
The Changing Role of the European Council in the Institutional Framework of the European Union

Frederic Eggermont

The Changing Role of the European Council in the Institutional Framework of the European Union

Consequences for the European Integration Process

Frederic Eggermont

The Changing Role of the European Council in the Institutional Framework of the European Union. Consequences for the European Integration Process

Intersentia Publishing Ltd.
Trinity House | Cambridge Business Park | Cowley Road
Cambridge | CB4 0WZ | United Kingdom
Tel.: +44 1223 393 753 | Email: mail@intersentia.co.uk

ISBN 978-1-78068-061-3
NUR 828

© 2012 Intersentia
Cambridge – Antwerp – Portland
www.intersentia.com | www.intersentia.co.uk

Cover picture: The Council of the European Union

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

No part of this book may be reproduced in any form, by print, photocopy, microfilm or any other means, without written permission from the publisher.

DEDICATION

This doctoral dissertation is dedicated to the late Professor Gabriel Wilner, former Executive Director of the Dean Rusk Center for International, Comparative and Graduate Legal Studies of the Law School of the University of Georgia, who was a dear friend and mentor.

ACKNOWLEDGEMENTS

Above all, I would like to express my outmost gratitude to my promoter Professor Dr. Tony Joris, Director of the Centre for European Law of the Vrije Universiteit Brussel, for his meticulous guidance during my research. I am furthermore indebted to my co-promoter Dr. Jan Werts who has given many helpful remarks and who really knows how to give moral support to a PhD candidate. Special thanks go to Professor Dr. Youri Devuyt, member of my guidance commission, for his continuous advice.

Of course, I would also like to express my gratitude to Professor Dr. Guido Van Limberghen, Dean of the Law Faculty of the Vrije Universiteit Brussel; Professor Dr. Erik Franckx, President of the Doctoral Board; and the other members of the Board who examined my thesis, namely Professor Karel De Gucht, Member of the European Commission and former Belgian Foreign Minister and Professor Dr. Koen Lenaerts, Judge at the Court of Justice of the European Union.

The result of this doctoral research would not be the same without the opportunity given by the following person to have them interviewed: Jan Willem Beaujean, Press and Information Service of the Permanent Representation of the Netherlands to the EU; Thérèse Blanchet, General Secretariat of the Council, Legal Service, Coordination Unit; Dr. Pieter Bouwen, Department of Political Science, Vrije Universiteit Brussel; Willy Claes, Former Belgian Foreign Minister; Jan De Bock, Former Permanent Representative of Belgium to the EU; Jean-Luc Dehaene, MEP, Former Vice-President of the Convention on the Future of the EU and Former Belgian Prime Minister; Philippe Baron de Schoutheete de Tervarent, Former Permanent Representative of Belgium to the EU; Erik Derycke, Former Belgian Foreign Minister; André Gillissen, Directorate for General Political Questions (Council); Professor Dr. Dominik Hanf, College of Europe; Christian Kremer, Deputy Secretary-General of the European People's Party; Giorgio Maganza, Director, Legal Service of the Council; Leo Tindemans, Former Belgian Prime Minister; and Didier Vanderhasselt, Former Diplomatic Counselor (Antici) of the Belgian Prime Minister.

Finally, I would like to thank my wife Karina, who has always stood by me in the whole process leading to this doctoral dissertation, including during the often difficult times. Without her, all this would not have happened.

CONTENTS

<i>Dedication</i>	v
<i>Acknowledgements</i>	vii
<i>Common abbreviations</i>	xvii
<i>Introduction</i>	xix

PART A. WHAT IS THE EUROPEAN COUNCIL?

Chapter I.

History of the European Council. 3

A. Summit meetings	3
1. Calls for the establishment of a Political Union: 1961 Paris and Bonn Summit meetings	3
2. Combining supranational and intergovernmental method in the integration process	6
3. Factors stimulating the establishment of Summit meetings	8
4. Towards the establishment of the European Council.	12
4.1. The 1969 Hague and 1972 Paris Summit meeting	13
4.2. 1973 Copenhagen Summit meeting	15
B. Proclamation of the European Council	17
1. 1974 Paris Summit meeting	17
2. Fouchet reinvented?	21

Chapter II.

