

**Beata Przybylska-Maszner, Zbigniew Czachór**

**THE EUROPEAN COUNCIL  
IN THE PROCESS  
OF TRANSFORMATION**



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Reviewers:

**Bogdan Koszel,**

Ph.D., Professor at Adam Mickiewicz University, Poznań

**Katarzyna Stachurska-Szczesiak,**

Ph.D., D.Litt., Maria Curie- Skłodowska University, Lublin

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## Introduction

The European Council is an outcome of political needs. Over time, it has become an institution without which nothing of significance for the further development of the European Union can happen. The European Council dates back to the 1960s, when it operated as conference meetings of the heads of member states of the European Economic Community. At a 1974 meeting in The Hague, French President George Pompidou suggested that these conferences be institutionalised. Initially, the representatives of other countries approached his idea sceptically. It was not until the Paris summit in 1974 that a final decision was taken to hold permanent meetings of the heads of state and government of member states, and to name them the European Council. The European Council first gathered in Dublin in 1975. Since then, it has become a political centre of the European project, despite the fact that its operation lacked legal foundation for the next ten years. Over the decades, the European Council has become a platform for working out common political positions and facilitated the process of resolving the most difficult crises. The European Council has become the place where European political solutions have been forged, and the driving force behind further integration, both in the 1980s, when the foundations of the new budgetary framework and reforms leading to the internal market were formed, and later on, when the European Council initiated the emergence of further intergovernmental conferences aimed at revising treaties. Its functioning has demonstrated the efforts of heads of government and state to become the main entity determining the shape and direction of European integration.

After the Maastricht summit, each new treaty modified the formula for the functioning of EU's institutional system, including the European Council. The latest one, the Treaty of Lisbon of 2009, also pursued the

increased effectiveness of EU institutions and their democratisation. The Treaty of Lisbon opened a new chapter in the history of the European Council by officially granting it the status of an institution, and thereby confirming its separateness. The period when the functioning of the European Council was not fully formalised was concluded with the adoption of the Rules of Procedure on the day the Treaty of Lisbon entered into force. To underline the role of the European Council and to functionally strengthen it, the position of the permanent president elected by members of the European Council for a two-and-a-half-year term was established. The president replaced the rotating national presidency, and the manner in which the president in practice exercises the powers entrusted to them attests to a significant strengthening of this position. Since the Lisbon Treaty entered into force, the European Council has reaffirmed its strategic role and participation in all major political decisions taken in the EU. This gathering of the heads of government and state identifies the directions of the EU's development, its priorities and political and economic strategies, facing up to internal and international challenges across a wide range of subjects: from economic issues, through migration, to development cooperation and external relations. Each summit of the European Council addresses a long list of problems to be solved. The strategic decisions of the European Council and its leadership have contributed to overcoming subsequent crises. However, the European Council has evolved over the years. The last decade in particular was a period characterised by an enormous dynamics of change both inside and outside the European Union which impacted the range of tasks entrusted to the European Council. The basic principle of the functioning of the European Union is to base its operation on a permanent process of intergovernmental and inter-institutional interaction. Decision-making is a political game between institutional actors and member states, involving third countries and other international organisations. In this context, the European Council strengthens its role by becoming a strong centre of political decision-making for the European Union.

This publication is the outcome of a research project entitled **“The European Council in the process of forming formal and infor-**



**mal competences in the realm of the European Union's external activities". The project was sponsored by the National Science Centre, Poland (Narodowe Centrum Nauki, NCN no. 2015/19/B/HS5/00131). It was carried out by the Faculty of Political Science and Journalism of Adam Mickiewicz University in Poznań, from 2016 until 2021. The project encompasses both internal determinants (such as intergovernmental disputes and inter-institutional limitations) as well as external conditions that shape the European Council's powers. The primary objective of the authors was to carry out a comprehensive analysis and assessment of factors that have an influence on the development of the European Council in terms of complementarity, dysfunctionality and adaptability. In the course of the research, complementarity was interpreted as a state resulting from mutually complementary activities aiming to achieve a common goal or the same goal. The concept of institutional complementarity, the idea that the co-existence of two or more institutions enhances the functioning of each, is increasingly used to explain why institutions are susceptible to change and why introducing or transforming the role a institution into a system often leads to achieve the intended objective.<sup>1</sup> In this area of institutional and functional transformations it was also essential to refer to synergy, which can provisionally be defined as the mutual strengthening and potentiating of the outcomes of interventions, the co-operation of numerous factors and maximisation of the outcomes produced as a result of the implementation of complementary activities and projects. Institutional dysfunctionality as a concept required a more in-depth analysis and interpretation. The starting point was provided by observing the outcomes of political events which resulted in a reduced degree of systemic adaptation, thereby necessitating ongoing modification. The authors assumed that both functional and dysfunctional outcomes/results emerge in this field. Adaptability means being able to adjust to new conditions. Adapting institutional mechanisms to changing conditions is one of the main factors in the development of the European Council in the period concerned.**

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<sup>1</sup> R. Deeg, *Complementarity and institutional change: How useful a concept?*, WZB Discussion Paper, no. SP II 2005–21, Berlin 2005, pp. 1–3.

The result of the project is this publication, which is a reflection of the research and thematic debates conducted. The publication comprises two parts, each of them addressing the topics indicated in the sub-titles: dys/functionality, complementarity and adaptability. This research issue seems highly topical, as the European Council deserves special attention among numerous European institutions due to its immensely dynamic transformations. The European Council exemplifies the development of an intergovernmental centre of political decision-making which is becoming an institutionalised political centre. It still displays interactions between the political intentions of member states against the background of the agenda of the remaining EU institutions. The intergovernmental system based on the network of national interests interferes with different institutional powers. Times of crisis are conducive to intergovernmental centres maintaining their decision-making role. The role of the European Council has been growing, which the research team believes will have an influence on the further development of the European Union and the formula of European leadership.

Considerable attention in the research was given to defining the place and role of the European Union in the international arena, and in particular to its ability to influence the international environment through its decision-making mechanism. Due to the extensive range of topics discussed, it was imperative to conduct analyses in several areas. Firstly, the initial context of the post-Lisbon legal status defining the framework for the functioning of the European Council was addressed, and legal acts and documents related to the system of coordination and management in the process of political decision-making in the European Council were analysed. Secondly, the research sought to identify the declared and actual goals of individual countries and the inter-institutional factors determining political decision-making in the European Council. At this stage, it was important to analyse the information available and design the questions to be later asked in the interview questionnaires. Thirdly, it was necessary to demonstrate the internal and external determinants of how the decisions of the European Council are formulated and implemented. The above

stages of the research process were conducted in consideration of the historical perspective, so as to show the changes that have occurred and explain their causes. The second part of the research included semi-structured interviews in the selected institutions. The detailed objectives of the project included: (1) The evaluation of the political influence of the European Council; (2) The identification of the areas where it is necessary to redefine the internal involvement of the European Council in the new political conditions; (3) Defining the short- and long-term prospects for the further development of the European Council; (4) Identifying potential directions of the European Council's influence; (5) Presenting the activity of the European Council in a broader international context, against the background of selected internal and external crises; (6) Formulating the guidelines for defining the directions of the evolution of the European Council's competences. Bearing the above issues in mind, in order to achieve the specific objectives, the authors tried to answer the following main research questions: (1) What is the scope and scale of the European Council's influence? (2) What are the main directions of the European Council's transformation and its influence on the further development of the European Union? (3) What are the internal and external determinants of the functioning of the European Council? (4) How do the interests of individual member states influence the strategic guidelines developed by the European Council on the example of selected political decisions?

This is an interdisciplinary project, therefore it applied research methods typical of research into history, law, political science and international relations. In order to accomplish the project goals, the following main methods were applied: (1) institutional-legal analysis, which is indispensable in order to identify the actual role of the European Council and define the framework of co-operation between the European Council and other institutions and entities, to interpret and assess current European legislation and to indicate proposals of new legal solutions; (2) the forecasting method, which facilitates the development of different scenarios or possible options of the middle-term development of the European Council; (3) the decision method,

which allows the decision-making processes of the European Council to be examined in the context of its international position and makes it possible to answer the question of what factors influence decisions made by the European Council in the face of various global developments; (4) the participant observation method, which is required when analysing decision-making processes; (5) in-depth interview method, which facilitates direct collection of primary data for analysis and evaluation. During the research, the system and factor methods were also employed to reconstruct the causes, course and outcomes of transformations. The system method involves designing a specific conceptual model of international phenomena under research, and facilitates the recognition of the most important processes that shape the transformation under analysis in this project, including the actual role and influence of different entities and institutions, in particular that of the state. In the factor method, the factors shaping a given class of social phenomena are identified, classified and ranked, to distinguish the most important determinants in institutional interactions. (The factor method allowed the authors to demonstrate the determinants of transformations and the processes shaping the phenomena analysed under the project). The research does not refer to the concept of a grounded theory, therefore several research hypotheses were made prior to commencing the research to be verified and modified as successive data was gathered via the process of collection and analysis of the research material, and arriving at conclusions.

The fundamental object of analysis was provided by the conclusions of the European Council. However, the concepts, opinions and recommendations issued by renowned European academic centres and EU analytical institutions were also analysed. They provided a broader historic and sociological perspective to the phenomena under analysis, thereby allowing characteristic variables to be identified with respect to the issue examined. In the course of the project, both existing and solicited sources were utilised. The former could be divided into several categories. Primary sources encompass legal documents and statements by politicians. Secondary sources are historical and political science studies. These were primarily texts devoted to

the history of successive political decisions made by the European Council. A highly significant category of secondary sources came from reports and studies of government agencies, and articles published in the mass media and the internet. Solicited sources were created in the course of research, and in-depth interviews carried out in EU institutions in Brussels, which facilitated the direct collection of material to be analysed and evaluated. The interviews concerned both representatives of individual states (state representations in Brussels) and representatives of institutions (list of interviewees).

Research for this book started exactly four years ago. It was a long and rewarding journey. We have amassed many significant debts of gratitude. First and foremost We must thank all those who agreed to be interviewed for the project. We would like to take this opportunity to thank them for their cooperation in sharing their expertise and insights. The authors would like to express their gratitude for the support they obtained in the course of the project from the following institutions: European Council, European Commission, European External Action Service, Permanent Representation of the Republic of Poland to the European Union in Brussels, Permanent Representation of Luxembourg to the European Union in Brussels, Permanent Representation of Belgium to the European Union in Brussels, Permanent Representation of Portugal to the European Union in Brussels, Permanent Representation of Austria to the European Union in Brussels, Permanent Representation of Latvia to the European Union in Brussels, Permanent Representation of Lithuania to the European Union in Brussels, and Permanent Representation of Romania to the European Union in Brussels. The authors would like to extend special thanks for the extremely valuable comments and organisational help to Katarzyna Smyk, Advisor in the Cabinet of the President of the European Council and Marek Prawda, Director of the European Commission Representation Office in Poland. Next the book benefited very much from feedback at various workshops and conferences and from colleagues who were happy to share their own work with us who commented on drafts. Special thanks go to our reviewers – Bogdan Koszel and Katarzyna Stachurska-Szczesiak. They offered us inspira-

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*Beata Przybylska-Maszner  
Zbigniew Czachór*

## **Part 1.**

# **Functionality and dysfunctionality in the process of creating the position of the European Council**





## Chapter 1.

# The European Council and its position within the system in light of the theory of European integration

ZBIGNIEW CZACHÓR

### 1.1. The European Council – a functional and neo-functional approach

The European Council neither operates outside the system, nor does it function alongside or over the European Union. It is part of a complex hybrid network of connections produced by innumerable parties to integration, ranging from member states, through to EU institutions, to political parties and groups of interests.

In light of the above, the type and range of activities of the European Council as a functional unit are assumed to follow from the functions attributed to it in EU Treaties and elsewhere, as well as from methods intended to perform these activities in a rational and functional manner within a determined range and scale; these activities are not dictated by a certain cluster of the interests of those states and governments that are parties to integration.<sup>1</sup> In this approach, the European Council serves the purpose of functionally combining national objectives with common goals, which transform into communitarian objectives by applying specific institutional forms.

Thus, the European Council becomes part of the process of transfer and redistribution of functions and competencies (authority) aiming to fulfill needs and solve problems; this process leads to the necessary

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<sup>1</sup> Cf. J. Ruszkowski, *Wstęp do studiów europejskich. Zagadnienia teoretyczne i metodologiczne*, Warszawa 2007, pp. 98–102.

depoliticization and neutralization of conflicts (crises) and contradictions between the participants in integration (actors and objects) by means of the continuous enhancement of specialized political cooperation in non-controversial functional sectors.<sup>2</sup>

The premise of functionalism is the continuous and peaceful development of the intergovernmental-communitarian functions of the European Council achieved through a process of deepened and enhanced integration. Taking this approach leads to another attempt to define the functional role of the European Council in the process of constructing a peaceful community which combines joint functions performed and fulfilled by functional institutions/entities on behalf of societies. This community is founded not only on the emphasis given to the politics of power, potential, strength and ideology, but also on constructing a new supranational and supra-state functional order which will focus on non-state entities (technocratic and nonpolitical institutions and agencies) performing their functions (in order to fulfill specific needs) under the supervision of the European Council, composed of those we call the “masters of the Treaties.”<sup>3</sup>

The most important field of competencies of the European Council concerns its nonpolitical and functional aspect, which should be neither ideological nor exposed to fundamental crises and conflicts of interests. Therefore, the functional approach assumes that in the process of integration, the states (governments) forming the European Council will gradually lose their political power and conflictual (crisis) identities, which have historically led to differences and disputes.<sup>4</sup> The process of gradual delegitimization of their national authority and self-restraint is to take place despite states remaining sovereign entities in the field of their respective statehoods and national competencies.

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<sup>2</sup> See A. Faber, *Europäische Integration und politik-wissenschaftliche Theoriebildung. Neofunktionalismus und Intergouvernementalismus in der Analyse*, Wiesbaden 2005, p. 10.

<sup>3</sup> Cf. J. Werts, *The European Council*, London 2008, pp. 23 ff.

<sup>4</sup> See P. de Schoutheete, *The European Council and the Community Method*, “Notre Europe Policy Paper”, no. 56, 2012.

Within functionalism, the consistent development of cooperation between the state actors of European integration within the European Council has primarily become a rational learning process which takes place as the functional needs are gradually met, and when the heads of state and government come to realize the need to seek (new, non-state) sources of their development and wellbeing, and begin to address their expectations and obligations at the European Union as a functional organization, rather than as states. They rapidly find the following:

- on their own they are unable to ensure security and wellbeing, including a high living standard devoid of crises and, most importantly, of dramatic conflicts and wars;
- it is primarily nation-states and their governments that impede a peaceful and conflict-free order in Europe;
- functional non-state entities have naturally emerged in the wake of transformations in modern democracy and the free market which contribute to the progress and development of nations.<sup>5</sup>

As a result of the process of diversification and branching out, member states and their governments are gradually transformed in the European Council, whereby their internal structures alter so as to ultimately conform to the functional architecture – an organizational network which manages and administrates the whole on behalf of the integration community.<sup>6</sup>

The above considerations can be concluded by saying that, in line with the tenets of functionalism, “function-based” fulfilling of needs by the European Council could in practice be based on the following:

- free (voluntary) adjustment (harmonization) of states leading to an equilibrium between intragovernmental entities and supranational (e.g. EU institutions) and transnational (e.g. European political parties, transnational corporations) actors;
- the ability to self-organize, joint activities and practical experience;

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<sup>5</sup> See M. T. Johnston, *The European Council: Gatekeeper of the European Community*, Boulder 1994.

<sup>6</sup> Cf. Z. Czachór, *Kryzys i zaburzona dynamika Unii Europejskiej*, Warszawa 2013, p. 48.

- complementing strictly state (government) patterns of behavior, institutionalization and legitimization of power with patterns stemming from trans- and supranationality.<sup>7</sup>

The neo-functional logic of the integration process finds convergence of interests more important than their compatibility. In this context, the European Council is generally accepted because it provides a multitude of different benefits (mainly political) to different entities, groups and elites. This neo-functional promise, to seek to fulfill the increasing needs of the participants of European integration, meant that it was necessary to move to the level of supra-sectoral (multi-sectoral) organizations and supranational (supra-state) organizations, which always have to accompany the activities of the European Council, in order to fulfill those needs. The states (governments) gathered in the European Council have not been able to oppose this movement.

Taking this approach was related to giving emphasis to the political process to “communitarize” the system and change the role of integration actors in shaping new organizational forms of societies stemming from the process of internationalization of these societies and their mutual relations. The gradual functional “depoliticization” of the elements, or the whole of European integration, including the European Council, could only be achieved in the course of further development (advance) of European integration (its enhancement).<sup>8</sup> This was confirmed by the integration processes triggered by the Treaty of Nice and the Treaty of Lisbon. Nevertheless, the multilayered crisis of integration has set back depoliticization, and has actually initiated strong politicization of both the European Council and the European Commission.

It comes as no surprise that the most important thing for both functionalism and neo-functionalism was the theoretical and empirical

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<sup>7</sup> S. Konopacki, *Funkcjonalistyczna teoria integracji politycznej Davida Mitrany'ego*, “Studia Europejskie”, no. 2, 1998, pp. 61–63.

<sup>8</sup> Cf. P. C. Schmitter, *Reflections on How and Why the EU Should Be Democratized*, Vorbereitet für die gemeinsame Tagung des Kulturwissenschaftlichen Instituts, Essen, und des Arbeitskreises Europäische Integration, Bonn, Stand und Entwicklung theoretischer Konzepte zum europäischen Integrationsprozeß, am 23–24 September 1999 in Essen, p. 1.

confrontation with the position and significance of state and politics in the functional system of integration. Unlike functionalism, neo-functionalism does not take a holistic approach to state, but treats it in terms of segments (modules) and refers to pluralism and numerous political entities (political forces), different needs, preferences and interests operating within its framework. Therefore, the essence of the neo-functional idea has boiled down to the proposition that the successful activity of the European Council is not only a product of functional needs, but mainly of the interactions of the political and economic forces of pluralism-oriented integration participants, defined by neo-functionalists to encompass, first and foremost, national (related to governments, political parties and parliaments) and transnational elites, groups in societies, technocrats and lobbying groups. Members of the European Council were assumed to pursue their own particular interests by reaching peaceful agreements which result from granting powers to a centralized institution for taking joint decisions.<sup>9</sup> One of the permanent elements of this institution would involve the governments of member states.

Neo-functionalism has further examined states and European integration by referring to the phenomenon of infranationalism, whereby states and governments do not disappear but their classic role in the multiple areas of European integration process wanes.<sup>10</sup> Infranationalism results from the Europeanization of the heads of state and government which takes place within the European Council, taking responsibility for the EU membership of their respective states.

The management and administration of European integration is definitely more efficient when performed not by national politicians alone, but accompanied by officers “specializing in Europe” who are personally interested in continuing the integration process. They work to nip all possible problems and crises in the bud, and are effectively supported in this task by agreement- and compromise-oriented experts,

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<sup>9</sup> Cf. G. Delle Donne, *The European Council after Lisbon: A review article*, “Perspectives on Federalism”, vol. 6, issue 3, 2014.

<sup>10</sup> J. H. H. Weiler, U. Haltern, F. Mayer, *European Democracy and its Critics – Five Uneasy Pieces*, Harvard Jean Monnet Working Papers, 1, 1995, pp. 25 ff.

analysts, advisors, “Sherpas” (as was the case of the Lisbon Treaty negotiations), think tanks, task forces, committees, working groups and representatives of different groups of interests (pressure groups). In this situation, decision processes are increasingly often taking place outside of sovereign constitutional channels, finding themselves in an infranational space.<sup>11</sup> An example of this is the ministers for European affairs in individual member states, and all the facilities they have at their disposal. These ministers very often have a direct influence over their principals (prime ministers and presidents), who are the national representatives of their countries in the European Council.

## 1.2. The European Council – a realistic approach

The classical approach to the realistic vision of how the European Council is formed and developed is based on the following tenets:<sup>12</sup>

- the ultimate and only successful form of evolution of a political community is the state and the government which represents it, rather than the European Union;
- states (governments) are the fundamental and only rational participants of internal and external European relations. They are also integral and sovereign integration entities which are fully independent from one another and have the right to self-preservation. From the point of view of nationalism, they were, and continue to be, the only legally legitimized political entities, which fall into the category of primary entities whereas the remaining integration actors are named secondary subjects of the European Union;
- the establishment of the European Communities, followed by the European Union, did not, and does not lead to states vanishing, but

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<sup>11</sup> J. M. de Areilza, *Reforma instytucjonalna Unii Europejskiej a nowy ustrój europejski*, (in:) E. Popławska (ed.), *Konstytucja dla rozszerzającej się Europy*, Warszawa 2000, p. 80.

<sup>12</sup> Cf. T. Łoś-Nowak, *Stosunki międzynarodowe. Teorie – systemy – uczestnicy*, Wrocław 2000, p. 46; see and cf. H. J. Morgenthau, *Politics Among Nations. The Struggle for Power and Peace*, New York 1985.

to their development and evolution within the EU Council and the European Council.<sup>13</sup>

It was, is and will remain a myth that European Union member states are equal. The opposite is implied by their respective influence in the European Council; the manner of voting in the EU Council; the number of seats in the European Parliament and other EU institutions and bodies; as well as the way they are treated by the European Commission and the European Court of Justice. Members of the European Council are fully convinced that states do need an arbiter (controller and supervisor) in the form of EU institutions or other member states (e.g. Germany), who either overtly or covertly force them to act in their individual interests. The more so as (in spite of changes introduced by the Lisbon Treaty) there have persisted differences in terms of content and concepts between the European policies of respective states, and the European policy of the European Union and its institutions. Therefore, the primary point of interest and concern of states and governments that are parties to the integration process have been the issues of foreign policy, security and their individual survival in line with the principle that “only states are capable of ensuring peace and well-being to themselves (and Europe).”<sup>14</sup>

According to the paradigm of realism, relations between states/governments in the European Council are formed in conformity with the Hobbesian culture of anarchy, which is based on fundamental human characteristics, namely the struggle against everybody else (*homo homini lupus est*). These relations continue to be dictated by structural mistrust, contesting of the hierarchical structure of the EU and the conflict of potentials, interests, competition and difficulties in achieving agreements (consensus and compromise).<sup>15</sup> States pursue

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<sup>13</sup> Cf. A. S. Milward, *The European Rescue of the Nation-State*, London 1992, p. 18; L. van Middelaar, *Przejście do Europy. Historia pewnego początku*, Warszawa 2011, p. 27.

<sup>14</sup> Cf. W. Wessels, *The European Council as the key (international) player*, Paper presented at the EUSA 13th Biennial Conference, Baltimore, Maryland 2013, pp. 1–4.

<sup>15</sup> Cf. S. P. Sałajczyk, *Wizje rzeczywistości międzynarodowej*, (in:) E. Haliżak, R. Kuźniar (eds.), *Stosunki międzynarodowe. Geneza, struktura, funkcjonowanie*, Warszawa 1994, p. 52.

the maximization of their own strength, influence and independence in the conviction that power attributes are the best warranty of their national interests and independence.

Differences between the national interests of different states, cultures and national identities are obvious. Only states and their governments in the European Council are able to process and adequately analyze information in terms of assessing the possibilities, risks and opportunities for integration. There is no European common interest of states nor an overarching “common good” or the “good of international/European community.”<sup>16</sup>

Nation-states continue to enjoy too strong a position to allow the emergence of a strong regional (European, uniform and unified) universal integration organization. International organizations, including the European Union and the European Atomic Energy Community, are not fully sovereign subjects of international relations but only forms of multilateral cooperation between states seeking to achieve their own interests. Therefore, the European Council will always remain an artificial construct. Unlike states, it is not founded on a centuries-long tradition and a lengthy process of political and democratic transformation. Democracy at the international level, or the level of the European community, continues to be superficial. The European public space is only an academic assumption.<sup>17</sup>

Another thing that should be borne in mind is that the “triumph” of neo-liberal capitalism, and where it has led Europe, has undermined the trust Europeans had in the protective role of the European Union and its supra-national institutions, and has pointed them again towards the power of civilization and creativity of the state, which is now expected to cure the wrongs Europeans have suffered. What is meant here is not the correction of “market defects”<sup>18</sup> but problem solving

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<sup>16</sup> Cf. J. Tallberg, *Political Bargaining in the European Council*, “Journal of Common Market Studies”, XLVI(3), pp. 685–708.

<sup>17</sup> Cf. Z. J. Pietraś, *Podstawy teorii stosunków międzynarodowych*, Lublin 1986, pp. 34–35.

<sup>18</sup> Cf. J. Derrida, J. Habermas, *Europa, jaka śni się filozofom*, “Gazeta Wyborcza”, June 10, 2003.



(unemployment, social exclusion, lowered living standards, and the European Commission, the European Central Bank, the International Monetary Fund and governments<sup>19</sup> intervening in the domestic affairs of different states). States had existed long before the European Communities and the European Union emerged, they exist alongside these institutions and will continue to exist after integration organizations collapse (dissolve, vanish). Therefore, further marginalization, or even the liquidation of the European Council might brought about even greater chaos and malfunctioning of the system given the potential crisis-triggered end of European integration.

The above considerations conducted in the spirit of realism-neoliberalism lead to the following observations:

- the European Council should be given the central position in the EU’s decision-making system;
- member states in the European Council should recover their full right of veto in matters related to their vital interests (the principle of unanimity should be the main principle of European integration);<sup>20</sup>
- rotating the presidency of the EU should be subordinated to the European Council and its internal bodies.

### **1.3. The European Council an intergovernmental approach**

The evolving position of the European Council in the European Union’s system necessitated the need to define a range of concepts in the field of the theory of European integration and international relations studies. In this context, Andrew Moravcsik referred to the theory of international regimes to review the neo-functional assumption whereby the decision-making process in the European Council is primarily founded on a common gains exercise. Consequently, Moravcsik concluded that the strategy of working out joint decisions by the representatives of European Council member states is based on agreements

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<sup>19</sup> E.g. the governments of Germany and France.

<sup>20</sup> This refers to the “Luxembourg compromise” of January 1966.

concluded between states by means of negotiation and persuasion techniques applied in an interpersonal, rather than strictly legal and international sense (parley, diplomatic talks). It is more about negotiating rational preferences in the course of internal bargaining over some time and “establishing positions and trading off” in an informal rather than formal manner.<sup>21</sup>

Currently, negotiating/bargaining in the European Council is clearly conducted in many different formats and according to different methods and procedures (or even without them). The process is becoming extremely complex, and the forms and functions of negotiating/bargaining are evolving in order to meet the rapidly changing needs (requirements) of the growing numbers of member states, fields of integration, and the number of encompassed issues and crises which turn out to be permanent.<sup>22</sup>

Negotiating/bargaining can be initiated only voluntarily by sovereign states, but once such negotiating commences, to a certain extent it becomes independent from them. Therefore, states (governments) frequently continue them on their own, to play a game of interests, or because of the influence of EU institutions or other subjective social/national factors, including emotional (psychological) factors, such as ambition, rivalry and competition.<sup>23</sup>

For the intergovernmental system of the European Council to be organized and effective, all its elements need to be efficient; this means that emerging crises and conflicts need to be prevented on time (early warning, early response). Therefore, the European Council and states/governments need to be interrelated. The more efficient and effective

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<sup>21</sup> Cf. A. Moravcsik, *The Choice for Europe, Social Purpose and State Power from Messina to Maastricht*, New York 1998, pp. 5–25; cf. A. Moravcsik, *Taking Preferences Seriously: A Liberal Theory of International Politics*, “International Organization”, no. 4, 1997, pp. 513–553; cf. A. Moravcsik, *Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach*, “Journal of Common Market Studies”, vol. 31, no. 4, 1993, pp. 473–524; W. Kaiser, *Europäische Integration: Politik und Forschung in der Krise?*, “Integration“, no. 2, 1993, p. 110; Z. Czachór, *Kryzys...*, op. cit., pp. 147–150.

<sup>22</sup> Z. Czachór, *Kryzys...*, op. cit., p. 148.

<sup>23</sup> *Ibid.*

each individual case of negotiating/bargaining is, the more stable and durable the outcome for the European Council. Its effectiveness depends on how it develops and articulates the priorities of the European policies of individual member states expressed in their formal and informal standpoints. The more these narrow national interests can be subordinated to the joint interests of the integrated community in the European Council, the more likely it becomes to achieve good results; and *vice versa*: all claims to pursue the interests which others are denied (such as one's zones of influence) interfere with the efficient regulation of European integration by way of intergovernmental agreements. If the starting position of a state (government) follows not only from national preferences, but also from the principles and standards of the European Union, its further actions become more predictable.<sup>24</sup>

The bargaining/deliberation way to agree on joint solutions in the European Council has several dimensions in the integration system. Firstly, it is a continuation of domestic policies of states meeting social expectations (aggregating social needs/demands). Secondly, it becomes part of the EU system of consensus-finding, with its own rules and dynamics, which goes beyond the control of member states (governments). Once it becomes a part of the integration system, it has to comply with its needs and elements. The main requirement here is to contribute to the stability, equilibrium and optimization of EU system.<sup>25</sup>

If intergovernmentality is understood in this manner, the heads of state and government (outside of the European Council) jointly aggregate the interests preferred by their societies/electorates (and by themselves) to subsequently present their national preferences transferred to the level of integration (in an EU institution, mainly in the European Council and the EU Council). Thus, the interests identified at national levels (involving political parties, social entities and pressure groups) are brought to the "intergovernmental negotiating table" where they are mutually bargained and adjusted with respect

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<sup>24</sup> Cf. J. Bryła, *Negocjacje międzynarodowe*, Poznań 1999, pp. 11–19.

