel is an excellent example of this second problem as well: the current working methods and proceedings. Gerhard Schröder's critique was twofold: the fact that this issue was at the agenda of the European Council at all and, secondly, the time it took to discuss this issue. It took over an hour for the fifteen political leaders to reach agreement on this rather 'low politics' issue. The often used 'tour de table' (in which every delegation is given the opportunity to have its say on the topic)

will after the enlargement have been *quadrupled* in time spent. Even if given only two to three minutes per delegation, this would lead to a 'tour de table' of over one hour on each topic. Not to mention the following discussions. The same line of argumentation can be applied to the so-called 'confessionals'.

The enlargement of the EU will lead to an increase in the number of official languages. Currently the EU has eleven official languages. As every negotiator is allowed to speak in his own language, an enlarged European Council will demand more translators and more trapped-translations which implies an increased margin of error and misunderstanding. This will slow down the negotiations and creates a potential source of irritation.

The numbers game can also be witnessed in the size of the delegations. Currently the European Council meetings involve hundreds of national diplomats and civil servants, who play their role in facilitating and co-ordinating the processes from a national perspective. The European Council has evolved from an informal 'chat around the fireside' into a pandemonium of national delegations of sometimes over thirty civil servants and diplomats per member state. The media often makes the comparison with a travelling circus.

These hundreds of national delegates have all a certain role to play in the multi-layered and complex proceedings surrounding the actual negotiations by the political leaders. This implies a complex and non-transparent web of co-ordination, deliberation and consultation structures in the margin of the European Council meeting. The direct consequences of the ever expanding number of indirect participants are visible in the current problems of the drafting of (presidency) conclusions and the process of co-ordinating national positions during the negotiations in the European Council: the political leaders have to wait too long for answers on their direct questions, too many diplomats have to study the drafts of the Presidency conclusions, more delegates imply more differing opinions to discuss, et cetera. In other words, to increase the efficiency and effectiveness of the total process of European Council negotiations a limitation of the number of delegates is needed.

The expansion of tasks and competencies has led to an increase to the so-called 'third party meetings', meetings with important political institutions or persons during the European Council summit, like political leaders of the applicant member-states, political figures from outside the EU, etc. This mounting number of meetings is squeezed into the already tight time schedule of the entire meeting of normally two days. These time consuming activities leave less time for actual negotiating. This frustration of the (potential)

outcomes of the negotiations is, finally, from the numbers game perspective negatively influenced by the broadening of the agenda.

The increased influence of the European Council on the successful process of post-war European integration has led to a growing number of competencies on a growing number of (national) policy areas. Nowadays, the European Union has an impact on almost all policy areas, including foreign and defence policies. This expansion of EU influence on national decision-making has broadened the European negotiation agenda. The increased number of negotiating points combined with the limited time available has complicated the negotiation process as such. The malfunctioning of the GAERC has broadened the negotiation agenda only further. The European Council should reform to refocus on its core business: strategic and political decision-making instead of concrete policy dossiers.

*The malfunctioning of the General Affairs and External Relations Council (GAERC)*