Composition of the European Council. 25

A. Members of the European Council	25
1. President of the European Council	26
1.1. Constitutional Treaty	26
1.2. Treaty of Lisbon	27
1.2.1. Appointment of the European Council President	28
1.2.2. Competences of the European Council President	31
2. Heads of State or Government	34
2.1. Prime Ministers and Presidents	35

3.	Commission President	40
3.1.	Before the SEA	40
3.1.1.	Before the 1974 Paris communiqué.	40
3.1.2.	1974 Paris communiqué and the establishment of the European Council	42
3.2.	Since the SEA	43
B.	Non-members of the European Council who attend the meetings	45
1.	Foreign Ministers	45
1.1.	Before the SEA	45
1.2.	Since the SEA	46
1.3.	Constitutional Treaty	47
1.4.	Treaty of Lisbon: presence of a minister only upon invitation.	48
2.	High Representative of the Union for Foreign Affairs and Security Policy ..	49
2.1.	Creation of the function by the Treaty of Amsterdam	49
2.2.	Treaty of Lisbon	49
3.	Other actors	52
 Chapter III.		
Competences and functioning of the European Council		55
A.	1974 Paris Summit meeting	55
B.	SEA	55
C.	EU Treaty	56
D.	Treaty of Amsterdam	58
1.	Provisions in the Treaty of Amsterdam	58
2.	Trumpf-Piris Report	59
E.	Treaty of Nice	60
F.	Constitutional Treaty	63
G.	Treaty of Lisbon	64
1.	European Council under the current Treaty	64
1.1.	Tasks	64
1.2.	Rules on decision making	67
1.3.	Proposing and appointing the Commission (President)	69
H.	Organisation of the proceedings of the European Council	70
1.	Preparation	70
1.1.	Preparation by the Council	70
1.1.1.	Trumpf-Piris Report	71
1.1.2.	Solana Reports	72
1.1.3.	Joint Presidency-Solana Report	73
1.1.4.	2002 Seville European Council	74
1.1.4.1.	Rules established by the 2002 Seville European Council	74
1.1.4.2.	2002 Seville conclusions enforced by Council Rules of Procedure	75
1.1.5.	Treaty of Lisbon	76

1.2.	Preparation by the European Council President	77
1.3.	Participation in the preparation of the European Council by the Commission and other actors	78
2.	Conduct of the European Council	80
3.	Conclusions of the Presidency/European Council	82
4.	Emergence of informal European Council meetings	87
4.1.	Appearance of informal European Council meetings.	87
4.2.	Differences between formal and informal European Council meetings	90

PART B. THE EUROPEAN COUNCIL AND ITS RELATION WITH OTHER
EU INSTITUTIONS AND OTHER ACTORS

Chapter I.

EU institutions.	95
A. The European Council and the Commission.	95
1. A brief description of the Commission	95
2. Reaction of the Commission to the first Summit meetings and the establishment of the European Council	96
3. Role of the European Council in the appointment of the Commission (President)	98
3.1. EEC Treaty	99
3.2. EU Treaty	100
3.3. Treaty of Amsterdam	100
3.4. Treaty of Nice	101
3.5. Treaty of Lisbon	102
4. Involvement of the European Council in the Commission's role in the legislative process	104
4.1. Decision-making efficiency: the European Council and the Commission's position in the decision making process	105
4.2. Accountability of the European Council: sharing of responsibility . .	109
4.3. Au Conseil européen, l'initiative politique, à la Commission, l'initiative politique et technique	114
B. The European Council and the Council.	118
1. A brief description of the Council	118
2. Differences between the European Council and the Council	120
2.1. Before the SEA	120
2.2. Since the SEA	122
3. Decision making efficiency: the European Council and the Council's role in the decision making process.	124
4. Accountability of the European Council: decline of the Council's role. . . .	128
C. The European Council and the European Parliament	130
1. A brief description of the European Parliament	130

2.	Reaction of the European Parliament to the creation of the European Council	131
3.	Involvement of the European Council in the European Parliament's role in the decision making process.	133
3.1.	The election, the seat and the size of the European Parliament.	133
3.2.	Decision making efficiency: the European Council and the European Parliament's position in the decision making process	137
4.	Accountability of the European Council towards the European Parliament	141
4.1.	European Parliament President addresses the European Council . . .	141
4.2.	European Council President presents a report to the European Parliament.	142
4.3.	European Council President and accountability	143
D.	The European Council and the Court of Justice of the EU	145
1.	A brief description of the Court of Justice of the EU	145
2.	Judgments relevant for the topic of this research.	146
2.1.	Germany v. European Parliament and Council (13 May 1997)	146
2.2.	Roujansky v. Council (14 July 1994)	147
2.3.	Commission v. Council (13 July 2004)	148
2.4.	Commission v. Council (20 May 2008)	150
3.	Interaction between the European Council and the Court of Justice	152

Chapter II.