<sup>25</sup> Cf. F. Strzyczkowski, *Teorie integracji europejskiej w doktrynie amerykańskiej*, Warszawa 2012, pp. 89–92.

to the different national preferences expressed and aggregated. The agreements achieved in this manner reflect the relative power of each member state. This is concluded by the establishment of the principles of supervision and adjustment to the mutual monitoring of decisions that have been agreed (by means of transferring national political and legal competencies to a supranational institutional level) in order to enhance mutual trust (and mutual credibility) between states and to protect present and future governments from any state backtracking from its commitments.<sup>26</sup>

#### **1.4. The European Council and its new positioning in the system**

Further tenets of the systemic attitude to the European Council based on the process of experimentation and conclusion, an attitude that can be described as “factual, objective and pragmatic,” involve arguments related to the conviction that it is necessary to achieve convergence of the interests of different states and governments by seeking natural symmetry. From this point of view, it is possible for member states of the European Council (and the EU Council) to pursue their individual interests by viewing the integration system in terms of a harmonized community. However, it is unacceptable to maintain integration cohesion based on the “solidarity” assumption that the richest (strongest) member states exert unmonitored influence on the position and development of weaker (poorer) states.<sup>27</sup> Formulated in this manner, the “principle” of European integration, which refers to the sense of “responsibility” for the fate of Europe (in the past and in the future),

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<sup>26</sup> Cf. M. A. Pollack, *Theorizing the European Union: International organization, domestic polity, or experiment in New Governance*, “Annual Review of Political Science”, 8, 2005, pp. 357–398; M. A. Pollack, *Theorizing EU Policy-Making*, (in:) H. Wallace, M. A. Pollack, A. R. Young (eds.), *Policy-Making in the European Union*, Oxford 2010, pp. 360 ff.; cf. M. A. Pollack, *International...*, op. cit., pp. 223 ff.; cf. A. Jaskulski, *System polityczny Unii Europejskiej po Traktacie ustanawiającym Konstytucję dla Europy*, Master’s dissertation, Poznań 2007, pp. 15–16.

<sup>27</sup> Cf. J. McCormick, *Zrozumieć Unię Europejską*, Warszawa 2010, p. 28.

exacerbates mutual contradictions and weakens some states while strengthening others.

On the other hand, it is also questioned that unification and harmonization should be based on supra-state institutions and other actors that are in no way related to sovereignty and whose decisions are imposed on member states from above. Another hardly acceptable solution is that allowing direct influence of European public opinion and EU citizens (the European *demos*) on the behavior and activities of states in the European Council.

The interests of a state and its authorities (government, president, and parliament) have to continue to be defined solely in terms of survival and political strength, which is mainly manifested in the European Council and the EU Council, and in relations with other member states. Therefore, member states have been trying to make EU supranational institutions (mainly the European Commission, European Parliament and European Court of Justice) realize that their competencies are clearly excessive. They exceed their powers, interfere with domestic matters of member states, and disrupt their political, legal and economic balance. One cannot ignore the fact that the powerful influence of these technocratic institutions and their excessive bureaucracy is intended to undermine the European Council.<sup>28</sup>

Comparing the ideologies of functionalism and realism with the reality of European integration leads us towards granting the European Union independent authority to apply coercion. It is commonly known that this exclusive right was previously exercised only by states, which were the only entities (referring to Max Weber<sup>29</sup>) with the right and obligation to apply force to individuals. The European Union has changed this and the European Council is unable to halt this process. We are also reminded of the fact that all attempts to weaken

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<sup>28</sup> Cf. P. Alexandrova, M. Carammia, A. Timmermans, *EU High Politics – the Policy Agenda of the European Council, 1975–2011*, (in:) F. Foret, Y.S. Rittelmeyer (eds.), *The Commanding Heights of the European Union. The European Council and the rotating presidencies: competition or collaboration?*, London 2013, pp. 103–125.

<sup>29</sup> See and cf. M. Weber, *Polityka jako zawód i powołanie. Wybór pism*, Kraków 1998.

member states by forcing them to transfer (restrict) their sovereign power result in a number of adverse outcomes in terms of their political systems. The crisis in the euro area is used to demonstrate that the structure of Economic and Monetary Union is inappropriate with respect to the imbalance of competencies enjoyed by individual states and EU institutions. States have also been deprived of their right to decide about their own monetary policy, and the European Union (including the European Council) has not been granted decision-making power in fiscal matters. In these circumstances, it was only a matter of time before a serious crisis would break out.

Given the rapid and frequently disturbed development of integration during the crisis, alongside a wide range of matters and policies of states and their internal actors, the above tenets need to be further verified and developed. The fundamental assumption is that the system of European integration can continue to be defined as a supra-national, but also international and intergovernmental system. Therefore, the states forming the European Council, without contribution from transnational and supranational institutions, are still able to guarantee balance to the European Union. This line of reasoning embraces the category of dynamic autonomy and independence of members of the European Council in the operations of the emerging system.<sup>30</sup> The following assumptions are thus made:

- the European Union’s system of unification and harmonization cannot excessively weaken its member states;
- states do not incessantly have to pursue changes in the system (or to the system) if they envisage that their benefits will be greater than the potential losses caused by such changes;
- changes, including crisis-driven ones, can occur in many different ways but they should never involve the economic and/or political weakening of states;
- states do not have to approve of the aggressive autonomization of EU (communitarian) institutions which “appropriate” their hitherto playing field;

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<sup>30</sup> See and cf. A. Gałganek, *Neoliberalizm versus neorealizm w teorii stosunków międzynarodowych*, (in:) W. Gill, M. Kosman, T. Wallas, A. Adamczyk (eds.), *Między historią a politologią*, Poznań 1998, pp. 65–74.

- achieving a balance of profits and losses produced by the activity of states in the system strengthens the tendency to maintain the *status quo* of integration;
- the system does not begin to transform until states are no longer able to keep it stable. Then, they approve of a new balance of power, to emerge with the participation of supranational and transnational institutions which reflects a new distribution of power and new structure of the system.<sup>31</sup> This occurs when several categories are combined, such as “power,” “change,” “community” and “consensus.”

In this approach to integration and crisis-triggering disruptions to the system, it becomes important to seek tangible (including economic, financial and technological potentials) and intangible sources of the power of states in the European Council. The latter include member states’ “gravitational potential,” understood in terms of their political strength, influence and the power of the arguments used to persuade other states and entities (including non-state ones) of their rationale. The best example of this is the behavior of Germany related to the adoption of the Fiscal Pact in early 2012, a pact Germany had designed and submitted for discussion at the European Council (EU summit).<sup>32</sup>

Adopting the above point of view, it is assumed that four processes of change are taking place in the functional-realist world of the European Council. One involves the division of states into small and large ones, weak and strong, those devoid of influence and those which are influential. This inequality results in the so-called secondary states seeking to improve their position in the system by associating with large and strong states within the framework of EU institutions.<sup>33</sup>

Playing their “true game” of integration, these states implement a type of conduct, or strategy: resistance and reluctant strategy/policy;

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<sup>31</sup> Cf. R. Gilpin, *War and Change in World Politics*, New York – Cambridge 1981, pp. 10–33.

<sup>32</sup> Cf. M. Carammia, P. Alexandrova, S. Princen, *Analyzing the policy agenda of the European Council*, “Perspectives on Europe” 42(2), 2013, pp. 41–46.

<sup>33</sup> Cf. P. J. Borkowski, *Polityczne teorie integracji międzynarodowej*, Warszawa 2007, p. 43.

isolation and closing off; feigning and avoidance; minimizing undesirable outcomes; indirect influencing; *ad hoc* building of coalitions with larger (stronger) partners (states and other entities); seeking alternatives.<sup>34</sup>

Small and medium states are used by large actors to help them achieve their goals, but being smart actors, the former are able to compensate for it by taking advantage of intergovernmental (the European Council or the EU Council) supranational (e.g. the European Commission) and transnational actors (e.g. European political parties, pressure groups and groups of influence) to augment their potential and bargaining power.<sup>35</sup> The augmenting methods can even turn out to be semi-Machiavellian, when states get around to using all available methods and measures to improve their “rankings” in the European Union, for instance by means of national lobbying (and achieving their goals by involving third parties, such as public relations and advertising agencies when exercising the presidency). There is also an informal technique of deception (“leading on”) that encourages one state acting against another, or intentional inspiration of conflicts (antagonizing e.g. with the help of the media) of selected EU states and institutions. This type of behavior could be seen on the part of countries such as the United Kingdom or the Netherlands when negotiating the Multiannual Financial Framework 2014–2020.

Another process refers to the Darwinian “survival of the fittest” and the transformation of dependence into interdependence, mainly in economic terms. In this context, the transformation of the “military state” and “political state” into a “commercial state” and “competitive

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<sup>34</sup> Cf. J. Berlińska, *Ile Dania w Europie?*, Toruń 2004, pp. 12–13.

<sup>35</sup> See and cf. M. W. Mosser, *Engineering Influence: The Subtle Power of Smaller States in International Relations*, Paper prepared for presentation at the UNC Graduate Conference, Chapel Hill, 20–21 May 2000; cf. M. A. Pollack, *International Relations Theory and European Integration*, EUI Working Papers, RSC no. 55/2000, pp. 2–3; J. M. Grieco, *The Maastricht Treaty, Economic and Monetary Union and the Neo-realist Research Programme*, “Review of International Studies”, no. 21, 1995, pp. 21–34; cf. S. Parzymies, *Państwo w procesie integracji europejskiej*, (in:) M. Sułek, J. Symonides (eds.), *Państwo w teorii i praktyce stosunków międzynarodowych*, Warszawa 2009, pp. 183 and 200.



state” does not fully eliminate the dependence and hegemonic tendencies in the system of the European Council. The dominating integration actors (such as Germany) continue to set the framework for such interdependencies to develop.<sup>36</sup>

The third process is about the democratization of the system of European integration, ultimately designed to eliminate contradictions between the different interests of member states in the European Council and the interests of the EU’s system as a whole. Sovereign states find it difficult to transfer the principles of representative and participatory democracy to the international/European level, but it seems increasingly necessary to take it into consideration. This cannot, though, lead to restraint (self-restraint) or the transfer of sovereignty (the absolute character of sovereignty must remain an indisputable axiom).<sup>37</sup>

The fourth process takes into account the fact that states are no longer merely “billiard balls” played by the European Council, and they welcome the division of their activities into the external (still the most important) and internal dimensions. The latter concerns the perspective of internalized interactions between sovereign state bodies operating for the purpose of strengthening states in the European Council. What is meant here are relations between the government, president, national parliament and constitutional judiciary, which is of crucial importance, for instance, when legitimizing the right of a state to enter EU agreements and treaties, and many other obligations. This is fully confirmed by the operations of the Federal Constitutional Court of Germany. This was, and still is significant for combining the external with the internal in the context of interstate and intergovernmental negotiations and bargaining (hard power versus bargaining power), and in the context of achieving individual needs, preferences and interests.<sup>38</sup>

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<sup>36</sup> Cf. S. Burchill, *Liberalizm*, (in:) S. Burchill, R. Devetak, A. Linklater, M. Paterson, Ch. Reus-Smit, J. True (eds.), *Teorie stosunków międzynarodowych*, Warszawa 2006, p. 61.

<sup>37</sup> Cf. E. Haliżak, *Demokratyczność systemu międzynarodowego* (in:) E. Haliżak, D. Popławski (eds.), *Demokracja w stosunkach międzynarodowych*, Warszawa 1997, p. 8.

<sup>38</sup> Cf. A. Moravcsik, *Integrating International and Domestic Theories of International Bargaining* (Chapter One), (in:) P. B. Evans, H. K. Jacobson, R. D. Putnam

## Conclusions. The European Council between the anarchy and hierarchy of the system

From the point of view of the position and role of states in the European Union and the European Council, the hierarchy is intertwined with the pursuit of anarchy.<sup>39</sup>

Anarchy is a hypothetical state of functional non-differentiation and sovereign equality, where priority is given to the state independently ensuring its own power and securing operations within the European Council in pursuit of its individual interests. All this is done in order to keep the balance of potential and power in the (European integration) system and thus allow the system and state to survive.<sup>40</sup>

Understood in this way, anarchy is not disorder, chaos or disintegration. First and foremost, it is the growing lack of a sense of community among members of the European Council.<sup>41</sup> It is also the opportunity of states to rationally exercise their authority and their right to use “on their own” the political and economic strength they still have at their disposal. There is more to this. This is also (perhaps mainly) about an attempt to reject the centralized supreme authority of the EU which regulates interstate relations, and a refusal to subject to the supragovernmental principles of the behavior of EU states, which restricts their sovereign competencies while failing to reduce the risk of disputes and crises. This is confirmed by the continuing crisis in the euro area, which could not be prevented by the supranational head-

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(eds.), *Double-Edged Diplomacy: International Bargaining and Domestic Politics*, Berkeley 1993, pp. 5–9.

<sup>39</sup> Prepared after reading e.g.: A. Gałganek, *Anarchia versus hierarchia w nauce o stosunkach międzynarodowych*, (in:) W. Micha, J. Nowak (eds.), *Wokół teorii stosunków międzynarodowych*, Lublin 2012, pp. 229–256.

<sup>40</sup> See and cf. J. Legro, A. Moravcsik, *Is Anybody Still a Realist?*, Working Paper Series 98–14, Weatherhead Center for International Affairs, Harvard 1998.

<sup>41</sup> See and cf. R. Wendzel, *International Relations: A Policymaker Focus*, New York 1980; see and cf. R. Wendzel *International Politics: Policy-Makers and Policy-Making*, New York 1981.

quarters located mainly in the European Commission and the European Central Bank.<sup>42</sup>

The anarchy within the system and the anarchy of the system of the European Council should also be understood in terms of a peculiar “pluriversum” with functionally identical sovereign states devoid of any superior authority.<sup>43</sup> The anarchy here is structured from the perspective of foe, competitor and ally at the same time. The balance between these three areas of the “anarchy spirit” of the European Council’s system should produce the absence of any dependence or superior authority.

The formal and informal hierarchy in the European Council means the concentration around the system’s core (point of reference and domination in the system) which assigns rights and responsibilities to the system’s subjects (actors) and exercises authority over them, settles their disputes, interferes in their domestic affairs and applies coercion to them.<sup>44</sup>

We are dealing with vertical and horizontal hierarchization in the European Council. The former refers to the relation of “vertical” dependence which primarily occurs between member states (governments) and the European Commission and European Parliament present in the European Council. Beneficially for states, this bond is flexible, as it is slowed down by lengthy procedures (such as EC complaints against member states filed with the ECJ) and relativized in the course of ineffective execution. The horizontal dimension is related to the “horizontal” system of dependencies which occur mainly between the European Council and Commission, between the EU Council and the European Council, and between the members of the European Council themselves.

Anarchy and hierarchy clash in the European Council system. On the one hand, member states pursue anarchy, but on the other they

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<sup>42</sup> Cf. Z. Czachór, *Kryzys...*, op. cit., pp. 96–98.

<sup>43</sup> Cf. A. Colás, *Imperium*, Warszawa 2008, p. 33.

<sup>44</sup> Cf. P. Bocquillon Pierre, M. Dobbels, *An elephant on the 13th floor of the Berlaymont? European Council and Commission relations in legislative agenda setting*, “Journal of European Public Policy”, XXI(1), 2014, pp. 20–38.

operate in a hierarchical space. The reality of European integration demonstrates that these two conditions are not actually dichotomous and are strongly connected. The main reason for this is that in the conditions of European integration at the summits of the heads of state and (or) government, and then in the European Council, from the beginning anarchy has been minimized by the hierarchical order introduced under the pretext of controlling potential perturbations and dysfunctions of the system.<sup>45</sup>

Intense attempts at the hierarchical neutralization of the need for anarchy can be found in the *acquis communautaire*, including the founding and reviewing treaties first and foremost. Paradoxically, these attempts produce a feedback in the form of a negative backlash of member states. This can be seen with respect to the most dangerous EU crisis which has shaken the economic foundations of European integration, namely the Economic and Monetary Union and the Single Market. In the course of this crisis the system undergoes accelerated anarchization, which can be described as the phenomenon whereby “anarchy is embedded in the hierarchy.” This phenomenon involves states and the European Council “breaking free” from the supervision of EU institutions (and their control); emphasis given to national sovereignty and constitutional responsibilities of states; enhancement of the political power of European Council member states in negotiations (such as the negotiations of the Multiannual Financial Framework); referring to the economic potential of individual states (e.g. Germany in the course of negotiations of successive aid packages, mainly for Greece); and growing hegemonic tendencies in the system of integration.

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<sup>45</sup> Jürgen Neyer suggests a new category, “heterarchy,” which combines anarchic and hierarchical elements. Anarchy is based on horizontality and heterarchy on variable movement and circulation in the system he dubbed “heterarchischen Mehrebenenstruktur.” Cf. J. Neyer, *Postnationale politische Herrschaft: Vergesellschaftung und Verrechtlichung jenseits des Staates*, Baden-Baden 2004, pp. 70 and 96.

## Chapter 2.

# The politological and political determinants of the activity of the European Council and the EU Council<sup>1</sup>

ZBIGNIEW CZACHÓR

### 2.1. The political system and the politicization and democratization of the EU

#### 2.1.1. *Partial polity*

The integration experience of EU member states, in which Poland has had its share for over a decade, allow a functionalist category of *partial polity* to be distinguished, which is rooted in the process of aggregation and acceleration of European integration initiated by the Maastricht Treaty on European Union. This category is a compromise and a response to interactions between member states and the supranational authority of the EU.<sup>2</sup>

These interactions are of particular importance from the point of view of the activity of the EU Council and the European Council. This is so because the European Union and its member states form a specific, and not fully legitimized, fragmented political system that is based on an unprecedented arrangement of powers. In a classic approach, this is a horizontal arrangement of relations between the institutions

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<sup>1</sup> This part of the book is a revised version of considerations presented in „Yearbook of European Integration”, 13/2019, pp. 31–42.

<sup>2</sup> Z. Czachór, *Zmiany i rozwój w systemie Unii Europejskiej po Traktacie z Maastricht*, Wrocław 2004.

and many entities of the European Union, and a vertical one, whereby relations are regulated between the EU, nation-states and regions, as well as non-state entities, such as intra-state and international interest groups, including trade unions, entrepreneurial organizations, political parties and non-governmental organizations.<sup>3</sup>

As concerns the vertical aspect, the European Union's system is based on the division of power between the central authority of the European Council and the authorities of individual states gathered in the EU Council. The division of power is made here based on the rules of law as well as informal provisions and procedures. In the integration reality, the actual effectiveness of both councils is significantly varied, ranging from a certain minimum required to impact EU activities, which is the natural objective of both councils after all, to a maximum.<sup>4</sup>

The position and specific roles of the EU Council and the European Council have increasingly been violating this division, as they are involved in both horizontal and vertical relations of the above actors of European integration. This position of the two councils in the EU's political system produces an utterly extraordinary and unique formula of powers, which attempts to combine two integration worlds – the intergovernmental and supranational (supra-governmental) worlds – into one. This can be evidenced by the governments of member states exercising their multiple influences on the EU Council and the European Council, which functionally depend on the European Commission and the European Parliament, as well as the European Court of Justice.

### ***2.1.2. Politicization***

The formula of activities performed by the EU Council and the European Council is also part of the development of European integration

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<sup>3</sup> Z. Czachór, *Demokracja i legitymizacja władzy w UE*, (in:) I. A. Szyszko (ed.) *Pytania o Europę. Opinie ekspertów*, Przedstawicielstwo Komisji Europejskiej, Warszawa 2010, pp. 61–62.

<sup>4</sup> W. Morawiecki, *Ponadpaństwowy i międzynarodowy charakter Unii Europejskiej*, (in:) J. Fiszer (ed.), *Państwa narodowe w euroatlantyckich strukturach*, Poznań–Warszawa 1996, pp. 150–167.

through its direct link with the process of *politicization* of the European Union's operations and the agential politicization of its entire internal system. Politicization is also related to the issue of national entities involved in the governance of the EU through the changing participation/share of member states in the management of the European Union and its policies.<sup>5</sup>

The multi-centric politicization of the EU makes it possible to analyze this system in terms of a transactional approach as a dual, complementary relationship between the two main entities of integration: the Council of the European Union and the European Council, which are interdependent and together create systemic properties that neither of them possesses separately. They create a joint system of roles, functions and features that they do not have on their own (as individual integration entities). Therefore, in this case, we are dealing with a new political (politicized, *nontechnocratic*) 'technology' of exercising power and its division should be examined in the horizontal and vertical dimensions.<sup>6</sup>

### **2.1.3. Checks and balances**

If the relationship between the EU Council and the European Council in the context of the horizontal division of power is based on a system of checks and balances, the emphasis must be on balance rather than on the separation of authorities/entities exercising power. For this reason, the powers and authority of the states and of the European Union are to some extent mixed up in this relational formula, and they overlap. At the same time, each entity has decision-making powers creating a mechanism of political influence. The powers of the EU Council

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<sup>5</sup> P. C. Schmitter, *Reflections on How and Why the EU Should Be Democratized*, Vorbereitet für die gemeinsame Tagung des Kulturwissenschaftlichen Instituts, Essen, und des Arbeitskreises Europäische Integration, Bonn, Stand und Entwicklung theoretischer Konzepte zum europäischen Integrationsprozeß, am 23–24 September, Essen 1999, pp. 1–3.

<sup>6</sup> K. W. Deutsch, *Die Analyse internationaler Beziehungen. Konzeption und Probleme der Friedensforschung*, Frankfurt a. M. 1968, pp. 224 et seq.

and the European Council are separated in terms of institutions (structures and personnel) but not of functions, because their powers are interrelated. The competition for power here results in its being shared, which is based on the ‘joint exercising’ of power and thus the joint performance of certain systemic functions, tasks and roles. The powers of one authority should not be performed directly or completely by any of the remaining authorities, and none of the authorities should gain a definite advantage over the others. This should be the message for both the presidency of the EU Council and for the President of the European Council, as well as for members of both councils.

## **2.2. Europeanization and internationalization of the EU Council and the European Council**

### ***2.2.1. Europeanization***

European integration is associated with the process of *communization* (unionization) of politics, aiming to change the roles of the EU Council and the European Council in shaping the new systemic forms of integration that are rooted in the process of Europeanization, which is becoming another law of the development, intensification, and by this token of the dynamics of European integration.

Europeanization means that organized collective entities such as the EU Council and the European Council (or the EU Council and the European Council treated as one) adopt and implement European rules, procedures and standards by incorporating them in their internal system. It also involves the spreading, propagation (distribution and redistribution) and alignment of values, information, institutions, norms, models and attitudes. Europeanization is also a process of transfer of knowledge, innovation and, as a consequence, of internal governance models.

Under the influence of changes in the integration system, Europeanization ceases to be a voluntary process increasingly becoming the



process of incremental, gradual, formalized adaptation and incorporation of the *acquis communautaire* and *the acquis politique* of the EU into the legal and political systems of member states and of the European Union itself.

The specific feature of Europeanization involves the assumption that the same entities (here the EU Council and the European Council) can be both a source of Europeanization and undergo Europeanization themselves. Political life (including the language of politics), administration and economy are specific areas subject to Europeanization. In political life, it is manifested in particular as the spreading of organizations, the rules or values and principles related to their protection. Members of both councils and the administrations of both institutions are subject to Europeanization.

Europeanization through the EU's governance institutions, which both councils are, involves progressing integration. This means integration encompassing the elements that used to be 'external' for EU member states. This demonstrates that no area of the political life of member states can survive in isolation from integration. In this sense, Europeanization is the opposite of closing oneself off and adhering to autarky. Therefore, both councils play important balancing as well as stimulating roles in European integration.

### ***2.2.2. Europeanization between foreign policy and European policy***

European policy is becoming increasingly dependent on currents that do not stop at national borders and call for a collective response from different governments that can take less and less liberty to act sovereignly. In the context of the presidency, the Europeanization of states limits the freedom of governments in shaping their foreign and domestic policies, and narrows down the selection of desired options in the internal and international/European area. As a consequence, the presence of the EU Council and the European Council makes member states realize that they are increasingly forced to take into account the needs and interests of the outside world, which encourages them

to cooperate, coordinate actions and implement mutually beneficial solutions.

Due to Europeanization, in the course of the EU Council and the European Council preparing and implementing political leadership within the EU, member states (as well as candidate countries) seek ways to achieve their goals and interests by working together, aligning and agreeing positions rather than by resorting to selfish activities. The Europeanization of politics, law and economy is becoming a permanent element of both councils' activities. As a result, member states 'unlearn' to act on their own (especially in a centralized EU environment), because it becomes too difficult and expensive for them. Disputes and conflicts have to be resolved by peaceful measures, primarily through negotiation and compromise, using jointly developed standards of conduct.

### ***2.2.3. Internationalization***

Internationalization leads to the greater international interdependence of the states gathered in the EU Council and the European Council. Such growing interdependencies in turn enhance, extend and deepen Europeanization processes. From an analytical point of view, European interdependencies can also be said to result from internationalization processes that go far beyond the EU system.

The above analysis clearly shows that, nowadays, interdependencies are among the basic determinants of the external activities of states. In the context of the role and tasks of the EU Council and the European Council, interdependencies should be treated as a consequence of the deepening internationalization of member states. This is because intergovernmentalism and relations between the EU and its environment have led to an unprecedented intensification of member states' activities in the area of external policy, outside the European Union, too. Unusual interactions and connections emerge between the EU Council and, especially, the European Council (including its president and members), and the outside world. In recent

years, since the Lisbon Treaty came in force, both councils have been engaging far more forces and resources in their international activities. They have been trying to be part of both European and global relations. With the help of the High Representative for Foreign Affairs and Security Policy, they have clearly opened the EU to the world even more. This is attracting interest from European and global public opinion, and is helping to strengthen their image and position in international relations.

### **2.3. Penetration and permeation of the determinants of the EU Council and the European Council activity in the systemic approach**

#### **2.3.1. Penetration and the EU's modus operandi**

In the academic literature, the process of penetration or permeation is attributed great importance in examining the activity of the EU Council and the European Council. Permeation is about the influence one system exerts on the internal operations of another system. For the purposes of this study, permeation is not defined in terms of pressure, but as saturation and systemic diffusion. Therefore, the process of permeation occurs primarily when participants in one system (the European Council) become participants in the political activities in another system (the EU Council). The elements of one system are present in another, including by transferring elements of one system to another.<sup>7</sup>

As part of the *modus operandi* of the EU, member states in both councils have provided themselves with a wide range of political and legal instruments to enable mutual penetration. It is assumed to be interdependent, diverse and mixed; it is symmetrical in the area of intergovernmental cooperation, and asymmetrical in the supranational

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<sup>7</sup> Z. Czachór, *Proces kreowania i upowszechniania priorytetów prezydencji na przykładzie Polski*, (in:) K. A. Wojtaszczyk (ed.), *Prezydencja w Radzie Unii Europejskiej*, Warszawa 2010, pp. 77–107.

area. On the one hand, the integration system is strongly influenced by the operations and decisions of the EU Council, on the other, it is also penetrated by member states that will not give up their permanent presence in the European Union system through their presence in the European Council.

Permeation here is formal and voluntary, based on provisions in treaties and other regulations. This does not necessarily mean that penetration processes pose a threat to the existence of the system. The more so as, in this case, we are dealing with the institutionalization of penetration. On the one hand, the EU Council consists of representatives (ministers) of member states (the EU Council is intergovernmental). On the other hand, the EU Council largely makes supranational decisions by a qualified majority. This is particularly evident when establishing regulations that are direct and binding for all member states. A similar process takes place in the European Council, where the principle of unanimity (consensus) prevails nevertheless.<sup>8</sup>

Penetration can also be informal, which can be seen, for example, in the many mechanisms of changes introduced outside treaties that COREPER or EU Council working groups employ in the course of their work. The permeation of member states' influence or interests into the institutional and decision-making system of the EU dominates here. Here, it is clear that member states have imposed many restrictions on the institutions of the European Union, including the EU Council, thereby impeding their informal permeation into member states' systems. Member states have also carefully considered and planned how to provide themselves with a wide spectrum of such measures.

A specific kind of penetration and permeation occurs also in relations between the EU Council and the European Council on the one hand, and the European Commission and the European Parliament on the other.

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<sup>8</sup> Z. Czachór, *Prezydencja państwa członkowskiego a system polityczny Unii Europejskiej. Podstawowe uwarunkowania*, (in:) A. Nowak-Far (ed.), *Prezydencja w Unii Europejskiej. Instytucje, prawo i organizacja*, Warszawa 2010, pp. 212–238.

