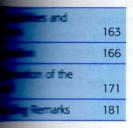# Chapter 10

The Council of the European Union

The Council of the European Union – which is more commonly referred to simply as the Council (the name used in the Lisbon Treaty) and at times the Council of Ministers – is the principal meeting place of the national governments.

When the Community was founded in the 1950s many expected that in time, as joint policies were seen to work and as the member states came to trust one another more, the role of the Council would gradually decline, especially in relation to the Commission. This has not happened. On the contrary, by guarding and building on the responsibilities that are accorded to it in the treaties, and by adapting its internal mechanisms to enable it to cope more easily with the increasing volume of business that has come its way, the Council not only has defended, but in some respects has extended its power and influence. This has naturally produced some frustration in the Commission, and also in the EP. It has also ensured, especially when set alongside the increasingly important position of the European Council in the EU's institutional system, that national governments have remained centrally placed to shape and influence most aspects of EU business.

Responsibilities and Functions

The functions undertaken by the Council can be classified in various ways. Hayes-Renshaw and Wallace (2006: 322–7) identify four main functions: legislative – developing and making legislation; executive – taking direct responsibility in some policy areas for exercising executive power; steering – 'devising the big bargains that orient the future work of the Union' (p. 325); and forum – 'providing an arena through which the member governments attempt to develop convergent national approaches to one or other policy challenges in fields where the Union does not have clear collective policy powers' (*ibid.*).

A three-fold classification is used here. As compared with the Hayes-Renshaw and Wallace classification, their legislative function is broadened, their executive function is retained, a different category – mediator – is added, and their steering and forum functions are subsumed within the first and third categories. The steering function is, however, revisited in Chapter 11, for much of what the Council does in this regard takes the form of preparing European Council decisions and declarations.

Policy and law-maker

The principal responsibility of the Council is to take policy and legislative decisions. As is shown throughout this book, the exercise of these responsibilities is shared in various ways with other EU institutions – especially the Commission and the EP.

The extent to which the Council must work with, and is dependent upon the cooperation of, the Commission and the EP in respect of policy and decision-making varies between policy areas and according to what type of decisions are being made. In broad terms, the Council has most room for independent manoeuvre when it is not acting within 'the Community method' (see Chapter 18), for then the roles and powers of the Commission and the EP are normally restricted. Amongst policy areas where the Community method does not apply are foreign and defence policy, which have increased in importance in recent years as the EU has come to issue numerous declarations on foreign policy matters and has come to engage in an array of foreign policy actions.

The Community method – which is used for the making of EU legislation – places limitations on the Council in two main ways. First, it is normally restricted to acting on the basis of proposals that are made to it by the Commission. Second, the EP has very important legislative powers. Prior to the Maastricht Treaty, the Council was formally the EC's sole legislature, but under the co-decision procedure that was created by the Treaty the EP became co-legislator with the Council in those policy areas where the procedure applies. As a result of subsequent treaty reforms, the procedure – which, tellingly, was re-named the 'ordinary legislative procedure' by the Lisbon Treaty – now applies to most significant legislation.

An indication of the Council's legislative role is seen in the volume of legislation it approves, either by itself or jointly with the EP. In 2014 it adopted (not counting amending acts) two directives (an unusually low number), 47 regulations and 335 decisions under its own name, and with the EP adopted 37 directives, 58 regulations, and 41 decisions.

It should not be thought that because the TFEU stipulates that the Council can normally only develop legislation on the basis of Commission proposals, the Council is thereby deprived of all powers of initiation. In practice, ways have been found if not to circumvent the Commission entirely at least to allow the Council

a significant role in policy initiation, and some legislative initiation. Article 241 TFEU is especially useful: 'The Council acting by a simple majority may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.' In the view of many observers the use that has been made of this article, and the very specific instructions that have sometimes been issued to the Commission under its aegis, are against its intended spirit. Be that as it may, the political weight of the Council is such that the Commission is bound to pay close attention to the ministers' wishes.

In addition to Article 241, four other factors have been also useful in boosting the Council's policy role in areas that are subject to the Community method when legislation is envisaged:

1. The ability of the Council to adopt recommendations and opinions. These are legislative acts without binding force – that is, member states are not obliged to 'download' them into national legislation. However, they carry political weight and it is difficult for the Commission to ignore them. Sometimes they are explicitly designed to pressurise the Commission to come up with proposals for legislation.

2. The increasingly developed Council machinery, which has grown in size over the years and become more specialised. There are now many places in the Council's network where ideas can be generated. The most obvious of these is the Council Presidency (see below), which can be much to the fore in prompting the Council to consider new policy directions and priorities.

3. The growing propensity to use Council Conclusions to indicate to the Commission the preferences of member states on a given topic. Such indications can be crucial in assisting policy formation.

4. The increasing willingness of the member states to found aspects of their cooperation not on EU law but on non-binding agreements and understandings. Such non-legal arrangements, which do not have to be initiated by the Commission and which are not subject to EP approval, are increasingly found in a number of domestic policy spheres where national differences can make it very difficult for legislation to be agreed. Such, for example, is the case with the non-monetary dimensions of EMU and also with the *Europe 2020* strategy – which

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...uses mainly on the promotion of economic
...and employment and much of which is
...not on legislation but on the much looser
OMC (see Chapter 18).

...important policy matter in which the
...is a key player is the EU's annual budget, which
...both the Council's and the EP's approval. As
...in Chapter 23, after the Commission issues
...budget the Council and EP engage in intensive
...ations on its contents, with the Council almost
...ably pressing for reductions in the overall size
...Commission's draft and the EP pressing for
...ases. A compromise is the inevitable outcome.

Executive

...Commission is the principal EU institution
...sible for the implementation of EU policies and
...As was shown in Chapter 9, it is the Commission
...liaises with and oversees the work of the various
...cies that undertake most of the 'front-line' EU
...implementation in the member states and it is
...Commission that undertakes the limited amount
...direct EU-level policy implementation in non-
...ign policy areas.

...owever, as was also shown in Chapter 9, in
...taking many of its implementation functions
...Commission is obliged to work with and through
...mittees composed of national governmental offi-
...ls. These committees are extremely technical and
...not formally part of the Council machinery or
...stem, but they do give the Council indirect execu-
...powers by virtue of the fact that the Commission
...to work through them. In some circumstances
...mittee challenges to Commission executive deci-
...ns result in references to the ministers for final
...lution.