	Other actors	155
A.	IGC	155
1.	Until the entry into force of the Treaty of Lisbon	155
2.	Treaty of Lisbon.	155
2.1.	Ordinary revision procedure	155
2.2.	Simplified revision procedures	156
3.	The European Council is involved in calling the IGC	157
3.1.	SEA	158
3.2.	EU Treaty	161
3.3.	Treaty of Amsterdam	163
3.4.	Treaty of Nice	165
3.5.	Treaty of Lisbon	167
3.5.1.	Draft Constitutional Treaty	167
3.5.2.	Treaty of Lisbon (Reform Treaty)	169
B.	Governments of the Member States	174
1.	Enlargement.	174
1.1.	Treaty provisions before the entry into force of the Treaty of Lisbon	175
1.2.	Treaty provisions since the entry into force of the Treaty of Lisbon	175

1.3.	The additional requirements added by the European Council	176
1.3.1.	General requirements	176
1.3.1.1.	Democracy	176
1.3.1.2.	Copenhagen criteria	177
1.3.1.3.	Integration capacity	178
1.3.2.	Requirements for specific states.	180
1.3.2.1.	Central and Eastern European states.	181
1.3.2.2.	Turkey.	183
1.3.2.3.	Iceland.	186
2.	Seats of the institutions and bodies	186
3.	Denmark in the EU	188
4.	Ireland in the EU.	188

PART C. EUROPEAN COUNCIL CONCLUSIONS IN LAW AND POLICY
MAKING IN THE EU

Chapter I.

European Council as allocator of budget funds 195

A.	The problem of upholding budgetary discipline in the 1980s.	196
B.	Introducing the financial perspectives	200
C.	Financial perspectives 1988–1992	201
D.	Financial perspectives 1993–1999	202
E.	Financial perspectives 2000–2006.	202
F.	The big enlargement.	204
G.	Financial perspectives 2007–2013	205
H.	Remarks and suggestions	209

Chapter II.

European Council as political initiator 211

A.	Summit meetings as political initiator	213
1.	EMU	213
2.	Environment	215
3.	Regional development	218
B.	European Council as political initiator	219
1.	Economic and monetary affairs	220
2.	Transparency in the decision making process.	227
3.	Contribution to the adoption of EU legislation	231
3.1.	Unanimity in the Council	231
3.1.1.	Environment and energy	231
3.1.1.1.	Commission communication on an energy policy for Europe.	232
3.1.1.2.	March 2007 Brussels European Council.	233
3.1.1.3.	March 2008 Brussels European Council.	235
3.1.1.4.	December 2008 Brussels European Council	238

3.1.2. Savings tax directive	240
3.2. Qualified majority in the Council	246
3.2.1. Transport	246
3.2.2. Subsidiarity and simplification of EU legislation	250
4. Remarks and suggestions	254
Chapter III.	
European Council as interpreter of the Treaties	255
A. Interpreting Treaty provisions	255
B. Almost amending Treaty provisions	258
C. Amending Treaty provisions	260
D. Remarks and suggestions	261
Chapter IV.	
European Council as a European (economic) government?	263
A. European Council as a European government	263
B. European Council as a European economic government	265
C. Remarks and suggestions	268
Chapter V.	
European Council and the implementation of decisions	269
A. Comitology	269
B. Open method of coordination	271
1. European Employment Strategy	271
2. 2000 Lisbon European Council	275
C. Remarks and suggestions	280
Chapter VI.	
European Council establishing bodies	283
A. Cohesion Fund	283
B. Fundamental Rights	286
C. Economic and financial matters	289
D. CFSP and ESDP bodies	292
E. Bodies in the area of freedom, security and justice	293
F. Remarks and suggestions	295
Chapter VII.	
European Council as an appeals council	297
A. Cases where the European Council has acted as an appeals council	297
B. Emergency brake (CFSP)	301

1. Treaty of Amsterdam	301
2. Treaty of Nice.....	302
3. Treaty of Lisbon.....	302
C. Area of freedom, security and justice	303
D. Remarks and suggestions	305

Chapter VIII.

