

The European Council and the Community Method

Philippe de SCHOUTHEETE

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Executive Summary

This Policy Paper by Philippe de Schoutheete is part of a series of works that *Notre Europe* has dedicated to the evolution of the European institutions in the wake of the Lisbon Treaty. It focuses in particular on the European Council, whose role has become so pivotal, that we can now refer not to a ‘triangle’ but rather to an ‘institutional trapezium’.

The first part looks back over the history of this institution, recalling the role played by Jean Monnet in its creation. It highlights the fact that, contrary to what is often claimed, the progressive strengthening of the European Council has not occurred to the detriment of the Community Method, whose role has also increased, as the Lisbon Treaty even made co-decision the ordinary legislative procedure in most fields.

The second part reviews the changes introduced by this same Treaty with regard to the European Council, and highlights the multiple role it has played. Its transformation into an institution is evidence of the importance

that it has gained. The urgent matters that it has had to face have left it little time to define the priorities of EU activity, as set forth in the Treaty. By contrast, the creation of a stable Presidency has helped to ensure the continuity of its works and to alleviate the tensions between large and small States, between those that are members of the euro area and those that are not. All throughout the crisis, the European Council has been the place where major decisions have been adopted.

The third part queries the role that the European Council will be called on to play in the future. The Lisbon Treaty did not lead to the simplification that was expected with regard to foreign relations, where the respective roles of the President of the European Council, of the High Representative and of the President of the Commission are not clearly defined. In addition, the role that the European Council has played in response to the crisis and the legitimacy that it has acquired as a result, are undoubtedly important aspects in the progressive construction of the government of Europe.

Table of contents

Introduction	p. 1
1. A historic parallel	p. 3
1.1. In the beginning, as always, was Jean Monnet	p. 3
1.2. The Jacques Delors decade	p. 5
1.3. From Maastricht to Lisbon	p. 6
2. The European Council after the Lisbon Treaty	p. 11
2.1. The European Council becomes an institution	p. 11
2.2. Presidency of the European Council	p. 15
2.3. The impact of the euro crisis	p. 18
3. Future prospects	p. 21
3.1. And when the crisis is over?	p. 21
3.2. Foreign policy	p. 24
3.3. The European Council and legitimacy	p. 27
Conclusion	p. 31
Selected publications by <i>Notre Europe</i>	p. 35

Introduction

The Community method was recently the subject of a European Commission seminar that was jointly organised by BEPA (Bureau of European Policy Advisers) and *Notre Europe*, whose synthesis has just been published¹. In the spring of 2011, *Notre Europe* had already launched the debate by publishing two Policy Briefs on the subject².

The definition of the Community method retained in this work is that which emerged from Michel Barnier and António Vitorino's contribution to the European Convention in 2002, on behalf of the European Commission: the Community method corresponds to a system where the Commission has a monopoly on tabling legislative proposals (i.e. the power to propose legislative acts), whereas the Council and the European Parliament adopt

1. Yves Bertoncini and Valentin Kreilinger, '[Seminar on the Community Method. Elements of Synthesis](#)', Seminar of 28 February 2012, Brussels, Foreword by Jacques Delors, *Notre Europe*, May 2012.
2. Paolo Ponzano, '[Community Method or Intergovernmental Method: an Irrelevant Debate?](#)', *Policy Brief No. 23, Notre Europe*, February 2011; Philippe de Schoutheete, '[The Form of Decision-Making in the Union](#)', *Policy Brief No. 24, Notre Europe*, March 2011.

European laws under the co-decision procedure. In addition, the Council votes by qualified majority, as a general rule, with unanimity being required if it wishes to amend the Commission's proposal³.

The European Council has also been the focus of attention from *Notre Europe*. It was the subject of a study, ten years ago, at a time when the subject attracted less attention, and was mentioned less frequently than it is today⁴.

This Policy Paper aims to examine the relationship between these two subjects.

Any historical thinking carried out on the gradual development of the European Council's role, leads to the recognition of a dialectical relationship over time, between the Community method and the European Council. Everything happens as though each extension to, or each new development in the Community method creates, to a certain extent and in parallel, an increase in the power of heads of government in the effective functioning of the institutional apparatus. When seen from an opposite point of view, the growing strength of the European Council over forty years, which is blatant and indisputable, very often goes hand in hand with strengthening of the Community method at each stage. Ultimately, the Lisbon Treaty recognises the European Council as a Union institution, the embodiment of a long-standing position of power; the same Treaty recognises the Community method as 'ordinary legislative procedure', the ultimate embodiment of a decision-making process that goes back to the first European Treaties.

This common historic thread, which, on reflection, is quite unique, shows the deep-rooted ambiguity of the institutional composition that Europe has progressively built for itself.

3. Michel Barnier and António Vitorino, 'The Community Method', Secretariat of the European Convention, Document CONV 231/02, 3 September 2002.

4. Philippe de Schoutheete and Helen Wallace, 'The European Council', *Research and European Issues No. 19*, *Notre Europe*, September 2002.

