



Relations between the European Council and the European Parliament

Institutional and
political dynamics

STUDY

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This study explores the development of relations between the European Council (of Heads of State or Government) and the European Parliament, two institutions that have become increasingly central to the operation of the European Union political system, especially since the 2009 Lisbon Treaty. It explains the Treaty framework for relations between the two institutions and traces their practical evolution over time, including an analysis of the roles of the presidents of each institution in such interaction. It also examines points of contention in the relationship to date, including in relation to 'legislative trespassing' by the European Council and the *Spitzenkandidaten* process.

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Executive summary

The most notable change in the European Union's institutional architecture since the beginning of the European project was the launch in 1975 of the European Council, which became a formal institution in 2009. From the outset, the European Council has had a profound impact on the EU's development. The dynamism of the EU system is apparent also in the rising prominence of the European Parliament (EP). Both institutions were major beneficiaries of successive rounds of Treaty reform; both benefited as well from the EU's rapidly widening policy scope and growing political importance, with the European Council assuming more and more responsibility for setting the agenda, providing direction, and taking key decisions, and the EP acquiring greater power and prestige as the only directly elected institution at the European level.

The differences between the two institutions are nonetheless striking. The European Council, consisting principally of the Heads of State or Government of the Member States, is a forum for promoting and reconciling national interests; the EP is a supranational body, the majority of whose members sit in trans-national political groups. The European Council is the EU's emergent political executive; the EP is part of the EU's legislature. The European Council surveys EU affairs from on high; the EP is deep in the trenches of European integration.

Despite their different character and purpose, the European Council and the EP view each other with circumspection. Their relationship is not inherently antagonistic, but nonetheless generates friction. Specifically, the EP is wary of the European Council's increasing involvement in a range of policy areas going well beyond those traditionally associated with intergovernmentalism. The EP is also concerned about accountability and transparency regarding the work of the European Council. For its part, the European Council is happy to keep the EP at arm's length. Subject, in most cases, to national parliamentary scrutiny of their activities, the Heads of State or Government enjoy operating in the European Council relatively free of EP scrutiny.

Although the European Council and the EP occupy separate spheres of EU activity, the conduct of certain policies and procedures brings them together, as does the interaction between the President of the European Council and the leadership of the EP, notably the speech by the EP President at the beginning of every regular meeting of the European Council, and the report by the European Council President to the EP after every such occasion, followed by a Parliamentary debate. The onset of the crisis years added a layer of complexity to European Council-EP relations, with the European Council meeting more frequently and acting more decisively in a range of policy areas, and the EP chafing at the European Council's apparent high-handedness, opacity, and unaccountability. Personal factors have sometimes complicated this political and institutional rivalry, as various European Council Presidents and European Parliament leaders have interacted with each other in different ways.

This study analyses European Council-EP relations, a crucial though so far under-researched part of the EU's institutional evolution, largely in the post-Lisbon Treaty period. It begins with a discussion of the recent rise of the two institutions, notably in the form of new intergovernmentalism and assertive parliamentarianism, and the implications of this development for the EU's institutional landscape. This section also links the European Council and the EP in the ways that they help to strengthen the EU's democratic legitimacy, both formally and informally. The next section outlines the Lisbon Treaty framework, which embeds European Council-EP relations. The study goes on to identify key interlocutors in European Council-EP relations, before assessing the quality of their interaction. The penultimate section explores points of contention in the relationship. The conclusions reiterate key topics and themes previously discussed in the study, and raise the possibility of the EP President's greater participation in the European Council.

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1. Introduction

The institutional architecture of the European Union (EU) has remained relatively stable over time. Apart from the emergence of independent, non-majoritarian institutions and agencies, the most notable change to the EU's original design, consisting of the Commission, the Parliament, the Council, and the Court, was the launch in 1975 of the European Council, although it did not become a formal institution until 2009. From the outset, however, the European Council has had a profound impact on the EU's development. EU institutional roles and responsibilities have always been fluid, thanks to formal Treaty changes, relevant court rulings, informal arrangements, and day-to-day interactions between and among the institutions themselves. The emergence of the European Council added a new element to the mix. For all of those reasons, institutional balance within the EU is in a state of constant recalibration. Few political systems are static; the EU system is more dynamic than most.

The dynamism of the EU system is especially apparent in the rising prominence not only of the European Council but also of the European Parliament (EP), two dissimilar, though complementary, institutions. Both were major beneficiaries of successive rounds of Treaty reform, going back to the late 1980s. Both benefited as well from the EU's rapidly widening policy scope and growing political importance, with the European Council assuming more and more responsibility for setting the agenda, providing direction, and taking key decisions, and the EP acquiring greater power and prestige as the only directly elected institution at the European level.

The differences between the two institutions are nonetheless striking. The European Council is small (30 members) and nimble; the EP is large (751 members) and cumbersome. The European Council, consisting primarily of the Heads of State or Government of the Member States, is a forum for promoting and reconciling national interests; the EP is a supranational body, the majority of whose members sit in trans-national political groups. The European Council is the EU's emergent political executive; the EP is part of the EU's legislature. The European Council surveys EU affairs from on high; the EP is deep in the trenches of European integration.

Despite their different character and purpose, the European Council and the EP view each other with circumspection. Their relationship is not inherently antagonistic, but nonetheless generates friction. Being institutionally ascendant may itself be a source of discord. More concretely, the EP is wary of the European Council's increasing involvement in a range of policy areas going well beyond those traditionally associated with intergovernmentalism, such as security and defence. The EP is also concerned about accountability and transparency regarding the work of the European Council. For its part, the European Council is happy to keep the EP at arm's length. Subject, in most cases, to national parliamentary scrutiny of their activities, the Heads of State or Government enjoy operating in the European Council relatively free of EP scrutiny.

To some extent, the European Council and the EP occupy separate spheres of EU activity. However, the conduct of certain policies and procedures brings them together, as does the interaction between the President of the European Council and the leadership of the EP, notably the speech by the EP President at the beginning of every regular meeting of the European Council, and the report by the European Council President to the EP after every such occasion, followed by a Parliamentary debate. The onset of the crisis years, which coincided with the advent of the elected, full-time European Council President, added a layer of complexity to European Council-EP relations, with the European Council meeting more frequently and acting more decisively in a range of policy areas, and the EP chafing at the European Council's apparent high-handedness, opacity, and unaccountability. Personal factors have sometimes complicated this political and institutional rivalry, as various European Council and European Parliament Presidents have interacted with each other in different ways.

This study analyses European Council-EP relations, a crucial though so far under-researched part of the EU's institutional evolution, largely in the post-Lisbon period (for exceptions, see Papí Boucher, 2015; Müller Gómez, Wessels, and Wolters, 2018). It begins with a discussion of the recent rise of the two institutions, notably in the form of new intergovernmentalism and assertive parliamentarianism, and the implications of this development for the EU's institutional landscape. This section also links the European Council and the EP in the ways that they help to strengthen the EU's democratic legitimacy, both formally and informally. The next section outlines the Lisbon Treaty framework, which embed European Council-EP relations. After that, the study identifies key interlocutors in European Council-EP relations, before assessing the quality of their interaction. The penultimate section explores points of contention in the relationship. The conclusions reiterate some of the main points discussed in the study, and raise the possibility of the EP President's full participation in the European Council.

2. A changing institutional landscape

The rise of the European Council is central to 'new intergovernmentalism,' which posits that integration deepened in the aftermath of the Maastricht Treaty (post-1992) without a corresponding increase in supranationalism. According to this approach, the Maastricht Treaty inaugurated a distinct phase of European integration, which extended EU activity into 'core state' policy fields beyond the socio-economic and ancillary areas hitherto covered by the traditional 'Community method' of decision-making. Aware of the need to cooperate more closely in highly sensitive areas such as fiscal policy, justice and home affairs, and security and defence, national governments agreed to do so largely on an intergovernmental rather than a supranational basis, thereby privileging institutions and bodies such as the European Council, the Euro Summit, and the Eurogroup (see Puetter, 2014; Bickerton, Hodson, and Puetter, 2015).

Intergovernmentalism has always been prevalent in European integration, as governments instinctively protected their prerogatives and shared sovereignty in supranational institutions to the extent necessary to achieve common, socio-economic objectives. Achieving those objectives, which centred on establishing and maintaining a single market, required the existence of supranational institutions, notably an executive body (the European Commission) and a judicial authority (the European Court). The Council of Ministers (now the Council of the EU) would mediate national interests in the course of legislative decision-making, based on proposals coming exclusively from the Community-minded Commission. The European Parliament gradually became the legislative counterpart, on the supranational side, of the more intergovernmental Council. In successive rounds of treaty reform, national governments gave the EP more legislative, budgetary, and other authority in order to strengthen the democratic legitimacy of the EU. Their motives were both ideational and pragmatic: EU-level policy-making not only deserved but also required EU-level democratic legitimation, without which the novel political system would never gain public acceptance and support.

The European Council came into existence in the 1970s in order to steer the European Community through turbulent times. From the beginning, the European Council and the EP had a special connection. As part of an implicit deal to balance, at least superficially, the institutionalization of intergovernmentalism in the new European Council, national leaders agreed at the same time to allow direct elections for the EP finally to take place (Wessels, 2016, pp. 21-42). Direct elections, which first happened in 1979, may not have empowered the EP as much or as rapidly as their proponents hoped, but nonetheless represented a major milestone in the political and institutional development of European integration (Ripoll Servent, 2018, pp. 8-12).

Subsequently, the European Council, as the key decision-maker during Inter-Governmental Conferences (IGCs) on treaty reform, progressively increased the power of the European Parliament. The EP was not a passive bystander in this process. On the contrary, the EP became adept at influencing IGC outcomes by means of indirect participation, coalition formation with sympathetic national governments, interaction with national parliaments, and networking within the leading European political parties. Moreover, ratification of Treaty reform required the EP's approval, thereby giving Parliament a degree of influence over the results of IGCs (see Beach, 2005; Rittberger, 2005).

Enlargement, another means of changing the EU's constitutional order, was a second area of activity in which the European Council was the key decision-maker, and for which EP approval was required. Blocking enlargement would have been a nuclear option for the EP, but the possibility of doing so gave Parliament additional leverage vis-à-vis the European Council. In the mid-1990s, the EP's linkage of approval for the accession of three countries (Austria, Finland, and Sweden) and reform of EU decision-making was instrumental in broadening the agenda of the IGC that resulted in the

Amsterdam Treaty, although the institutional and policy provisions of that Treaty disappointed the EP and other supporters of greater supranationalism (see Edwards and Pijpers, 1997).

For the first thirty-five years of its existence (1975-2010), but especially in the post-Maastricht period, the European Council consolidated its position at the apex of the EU's institutional edifice. As the name suggests, summit meetings gave national leaders an opportunity to survey EU affairs from on high, to provide direction, negotiate treaty changes, conclude accession agreements, and occasionally act as a 'super' General Affairs Council, chaired in the pre-Lisbon days by the country in the rotating Council presidency. The European Council invited EP presidents to make brief presentations at the beginning of its regular meetings, and the leader of the country in the Council presidency reported to the EP on the outcome of those meetings. National leaders other than the Council President occasionally addressed the EP as well, Strasbourg being an iconic venue for speeches on the subject of ever-closer union. Other than that, the European Council was happy to keep the supranational EP at arm's length.

For its part, the EP viewed the European Council with a degree of suspicion. As a key component of the EU's supranational apparatus, the EP understandably resented the European Council's emergence at the top of the EU's institutional structure, and the European Council's occasional intrusion into legislative decision-making, largely in the form of the Council's de facto highest configuration. The EP's wariness towards the European Council was apparent in the early 2000s, during the Constitutional Convention that resulted in the Draft Constitutional Treaty (see Castiglione, et al, 2007; Norman 2005). Because of its large representation in the Convention, and the location of its administrative offices in Brussels, where the Convention took place over a two-year period, the EP was in a good position to influence the outcome of the proceedings (Benedetto and Hix, 2007). The EP's preferences focused mostly on decision-making procedures and on broadening the policy scope of a supranational EU. The EP seemed less than enthusiastic about the formal institutionalization of the European Council, and the acquisition by it of a full-time President, elected by the European Council's principal members (the Heads of State or Government).

Despite the novelty of holding a Convention as a means of laying the groundwork for a new treaty, national governments held the upper hand in the treaty-revision process. Under the terms of the existing treaty, they alone were empowered to negotiate and conclude treaty change. Doing so in the politically charged atmosphere of the late 2000s, in the wake of the rejection of the proposed Constitutional Treaty by Dutch and French voters, and strong opposition from some Member States to new modalities for qualified majority voting, was especially difficult. Indeed, the road to Lisbon was long and arduous. It took eight years to complete, beginning with the Constitutional Convention and ending with uncertainty about ratification in a number of Member States. Treaty reform—changing the rules of what the EU does and how the EU does it—had become more and more fraught in the face of growing public dissatisfaction with European integration. Governments were less and less willing to make the political investment in protracted negotiations and possibly bruising ratification campaigns (Craig, 2010).

Implementation of the Lisbon Treaty, in December 2009, ended this lengthy period of debate about the future of the EU. During that time, the EU had launched the single currency; enlarged to include 27 Member States; extended the Schengen area for the free movement of people; and broadened its remit into new areas of macro-economic and fiscal policy coordination, justice and home affairs, and external security and defence. Institutional arrangements for managing such a rapidly changing EU, which formed an important part of the Lisbon Treaty, included a privileged position for the European Council. The switch to a full-time European Council President was especially portentous. Although the Treaty said little about the powers or prerogatives of the new office, it quickly evolved into an important and influential post. As a result, the European Council became noticeably more cohesive and effective (See Papí Boucher, 2017; Wessels, 2016).

At the same time, the Treaty strengthened the EP considerably, giving it additional budgetary authority and a greater legislative role, thanks to the widespread applicability of what became the Ordinary Legislative Procedure. Indeed, Lisbon was the latest in a series of Treaty changes, going back to the late 1980s, from which the EP benefited greatly. Thanks largely to strong, collective leadership, the EP promoted its various institutional and policy preferences by means of 'assertive parliamentarianism,' a counterpart in the EU system to new intergovernmentalism.

Given the political background to the eventual emergence and implementation of the Lisbon Treaty, it is not surprising that the European Council and the EP had fared so well. Public disenchantment with the EU was mounting since the early 1990s, and seemed to grow in proportion to the EU's increasing size and broadening policy scope. Acutely aware of this development, and of its potentially devastating political consequences, national and institutional leaders focused their attention on attempting to strengthen the EU's popular appeal and democratic legitimacy.

The Commission has always been the weakest link in the EU's legitimacy chain. The Constitutional Convention rejected as impracticable the idea of having a directly elected Commission President. Based on the Convention's deliberations, the Lisbon Treaty included a provision for the European Council to take into account the outcome of the EP elections when nominating the Commission President. As in the past, the EP would then vote on the European Council's nominee. Although the European political parties and the EP would exploit this innovation by initiating the *Spitzenkandidaten* process, the Commission President would nonetheless be elected only indirectly, and the college approved collectively. While remaining central to the EU system, and a beneficiary as well of the Lisbon Treaty, the Commission therefore seemed fated to remain the institutional epitome of the EU's democratic deficit.

By contrast, the European Council and the EP have easily identifiable analogues in national political systems. Superficially, the European Council resembles a national government and the EP the lower house of a national parliament. People in many countries may hold their governments and parliaments in low esteem, but few question the legitimacy of those institutions. Heads of State or Government—the principals in the European Council—and Members of the European Parliament (MEPs) derive their legitimacy directly from elections and indirectly from the familiarity of the positions they hold.

Indeed, Article 10 of the Treaty on European Union (TEU) states unequivocally that 'The functioning of the Union shall be founded on representative democracy.' It goes on to explain that 'Citizens are directly represented at Union level in the European Parliament [and] Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.'

Apart from their unquestionable legitimacy, the European Council and the EP provide the EU with a degree of political theatre, without which it would have even more difficulty connecting with European citizens. Meetings of the European Council are important events in the life of the EU. Although they have become almost commonplace in recent years, EU summits still attract massive media attention, not least because of the high political salience, especially since the onset of the EU crises, of the subjects under discussion. Whereas meetings of the European Council are confidential, as are meetings of national governments, an element of political theatre surrounds the arrival of national leaders outside the European Council building, where they make short statements for the media; their chit-chat with each other in the elaborate European Council chamber before the meetings begin, which cameras (without sound) are allowed to capture; and their press conferences during and after the meetings themselves. These widely broadcast gatherings of European leaders may well shape the way that many people envision the EU.

Parliaments usually provide most of the theatrics in a political system. The EP is no exception, but only up to a point. Plenary sessions can be dramatic, but not as dramatic as meetings of national parliaments. That is partly because, unlike in most national systems, in the EU a government does not depend for its survival on maintaining the support of a majority of MEPs, not least because there is no EU government analogous to a national government. The multilingual and multicultural nature of the EP also drains the institution of drama, as debates generally lack the fluency and repartee associated with many, but by no means all, national parliaments. Nevertheless, the EP possesses an institutional image with which most people can associate.

Regardless of people's familiarity with both institutions, however superficial, successive Treaty changes reinforced the trend within the EU towards the emergence of a commanding European Council and an assertive European Parliament, politically on a higher plane than the Council and the Commission. This is not to say that the Council and the Commission are unimportant, only that their overall influence receded during the same span of time, relative to that of the European Council and the EP. As the culmination of a long-term development, Lisbon recast the balance among the institutions, with the European Council and the EP clearly in the ascendant.

3. The Treaty framework for European Council-European Parliament relations

The Lisbon Treaty, the latest and possibly the last major revision of the EU's founding Treaties, introduced extensive policy and institutional reforms. A number of these have important implications for relations between the European Council and the EP. One is the article on the nature and composition of the European Council. Others, of a constitutional nature, dealing with institutional affairs, or touching on specific policies and procedures, have a direct bearing on European Council-EP relations.

3.1. The European Council's institutional existence

Article 13 TEU lists the Union's institutions. For the first time in the EU's founding Treaties, the European Council is included among them. This Treaty provision amounts to a statement of the obvious, after long-standing resistance to the idea of recognizing the overtly intergovernmental European Council as a formal EU institution had finally melted away.

Article 15 TEU deals with the nature and composition of the European Council. Article 15(1) states that the purpose of the European Council is to provide the Union with the necessary impetus for its development and define its general political directions and priorities. Of particular importance to the EP, Article 15(1) also states that the European Council 'shall not exercise legislative functions.' Article 15(2) specifies the composition of the European Council: the Heads of State or Government, together with its President and the President of the Commission. Article 15(3) refers to the frequency of European Council meetings (twice every six months, with additional meetings when the President decides that the situation so requires). Article 15(4) explains that consensus is the European Council's preferred decision-making mode, except where the Treaties provide otherwise.

Article 15(5) provides for a full-time President of the European Council; Article 15(6) describes the President's responsibilities. The full-time European Council presidency was one of the most conspicuous institutional innovations of the Lisbon Treaty. Studies of the original, rotating European Council presidency noted that six months was too short a time for sustained leadership and that the effectiveness of each country's presidency varied greatly, depending on a variety of personal, political, and economic factors (Tallberg, 2006). The growing importance of the European Council and obvious inadequacy of the rotating presidency resulted in near-universal agreement during the Constitutional Convention that the institution needed a standing President. However, there was disagreement about the nature of the new office. Representatives of some of the small Member States fretted that big Member States would capture the European Council Presidency and use it as a platform to strengthen their influence in the EU's premier intergovernmental institution. The agreement eventually reached in the Constitutional Treaty, carried over to the Lisbon Treaty, was for a president to be elected by qualified majority vote, for a period of two-and-a-half years, renewable once (Craig, 2010, pp. 81-83).

According to Article 15(6), the President's responsibilities are to chair the European Council; drive forward its work; provide continuity; and facilitate cohesion and consensus. Some of these responsibilities harked back to the rotating presidency; others were new. The President may not hold a national office, thereby emphasising his position as a European-level official. This was a clear break from the rotating presidency, although, when chairing the European Council, the leader of the country in the rotating presidency generally tried to act neutrally, as an honest broker, and promote a common European rather than a partisan national interest. By putting in place a full time President, who would occupy only a European-level office (or offices), the Treaty gave the Presidency a supranational character, despite the deep-rooted intergovernmental ethos of the European Council. The Commission President's membership in the European Council had already

introduced an element of supranationalism into an otherwise avowedly intergovernmental body. As was already the case with the Commission President, however, the European Council President does not have a vote in the European Council, thereby setting a formal limit on the intrusion of supranationalism into the institution.

Due largely to the concerns of the small Member States, nothing in the Treaty suggested that the full-time Presidency could become a power centre. Instead, the President would be the equivalent of a non-voting executive chair. Only the charge to 'drive forward' the work of the European Council hinted at the new President's leadership potential.

Mirroring these seemingly modest Treaty provisions, Member States agreed when setting up the office that the European Council President would have a small staff, essentially a cabinet or personal office equivalent in size to that of the Commission President. In addition, the full-time President could draw on the resources of the Council Secretariat, traditionally at the disposal of the Council Presidency. Despite the allocation of such modest means, having a President with a permanent seat in Brussels would be a considerable improvement for the European Council. The goal was not necessarily to provide strong leadership, but to enhance the institution's efficiency by providing consistent chairmanship, better preparation, regular follow-through, and close liaison with key actors.