## 2.4. Political legitimization of the authority of the EU Council and the European Council

### 2.4.1. *New forms of legitimization*

Resolving to establish and develop the European Union, member states decided that European integration needed new forms of legitimization, making it possible to go far beyond the area of operations typical of classic international organizations. Here, legitimization is a privilege enjoyed by the EU Council and the European Council to take actions approved by all recipients of these actions. Legitimization is also a process of political justification, sanctioning and motivating the behavior of the EU and its entities, including member states and their representations in the system.<sup>9</sup>

Legitimization concerns not only European integration, but also its governance, and is closely related to the more or less effective performance of the tasks of the EU Council and the European Council (including the distribution of political decisions and values) which are considered the common interest of its members. Legitimization occurs at multiple levels and involves shifting loyalty from the level of member states to that of the EU and Community, as well as a shift in the opposite direction. For this to be possible, the benefits of participating in the integration system at the intergovernmental and Community levels must outweigh the benefits of remaining outside the system. In this perspective, the combined subsystem of the EU Council and the European Council can be perceived as a kind of political and regulatory authority, or an ‘organization/institution with a specific legitimizing purpose’.<sup>10</sup>

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<sup>9</sup> Ibidem.

<sup>10</sup> W. Wallace, *Governance without Statehood. The Unstable Equilibrium*, (in:) H. Wallace, W. Wallace (eds.), *Policy-Making in the European Union*, Oxford University Press, Oxford 1996, pp. 439–460.

### ***2.4.2. Result-oriented legitimization***

The result-oriented legitimization of the EU Council and the European Council lies in their ability to accomplish goals and solve problems in an efficient and effective manner. The greater this ability, the more their subsystem is legitimized. However, the development of the European Union is not only characterized by the intensifying pursuit of effective procedures, but also by the ongoing and collective search for an effective and transparent framework allowing the results to be recognized as legitimate.

The legitimization provided by the EU Council and the European Council gains importance in crisis situations occurring between entities or actors of the system, especially regarding their powers (mainly in relations with the European Commission) in the field of solving problems. The activity resulting from a different way of overcoming tensions or crisis situations in the European Union is unlike what occurs in a similar situation in member states. This results from a different decision system and the foundation of legitimacy.<sup>11</sup>

### ***2.4.3. Dual legitimization***

For the purpose of this analysis, the authority of the EU Council and the European Council can also be seen as a sophisticated system of dual legitimization. Operations of both institutions are justified by state authorities on the one hand, and by the whole of the EU's (communitarized, Europeanized) internal apparatus (mainly the General Secretariat) on the other.

The legitimization of the authority of the EU Council and the European Council is associated with certain functions that support exercising this authority. The regulatory function is about controlling integration processes according to the rules adopted in treaties and other regulations. The mediation function involves conflict resolution

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<sup>11</sup> R. Stemplowski, *Wzmocniona współpraca a uniwersalizm w Unii Europejskiej*, (in:) A. Podraza (ed.) *Traktat nicejski*, Lublin 2001, pp. 133 et seq.

and mediation regarding conflicting interests of EU countries and institutions. The adaptive function consists of, among others, improving operations of institutions and expanding the foundations of the integration system. The innovative function is about introducing new operating rules and mechanisms into the system and its surroundings.

The adaptive function deserves particular attention, which is directly associated with adapting the system to the permanent change taking place in the European Union, both in terms of its *European governance* and the admission of new members. Adaptation is also important for the stability of European integration. It helps to neutralize any attempts to change the structure of powers.

One of the important legitimizing functions of the authority of both institutions is their ability to work out consensus over the political and party divisions in the EU. In practice, this ability varies, especially during crises in the EU.

## **2.5. How to build the mission of the EU Council and the European Council. Axiological aspects of the process of creating authority and political decisions and the dissemination of their priorities**

### ***2.5.1. Axiology of the EU Council and the European Council***

In the system of European integration the EU Council and the European Council, whether they want it or not, are part of the process of creating a political community based on values. This is extremely important in the context of developing a mission, and then the agenda and priorities of both institutions, which cannot be merely guided by the national interests of member states.

Today the axiology of the EU Council and the European Council may be an element of the survival and continuation of European integration. The success of such an approach depends on a conjunct combination of the conventional concept of a political coordination

system (understood as intergovernmental) and opening up to the pursuit of a joint European good on the basis of an ongoing reconciliation of goals and values, and in the practice of integration – through consensual agreement on specific priorities, objectives and tasks.

Due to the above, the combined authority of both councils can be defined in terms of the process of coordination and governance of not only a ‘national good’/‘state good’ but also that of a “European good and common reflection (the outcome of European deliberation, reflection and focus)” functioning within a “European public space” based on shared preferences and a political program.<sup>12</sup>

### **2.5.2. Common European good**

The common European good, analyzed from the point of view of the role of both institutions, could involve a combination of the collective (political and economic) interests of member states with the common values expressed by the supranational and intergovernmental composition of both councils.

In this light, the following values can be distinguished here, important both for the EU Council and the European Council:

- unity – which is expressed through working out and presenting a joint and uniform standpoint;
- solidarity – which pertains to members of the EU Council and the European Council pledging to jointly and simultaneously fulfill their commitments, provide each other with assistance and jointly represent their interests. The departure from this value/principle, especially due to the growing pressure on accepting the opt-out policy, has led to the principle of closer cooperation (enhanced cooperation) having been introduced to the treaties;
- coherence – developing a joint message to member states and the outside world.

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<sup>12</sup> J. Habermas, *Nim pojawi się ustrój europejski*, „Gazeta Wyborcza”, 6–7 stycznia 1996, p. 13.



## **Conclusions. The European Council between politicization and democratization**

1. The authority of the Council of the European Union and the European Council is located both in the political system of the European Union and the political systems of member states. This makes the two councils unique institutions that combine two important methods of integration: the intergovernmental and communitarian (supranational) methods.

2. Both councils are part of the decision-making process in both member states and the European Union. This process is not a technocratic or apolitical formula for exercising power. Like other integration procedures and phenomena, it undergoes politicization and democratization.

The politicization of the EU Council and the European Council applies to the level of both the states (governments) and the European Union. On the one hand, both institutions are used by member states as an element of their internal political games, and on the other one, they become very important in ‘playing out’ national preferences, ‘haggling’ between the representatives of member state governments, and in intergovernmental inter-state negotiations, which abound in confrontation, rivalry and competition.

3. The exercise of power and political leadership in the EU by the EU Council and the European Council is an excuse for a serious, internal debate on the future place of both institutions in a (hopefully) post-crisis EU.

4. The determination of the current and future agenda and priorities of the EU Council and the European Council and their dissemination, as well as public discourse regarding the core of their presidency in the European Union are invariably affected by the following factors:

- political stability and economic condition of the EU, especially in the times of global and European crisis;
- factual knowledge and logistic preparation of EU and national public administrations;
- political/party consensus (or lack thereof) regarding the present and the future of integration;

- the attitude of governments and their leaders to European integration;
- the negotiating capability of both councils and their ability to strike the necessary compromises;
- the ability to express common interests at the European level;
- the position of the European Union in the world;
- the effectiveness of government cooperation with internal bodies (Secretariat General, COREPER);
- the correspondence between political arrangements and their implementation as regards political decisions and EU legislation.

## Chapter 3

# **Formal and informal powers of the European Council – positioning, institutional and intergovernmental interactions, functional principles**

BEATA PRZYBYLSKA-MASZNER

### **3.1. Research assumptions**

The European Union has undergone constant institutional reform. Sometimes, these are formal changes reflected in amendments to treaties. However, very often they are an outcome of specific solutions applied in practice, or through introducing certain procedures triggered by the need to respond to various developments. The European Council is an institution whose functioning is particularly marked by the tendency to accrue informal powers. The transformations of the European Council are related both to the progressing institutionalisation and formalisation of its structure and powers, as well as to the emergence of procedures which determine its position and operating practice outside of treaties. Being one of the key institutions of the European Union, the European Council is an extremely interesting subject of research and analysis. The subject of this chapter is to present the European Council in the process of shaping its formal and informal powers. In order to understand the nature of the processes in question, this analysis takes into consideration a range of theoretical achievements. The examination of the historic development of an institution from a specific point in time allows us to observe certain regularities that were not necessarily visible at the moment when this institution was forming. As these processes are covered by Integration Studies, it was decided to examine the development of the European

Council's powers from a historical perspective.<sup>1</sup> Historical institutionalism refers to the interactions between the actors of European integration in the European Union system, which are analysed by taking a documentary and retrospective approach.<sup>2</sup> The passage of time is of great importance here, as it makes it possible to investigate the process of institutional activity, where institutions are also understood as the norms, procedures and principles of integration within the EU system, and their successive impact on the selection of specific strategies, preferences and integration interests.<sup>3</sup> It is therefore assumed that the institutional nature of the European Union, historically, structures the models and forms of internal cooperation, thereby contributing to agreements and compromises or conflicts and disputes. Institutional and historical analysis is an inter-paradigm category which combines the key elements of the world of neo-functionalism and the intergovernmental approach. The role of inevitability is emphasised here in terms of the consequences of institutional choices. Decisions provide the functional basis upon which new historically related political acts are taken. As in the spill over mechanism, they lead to successive sequences of interdependent integration events, and political mechanisms develop as a consequence.<sup>4</sup> We are dealing here with compound decisions consisting of the "old", and its "new" outcome.<sup>5</sup> It resem-

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<sup>1</sup> The following studies also present a historical approach: J. Werts, *The European Council*, London 2008, pp. 2–20; F. Eggermont, *The Changing Role of the European Council in the Institutional Framework of the European Union. Consequences for the European Integration Process*, Cambridge–Antwerp–Portland 2012; P. de Schoutheete, *The European Council*, (in:) J. Peterson, M. Shackleton (eds.), *The Institutions of the European Union*, Oxford 2006; W. Wessels, *The European Council*, London–New York 2016, pp. 1–66.

<sup>2</sup> K. Thelen, *Historical Institutionalism In Comparative Politics*, "Annual Review of Political Science", vol. 2, June 1999, pp. 369–404.

<sup>3</sup> Z. Czachór, *Teoretyczne wyznaczniki zmiany systemowej w Unii Europejskiej. 2014–2019*, "Rocznik Integracji Europejskiej", no. 8, 2014, pp. 19–32.

<sup>4</sup> B. Rosamond, *Theories of European Union Integration*, Macmillan, Basingstoke, 2000, p. 60; R. Riedel, *Spillover in action – neofunctionalism revisited*, "Polish Political Science", vol. XXXVIII, 2008, pp. 88–90.

<sup>5</sup> Z. Czachór, *Kryzys i zaburzona dynamika Unii Europejskiej*, Warszawa 2013, pp. 239–241.

bles a sequence of closely related institutional events in which each decision is transformed by adding new elements to it. What matters are the motives and justifications influencing the decision.

The main obstacle one faces in studying the issues in question is the difficulty of getting access to what actually happens in the European Council. It is deliberately isolated, and access to its meetings is very limited. This is in stark contrast to other EU institutions that follow an extensive information policy, giving access to the databases on the formal aspects of the decision-making process. The European Council limits itself to informing the public about the decisions made, not about the details of the mechanisms of arriving at these decisions. The arguments developed in this chapter draw on the research into the EU's institutional system, in particular the EU decision-making process, and supplement it with original, empirical material obtained in interviews conducted in EU institutions from June 2017 to March 2019. For the range of analysis adopted here, and building on selected case studies from the period 2009–2019, the process tracing method was considered appropriate.<sup>6</sup> It allows the causal mechanisms that explain a given case to be traced. The analysis of legal documents, which determine the scope of transformations of the European Council's function, as well as other source materials, was necessary to trace the process. Network analysis<sup>7</sup> was used to identify inter-institutional ties, which made it possible to study their structure, or the emerging properties of permanent patterns of relationships between agents, which can identify, include, and constrain these agents. Network analysis was used selectively to identify the determinants of the process by which the European Council arrives at political decisions. Against the backdrop of intergovernmental ties, the existing structures of inter-institutional relations that define the European Council's function-

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<sup>6</sup> P. Hall, *Tracing the Progress of Process Tracing*, "European Political Science", vol. 12, 2013, pp. 20–30; K. Ławniczak, *Śledzenie procesu w badaniach politologicznych. Warianty i potencjał zastosowania*, "Przegląd Politologiczny", vol. 1, 2018, pp. 49–61.

<sup>7</sup> E. M. Hafner-Burton, M. Kohler, A. H. Montgomery, *Network Analysis for International Relations*, "International Organisation", vol. 63, issue 3, July 2009, pp. 559–592.

ing are presented. This chapter builds on the starting assumption that due to the need to intensify the EU's effective activity in the face of internal and international challenges, the existing rules of the division of tasks within the EU's institutional system have been significantly modified, strengthening the position of the European Council. Network analysis provided a toolkit to identify these inter-institutional ties. It was particularly important to identify the ability of various actors to increase their decision-making capacity by strengthening, and taking advantage of their position in the network.

### **3.2. The formation of powers in a process of institutional change**

The establishment of the European Council marked an important step in the process of European integration. These meetings of the leaders of member states proved effective, as they resolved deadlocks in the EU decision-making process. The Solemn Declaration on European Union, adopted in Stuttgart in 1983 by the heads of state and government, defined the following tasks of the European Council: “[it] defines approaches to further the construction of Europe and issues general political guidelines for the European Communities and European Political Cooperation; [...] initiates cooperation in new areas of activity; solemnly expresses the common position in questions of external relations.”<sup>8</sup> This provided the grounds for determining the initial scope of powers (later stipulated in the Single European Act and the Maastricht Treaty), which was expanded in practice. It was only under the Treaty of Lisbon that the European Council obtained the status of an EU institution proper. It was included in the primary institutional system of the EU. In studies on the institutional system, the European Council has been described as the driving force, the helm of the European integration process, the machinery of political impulses, or EU political mechanism. Other relevant descriptions mention

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<sup>8</sup> Solemn Declaration on European Union, Stuttgart, 19 June 1983, [https://www.cvce.eu/en/obj/solemn\\_declaration\\_on\\_european\\_union\\_stuttgart\\_19\\_june\\_1983-en-a2e74239-a12b-4efc-b4ce-cd3dec9cf71d.html](https://www.cvce.eu/en/obj/solemn_declaration_on_european_union_stuttgart_19_june_1983-en-a2e74239-a12b-4efc-b4ce-cd3dec9cf71d.html).

“the genuine engine of European integration”,<sup>9</sup> “collective leader” (*chef d’Etat collectif*),<sup>10</sup> “new centre of political gravity”,<sup>11</sup> “antidote to the stagnation of integration processes”,<sup>12</sup> “provisional European government”,<sup>13</sup> “supreme organ”,<sup>14</sup> and “constitutional glue”.<sup>15</sup>

As the institution has operated, the scope of its formal and informal powers has been worked out over the years. An additional, informal set of powers has gradually been developed as an outcome of the practical need to ensure the proper functioning of the causative mechanisms related to the performance of the tasks entrusted to the European Council, which also consciously sought to extend its influence in areas beyond the stipulated obligations in the event that other relevant bodies fail to work effectively. These informal powers are meant to bring practical benefits, both in terms of the management of the institution and inter-institutional processes, as well as in the process of coordinating intergovernmental positions. Importantly, expanding the scope of the European Council’s “powers” should not go beyond the framework of “competences” granted to the EU under its treaties. Zbigniew Czachór points to another aspect, arguing that other factors of the non-formal world of institutional power include the power of authority wielded by organised political decision-makers.<sup>16</sup> Such powers identify the scope of prerogatives to make decisions and perform specific tasks.<sup>17</sup> They are often exercised by adhering to a specific pro-

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<sup>9</sup> P. Magnette, *Le régime politique de l’Union européenne*, Paris 2003, p. 119.

<sup>10</sup> *Ibid.*

<sup>11</sup> U. Puetter, *New intergovernmentalism and institutional change*, 2016, p. 68.

<sup>12</sup> J. Werts, *The European Council*, 2008, p. 18.

<sup>13</sup> *Ibid.*, p. 190.

<sup>14</sup> K. Michałowska-Gorywoda, *System prawno-instytucjonalny. Mechanizm podejmowania decyzji*, (in:) L. Ciamaga, E. Latoszek, K. Michałowska-Gorywoda, L. Oręziak, E. Teichmann (eds.), *Unia Europejska*, Warszawa 1998, p. 51.

<sup>15</sup> This expression refers to the process of merging Community policies with the common foreign and security policy as well as police and judicial cooperation in criminal matters. Cf. M. Westlake, *The Council of the European Union*, London 1995, pp. 30–31.

<sup>16</sup> Z. Czachór, *op. cit.*, p. 243.

<sup>17</sup> J. Stacey, B. Rittberger, *Dynamic of formal and informal institutional change in the EU*, “Journal of European Public Policy” 10(6), 2003, pp. 858–883.

cedure, and in such a case, following this procedure is essential for the task to be performed in a competent manner, frequently regardless of whether or not the intended result has been achieved.

Powers are rooted in the transformation processes of the EU's political system. The meaning of this concept is variable. "Powers" mean not only formal authority under developed procedures or an informal consent to assign them, but also, and often primarily, the practical ability to carry out tasks. Due to this ability, the obligations related to performing various functions are properly carried out and the goals of the organisation are achieved. The conduct of the person performing a given task within the range of powers entrusted to them is closely related to their effectiveness. The system also allows for powers to overlap (shared powers). This is well illustrated by the difficulties in identifying the external representation of the EU, where the presidents of the European Commission, the European Council, and the European Parliament, the High Representative, and the head of the state holding the presidency all have similar tasks within their powers,<sup>18</sup> but when performing these tasks they are functionally limited by the facts that other entities in the institutional system have also been entrusted with similar tasks.

Whether or not powers are properly exercised can be assessed when we know the expected, or planned mode of conduct. The examination of modes applied allows us to determine whether or not the operational principles will lead to achieving the goal.<sup>19</sup> In addition, the granting of powers also means assigning responsibility for accepting and carrying out a task for a specific purpose, typically specified in a treaty. The concept of "powers" takes into account the variability of the conditions in which tasks are carried out, including in particular the possibility of adapting to new challenges, which

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<sup>18</sup> M. G. A. Vicere, *The roles of the President of the European Council and the High Representative in leading EU foreign policy on Kosovo*, "Journal of European Integration", vol. 38, issue 5, 2016.

<sup>19</sup> Perceiving an institution as being effective means accepting its actions, which translates into its relatively stable functioning as long as no changes are required.



may lead to a change in the rules and standards of social behaviour related to carrying out these tasks. Defining the scope of the “powers” of an institution makes it possible to determine the scope of work to be performed mainly by institutional officials and to entrust them with responsibility for individual tasks, which should be carried out in compliance with the rules and with accepted standards of conduct, but should also take into account changing conditions that force these officials to adjust their mode of work to the circumstances. In the case of the European Council, we can talk about the practice of performing duties by institutional officials – members of the European Council, including its president, the president of the European Commission and the High Representative who participate in the meetings, as well as state officials – the heads of governments and state. The third, equally important, institutional element analysed here are the administrative staff providing support to the above-mentioned two types of officials, namely the people working in the office of the president, sherpas and delegation members. The power of an institution is very often expressed by this institution, emphasising its independence and its workers taking an individual approach to carrying out their tasks. This should be associated with their responsibility for carrying out tasks in accordance with provisions of treaties and other acts regulating the functioning of the European Council, but above all with the standards of conduct agreed with the leaders of member states, which may be formalised or not.

### **3.3. The scope of powers versus the institutional position and mechanisms of performing tasks**

In studies which examine the institutional structure of the European Union, several typologies of the powers of the European Council are proposed. Interestingly, the division of powers is an outcome of changes introduced to each revision treaty as regards the abilities of the European Council to act and the actual tasks vested in it. One of the most popular schemes of the division of powers distinguishes

those stipulated in treaties and those non-stipulated in the Treaties;<sup>20</sup> general, understood as following from the strategic character of the European Council, and detailed.<sup>21</sup> After the Treaty of Amsterdam, Philippe de Schoutheete proposed a division into five specific powers: defining political guidelines, settling issues unresolved at lower levels, making decisions in politically sensitive and complex areas, involvement in external affairs, and amending treaties.<sup>22</sup> Z. J. Pietraś designed a different division, defining powers as political (and only exceptionally legislative), supervisory and related to nominating officials.<sup>23</sup> S. Hix distinguished between executive and political powers.<sup>24</sup>

Furthering our considerations on determining the powers of the European Council, we will concentrate on its position in the institutional network system of the European Union in the context of its balancing function in an unstable political system. The approach presented below addresses the functions performed by the European Council and its ability to perform tasks after the Treaty of Lisbon. The assumption here is that the European Council should be defined in terms of structure and function. The former presents the organisational and legal aspect of the European Council in a static sense. It outlines the configurations of links with other entities, decision-making mechanisms and systems, as well as the organisation of the internal management system, including scheduling tasks. The functional aspect addresses the activities and processes carried out in a dynamic sense. It identifies how extended the processes of the execution of tasks are. In the course of this analysis, functional and structural interdependencies had to be distinguished. Structural interdependencies are based on the division of tasks. Functional interdependencies concern the distribution of in-

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<sup>20</sup> M. Gierycz, *Rada Europejska*, (in:) K. A. Wojtaszczyk (ed.), *System instytucjonalny Unii Europejskiej*, Warszawa 2005, pp. 109–117.

<sup>21</sup> K. A. Wojtaszczyk, *Instytucje Unii Europejskiej*, (in:) K. A. Wojtaszczyk (ed.), *Integracja europejska*, Warszawa 2006, p. 98.

<sup>22</sup> P. de Schoutheete, *The European Council*, (in:) J. Peterson, M. Shackelton (eds.), *Institutions of the European Union*, New York 2006, pp. 33–59.

<sup>23</sup> Z. J. Pietraś, *Prawo wspólnotowe i integracja europejska*, Lublin 2005, p. 271.

<sup>24</sup> S. Hix, *System polityczny Unii Europejskiej*, Warszawa 2010, pp. 64–65.

fluence (degree of influence), and can be seen as internal or external relationships. In the following considerations, the European Council is shown within an organisational structure where the interdependencies formed are both functional and structural in three contexts: the European Council being a catalyst of EU development, a political decision-maker, and collective political leader.

### **3.4. The European Council as a catalyst of EU development – a strategic function**

The fundamental task of the European Council is to set the strategic direction of European integration, both in political and economic terms. Coordinating the will of states, the European Council gives political impetus to the subsequent actions of other EU institutions and member states. It is the European Council that identifies the EU's strategic interests, sets goals and indicates the general guidelines of the common foreign and security policy. The European Council has taken, and continues to take decisions in the following areas:

- developing new policies, including the enhancing of cooperation<sup>25</sup> or its communitarisation;
- establishing economic and monetary union, supporting economic development, and, currently, crisis management in the Euro Area;
- further enlargement of the EU and its direction.

Given such a wide range of influence, the European Council can be said to play the role of a catalyst of integration processes.

The first area, developing new policies, takes place at European Council summits. An example may be the beginnings of the common security and defence policy, marked by the summits in Cologne, Helsinki, Santa Maria de Feira and Nice. Similarly, the European Council set out the framework for cooperation in criminal matters, migration policy, anti-drug and counter-terrorism policies. When describing suc-

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<sup>25</sup> A. Faber, *Theoretical Approaches to EU Deepening and Widening: A Multi-disciplinary Overview and Some Tentative (Hypo) theses*, 2000, <http://www.eu-consent.net/library/brx061012/WP%20II%20III%20Paperredefiningconcepts.pdf>.

cessive steps on the path of European integration, we use the names of various European Council meetings, which addressed the new areas of member states' involvement, or the prospect of the EU's territorial expansion. Numerous concepts have emerged which refer to the locations of European Council summits, such as the Copenhagen Criteria, the Luxembourg and Helsinki Groups, the Barcelona Process, the Berlin Agenda, or the Lisbon Strategy. The influence of the European Council on the process of deepening or communitarising individual policies should be emphasised. During the meetings held over the years, the details of institutional reforms and changes in the functioning of individual policies were clarified.<sup>26</sup> Preliminary decisions were taken at European Council meetings, to be later discussed in detail at intergovernmental conferences, leading to passing amendments to the treaties regulating the functioning of the EU.<sup>27</sup> It is within the powers of the European Council to call for a convention or an intergovernmental conference of representatives of member states in order to amend the content of a treaty. Treaties can be amended following the ordinary revision procedure or the simplified revision procedures.<sup>28</sup>

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<sup>26</sup> The provisions of the TFEU on the internal policies and activities of the EU (Part III) may be amended through decisions unanimously adopted by the European Council after consulting the European Parliament and the Commission. In the event of institutional changes in the area of monetary policy, the European Council has to consult the European Central Bank. Any decision of the European Council has to be confirmed by member states in conformity with their respective constitutional requirements.

<sup>27</sup> At the extraordinary meeting in Turin in March 1996, the decision was taken to convene an intergovernmental conference that led to the revision of the treaties which was subsequently approved by the European Council in Amsterdam in June 1997. The Helsinki European Council in December 1999 convened an intergovernmental conference to prepare the Treaty of Nice. In Laeken, on 14–15 December 2001, the European Council decided to call a Convention for the Future of Europe to prepare the next intergovernmental conference, which resulted in the draft Treaty establishing a Constitution for Europe, approved at the Thessaloniki European Council in June 2003. The negative result of the referendum made it impossible to ratify this treaty, but on 21–22 June 2007, the European Council agreed on the mandate for the next intergovernmental conference, which resulted in the Lisbon Treaty.

<sup>28</sup> Under the ordinary revision procedure, the president of the European Council, after a relevant decision by the European Council, after consulting the Europe-

Importantly, the European Council has yet another task, that of ensuring the proper monitoring of the ratification process of revision treaties. The European Council has an obligation to react in the event of ratification delays.

Secondly, the European Council also influenced the course of economic integration, pursuing the establishment of the Economic and Monetary Union (Madrid 1989, Strasbourg 1989, Dublin 1990). The Dublin European Council decided to commence the work of the intergovernmental conference on monetary union and to convene the second intergovernmental conference on political union. Also currently, the European Council, on the basis of Council reports, develops conclusions on the broad guidelines for the economic policies of member states and the EU (Article 121 TFEU), and accepts annual reports of the European Central Bank on the activities of the European System of Central Banks and on monetary policy. The European Council has the important task of approving strategic documents setting key determinants of economic development, for example, the Lisbon Strategy adopted at the Lisbon summit in 2000.<sup>29</sup> The fundamental premise of the Lisbon Strategy is to transform the European economy into a world leader. It was also at the Lisbon summit that the decisions

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an Parliament and the Commission, may call a convention to consider amendments to the treaties proposed by member states, the European Parliament or the Commission. The convention consists of the representatives of national parliaments, the European Parliament, the Commission and the heads of government and state. The European Central Bank is also consulted when institutional changes in the monetary area are proposed. The convention examines the proposed amendments and adopts (by consensus) a recommendation for an intergovernmental conference. At this conference, the representatives of member states agree on the content of a treaty amending the provisions previously in force. If the scope of the proposed amendments to the treaties does not justify calling a convention, the European Council, after obtaining the consent of the European Parliament, can decide on the mandate of the intergovernmental conference by a simple majority. Simplified revision procedures apply to selected policy areas. Provisions of the treaty allow the European Council to amend its content after consultations or with the consent of other institutions.

<sup>29</sup> Cf. Presidency Conclusions, Lisbon European Council, 24 March 2000, no. 100/1/00.

were made that the spring meetings of the European Council (organised in March) would address the EU's budget and finances and verify the assumptions of the implementation of the EU's economic development. In February 2005, a draft of the Strategy for Growth and Jobs was developed. The experiences from the implementation of the Lisbon Strategy laid the foundation for the preparation of the next document, the Strategy for smart, sustainable and inclusive growth, which was adopted by the European Council on 17 June. While continuing the previous strategy, at the same time it was a new programme for the socio-economic development of the European Union for the following decade.<sup>30</sup> The enhanced open method of coordination (OMC) was adopted for the purpose of its implementation.<sup>31</sup> Due to the adoption of strategies in the field of coordination of economic and social policies, the European Council has been viewed as a political decision-making centre which forms the economic underpinning of Economic and Monetary Union. The main difficulty is that the European Council – giving guidelines, coordinating and verifying the actions taken – has a limited impact on the achievement of the economic results planned.

The European Council also initiates corrective actions and actions for crisis management in relation to the situation in the Euro Area. In March 2010, at the height of the sovereign debt crisis, the European Council decided to create a Task Force for financial management.<sup>32</sup>

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<sup>30</sup> Cf. part I, *Europa 2020: Nowa Europejska Strategia na rzecz zatrudnienia i wzrostu gospodarczego*, Konkluzje Rady Europejskiej, 25–26 marca 2010, EUCO 7/10; *Nowa Europejska Strategia na rzecz zatrudnienia i wzrostu gospodarczego*, Konkluzje Rady Europejskiej, 17 czerwca 2010, EUCO 13/10; Komunikat Komisji *Europa 2020. Strategia na rzecz inteligentnego i zrównoważonego rozwoju sprzyjającego włączeniu społecznemu*, Bruksela, 3.3.2010, KOM(2010) 2020.

<sup>31</sup> This new intergovernmental method of EU governance consists of common goals being agreed at the European level and then transferred to the national level through programmes implemented in member states. The cooperation of member states is exercised on the assumption that the influence of European institutions is limited. The OMC is applied to “sensitive political areas” where the methods hitherto used have been difficult to apply, that is in policies for education, migration, and employment, as well as economic policy coordination and culture.

<sup>32</sup> The Task Force was headed by Herman van Rompuy. It was composed of the ministers of finance of the 27 EU states.