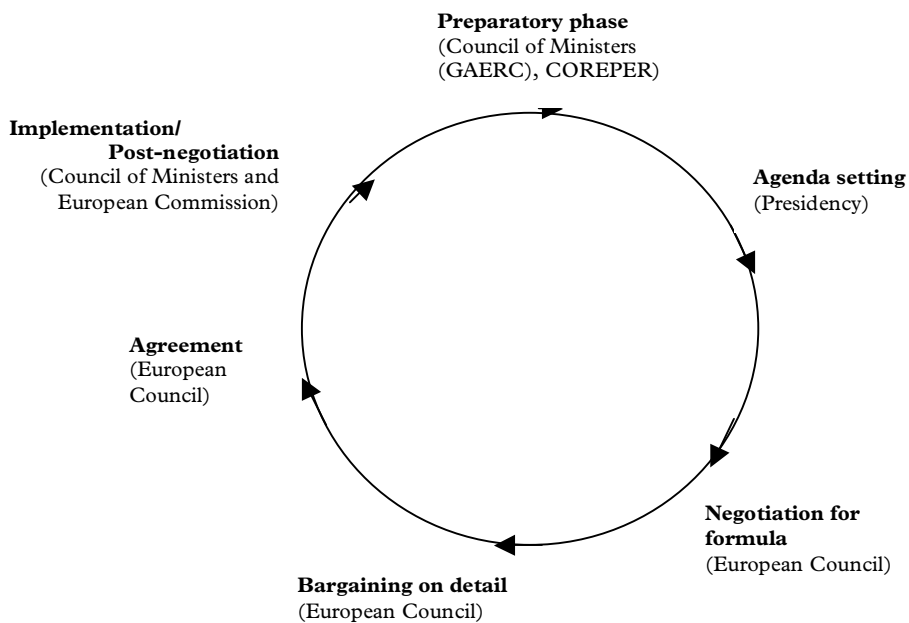
One of the most important functions of the General Affairs and External Relations Council (GAERC) is to coordinate EU policies and dossiers in preparation of the European Council meetings. During the last couple of years, however, the GAERC has decreasingly been able to fulfil this function properly. In fact, it seems that the GAERC has used the European Council as a kind of final arbiter. As a consequence the European Council has lost its most important function as ‘motor’ behind integration. More and more, the European Council has become the replacement of the GAERC by taking tough decisions on specific policy dossiers. The speech of Gerhard Schröder at the Den Uyl-lezing in Amsterdam in the aftermath of the Barcelona European Council in 2002 is again an illuminating example. The German Chancellor publicly showed his frustration on the proceedings of the Barcelona European Council where the leaders of the fifteen member states had a round the table discussion on the reopening of the Gotthard tunnel. Schröder cynically stated “this could not be not the task of the European political leaders”.

This sign of frustration of the German Chancellor seems to be the tip of the iceberg of general concerns with the negotiating process in the Council of Ministers. The widening gap between the political statements of the European Council and the decreasing decision-making in the Council of Ministers has forced the European political leaders to negotiate on an ever-expanding agenda within an unchanging, two-day time schedule. The consequence of this process is a shift from the actual decision-making on policy dossiers from

the General Affairs and External Relations Council to the European Council. The European Council should cease working out the details of policies at this level and focus on its main strategic tasks. One could argue that in a way the European Council has taken over an important task of the Council, which takes too much of its valuable time. In case of policy decisions the European Council should only function as the institution of final resort.

In the International Relations literature decision-making is often described as a six stage ongoing cyclical process: development: preparatory phase, agenda setting, negotiation for formula, bargaining on details, agreement, and implementation/post-negotiation (see below).

*Process of International Decision Making in a Multilateral Context applied to the European Council*



This cyclical process is perfectly applicable to the European Council. It is clear that in case of a malfunctioning Council of Ministers in the preparatory phase the entire chain of European Council decision-making starts to

stagnate. The dependency on the functioning of other EU institutions has made the European Council institutionally vulnerable.

This vulnerability has led to what is called here a 'delivery deficit'. The European Council has persisted in showing a high level of ambition in its decisions and presidency conclusions. In fulfilling its function of giving impetus to the integration process the European Council has launched several ambitious plans over the last couple of years in different policy areas. However, as the Council of Ministers has not been able to live up to these initiatives a widening gap is evident between top-level decisions and the actual implementation of EU policies. In other words, the EU cannot practice what it preaches!

### **Safeguarding the European Council: processes of reforms**

In order to avoid the earlier mentioned threat of stagnation, the European Council for the first time since its creation in 1974, is the subject of a reforms agenda. Based on the above-described analysis the European Council needs to tackle the following five dilemmas:

- 1 The main task of the European Council is to provide the EU with the necessary impetus for its development and to define the general political guidelines thereof. The implication of this task is that the European Council will primarily focus on European *high politics*. High politics implies a high sensitivity surrounding the issues. In other words, the European Council has to decide upon policy areas in which the member states are very hesitant of handing over power and sovereignty to the EU (e.g. defence, taxes, social policy, voting power in the institutions). These are the matters on which it is difficult to produce satisfying outcomes on a regular basis.
- 2 The bulk of European decision-making takes place within the so-called community structure of the Commission, Council and Parliament. The European Council has almost no role in this process. In other words, a large part of European decision-making takes place outside the direct influence of the European Council. Therefore, it is not possible to look at the European Council as the sole leading institutions in the centre of European politics. In fact, the other EU institutions, the Commission in particular, play an important role as well.
- 3 Closely linked with these first two remarks, it should be noted that the European Council has no direct influence or power on the

implementation and control of its own decisions. The implementation and control of EU policies are autonomous competencies of the other EU institutions (Commission, Council, Parliament and Court).

