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WOLFGANG WESSELS

Department of Political Science, University of Cologne, Germany

ABSTRACT   Since its creation in 1974 the European Council has turned into the key institution in the institutional architecture of the EU polity. The Maastricht Treaty on the European Union was a history-making product of this body of heads of state or government. For the institutional evolution of the European Council itself the Maastricht Treaty confirmed and reinforced trends starting with the Hague summit in 1969. This article covers the pre-history of the European Council as well as the road from the birth of the European Council in Paris, 1974, to the Maastricht Treaty and the next steps via two treaty revisions and the constitutional convention to the Lisbon Treaty in 2009. This article will not only try to satisfy some historical curiosity, but point out fundamental factors, explaining why Union executive leaders have invested time and energy in the labour-intensive and partly frustrating exercise of the making and working of their club: this key institution helped them to emerge as powerful multi-level players in a multi-institutional architecture.

KEY WORDS: European Council, institutional evolution, Treaty of Maastricht, fusion thesis

The Maastricht Treaty was a history-making act of heads of state or government. The agreement of the national leaders opened a new age for European construction and generally for Europe. Before, the fall of the Berlin Wall, leading to the end of German and European division and of the bipolar confrontation between the superpowers, had fundamentally changed Europe's political landscape. After some short but serious hesitations about the future direction of European construction, the highest political representatives of the 'masters of the Treaties' (BVerfG 2009, para. 298) upgraded the political significance of the EU by shaping the

Correspondence Address: Wolfgang Wessels, Department of Political Science and European Studies, Gottfried-Keller-Str. 6, 50931 Köln, Germany. Email: wessels@uni-koeln.de.

highly ambitious Maastricht Treaty. Though formally members of both the European Council and the 'Intergovernmental Conference' (see, for the legal differentiation, de Schoutheete 2012, 44), the heads of state or government of the then 12 EU member states used the European Council to exercise a role as constitutional architect for the Union.

We can highlight a long and differentiated set of items pointing at the relevance of the Maastricht 'Treaty on the European Union'. The High Contracting Parties of the treaty not only baptized this political system as the 'European Union'; they achieved major system-making decisions — especially the creation of the Economic and Monetary Union. It also redesigned the Union's general constitutional framework, with the temple structure based on three pillars.

The respective treaty provisions also formed a revised institutional architecture. Besides extending the powers of the EP by introducing the co-decision procedure, the treaty formulated a set of functions and of institutional features for the European Council. My article will deal with the Maastricht Treaty's contribution to shaping the institutional form of this key institution. I will not deal with all functions exercised by the European Council as constitutional architect in system-making or as ultimate decision maker in policy-making, but rather analyse its formal features along three institutional models, which signal competing conceptions of this key body.

One major point of departure follows a conventional approach. This 'presidency model' starts with the French version of a 'Europe des patries'. The 'summit' at the apex of the Union's institutional pyramid is then the most authoritative sign of the 'con-federal' nature of the European construction (Fontaine 1979, 357). The European Council is per se the supreme authority for Europe, as its members as top national policy-makers are the key actors to 'formulate a consistent set of national preferences', bargain with one another to reach 'substantive agreements' and finally 'choose to delegate and pool sovereignty in international institutions that secure the substantive agreements they have made' (Moravcsik 1998, 20). Irrespective of the legal words of primary law, the European Council is supposed to be the key locus of power in the EU, exercising the prerogatives of ultimate leadership. Such a body of national leaders of sovereign states should not be subject to any legal constraints.