3.2. Treaty articles relevant to European Council-European Parliament interaction

A number of Treaty articles touch directly or indirectly on interaction between the European Council and the EP, including the question of European Council and EP representation at each other's institution. Article 15(6)(d) TEU requires the European Council President to 'present a report to the European Parliament after each of the meetings of the European Council.' These reports are usually followed by an exchange between the European Council President, and the EP's political group leaders and ordinary MEPs. As for EP representation at the European Council, Article 235(2) TFEU states only that 'the President of the European Parliament may be invited to be heard by the European Council.' In fact, since 1987 the EP President has spoken at the beginning of regular European Council meetings. Accordingly, Article 4(2) of the European Council's post-Lisbon rules of procedure states that 'Such exchange of views shall be held at the start of the meeting of the European Council, unless the European Council unanimously decides otherwise.' These interactions between the EP President and members of the European Council, on the one hand, and the European Council President and MEPs, on the other hand, form the tip of the iceberg of European Council-EP relations. Beneath the surface, the two institutions interact in a number of ways, many of which also spring from provisions in the Lisbon Treaty.

Other relevant articles include various policies and procedures involving both the European Council and the EP. These cover articles of a constitutional nature, such as Article 7 TEU on infringement procedures against a Member State allegedly in violation of the EU's core values; Article 48 TEU on Treaty change; Article 49 TEU on enlargement; and Article 50 TEU on the withdrawal of a Member State. Other pertinent articles have to do with institutional affairs, such as Article 14 TEU on the composition of the EP; Article 17 TEU on the election of the Commission President and the appointment of the College of the Commission; and Article 283(2) TFEU on the appointment of members of the Executive Board of the European Central Bank. Article 86 TFEU calls for the involvement of both institutions in establishing, and possibly extending, the powers of the Public Prosecutor's Office. Under Article 140(2) TFEU, the two institutions play a role in deciding when a country may join the eurozone.

In some of these cases, the European Council needs the consent of the EP in order to act; in other cases, the European Council is obliged to consult the EP before it can act. For instance, Article 48

includes two basic procedures for treaty reform: the ordinary procedure and two simplified procedures. In the case of the ordinary procedure, the European Council needs to consult the EP before convening a convention on treaty change. If the European Council decides to proceed without a Convention, it must obtain the consent of the EP. Clearly, the need for consent, as opposed to consultation, enhances the power of the Parliament.

With respect to the simplified procedure for TFEU revision, which does not require a Convention, the European Council needs the EP's consent (Article 48(6) TEU). Another simplified procedure, Article 48(7) TEU, contains the so-called *passerelle* or bridging clause, which allows the European Council to change the decision making rule in the Council from unanimity to qualified majority voting, or to change the basis of legislative decision from a special procedure to the Ordinary Legislative Procedure. In order to do so, the European Council needs the consent of the EP. Because use of the *passerelle* clause to extend recourse to qualified majority voting, or the scope of the Ordinary Legislative Procedure, would move the EU in a supranational direction, it would be highly controversial and deeply contested among Member States.

On other institutional matters, the European Council may act only on the initiative, and subsequently with the consent, of the EP when deciding on the composition of the EP (Article 14(2) TEU). Of greater significance, Article 17(7) TEU, on the election of the Commission President, stipulates that 'Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission ... [who] shall be elected by the European Parliament by a majority of its component members.' What this meant in practice became highly controversial in 2014, when the EP successfully championed the *Spitzenkandidaten* process.

As for specific policies, Article 148 TFEU states that, each year, the Council will draw up guidelines on employment for Member States, based on European Council conclusions, after consulting the EP, among other bodies. More noteworthy, because of their potential for conflict with the EP, are a number of provisions in the TFEU that allow the European Council, in exceptional cases, to encroach into legislative decision making. In two areas of judicial cooperation in criminal matters (Article 82 TFEU and Article 83 TFEU), the European Council may suspend the Ordinary Legislative Procedure at the request of a Member State that chooses to pull the 'emergency brake.' In such a case, within four months of the suspension, the European Council may refer the legislative proposal back to the Council, thereby resuming the legislative process. In those cases, and in another case of police cooperation involving a special legislative procedure (Article 87 TFEU), the Treaty therefore authorizes the European Council, under exceptional circumstances, to influence the legislative process, either by suspending the process completely or, in effect, by changing the decision-making rule in the Council from qualified majority voting to unanimity. A similar Treaty provision (Article 48 TFEU) pertains to legislation on social security (see Papí Boucher, 2015, pp. 131-133).

3.3. The European Parliament's initial reaction

The rejection of the Constitutional Treaty was a bitter disappointment for the EP. Three senior MEPs (Elmar Brok, Enrique Barón Crespo, and Andrew Duff), veterans of the Constitutional Convention, followed closely and sought to influence the proceedings of the ensuing IGC, which Member States convened in 2007 in order to refashion as many as possible of the changes contained in the Constitutional Treaty into amendments to the existing Treaties. The EP regretted that the relatively narrow mandate for the IGC implied 'the loss of some important elements that had been agreed during the 2004 IGC, such as the concept of a constitutional treaty, the symbols of the Union, comprehensible names for the legal acts of the Union, a clear statement of the primacy of the law of the Union and the definition of the Union as a Union of citizens and states' (European Parliament, 2007). Nevertheless, The EP duly endorsed the outcome of the 2007 ICG, in the form of the Lisbon

Treaty, while lamenting certain features of it, such as the inclusion of 'restrictive mechanisms like 'emergency brakes' to the Ordinary Legislative Procedure in some areas of competence' (European Parliament, 2008).

The EP adopted a Resolution in May 2009 on the likely impact of the Lisbon Treaty on institutional affairs in the EU. The EP generally welcomed the innovations in the Lisbon Treaty, which could 'create the conditions for a renewed and enhanced institutional balance within the Union.' Indeed, the EP saw the Treaty as means of adapting the traditional Community method of Commission-Council-Parliament interaction into an overarching Union method, in which the newly institutionalized European Council would 'refocus' its role 'on the fundamental task of providing the necessary political impetus and defending the general orientation and goals of the Union's activity' (European Parliament, 2009).

The EP welcomed 'the creation of a fixed long-term Presidency of the European Council,' but noted that the office holder would not be 'President of the European Union,' merely 'chair of the European Council.' At the same time, the EP 'warns that the new institutional framework requires each institution to play its role in permanent cooperation with the other institutions,' and that the European Council must not interfere 'in the normal exercise of the legislative and budgetary powers of the Union' (European Parliament, 2009).

The resolution emphasized three features of the Treaty that had the potential to strengthen supranationalism, increase the power of the EP, and enhance the EU's legitimacy. Each involved the European Council. The first of these was the possibility of extending the use of qualified majority voting in the Council and the applicability of the Ordinary Legislative Procedure to new policy areas. Understandably, the EP called on the European Council 'to make the fullest possible use' of the Treaty's *passerelle* provisions. The second concerned the EP's involvement in future Treaty reform. Building on the procedures for Treaty change contained in Article 48 TEU, the Resolution argued that the EP had a right to greater participation in IGCs, on terms similar to those of the Commission's involvement. In the EP's view, 'an interinstitutional arrangement could in future define the guidelines for the organization of IGCs, notably in relation to the participation of the European Parliament' (European Parliament, 2009).

The third had to do with the election of the Commission President. The report went to great lengths describing the potential political importance of such a development, and suggesting possible steps for European Council-EP cooperation in that regard. Moreover, the resolution called 'for a political agreement between the European Council and the European Parliament in order to ensure that the procedure for the choice of President of the next Commission ... will, in any case, respect the substance of the new powers that the Treaty of Lisbon assigns to the European Parliament on this issue' (European Parliament, 2009).

In each of these cases, the EP's hopes were dashed. First, the European Council never used the *passerelle* procedures. Second, as major Treaty reform was simply not on the EU's agenda after the lengthy process that had resulted in the Lisbon Treaty, the extent of the EP's involvement in IGCs became moot. Third, far from cooperating on the election of the Commission President under the terms of the Lisbon Treaty, the European Council and the EP clashed in 2014 on this question. Although the outcome may have enhanced the position of the EP vis-à-vis the European Council, the EP had hoped to avoid an inter-institutional struggle over what became the *Spitzenkandidaten* process (see Section 6.4.1. of this paper).

4. European Council-European Parliament interlocutors

The President of the European Council and the President of the European Parliament are the chief interlocutors in the interinstitutional relationship. They meet often, in various formal and informal settings. The European Council President also meets other members of the EP's collective leadership, notably the Presidents of the political groups and chairs of the leading committees. Individual Heads of State or Government also visit the EP, and meet on other occasions with the EP President and other EP leaders. However, they do so in their capacities as national leaders, even if they discuss issues on the agenda of the European Council. Similarly, the Commission President, who is also a member of the European Council, is in close contact with the European Parliament President and other EP leaders, but not as a representative of the European Council. The leader of the country in the rotating Council Presidency is in frequent contact with the EP President, political group presidents, committee chairs, and committee rapporteurs, partly in pursuit of European Council business.

The main transnational political parties provide additional opportunities for the European Council President, the Heads of State or Government, and leading MEPs to meet. In particular, pre-European Council 'summits'—usually lunches or dinners held immediately before a meeting of the European Council—organized by the European People's Party (EPP), the Party of European Socialists (PES), and the Alliance of Liberals and Democrats for Europe (ALDE), bring together the European Council President, national leaders, Commissioners, and leading MEPs, according to their particular party affiliation. These events, as well as the annual party congresses, provide a valuable opportunity for members of the European Council, senior Commissioners, and MEPs to strategize together, along political party lines, on how to approach items on the European Council's agenda. Summits and other events of the EPP are especially important, given that the current European Council President, Commission President, European Parliament President, and German Chancellor all belong to this transnational party.

4.1. The European Council President

The universe of potential European Council presidents is small. Although not a prerequisite for the position, credible candidates have to be current or former national leaders. Only people with such experience could hope to preside over a body whose principal members are prime ministers or presidents.

Country of origin is always important when it comes to high-level EU appointments. A key consideration for the inaugural European Council President, already flagged during the Constitutional Convention, was whether the person would come from one of the 'Big 4' Member States (France, Germany, Spain, and the UK). Given the eagerness of France, Germany, and the UK, in particular, to have a full-time European Council President, leaders of other Member States, especially the smaller Member States, wanted the office holder to be one of their own. In the event, the big Member States could not agree among themselves on a suitable candidate. The leaders of France and Germany—less so Spain and the UK—seemed disinclined to risk giving the new President the potential to become truly presidential, thereby possibly overshadowing themselves and diminishing their influence within the European Council. In effect, they rejected the model of a strong, authoritative, forceful European Council President (Barber 2010, pp. 60–61).

Herman Van Rompuy, Prime Minister of Belgium when the Treaty came into effect, was the personification of an alternative model: a highly competent chair; a team player; a safe pair of hands. Coming from a small Member State, and having been Prime Minister for only a year, limited his potential influence. Most national leaders had never intended to empower an independent leader, the equivalent of a national Prime Minister or President writ-large. Instead, they wanted someone

who was trustworthy and able; comfortable in their presence but suitably deferential; an acceptable face for the European Council (Dinan, 2017, pp. 161-162).

On 19 November 2009, the European Council chose Van Rompuy as its first full-time President (European Council, 2009a). He took up the position on 1 December 2009, the day on which the Lisbon Treaty entered into force, after he had resigned his national office. Van Rompuy quickly put together a small but effective cabinet, which included Richard Corbett, a highly respected former (and future) MEP, who assumed responsibility primarily for liaising with the EP and advising on constitutional affairs. Overall, Van Rompuy's choice of key personnel showed shrewd judgment and built a solid foundation for his period in office.

Van Rompuy's ability to maintain good relations with key interlocutors helps to explain his success. Foremost among these were the other members of the European Council, especially the leader of the country in the rotating Council Presidency, and the Commission President. Van Rompuy had to walk a fine line prioritising relations with the leaders of France and Germany without antagonizing other European Council principals.

Crises dominated Van Rompuy's Presidency: first the euro crisis; then the Ukraine crisis; and throughout a chronic crisis of rising populism and rampant Euroscepticism. Van Rompuy's knowledge of public finance helped him to navigate the European Council through the shoals of the euro crisis, although the Heads of State or Government often seemed overwhelmed by events. The problem lay partly with the nature of the crisis. As Van Rompuy observed in October 2011, 'markets have the luxury of moving with the speed of the click of a mouse; political processes ... cannot deliver so quickly' (*Agence Europe*, 28 October 2011). The architecture of EMU made matters worse. Given the eurozone's political character and institutional design, EU leaders had great difficulty responding rapidly to events, no matter how urgent the situation became.

Due to the severity and complexity of the euro crisis, Van Rompuy presided over many of the longest, most drawn-out meetings in the European Council's history. Some national leaders and commentators criticized Van Rompuy for calling too many extraordinary meetings of the European Council, and meetings of the leaders of the eurozone members, which became institutionalized in the Euro Summit.

Van Rompuy's efforts to facilitate cohesion and consensus within the European Council would have been difficult at the best of times. Many agenda items that rose to the level of the European Council were intrinsically contentious. Even 'ordinary' European Council business—giving the EU economic and political direction, or guiding EU external relations—tended to be divisive (Tömmel, 2017). Conducting ordinary business in the extraordinary circumstances of an economic recession, financial crisis, and deteriorating international situation became extremely trying.

As his first term came to a close, Van Rompuy had incumbency on his side. Implicit in the Lisbon Treaty was the assumption that the office-holder would be re-elected for a second term. Accordingly, the European Council re-elected Van Rompuy, again by acclamation, in March 2012 (European Council, 2012a). At the same time, Van Rompuy secured another office: President of the Euro Summit.

In addition to dealing with the euro crisis, which seemed to decline in intensity during his second term in office, but would resume spectacularly in 2015, Van Rompuy found himself at the forefront of EU efforts to resolve a major crisis with Russia, triggered by the country's annexation of Crimea in 2014 and ensuing support for the violent separatist struggle in Eastern Ukraine. Perhaps because he had less experience of international relations than of economics and finance, Van Rompuy seemed to struggle more with the demands of the Ukraine/Russia crisis. Nevertheless, his patience and conciliation helped steer the European Council through another difficult time, during which the Member States maintained unity in the face of an unprecedented external challenge.

One of Van Rompuy's final tasks, in August 2014, was to help the European Council find its next President, a decision bound up with the selection of the next High Representative, taking into account the recent election of Jean-Claude Juncker as Commission President. After much back and forth, the European Council elected Polish Prime Minister Donald Tusk as its President for the period from 1 December 2014 to 31 May 2017 (European Council, 2014a). Tusk resigned his national position on 9 September 2014, in order to take up the job in Brussels.

Tusk was less familiar than Van Rompuy was with economics and finance, and did not have first-hand experience of national participation in the euro area. Nevertheless, he also became President of the Euro Summit. Tusk was especially interested in foreign affairs, and had a long-standing distrust of Russia. However, it was his political experience in Poland, shaped by a bitter rivalry between Civic Platform, his right-of-centre political party, and the conservative Law and Justice Party, that set him farthest apart from Van Rompuy. Tusk's election as European Council President therefore suggested a revision of the model pioneered by his predecessor.

Yet the institutional constraints of the job were the same for Tusk as they had been for Van Rompuy. National leaders were no more likely to cede significant political authority to him, even if he was personally more assertive and had a higher political profile, than they had been willing to cede to Van Rompuy. As was the case with Van Rompuy, Tusk's influence would depend largely on the institutional basis of the European Council Presidency; on his own attributes, experience and skill; on the forcefulness of his ideas; and on prevailing political and economic circumstances.

In the event, Tusk's tenure was every bit as challenging as Van Rompuy's. The euro crisis flared up again in 2015, when Greece, once more on the verge of bankruptcy, initially rejected a third bailout. In an effort to resolving the latest Greek crisis, Tusk convened three extraordinary summits over the course of six weeks that summer.

Shortly thereafter, the migration crisis erupted, as hundreds of thousands of refugees and asylum seekers, fleeing Iraq, Syria, and other war-torn countries, flooded into the EU, mostly through the Western Balkans. Chancellor Angela Merkel's decision in August 2015 to give migrants unrestricted entry into Germany may have triggered an additional influx into the EU, thereby alarming other Member States, particularly in Central and Eastern Europe. A Council decision of September 2015, on the mandatory reallocation of migrants, mostly from Germany to other Member States, proved inoperable and widened the fissure within the EU between Germany and the Commission, on one side, and the Central and Eastern European countries, on the other.

Although close to Merkel, Tusk was in the invidious position for a European Council President of going against the German Chancellor on such a highly sensitive political issue. Not least because of entrenched opposition from other national leaders, Tusk opposed mandatory quotas. Instead, he emphasized the importance of securing the EU's external borders and striving for consensus in the European Council on the contentious reallocation question. Migration remained the most divisive and time consuming issue for the European Council throughout 2016, but became a less urgent policy priority in 2017, thanks to the dramatic reduction of migrants entering the EU through the Western Balkans and Italy's concerted efforts to limit migration flows across the Central Mediterranean.

The vexing question of the UK's position in the EU, and eventually its decision to leave, occupied much of Tusk's time. First, before the UK referendum, came the 'new settlement' for the UK in the EU, which would become effective as soon as the UK informed the Council that it intended to stay in the Union (European Council, 2016a). The outcome of the June 2016 referendum cast the 'new settlement' aside, and ushered in the next phase of Brexit, which culminated, in March 2017, in the UK government triggering Article 50 TEU by formally announcing its intention to withdraw from the EU. The negotiation phase of Brexit preoccupied Tusk in 2017 and 2018, but because of his

extensive preparatory work on the subject, did not take up too much time in the configuration of the European Council dealing with the issue (the EU27 Article 50 format).

The EU27 became a forum not only for discussing Brexit, but also for conducting a debate on the EU's future, which intensified immediately after the UK referendum. As contributions to the 'Future of Europe' debate, the European Council produced the Bratislava Declaration and Roadmap in September 2016 (European Council, 2016b), and the Rome Declaration in March 2017, at a celebration of the 60th anniversary of the founding Treaties of the European Community (European Council, 2017a).

The EU27's contribution to the post-Rome phase of the debate included the 'Leader's Agenda,' a framework for reorganizing the work and improving the output of the European Council, from October 2017 until the next EP elections, in June 2019. This was very much Tusk's initiative. The idea was to free members of the European Council from what some of them saw as the constraints of the draft conclusions of summit meetings. Tusk hoped that informal, unscripted 'Leaders' Discussions,' based on a 'Discussion Note' prepared by the President, would facilitate consensus building on some of the most sensitive issues confronting the European Council, which would eventually result in formal Conclusions. The European Council used this approach in December 2017, to discuss migration and EMU, and in February 2018 to discuss institutional affairs (Anghel, Dinan, and Drachenberg, 2018).

The Heads of State or Government elected President Tusk to a second, two-and-a-half year term in the March 2017 (European Council, 2017b). Only Poland, his own country, voted against, for domestic political reasons. Despite being marred in this way, the significance of Tusk's re-election was that it followed the precedent set by the re-election of Van Rompuy, the European Council's founding president, five years previously. Even though the European Council has had only two full-time presidents so far in its history, it seems safe to suggest that its presidents will usually serve five-year terms.

Both Van Rompuy and Tusk consolidated their credibility as presidents of the European Council by interacting authoritatively not only with other members of the European Council, but also with other key interlocutors, including in the EP. Van Rompuy set a precedent, meeting frequently with the EP leaders, expertly guided by Richard Corbett. Tusk followed suit, though his visits to the EP and interactions with EP leaders were noticeably less frequent. Before assessing the quality and characteristics of the interaction between the European Council and the EP, it is important to understand the sources and nature of political leadership in Parliament, and to introduce the occupants of those positions in the post-Lisbon period.

4.2. European Parliament leaders

The President is at the apex of the EP's leadership structure and represents the Parliament in its formal interactions with other institutions. However, EP leadership does not reside solely in the Presidency, but is distributed among various offices. Apart from the EP's Vice-Presidents, whose roles are mostly ceremonial, these include the presidents of the political groups, the chairs of the Committees, and even the Committee rapporteurs. The EP's leadership structure includes another influential office not filled by an MEP, but by Parliament's most senior civil servant, whose appointment is highly political: the office of Secretary-General. The collective leadership of the EP, though personified by the President, in effect consists of the Conference of Presidents (the EP President and the presidents of the political groups, with the assistance of the Secretary-General).

In view of its composition, the Conference of Presidents is a politically diverse body, consisting of leaders of political groups that span the ideological spectrum. It therefore includes the leaders of political groups that are Eurosceptical and overtly hostile to the EU. The leaders of the mainstream political groups—notably those of ALDE, the EPP, and the Progressive Alliance of Socialists and

Democrats (S&D), as the Socialist Group has called itself since 2009—whose members account for the majority of seats in the EP, may have opposing policy preferences, but they share a deep commitment not only to European integration, but also to supranationalism and the primacy of parliamentarianism in the EU system. Moreover, these leaders are formidable figures on the EU political stage. One of them—Guy Verhofstadt—was Prime Minister of Belgium for many years. In that capacity, he became intimately acquainted with the European Council.