...The foreign and defence policy areas provide for
...most obvious and direct Council executive activ-
...Many of the declarations issued by the Council
...foreign policy matters are, in effect, executive
...cisions in that they involve the operationalisation
...principled positions developed and pronounced
...er by the European Council and the Council itself.
...en these operationalisations involve close liaison
...th the Commission, especially where trade and
development policy instruments are involved. Where

operational activity involves putting civilian, police,
and military personnel into 'troubled areas' – as many
EU operations now do in the form of EU 'special
representatives', 'monitors', 'observers', and 'mis-
sions' – policy execution is very much in the hands of
the Council, working usually in very close liaison with
appropriate agencies from member states.

Mediator

The Council exercises important responsibilities in the
key activities of mediation and consensus-building. Of
course, as the forum in which the national representa-
tives meet, the Council has always served the function
of developing mutual understanding between the
member states, both on prospective and established
and on general and specific EU matters. Moreover,
a necessary prerequisite for successful policy devel-
opment has always been that Council participants
display an ability to compromise in negotiations. But
as the EU has grown in size, as more difficult policy
areas have come onto the agenda, and as political
and economic change has broken down some of the
pioneering spirit of the early days, so has positive and
active mediation come to be ever more necessary:
mediation primarily between the different national
and ideological interests represented in the Council,
but also between the Council and the Commission,
the Council and the EP, and the Council and non-
institutional interests. The Commission has taken
on much of this task, but so too have agencies of the
Council itself – most notably the Presidency and the
General Secretariat.

* * *

The Council has both gained and lost responsibilities
over the years. The most obvious gain has been the
extended scope of its policy interests. As is noted at
several points in this book, the EU's policy remit is
now such that there are very few spheres of public
policy in which the EU is not involved to at least some
extent. This in turn means that there are few policy
spheres in which the Council is not seeking to launch
or shape initiatives and to take decisions of some sort.

There are, however, two respects in which the
Council may be said to have lost responsibilities over
the years, or at least to have become obliged to share
them. First, as is shown in Chapter 11, the European

Council – the body that brings together the Heads of Government or State – has assumed greater responsibility for taking the final political decisions on highly sensitive and contested issues and such 'history-making' issues as new EU accessions, institutional reforms, and the launching of broad policy initiatives. Second, as was noted above and is shown at greater length in Chapter 12, the powers of the EP have greatly increased, especially in respect of the making of legislation where the vast majority of Commission legislative proposals now need not only Council but also EP approval if they are to be adopted and enforced.

Composition

The ministers

Ministerial meetings are at the apex of the Council machinery. Legally there is only one Council, but in practice there are more in the sense that the Council meets in different formations to deal with different policy areas. There used to be over 20 of these formations, but changes over the years – designed primarily to improve the consistency and coherence of the Council's work– have resulted in there now being ten (see Box 10.1).

Because of their importance, three formations of the Council merit a particular mention:

- The *General Affairs Council* is responsible for horizontal matters (that is, coordination between different policy areas), for institutional and administrative matters, and for preparing and following up meetings of the European Council (the last of these functions being undertaken in liaison with the European Council President and the Commission).
- The *Foreign Affairs Council* deals with the Union's external policies, namely the common foreign and security policy, the security and defence policy, external trade, development cooperation, and humanitarian aid.
- The *Economic and Finance Council* (Ecofin) also has a broad remit in that few economic and financial issues are excluded from its portfolio. Its meetings often are preceded by meetings of the *Eurogroup*, which brings together the Economic or Finance Ministers of the states that are members of the eurozone.

BOX 10.1

Formations of the Council

General Affairs
Foreign Affairs
Economic and Financial Affairs
Justice and Home Affairs
Employment, Social Policy, Health and Consumer
 Affairs
Competitiveness
Transport, Telecommunications and Energy
Agriculture and Fisheries
Environment
Education, Youth, Culture and Sport

Beyond the General Affairs, Foreign Affairs and Ecofin Councils, other matters are dealt with, as can be seen from Box 10.1, by sectoral or technical Councils, which are composed of Ministers of Agriculture, Transport, Environment, and so on. The relatively small number of Council formations and the broad policy responsibilities of each formation means that member states often send more than one minister to the same Council meeting, though when this happens ministers normally only attend for the agenda items that directly concern them.

There is no hierarchy between the Council formations and any can adopt a decision that falls under the remit of another – which is most likely to happen if the relevant formation is not scheduled to meet for some time and a matter is ready for a final decision to be taken.

The national representatives who attend ministerial meetings can differ in terms of their status and or policy responsibilities. This can inhibit efficient decision-making. The problem arises because the states themselves decide by whom they wish to be represented, and their decisions may vary in one of two ways:

1 *Level of seniority*. Normally, by prior arrangement, Council meetings are attended by ministers of similar standing, but circumstances do arise when the various delegations are headed by people of different levels of seniority. This may be because a relevant minister has pressing domestic business or because it is judged that an agenda does not warrant his or her attendance. Occasionally the

may be 'unavoidably delayed' if a meeting is ...ted and/or has a politically awkward issue ...the agenda. Whatever the reason, a reduction in ...status and political weight of a delegation may ...ke it difficult for binding decisions to be agreed. ...ctoral responsibility*. Usually it is obvious which ...vernment departments should be represented ...Council meetings, but not always. Doubts may ...se because agenda items straddle policy divi...ns, or because member states organise their ...tral government departments in different ways. ...a result, it is possible for ministers from rather ...erent national ministries, with different respon...ibilities and interests, to be present. The diffi...ies this creates are sometimes compounded, ...ecially in broad policy areas, by the minister ...ending not feeling able to speak on behalf of ...low national ministers with a direct interest and ...erefore insisting on the matter being referred ...ack to national capitals.

...tates are not, therefore, always comparably rep...ed at ministerial meetings. But whether a coun...'s lead representative is a senior minister, a junior ...nister or, as sometimes is the case, the Permanent ...presentative, the Deputy Permanent Representative ...even a senior diplomat, care is always taken to ...ure that national interests are defended. The main ...this is done is by the attendance at all meetings ...not only lead national representatives but also of ...all supporting national delegations. These delega...ns comprise national officials and experts plus, at ...portant meetings or meetings where there is a ...de-ranging agenda, junior ministers to assist the ...nior minister. So, for example, Trade Ministers ...ually accompany Foreign Ministers to meetings ...the Foreign Affairs Council when trade issues are ...be considered. Normally four or five officials and ...perts support the 'inner table team': that is, the most ...nior national representative(s) who actually sit at ...he negotiating table. However, the format of seating ...rangements can vary between meetings, so though ...ost commonly inner table representatives consist of ...ust one, they do sometimes consist of two – especially ...f an agenda demands it or if states press it for it for ...omestic political reasons (as, for example, federal ...tates such as Germany or Belgium sometimes do). ...he task of the supporting teams is to ensure that the ...head of the delegation is properly briefed before the

meeting (briefing sessions may be held in national capitals, permanent representations, or delegation rooms in the Council building), fully understands the implications of what is being discussed, and does not make negotiating mistakes. Sometimes, when very confidential matters are being discussed or when a meeting is deadlocked, the size of delegations may, on a proposal from the President, be reduced to 'Ministers plus two', 'Ministers plus one', or, exceptionally, 'Ministers and Commission'.