- 4 One of the main problems seems to be the malfunctioning of the Council of Ministers, the General Affairs and External Relations Council (GAERC) in particular. This Council is decreasingly able to reach consensus on actual policy decision-making. Over the last couple of years this GAERC has increasingly used the European Council as a final court of appeal. All actual policy dossiers that could not be decided upon within the community structure were put on the agenda of the European Council meetings. This overload of work has led to such an extended agenda that European Council decision-making is in real danger of stagnation. The European Council itself has realized this potential threat and has already launched an internal reform, based on two reports by its Secretary-General.
- 5 The main internal dilemma stems from the old fashioned working methods, the unchanged structure of negotiations, and the ever-increasing number of participants. The summit meetings of the European Council appear disruptive and produce too few decisions. Reforms are needed before actual enlargement takes place.

The European Council has initiated two different, but closely linked processes of internal reforms: an operational one, focussing on the day to day functioning of the European Council and an institutional one, focussing on the future power position. Both processes started some years ago and will be finalised before the actual enlargement takes place. Both processes will be discussed now in length.

*The operational process: Helsinki (1999) – Seville (2002)*

The European Council at its Helsinki summit at 10 and 11 December 1999 already recognized the potential dark clouds of the upcoming enlargement. In its conclusions the European Council put two important issues high on the agenda: effective institutions and transparency. In its Presidency conclusions it stated that ‘the scale of the coming enlargements coupled with the wider scope of the Union’s actions could well slow the Council down, and ultimately paralyse it. That risk is already perceptible now and represents a

threat to the smooth operation of the Union, given the Council's central role in Union decision-making'.<sup>20</sup>

The Göteborg European Council (December 2001) has returned to these problems once again. The Secretary-General was mandated to present suggestions for improving the way the European Council (and the Council of Ministers) operates. In his report of 11 March 2002 Javier Solana presented a clear analysis of the current problems of the EU-negotiating process.<sup>21</sup> His analysis and recommendations formed the basis of the reforms on the future constellation of the European Council proposed at the Barcelona and Seville European Council meetings in 2002 that have come effectively into practice since January 1st of 2003.

According to the secretary-general the main problem is the following: "The European Union is the Union's supreme political authority. It possesses a legitimate power of decision. It represents the unity between the Union, on the one hand, and its Member states, on the other, in its closest form. Its task is 'to provide the Union with the necessary impetus for its development and define general political guidelines'. That presupposes clarity of objectives, transparency of decisions, continuity of action. For some years now, the European Council has been sidetracked from its original purpose. Owing to malfunctioning of the Council, it is increasingly asked to spend time on laborious low-level drafting work, which adversely affects normal Community procedures. The drift in the working of the Presidency has reduced its meetings to report-approval sessions or inappropriate exercises in self-congratulation by the institutions".<sup>22</sup>

The European Council meeting in Barcelona on 15-16 March 2002 was another clear example of the problems which Heads of Government have in reaching agreement on the reform of their negotiating processes. Even with the help of two reports by the Secretary-General of the Council, Javier Solana, the European Council was not able to present its first prudent steps on the path of internal reform. Eventually, partly based on the mounting pressure of the proceedings in the Convention, it was decided, "the European Council instructed the Presidency, in close cooperation with the Council Secretary-General, to make all appropriate contacts [...] with a view to submitting a

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20 Helsinki European Council, 10-11 December 1999, Presidency conclusions, see: [http://europa.eu.int/council/off/conclu/dec99/dec99\\_en.htm](http://europa.eu.int/council/off/conclu/dec99/dec99_en.htm)

21 Council of the European Union, General-secretariat, *Preparing the Council for Enlargement*, Brussels, 11 March 2002, S0044/02.