1. A historic parallel

1.1. In the beginning, as always, was Jean Monnet

Everyone knows that the origins of the Community method date back to the first European Treaty, that of the European Coal and Steel Community. It stems from proposals made by Jean Monnet in order to provide a structure in 1950 for the initiative launched by Robert Schuman. In his *Memoirs*⁵, Monnet speaks of the ‘cornerstone of joint endeavour’, which is ‘the continuous dialogue that it organises between national and common institutions whose objectives are linked and that can only move forward united, in solidarity’. In the initial, still primitive, version, it already included the essential: the institutional triangle made up of the High Authority (which would later become the Commission), which had the sole right of initiative, the Council, which decided, without being able to replace the Commission’s right of initiative, and the Parliament, which expressed democratic voice,

5. Jean Monnet, *Mémoires*, Arthème Fayard, Paris, 1976, 642 pages. Translation: *Notre Europe*.

although quite tentatively in the beginning. Monnet adds ‘this dialogue, inseparable from decision-making is the very essence of Community life, and is what makes it original among modern political systems’. He had personally ensured that this original decision-making procedure was introduced into the first European Treaty, the Treaty of Paris. He closely followed this very procedure during the negotiations of the Treaty of Rome, in 1956 and 1957, on this very point, and welcomed the role of Paul-Henri Spaak, who ‘could not have been more resourceful’. This Community method really is Monnet’s ‘baby’.

The role played by Jean Monnet in the creation of the European Council is however less well remembered. In a memo dated August 1973, he called on the heads of government to create a ‘provisional European government’; this ‘government’ would decide on the necessary instructions to the ministers of the Council; it would meet once every three months; its decisions would be restricted to members, who would keep them confidential⁶. It is easy to recognise the main features of the institution that we know today. ‘He was creating nothing more than a decision-making procedure, but the only one that was effective so that the different stages assigned to the European Union were respected.’ ‘The European Council, through its supreme decision-making characteristic, was in charge of great opportunities and proportional risks.’ Valéry Giscard d’Estaing, then President of the French Republic, mentions Monnet’s support: ‘He approved my initiative to create the European Council. The procedure resembled his: empirical on the surface, but determined in substance’⁷.

It would therefore undoubtedly be a deformation of Monnet’s idea to create an opposition, or an antagonism between the Community method and the role of the European Council. On examining his writings, no dogmatism

6. This quotation (in French) as well as the following ones are taken from chapter 21 of the book Jean Monnet, *Mémoires*. Translation: *Notre Europe*

7. Valéry Giscard d’Estaing, *Le Pouvoir et la Vie*, Paris, Compagnie 12, 1988, T. I, page 119. Translation: *Notre Europe*.

can be found in the institutional field, as he was so focused on the result, on progress and therefore on pragmatism. ‘I never wondered where my preferences were going. It’s a useless question when events dictate.’ One could imagine that many heads of government have found resonance with this sentence, many decades later, in certain crisis meetings on monetary affairs.

1.2. The Jacques Delors decade

Jacques Delors always had a preference for the Single European Act, of which he was the originator. In his *Memoirs*, he speaks of his favourite treaty, as ‘a slim treaty, with plenty of muscle and no fat’. ‘It is a short treaty that says what it needs to say and does not lend itself to controversy on its scope and its interpretation’⁸. The provision to which he attached most importance was the introduction of qualified majority for the implementation of the internal market, which was his main objective. Certain proposals introduced by the Commission were previously blocked at Council level, sometimes for a decade or more, because of the rule of unanimity. The majority rule, exercised as part of the Community method, led to the adoption in just a few years, of the 260 directives linked to the establishment of the ‘great market’ that was also known as ‘Objective 1992’ at the time.

The Single European Act is the obvious strengthening of the Community method, which experienced a glorious period a little before and after the Maastricht Treaty. European legislation, based on this procedure, saw unprecedented development, and extended into all sectors of the economic and social life of European countries. It could be said at the European Parliament (perhaps unwisely) that European legislation determines the bulk of national legislation, in these sectors. It was only after

8. Jacques Delors, *Mémoires*, Paris, Plon, 2004, page 227. Translation: *Notre Europe*.

this period that other Commissions would later have the objective of legislating less, which meant using the Community method less often.

But this decade, in which the Community method triumphed, also saw the emergence of the European Council as a veritable centre of power. It did not have legal status, and did not exist in the Treaties. Its power and its role were little- or ill-defined in the texts, although they were quite obvious and for all players involved. As early as 1993, an academic monograph noted: ‘Nothing decisive can be planned or undertaken without its authorisation’⁹.

In his *Memoirs*, Jacques Delors underscores the importance that he attaches to the European Council, in addition to the Community method: ‘My main task was to ensure intellectual control over the agenda of the European Council’¹⁰. In 1985, the two elements that Jean Monnet had juxtaposed in 1973 could be found in the way of thinking of the President of the new Commission.

1.3. From Maastricht to Lisbon

In the debate surrounding the Community method, it is obvious that we have lost considerably regarding conceptual clarity over time. Thirty years ago, while political cooperation was a mere fledgling, following on from the Davignon report the legal situation was clear:

- Everything that was under the jurisdiction of the Community was debated within its institutions, and the normative decision was made there according to the Community method;
- Everything that was not under the jurisdiction of the Community (i.e. political cooperation) was debated outside the institutions, and the

9. Béatrice Taulègne, *Le Conseil européen*, Paris, PUF, 1993, page 481. Translation: *Notre Europe*.

To my knowledge, this is the first academic study focusing specifically on the European Council.

10. Jacques Delors, *op. cit.*, page 226.

decision was made by consensus. A useless coinage was used by calling this procedure ‘intergovernmental’, as it is nothing more than the usual procedure of multilateral diplomacy.

There was a clear separation, with no overlapping of one sector into another, in other terms, conceptual simplicity¹¹.

Then came the Maastricht Treaty, with its pillared structure, which introduced a certain confusion. What happened outside the common institutions was still known as ‘intergovernmental’, for example Schengen cooperation, which, at the time, was outside the Treaty. But another activity that took place within the institutions, in the second or third pillar, was also known as ‘intergovernmental’, according to procedures other than that of the Community method. From the moment where the same term describes different realities, some within institutions and some outside, we accept ambiguity, and this ambiguity has continued to grow within the debate.