* * *

The regularity with which meetings of individual formations of the Council are held reflects their importance in the Council system and the extent to which there is EU policy interest and activity in their area. So, the Foreign Affairs and the General Affairs Councils meet the most frequently, with usually at least one meeting per month. The Ecofin, Agriculture, and JHA Councils meet most months, whilst the other Councils do not normally meet more than twice during each Council Presidency.

Altogether there are usually around 70 formal Council meetings in an average year: 67, for example, were scheduled for 2016. Each Council formation has customary months in which it meets with, for instance, the Education, Culture, Youth and Sport Council normally meeting in May and November. Ultimately, however, the scheduling of meetings is at the discretion of the Presidency, which plans a programme well in advance of assuming its six-month tenure of office. Although meetings are held throughout the year, there is a slight bunching towards the beginning and ending of Presidencies so as to enable priorities to be set and some Councils to be able to assist in preparing the June and December European Council meetings. Council meetings are normally held in Brussels, but the April, June, and October meetings are held in Luxembourg.

Unless there are particularly difficult matters to be resolved, meetings do not normally last more than a day. A typical meeting begins about 10 a.m. and finishes around 6 p.m. or 7 p.m. Foreign Ministers and Ecofin Ministers are the most likely to meet over two days, and when they do it is common to start with lunch on day one and finish around lunchtime on day two.

Outside the formal Council framework, ministers, particularly Foreign Ministers and Ecofin Ministers,

have periodic weekend gatherings, usually in the country of the Presidency, to discuss matters on an informal basis without the pressure of having to take decisions. In 2016, 22 informal ministerial meetings were scheduled. Such informal gatherings are especially common in the opening weeks of Council Presidencies, when Presidencies are keen to discuss their priorities with colleagues and to gain feedback on what will and will not be possible.

The Committee of Permanent Representatives

Each of the member states has a national delegation – or Permanent Representation as they are formally known – in Brussels, which acts as a kind of embassy to the EU. The Permanent Representations are headed by a Permanent Representative, who is normally a diplomat of very senior rank, and are staffed, depending on the size of the member state and therefore of its administration, by about 70–100 officials, plus back-up support. About half of the officials are drawn from the diplomatic services of the member states and about half are seconded as technical attachés from appropriate national ministries, such as Agriculture, Trade, and Finance.

Of the many forums in which governments meet 'in Council' below ministerial level, the most important is the Committee of Permanent Representatives (COREPER). Although no provision was made for such a body under the Treaty of Paris, ministers established a coordinating committee of senior officials as early as 1953, and under the Treaties of Rome the Council was permitted to create a similar committee under its Rules of Procedure. Under Article 4 of the 1965 Merger Treaty these committees were merged and were formally incorporated into the Community system: 'A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council.'

There are in fact two COREPERs: COREPER II and COREPER I. Both normally meet once a week. COREPER II is the more senior, with member state delegations at its meetings headed by the Permanent Representatives and with its agendas being the more 'political' of the two COREPERs. It works mainly for the General Affairs, Foreign Affairs, Ecofin, and

JHA Councils. It also often deals with issues for [...] Council meetings that are particularly sensi[...] controversial. COREPER II is assisted in its ta[...] the Antici Group, which is made up of senior off[...] from the Permanent Representations and wh[...] in addition to assisting COREPER II, acts as a [...] information-gathering and mediating forum betw[...] the member states.

At COREPER I meetings, national delegatio[...] headed by the Deputy Permanent Represent[...] COREPER I works mainly for the Council[...] covered by COREPER II. Because of the nat[...] the business covered by these Councils, CORE[...] tends to deal with more technical policy and leg[...] tive matters than does COREPER II. CORE[...] assisted by its equivalent of the Antici Gro[...] Mertens Group.

In addition to preparing Council mee[...] COREPER also exercises a number of more g[...] functions on behalf of the ministers in the C[...] and EU systems. As Bostock (2002: 215) has [...] COREPER 'should be thought of as a co-or[...] of Council business, partly as a fixer and tr[...] shooter'. It is able to exercise such roles be[...] again to quote Bostock (p. 226), it 'is a bod[...] posed of officials with the seniority and pr[...] to ministers to take a politically informed vie[...] with the diplomat's and bureaucrat's obliga[...] master the technicalities of the dossier befor[...] Such qualities make COREPER members ide[...] – as COREPER I members usually do – the[...] resent the Council in trilogues and/or conci[...] committee meetings with the EP under the or[...] legislative procedure (on the procedure, see C[...] 12 and 19).

But whilst not querying COREPER's centra[...] the Council system, it has to be recognised tha[...] has been a marginal decline in its position an[...] tiveness in recent years. One reason for this i[...] will be shown below, in the increasingly imp[...] and busy foreign and security and econom[...] finance policy areas, very senior Council com[...] have come to act almost on a comparable le[...] COREPER and to have acquired a considera[...] ure of discretion in how they operate. Anothe[...] is that COREPER has inevitably become les[...] bable' as the EU has grown in size, which has [...] COREPER's ability to 'get things done' throu[...] mal means.

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Committees and working parties

complicated network of committees and working
parties assists and prepares the work of the Council
and COREPER.

Council committees

Council committees are composed of national offi-
cials, are serviced by Council administrators, and have
as their task providing advice to the Council and the
Commission as appropriate, and in some instances as

directed. An outline of the most important Council
committees is given in Box 10.2.

In addition to the committees listed in Box 10.2,
many other committees also assist the work of the
Council. They range in the subjects they cover from
the Social Protection Committee to the Committee for
Civilian Aspects of Crisis Management. Some of these
committees shade into working parties and undertake
much the same tasks as them.