European Council in the CFSP	307
---	------------

A. European Council in the Treaties	307
1. Before the entry into force of the Treaty of Lisbon	307
2. Modifications by the Treaty of Lisbon.....	309
2.1. General provisions on external action	309
2.2. CFSP.....	310
B. European Council conclusions in CFSP legislation	310
1. Common strategies, joint actions and common positions.....	310
1.1. Common strategies	311
1.2. Joint actions and common positions	313
2. Overview of important European Council meetings	314
C. Remarks and suggestions	317

Chapter IX.

European Council in the area of freedom, security and justice	319
--	------------

A. European Council in the Treaties	320
1. Before the entry into force of the Treaty of Lisbon	320
2. Modifications by the Treaty of Lisbon.....	321
B. European Council conclusions in legislation in the area of freedom, security and justice.....	322
1. Uniform passport	322
2. 1999 Tampere European Council.....	324
3. Migration	328
C. Remarks and suggestions	331

Chapter X.

European Council involved in individual decisions	333
--	------------

A. Lowering dependence on crude oil	333
B. Free market in the transport sector.....	333
C. Small and medium-sized enterprises	334
D. British beef ban.....	335
E. Enterprises employing problem categories	336
F. Tax obligations	337

Chapter XI.	
European Council involved in relations with Member States and third countries .	339
A. Member States	339
B. Non-Member States	340
1. New Zealand	340
2. Mediterranean countries	341
3. Central and Eastern European countries	343
Conclusions	347
A. Results of the research	347
1. What is the relationship between the European Council and other EU institutions and actors?	347
1.1. EU institutions	347
1.1.1. European Commission	347
1.1.2. Council	351
1.1.3. European Parliament	353
1.1.4. Court of Justice of the European Union	354
1.2. Other actors	356
1.2.1. IGC	356
1.2.2. Governments of the Member States	357
2. What are the European Council's various roles in the EU decision making process?	359
B. Recommendations for changes	363
1. Concerning the relationship between the European Council and other EU institutions	363
1.1. European Commission	363
1.2. Council	364
1.3. European Parliament	365
1.4. Court of Justice of the European Union	365
2. Concerning the CFSP	366
C. Concluding remarks	367
<i>Selected Bibliography</i>	<i>373</i>
<i>Annex – Suggested changes to the Treaties</i>	<i>393</i>
Treaty on European Union	395
Treaty on the Functioning of the European Union	401

COMMON ABBREVIATIONS

CFSP	Common Foreign and Security Policy
COREPER	Committee of Permanent Representatives of the Member States
EC	European Community
ECSC	European Coal and Steel Community
ECU	European Currency Unit
ESDP	European Security and Defence Policy
EEC	European Economic Community
EMS	European Monetary System
EMU	Economic and Monetary Union
EPC	European Political Cooperation
EU	European Union
EURATOM	European Atomic Energy Community
HSG Council	Council in composition of the Heads of State or Government
IGC	Intergovernmental Conference
JHA	Justice and Home Affairs
PJCCM	Police and Judicial Cooperation in Criminal Matters
SEA	Single European Act
WEU	Western European Union

INTRODUCTION

It in fact all started during spring 2004 in the coffee-house Blue Sky in Athens, Georgia (United States) where Professor Tony Joris and I discussed possible topics for a future Ph.D., once I had obtained my LL.M. He proposed examining the European Council, a topic that immediately drew my attention. Today, and years later, Blue Sky has disappeared but I possess two things that give me good memories of that wonderful place: a coffee-cup purchased there and this doctoral dissertation.

This dissertation is intended to provide the reader with a picture of the European Council's creation, composition, competences and functioning. It also aims to provide an analysis of the interactions of the European Council with other institutions and actors of the European Union (hereinafter 'EU'). But the main goal of the dissertation is to identify the various roles of the European Council in the EU decision making process.