Firm and reflective supporters of the Community method, i.e. almost all the European political personnel of that time, unanimously recognised the great merits of this procedure. They sometimes wondered however, about its automatic application to the new tasks entrusted to the Union. They also recognised the limits of this method, particularly on two points: it is normative and it is poorly suited to crisis situations.

- Everyone knows that the Community method is a normative decision-making process. It has been designed to establish rules, directives and laws. That is precisely why the current treaty calls it ‘ordinary legislative procedure’ (Article 289 TFEU). The Community, and then the Union, has always been an essentially legal, normative and regulatory structure, and the Community method meets these needs. But it goes without saying that certain European decisions are not

11. Cf. Philippe de Schoutheete, *La coopération politique européenne*, Bruxelles, Labor, 1980 and 1986.

normative, they are by nature outside the Community method. As in our countries, different policies call for a different decision-making process: just think of competition or foreign policy. As a historical point, it can be mentioned that the draft Treaty presented by the Dutch Presidency in September 1991, which was considered to be too ‘Community-based’ and rejected by the majority of Member States, did not advocate the Community method in foreign policy either¹².

- On the other hand, political life has been through crises before: we are currently experiencing one, and a major one at that! The Community method was not designed to deal with crises. It is based on balanced procedures, institutional workings and successive readings. It takes time to be implemented. However, the very nature of a crisis means that time is of the essence. This must be taken into account.

But, subject to these reservations, the successive European Treaties have certainly consolidated the Community method by increasing, in successive stages, the powers of the Commission, the qualified majority of the Council and the co-decision procedure with the Parliament.

However, at the same period, the European Council, which was still not a Union institution, was also extending its real role. We need only think of its growing leverage in Treaty modifications, in fixing financial perspectives, in implementing the Lisbon Strategy, as well as in many other fields. This evolution and its causes (particularly the relinquishment of the General Affairs Council’s powers) have been copiously described. Well before approval of the Lisbon Treaty, all academic analyses agreed on the

12. I wish to thank Willem van Hasselt for his kindness in providing me with the text of the Dutch draft Treaty (doc SN 1079/1991), which had become difficult to find. Article B of title I (CFSP) excluded the Commission’s sole right of initiative, and indicated that a non-specified part of the CFSP would continue to come within the intergovernmental provisions of the Single European Act (title III).

immense leverage of the European Council, as shown in 2002, by the aforementioned study undertaken by *Notre Europe*¹³.

The historic and parallel path of both the Community method and the European Council, at each of these stages, should at least be given some thought.

13. Philippe de Schoutheete and Helen Wallace, *op. cit.*

2. The European Council after the Lisbon Treaty

2.1. The European Council becomes an institution

Article 15 TEU transformed the legal nature of the European Council. What had been, for 35 years, a regular meeting of heads of State and government, has become a Union institution.

At first sight, it is one of the major innovations of the Treaty. Two considerations, however, temper this judgement:

- The aforementioned article states that the European Council ‘shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof’. This formulation, copied from the draft Constitutional Treaty, only marginally differs from that of the Maastricht Treaty. The use of identical terms, 20 years later, does not show a real willingness for change. What is even more important is the fact that the functions actually carried out by the European Council in the daily

reality of the Union, both before and after the Lisbon Treaty, are different from the requirements of the Treaty and go well beyond the terms used¹⁴. The heads of government for the past 20 years at least, have not limited themselves to providing impetus or defining political priorities. Whether it concerns the completion of the internal market, the creation of the euro, the enlargement policy or financial perspectives, the European Council very often thoroughly entered the decision-making process. The entire open method of coordination, which began in 2000 under the name of the ‘Lisbon Process’, implied the personal involvement of heads of government in the annual comparative review of economic policies. This is also true for changes to the Treaty or in determining the headquarters of the institutions, and everyone remembers examples of high-level debates that were not really part of the Union’s priorities. Of course one can deplore a development that is sometimes considered as a drift. But there is no indication that the European Council, by becoming a Union institution, is determined to change its behaviour on this. The change is therefore not guaranteed.

- It must be acknowledged, however, that since the entry into force of the Lisbon Treaty, the European Council, as any institutional structure, is in a crisis situation. Almost all of its meetings have been marked by imminent danger, or a short-term decision. It had to deal with the most urgent matters first as the ‘house was on fire’. It would be foolhardy to draw any sort of conclusion on the sustainable impact of Article 15 TEU, based on just two years of experience, and two years of major crisis, at that. How will the European Council behave in a blessed and future period, where the absence of imminent danger would allow long-term thinking?

14. I am referring to the chapter that I wrote on the European Council in J. Peterson & M Shackleton (eds.), *The Institutions of the European Union*, Third Edition, Oxford University Press, 2012.

Subject to these reservations, it goes without saying that the formal creation of a new institution is not without its consequences. It is true that the European Council has been playing, *de facto*, and for a long time now, an important role in the decision-making process of the Union. It had taken over some of the political initiative (not legislative initiative) that had been traditionally exercised by the Commission. It had also taken over some of the political decision-making that had been traditionally exercised by the Council. But the legal recognition of this situation, through the Lisbon Treaty, gives a new dimension to old practices.

The traditional decision-making triangle (Commission, Council, Parliament), that was the foundation of the Community method, has become a quadrangle. How can we move from one shape to the other? How can the new player be integrated into the old game? The fundamental question remains open. It depends on the vision that people may have of the European Council. It is made complex by the gap between principle and practice.