As a clear alternative to the 'presidency model', the 'council model' aims at integrating the political potential of the highest national decision-makers into the 'ordinary' institutional architecture characterized by the Community method. National chief executives then act according to the relevant treaty rules, including the use of qualified majority voting. As one among several possible Council formations, the European Council may take legally binding decisions applicable for all relevant policy domains and modes of governance as regulated by EU treaties. The European Council will be subject to the constitutional checks and balances of the EU system; thus in this model the Court of Justice of the European Union is empowered to review the legal acts of the European Council. In this model the body of the heads of state or government becomes 'communitarised'. Following neo-functionalist logics (see, e.g., Niemann and Schmitter 2009), the Union's

heads of state or governments turn into 'agents' of functional spill-over mechanisms. So-called 'necessities' from 'anonymous' structural forces (Hallstein 1969), especially those arising from the 'market' or the 'logics' of the international system, push the chief executives of the day to extend the scope of common policies and improve earlier institutional structures and procedures.

In my fusion model (see Wessels 2005, 2010) the European Council is the driver of a fundamental evolutionary dynamic of the EU system. It incorporates and carries forward both the vertical fusion between levels as well as the horizontal fusion between EU institutions, as it is the central institution in a complex vertical multi-level constellation and in horizontal multi-institutional architecture with a large and differentiated set of modes of governance (Diedrichs *et al.* 2011): each head of state or government has —— as multi-level player —— a 'double hat': he is active in a set of opportunities and constraints on the European and domestic level. In order to enhance their problem-solving capacity, the members of the European Council turn this institution into a norm entrepreneur, exercising important rule-making functions in an increasing number of policy fields of vital national interest, jointly with other EU institutions. At the same time the highest representatives of the European states protect their respective national influence by at least reinforcing their own institution in the EU architecture.

With our focus on institutional evolution, we run the risk of falling into traps resulting from a sometimes too-narrow look at this unconventional institution. A first bias, and in quite a lot of academic contributions, consists in just enumerating the treaty provisions. As a consequence, one might easily draw faulty conclusions if the 'legal words' are taken to constitute the 'real world'. Such a shortcoming might not only lead to a misleading analysis of this strange *sui generis* institution itself; it might also miss a rare opportunity to explain essential developments in the European Union's evolution in the post-World War II history of Europe. Just to look at the forms —— and not at the political functions and major agreements —— might block a deeper understanding of the dynamics of the European construction itself, taken up and reinforced by the Maastricht Treaty.

There is a second major trap in analysing and assessing this institution: we might be persuaded too easily by a purely intergovernmental characterisation and explanation of this institution; there is a temptation to reduce the role of the European Council to a presidency model in which national leaders just agree on 'big bargains' at 'critical junctures' or on sovereignty-sensitive domains like foreign and security policy. Such a view underestimates the extensive agenda the European Council pursues in its regular work, and its on-going influence on major domains of policy-making. Thus, keeping the council model and the fusion model as points of reference helps us to reduce these risks.

Pre-history: Roads to the European Council's Creation

For analysing the Maastricht provisions on the European Council we need to look at the history of this key institution. I propose to start with the

summit at The Hague in 1969, as this conference was a 'turning point' (see Bitsch and Loth 2009, 110) to 'relaunch the European integration' (Marhold 2009, 24), and thus a milestone for the history of the European construction in general (see Mittag and Wessels 2004). It set a path (Pierson 2000) which influenced not only the agenda of the Maastricht Treaty but is still affecting the Union's agenda.

Points of departure for analysing this event are changes in the historical context — especially the economic and political crises of the late 1960s. One major motivation to convene the summit was the desire to overcome the EC's internal institutional blockages; this interest was reinforced by major pull effects from developments in the international system. Problems in the final years of the Bretton Woods system were creating serious difficulties for European economies. The Soviet invasion of Czechoslovakia in 1968 and the intensification of the Vietnam War had reduced the hope for a detente in the bipolar world with a potential 'third power' role for Europe.

This kind of challenge was also typical for later periods. The leaders of the EC member states were confronted with a strategic choice: should they use the then existing EC merely as one among several technical organisations with restricted functional objectives in clearly delimited domains — similar to a European OECD — or should they upgrade this framework into a comprehensive priority arena for tackling major international economic and political challenges? To formulate it from a more fundamental perspective: was the EC to be extended to be the major arena for pursuing their problem-solving instinct over a broad range of public policies?