22 Ibid, p. 1-2.

report at the Seville meeting proposing specific measures for adoption.”<sup>23</sup> In other words, the path of no return appeared to have been taken!

The Seville summit, a couple of months later, turned out to be more successful. For the first time in its history the European Council was able to reach agreement on some initial internal reforms of the working methods and proceedings. The Spanish Presidency, in cooperation with the Secretary-General/High Representative, Javier Solana, argued in its report of 13 June 2002 that “the view is widely held that, following the next enlargement, the European Council will have increasing difficulty in fulfilling its task with the authority and efficiency expected of the highest political authority of the Union. It is also generally admitted that one way of improving the functioning of the European Council, by refocusing it on its essential tasks, would be set precise and binding rules for the *preparation, conduct and conclusions* of its proceedings”.<sup>24</sup> The most important changes are:<sup>25</sup>

- The European Council shall in principle meet four times a year. Only in exceptional circumstances it may convene an extraordinary meeting.
- The meetings shall be prepared by the newly formed General Affairs and External Relations Council (GAERC), which shall coordinate all the preparatory work and draw up the agenda (draft agenda’s, brief outlines).
- The proceedings shall last for one full day, preceded the day before by a meeting restricted to Heads of State or of Government and the President of the Commission.
- Meetings in the margins with representatives of third States or organizations may be held in exceptional circumstances only. They must be approved in advance by the agenda setting General Affairs and External Relations Council.
- The Presidency is given more tools and competencies (e.g. order of contributors) to influence the agenda and to streamline the discussions. Furthermore, a new timetable will come into effect during the sessions (limiting speak-time).
- Delegations shall receive summary briefings on the outcome and substance of the discussions on each item as proceedings continue in such ways that confidentiality is safeguarded.

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23 *Presidency Conclusions* – Barcelona, 15 and 16 March 2002, p. 23.

24 Council of the European Union, Report by the Presidency to the European Council (drawn up jointly with the General-Secretariat-General of the Council), *Measures to Prepare the Council for Enlargement*, Brussels, 13 June 2002, 9939/02, POLGEN25.

25 *Presidency Conclusions* – Seville, 21 and 22 June 2002, Annex I, p. 19-21.

- Each delegation shall have two seats in the meeting room. The total size of delegations shall be limited to twenty (!) persons for each Member State and for the Commission. That number shall not include technical personnel assigned to specific security or logistic support tasks.
- The Presidency conclusions will only set out policy guidelines and decisions, placing them in their context and indicating the stages of the procedures.
- An outline of the conclusions shall be distributed on the day of the meeting before the start of the proceedings with the distinction of those parts that have been approved and those parts that need to be discussed.

Most of these changes were put into practice during the Danish Presidency in the first half of 2003.

*The institutional process: (post) Nice (2000) – IGC2003/4*

As mentioned before, the institutional implications of the enlargement of the European Union have been high on the political agenda for over ten years. Ever since the creation of the European Union in 1992, the member states have tried to reach agreement on their future position of power. At the Amsterdam summit in 1997, the European political leaders were not able to construct a satisfactory new balance of power for an enlarged European Union. Though a new EU Treaty was established, no agreement was reached on what later became known as the ‘Amsterdam left overs’: the future national weights in European decision-making. These ‘Amsterdam left overs’ were the main issues during the IGC2000 that was concluded with the Nice summit in December 2000. At this summit some progress was made but that same European Council recognized that the Nice Treaty would not sufficiently prepare the EU decision-making process for enlargement.

It was eventually the European Council itself which established the unique European Convention at its Laeken summit in December 2001. This Convention, consisting of 105 members<sup>26</sup> and being presided by the former French President and co-founder of the European Council, Valéry Giscard d’Estaing, was an extra-institutional EU body that was instructed to deal with a very specific task: preparing a new constitutional EU Treaty for an enlarged

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26 For additional information on the Convention, see:  
[http://www.europa.eu.int/futurum/index\\_en.htm](http://www.europa.eu.int/futurum/index_en.htm)

European Union.<sup>27</sup> One of the fundamental reasons behind this decision to convene such a constituent, extra institutional assembly was ‘the realization that previous intergovernmental conferences had failed to produce reforms bold enough to prepare the EU adequately’.<sup>28</sup> Another reason stemmed from the criticism ‘levelled against the EU that treaty reforms had hitherto been closed shops where political and bureaucratic elites decided on Europe’s future without involving the European public or their parliamentary representatives’.

