TRACK Dossier

The European Council:
Tasks and Decision making
-
A teaching offer

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Teaching and Researching
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Table of Content

Key Words

TEDO-Scheme – Legal words and reals world – Constitutional Architect – System making – Electoral body – Power of the Purse – Master of Treaties – Permanent President

Our Approach for teaching: The TEDO-Scheme

The dossier aims to provide a comprehensive overview of the European Council for academic teaching. The TEDO-Scheme (see Table 1) serve to offer a scheme for teaching students about institutions; our contribution provides some help to observe and analyse the major EU institutions in an overview. Following treaty provision our approach is divided into four categories: **T**asks, **E**lection / composition membership, internal **D**ecision-making and internal **O**rganisation.

Table 1: *The TEDO-Scheme for each intuition*

Tasks:	The written / legal tasks as laid down in the treaties and real world functions as observed in the living architecture.
Election:	Conditions and provisions for the election or appointment of office holders as well as the composition of the institution.
Decision-making:	The legal rules and real patterns for internal decision-making procedures.
Organisation:	The structure, working methods and internal organization.

Of course, such a scheme of enumerating tasks, election/composition, decision making, and internal organization is only a first step. In order to deepen the knowledge on various aspects of the EU political system, further references to the academic literature are provided.

The European Council's main characteristics

The marathon summit in July 2020 where the Heads of State or Government of the European Union's Member States and the Presidents of European Council and the Commission agreed on a historic rescue package to tackle the socio-economic consequences of coronavirus pandemic, once again showed that the European Council (EUCO) is a key institution for the EU's system.

The TEDO-scheme provides an analytical tool to capture the main characteristics of this institution of the Union's leaders and should be the initial point for every academic analysis and assessment of the European Council.

Figure 1: TEDO-Scheme of the European Council
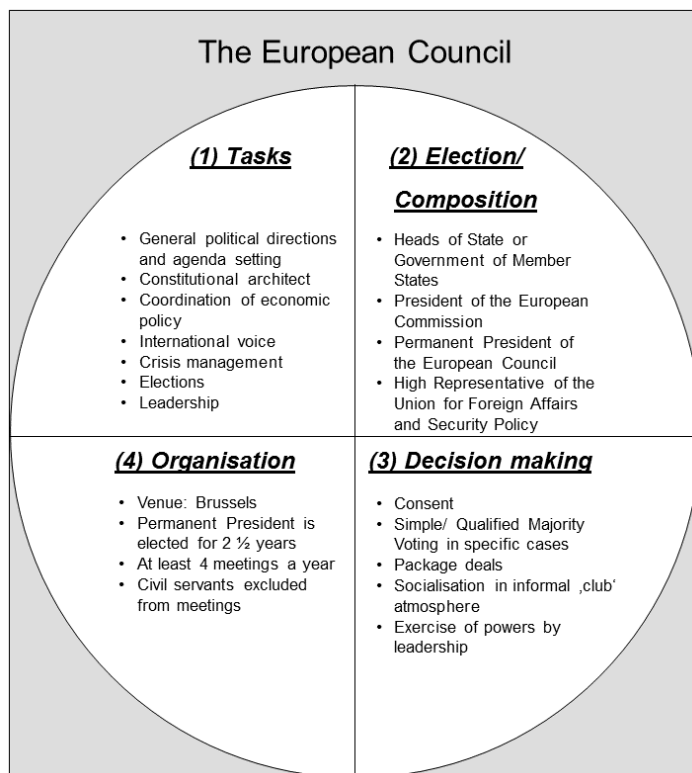
Source: Translation of Wessels 2019, p.5.

1 Tasks: Legal words and real world

Tasks include the written / '**legal**' tasks as laid down in the treaties and **'real'** world function as observed in the living architecture. In describing and analysing the Union´s living architecture, the teaching companion follows a two-step comparison of '**legal**' wording in Treaty texts and '**real**' world functions, that is, if and in what way these Treaty texts are actually applied in practice. This terminology shall help to capture the written Treaty provisions as well as their actual use in the EU system.

