

Different types of meetings of the EU Heads of Government

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1. Introduction

This paper describes and analyses the different types of meetings of the EU Heads of Government. Each type of meeting has a different legal basis and a different role. There are ambiguities, particularly in the question of form. It seems that the participants themselves do not usually attach much importance to the formalistic nature of their meetings.

In the context of the on-going process of institutional reform, this paper is also a contribution to the European Convention.

2. The participants

2.1. Heads of Government

Throughout the paper, *Heads of Government* also includes the Heads of State of Finland and France when they participate in these meetings as required by their internal system of government. For example, during the period of political cohabitation in France, the French Prime Minister was present in some of these meetings. The competences of the Finish and French Heads of State and Government are not addressed in this paper.

The Heads of Government are the supreme political authority of the EU. As a body, it is the locus of power. They are the highest elected, political representatives of the Member States. By definition, they participate in all of the types of meetings.

The powers of the Heads of Government are wider than the powers reflected in the Treaties. They have worked many years without a nicely designed legal framework. This might be a source of annoyance for legal experts; it does not seem to worry too much the Heads of Government or political experts.

2.2. Commission

The Commission President participated in the Summits since 1967. The 1974 press release does not explicitly mention that the Commission President will form part of the European Council but he continued to participate. His participation was established out of practice. The Commission President as member of the European Council is first mentioned in the Solemn Stuttgart Declaration in 1983. The Single European Act (SEA) in 1987 clearly makes the Commission President a member of the European Council.

2.3. Others

In some types of meetings, national ministers and one additional EU commissioner are present.

3. Physical aspects

These different types of meetings are legal and political concepts and not a physical concept. They do not have to come together specifically for each type of meeting. For example, the Heads of Government sometimes decide during a European Council to switch to a different type of meeting just for one point on the agenda. On 19 June 2002 in Feira during the European Council took place a Council of the European Union at Superior Level.

4. Legal versus political basis

There are only a few articles in the European founding Treaties dedicated to the Heads of Government. However, there are several legally non-binding documents, which have been the result of political agreements and are not part of the Treaties. These documents have contributed to describe the functions of Heads of Government. The content of the documents related to these meetings is vague and leaves room for interpretation. There are discussions whether these political instruments are legal or not. The participants, however, do not seem to be overly concerned by the ambiguities. Scholars and the public in general are more confused.

5. Types of meeting

Some names of these meetings resemble each other and can be confused; therefore, the different types of meetings are numbered to simplify its distinction. The following types of meetings have been identified:

- Type 1: European Council
- Type 2: Council of the European Union at Superior Level
- Type 3: Heads of Government of the Member States
- Type 4: Heads of Government as Intergovernmental Conference

5.1. Type 1: European Council

5.1.1. Description

The European Council is an Institution of the European Union. The European Council ‘shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof’¹.

The European Council takes political decisions by consensus; e.g., there is no formal voting. It is left to the other EU Institutions to give legal status² to the political decisions by following the procedures set down in the Treaties³.

It is interesting to note that in the time of the discussions leading to the creation of the European Council, Spinelli, one of the founding fathers of the EU and Member of the European Commission at that time, suggested that summit meetings might be institutionalised as a ‘supreme council’⁴.

Of all these types of meetings, the European Council is the most visible one for the public. It is structured and takes place regularly thus achieving some stability over a

¹ Article 4 TEU

² Jacqu  , *Droit Institutionnel de l’ Union Europ  enne*, 2001, pp. 285-286

³ Council, *The European Council*, Office for Official Publications of the European Communities, May 2000, <http://ue.eu.int/en/info/eurocouncil/sommet.htm>, p. 7 and Westlake, M., *The Council of the EU*, 1995, p. 29

⁴ Bulmer & Wessels, W., *The European Council: Decision-Making in the European Community*, 1987, p. 38

period of time. In any institutional framework ‘the regularity of meetings makes a fundamental difference’⁵.

5.1.2. Composition

The members are:

- Heads of Government
- Commission President

They are assisted by:

- Foreign Ministers
- Economic and Finance Ministers, when the European Council is discussing matters relating to economic and monetary union, they can be invited to participate in European Council meetings;⁶ they either replace or sit alongside Foreign Ministers.
- One Member of the Commission

Article 4 of the Treaty on European Union (TEU) does not specify if the *assistants* as a group assist the members. Or if each assistant is for his own respective member; this seems to be the case.