The historical context also led to a renaissance of fundamental motivations in France and Germany. The French strategy for the European construction was, in 1969 (as before and later on, including the Euro zone crisis 40 years later), strongly influenced by its assessment of the growing economic power of its neighbour on the other side of the Rhine.

The agreement of the conference, achieved on the first evening of the summit in bilateral talks between the French President Pompidou and the German Chancellor Brandt (Brandt 1978, 321f), paved the way to the next stages up to the Lisbon Treaty and the crises from 2008 onwards. As to 'completion', the heads of state or government agreed 'to lay down a definitive financial arrangement for the common agricultural policy' which included the creation of 'own resources' and 'greater budgetary powers for the European Parliament' (The Hague, December 1969).[1]

'Enlargement' in the direction of the UK was agreed on with a major pre-condition that 'applicant States accept the Treaties and their political aims [and] the decisions taken since the entry into force of the Treaties' (*ibid.*, point 13). It pre-fixed the third condition of the so-called Copenhagen accession criteria, which the European Council passed in 1993.

As for 'deepening', the conference requested the Council of Ministers to produce a plan 'with a view to the creation of an economic and monetary Union' (*ibid.*, point 8), which then led to the 'Werner Plan' and initiated the process leading eventually to the Economic and Monetary Union. On the matter of political co-operation, the foreign ministers were instructed to 'study the best way of achieving progress in the matter of political

unification within the context of enlargement' (*ibid*., point 15). Thus, the heads of state or government launched the procedure for 'European Political Cooperation' (Allen and Wallace 1982, 24–7) in foreign policies, which became the 'Common Foreign and Security Policy' under the Maastricht Treaty.

For understanding the making of and working of the European Council it is important to note that the summit contributed to framing the perception of national leaders with regards to European construction. In their view, 'those who bear the highest political responsibility in each of the member states' (The Hague, December 1969) stressed 'the irreversible nature of the work accomplished by the Communities... paving the way for a united Europe capable of assuming its responsibilities in the world of tomorrow' (*ibid*.).

Even if we acknowledge some usual summit rhetoric, the top national politicians signalled to themselves and also to their political and administrative machinery that they had earmarked the European construction as a priority arena for a joint exercise of shared responsibility on a broad set of public policies.

However, even with this basic commitment, the national leaders were not able to take any significant steps to reform the institutional architecture, as deeply rooted conflicts about the general direction and the finality of the integration construction were not overcome. This obvious misfit between ambitious political objectives on the one hand and the unreformed set-up of institutional arrangements on the other is also of significance for the later conceptual debate on the European Council in the Maastricht Treaty and beyond.

Given the upgrading of the European level and faced with the weak performance of Community institutions, it's not a surprise that in the following years further *ad hoc* summits were held — in Paris in 1972 and in Copenhagen in 1973. They offered a wide range of experiences and lessons for institution building.

The Paris summit of 1974 then decided to create the European Council (de Schoutheete 2012, 44–6). Its chairperson, the French President Giscard d'Estaing, also coined the label of the new institution: 'the summits are dead, long live the European Council' (Moreau Defarges 1988, 35).

The key for this agreement was a deal to establish an institutionalized summitry and to introduce direct elections to the EP. Thus, this institutional package was balanced between more intergovernmental and more supranational elements: whereas the creation of the European Council was regarded as a 'victory' of intergovernmental strategy, federalists claimed that the commitment to the direct elections of the EP was a major step towards upgrading the EP as the body of representatives legitimized by the 'European people'.

This first significant agreement by the heads of state or government on the institutional architecture set a precedent; also, with later decisions including those for the Maastricht Treaty and up to the Lisbon Treaty, the heads of state or government reached a consensus on institutional issues only by pursuing both the intergovernmental and the supranational direction at the same time.

Shaping the Idée Directrice

In order to analyse the Maastricht formula for the European Council we need to look at the heritage and at the state of the deliberations and disputes about guiding concepts for the institutional model.