In addition, there has been an increasing ten-
dency in recent years for *ad hoc* committees of
senior national officials – sometimes referred to as

Box 10.2

Key Council committees

- *The Special Committee on Agriculture* (SCA). Because of the volume and complexity of EU activity in the agricultural sector, most of the 'routine' and 'non-political' pre-ministerial-level work on agriculture is undertaken not in COREPER but in the SCA. The SCA, which is staffed by senior officials from the Permanent Representations and national Ministries of Agriculture, usually meets at least weekly.
- *The Trade Policy Committee* (TPC). Any significant action undertaken by the EU in international trade negotiations is preceded by internal coordination via this committee. The committee performs two main functions: it drafts the briefs that the Commission negotiates on behalf of the EU with third countries (the committee's draft is referred, via COREPER, to the ministers for their approval); and it acts as consultative committee to the Council and the Commission on what should be done when problems arise during the course of a set of trade negotiations. Both advisory and controlling functions are thus exercised in relation to the Commission. The committee normally meets once a week: the full members – who are very senior officials in national Ministries of Trade or the equivalent – meet monthly and deal mostly with overall trade policy issues; the deputies – who are middle-ranking officials from the Ministries, or sometimes from the Permanent Representations – meet three times a month and deal mostly with more specific trade matters. At meetings of both formations of the committee the national representatives are accompanied by small teams of national experts. Working parties, which meet as and when it is necessary, assist the committee.
- *The Economic and Financial Committee*, which was established at the start of the third stage of EMU in January 1999, focuses on economic and financial policy, capital movements, and international monetary relations. The members of the Committee – of which there are two from each member state (one from the administration and one from the national Central Bank), plus two from the Commission, and two from the European Central Bank – are senior and influential economic and financial experts; they are, in other words, people who can normally communicate directly with whomsoever they wish, and who are customarily listened to.
- *The Political and Security Committee* (PSC, though more commonly known after its French acronym – COPS) is the Council's main CFSP committee. It is composed of senior officials from the Permanent Representations, though sometimes it also meets at the level of Political Directors of the member states.
- *The Standing Committee on Operational Cooperation on Internal Security* (COSI) was provided for by the Lisbon Treaty so as to facilitate and promote the coordination of internal security operational actions. It is one of a number of committees in the AFSJ area. Others include the *Security Committee*, and the *Strategic Committee on Immigration, Frontiers and Asylum* (SCIFA).

'High-Level Groups' – to be established for the purpose of developing initiatives and policies (though not of course for the purpose of drafting legislation), especially in new and sensitive areas. An example is the High-Level Group on Education and Training, which normally meets twice a year.

Working parties

The role of Council working parties (also known as working groups) is more specific than that of most of the committees in that their main job is to carry out detailed analyses of formally tabled Commission proposals for legislation. The number of working parties in existence at any one time varies according to the overall nature of the EU's workload and the preferences of the Presidency in office, but in recent years there have usually been over 150, with the largest number being in the agricultural policy area. (It is impossible to give a precise figure of the number of working parties because many are *ad hoc* in nature.) Members of working parties, of whom there are usually between two and four per member state, are almost invariably national officials and experts based either in the Permanent Representations or in appropriate national ministries. Occasionally governments appoint non-civil servants to a working party delegation when highly technical or complex issues are under consideration.

The name 'working party' suggests that meetings would be attended by a relatively small number of people, who would soon likely develop a 'clubbable' atmosphere. But, in fact, with as many as four or even five being in each national 'team' and with representatives from the Commission and General Secretariat also attending working party meetings, there can be well over 100 people present – not counting translators!

Like most Council meetings, working party meetings are set before the start of Presidencies, though with flexibility built in. Working parties with a heavy workload may meet as many as ten times during a Presidency. Usually there is an interval of at least two weeks between meetings so as to allow the Council's Secretariat time to circulate minutes and agendas – in all of the languages of the member states. But, if a working party is dealing with a contested piece of legislation which the Presidency is keen to advance, meetings are likely to be held weekly. Up to 15 or so different

working parties are in session in Brussels on most working days. On completion of their analyses and deliberations of the work in hand – often Commission proposals – working parties report to COREPER or to one of the Council's senior committees.

The General Secretariat

The main administrative support for the work of the Council is provided by the General Secretariat, which is headed by the Council's Secretary-General who is appointed by the European Council.

The Secretariat has a staff of just over 3,000, most of whom are located in Directorates General dealing with different policy areas. Of the 3,000, around 500 are at diplomatic level. The Secretariat's base, which also houses Council meetings, is located in the Justus Lipsius building, which is situated opposite the Berlaymont building (the main Commission building) in the Schuman area of Brussels and is also not far from the EP building.

The Secretariat's main responsibility is to service the Council machinery – from ministerial to committee and working party levels. This involves activities such as preparing draft agendas, drafting or assisting with the drafting of documentation, keeping records, providing legal advice, processing and circulating decisions and documentation, translating, and generally monitoring policy developments so as to provide an element of continuity and coordination in Council proceedings. This last task includes seeking to ensure a smooth transition between Presidencies by performing a liaising role with officials from the preceding, the incumbent, and the incoming Presidential states.

In exercising many of its responsibilities, the Secretariat works particularly closely with the Council Presidency. This is essential because key decisions about such matters as policy priorities, the setting of meetings, and the composition of agendas are primarily in the hands of the Presidency. Before all Council meetings at all levels Secretariat officials give the Presidency a full briefing about subject content, the current state of play on the agenda items, and possible tactics – 'the Poles are isolated', 'there is strong resistance to this in Spain and Portugal, so caution is advised', 'a possible vote has been signalled in the agenda papers and, if taken, will find the necessary majority', and so on.

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...extent to which Presidencies rely on the ...variat varies considerably. Because of their more ...administrative resources, smaller member ...tend to be more reliant, but larger states also ...much to gain by making use of the Secretariat's ...ces and its knowledge of what approaches are ...likely to be effective in particular situations.

...main reason why Presidencies are sometimes a ...reluctant to make too much use of the Secretariat ...there is a natural tendency for Presidencies to ...heavily on their own national officials as they ...achieve a successful period of office by getting ...sures through. Something approaching a dual ...cing of the Presidency is apparent in the way ...Council meetings, at all levels, the President (the ...sits with a member of the Secretariat to his/her ...and a deputy chair (and national expert) to his/her ...(Other officials from the Presidency's member ...sit to the side, since the national interest must ...be represented.)

The Operation of the Council

The Council Presidency

The rotation system

...to the entry into force of the Lisbon Treaty in ...ember 2009, the Council Presidency rotated ...ween the member states on a six-monthly basis: ...uary until June, July until December. The rota...on used to be in alphabetical order, but following ...e 2004 enlargement it was decided to arrange it ...that small states, who now constituted the great ...jority of EU member states, would not normally ...low one another and that Presidencies would be ...ranged into groupings of three states, referred to as ...e 'trio', consisting ideally of one large or medium-...zed state plus two others. Box 10. 3 lists the first ...ew years of the Presidency rotation that was agreed ...ortly after the Brexit referendum in 2016, for the ...ars up to 2030.

The trio grouping of Presidencies grew out of a ...ng-standing practice of preceding, current, and ...cceeding Presidencies working closely with one ...nother. This practice developed partly to assist small ...member states when they occupied the Presidency,

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but mainly to try and improve continuity and enhance consistency between Presidencies.