Tasks, composition, decision-making and major parts of the internal organisation of the European Council are laid down in Art. 15 TEU and Art. 235 TFEU. The fundamental function is determined by the TEU:

Article 15(1) TEU

The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.

Compared with analogue articles for other EU institutions (see Art. 14 (1) TEU for the EP and 16 (1) TEU for the Council), the functions conferred to the European Council remain rather general. The wording indicates a role somehow superior to or at least independent of the remaining EU institutions.

Following former role descriptions, the European Council's general task is 'to provide the Union with the necessary impetus for its development' and 'define general political directions and political priorities thereof' (Art. 15 (1) TEU).

It further 'does not exercise legislative functions' (Art. 15 (1) TEU). This formulation represents a precautionary and pre-emptive reaction to prevent an intervention from the political top into the 'ordinary legislative procedure' i.e. in the 'institutional triangle' between the European Commission, the European Parliament and the Council of the European Union.

Beyond these general orientations, the Lisbon Treaty assigns a set of more specific tasks to the European Council. As to system-making, the treaty empowers the European Council to act in procedures for deepening and, to a more marginal degree, for widening. Thus, for treaty-making the 'ordinary' and 'simplified' revision procedures (Art. 48 TEU) allocate essential functions to the European Council. In the real world, sessions of the European Council served the **'masters of the Treaties'** (Bundesverfassungsgericht 2009) to prepare, negotiate, agree on and monitor the implementation of pre-constitutional and constitutional acts that led to a deepening and widening of the EU system. In particular, national leaders as **'constitutional architects'** concluded the final agreements of intergovernmental conferences for five treaty reforms and for five waves of accessions to the Union and for one withdrawal (the Brexit). Besides these functions of **system-making**, the Lisbon Treaties underlines additional positions of leadership of the European Council. The provisions of the primary law confirm its power as an **electoral body** in proposing the candidate for the President of the Commission (Art. 17 (7) TEU) and for nominating the President and the members of the Executive Board of the European Central Bank (ECB). Treaty articles also have extended this function to the election and appointment of the permanent President of the European Council itself (Art. 15 (5) TEU) and of the High Representative of the European Union for Foreign Affairs and Security Policy (Art. 18(1) TEU).

Following the general pattern of these treaty provisions, the European Council is the only or at least one of the decisive institutions to vote persons into the top positions of the EU's institutional architecture: The only exception being the President of the European Parliament. Political leaders of several generations also have de facto used their institution to become **'masters of procedures'** to guide processes of policy making of vital interests for them. The European Council has again and again acted as ultimate decision-maker and as highest political instance of appeal for controversial issues which could not be settled on a lower level, even if this institution is not mentioned in the respective treaty articles. One significant case is their role in settling fundamental issues of the Union's budget: Beyond treaty provisions the European Council has exercised the **'power of the purse'** in regular intervals by achieving highly controversial agreements on the size of EU income and of categories of expenditures for what is now known as the **'multiannual financial framework'**. The budget summit of July 2020 is thus another example for this key role.

As a result of its intensive work, the European Council has developed a state-like agenda, covering a broad scope of public policies in different degrees of intensity (see also table 2). In several ways, though with varying impact, the Heads of State or Government have set the EU's agenda and priorities, shaped doctrines and formulated guidelines for most public policies and also monitored and moderated implementation processes in many domains.

Table 2: *Overview of important topics for the European Council 2020*

The coronavirus crisis Has dominated the agenda of the European Council in 2020. European Council plays a key role as crisis manager dealing with economic, political and social implications.
Brexit 2020 was a transition period with focus on the future relationship between the UK and the EU. On 30 December 2020 the EU-UK trade and cooperation agreement was signed. Consequences of Brexit and on the European Council are still to be seen.
External Affairs: a collective voice *Western Balkans:* Unequivocal support by pledging a package of over EUR 3.3 billion to tackle the consequences of the coronavirus pandemic. *Turkey:* The EU's relationship with Turkey concerning migration and drilling activities in the Eastern Mediterranean. *China:* EU-China relations have been one of the priorities of the German presidency, there have been high level meeting with EU and Chinese officials.