Writing about the European Council is not an easy task due to the closed character of its meetings. Nonetheless, most sessions end with written conclusions which are a tangible object for examination. Already Jan Werts¹ and Béatrice Taulègne² had studied the European Council in great detail, but nobody had ever taken the time to examine in what manner European Council conclusions have been used in the decision making process of the European Union. Besides, the doctoral dissertations of Werts and Taulègne dated from 1993 (during the period of the entry into force of the Treaty on European Union (hereinafter 'EU Treaty')) and a lot of things have happened in the meantime (just think about the entry into force of the Treaty of Amsterdam, the Treaty of Nice and the Treaty of Lisbon).

After careful consideration and study, I decided to focus my Ph.D. on the delimitation of the European Council in the institutional structure of the EU and answer two main research questions. First, what is the relationship between the European Council and the other EU institutions? Second, what are the various roles of the European Council

¹ Jan WERTS, *The European Council* (1992). See also the more recent study: Jan WERTS, *The European Council* (2008).

² Béatrice TAULÈGNE, *Le Conseil Européen* (1993).

in the EU decision making process? The results of this dissertation will show that European Council conclusions have been used extensively in this decision making process, and this merely increased over time.

1. What is the relationship between the European Council and the EU institutions?

The Report on European Institutions, presented by the Committee of Three to the Dublin European Council of 29–30 November 1979, foresaw that the European Council “*should not erode the competences of [the] institutions. It should help them work better, by giving encouragement, coherence and an overall direction to their efforts*”.³ However, the question is whether the European Council has not, in effect, eroded the competences of the other EU institutions, and more specifically of the Council, the Commission and the European Parliament. Judgments of the Court of Justice of the EU which are relevant for the topic of this research are also examined.

Council

Since the Treaty establishing the European Economic Community (hereinafter ‘EEC Treaty’) stated that the “*Council shall consist of representatives of the Member States*”,⁴ it was possible for the European Council to sit as a Council for the reason that both had the same composition. Indeed, the Heads of State or Government are considered the highest representatives of the Member States. However, the Heads of State or Government had not the intention to modify their Summit meetings into rigid Council sessions, and since the entry into force of the Single European Act (hereinafter ‘SEA’) the European Council and the Council have a different composition: the Commission President is a member of the European Council but not of the Council. The same applies today to the European Council President.

Has the Council lost a great part of its significance due to the appearance of the European Council? Is the Council, due to the European Council, not bound by the coercion to find compromises within the time limits set by the European Council?⁵ More and more, the European Council spends its time dealing with issues which in fact have to be handled at the level of the Council.⁶ This is, of course, not only detrimental to the European Council’s specific impetus giving role, but it also triggers a certain automatic reaction within the Council to forward all difficult issues to the European Council, instead of trying to find a solution itself. The Council came even under more

³ Council of the European Communities, *Report on European Institutions* 18 (1980).

⁴ Art. 146 EEC Treaty.

⁵ See Franklin DEHOUSSE and Jordi GARCÍA MARTÍNEZ, “La politique européenne d’immigration et d’asile”, 55 *Studia diplomatica* 1, 91 and 98 (2002).

⁶ Pierre MAILLET, “Lisbonne: une noble ambition, mais de curieuses méthodes”, 441 *Revue du Marché commun* 516, 517 (2000).

pressure with the open method of coordination.⁷ This method placed the actual decision making and guidance role in the hands of the European Council and not in those of the Council.

Commission

The Commission never opposed the European Council (nor did it oppose the Summit meetings which were held before the establishment of the European Council) because it saw in the system of the Summit/European Council meetings an opportunity to put the Community integration (back) on track. With time, it appeared that the Commission increasingly started to depend on the impetus giving role of the European Council. As such, it forfeited its sacred role as instigator of the European integration process. It also has to be examined if the European Council provided an opportunity for the Commission to use European Council conclusions in the Commission's interaction with the Council in the formal EU decision making process.

If not provided otherwise in the EU Treaty or the Treaty on the Functioning of the European Union (hereinafter 'TFEU'), agreements in the European Council are made by consensus. This means that no accord can be made as long as the Commission President is opposed. Besides, the more the European Council becomes involved in European policy making, the more the Commission, due to the presence of its President in the European Council, is involved in that policy making.