The Task Force was required to develop proposals to improve the crisis resolution framework and increase budgetary discipline. The president of the European Council, who acted as the chief negotiator, supported by his own personnel as well as that of the presidency, played a significant role in the process.<sup>33</sup> The final report presented at the 28–29 September 2010 summit set out the main political recommendations and concrete proposals agreed by the Task Force as well as the guidelines on how to implement them in five areas: fiscal discipline and increased economic surveillance; deeper and wider coordination; a solid crisis management framework; stronger institutions and more effective and rule-based decision-making. The findings of the Task Force influenced the shape of the Stability Pact.

The European Council can be relied on in crisis management. In 2011, in response to the Euro Area crisis, the leaders of Euro Area member states, together with the leaders of Bulgaria, Denmark, Lithuania, Latvia, Poland and Romania, adopted the Euro Plus Pact (formerly the Euro Pact), which introduced stricter economic policy coordination to increase competitiveness and convergence.<sup>34</sup> This document confirmed the division of EU states. Member states with the euro as their currency launched the European Stability Mechanism (ESM) to protect the Euro Area. The ESM was to replace the European Financial Stability Facility and the European Financial Stability Mechanism in providing external financial assistance to Euro Area member states after June 2013. With regard to the above changes, the practice of informal meetings of the heads of government and state of the Euro Area was introduced. The possibility of calling a separate meeting, commonly known as the European Council of the Euro Area (summit of Euro Area states), was confirmed by the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union of

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<sup>33</sup> Sprawozdanie końcowe grupy zadaniowej dla Rady Europejskiej, 21 października 2010 r., Bruksela, 15302/10.

<sup>34</sup> Cf. Annex I, *Pakt Euro Plus ściślejsza koordynacja polityki gospodarczej służąca zwiększeniu konkurencyjności i konwergencji*, Konkluzje, Rada Europejska, 24–25 marca 2011.

March 2, 2012.<sup>35</sup> The Council of the Euro Area is composed of the heads of state and government from the Euro Area and the president of the European Commission. The president of the European Central Bank participates in the informal meetings of the Euro Area summits. The heads of state and government of Euro Area states appoint the president of their summits by a simple majority vote. This appointment takes place at the same time as the European Council elects its president. The term of office of both presidents is 2.5 years. On the first day of the March summit in 2012, after the head of the European Council, Herman Van Rompuy, was elected for his second 2.5-year term, he was also elected president of the Euro Area summits. The functions of both presidents were combined during the two terms of his office and the terms of his successors. Euro Area summits address the issues of the shared responsibility of the states with the euro with regard to the currency they all share, other matters pertaining to the governance of the Euro Area and the applicable rules, and strategic guidelines on the economic policies conducted in order to increase convergence in the Euro Area. The meetings are prepared by the president of the summit in cooperation with the president of the European Commission. The preparation of summits of Euro Area states and the follow-up activities are also the responsibility of the Eurogroup, and its president may be invited to the meetings. After each Euro Area summit, its president is obliged to present a report on the proceedings to the European Parliament. The heads of state and government of the states outside the Euro Area which have ratified the Treaty may participate in the talks at Euro Area summits.<sup>36</sup>

As concerns economic development, the special powers vested in the European Council also apply to considerations on the employment

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<sup>35</sup> The Treaty entered into force on 1 January 2013.

<sup>36</sup> Pursuant to Art. 12 of the Treaty on Stability, Coordination and Governance of the Economic and Monetary Union, these countries take part in the talks on competitiveness, changes to the general structure of the Euro Area and its future basic principles, as well as, where appropriate and at least once every year, in debates on specific issues related to the implementation of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.



situation in the EU, followed by adopting conclusions on the basis of a joint report by the Council and the Commission (Art. 148 TFEU). The Treaty of Amsterdam gives the European Council the power to issue employment policy guidelines applicable to all member states. The first guidelines were adopted during the European Council in Luxembourg in November 1997. Interestingly, during this summit, in the face of high unemployment, the European Council adopted the European Employment Strategy. This marks the beginning of the Luxembourg Process, whereby efforts to improve the EU labour market intensified. Importantly, this strategy employed the open method of coordination (OMC), which later expanded to other areas, such as education and training. The strategy played an important role in coordinating EU policies aimed at implementing its goals through actions taken by member states.<sup>37</sup> Building on the annual conclusions of the European Council, the Council, upon request of the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee, draws up guidelines to be taken into account by member states in their employment policies.

Third, the European Council also determines the conditions for the future enlargements of the European Union. It actively works out enlargement decisions and conducts dialogues with candidate countries. The European Council was also a key element of the system for negotiating the withdrawal of the United Kingdom from the EU, and, after its leaving, it was the main decision-maker on the post-Brexit conditions. The European Council prepared guidelines that defined the scope and pace of the negotiations. The main concern was the interests of the European Union and its member states. In practice, the British government had to conform to the negotiation model of the EU.<sup>38</sup> It was at the level of the European Council that all the diffi-

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<sup>37</sup> The open method of coordination applied in the Luxembourg process proved to be effective, allowing it to become a model to be pursued in other policy areas.

<sup>38</sup> A. Jaskulski, *The role of the European Council in the Brexit negotiations and in shaping the “new” foreign policy of the European Union*, “Środkowoeuropejskie Studia Polityczne”, no. 4, 2017, p. 141.

cult behind-the-scenes talks were held, in which the EU was expected to demonstrate that the decision of the UK was detrimental to it and would generate a number of problems in relations, while at the same time building future relationships to protect common interests.

### 3.4. The European Council as a political decision-maker

The process of political decision-making in the European Union can be analysed in the context of multi-level governance.<sup>39</sup> The concept of multi-level governance does not directly challenge the assumption that nation states are the main actors in international relations, but it adds supranational actors to this approach, which means that statehood as such is not depreciated.<sup>40</sup> Intergovernmentalism can be viewed as a “negative hero of integration”<sup>41</sup> of the EU’s system, therefore, at the theoretical level, the concept of multi-level governance is a compromise solution applied in the considerations below.

The European Council is not a legislative institution, but as a political decision-maker it constantly interacts with the Council of the

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<sup>39</sup> Princen presented very interesting research assumptions of this analysis. He indicated four stages of developing specific policies and proposed methodological tools for their analysis. The four stages are as follows: (1) agenda setting; (2) policy formulation, which should be examined via network analysis; (3) policy decision, most often studied by means of institutional analysis; and (4) policy implementation. Cf. S. Princen, *Agenda-Setting Strategies in EU Policy Process*, “Journal of European Public Policy, 18 (7), pp. 927–943; S. Princen, *Agenda-setting and the formation of an EU policy-making state*, (in:) J. Richardson (ed.), *Constructing a Policy-Making State? Policy Dynamics in the EU*, Oxford 2012, pp. 29–45.

<sup>40</sup> R. Riedel (2010), *Conditionality – czyli europeizacja otoczenia Unii Europejskiej*, (in:) A. Paczeński, R. Riedel (eds.), *Europeizacja. Mechanizmy, Wymiary, Efekty*, Oslo–Toruń–Wrocław 2010. For the model of multi-level governance illustrating the progressive erosion of nation states in Europe, which replace traditional sovereignty including other actors in the governance process, see: G. Marks, *Structural Policy and Multi-level governance in the EC*, (in:) A. Cafurny, G. Rosenthal (eds.), *The state of European Community: The Maastricht Debate and Beyond*, New York 1993.

<sup>41</sup> P. J. Borkowski, *Międzyrządowość w procesie integracji europejskiej*, Warszawa 2013, p. 433.

European Union and the European Commission. Over the years, its influence on the former has evolved and institutional interactions have changed. There is a visible tendency to extend the competences of the European Council to the areas previously reserved for the Council of the European Union. Earlier provisions allowed the European Council to change its role and become a council composed of the heads of government and state making legally binding decisions.<sup>42</sup> This composition of the European Council was not established until the Maastricht Treaty. Before that, it had functioned without a clear foundation in treaties. After the Treaty of Nice, the council in this composition could take decisions in the event of a breach of common rules by a member state. It also deliberated on the appointment of the president of the European Commission and the head of the ECB, and amendments to the ECB's statute (including decisions 2009/532/EC, 2003/223/EC). This solution was applied in particular with respect to Economic and Monetary Union. The decisions in questions concerned the third stage of its establishment (Decision 98/317/EC) and the possible repeal of the derogation on the participation of a member state in EMU. The Treaty of Lisbon ruled out a European Council composed exclusively of the heads of state and government and the scope of its decision-making powers was assigned to the new composition of the European Council or the Council of the European Union (exclusively repealing the derogation under the EMU).

Since the Lisbon Treaty, the European Council has made direct decisions concerning the following:

- appointments to various EU bodies;<sup>43</sup>

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<sup>42</sup> Cf. C. Mik, *Europejskie prawo wspólnotowe. Zagadnienia teorii i praktyki*, vol. 1, Warszawa 2000, pp. 130–132.

<sup>43</sup> The scope of nominating powers deserves to be mentioned. The European Council appoints the European Commission, and under a separate procedure appoints also its own president and the High Representative of the Union for Foreign Affairs and Security Policy. It also appoints the president, vice-president and members of the executive board of the European Central Bank. Nomination decisions are made by a qualified majority (the decision to appoint its president, elect a candidate for the office of president of the European Commission, appoint the High Representative for Foreign Affairs and Security Policy, and the president of

- bridging (or *passerelle*) procedures<sup>44</sup> (the transition from special to ordinary procedure (Art. 48(7) TEU), suspending the ordinary legislative procedure (Art. 48 TFEU, Art. 82(3) TFEU, Art. 83(3) TFEU) and the transition from unanimity to qualified majority voting in the Council of the European Union);
- enhanced cooperation (at the request of a state representative, the European Council may decide whether or not enhanced cooperation can be established in a particular field, Art. 20 TEU);
- cooperation of the police and judiciary on criminal matters (pursuant to Art. 68 TFEU, “the European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice”);
- the procedure for adopting admission criteria for states considered by the Council of the European Union under the enlargement procedure (Art. 49 TEU);
- common foreign and security policy;
- the establishment of common defence (Art. 42(2) TEU).

The most interesting area where the European Council plays a key role is the common foreign and security policy. By giving the EU the impetus for its development, the European Council determines general political directions and lays down general principles and guidelines for the common foreign and security policy. General guidelines also apply to matters with political and defence-related implications.

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the European Central Bank). Pursuant to Art. 14 TEU, on the initiative of the European Parliament and after obtaining its consent, the European Council unanimously adopts the composition of the European Parliament.

<sup>44</sup> Several binding clauses were introduced in the Lisbon provisions allowing the European Council to change the decision-making procedure from unanimity to majority voting, by virtue of what is called a bridging (*passerelle*) procedure. It permits the European Council to change the special legislative procedure required by treaties into the ordinary legislative procedure. Decisions to apply the bridging clause are adopted by the European Council unanimously, after obtaining the consent of the European Parliament and provided that no national parliaments of member states object within six months of being informed of the intention of the European Council to take such a decision. Under the Common Foreign and Security Policy, the European Council can, without consultation, but unanimously, decide to change the voting procedure from unanimity to qualified majority.

The European Council can decide to adopt common defence (this option, provided in the treaty in 1993 has not been used so far). Since the beginning of the 1990s, foreign and security policy has been an important part of every agenda of the European Council. The adopted arrangements concerned selected topics and territories. The meetings addressed, among other things, disarmament, combating terrorism, and conflict resolution. The EU has become an actor with global interests, implementing its foreign policy in all parts of the world, especially in its neighbourhood.<sup>45</sup> Researchers who examine the European Council's agenda confirm that international affairs are among the dominant topics at European Council meetings.<sup>46</sup> Foreign policy was the third most common topic on the agenda in the period from December 2014 to June 2017 (12% rate of attention).<sup>47</sup> As a result, the European Council is viewed as playing the "leading role" in responding to international challenges. The conflict of interests between member states means that, without the European Council, any foreign policy would be impossible in the European Union. Foreign policy and the European Council are two closely related structures in the integration process, namely a policy and an institutional actor respectively. To understand the development, goals, possibilities, ideas and values of the EU's foreign policy, it has to be examined primarily in terms of the activities of the European Council. It is the European Council that expresses the EU's positions, whereby the EU as a whole is viewed as a promoter of interests and values in external relations. The European

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<sup>45</sup> J. Jańczak, *The European Council and the European Union's external activities. Forming relations with eastern neighbors*, "Przeгляд Politologiczny", no. 1, 2018, pp. 63–72.

<sup>46</sup> P. Alexandrova, M. Carammia, A. Timmermans, *High politics: The policy agenda of the European Council, 1975–2011.*, (in:) F. Foret, Y-S. Rittelmeyer (eds.), *The European Council and European Governance. The Commanding Heights of the EU*, London 2012, pp. 53–72; P. Alexandrova, M. Carammia, S. Princen, A. Timmermans, *Measuring the European Council agenda: Introduction a new approach and dataset*, "European Union Politics", vol. 15, issue 1, 2014, pp. 152–167.

<sup>47</sup> M. Carammia, *Analysis of agenda setting in the European Council, December 2014–June 2017*, European Parliamentary Research Service, September 2017, pp. 19–20.

Council develops the strategic documents of this policy. Even though ultimately they may have little impact on reality, they nevertheless provide clear guidelines as to the direction of political actions.

The European Union exerts influence on the international environment through its economic, political and military power.<sup>48</sup> It is a powerful centre of political influence, and one that influences its surroundings. This can be dubbed “external governance”. Janusz Ruskowski argues that external governance is an element of multi-level governance in the EU, combined with global governance. External governance is a method applied in implementing Europeanisation, as it facilitates the transfer of EU regulations and their adoption by non-member states. External governance is part of broadly understood governance in the EU’s political system, and one of its fundamental concepts.<sup>49</sup> The method of performing external governance by the European Council relies on external actions which can have political, financial, aid or other character.<sup>50</sup> In a situation where the EU sets its own political solutions and standards building on a compromise in the European Council, such political standards can serve as models of conduct for actors from outside the EU. The president of the European Council and their cabinet propose practical solutions which, combined with their international activity, foster the development of cooperation with other entities from outside the EU – third countries and international organisations. The European Council co-creates international solutions, as was the case with the agreement

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<sup>48</sup> Por. H. Sjursen, *The EU as a ‘normative’ power: how can this be?*, “Journal of European Public Policy”, 13:2, 2006, pp. 235–251; H. Sjursen, *What Kind of Power?*, “Journal of European Public Policy”, no. 13/2006, pp. 169–181; A. Skolimowska, *The European Union as a ‘Normative Power’ in International Relations. Theoretical and Empirical Challenges*, “Yearbook of Polish European Studies”, vol. 18/2015, pp. 111–131.

<sup>49</sup> J. Ruskowski, *Europeizacja ad extra w zarządzaniu zewnętrznym (external governance) Unii Europejskiej*, “Rocznik Integracji Europejskiej”, (4), 2010, pp. 7–12.

<sup>50</sup> D. Milczarek, K. Zajączkowski, *Potęga i niemoc. Unia Europejska jako aktor w stosunkach międzynarodowych (część 2)*, “Studia Europejskie”, vol. 1, 2015, p. 11.

with Iran. The president and their cabinet play a large part in international activities (such as attending international meetings – bilateral summits and G7 summits), although in this respect the powers of the president of the European Council overlap with those of the president of the European Commission (double hat representation). With regard to the institutional interdependence between the European Council and the European Commission, we can speak of a kind of competition on the international scene, especially in the area of representation.<sup>51</sup>

In recent years, the European Council has grown in importance in times of sudden and unforeseen events, where a relatively quick and efficient response has been required in the face of severe international crises.<sup>52</sup> In this respect, the role of the president of the European Council is of immense importance.<sup>53</sup> The European Council is viewed as a key actor capable of responding to emergencies on behalf of the EU in a swift and concrete manner.<sup>54</sup> Tasks and responsibilities to coordinate responses are transferred to the president of the European Council and their cabinet. The process of this transfer intensified during the term of Donald Tusk, who carried out his tasks both in the face of the immigration crisis and in the context of Brexit.<sup>55</sup> It deserves to

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<sup>51</sup> The European Council takes independent decisions which, in principle, do not have to follow a request from the Commission and do not require the involvement of the European Parliament. The Treaty of Lisbon provides for organisational links with the Commission, as its president is part of the European Council and the High Representative for Foreign Affairs and Security Policy takes part in deliberations. The European Council can request the European Commission to submit reports. Under the Treaty of Lisbon, the High Representative of the Union for Foreign Affairs and Security Policy constitutes an additional body that plans and implements foreign policy on behalf of the European Council. The president of the European Council represents the EU outside in matters related to the common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy.

<sup>52</sup> D. Kabat-Rudnicka, *Zmiana system rządu w Unii Europejskiej w świetle działań antykryzysowych*, “Studia Europejskie”, vol. 1, 2016, pp. 81–82.

<sup>53</sup> G. Edwards, *The Patterns of the EU's Global Activity*, (in:) C. Hill, M. Smith (eds.), *International Relations and the European Union*, Oxford 2011, pp. 44–74.

<sup>54</sup> W. Wessels, op. cit., pp. 220–223.

<sup>55</sup> Interviewee EU-19/EC 3, 20.04.2019; EU-19/EC9, 19.09.2019.

be mentioned that in resolving crises, the European Council is augmented by closely cooperating with the European Commission and its president. Numerous detailed tasks of the European Council can be named in the field of EU external actions, such as, above all, forming or supporting new international initiatives and promoting and transferring values and principles, including democracy, protection of human rights, solidarity, and the rule of law. As regards the enlargement policy, these values are included in the membership criteria adopted by the European Council.

As well as its political decision-making power, the European Council is in charge of the control mechanism of other institutions in terms of the scope of tasks vested in them. It also has a “nuclear option” in its hands, namely the possibility of suspending a state as an EU member. The European Council can supervise the tasks and activities to be performed by other EU institutions. This mainly concerns the European Commission and the Council of the European Union (including the presidency); in recent years, mainly in the area of Economic and Monetary Union, Common Foreign and Security Policy, Common Security and Defence Policy, and the Area of Freedom, Security and Justice. As part of specific monitoring, the European Council examines the conduct and actions of member states and EU institutions. This applies in particular to crises in the EU and its crisis management subsystem. It has been tested repeatedly, especially during the successive crises in the Euro Area, the migration crisis and Brexit. On the other hand, the European Council itself is subjected to monitoring and political control by the European Parliament, to which the president of the European Council reports after each meeting of the Council. The European Council has yet another power, whereby it can suspend the rights of a member state due to a serious breach by that state of the EU’s rules. So far, the procedure initiated pursuant to Article 7(2) of the Treaty on European Union, has never found such a breach. According to this article, “The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach



by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.”<sup>56</sup>

The exercise of powers is closely related to the assigned institutional functions. The table below presents the scope of institutional functions and related tasks by the European Council. It illustrates how extensive the activity of the European Council is, which includes the above-discussed coordination of positions, conducting negotiations, developing long-term political strategies and *ad hoc* political solutions, political decision-making, interinstitutional control, and international activity. Communication is the last element. The interest in the work of the European Council has been growing from year to year. On the days of its meetings, accreditations are issued to thousands of journalists from dozens of countries around the world. They are serviced by the Press Office. The media give a lot of attention to the growing role of this political centre of Europe, also attracting the public interest in the results of the European Council’s work. The tasks of the European Council also include providing information about its undertakings and building the image of an institution that is open to the public.

**Table 1. Institutional functions assigned to the European Council**

Institutional function	Related tasks
1	2
Coordination of positions	administrative role; performing tasks assigned at meetings by the leaders of member states under a specific mandate
Negotiating platform	negotiating to find a compromise solution
Developing long-term political strategies	identifying and articulating political problems, finding political solutions and focussing public attention on them
Developing <i>ad hoc</i> political solutions	initiating talks to work out political solutions; presenting proposals of new response instruments (composed of several proposals) in order to obtain a consensus; effective mediation between member states based on the highest possible degree of the convergence of interests

<sup>56</sup> Having determined the existence of such a breach, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the member state in question, including the voting rights of the representative of the government of that member state in the Council.

1	2
Interinstitutional control	monitoring and reporting on the activities of other institutions
Political decision-making	developing political decisions defined in the conclusions after the summits
Communications	institutional representation facilitating the flow of information about the activities of the European Council, building the image of an institution maintaining relations with the public and with other entities on the international arena; contact with the public through the media
International activity – relations with third parties	creating a broad political base to develop the Council's own political strategy, cooperation with third countries and international organisations

**Source:** Own elaboration.

### ***3.4.1. The mechanism of political decision-making in the European Council***

The European Council is a forum for the exchange of views and arriving at political consensus on all areas of EU policy, even sensitive ones. This is also where political conflicts emerge. The above-mentioned political sensitivity is best demonstrated when trying to work out a common position.<sup>57</sup> Herman van Rompuy described it well, saying that “[d]ealing with the tension between unity and diversity remains the daily bread of our Union.”<sup>58</sup> This platform for the exchange of views is the arena of conflict between the interest of the state and the arguments of other member states, a confrontation that can lead to compromise solutions.<sup>59</sup> The European Council is involved in the areas where other institutions (including the Council of the European

<sup>57</sup> J. P. Aus (2010), *The Mechanisms of Consensus: Coming to Agreement on Community Asylum Policy*, (in:) D. Naurin, H. Wallace (eds.), *Unveiling the Council of the European Union. Games Governments Play in Brussels*, Basingstoke 2010.

<sup>58</sup> *Rada Europejska 2011*, Sekretariat Generalny Rady, Luksemburg, UPUE, styczeń 2012, p. 5.

<sup>59</sup> Interviewee EU-18/PR 6, 19.04.2018.

Union) are unable to respond.<sup>60</sup> The direction the remaining institutions should adopt in their operations is indicated in the conclusions with such phrases as “encourages the development of...”, “calls for action in the area of...”, “confirms support for the initiative...”, “agrees to take steps to...” and so on.

The European Council can issue formal decisions as well as conclusions, declarations, statements, strategies and reports. Its legally non-binding instruments cannot be subjected to legality review by the Court of Justice. Its decisions, however, may be brought before the Court of Justice for review of legality. Declarations express intentions of members of the European Council to accept future commitments in the European or international arena. In foreign policy, they most often concern relations with certain third countries or regions of neighbourhood or partnership. Statements express the approval or disapproval, satisfaction, consent or condemnation of events on the European and global arena and are declarative in nature. They send a message to the public and express a common opinion on a given topic. They can be divided into statements by the heads of state and government, statements by the heads of state and government of the Euro Area, statements by the European Council, and statements by the Eurogroup. The last term of office of the president of the European Council featured a novel type of document, namely the president’s letters to the European Council’s members. Conclusions are the most awaited outcome of deliberations in the European Council. They can be viewed as political documents summarising each summit. The president of the European Council prepares draft guidelines to the conclusions of the European Council, as well as draft conclusions and draft decisions of the European Council, which are debated in the General Affairs Council. Thus, the provisions in the conclusions of the European Council can be considered to be political decisions the outcome of which will result from the actions of the Commission, the Council of the European Union, and the European Parliament in the legislative process.<sup>61</sup> Sometimes, the time which

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<sup>60</sup> Interviewee EU-18/EC 5, 20.11.2018; Interview EU-18/EEAS 3, 18.06.2018.

<sup>61</sup> The nature of political decision-making at the level of the European Council means that these decisions translate not only into the general priorities of the ac-

lapses between the decisions of the European Council and those of the Council is long enough for the circumstances to change, resulting in abandoning the relevant decision on a given matter, or seeking a bigger compromise than the original legal solution proposed.

In general, the decisions of the European Council are made by consensus. In order to achieve this, the parties involved must act in a certain way. Member states and their representatives are expected to “show a high degree of commitment to consensus seeking.”<sup>62</sup> It is important to announce after the summit that all parties succeeded, in line with the principle that “decisions should be legitimised by everybody”, “a compromise can always be reached” and “every summit is a success.”<sup>63</sup> The European Council acts according to the consensus principle, which means that even though decisions on certain issues can formally be made by a qualified majority, it rarely happens in practice. Consensus is viewed as the defining element of the EU’s “political identity.”<sup>64</sup> The European Council can understand consensus as the absence of clear objections. This means that a consensual decision does not have to be supported by everyone, but its opponents choose not to raise their objections,<sup>65</sup> possibly due to political calcula-

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tions of heads of state and government, but also into genuine legally binding regulations forged in the legislative process of the European Commission, the Council of the European Union and the European Parliament. The political initiative of the European Council therefore appears to have political influence on the legislative process.

<sup>62</sup> U. Puetter, *The European Council and the Council: new intergovernmentalism and institutional change*, Oxford 2014, p. 59.

<sup>63</sup> Interviewee EU-19/EC0 5, 17.06.2019; Interviewee EU-18/EC5, 20.11.2018; Interviewee EU-18/EC7, 20.04.2018.

<sup>64</sup> D. Heisenberg, *The Institution of “Consensus” in the European Union: Formal Versus Informal Decision-Making in the Council*, “European Journal of Political Research”, 44 (2005), pp. 65–90; J. P. Aus, *The Mechanism of Consensus: Coming to Agreement on Community Asylum Policy*, (in:) D. Naurin, H. Wallace (eds.), *Unveiling the Council of the European Union*, Palgrave Macmillan, 2008.

<sup>65</sup> S. Novak, O. Rozenberg, S. Bendjaballah, *Enduring consensus: why the EU legislative process stays the same*, “Journal of European Integration”, vol. 43, issue 4, 2021, pp. 475–493. Also cf.: O. Elgström, C. Jönsson, *Negotiation in the European Union: Bargaining or Problem-solving?*, “Journal of European Public Policy”, 7 (5), 2000, pp. 684–704.

tion or lack of interest in the matter. Chelotti points out that cooperation practices at the European level are limited by the national orientations of the actors involved.<sup>66</sup> Puetter argues that consensus seeking reflects the desire of member state governments to act collectively, even in the absence of the EU's powers.<sup>67</sup> In order to understand how consensus is achieved in the European Council, the analysis of the conduct of politicians participating in the meetings is important. In the European Council, "class counts", and "good relations between politicians are a recipe for a successful summit."<sup>68</sup> It is essential whether or not a given leader prepares a good argumentation strategy. The power of influence equals political strength, and consists of, among other things, experience, language skills, interpersonal skills, and political charisma. Tallberg, when examining the negotiating power of states in the European Council, applied negotiation theories. He described three sources of this negotiation power, namely state-related, institutional and individual, including the properties and skills of specific persons representing a given state or institution.<sup>69</sup> The results of his research clearly indicated that state-related sources of negotiating power dominated in the decision-making practice of the European Council.

The election of Donald Tusk for a second term as president of the European Council on 9 March 2017 was a very interesting case of applying the principle of consensus in practice. In the short practice of electing the president, this used to be a simple decision which did not stir political emotions, unlike the election of the president of the European Commission. Although the treaty admits the vote, until then appointment decisions were made by consensus. However, in this case, for the first time, the president of the European Council was not elect-

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<sup>66</sup> N. Chelotti, *Transgovernmental networks and rationalist outputs? The partial social construction of EU foreign policy*, "European Security", vol. 25, no. 4, 2016, pp. 23–25.

<sup>67</sup> U. Puetter, *The centrality of consensus and Deliberation in Contemporary EU Politics and the new intergovernmentalism*, "Journal of European Integration", vol. 38, no. 5, 2016, p. 603.

<sup>68</sup> Interviewee EU-19/EC 2a, 19.09.2019.

<sup>69</sup> J. Tallberg, *Bargaining Power in the European Council*, "Journal of Common Market Studies", vol. 46, no. 3.

ed by the unanimous consent of all member states. Objections were raised by Poland, the country where Donald Tusk was prime minister from 2007 to 2014. This demonstrated that a member state that wants to use the practice of consensus building to pursue its own particular interests, regardless of the position of others, will not be accepted in an environment that seeks compromise.<sup>70</sup> Blocking decisions is interpreted as imposing one's position on other member states.<sup>71</sup> Choosing such a course of action results in being misunderstood.<sup>72</sup> Poland nominated a different candidate, but the application which was ultimately processed was that supported by a majority of the states. The prime minister of the country holding the presidency in the EU at the time presided over that session (the president of the Council of Europe did not participate in the deliberations concerning his election) and proposed the candidacy of Donald Tusk asking "whether anyone, apart from Poland, opposes his election."<sup>73</sup> This election produced a number of procedural challenges for the legal service of the European Council and, consequently, generated the idea of formalising the rules for the election of the president in the future. The information about the election of the president was not announced in the Conclusions, but in the Conclusions by the President of the European Council. This vote showed that the apparent consensus in the European Council does not always fully correspond to the reality of the decision-making processes. Seeking consensus does not mean accepting a veto.<sup>74</sup> Although a justified reservation of even a single state may be significant in the European Council, it is worth remembering that the goal of the intergovernmental decision-making process in the EU is to meet the objective of arriving at a decision. Allowing "informal veto" rules to be introduced might jeopardise the effectiveness of decision-making at the level of the European Council.

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<sup>70</sup> Interviewee EU-18/PR 1, 19.04.2018; EU-18/PR7, 15.07.2018.

<sup>71</sup> König T., Junge D. (2010), *Veto Players Theory and Consensus Behaviour*, in: *Unveiling the Council of the European Union. Games Governments Play in Brussels*, D. Naurin, H. Wallace (eds.), Palgrave, Basingstoke.

<sup>72</sup> Interviewee EU-19/Eco 0, 16.06.2019.