Single Market: pushing a key item of the acquis
Economic and Monetary Union and Single Market should be deepened. Focus on digitalisation of the economy and remaining globally competitive in key technologies and strategic value chains.
A master of Enlargement
Opening accession negotiations with Albania and North Macedonia is high on the agenda.
EU budget
Multiannual Financial Framework 2021-2027: The Heads of States or Government agreed on the MFF budget. The overall budget is EUR 1.074.3 billion.

Source: Wessels et al. (2020)

The Lisbon TEU places the European Council also at the top of the institutional architecture regarding 'external action' (Art. 21 TEU). In taking up this responsibility, the European Council has dealt with differentiated items on the international agenda. Declarations of the European Council range from dealing with developments in the regional neighbourhood to global issues. In its attempts to establish the EU as a 'global player', the European Council can be regarded as the EU's collective voice and face, perhaps even as a **'collective Head of State'** (De Schoutheete 2017).

The European Council also exercised major pre-constitutional and pre-legislative functions in another core area of national sovereignty: It created and developed an 'area of freedom, security and justice' in dealing with salient items of justice and home affairs (see Art. 68 TFEU). Even if originally not intended, the chief national executives have also included traditional policies of the European Community in the European Council's agenda, like the internal market and the Common Agricultural Policy (CAP), as well as newer issues like environmental, climate and migration policies.

A major function that is not explicitly mentioned in the Treaties is the European Council's role to offer political leadership for (re-)acting in situations of internal crisis and external shocks, as recently in the current coronavirus crisis. A strong demand for guidance has often pushed the Heads of State or Government to direct the Union in times of uncertainties.

2 Election and Composition: The Club of the Highest Political Leaders

An essential feature of the European Council is its composition. Its members are legitimised by national elections. They are the highest political representatives of the Member States as

´**master of the Treaties**`. Since the creation of its post, the President of the European Commission has also belonged to this group.

> Article 15(2) TEU
>
> The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work.

The provisions of the Lisbon treaty added an elected full time President to the list of members, replacing the rotating presidency which was exercised by the Head of State or Government of the Member State which chaired the Council of the EU for half a year (see chapter 4). These provisions also guarantee the participation of the High Representative of the Union for Foreign Affairs and Security Policy who 'shall take part in its work' (Art. 15 (2) TEU). Whenever necessary other leaders are informally invited to participate thus, when dealing with the financial and monetary measures, the President of the European Central Bank also takes part in the deliberations.

At the beginning of each session, the President of the European Parliament presents its positions. However, after a short discussion, he/she leaves the conference room. Advisors, for example national civil servants, are not allowed to be present. The members seek to keep a highly exclusive club atmosphere. Yet, there are many civil servants close to the conference room, in order to brief their member of the European Council if needed.

In the course of the financial and debt crisis, the so-called Euro-summit has emerged. In this composition, only the Heads of State or Government of Eurozone countries gather to take decisions related to the Economic and Monetary Union (EMU). The Heads of State or Government of the euro area also have elected their own President for a two-and-a-half year term. For this function they asked the President of the European Council to take up also this work. In the last years the Euro summit met in an ´integrative 'composition that means the Heads of non-Euro members could be present.

3 Decision-Making: Formal and Informal

Given their pivotal role, the decision-making procedures of the European Council deserve closer attention. The legal provisions confirm one major rule regarding its internal decision-making: The dominating mode is consensus i.e. to grant each member a veto position.

> Article 15(4) TEU
>
> Except where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus.

Despite the above-mentioned treaty article, the provisions also enable the members to take decisions by qualified majority (Art. 235 TFEU) when exercising electoral functions (see e.g. Art. 17(7) TEU) and deciding on minor adaptations for the working of other institutions (see Art. 236 TEU).