The trio system was formalised and strengthened in a Declaration annexed to the Treaty of Lisbon, which stated that the Presidency would now 'be held by pre-established groups of three Member States for a period of 18 months' (see Document 10.1). The existing system of one state chairing all meetings for a six-month period was, however, retained, apart from for the Foreign Affairs Council which is chaired by the High Representative of the Union for Foreign Affairs and Security Policy (on the High Representative, see Chapters 7 and 22). In a discretion that was inserted particularly to assist very small member states with limited administrative resources, the three states in the Presidency group would be able to alter this arrangement if they so chose.

Document 10.1

The grouping of Council Presidencies as set out in Declaration 9 of the Treaty of Lisbon

Article 1

1 The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

2 Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the chair in all its responsibilities on the basis of a common programme. Members of the team shall decide alternative arrangements between themselves.

Source: Declaration 9 attached to the Treaty of Lisbon '… *concerning the European Council decision on the exercise of the Presidency of the Council'.*

The Council Presidency system post-Lisbon thus is that the Presidency is held for 18 months by groups of three member states, with each of the states assuming 'the lead' for six months.

The tasks of the Presidency

The main tasks of the Presidency are as follows.

1 *To arrange (in close association with the General Secretariat) and to chair Council meetings from ministerial level downwards.* These tasks are undertaken by the lead Presidency state.

However, there are some exceptions to, and variations on, these arranging and chairing responsibilities. For example, where it is clear that dossiers will be dealt with mainly during the next Presidency or where issues will be dealt with at ministerial level during the next Presidency, then some of the Council's sub-ministerial meetings – though not COREPER – are chaired by the state holding the next Presidency. In the same spirit of trying to ensure that a single member state assumes responsibility for taking issues through the Council machinery, all meetings dealing with the EU's annual budget are chaired by the state holding the Presidency during the second six-month period of the year (the annual budget is finalised in

December). And, in a change introduced by the Lisbon Treaty, meetings in the foreign affairs and security sphere, including ministerial-level meetings, are chaired by the High Representative or his/her representative.

As the chair of meetings, the Presidency has considerable – though not complete – control over how often Council bodies meet, over agendas, and over what happens during the course of meetings.

2 *To build a consensus for initiatives.* A successful Presidency is normally regarded as one that gets things done. This can usually only be achieved by extensive negotiating, persuading, manoeuvring, cajoling, mediating, and bargaining with and between the member states, and with the Commission and the EP.

As Tallberg has observed (2006, 2008), within the Council itself a number of factors have combined to increase the importance of 'the Presidency compromise'. Foremost amongst these factors are the increased range and complexity of EU business, the increased number of member states and therefore also of national preferences, and the increased availability of QMV – which has resulted in it becoming common practice for the Presidency to attempt to find a qualified majority and then work to bring the dissatisfied on board.

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To offer leadership. Very much overlapping with the building of consensus task, Presidencies have a responsibility to offer leadership. As has just been shown, this can involve leading the way in efforts to forge acceptable deals between member states. But it can also involve attempting to prioritise new issues and ensure existing issues are taken forward. Work programmes are important frameworks via which Presidencies provide and organise leadership in issue areas. Each trio Presidency issues an 18-month work programme before it enters office. This programme is then followed up by work programmes from each of the three states as they take the chair.

In unforeseen circumstances – such as responding to a major economic and monetary challenge or to an external crisis – Presidential leadership may require initiating policy responses and cajoling the EU institutions and the member states to be proactive in responding to the problem in hand. During its Presidency in the second half of 2008, France was seen – and was generally praised – for offering strong leadership as the depth of the world economic recession and monetary crisis became increasingly clear.

To ensure continuity and consistency of policy development. A mechanism used for this purpose has been the trio which, as Document 10.1 shows, is required post-Lisbon to operate on the basis of a common programme. This notion of a common programme builds on an increased attention to medium-term planning that has been increasingly emphasised by, and within, all EU policy institutions since the early 2000s.

It has to be said, however, that most informed observers think that, in practice, the introduction of the trio system has not greatly improved the Council's policy efficiency or effectiveness.

To represent the Council in dealings with outside bodies. This task is exercised most frequently with regard to other EU institutions and with non-member countries in connection with external EU policies. Regarding the first of these, this particularly takes the form of ministers appearing before EP committees and, to a lesser extent, EP plenary sessions. Regarding the second, the Lisbon Treaty transferred much of this responsibility to the High Representative and the European External Action Service (EEAS), though the Council Presidency retains an important external representative function in non-CFSP/CSDP sectoral areas with important external dimensions – such as energy, transport, and environment.

Advantages and disadvantages of holding the Presidency

Holding the Presidency – especially the lead Presidency – has advantages and disadvantages. One obvious advantage is that there is considerable prestige and status associated with the position, with media focus and interest on the Presidency invariably being high. A second advantage is that because the occupation of the Presidency puts states at the very heart of EU affairs, Presidencies have the potential to do more than they can as ordinary member states to help shape and set the pace of EU policy priorities. The extent of this potential should not, however, be exaggerated for though Presidencies set out their priorities when they enter office, they do not start with a clean sheet, but rather have to deal with much uncompleted business from previous Presidencies and with rolling work programmes. Furthermore, their time in office is relatively short, and is just not long enough for the full working-through of policy initiatives – especially if legislation is involved. And a third advantage is that there is some leeway for bringing Council positions closer to the positions of the Presidency. As Tallberg (2004: 1019) has put it, Presidencies can use their privileged access to information about states' preferences and their access to instruments of procedural control to 'steer negotiations away from their worst alternative and towards their preferred outcome'. Schalk *et al.* (2007) and Thomson (2008) confirm Tallberg's finding about the ability of Presidency's to tilt decisional outcomes in their favour, though both stress that this is time-dependent and only takes place in the closing stages of decisional proceedings. As Thomson describes it: 'Member states that hold the presidency when a legislative proposal is adopted as law pull decision outcomes towards their favoured policy positions' (Thomson, 2008: 611).

As for the disadvantages of holding the Presidency, one, especially for smaller member states, is the heavy administrative and financial burdens that are attached to it. These have, moreover, increased over the years as the EU has moved into an increasing number of policy

areas and has acquired many more members. To take just the chairing of meetings, an average Presidency involves the chairing of 35–40 ministerial meetings and as many as 2,500 COREPER and working party meetings. There are also many conferences, events, and meetings to be hosted in Presidency states. Indeed, it was the growing extent of the financial and administrative burdens along with the greatly increased number of smaller member states that lay mainly behind the movement towards trio Presidencies.