<sup>73</sup> Interviewee EU-19/EC 1, 19.09.2019.

<sup>74</sup> Interviewee EU-18/PR 6, 19.04.2018.

A vote can be held only on a limited number of matters stipulated by the Lisbon Treaty. Often, even if a vote is permitted, the consensus mode is chosen. If there is a vote on a decision, it is held at the request of the president. Taking into account the voting method, there are unanimous decisions, decisions by a majority vote, decisions taken by a simple majority (of a procedural nature).<sup>75</sup> The voting quorum required amounts to 2/3 of the members, excluding the presidents of the European Council and the European Commission, who do not vote. In the absence of a state representative, one of the other state representatives can act on their behalf. If the representatives of more than one state are absent, the state present at the meeting can act on behalf of not more than one state. Votes on matters specified by the Lisbon Treaty are held on the initiative of the president of the European Council.<sup>76</sup> Procedural decisions adopted by the European Council under its Rules of Procedure require a simple majority. In urgent matters, upon the president's request, a written procedure for making decisions is admissible. All members of the European Council have to consent to the written vote. Among the binding decisions of the European Council adopted by voting after the Lisbon Treaty, the European Council Decision of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro should be mentioned.

### ***3.4.2. The principles of functional dependencies in the work of the European Council***

Summarising the considerations so far, it should be noted that the principles shaping functional dependencies in the European Council

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<sup>75</sup> Article 235(3) TEU reads that “the European Council shall act by a simple majority for procedural questions and for the adoption of its Rules of Procedure.” Cf. Decyzja Rady Europejskiej z dnia 1 grudnia 2009 r. w sprawie przyjęcia regulaminu wewnętrznego (2009/882/UE), 2.12.2009, L 315/51.

<sup>76</sup> The president is required to conduct a vote at the initiative of the member of the European Council.

have been developed in two areas: structure and management in the process of political decision-making. They include the principle of coordination, the principle of cooperation, the principle of information dependencies, the principle of organising operational dependencies, the principle of maximising impact, as well as the principle of direct and concentric contact, the principle of consensus, and the principle of communication (stressing the success after each summit). The principles from both areas are discussed below, in terms of the process of establishing functional links.

The following principles can be distinguished in the area of structure:

- the principle of coordination – organisation of activities performed jointly or with the participation of all interested parties;
- the principle of cooperation – launching intergovernmental action to the extent that is necessary to achieve a political decision that guarantees the common interest and efficient proceedings, using measures appropriate to the circumstances and their nature;
- the principle of information dependence – building the system of information flow and ensuring the shortest direct way of mutual communication, while adapting the information system to the structure;
- the principle of organising operational dependencies, that is defining the manner and scope of interinstitutional cooperation aimed at achieving the goals of the organisation;
- the principle of maximising impact – creating bonds that guarantee maximum benefit.

In the area of managing the process of political decision-making, the following can be indicated:

- the principle of direct contact – the recommendation that consensus should be achieved through personal, horizontal intergovernmental relations, as well as between state representatives and the president of the European Council;
- the principle of concentric contact – introducing trustworthy people into the process of developing political decisions, namely sherpas and the staff in the president's cabinet;



- the principle of autonomous decision-making, based on the belief that the heads of government and state constitute a separate functional structure that is independent from other decision-making bodies;
- the principle of consensus – whereby decisions are made in a consensual manner, even though decisions can be made by a majority vote;
- the principle of inclusiveness – whereby EU partners, such as neighbouring countries, are included in cooperation;
- the principle of communication – whereby the results of negotiations are presented as the success of all parties involved in line with the assumption that “each summit is successful”.

### **3.5. The European Council versus collective political leadership – the leadership function**

It is clear that the European Council, composed of the heads of state and government, constitutes the political leadership of the European Union.<sup>77</sup> In the case of the European Council, we are dealing with collective political leadership from a behavioural perspective. This is because the European Council acts as a strategist and political coordinator in setting the EU’s political agenda. Typically, the European Council does this by adopting conclusions at each of its summits. In the conclusions, it indicates the topics that the EU should address and identifies what actions to take, or what goals to achieve. It can also set a deadline for an agreement on a specific matter to be reached or

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<sup>77</sup> C.f. eg. I. Pernice, *Democratic Leadership in Europe. The European Council and the President of the Union*, Walter Hallstein-Institut, WH-1 Paper 1, January 2003, pp. 304, <https://www.rewi.hu-berlin.de/de/lf/oe/whi/publikationen/whi-papers/2003/whi-paper0103.pdf>; J. Tallberg, *Leadership and Negotiation in the European Union*, Cambridge 2006; I. Tömmel, A. Verdun, *Political leadership in the European Union: an introduction*, “Journal of European Integration”, vol. 39, issue 2, 2017, pp. 103–112; M. Müller, F. A. W. J. van Esch, *The contested nature of political leadership in the European Union: conceptual and methodological cross-fertilisation*, “West European Politics”, vol. 43, issue 5, 2020, pp. 1051–1071.

for a legislative proposal to be put forward. In this way, it influences and manages the political agenda of the EU. The European Council also adopts the EU's strategic programme, which sets out long-term priorities for action and work. The first such five-year programme was established at the Brussels summit on 20 June 2019. It indicated the priorities that would be used by the European Council to plan the course of action and by other EU institutions to develop their respective programmes.<sup>78</sup> This programme also shows how to achieve these goals. The European Council prepares its strategic and tactical action programme, including horizontal and sectoral priorities, aiming both to combat crisis and foster development. Activities are planned by introducing new issues and those that have not been addressed before, as well as by reminding about the problems and issues that the EU has attempted to resolve but hitherto failed. The programming function comes down to setting new tasks and integration goals, developing a vision of integration, determining how specific actions and events should be interpreted, and detailing the tasks and activities of EU states and institutions.<sup>79</sup>

The European Council performs a genuine leadership function, taking the most difficult financial, structural and personnel decisions in the EU. Its leadership is part of the intensive institutionalised quasi-governance – the specific way in which the European Union operates. It has been developed by its member states to achieve the most far-reaching political goals. Many states find it difficult to accept that all institutions are fully involved under the classical community method when initiating a new area of cooperation or introducing key changes. As a consequence, these states prefer to make decisions among themselves and involve EU institutions to a greater extent at a later stage.<sup>80</sup>

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<sup>78</sup> The programme lists four main priorities: protecting citizens and freedoms, developing a strong and resilient economic base, building a climate neutral, ecological, fair and social Europe, promoting European interests and values globally. Cf. *A New strategic agenda 2019–2024*, <https://www.consilium.europa.eu/media/39914/a-new-strategic-agenda-2019-2024.pdf>.

<sup>79</sup> W. Wessels, *op. cit.*, p. 8.

<sup>80</sup> L. Jesień, *Prezydencja Unii Europejskiej. Zinstytucjonalizowana procedura przywództwa politycznego*, Warszawa 2011, pp. 14–16.

The model of the European Council exercising its leadership power in the European Union is based on political decision-making, but even more so on monitoring the practical implementation of its decisions by EU institutions and member states. In order for the leadership of the European Council to be material and true, it must be based on the leader's authority. There is one more element related to the process of enhancing the European Council's leadership, namely various crises. Ruzzkowski noticed a certain regularity "where when European integration is experiencing a crisis, intergovernmental logic prevails, and the role of EU member states is clearly growing, while in the post-crisis phases the EU develops according to a supranational logic with a significant influence of European technocratic institutions."<sup>81</sup>

### **Conclusions. The future transformations of the European Council**

Since 1974, we have been witnessing the process of the European Council taking shape in the political system of the EU. The reforms implemented have been part of a broader process of creating the political balance capable of meeting the needs. The ineffectiveness of the *status quo* which had been reached stimulated further institutional transformations. There was a clear process of the European Council's formalisation and of it being placed among other institutions (creating ties and inter-institutional relations), as well as extending the thematic scope of its agenda. The evolution of the functions of the European Council over the years leads to the conclusion that its previous and present position in the institutional system is determined by the need to create a permanent centre of political leadership.

The Treaty of Lisbon marked the ultimate stage of the European Council fully entering the institutional framework, but this was not the last document to introduce changes to its functioning and political impact. The European Council is one of the institutions that have

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<sup>81</sup> J. Ruzzkowski, *Państwo członkowskie Unii Europejskiej jako jednostka analityczna w studiach europejskich*, (in:) J. Ruzzkowski, R. Podgórzńska (eds.), *Państwo w Unii Europejskiej*, Szczecin 2017, p. 10.

undergone a major transformation under the Lisbon provisions. The changes concerned the composition of this institution, as well as the formula and scope of its operation. The significant strengthening of its position is visible in how it performs its functions in practice. The influence of individual institutional actors on the process of political programming of the European Union's activities has also changed significantly. After the Lisbon Treaty entered into force, the formalisation of the meetings of the European Council entered another phase, symbolised by drafting the Rules of Procedure, allocating separate administrative facilities to the president, the new seat being built, as well as the formula of work being developed. From a theoretical perspective, the European Council connects the economic and political planes. In the future, the degree to which these two planes are coherent will depend on the complexity of decision-making formulas in the expanding system of rules and procedures that regulate the powers of the European Council.

This is not the end of the transformation of the inter-institutional relations between the European Council and the Commission as well as the European Council and the EU. Strengthening the position of one of the institutions means that the others lose some of their authority (especially the European Commission and the Council of the European Union). The weakened position of the national presidency is most visible in the new balance of power. The powers of the president of the European Council fall within the remit of (and often compete with) those of the president of the European Commission, and to a lesser degree of the High Representative. The current system balances out the authority of the European Commission, the Council of the European Union, the European Parliament, and the European Council equipped with new powers in this system. The former triangle has been replaced by a "decision-making square", which is reflected in the dynamics of decision-making. The European Council, as the "supreme institution", has reduced the scope of powers of the Council of the European Union, reducing it to an institution which approves the provisions previously adopted by the European Council. The role of the European Council clearly reflects the balance of power that is

acceptable and desired, as it has been developed by a compromise formula that takes into account the position of large and small states. This, however, leads to the strengthening of the intergovernmental formula.

The European Council is an example of a centre of political decision-making governed by an intergovernmental formula which has transformed into an institutionalised political centre. This formula will be maintained because its effectiveness in decision-making is satisfying to all parties. The interaction between the political will of member states and the background of the EU's institutional base with its working agenda will continue to be visible. This intergovernmental system based on a network of national interests will overlap with the inter-institutional balance of power. In times of crisis, the influence on decisions is more likely to remain closer to intergovernmental centres.<sup>82</sup> The analyses of the integration process show that, since the 1970s, the future of the EU has depended on the decisions of the European Council. It is still valid to say that the future of the European Council will depend on the political determination to further develop the EU.

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<sup>82</sup> M. Rewizorski, B. Przybylska-Maszner, *System instytucjonalny UE po traktacie lizbońskim*, Warszawa 2012, pp. 203–204.



## **Part 2.**

# **Complementarity and adaptability in the political decision making in the European Council**





## Chapter 4.

# The European Council versus the interstate and intergovernmental dynamic of European integration

ZBIGNIEW CZACHÓR

### 4.1. The European Council. The national, state and governmental interior of the European Union

Considerations on the interstate/intergovernmental interior of the EU should begin with the theoretical concepts of Hoffmann, who analysed the integration capabilities of nation states which, as a result of accession processes, have become member states within a supranational, supra-state, but also within an interstate and intergovernmental community. He considers such a community to be a form of societal organisation which, due to its peculiarly distorted identification and “methodology” of expressing its conflicting interests, is not realistically able to establish a union without the participation of states.<sup>1</sup> Thus, unlike federalists and functionalists, he focussed on the process of strengthening, rather than weakening of states. Not without reason, he highlighted the increase in the national (state) awareness of European societies and the still strong national (state) democracies.<sup>2</sup>

<sup>1</sup> See and cf. S. Hoffmann, *Obstinate or Obsolete: The Fate of the Nation-State and the Case of Western Europe*, (in:) J. S. Nye (ed.), *International Regionalism*, Boston 1968; S. Hoffmann, *European Process at Atlantic Cross Purposes*, “Journal of Common Market Studies”, No. 3, 1965; C. Giering, *Europa zwischen Zweckverband und Superstaat. Die Entwicklung der politikwissenschaftlichen Integrationstheorie im Prozess der europäischen Integration*, Bonn 1997, pp. 69–74.

<sup>2</sup> These considerations are based, among other things, on Z. Czachór, *Zmiany i rozwój w systemie Unii Europejskiej po Traktacie z Maastricht*, Wrocław 2004, pp. 44 ff.

This was based on his belief that nation states would survive the period of “Sturm und Drang”, as he dubbed the expansion of functionalism (and its subsequent “neo-mutations”) and federalism, which have generated considerable dysfunction in the EU. Unlike the realists, Hoffmann, however, has taken into account negative “national” incentives and impulses that make it necessary to continue European integration. Among them, he indicates discrediting of nationalism, large member states’ imperial concepts of foreign policies, egoism and particularism, the varied interests and strategies of states, the propensity of states to resolve disputes through conflict (dispute), and poor relations between state governments and their citizens. He has also emphasised crisis-generating elements inside the integration system; disturbed relations between the Communities and their external environment; dynamic rivalry and competition between member states; the problem of integrative leadership (using the example of the president of the European Commission and their relations with heads of state and government in the European Council); and reasons for unsuccessful political and military integration.<sup>3</sup>

In light of the above-mentioned arguments, it should be assumed that the theoretical (conceptual) depiction of states in the European Council as well as in the Council of the European Union has to be based on the following tenets:

- it is necessary to gradually weaken the community method (the Monnet method, that has been so strongly promoted in recent years), and mainly the influence of supranational institutions (especially the European Commission) and transnational actors (pressure and influence groups) on the European Council;<sup>4</sup>
- the hierarchised cooperation of states on integration within the European Council is the only solution that can secure the needs and preferences of their citizens;

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<sup>3</sup> Cf. Z. Czachór, *Kryzys i zaburzona dynamika Unii Europejskiej*, Warszawa 2013, pp. 139–140.

<sup>4</sup> See P. Schoutete, *The European Council and the Community Method*, “Notre Europe Policy Paper”, no. 56, 2012.

- interstate and intergovernmental ways to overcome crises and prevent disputes need to be highlighted;
- the articulation of interests of EU states through the European Council needs to be restored, which will benefit integration.<sup>5</sup>

This attitude has been based on the credo that only nation states and their governments, which are the central actors in the system, can engage in the integration process by participating in the work of interstate/intergovernmental organisations and institutions such as the European Union. In this way, nation states achieve a certain degree of cooperation and interdependence, which prevents the use of force in solving crises and conflicts through institutionalised information exchange and the constant search for consensus (interstate and intergovernmental).<sup>6</sup>

Intensive institutionalisation, which incorporates more and more areas of integration, instead of leading to freedom and a common European space, produces disturbances within the EU, followed by the restriction, or even regression of integration. An advanced institutional change (visible, for example, during the eurozone crisis), understood as a process of accelerated regulation of the intentions and methods of operation of supra- and non-state integration entities, may lead to a consolidation of technocratic and bureaucratic practices that have nothing in common with genuine European integration. The more so, as many of these practices have become outside the control of the European Council.

Due to the above, member states in the European Council cannot be governed by European specialists, technicians (technologists), officials, advisers, organisers, “non-politicians” and other such “masters” in integration.<sup>7</sup> For this reason, technocracy has become an anti-rational type of authority, leading to member states and the European Council melting away in a pluralistic and de-nationalised European governance and administration, something that has to be opposed in the world of theory and practice.

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<sup>5</sup> Cf. Z. Czachór, *Kryzys...*, op. cit., pp. 141.

<sup>6</sup> *Ibid.*, p. 141.

<sup>7</sup> *Ibid.*, p. 142.

The key concept of the *national situation*<sup>8</sup> and related categories such as nationality, statehood, national/state identity and national/state legitimacy were, and continue to be essential elements of the interstate (and intergovernmental) interpretation of the dynamic of European integration in the European Council. The strength of the nation state should be associated with the emotions of the peoples who treat the state as their own home. First they build it, and then they defend and protect it. National identity, shared historical experiences, language, national values and symbols, which are expressed in a conscious sense of separateness based on territoriality, should be counterpointed with the neo-functional myth of the European order based on ever-lasting peace guaranteed by state-neutral European activists, both politicians and officials, who argue that the state has grown old and is receding into the annals of history.<sup>9</sup>

As for the legitimacy of the integration authorities, this should be realised through national/state political systems and national state institutions and the government, and not directly through the supra-national integration system. The proposals for double legitimacy, derived from the European Union and member states, are politically risky. Legitimacy defined in this way results in instability, and even crises in the methods and ways of dividing power between states and the EU. The executive power of the European Commission collides with the executive power of member states in the European Council. The legislative power at the level of the EU Council and the European Parliament clashes with that of the national parliaments of member states. This is accompanied by a conflict between the judiciary of states and the hyper-authority of the European Court of Justice. The authority of the ECB collides with that of respective national central banks.<sup>10</sup>

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<sup>8</sup> S. Hoffmann, *Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe*, "Daedalus", vol. 95, no. 3, Tradition and Change (Summer, 1966), p. 868.

<sup>9</sup> *Ibid.*, p. 143.

<sup>10</sup> *Ibid.*

## **4.2. The European Council and the variable determinants of the interstate (intergovernmental) sense of confederal integration**

Summing up the attempt to explain the interstate (intergovernmental), and thus confederal sense of European integration from the perspective of the European Council, several premises should be highlighted.<sup>11</sup>

The first premise is based on the assumption that the states gathered in the European Council and their governments are not able to naturally produce a “super-Leviathan” (a Super-European Union) which, based on a broad consensus on values and regulatory procedures, would be capable of preventing or resolving conflicts and crises in the EU and in the international system. On the other hand, the European Council has to continue to ensure that European integration is not in danger of a potential “state of war”, as J. J. Rousseau put it.

The second premise highlights the fact that the influence of integration factors on the European Council has been disturbed, which is why maintaining/strengthening its position in the EU system has to be seriously considered. The attachment to states does not have to translate into a policy of immediate reduction or dissolution of EU institutions, which should be “of service” to the European Council.

The third condition is based on the conviction that it is imperative to maintain the European Council as an arena of disputes and constructive clashes between EU states and institutions, operating in the condition of the dichotomy between the European integration system, fighting for the right to organise itself, on the one hand, and the system of states and governments, holding on to their experience and old and verified principles based on anarchic realism and its successive mutations, on the other.<sup>12</sup>

The fourth premise is that it is member states in the European Council that are able to accept the limited hierarchisation of the system which they are part of (which they have created). Therefore, the deepening and expansion of European integration is only possible on

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<sup>11</sup> Ibid., p. 144.

<sup>12</sup> See S. Hix, *System polityczny Unii Europejskiej*, Warszawa 2010.

the initiative, and with the consent of the states making consensual decisions in the European Council.<sup>13</sup> All the more so, as the states in the European Council have the right to resort to integration flexibility<sup>14</sup> and to use various forms of political pressure within the framework of various agreements and arrangements.

### 4.3. The European Council and intergovernmental federalism

The practical transfer of the principles of political and legal systems of various states to the European Union's system (with volatile links between its elements), combined with a lack of political will of the states concerned has always been difficult. The European Union has not become a stateless or supra-state federal structure as the "founding fathers" imagined. Nor has it become a universal, peaceful and crisis-free organisation integrating its members in terms of both politics and economy.

The period between 2001 and, practically, today has been a time of two opposing tendencies colliding. In one approach, an attempt to reactivate federal ideas has been made by politicians, scholars and representatives of federalist NGOs, mainly from countries such as Belgium, Luxembourg, Italy and Germany, who were particularly active during the deliberations of the European Convention. The second tendency concerned the option of strengthening the confederate, in-

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<sup>13</sup> See and cf. S. Hoffmann, *World governance: Beyond Utopia*, "Deadalus" 2003, Retrieved from: <http://www.findarticles.com/p/articles> (2.09.2006); S. Hoffmann, *Yesterday's Realism*, "The American Prospect. Online edition", vol. 12, no. 13, 2001, Retrieved from: <http://www.prospect.org> (4.09.2006); M. Niewiarowska, *Konwent Europejski i Traktat ustanawiający Konstytucję dla Europy – demokratyzacja Unii Europejskiej?*, master's dissertation, Poznań 2007, pp. 11–14.

<sup>14</sup> *Die Europäische Union. Bericht von Leo Tindemans und der Europäischen Rat (29.12.1975)*, "EG – Bulletin", Beil. 1, 1976; J. Vernant, *Europa in Stadium des Überganges*, "Europa Archiv", no. 10, 1969, pp. 10–25; W. Brandt, *Speech to the French Organization of the European Movement*, 19 November 1974, "Europa Archiv", no. 5, 1975, pp. 33 ff.

tergovernmental and directly state-related element in the functioning and governance of the European Union. The provisions of the Treaty establishing a Constitution for Europe, which did not enter into force because it was too federal, and of the Treaty of Lisbon, which was created to address the failure of the former, do not determine which one of these tendencies has won. As was the case with previous treaties, the supporters of each approach are still looking for sufficient arguments to support their views on the impact of their solution on the further development of the European Union.

Combining the centralist and decentralist approaches of the European Union leads to defining integration as a synthesis of both attitudes, in which specific functions are concentrated at the highest level of federal authority while decentralisation is applied at the state, regional and local levels in order to maximise the participation of societies (individuals) in integration.<sup>15</sup> Understood in this way, the concept of equilibrium is implemented by the relevant institutionalisation and division of powers.<sup>16</sup> In this situation, federalism can be based on combining the sovereign rights of political state entities which maintain a wide scope of their own autonomy.<sup>17</sup> In this way, an organism called a federation of states and citizens (a union of states and citizens) can be co-shaped. The role of the European Council seems to be extremely important in such a model.

In light of the above, Croisat and Quermonne have attempted to assess the development of increasingly diverse forms of cooperative federalism which, they believe, have one thing in common. This shared property is the vertical cooperation of individual entities (states, regions, institutions and organisations), or of the political levels participating in the federal and confederal integrations. The intergovernmen-

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<sup>15</sup> Cf. S. Miklaszewski, *Mechanizm regionalnej integracji gospodarczej w teorii i praktyce Europejskiej Wspólnoty Gospodarczej*, Kraków 1991, p. 33; cf. A. Dangelmayer, *Idea federalizmu w polityce Niemiec wobec integracji europejskiej*, (in:) J. Kranz, J. Reiter (eds.), *Drogi do Europy*, Warszawa 1998, pp. 103–105.

<sup>16</sup> These can be states and regions.

<sup>17</sup> Cf. I. P. Karolewski, *Teorie integracji a Niemcy*, (in:) E. Stadtmüller (ed.), *Jaka Europa? What kind of Europe?, Materiały z konferencji naukowej, Wrocław 6–8 V 1998*, Wrocław 1998, p. 281.

tal aspect is of considerable importance here, as it is only the executive (governments), and not parliaments, that drive the formation of the federal integration order.<sup>18</sup> In the practice of integration, this would mean the expansion of the competences of the European Union's authorities, which would boil down to the strengthening of both the European Commission and the European Council. This would lead to replacing supranational federalism with intergovernmental federalism, with the European Council and its president taking over the functions of the main governmental body of the European Union.

The work of the European Convention and the Praesidium of the European Convention's proposal to base the European Union on federal foundations in 2003 were to confirm the implementation of this theoretical construct. Although the necessary consensus could not be found during the Convention, intergovernmental federalism seems to have provided a good basis for public debate and scholarly reflections on the "new continuation" of European integration, mainly in terms of opting for a union of confederal states (as is the case at present) or a union of federal states (a vision of the future).

#### **4.4. The European Council and the management of preferences of member states**

The first component of the new understanding of European integration is the assumption that the states, and primarily their governments, operating in the European Council, behave in a rational and responsible way. The second one involves the liberal theory of the emergence of national preferences (the state of national preferences). The third one is constituted by an intergovernmental analysis of institutionalism (institutional mix<sup>19</sup>) and the system of transactional interstate (inter-

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<sup>18</sup> Cf. M. Croizat, J. L. Quermonne, *L'Europe et le fédéralisme. Contribution à l'émergence d'un fédéralisme intergouvernemental*, Paris 1999, pp. 9–12; H. Marhold, *Föderale Strukturen für Europa? Aktuelle Beiträge zur Debatte in Frankreich*, Tübingen 2000, pp. 32–35.

<sup>19</sup> A. Moravcsik, *The Choice...*, op. cit., pp. 20–21.



governmental) relations and bargaining conducted primarily by the heads of state or government (including ministers and their proxies), in order to ensure the implementation of jointly planned goals (mainly in treaties).<sup>20</sup>

Considering the above division, it should be assumed that liberal inter-governmentalism is a three-stage process of permanent modelling, developing and forming integration preferences, carried out by individual states (their leaders) through international bargaining, which refers to R. D. Putnam's two-level game theory.<sup>21</sup> As a consequence of intergovernmentalism understood in this way, firstly, the heads of state and government gathered in the European Council coherently aggregate interests resulting from the preferences of their citizens/voters (as well as from their own interests), and then transfer and present respective national preferences at the integration level (European Union institutions – mainly the European Council and the Council of the European Union). In this way, the interests worked out at state level (with the participation of political parties, social actors and pressure groups) are transferred to the “intergovernmental negotiating table”. In the bargaining process there, the parties adapt to each other as concerns the expressed and aggregated national preferences. The agreements thus reached reflect the relative strength of each member state, and supranational institutions such as the European Commission and the European Parliament have little or no influence on the outcome of negotiations and bargaining. Finally, the rules of supervision and the rules for the mutual control of negotiated decisions are developed (through the transfer of national political and legal competences to the institutional supranational level), which is to increase mutual trust (and common credibility) between states and to protect incumbent and future governments from one of the countries withdrawing from their commitments.<sup>22</sup>

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<sup>20</sup> Por. Z. Czachór, *Kryzys...*, op. cit., p. 150.

<sup>21</sup> Cf. R. D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, “International Organization”, 42, 1988, pp. 427–460.

<sup>22</sup> Cf. M. A. Pollack, *Theorizing the European Union: International organization, domestic polity, or experiment in New Governance*, “Annual Review of

#### 4.5. The aggregation of preferences in the European Council

At this point, let us refer to an important observation that integration within the European Union can be viewed as a sequence: rational preferences are generated by societies/nations, then selected and chosen, and, finally, aggregated and transferred to the EU level by representatives of the government of a member state (ministers and officials/government administration, as well as political leaders and the ruling elite of individual countries). The recipients are the European Council and the Council of the EU together with COREPER.

Moravcsik identifies several factors that influence the position of a member state's government in its pursuit and attainment of inter-governmental arrangements/decisions after the respective preferences have been aggregated. The first factor concerns the determination and activity in presenting nationally developed preferences. What happens more and more often in this regard is that multilateral negotiating/bargaining is preceded by bilateral formal and informal talks (the latter are increasingly frequent in a turbulent EU). What is more, the final result of negotiations/bargaining depends on the bargaining and deliberative power of states,<sup>23</sup> based on their access to specific resources, such as competences, skills and information on the one hand, and material (e.g. financial) resources on the other. The bargaining power of the state is not only about the power of its voice, and the size or potential of that state/government, but also about the position of a given country in the spectrum of preferences expressed by all the states that decide whether or not a given state policy is feasible.<sup>24</sup>

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Political Science”, 8, 2005, pp. 357–398; M. A. Pollack, *Theorizing EU Policy-Making*, (in:) H. Wallace, M. A. Pollack, A. R. Young (eds.), *Policy-Making in the European Union*, Oxford 2010, pp. 360 ff.; cf. M. A. Pollack, *International...*, op. cit., pp. 223 ff.; cf. A. Jaskulski, *System polityczny Unii Europejskiej po Traktacie ustanawiającym Konstytucję dla Europy*, master's dissertation, Poznań 2007, pp. 15–16.

<sup>23</sup> Here, the influence of neorealism on the concepts developed by A. Moravcsik can be ascertained.

<sup>24</sup> J. Czapatowicz, *Teorie stosunków międzynarodowych: krytyka i systematyzacja*, Warszawa 2007, pp. 334 ff. Cf. Z. Czachór, *Kryzys...*, op. cit., p. 157.

The second factor concerns the ability of states (governments) to build coalitions (alliances) to pursue a defined agenda or objective, as well as pragmatic *ad hoc* agreements.<sup>25</sup> The third factor concerns the possibility of using package deals and institutional (or quasi-institutional) solutions. The fourth one is about the ability to create an appropriate environment and atmosphere for negotiations/bargaining. Appropriate identification of opposing arguments (preferences) matters here, as well as the place and time of interactions and transactions and the expertise of people involved.<sup>26</sup>

To the catalogue of the fora of intergovernmental negotiation/bargaining, including intergovernmental conferences, the European Council (summits of heads of state and government) and the presidency, a specific convention method can be added, which also meets the minimum standard of institutional bargaining<sup>27</sup> (albeit more informal), in which representatives of EU institutions take part alongside representatives of the governments of member states and relevant representatives of national parliaments.<sup>28</sup>

It should be emphasised at this point that there are two significant differences between the theoretical approach of the systemically liberal intergovernmentalism and neorealism, which are important for considerations on maintaining equilibrium in a dynamic and crisis-disturbed integration project which has been upset. Firstly, the preferences aggregated at the national level are not supposed to result from concerns about states maintaining their security or their potential po-

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<sup>25</sup> Krzysztof Szymański, MEP, writes: “The fact that someone is a dear friend in one matter does not mean that we are tied by a cordial alliance in the EU reality. The EU is a system of variable geometry. There are matters that are easier to deal with with Berlin (e.g. industrial policy), others, in which we can find understanding in Rome and Paris (neighbourhood), and there are also those that may be advocated by London (shale gas, common market). In the EU, looking for life choices is gross nonsense”; K. Szymański, *Miara oczekiwania*, “Rzeczpospolita”, 13 February 2013, p. A11.