Thus, given consensus as threshold, the shadow of a potential vote does not serve as a 'whip' for the President to strengthen his role as a consensus broker as this is a recurrent pattern in the Council´s decision making.

In view of these legal rules for decision-making within the European Council, one could expect that this institution would not be capable of concluding any substantial agreements. As each political leader is equipped with a veto right and considering deeply heterogeneous interests among the Member States, it is surprising that the European Council has regularly adopted significant agreements on major issues of national interests.

To explain this performance, we need to look at real world patterns of reaching agreements. We observe a set of differentiated tactical devices and bargaining instruments to form consensus among national leaders.

One major factor for explaining the way of achieving a common position is to look at the preparation and the conclusion of **'comprehensive 'package deals'**. This argument stresses that only those policymakers at the top of the national hierarchy are able to reach agreements which include demands and concessions over a broader scope of policy domains. By combining side payments and intersectoral linkages ('horse-trading'), chief national executives have the authority and power to link detailed decisions for several issues on the political agenda. In this they are able to frame gains and losses in a way which at the end is acceptable to each member.

The process of framing and concluding agreements is not a simple or rapid one. In spite of many experiences and lessons drawn, it still takes the Heads of State or Government considerable **time and energy** to get to a consensus.

In the final hours of the real negotiation, quite often in the middle of the night, the President of the European Council uses several procedural devices to facilitate consensus (Art. 15 (6) TEU). One of the most important of these devices is the so-called **'confessional procedure'** Before or during plenary sessions of the European Council, the President will individually contact those members who are crucial to reach consensus. Based on such an informal procedure, the President identifies the essential elements of package deals and drafts a compromise text.

Besides the **skills of the President**, we observe also another significant feature to reach an agreement. Like in other negotiations in similar constellations, drama and exhaustion forces members to agree. Long night sessions of the European Council took place at nearly each act of system-making and when taking decisions on the Union's own resources and on the multiannual financial framework. Also, in emergency cases under external shocks, members had to find solutions in long-night sessions. It took the members of the European Council five days and four nights to agree on the financial package for dealing with the Corona crisis in July 2020.

To understand these **bargaining processes**, we need to be aware that the EU - leaders need to deal with controversial key details. Merely fulfilling its role to 'define the general political directions and priorities thereof', as the Art. 15 (1) TEU stipulates, does not adequately characterise the bargaining style. Although it might not appeal to them, they personally have to get down to the unpleasant so-called **'technical details'**. Only by negotiating concrete formulations, the political leaders can reach a consensus in important matters of conflict.

Faced with these difficulties as ultimate decision-makers, the top politicians also use a couple of conventional devices to get to acceptable compromises. Quite often, we can discover vague and ambiguous wordings. Often agreements can only be reached by increasing the complexity of the solutions or even by a consensus on meaningless but face-saving formulations.

Another tool is to **postpone decisions**: If in a final session, controversies could not be settled, members also agreed to take further decisions at a later date – these are referred to as **'left-overs'** or **'rendezvous-formula'**.

A special device to reach consensus in the European Council is to agree on different forms of **'opt outs'**: In these cases, the majority of members offers an exception from common rules to deviating colleagues in firm minority positions.

Besides analysing negotiation tactics, we also need to look at **sources of power** including constellations and coalitions of countries as well as at potential factors for leadership.

Several sources confirm that members can be roughly divided in a small group of leaders and a larger group of followers. Against some conventional assessments, we argue that the European Council serves smaller states to counteract tendencies towards a directorate of just the mighty few by offering the less powerful ones the opportunity to raise their voice. At the same time there is a strong demand for leadership which the Franco-German tandem has taken up on its own initiative, but which is accepted and even asked quite often for by many less influential members.