European Parliament

Although the European Parliament initially saw the establishment of the European Council as something positive, it considered the fact that the Commission sent communications to the European Council, instead of proposals to the Council, a thorn in its flesh, because unlike proposals, such communications do not have to be submitted to the European Parliament.⁸

In its 1981 resolution on the role of the European Parliament in its relations with the European Council, the Parliament stressed that the European Council, whenever it acted as a Council, should abide by the established procedures for consultation and conciliation.⁹ The European Parliament also demanded that the European Council would keep it regularly informed of the proceedings and the subjects discussed at its meetings, and that the presiding Council President would take part once a year in a general debate in the European Parliament on the role of the European Community

⁷ Under the open method of coordination, Member States have to coordinate their national policies towards one or more common objectives. During this process, Member States are evaluated at regular intervals.

⁸ François JONGEN, "Le Conseil européen", 1072 *Courrier Hebdomadaire* 41 (1985).

⁹ European Parliament, Resolution of 18 December 1981 on the role of the European Parliament in its relations with the European Council, OJ C 11/192 of 18 January 1982, §1.

(hereinafter ‘EC’) in international politics and on the progress towards European integration (*see* current Article 15, §6(d) EU Treaty, which states that the President of the European Council has to present a report to the European Parliament after each of the meetings of the European Council). The European Council was requested to forward to the European Parliament a written communication on these issues one month before a joint debate that could be linked to the debate on the Commission’s annual report.¹⁰

Court of Justice

Some judgments of the Court of Justice, such as *Federal Republic of Germany v. European Parliament and Council* (13 May 1997),¹¹ *Roujansky v. Council* (14 July 1994),¹² and *Commission v. Council* (13 July 2004¹³ and 20 May 2008¹⁴), will be examined to see in what manner European Council conclusions are used in deciding cases.

2. What are the various roles of the European Council in the EU decision making process?

It has never been thoroughly examined in what manner European Council conclusions have been used in the EU decision making process. That these conclusions are at times an important reference is shown by the following example.

In order to enable European citizens and companies to derive full benefit from the setting up of an area without internal frontiers, the EU can identify trans-European transport projects of common interest.¹⁵ According to the TFEU, these projects have to be selected using the ordinary legislative procedure (codecision under the former EC Treaty).¹⁶ However, in 1994 the identification of trans-European transport projects was made by the Corfu and Essen European Council meetings of 24–25 June and 9–10 December 1994 respectively.¹⁷ The European Council had taken the lead from the beginning, although, taking into account that the codecision procedure had to be followed, the procedure had to start with a proposal of the Commission.¹⁸ This had been the case, but the Commission was fast to amend its initial proposal after the Essen European Council of 9–10 December 1994 which had taken the final decision on the priority projects.

¹⁰ *Id.*, §3–4.

¹¹ ECJ, Case C-233/94, *Federal Republic of Germany v. European Parliament and Council* [1997] ECR I-2405.

¹² ECJ, Case C-253/94, *Roujansky v. Council* [1995] ECR I-7.

¹³ ECJ, Case C-27/04, *Commission v. Council* [2004] ECR I-6649.

¹⁴ ECJ, Case C-91/05, *Commission v. Council* [2008] ECR I-3651.

¹⁵ Art. 129c, §1, first indent EC Treaty (Maastricht); ex art. 155, §1, first indent EC Treaty; current art. 171, §1, first indent TFEU.

¹⁶ The European Parliament and the Council decide on the basis of a Commission proposal.

¹⁷ Conclusions of the Presidency, 24–25 June 1994, *Bull. EU* 6–1994, No I.3 *et seq.* [hereinafter ‘1994 Corfu conclusions’], Annex I and Conclusions of the Presidency, 9–10 December 1994, *Bull. EU* 12–1994, No I.2 *et seq.* [hereinafter ‘1994 Essen conclusions’], Annex I.

¹⁸ Art. 189b, §2 EC TREATY (Maastricht); ex art. 251, §2 EC TREATY; current art. 294, §2 TFEU.

In many instances, European legislation refers to European Council conclusions, but in what specific fields of European policy making European Council conclusions have been an important reference for the other EU institutions in the decision making? By identifying and examining these policy fields we will be able to provide a typology of the various roles of the European Council in the EU decision making process.

