

Philippe de Schoutheete and Helen Wallace, Study on the European Council (September 2002)

Caption: In this study realised on the European Council by Philippe de Schoutheete and Helen Wallace in 2002, both authors present the historical context in which the European Council developed, the functions it fulfils and the remedies which could be applied to its weak points.

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The European Council

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Introduction

‘Europa’, the European Union website, gives Internet surfers an enthusiastic description of the European Council. It *‘occupies a unique place in European Union decision making... Currently only the European Council can really give the European Union a shot in the arm... It plays a vital role in all European Union fields of activity whether it be by giving impetus to the Union, or defining general political guidelines, or by coordinating, arbitrating or disentangling difficult questions... It has acquired such importance and legitimacy today that it is difficult to imagine that there was a time when it did not exist.’*

This description may irritate some ardent federalists and some confirmed Eurosceptics but it is in fact shared by most political observers of the European integration process. In a recent book Peter Ludlow describes it as *‘the arbiter of systemic change, the principal agenda setter, the ultimate negotiating body and the core of the EU’s executive’*. (Ludlow 2002, pp. 5-15). For others it is *‘the primary source of history making decision’* (Peterson and Bomberg 1999, p. 33) or *‘the guiding force of the European integration process’* (de Schoutheete 2001, p 40).

High appreciation of the European Council is partly founded on the consideration that it has been working better than the rest of the institutional apparatus of the EU. It has, in a significant number of cases, been able to find solutions where normal Council procedures were failing. Over the years it has effectively fulfilled a coordinating role that foreign ministers in the General Affairs Council were less and less able to ensure. It was heads of government who were ultimately able to solve existential crises such as the British budgetary debate in the seventies and eighties. They alone could launch major new initiatives such as monetary union (Hanover 1988) or enlargement (Copenhagen 1993). Basically the history of the European Council, since its creation in 1975, is widely judged to be a success story.

There is of course a darker side to this rosy picture. The European Council has not always been very effective in taking decisions, or in implementing the decisions which it has taken. It took several years of

acrimonious discussion to solve the British budget question. Package deals on Community financing or the location of institutions are painfully slow, the nature and the level of arguments not really edifying. Acrimonious and sometimes unfruitful discussions on high-level appointments, or the seats of agencies, get headline treatment in the press. Treaty modification has become a regular diet for heads of government and they are not always good at it: Amsterdam produced important ‘left overs’ and Nice was so chaotic that Tony Blair concluded ‘*We cannot go on working like this*’. Indeed this led the European Council to embark itself on a discussion of reform at its meetings in Barcelona and Seville in 2002.

Perhaps the clearest indication of relative failure is the creation — by the European Council itself (Laeken, December 2001) — of the Convention. The rationale behind this decision is that two successive intergovernmental conferences (IGCs), respectively leading to the treaties of Amsterdam and Nice, are, by common consent, considered to have failed to adapt adequately, or appropriately, the Union’s institutions to the challenges of enlargement, globalisation and winning back the support of public opinion. If those treaties had been considered adequate, we would not have a convention today, or a new intergovernmental conference tomorrow. But what was the driving force and the decisive arbiter in those negotiations? The European Council, of course. In calling for a Convention to prepare the next IGC heads of state or government accept that existing mechanisms for treaty change, of which they are the central and most decisive element, are not entirely satisfactory.

This admission justifies a review of the role and working methods of the European Council in the European integration process. To be effective, and to fulfil its mandate, the Convention must consider all aspects of decision-making in the Union. It should ‘*improve the efficiency of decision-making and the working of the institutions in a Union of some thirty member states*’ (Laeken Declaration). Nobody can deny that the European Council is a very significant part of that decision-making and of the working of those institutions.

The purpose of this paper is to consider the historical context in which the European Council gradually developed and which explains many of its characteristics, the functions it fulfils today and its effectiveness in fulfilling them and finally the remedies which could be applied to its identified weaknesses. This is a contribution to the general institutional reflection accompanying the Convention. It deals with items that imply treaty changes and others that do not.

History: 1975-2002

Meetings of heads of government have taken place since the very beginnings of European integration, but the decision to have *regular*, as opposed to *occasional*, meetings was taken at a summit in Paris in December 1974 and the first European Council meeting took place in Dublin in March 1975. Since then it has met usually two to four times a year (five in 2001) to reach a total of approximately 80 meetings over the years. The impact of these meetings of the European Council on the Union as we know it is obviously very large.

The Paris summit conclusions indicate that the objective was to ‘*ensure progress and overall consistency*’. It could indeed be argued that the Community, locked for several years in the debate over British accession, had lost dynamism, especially since the Luxembourg compromise was de facto inhibiting majority voting. And consistency between Community activities and the newly born ‘*political cooperation*’, deriving from the Davignon report of October 1970, was not easy to ensure at a time when some participants, primarily the French, were insisting on an absolute and permanent separation between the two activities. The Tindemans Report, drafted in the same time frame, justified the creation of the European Council by the argument that ‘*the institutional structures set up by the treaties have shown themselves in practice to be too weak to give the continuing political momentum needed for the construction of Europe*’.

The conclusions do not mention other motives, though some were probably even more important. Valéry Giscard d’Estaing, the then recently elected President of the French Republic, wanted to remain as directly involved in European affairs as he had formerly been as Finance Minister. He found a major ally in Helmut Schmidt, the new Chancellor of Germany, who had also been Finance Minister and shared Giscard’s desire to remain an active participant in the European debate.

On the other hand, the Benelux governments had long been opposed to regular summit meetings. Contrary to those of the bigger member states their political systems were, and still are, deliberately conducive to coalition governments, in which the Prime Minister is no more than *primus inter pares*, and was, at the time, rarely involved in foreign policy. However, Benelux governments were also seriously committed to progress in European integration and listened to Jean Monnet. The latter had come to the conclusion, already in 1973, that to '*return to the sources of power*' regular meetings of heads of government were necessary. Given his past role and accumulated credit, he was instrumental in persuading governments from the smaller member states. Nevertheless there remained over the years, and perhaps even today, an element of reluctance in the diplomacy of the smaller member states towards the intergovernmental character of the European Council and the risk of *directoire* that it might entail.

The initial concept of the European Council was to make it as informal as possible. Willy Brandt liked to think in terms of *Kamingesprächen*, fireside chats. The motto of his successor, Helmut Schmidt, was '*keine Papieren, keine Beamten*' (no papers, no officials). The idea was to make meetings of the European Council as different as possible from normal Council meetings. Council rules of procedure did not apply, the composition was different, there was no legal basis in the treaties: this was a place where power was exercised and not one where legal procedures were implemented. Even its decisions were issued 'only' as the Presidency's conclusions. In a way this approach suited everybody: the more majestic members of the European Council did not want their activity to be assimilated in any way to the day-to-day haggling of Coreper and Council, the more Community-minded wanted the working of the European Council to be as distant as possible from the institutional framework of the Community, although the President of the Commission was always a full member of the European Council.

Over the years this initial approach has had to be largely abandoned in practice, even if it remains, in some minds, as the reflection of a mythical past. Hundreds of pages of documents are routinely rubber stamped by most European Councils and civil servants by the hundred clutter the corridors. Nevertheless, in the room, heads of government are still alone, most frequently with their foreign ministers, and practical arrangements are such that they operate at a distance, both in time and space, from their own civil servants. In that practice, European Councils are still very different from normal Councils, even after the discussions at the Seville meeting in June 2002. They are free to set their agenda and rules of procedure.