The European Council does not have rules of procedure. For example, what is the quorum? Some authors consider that because the ‘Foreign Ministers were not present the European Council was not correctly constituted, in the sense of article 4 TEU’⁷.

Article 4 TEU states that ‘The European Council shall bring together the Heads of States or Government of the Member States and the President of the Commission. They shall be assisted by the Ministers of Foreign Affairs of the Member States and by a Member of the Commission’. This seems to suggest that the Ministers and the Member of the Commission are participants, but not members of the European Council. This is the practice. For example, at the Ghent informal European Council on 19 October 2001 although the Ministers were not present, it was a European Council.

⁵ de Schoutheete & Wallace, *The European Council*, 2002, p. 25

⁶ 4th Declaration annexed to the final act of the TEU

⁷ De Schoutheete & Wallace 2002, p. 8

5.1.3. Outcome

The title of the document is the *Presidency Conclusions*. This ‘written record of conclusions ... [is]... issued on the authority of the Presidency’⁸. Article 4 of the TEU specifies that it ‘... shall submit to the European Parliament a report after each of its meetings ...’.

5.1.4. Origin

The European Council emerged out of sporadic summits in the 60s and 70s. After the meeting of the Heads of Government of the Community in Paris 9-10 December 1974 a half page press release⁹ stated the decision of the Heads of Government to formalize their regular meetings. This could be considered a step towards its institutionalisation. This marked the creation of the European Council but the term *European Council* was not used in this original Communiqué. The then French President, Valéry Giscard d’Estaing, announced at the end of the meeting with the following words the creation of this new institution and thus contributed the name: ‘The Summit is dead. Long live the European Council’. Finally, out of practice, the term was imposed, but it entered the founding Treaties only twelve years after its creation in one article in the Single European Act signed in 1986.

5.1.5. Legal Basis

The legal basis for the existence of the European Council is article 4 TEU signed in 1992. The legal basis for its role and functions is vague; article 4 TEU only gives a general overview of its task, namely to ‘provide the Union with the necessary impetus for its development and define the general political guidelines’. Several articles in the Treaties specify the areas in which actions by the European Council are possible, i.e. article 13 TEU in relation to Common Foreign and Security Policy, article 99 paragraph 2 Treaty of European Communities (TEC) in relation to economic policy, article 128 paragraph 1 and 2 TEC in relation to employment.

⁸ London Declaration 1977

⁹ Meeting of the Heads of Government of the Community, Paris 9-10 December 1974, Source: Eight General Report EC, 1974, p. 297

It was through the Single European Act (SEA) that the European Council entered the European Treaties. This means that although the European Council was the main actor in the European decision-making process, it was without any legal basis¹⁰ from 1974 to 1986. The SEA modified the original Treaties, but it devoted only one article to the European Council in which it defined its composition and the frequency of its meetings (at least twice a year), but not its functions. The TEU went a step further in 1993 and formally defined for the first time its role and tasks. The Treaty of Amsterdam signed in 1997 again modified the original Treaties. This Treaty introduced the competence of the European Council in the area of employment.

The Single European Act gave the European Council a legal basis but instead of clarifying this phenomenon it produced more uncertainty¹¹. It did not describe its tasks, its position in the institutional framework, its relationship with the Council and the other Institutions or the legal character of its acts. It continued and still continues today to be difficult to classify the European Council within the institutional framework.

‘The treaty texts ... do not adequately cover the effective powers ... it now operate on the basis of treaty articles in which it is described simply as a source of impetus and inspiration. In fact, however, it is the most important, and the ultimate, decision taker in all Union matters’.¹²

5.1.6. Political Basis

Apart from the legal documents, there are other documents attempting to define the role and functions as well as the organisation of the European Council. In 1974, the European Council started to operate on the basis of the above mentioned half page press release¹³ issued at the end of the meeting of the Heads of Government of the European Community in Paris 9-10 December 1974. It stated the decision of the Heads of Government to institutionalise their regular meetings.

¹⁰ De Schoutheete & Wallace 2002, p. 6

¹¹ Labouz, M.-F., *Le système communautaire européen*, 1988, p. 197

¹² De Schoutheete & Wallace 2002, p. 7

¹³ See 2.1.3, Meeting of the Heads of Government of the Community, Paris 9-10 December 1974, Source: Eight General Report EC, 1974, p. 297

Leo Tindemans, the then Prime Minister of Belgium, was asked by the European Council at the Conference of Heads of Government of the Community in Paris on December 1974 to prepare a report on 'European Union'¹⁴. One part of this report dealt with the strengthening of the institutions. Here he analysed, among others, the functioning of the European Council and he submitted propositions defining the role and method of working of the European Council.