<sup>26</sup> Cf. Z. Czachór, *Kryzys...*, op. cit., p. 157.

<sup>27</sup> K. Szczerski, *Integracja europejska. Cywilizacja i polityka*, Kraków 2003, p. 26.

<sup>28</sup> Cf. Z. Czachór, *Kryzys...*, op. cit., p. 157.

sition in the system. This is believed, even though the present crisis has undermined the foundations of security and existence of selected countries (such as Greece, Portugal and Cyprus). Secondly, the bargaining capacity is determined mainly by the power of the economic preferences (the importance of priorities) of individual member states represented in the European Council, and aiming to ensure/achieve prosperity for both the states and the entire EU, rather than by their strict military or political power, or other factors and resources of a given participant in bargaining.

Nevertheless, neorealist exceptions can be found here, too. In this context, all the integration crises and the changes they have triggered, including revisions of treaties, have recently proven that a gradual process of the convergence of national priorities (preferences) is taking place in the leading, large member states (governments), which resolve the most important bargaining issues among themselves, and then offer some concessions to those smaller states who find it difficult to accept the proposals developed by the large member states.<sup>29</sup>

## **Conclusions. The post-confederal Union method and the European Council**

The *Union method*<sup>30</sup> proposed by Chancellor Angela Merkel refers to a conjunctive rather than alternative approach to the practice of European integration within the European Council. Assuming that “we are all Europe”, the new institutional and decision-making architecture of the European Union should be based, in this model, on the heads of state and government of member states gathered in the European

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<sup>29</sup> Cf. Z. Czachór, *Kryzys...*, op. cit., p. 158.

<sup>30</sup> Cf. M. Sarrazin, S.-Ch. Kindler, *Brücke sehen und streben – Gemeinschaftsmethode versus Unionsmethode*, “Integration” no. 3, August 2012, pp. 213–222; *Przemówienie kanclerz Niemiec Angeli Merkel wygłoszone podczas uroczystości inauguracji 61. roku akademickiego w Kolegium Europejskim w Brugii w dniu 2 listopada 2010 roku*, “Nowa Europa. Przegląd Natoliński”, no. 1/12, 2012, pp. 138–154.

Council, together with the presidents of the European Commission and the European Council, who should jointly set the principles for further development of integration. This is about a united and responsible activity in the fields of European integration reserved for respective actors, which should facilitate the achievement of jointly developed goals. Integration tasks can vary. Even the paces of their implementation can be different. The most important thing is that the goals set in advance are consciously achieved.<sup>31</sup>

The Union method is in fact a combination of the community method and coordinated actions of member states and governments gathered in the European Council. It is supposed to show that achieving integration success depends on the fulfilment of obligations by all the entities of integration involved and, first and foremost, by member states. It is implied that the integration actors should not be increasingly separated from each other. This mainly concerns the relations between the European Commission, the European Parliament and the governments (authorities) of member states, and thus the European Council.

The experimentation with the practice of the Union method, approached as a measure to counter the crisis, also applies to the proper supervision and coordination of the institutional and decision-making system of the European Union. The first example of such a practice is to involve the European Council (and especially its president) more in the interinstitutional trilogue between the Council of the European Union, the European Parliament and the European Commission. The European Council's right to interfere with and, in a sense, veto the arrangements of the institutional "supra-governmental trio" is not ruled out. The second example is the proposal to work out permanent forms of cooperation and consultations between governments, the presidency and the President of the European Council in Brussels within an intergovernmental "triad system". The third example concerns diminishing and minimising the role of smaller and weaker governments, reducing them to ob-

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<sup>31</sup> Cf. Z. Czachór, *Kryzys...*, op. cit., p. 165.

servers or service providers, in line with the principle that “the intergovernmental method helps large, but not small and weak states, and intergovernmental bargaining changes and interferes with interests of states.”<sup>32</sup>

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<sup>32</sup> Cf. M. A. Cichocki, *System Europa*, (in:) J. F. Staniłko (ed.) *Europejski ład gospodarczy w 2020 roku*, Instytut Sobieskiego, Warszawa 2012, p. 93; cf. Z. Czachór, *Kryzys...*, op. cit., p. 166.

## Chapter 5.

# The influence of the European Council on the external actions of the European Union – the mechanism of political decision-making behind closed doors

BEATA PRZYBYLSKA-MASZNER

### 5.1. Research assumptions

The institutional system of the European Union underwent fundamental changes in formal and legal terms with the entry into force of the Treaty of Lisbon in 2009.<sup>1</sup> One of the fundamental changes involved the European Council being granted the status of an institution. Like any organisational structure, the European Union has been evolving in relation to the internal processes and various events affecting its transformations. The desired institutional stability is practically impossible to achieve due to the dynamics of internal and external political changes that affect the institutional structure of the European Union. Institutions are transforming, but even more so the relations between institutions. This results from the provisions of treaties, and above all from the practice of introducing informal changes into the institutional system. These informal changes are often validated by

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<sup>1</sup> The Treaty of Lisbon and the changes it introduced with reference to institutions have repeatedly been examined in the literature on the subject; therefore this article will not analyse its provisions in detail. See e.g. D. Phinnemore, *The Treaty of Lisbon. Origins and Negotiation*, Palgrave Macmillan, 2013; M. Rewizorski, B. Przybylska-Maszner, *System instytucjonalny Unii Europejskiej po traktacie z Lizbony. Aspekty polityczne i prawne*, Warszawa 2013, pp. 37–39; D. Hodson, J. Peterson, *The Institutions of the European Union*, Oxford 2017, pp. 55–79.

treaty provisions only after many years of certain functions operating in practice. In the European Union, it is the political process and the practice of everyday policy-making that determine the actual powers and functions of individual institutions, and thus their relationships.

The scope of external relations within the framework of the European Union's activities is very broad, as it encompasses numerous policies which, mainly for historical reasons, are governed in different ways. It addresses the external dimension of trade policy and development cooperation, neighbourhood policy, enlargement policy, foreign policy, as well as security and defence policy. On the one hand, there are policies that are closely related to the European Commission and the communitarian method. On the other hand, foreign, security and defence policies are primarily intergovernmental, and the involvement of EU institutions in the creation and implementation of these policies is relatively limited.<sup>2</sup> The most important institution in the EU's political system has long been the European Council, regardless of its formal powers. The European Council determines the directions of the EU's development, including the scope of its external activities. It dates back to the 1960s, when it operated as conference meetings of the heads of member states of the European Economic Community. At a 1974 meeting in The Hague, French President George Pompidou suggested that these conferences be institutionalised.<sup>3</sup> Initially, the representatives of other countries viewed his idea sceptically. It was not until the Paris summit in 1974 that a final decision was taken to hold permanent meetings of the heads of state and government of member states, and to name them the European Council. The European Council first met in Dublin in 1975. Since then, it has become a political centre of the European project, despite the fact that its operation lacked legal foundation for the next ten years.<sup>4</sup> Over the decades, the European Council has become a platform for working out

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<sup>2</sup> P. Borkowski, *Międzypaństwo w procesie integracji europejskiej*, Warszawa 2013, pp. 377–379.

<sup>3</sup> K. Popowicz, *Historia integracji europejskiej*, Warszawa 2006, p. 120.

<sup>4</sup> J. J. Węc, *Reforma Wspólnej Polityki Zagranicznej i Bezpieczeństwa Unii Europejskiej w Traktacie Lizbońskim*, "Politeja", vol. 15/2011, pp. 193–210.



common political positions and facilitated the process of resolving the most difficult crises.

Foreign affairs have always been of great importance in the work of the European Council. However, since the 1990s, due to the wider scope of international challenges and the EU's pursuit to strengthen its role in international relations, international issues have become a key area of debates and decisions made in the European Council. An unstable neighbourhood, threats triggered by the exacerbated conflict in the Middle East, the need to become engaged in Iraq and Afghanistan, negotiations with Iran, the Arab Spring, political disputes with Russia during the war in Georgia and after the annexation of Crimea, and a new approach to partnership with African states are just some of the items in the agendas designed when preparing European Council meetings. Some of these issues have even led to extraordinary summits of state leaders being convened.

This part of the book endeavours to present the results of research on the evolution of the functioning of the European Council after the entry into force of the Treaty of Lisbon, with particular emphasis on the role of the European Council in forming external actions and its formal and informal powers. The research materials used in this part were collected, among other things, during the interviews conducted from January 2018 to December 2019 by members of the research team at the European Council, the European Commission, the European External Action Service, as well as permanent representations of selected member states in Brussels. Due to the fact that the European Council is an institution operating behind closed doors, few studies are available on its functioning, especially on external actions. The research conducted so far has been based almost exclusively on interviews.<sup>5</sup> The main research hypotheses that were verified in this

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<sup>5</sup> The evolution of the European Commission has been investigated by the following authors, among others: J. Werts, *The European Council*, London 2008; F. Eggermont, *The Changing Role of the European Council in the Institutional Framework of the European Union. Consequences for the European Integration Process*, Cambridge–Antwerp–Portland 2012; P. de Schoutheete, *The European Council*, (in:) J. Peterson, M. Shackleton (eds.), *The Institutions of the European Union*, Oxford 2006; I. Pernice, *Democratic Leadership in Europe. The European*

part of the book assumed that, given the growing expectations that the European Council will be able to provide solutions to a growing number of issues in EU external actions, we would see an intensified transition from informal to formal procedures, in particular, as regards the rules of how other institutions operate in the mechanism of inter-institutional ties. As a consequence, the European Commission's ability to set directions for action and, to some extent, to issue decisions would become limited.<sup>6</sup> At the same time, the burden of developing solutions would shift from the ministerial level of the Council of the European Union to that of the European Council, hindering the pursuit of an agreement at the level of ministers of member states. This would result in the overburdening of the European Council, which is obliged to deal with an increasing number of issues, thereby being required to increase the number and duration of European Council meetings.

## **5.2. The powers of the European Council in the area of external actions after the Lisbon Treaty. Legal and institutional aspects**

The functioning of any institution in the system relies on the relevant legal regulations. In the case of the European Council, these include treaty provisions, the Rules of Procedure adopted in 2009, as well as guidelines arrived at via interinstitutional agreements which confirm the principle of interinstitutional loyalty, whereby institutions are obliged to cooperate in the implementation of treaty provisions.<sup>7</sup>

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*Council and the President of the Union*, (in:) J. M. Beneuyto Pérez, I. Pernice (eds.), *The Government of Europe: Which Institution Design for the European Union*, Baden-Baden 2004; W. Wessels, *The European Council*, London–New York 2016.

<sup>6</sup> P. Bocquillon, M. Dobbels, *An elephant on the 13th floor of the Berlaymont? European Council and Commission relations in legislative agenda setting*, "Journal of European Public Policy", vol. 21, issue 1, 2014.

<sup>7</sup> Cf. European Council Decision 2009/882/EU of 1 December 2009 adopting its Rules of Procedure, L OJL 315/51, 2.12.2009; Council Decision of 1 December 2009 laying down the conditions of employment of the President of the European Council (2009/909/EU), OJ EU, L 322/35, 9.12.2009.

The latter, although concluded mainly between the Council of the European Union, the European Commission and the European Parliament, have a great indirect influence on the European Council. Such regulations provide the starting point for analysing the powers and functions of the European Council. On the one hand, the degree of detail in the regulations facilitates the functioning of the institution, as they precisely define the scope of its powers and duties. The relative stability and predictability of changes in the system is thus maintained.<sup>8</sup> On the other hand, excessively precise, casuistic regulations might limit its activities, leading to its ineffectiveness. The principles governing interinstitutional relations are of immense importance.<sup>9</sup> In accordance with the principle of institutional autonomy, each institution may determine its own structures and principles of operation, that body also has influence on its internal organisational structure. In 2009, the European Council adopted a decision that approved the Rules of Procedure in which only the basic framework for its functioning was defined. The adoption of these principles confirmed that, like other institutions, the European Council has the right to determine its structure and principles of operation, to influence the appointment of internal organs and to establish auxiliary and advisory bodies. The degree of detail in the above documents is not high,<sup>10</sup> leaving room for informal institutional solutions to be developed.

The Lisbon Treaty marked one of the most important moments in the development of the EU's external actions policy, both at the institutional and political levels. It took time to interpret the provisions of the new treaty. Due to the difficulties associated with its entry into force, as well as the context of the economic crisis, the new institutional order took shape in the course of the treaty's implementation. Also the functions of the European Council as concerned ex-

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<sup>8</sup> J. Stacey, B. Rittberger, *Dynamic of formal and informal institutional change in the EU*, "Journal of European Public Policy", 10(6), 2003, pp. 858–883.

<sup>9</sup> M. Rewizorski, *Zasady systemu instytucjonalnego Unii Europejskiej*, "Studia Europejskie", vol. 1, 2013, pp. 29–49.

<sup>10</sup> Cf. J. Lewis, *The Council of the European Union and the Council*, (in:) J. M. Magone (ed.), *Routledge Handbook of European Politics*, London–New York 2015.

ternal actions were gradually modified. In the earlier system, formed on the basis of the Maastricht Treaty and its Amsterdam and Nice revisions, the external policies of the European Union were created in two ways. The European Commission (representing the supranational order) played a key role in economic relations, while the Council of the European Union (representing the intergovernmental order) – in political relations. The Council of the European Union and the European Council were the platforms where the interests of member states were represented. Numerous analyses of the power and position of the European Union's institutions after the Lisbon reform demonstrate the strengthening of the European Parliament and the European Council, while the European Commission and the Council of the European Union have weakened.<sup>11</sup>

The Treaty of Lisbon played an important role not only in the process of specifying the position of the European Council, but also in the organisation of its relations with the external environment of the European Union. The treaty clarified the provisions that grant international legal identity to the EU, and reformed the system of governance of external actions. The main institutional manifestation of these changes involved reforming the position of the High Representative for Foreign Policy, who was put in charge of managing the work of the Foreign Affairs Council, while heading the European External Action Service at the same time.<sup>12</sup> However, the political role associated with this position was not particularly significant in identifying the

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<sup>11</sup> P. Thaler, *The European Commission and the European Council: Coordinated Agenda setting in European energy policy*, "Journal of European Integration", vol. 38, 2016; P. de Schoutheete, *The European Council and the Community Method*, "Notre Europe", Policy Paper 56, 2014; U. Puetter, *The European Council and the Council: new intergovernmentalism and institutional change*, Oxford University Press, 2014.

<sup>12</sup> M. Sus, *Wysoki Przedstawiciel Unii Europejskiej do Spraw Zagranicznych i Polityki Bezpieczeństwa jako przedsiębiorca polityczny. Propozycja podejścia badawczego*, "Rocznik Integracji Europejskiej", no. 3, 2019, pp. 61–72; C. Rüger, *A Position under Construction: Future Prospects of the High Representative after the Treaty of Lisbon*, (in:) G. Müller-Brandeck-Bocquet, C. Rüger (eds.), *The High Representative for the EU Foreign and Security Policy – Review and Prospects*, Nomos, 2011.

goals and shape of the EU's foreign policy. The High Representative plays more of an administrative role, and their influence on the most important decisions of the European Council in the field of external relations is relatively small. Ultimately, it is up to member states to decide on foreign policy.

The examination of the work of the European Council allows us to state that, despite the lack of significant legislative powers, it is becoming a source of political decisions. The European Council plays an important role in particular when new anti-crisis mechanisms are being shaped. It is on its forum that strategic proposals for solutions are born. This is especially true when no compromise can be achieved at the ministerial level of the Council of the European Union.<sup>13</sup> By strengthening the European Council, the Lisbon Treaty only to a certain extent responded to the need for creating an effective decision-making centre that would initiate positive changes and constitute an efficient mechanism of international response. The success was only partial, since the treaty retained the intergovernmental character of the main area of external action – the foreign, security and defence policies that are based on unanimity. Ultimately, it was possible to create a mechanism in which the European Council, with its quite limited powers under the treaty, manages the foreign and security policies of the European Union, due to its links with the foreign ministers of individual countries.<sup>14</sup> It should also be observed that the formal aspects resulting from the entry into force of the Treaty of Lisbon were of little importance for the formulation and implementation of the European Union's foreign policy. As one official said, "treaties clearly define the division between the institutions in the field of external relations. The conclusions of the European Council on foreign matters are related to what comes from the Council of the European Union."<sup>15</sup>

In order to understand the nature of the European Council in the field of external actions of the European Union, it is necessary

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<sup>13</sup> M. Tomaszuk, *Unia Europejska w dwa lata od wejścia w życie Traktatu z Lizbony*, "Rocznik Integracji Europejskiej", no. 5, 2011, p. 158.

<sup>14</sup> Interviewee EU-18/PR 4, 20.04.2018; Interviewee EU-18/PR 5, 20.04.2018.

<sup>15</sup> Interviewee EU-18/PR 2, 19.04.2018.

to consider the essence of the processes of creation, the specific character of its external relations, its international position, and the decision-making mechanism. Janusz Ruzzkowski points out that “the EU influences the international environment through a set of activities and instruments directed outside, collectively dubbed external governance, which is an element of multi-level governance in the EU combined with global governance.”<sup>16</sup> The external actions of the European Union can be defined as the area of creating common solutions in the conceptual and strategic, institutional and operational dimensions as concerns the economic relations, as well as foreign, security and defence policies. Actions are taken both by EU institutions and by member states via their broadly understood relations with the outside world. A double dichotomy emerges here: in terms of the actors (state-institution) and of the matters addressed (CFSP/CSDP versus trade/development cooperation/other external EU policies).

In the context of the considerations in this text, the issue of the effectiveness of the European Union in its international roles is particularly interesting.<sup>17</sup> There is a significant discrepancy between the ascribed roles and the true intentions of states, resulting mainly from the specific way in which external activities are constructed. Member states are able to reach a compromise as long as they can pursue their own interests. Another significant discrepancy emerges between the expectations towards the European Union concerning its international activity and the EU’s actual position and achievements on the international arena. It is important to determine the position of the European Council in terms of the mechanisms regulating its position, which requires examining the context of the external activities of the European Union.

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<sup>16</sup> J. Ruzzkowski, *Europeizacja ad extra w zarządzaniu zewnętrznym (external governance) Unii Europejskiej*, “Rocznik Integracji Europejskiej”, no. 4, 2010, pp. 10–12.

<sup>17</sup> L. Aggestam, *Role theory and European foreign policy. The European Union’s Roles in International Politics: Concepts and Analysis*, Routledge, New York 2006.

### 5.3. Interactions in the process of political decision-making in the European Council

The internal dynamics of the activities of the European Council is relatively little determined by treaty provisions. Due to the primary law regulating the functioning of the European Council being highly general, a huge proportion of the rules are informal and very closely associated with the current political situation in the EU. Flexibility and adaptability in operation ensure the European Council a relatively high level of effectiveness. The European Council is perceived as having the ability to make the decisions expected of it.<sup>18</sup> The role of the European Council in the European political system is very closely related to that of member states, as it provides a forum where the most important interests and preferences of the European Union member states clash. If the position and role of the European Council in the EU is clear, the role of member states in the system is also largely clarified.<sup>19</sup> The analysis conducted makes it possible to indicate the determinants of the roles played by member states in the system and their ability to jointly influence the decision-making process in the most important political body of the EU.

The European Council defines politically binding strategic goals and guidelines. Political decisions made on its forum are forged in the course of negotiations at various levels of the intergovernmental structure in the EU. One of the state representatives interviewed explained it most accurately: “First a discussion at the level of experts, then the leaders meet. These are different talks with different dynamics. The latter are political in nature and are not influenced by instructions from above. At other levels, we get instructions from the leaders.”<sup>20</sup> The differences in negotiating positions are sometimes so

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<sup>18</sup> Interviewee EU-17/EEAS 2, 20.06.2017; Interviewee EU-17/EC 2, 20.05.2019.

<sup>19</sup> J. Tallberg, *Bargaining Power in the European Council*, “Journal of Common Market Studies” vol. 46, no. 3, 2008, pp. 5–25.

<sup>20</sup> Interviewee EU-18/PR 6, 19.04.2018.

huge that the European Council is a necessary buffer which prevents disputes and defuses political emotions. The pursuit of compromise is a path that should lead to the formulation of conclusions by the European Council. The scope of topics addressed in them is determined in the course of painstaking talks where a common position is established. The heads of state and government are obliged to make a decision, carrying the burden of responsibility for the fate of the community. On the forum of the European Council, the interest of the state clashes with the common interest, which is also a factor in the negotiations. The struggle to achieve a common interest creates a positive dynamic which facilitates decision-making. As one interviewee explained: “the dynamic was different at lower levels, where conflicting interests were evident, but the dynamic was different at the level of the European Council. At that level, it is easier to propose new solutions, [there is] greater flexibility. Leaders know they have to make the final decision to reach consensus.”<sup>21</sup> This can be seen very clearly on the example of the conflicts with Russia after the annexation of Crimea, “although not everything was said openly, there was a conviction that sanctions should be imposed. A decision was made and other people at the technical level had to discuss and find a final solution.”<sup>22</sup>

When analysing the decision-making mechanism in the European Council it is important to determine the impact of individual member states on this decision. The role of the presidency should be emphasised, which “continues to be an important driving force.”<sup>23</sup> France and Germany are very often the driving force behind political solutions but they do not always play the leading role. Although there is a feeling that the group of states that make decisions is somewhat limited, attention should be given to the emergence of coalitions of interests – groups of states seeking to adopt a proposed solution or, which happens more often, to block a proposal. In the research, the influence of Brexit on the functioning of the European Council was

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<sup>21</sup> Interviewee EU-17/EC 2, 20.05.2017; Interview EU-18/EC 8, 15.07.2018.

<sup>22</sup> Interviewee EU-18/ECo 1, 19.09.2018.

<sup>23</sup> Interviewee EU-18/PR 4, 20.04.2018.



also observed. The UK's withdrawal has affected the balance of power in the European Council and certainly sapped the external influence of the EU. Brexit has shown, however, that only the European Council can bear the burden of acting in conditions that cannot be foreseen by any regulations or as the result of a logical development of events. Brexit was a masterpiece of negotiations divided into acts, like a drama, performed on the forum of the European Council. Although various institutions were formally involved in the Brexit process, all the most important decisions were made by the European Council. The situation was similar to that of the financial crisis, the migration crisis, and other international crises since 2012. But for the active and decisive role of the European Council, it would not be possible to really solve existing problems.

Representatives of smaller member states are profoundly aware of the problem with unanimous decisions in the field of foreign policy. As one official said: "The CFSP – it takes a long time to reach an agreement."<sup>24</sup> On the other hand, there is a strong belief that not all countries would want to talk about a transition from unanimity to qualified majority voting. As indicated above, this was a concern of smaller member states whose interests in international politics are less sensitive. As one representative stated: "We are too small to have a big problem."<sup>25</sup> In the case of larger EU actors, it may be more convenient for them to not have a decision at the EU level and to be able to act on their own, than to have a decision that goes against their preferences in international politics. However, it cannot be ruled out that the discussion on introducing qualified majority voting on some foreign policy issues will return, followed by the discussion on changes to the founding treaties. Nevertheless, as one interviewee said: "This is not the time to open Pandora's box, this is not the time to change the treaties."<sup>26</sup> So even if small states are not decision makers in full, and are not always eager to support the decisions made by larger member states, the representatives of the former know how to deal with the big

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<sup>24</sup> Interviewee EU-18/PR 3, 20.04.2018.

<sup>25</sup> Interviewee EU-18/EC 6, 15.07.2018.

<sup>26</sup> Interviewee EU-19/EC 0, 16.06.2019.

ones.<sup>27</sup> What matters here is the network of connections that ensure cooperation in working out a common position.

Another noticeable change is the frequency of the European Council's meetings, which translates into its increasing role, although opinions on this matter are divided. While some observers have claimed that the European Council has become the key institution in European Union politics, others have argued that the Council's role has remained relatively stable over time. Building on theories of agenda-setting, Marcello Carammia, Sebastian Princen, and Arco Timmermans identified two modes of agenda formation – selective targeting and routine monitoring. Based on the analysis of the conclusions of the European Council, they showed the dynamics in terms of agenda formation and a marked shift towards routine monitoring of issues. The authors confirmed the observation that the European Council is developing into the EU's *de facto* government.<sup>28</sup> The increase in the number of European Council meetings attests to the need for rapid reaction and political involvement.<sup>29</sup> At the same time, it has been identified as a problem, and an object of criticism, that matters that should be resolved by other institutions, namely the Council of the European Union and the European Commission, are being transferred to the level of the European Council. This is because a decision by the European Council requires unanimity, while for the other two institutions, the decision-making mechanism and influence on decisions are slightly different. In fact, smaller member states may lose influence and the ability to make decisions that are in line with their national interests. If a given issue is transferred to the level of the European Council, where power is concentrated in the hands of the most important member states, then the remaining states can actually take a stand as to the decision being developed only in the second stage of the decision-making process. This mechanism further stresses the inter-

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<sup>27</sup> Interviewee EU-18/PR 6, 19.04.2018.

<sup>28</sup> M. Carammia, S. Princen, A. Timmermans, *From Summitry to EU Government: An Agenda Formation Perspective on the European Council*, "Journal of Common Market Studies", no. 54(4), 2016, pp. 809–825.

<sup>29</sup> Interviewee EU-19/EC0 2, 17.06.2019.

governmental character of decision-making, placing the emphasis on the European Council rather than the Council of the European Union. This is confirmed by a statement from one of the interviews: “there is no point in moving the issue to the Council [of the European Union], among others, if it is going to return to the European Council in the coming weeks.”<sup>30</sup>

#### **5.4. Non-formal determinants of political decision-making in the European Council**

Informal contacts always play a very special role in political decision-making. The cabinet of the president is of key importance in this case. Another thing is the double role the heads of state and government of member states play, being both the leaders of their respective states (governments) and members of the European Council. This has resulted in the emergence of special envoys of the presidents or prime ministers of member states who work in between European Council summits. The role these informal envoys, or sherpas, play grants them special privileges. “Outside the institutional procedure and permanent representatives – they [the envoys] get straight to the cabinet of the president of the European Council.”<sup>31</sup> Sherpas keep in constant touch and focus solely on the activities of the European Council with the aim of facilitating its efficient decision-making. Sherpas have taken over the role of the Committee of Permanent Representatives (COREPER), which in practice eliminates the duplication of certain preparatory activities. Although COREPER and the Council are still formally responsible for the preparation of European Council meetings, these are reduced to strictly technical activities. Sherpas frequently become permanent representatives. Sherpas and permanent representatives meet informally. All contacts, especially informal ones, are exploited. Usually sherpas meet on Mondays before the summits.<sup>32</sup> Introducing

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<sup>30</sup> Interviewee EU-19/EC 3, 20.04.2019.

<sup>31</sup> Interviewee EU-17/EC 2, 2.05.2017.

<sup>32</sup> Interviewee EU-18/EC 4, 4.11.2018.

sherpas is another highly important informal change that has taken place in the EU's political system. Perhaps in the future, their function will be formally institutionalised through complex institutional changes. The interviews show that the functioning of the European Council is becoming increasingly formalised, and that sherpas are replacing the COREPER and the General Affairs Council in terms of preparing the agendas of the European Council's meetings. It is these special representatives of the heads of state and government of member states who become key actors in setting the agenda and preparing decisions that are ultimately endorsed by the European Council. They work for the main political actors and, at this high political level, make the contribution that is necessary for the summit to reach an agreement. These changes in the work of the European Council can be explained by several reasons. Firstly, by the role of COREPER, which is a non-specialised body in the sense that it deals with a variety of issues, mainly current, legislative and sometimes technical matters. Preparing the European Council's meetings is only one among the many tasks entrusted to COREPER. Secondly, COREPER members are primarily officials (diplomats) associated with the ministries of foreign affairs, while sherpas have the status of personal envoys of heads of state and government, which is why their role is much more political.

The second important issue concerns the scope of the informal functions of the permanent president of the European Council. It goes without saying that their role in achieving results is crucial, but this ability to achieve them is strongly related to the personal qualities and commitment of the president. Each of the presidents so far has had their own style and concept for fulfilling their role. The president of the European Council and their immediate circle are the main actors at meetings of the European Council. They are there to ensure that the text of the conclusions is agreed and to communicate it to the public.<sup>33</sup> The president of the European Council acts as a mediator who

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<sup>33</sup> For more on the role of the president of the European Council see: B. Przybylska-Maszner, *Funkcja przewodniczącego Rady Europejskiej – kompetencje formalne i nieformalne w świetle postanowień traktatu lizbońskiego i praktyki działań*, "Rocznik Integracji Europejskiej", no. 14, 2020, pp. 373–389.

conducts negotiations between the parties involved, proposing compromise solutions, and thereby trying to come up with an acceptable proposal.<sup>34</sup> Although the president of the European Council's resources are limited (having only a small number of administrative support staff), they can initiate ideas and convince member states to accept the prepared project. Presidential tasks include working out a compromise and gaining support for ideas backed by the majority; building coalitions of like-minded member states; and taking into account the various preferences of member states. The conviction that prevails in the literature on the subject is that the role of the president of the European Council is passive. Tommel questions the fact that the president of the European Council acts primarily as a neutral mediator, but confirms that the president's actions have facilitated the acceleration of integration beyond national preferences.<sup>35</sup> The presidents who held office up till 2019 were all determined to give political impetus to the work of the EU in order to implement the then agendas dictated by political crises. They should be appreciated as efficient officials who supported European Council members in working out compromises, and at the same time as the indirect creators of solutions, jointly responsible for the European project. The former presidents of the European Council realised that they were bound by treaties, but their work and experience of interinstitutional cooperation influenced the manner in which they and their successors performed this function.<sup>36</sup> The details of exercising this function are developed in everyday practice which influences the scope of informal powers. This can be exemplified by the letters to state leaders introduced during the presidency of Donald Tusk. The pursuit of informal power determines the choice of personal skills that are needed and used, and the methods of operation.