By following the letter of the Treaty, the European Council must limit itself to providing impetus and defining priorities. Some conclude from this that the new institution, in principle, is not a truly executive body, and is certainly not the beginning of a European government, as it is not formally the decision-making centre. This presentation reinforces a long tradition in deep-rooted European debate: the words 'European government' are emotionally loaded. And yet it must be recognised that the European Council in fact decides on lots of things, on lots of important issues, also in the Community field and has done so for a long time. Is this not exactly the task of the executive? Is it not the beginning of a European government? As long as this basic contradiction is not lifted, it will be impossible to reach the agreed conclusions.

In his institutional thinking, Jean-Louis Quermonne already noted ten years ago that the Community method had allowed us to do without a European

government for a long time. He added that this method, of which he recognised the full importance, led to a form of governance that he described as a false alternative to government. His conclusion was that the issue of European government should one day be tackled¹⁵.

It is the type of issue that the political world only tackles when obliged to. Debate would undoubtedly have remained academic, if the euro crisis had not relaunched it. It exposed the once-forgotten weakness of the economic pillar of EMU, and the danger of this weakness¹⁶. So once again there is talk of an economic government, at least for the euro area. Even if the name displeases, and causes fear, it is in fact what is being gradually implemented by the decisions made throughout the euro crisis.

Just as each time the issue of European government is raised, the focus is naturally placed on the European Council: already in August 1973, Jean Monnet called on the heads of government to form a ‘provisional European government’. But the underlying ideological debate continues. President Barroso, in his State of the Union Address in September 2011, stated that: ‘...within the Community competences, the Commission is the economic government of the Union’¹⁷. President Sarkozy, speaking of the euro area, declared one month later: ‘France, from the outset, called for an economic government of the euro area and said that this economic government should consist of a meeting of heads of State and government’¹⁸. Can this debate really have an unequivocal answer?

15. Jean-Louis Quermonne, *L'Europe en quête de légitimité*, Paris, Presses de Sciences Po, 2001, page 73 and the following pages.

16. Philippe Maystadt, *Europe : le continent perdu ?*, Bruxelles, Foreword, 2012, page 102 and the following pages.

17. President Barroso, ‘[State of the Union Address 2011 European Parliament](#)’, 28 September 2011.

18. Cf. European Council and Euro Area Summit, press conference given by Nicolas Sarkozy, 27 October 2011.

2.2. Presidency of the European Council

The second main innovation concerning the European Council in the Lisbon Treaty consists in endowing it with a permanent President, appointed for a term of two and a half years, renewable once (Art. 15(5) TEU). The nature of the function, its importance, its role, its leverage and its place in the Union, were the focus of comments varying from hyperbole to sarcasm before the entry into force of the Treaty. In all likelihood, in the future this position will essentially be what Herman van Rompuy did during his first term.

A lingering misunderstanding, stoked by the press, particularly in the UK, concerned the visibility of the occupant. It was altogether unlikely that the main European leaders would deliberately place a flamboyant personality at the head of the European Council whose media influence would overshadow them. Any occupant would have been doomed to fail, if he had tried to extend his aura to the detriment of national leaders. These were not looking for a competitor, but rather an architect of compromise, respected and experienced, able to introduce some order, supervision and consistency into the chaotic and often improvised organisation of the European Council's work. They obviously attached more importance to this internal dimension ('a figure apt at consensus building and group leadership') than to the external dimension ('capable of stopping the traffic in Washington or Beijing')¹⁹.

In this approach, the main task of the President is to prepare the European Council meetings, to chair the debates, to reach joint conclusions and to ensure they are carried out. The necessary qualities are moral authority, confidence among players, a sense of consensus, and expertise on the various issues. It is the conjunction of all these elements that demonstrates effectiveness and makes him successful.

19. 'The Treaty of Lisbon. A Second Look', *Joint Study by Egmont-CEPS-EPC*, Brussels, September 2010, page 13.

The first gesture of the newly-elected President was to call an informal meeting of the European Council on 11 February 2010. With this, he claimed his right to call a meeting and to set its agenda; i.e. he established a certain authority. It has not really been disputed since then. He is not, as some had foreseen, a simple session chairman: he influences the preparation, the discussion and the conclusion of European Council debates. But he is not the President of Europe!

As regards expertise on the various issues, he is undoubtedly aided by his past experience as Belgian Prime Minister and as Minister for the Budget. His main advantage is that he has more time than others to devote to European issues. As he stated in his first address: 'Time is a politician's prime material'²⁰.

But it is undoubtedly on his ability to create confidence, and to find consensus that he will be judged. The position, by nature, is the focal point of potential tensions and conflict between institutions and between States. They seem to have been handled well:

- Experts foresaw conflict between the President of the Commission and the President of the European Council. If there were tensions, they have actually diminished with time. Regular contact (Monday morning breakfasts!) created and strengthened mutual understanding. More important is the support given by President Van Rompuy at crucial moments to the role of the Commission, disputed by some Member States. This was clearly the case in the preparation and holding of the (very important) European Council of March 2011 on economic governance²¹. In the other direction, the President of the European Council cannot do without the support and expertise of the Commission services in the implementation of the mandates

20. Herman Van Rompuy, 'Speech by the President of the European Council pronounced at the "Klausurtagung" of the CSU-Landesgruppe Wildbad Kreuth', Germany, 7 January 2010.

21. Peter Ludlow, 'The European Councils of February and March 2011', EuroComment, *Briefing Notes*, Vol. 8 No. 5 and 6, August 2011.

entrusted to him. Mutual interest, buffered by sufficient trust have thwarted the pessimistic predictions.