This freedom of action has been used to some effect for political aims. In the late eighties it became customary to invite the President of the European Parliament to address the European Council at the beginning of its meetings. Whether this has had a visible effect on the conclusions is doubtful, but it is a recognition of the growing political relevance of Parliament. In the mid-nineties it became customary to invite heads of government from candidate countries for lunch and a brief discussion on the second day of most European Councils. There again the practical impact is not self evident, but the political significance and psychological value of these meetings should not be underrated.

In the course of time specialized meetings of the European Council have evolved:

- **Informal meetings.** The first informal meeting was called by the Spanish presidency at Formentor (Mallorca) in September 1995 to discuss the issues of the then current IGC. Informal meetings are usually shorter than formal meetings. The purpose is to allow for the sort of confidential exchange of views and brainstorming which a growing workload has gradually eliminated from regular meetings. Foreign Ministers are not usually present, which is a frequent source of frustration (as for instance in Paris after the Berlin Wall came down or recently in Ghent in October 2001). In theory, there should be no conclusions: yet the Ghent informal European Council adopted declarations — on the fight against terrorism, the review of the economic situation and the introduction of the euro — which were not very different in language from what would normally have appeared in European Council conclusions.
- **Thematic meetings.** In recent years a number of meetings of the European Council have been convened on specific subjects such as Justice and Home Affairs (Tampere, October 1999) or Economic and Social Affairs (Lisbon, March 2000). This obviously reflects the growing involvement of the European Council in concrete

policy issues. At Lisbon it was decided that spring meetings would be convened each year and concentrate on economic and social questions (§36 Lisbon conclusions). It is on that basis that the European Council met in Stockholm in March 2001 and in Barcelona in March 2002. Yet the ‘thematic’ character of these meetings is debatable. In Stockholm it was overshadowed (at least for the media) by the presence of President Putin. The Barcelona meeting certainly dealt with economic and social issues, but its conclusions also mention better working methods, the future of Europe, the northern dimension, custom duties on steel imports in the United States, the ratification of the Nice Treaty, Gibraltar, Western Balkans, Serbia and Montenegro, Macedonia, the Middle East, Zimbabwe, Angola, Congo and Nigeria. The difference with a ‘non-thematic’ European Council is not obvious.

- Emergency meetings. Given the importance that the European Council has acquired in the European decision-making process and given the increasing importance of foreign policy issues for the EU, it was inevitable, however difficult that may be in view of respective agendas, that the European Council should be called upon to meet urgently in times of serious crisis. This was the case when it met in Brussels on 21 September 2001, ten days after the terrorist attacks on New York and Washington. That meeting was an important political and psychological signal to the United States; it also galvanized European action in several fields, including the common arrest warrant.

Looking back on a quarter of a century of European Council meetings, and before going any further in the analysis of its legal basis and of its powers, it is interesting to note that the grounds for the initial fears, especially those expressed by the smaller and more Community minded members of the Community, have not turned out to be justified.

One such fear was that this ‘intergovernmental’ body, ‘*explicitly designed to narrow rather than to broaden the scope for autonomous action by supranational actors*’ (Moravcsik 1998, p. 488) would gradually turn the Community into an intergovernmental structure. In practice the Union in 2002 is a much more supranational construction than the Community of the seventies. And the reasons for this evolution (the single market, monetary union, codecision, European citizenship etc.) all originate in, and were decided by, the European Council. A high-powered intergovernmental body has substantially contributed to making the Union more supranational. This is only one of the many paradoxes surrounding this institution.

Another fear was that this new body would be an instrument for domination by the bigger member states, whereby they would establish a *directoire*. Although it is true that differences in size and power are more apparent at the top level than in regular institutional debate, and also that the Franco-German couple has frequently played an important role, there is no pattern of domination by some member states. In her time, Mrs Thatcher was practically constantly at odds, in the European Council, with her partners, big and small, and over the years Britain frequently found itself relatively isolated in that forum. It was at the Milan European Council of June 1985 that the taboo against voting in the European Council was broken. On the other hand several heads of government of smaller member states have wielded considerable influence in European Councils: the names of Dehaene, Juncker, Guterres, and Kok come to mind. Hardly any debates (Nice was an exception) have pitted smaller member states, as a group, against their bigger partners.

The legal basis

The European Council is difficult to study, to describe and to classify as an institution within the EU because its development, over a quarter of a century, has been ambiguous and fraught with paradoxes. These ambiguities and paradoxes are certainly significant: they are the results of history and successive political decisions, and they need to be kept in mind when reflecting over the future. One of the major paradoxes relates to the legal basis for its meetings.

Between 1974 and 1986 the European Council was an important actor in the European decision-making process (in the British budgetary debate, for instance) without any legal basis in the treaty. This situation, very strange in a highly legalistic Community, was not an accident but the result of the desire, notably of the Benelux governments, to save the Community institutional framework from being dominated by this new ‘intergovernmental’ meeting place. It was thought that this could be ensured by depriving it of any legal

basis in the treaties.

The Single European Act departs from this approach in that it describes the composition of the European Council, but it intentionally avoids defining its powers. These derive from the treaties of Maastricht and Amsterdam and, quite significantly, from practice. Although heads of government do not usually attach much importance to the legal nature of their meetings it is important, in view of possible reform, to make the appropriate distinctions. They meet in different capacities:

- As a 'European Council' *stricto sensu* they now operate on the basis of article 4 TEU ('provide the Union with the necessary impetus for its development and define the general political guidelines thereof').
- Specific examples of this role are given in the treaty: on broad guidelines for economic policies (article 99 § 2 TEC) and on the employment situation (article 128 § 1 & 2 TEC).
- Article 13 TEU gives the European Council a similar, but rather more precise, competence in the specific field of CFSP ('define the principles and general guidelines...decide on common strategies')
- In specific cases mentioned by the treaty heads of government operate with the power to make legal decisions as the 'Council meeting at the level of Heads of State and Government'. They must then respect the rules of procedure of the Council, including as regards the location of meetings. This occurs in the field of monetary union (articles 112, 121 and 122 TEC) and human rights (article 7 TEU). It follows that the conclusions of the meeting held by heads of government in Brussels on 2 May 1998 to decide on the adoption of a common currency are not European Council conclusions (they are absent from the list of such conclusions published by the Europa website). They are Council conclusions.
- When making a certain number of appointments or designations heads of government operate in a purely intergovernmental framework, even if these decisions are written in, or annexed to, the European Council conclusions. This is the case for the seats of institutions: at Edinburgh (December 1992) 'representatives of the governments of member states' fix the seats of major institutions in annex VI of the conclusions, in Brussels (October 1993) 'representatives of member states meeting at the level of heads of state or government' take similar decisions in annex II of the conclusions. The appointment of Romano Prodi as President of the Commission is formulated by 'heads of state and government' in part 2 of the Berlin European Council conclusions in May 1999. However the appointment of Javier Solana as Mr PESC (the French acronym for CFSP) was made by the European Council itself (paragraph 4 of the Cologne conclusions: June 1999). It is worth noting that, according to most legal opinion, there is no obligation to use intergovernmental decision making for the designation of seats of agencies or other Union bodies: they could just as well be part of the Union decision creating them, but that has not been the practice.
- When negotiating treaty changes (as in Maastricht, Amsterdam and Nice) , heads of government operate on the basis of article 48 TEU. Conclusions describe them as an 'intergovernmental conference meeting at the level of heads of state or government'. To call such a conference the presidency needs a favourable opinion of the Council, after consultation of the Commission and Parliament. The Council can render that favourable opinion by simple majority vote, a point that Mrs. Thatcher discovered to her dismay when the Milan European Council (June 1985) called an IGC, which was to result in the Single European Act.
- The European Council has avoided getting directly involved in the accession negotiations with candidate countries : these are conducted by foreign ministers. But it has been active in defining the position of the member states in those negotiations. In Brussels in December 1993 it determined (annex III to the presidency conclusions) the number of Commissioners , as well as how many votes in the Council, how many members of Parliament, of the Economic and Social Committee, of the Committee of the Regions etc. were to be attributed to the candidate countries (Norway, Sweden, Finland and Austria). It was then operating on the basis of article 49 § 2 TEU.
- Finally the Lisbon European Council (March 2000) codified '**a new open method of coordination at all levels, coupled with a stronger guiding and coordinating role for the European Council to ensure more coherent strategic direction and effective monitoring of progress**'. This is not strictly speaking a new legal basis : it can, and probably should, be interpreted as an implementation of articles 99 and 128 TEC, mentioned above, on economic guidelines and the employment situation. But the Lisbon conclusions do imply a new role for the European Council '**taking on a pre-eminent guiding and coordinating role to ensure overall coherence and the effective monitoring of progress towards the new strategic goal**'. The heart of the 'open method of coordination' for the Lisbon process is a meeting of the European Council to be held every spring to define the relevant mandates and ensure that they are followed up. As we have seen above

these spring meetings are not in their conclusions very different from normal European Councils. But the idea of giving the European Council a **new** role is clearly present.

The fact that the European Council operates on a variety of legal bases, sometimes inside and sometimes outside the institutional framework, and that conclusions are not always clear on these issues, is a permanent source of ambiguity. Two further remarks need to be made in this context.

1. The treaty texts, mentioned above, do not adequately cover the effective powers of the European Council and the role it has played over the years in the European integration process. After having worked for a long time without any legal base, it now operates on the basis of treaty articles in which it is described simply as a source of impetus and inspiration. In fact, however, it is the most important, and the ultimate, decision taker in all Union matters, including those which are legally Community affairs (Example: the Delors packages in 1988 and 1992 or Agenda 2000). The role of the European Council is much more important than a strict analysis of treaty texts would warrant.

2. Except when they meet as a '*Council at the level of heads of State and government*', members of the European Council are not bound by any written rules of procedure. This is a consequence of the emphasis put, from the very beginning, on informality. Agendas are flexible, documents appear on the table with little or no prior notice, participants vary, points that have never been discussed appear in the conclusions. Over time a set of 'rules' has gradually been built up by custom but the European Council unhesitatingly departs from them if it sees fit. The Ghent European Council in October 2001 gives a clear example of this. It was scheduled as informal, and therefore, under accepted practices, there should have been no conclusions. In fact three declarations were issued: on the follow up to the attacks of 11 September, on the economic situation and on the introduction of the Euro. In the title they are called '*declarations by the heads of state or government and the president of the Commission.*' This reflects the fact that Foreign Ministers were not present and that therefore the European Council was not correctly constituted, in the sense of article 4 TEU. But in the text of the declarations themselves, it is the 'European Council' that states, notes, confirms, is determined etc. In other words although the practice is that no conclusions should be issued, and although the participation in the meeting is not legally correct, nevertheless declarations were issued, in the name of the European Council, that are in effect conclusions.

Composition and preparation

One of the characteristics of the European Council, and a striking difference with the Council, is that the President of the European Commission is *de jure* a member of the European Council. Some presidents have made use of this fact to further their own views. Jacques Delors initiated the process leading to the single market at the Milan meeting in June 1985 and to monetary union at the Hanover meeting in June 1988: it was a personal initiative and it is at least doubtful that he could have done that at any other level or without being a member of the European Council. In other cases the overpowering nature of summit meetings seems to put in jeopardy the independence of the Commission and its freedom of action. Presidency conclusions usually refrain from giving specific instructions to the Commission, but the underlying power play is there and the Commission is not in fact free to ignore such conclusions (although its President plays an active part in the debates on which the conclusions are based). When addressing reform of the institutional framework of the Union the delicate balance between the power of the European Council and the independence of the Commission is a point to be kept in mind.

The preparation of a European Council is largely in the hands of the presidency. The head of state or government of the Presidency-in-office traditionally makes a tour of capitals, which enables him or her to sense the priorities of different member states and to sketch or test his or her ideas. On this basis s/he drafts a letter to his or her colleagues a few days before the meeting and this serves as an agenda. In this exercise s/he is helped, in the first instance, by the secretariat general of the Council who will be accompanying him or her in his or her travels and working on draft conclusions in the weeks leading up to the meeting. Contacts between immediate advisers or assistants of the heads of government (*sherpas*) are frequently useful but not apparently fundamental in the process. The role of the Commission varies: in some cases in the past it has been important but today the Commission is, in general, not intimately involved in the

preparatory process. Similarly the role of the General Affairs Council (G.A.C.) and of Coreper, which was initially important, has diminished over time. This reflects the fact that the G.A.C. has lost the ability (possibly even the desire) to exercise an overall coordinating role on European Union affairs. There is in fact little control on the flux of documents coming from the Council acting in its different capacities and hardly any preliminary discussions of the substance of the issues they raise, although the reforms embraced at Seville are intended to address this. There are of course exceptions where the G.A.C. plays an important preparatory role: this was the case before the Laeken European Council (December 2001) when the G.A.C. confirmed the timetable, composition and mandate of the Convention. But basically the fact remains that the presidency, and specifically the President of the European Council, is the most important actor in the preparation of a European Council, often building on informal contacts and liaison between the 'sherpas'. As successive presidents have discovered, this implies that a significant part of his or her time needs to be devoted to this task.

Strengths and weaknesses

For a balanced analysis of the efficiency and effectiveness of the European Council one needs to distinguish between its various functions and *modus operandi*, as well as to reflect on the way meetings are prepared. The key functions are:

- Developing strategic guidelines and political impetus
- Making policy decisions in the traditional Community fields
- Shaping a collective foreign policy
- Taking intergovernmental decisions outside the treaty framework
- Pursuing the open method of coordination
- Amending the Treaties.

Strategic Guidelines

Setting strategic guidelines and generating political impetus was the initial task assigned to the European Council, the task described in article 4 TEU and the one at which it has been most successful. Basically the European Council has, for over a quarter of a century, fixed the agenda of the Union, especially as the EU has moved beyond the specific tasks laid down in the original treaties. Nothing decisive has been initiated without its approval. All new projects have been launched at that level, even if the first proposal apparently came from the Commission, the Franco-German caucus, the Benelux or other member states, singly or jointly. This is true of new fields of activities like the fight against terrorism (Rome, December 1975), the quest for monetary union (Hanover, June 1988) or open coordination of economic and social policy (Lisbon, March 2000). It also covers successive decisions on enlargement (lastly, Copenhagen, June 1993) and the launching of efforts towards treaty reform, from the Single European Act (Milan, June 1985) up to the Convention (Laeken, December 2001).

