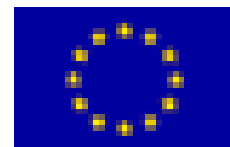


From the Convention to the IGC:
Mapping Cross-National Views
towards an EU-30



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**"Reforming the EU Institutions - Challenges for the
Council"**

University of Maastricht

INTERNAL REFORM OF THE COUNCIL

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In recent years, the Council, as other institutions, has been reflecting on possible means of reforming its functioning in view of the Union's pending enlargement. This reflection has been carried out at all levels - from European Council summits down to the Coreper and the Antici group, delegations have been discussing the challenges raised by the prospect of a Union of 25 members (and more). In particular, the European Council on two occasions commissioned reports on preparing the Council for enlargement from the Secretary-General of the Council,¹ and these were subsequently taken on board, at least in part, by the European Council.²

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1 "The functioning of the Council in view of enlargement", report by SG Trumpf, doc. SN 2139/99, and "Preparing the Council for enlargement, report by SG Solana, doc. 1636/2/02.

These efforts were largely focused on *internal* reforms - i.e. reforms which would not require changes to the Treaties. The very nature of such reforms explains both their strength and their limits. They can easily be implemented; but they can just as easily be ignored. They can be seen as practical improvements to the functioning of the Council; but they can also be perceived as the first step towards more radical changes and thus immediately raise oppositions of a quasi-ideological nature.

This paper seeks to describe recent reforms adopted by the Council and provide where possible a first assessment of their impact. It focuses on the attempts to enhance the role of the General Affairs Council, on the limited reforms aimed at strengthening the authority of the Presidency of the Council and on practical efforts geared towards ensuring a smoother running of the Council machinery.

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These two documents, as all Council documents quoted or referred to in this paper, are available on the Council's internet site – <http://ue.eu.int>.

- 2 Presidency conclusions of the Helsinki European Council, doc. SN 300/1/99 , and Presidency conclusions of the Seville European Council, doc. 13463/02.

1. Enhancing the coordinating role of the General Affairs Council

Historically, as the Community's competences expanded and the Council was accordingly fragmented into a growing number of different sectoral configurations, it fell upon the General Affairs Council³ to ensure the coherence of the Community's action across the board of its different policies.

Although Foreign Ministers certainly have tried on several occasions to (re) assert their general competence to generally oversee and coordinate Community policies, their success has proven mixed. The innovations agreed at the Seville European Council however can contribute to strengthening the General Affairs Council.

1.1. The limits to coordination

Coordination is easier said than done. Originally, the coordination of the Community's activities was ensured through the practice of holding "jumbo" ministerial meetings which would bring together both the sectoral Ministers and the Foreign Affairs Ministers. But this procedure not only was relatively cumbersome, it also ran against the very reasons why the Council was fragmented amongst different formations.

In October 1975 the Italian Presidency established the "Villa Marlia" procedure, by which the Foreign Ministers would every month be seized of a report issued by the General Secretariat describing the discussions being held in other Council configurations, so that the General Affairs Council could "properly exercise its coordination function". Very soon however this process was dropped altogether ... until it was resuscitated a quarter of a century later by the Belgian Presidency in July 2001, in the form of a monthly "report on the proceedings in other Council configurations". With not much more success: on average, Foreign Ministers do not spend more than five minutes on this agenda item.

Another procedural device aimed at facilitating the Council's coordinating role has been to more clearly separate its General Affairs and its External Relations functions. A first step was taken during the Austrian Presidency of 1998, when the practice of formally dividing Foreign Ministers' agendas between horizontal issues and foreign policy issues was initiated.

Later on in Helsinki the European Council decided furthermore that

*The General Affairs Council must be in a position to deal effectively with horizontal internal issues including overall policy coordination. The General Affairs Council agenda shall accordingly be divided into two distinct parts. Member States shall ensure that they are suitably represented at ministerial level at both parts of the session.*⁴

3 This paper covers a period during which the Council composed of Foreign Ministers has been known under different names ("Foreign Affairs Council", then "General and Foreign Affairs Council", later still "General Affairs Council" and most recently "General Affairs and External Relations Council"). However, for the sake of simplicity, and given that this paper is essentially concerned with the Foreign Ministers' general role in coordinating the EU's policies, it will systematically refer to the "General Affairs Council" as a short hand.

4 Conclusions of the Helsinki European Council, *op.cit.*

Finally, in Seville it was decided that

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 and) 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.*⁵

The rationale was that by freeing up more time for Foreign Ministers to consider "General Affairs", a "backbone", or a "coordinating chain" made up of the European Council, the General Affairs Council and COREPER, would emerge to ensure the general coordination of the Union.