4 Organisation of the European Council: The role of the President

As to the internal organisation of the European Council´s work, the Lisbon TEU introduce a significant novelty: Instead of a Presidency rotating between its members on a half-yearly basis, the Heads of State or Government **elect** a permanent (or full time) President. At first sight, the rules for the election are surprising. In contrast to the President of the Commission and the High Representative of the Union for Foreign Affairs and Security Policy, this office holder is only elected for two and a half years. The mandate of the President of the European Council is also only 'renewable once'. Thus, the overall term is limited to five years – again in clear difference to other top positions. In the shadow of qualified majority voting, not all members of the European Council need to agree on the candidate for the chair. However, given the group norms and the interest of the elected person to be accepted by all of his colleagues, an open controversy seems less likely.[1]

The respective Art. 15(5) TEU clearly sets limits to the autonomy of the office holder. National leaders might sanction a person with a too ambitious profile already after the rather short time span of two and a half years.

Overall, the intended consequences of these rules for election are thus shaped by the inclination to prevent an agent's drift by the potential misuse of longer experiences and deeper institutional memory of the President - than most members of the European Council. The treaty article

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[1] Notably, the election of Jean-Claude Juncker as President of the Commission in June 2014 has proven that under certain circumstances the Heads of State or Government decided against the explicit will of some member states.

documents the members' attempts to set up provisions which weaken inbuilt trends towards an overly powerful and charismatic leadership role.

The provisions of the Lisbon Treaties (Art.15(6b) TEU) and even more the new Rules of Procedures (Art.3) fix the **tasks** of the President. Art.15(6) TEU asks the President of the European Council to fulfil a variety of tasks:

Article 15(6) TEU

The President of the European Council:

(a) shall chair it and drive forward its work;

(b) shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;

(c) shall endeavour to facilitate cohesion and consensus within the European Council;

(d) shall present a report to the European Parliament after each of the meetings of the European Council.

The President of the European Council shall, at his 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.

In the list of normal, typical functions of a chairperson the most important is to 'facilitate cohesion and consensus´. The European Council is supposed to meet at least twice every six months which amounts to at least four meetings a year. Given the tasks the EU leaders earmark for themselves they met in the last year nearly each month. In exceptional circumstances special sessions of the European Council can be convened (Art. 15 (3) TEU).

Table 3: European Council meetings January – December 2020

20 – 21 February 2020	Special European Council (MFF)
10 March 2020	Video conference of the members of the European Council
26 March 2020	Video conference of the members of the European Council
23 April 2020	Video conference of the members of the European Council
19 June 2020	Video conference of the members of the European Council
17 - 21 July 2020	Special European Council (NGEU and MFF)
19 August 2020	Video conference of the members of the European Council (Belarus)
1 – 2 October 2020	Special European Council
15 – 16 October 2020	European Council
29 October 2020	Video conference of the members of the European Council

10 – 11 December 2020	European Council

Source: European Council Meeting calendar.

As part of organisational arrangements 'the European Council shall be assisted by the General Secretariat of the Council' (Art. 235 (4) TFEU) which acts 'under the authority of its Secretary-General' who 'shall take all the measures necessary for the organisation of proceedings' (Art. 13 (1,2) TEU; Rules of Procedure).

In contrast to rules of the Council of the EU to 'meet in public' (for legislative acts) (Art. 16 (6) TEU), 'meetings of the European Council shall not be public' (Art. 4 (3) Rules of Procedure), and, even more, 'the deliberations of the European Council shall be covered by the obligation of professional secrecy' (Art. 11 Rules of Procedure).

The language regime raises less difficulties. The Rules of Procedure dictate that 'the European Council shall deliberate and take decisions only on the basis of documents and drafts drawn-up in the languages specified in the rules in force governing languages', i.e. the official languages (Art. 9(1) Rules of Procedure). For the internal decision making the skill to negotiate in English is useful to defend one´s position.