Taken as a whole it is difficult to deny that the development of European integration in the latter part of the twentieth century was a major strategic achievement. '*The European Union is a success story*', says the Laeken Declaration. The merit of that achievement must lie, not exclusively but to an important degree, with the European Council, because of the fundamental role it has played in that development.

It must, however, be said that if heads of government took a significant number of crucial decisions at the right moment, thereby visibly modifying the map of Europe and the strength and cohesion of the Union, they failed to give, or maintain, a sense of purpose to the whole exercise. Partly, no doubt, because they feared disagreement in the definition of a common purpose. But partly also, perhaps, because overfilled agendas, endless conclusions, the media circus accompanying the meetings, press conferences all over the place, obscured the decision-making process at the level of heads of government, to the point where public opinion lost confidence that there was a sense of strategic direction. In some senses the heads of government were ill-served by the institutions in so far as there was no transmission mechanism for following up their conclusions. Fundamental decisions were taken, and rightly so, but, lost in a morass of minor points, they were not always perceived as such, sometimes even deliberately downgraded for the convenience of some

participant. A case in point is the major decision to enlarge the Union to central and eastern Europe (Copenhagen, June 1993): certainly justified in terms of history, politics, geo-strategy, trade, but little has been done to explain it. There is no doubt that public opinion, in most member states, has lost understanding of, and confidence in, the European integration process over the period when the European Council was clearly the leading actor. This is today one of the major problems of the Union, and this leading actor must take a large part of the blame for the problem, just as it gets a large part of the credit for the achievements. Explaining and justifying policy, in order to convince public opinion is, after all, a major part of politics.

Community decisions

It was certainly not the original intention that the European Council should function as a regular and important decision making forum for Community matters. The Tindemans Report (1975) stressed that it should limit its action to giving general policy guidelines and impetus. That was also the line followed by the Stuttgart Declaration in 1983 and the Dooge Report in 1985.

Reality is different. The European Council has gradually involved itself in making detailed decisions: on practically all aspects of the internal market in the early eighties, on successive financial packages (Delors I, Delors II, Agenda 2000), and on the main elements of monetary union in the late eighties. Difficult problems are transferred to the European Council as a matter of course. A cursory examination of its conclusions shows that decisions at that level sometimes go down to financial minutiae. The creation of 'thematic' European Councils (at Lisbon or Tampere) shows the inclination of heads of government to involve themselves more and more in practical policy decisions. Many sectoral formations of the Council have also been only too ready to pass difficult decisions upwards.

In his report to the Barcelona European Council, in March 2002, Javier Solana, the Secretary General and High Representative, notes that '*(the European Council) is increasingly asked to spend time on laborious low-level drafting work which adversely affects normal Community procedures*'. He identifies malfunctioning of the Council of Ministers and drift in the working of the presidency as major defects, and these are considered further on in this paper.

The present situation, as Solana indicates, certainly has a negative impact on the work of the European Council. It also has a negative impact on its image and on the image of the institutional framework in general:

- The fact that important strategic decisions are lumped together, in lengthy conclusions, with minor points and verbose declarations, obscures the strategic role of the institution. It blurs the distinction between Council and European Council, thereby contributing to the widespread feeling that nobody knows who does what, who is responsible for what.
- Experience has shown that the heads of government are effective in large bargaining exercises, such as the successive financial packages. It may be that they alone have the national authority enabling them to make the necessary deals. This should not, however, be taken for granted: with convincing leadership the Council acting in other capacities (General Affairs, Ecofin) has been known to settle intrinsically important and complex problems. Moreover heads of government also often find on their agenda, specific points which are certainly controversial but neither very complex nor of great strategic importance for the Union. They are not always good at settling these, nor do they always have the time, and when they fail to agree (on the seat of the European Agency for Food Safety or on the languages of the Patent Office, for example) failure is highly publicized. The necessary compromise becomes more difficult and the failure to agree taxes the prestige and the image of the institution. Over the years, bad control and poor preparation of the agenda have been significant weaknesses.
- Lack of discrimination is also responsible for the curious practice of adding to European Council conclusions a list of 'documents submitted'. These are lengthy reports, communications, recommendations or conclusions, from the Commission, the Council presidency, various formations of the Council or other bodies, which are addressed to the European Council. In one specific case, concerning the annual report of the European Central Bank, the treaty itself specifies that it must be addressed to the European Council (art. 113 §3 TEC)
- Although nobody really believes that any member of the European Council has read all these documents,

let alone approved them, they are presented as annexes to the conclusions, presumably in order to benefit in some way from the exalted nature of European Council conclusions. The number and size of these texts have been on the increase: twenty could be an average over the last few years, but Annex 4 to the Laeken conclusions (December 2001) mentions 33 documents. The practical benefits of this practice seem marginal, but it certainly contributes to the widespread impression of bureaucratic opacity, and leads to misunderstanding of what the European Council is supposed to do.

Foreign Policy

The Paris Conclusions (1974) indicate that the European Council should meet '*in the context of political cooperation*', which at the time meant foreign policy, and the Stuttgart Declaration (1983) states that the European Council '*solemnly expresses the common position in questions of external relations*'. The foreign policy dimension was stressed from the very beginning and it has always been present in the deliberations at the top level.

European Council declarations mark important steps in the development of common positions on foreign policy: at Venice (June 1980) on the Middle East, at the Hague (June 1986) on sanctions against South Africa, on relations with the USSR and Eastern Europe (Madrid, June 1989), on the siege of Sarajevo (Cannes, June 1995) on the possible use of force in Yugoslavia (Berlin, March 1999), or on the fight against international terrorism (Brussels, September 2001).

More recently meetings of the European Council have been used as occasions for top level meetings with third countries. This occurs on a regular basis with candidate countries, but also with the United States (President Bush at Göteborg in June 2001) and Russia (President Putin at Stockholm in March 2001). Other occasional visitors include the chief executives of countries in crisis, such as President Trajkowski of Macedonia (Stockholm, March 2001). President Mandela of South Africa was received at Cardiff (June 1998) and his successor, President Mbeki, at Lisbon (March 2000).

In this field of activity there is no doubt that the European Council fulfils an important role, giving to foreign policy declarations or diplomatic meetings a visibility and a resonance which could not be attained at another level. Modern day diplomacy includes a growing element of declarations and contacts at the highest level ('summitry') and the European Council is the instrument whereby the Union participates in that worldwide activity.

Yet here again one can question whether enough discrimination is exercised. We referred above to eleven foreign policy points mentioned (in the conclusions) in the Barcelona conclusions (March 2002). That is not exceptional: at Santa Maria da Feira (June 2000) we find the Mediterranean strategy, the Northern dimension, Russia, Yugoslavia, Kosovo, Croatia, Montenegro, Israel, Syria, Lebanon, South Africa, Ethiopia and Eritrea. Most of the points made are perfectly valid; the question is whether they really need to be made at the highest level. If, as would seem reasonable, the essential role of the European Council, in the foreign policy field, should be to indicate priorities and major strategies, leaving the application thereof to Foreign Ministers, then the mention of a dozen issues in the conclusions obscures the main thrust and is a source of confusion. To have a dozen priorities is generally equivalent to having none. It can at least be interpreted in that way by public opinion.