One of the most striking developments in the institutional history of European integration is the extent to which the EP's leadership has succeeded in raising the profile and increasing the power of Parliament. Impelled by a strong sense of institutional loyalty or patriotism, and a deep commitment to supranationalism, the EP's leadership has been extraordinarily adept at advancing Parliament's interests in IGCs and negotiations for inter-institutional agreements; at quickly revising Parliament's rules of procedure in order to take full advantage of treaty changes; and at exploiting other opportunities to advance the EP's agenda. Perhaps because the EP had to fight so long and so hard for direct elections, and then for full legislative co-decision, the EP's leadership has a historical memory that strengthens its natural inclination to take a combative approach in its dealings with other institutions, particularly on the intergovernmental side of the EU (the Council and the European Council). This approach is apparent in the title of a book by former Secretary-General Julian Priestley on the EP's institutional advance over the years: *Six Battles that Shaped Europe's Parliament* (Priestley, 2008). The EP fought one of those battles to win a seat at the table: the European Council table (albeit only for the opening session).

According to Article 14(4) TEU, Parliament organizes its own internal affairs, including the allocation of leadership positions. MEPs elect the President every two-and-a-half years, at the beginning and mid-way through the five-year mandate of each legislature. As part of a pre-election pact, the two biggest groups (the EPP and the PES, before re-naming itself the S&D) agreed that their members would elect the EPP candidate to the presidency in July 2009, immediately after that year's EP elections, and elect the PES candidate to the presidency in January 2012, at the halfway point of the seventh legislature (2009-2014). Following an internal competition, the EPP put former Polish Prime Minister Jerzy Buzek for the position. Although not all members of the EPP and S&D groups were happy with the pre-election pact, Buzek won the Presidential election with a comfortable majority. He was still relatively new to the job when the Lisbon Treaty finally came into effect.

As Prime Minister of Poland from 1997 to 2001, Buzek had attended many meetings of the European Council. Indeed, he was the only EP President ever to have been a Head of State or Government. Active in the transnational European People's Party, he became a leading member of the EPP Group after he entered the EP in 2004. In his five years as a member, before becoming President, Buzek was involved in the Committee on Industry, Research and Energy. Reserved and courteous, he was the first person from one of the new Central and Eastern European Member States to hold a leading EU position. Confronted with the onset of the euro crisis at the outset of his presidency, Buzek struggled to keep up with events, especially as the EP seemed increasingly sidelined and the European Council took centre stage.

As agreed in 2009, next time around the EPP supported Martin Schulz, the S&D candidate, who duly won the election for President in January 2012. As was the case with Buzek's election, not everyone in the EPP and S&D groups was happy with this electoral arrangement, but the vast majority went along with it. Schulz could not have been more different from Buzek. A German Social Democrat, Schulz had spent almost his entire political career in the EP, having become a member in 1994. Ambitious for the highest EU offices, Schulz was chair of the Socialist Group from 2004 to 2009, and of the S&D from 2009 until he became EP President in 2014. Being extremely active in Social Democratic circles in his native Germany, within the EP, and across Europe, Schulz built a dense network of party contacts. He knew many Heads of State or Government personally, and was eager to operate at their level. By the time that he became EP President, the euro crisis was at its height.

Schulz chafed at the European Council's apparent inability to resolve the situation, and the EP's seeming marginalization.

Schulz made history by being re-elected for a second term, when the eighth legislature convened in July 2014, after the latest EP elections. Having failed to become Commission President, as the *Spitzenkandidat* of the Party of European Socialists, Schultz had the consolation of keeping his old job. He managed to do so because of a continuation of the agreement between the EPP and the S&D to alternate the presidency between them during the tenure of the eighth legislature. According to this arrangement, which other political groups and some members of the EPP and S&D disliked, the position should have gone to the EPP on 1 July, but Schulz succeeded in reversing the rotation so that he could stand as President for the first half of the term. Thanks to the EPP–S&D pact, Schulz won 409 out of 612 valid votes cast (European Parliament, 2014a).

Being EP President for an unprecedented five years boosted Schulz's political profile and stature. He gained immense experience operating at the highest levels of EU affairs. He formed a close relationship with Commission President Juncker, who had been the successful *Spitzenkandidat* after the 2014 EP elections. Indeed, the electoral pact between the EPP and the S&D, which had allowed Schulz to be re-elected EP President, was very much a personal pact between Juncker and Schulz. The two men saw themselves as allies in defence of supranationalism and the Community method, in the face of intense, crisis-driven intergovernmentalism, epitomized by the European Council. Much to Schulz's irritation, whereas Juncker was a member of the European Council, the EP President mostly attended only the opening session.

Schulz's EP Presidency spanned the European Council presidencies of Van Rompuy and Tusk. Tusk had already settled into the European Council Presidency when Schulz replaced Buzek as EP President. Schulz's arrival marked a new, more assertive approach on the part of the EP President towards the European Council, with which Van Rompuy had to come to terms. Tusk and Schulz were cast in the same mould. The new European Council President and the already well established EP President never had a close rapport, but understood each other well, as seasoned politicians do.

Having won an unprecedented second term as EP President, Schultz wanted to break another record and win a third term. This caused a breakdown of the EPP-S&D arrangement whereby the S&D would support the EPP candidate to become president in January 2017, halfway through the mandate of the eighth legislature. Instead, the election became wide open, with various political groups entering into negotiations to promote their candidates' prospects. In the end, after four rounds of voting, the EPP's Antonio Tajani beat his Socialist compatriot, Gianni Pittella, by 351 votes to 282, with the support of MEPs from the ALDE group and from the European Conservatives and Reformists Group (European Parliament, 2017a).

Like Schulz, Tajani had considerable experience of EU affairs, in his case having been a member of the European Commission from 2008 to 2014. First elected to the EP in 1994, he had participated in the Convention on the Future of Europe from 2002-2003. Before his election as President, Tajani had held leadership positions in the EPP group. Despite his experience in both the Commission and the Parliament, and his interest in achieving high office in his native Italy, Tajani was not particularly dynamic or forceful.

Styles of Presidential leadership in the EP vary along a spectrum that stretches from purely ceremonial to highly political. Most EP presidents have tilted towards the ceremonial end of the spectrum. Buzek and Tajani fit that profile. By contrast, Schulz was the most politically active President in the history of the EP. As soon as he took office, in January 2012, Schulz sought to fashion a new, overtly partisan model for the EP presidency, in contrast to the more reserved, neutral model followed by his immediate predecessor. Schulz's forcefulness, acumen, nationality, and efforts initially to become the next Commission President, then EP President for a third term, then Chancellor of Germany, enhanced his public profile and political presence.

The outcome of the EP Presidential election determines the outcome of the elections for other EP leadership positions, except for political group leaders, who are elected by political group members. Since the beginning of the seventh legislature, in July 2009, the three main, pro-EU groups have had the following leaders: Joseph Daul (2009-2014) and Manfred Weber (2014-) of the EPP; Hannes Swoboda (2009-2014), Gianni Pittella (2014-2017), and Udo Bullmann (2018-) of the S&D; and Guy Verhofstadt (2009-) of ALDE. Together with the President, these leaders have been the chief interlocutors, on the EP side, of the European Council President. As noted earlier, the political group leaders are major figures on the European political stage. Guy Verhofstadt stands out, being a former Prime Minister of Belgium; someone who, in 2004, almost became the European Council's nominee for Commission President and, in 2014, was the unsuccessful Liberal *Spitzenkandidat* for Commission President. Being one of the most prominent MEPs with a particular interest in constitutional affairs, Verhofstadt has taken a keen interest in the work of the European Council.

5. European Council-European Parliament interactions

The European Council provides guidance and strategic direction for the EU. It also pays close attention to specific EU policies and programs, whose success is essential for the success of the EU as a whole. In times of acute crisis, the European Council becomes the EU's key decision maker. The euro crisis often required rapid European Council intervention in order to save the single currency. The stakes could not have been higher.

The European Council needs the support of the EP in order to realize its goals and, occasionally, legitimize its decisions. The European Council often calls on the co-legislators to expedite decision making on certain issues, which it deems especially important and which may have become stuck in the legislative process, or may be new and particularly time-sensitive. The Heads of State or Government are able to break legislative logjams and push through decisions in the Council, which consists of ministers in their national governments. They have little leverage over the EP, the other branch of the EU's legislature. Hence the need for the European Council, by means of its President, to stay in close touch with the EP; to explain the European Council's preferences and priorities; and to win the EP's support for certain legislative or other action.

The EP likes to be noticed and courted. Visits by the European Council President are ceremonial and substantive occasions. They give the President an opportunity to flatter his hosts, to explain the European Council's position, and to ask the EP for assistance. The political group leaders and other MEPs, in turn, have an opportunity to explain their positions to the European Council President, to raise some concerns, and to obtain more information on the work of the European Council. Along with the EP President's intervention at the opening of a European Council, these set-piece occasions are the most visible element of European Council-EP interaction. In addition, the European Council President and the EP President meet regularly, and the European Council president stays in touch with the political group presidents and other leading MEPs.

As President Buzek observed in 2011, 'These timely and recurrent consultations ensure that when providing the political impetus for the development of general EU political priorities, the European Council is aware of the possible reaction of the EP and can take it into account.' President Buzek also remarked that 'the EP can attempt to influence the workings of the European Council in a number of ways: through the adoption of timely resolutions ahead of summits, through the presence and address of the President of the EP at the beginning of each European Council, by holding a meeting of the Conference of Presidents of political group leaders with the President of the European Council immediately after each summit, and by holding a comprehensive discussion with the European Council President during the plenary session that follows' (Buzek, 2011, p. 9).

5.1. The European Parliament President at the European Council

Presidents of the EP have been addressing meetings of the European Council since 1987. In its rules for organizing the proceedings of the European Council, agreed to in Seville in June 2002, the European Council regularized this practice, and stipulated that there would be 'an exchange of views' with the EP President at the beginning of the second day of each of its meetings (European Council, 2002). Members of the European Council saw this as an opportunity to hear the EP's perspective on important institutional and legislative affairs. Although the EP's views may have been important, especially for legislative and budgetary decision-making, most members of the European Council nevertheless tended to see the EP President's visit as being ceremonial rather than consequential; a necessary interlude in the work of the European Council proper.

According to the Rules of Procedure of the European Council, drawn up immediately after ratification of the Lisbon Treaty, 'the President of the European Parliament may be invited to be heard by the European Council ... such exchanges of views shall be held at the start of the meeting,

unless the European Council unanimously decides otherwise' (European Council, 2009b). By that time, the EP's powers had increased dramatically, not least because of the Lisbon Treaty itself. The EP's views mattered more than ever before for the proper functioning of the EU, but few national leaders seemed to think that the EP President's visit constituted an important part of a European Council meeting. National leaders undoubtedly benefited from hearing the EP's perspectives, and the leader of the country in the Council presidency sometimes built on the EP President's intervention when discussing a particular legislative file either during the President's visit or later in the European Council meeting.

EP Presidents prepare their interventions carefully, based on consultations with the political group leaders in the Conference of Presidents, shortly before the European Council take place. In most cases, the interventions are lengthy and wide-ranging, reflecting the variety of issues and opinions prevalent in Parliament at any particular time. EP presidents usually circulate their speeches before delivering them in the European Council.

As noted earlier, Jerzy Buzek, EP President when the Lisbon Treaty came into effect, is the only incumbent to have been a Head of State or Government. Whereas his predecessors and successors may have relished the opportunity to sit with national leaders, however briefly, in a European summit, Buzek was no stranger to the European Council and was hardly overawed when speaking there as EP President. If anything, having listened to EP Presidents when he was a member of the European Council, Buzek, may have had some sympathy for those Heads of State or Government who appeared to be listening politely to him, speaking in his capacity as EP President, while waiting to get on with what they saw as the European Council's real business.

In his first intervention as EP President following implementation of the Lisbon Treaty, Buzek assured the European Council that the EP was 'willing and able to rise to the challenge' of establishing 'new procedures for cooperation between the European institutions' (10 December 2009). A year later, Buzek reiterated to the European Council that the EP 'looks forward to working actively and positively with you ... in the months ahead' (October 2010). In the meantime, however, the European Council's response to the euro crisis had caused growing alarm in the EP. Defense of the Community method in the face of increasing intergovernmentalism became a major focus of Buzek's speeches at the European Council.

In an article published shortly before he left office, Buzek warned that 'the newly acquired importance [of the European Council and its President] could not go unchecked ... [and that] the Parliament [should] help ensure that the proceedings and the conclusions of the heads of state and government will be properly scrutinized' (Buzek, 2011, p. 9). This suggests that the relationship between Buzek and Van Rompuy had grown tense. In fact, both being courteous and non-confrontational, the two presidents worked well together. Moreover, they shared an ideological affinity, being prominent members of the EPP.

Martin Schulz was far more assertive than Buzek in his dealings with the European Council. As he said in his inaugural speech to the European Council, at an informal summit in January 2012, 'It is a great pleasure for me to speak to you today for the first time as President of the European Parliament. However, my new office has not changed me or my preferences for plain speaking' (30 January 2012). This set the tone for Schulz's meetings with the European Council during his five years in office.

In particular, Schulz was highly critical of the European Council's role in confronting the euro crisis, which, he claimed, accentuated intergovernmentalism, undermined parliamentary scrutiny, and weakened the legitimacy of EU governance. With the intensification of the crisis, and the proliferation of summits, Schulz grew increasingly shrill in his defense of the Community method. During his inaugural Presidential address to the EP, in January 2012, Schulz decried that 'decisions which affect all of us being taken by heads of government behind closed doors,' and described

excessive 'summitization' as 'a reversion to a form of European politics which I thought had been consigned to the history books: it is reminiscent of the era of the Congress of Vienna in the 19th century, when Europe's leaders were ruthless in their defence of national interests and democratic scrutiny was simply unheard of' (Schulz, 2012a). In a speech in Berlin in March 2012, He cited Jürgen Habermas in support of his view that the European Council's efforts to manage the euro crisis were leading to the 'destruction of democracy' (Schulz, 2012b).

'The European Parliament wants to make a constructive contribution to the decision-making process [for euro reform],' Schulz told national leaders in January 2012. 'If it is to do so, however, it must be involved in the first place.' The solution was simple: 'The European Parliament must participate [fully] in all Eurozone and EU summits' (30 January 2012). In June 2012, Schulz announced that 'as the representative of a multinational parliament,' he could not 'accept a situation in which more and more decisions are taken without parliamentary involvement' (29 June 2012). At the end of the year, he lectured the national leaders on modes of European governance, calling for 'a separation of powers similar to those which ordinary Europeans are familiar with from their own countries' (13 December 2012).

Mostly Schulz criticized the European Council for its conduct of the euro crisis and later the migration crisis; for its apparent lack of accountability; for his exclusion from its meetings; and for the threat posed by excessive intergovernmentalism to the Community method. Occasionally he added an ideological element, as when, in March 2013, he criticized the European Council from a social democratic perspective, arguing that 'deepening the recession by dogmatically implementing austerity policies makes no sense whatsoever' (14 March 2013).

In his final speech to the European Council, in December 2016, Schulz warned yet again that '[We must] strengthen democracy and accountability both at national and European level. ... I cannot emphasise this point strongly enough: the involvement and participation of the European Parliament in all decisive steps this Union takes is essential for its future and even for its survival. This is what I have fought for over the last twenty-two years. Not because I wanted to shine in the spotlight, but because I know that in these difficult times, times in which more and more citizens lose faith in representative democracy and turn to demagogues who promise a better future in nationalism, that in these times it is fundamental that we strengthen our democratic institutions in the best way we can' (14 December 2016).

Undoubtedly, Schulz was sincere in his concern about the EU's plight and in his commitment to deeper integration along supranational lines. Nevertheless, his strident criticism of the European Council, a body that he was eager to join, in 2014, as Commission President, must have grated on some of the national leaders. It is difficult not to speculate about how the dynamics of the European Council might have changed if Schulz had succeeded, in 2017, in becoming Chancellor of Germany.

President Tajani made his first appearance at the opening session of a European Council meeting on 9 March 2017. In his speech, Tajani explained that 'I was elected on the basis of a clear pledge: to act as the spokesman for the European Parliament, not its Prime Minister. At European Council meetings, I will set out Parliament's positions, and in so doing give voice to the views of the minority as well [as the majority].' Clearly, Tajani was differentiating himself from his predecessor's approach to the European Council. The final sentence of President Tajani's statement must have been music to the ears of his listeners: 'You can count on me and on the European Parliament' (9 March 2017).

The substance of President Tajani's carefully prepared speeches consisted of the EP's positions on whatever issues the European Council was about to discuss. Speaking at the opening of the EU27 (Article 50) Meeting on 29 April, for instance, Tajani expressed the EP's support for the 'the guidelines that the European Council is preparing to adopt,' and assured national leaders 'that Parliament will approach the negotiations in a spirit of sincere cooperation and will be standing alongside you every step of the way' (29 April 2017). As for the Future of Europe debate, Tajani remarked on 19 October

that 'Parliament was the first to contribute to this reflection process, through the Brok-Bresso, Böge-Bérès and Verhofstadt reports.' As a next step, Tajani explained that 'the Conference of Presidents has decided to devote a series of debates in plenary to the future of Europe, and to invite the Heads of State or Government and leading European figures who wish to speak to outline their vision and debate with us.' President Tajani had 'already extended that invitation to some of you in person, and will be sending everyone a written invitation in the next few days' (19 October 2017).

5.2. The European Council President at the European Parliament

Herman Van Rompuy took the task of reporting to the EP extremely seriously. Although involved in Belgian politics for many years, and having been Prime Minister during the year before he became President of the European Council, Van Rompuy was not thoroughly familiar with the EU, and specifically with the EP. As someone with a deep commitment to democratic institutions, however, Van Rompuy instinctively appreciated the EP's political and symbolic importance. Van Rompuy immediately recruited former MEP Richard Corbett to advise him on the ins-and-outs of the EP. Under Corbett's expert guidance, Van Rompuy devoted a surprisingly large amount of his time to the EP, reporting not only on regular meetings of the European Council, but also on informal summits, and on interacting with a wide range of leading MEPs, such as committee chairs, coordinators, and rapporteurs.

Speaking at the end of his report on the October 2010 European Council, Van Rompuy promised that he would 'continue my practice of briefing the leaders of your political groups immediately, within a couple of hours after the end of each European Council meeting,' whether formal or informal (24 November 2010). Whereas he delivered his reports on regular summits mostly at plenary sessions of the EP, Van Rompuy generally delivered his reports on informal summits at specially arranged meetings of the Conference of Presidents, as soon as possible after the end of the summits themselves. Similarly, Van Rompuy told the EP that 'I am willing—even though I am not obliged—to come to Parliament after each individual eurozone meeting I chair and report on the meeting as with the European Council' (27 October 2011). Given the number of informal European Councils, including eurozone summits, that took place during the height of the euro crisis, this may have involved more interaction with the European Council President than the political group leaders hoped or possibly wanted to have.

An EP report on relations between the EP and 'the institutions representing the national governments,' adopted in October 2013, noted approvingly that 'in agreement with Parliament's authorities, and in particular through exchanges of letters, President Van Rompuy has sought to take account of information and transparency requirements as far as possible: he has personally met Parliament's committee chairs, rapporteurs and sherpas to discuss a number of important topics; he has replied to written questions; he has provided regular reports on European Council meetings, either to the plenary or to the enlarged Conference of Presidents, and has had numerous contacts with group chairs.' The report concluded that 'this practice is worth formalising so that it can serve as a precedent for the future,' but added that 'it should also be improved' (European Parliament, 2013a).

Even so, Van Rompuy was sometimes criticized for not being sufficiently deferential to the EP. In a special EP debate on the euro crisis, held in October 2011, Martin Schulz, then leader of the S&D Group, claimed that 'Mr Van Rompuy ... has missed a big opportunity here today. If he had come here, the attention of the whole of Europe would have been focused on him. All the Heads of Government are going to their parliaments [to discuss the euro crisis] and Mr Van Rompuy has missed his chance today.' In the same debate, Verhofstadt warned that he would 'make a proposal at the Conference of Presidents to summon Mr Van Rompuy ... to talk about economic governance in the euro area' (25 October 2011) The following year, Jean-Pierre Audy, of the EPP Group, asserted that 'the President of the European Council himself needs to establish a relationship with our

Parliament. ... We need political dialogue at the very highest level with ... Mr Van Rompuy, who is absent from this House far too often' (13 June 2012).

In fact, Van Rompuy lavished attention on the EP. He prepared his post-summit reports carefully because of the prominence of his visits to the EP and because of the opportunities they provided to send a particular message or expand upon a specific point raised in the European Council. The Commission President accompanied the European Council President on most of these visits, and reported as well on the outcome of the latest summit. The EP President did not usually respond to the European Council President's reports. Instead, the leaders of the political groups responded, followed by ordinary MEPs. Occasionally the European Council President responded, in turn, to some of the points raised in the series of interventions following his report, which gave the proceedings the semblance of a debate. However, these events could hardly be characterized as real debates, which are notoriously difficult to organize in the EP, for organizational and linguistic reasons.