   The *ad hoc* summits in the 1960s and early 1970s had intensified the debate on why and how regular conferences of the heads of state or government should be installed. The early controversy centred on whether an institutionalized summitry was desirable for the European construction at all. Inevitably, this question was linked to fundamental visions, narratives and theories of European integration. Based on long enduring disputes on the nature of the integration construction, political and academic debates on the overall role of the European Council were dominated by the cleavage between supranational and federal positions on the one hand and intergovernmental and con-federal views on the other. Although quite often those heated controversies may block an analysis of the European Council's real impacts on the institutional architecture, they also help us to understand certain pre-occupations which have come up repeatedly — also in the formulations of the Maastricht Treaty and in later periods of its evolution. Thus, some significant arguments in this apparently perennial war of words can explain major elements in the shaping and making of the respective institutional form for the European Council in the Maastricht Treaty and beyond, e.g., in creating and shaping the permanent presidency for European Council in the Lisbon TEU (Wessels and Traguth 2011). The long shadow of this debate affects the analysis and assessment of the European Council's position in the institutional balance in the EU architecture up to the presence.

   The concept of an institutionalized summitry had been launched by de Gaulle, who saw in 'the realities of Europe' the need for a 'regular organised concert of the responsible government' with 'subordinated specialised working organisation' (de Gaulle 1970, 244–5; translation by the author). In his proposals for the summits in 1961, the Fouchet plans, more specific provisions for this body were then formulated. These formulations are an exemplary case for the presidency model. They were rejected especially by the smaller member countries. The provisions of the 1974 Paris Summit on the institutional features of the European Council, the starting point for the articles of the Maastricht Treaty, are more hybrid and in view of the models more ambiguous:

   (2) Recognizing the need for an overall approach to the internal problems involved in achieving European unity and the external problems facing Europe, the Heads of Government consider it essential to ensure progress and overall consistency in the activities of the Communities and in the work on political co-operation.
   (3) The Heads of Government have therefore decided to meet, accompanied by the Ministers of Foreign Affairs, three times a year and, whenever necessary, in the Council of the Communities and in the context of political co-operation.

> The administrative secretariat will be provided for in an appropri-
> ate manner with due regard for existing practices and procedures.
> (Meetings of the Heads of State or Government 1974)

A closer look shows us that the wording remained vague regarding the
political functions the European Council was supposed to take up. In view
of 'internal problems involved in achieving European unity' and 'external
problems facing Europe', the text defined as a major task 'to ensure pro-
gress and overall consistency in the activities of the Communities and in
the work on political cooperation'. With the term 'progress', the wording
alluded in an ambiguous sense to system-making. These formulations did
not delimit the scope of the potential agenda, allowing the members to
deliberate about any subjects they considered appropriate for a summit.

The text documented an important concern of heads of state or govern-
ment — namely to integrate different activities on the European level: in
view of 'the need for an overall approach', these formulations stressed the
nascent function of the European Council to bridge gaps between several
domains of common activities and different modes of governance. Heads
of state or government were supposed to 'ensure consistency' between
external economic relations run by Community institutions according to
the rules of the Rome Treaties and the (diplomatic) political cooperation
managed jointly by national foreign ministries. The two 'pillars' of the
EU's international actorness were and still are a regular topic when
improving the external profile and performance of the EU. The Maastricht
Treaty, like the Lisbon TEU, again addressed this issue.

The Paris text on the institutional form is short; it simply enumerates the
members of a first and second rank ('accompanied by ministers of foreign
affairs'). The provisions to meet as a 'Council of the Communities' indicates
a certain, though not clearly defined location within the institutional
architecture. This wording widely remained an empty prescription until new
formulations in the Maastricht Treaty, but it had an impact on the member-
ship. To meet as the Council meant that the president of the European
Commission was a member accepted by the peer group in formal terms as
one among equals. As to the frequency of meetings, the formulations pre-
scribed a minimum number and allowed flexibility.