In practice this device has also had mixed results, for a number of reasons:

- practical reasons, such as the difficulty of getting Foreign Ministers to spend the necessary time in Brussels, as well as an increasingly heavy workload in the field of external relations as the EU develops its CFSP and ESDP;
- institutional reasons, such as the multiplication of parallel fora which also contribute to the preparation of European Council (e.g. "sherpas", or the ECOFIN *filière*);
- domestic reasons: whatever procedures may be established, the fact remains that in the national context, it is far from obvious that the Foreign Minister would possess either the capacity or the authority to arbitrate between the diverging interests formulated by different governmental departments.

For the General Affairs Council to really be a "general affairs" Council, it would probably need to be composed of Ministers for European Affairs, who, rather than acting as mere stand-ins for the Foreign Affairs Ministers, would need to have some degree of authority. This might entail their being attached to the Prime Minister.

If in general it is thus difficult for the General Affairs Council to exercise its coordination mandate the exception however would have to be those dossiers which are of such a horizontal nature that no sectoral Council formation could successfully deal with it. It is on dossiers such as the Union's financial perspective, enlargement, and institutional reform, that the General Affairs Council can be at its best.

Indeed, if by "coordination" one would mean "arbitration", then clearly the body "coordinating" the developments brought to the Union's policies would have to be the

5 Conclusions of the Seville European Council, *op.cit.*

European Council. And as a matter of fact the European Council has increasingly found itself getting into the details of sectoral policies.

So that if the General Affairs Council is to "coordinate" at all, it is rather through its preparations of the meetings of the European Council.

1.2. Gate-keepers of the European Council

Both the reports of Jürgen Trumpf and Javier Solana stressed the importance of enhancing the preparatory role of the General Affairs Council as a means of reversing the growing deficiencies in the organisation and running of the European Council.

The Seville European Council put a particular emphasis on the role of the General Affairs Council, which would come to act as a "gate-keeper" to the European Council:

European Council meetings shall be prepared by the General Affairs and External Relations Council, which shall coordinate all the preparatory work and draw up the agenda. Contributions by other configurations of the Council to the proceedings of the European Council shall be forwarded to the General Affairs and External Relations Council not later than to weeks before the European Council [...] On the eve of the European Council meeting the General Affairs and External Relations Council shall hold a final preparatory session and adopt the definitive agenda, to which no item may subsequently be added without the agreement of all delegations.⁶

This gate-keeping role was to express itself in practice through a "draft annotated agenda" to be presented by the Presidency to the Council a month before the meeting of the European Council, and a revised, more elaborate, version submitted to the Council held on the "eve" of the European Council:

At a meeting held at least four weeks before the European Council, the General Affairs and External Relations Council, acting on a Presidency proposal, shall draw up an annotated draft agenda distinguishing between:

- . items to be approved or endorsed without debate;*
- . items for discussion with a view to the definition of general political guidelines;*
- . items for discussion with a view to the adoption of decisions [...]*
- . items for discussion but not intended to be the subject of conclusions.*

So far, the establishment of the draft annotated agenda has proven to be a more successful procedural innovation than the other attempts described above.

The first post-Seville European Council, held in Brussels in October 2002, was a typical example. Two issues were on the agenda of the European Council – enlargement and Kaliningrad. As concerns enlargement, the Council meeting two days before the European Council was able to settle important elements by agreeing in advance of the European Council on the methodology for calculating net budgetary positions of the new Member States as well as on the institutional aspects of enlargement – and thus avoided Heads having to discuss these two complex and sensitive issues. As concerns the question of transit between Kaliningrad and the rest of Russia after Lithuania's accession to the EU, the Council actually defined the EU's

6 Conclusions of the Seville European Council, *op.cit.*

position on the Russian requests, a position which was then simply endorsed by the European Council. More generally the Council also served as a way of testing the waters on the language to be included in the draft European Council conclusions.⁷

The same judgement can apply to the Copenhagen European Council on 12 and 13 December 2002. Although much negotiation took place in Copenhagen (both with the candidate countries and within the Union itself), the discussions held on the basis of the annotated draft agenda in the two previous meetings of the General Affairs Council (and in Coreper) allowed a progressive framing of the parameters of what the final outcome was to be, through a series of approximations.⁸

The Brussels and Copenhagen European Council meetings just referred to may well have been atypical in that they were focused on a limited number of issues (out of necessity, but also due to the authority of the Presidency).