In addition, although according to the text of the EU Treaty before the entry into force of the Treaty of Lisbon there was no involvement of the European Council in the enlargement process, the latter has established different criteria that have to be fulfilled by candidate Member States in order to enter the EU. Are these criteria really a reference when the EU institutions, which have actual treaty competence to decide on accession criteria, have to make the final decision?

The European Council is also involved in the actual decisions allowing a state to become a member of the EU. The reaction of the Spanish government in the face of the coup d'état of 23 February 1981 under the command of Colonel Antonio Tejero convinced the Maastricht European Council of 23–24 March 1981 that Spain could now accede to the European Economic Community (hereinafter 'EEC').¹⁹ When the Copenhagen European Council of 21–22 June 1993 took note of the progress in the enlargement negotiations with Austria, Finland, Norway and Sweden, the European Council also determined that the enlargement with those Member States had to become a reality by 1 January 1995.²⁰

The same applies for the treaty revision procedure of Article 48 EU Treaty. The European Council was not involved in that procedure, according to the EU Treaty until the entry into force of the Treaty of Lisbon. However, political reality showed otherwise. The European Council is involved in calling the Intergovernmental Conference (hereinafter 'IGC') and decides on its agenda, but to what extent European Council conclusions arrange the outstanding important political issues? Or is it in fact not the European Council, but the Heads of State or Government who decide on this matter?

In answering our two research questions, one has to take into consideration that there is no linear relationship between the European Council and EU decision making. It is not because the European Council adopts conclusions that these immediately form the basis of a Commission proposal which in the end will be approved by the European Parliament and the Council. Sometimes, the initiative is not in the hands of the European Council but in those of the Commission, and the European Council merely gives its support to the Commission (communication/proposal).

The European Council is a very complex EU institution because the meetings are not public and there are no minutes of the meetings available for research. However, this

¹⁹ Presidency's Summary, 23–24 March 1981, *Bull. EC* 3–1981, No 1.1.4 *et seq.* [hereinafter '1981 Maastricht conclusions'].

²⁰ Conclusions of the Presidency, 21–22 June 1993, *Bull. EC* 6–1993, No I.2 *et seq.* [hereinafter '1993 Copenhagen conclusions'], §1.10–12.

does not prevent that the manner in which European Council conclusions are used in EU decision making is examinable. Although the written results of the meetings of this EU institution are conclusions of the European Council (in fact of the Council Presidency until the entry into force of the Treaty of Lisbon), one should be aware that the Heads of State or Government and the Commission President do not always discuss in their meetings all the matters which are written down in the conclusions. In other words, European Council conclusions are in no way always the product of the European Council. In addition, the reader should not be given the impression that there is a strict procedure to be followed by the European Council. Often the European Council reaches agreement on a sensitive issue in the middle of the night after hours of tactical and political machinations full of intrigue. In no way this dissertation intends to provide an overview of the discussions during the meetings, of the failed meetings, of the tensions and even the fights at these sessions, sometimes with bad compromises as result. Thus, the political games during a European Council session are outside the scope of this research.

In the first part (Part A), the European Council will be clearly delimited abreast the institutional structure of the EU (and the former Communities). This entails that the European Council will be examined from a historical perspective (Chapter I) starting with the Summit meetings until the European Council under the Treaty of Lisbon. This will be followed by Chapter II on the composition of the European Council. Understanding its composition will help to define the European Council's changing place in/outside the institutional structure of the EU. Once the place of the Summit meetings and the European Council has been defined, their competences and functioning throughout the whole period examined (1961-today) will be studied (Chapter III), including the provisions of the Treaty of Lisbon of 2007.²¹ It is not possible to describe the European Council's functioning without giving special attention to the appearance of informal European Council meetings which were not described in the EU Treaty.

The second part (Part B) will examine the European Council's relationship with the other EU institutions and actors. While examining the manner in which European Council conclusions were used in EU law making, it will also be observed in what way this EU institution got involved. An in depth analysis of the relation between several institutions of the EU (Council, Commission, European Parliament and Court of Justice) and the European Council will be performed (Chapter I). Finally, Chapter II will pay attention to the relation between the IGC and the governments of the Member States on the one hand, and the European Council on the other hand.