5 Conclusion: A key to understand the EU

Our analysis claim that the European Council has been the key institution or transformative force to understand the EU. Studying the institutionalised summitry of the Heads of State or Government of the EU satisfies a fundamental curiosity to observe what European political leaders do and attempt to achieve in their European Council. However, it also raises difficulties to fully understand the functioning of this key institution. The European Council is omnipresent in media coverage in times of crisis in Europe i.e. the Corona crisis. The members of this key institution, the state and Heads of Government as well as the President of the Commission and the President of the European Council himself have had a lasting impact on the development of the European Union in vital core areas and over a long time. In addition to the legal tasks, the activity profile must be analysed as well as the factors that enable national leaders to be in find consensus over and over again on important questions.

6 Lessons for Teaching

Ask students to

1. Study the legal text

2. Observe carefully the real world functioning of the European Council: read the conclusions of the sessions and reports by media.

3. Look for academic articles on a regular basis.

4. Think outside the conventional box.

5. Organise a simulation game of the European Council on a controversial issue

6. Answer a set of questions on the European Council.

Sources

Online sources

http://consilium.europa.eu

Official homepage of the Council of the European Union with additional links, i.e., on the European Council and the conclusions for the past sixteen years.

https://www.europarl.europa.eu/at-your-service/en/stay-informed/research-and-analysis

Official homepage of the European Parliamentary Research Service (EPRS) with regular reports and numerous articles on the European Council.

Basic sources

Bundesverfassungsgericht (2009): Urteil zum Vertrag von Lissabon, 2 BvE 2/08 vom 30.6.2009, Absatz-Nr. (1 - 421). Bundesverfassungsgericht.

Schoutheete, Philippe de. (2017): The European Council: A formidable locus of power. In The Institutions of the European Union, Hrsg. Dermot Hodson und John Peterson, 4. Aufl., 55–79. Oxford/New York: Oxford University Press.

Wessels, Wolfgang; Ersoy, Denise; Hopp, Lea; Korte, Marius (2020): TRACK Annual Report 2020 [Online] Available: https://track.uni-koeln.de/sites/track/user_upload/TRACK_Annual_Report_2020_Final.pdf [Accessed 13/09/2021].

Wessels, Wolfgang (2016): The European Council. Basingstoke: Palgrave Macmillan.

Wessels, Wolfgang; Hopp, Lea (2020): Europäischer Rat. In: Weidenfeld, Werner; Wessels, Wolfgang (Hrsg.): Jahrbuch der Europäischen Integration, 99-106. Baden-Baden: Nomos.

Further Reading

Anghel, Suzana Elena; Drachenberg, Ralf; Finance, Stanislas de (2016). The European Council and crisis management. Brussels: European Union.

Hayes-Renshaw, Fiona; Wallace, Helen (2006): Overlapping competences: The Council and the European Council. In: The council of ministers, 2nd ed., 165–185. Basingstoke/New York: Palgrave Macmillan.

Johansson, Karl Magnus and Tallberg, Jonas (2010): Explaing Chief Executive Empowerment: EU Summitry and Domestic Institutional Change. In: Western European Politics, 33(2), 208-236.

Piris, Jean-Claude (2010), The Lisbon Treaty. A Legal and Political Analysis. Cambridge: Cambridge University Press, 209-225.

Puetter, Uwe (2014): The European Council and the Council. New intergovernmentalism and institutional change. Oxford: Oxford University Press.

Pütter, Uwe (2015): The European Council and the Council. Perspectives on new dynamics in EU governance. Brussels: European Parliament.

Van Rompuy, Herman (2012): The European Council in 2011, (Luxembourg): Publications Office of the European Union).

Van Rompuy, Herman (2014): Europe in the Storm: Promise and Prejudice. Davidsfonds.

Wessels, Wolfgang; Raphael, Christian; Ribbe, Darius (2020): Die Europapolitik in der wissenschaftlichen Debatte. In: Jahrbuch der Europäischen Integration, 31-48. Baden-Baden: Nomos.

Werts, Jan (2008) 'The European Council' (London: John Harper Publishing).

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