The specificities of the Spring European Councils, devoted to the large agenda of the Lisbon Strategy (which encompasses practically all EU policies), were to prove a more arduous test at the March 2003 European Council. The presentation of the draft annotated agenda at the two General Affairs Council meetings prior to that meeting of the European Council (and at the COREPER meetings before the General Affairs Council) usefully allowed delegations to flag particular concerns in advance, in a more transparent way than before, and thus helped the Presidency in drawing up the draft European Council conclusions.

It is true that at times the preparatory discussions in the General Affairs Council and COREPER tended to deteriorate into lengthy drafting sessions, but to a large extent it helped prevent such drafting work from taking place at the level of the European Council itself.

In total, the draft annotated agenda has played a useful role in :

- helping the Presidency to limit the agenda from the onset to a limited number of issues;
- closing the agenda of the European Council before its meeting begins, and thus in principle avoiding additional points being added to the agenda of the European Council at the last minute, as used to be too often the case;
- clearing the agenda of the Heads of State and Government of a number of issues which will have been "pre-agreed" by the Council;
- allowing drafting work to be conducted at the level of Coreper and Council, and thus allowing the Heads to focus on the substance of the issues; and

7 Compare to that end the annotated draft agendas submitted to the Council in September 2002 (doc. 12375/02) and in October 2002 (doc. 13234/02), the conclusions of the Council of 22 October 2002, doc. 12945/03, and the conclusions of the European Council itself, doc. 14702/02.

8 Again, one should compare the annotated draft agendas submitted to the two Council meetings preceding the European Council (docs. 14257/02 and 14798/02) and the conclusions of the European Council (doc. 15917/02).

- setting the parameters of the decisions to be taken by the Heads.

2. Strengthening the Presidency

Although the Presidency of the Council is currently nothing more than a revolving *primus inter pares*, it is held responsible for the destiny of the Union. As such, it has attracted particular attention in the reflections on the reform of the Council. If delegations agreed to a number of practical reforms, discussions on more ambitious changes stumbled on the on-going work in the Convention on the future of Europe.

2.1. Practical improvements

Whilst the proposals contained in the report by Secretary-General Solana on the European Council and the General Affairs Council were largely taken on board by the Seville European Council (see above), the reforms adopted in Seville as concerns the functioning of the rotating Presidency were more limited.

These reforms essentially consisted in an enhancement in the cooperation between present and future Presidencies:

Where it is clear that a dossier will essentially be dealt with during the following six-month period, the representative of the Member State holding the Presidency during that six-month period may, during the current six-month period, chair meetings of committees (other than Coreper) and working parties at which the dossier is discussed. The practical implementation of this provision shall be the subject of an agreement between the two Presidencies concerned.

In practice, so far, this has been limited to leaving it to the future (Italian) Presidency to chair already during the first semester of 2003 the preparations of the 2004 budget, on which the final decisions will be taken during its turn in the chair.

The Seville European Council also called for more programming of the activities of the Council over a period longer than the six month term of the Presidency as a means as forcing more continuity, through the establishment of a one-year programme of activities as well as a three-year strategic programme.

In line with these decisions the Greek and Italian Presidencies presented in December 2002/January 2003 programme for the whole of the year 2003 - which however did not deter them from presenting, as usual, their own six-month programmes. Though the presentation of this yearly programme did force delegations to reflect and discuss the priorities of the coming year, it is doubtful that this helped to overcome the "permanent imbalance and infighting within the Union" described by Javier Solana in his report as one of the negative side-effects of the rotating Presidency.

In any case, it could be argued that in the legislative field the main programming effort lies in the hands of the Commission, which presents the proposals submitted to the Council, and that progress in the Council is also dependent on progress in the other branch of the legislative authority, i.e. the European Parliament.

9 Conclusions of the Seville European Council, *op.cit.*

It remains to be seen whether the work to be conducted this Autumn together by the six delegations holding the Presidency in the period 2004-2006 will lead to more continuity in the work of the Council.

2.2. In the shadow of the IGC

Further to the proposals contained in the Solana report, the Council pursued its reflections on improving the function of the Presidency throughout the Danish Presidency. But after six months the report presented to the Copenhagen European Council was quite blunt in stating that

A difference of views exists however on the need for change [to the Presidency function] in view of enlargement. Some believe that it is possible to maintain the basic structure of the current rotating Presidency while others believe that it is necessary to consider more substantial reform.¹⁰

The only line of consensus seemed to consist in a number of very general "key principles and objectives" - i.e. "institutional balance; equality between Member States; strengthened continuity; improved efficiency; improved coordination, consistency and transparency in the Council's work". The report went on to describe three different approaches raised in the discussions:

- (i) *an approach consisting in strengthening further the logic of cooperation between the present and incoming presidencies, possible combined with a strengthening of the role of the High Representative;*
- (ii) *an approach based on an "institutional" [i.e. fixed] Presidency for the Council's "coordinating chain", while either introducing an elected Presidency or maintaining the rotating Presidency for most Council configurations;*
- (iii) *an approach based on the system of "Team Presidency", while possible retaining a six-monthly component for the "coordinating chain" and adding an "institutional" element for external relations.*

as well as the

idea of an elected President of the European Council.