It has been clear since the treaty of Maastricht, and certainly since the appointment of Javier Solana as High Representative, that the approach to foreign and defence policy issues was a major challenge for the Union. On the basis of the first debates at the Convention, one might even say that this is the single most important challenge for the future. Past experience in Community matters is not always relevant in this respect because what we generally need here is quick decision and action, whereas the Community method was essentially devised as a rule-making procedure. Moreover these decisions and actions are suggested in fields that are highly sensitive from the point of view of national sovereignty. It seems obvious that no progress will be possible without the commitment, impulse and authority of the heads of government. But to be effective their intervention should be limited to principles, orientations and major strategic decisions, leaving day-to-day issues to Foreign Ministers who need to focus on taking these forward. This has not always been the

case in the past on either side.

Decisions taken outside the treaty framework

As we indicate above, in the section on the legal basis, custom and practice (rather than legal obligation) make heads of government responsible for taking a sizeable number of decisions on appointments or seats of institutions, which are then validated by consensus outside the legal framework of the treaty. Heads of government have been known to spend considerable time finding agreement, generally under the form of packages, on issues, such as the seat of various institutions, which had seemed insoluble at lower levels (Edinburgh, December 1992; Brussels, October 1993). They have also been known to fail to agree quite spectacularly (on the designation of the President of the Commission in Corfu, June 1994, for instance, or, more recently, on the seat of the Food Authority in Laeken, December 2001).

Achieving agreement by consensus is always difficult and will get more difficult as the number of member states increases. The fact that the European Council is presently expected to take decisions of this sort on a regular basis, often on a basis of minimal preparation, and on a variety of issues, can be considered a waste of time and a source of weakness.

The treaty of Nice goes some way towards meeting this concern by deciding that major appointments such as the President of the Commission (article 214) and the secretary general of the Council/ High Representative (article 207 §2) should be made by the Council (thus within the treaty framework) and by qualified majority (thus not by consensus).

The fact remains that, at present, decisions of relatively minor importance are considered at the highest level. Guy Verhofstadt, presiding at Laeken, was probably right not to prolong the European Council simply to debate the merits of Parma and Helsinki as a seat for the Food Authority. But should the question have been on the agenda in the first place? The fact is that failure at the highest level is spectacular, and widely reported in the press. If possible the risk of failure should be avoided, because it tends to discredit the European Council and the institutional framework in general.

Open Method of Coordination

This new process was formalised at Lisbon in March 2000. In essence it aims at generating agreement among governments to move together towards tackling a range of socio-economic challenges, where the policy powers remain located at the level of national or sub-national government in the member states, and where the scope for agreement depends on soft prescriptions rather than hard law. It has been agreed that, as far as questions of economic reform are concerned, the European Council should therefore become a forum — even a kind of ‘seminar’ — for comparing different national experiences and experiments, with the detailed work to be taken forward over the year. The process is not limited to activities at the highest level: it implies significant work at Council and committee level. Nevertheless the centrepiece is a special spring meeting of the European Council that has taken place only twice so far: Stockholm in 2001 and Barcelona in 2002. It is certainly too early to pass judgment on the effectiveness of this new method but a few reflections are worth making:

- The process aims at reconciling a clearly felt need for closer coordination of member states’ economic and social policies and an equally clear reluctance to give the Community any new competence in these fields, partly because the appropriate policy response may not require legislation.
- The answer given by the Lisbon conclusions is that this can be done on the basis of existing processes (broad economic guidelines, Luxembourg, Cardiff and Cologne processes). ‘*No new process is needed*’. What is needed is a new method of coordination making use of guidelines, timetables, indicators, benchmarks, periodic monitoring, evaluation and peer review, on the one hand, and a strong guiding and coordinating role for the European Council on the other.
- Even if there is no ‘new process’, the policy technique is certainly innovative. It has been called intensive transgovernmentalism in which: ‘*the primary actors are leading national policy-makers, operating in highly interactive mode and developing new forms of commitment and mutual engagement*’ (Wallace 2002, p. 341).

- Doubts were expressed at the time as to whether it was in fact feasible to get the desired result (close coordination of policies) without any formal transfer of competences, that is without legal obligation and constraint. Others doubted whether such an elaborate and complex system could in fact work on the basis of one special meeting a year. Whether conceptual or pragmatic, such doubts are still expressed to day, and the Stockholm and Barcelona meetings have not convinced the sceptics.
- In practice the system seems to consolidate, in this field, not the authority of the European Council, but that of ECOFIN, which has taken over the coordinating role on the economic, financial, and increasingly social aspects, a role formerly (and perhaps only hypothetically) exercised by the General Affairs Council.
- The Barcelona conclusions themselves indicate some dissatisfaction at the highest level. *'There have been important successes but there are also areas where progress has been too slow... There is a need for simplification and consolidation... The Council and Commission should streamline relevant processes... The Commission will make proposals to reinforce coordination in time for the spring meeting in 2003.'*

The only reasonable conclusion is that the jury is still out and in any case the Lisbon agenda is predicated on a 10-year process of reform. The European Council has not yet entirely convinced outsiders, nor apparently all insiders, that it can in fact deliver what the Lisbon conclusions proposed to deliver. Moreover, this reflective, even discursive, process begs a number of questions about how such reflections should be prepared, by whom and with what kinds of follow-up mechanisms. And a great deal rests on whether and how the Commission rises to the challenge of taking the process forward.

Amending the treaties

Since 1985 member states have been in a quasi-permanent process of treaty revision. Except for short periods they have been either preparing, negotiating or ratifying modifications of the initial treaties: the Single European Act, the treaties of Maastricht, Amsterdam and Nice.

In that process the European Council has played an increasingly important role. In the negotiation of the Single European Act (1985-6) the main input of heads of government was to launch the first of these quasi-constitutional IGCs and to conclude that the Act would indeed be 'single', that it would incorporate in one document articles relating to political cooperation and Community activities, which had been negotiated separately. In the Maastricht negotiations (1990-1) several important points of substance were decided only at the highest level and at the last minute. Nevertheless a large amount of work had been done both by finance ministers, on the articles on monetary union, and by foreign ministers, notably on the second pillar relating to the common foreign and security policy. In the Amsterdam negotiations (1996-7), and again in the negotiations leading to the Treaty of Nice (2000), foreign ministers had little impact. Practically all the problems not resolved at the level of personal representatives went to the European Council, which had become the ultimate negotiator.

The direct involvement of heads of government in treaty negotiation has always been essential: they played a significant role in the negotiation of the Rome treaty. But the level of involvement in recent treaties has shown up glaring weaknesses.

The negotiating process, as it is now conducted, leads to complex and excessively detailed treaty texts, with numerous protocols and dozens of declarations in annex. When these emerge from the European Council, they are so obscure or ambiguous that it takes legal and linguistic experts, under the guidance of Coreper, several weeks of heavy work simply to establish what has been decided. Even so unresolved problems, often called 'leftovers', are numerous and lead to subsequent new negotiations. This permanent negotiating process, leading to documents that the average citizen cannot understand, has contributed to disenchantment in public opinion.