The third part (Part C) will study European Council conclusions in law and policy making in the EU in order to answer on the second research question. EU law based on European Council conclusions will be investigated. With respect to policy areas where

²¹ The Treaty of Lisbon was originally called the 'Reform Treaty', but it is tradition that treaties are called after the city in which they are signed.

the Commission has an exclusive right to submit proposals, only binding secondary legislation, namely regulations, directives and decisions will be examined; no attention will be given to non-binding secondary legislation, such as resolutions, opinions and recommendations, unless they are relevant.

Through an intensive examination of the text of these acts using databases such as EUR-LEX, OEIL, PreLex, documents of the individual institutions and bodies, references to the European Council are analysed. Once archived, these acts are subsequently examined on the way European Council conclusions were a reference for the other institutions in the decision making process. The *influence* of European Council conclusions will not be (statistically) measured (this is something which belongs to political sciences). This means that this research does not aspire to establish an impact scale from one to ten because this cannot be automatically deduced from the empirical results, but it will indicate, in a reliable manner, when European Council conclusions have been used in the decision making process as described in the Treaties. A substantive amount of literature will be referred to, so that acts without reference to the European Council but which actually have been based on European Council conclusions, can be spotted.

In this way, based on a textual analysis of European Council conclusions and legal texts, a typology will be created to provide an orderly picture of the European Council's various roles: allocating budget funds (Chapter I), political initiator (Chapter II), interpreter of the Treaties (Chapter III), European (economic) government (Chapter IV), implementation of decisions (Chapter V), establishing bodies (Chapter VI) and appeals council (Chapter VII). In order to make a complete analysis of European Council conclusions in law and policy making in the EU, Chapter VIII will deal with the European Council in the CFSP, Chapter IX with the European Council in the area of freedom, security and justice, Chapter X with the European Council's involvement in individual decisions and Chapter XI with the European Council's involvement in relations with Member States and third countries.

Once again it should be clearly kept in mind that this is a legal dissertation and that, by no means, we intend to measure the influence of the European Council on the formal decision making process. The identification of a typology is based on the study of legislation in which reference was made to the European Council conclusions during the decision making process. The typology is thus based on the exhaustive list of policy areas which could be identified, by using the aforementioned methodology in which European Council conclusions have played an important role, namely: financial perspectives, Economic and Monetary Union (hereinafter 'EMU'), environment, regional development, social development, transport, growth and employment, services, utilities market, transparency, subsidiarity, simplification of EU legislation, Charter of Fundamental Rights, savings tax directive, the CFSP and the area of freedom, security and justice.

For clarity, whenever reference is made to the EU Treaty and the TFEU in the footnotes, the Article as it was applicable under the Treaty of Nice (referring to the consolidated version of the EU Treaty and the Treaty establishing the European Community as published in *OJ CE* 321/1 of 29 December 2006) will be mentioned too, insofar as this is appropriate (the word ‘ex’ will be placed before that Article). For example: art. 171, §1, first indent TFEU (ex art. 155, §1, first indent EC Treaty). In case the word ‘Maastricht’ or ‘Amsterdam’ is used, this means that reference is made to an Article as it was applicable respectively under the EU Treaty (referring to the EU Treaty published in *OJ C* 191 of 29 July 1992 or the consolidated version of the Treaty establishing the European Community as published in *OJ C* 224 of 31 August 1992) or the Treaty of Amsterdam (referring to the consolidated version of the EU Treaty and the Treaty establishing the European Community as published in *OJ C* 340 of 10 November 1997).

For example, reference ‘art. 102a EC Treaty (Maastricht); ex art. 98 EC Treaty; current art. 120 TFEU’ means that the Article referred to in the text is art. 102a EC Treaty as applicable under the EU Treaty (Treaty of Maastricht). Article 102a EC Treaty (Maastricht) was later on Article 98 EC Treaty under the Treaty of Nice, but is today (under the Treaty of Lisbon) Article 120 TFEU.

When in a footnote the following reference is made: ‘art. 153 TFEU as amended by art. 2.116 Treaty of Lisbon’, this means that Article 153 TFEU is used as it has been formulated by Article 2.116 Treaty of Lisbon.

The suggestions to amend the Treaties, which are discussed in the conclusions, are listed in the Annex.

Although in the coming years and even months a number of noteworthy innovations and changes in the European Council’s practice will take place (this is the risk of examining a *moving target* such as the European Council), all things have to end. The doctoral dissertation is up to date until 1 September 2011. In a couple of years somebody else can pick up where I left off...