- The old fear of a Franco-German *directoire* was emphasised during the euro crisis through provocative media action. This applies to the ‘Stability and Growth Pact’, which was agreed on without warning in Deauville, in October 2010, and to the joint press conference held in Brussels just before the European Council of February 2011. The public reaction of the other partners was rather tempered. This can be explained by the danger of the crisis and Germany’s clout in this. One might expect that in private the reactions were stronger. The unusual act of an open letter from 12 heads of government, including Mario Monti and David Cameron, on the eve of the European Council of March 2012 shows a certain irritation. The President was able to manage all these tensions. On the one hand, he evidently managed to maintain a relationship of trust with the Franco-German couple. On the other hand, his real and often decisive involvement in the preparation of meetings and the balanced chairing of debate during these meetings, helped to reassure the others. Herman Van Rompuy, as former Belgian Prime Minister, has a level of ‘Community’ commitment that reassures those who most fear a *directoire*.
- The euro crisis, which is omnipresent in European Council debates, could naturally have raised fears of marginalisation in the countries outside the euro area. It must be remembered that during the Convention, the prospect of holding euro area summits had sparked off such outrage that it was quickly abandoned. Today, it is an accepted reality, and these summits are presided by Herman Van Rompuy. A lot of attention has been given to reducing possible tension. Peter Ludlow concludes: ‘it is reasonable to assume that many if not all the dangers inherent in the split between the Ins and the Outs can be contained’²².

22. Peter Ludlow, EuroComment, *Occasional Notes*, 3 October 2011.

The players, just like the observers, generally agree that Herman Van Rompuy has fulfilled the expectations that everyone placed in this new position. His presence in discussions, in the media, with the Member States, goes without saying, which is a sign of success for a function that had to be created from scratch. The fact that he is entrusted with presiding the euro summits is a sign of trust that was not self-evident. Institutional or personal problems will of course arise. But it is reasonable to presume that solutions will be found for them in the climate of consensual authority that the occupant has managed to create for himself.

2.3. The impact of the euro crisis

The way the European Council has evolved over the past two years has been marked more by the management of the euro crisis than by the institutional innovations of the Treaty.

The commitment was obvious from the very first, informal, meeting of the European Council under the new Presidency, in February 2010. The final declaration states that ‘Euro area Member States will take determined and coordinated action, if needed, to safeguard financial stability in the euro area as a whole’. Two years later, for the European Council of March ‘Euro area Heads of State or of Government recall their determination to do whatever is needed to ensure the financial stability of the euro area as a whole, and their readiness to act accordingly’. The political scope of these declarations is obvious, and the formulation quite the same. But between the texts we have moved from ‘Member States’ to ‘Heads of State and Government’. The change is not just semantic.

In reality, the heads of government personally assumed the responsibility of managing the crisis, which is not their role according to the letter of the Treaty. They successively adopted, at their level, an impressive set of

measures. All or almost all of these would have seemed problematic or improbable in 2007. Some of these measures fall within the Community's sphere of competence, and were legally adopted by the Community method. This is the case for six legislative acts (known as the Six-Pack) adopted in 2011 to strengthen the Union's economic governance. Others fell outside the Community's sphere, and despite the silence of the Treaty, they were nevertheless adopted by the European Council. This was the case for the creation of the European Financial Stability Facility (EFSF), or the successive support operations for Greece's sovereign debt. The very fact of holding meetings of heads of government of the euro area, a proposal that Ms Merkel was still opposed to in 2008, confirms the new and leading role that they wanted to play in this particular field.

The responsibilities assumed at this level have had a considerable impact on the functioning of the European Council. In reality, it was dominated by this subject, almost to the exclusion of all others.

This transfer of responsibilities also led to some criticism. For some players, it raises questions about the Community method. Behind this fear, it seemed that there was fear of an executive. Martin Schulz, President of the European Parliament, recently said 'The Heads of State and Government are arrogating more and more decisions to themselves, debating and taking decisions behind closed doors and in disregard of the Community method'²³.

It must be remembered that, before the entry into force of the Lisbon Treaty, important decisions, sometimes detailed and of Community-wide scope, were frequently made politically at European Council level, before being legally implemented by the Community institutions. This was the case for the financial perspectives or the 'Delors Packages'. This old procedure is also that which led to approval of the 'Six-Pack' in 2011.

23. 'Speech by EP President Martin Schulz to the Members of the European Commission', 25 April 2012.

We can above all wonder if the heads of government had any choice in a crisis of unprecedented scope. Was it conceivable not to use all their authority to influence the decision? Not to seek solutions or a palliative in the Treaties, or in national resources, sometimes even bordering on legality? Could they have made the argument of jurisdiction and procedures? What would we have said if they had not explored every possible opportunity?

Speaking at *Sciences Po Paris* in September 2010, at the invitation of *Notre Europe*, President Van Rompuy expressed this point of view: 'It is normal, when taking decisions which concern the foundations of money and which furthermore involve extraordinary amounts, that responsibility for this is assumed by a head of government... The European Council is the place where one and the other can find common and thus European positions...'. He touches on this subject again during a conference at the Humboldt University: 'In times of crisis we reach the limits of institutions built on attributed competences. When we enter uncharted territory and new rules have to be set, the European Council is well placed to play its part. It is one of the reasons it was founded in the seventies'²⁴.

24. 'The discovery of co-responsibility: Europe in the debt crisis', Speech given by Herman Van Rompuy, President of the European Council, at the Humboldt University, Berlin, 6 February 2012.

3. Future prospects

3.1. And when the crisis is over?

Since its creation, the purpose of the European Council has been to take distance from everyday problems, to reduce technical complexity, to think in the long-term about the goals of European integration, about priorities rather than procedures. That was the spirit of the *'Kamingespräche'* that were so dear to Willy Brandt. This again was the formulation of the Lisbon Treaty, which speaks of impetus and general political goals.