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<sup>34</sup> M. Mintrom, *Policy Entrepreneurs and the Diffusion of Innovation*, "American Journal of Political Science", vol. 41, no. 3, 1997, pp. 738–770; M. Mintrom, P. Norman, *Policy Entrepreneurship and Policy Change*, "Policy Studies Journal", vol. 37, no. 4, 2009, pp. 649–667.

<sup>35</sup> I. Tommel, *The standing president of the European Council: intergovernmental or supranational leadership?*, "Journal of European Integration", vol. 39, issue 2, 2017.

<sup>36</sup> Interviewee EU-18/EEAS 2, 18.06.2018.

The required skills are specified in the job description set out in the Treaty of Lisbon, while the successful performance of the president is determined by their qualifications for performing duties verified by the tasks assigned.

Another issue that deserves to be mentioned is convening meetings in a format that is not stipulated in treaties, but still acceptable to all members. An example is the meeting of the heads of EU states and Turkey in Varna on 26 March 2018. EU leaders received Turkish President Recep Tayyip Erdoğan at Evksinograd residence in Bulgaria. The EU was represented by the President of the European Council Donald Tusk, the President of the European Commission Jean-Claude Juncker and the Prime Minister of Bulgaria Boyko Borisov. The meeting in Varna followed the previous meeting of the leaders on 25 May 2017 and the talks that had taken place since then on economic cooperation, counter-terrorism and foreign policy. There were no EC guidelines for this informal meeting.<sup>37</sup> This facilitated a discussion outside the rules, which was needed due to the sensitivity of the issues involved. This meeting was not expected to bring any concrete results, so there was no need to develop conclusions to be issued after the meeting of the European Council.

Another factor that has immense influence on the decision-making process in the European Council is personal relationships (likes and dislikes) between leaders.<sup>38</sup> The ability to communicate in a working language, usually English, is yet another important issue. An inability to communicate reduces the leaders' potential to influence decisions. There are also factors of good neighbourly relations between states, which are reinforced through the cultural and linguistic community. It is also important to maintain informal contacts, such as meetings and talks outside the meetings of the European Council. Leaders' member-

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<sup>37</sup> Interviewee EU-18/PR 6, 19.04.2018.

<sup>38</sup> Cf. P. de Boissieu, J. Cloos, P. S. Christoffersen, L. van Middelaar, J. Keller-Noëllet, G. Milton, C. Roger, T. Blanchet, D. Galloway, A. Gillissen, *National Leaders and the Making of Europe: Key Episodes in the Life of the European Council*, London 2015; J. Janning, *Leadership coalitions and change: the role of states in the European Union*, "International Affairs", 81 (4), 2005, pp. 821–833.

ship of the same political family can also be important. “Linguistic affinities help a lot. Geography also matters, the Benelux countries, or the Baltic countries tend to cooperate.”<sup>39</sup> The influence of smaller and larger states on decisions is an interesting issue. “The size of the state matters – but the issues matter the most. The larger states initiate and most often form the foundations for the solution, then everyone decides. Ultimately, unanimity is required in foreign affairs.”<sup>40</sup> Therefore, smaller states strongly emphasise their formal ability to block any decision proposed by the most important actors. Member states often have to look for other tools to influence the decision-making process, for instance by seeking support from the European Commission. Bilateral meetings are an example, where a group of states meet with the president of the European Commission. “It is not the size of the state that matters, what matters is how many friends you have.”<sup>41</sup> Personal ties between politicians help a lot. Some people are more influential and popular. It is always a matter of political experience and years of practice. The research conducted emphasises the immense role the charisma and personality of individual leaders plays in influencing the functioning of the European Council and its decisions, as well as in reaching compromises that are advantageous for the country represented by the leader. “The presidents of Lithuania and Denmark are both very influential and can punch above their weight. Orban always leaves a winner – he always wins partners before the meeting and has a strong personality” (interview 6). Some people are indicated as being able to engage effectively in developing the decisions of the European Council. In particular, personality and leadership skills are crucial in the activities of small states which, despite the formal equality of states, are of less importance in decision-making of the European Council. Since the Hungarian Prime Minister Viktor Orban took power, he has used the problems of the European Union as an important instrument for mobilising Hungarians to support his policy on the domestic arena. Orban claims that the European Union has caused

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<sup>39</sup> Interviewee EU-18/PR 1, 19.04.2018.

<sup>40</sup> Interviewee EU-18/EC0 4, 15.07.2018.

<sup>41</sup> Interviewee EU-19/EC 3, 20.04.2019.

Hungary numerous problems and poses a general threat to its citizens, yet he is still able to influence EU decisions so that they are relatively favourable for his country. This is a special case of playing a two-tier game that has long been accepted by EU leaders. In this case, the great political potential of Viktor Orban can be seen, and his ability to use knowledge about the mechanisms governing the activities of the European Council. These are skills and knowledge accumulated over the years of EU membership. Importantly, however, “personality is important, but not sufficient”.<sup>42</sup> Personal skills are very important, but, in order to solve issues, constructive input into the discussion is required. Specialist knowledge is what matters, as it allows you to influence the results of discussions in the European Council.

Some member states do not get involved in the decision-making process concerning a particular country or region where they have no interests. They will support a given proposal on the ground of the opinions presented by countries perceived as experts on a given issue. The role of the European Council is to delegate tasks to other institutions, primarily the European Commission and the Council of the European Union and, to a lesser extent, the European Parliament, although the activities of the latter are also largely determined by decisions of the European Council. This is because the European Council determines the EU’s agenda and identifies the most important political issues to be resolved, which influences the European Commission’s legislative proposals submitted to the EU legislature. This operational mode is very effective, and the European Council achieves a good implementation rate because it “knows what is feasible.” Being realistic is also crucial for fruitful and clear cooperation.<sup>43</sup>

## **Conclusions. The European Council in the international arena**

The European Council is the youngest and fastest developing institution within the EU. The above considerations indicate that it is fo-

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<sup>42</sup> Interviewee EU-18/EC 6, 15.07.2018; Interview EU-18/EC 3, 15.07.2018.

<sup>43</sup> Interviewee EU-18/PR 4, 20.04.2018.



cussed on meeting the expectations of solving the most difficult problems in the cooperation of member states. The fact that treaties clearly define the role of the European Council in the field of external relations should be emphasised. The area of foreign policy demonstrates a clear attachment to the fundamental values on which the European Union is based. This is especially emphasised with respect to crises. The role of the European Council is not limited to setting guidelines, but it should create and defend a shared vision. It is the European Council where European political solutions have been created which have strongly influenced the course of the European integration process on the one hand and the international sphere on the other. In shaping its roles in the international arena, the EU needs strong political support, which it obtains from the European Council. Recent years, with numerous crises, attempts at treaty reforms, enlargement and Brexit, have been testing, showing the impact of this platform on meetings of the heads of state and government, both within the EU's political system and internationally.

The European Council is undergoing a process of change. The permanent president, the operations of their secretariat and the group of advisers, the functioning of sherpas, who are in contact with each other and specialise in the scope of activities of the European Council, are all leading to the increasing institutionalisation of its functioning. Taking into account other procedural and institutional elements, it can be concluded that the European Council is becoming an institution operating on a permanent basis, and exerting a huge influence on the development of the EU. The permanent nature of the European Council's activity, even though it operates through cyclical meetings, makes it possible to improve the efficiency of decision-making, and thus increase the number of matters it deals with. The political decisions it makes are possible because member states want, and are able to influence how these guidelines are implemented at other levels of the EU's system.

It should be noted that the powers of the European Council have expanded at the expense of other institutions. The European Council is increasingly eager to become more and more involved in matters

formally pursued by other actors of the political system, since European citizens increasingly need international challenges to be efficiently handled. The area of informal activities of the European Council is also expanding. Obtaining or having powers does not only mean formal powers granted under formal procedures, or informal consent, but also, and often primarily, the practical ability to perform tasks. Due to this ability, the duties related to the performance of functions, as well as the implementation of the goals of the organisation can be properly performed. How the actor performs the tasks within their range of powers has a direct impact on their effectiveness.

The possibilities of using the post-Lisbon tool-kit by the European Union, including the European Council, in external actions, depend not only on the policies of member states and individual institutions of the European Union, but also on European societies accepting them. The problem of the legitimisation of integration processes, in particular the external actions of the European Union, is an important aspect when considering the role of the European Council.

## Chapter 6.

# The European Council and the economic and financial crisis of the European Union

ZBIGNIEW CZACHÓR

### 6.1. The European Council and the roots of the crisis

In the early 1990s, the heads of state and government in the European Council became convinced that regulatory liberalism should dominate. It was widely believed then that:

- rational financial markets allocate capital in an optimal (rather than speculative or “common trend”) manner, in pursuit of balance and self-correction of economic disturbances;
- public intervention disturbs market operations and generates social costs (thus the rigorous provisions on public help in the Treaties). Following the principles of monetarism, it is permitted for states to be a party to their economy and intervene, but only so as not to harm the market;
- the principal tenets of economic development should involve the widest possible deregulation of national economies and the survival of the best-adjusted ones in the conditions of free competition;<sup>1</sup>
- the Single Market does not require a genuine political union in the form of a new political system (e.g. a federation) of an integrating Europe. It was considered to be pointless to influence EU citizens in order for them to exert effective pressure on their governments to commence the establishment of the United States of Europe (thereby complementing the project of an economic and monetary union with a political union).

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<sup>1</sup> This is a reference to Charles Darwin’s theory.

In July 1997, the European Council adopted the *Agenda 2000 – For a stronger and wider Union*. As well as presenting its assessment of the preparedness of candidate countries to join the EU, this document featured ambitious goals (which had already been addressed by many other EU documents) such as achieving sustainable economic growth and increased employment; putting knowledge – one of the main EU priorities at the forefront; modernization of employment systems; improving living conditions; further pursuit of economic and social cohesion; greater concentration of assets; structural support; efficient operations of the European Commission at the service of European citizens; financing of fundamental needs; and rational management of public resources.<sup>2</sup>

At the session of the European Council in Vienna in December 1998, the issue of inefficient EU activities within the employment, growth and stability policies recurred. This was addressed by another document, the *Vienna Strategy for Europe*. It contained classic and typical resolutions to strengthen the instruments to coordinate the economic policies of member states, taxation policy, improve the structure of international finance and promote investments in European infrastructure and human capital.<sup>3</sup>

Practically at the same time, the European Council supervised the drafting of the European Union's flagship document, the Lisbon Strategy of 2000.<sup>4</sup> The Strategy soon turned out to exemplify the paralysis of European integration caused by the clash of utterly incongruent visions of the EU's further economic and social development presented by member states and supranational institutions (including transnational actors). Another reason for the difficulties in the implementation of the Strategy was the innovative but inefficient Open Method

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<sup>2</sup> *Agenda 2000. Unia Europejska rozszerzona i silniejsza*, "Monitor Integracji Europejskiej", special issue, Warszawa 1997.

<sup>3</sup> Cf. *Posiedzenie Rady Europejskiej we Wiedniu. Konkluzje Prezydencji, 11–12 grudnia 1998 r.*, Spotkania Rady Europejskiej 1993–2002, "Monitor Integracji Europejskiej", special issue, pp. 160–161.

<sup>4</sup> *Presidency Conclusions*. Lisbon European Council 23 and 24 March 2000. Author's own material; *Strategia Lizbońska – Droga do sukcesu zjednoczonej Europy*, UKIE, Warszawa, May 2002.

of Coordination (OMC). From the very beginning it became clear that the tenets of the Strategy were unable to transform the EU into the most competitive economy in the world.

Seeing the negligible results of the Lisbon Strategy, in 2005, the European Council, with the European Commission at the helm, decided to renew the Strategy.<sup>5</sup> It was considered that the attitude based on the Open Method of Coordination had failed; it consisted of the European Commission publishing indicators, comparisons and best practices, thereby encouraging member states to implement the necessary reforms.<sup>6</sup>

As time went by and the Lisbon Strategy turned out to be a project that could not be maintained, another strategy was discussed in March 2010; this time it was a strategy for smart sustainable growth promoting social inclusion, entitled *Europa 2020*.<sup>7</sup> It referred to the vision of both the market economy and the social market economy, emphasizing consistent economic growth and high levels of employment, productivity and socio-economic cohesion. The strategy identified three priorities: the smart growth of an economy based on knowledge and innovation; sustainable growth (promoting a more resource efficient, greener and more competitive economy); and inclusive growth (fostering a high-employment economy delivering social and territorial cohesion).<sup>8</sup>

The above strategies and programs, alongside other processes and conditions, all resulted in a crisis of the structurally “overleveraged” system of European economy and finance. Monetarist policy,

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<sup>5</sup> Cf. *Working together for growth and jobs. A new start for the Lisbon Strategy*. Communication from President Barroso in agreement with Vice-President Verheugen, Brussels, 2.2.2005, COM(2005) 24 final.

<sup>6</sup> Cf. D. Hübner, *Partnership for growth, employment and competitiveness*. Speech delivered at a conference “The role of large businesses in the development of the regions of Central and Eastern Europe,” Warsaw, January 20, 2006.

<sup>7</sup> Cf. *EUROPE 2020. A strategy for smart, sustainable and inclusive growth*, COM/2010/2020 final.

<sup>8</sup> European Council, *Conclusions* of 14 March 2008; 20 June 2008; 16 October 2008; 12 December 2008; 20 March 2009; 19 June 2009; 13 October 2009; and 11 December 2009.

deregulation, the activities to increase supply, new (including financial) methods to intervene in the operation of market mechanisms had failed, leading to the existing system breaking down after 2007.<sup>9</sup>

In 2010 and later, Europe “sobered up” and in April 2011, the European Commission followed its “pro-growth and reformatory offensive” and submitted the Single Market Act, addressed primarily at the European Council. It contained twelve projects for new economic growth in the European Union. The European Commission adopted its routine technocratic approach and identified twelve leverages to stimulate economic growth and enhance civil trust, namely: SMEs access to finance, labor mobility in the Single Market, intellectual property rights, consumers as Single Market players, services: strengthening standardization; stronger European networks, digital Single Market, social entrepreneurship, taxation, greater social cohesion in the Single Market, business environment, and public procurement.<sup>10</sup>

The same issue was revisited in October 2012, when the European Commission submitted the Single Market Act II, where further twelve “basic activities” were suggested to be swiftly adopted by EU institutions. These activities were to be concentrated around four main pillars of economic growth, employment and consumer trust, such as integrated networks, cross-border mobility of persons and businesses, digital economy, activities to promote cohesion and consumer benefits.<sup>11</sup>

On June 29, 2012, the heads of state and government gathered in the European Council decided to adopt a Pact for Economic Growth

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<sup>9</sup> Cf. P. Koryś, *Kryzys gospodarczy, ekonomia i wolny rynek. Doświadczenie historyczne, stan obecny i prognozy na przyszłość*, (in:) J. Kloczkowski, J. Price (eds.), *Platon na Wall Street. Konserwatywne refleksje o kryzysie ekonomicznym*, Kraków 2010, p. 499.

<sup>10</sup> *Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. Single Market Act. Twelve levers to boost growth and strengthen confidence. “Working together to create new growth,”* COM/2011/0206 final; *Twelve projects for the 2012 Single Market: together for new growth*, IP/11/469, Brussels, 13.04.2011.

<sup>11</sup> *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Single Market Act II. Together For New Growth*, Brussels, 3.10.2012, COM(2012) 573 final.

and Employment which spelled out the activities to be undertaken by member states and the European Union in order to resume smart growth (promoting social inclusion) and investment, increased employment and European competitiveness.<sup>12</sup> This Pact was expected to provide a coherent framework of activities on the level of nations, the EU and the euro area using all available measures, instruments and policies. The Pact for Economic Growth and Employment directly referred to the *Europe 2020* strategy and the Single Market Acts I and II. It included an extensive catalogue of ways to stimulate smart, sustainable and resource-saving economic growth which promoted job creation and social inclusion.<sup>13</sup>

## **6.2. The European Council and the crisis in the euro area and the whole of the European Union**

Launching the single currency led the majority of euro area member states to increase their spending over 2002–2007, with the European Council's tacit support. Greece was the best example of a country which, having joined the Economic and Monetary Union, could enjoy the financial guarantees of the ECB and the remaining euro area members. Interest rates on bonds fell substantially, significantly lowering debt servicing costs. Similar instruments and mechanisms were launched in other countries, such as Ireland, Spain, Portugal and Italy. All this was combined with the unrestricted expansion of (global and European) financial markets, and increasingly sophisticated products offered to both private and public entities.<sup>14</sup>

The demand for macroeconomic stability and the need for a credible nominal anchor (the Maastricht criteria) in the euro area turned

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<sup>12</sup> Cf. European Council, *Conclusions*, 28/29 June 2012, EUCO 76/12, Brussels, 29 June 2012.

<sup>13</sup> Cf. European Council, *Conclusions*, 28/29 June 2012, EUCO 76/12, Brussels, 29 June 2012.

<sup>14</sup> Z. Czachór, *Kryzys i zaburzona dynamika Unii Europejskiej*, Warszawa 2013, p. 426.

out to be particularly significant, as the centralized monetary policy (formed by the European Central Bank) was accompanied by decentralized fiscal policies (created by the governments of member states).<sup>15</sup> Without a doubt, such a combination of centralization and decentralization was the root cause of problems in the euro area and the current need to restructure the system of economic governance in the EU.<sup>16</sup>

Examining further stages of the crisis<sup>17</sup> in the euro area and in the EU, the analysis should begin in December 2005, when the European Central Bank warned the “world of European finances” against the growing financial imbalance. In the ECB’s opinion, long-term interest rates and risk premiums had reached too low a level in some financial markets. This communication did not spark any serious response, however. The situation deteriorated over time and in 2007, the ECB emphasized threats associated with complex, nonstandard and highly risky financial instruments (derivatives) operating in the financial dealings. The ECB also announced that the financial system was no longer immune to a potential rapid drop in liquidity. The problems related to US sub-prime mortgages had already had an adverse impact on the liquidity in monetary markets worldwide. The first symptoms of the breakdown on the real estate market could already be seen and the stock market boom was ending.<sup>18</sup>

The period of 2007–2008 marked a watershed both on the European and global scale. On the one hand, ill-conceived and hasty “initiatives” were being taken in order to strengthen supervision institutions, on the other one, the attempts to enhance the financial system’s

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<sup>15</sup> Cf. *Raport na temat pełnego uczestnictwa Rzeczypospolitej Polskiej w trzecim etapie Unii Gospodarczej i Walutowej*, NBP, Warszawa 2009, p. 13.

<sup>16</sup> Z. Czachór, *Kryzys...*, op. cit., p. 426.

<sup>17</sup> Developed on the basis of: *Kryzys a Europejski Bank Centralny*, Retrieved from: <http://www.ecb.int/ecb/html/crisis.pl.html> (1.12.2012); T. Kunstein, W. Wessels, *Die Europäische Union in der Währungskrise: Eckdaten und Schlüsselentscheidungen*, “Integration” no. 4, 2011, pp. 309–310.

<sup>18</sup> Cf. T. Chłopecki, *Kryzys gospodarki czy kryzys ekonomii*, (in:) B. Jałowicki, P. Kaprański (eds.), *Spoleczny wymiar kryzysu*, Warszawa 2012, p. 32; Z. Czachór, *Kryzys...*, op. cit., p. 427.



security was blocked at the Basel Committee on Banking Supervision, preventing the introduction of a ban on capital leveraging, or the principle of the separation of investment institutions from classical banking ones. At that time such regulations were thought to possibly result in lowering the international competitiveness of European financial institutions. In fact, this was the most appropriate moment to take determined and responsible steps that could have minimized the outcomes of what was about to happen.<sup>19</sup>

Simultaneously, talks were held by the ECB, the National Reserve System and central banks of Canada, the United Kingdom and Switzerland to introduce solutions mitigating the tensions on the short-term interbank lending market. Consequently, a strange and bogus calming down ensued, which was approved of by the European Council, among others, issuing optimistic conclusions on March 9 where it stated that “Europe is currently enjoying an economic upswing and reforms are starting to translate into growth and jobs. These positive developments should be used to step up the pace to modernise Europe and its economy, thus helping the EU to achieve higher levels of prosperity, further job creation and greater social cohesion. The Union is determined to shape both its internal and external policy in accordance with its values in a globalised world to the benefit of the Union’s citizens.”<sup>20</sup>

This was the atmosphere in which month after month passed (and was wasted) without the actual participation of the European Council, while the United States and Europe were thinking about what to do next. In March 2008, at its summit, the European Council broke its silence and accepted the periodical report on the stability of financial markets drawn up by the Economic and Financial Affairs Council (Ecofin). It was concluded in the report that the international financial system remained unstable (mainly through the fault of the private sector) after the turmoil that had occurred in the financial markets. Nevertheless, the document confirmed that certain corrections had already been implemented following the steps taken by the European Central

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<sup>19</sup> Z. Czachór, *Kryzys...*, op. cit., p. 428.

<sup>20</sup> Cf. Council of the European Union, *Presidency Conclusions*, 8/9 March 2007, EUCO 7224/07, Brussels, 9 March 2007.

Bank, national and EU bodies and financial institutions in order to stabilize the situation. It also acknowledged the following:

- it is imperative to immediately disclose the full exposure of banks and other financial institutions to risk, off-balance-sheet instruments and losses;
- it is necessary to improve the supervision framework of financial prudence and risk management in individual institutions, given the conditions of continuous financial innovations;
- the framework of financial stability needs to be improved by means of more effective supervision of financial prudence and improved methods of crisis management in the field of finance;
- it is important to manage cross-border crisis situations in the field of finance;
- the early warning systems need to be improved at both EU and international levels, including by strengthening the IMF's supervisory role over macrofinancial stability.<sup>21</sup>

In the meantime, riots broke out in May 2008, which subsequently evolved into protests lasting many months, mainly in Greece (“urban guerrilla”).<sup>22</sup> In September 2008, the G7 (the group of the seven richest and most influential countries in the world) committed to taking measures in order to protect the global financial system. Ministers of finance and presidents of central banks in the G7 countries declared close cooperation in order to protect the integrity of the international financial system. This was followed by the Lehman Brothers bank announcing bankruptcy on September 15, 2008.<sup>23</sup> On October 12, 2008 the first historic summit of the euro area convened to respond to this situation; both the summit and the whole of the system were “informal.” It did not bring the expected results. Again, months of inexplicable inaction and idle considerations and disputes (mainly between France and Germany) passed. The situation did not change until October 2009, when Greece initiated the open and loud public discussion of its disastrous financial

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<sup>21</sup> Ibid.

<sup>22</sup> Cf. B. Jałowicki, *O naturze kryzysu*, (in: ) B. Jałowicki, P. Kaprański (eds.), *Spółeczny wymiar kryzysu*, Warszawa 2012, p. 11.

<sup>23</sup> Z. Czachór, *Kryzys...*, op. cit., p. 428.

problems.<sup>24</sup> The European Commission examined the consequences of violating the convergence criteria, and concluded that getting Greece out of the debt it had been trapped in would demand ca. 300 billion euro. It was politically impossible for the European Council to approve of such a course of action at the time.<sup>25</sup> The European Council believed that the crisis could be overcome by means of altering the regulations and establishment of new monitoring and supervision institutions.

Going back to the calendar of the crisis, it was in December 2009 when the (quarrelling) representatives of member states and EU institutions “woke up from their prostration lethargy and idleness”<sup>26</sup> and resolved to apply their traditional method of responding to the crisis, namely to take institutional steps and “establish a body.” By consent of the European Council, they formed three new entities tasked with the supervision of the banking, insurance and securities markets: the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority. Their competencies encompass monitoring the financial operations of banks, stock markets, insurance companies and pension funds.<sup>27</sup>

On January 12, 2010, the ECB announced that it had found it problematic to accept the information on the Greek deficit provided by the Greek authorities. The accusations of “statistical frauds” emerged for the first time as well as warnings of Greece being insolvent.<sup>28</sup> On February 11, 2010, another informal EU summit was held. It was the first time a summit was dedicated to the issue of saving Greece, which became an EU routine in the months and years that followed. The outcome was that the President of the European Council, Herman Van Rompuy, became the president of euro area summits, too. This formed a dangerous precedent whereby, in the future, representatives from outside the euro area might be excluded from heading the

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<sup>24</sup> Cf. European Council, *Conclusions*, 10/11 December 2009, EUCO 6/09, Brussels, 11 December 2009.

<sup>25</sup> Z. Czachór, *Kryzys...*, op. cit., p. 429.

<sup>26</sup> *Kapitał wywinął nam numer*. Sociologist Alain Touraine interviewed by L. Włodek, “Gazeta Wyborcza”, January 5–6, 2013, p. 24.

<sup>27</sup> Z. Czachór, *Kryzys...*, op. cit., p. 430.

<sup>28</sup> Cf. A. Touraine, *Po kryzysie*, Warszawa 2013, p. 107.

European Council, then one of the most important EU institutions.<sup>29</sup> Additionally, matters related to the euro area were discussed at least once a month in the presence of the President of the European Commission and the President of the Eurogroup (a position long held by the Prime Minister and Minister of Finance from Luxembourg, Jean-Claude Juncker). Together they determined further activities (including economic strategies and enhanced convergence in the euro area) as well as all counter-crisis measures.<sup>30</sup>

In March 2010, Greece was promised financial aid (by the EU, and with the aid of the IMF). On April 23, 2010, Greece officially confirmed the necessity to receive an “aid package” and agreed to launch reforms and implement austerity measures supervised by the European Commission, the ECB and IMF (the “Troika”). On May 2, 2010, a loan package for Greece to the amount of EUR 110 billion was agreed and announced in the historic and precedent-setting EU Council Decision (2010/320/EU) of June 8, 2010 issued in order to reinforce and enhance fiscal supervision, and call for Greece to take the measures deemed necessary to curb its excessive deficit.<sup>31</sup> A few days later (May 78), the heads of state and government of euro area countries resolved to launch an “aid umbrella” program available for all states in need. The program became reality on May 9–10, when the ministers of finance of member states agreed on an extensive package of measures to protect financial stability in Europe, including the European Financial Stabilization Mechanism (EFSM) and the European Financial Stability Facility (EFSF); the maximum package value was set at EUR 500 billion. Additionally, the IMF committed itself to make further EUR 250 billion available.<sup>32</sup>

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<sup>29</sup> Cf. A. Słojewska, *Francuski pomysł skutecznie marginalizuje Polskę*, Retrieved from: <http://www.rp.pl/artykul> (10.12.2012).

<sup>30</sup> Z. Czachór, *Kryzys...*, op. cit., pp. 430–431.

<sup>31</sup> For more on this topic see: R. Mężyk, *Działania Unii Europejskiej w obliczu kryzysu greckiego a poszanowanie zasady subsydiarności i suwerenności państw członkowskich*, (in:) C. Mik (ed.), *Konferencja Unia Europejska: zjednoczeni w różnorodności*, Warszawa 14–15 grudnia 2010, Warszawa 2012, pp. 410 ff.

<sup>32</sup> For more on the crisis in the monetary union see: M. Dunin-Wąsowicz, A. Darska, G. Tchorek, *Integracja europejska i nowy ład gospodarczy. Raport*, Aca-

The crisis peaked in May 2010. Markets froze up, stock indicators hit the bottom, two large European banks faced bankruptcy, Barack Obama intervened in Berlin, and bankers went into hysterics.<sup>33</sup> The ECB responded to this on May 10, 2010 by the interventional purchase of debt securities (bonds and other papers) on secondary markets of endangered states. On September 7, 2010, the EU Council made decisions referring to the “European semester” and on September 29, the European Commission presented a “sixpack” of laws intended to expand the stability and growth pact. Germany and France came to the rescue in October, when Chancellor Merkel and President Sarkozy suggested changing the treaty provisions on aid mechanisms for countries suffering from the crisis.<sup>34</sup>

On October 28, 2010, the European Council resolved to reinforce the stability and growth pact and establish a permanent mechanism of crisis prevention.<sup>35</sup> In late November, the Irish government requested financial aid from EU states and the euro area, and the leaders and ministers of finance from the euro area agreed on the future European Stability Mechanism (ESM) to replace the European Financial Stability Facility (EFSF) as of mid-2013. This initiated a “rescue campaign” aimed at supporting the toppling euro area by creating a robust financial and organizational network for a new Economic and Monetary Union, dubbed in the language of politics and the media as “robust firewalls,” a “Euro-Rettungsschirm” or a “financial bazooka.” On top of that, the European Systemic Risk Board (ESRB) was established for the purpose of preventing systemic risk to the financial stability of the European Union, and mitigating the risks generated by processes occurring in the financial system.<sup>36</sup>

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demic Editor: M. Dunin-Wąsowicz, Warszawa 2012; Z. Czachór, *Kryzys...*, op. cit., p. 431.