The EP had discussed the appointment of the first European Council President even before Van Rompuy's election to the position. In a debate on the outcome of the October 2009 European Council, veteran MEP Elmer Brok questioned the democratic legitimacy of the new office, arguing that whoever holds it 'has only the legitimacy of the Heads of State or Government, and in any constitution, any operational president who is not answerable to Parliament is directly elected by the people. That must be the case for the President of the European Council, too.' Guy Verhofstadt was similarly concerned about the incumbent's role and perspective on European integration, arguing that the office holder 'must be ... a chairman rather than a president, to use those two English words. Next, it must be ... someone who believes in European integration. After all, to be elected Pope, one has to be a Catholic! Thus ... [it must be] someone who believes in European integration, not a sceptic ... he or she has to believe in the Community method. It is the Community method that drives Europe forward ... It is the Community method that the President of the Council must defend' (11 November 2009).

Verhofstadt may have had mixed feelings when he heard of Van Rompuy's election. Apart from having been Van Rompuy's rival in Belgian politics, Verhofstadt reportedly wanted to become the first European Council President, having failed to become the Commission President. At least Verhofstadt knew who Van Rompuy was. Other MEPs expressed surprise at the election of such a relatively unknown individual. Speaking for the Greens, Rebecca Harms remarked that MEPs generally were unfamiliar with Van Rompuy, who should 'come to meet the groups in this House, so that we can find out more about him. Everyone is saying that the Belgians are very proud of him. Why does he not enter into a voluntary debate with the groups in this House, so that we can get to know one another better at the beginning of his period of office?' (25 November 2009). Harms need not have worried, as Van Rompuy soon visited the EP on a regular basis.

In his first report, following the February 2009 informal summit, Van Rompuy explained his approach: 'As regards my relationship with the European Parliament, the treaty is quite brief on this: it simply requires that I report to you 'after [...] meetings of the European Council'. That means a minimum of four times a year, though in most years, that is more likely to be five or six and may, in the future, rise to 10. It will not be long before many of you will be fed up with the sight of me! I will continue to multiply other usual contacts with Members of Parliament, such as the meetings I have begun with leaders of groups and the monthly meeting I have with the President of Parliament' (24 February 2010).

Joseph Daul, leader of the EPP Group, responded from an institutional rather than a political group perspective, though he and Van Rompuy were fellow Christina Democrats. The EPP 'expects a lot of you,' Daul told Van Rompuy. 'I welcome the positive and pragmatic spirit of your speeches since your nomination, and I appreciate the tone that you want to set in the European Council, but I expect you and the Council of Ministers to be aware that with the Treaty of Lisbon, your relations with us,

the MEPs, have changed. We are equal decision makers, and that has not only legal consequences, but political ones as well' (24 February 2010).

This was also the occasion when Nigel Farage insulted Van Rompuy, for which Farage was fined 10 days' MEP allowances. Farage's antics, which attracted considerable media attention well beyond the UK, livened up the European Council President's first report to the EP, and may have helped Van Rompuy to become better known throughout the EU.

In a response to points made by MEPs following his report on the March 2010 European Council, Van Rompuy explained his role as President at a particularly challenging time: 'The European Council is neither the executive nor the legislative power of the Union. The mission of the European Council, according to the Treaty, is to give impetus and guidelines to the political direction of the Union. This applies also to economic policy. ... Curiously, some have suggested that my own role in this process was merely that of a spectator whilst others have accused me of being a power-grabbing dictator. Let me assure you that I am neither. The permanent President of the European Council has to be a facilitator and a builder of consensus in an institution that can only work by finding the necessary and sufficiently ambitious compromises. I had hoped that my start as permanent President of the European Council would have been easier. The two coming years will be difficult. I am fully aware that the worst of the recession is over, but not the problems' (7 April 2010).

The reaction of Hannes Swoboda, Vice-Chair of the S&D Group, was typical of that of many MEPs. He praised Van Rompuy personally, while criticising the European Council politically: 'I would like to start by thanking Mr Van Rompuy for the eagerness of his communication with Parliament, which is a good sign of his personal commitment. What you actually had to tell Parliament—which relates to decisions taken by the [European] Council, not by you personally—is deeply disappointing for us' (7 April 2010).

Van Rompuy spent considerable time at the EP explaining and defending the role of the European Council in the euro crisis, and listening to complaints from MEPs about excessive intergovernmentalism. Speaking on 23 June 2010, about the outcome of the European Council held a week previously, the usually patient Van Rompuy remarked that 'it is ... somewhat facile [of MEPs] to equate the European Council with simple intergovernmentalism. It is now an EU institution. It operates within the framework of the carefully balanced architecture of the Union as a whole, described in the Treaties. It includes among its members the President of the Commission. It now has—in its own President—someone chosen to work in the interests of the Union as a whole and who is not simultaneously representing a national government. In any case, we should not assume that heads of national governments are not capable of perceiving the wider common interest or that they are unaware of the fact that their own national interest is indeed to have a well-functioning Union.' As for the work of the European Council, Van Rompuy was at pains 'to underline what we have succeeded in doing under extremely difficult circumstances, in the first three or four months of this year, and we will continue. I am also sure that, a few months from now, even if they do not applaud us, some of those [in the EP] who are critical now will nevertheless agree that we are right' (23 June 2010).

The EP remained highly critical of the role of the European Council in the euro crisis, despite Van Rompuy's efforts to defend the institution over which he presided. Though sometimes exasperated by MEPs' comments, and disappointed by the low turnout for his reports on European Council meetings, Van Rompuy took his visits to the Parliament in stride, noting in his first annual report on the European Council that his appearances 'resulted in a number of lively debates in 2010' (European Council, 2011, p. 14).

Reporting on the June 2013 European Council, Van Rompuy remarked jokingly that he 'particularly [wanted to] thank those who have spoken positively about the European Council's conclusions. It's so rare that I cherish these moments' (2 July 2013). A year later, he commented on what had been a

'different kind of debate today,' with many remarks addressed to other MEPs, not just to him and the Commission President (2 July 2014). In other words, MEPs were using the opportunity of the debate on the European Council President's report to score points against each other, even on topics unrelated to the European Council conclusions.

The tendency of MEPs to snipe at each other on such occasions became more pronounced under President Tusk, not because of Tusk himself, but because of the large number of Eurosceptics in the EP after the May 2014 elections. Whereas MEPs generally did not come to the hemicycle to listen to Tusk, many Eurosceptics saw the European Council President's visit as an opportunity to draw attention to themselves during the plenary session and attack the leaders of the mainstream political groups.

Compared to the Van Rompuy years, they had fewer opportunities to do so because Tusk reported to the EP less frequently than did his predecessor. Whereas Van Rompuy tried to report on every regular and informal summit, Tusk mostly reported only on regular European Council meetings. MEPs sometimes complained about his tendency not to report on informal summits. Speaking during a debate on the outcome of the February 2018 informal European Council, Manfred Weber, Chair of the EPP Group, regretted 'that Donald Tusk is not with us today,' to discuss the institutional issues discussed by the Heads of State or Government at the summit. Udo Bullmann, of the S&D, was more emphatic: 'where is the European Council? I haven't met the European Council on the floors of this chamber. I have not seen them here. ... I find it a scandal, because this is about the future of Europe, and where is the President of the European Council? He will learn to take this House seriously, and he and his colleagues will learn to take this Chamber of European parliamentarians seriously because it's about our common future, and we will not give in on these kinds of procedures.' This caused President Tajani to interject: 'Just for your information, it was an informal European Council and the President of the Council is not obliged to come and report to Parliament.' To which Verhofstadt responded tartly: 'I think we have to pay you, Mr President, a double salary in February because you have taken over the role of Mr Tusk today' (23 February 2018).

Although less solicitous of MEPs than Van Rompuy had been, Tusk nevertheless sought to strike the right note, as he did on his inaugural visit, when he quipped that he 'would like to thank [President Schulz] for your warm welcome here in the European Parliament. It is a nice surprise for me, because I have heard a lot about your temperament here in this Chamber.' He went on to say what his audience wanted to hear: 'I have no doubt that good communication between the institutions plays a key role. Let me again assure you that I am ready to change the logic of competition into the logic of cooperation. I can promise that I will use 'we', and not 'I'. Of this you can be sure' (13 January 2015). This was a bit unfair on Van Rompuy, who was not in the least confrontational, but whose relationship with the EP was sometimes tense, especially at the height of the euro crisis.

President Tusk's reports to the European Parliament provided a synopsis of the European Council's discussions and decisions, but rarely revealed anything that the President had not already said in public remarks during and immediately after the summits themselves. Occasionally, however, in his closing remarks after the debate, Tusk clarified aspects of the European Council's deliberations or elaborated upon current developments in the EU.

As was the case with Van Rompuy, the conduct of the European Council in response to the euro crisis generated considerable controversy for Tusk in the EP. A resurgence of the crisis in 2015 preoccupied the European Council, and preoccupied the EP during the European Council President's visits there. Once again, leading MEPs were critical of the way in which the European Council conducted its business. Speaking after Tusk's report on the March 2015 European Council, Verhofstadt 'completely deplore[d] the fact that you have organised a meeting on Greece with a limited format' (25 March 2015). This was a reference to a meeting on the margins of the European Council between Greek Prime Minister Tsipras, German Chancellor Merkel, French President

Hollande, and the Presidents of the European Council, Commission and the European Central Bank, to discuss the escalating crisis in Greece.

'What type of Union is this?' asked Verhofstadt. 'Greece concerns all the countries of the European Union and at least all the countries of the eurozone and it should not be allowed that there are separate and limited meetings of a number of countries about it. I do not think that this is at all acceptable. It is against the interest of the Union and against the interest of the eurozone to do this. I know there is always pressure. I had the same thing, I remember, and certainly Jean-Claude [Juncker] had also, in Ghent. Do you remember that, Jean-Claude? The big countries wanted a meeting ... and they asked me – I was President of the Council – for a separate room. I found the dirtiest room in Ghent to give them for their meeting. The meeting lasted only five minutes. It was so dark in that room that they came out after five minutes and joined the meeting of the whole European Council. So I deplore this. Do not do it. It sends a bad signal to everybody' (25 March 2015).

This was reminiscent of criticism by Schulz, when he was leader of the Socialist Group, of Van Rompuy at the height of the euro crisis, in October 2010. On that occasion, in a preview in the EP of the forthcoming European Council, Schulz commented on the bilateral summit between Merkel and then French President Sarkozy, which took place on 19 October in Deauville, on the eve of the regular European Council. At Deauville, Merkel and Sarkozy had agreed that bailouts from the European Stability Mechanism should be conditional on private creditors swallowing some of their losses, a position that Merkel and Sarkozy sought to impose on the European Council.

Schulz called the Deauville mini-summit 'a worrying development ... [that] turns the institutional structure of the European Union on its head. I ask myself when Mr Van Rompuy will draw the appropriate conclusion ... [To have] our charming couple ... in Deauville waltz up and announce: 'We have already decided everything' ... is an assault on the institutions of the European Union. If I were Mr Van Rompuy, I would tell them where they could stick their job. You cannot keep being a doormat forever and putting up with such abuse. ... [I] repeat: Europe is being led in the wrong direction, both institutionally and in substance' (20 October 2010).

On that occasion Van Rompuy had not been in the EP to explain the situation. In March 2015, however, Tusk was present when Verhofstadt attacked the side meeting at the European Council, and launched a robust defence: 'As regards the question from Mr Verhofstadt and this problem with informal meetings in Brussels ... [such events] during European Council meetings are not my invention. In fact this is the most common method of work in Brussels. We have dozens of informal meetings every day, especially during our [summits]. I can assure you that [the meeting in question] was not a decisive meeting and ... [resulted from] a clear request from Prime Minister Tsipras and not from the largest Member States. I have heard it said that France and Germany, as the two biggest Member States, requested this meeting but that is not true' (25 March 2015).

While dealing with a flare-up of the euro crisis in the spring and summer of 2015, the European Council found itself simultaneously confronting a sudden escalation of the migration crisis. Again, leading MEPs were critical of the European Council's procedural and substantive response. Dismissing MEPs' criticism of the outcome of an extraordinary summit in April 2015, held in the wake of a disaster in the Mediterranean that cost the lives of several hundred migrants, Tusk countered that 'According to many of your interventions, our meeting last week decided too little. [Italian] Prime Minister Renzi said after the meeting, and I quote, 'Europe has shown serious commitment. For the first time, there is a shared strategic approach'. Similarly, [Prime Minister] Joseph Muscat of Malta said, 'There is a new sense of resolve. What happened last week has definitely changed the mood in the European Council and in Member States'. In this case, I will respect the opinions of the leaders in the countries most affected' (29 April 2015).

As was the case with the euro crisis, leading MEPs criticized the European Council for its alleged subversion of the Community method. This applied particularly to the question of the reallocation

of migrants among Member States, which the Commission and the main political groups believed should be based on mandatory quotas. Indeed, the Council took a decision to that effect in September 2015, which soon proved unworkable in the face of strong opposition from certain Member States. Tusk also opposed mandatory quotas, and argued that, apart from humanitarian assistance, the migration crisis required first and foremost that the EU protect its external borders. Given the impracticability of mandatory quotas, Tusk searched for a solution within the European Council to which every Head of State or Government could agree. Leading MEPs seemed impatient with this approach.

Once again, it was Verhofstadt who led the charge: 'I would like to say bluntly to Mr. Tusk that I am getting more and more fed up with the [European] Council, not with him personally—be assured of that—but with the institution that he represents. I am saying this is because, first of all, it has taken a very long time for an informal summit to be organised [on 25 September 2015] ... Then, what was produced from this summit was a one-page statement. This is all that ... the European Council [produced] on the most important crisis Europe has faced in the last decade—a refugee crisis such as we have never seen before. ... I ask myself how many people from Syria have to die and how many additional people from Syria have to flee to Europe before the European Council takes a comprehensive, global approach to this refugee crisis, as is proposed by the Commission?' Tusk was phlegmatic in the face of such criticism, telling MEPs that he was 'here in Parliament to be criticised and I am not here to be applauded: it is [my] job' (6 October 2015).

Nevertheless, Tusk was far from sanguine about the seriousness of the crisis facing the EU, telling MEPs in October 2015 that the situation 'that we, all of us, as a community, as the European Union, are facing now is perhaps the biggest challenge we have seen for decades. I have no doubt that this challenge has the potential to change the European Union we have built. It has the potential even to destroy achievements such as border-free travel between Schengen countries. What is even more dangerous, it has the potential to create tectonic changes in the European political landscape. And these are not changes for the better. These are truly extraordinary times that require extraordinary measures, extraordinary sacrifices and extraordinary solidarity. To me, as President of the European Council, and I believe to most of us, it is paramount to ensure the unity of our Member States and our European institutions. Together, we will handle this crisis. Otherwise, I do not want to think of the alternative' (27 October 2015).

Beginning in early 2016, Tusk's interactions with MEPs became less fraught. This may have been due to the stabilization of the euro and migration crises. At the same time, the emergence of Brexit, another major challenge for the EU, might have helped not only to strengthen unity among the 27 other Member States but also to bring the European Council and the EP closer together. With the obvious exception of Eurosceptical MEPs, especially members of the United Kingdom Independence Party (UKIP), the EP as a whole regretted the prospect of a UK withdrawal from the EU. The EP worked closely with the European Council on fashioning the so-called 'New Settlement,' a set of concessions on the part of the EU to the UK in the event that a majority voted to remain in the EU, in the June 2016 referendum.

A number of senior MEPs participated as sherpas in the discussions among national officials leading up to the decisive European Council of 18 February 2016, which President Schulz attended. There were no objections to the EP being fully involved in negotiating the new settlement, not least because EP support would be essential in order to deliver crucial legislative elements of it. Tusk subsequently reported that the summit to conclude the New Settlement was 'as difficult as any of my term,' and that it was 'my firm belief that we needed to involve the European Parliament fully in this process. I will always remember these crucial talks with President Schulz, with group leader Verhofstadt and with distinguished colleagues Gualtieri and Brok. It is thanks to you that this agreement allowed us to take into consideration the interests of the Union as a whole. Without your help this agreement would not have been possible. Thank you very much again' (24 February 2016).

Because of the outcome of the UK referendum in June 2016, the New Settlement became irrelevant. The UK government's decision to leave the EU meant that the European Council and the EP assumed important responsibilities in the process, especially after the UK triggered Article 50 TEU, in March 2017. The European Council's primary responsibility is to set the guidelines for the negotiations on the withdrawal agreement. Although the Council is responsible for concluding the agreement on behalf of the EU, after obtaining the EP's consent, the European Council nevertheless follows the proceedings closely. The EP set up a Brexit Steering Group, under the aegis of the Conference of Presidents, to coordinate and prepare Parliament's deliberations, considerations and resolutions on the issue. The Steering Group, comprising six senior MEPs from the mainstream political groups, included Guy Verhofstadt (the coordinator and chair), Elmar Brok, and Danuta Hubner.

As Tusk explained to the EP in January 2017, 'The European Council will maintain political control over the [Brexit] process, while ensuring that the Commission is the Union's chief negotiator. The leaders fully realise the important role of the European Parliament in the process. With this in mind, they invited the chief negotiator to keep the Parliament closely and regularly informed, and agreed how the European Council will interact with the Parliament throughout the coming months. With this work now done, the EU stands ready to start the negotiations when the UK notifies its departure.' Tusk went on 'to thank you [the EP] for your clear and wide support for our common future strategy in the Brexit negotiations. I think this is very important as a signal, not only to public opinion, but also to our 27 Member States. I think that one of the most important things to show today may be that you are really united when it comes to a Brexit strategy, as are the institutions. Thank you. I think this was a really important signal' (18 January 2017).

Reporting on the March 2017 European Council, Tusk explained that 'When it comes to [the Brexit] negotiations, we will have no choice but to start the withdrawal talks once the UK notifies. We are carefully preparing for these negotiations, in close consultation with Member States and the European Parliament.' At the end of the ensuing debate, he thanked MEPs 'you for your words of congratulations and support. It gives me the greatest satisfaction to hear them here in the European Parliament' (15 March 2017).

Two months later, reporting on the first meeting of the European Council in the EU27 (Article 50) format, Tusk could 'only praise the European Parliament and its leaders for the role they have played. Sincere thanks and appreciation for your constructive assistance. This bodes well not only for the future of the negotiations, but our future as a Union of 27 ... Until today I haven't witnessed such unity for the matters that I report here in the European Parliament' (17 May 2017). The main political groups' leaders fully supported Tusk, the EU27, and Michel Barnier, the Commission's chief negotiator, on Brexit.

Indeed, the EP had passed a resolution on 5 April 2017, on Brexit, which showed a substantial convergence between the two institutions on the principles, the main priorities, and the sequencing of the negotiations (European Parliament, 2017b). Tusk again acknowledged the important and constructive role of the European Parliament in the Brexit process in his report on the October 2017 European Council (24 October 2017). In his report on the decisive December 2017 European Council, Tusk wished MEPs 'all the best for the New Year,' and thanked 'the Parliament for its excellent cooperation in 2017.' Tusk singled out 'all those who took the floor in today's debate, because your positive reactions to my comment on Brexit make me even more confident that we will stay united as 27 in every scenario, and this is why I feel so comfortable today' (16 January 2018).

Buoyed by the extent of the inter-institutional cooperation on Brexit, Tusk seemed eager to build a rapport with the EP, especially following Schulz's tenure as President and departure from Brussels. Already in January 2017, while reporting on the December 2016 European Council, Tusk heaped praise on the EP, and even attributed recent progress on migration, security, and the economy 'in great part, to [the EP's] hard work and sense of responsibility.' (18 January 2017). Despite a meeting of the minds on Brexit, which intensified throughout 2017 and 2018, MEPs did not always

reciprocate Tusk's kind words, with many of the EP's leaders still critical of Tusk and the European Council for its general conduct of EU affairs.

For instance, the European Council made much of its decision to hold a special summit in Bratislava, in September 2016, to discuss the Future of Europe in light of Brexit and other significant developments. During the debate following Tusk's report on the June 2016 European Council, several leading MEPs criticized the Heads of State or Government for pushing discussion of EU's down the road to Bratislava. As Verhofstadt remarked, 'The inconvenient truth is that more of the same will not get us out of this crisis ... That is burying our heads in the sand. People want you [President Tusk] to work on another Europe, a Europe that delivers results. By not doing that, you are sleepwalking towards disaster, towards 27 other referendums in the near future. So let us not be naive. The real problem today ... is intergovernmentalism. A loose configuration of nation states based on unanimity cannot work. That is the reality today that you have not recognised until now' (5 July 2016).

The EP's contribution to the Future of Europe debate included three reports in late 2016 and early 2017 (the Böge-Berès, Bresso-Brok, and Verhofstadt reports). MEPs wanted the European Council to take these reports seriously, and to hear the EP's voice. The EP President co-signed the Rome Declaration of March 2017, the next milestone in the Future of Europe debate (European Council, 2017a). Tusk sought to reassure the EP about its involvement in the debate: 'I share the views of those who want us not to celebrate in Rome, but to set a clear course for the future. Rome will be one of the stages, not the grand finale, of this discussion. If this discussion is to be effective, there must be cooperation between States and between the institutions' (15 March 2017).