Very soon, it had indeed appeared in the course of the discussions that it was difficult for some delegations to agree to proposals which they felt would anticipate on the outcome of the ongoing Convention on the future of Europe and of the forthcoming Intergovernmental conference.

Even the attempts to submit to the Copenhagen European Council reforms of a limited nature (so-called "Seville plus" in reference to the very steps taken in Seville) foundered on the fear of some that the work in the Convention would thus be undermined.

In the end the Copenhagen European Council had to limit itself to merely taking note of the report on the Presidency of the Union – which itself simply described the state

10 Presidency report to the European Council on "Reform of the Council Presidency", doc. 15406/02.

of the discussions – and the discussions on the Presidency within the Council were abandoned.

In all truth, could it have been much different considering that the European Council had one year before, in Laeken, entrusted to the Convention the task of reflecting i.a. on how to improve the efficiency of the Union.

To conclude this section, it may be worth referring to the outcome of the Convention on this issue, and note that the draft Constitutional Treaty has largely taken on board the idea of longer-term presidencies:¹¹

Article I-21

1. *The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. In cases of serious malpractice, the European Council can end his mandate according to the same procedure.*
2. *The President of the European Council shall chair it and drive forward its work. In cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council, he shall ensure proper preparation and continuity. He shall endeavour to facilitate cohesion and consensus within the European Council. He shall present a report to the European Parliament after each of its meetings. The President of the European Council shall in that capacity ensure, at his level, the external representation of the Union on issues concerning its Common Foreign and Security Policy, without prejudice to the responsibilities of the Minister for Foreign Affairs.*
3. *The President of the European Council may not hold a national mandate.*

Article I-23

The Foreign Affairs Council shall [...] be chaired by the Union's Foreign Minister [...] The Presidency of a Council formation, other than that of Foreign Affairs, shall be held by Member State representatives within the Council on the basis of equal rotation, for periods of at least a year. The European Council shall establish the rules of such rotation, taking into account European political and geographical balance and the diversity of Member States.

3. Towards a more effective functioning of the Council

3.1. Streamlining the Council

In Helsinki the European Council noted that

Given the diversification of the Union's activities and broadening of the areas covered by the Treaties, it is important to prevent fragmentation of the Union's activities and decision-making by limiting the number of Council formations, and by avoiding artificial activities to fill up agendas. This will help focus the Union's action and improve overall policy coordination and consistency by the Council's preparatory bodies.¹²

and thus reduced the number of Council formations down to 15.

11 Draft Constitutional Treaty, CONV 797/1/03 REV 1

12 Helsinki conclusions, *op.cit.*

In Seville it decided to cut their number further down to 9:

1. *General Affairs and External Relations;*
2. *Economic and Financial Affairs;*
3. *Justice and Home Affairs;*
4. *Employment, Social Policy, Health and Consumer Affairs;*
5. *Competitiveness (Internal Market, Industry and Research);*
6. *Transport, Telecommunications and Energy;*
7. *Agriculture and Fisheries;*
8. *Environment;*
9. *Education, Youth and Culture .*

Let us look at just one example. The decision to merge the Development Council into the General Affairs and External Relations Council was initially a bit controversial, with some NGOs fearing that this would in fact marginalise the role and influence of the Development Council. In fact, Development Ministers continue to meet twice a year (within the GAERC), albeit perhaps with less time at their disposal. But what has changed is this has meant that their agendas are better focused. Furthermore, the merger into the GAERC has allowed a better integration of development issues in the Union's external policies (e.g. trade & development, development & migration).

A final note on this to remark that the Convention has pushed this logic of strengthening the General Affairs Council further, by proposing that

Article I-23

The General Affairs and Legislative Council shall ensure consistency in the work of the Council of Ministers. [...] In this [legislative] function, each Member State's representation shall include one or two representatives at ministerial level with relevant expertise, reflecting the business on the Council agenda.