The paradox is that it is possible to have a positive or negative judgement on the European Council's performance in managing the euro crisis, but it would be extremely difficult today to exercise any judgement on the implementation of tasks formally entrusted to this institution by the Lisbon Treaty. It worked in an emergency situation, under pressure from the markets, on often technical issues, on seeking short-term and sometimes even immediate solutions. The 'long term' had to be postponed.

The efficiency of the European Council, within the framework defined by the Treaty and in a 'normal' period (if it ever comes!), is still an open question. But some reflection is necessary:

- The European Council is the meeting of around 30 persons, reaching decisions by consensus, with each person naturally taking account of national political deadlines. The European Council has shown that it can make important and difficult decisions, even under duress such as an extreme emergency, tight deadlines or external pressure such as the markets. But in the absence of pressure, other meetings lean towards harmless general matters, or the obscure and ambiguous compromise that dots the European texts. No meeting that big could naturally be conducive to impetus.
- Under pressure from the markets, recent European Council debates have mainly focused on measures concerning the euro area. This allows the more sceptical, including the United Kingdom, to abstain, as they are not directly concerned. When issues concerning all the Member States are finally tackled, hypothetically with no imminent pressure, is it really sure that strong impetus can be provided, as stated in the Treaty, or that general goals will be defined together, when opinions diverge and populism is growing? Or will it be necessary to organise enhanced cooperation at European Council level? How, and based on what?
- The European Council is, par excellence, a place of power, the place where great European debate takes place on a one-to-one basis. And, just like in any power game, the size and the power of the States is a strong argument. The Community method, through its 'checks and balances', tends to make a more level playing field and impedes domination by some. The European Council, by personalising the debate, tends, on the contrary, to maximise the influence of major players, and some major players in particular. Sometimes the ability and the experience of men weaken this trend. We have seen leaders from small countries with powerful voices and leaders

from large countries with very little influence. But this is not the general rule, and this trend was heightened by the growing number of players, due to enlargement. They all sing in chorus but the voices of the tenors stand out! This political reality, in my view irreversible, is a source of concern for some. It explains and underlies the renewed arguments for the Community method. These voices will be even stronger once we have weathered the storm. In the long run, it will be dangerous to ignore them.

- The practical functioning of the European Council was certainly improved by a set of provisions adopted in Seville in 2002. But the ambivalent nature of the Lisbon Treaty also has consequences at this level. On the one hand, it goes without saying that the European Council cannot cut itself off from the Council configurations, which often give it the subject matter for its debates. On the other hand, the role of the rotating presidency in preparing the European Council (at COREPER level and at General Affairs Council level) is paradoxical and not very effective. In the spirit of the new Treaty, the composition and the role of the General Affairs Council were to be reformed. But this has not happened. Its theoretical role is often circumvented by direct contributions from the capital cities, sometimes improvised and always fragile by nature as they are based on the good relations existing at the time between certain leaders. The occasional use of personal representatives (Sherpas), an old and common practice in multilateral diplomacy, does not introduce any major change. The fact is, many European Council meetings today are marked by writing exercises at the highest level, which the Seville rules were in fact trying to avoid.
- A now-common practice consists in giving the President of the European Council mandates to be implemented:
 - During its meeting of 20 March 2010, the European Council asked its President, in conjunction with the Commission, to set up a working group composed of representatives from the Member

States, from the rotating presidency and from the ECB, that would present to the Council, before the end of the year, the necessary measures to reach the objective of an improved crisis resolution framework and better budgetary discipline, by exploring all the avenues that would strengthen the legal framework.

- The informal meeting of the European Council on 23 May 2012 requested that its President, in conjunction with the Presidents of the Commission, of Eurogroup and of the Central Bank, report to the European Council of June, on the components of an economic Union, as well as the working method required to achieve it.

For the implementation of these mandates, the President does not have his own administration. He has no direct control of the Councils that must carry out the decisions of the European Council. The structure, as it stands, appears to depend on good personal relations, and as a result is quite fragile.

Many of these considerations are linked to a basic question that is impossible to answer today: how will this new institution form part of the well-honed institutional framework that we know? The extraordinary period that we have experienced does not allow a firm conclusion on this point. It seems unlikely, in the future, that it will be strictly limited to what is formulated in the Treaty, which has never been fully adhered to. But where will it stop? There is understanding of certain fears at the Parliament and at the Commission, that time alone and practice will allay, on condition that they are addressed.

3.2. Foreign policy

Since the beginning, the European Council has played an important role in foreign relations firstly for the Community and then the Union. Over

the past 30 years, not one single meeting has not been without its often numerous and sometimes tough declarations: in March 1999 on the siege of Sarajevo, in September 2008 on Georgia, in March 2012 on Syria. It has been said that in this context the European Council, through these joint political declarations, has in fact acted as a collective head of State.

This external dimension, which was very present in the Convention, can be found in the Treaty through the creation of the High Representative of the Union for Foreign Affairs and Security Policy, and of a permanent presidency of the European Council, whose foreign role has been affirmed. These two positions should improve external visibility. Some spoke of giving a face to Europe.

The relationship between the two functions is formulated in the Treaty: '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 powers of the High Representative of the Union for Foreign Affairs and Security Policy'. The lack of precision and the ambiguity of this text could easily have led to tensions or conflict, with both the High Representative and the President of the Commission. There does not, however, seem to be any sign of this. An agreement signed in March 2010 between President Barroso and President Van Rompuy resolves the issues of external representation at their level. Relations with Catherine Ashton are running smoothly.

In practice, the European Council's external action is today quite similar to that which it carried out before the Lisbon Treaty. Each meeting ends with foreign policy considerations: for example in June 2010 on Iran, in March 2011 on Gaddafi's departure, in March 2012 on President al-Assad's departure.