The presidency country, rotating on an equal basis among the member
states, was put automatically in charge of the chair.

In view of different institutional models for the European Council, the
agreement of the Paris 1974 summit was a typical diplomatic product.
One reading might lead to the assessment that provisions are nearest to
the council model of institutionalized summitry. Specific concessions on
forms and functions of the European Council were granted to those who
perceived summitry as a threat to the EC's supranational aspirations.
However, it became clear that the founding fathers Giscard d'Estaing and
Schmidt expected the meetings to include a full and frank discussion and,
if necessary, decisions on all issues required, thus invoking a central
feature of the presidency model. Giscard d'Estaing even drew an analogy
to traditional 'governmental bodies' (Moreau Defarges 1988, 35).

With historical hindsight the first permanent President of the European Council explained the creation as a compromise:

> … the European Council itself was the result of a legal and political compromise, between those Member States who wanted a strong executive power, through bringing together the heads of the national executives, and those who were against the new institution as such and who would have preferred a stronger Commission. (van Rompuy 2010, 5)

His additional assessment is near to the fusion model:

> … this compromise has, in fact, overcome the old distinction between the intergovernmental and the supranational; it has resulted in a synthesis allowing the Union to build both on the strength of the Member-States and the qualities of our common institutions. (*ibid*.)

From Paris to Maastricht

The short Paris text on the European Council quickly proved to be insufficient to define its overall role; some of the founding members soon started to reflect on the optimal mixture of function and form for this institution.

Of high significance for formulating the European Council's future role was the nowadays almost forgotten 'Solemn Declaration' of Stuttgart of 1983. The members of the European Council then agreed on a set of objectives and principles for their own work. For the first time heads of state or government enumerated a differentiated set of major tasks reflecting some of the already practised functions of the European Council in its first years of existence. These formulations had long-lasting effects, as they returned later in the provisions of the Maastricht Treaty and were taken up again in the Lisbon TEU.

The heads of state or government defined the major functions of the European Council as:

- an initiator and agenda-setter;
- a provider of guidelines;
- a forum for deliberation;
- a bridge-builder between different pillars;
- a constitutional architect; and
- an external voice.

In the middle of the 1980s the new generation of members pushed the European Council towards more ambitious agreements. The French President Mitterrand, after a period of hesitation, the German Chancellor Kohl and the Commission President Delors, supported by other members, developed a set of bolder initiatives.

The first such initiative was the agreement on the goal of a 'Europe without frontiers' during the intergovernmental conference on the 'Single European Act'. This treaty amendment also revised legislative procedures

by enlarging the scope of rules with a qualified majority voting in the Council and by increasing the rights of the EP.

The Single European Act did not locate the provisions on the European Council among the amendments to the original Treaties establishing the European Communities, but rather placed them in a separate title (Title I, 'Common Provisions'). While the High Contracting Parties thus codified the European Council in primary law for the first time, they allocated a special status to this body outside the Community checks and balances. This formal position outside the EC Treaty was then taken up by the Maastricht Treaty and kept until the revisions of the Lisbon Treaty. The original formulation of the Paris summit which appeared to be near to the council model was given up.

The specific provisions of the SEA on the European Council were limited: Article 2 confirmed the rules of membership with an equal status for the president of the Commission and second rank for ministers of foreign affairs. This first treaty wording did not define any functions for the European Council.

The Maastricht Treaty and its Revisions

The Maastricht Treaty, which entered into force in 1993, created a revised institutional architecture. For the European Council it formulated articles on the major institutional features, which were basically confirmed and partly amended by the Treaty of Amsterdam (1999) and the Treaty of Nice (2003). The relevant articles dealing with the European Council were valid until November 2009. In the following description I will refer to the articles in the version of the Nice Treaty.

The Maastricht Treaty and follow-up revisions extended the legal basis for the activities of the European Council; the number of references in the treaties increased from 13 in the Maastricht Treaty to 27 in the Nice Treaty.