The Leaders' Agenda, announced in October 2017, was the European Council's signature contribution to the Future of Europe debate. Tusk used his closing remarks in the debate following his report on the October 2017 European Council 'to clarify a few misunderstandings' about the Leaders' Agenda. He was keen to reassure the EP that the Leaders' Agenda 'is not an alternative version of the State of the Union address, it is a plan on how to organise the work of the European Council in the next 2 years. The Leaders' Agenda is not about changing the community method, it is an attempt to speed up decision processes within the framework of binding rules, with respect for the competences of all institutions, which also means the respect for the competencies of the European Council. ... I am the last one who would like to violate the Treaty and our rules' (24 October 2017).

As was the case with his comments on the Leaders' Agenda, Tusk used the opportunity of his visits to the EP to elaborate upon other current events. For instance, in March 2017, he spoke about the idea of a multi-speed EU, which was prevalent at the time. While noting that this idea 'has sparked a lot of controversy, not only here in Parliament,' Tusk accentuated the positive, observing that the multi-speed scenario 'has a sobering affect as a warning to those who have the weakening of the EU in mind' (15 March 2017). Indeed, talk of multi-speed Europe receded after the UK triggered Article 50 TEU, with the other 27 Member States seemingly eager to display unity in the face of potential division.

Another example concerns Tusk's re-election as European Council President in March 2017, in the face of bitter opposition from the government of his own country. Although careful not to criticize the Polish government in public, Tusk could not resist poking fun at his opponents in Warsaw when he wrapped up a debate in the EP on the outcome of the European Council at which he had been re-elected: 'Mr Lamberts [co-chair of the Greens] has said that I owe my re-election mainly to the fact that Mr Kaczyński [leader of the ruling political party in Poland] was against it and that his attack on me helped me. I can only say that I find it quite natural that in critical moments we can always count on our compatriots' (15 March 2017).

6. Points of contention

These accounts of EUCO-EP interaction indicate several points of contention in relations between the two institutions. In most cases, the EP rather than the European Council was the aggrieved institution; the one most likely to complain. A number of these contentious points were systemic in origin; others had to do with the European Council's apparent trespassing beyond the boundaries of its competences or responsibilities, such as in the field of legislative decision-making, and in negotiating and concluding the Multiannual Financial Framework (MFF). Treaty change, involving the simplified procedure, and new intergovernmental treaties concluded outside the EU Treaty framework, were another source of discord between the institutions. On the question of the EU's institutional arrangements, the EP had some bones to pick with the European Council, but the major cause of conflict was the *Spitzenkandidaten* process, which the EP imposed on the European Council.

The euro crisis, and to a lesser extent the migration crisis, were aggravating factors in an already difficult European Council-EP relationship. The euro crisis coincided with the emergence of the European Council as a full-fledged EU institution, and with it the advent of the full-time European Council President. The urgency of the situation catapulted the European Council and its President to the forefront of EU affairs and unintentionally magnified many of the EP's apprehensions about the European Council, including concerns about governance and inter-institutional balance. Without the euro crisis, European Council-EP relations would have been problematic; with the crisis, they became fraught.

6.1. Governance

Legitimacy, accountability, and transparency are hallmarks of good governance. Few would question the legitimacy of the European Council, whose principal members are national leaders, elected in their own Member States. The legitimacy of the European Council President rests on the incumbent's election by the Heads of State or Government.

To whom is the European Council accountable? The Heads of State or Government are accountable to their national parliaments and electorates; the European Council President is accountable to the Heads of State or Government. The extent to which national parliaments and electorates hold Prime Ministers and Presidents accountable for the conduct of EU affairs varies greatly from country to country. It has generally increased because of the severity and political salience of the euro crisis, but remains highly uneven nonetheless. As an EU institution with executive authority, arguably the European Council should be accountable at the European level. Not unreasonably, many MEPs think that it should be accountable to their institution. The fact that national leaders, while taking executive decisions in the European Council, are accountable only to national parliaments arguably minimises the proper role of the EP. Fabbrini and Puetter call this 'the most evident Achilles's heel of the intergovernmental union,' a post-Lisbon arrangement that 'has not found a place for the EP (Fabbrini and Puetter, 2015, p. 492).

The European Council and its President view the President's reports to the EP as instruments of transparency, not of accountability. According to Article 11 of the Rules of Procedure, 'Without prejudice to the provisions on public access to documents, the deliberations of the European Council shall be covered by the obligation of professional secrecy, except insofar as the European Council decides otherwise.' It is reasonable for executive bodies to conduct business in private, although concerns about the democratic deficit have fuelled calls for greater transparency in all aspects of EU governance.

The European Council balances the obligation of professional secrecy and the growing expectation of greater transparency in formal and informal ways. The President's reports to the EP are a formal way of doing so. In addition, the President has agreed to respond to written questions from MEPs,

but only concerning the political activities of the President, such as travel and meetings, not the work of the European Council. Because of the limited remit of this instrument, MEPs have not asked many questions of the President.

The European Ombudsman has expressed interest in the work of the European Council. In a letter to President Tusk on 15 December 2017, the Ombudsman asked about possible interaction between the President's Office and interest representatives. She also inquired about the Leaders' Agenda, asking if 'the associated progress reports [would] be published.' The Ombudsman requested a reply 'at your earliest convenience, preferably before March 1st, 2018' (O'Reilly, 2017).

President Tusk replied on 18 April 2018. In his letter, he reiterated his 'attachment to the principle of transparency,' and explained his practice of meeting with interest representatives 'only in exceptional and justified cases.' As for the Leaders' Agenda, Tusk pointed out that 'the progress reports you refer to are oral reports, made during the meetings of the European Council by the member of the European Council representing the Member State holding the rotating presidency of the Council' (Tusk, 2018).

The Ombudsman may have missed the mark by asking only about the Council presidency's implementation reports, rather than about other aspects of the European Council's work. Despite, or perhaps because of, this exchange of letters, there are signs that the Ombudsman is critical of the European Council's relative lack of transparency. Referring to the European Council's involvement in the process of concluding a new MFF, the Ombudsman remarked in May 2018, that 'no doubt in the end the European Council will play a decisive role in the outcome, like last time, through opaque discussions behind closed doors' (O'Reilly, 2018).

Informal instruments of European Council transparency include speeches, press releases, press conferences, and tweets by the European Council President, and occasional public appearances by members of the President's cabinet and senior officials in the Council Secretariat. Moreover, most of the Heads of State and Government report on the outcome of a European Council soon after the meeting has taken place. They and the Commission President also make press statements during breaks in the European Council meetings and immediately after the meetings end. Despite their obligation of professional secrecy, members of the European Council reveal quite a lot about what takes place within the European Council, even though the principals invariably tailor their remarks for a national audience.

The EP cannot hold the European Council to account, but it can provide a degree of oversight, which is consistent with the EP's constitutional role of scrutinising the executive. Accordingly, since June 2014, the European Council Oversight Unit within the European Parliamentary Research Service (EPRS), the EP's in-house research arm and think-tank, has been monitoring and analysing the work of the European Council, notably with respect to the delivery of commitments contained in the European Council's Conclusions. The regularly updated Rolling Check-List of Commitments reviews progress to date in achieving the goals that the European Council has set itself. The Service also provides material to the President of the European Parliament to help prepare for his participation in European Council meetings.

The European Council may not like the idea of EP scrutiny or oversight of its work. Nevertheless, relations between senior European Council and EPRS officials are close and cordial. There appears to be a growing appreciation on the part of the European Council of the quality and usefulness of the EPRS's output. For instance, a European Council publication of September 2017, on implementation of the Bratislava Roadmap, included a lengthy table with, in the left-hand column, a list of commitments made in the roadmap; in the middle column, a list of measures taken and results achieved; and, in the right-hand column, coloured dots to represent progress so far (done; on track; efforts still needed; insufficient) (European Council, 2017c). This was the first time that the

European Council publicly tabulated its commitments and follow-through, using a methodology closely resembling one that the EPRS had already developed.

6.2. Institutional balance

Institutional balance is a question of perception as much as reality. As noted earlier in this study, EU Treaties, case law, and political agreements regulate interaction among the institutions, but day-to-day developments are important as well. The European Council's existence was already a cause of concern for advocates of a supranational EU and defenders of the Community method. The institutionalization of the European Council and advent of a standing President disquieted those who perceived the EU's institutional balance as resting primarily on the Commission-Council-Parliament decision-making triangle, with the Heads of State or Government hovering above, providing overall guidance and direction. The new, Treaty-based heft of the European Council and its President could potentially destabilize this arrangement. The onset of the euro crisis risked tilting the institutional balance firmly in the European Council's favour.

An EP Report of February 2014, on the implementation of the Lisbon Treaty, noted that the euro crisis 'works to the advantage of the European Council's intervention and authority and favours intergovernmentalism to the detriment of the Community method' (European Parliament, 2014b). Even before the onset of the crisis, the European Council was in the ascendant, thanks to the changing nature of the EU in the post-Maastricht period. The EP's defence of the Community method seemed increasingly archaic in an era characterized by growing national involvement in a range of EU policy fields. Nonetheless, the EP was rightly concerned about the European Council's encroachment into legislative decision-making, and about an apparent tilt towards intergovernmentalism in the general conduct of EU affairs. Apart from the institutional implications of the euro crisis, the European Council's propensity to cross borders into areas from which the Treaties specifically excluded it understandably alarmed the EP. In that sense, the EP's defence of the Community method was a call for the European Council to respect the Treaty-based framework for inter-institutional relations.

6.2.1. Response to the euro crisis

The eruption of the euro crisis, initially in the form of a ballooning Greek deficit, coincided almost exactly with implementation of the Lisbon Treaty. This was the beginning of what Van Rompuy later called 'the gravest crisis in the history of European integration' (Van Rompuy 2014a). The seriousness of the situation, with Greece hovering on the brink of bankruptcy, required urgent action by the Heads of State or Government. In one of his first acts as European Council President, Van Rompuy had convened an informal summit in February 2010, in the picturesque setting of the Solvay Library in Brussels, to discuss a strategy for jobs and growth. Instead, the rapidly escalating Greece crisis dominated the discussion, just as the widening euro crisis would dominate every meeting of the European Council for the next three years. Altogether, the European Council met six times in 2010, seven times in 2011, and seven times in 2012, with separate eurozone summits in 2010 and 2011 (one each year). Eurozone summits were formalized in 2012 under the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG).

The crisis required a number of separate but related responses. One was to provide urgent, largescale financial assistance initially to Greece, and subsequently to other countries facing unsustainable budget deficits. Only national governments had the political authority and the financial resources to organize bailouts for struggling Eurozone members. They did so by reaching political agreement in the European Council, initially on a rescue fund for Greece; then on a temporary European Financial Stability Facility; and finally on a permanent European Stability Mechanism (ESM), an intergovernmental institution based on a treaty among participating countries.

At the same time, governments sought to tackle the root causes of the crises by tightening the EMU rules on fiscal discipline, notably by obliging Eurozone members to meet their obligations under the Stability and Growth Pact (SGP), which sets the well-known limits for budget deficits and public debt of 3% and 60% of GDP, respectively. Accordingly, the European Council advocated new EU legislation, notably the 'Six Pack' and the 'Two-Pack,' and proposed an amendment to the Lisbon Treaty with the aim of enforcing fiscal discipline. When it proved impossible to get all EU Member States on board for a Lisbon Treaty reform, the vast majority of governments concluded the TSCG, also known as the fiscal pact, among themselves. Van Rompuy described 'the decisions we have taken [in the European Council in 2010] as constituting "the biggest reform of the Economic and Monetary Union since the euro was created"' (European Council, 2011, p. 6).

Developments in 2012, including the fall of the Greek government, in February, showed that the euro crisis was far from over. To make matters worse, the crisis acquired a new dimension when the stability of the Spanish banking sector suddenly came into question. In addition to the sovereign deficit and debt crises, the EU now faced a major banking crisis. Van Rompuy described the June 2012 summit, held at a time when 'the risk of a eurozone break-up' appeared more real than ever, as 'perhaps the most important European Council of my five years in office.' It was there that the Heads of State or Government 'sensed that the moment called for a qualitative breakthrough ... on banking union, the most urgent issue of all. ... Tensions quickly became apparent ... Some wanted to start with banking supervision, to prevent new problems, others preferred action on greater solidarity in the area of banking, to overcome troubles from the past. ... [Accordingly] We tied two political decisions together: the creation of a single supervision mechanism for all eurozone banks and the possibility for failing banks to get capital directly from a common rescue fund ... The commitment of political leaders to European banking supervision created the opening for [the ECB] to step up its role in the crisis—with words... and with action, the OMT, which both came that summer' (Van Rompuy, 2014a).

Implementing the European Council's decisions required intergovernmental negotiations to set up the Single Supervisory Mechanism (SSM), together with legislative action to establish the [Single Resolution Mechanism](#) (SRM). The SSM supervises the largest and most important banks in the eurozone directly at European level, while the purpose of the SRM, which includes a single resolution board and a single resolution fund financed by the banking sector, is to resolve failing banks in an orderly manner with minimal costs for taxpayers and for the real economy. (A third element of the Banking Union, a European Deposit Insurance Scheme, has so far proved elusive).

Although, as noted earlier in the report, Van Rompuy was assiduous in keeping the EP informed of these developments, the EP looked askance at what it saw as rampant intergovernmentalism, both procedurally (in the form of what appeared to be perpetual summitry) and substantively (in the form of new initiatives and mechanisms to deal with the escalating crisis). Van Rompuy seemed unsympathetic to the EP's concerns. As he explained in a speech in Paris, in September 2010, 'Before the summer, voices were raised in criticism of this role being played by my institution. An old pattern of thought ... re-emerged: the 'Community method' was being threatened by the intrusion of the 'intergovernmental', notably in the form of the European Council. ... I have heard talk of this binary pattern, of good against evil, at the European Parliament ... In my opinion, it is a false argument ... [W]hen decisions are taken that concern the foundations of a currency and which also involve extraordinary amounts of money, it is quite normal that responsibility for those decisions should be taken by a head of [state or] government ... The European Council is the place where different sides can find common positions, i.e. European positions. We do this in close cooperation with the other institutions ... [including] the Parliament ... And the Presidents and Prime Ministers must all in turn cooperate with ... their parliaments. It is the combination of all these links that constitutes the strength of our Union' (Van Rompuy, 2010a). Speaking shortly before he left office, at the end of 2014, Van Rompuy remarked that 'Often the choice is not between the Community method and the

intergovernmental method, but between a coordinated European position and nothing at all' (Van Rompuy 2014a).

6.2.1.1. The Task Force and the Four Presidents' reports

The European Council's response to the crisis was not entirely ad hoc. From the beginning, the European Council sought to take a systematic approach by addressing fundamental weaknesses in the architecture of EMU, which the crisis was exposing, with a view to strengthening economic governance. As a first step, in March 2010, the European Council established a Task Force, under Van Rompuy's chairmanship, with a mandate to present, before the end of the year, the measures needed to put in place an improved crisis resolution framework and better budgetary discipline, exploring all options to reinforce the legal framework. The Task Force presented its report to the European Council in October 2010 (Van Rompuy, 2010b).

In addition to Van Rompuy, the Task Force consisted of representatives of all of the EU's then 27 Member States—mostly Finance Ministers—plus the Commissioner for Economic and Financial Affairs, the President of the European Central Bank, and the President of the Eurogroup, who was then the Luxembourg Prime Minister, Jean-Claude Juncker. Much to its annoyance, the EP was not represented on the Task Force. Thus began a pattern of formal exclusion of the EP from key deliberations on economic governance during the height of the euro crisis, which became a major point of contention between the European Council and the EP from 2010 to 2013.

The Task Force recognized that adequately addressing the escalating crisis would require a fundamental shift in economic governance, commensurate with the extent of economic and financial integration already achieved through monetary union and the internal market. The recommendations in the Task Force Report addressed this high degree of interdependence, particularly in the eurozone, while acknowledging national responsibilities for fiscal and economic policies, and made recommendations intended to achieve general objectives: greater fiscal discipline; broader economic surveillance; deeper and broader economic policy coordination; a robust framework for crisis management; and stronger institutions for more effective economic governance. The Task Force did not address concerns about accountability and transparency, which the EP had raised from the beginning of the crisis.

Many of the measures taken to tackle the crisis in 2011 and 2012 were in line with the Task Force recommendations, but the realization among members of the European Council 'that we were facing a systemic crisis' gave Van Rompuy an opportunity to delve even deeper into the mechanics of EMU reform: 'At a special summit in May 2012, I engineered a mandate for the four of us—the heads of the Commission, the Eurogroup, the ECB and the European Council'—to draft a report on how to achieve a 'Genuine Economic and Monetary Union' (Van Rompuy, 2014a). Once again the, EP was excluded, although the report would have to address questions of legitimacy and accountability, and would likely recommend additional legislative initiatives.

The Van Rompuy Group submitted a report to the European Council in June 2012. Unlike the Task Force Report, the June 2012 report addressed the need to strengthen legitimacy and accountability as part of a wide-ranging reform of EU economic governance: 'Decisions on national budgets are at the heart of Europe's parliamentary democracies. Moving towards more integrated fiscal and economic decision-making between countries will therefore require strong mechanisms for legitimate and accountable joint decision-making. Building public support for European-wide decisions with a far-reaching impact on the everyday lives of citizens is essential. Close involvement of the European Parliament and national parliaments will be central, in the respect of the community method' (Van Rompuy, 2012a).

In the June report, Van Rompuy explained that he was 'prepared to continue working, together with the Presidents of the Commission, the Eurogroup and the European Central Bank, to submit to the December 2012 European Council detailed proposals for a stage-based process towards a genuine

Economic and Monetary Union.' The European Council took him up on the offer. Van Rompuy presented an interim, follow-up report to the European Council in October 2012, which built 'largely on ideas and proposals that were expressed during a series of bilateral meetings in September with all EU member States and with the European Parliament and its President' (Van Rompuy, 2012b).

Perhaps reflecting the EP's informal involvement in Van Rompuy's work, the October report expanded upon the importance of democratic legitimacy and accountability in any new EMU architecture. 'As a general principle, democratic control and accountability should occur at the level at which the decisions are taken. This implies relying on the European Parliament as regards accountability for decisions at European level but also maintaining and securing the pivotal role of national parliaments, as appropriate. The Lisbon Treaty has already introduced improvements to the EU's democratic accountability, both for the European Parliament and for national parliaments. A further strengthened role of EU institutions must be accompanied with a commensurate involvement of the European Parliament in the EU procedures' (Van Rompuy, 2012b).

Building on its interim report and taking into account the exchange of views at the October European Council, the Van Rompuy Group continued work on 'a specific and time-bound roadmap for the achievement of a genuine Economic and Monetary Union,' to present at the December European Council. The Group's preparatory process included additional informal consultations with the European Parliament. Indeed, the final report recognised the EP's 'valuable contribution' (Van Rompuy, 2012c).

In addition to suggesting a timeframe and a stage-based process towards the completion of EMU, the final report again addressed the challenges of including strong mechanisms for democratic legitimacy and accountability: 'One of the guiding principles is that democratic control and accountability should occur at the level at which the decisions are taken. The implementation of this guiding principle is key to ensuring the effectiveness of the integrated financial, budgetary and economic policy frameworks. This implies the involvement of the European Parliament as regards accountability for decisions taken at the European level, while maintaining the pivotal role of national parliaments, as appropriate ... [Accordingly], further integration of policy making and a greater pooling of competences at the European level should first and foremost be accompanied with a commensurate involvement of the European Parliament in the integrated frameworks for a genuine EMU' (Van Rompuy, 2012c). This was the rationalization for the EP's right to scrutinise the ECB's supervisory role in the conduct of the SSM and of the Single Resolution Board.

At the same time, the final report emphasized the importance of strong executive action for effective economic governance in the EU: 'the crisis has shown the need to strengthen not only the EMU's surveillance framework but also its ability to take rapid executive decisions to improve crisis management in bad times and economic policymaking in good times ... Reinforcing the capacity of the European level to take executive economic policy decisions for the EMU is essential.'

Differences between President Hollande and Chancellor Merkel, as well as misgivings among other Heads of State or Government, prevented the European Council, in December 2012, from adopting the Van Rompuy Group's far-reaching plan for 'completion' of EMU. The European Council did not endorse the final report's call for a three-stage, time-specific plan, and Merkel successfully resisted the idea of establishing a large EU-level fund to help counter country-specific economic shocks, fearing that it would cost Germany too much and possibly reward countries that were not serious about structural reform. She also managed to limit the scope of the proposed SSM to large banks and those already receiving state support, thereby shielding most German institutions from it (Emmanouilidis, 2012).

An EP Resolution of 20 November 2012, on the work of the Van Rompuy Group, was highly critical of the European Council, noting that 'the current intergovernmental structure [of EMU crisis management] represents a severe lack of democratic legitimacy,' and that its 'decision to take the

intergovernmental route, failing to include Parliament as an important actor to find a way out of the crisis, though inevitable in some instances, is deplorable.' The Resolution also complained that 'from a democratic point of view and in the light of all the provisions of the Lisbon Treaty it is unacceptable that the President of the European Parliament, which is composed of elected Members representing more than 502 million European citizens, has not been involved in the drafting of the [Van Rompuy] report' (European Parliament, 2012).