The point that needs to be stressed is that the work of the European Council as treaty negotiator is different in nature from its other functions. In all other cases the European Council operates as a political decision-maker. But here the European Council is directly modifying the Treaty, the quasi-constitutional basic law of the Community. The structure and the modus operandi of the European Council are well adapted to political decision-making. They are not well adapted to detailed drafting of texts. Hectic night sessions with no assistants in the room, multilingual debate on texts that appear and disappear from the negotiating table

without having been studied in depth, across the board compromises on unrelated issues at the break of dawn, cannot lead to clear legal texts. The fact is that no civilised nation operates in such an uncoordinated and risky way, a point that led Tony Blair to comment, at the end of the Nice negotiation: 'We cannot go on working like this'.

Preparation of European Council meetings

Present practice in the preparation of European Councils puts a very heavy burden on the presidency and especially on the president of the European Council himself. In the absence of clear rules of procedure and of an efficient preparatory organ, much depends on the personal input of the head of government in the chair. The combination of this task with his domestic obligations is not always easy. Several recent presidents have been criticized internally for spending too much time on 'European' affairs. In many other cases it is obvious that a European Council meeting would have benefited from more in depth preparation. This weakness will necessarily become more apparent with enlargement: a tour of capitals takes about ten working days today. It would presumably take three weeks in a Union of 27. With two European Councils in each presidency this would imply six weeks of dedicated travel in a six month presidency, which is an unrealistic commitment. Radical reform seems appropriate if the system is to work adequately in future.

The follow up of European Council decisions is frequently deficient. There is no proper instrument to ensure that lower levels of power effectively implement decisions taken. Here of course the fact that the presidency changes every six months is significant. The European Council is not usually chaired more than twice by the same person. The incoming presidency is frequently more interested in taking new decisions, on points of specific interest for itself, than on implementing decisions taken under a former leader. The Council secretariat stands for continuity and has been playing an increasing role, but it does not have the necessary weight to face a reluctant Council. This explains that the overall record of the European Council is mixed: some spectacular results in highly sensitive fields, quite a lot of ineffective decisions lost in verbal confusion, and many cases of lost political direction due to the absence of effective follow-up.

Both the preparation and the follow-up of European Council meetings are unsatisfactory and need to be amended.

Reform of the European Council

That the European Council has played a fundamental role for a quarter of a century is a generally acknowledged fact and that it should continue to do so in the interest of European integration is not really in dispute. That the European Council does not work as effectively as it should, and that enlargement threatens it with further degradation is perhaps less generally accepted but nevertheless true, as the previous section has tried to establish. Outside observers have been somewhat hesitant about criticizing this very senior level of politics in the Union, given the overall performance of the European Council. But participants themselves, both publicly and in private, indicate that they are well aware of the shortcomings. '*The European Council has been sidetracked from its original purpose*', says Solana in his report to the Barcelona meeting. The Presidency report to the Seville European Council meeting (Polgen 25 of 13 June 2002) considers as generally accepted that the European Council, after the next enlargement, will have more and more difficulty in fulfilling its task with the authority, consistency and efficiency expected from the supreme political authority of the Union. Those deficiencies are part of the institutional problem which the Union has to face.

If the Convention on the future of Europe is to accomplish its task, it should therefore also consider the working of the European Council, as, indeed, the Seville European Council has already done in annex I of its conclusions.

The first meetings of the Convention show that, at this crucial moment in the institutional development of the Union, conflicting views are coming to the fore and risk dominating the debate. Arguments (and gut reactions) in favor of or against intergovernmental versus supranational solutions have been with us since the fifties. There has always been much oversimplification in this presentation, and it is perhaps increased

today by the feeling that impending decisions will largely determine the future. Balance between the institutions is felt to be endangered by the weakness of a Commission that has not fully recovered from the trauma of the Santer resignation with the risk of becoming increasingly dependent on the majority in the European Parliament. Confrontation between bigger and smaller member states, which was subliminal in the Amsterdam negotiation and public in Biarritz (October 2000) and Nice (December 2000), has contributed. Bigger states are felt to be identifying with intergovernmental solutions, in view perhaps of establishing a *directoire*, and smaller states are felt to be seeking protection in the supranational structure, notably the Commission, and also in insisting on their veto rights where unanimity rules apply. However simplistic this picture may be, it is present in public opinion and apparent in the psychological reaction of many insiders. In a way the European Council is at the heart of this dispute because it is, *de facto*, at the heart of the institutional system of the Union. Great care should therefore be taken to identifying reform proposals if one wants to accommodate these conflicting views, as, in the end, we will have to.

There is large agreement about the aim of restoring the European Council to its original purpose, that of the highest political authority giving strategic orientations to the Union and its foreign policy, and of anchoring it in the EU institutional system. That is the thrust of the report submitted by Javier Solana in March and which was approved in Barcelona. That is also the substance of the report submitted by the presidency in Seville. What are the means to reach that objective? They involve:

- the proceedings of the European Council;
- a new General Affairs Council in charge of preparing and implementing European Council decisions and, to that end, coordinating the work of other Councils and
- the Presidency.

The Seville European Council has taken a few decisions on the first point. It came to an ambiguous formulation on the second and left the third both to the new GAC and to the work of the Convention.

Proceedings

The present day European Council already suffers from moments of anarchy deriving from the absence of clear procedures. A future Council of thirty members could not conceivably operate well without sensible rules strictly enforced. Speaking to the European Parliament on 15 May, Javier Solana stressed the necessity for the European Council to accept a 'code of conduct', like other EU institutions. The Spanish presidency submitted to the European Council a report pointing in that direction. Useful decisions involving preparatory measures, the setting of the agenda, the number of seats to be allocated, the size of delegations, the way debates are organized and conclusions are to be found in annex I to the Seville conclusions. We believe that some further points should be considered.

- After enlargement heads of government alone should sit at the table, with the accompanying minister or adviser behind them, so as to maintain the minimum of eye contact needed if a meeting is to prosper.
- The European Council should certainly avoid having itself to draft decisions or legislation (point 9 of the Seville conclusions). It should also limit the number of intergovernmental decisions taken at this level: thus important appointments should be made in the treaty framework and by majority vote (as foreseen in the Treaty of Nice and discussed at Seville); seats of new agencies should, as a rule, be fixed by the Council, in the legal instrument creating the agency.
- Because it avoids legislating and drafting decisions, the European Council will not, as a rule, need to vote but it should certainly be able to do so, in the same conditions as the Council, in specific cases (as it has done in some rare cases in the past). In an enlarged Union it will presumably be useful to use such concepts as 'broad consensus' or 'majority opinion' in the formulation of the conclusions of the European Council in order to avoid the paralyzing delay inevitably linked to the quest for unanimity, or complete consensus, on all issues.
- If the meeting is well conducted, and oral conclusions clearly formulated by the President on each point, it should be possible to do away completely with the detailed discussion in the European Council of written conclusions. A short summary of conclusions could be distributed, under the responsibility of the Presidency, a day or two after the meeting.