The provisional EU Treaty contains the following articles that will most probably be approved and ratified without any changes:

*Article 20: The European Council*

- 1 The European Council shall provide the Union with the necessary impetus for its development, and shall define its general political directions and priorities. It does not exercise legislative functions.
- 2 The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Union Minister for Foreign Affairs shall take part in its work.
- 3 The European Council shall meet quarterly, convened by its President. When the agenda so requires, its members may decide to be assisted by a minister and, in the case of the President of the Commission, a European Commissioner. When the situation so requires, the President shall convene a special meeting of the European Council.
- 4 Except where the Constitution provides otherwise, decisions of the European Council shall be taken by consensus.

*Article 21: The European Council Chair*

- 1 The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. In the event of an

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27 The topics the Convention had to deal with were defined at the Laeken summit and laid down in the Annex IV of conclusions of this summit.

28 Michalksi, A. (ed.), *An Assessment of the European Convention: The Political Dynamics of Constitutional Reform – Seminar Report*, The Clingendael Institute The Hague, 5 June 2003, p. 3, see: <http://www.clingendael.nl/>.

impediment or serious misconduct, the European Council can end his or her mandate according to the same procedure.

- 2 The President of the European Council:
  - shall chair it and drive forward its work,
  - shall ensure its proper preparation and continuity in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council,
  - shall endeavour to facilitate cohesion and consensus within the European Council,
  - shall present a report to the European Parliament after each of its meetings.

The President of the European Council shall at his or her 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 responsibilities of the Union Minister for Foreign Affairs.

- 3 The President of the European Council may not hold a national mandate.

How should we assess both these processes with their respective reform proposals? What will be the consequences for the functioning of the European Council? Will the proposals prove to be sufficient? Has the European Council been able to turn around the threat of stagnation in EU decision-making or has it even improved its position?

### **The future of the European Council: leading the way in Europe!**

The operational process has already been put into practice. The Danish Presidency applied most of the reform proposals during the first half of 2003. This has so far led to shortened meetings (limited in time), more concentrated presidency conclusions, and a renewed functioning of the General Affairs and External Affairs Council. One could argue that the operational reforms are rather successful. Still, it is questionable whether the reforms are sufficient for the proper functioning of a European Council of twenty-five member states. The limitation to a maximum of twenty delegates per member state would still lead to *five hundred* persons surrounding the European Council summits. Furthermore, EU history tells that difficult issues cannot be solved within the setting of a single summit. So, what will happen, if the European Council has to decide on politically sensitive issues?

The European Convention appears to have found the solution to this question by presenting some *additional* reforms in combination with other operational reforms that have made it into the provisional constitutional Treaty of the European Convention as well. The summits will be held quarterly and will eventually all take place in Brussels. The General Affairs and External Relations Council will be split up and will be given clearer guidelines. In fact, the GAERC will be presided by a newly created function of a European Minister of Foreign Affairs.

Judging the reform proposals, it is argued that the European Council has been able to tackle three of the five earlier defined dilemmas: the working methods have been modernized, the procedures and tasks of GAERC will be changed, and the European Council will be more firmly embedded within the institutional EU structures. What remains are the interdependency of the functioning (and especially implementation) of the other EU institutions and the question of high politics. However, these two dilemmas are inherent to the current system of EU top-level decision-making. The 'new' European Council will have to deal with these dilemmas and continue to give guidance to European integration.