As to legal status, the High Contracting Parties placed the European Council in the treaty chapter on 'common provisions'. Within the so-called temple structure of the EU system the European Council was positioned at the 'roof', as part of the 'single institutional framework' dealing with all three pillars of the Union's policy areas and its different modes of governance. The European Council however was not enumerated in Article 7 of the 'Treaty on the European Community' (TEC), which fixed the list of EC institutions. From this exclusion followed that the activities, agreements and acts of the European Council could not be subject to any judicial review of the legality of its acts by the European Court of Justice (ECJ) (Art. 46 TEU (Nice)). This legal provision implied that the European Council was located outside the EC's institutional architecture with its checks and balances, which is characterized by the fact that each organ has to respect the tasks of the others laid down in the treaty (Louis and Ronse 2005, 185f).

Thus, following the SEA, the Maastricht Treaty confirmed the legal status of the European Council as one of a specific nature. Apparently, the highest political representatives of the Masters of the Treaties preferred to

keep their own institution out of too many procedural and legal constraints.

The basic provision (Art. 4 TEU (Nice)) took up earlier formulations about functions and forms:

> The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.
>
> The European Council shall bring together the Heads of State or Government of the Member States and the President of the Commission. They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a Member of the Commission. The European Council shall meet at least twice a year, under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council.
>
> The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.

The article repeated formulations of the 1983 Stuttgart Solemn Declaration concerning the set of general tasks; it again underlined the terms 'provide impetus' and 'define general political guidelines'. The implied political functions, however, remain again vague and ambiguous.

The High Contracting Parties also extended the scope of the European Council's activities: beyond this general role assignment the treaty provisions also allocated additional tasks to the European Council. Of specific importance are the articles for a strong role in the second pillar, which the Maastricht Treaty established for the 'Common Foreign and Security Policy' (CFSP). They constitute the European Council as the most authoritative body in this field: the European Council 'shall define the principles of and general guidelines for the common foreign and security policy' (Art. 13 (1) TEU (Nice)) and 'decide on common strategies' (Art. 13 (2) TEU (Nice)); it shall also set the agenda for the Council. Beyond this role in normal policy-making for the second pillar, Article 17 (1) TEU (Nice) gives the European Council a gate-keeper position with respect to treaty-making in this policy domain: it has to take a first decision related to 'the progressive framing of common defence policy, which might lead to a common defence'.

The European Council's function as an ultimate decision-maker and highest instance of appeal is also inserted into this treaty chapter. Thus, in rare cases of qualified majority voting in the Common Foreign and Security Policy (Art. 23 (2) TEU (Nice)), the Council was empowered to refer an item vetoed by one member state 'to the European Council for decision by unanimity' (Art. 23 (2) TEU (Nice)).

Not only in the second pillar but also in the first —— the EC pillar —— the treaty provisions attributed certain tasks to heads of state or government. Dealing with macroeconomic and social issues, the European Coun-

cil was empowered to agree on conclusions 'for the broad guidelines of the economic policies of the Member States and of the Community' (Art. 99 (2) TEC) and 'shall each year consider the employment situation in the Community and adopt conclusions thereon' (Art. 128 (1) TEC).

The Maastricht Treaty also introduced a new legal form: for certain delimited EC matters the body of the chief national executives was asked to act as the 'Council in the composition of the Heads of State or Government'. On this legal basis and following long-time practices, national leaders were to exercise electoral functions for top positions in the institutional architecture such as nominating the president of the European Commission (Art. 214 (2) TEC) and the president of the European Central Bank (Art. 112 (2) (b) TEC). In these cases, the body of the heads of state or government was enabled to pass decisions by a qualified majority vote —— a feature which is also taken up by the Lisbon TEU.