However, the role of President of the European Council, through its permanent nature, is obviously new in this context. He helps to represent the Union in global fora where heads of government come together, such as the G8, or G20. He ensures the chairing of regular meetings at summit level with the Union's strategic partners: United States, China, Russia, around ten in all. He brings continuity to certain functions where beforehand the Union's position was weakened due to rotating six-month presidencies. Foreign policy obviously has a substantial presence in the President's agenda, even if it is not the focal point of his concerns.

The fact remains that EU performance in foreign policy over the past few years is not convincing. The ambition of the Treaty was to simplify our external representation, but in fact, our partners remain perplexed regarding the complexity of our structures. The rotating presidencies still exist. These, especially when it comes to the larger countries, wish to preserve external visibility, which is, and will be a source of tension and a factor of inconsistency.

The impression, which may be subjective, is that since Lisbon, neither the European Council nor its President have been placing foreign policy at the top of their priorities. This is understandable. The dominating and almost exclusive concern is that which stems from the economic and financial crisis. Past experience has shown that the European Council, during short and relatively infrequent meetings, could not properly address more than one problem at a time.

But it must also be said that the willingness of the Member States to make significant progress towards a common foreign policy is not obvious. Nobody talks anymore about establishing structured cooperation in the field of defence, which is nevertheless laid down by the Treaty. In general, the collective appetite for a common foreign policy has decreased everywhere. Governments, aware of rising nationalism in public opinion, are

seeking to retain their full autonomy in their dealings with the outside world, even if it means undermining efforts made by the common institutions.

The personal appraisal over 15 years ago of Stuart Eizenstat, a skilled American observer of our weaknesses, remains valid²⁵ when he stated that the main Member States did not yet wish to abandon their rights concerning foreign affairs for the benefit of a common approach, and that as long as this change had not come about, common policy would always be inferior to what the Treaty had promised. He was speaking of Maastricht! Since then we have in fact rather regressed.

3.3. The European Council and legitimacy

During the years 2010 and 2011, the European Council met, under one form or another, about ten times a year. Although these meetings are more regular, they continue to attract the relatively constant attention of the press and of public opinion. This is perhaps due to the situation of crisis that has surrounded each of these meetings in recent times. It is undoubtedly due to the participation of figures that are well known, at least in their countries, and sometimes throughout all of Europe. Perhaps it is due to a residual streak of decorum surrounding these ‘summits’. But the fact remains that this institution has reached a level of visibility that a Commission, Council or Parliament meeting could never expect. For most people, it is the tip of the European institutional iceberg. The consequences of this political fact are the focus of attention.

What is striking, during the period under consideration, is that these meetings have been mostly presented by the press as being failures or partial failures. If by chance the natural scepticism of some faded temporarily, the financial

25. *Financial Times*, 16 February 1996.

markets often remedied the situation. And yet, despite all this, a sense of expectation, sometimes even a touch of optimism, seems to surround each new meeting. It seems as though the European citizens consider that the heads of government have a collective responsibility to make the necessary decisions, particularly in the event of a crisis, and especially if the crisis becomes permanent. Most Europeans expect results from these meetings, and want to believe in them. This expectation, in itself, gives a certain form of legitimacy to the European Council. Philippe Maystadt speaks of it as ‘the body that clearly has the greatest political leverage and that appears as being the most legitimate according to the citizens’²⁶.

The source of democratic legitimacy in such a complex and original structure as the European Union is a vast subject. Vivien Schmidt has written an excellent book about it²⁷, describing the Union as a ‘highly compound regional polity’ in which democracy, and therefore legitimacy, is naturally fragmented, partly because of the European institutional mechanism (the Parliament) and partly because of national institutions. Her theoretical analysis focuses on the application of the concept of democracy to a multi-nation, institutional entity such as the Union. She notes that this concept of democracy, with its variants and its different dimensions, was initially designed, both intellectually and politically, within a totally national framework. Its extension to the European structure requires at least some balanced thinking.

In her theoretical analysis of democracy in Europe, Vivien Schmidt makes a distinction between two political moments:

- Negotiation (coordinative discourse): the moment of argumentation and the substantial content of a policy negotiated in the Union; this debate mainly takes place between European players, between experts and politicians;

26. Philippe Maystadt, *Europe : le continent perdu ?*, Brussels, Foreword, 2012, pages 115-116. Translation: *Notre Europe*.

27. Vivien A. Schmidt, *Democracy in Europe. The EU and National Polities*, Oxford University Press, 2006, pages 230, 253 and the following pages.

- Communication (communicative discourse): the moment when the goal or the result of ongoing or completed negotiation is communicated; this goes from players towards the citizens.

It goes without saying that the second discourse is essential for a democracy to work. Jacques Delors recently said that simplicity was part of democracy: ‘Being an inventor of simplicity, is to enable citizens to understand better what is happening’²⁸. It cannot be argued that the European Council is always the architect of simplicity! But it is very often the common ground that centralises the main part of debate, and is also very often the focal point attracting media attention. It is the tip of the iceberg, and a privileged forum for the communicative discourse.

The formula, initially proposed by Jacques Delors, which makes the Union a ‘European federation of nation-states’ is not unlike that of Vivien Schmidt when she speaks of ‘a highly composite regional political entity’²⁹. Whatever the terminology used, the mixed character of the democratic dimension of the Union, must be the basis of all analysis. Gaëtane Ricard-Nihoul, in her recent study on Jacques Delors’ proposal³⁰, comes to the conclusion, just like Vivien Schmidt, that part of the debate on the democratisation of the Union is being disregarded, if we do not talk about ‘the coordination and the dialogue, between the European and national levels of democracy’. This is one aspect of this continuous dialogue, that Jean Monnet spoke about, between national institutions and common institutions ‘whose objectives are linked and that can only move forward united, in solidarity’. In this coordination and this dialogue, the European Council is playing its role; it is a source of legitimacy.