A second disadvantage is that although, as has just been noted, there is some room for Presidencies to attempt to bring issues closer to their own preferred positions, it is generally expected that Presidencies will adopt a broadly consensual approach on disputed issues – which on some issues can limit the ability of governments to defend their own national interests. Such was the case in the first half of 1999 under the German Presidency and in the second half of 2005 under the UK Presidency, when both governments felt inhibited about over-pressing their dissatisfaction with the deals that emerged on the financial perspectives for the 2000–06 and 2007–13 periods respectively.

And a third disadvantage is the blow to esteem and standing that is incurred when a state is judged to have run a poor Presidency. Member states generally viewed as having operated poor Presidencies include France (in the second half of 2000), Italy (in the second half of 2003), and the Czech Republic (in the first half of 2009).

The hierarchical structure

A hierarchy exists in the Council. As indicated above, it consists of:

- Ministers – with all ten formations being of equal status and with no ministerial-level formation empowered to issue instructions to other Council formations.
- COREPER and a few specialised high-level committees such as the SCA and the PSC.
- Committees and working parties, of which there are approaching 200 in total.

The lack of a hierarchy within the ministerial level, and in particular the inability of the 'coordinating' formation – the General Affairs Council – to

issue instructions to other formations, has some times resulted in the European Council, though not formally part of the Council system, trying to resolve thorny issues and issuing general guidelines to ensure that there is an overall policy direction and coherence in the work of the Council. The European Council can only go so far, however, in performing such problem-solving and coordinating roles: partly because of the infrequency of its meetings; partly because some Heads of Government prefer to avoid getting too involved in detailed policy discussions; but, above all, because the national leaders are subject to similar national and political divisions as the ministers.

The Council's hierarchical structure is neither tight nor rigidly applied. So, for example, important committees and working parties can sometimes communicate directly with ministers. Nonetheless, the hierarchy does, for the most part, work. This is best illustrated by looking at the Council's procedures in dealing with a Commission proposal for a significant piece of legislation.

The *first stage* is initial examination of the Commission's text. This is undertaken by a working party or, if it is of very broad application, several working parties. If no appropriate permanent working party exists, an *ad hoc* one is established.

As can be seen from Box 10.4, several factors can affect the progress of the proposal in the Council from working party level upwards. They include the urgency, complexity, and controversiality of the proposal; the competence and flexibility of the Commission as it explains and defends 'its' proposal; and the extent to which member states are able and willing to compromise on the contents of the proposal.

An influencing factor that has greatly increased in importance over the years is whether the proposal could be subject to QMV when it appears before ministers. Formal votes are not called below ministerial level, but the possibility of them being taken can affect the progress of a proposal at all levels. If a deal is not possible and unanimity is required, then working party deliberations may take as long as is necessary to reach an agreement – which can mean months or even years. If, however, QMV is possible, delegations that find themselves isolated in the working party must anticipate the possibility of their state being outvoted when the ministers consider the proposal

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- The urgency of the proposal.
- The controversiality of the proposal and ... opposition amongst the states.
- The extent to which the Commission has tailored ...text to accommodate national objections/ reservations voiced at the pre-proposal stage.
- The complexity of the proposal's provisions.
- The ability of the Commission to allay doubts of member states by the way it gives clarifications and answers questions.
- The judgements made by the Commission on whether, or when, it should accept modifications to its proposals.
- The competence of the Presidency.
- The agility and flexibility of the participants to ...ise (usually through the Presidency and the Commission) and accept compromise formulae.
- The availability of, and willingness of the states to use, majority voting.

...may therefore feel it necessary to engage in damage limitation. This usually involves adopting some combination of three strategies. First, if the proposal contains matters that are judged to be particularly important to national interests (they are commonly referred to as 'red lines'), then this is stressed during the working party's deliberations – in the hope that other delegations will take a sympathetic view and will either make concessions or not seek to press ahead too fast. Second, if the proposal is judged to be not too damaging or unacceptable, then attempts will be made to amend it, but it is unlikely that too much of a fuss will be made. Third, if internal deliberations cannot resolve a matter judged to be of considerable importance, an attempt may be made to 'do a deal' or 'come to an understanding' with other delegations so that a blocking minority of states is created.

The General Secretariat of the Council is always pressing for progress and tries to ensure that a working party does not need to meet too often. But, if any significant contestation between states is involved on a proposal, there may need to be as many as a dozen or so working party meetings before the proposal is passed up the Council system. The first, and possibly also the second, meeting normally consists of a general discussion of key points. Subsequent meetings are then taken up with article-by-article examinations of the Commission's text. If all goes well, a document is eventually produced indicating points of agreement and disagreement, and quite likely having attached to it reservations – in the form of footnotes – that states have entered to indicate that they are not yet in a position formally to commit themselves to the text or a part of it. (States may enter reservations at any stage of the Council process. These can vary from an indication that a particular clause of a draft text is not yet in an acceptable form, to a general withholding of approval until the text has been cleared by the appropriate national authorities.)

The *second stage* is the reference of the working party's document to COREPER – which in the case of Commission proposals for legislation is normally COREPER I – perhaps via one of the Council's high-level committees. Placed between the working parties and the ministers, COREPER acts as a sort of filtering agency for ministerial meetings. It attempts to clear as much of the ground as possible to ensure that only the most difficult and sensitive of matters detain the ministers in discussion. So when the conditions for the adoption of a measure have been met in a working party, COREPER is likely to confirm the working party's position and advance it to the ministers for final approval. If, however, agreement has not been reached by a working party, COREPER can do one of three things: try itself to resolve the issue (which its greater political status might permit); refer it back to the working party, perhaps with accompanying indications of where an agreement might be found; or pass it upwards to the ministers.

Whatever progress proposals have made at working party and COREPER levels – and in practice most matters requiring a Council decision are resolved at these levels – formal adoption is only possible at ministerial level. Ministerial meetings thus constitute *the third and final stage* of the Council's procedure. Items on ministerial meeting agendas are grouped under two headings: 'A points' and 'B points'.

Matters that already have been agreed and on which it is thought Council approval will be given

without discussion, are listed as 'A points'. These can cover a range of matters – from routine 'administrative' decisions to controversial new legislation that was agreed in principle at a previous ministerial meeting but upon which a formal decision was delayed pending final clarification or tidying up. 'A points' do not necessarily fall within the policy competence of the particular Council that is meeting, but may have been placed on the agenda because the appropriate formation of the Council is not due to meet for some time. Ministers retain the right to raise objections to 'A points', and if any do so the proposal may have to be withdrawn and referred back to COREPER. Normally, however, 'A points' are quickly approved without debate (mainly through the Antici and Mertens networks in preparation for the COREPER meetings). Such is the thoroughness of the Council system that ministers can assume 'A points' have been thoroughly checked in both Brussels and national capitals to ensure they are politically acceptable, legally sound, and not subject to scrutiny reservations. 'B points' may include items left over from previous meetings, matters that have not been possible to resolve at COREPER or working party levels, or proposals that COREPER judges to be politically sensitive and hence requiring political decisions. All 'B points' will have been extensively discussed by national officials at lower Council levels, and, on most of them, a formula for an agreement will have been prepared for the ministers to consider.