With the same logic the number of preparatory bodies of the Council has been reduced – the last such exercise brought the number down to 158 working parties and committees. Examples of this restructuring effort included the merger of the Working Party on Central Europe and the Working Party on Southeast Europe (a logical consequence of the enlargement process) and the merger of the Working Party on the Internal Market and the Working Party on Industry (a consequence of the creation of the Competitiveness Council).

A third direction of recent efforts aimed at streamlining the Council concerns the use of languages. Indeed, as was stated in a report submitted to the Copenhagen European Council,

The accession of ten new Member States will result in the number of official languages in the Union almost doubling [from 11 to 20]. No other major body or institution in the world operates using such a large number of official languages [...] The current difficulties in managing the language requirements of the Council and its preparatory bodies with eleven official languages will be significantly compounded after enlargement as a result of the exponential leap in the number of possible language combinations. Limited physical, human and financial resources mean that out of necessity some flexibility has to be applied in practice in managing available linguistic resources to ensure that negotiations are conducted efficiently, without undermining the basic principles underpinning the Union's language arrangements.¹³

13 Report on the use of languages in an enlarged Union, doc. 15334/1/02.

Whilst emphasising that in no manner could the current practice of providing full language interpreting for meetings of the Council and the European Council be questioned, the report identified three approaches which could help alleviate the problem:

- extend the existing practice in certain areas of holding meetings without any interpreting;
- reach an understanding to move away from full language interpreting in certain areas, and
- look at the possibility of introducing a "request and pay" system by which interpretation services would be made available according to the demand of delegations.

Work has since continued within the Council, on possible means of reaching a solution involving all three of these approaches.

3.2. Working methods of the Council

In March 2003 the Council set itself a "code of conduct" aimed at improving the efficiency of the preparation and conduct of meetings. The code basically starts from the premise that whilst there will be an increased demand for speaking time (due to the presence of 10 extra delegations), the supply of meeting time will remain static (due to the fact that the number of meeting rooms and interpreters remains physically limited). It went on to define 16 "rules", largely inspired from the procedures followed in assemblies, which if respected could help alleviate this basic difficulty.

In particular, the need to make better use of the time *between* meetings was underlined. This basically referred to the need to more systematically carry out some of the work outside of the meeting, for example by tasking a small group to study solutions to a particular stumbling block - it being clear that in any case their work would be reported back to the plenary group, which would fully retain its decision-making prerogatives.

Another solution advocated in the code was to substitute written exchanges to oral discussions. Thus, in advance of a meeting the Presidency may circulate a proposal, on which delegations could exchange comments by e-mail, so that when the meeting is actually convened it can focus on the issues which will have thereby been identified as problematic. Many complex dossiers were successfully dealt with in this manner in the Antici group during the Greek Presidency.

The code also stressed that with the forthcoming enlargement, a new threshold will have been crossed, and that a greater discipline would therefore be required from delegations if meetings were to achieve any results at all. Thus certain meeting practices were to be banned (e.g. no more items placed on the agenda of the Council for information only, no more table rounds) and delegations were encouraged to make

brief interventions, and where ever possible a "spokesperson" could intervene on behalf of like-minded delegations.

Many of these ideas would strike any *connoisseur* as having no novelty at all (one can find many of them in the Helsinki guidelines for reform, or in the Council's rules of procedure, for example). Some of them might even strike any normal citizen as sheer common sense. One can therefore question why such rules will be applied now, whilst in the past they were ignored, despite having been given the highest political weight through their endorsement by past European Councils, despite having been given legal weight by their inclusion in the Council's rules of procedure, and despite their obvious common sense. The optimistic answer would be found in a strengthened sense of delegations that working methods simply have to improve if the Council is to carry out its essential role. In other words the code of conduct constituted a last consolidation of well-known improvements to the Council's working methods, before the jump into the unknown.

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The reform efforts described in this paper are necessarily limited in scope given their very nature (as they must take place within the constraints set by the Treaties) as well as due to the political context and the ongoing discussions in the Convention. It is also true that these efforts are not new. Just like a sea-serpent, the issue of Council reform regularly turns up - a subject often sighted, but never quite captured: over the years the Council has taken the same decisions on several occasions before relapsing into its bad habits.

These internal reforms should not, however, be discarded as mere stopgap measures, as they potentially can make quite a difference to the way in which the Council runs its business. They also present the advantage of being immediately applicable, without having to await the conclusion of cumbersome ratification procedures in 25 countries.

Sometimes one has to sink to the bottom before being in a position to give a salutary kick back to the surface. In other words it may well take the actual pressures of running an effective meeting composed of 25 delegations for all the measures and ideas described in this paper to be implemented to their fullest potential.