In 1977 and 1983, the Heads of Government signed two Declarations, the *London Declaration on the European Council*¹⁵ and the *Stuttgart Solemn Declaration on European Union*¹⁶. These legally non-binding documents briefly specify the organisation and role of the European Council as well as its composition.

The Stuttgart Solemn Declaration in 1983 states that: 'When the European Council [Type 1] acts in matters within the scope of the European Communities, it does so in its capacity as the Council [of the European Union at Superior Level (Type 2)] within the meaning of the Treaties.'

5.2. Type 2: Council of the European Union at Superior Level

5.2.1. Description

The Council of the European Union at Superior Level is an Institution of the European Communities. Heads of Government can meet as 'Council, ... in the composition of the Heads of State or Government'¹⁷. Here, the Heads of Government can act inside the Community Framework with the power to make legal decisions¹⁸.

In this type of meeting, the Heads of Government do the political and the legal work; i.e., the other EU Institutions do not have to intervene to give it a legal status as in the case of the European Council (Type 1).

¹⁴ Bulletin of the EC, Supplement 1/76

¹⁵ *London Declaration on the European Council*, 1977, Source: *Bulletin of the EC*, 1977, no 6

¹⁶ *Solemn Declaration on European Union*, Stuttgart, 19 June 1983, Source: *Bulletin of the EC*, 1986, Supplement no 2, p.7.

¹⁷ Article 121, paragraphs 2, 3, and 4 and article 122 TEC; article 7 paragraph 1 TEU

¹⁸ De Schoutheete & Wallace, 2002, p.6

5.2.2. Composition

- Heads of Government

Article 203 TEC specifies the composition of the Council of the European Union as follows, ‘The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State’; hence, Council of the European Union at Superior Level meeting (Type 2) is not the European Council (Type 1).¹⁹

The Commission President can be present, but he is not a member of the Council of the European Union at Superior Level meeting (Type 2). As with any other Council of Ministers, the Commission has the right of initiative as attributed by the Treaties²⁰.

5.2.3. Outcome

The results of these meetings are *Council Conclusions* as any other conclusions from the Council of Ministers. In particular, they are not *Presidency Conclusions* as in the European Council (Type 1).

5.2.4. Origin

When the European Council was created in 1974, the press release issued after the meeting of the Heads of Government indicated that ‘The Heads of Government have therefore decided to meet, ... and, whenever necessary, in the Council of the Communities...’ This means that Heads of Government were stating their intention to meet as Council of the European Union at Superior Level (Type 2).

So far, the Heads of Government have used this option twice. The first time was on the 2-3 May 1998. It was the 2088th Council session where they decided unanimously on the participation at the third phase of the EMU of eleven Member States, who fulfilled the necessary conditions to adopt the single currency by 1 January 1999.

¹⁹ see Council website p.4, Jacqu  , 2001, pp. 282-283

²⁰ Jacqu  , 2001, p. 280

The second time was on the 19 June 2000 in Feira, Portugal. It was the 2275th Council session where they decided on the introduction of the Euro as the single currency in Greece.

As mentioned above, the outcome of these two meetings are Council Conclusions and are therefore they are not in the web site of the Council²¹ as European Council Presidency Conclusions.

The above shows that the Heads of Government do not use this option very often. When they use it, they deal with very important and significant decisions, so far both in the area of EMU.

5.2.5. Legal Basis

Several articles in the Treaties specify the areas in which actions in this composition are possible: article 121 paragraphs 2, 3 and 4 and article 122 TEC in relation to the monetary policy; the Treaty of Amsterdam added article 7 paragraph 1 TEU in relation to human rights.

This new article 7 extends the possibility for the Head of Government to meet in a higher emanation of the Council, and therefore to become an extension from it, can be interpreted as a political will to allow the Heads of Government to develop into an integral part of the Council hierarchy. When they meet as Council of the European Union they have to follow its rules of procedure. Some authors²² consider that it is the European Council that could develop into an integral part of the Council hierarchy.

5.2.6. Political Basis

Since 1974, the Heads of Government had the possibility to meet as a Council of the European Union based on the above-mentioned press release issued after the meeting of the Heads of Government in December 1974 in Paris.