*   *   *

Ministerial meetings can have very wide and mixed agenda. Four observations are particularly worth making about the sorts of agenda items that arise.

- There are variations regarding what ministers are expected to do. The range of possibilities includes the taking of final decisions, the adoption of common positions, the approval of negotiating mandates for the Commission, the resolution of problems that have caused difficulties at lower levels of the Council hierarchy, and – simply – the noting of progress reports.
- Some items concern very general policy matters, whilst others are highly specialised and technical in nature.
- Most items fall within the sectoral competence of the ministers who have been convened, but a few

do not. 'Extra sectoral' items are usually placed on agendas when everything has been agreed, a decision needs to be taken, and the relevant sectoral Council is not scheduled to meet in the immediate future.

- As well as policy issues, agenda items can also include administrative matters, such as appointments to advisory committees (which are usually placed under the 'A points').

Decision-making procedures

Taking decisions

As is shown in Box 10.5, the treaties provide for three basic ways in which the Council can take decisions: by unanimity, by qualified majority vote, and by simple majority vote.

- *Unanimity* used to be the normal requirement when a new policy was being initiated or an existing policy framework was being modified or further developed. However, treaty reforms since the SEA have greatly reduced the circumstances in which a unanimity requirement applies and it is now confined to just a few policy areas and types of decisions. Included amongst these are policy directional decisions within the framework of the CFSP/CSDP, enlargement decisions, 'constitutional' decisions, and many decisions with financial implications – including virtually all of those touching on taxation. Unanimity is also required when the Council wishes to amend a Commission legislative proposal against the Commission's wishes. Abstentions do not constitute an impediment to the adoption of Council decisions that require unanimity. Furthermore, the TEU provides for 'constructive abstentionism' in the CFSP area, whereby an abstaining state 'shall not be obliged to apply the decision, but shall accept that the decision commits the Union. ... If the members of the Council abstaining in this way represent at least one third of the Member States comprising at least one-third of the population of the Union, the decision shall not be adopted' (Article 31 TEU).
- *Qualified majority voting* now applies to most types of decision where legislation is being made and some – mainly executive – CFSP/CSDP decisions.

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Box 10.5

Decision-making in the Council

Ministers may take decisions in one of three ways:

- By *unanimity*. Although rounds of treaty reform have greatly reduced the number of decisions that require unanimity, it still applies to many types of decision – including all major decisions in such key policy areas as foreign, defence, enlargement, and taxation.
- By *qualified majority*. Prior to the entry into force of Lisbon Treaty-created rules in November 2014, QMV was based on a triple majority system in which qualified majorities consisted of 74 per cent of weighted votes (states were assigned a number of votes in approximate proportion to the size of their population) cast by a majority of member states, with an optional check that the majority represented 62 per cent of the population of the EU (see the sixth edition of this book for details).

  Since November 2014, the triple majority system has been replaced by a simpler double majority system in which majorities require the approval of at least 55 per cent of the member states (72 per cent if the proposal does not come from the Commission) representing at least 65 per cent of the EU's population. To safeguard against the possibility of three of the largest states joining together to limit a proposal, a blocking minority must consist of at least four states.
- By *simple majority*. This applies only to relatively minor and procedural matters.

In practice, there is always a preference for consensus whatever procedure applies.

As was explained in Chapter 7, and as is shown in Box 10.5, QMV rules were changed by the Lisbon Treaty, with the weighted vote and triple majority system being abolished and replaced with a simpler double-majority system in which a qualified majority exists if at least 55 per cent of member states representing 65 per cent of the EU's population are in favour of a proposal. Population size is thus

given a more direct effect, which naturally favours *the larger member states. However, so as to assuage the concerns of states which felt the Lisbon Treaty rules were less favourable to them – which meant particularly Poland and Spain, plus most of the very small states* (all of which had benefited from 'generous' weighted votes), the introduction of the new rules was delayed until November 2014, and until March 2017 a member state could insist that in a particular vote the pre-Lisbon Treaty rules should still apply.

- *Simple majority voting*, in which all states have one vote each, is used mainly for procedural purposes and, since February 1994, for anti-dumping and anti-subsidy tariffs within the context of the Common Commercial Policy (CCP).

Until the mid-1980s, proposals were not usually pushed to a vote in the Council when disagreements between the states existed, even when majority voting was permissible under the treaties. A major reason for this was the so-called Luxembourg Compromise of 1966, which was a political deal between the member states that was interpreted as meaning that, whatever the treaties might say about voting arrangements, any state had the right to exercise a veto on questions that affected its vital national interests – and states themselves determined when such interests were at stake. (For a fuller account of the Luxembourg Compromise and its consequences, see the fifth edition of this book, and Teasdale, 1995.) However, though majority voting has now come to be used and the Luxembourg Compromise is all but dead, the member states still prefer to take decisions by unanimity. They do so because it is recognised that the functioning and development of the EU is likely to be enhanced if policy-making processes are consensual rather than conflictual. Thus, national authorities are unlikely to undertake the necessary task of transposing EU directives into national law with much enthusiasm if they are seen as being domestically damaging, or if they are imposed on a dissatisfied state following a majority vote in the Council. Nor is it likely that national bureaucracies will be helpful about implementing unwanted legislation. More generally, the overuse of majority voting on important and sensitive matters is likely to create grievances that could have disruptive implications right across the EU's policy spectrum.

For good reasons, as well as perhaps some bad, decision-making in the Council thus usually proceeds on the understanding that difficult and controversial decisions are not imposed on dissenting states without full consideration being given to the reasons for their opposition. When it is clear that a state or states have serious difficulties with a proposal, they are normally allowed time. They may well be put on the defensive, asked fully to explain their position, pressed to give way or at least to compromise, but the possibility of resolving an impasse by a vote is not the first port of call. Usually the item is held over for a further meeting, with the hope that in the meantime informal meetings or perhaps COREPER will find the basis for a solution. All states, and not just the foremost advocates of retention of the veto (as a guarantee of state sovereignty over any given issue) – initially France and from the early 1980s the UK – accept that this is the only way Council business can be done without risking major divisions.