- The list of ‘distributed documents’ should disappear. (Annex VIII to the Seville conclusions mentions 28 of them). The General Affairs Council should have a permanent mandate to consider and dispose of such documents, forwarding to the European Council only those, which are technically necessary for the conduct of the debate.
- European Council declarations, including foreign policy declarations, should be limited to strategic points of major interest effectively debated at the meeting. Foreign ministers or finance ministers can of course make separate declarations in the margin of a European Council.
- Some privilege of precedence should be given to Presidency press conferences, other participants refraining from organizing press conferences at the same time.
- Given the decision made in Nice to hold all European Councils in Brussels, arrangements should be made for the European Parliament to meet the day after any European Council to hear a report from the Presidents of the Council and of the Commission. This rapid reporting would enhance the accountability of the proceedings. Similarly heads of government should undertake to inform their national Parliaments without delay. Lisbon Process: although it is probably too early to take any firm decisions, some consideration should be given in future to the possibility of adopting different proceedings (composition, preparation, location etc.) for the very specific tasks accepted by the European Council in this process, which is more in the nature of a high level seminar than a political decision-making forum. The new General Affairs Council (see next section) should, in its coordinating capacity, play an important role because the subjects that need to be considered by the European Council go well beyond the remit of any specific Council, including ECOFIN.
- Treaty Negotiation: Similarly consideration should be given to the possibility of specific procedures when heads of government are meeting as a top-level intergovernmental conference (art. 48 TEU). The objective should be to submit only a limited number of points, well prepared in advance, for political decision at the highest level. Detailed drafting should be done at a lower level, with the help of legal experts. Account should be taken of the fact that the current experiment with the Convention is likely to change the way intergovernmental conferences are conducted in future.

A New General Affairs Council

There is no doubt that part of the deficiencies of the European Council result from malfunctioning of the Council and singularly the inability of the General Affairs Council of foreign ministers to ensure adequate preparation and follow-up of European Council meetings, which presumes a coordinating role across the Council acting in its different capacities. The problem is not new: it may indeed have been instrumental in creating the European Council in the first place. But it has become more intractable over time as the Community grew in size and scope of activity and as a wider range of ministers have been swept up into Community business. Enlargement can only magnify these problems.

This paper considers reform of the Council only inasmuch as it relates to the working of the European Council. From that point of view the proposal to divide the present General Affairs Council (GAC) into an External Affairs Council, on the one hand, and a new GAC on the other is highly relevant. This new body would bring together ministers having the authority in their country to ensure coordination of European affairs, meeting very frequently in Brussels and dealing with the horizontal issues presently entrusted to the GAC. One of its main tasks would be the preparation and follow-up of European Council meetings.

The Presidency report to the European Council at Seville submitted a suggestion along those lines but indicated that there was some opposition to the division of the present GAC. That had indeed been apparent at the GAC meeting of foreign ministers in Luxembourg on 17 June. Differences of opinion were apparent in Seville yet the European Council conclusions do subtly, but potentially crucially, adapt the present configuration. The relevant paragraph in annex II of the conclusions is worth quoting in full:

The current General Affairs Council configuration shall from now on be called the ‘General Affairs and External Relations Council’. In order best to organise proceedings with regard to the two main areas of activity covered by this configuration, it will hold separate meetings (with separate agendas and possibly on different dates) dealing, respectively, with:

(a) preparation for and follow-up to the European Council (including the coordinating activities necessary

to that end), institutional and administrative questions, horizontal dossiers which affect several of the Union's policies and any dossier entrusted to it by the European Council, having regard to EMU operating rules;

(b) the whole of the Union's external action, namely common foreign and security policy, European security and defence policy, foreign trade, development cooperation and humanitarian aid.

The new General Affairs and External Relations Council (which will presumably be known as GAERC!) might remain just one configuration of the Council (which in any case is formally a single body). But the part of it dealing with the preparation and follow-up of the European Council (including coordinating activities) would hold separate meetings, with separate agendas, possibly on different dates and, of course, possibly different ministers. Experience will show whether there is any difference between such a situation and two separate configurations of the Council. At first sight the difference is not obvious. Much will depend on whom governments choose to send to the meetings.

What this structure would seem to imply is that there are, as from now, in practice, three primary means of access to the European Council:

- The GAERC meeting in its coordinating mode,
- The GAERC meeting in its external action mode,
- 'EMU operating rules', which means ECOFIN, the Council configuration bringing together economics and finance ministers.

Presumably the agenda would be structured according to that division. The logical conclusion would be to determine on that basis which (single) minister accompanies the head of government in the meeting on the discussions of the different points of the agenda.

Whatever the operating details, the idea of a dedicated Council configuration for the preparation of the European Council makes sense. Together with accepted rules of procedure it would go a long way towards strengthening the system.

The new GAERC should have the authority to select points that need to be put on the agenda of the European Council and to reject those that do not. It should annotate each agenda point (summary of options) to facilitate discussion at the highest level. If needed it should help the Presidency in drafting conclusions. It should follow, and if needed coordinate, the implementation by the various Council configuration of European Council conclusions and orientations. It should devote particular attention to the preparatory work for the open method of coordination, to enable the European Council in effect to play the very important and specific role that it needs to play in that context. It should deal with, and dispose of, the reports, communications, recommendations etc. addressed to the European Council, which today end up in the annexes of the conclusions. Basically it should be an instrument for the European Council in the exercise of its fundamental task of governance of the Union.

The Presidency

The merits and shortcoming of the six month rotating presidency are being sharply debated, notably at the Convention, and arguments can be put forward in various directions. In the case of the European Council, however, the options for change are limited. It is not reasonable to suppose that an incumbent head of government could exercise the presidency of the European Council for a much longer period of time, say two and a half years. National tasks and responsibilities, at that level, are too constraining. They can, with difficulty, be combined with European tasks and responsibilities for a short period. To prolong a period of absorption in European affairs, involving a distancing absence from national politics, would in many cases amount to political suicide. And of course presidency tasks will be more demanding in an enlarged Union: more contacts, more travel, more problems, more external obligations. This means that the system of 'team presidencies', favoured by some, whereby presidencies would be shared out between a group of countries for a period of several years, could not be applied at the highest level, because no incumbent head of

government could undertake the presidency of the European Council for a long period of time.

In practice that leaves two options open for the presidency of the European Council:

- To appoint a president who has been, but is no longer, an incumbent head of government.
- To keep the present rotation, but to accept that the role of the president would be limited to that of a chairman.

An Appointed President?

The idea initially put forward by Chirac, and supported later by Blair and Aznar, of electing a full-time President of the European Council, chosen from among former heads of government and for a period of, say, five years, would certainly enhance efficiency, visibility and authority. The President would have time adequately to prepare meetings through numerous contacts and preliminary work. S/he might chair coordinating meetings of the GAERC in order to focus on follow-up work. S/he would ensure continuity, acquire an extensive knowledge of issues and personalities, and develop the skills needed when chairing a large group of prominent political figures. S/he would give a face to the European Union both in the Union itself and to the outside world.

But difficult issues arise.

The first concerns divergences in political culture: the personalization of power, which is implicit in a presidential, or quasi-presidential, system of this sort, is a political fact in some major countries in Europe, but it is not prevalent in the majority, specially in the smaller ones, where coalitions are the rule, and parliamentary assemblies play a major role. Linked to suspicion that the President would always be chosen from a big country, this proposal could exacerbate the divide between bigger and smaller member states. Some preliminary reactions to the proposal are indicative of this danger.