6.2.1.2. The Five Presidents' Report

Although the euro crisis seemed to have receded by 2014, eurozone leaders realized that the foundations of EMU were still unsound, and that the reform effort was losing momentum. Accordingly, at the Euro Summit in October 2014, they called for work to 'develop concrete mechanisms for stronger economic policy coordination, convergence and solidarity' and 'to prepare next steps on better economic governance in the euro area' (Euro Summit, 2014). This time, the eurozone leaders asked Commission President Juncker, rather than European Council President Tusk, to prepare a report, building on the 2012 Four Presidents' Report. The reason why the European Commission President rather than the European Council President directed the new report was personal more than institutional: Juncker was far more familiar with EMU than was Tusk, who did not come from a eurozone country and was happy to cede primacy on this issue. By contrast, Van Rompuy had been thoroughly familiar with EMU. Tusk was nevertheless more central than Juncker in dealing with the euro crisis when it erupted again in 2015, given Tusk's institutional position as President of the European Council, the EU's crisis-management body.

In another procedural change, the Euro Summit asked Schulz to join the team of Presidents working on the report. Thus the follow-up to the Four Presidents' Report became the Five Presidents' Report (the President of the European Commission, President of the Euro Summit—who is also the President of the European Council—the President of the Eurogroup, the President of the European Central Bank, and the President of the European Parliament). This addition was thanks to Juncker, who explained in his 2015 State of the Union speech: 'It was self-evident for me to include President Schulz in this important work. After all, the Parliament is the heart of democracy at [the] EU level...The [EP] is and must remain the Parliament of the euro area. ... I am therefore glad that for the first time, we have written not a 'Four Presidents' Report', but a 'Five Presidents' Report' (Juncker, 2015).

Schulz's involvement was politically significant for two reasons. The first was that it indicated how far the EP had come since the early days of the euro crisis, when the European Council gave little thought to the EP's interest in EMU. The second was that it demonstrated the close association between Juncker and Schulz, the two leading contenders in the recently inaugurated *Spitzenkandidaten* process, who, following the outcome of the election, had formed a political partnership in their roles as Commission President and EP President. Schulz relished the personal and political recognition inherent in the expansion of the group of presidents working on the report from four to five.

A number of countries, notably Germany, were doubtful about the feasibility of taking additional steps to strengthen EMU, and were lukewarm about the work of the Juncker Group. Juncker's well-known preference for fiscal federalism and other comprehensive reforms to buttress monetary union bothered the Germans because of the political sensitivity of such proposals in a country fearful that the EU would become a 'transfer union,' and where concerned citizens were prone to bring cases before the Constitutional Court. The EU had already taken several sweeping measures to shore-up EMU. It was natural for governments to do only as much as necessary, as late as possible, to cede further sovereignty on economic policy-making, especially at a time of rising Euroscepticism.

Juncker presented the Five Presidents' Report to the European Council in June 2015 (European Commission, 2015). As expected, it went farther in its recommendations than many national leaders found acceptable. The Report contained a plan to complete EMU by 2025 at the latest, including concrete measures to be implemented during three stages, beginning in July 2015. Thus, the Report called for introducing the long-discussed European Deposit Insurance Scheme and sharing additional sovereignty among eurozone members in order, for instance, to create a eurozone treasury.

The battle ground over the following months centred on banking union, one of the most important parts of the still incomplete EMU. The Commission seemed determined to press ahead with plans for the Deposit Insurance Scheme. Wolfgang Schäuble, Germany's Finance Minister, denounced this and other Commission proposals. Apart from resenting what he saw as Commission overreach, what bothered Schäuble was that German taxpayers could end up paying most of the cost of depositor bailouts at a time when banks were still vulnerable to shocks (See Dinan, 2016, pp. 109-110).

Less controversially, the report stressed that monetary union was open to all EU members, and that completing and fully exploiting the single market in goods and services, digital, energy and capital markets should be part of a stronger economic union, paving the way for more jobs and higher growth. As the report pointed out, a complete EMU is not an end in itself, but a means towards improving the lives of citizens, preparing the EU to meet global challenges, and enabling Member States to prosper.

Not surprisingly, in view of Schulz's participation in it, the Report advocated a key role in economic governance for the European Parliament, as well as national parliaments. Recommendations included strengthening parliamentary oversight as part of the European Semester, and continuing the 'economic dialogues' between the European Parliament and the Council, the Commission and the Eurogroup that had already taken place in accordance with of the 'Six-Pack' and 'Two-Pack' legislation. Accordingly, 'the European Parliament should organise itself to assume its role in matters pertaining especially to the euro area' (European Commission, 2015, p. 17).

6.2.1.3. The European Semester

From the outset, the euro crisis demonstrated the need for closer coordination of economic policy as well as fiscal policy among Member States, especially among eurozone members. In June 2010, the European Council adopted one of the earliest of the Van Rompuy Task Force recommendations, for the so-called 'European Semester' to reinforce economic and fiscal policy coordination (Van Rompuy, 2010). The European Semester allows a simultaneous assessment of Member States' annual budgetary measures and structural reforms aimed at fostering growth and employment. First applied in 2011, the idea of the European Semester is to help ensure that Member States, and especially eurozone members, take their EMU obligations into account when they prepare their annual budgets and reform programmes.

In an effort to improve accountability at the European level for EMU-related initiatives, the Four Presidents' Report included recommendations to strengthen the EP's role in the European Semester. Based on the Four Presidents' Interim Report, the October 2012 European Council called for debates in the European Parliament and national parliaments on the recommendations adopted in the context of the European Semester (Van Rompuy, 2012c).

The European Council plays a key role in the European Semester by providing policy orientations at its March meeting, based on the Commission's annual growth survey and the Council's analysis and conclusions stemming from the survey. In an Opinion attached to an EP Report on economic governance, in November 2013, the EP's Committee on Economic and Monetary Affairs was highly critical of the European Council, warning it 'not to interfere unduly in the European Semester process, and to ensure that the agreed procedures are followed.' Furthermore, the Committee 'Insists that at the spring European Council the President of Parliament should present Parliament's

views on the annual growth survey; [and] takes the view that an interinstitutional agreement should be negotiated in order to involve Parliament in the approval of the annual growth survey and of the economic policy and employment guidelines' (European Parliament, 2013b).

The Five Presidents' Report on completing EMU called for 'revamping' the European Semester: 'To better integrate the euro area and the national levels, the European Semester should be structured into two successive stages distinguishing more clearly between a European moment and a national moment.' In its section on 'Democratic accountability, legitimacy and institutional strengthening,' the Report suggested ways in which the EP could be more closely and effectively involved in the process (European Commission, 2015, pp. 20-22). These recommendations, and subsequent reforms of the European Semester, reflected Schulz's inclusion as an author of the Report and the EP's growing influence in EMU governance.

The first phase of the semester, from January to March, consists of policy guidance at the EU level. In addition to the Commission, the Council, and the European Council, the EP is actively involved in this phase. Whereas the European Council continues to provide policy orientations at its March meeting, and endorses the Council's final recommendations at its June meeting, the European Parliament discusses the annual growth survey, may publish a report on its own initiative, and issues an opinion on employment guidelines. The Parliament is also involved in the European Semester through the economic dialogue, whereby the EP may invite the President of the Council, the Commission and, where appropriate, the President of the European Council or the President of the Eurogroup to discuss issues related to the European Semester.

6.2.2. Crossing boundaries

The work of the European Council is horizontal in nature. Providing guidance and direction requires the European Council to cast a wide net over EU affairs. Nevertheless, Article 15.1 TEU states emphatically that 'the European Council shall not exercise legislative functions.' The EP is highly sensitive to boundary crossing by the European Council, specifically into the realm of legislative decision-making. According to the EP, the European Council has frequently trespassed, especially because of the euro crisis. In the negotiations of the 2014-2020 MFF, an issue unrelated to the euro crisis, the EP became increasingly irritated by what it saw as unwarranted European Council involvement.

6.2.2.1. Legislative trespassing

Regardless of concerns about rampant intergovernmentalism, the EP resented and sometimes resisted what appeared to be legislative trespassing on the part of the European Council. This alleged practice takes many forms. One is in the way in which the European Council calls on the Commission to introduce legislative proposals. Another is the way in which the European Council sometimes usurps the authority of various formations of the Council, by reaching political agreement on an issue making its way through the legislative process, and instructing the Council to act accordingly. More insidious from the EP's perspective is pressure from the European Council on the co-legislators—the EP as well as the Council—to accelerate the decision-making process.

At the height of the euro crisis, the European Council justified legislative trespassing by stressing the urgency of the situation. This was particularly the case with legislation on the Banking Union, with the set of legislative proposals known as the 'Six-Pack', which strengthened the SGP in a number of ways; and with a subsequent set of proposals, the 'Two Pack,' to strengthen further euro area budgetary surveillance. Indeed, the 'Six Pack' and the 'Two Pack' became emblematic of the EP's growing irritation with the European Council (Dinan, 2013a, pp. 99-100).

The extent of EP involvement in the pre-proposal stage of legislative decision-making depends to a great degree on the policy field in question. The nature of the eurozone crisis, which required rapid decision-making, precluded the possibility of leisurely Commission–Council–EP legislative

planning. This, in turn, fuelled the frustration of many MEPs over what looked like diktats from the European Council to enact legislation as quickly as possible in response to the escalating crisis. Such frustration emerged especially during enactment in 2011 of the Six Pack, and in 2012-2013 of the Two Pack.

The Six-Pack legislative package, consisting of five Regulations and a Directive, reformed the Stability and Growth Pact by strengthening oversight of national budgets and introducing the Macroeconomic Imbalance Procedure, an early warning mechanism on fiscal imbalances. It also brought the surveillance of fiscal and economic policies under the European Semester, to ensure that the policy advice given to Member States was consistent. The legislation applies to all Member States, although some rules, such as those on sanctions, apply only to eurozone members. The Regulations of the 'two-pack' build on and enhance the six-pack reforms, by improving budgetary coordination through the introduction of a common budgetary timeline and common budgetary rules for Member States, and by introducing a system of enhanced surveillance for those Member States experiencing serious difficulties with financial stability, receiving financial assistance, or emerging from adjustment programmes (EPRS 2014).

In view of the perceived importance of the Six Pack and the Two Pack for the stability of the eurozone, Van Rompuy was intensely interested in their passage through the Parliament. As well as his meetings with the EP President and the Conference of Presidents on the subject, he also met the rapporteurs and committee chairs involved in the Six Pack and the Two Pack legislation. The EP appreciated the urgency of the situation, but some MEPs felt unfairly pressured by the European Council. Nevertheless, the EP tried to amend the original proposals with a view to making them more transparent, preventing the reduction of government deficit and debt from weakening a Member State's growth and employment prospects, and protecting national spending with growth potential or on policies such as education and healthcare.

Despite these modifications, critics contend that during the legislative process, the EP showed little internal coherence, allowing Heads of State or Government to pressure national delegations in the EP political groups to accept Council and Commission positions. Indeed, Bressanelli and Chelotti claim that 'The EP saw its legislative position limited ... it played almost no part in the agenda-setting of the two packages, [and] the impact it had during the policy process on their final outputs was minor. It took a back seat and operated in a 'responsible' way, de facto accepting that the legislation was predominantly cooked elsewhere.' Rubbing salt in the wound, they opined that 'this is a practice that [the Heads of State or Government] usually pursue in salient legislative dossiers and does not seem a peculiar feature of the Six-pack or the Two-pack' (Bressanelli and Chelotti, 2016, p. 522; for a more positive assessment of the EP's involvement in EMU-related legislation, see O'Keefe, Salines and Wieczorek, 2016, and Rittberger, 2014).

The EP's alleged ineffectualness in legislating for the Six Pack and the Two Pack may also have had something to do with the relative inexperience of the Economic and Monetary Affairs Committee (ECON), which hitherto was rarely involved in co-decision and suddenly found itself in the thick of the fight. Intense pressure to reach agreement, combined with the committee's unfamiliarity with the intricacies of the Ordinary Legislative Procedure, may have weakened the EP legislative capacity (Dinan, 2013a, pp. 99-100).

The European Council President also kept a close eye on the legislative work of the Council and the Parliament with respect to the Banking Union, 'taking stock of progress during most of our meetings' (European Council, 2014b, p. 6). In his 2013 Report, Van Rompuy noted that by September 2012, only three months after the decisive European Council, the Commission had prepared its legislative proposals for the SSM. Three months after that, the finance ministers reached an agreement, while the Parliament adopted its position at committee level. This 'shows that the Union does have, when it wants, the ability to take timely and decisive action—a crucial test of our credibility (European Council, 2013a, p. 8). Despite the Commission's initial hope of having the SSM in place by 1 January

2013, it was only in March of that year that the Council and the Parliament reached a political agreement on it. The SSM finally became operational in November 2014

Finance ministers reached agreement on the proposal for a Regulation on the Single Resolution Mechanism in December 2013, on the eve of a meeting of the European Council. In its March 2014 Conclusions, the European Council congratulated 'the negotiators of the European Parliament and the Council on the agreement reached on the Single Resolution Mechanism Regulation,' and noted that, 'As was underlined at today's exchange of views between the President of the European Parliament and the European Council, this is a major achievement that will open the way to the completion of the Banking Union.' Piling on the pressure in its own subtle way, the European Council proclaimed that 'It is important now to formally adopt the Regulation before the end of the current legislature' (European Council, 2014c). Duly enacted on 15 July 2014, at the beginning of the next legislature, the Regulation entered into force on 19 August 2016.

The European Council's insistence that legislative decisions deemed essential for resolving the eurozone crisis be taken quickly, as early as possible in the co-decision procedure, irritated Schulz and other MEPs. The EP felt that it had acted with relative alacrity in adopting the series of legislative acts, in 2013 and 2014, on the Banking Union. Although it would be unfair to say that the EP was under duress, many MEPs felt discomfited by the European Council's unrelenting interest in the passage of these acts. While possibly not constituting a case of legislative trespassing, the European Council certainly pressured the EP to proceed rapidly with its legislative work.

At least these legislative acts gave Parliament a role in the scrutiny of the newly established institutions. In its supervisory role, in the conduct of the SSM, the ECB is accountable to Parliament and to the Council. Under the terms of an [Interinstitutional Agreement](#) (IIA), of November 2013, between Parliament and the ECB, the EP's Committee on Economic and Monetary Affairs holds regular [public hearings for the Chair of the SSM](#). Parliament also holds an annual hearing for the Chair of the Single Resolution Board, under the terms of the [Interinstitutional Agreement](#) between Parliament and the SRB, of December 2015 (European Parliament, 2018a).

The EP's anxieties about legislative trespassing went well beyond the impact of the euro crisis. One of the most egregious cases, from the EP's point of view, concerned the European Council's direct interference in a draft Regulation, in June 2012, on the European Patent. The Opinion of the Committee on Legal Affairs, attached to a Constitutional Affairs Committee Report on economic governance, adopted in November 2013, tells the story: 'Despite the Lisbon Treaty explicitly excluding [the European Council] from the exercise of legislative functions ... the European Council has intervened in the legislative procedure by deciding to remove specific elements from texts already agreed by Parliament and the Council; recalls in this connection the de facto deletion of Articles 6 to 8 of the agreed text on the proposal for a regulation on a European patent with unitary effect and considers such interventions by the European Council to be illegitimate.' The Opinion of the Committee on Economic and Monetary Affairs, attached to the same Report, reminded the European Council that 'it does not have any Treaty-based prerogative of legislative initiative and that it must stop instructing the Commission on the form and/or content of any further legislative initiative' (European Parliament, 2013b; see also Papí Boucher, 2015, pp. 133-134).

The European Council President was generally unapologetic about his institution's attention to legislative matters. As Van Rompuy was quick to point out, such an interest was consistent with the European Council's obligation to provide the EU with strategic direction. Nor has the European Council been reluctant to declare its intention to act as a Council of last resort, especially in important economic policy areas. For instance, in its October 2017 Conclusions, the European Council noted that building a Digital Europe would be a massive, time-consuming undertaking, which the European Council would 'follow closely ... and provide the necessary guidance.' It would require the institutions 'to step up the legislative work,' and 'Member States to implement the relevant EU legislation.' As if to emphasise the importance of expediting legislative action, the

conclusions noted pointedly that 'The European Council will at its level address issues that cannot be solved at the level of the Council.' In other words, the Heads of State or Government would break logjams in the Council by reaching political agreements among themselves (European Council, 2017d).

6.2.2.2. The Multiannual Financial Framework

Negotiating and concluding the MFF is one of the biggest events in the life of the EU. Budget negotiations at the national level are always fraught. They are particularly difficult at the European level because of the intensity of national interests, which generally reflect differences between net contributors to the budget and net beneficiaries of EU spending. From the time of the first MFF, the so-called Delors Package of 1988-1992, the European Council has been directly involved in the negotiations, which, until the Lisbon Treaty, formally concluded with an Inter-Institutional Agreement between the Commission, the Council, and the Parliament. Given the high political salience of EU budget negotiations, the Heads of State or Government were bound to have taken such a hands-on approach.

It may seem surprising, therefore, that the Heads of State or Government agreed, as part of the Constitutional Treaty and subsequent Lisbon Treaty reforms, to modify the MFF procedure in the way that they did. Specifically, under the terms of the Lisbon Treaty, the MFF is decided in a Regulation adopted according to a special legislative procedure, requiring unanimity in the Council and the consent of the EP. The European Council has no formal involvement. Indeed, the implication of the Treaty revision was that the European Council would take a hands-off approach.

The surprising thing, perhaps, is not that the Heads of State or Government agreed to this, but that the EP expected, or at least hoped, that the European Council would not intrude in the negotiation and conclusion of subsequent MFFs. The EP was rudely disabused of such hopes in the course of the adoption of the Regulation, in 2013, for the 2014-2020 MFF. Indeed, the EP now sees the European Council's actions leading to the adoption of the Regulation as textbook examples of institutional overreach and legislative trespassing (European Parliament, 2014c; Papí Boucher, 2015, pp. 126, 135-136).

At its June 2012 meeting, the European Council 'held an in-depth discussion with the President of the European Parliament on the future Multiannual Financial Framework. ... The European Council welcomed the progress achieved under the Danish presidency, which provides a basis and orientations for the final stage of the negotiation during the incoming Cyprus presidency' (European Council, 2012b). In fact, Van Rompuy soon made it clear that his office—not that of the Cypriot Presidency—would conduct the negotiations in the latter part of 2012. Van Rompuy convened a special session of the European Council, in November 2012, to try to reach an agreement among the Heads of State or Government, but the meeting ended in acrimony. Van Rompuy then embarked on an intensive round of bilateral meetings with individual national leaders. Based on his brokerage, the Heads of State or Government were able to overcome their differences at another special meeting of the European Council, in February 2013 (European Council, 2013b).

The Conclusions of that meeting contained a detailed agreement on the MFF. Critics saw it as an indictment of the European Council's involvement in the MFF process: 'a 48-page ... document that lays down the precise ceilings and other figures to be inserted in the MFF Regulation and that contains, for example, 20 pages of detailed directions on the contents of ordinary legislative procedure regulations in cohesion policy, including amounts, co-financed rates and side payments for individual countries, and a further 7 pages on ordinary legislative procedure regulations in agriculture, can hardly be considered to provide mere "general" direction and priorities' (Crowe, 2016, p. 19).

The European Council had effectively taken over negotiations within the Council on the MFF, acting as a super General Affairs Council. In so doing, it 'usurped' the legislative functions of the Council

(Crowe, 2016, p. 19). Having concluded its internal negotiations, far from public view, the European Council pressured the EP to adopt the necessary legally binding texts as soon as possible (European Council, 2013b).

Instead, the EP adopted a Resolution in March 2013, by an overwhelming majority, noting that the outcome of the European Council's deliberations 'represent no more than a political agreement between the Heads of State and Government,' which the EP 'rejects in its current form' (European Parliament, 2013c). The EP had only limited leverage. Negotiations between the EP and the Council Presidency began in May 2013 and ended the following month with a political agreement. Parliament won some concessions on the margins of the MFF, but not on the amounts of expenditure. The EP finally gave its consent to the MFF in November 2013, when it approved the draft Regulation by a large majority (the Council duly adopted the Regulation in December 2013, just before the end of the current MFF). The lesson was clear: 'Faced with a Council that considered itself strictly bound by the European Council's Conclusions, and with time running out before the expiry of the functioning programmes for 2007-2013, the Parliament was in the end left with a stark and unappealing political choice between accepting a *fait accompli* package imposed by the European Council or provoking a major institutional crisis' (Crowe, 2016, p. 21).

Of all the points of contention between the European Council and the EP since implementation of the Lisbon Treaty, it was the MFF that caused the most frustration, and even outright anger, in Parliament. Alain Lamassoure, Chair of the Committee on Budgets, accused national leaders of 'negotiating the MFF as if it were an international agreement, to be concluded in secret between diplomats, rather than an act of Union legislation to be adopted in accordance with the procedures laid down in the treaties' (Lamassoure, 2013).