The *London Declaration on the European Council*²³ of 1977 states that

²¹ URL: <http://ue.eu.int/en/Info/eurocouncil/index.htm>

²² Nicoll, W., *Representing the States*, in Duff et al., *Maastricht and Beyond*, 1994, p. 203

²³ *London Declaration on the European Council*, 1977, Source: *Bulletin of the EC*, 1977, no 6

‘It is also recognised that the European Council will sometimes need to fulfil a third function, namely to settle issues outstanding from discussions at a lower level. In dealing with matters of Community competence the European Council will conform to the appropriate procedures laid down in the Community Treaties and other agreements.’

The *Stuttgart Solemn Declaration on European Union*²⁴ of 1983 states that

‘When the European Council acts in matters within the scope of the European Communities, it does so in its capacity as the Council within the meaning of the Treaty.’

According to these two declarations, the Council of the European Union at Superior Level meeting could deal with any matter of Community competence. The later development of the legal basis as indicated above, defines only two areas of competence; namely, monetary policy and breach of human rights.

5.3. Type 3: Heads of Government of the Member States

5.3.1. Description

The Heads of Government can meet as ‘Governments of the Member States at the level of Heads of State or Government’²⁵. Here, they act in an intergovernmental framework. They do not have to arrange a special meeting, but they can take decisions in this framework during the European Council. Their tasks include making a certain number of appointments (e.g., the Commission President), designating or fixing seats of institutions.

This is the only type of meeting where one can have a subset of the Heads of Government. This is because the issue(s) addressed only concern some Member States. For example, the euro.

Heads of Government (particularly from small Member States) are sensitive when other Heads of Government (particularly from large Member States) meet. It seems that the level of tolerance is two participants; e.g., bilateral Franco-German meetings,

²⁴ *Solemn Declaration on European Union*, Stuttgart, 19 June 1983, Source: *Bulletin of the EC*, 1986, Supplement no 2, p.7.

²⁵ Article 117 TEC

though there are some misgiving. When Blair tried to organize a *Dinner for Three* (4 November 2001) it ended up as a Mini-Summit.

5.3.2. Composition

- All or a subset of the Heads of Government

5.3.3. Outcome

The results are *Decisions* taken by common agreement. They may be annexed to the European Council Presidency Conclusions. The following are two examples of Decisions.

During the Edinburgh European Council on 11-12 December 1992 the Heads of Government of the Member States (Type 3) took one Decision that was included in the Edinburgh Presidency Conclusions: ‘On the occasion of the European Council Member States reached agreement on the seats of the European Parliament, the Council... The formal decision is taken out in Annex 6’. The official title of annex 6 is: ‘Decision taken by Common agreement between the Representatives of the Governments of the Member States on the location of the seats...’ Furthermore, Annex 1 to the Edinburgh Presidency Conclusion says ‘the Heads of State and Government, meeting within the European Council, ... having freely decided to exercise in common some of their competences, ...’

On 23 May 2002, a Decision was taken by Common Accord of the Governments of the Member States that have adopted the euro at the level of Heads of State or Government appointing the Vice-President of the European Central Bank.²⁶ This was one case where only a subset of the Heads of Government took the Decision.

5.3.4. Legal Basis

Several articles in the Treaties specify the areas in which actions in this composition are possible: article 117 TEC in relation to the appointment of the President of the European Monetary Institute; article 112 TEC in relation to the nomination of the

²⁶ Official Journal L 137, 25/05/2002 P. 0025 - 0025

president, Vice-President and other members of the Executive Board of the European Central Bank.

5.4. Type 4: Heads of Government as Intergovernmental Conference

5.4.1. Description

The Heads of Government can meet as an Intergovernmental conference meeting at the level of Heads of State or Government. Their task is to revise the Treaties.

As in the Heads of Government of the Member States meetings (Type 3), no special arrangements are needed; decisions may be taken during the European Council meetings. The Heads of Government can decide on the amendments, as they have, for example, in Luxembourg on the Single European Act and in Maastricht on the Treaty on European Union.

5.4.2. Composition

- Heads of Government

5.4.3. Outcome

The result is a new *Treaty* or *Treaty Amendments* decided upon by common agreement. However, one has to bear in mind, that finalisation of the texts has been done at the level of the foreign affairs ministers²⁷.

5.4.4. Legal Basis

It is the article 48 TEU, which states:

‘... If the Council, ..., delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties...’