It seems, therefore, that the European Council reforms, especially those from the European Convention, perfectly fit in some current global developments in top-level decision-making. These changing international relations, especially in the post-Cold War era, have had a clear impact on the system of international decision-making. The process of globalization, leading to a growing interdependence between nation-states, and the rise of international organizations and regional cooperation, made it 'grow in number, become more complex technically and politically, and acquire new dimensions, such as being an alternative to coercive solutions of disputed problems'.<sup>29</sup>

The scope of issues on the agenda has increased immensely as well. Some international organizations tend to deal with almost all policy areas, as in the case of the European Union. An increasing number of dossiers and negotiations in the respective international organizations get interlinked, leading to a growing complexity in decision-making as a direct consequence. On the other hand, this expanding scope lowers the threshold of (total) package deals and intensifies the contacts between the parties involved, which in itself facilitates the possibility of consensual decision-making.

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29 Kremenjuk, V.A., "The Emerging System of International Negotiation", in: V.A. Kremenjuk, *International Negotiation*, PIN, Jossey-Bass, 2002, 2nd edition, p. 22-23.

Finally, one could argue that international *top level* decision-making gets more and more institutionalized. They are no longer just a means in order to reach the ultimate goal of getting to an agreement, but have become an autonomous part of the decision-making process. Many international summits take place at permanent locations and are being prepared by the institution's own secretariat.

The European Council is an excellent example of these latest developments in international decision-making. First, one can witness a significant increase in the *number* of European Council summits over the last years. The average number of meetings per year has doubled from two summits in the first half of the 1990's to four summits at the beginning of this century.<sup>30</sup> Furthermore, over the years several kinds of European Council summits have come into existence. The Presidency conclusions speak of *normal* and *extraordinary* meetings, as in case of the September 11th attacks (2001) and the war in Iraq (2003). De Schoutheete rightly mentions a third kind of meeting: *informal* meetings of which no official notes, conclusions or decisions are published, like the first informal European Council summit in September 1995 on the ongoing proceedings of the IGC.<sup>31</sup>

These different kinds of meeting coincide with the ever-expanding agenda of the European Council. As mentioned in the historical overview, the European Council has been involved in an *ever-expanding number of policy areas*. In fact, the European Council is currently considered as the guiding EU body in most policy areas, especially foreign policy, institutional developments, justice and home affairs, and external representation. In this sense the European Council's *expanding agenda* reflects the ongoing process of European integration, characterised by a high level of interdependency and complexity.

Finally, some remarks on the institutionalisation of the European Council. Ever since its creation in 1974 the European Council has become more and more embedded into EU structures. It is very likely that with the new constitutional Treaty the European Council will take the final step towards being a formal, powerful EU institution, including a permanent President and an own staff and secretariat (see later in this paper). In fact, it already decided on some preliminary steps at its Nice summit in December

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30 For a complete overview of all European Council meetings, see: [http://europa.eu.int/european\\_council/conclusions/index\\_en.htm](http://europa.eu.int/european_council/conclusions/index_en.htm)

31 Schoutheete, P. de, "The European Council", in: Peterson & Shackleton, *The Institutions of the European Union*, Oxford University Press, 2002, p. 29.

2000. Here was laid down in the 'Declarations adopted by the Conference' in article 22: "*Declaration on the venue for European Councils: As from 2002, one European Council meeting per Presidency will be held in Brussels. When the Union comprises 18 members, all European Council meetings will be held in Brussels*".<sup>32</sup> This means that the European Council will be given a permanent seat and have an opportunity to build up its own secretariat and diplomatic staff.

In other words, the European Council has been able to bend a potential threat into a strengthened position within the European Union. As soon as the new Treaty is ratified the European Council will have an indirectly elected President, who can start building up a secretariat and who can lean on a stronger institutional position than ever before. One could argue that under the leadership of Giscard d'Estaing, he almost personally has been able to fulfil the final phase of his political intentions of the seventies: creating a strong, powerful, formal intergovernmental top level institution that can counterbalance too much supranational influence by the European Commission and Parliament.

However, one particular international relations reflex should not be forgotten. Changes in procedures and methods always lead to unexpected new problems and dilemmas. No one can tell how the European Council will actually operate once twenty-five member states will be represented. Undoubtedly, new reforms will be needed in future to keep the European Council in its EU driving seat. Much will depend on the *person* who will become the first President of the European Council. Will he or she show real leadership or just follow the European political leaders? Time will tell.

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32 See for the Treaty of Nice:  
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