Van Rompuy's defence against such attacks was that the European Council was merely defining the general political direction of the EU, in accordance with Article 15 TEU. He also relied on precedent, telling the EP: 'we all know from past experience that this is one of the areas in which the European Council will inevitably be called on to fulfil its role' under Article 15 TEU (Van Rompuy, 2012d). Accordingly, it seemed disingenuous for the European Council to claim, as it did in June 2012, that 'Work [on the MFF] should ... be accelerated on the relevant legislative texts with a view to rapid adoption, following the procedures enshrined in the Treaty. In this process, all ... institutions are invited to cooperate closely, in line with Treaty competences' (European Council, 2012b).

In a Resolution adopted in April 2014, on the lessons of the recent MFF negotiations, the EP was highly critical of the European Council. The EP 'Regrets that the European Council took a top-down approach to deciding the overall size of the MFF,' and 'considers it regrettable that, prior to the European Council agreement on the MFF of 8 February 2013, no meaningful negotiations were held between Parliament and the Council.' The Resolution accused the European Council of opacity, and of legislative trespassing on a grand scale. Apart from acting as a Council formation of last resort, the European Council had included in its February 2013 Conclusions 'a significant number of legislative elements that should have been decided under the ordinary legislative procedure' (European Parliament, 2014c; Drachenberg, 2018, pp. 6-7).

Crowe concludes his study of the European Council and the MFF with the observation that 'the European Council's dominance distorted the institutional balance laid down in the Treaties ... and undermined the transparency and democratic accountability of the decision-making process ... the role played by the EUCO is difficult to reconcile with the wording and spirit of the [Lisbon Treaty]' (Crowe, 2016, pp. 3, 23).

It is hard to see how the situation could improve during the negotiations for the next MFF, covering the period 2021-2027. The European Council held its first discussion on the subject at an informal summit in February 2018, in the form of a Leaders' Meeting. The Commission presented its proposals in May. Britain's withdrawal from the EU adds another complication, by causing a sizeable budget

shortfall. At the same time, the EU's net contributors seem willing to maintain or even increase their financial commitments in light of Brexit and an obvious need for new or higher EU spending in policy areas such as migration and defence. Nevertheless, the timing of the negotiations may be awkward, as they are likely to conclude only after major institutional changes in late 2019, notably a new legislature, a new Commission, and a new European Council President.

6.3. Changing the Lisbon Treaty and negotiating new treaties

Yet another round of major treaty change seemed neither necessary nor desirable following implementation of the Lisbon Treaty, which was the culmination of a process that had begun almost a decade earlier. As a result, the European Council and the EP were unlikely to find themselves involved for many years to come in the ordinary revision procedure. Nevertheless, the European Council soon engaged in minor revisions of the Lisbon Treaty, using the simplified revision procedures. Examples of these changes include transitional measures on the composition of the EP, in 2010; and the addition of a protocol on Irish concerns about the Lisbon Treaty, in 2012. In each of these cases, some MEPs had misgivings about acquiescing in the European Council's request to use the simplified procedure, preferring to hold out for a Convention, which the EP generally views as being essential to legitimize any treaty change, and as an opportunity to open the door to possible changes other than those on the European Council's agenda.

The response to the euro crisis also necessitated treaty changes. One of these concerned the establishment of the European Stability Mechanism (ESM), the permanent eurozone bailout fund, which required modifying Article 136(3) TFEU. In the end, because some Member States opposed locating the EMS within the Treaty framework, the European Council decided to set up the EMS based on a separate, intergovernmental treaty. The EP adopted its opinion on this in March 2011, with some members expressing concern about the extra-EU nature of the agreement, and about the perceived heavy-handedness of Chancellor Merkel and President Sarkozy in engineering the ESM (European Parliament, 2011). Nevertheless, EP representatives contributed to the drafting of the ESM Treaty, despite initial objections by the UK to EU institutions being involved in IGCs not involving all Member States. The leaders of the participating Member States concluded the Treaty Establishing the European Stability Mechanism in February 2012, and the new financial instrument became operational in September of that year.

In the meantime, Merkel pushed to amend the Lisbon Treaty yet again, this time to include in it rules to tighten fiscal discipline, in the form of a fiscal pact. With Sarkozy on board, Merkel built up sufficient political momentum to win support for the idea at the December 2011 European Council. Having reluctantly agreed to approve the earlier Treaty change on establishing the ESM by means of a simplified amendment procedure, thereby obviating the need for a Convention, many MEPs were reluctant to allow another, more far-reaching Treaty change to take place by the same means. Their preference was for the European Council to convene a Convention, in which the EP would be well represented and correspondingly influential.

National governments were averse to calling a Convention because of the amount of time that it would take, especially as the proposed Treaty reform sought to address the fast-moving euro crisis. Moreover, governments feared opening a Pandora's Box, with a host of other items possibly popping up on the Convention's agenda, and were loath to run the risk of contentious ratification procedures. The EP acquiesced, but many MEPs felt that, having gone along with the simplified procedure to establish the ESM and having acted constructively in the negotiations earlier in the year for legislation to strengthen the Stability and Growth Pact, they and their institution were being steamrolled by national governments on the politically more consequential question of negotiating the fiscal pact.

In the event, the UK's opposition meant that the proposed pact would have to be negotiated as an intergovernmental treaty among the other Member States. As in the case of the ESM, the EP was only indirectly involved in drafting what became the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG). Merkel's claim that the European Council's decision to negotiate an intergovernmental agreement did not mean that the EU's supranational institutions would be entirely side-lined, as the proposed pact would 'give a greater role to the Commission and the European Court of Justice, and EP observers [would] be invited to sit in on the drafting of the treaty,' satisfied few MEPs (Merkel, 2011). Twenty-five national leaders signed the TSCG on 2 March 2012—the prime ministers of Britain and the Czech Republic being the odd ones out. The Treaty entered into force on 1 January 2013 for the 16 countries that had completed ratification by that time.

Later in 2012, the EP adopted a Resolution on the work of the Van Rompuy Group, which was preparing a final report for the European Council on ways to achieve 'a genuine Economic and Monetary Union.' The Resolution noted that 'Parliament has the right to submit to the Council proposals for the amendment of the Treaties which subsequently need to be examined by a Convention, in order to complete the framing of a genuine EMU by enhancing the Union's competencies, in particular in the field of economic policy, and by strengthening the Union's own resources and budgetary capacity, the role and democratic accountability of the Commission and Parliament's prerogatives.' While conceding that 'such a Convention should not take place before the next election of the European Parliament,' the Resolution recommended that preparations for it should start before the May 2014 election (European Parliament, 2012). This was wishful thinking on the EP's part.

6.4. Institutional affairs

The European Council and the EP had a number of disagreements on institutional affairs, ranging from the highly consequential dispute over *Spitzenkandidaten* process, in 2014, which is likely to recur in 2019, to a minor spat over a nomination to the governing council of the ECB, in 2012. A potential disagreement over the composition of the EP after the 2019 elections, in light of Brexit, failed to materialize in 2018.

6.4.1. The *Spitzenkandidaten* process

The *Spitzenkandidaten* process for electing the Commission President became a major point of contention between the European Council and the EP in 2014, and could well be even more contentious in 2019. Unlike other disagreements between the two institutions, in this case the EP engineered the encounter, partly to clip the European Council's wings.

According to Article 17(7) TEU, it is the European Council's prerogative 'to propose to the European Parliament a candidate for President of the Commission ... taking into account the elections to the European Parliament.' The EP would then elect the candidate 'by a majority of its component members.' A Declaration attached to the Treaty explained that 'the European Parliament and the European Council are jointly responsible for the smooth running of the process leading to the election of the President of the European Commission. Prior to the decision of the European Council, representatives of the European Parliament and of the European Council will thus conduct the necessary consultations in the framework deemed the most appropriate. ... The arrangements for such consultations may be determined, in due course, by common accord between the European Parliament and the European Council' (Declaration 11, TEU).

Based on its interpretation of these Treaty provisions, the EP insisted that the European Council accept the *Spitzenkandidaten* process, whereby it would nominate as Commission President the candidate of the European political party who, following the elections, had the support of a majority of MEPs. The European Parliament would then elect that candidate as Commission President (on the

Spitzenkandidaten process, see Dinan, 2014; Dinan 2015; Hobolt, 2014; Müller Gómez and Wessels, 2017; Papi Boucher, 2015, pp. 129-130; Peñalver Garcia and Priestley, 2015).

The *Spitzenkandidaten* process meets a number of important objectives for the EP. One is to try to strengthen the legitimacy of the EU by strengthening the legitimacy of the Commission President and, indirectly, that of the entire Commission. Another is to bolster parliamentarianism in the EU by tying the EP elections to the election of the Commission President, the head of the EU's executive body. Moreover, the *Spitzenkandidaten* process seeks to inject a strong dose of partisan politics into the EU as a means of tackling the chronic democratic deficit, and as a means also of increasing voter turnout in EP elections. Only incidentally did the *Spitzenkandidaten* process allow the EP to confront the European Council, which hitherto had enjoyed a free hand in nominating the Commission President.

The advent of the *Spitzenkandidaten* process owed much to Martin Schulz's effectiveness as EP President and desire to become Commission President, and to the entrepreneurship of Klaus Welle, Secretary-General of the EP, who wanted to enhance the authority of his institution, especially vis-à-vis the European Council. As Welle pointed out in a number of speeches in 2013, the Lisbon Treaty included several changes with respect to the selection of the Commission President. On the face of it, these changes were relatively small. They aimed to regularize the practice that had developed over the previous few years whereby the EP approved the European Council's nominee for Commission President. In 2004, for instance, the EP voted narrowly in favour of José Manuel Barroso's appointment. In 2009, Barroso won greater support in the EP but only after he introduced a programme for the Commission's next term, at the behest of the EP.

Schulz and Welle, ideological opposites but equally committed to enhancing the power of the EP and further democratizing the EU, exploited these relatively minor modifications—what Welle called the 'unused potential' of the Lisbon Treaty—to build a case for an entirely new approach to selecting and electing the Commission President. As Welle explained in a speech in Brussels in September 2013: '[P]eople are now finding out—to their astonishment—that ... the Lisbon Treaty has very much changed the legal basis for the process on how to get the Commission into office. First, the EP 'elects'—not simply 'approves'—the Commission President. Second, the European Council selects its nominee for President based on the outcome of the European elections' (Welle, 2013).

Welle compared European voters' choice of Commission President among the candidates presented by the European political parties in the EP elections to national voters' choice of national leaders based on the candidates presented by national political parties in national elections. As he said in his September 2013 speech, the nomination by European political parties of candidates for Commission President 'is a very important change because it means that voters [will] have an idea about who would lead the Commission depending on the outcome of the European elections. That is something which on [a] national level is absolutely normal ... If from now on, also in the EU, voters could know in advance who the personal alternatives are [to lead the executive] then we also would have a much higher degree of legitimacy' (Welle, 2013).

Schulz and Welle were trying to appeal to voters, on the one hand, and to national leaders, on the other. Their strategy was to draw as close an analogy as possible between the unfamiliar EU system of governance and familiar national systems of governance. What could be simpler than to compare the EP to a national parliament, and to compare EP elections to national elections? In each case, elections result in the parliament (European or national) electing a leader (Commission President or Chancellor/Prime Minister) to form the executive (Commission or government) (Dinan, 2014, pp. 115-116).

The EP endorsed the proposed new process when it adopted a Report on the implementation of the Lisbon Treaty, in February 2014. Taking into account 'that the Treaty of Lisbon seeks to reinforce the

EU's democratic credentials,' the Report 'supports the proposal for the designation of candidates for the Commission Presidency by the European Political Parties ... [and] Reiterates its invitation to the European Council to clarify, in a timely manner and before the elections, how it will take account of the elections to the European Parliament and honour the citizens' choice when putting forward a candidate for President of the Commission, in the framework of consultations to be conducted between Parliament and the European Council' (European Parliament, 2014b).

The EP's enthusiasm for the process was bound to cause a showdown with the European Council. Chancellor Merkel and other national leaders soon voiced their disagreement with the EP's interpretation of the relevant Lisbon Treaty changes. As a Christian Democrat, Merkel naturally opposed Schulz, a Social Democrat, although the Christian Democrats and the Social Democrats had formed a grand coalition in Germany, in December 2013. More to the point, as a leading member of the European Council, Merkel did not want the EP deciding the procedure for the selection of the next Commission President, based on what she thought was a questionable interpretation of the Treaty. Brussels was soon abuzz with speculation about what might happen next, and about the implications of this for the nature of the Commission Presidency, the future of the Commission, relations between the Commission and the EP, and relations between the European Council and the EP.

Most of the European political parties chose their candidates for Commission President in early 2014. Schulz was elected unopposed by the Party of European Socialists (PES) at a special congress in Rome. The European People's Party (EPP) elected Jean-Claude Juncker, who defeated the only other contender, Internal Market Commissioner Michel Barnier, at a congress in Dublin. ALDE struggled to choose between former Belgian Prime Minister Guy Verhofstadt, leader of the party group in the EP, and Commissioner Olli Rehn. Verhofstadt and Rehn finally reached an accord, which the party endorsed, whereby 'the two candidates [would] jointly lead the campaign, on an equal footing...[but] Verhofstadt [would] be the ALDE Party's candidate for Commission President ...' (ALDE, 2014).

Thus began a political campaign unprecedented in the history of the EU. Picking up steam in April and May, the *Spitzenkandidaten* crisscrossed Europe, giving interviews, attending rallies, buttonholing pedestrians and participating in a number of televised (and webcast) debates. Given that the EPP and the PES were far ahead of ALDE in the aggregate number of seats in the national parliaments and in the European Parliament, the campaign boiled down to a contest between Juncker and Schulz. 'Let's be clear about this,' Juncker declared in mid-March 2014, 'one of us will get the job' (*Spiegel International*, 19 March 2014). It remained uncertain whether the European Council would go along with Juncker's assessment.

Spirited though it was, the campaign failed to excite public opinion throughout the EU. The EP elections continued to be organized and waged largely along national lines. Only in Germany did the *Spitzenkandidaten* seem to generate much interest, perhaps because of Schulz's prominence in Germany's Social Democratic Party (SPD) and Juncker's frequent media appearances there over the years, especially since the onset of the eurozone crisis. The two leading candidates had a couple of lively debates on German television in the fortnight before the elections, broadcast at prime time. They sparred over prescriptions for economic growth and the social cost of austerity, without seriously challenging the German-inspired orthodoxy of fiscal rectitude in response to mounting public debts. Schulz took aim at Luxembourg's extravagant use of tax breaks to attract international business, a practice that flourished under Juncker's long premiership.

None of this seemed to affect voter behaviour or turnout in any significant way. In elections marked by a decline in overall support for the three centrist parties, the EPP's share of the vote dropped from 36 per cent in 2009 to 29.4 per cent, which nonetheless gave the EPP more seats (221) than the PES (191), whose percentage of the vote held steady (25.4 per cent). The biggest disappointment for the EP's leadership was that voter turnout again declined, however slightly, from 43 per cent in 2009 to

42.6 per cent (European Parliament, 2014d). Whatever else, the *Spitzenkandidaten* process had failed to bring more voters to the polls, proving Schulz wrong when he declared confidently in mid-March that the '[e]lection turnout will increase. The competition between myself and Juncker will help to ensure that' (*Spiegel International*, 19 March 2014).

Displaying remarkable institutional agility, the EP moved quickly after the elections to lock the new procedure in place. Almost immediately, Juncker and Schulz agreed that Juncker, as the candidate of the party that had won the most seats, was now the sole candidate for Commission President. ALDE may have hoped that if the EPP and the PES failed to reach agreement in support of Juncker or Schulz, Verhofstadt might instead become the EP's candidate. Seeing that this would not happen, ALDE threw its support behind Juncker. Soon afterward, the Conference of Presidents, including the political group leaders and the European Parliament President (Schulz), endorsed Juncker and wrote accordingly to the European Council, which had scheduled an informal summit that evening (27 May) in Brussels.

At the summit, UK Prime Minister David Cameron and a handful of other national leaders expressed their opposition to Juncker and resentment of the EP's assertiveness. Rather than rush to judgment, the Heads of State or Government agreed to open formal consultations between the European Council and the EP, as called for in the Treaty, giving Van Rompuy a mandate to act on their behalf (European Council, 2014d). The European Council would make a definitive decision at its regular end-of-semester meeting, on 26-27 June.

Motivated by domestic political considerations as much as principled opposition to the *Spitzenkandidaten* process or personal aversion to Juncker, Cameron might have thought that he could block Juncker by exercising a veto in the European Council. Although national leaders had been able, since the Nice Treaty of 2003, to nominate the Commission President by a qualified majority vote, a quest for consensus remained the norm. Even so, Cameron attempted to bolster his position by forming an anti-Juncker coalition. Few national leaders were enthusiastic about Juncker, but most—regardless of political affiliation—were willing to accept him, and the *Spitzenkandidaten* procedure. Cameron thought that he could count on the support of Merkel, who seemed equivocal on the issue. Like Cameron, she disagreed with Juncker's politics, which appeared to be more social democratic than Christian Democratic. She disliked also some of the positions that Juncker had taken during the eurozone crisis, especially when he flirted with the idea of Eurobonds, which were anathema to her.

Yet there were limits to how far Merkel would or could go to stand in Juncker's way. Merkel's Christian Democratic Union (CDU), after all, was a leading constituent member of the EPP. As Europe's most prominent Christian Democrat, Merkel herself was complicit in Juncker's selection as the EPP's *Spitzenkandidat*. Even the SPD, in coalition with the CDU, supported Juncker's nomination, because it supported the new procedure. Merkel might have wished that things had turned out differently, but she was not about to provoke a showdown with the EP by trying to forge a blocking minority in the European Council against Juncker.

By the time that the European Council met at the end of June, Van Rompuy was able to report that Juncker most likely had the necessary votes in the EP to be elected Commission President. This did not deter Cameron. Although by now unequivocally behind Juncker, Merkel feared that a crushing defeat for Cameron in the European Council would increase the UK's largely self-imposed alienation from the EU. Much to the dismay of Merkel, Van Rompuy, and others who tried to smooth things over, Cameron insisted on holding a vote. Only one other national leader—Hungarian PM and EPP member Viktor Orbán—sided with the UK Prime Minister, for whom the outcome was an embarrassment.

The European Council offered Cameron some political cover. At his insistence, the Conclusions stated that: 'The UK raised some concerns related to the future development of the EU. These

concerns will need to be addressed ... Once the new European Commission is effectively in place, the European Council will consider the process for the appointment of the President of the European Commission for the future, respecting the European Treaties' (European Council, 2014e). Nevertheless, Cameron did not retreat in his post-summit press conference: '[L]et me be absolutely clear, this is a bad day for Europe. It risks undermining the position of national governments. It risks undermining the power of national parliaments and it hands new power to the European Parliament' (Cameron, 2014).

Following the drama in the European Council, the vote in the EP, on 14 July, was anti-climactic: 422 for Juncker, 250 against and 47 abstaining. Nevertheless, it was an important event for the EU. According to Schulz, 'the European Council and the European Parliament have together ... [ushered] in a new democratic era ... by establishing a new constitutional procedure, which did not necessitate a revision of the treaties' (European Parliament, 2014e). The success of the new procedure nevertheless rested on an expansive interpretation of the existing Treaties, which many members of the European Council did not share.

It is difficult to assess the implications of the *Spitzenkandidaten* process for the legitimacy of the Commission President, the future of the Commission, the long-term development of Commission-EP relations, and for the EU system as a whole. The success of the process in 2014—the fact that the candidate representing the party that received the most votes in the EP elections became Commission President, despite misgivings in the European Council—inevitably generated speculation about the rise of parliamentarism and representative democracy in the EU (Fabbrini, 2015; Shackleton, 2017). Having acquired greater budgetary, legislative and oversight responsibilities, might the EP not become a 'real' parliament by electing the government as well? The Commission is accountable to the EP, which elects the Commission President and approves the College of Commissioners. However, the Commission is not a government that stands or falls depending on whether it maintains the support of a majority of MEPs. Moreover, the fractiousness of political groups in the EP, in comparison to the cohesion of governing parties or coalitions in most national parliaments, illustrated the extent to which the EP is a case apart.

The EP nevertheless revelled in the patina of parliamentarism in the aftermath of Juncker's election as Commission President. Juncker paid due homage to parliamentarism in the EU, but also saw the outcome as an opportunity to strengthen presidentialism in the Commission. The juxtaposition of parliamentarism and presidentialism in the shadow of the *Spitzenkandidaten* process was striking, and illustrated the distinctiveness of the EU as a political system.

Even before he formally became President, Juncker claimed that, based on his election by the EP, he would preside over 'a more political Commission' (Juncker, 2014). What did being 'more political' really mean, and how would Juncker go about it? The tone and content of his 2015 State of the Union speech contained some clues, notably a marked assertiveness towards national governments and a willingness to make bold proposals with respect to the euro and migration crises (Juncker, 2015).