The Council on this highest political level was also empowered to take essential system-making decisions, e.g., on entering the third step of the European Monetary Union (Art. 121 (4) TEC) and on accessions of new members into the EMU (Art. 121 (4) TEC). As Council the heads of states or government had also to get involved in the suspension of rights of members states in the case of a 'serious and persistent breach' of fundamental values (Art. 7 (2) TEU (Nice)).

When acting as a Council formation, the heads of states or government had to comply with the rules of the EC Treaty; it implied that the European Court of Justice might review the legality of these acts in view of the relevant primary law.

In the provisions for the third pillar, dealing with major items of justice and home affairs, the treaty did not assign any explicit role to the European Council, although the rules allowed it to become active in setting guidelines for problem-solving in these areas of public policies.

Reading these treaty provisions, we can identify considerable similarities to the presidency model —— especially with reference to the general provisions and the treaty articles concerning the CFSP. However, in introducing 'the Council in the composition of the Heads of State or Government', the EC Treaty clearly follows the characteristics of the council model.

A further step in the evolution of the written provisions for the European Council but below a treaty amendment was the Seville 2002 agreement on the 'Rules for the organisation of proceedings of the European Council' (Seville, June 2002). After frustrating experiences with shortcomings in its intra-group working —— manifested again at the labour-intensive summit in Nice (de Schoutheete 2012, 64) —— the members agreed on rules for the 'preparation, conduct and conclusions' (Seville, June 2002) of their meetings. This document was based on a 'Report by the Working Party set up by the Secretary-General of the Council' of March 1999 (Piris and Trumpf 1999).

The Seville formulations served as a major point of departure for the decision on the 'Rules of Procedure for the European Council' (European Council Decision 2009/882/EU), which entered into force together with the Treaty of Lisbon on 1 December 2009.

Via the Constitutional Convention to the Lisbon Treaty

The heads of state or government did not regard the Maastricht Treaty and its two amendments as the final stage of Union's architecture. Especially in view of the challenges originating from the 'Big Bang' enlargement in 2004, the European Council pursued its role as constitutional architect, with the Lisbon Treaty as final product of its intensive work in the constitutional decade from 1999 to 2009. The Lisbon TEU and TFEU, then, constitute a major milestone in the evolution of the legal provisions for the European Council. Most probably the documents will constitute the formal point of reference for some time to come. The heads of state or government themselves have declared: 'The Lisbon Treaty provides the Union with a stable and lasting institutional framework. We expect no change in the foreseeable future' (Presidency Conclusion, December 2007).

The history of the respective articles in the Lisbon Treaty starts immediately with the post-Nice 2000 deliberations. With the Laeken agreement the European Council installed a 'Convention on the Future of Europe', which elaborated a 'Treaty establishing a Constitution for Europe' (Scholl 2006; Magnette and Nicolaidis 2004; Norman 2003). This unusual treaty-shaping body put the reform of the European Council high on its agenda and formulated proposals for the functions and the form of the European Council. Especially, the President of the Convention, Giscard d'Estaing, the mastermind of the making of the European Council in 1974, submitted three decades after his original contribution a far-reaching concept. Of specific importance was the controversial debate about the creation and the functions of a permanent president of the European Council (Traguth and Wessels 2004, 224–35; Norman 2003). After a draft by Giscard d'Estaing and an intensive dispute between large and smaller states the Convention finally agreed on a text based on a Franco–German proposal. The formulations of the Convention were confirmed in the subsequent intergovernmental conference leading to the official signing of the 'Treaty establishing a Constitution for Europe' (see, e.g., Laffan 2006).

The provisions on the European Council also survived the rejection of the Constitutional Treaty by the French and Dutch voters: the following intergovernmental conference drafting a 'Reform Treaty', later called the 'Lisbon Treaty', eliminated certain articles and changed others of the Constitutional Treaty, but member state governments and later the national ratification processes left the articles on the European Council untouched.

After three decades of existence the articles of the Lisbon Treaty mark considerable changes on the basic institutional features compared to the pre-existing legal provisions of the Maastricht and Nice TEU. The High Contracting Parties fully integrated the European Council into the treaty.