The second concerns the impact on the institutional balance of the Union and specially the relationship between the President of the European Council and the President of the Commission. The proposed system would elevate to the highest level the sort of tension which is known to exist between the functions (not the persons) of Patten and Solana, and which most observers think should be remedied. If, as would seem probable and desirable, the President of the Commission were to receive more democratic legitimacy from, or through, a vote of the European Parliament, we would have a conflict. Supranational legitimacy from the European Parliament versus intergovernmental legitimacy from the European Council. Europe, it seems to us, needs to combine and reconcile those two legitimacies, not to oppose them.

The last objection would fall if, as suggested by some (Grant, 2002), the President of the Commission, appointed by the European Council, were also to chair that body. Given that the President of the Commission is the only member of the European Council dealing exclusively with European affairs, that s/he is also (with the exception of the Belgian Prime Minister) the only one to reside permanently in Brussels, s/he would have the time, occasion, technical knowledge and infrastructure to exercise this presidential task. Dynamics in the system would increase because leadership would flow from a very formidable political figure, combining both forms of legitimacy, able to call on support from the European Council, approval from Parliament, independence and technical know how from the Commission. How would this impact on the collegial character of the Commission? Would this help or hinder the capacity of the Commission to steer forward major policy reform packages? Are member states ready for this sort of step?

A Chairman instead of a President?

European Councils today are the highlights of successive presidencies. They allow political leaders to bask in the limelight and to show to their national audience that Union membership is not a vacuous concept, that leadership is exercised equally by big and small. Ideally they should bring the Union closer to the citizens.

They surely have some impact in that direction, but it is also the case that fault lines are particularly obvious at the European Council level. Six months are not enough to make a mark on the world scene for a leader who is not a major player or who is absorbed in the internal political arena. Time is scarce to master the intricate details of Community files and to understand the factors underlying each government's position. National political proficiency does not necessarily prepare to chair and guide an international body with potentially conflicting interests. Temptation to use the presidency for furthering national priorities and '*inappropriate exercises in self congratulation*' (Solana) are difficult to resist, so that the arguments put forward to end the six monthly presidency of the Council are equally, if not more, valid at the highest level.

Many of the problems derive from the quasi-exclusive role that the President of the European Council, by tradition, plays in preparing, organising and managing the meetings, in presenting the results to internal and external audiences, with neither the support of clear rules nor the help of an authorised and efficient preparatory Council. The various suggestions made above on proceedings, and on the role of a new GAC (or GAERC) tend to lighten the burden on the presidency. Further steps in that direction could aim at sharing out the preparatory tasks, and the managerial and representational role, to the point where the President of the European Council would essentially be expected to chair a well-prepared meeting of colleagues. This would respect the principle of equality between member states, give some limelight to successive presidents, and therefore maintain some of the advantages of the present system, while avoiding, hopefully, most of its actual and potential defects.

In that sense, three suggestions, made separately in some circles, are perhaps worth considering as a whole:

1. The Foreign Affairs Council (or the GAERC in its external relation mode) should be chaired by the High Representative for Foreign and Security Policy. This would consolidate the position that Javier Solana has gradually established as main foreign policy spokesperson and operator when the Union acts on the world stage. It would also enhance consistency and durability, both of which are of the highest importance in external relations.
2. The General Affairs Council (or the GAERC in its coordinating mode) should be chaired by the President of the Commission. This would give one member of the European Council, permanently present in Brussels, a central role in the preparation of its meetings, and combine the expertise of the Commission and the Council secretariat in the preparation of the European Council.
3. Other Councils, including ECOFIN, should also have semi-permanent presidencies. One solution would be, as suggested by the note from *Notre Europe* on a European Government ⁽¹⁾, that these presidents should be the relevant members of the Commission.

In such an environment the President-in-office, when chairing the European Council, could rely on the help and know-how of the President of the Commission, actively implicated in a thorough preparation of the meeting, on the help and connections of the High Representative for the external dimension and, if needed, on the expertise of one or more semi-permanent presidents of sectoral Councils. All these supporting members of the cast would feature a degree of relative permanence and durability, that is of professionalism, compensating for the potentially debilitating effect of a rotating chairman.

* * *

Conclusion: why reform matters

The European Union is at a critical stage in its evolution. The combination of enlargement with the pressing agenda of policy challenges in areas of high political sensitivity puts the spotlight on the European Council. It is here that the most senior politicians from across the Union are brought tested both to devise collective approaches and to commit their governments and countries to deliver tangible results. They cannot, by themselves and in isolation, fulfil the multiple tasks of governance of the Union but they need to give strategic leadership and a more consistent focus on key issues.

We have argued in this paper that the European Council was devised precisely for this purpose, albeit in less testing circumstances. The European Council has indeed been the source of many important and path-breaking agreements that have strengthened the Union. However, there has been a marked loss of leadership capacity in recent years, so called agenda creep, and too many issues have landed on the table of the European Council which should have been settled elsewhere within the institutional system of the Union. Prime ministers have allowed themselves to become the victim of drift and poor coordination, and indeed have not always been willing or able to take a firm grip on European policy priorities in the domestic debates in their own countries. It is hardly surprising that the ordinary citizen remains to be convinced that the Union has a sense of direction and purpose.

These problems have become increasingly clear in recent years. The prospective enlargement of the Union makes weaknesses that might have been tolerated before inexcusable for the future. This is especially so when there is such a pressing agenda in the field of foreign and defence policies, where the Union is being challenged to demonstrate a real capacity to act and to deliver solid and sustainable commitments. The additional agenda of highly sensitive issues in the domain of justice and home affairs only strengthens the need for strategic leadership capacity in a field where both Union and national actions have to be carefully combined, and on topics that generated heated political debate.

Essentially our prescription in this paper is based on pragmatic common sense. Equipping the European Council to operate effectively as a collective forum would enable two parallel objectives to be promoted. On the one hand, our suggestions are intended to put the European Council in a position to focus on strategic priorities, while pressuring the regular institutional machinery of the Union to perform more effectively. On the other hand, our clear assigning of this strategic role to the European Council is intended to signal that at home prime ministers should also follow through the logic of engaging in domestic debate over European policies.

Among the organs of the European Union the European Council is the one that most easily lends itself to pragmatic and common sense reform. It has operated at its best when developing strategic bargains on key issues. Our plea is that this should be precisely its core function. Many of the remedies lie in the hands of the prime ministers and presidents themselves, and of the officials who assist them. A clearer strategic view of priorities from the side of the Commission would also be a reinforcing asset, given its potential for helping to shape the agenda and to foster coordination among policy domains. Actually only one or two of our suggestions, notably those on the presidency, need formal treaty changes and hence an input from the Convention and the forthcoming intergovernmental conference. Our suggestions would fit with whatever institutional design is likely to emerge from this more constitutional debate. In the meantime non-treaty reform and changes in behaviour can go a very long way to providing a remedy, as of now, in order to contribute to a rebuilding of confidence in the Union's most senior politicians, and in their ability to make the Union work well and purposively.

(1) 'À la recherche d'un gouvernement européen', September 2002. Available in French on <http://www.notreeurope.asso.fr>.