In practice, being more political appeared to entail moving the Commission towards a more compliant relationship with the EP. In the political guidelines that he presented to the EP, Juncker promised that he would animate the 'special partnership' between the two institutions 'with new life' (Juncker, 2014). Being a more political Commission, which Juncker stressed in every address to the EP, seemed to mean being highly sensitive to the interests of the Parliament and its President. What appeared to be the Commission's increasing deference to the EP was particularly noticeable in the close relationship between Juncker and Schulz. In the new Parliament, the EPP and the S&D agreed to form a 'grand coalition' to support Commission initiatives. ALDE, the Liberal group, threw in its lot with the grand coalition, but the Juncker–Schulz duumvirate did not become a Juncker–Schulz–Verhofstadt triumvirate.

Professional ambition may partly explain the close relationship between Juncker and Schulz in 2015 and 2016. As noted earlier in this report, Schulz was already in an unprecedented second term as EP President, a post that ordinarily rotated between the EPP and S&D halfway through a parliamentary mandate, based on an informal agreement between the two groups. In 2015, Schulz hinted at wanting to win a third term so that he could oversee the grand coalition during the remainder of Juncker's term as Commission President (2014–2019). As a leading EPP politician, Juncker could help Schulz with that.

In the event, Schulz did not succeed in winning a third term. Instead, in January 2017, the EP elected Antonio Tajani of the EPP as its new president, after several rounds of voting. Thereafter, although Juncker remained deferential in his dealings with the EP, relations between the Commission and the EP appeared to revert to their previous state of cooperation without excessive collaboration, possibly reflecting a better inter-institutional balance. The dynamic of the Juncker-Schulz relationship added to the difficulty of assessing the long-term consequence for Commission-EP relations of the *Spitzenkandidaten* process.

The *Spitzenkandidaten* process threatened once more to become a source of discord in European Council-EP relations when the 2019 EP elections began to loom larger on the horizon. The use of the process in 2014 had caught many members of the European Council by surprise. This time around, the European Council was determined to adopt a position well in advance. Accordingly, President Tusk put the issue on the agenda of the Leaders' Discussion on institutional affairs, at the informal summit of 23 February 2018.

Some national leaders wanted to reassert what they saw as their right to elect the Commission President while taking into account the results of the EP election and after having held the appropriate consultations, as required by the Lisbon Treaty. They did not want to have to accept either the leading 'lead candidate' following the EP election, or one of the other *Spitzenkandidaten*. Apart from the possible incompatibility of the process with the Treaty, some national leaders were concerned that the process would limit the pool of potential candidates, and encouraged the politicisation of the Commission. In his preparatory note, President Tusk noted also the link between the process and the Treaty requirement for 'balances' in the context of high-level nominations, taking 'due account ... of the need to respect the geographical and demographic diversity of the Union and its Member States,' as well as a more general Treaty provision on the need to ensure gender balance (European Council, 2018a).

Tusk's preparatory note asked the Heads of State and Government for their views: 'Should the European Council automatically accept the outcome of a "*Spitzenkandidaten*" process or should the European Council autonomously decide how to take account of the elections, having held appropriate consultations?' The answer, according to Tusk in his post-summit press conference, was 'agreement that the European Council cannot guarantee in advance that it will propose one of the lead candidates for President of the European Commission. There is no automaticity in this process' (European Council, 2018b).

Clearly, the *Spitzenkandidaten* process risked once again becoming a point of contention between the European Council and the EP. The only discordant note in President Tajani's speeches to the European Council in 2017 was on this subject. Addressing the European Council at the start of its October meeting, where the Heads of State or Government were about to discuss the issue, Tajani expressed to the European Council his fervent wish that it 'make [the *Spitzenkandidaten*] arrangement the norm,' knowing full well that the European Council was equivocal on the issue (19 October 2017).

Indeed, referring to the *Spitzenkandidaten* process in his report to the European Parliament on the October Summit, Tusk reminded his listeners that 'It was not the European Council that was the weak link in 2014. Jean-Claude Juncker was elected with 26 votes against 2 votes in the European

Council, while in the Parliament he got 422 votes out of 729 votes, so it is easy to imagine [a] situation [in which] it will be more difficult for the winning *Spitzenkandidat* to win sufficient support in the new European Parliament than in the European Council' (Tusk, 2017).

In a revision of the Framework Agreement on relations between the European Parliament and the European Commission, adopted by a large majority on 7 February 2018, the EP warned that it would be ready to reject any candidate in the investiture procedure of the President of the Commission who was not appointed as a '*Spitzenkandidat*' in the run-up to the European elections' (European Parliament, 2018b). Clearly, the EP sees the 2019 elections as an occasion to cement the use of the process in the face of the European Council's unease with it.

The *Spitzenkandidaten* process is not scheduled to appear again on the European Council's agenda until June 2019, when the question of 'high level appointments' will need to be decided. At that time, the political dynamics in the European Council will be considerably different from what they were in 2014. For one thing, the UK will no longer be a member of the EU, thereby precluding the possibility of strong opposition from a UK Prime Minister to the use of the process. For another, President Macron is not (so far) a member of a European political party, but has expressed an interest in establishing a transnational party of his own, perhaps after the 2019 elections. This reduces Macron's interest in supporting any of the *Spitzenkandidaten*. Meanwhile, Chancellor Merkel is likely to maintain her ambivalence, if not outright opposition, to the process. Another difference between 2014 and 2019 is that whereas President Van Rompuy seemed neutral on the subject, President Tusk has made clear his aversion to the *Spitzenkandidaten* process.

This does not necessarily mean that a battle between the EP and the European Council is inevitable in mid-2019. However, it suggests that the European political parties, whose leading prominent members include most of the Heads of State or Government, will need to pay particular attention to their selection of *Spitzenkandidaten* in the run-up to the EP elections.

6.4.2. Composition of the EP

The composition of the EP, including the possibility of introducing a transnational list, was another potentially divisive issue in relations between the European Council and the EP. This idea, long discussed in the EU, became prominent in 2017 thanks not only to President Macron's advocacy of it, but also to the opportunity for a reapportionment of EP seats in light of the UK's impending withdrawal.

In a sign of the issue's political sensitivity, several MEPs took exception to President Tusk's comment, made during his report on the October 2017 European Council, that 'I personally believe that the most natural solution [to the future composition of the EP] would be to adopt a simple rule: fewer countries, fewer mandates. It is not only pragmatic and logical, but also what is expected by public opinion.' Tusk was quick to qualify this remark, noting that 'Of course, such a solution in no way invalidates' the Parliament's position, as 'I am aware that this will be our common decision, since the Parliament will be proposing and co-deciding on this matter' (24 October 2017).

Liberal leader Guy Verhofstadt nevertheless pounced: 'you have to know that the legislative initiative for the composition of the Parliament is of this Parliament and not the European Council. I have to tell you that. What I expect is for the European Council to back the proposal that will be made by a huge majority here in the House. ... It will be a proposal based on the reduction of the number—that is a fair point. [But also] It will be a proposal that finally puts justice in the system with degressive proportionality, so that we do not take all five years to restart the work' (24 October 2017).

At the January 2018 plenary session, MEPs rejected the idea of a transnational list for the next EP elections, due largely to the opposition of the EPP, which had a strong stake in maintaining the status quo. In his Discussion Note for the February 2018 Leaders' Meeting, where the Heads of State

or Government were due to address institutional affairs, Tusk noted that the EP had proposed that 27 of the UK's 73 seats 'be re-distributed to 14 Member States in order to reflect demographic changes and respect the principle of degressive proportionality,' and that the total number of seats in the EP be reduced 'from 751 to 705 in line with the principle "fewer Member States, fewer MEPs".' He proposed asking members of the European Council if they would be ready to support the EP proposal, and 'to continue the reflection on the idea of a European constituency and transnational lists in view of the 2024 European Parliament elections' (European Council, 2018b). Based on his remarks at the post-summit press conference, the answer to both questions was in the affirmative. This presaged easy agreement at the June 2018 European Council on the composition of the EP, and ended the possibility of a European Council-EP clash on the issue.

6.4.3. The European Central Bank

In November 2012, the European Council and the EP had a disagreement over a nomination to the governing council of the ECB. The EP insisted that a woman be appointed; the European Council stuck to its original position and appointed Yves Mersch, from Luxembourg (though Spain objected to Mersch's appointment for other reasons). The EP raked an unapologetic Van Rompuy over the coals, but could do little about the European Council's decision (*European Parliament News*, 25 October 2012). Although seemingly insignificant, the episode demonstrated the potential for senior EU appointments to become flashpoints in European Council-EP relations.

7. Conclusions

The existence of the European Council since the mid-1970s coincides approximately with the modern phase of the EP's existence, which dates from the first direct elections, in 1979. The then nine Heads of State or Government linked the launch of the European Council to a decision finally to hold direct elections, in recognition of the importance of strengthening supranationalism as well as intergovernmentalism at a difficult stage of the EU's development.

The two institutions have grown in prominence and importance over the years, reflecting profound changes in the nature, policy scope, and membership of the EU. By 2009, after several rounds of Treaty change aimed at improving the efficiency and legitimacy of a Union that had extended its reach into almost every field of public policy, while enlarging to encompass 27 Member States, the European Council and the EP had emerged at the apex of the EU's institutional architecture.

Whereas the EP is deeply embedded in the Community method of policy-making and institutional oversight, the European Council was, until recently, relatively detached from everyday EU affairs, instead providing overall political direction and taking decisions on major issues affecting the EU's future, such as treaty change, enlargement, or the MFF. As a result, the two institutions co-existed for much of their lives in separate but intersecting spheres of EU activity.

That changed dramatically with the onset of the euro crisis, which coincided with implementation of the Lisbon Treaty. Suddenly the European Council, which only then became a formal institution, with its own full-time President, was thrust into the forefront of everyday EU affairs as the Heads of State and Government battled to save the euro, and possibly even the EU. The European Council became an executive body operating in almost permanent crisis mode, taking decisions about bailouts and other emergency measures with little parliamentary oversight in its members' home countries, and even less at the European level.

Resolving the euro crisis required the European Council to redesign EMU. As early as 2010, the European Council asked its President to lead a Task Force on EMU reform, and again in 2012 to produce a more extensive report, in cooperation with the President of the Commission, the President of the Eurogroup, and the President of the European Central Bank. In each case, the EP was not formally involved. Only later, in 2014, when the Euro Summit called for another high-level report on completing EMU, under the chairmanship this time of the Commission President, was the EP finally included.

Lack of parliamentary oversight of the European Council and exclusion from initiatives to address the euro crisis were only some of the EP's concerns about the role and responsibilities of the European Council. There was a pervasive sense in the EP that the European Council was exceeding its boundaries, notably by trespassing on legislative decision-making, thereby breaking the Treaty's commandment that it 'shall not exercise legislative functions' (Article 15(1) TEU). The European Council appeared to do so by pressing the Commission to introduce legislation and by pressuring the co-legislatures to reach decisions quickly, as early as possible in the Ordinary Legislative Procedure. Sometimes the European Council acted as a Council configuration of last resort, ending legislative logjams in the General Affairs Council. In the case of legislation linked to the euro crisis, such as the Six Pack and the Two Pack, the European Council justified its involvement by citing the need for urgent action. The European Council also claimed that its keen interest in EU legislation, if not actual intrusion, was warranted by its Treaty-bound obligation 'to provide the Union with the necessary impetus for its development and define its general political directions and priorities' (Article 15(1) TEU).

The European Council became directly involved in the negotiations for the 2014-2020 MFF, to the point of taking over the work of the Council, again on the grounds of its responsibility for defining the EU's general direction and priorities. As in the case of the euro crisis, the real reason for the

European Council's involvement was that the domestic political stakes were so high. When it came to putting together rescue packages for countries in acute financial distress, and building a permanent assistance mechanism, the Heads of State or Government alone had the authority to act. In some countries, the government's survival depended on decisions taken in the European Council. Money is also at the core of the MFF negotiations, which have a direct bearing on national finances. Although the Lisbon Treaty did not specify the European Council's involvement in concluding the MFF, it was hardly surprising that the Heads of State or Government took over from the Council at a crucial point in the process, in 2012-2013. Nor is it surprising that the EP, already wary of the European Council's ascendancy during the euro crisis, found this objectionable.

Tension between the European Council and the EP may be endemic because of the nature of the EU itself, given that each institution represents a different dynamic—intergovernmental and supranational—in the integration process. It may also be the inevitable result of the European Council and the EP having become 'the primary poles of power in the post-Lisbon institutional system' (Monar, 2011, p. 86). More concretely, it is rooted in the EP's justifiable concerns about the implications of 'new intergovernmentalism,' in the form of the European Council's current activism, for the quality of EU governance and the integrity of the EU's institutional arrangements. Disputes over legislative trespassing, executive overreach, and the like are significant in their own right, but have a much greater meaning when considered in the broader context of EU democracy. How compatible is European Council activism with the principles and practice of accountability, legitimacy, and transparency to which the EU aspires?

Such concerns explain the EP's persistent defence in the post-Lisbon period of the Community method. In the EP's view, the Community method is not simply a means of enacting legislation, allocating budgets, or scrutinizing the work of the Commission. Rather, it is framework for providing good governance: for upholding accountability, legitimacy, and transparency. By allegedly undermining the Community method, the European Council's behaviour risks undermining the integrity of the EU itself. The European Council, sure of its own legitimacy, its principal members' accountability to national parliaments and electorates, and its obligation of professional secrecy, has consistently failed to see the EP's point.

Hence the sometimes heated moments during visits to the EP by the European Council President. Those occasions allowed the EP's leadership not only to vent its frustration, but also to make important arguments in support of good governance and the EU's institutional balance. Occasionally the EP's complaints seemed over the top, as when Martin Schulz attacked the European Council for being 'a permanent Congress of Vienna,' or denounced what he saw as 'the creeping deparliamentarisation of Europe' (Schulz, 2012a; 2012b). However, such theatrical flourishes brought the encounters to life and drew attention to substantive EP concerns.

The European Council President is obliged to report to the EP after each regular meeting of the European Council. President Van Rompuy far exceeded this obligation by coming to the EP after most summits, formal or otherwise, by meeting regularly with the EP President, and by meeting occasionally with the political group leaders and key committee chairs. As a fervent pro-European, Van Rompuy may have sympathized with the EP's fundamental concerns about the conduct of the European Council. As European Council President, he was nevertheless keen to get things done, which sometimes meant mollifying the EP in order to ensure its support for important legislative or other initiatives. He also resisted the idea that the Community method was sacrosanct, or the only way of conducting business in a rapidly evolving EU.

President Tusk visited the EP less often than Van Rompuy had, and appeared to take a more transactional approach to European Council-EP relations. Despite having been a long-time principal member of the European Council, when he was Prime Minister of Poland, Tusk had little experience of working with the EP. As European Council President, he evinced little empathy for it.

Speeches by the EP President at European Council meetings were an opportunity to highlight the EP's general concerns about developments in the EU, especially during the early years of the euro crisis, and specific concerns about current agenda items. Schulz was an outlier as EP President. For one thing, he secured a second, consecutive term in office. For another, he adopted an unusually forthright approach in his dealings with the Heads of State or Government. As he had done as leader of the Socialist group, as EP President he criticized the European Council unrelentingly for its secrecy, executive overreach, and subversion of the Community method. It is hard to say whether this helped or hurt the cause of the EP in its dealings with the European Council. By contrast, Schulz's immediate predecessor and successor—the only other EP Presidents to have spoken at the European Council in the post-Lisbon period—were less assertive. In that sense, they conformed to the traditional model of EP President.

The biggest dispute between the European Council and the EP concerned the election of the Commission President, in 2014. At issue was not simply the choice of President Barroso's successor, but also key institutional prerogatives and responsibilities. The European Council and the EP interpreted the Lisbon Treaty differently. The EP's interpretation prevailed. As a result, the European Council nominated and the EP elected as Commission President the candidate whose political party had won the most seats in the EP elections. Irritation with the European Council undoubtedly animated the EP's advocacy of the *Spitzenkandidaten* process. More important, the EP struck a blow for its right to elect the head of the EU's executive, thereby boosting the legitimacy of the Commission President and strengthening parliamentarianism in the EU system. For some members of the European Council, this was tantamount to altering the institutional balance.

The outcome of the 2014 battle over the Commission President was gratifying for the EP, but it could have had some undesirable consequences for the EU system. Having been elected by the EP, Jean-Claude Juncker claimed to have a mandate to preside over a political Commission. In practice, that seemed to mean operating in tandem with President Schulz and being highly deferential to Parliament. Perhaps the Commission's seemingly excessive deference to the EP was due more to the close personal relationship between Juncker and Schulz than to an institutional effect of the *Spitzenkandidaten* process, which could roil European Council-EP relations again in 2019. The EP sees another successful application of the process as essential for making it permanent. The European Council, or at least some of its leading members, are likely to resist. Already, the European Council has stated that it cannot guarantee that it will propose one of the *Spitzenkandidaten* for President of the European Commission, and sees no automaticity in the process.

As in 2014, the fact that most members of the European Council are leading members of the main European political parties, which claim to be committed to the new arrangement, may tip the balance in favour of the EP's preferred outcome. Greater familiarity with the process and its rising popularity in some Member States could also tie the hands of unsympathetic national leaders, even if one of them, the leader of a large Member State who is not a member of a European political party, tries to hold out.

Much depends on the political parties' selection of candidates. In recent years, Commission Presidents have been former national leaders, but this is not a prerequisite for the position. In 2014, the PES chose Schulz as its candidate. Regardless of Schulz's record of clashing with the European Council, it is highly unlikely that the European Council would ever have selected someone with Schulz's political background to become Commission President. Arguably, it is good for democracy in the EU that the political parties have widened the net in their selection of candidates for the Commission Presidency. At the same time, the political parties will need to pay attention to how the European Council might view their candidates, or potential candidates. Once again, networks among national leaders, EP leaders, and other prominent politicians within the European political parties may hold the key to the success of the *Spitzenkandidaten* process in 2019 – success in this case meaning its use as a method for selecting the Commission President and its ability to produce good candidates.

Another European Council-EP clash over the *Spitzenkandidaten* process would not necessarily benefit the EU. Nor is deep-seated European Council-EP rivalry good for either institution, let alone for the EU as a whole. The early post-Lisbon years may have been exceptional, with the EU confronting a series of severe crises just as its institutions were settling into a new constitutional arrangement. By 2017, the first year in almost a decade when the EU was not immersed in crises, relations between the European Council and the EP were noticeably better.

The year 2017 was also when the most recent iteration of the Future of Europe debate took off, due in no small part to the UK's impending departure. Some of the EP's contributions to the debate, such as the December 2016 Report on the EU's institutional arrangements, are highly critical of the European Council (European Parliament, 2016). Nevertheless, the EP seems open to new ideas, as the EU copes with the withdrawal of a large, influential Member State and moves beyond the crisis years.

For its part, the European Council has launched the Leaders' Agenda as part of its contribution to the debate. In doing so, the European Council has provided an opening for the EP, albeit unintentionally. The Leaders' Agenda includes Leaders' Meetings, at which stakeholders discuss pressing issues, which are often highly controversial. The EP President is an EU leader and political stakeholder. Already the EP President addresses the European Council before its meetings, which often include Leaders' Meetings. Why should the EP President not be included in the Leaders' Meetings themselves? Why should the EP President not participate in Leaders' Discussions? By extension, why should the EP President not participate fully in the European Council? This is an issue of both principle and pragmatism. The principle is one of inclusion for all of the EU's highest-level leaders. The pragmatic point is that, as leader of the EP, the President has much to contribute to discussions about the EU's most pressing problems, and can offer a perspective which national leaders and the Commission President lack.

Most members of the European Council would likely be aghast at the idea of the EP President joining their exclusive club. They would argue that the European Council brings together the heads of executives, not legislatures; that including the EP President would blur the lines between executive and legislative responsibilities in the EU. However, the EU does not have a neat separation of powers, and nothing about the role of the European Council, as described in the Treaty, suggests that the participation of the EP President would be inappropriate or detrimental to its operation. As it is, the EP President participates in the opening session.

Although the Treaty does not mention the EP President as a member of the European Council, the European Council President may invite the European Parliament President (or anyone else) to attend meetings of the European Council, not just for the opening session. In that case, the EP President could become an informal member, with a right to contribute to debates on policy matters, while not participating in decisions which the European Council has a Treaty-based obligation to take. On the occasions when the European Council chooses to act as a *de facto* Council formation, to discuss legislative issues, it could hold 'Principals' Meetings,' aside from the European Council proper, exclusively for the Heads of State or Government and the Commission President.

Such a development might seem radical in view of the trajectory of European Council-European Parliament relations in recent years. Yet the idea is not far-fetched. Leading MEPs have frequently called for the EP President to be allowed to participate fully in meetings of the European Council and the Euro Summit. Moreover, the Future of Europe debate presents an opportunity for fresh thinking on a variety of issues, including the EU's institutional arrangements.

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This study explores the development of relations between the European Council (of Heads of State or Government) and the European Parliament, two institutions that have become increasingly central to the operation of the European Union political system, especially since the 2009 Lisbon Treaty. It explains the Treaty framework for relations between the two institutions and traces their practical evolution over time, including an analysis of the roles of the presidents of each institution in such interaction. It also examines points of contention in the relationship to date, including in relation to 'legislative trespassing' by the European Council and the *Spitzenkandidaten* process.

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