Major points of differences are:

- In the 'provisions on the democratic principles' (Title II TEU) the European Council is one of the institution mentioned in the article on 'representative democracy'(Art. 10 (1): 'Member States are represented in the European Council by their Heads of State or Government themselves democratically accountable either to their national

parliaments or to their citizens' (Art. 10 (2)TEU). The European Council is then also enumerated in the list of the 'Union's institutions' (Art. 13 TEU).

- In these terms they upgraded the role of the European Council to complete treaty status and with it affected the overall institutional balance of the EU's architecture (Monar 2011). But with these rules the heads of state or government also set more constraints for their institution.
- Provisions of the TEU and TFEU (CEPS *et al.* 2010; Piris 2010, 205–9) then list the major functions and features of its institutional form (see Art. 15 (1) TEU). They took up the wording of the Stuttgart Solemn Declaration and the Maastricht Treaty. Thus, also in view of key areas of EU's activities on 'Union's external action' (Art. 22 TEU) and more specifically in the CFSP pillar (see Art. 26 TEU) the Lisbon TEU confirms and extends the legal empowerments of the European Council.

Whereas provisions on functions of this institution can be seen as a confirmation and as an extension of the Maastricht Treaty and its revisions, I argue that the High Contracting Parties of the Lisbon Treaty have fundamentally changed the institutional form. They inserted the European Council in the list of the 'Union's institutions' (Art. 13 TEU), and installed a permanent President (Art. 15 (5) and (6) TEU).

Even if we might not expect any changes in the treaty provisions for some time to come, the institutional evolution of the European Council has not come to an end. The crisis years have not only increased the use of its functions and extended some of them in a dramatic night session, but they have also affected relevant institutional features: with the creation of the Euro summit and its political and administrative infrastructure in new legal forms (Kunstein and Wessels 2011) heads of state or government have again changed the institutional form of their set-up.

Conclusions: Maastricht and Beyond: Creating Institutional Opportunities for Ambitious Multi-level Players

In an institutional analysis this article argues that the Maastricht Treaty and its two revisions have confirmed and extended earlier trends, whereas the Lisbon TEU has created innovative institutional features.

In terms of political relevance and impact the Maastricht Treaty has fundamentally increased the significance of the EU for European governments: member states have extensively extended the scope of dealing with public policies and differentiated their modes of governance (Diedrichs *et al.* 2011; Héritier and Rhodes 2011). The 'demand' on top national politicians for getting engaged increased, as did their 'supply' —— exercising a leadership role in an arena which has become increasingly salient for their own role in domestic and international politics. The political programme of the Maastricht Treaty —— especially the EMU —— has augmented pressures for stronger cooperation among the 'bosses', which

they did not want to leave to the Community's traditional institutional architecture. The European Council could offer institutional opportunities to the heads of state or government to act as multi-level players in a multi-institutional architecture. The national leaders have reinforced their own institution to achieve a leadership role in the EU system. Irrespective of all controversies about the functions and the exact form of the European Council, they created an institution which has served as a significant bridge between the national and EU arenas of their activities.

Regarding the models as points of reference I see several co-evolutions: whereas the Stuttgart Solemn declaration, the SEA and the Maastricht Treaty and its amendments have highlighted features which are characteristic of the presidency model, the council model has regained importance in the Lisbon TEU, though these treaty provisions exclude the European Council from the legislative procedures (Art. 15 (1) TEU). An increasing number of treaty articles in which the European Council has to share powers with other institutions point at trends towards a fusion process. Examples for this reading are the procedures for electing the President of the Commission (Art. 17 (7) TEU) and those for the revision of the treaties (Art. 48 TEU).

In an historical review the Maastricht Treaty had two major effects on the European Council: this act by the heads of state or government extended the policy agenda of their institution and it confirmed and extended fundamental institutional features.

Acknowledgements

Note

1. This refers to the respective communiqué/conclusions of the heads of state or government/the European Council.

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