28. Jacques Delors, ‘For a revival of Europe’, *Tribune, Notre Europe*, 11 April 2012.

29. For The Free Dictionary, a composite is ‘a complex material... in which two or more distinct, structurally complementary substances... combine to produce structural or functional properties not present in any individual component’. The application of this concept to European integration seems appropriate, in my opinion.

30. Gaëtane Ricard-Nihoul, *Pour une Fédération d’États-Nations*, Larcier, 2012. Translation: *Notre Europe*.

Conclusion

Helen Wallace once described the Council as an ‘institutional chameleon’, because of its different visions, and the different images that we could have of it³¹. The same could be said of the European Council: a body equipped to provide impetus and guidance, sometimes a decision-making body, crisis manager, collective head of State in external relations, source of legitimacy. These different aspects are the stages of growing power.

The relationship between this growing power of the European Council and the vital contribution of the Community method to the functioning of the Union is generally perceived as a confrontation. With regard to historic development, does this not simply amount to continued coexistence in diversity?

31. Helen Wallace, ‘The Council: An Institutional Chameleon?’, *Governance: International Journal of Policy, Administration and Institutions*, July 2002, Blackwell Publishing, Oxford.

The ambivalent and ambiguous nature of terms does not help the debate. The term ‘intergovernmental’ covers very different things, and all that is ‘Community-based’ does not come under the method of the same name³². The widespread concern is that the ‘intergovernmental’ is superseding the Community method. But the result of recent years of crisis is that the Community institution par excellence, the Commission, as President Barroso consistently points out, has acquired responsibilities and powers that go well beyond those of 10 or 20 years ago. The Union is more ‘Community-based’ than ever, even if it is not always the ‘method’ that led to this situation. The Member States of the euro area today accept ‘Community’ control of their budget and their economic policy, which would have been unthinkable some five years ago. This originally came from ‘intergovernmental’ decisions, and only then from the Community method. We must be wary of over-simplification!

One may ask whether the true debate today is not between the Community method and intergovernmental decision-making, but rather between governance and government.

The Community, and then the Union, has essentially been normative. The Customs Union was created by a treaty, the internal market by directives, the euro had to be consolidated by a ‘pact’, and even the ‘open method of coordination’ is a form of soft law. These are various forms of governance, in the sense given to this term by the Commission’s White Paper³³ ‘the rules, processes and behaviour that affect the way in which powers are exercised’.

The directive and the five regulations (Six-Pack), adopted in September 2011 for budgetary surveillance in the euro area and the correction of macro-

32. It is for this reason that in a *Notre Europe Policy Brief* (No. 24 March 2011) I suggested that we speak rather of ‘institutional method’.

33. European Commission, *European Governance. A White Paper*, COM 2001/428 final, 25 July 2001.

economic imbalances, give the European institutions, and mainly the Commission, an unusual and even an unprecedented level of control and constraint. The precision of the measures and the automatic nature of decision-making processes are considered to be government actions, rather than forms of governance. It is not only rules that are being prescribed, but also the exercise of a form of economic government.

In another manner, the specific and binding conditionality linked to collective action – through the European Council – to support Greece’s debt, limits the country’s sovereignty, in practice. Today, it is the Union that is governing Greece from an economic and financial aspect, at least partly.

This idea of economic government has stirred controversy in Europe. The concept raises fears, whereas the idea of governance is accepted. There is clearly room here for debate. But, mainly due to market pressure, some elements of economic government, inevitably incomplete, are gradually being formed in the euro area. It is likely that this evolution will extend and strengthen in the future. It raises questions and calls for reflection.

The question mark concerns democratic control of this ‘economic government’ that is becoming established. According to Mario Monti, ‘the crisis has highlighted the need to legitimise European decisions’. This legitimacy depends on proper coordination between national and European democracy.

Reflection is based on hope. No political system can survive without giving hope to its citizens. Europe has been a great channel of hope for several generations, including mine. And today? It is not hope that encourages integration, it is market fears. Is this enough? What we see around us, rather, is hopelessness. Many Europeans do not see a light at the end of the tunnel. Who will bear a message of hope, if our leaders and institutions do not? Here too, the European Council has a role to play.

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Visions of Europe

The European Council and the Community Method

This Policy Paper by Philippe de Schoutheete is part of a series of works that *Notre Europe* has dedicated to the evolution of the European institutions in the wake of the Lisbon Treaty. It focuses in particular on the European Council, whose role has become so pivotal, that we can now refer not to a 'triangle' but rather to an 'institutional trapezium'.

The first part looks back over the history of this institution. It highlights the fact that the progressive strengthening of the European Council has not occurred to the detriment of the Community Method, whose role has also increased, as the Lisbon Treaty even made co-decision the ordinary legislative procedure in most fields.

The second part reviews the changes introduced by this same Treaty with regard to the European Council, whose transformation into an institution is evidence of the importance that it has gained. The urgent matters that it has had to face have left it little time to define the priorities of EU activity, as set forth in the Treaty. But all throughout the crisis, the European Council has been the place where major decisions have been adopted.

The third part queries the role that the European Council will be called on to play in the future. The Lisbon Treaty did not lead to the simplification that was expected with regard to foreign relations but the role that the European Council has played in response to the crisis and the legitimacy that it has acquired as a result, are undoubtedly important aspects in the progressive construction of the government of Europe.

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