<sup>33</sup> J. Rokita, *Deutsche Ordnung? (O dylemacie skąpca i imperialisty)*, “Horyzonty Polityki. Horizons of Politics. Nie-ludzki wymiar polityki. Non-Human dimension of politics”, no. 3 (4), 2012, p. 329.

<sup>34</sup> Z. Czachór, *Kryzys...*, op. cit., p. 432.

<sup>35</sup> Cf. European Council, *Conclusions*, 28/29 October 2010, EUCO 25/10, Brussels, 29 October 2010.

<sup>36</sup> *Ibid.*

On December 16–17, 2010, the European Council adopted a draft decision on the amendment to Article 136 of the Treaty on the Functioning of the European Union (TFEU) thereby providing for the permanent stabilization mechanism to be established (future European Stability Mechanism) whose fundamental function would be to ensure liquidity to euro area states. The change was formally adopted by the European Council Decision 2011-199 of March 25, 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for member states whose currency is the euro. The decision had subsequently to be ratified by EU member states.<sup>37</sup>

On January 1, 2011, in the middle of the severe crisis, Estonia became the 17th member of the euro area. In the same month, EU ministers of finance began launching the “European semester,” or the assessment cycle of the coordination of economic policies, which is part of a wider reform of economic governance in the European Union. At the session of the European Council held in Brussels on March 24–25, 2011, the Euro Plus Pact (EPP) was adopted. This was an intergovernmental agreement between euro area states and six other states (Poland, Bulgaria, Denmark, Lithuania, Latvia and Romania). This document addressed the issue of the improvement of economic governance in the EU by implementing economic policies so as to promote convergence, increased employment, budgetary and financial stability, and the increased competitiveness of the euro area and the EU.<sup>38</sup> Several weeks later, in April 2011, Portugal requested the aid mechanism to be launched for this country.<sup>39</sup>

The European Council remained optimistic. At its session in June 2011, the Council declared that “[e]uro area Heads of State or Government reiterate their commitment to do whatever is necessary to ensure

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<sup>37</sup> Cf. European Council, *Conclusions*, 16/17 December 2010, EUCO 30/10, Brussels, 17 December 2010.

<sup>38</sup> Cf. J. Barcz, *Instrumenty międzyrządowe dotyczące kryzysu w strefie euro a spójność Unii: możliwość przystąpienia państw członkowskich UE spoza strefy euro*, (in:) M. M. Kenig-Witkowska, R. Grzeszczak (eds.), *Traktat z Lizbony – wybrane zagadnienia/The Treaty of Lisbon: selected issues*, Warszawa 2012, p. 105.

<sup>39</sup> Z. Czachór, *Kryzys...*, op. cit., pp. 432–433.

the financial stability of the euro area as a whole” and stated that the “recovery in the euro area is well on track and has reached a sustainable path of solid growth. The euro is based on sound fundamentals, and we are deeply satisfied with the track record of price stability achieved since the inception of the euro.”<sup>40</sup>

A set of additional stabilization solutions was agreed at subsequent crisis summits of the euro area and the European Union held on October 23 and 26, 2011. Euro area heads of state or government agreed that it was necessary to improve the governance of the euro area, including the organization of regular semi-annual summits of euro area states. December 2011 saw another stage of the crisis which directly followed the signing of the treaty on the accession of Croatia. On December 9, euro area leaders resolved to adopt a fiscal pact which, among other things, strengthened the regulations on the excessive deficit procedure. 2011 can be summed up as different from the earlier period, in that it marked the European Council’s and other institutions’ attempts to take strategic and long-term activities, rather than merely short-time adjustment measures. It was also the time when the necessity to amend the treaties was realized as the most significant element to legitimize the EU arising from the crisis.<sup>41</sup>

In the following year, on February 2, 2012, euro area states entered the Treaty establishing the European Stabilization Mechanism (ESM). Its operation was inaugurated on October 8, 2012. The ESM was an international financial institution which took over the responsibilities of the EFSF and EFSM.

On March 1, 2012, twenty-five EU states (excluding the United Kingdom and Czech Republic) signed the Fiscal Compact under the formal title of the Treaty on Stability, Coordination and Governance (TSCG). This intergovernmental agreement created the risk of sanc-

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<sup>40</sup> Cf. European Council, *Conclusions*, 23/24 June 2011, EUCO 23/11, Brussels, 24 June 2011.

<sup>41</sup> Cf. A. Nowak-Far, *Shaping the European Union’s economic order as a tool to counter the crisis*, Speech delivered at a panel entitled “Crises in the European Union and ways of overcoming them,” 3<sup>rd</sup> National Congress of Political Science, Poznań, Poland, 2012; Z. Czachór, *Kryzys...*, op. cit., p. 435.

tioning the disintegration of the EU into several concentric circles. The Treaty openly stipulated the goal of strengthening the Economic and Monetary Union's structure. It also institutionalized informal Euro Summit meetings and formally defined such terms as Eurogroup and euro area.<sup>42</sup> Among other things, the new treaty requires the "balanced budget rule" to be included in national legal systems through binding and stable regulations – preferably at the constitutional level – and thus fall within the remit of the Court of Justice of the European Union. States might be encouraged, or even forced if need be, to reduce their potentially identified deficit. The Treaty provides for the financial aid granted to states in the euro area under the new programs within the framework of the European Stability Mechanism to be conditional upon the ratification of the Treaty by the concerned country (as of March 1, 2013). It also envisages that, in the matters that are essential for proper functioning of the euro area without breaching the principles of the Single Market, the mechanism of enhanced cooperation might be referred to as stipulated in Art. 20 of the Treaty on the European Union and in Art. 326–334 of the Treaty on Functioning of the European Union.<sup>43</sup>

March 2012 also marked the beginning of the second financing campaign by the EBC, which in the course of 36 months lent EUR 530 billion to 800 banks. Responding to changes taking place in the EMU and the EU, on March 30, 2012, the Eurogroup stated that its goal was to create "a genuine Fiscal Stability Union."<sup>44</sup>

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<sup>42</sup> *Traktat o stabilności, koordynacji i zarządzaniu w Unii Gospodarczej i Walutowej pomiędzy Królestwem Belgii, Republiką Bułgarii, Królestwem Danii, Republiką Federalną Niemiec, Republiką Estońską, Irlandią, Republiką Grecją, Królestwem Hiszpanii, Republiką Francuską, Republiką Włoską, Republiką Cypryjską, Republiką Łotewską, Republiką Litewską, Wielkim Księstwem Luksemburga, Węgrami, Maltą, Królestwem Niderlandów, Republiką Austrii, Rzeczpospolitą Polską, Republiką Portugalską, Rumunią, Republiką Słowenii, Republiką Słowacką, Republiką Finlandii i Królestwem Szwecji, sporządzony w Brukseli dnia 2 marca 2012 r.*, Sejm Rzeczypospolitej Polskiej, VII kadencja, Warszawa, 4 grudnia 2012 r. (release no. 961).

<sup>43</sup> Z. Czachór, *Kryzys...*, op. cit., p. 435; cf. European Council, *Conclusions*, 1/2 March 2012, EUCO 4/3/12, Brussels, 8 May 2012.

<sup>44</sup> *Statement of the Eurogroup, 30 March 2012*, Retrieved from: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ecofin/129381.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/129381.pdf) (10.01.2013).



Unfortunately, the turmoil continued. A third country, Spain, requested financial aid in June 2012, followed by Cyprus, whose situation was very complex on account of its economic ties with Greece and crediting dependence on Russia, not to mention the division of Cyprus and the conflict with Turkey.

In late June 2012, the European Council decided to establish a European mechanism for bank supervision. At the summit of the European Council held on June 28–29, 2012, Herman Van Rompuy, in cooperation with the Presidents of the Commission, the Eurogroup and the European Central Bank presented a report entitled *Towards a Genuine Economic and Monetary Union*, which set out the future of the EMU.<sup>45</sup> The European Commission responded on September 12, 2012 by presenting an action plan for a banking union and two draft regulations on a united supervision mechanism over banks in the euro area, and granting essential rights to the ECB.<sup>46</sup>

An unprecedented decision was taken on September 6, 2012. The Board of Presidents of the ECB resolved to launch a program of unlimited purchase of bonds in the secondary market (Outright Monetary Transactions, OMT) in order to reduce the return on debt of the endangered euro area states. OMT would be launched at the request of a given country as long as the country accepted the conditions of the aid program. “Money printing” must not translate into the countries struck by crisis failing to carry out reforms.<sup>47</sup> Everything suggests that this was one of the key events in the history of European integration and of emergency measures taken in the euro zone which will be decisive for the survival of the single currency and the EU.<sup>48</sup>

The crisis also exerted an impact on the negotiations on the Multi-annual Financial Framework 2014–2020 held during the meeting of the heads of state and government on November 22–23, 2012. Al-

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<sup>45</sup> Cf. European Council, *Conclusions*, 28/29 June 2012, EUCO 76/12, Brussels, 29 June 2012.

<sup>46</sup> *Zintegrowane ramy finansowe, czyli tzw. unia bankowa*, Retrieved from: <http://libr.sejm.gov.pl/oide> (2.12.2012); Z. Czachór, *Kryzys...*, op. cit., p. 436.

<sup>47</sup> *EBC ogłosił plan skupu obligacji, ale postawił warunki*, “Biuletyn Rady Gospodarczej”, Friday 7.09.2012.

<sup>48</sup> Z. Czachór, *Kryzys...*, op. cit., p. 437.

though the President of the European Council, Herman van Rompuy suggested the amount of EUR 973 billion (EUR 81 billion less than what the European Commission proposed in June 2011), the compromise, which was so important for the whole of the EU, could not be reached. Member states split into the “friends of the cohesion policy” (including the gross payers and Cyprus) and the “friends of reasonable spending” (the net payers only). The latter group was dominated by members of the Eurogroup, who found the “financial cuts” negligible in the face of the scale of challenges associated with the public debt crisis in the euro area.<sup>49</sup>

The debates on the structural future of the EMU continued to be fraught by tension in November and December 2012. The moment Poland and several other countries had managed to neutralize German ideas of establishing a separate financial mechanism for the euro area (“the budget of the euro area”), the same idea was tabled again by the President of the European Commission, Jose M. Barroso. His proposal involved designing, within the framework of the EU budget, a new “convergence and competition instrument” (plus the mechanism of fiscal capability of the euro area), which would be separate from the multiannual financial framework and would also support the timely implementation of structural reforms that are of significance for member states, secure the effective operation of the EMU, and strengthen joint EU budgetary and economic policy.<sup>50</sup>

Before the summit of the heads of state and/or government on December 13–14, 2012, a new report drawn up under the supervision of the President of the European Council was published; its paramount goal was to propose a temporal framework and stages of the process leading to the ultimate completion of the EMU.<sup>51</sup>

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<sup>49</sup> Ibid., p. 442.

<sup>50</sup> Cf. *A blueprint for a deep and genuine economic and monetary union: Launching a European Debate*, European Commission, Brussels, 28/11/2012; Z. Czachór, *Kryzys...*, op. cit., p. 439.

<sup>51</sup> *Towards a Genuine Economic and Monetary Union*. Herman Van Rompuy, Herman Van Rompuy, President of the European Council. In cooperation with Jean-Claude Juncker, President of the Eurogroup, Mario Draghi, President of the European Central Bank, 5 December 2012.

The consolidation of the EMU was to be about more than the completion of its structure. The process of strengthening the EMU was to start with the completion and implementation of new, enhanced economic governance and, within a future bank union, with the adoption of a uniform supervision mechanism and new regulations on the repair, restructuring and orderly resolution of a failing bank and regulations on deposit guarantees. The issue of the social dimension of the EMU was to be addressed in the future, alongside the enforceability and conditions of mutually negotiated agreements promoting competition, economic growth and the mechanisms of solidarity. Such agreements, named competition and economic growth agreements, would encompass all euro area member states while member states from outside of the euro area could choose to enter similar agreements at their discretion.<sup>52</sup>

The creation of the EMU was to be completed by referring to the EU's institutional and legal framework. It was to be open and transparent to member states who do not use the single currency. It was also important to ensure equal opportunities both to member states who participated in the uniform supervision system, and those who did not, alike.

The fiscal pact came into force on January 1, 2013. A minimum of twelve euro area states were required to ratify the pact to make it binding. On February 7–8, 2013, following lengthy negotiations, the heads of state and government gathered in the European Council adopted the Multiannual Financial Framework (MFF) 2014–2020. A political agreement was reached that the maximum total figure for expenditure for EU 28 for the period 2014–2020 was EUR 959,988 million in appropriations for commitments, representing 1.00% of EU GNI, and EUR 908,400 million in appropriations for payments, representing 0.95% of the EU GNI.

It can be read in the summit conclusions that over recent years the European Union and its member states took important steps in response to the challenges posed by the economic and financial cri-

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<sup>52</sup> European Council, *Conclusions*, 13/14 December 2012, EUCO 205/12, Brussels, 14 December 2012.

sis. Looking to the future, the next Multiannual Financial Framework must ensure that the European Union's budget is geared to lifting Europe out of crisis. The European Union's budget must be a catalyst for growth and jobs across Europe, notably by leveraging productive and human capital investments. It is declared in the conclusions that EU spending should be mobilized to support growth, employment, competitiveness and convergence, in line with the Europe 2020 Strategy. The MFF should reflect the consolidation efforts being made by member states to bring deficit and debt onto a more sustainable path. Other matters addressed there involve the European value added, smart fiscal consolidation, sound macroeconomic policies, better management of policies, concentration of funds on growth-enhancing measures, improving the quality of spending, the necessary flexibility in the interest of efficient allocation of resources, maximizing the leverage effect of actions supported by the EU budget, and increase in payments for member state with temporary budgetary difficulties.<sup>53</sup>

Streamlining governance in the euro area, in March 2013, the heads of euro area states or governments were asked to adopt the rules of their meetings, which stems from the Treaty on stability, coordination and governance, and is undoubtedly politically decisive for the separation of the EMU from the EU.<sup>54</sup>

In June 2013, the European Council debated the reinstatement of regular business crediting and facilitating investment financing. This was particularly important in countries with high unemployment among the young, and those in need of new investments to promote economic growth and employment. The European Council responded by agreeing on a new Investment Plan to be initiated, and on other steps to be taken to implement the Growth and Employment Pact. Key priority was given to completing the establishment of a banking union

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<sup>53</sup> *Multiannual Financial Framework*, European Council, *Conclusions*, 7/8 February 2013, Brussels, 8 February 2013, EUCO 37/13; Z. Czachór, *Kryzys...*, op. cit., p. 442.

<sup>54</sup> Cf. European Council, *Conclusions*, 14/15 March 2013, EUCO 23/13, Brussels, 14 March 2013.

in line with the European Council Conclusions of December 2012 and March 2013.<sup>55</sup>

### **Conclusions. The “strategic” activity of the European Council reinforced by the crisis**

In 2014, the European Council issued the *Strategic Agenda for the EU in Times of Change*, where five overarching priorities were agreed which will guide the work of the European Union over the following five years, namely: stronger economies with more jobs; societies enabled to empower and protect; a secure energy and climate future; a trusted area of fundamental freedoms; and effective joint action in the world. Action in these fields was considered vital by the European Council, given the important challenges facing EU societies. The European Council identified the following challenges posed by the crisis: disturbingly high unemployment, especially among young people; rising inequality; scarce natural resources; the cost of energy and impact of climate change; energy dependency; radicalization and extremism; geopolitical instability; demographic trends, such as ageing populations putting additional pressure on our welfare systems; and irregular migration flows.<sup>56</sup> The analysis of the *Strategic Agenda* implies that the EC believes that the crisis in the euro area is coming to an end. Is it really so?

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<sup>55</sup> Cf. European Council, *Conclusions*, 27/28 June 2013, EUCO 104/2/13, Brussels, 28 June 2013, pp. 7–8.

<sup>56</sup> Cf. European Council, *Conclusions*, 26/26 June 2014, EUCO 79/14, Brussels, 27 June 2014.

## **Final remarks**

The European Council systematically focuses on the key challenges facing the European Union. In its work, it has addressed the most important problems faced by the EU as a whole, and by its individual members. The considerations presented in this book apply a broad range of methods to theorise European integration, providing a framework for explaining the phenomena of institutional transformation, and facilitating a better understanding of the processes taking place in a post-Lisbon EU which is trying to respond to a series of internal and international crises. Most of these methods explore the causes and dynamics of integration, thereby making it possible to understand the political, legal and institutional organisation of the EU and its various transformations. It also allows the reader to understand the process of transformation of the European Council, which is the main subject of deliberations in this publication. Its role in creating the activity of the European Union is highly important within the integration processes. The considerations presented allow a range of conclusions to be drawn.

Firstly, the European Council is part of a complex multi-level network of connections created by integration actors – from member states, through to EU institutions to political parties and interest groups. The type and scope of the European Council's activities result from the functions assigned to it in and outside treaties, as well as from how they are rationally and functionally performed, rather than from the constellation of interests of the states and governments which are participating in integration. In this approach, the European Council is intended to functionally combine national goals with shared goals, which are then transformed into community goals through specific forms of institutionalisation. In the process of the European Council's transformations, the neofunctional assumption that autonomous

supranational institutions have a considerable impact on the dynamics of integration processes, taking over the role of states in time, is confronted with the intergovernmental assumption that states behave rationally and try to maximise their interests, and international institutions are indispensable for long-term cooperation, as they facilitate the increased effectiveness of activities. As a result, integration is a way of adapting to a new international environment, in particular to increasing globalisation, and does not serve to replace the nation state. Adaptation is a process whereby the European Council changes the scope of its functions to adapt to changes in the external environment. In order to survive and increase its efficiency, it adapts in a process of evolution. This adaptation concerns not only the European Council, but also its institutional environment. Adaptation ensures the necessary response to changes.

Secondly, the Treaty of Lisbon created a new political and institutional environment in which many institutional actors are still establishing their positions and functioning mechanisms in practice. As a result, despite the complex interrelationships between member states and institutions, the governments of member states continue to play a central role in the EU's system. The positioning of the European Council of the European Union is similar, also related to the changing international situation.

Thirdly, the evolution of the functions performed by the European Council over the years leads to the conclusion that its previous and present position in the institutional system is determined by the need to create a permanent centre of political leadership. The European Council is strengthening its competences as it responds to the multifaceted changes in the internal institutional structure of the European Union, as well as to growing external threats. This strengthening is due to the fact that its intergovernmental functioning formula is indispensable for supplementing or replacing ineffective and inert supranational structures. The European Council is gradually becoming the main centre of political influence, which leads to its exclusive role in creating the strategic framework and specific roles of the EU in the international arena.

The research results demonstrate the growing importance of the European Council in the EU's institutional system. The publication we have prepared is only a contribution to the discussion about changes in the EU's institutional system. We hope that the research into this area will continue to develop in the future.

*Beata Przybylska-Maszner  
Zbigniew Czachór*



## List of Interviewees

All interviews in the book were carried out by the members of the project “The European Council in the process of forming formal and informal competences in the realm of the European Union’s external activities” between May 2017 and June 2019 financed by the National Science Centre, Poland (Narodowe Centrum Nauki, NCN no. 2015/19/B/HS5/00131). All interviewees were carried out on the basis of anonymity. Interviewee groups were coded according to the institutional affiliation. Interview reference codes throughout the book indicate this information and state the date of the interview. There were two groups of interviewees: officials employed by one of the EU institutions (EC-European Council, ECo-European Commission, EEAS-European External Action Service) diplomats from the permanent representations of the member states in Brussels (PR). All interview documentation is deposited in Authors’ archive.

### Time Frame

Interviewee EU-17/EEAS 1, 20.06.2017.

Interviewee EU-18/EEAS 2, 18.06.2018.

Interviewee EU-18/EEAS 3, 18.06.2018.

Interviewee EU-19/EC 0, 16.06.2019.

Interviewee EU-19/EC 1, 19.09.2019.

Interviewee EU-17/EC 2, 20.05.2017.

Interviewee EU-19/EC 2a, 19.09.2019.

Interviewee EU-19/EC 3, 20.04.2019.

Interviewee EU-18/EC 4, 4.11.2018.

Interviewee EU-18/EC 5, 20.11.2018.

Interviewee EU-18/EC 6, 15.07.2018.  
Interviewee EU-18/EC 7, 20.04.2018.  
Interviewee EU-18/EC 8, 15.07.2018.  
Interviewee EU-19/EC 9, 19.09.2019.

Interviewee EU-19/EC<sub>0</sub> 0, 16.06.2019.  
Interviewee EU-18/EC<sub>0</sub> 1, 19.09.2018.  
Interviewee EU-19/EC<sub>0</sub> 2, 17.06.2019.  
Interviewee EU-18/EC<sub>0</sub> 3, 15.07.2018.  
Interviewee EU-18/EC<sub>0</sub> 4, 15.07.2018.  
Interviewee EU-19/EC<sub>0</sub> 5, 17.06.2019.

Interviewee EU-18/PR 1, 19.04.2018.  
Interviewee EU-18/PR 2, 19.04.2018.  
Interviewee EU-18/PR 3, 20.04.2018.  
Interviewee EU-18/PR 4, 20.04.2018.  
Interviewee EU-18/PR 5, 20.04.2018.  
Interviewee EU-18/PR 6, 19.04.2018.  
Interviewee EU-18/PR 7, 15.07.2018.

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## Annex

### European Council meetings – November 2009 to December 2020

Date	Type	Documents	EU Presidency
1	2	3	4
<b>2009</b>			
19 November	Informal	Presidency Conclusions – chose the first President of the EC and HR	Sweden
10–11 December	Formal	Presidency Conclusions	
<b>President of the European Council Herman Van Rompuy</b> <b>1.12.2009–30.11.2014</b>			
<b>2010</b>			
11 February	Informal	Statement on Greece	Spain
25 March	Euro summit	Statement	
25–26 March	Formal	Conclusions	
7 May	Euro summit	Statement	
17 June	Formal	Conclusions	
16 September	Extraordinary	Conclusions	Belgium
28–29 October	Formal	Conclusions	
16–17 December	Formal	Conclusions	
<b>2011</b>			
4 February	Formal	Conclusions	Hungary
11 March	Euro summit	Statement	
11 March	Extraordinary	Declaration on EU Policy for action In Libya and Southern Neighbourhood region	
24–25 March	Formal	Conclusions	
23–24 June	Formal	Conclusions	
21 July	Euro summit	Statement	Poland
23 October	Formal	<b>Conclusions</b>	
23–26 October	Euro summit	Statement	
26 October	Informal	<b>Statement</b>	
8–9 December	Formal	<b>Conclusions</b>	
9 December	Euro summit	Statement	

1	2	3	4
<b>2012</b>			
30 January	Euro summit	Statement	Denmark
30 January	Informal	Statement	
1–2 March	Formal	Conclusions	
2 March	Euro summit	Statement	
23 May	Informal	Statement	
28–29 June	Formal	Conclusions	
28–29 June	Euro summit	Statement	
18–19 October	Formal	Conclusions	Cyprus
22–23 November	Extraordinary	Statement	
13–14 December	Formal	Conclusions	
<b>2013</b>			
7–8 February	Formal	Conclusions	Ireland
14 March	Euro summit	Remarks by President, Adopted rules for the organization of the proceedings of the Euro summits	
14–15 March	Formal	Conclusions	
22 May	Formal	Conclusions	Lithuania
27–28 June	Formal	Conclusions	
24–25 October	Formal	Conclusions	
19–20 December	Formal	Conclusions	
<b>2014</b>			
6 March	Extraordinary	Statement on Ukraine	Greece
20–21 March	Formal	Conclusions	
27 May	Informal	Statement	
26–27 June	Formal	Conclusions	
16 July	Extraordinary	Conclusions	Italy
30 August	Extraordinary	Conclusions	
23–24 October	Formal	Conclusions	
24 October	Euro summit	Statement	
<b>President of the European Council Donald Tusk 1.12.2014–30.11.2019</b>			
18 December	Formal	Conclusions	
<b>2015</b>			
12 February	Informal	Statement on the fight against terrorism	Latvia
19–20 March	Formal	Conclusions	
23 April	Extraordinary	Statement	
22 June	Euro summit	Presidential remarks	
25–26 June	Formal	Conclusions	

1	2	3	4
7 July	Euro summit	Presidential remarks	Luxem- bourg
12 July	Euro summit	Statement, Presidential remarks	
23 September	Informal	Presidential remarks, Statement	
15 October	Formal	Conclusions	
12 November	Informal	Presidential remarks	
17–18 December	Formal	Conclusions	
<b>2016</b>			
18–19 February	Formal	Conclusions	Nether- lands
17–18 March	Formal	Conclusions	
28 June	Formal (post- poned – Brexit case)	Conclusions	
29 June	Informal	Statement	
16 September	Informal	Bratislava declaration and roadmap	Slovakia
20–21 October	Formal	Conclusions	
15 December	Formal	Conclusions	
<b>2017</b>			
3 February	Informal	Statement and remarks, Malta declaration on the external aspects of migration – Donald Tusk reelection	Malta
9 March	Formal	Conclusions by the President	
10 March	Informal	60th anniversary of the Rome Treaties	
25 March	Informal	60th anniversary of the Rome Treaties. The Rome Declaration	
29 April	Extraordinary	Guidelines for Brexit negotiations	
22–23 June	Formal	Conclusions	
22 June (evening)	Extraordinary	Decision by Heads of State and Government: Procedure leading up to a decision on the relocation of the EMA and the EBA	
29 September	Informal (Tallinn Digital Summit)	---	Estonia
19–20 October	Formal	Conclusions	
17 November	Informal	---	
14–15 December	Formal	Conclusions. Guidelines for Brexit negotiations	
15 December	Euro summit	---	
<b>2018</b>			
23 February	Informal	---	Bulgaria



1	2	3	4	
22–23 March	Formal	Conclusions		
23 March	Euro summit	---		
28–29 June	Formal	Conclusions		
29 June	Extraordinary	Conclusions		
29 June	Euro summit	Statement		
19–20 September	Informal	---		Austria
17 October	Extraordinary	---		
18 October	Formal	Conclusions		
18 October	Euro summit	Statement		
13–14 December	Formal	Conclusions, Conclusions (art. 50)		
14 December	Euro summit	Statement		
<b>2019</b>				
21–22 March	Formal	Decision 2019/476 taken in agreement with the United Kingdom extending the period under art. 50(3) TEU, Conclusions (art. 50)	Roumania	
10 April	Extraordinary	Conclusions (art.50)		
9 May	Informal	The EU's strategic agenda 2014–2019. The Sibiu Declaration		
28 May	Informal	---		
20–21 June	Formal	Conclusions		
21 June	Euro summit	Statement		
30 June–2 July	Extraordinary	Conclusions	Roumania/ Finland	
17–18 October	Formal	Conclusions, Conclusions (art. 50)	Finland	
<b>President of the European Council Charles Michel</b>				
<b>1.12.2019–...</b>				
12–13 December	Formal	Conclusions, Conclusions (art. 50)		
13 December	Euro summit	Statement		
<b>2020</b>				
20–21 February	Extraordinary	Declaration on the situation in Idlib	<b>Croatia</b>	
10 March	Video conference, informal	Conclusions of the President		
17 March	Video conference, informal	Conclusions of the President		
26 March	Video conference, informal	Joint Statement		
23 April	Video conference, informal	Conclusions by the President, Join European Roadmap towards lifting COVID-19 containment measures		
19 June	Video conference, informal	---		

1	2	3	4
17–21 July	Extraordinary	Conclusions	<b>Germany</b>
19 August	Video conference, informal	Conclusions by the President	
1–2 October	Extraordinary	Conclusions	
15–16 October	Formal	Conclusions	
29 October	Video conference, informal	---	
10–11 December	Formal	Conclusions	

## Contributors

**Zbigniew Czachór**, prof., lawyer, political scientist and journalist, expert on EU law and politics, international public law and international relations. Head of the Department of European Integration Research at the Faculty of Political Science and Journalism at Adam Mickiewicz University and Jean Monnet Chair, President of Polish Association of European Studies. Member of European Commission network of experts in European studies *Team Europe* Poland.  
E-mail: [zbigniew.czachor@amu.edu.pl](mailto:zbigniew.czachor@amu.edu.pl).

**Beata Przybylska-Maszner** – political scientist, europeanist. Since 2016, an associate professor at the Department for European Integration Research of the Faculty of Political Science and Journalism at the Adam Mickiewicz University in Poznań, Poland. Executive Editor of “Rocznik Integracji Europejskiej” (European Integration Yearbook). Member of European Commission network of experts in European studies *Team Europe* Poland. Her academic interests focus around the themes of institutionalisation process of the European Union’s Common Foreign and Security Policy, in particular its influence on EU relations with specific states and regions. Her research also concentrates on: reform of EU institutional system, coordination of EU external actions, implementation of EU’s instruments for financing external actions. Since 2016, a coordinator of project “The European Council in the process of shaping its formal and informal powers within the scope of EU external actions”.  
E-mail: [beata.przybylska-maszner@amu.edu.pl](mailto:beata.przybylska-maszner@amu.edu.pl)