²⁷ Jacqu  , *Droit Institutionnel de l’ Union Europ  enne*, 2001, p. 286

6. Confusions

The outcomes of one type of meeting could be integrated²⁸ (one could say buried) in the outcome of another type of meeting that takes place at the same time. For example, the Decision included as Annex 6 to the Edinburgh Presidency Conclusions.

Hence, it poses a challenge for general observers to make a clear distinction between the different types of meetings that take place at the same time and place and their outcomes.

For example, Treaties and Treaty Amendments were decided in Luxembourg (1986), Maastricht (1992), Amsterdam (1997) and Nice (2000). The legal subtleties that these decisions were taken during European Council meetings (Type 1) but by the Heads of Government as Intergovernmental Conference (Type 4) is lost to many. The general perception is that it is the European Council (Type 1) who decided upon the Treaties.

Lines are blurred and in practice even the participants in these different types of meetings do not always respect the appropriate distinction.

Conclusions often show inconsistencies as terms are mixed and may thus lead to confusion. For example, the Barcelona Presidency Conclusions of 15-16 March 2002 states in paragraph 50 'The Heads of State or Governments welcomed ... and will hold...' Then in paragraph 51 it goes on 'the members of the European Council heard a presentation by the Council Secretary-General... The European Council instructed the Presidency...'

Most of the authors state that the European Council is the EU supreme authority. In fact, it is the Heads of Government as a body. This terminological ambiguity arises because often authors equate Heads of Government with European Council. If the Heads of Government meet as any of the other types of meeting they continue to be the EU supreme authority; i.e., because they meet as Heads of Government of the Member States they do not have less power than if they meet as European Council.

²⁸ de Schoutheete & Wallace 2002, p. 6

The main literature in this area is not about the meetings of Heads of Government in general but about the European Council (Type 1). It is recognised in the main literature on the European Council that the difficulty to study, to describe and classify the European Council as an Institution within the EU is mainly due to the ambiguities and paradoxes related to the legal basis for these different types of meeting. 'Its [the European Council's] ... development, over a quarter of a century, has been ambiguous and fraught with paradoxes'²⁹. It 'is not a product of one consistent concept ... of European integration...'³⁰ and there are number of inconsistencies in the role and functions that various parts of the legal and non-legal documents ascribe to it³¹.

For the purpose of analysis, authors tend to neglect these legal subtleties and sometimes they are inclined to assign the tasks and functions of all of these types of meeting to the European Council (Type 1). For Wallace, the European Council (Type 1) has become 'the key forum for determining treaty reforms'³². De Schoutheete lists 'Negotiation of treaty changes' as one of the main functions of the European Council.³³ Ludlow argues that 'it was the European Council that finally agreed to the Single European Act'. He states that 'the European Council acted as the intergovernmental conference of last resort three more times: at Maastricht, Amsterdam and Nice'.³⁴ Werts mentions that the 'European Council has its say in the appointment of the President of the Commission'³⁵. This shows, that there is some ambiguity in the literature and also in practice around this question. It is understandable, as even the Heads of Government do not seem to attach too much importance to these legal subtleties of their meetings³⁶.

7. Conclusions

The different types of meeting exist because they have different roles; i.e., it is not just a question of form. Modifying the current situation would imply fundamental changes in sovereignty.

²⁹ De Schoutheete & Wallace 2002, p. 6

³⁰ Wessels 1991, p. 9

³¹ Hayes-Renshaw & Wallace 1997, p. 160

³² Wallace, H., *The Institutional Setting: Five Variations on a Theme*, 2000, p. 20

³³ De Schoutheete 2002, p. 34-40

³⁴ Ludlow, P., 2002, p. 7-8

³⁵ Werts, 1992, p. 121

In the two extremes from Community (supranational) to intergovernmental, the different types of meetings can be ordered as:

- Type 2: Council of the European Union at Superior Level (the most supranational meeting)
- Type 1: European Council
- Type 4: Heads of Government as Intergovernmental Conference
- Type 3: Heads of Government of the Member States (the most intergovernmental meeting)

The coming institutional reform could take care of formalising the different types of meeting and/or merging some of them. Probably, the European Convention could do the preparatory work.

At the most trivial level, confusion could be easily avoided if the appropriate authority issued one formal document describing the different types of meetings. Afterwards, the practitioners would have to follow the terminology. For example, 'By this Decision the Heads of Government of the Member States name Mr. X Commission President'.

8. Author, disclaimer and acknowledgement

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³⁶ De Schoutheete & Wallace 2002, p. 6

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