But though there are good reasons for preferring consensus, it came to be accepted from the early 1980s that the unanimity principle could not be applied too universally or too rigidly. It was recognised that QMV would need to be increasingly used, and in practice it has been so. Several interrelated factors explain this increased use of majority voting.

- Attitudes have changed. There has been an increasing recognition, even amongst the most rigid defenders of national rights and interests, that decision-making by unanimity is a recipe not only for procrastination and delay, but often for unsatisfactory decision-making ('lowest common denominator' outcomes), or even no decision-making at all. The situation whereby consensus remains the rule even on issues where states would not object too strongly to being voted down, has come to be seen as unsustainable in the face of the manifest need for the EU to become efficient and dynamic in order, for example, to assist its industries to compete successfully on world markets.
- The 'legitimacy' and 'mystique' of the Luxembourg Compromise were dealt a severe blow in May 1982 when, for the first time, an attempt to invoke the Compromise was overridden. The occasion was an attempt by the UK government to veto the annual agricultural prices settlement by proclaiming a vital national interest. The other states did not believe that such an interest was at stake and took the

view that Britain was attempting to use agricultural prices to force a more favourable outcome on concurrent negotiations over UK budgetary contributions.

- By increasing the number and variety of interests and views represented in the Council, EU enlargements have made unanimity all the more difficult to achieve and hence have increased the necessity for majority voting.
- All treaties since the SEA have extended the number of policy areas in which majority voting is constitutionally permissible (see Part II for details). Moreover, the discussions that have accompanied treaty reforms have been based on the assumption that the new voting provisions would be used.
- In July 1987, the General Affairs Council, in accordance with an agreement it had reached in December 1986, formally amended the Council's Rules of Procedure. Amongst the changes was a relaxation of the circumstances by which votes could be initiated, whereas previously only the President could call for a vote, since the amended Rules came into effect it has been the case that any national representative and the Commission also have the right, and a vote must be taken if a simple majority agrees.

Figures on the use of QMV are, in fact, lower than might be supposed. Votes are now explicitly used in about 20 per cent of the cases where they could be. When there are formal votes, it is unusual for more than a couple of states to abstain or vote against. (There is a considerable academic literature on voting in the Council. See, for example, Golub, 2012; Häge and Naurin, 2013; Hosli *et al.* 2011; Naurin and Wallace, 2008; Thomson, 2011.)

Such low figures for the use of votes do not, however, provide a full picture of the impact of QMV on voting behaviour in the Council. This is because what really amounts to majority voting can occur without a formal vote being taken. In about 10 per cent of cases they are implicitly used in the sense that states that are known not to be in favour of a proposal choose not to register a dissenting vote. This can be because a state that is opposed to a proposal that otherwise commands general support prefers to try to extract concessions through negotiation – perhaps at working party or COREPER stage – rather than run the risk of pressing for a vote and then finding itself outvoted. Or it can be because the Presidency announces that 'we appear to

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... the importance of QMV lies not only in the ...-ber of votes that are held. Its existence affects ...-cil processes in many ways, most obviously in ...t when it is available – and its 'reach' has spread ...-ly over the years – it not only permits votes to be ...-en but it also forces states that are dissatisfied with ...roposal to look for deals with other states and/or ...-er ways to protect themselves. Where, by contrast, ...-imity applies, states can be encouraged to 'grand-...-and' and to look for 'compensations' in areas that ...-ve little to do with the proposal in hand.

...hat all said, the impact of QMV should not be ...-estated. As Box 10.4 shows, many factors combine ...o determine the progress of proposals through the

Council. Crucially, a strong preference for consensual decision-making remains a key feature of Council decision-making processes, and can be expected to remain so. Quite apart from the fact that unanimity is still required by the treaties in some important areas, there continues to be a strong preference for trying to reach general agreements where 'important', 'sensitive', and 'political' matters, as opposed to 'technical' matters, are being considered. This may involve delay, but the duty of the national representatives at all Council levels is not only to reach decisions but also to defend national interests.

The conduct of meetings

The formal processes by which Council meetings are conducted and business is transacted are broadly similar at ministerial, COREPER, and working party levels.

With working parties normally attended by at least 100 people and COREPER and ministerial meetings by about 150, meetings have to be held in large rooms, as photograph 10.1 shows. At one end or one side of the meeting table sits the state that is in the Presidency chair – whose delegation is led by the most

Photo 10.1 A Council meeting in session: Ecofin Council, 17 February 2015

senior figure present from the state; at the other end or side sit the Commission representatives; and ranged between the Presidency and the Commission are the representatives of the member states, with national delegations sitting together. The delegation from the country holding the Presidency chair sits to the right of, but separate from, the Presidency team.

As indicated earlier, the Presidency plays a key role in fixing the agenda of Council meetings, in terms of both content and the order in which items are considered. The room for manoeuvre available to the Presidency should not, however, be overstated, for quite apart from time constraints there are several other factors that serve to limit options and actions. For example: it is difficult to exclude from the agenda of Council meetings items that are clearly of central interest or need resolution; the development of rolling programmes means that much of the agenda of many meetings is largely fixed; and anyone in a COREPER or a ministerial meeting can insist that a matter is discussed provided the required notice is given. Therefore, a Presidency cannot afford to be too ambitious or the six-month term of the state in the chair will probably come to be seen as a failure. With this in mind, the normal pattern for an incoming chair of a sectoral Council is to take the view that of, say, eight proposed directives in his or her policy area, he or she will try to get four particular ones through if conditions are favourable (especially since this will also involve approval by the EP). This is then reflected in the organisation of Council business, so that by the end of the six-month term two may have been adopted by the Council (and the EP) whilst another two may be at an advanced stage (with trilogues with the EP possibly already having commenced). This means that such files would be synonymous with 'ripe fruit hanging on lower branches of a tree waiting to be easily picked' by an incoming Presidency.

At ministerial level, Council meetings can often appear to be chaotic affairs: as indicated above, not counting interpreters there can be up to 150 people in the room – with each national delegation represented by a team of perhaps four or five at any one time, the Commission by a similar number, and the Presidency being supported by both General Secretariat and national officials; participants frequently change – with ministers often arriving late or leaving early, and officials coming and going in relation to items on the agenda; ministers may need to be briefed by officials if new points are raised; there are huddles of delegations during breaks; requests for adjournments and postponements are made to enable further information to be sought and more consideration to be given; and contact may be made with national capitals for clarifications or even, occasionally, for authorisation to adopt revised negotiating positions. Not surprisingly, delegations that are headed by ministers with domestic political weight, that are well versed in EU ways, that have mastered the intricacies of the issues under consideration, and that can think quickly on their feet, are particularly well placed to exercise influence.

A device that used to be much employed at Council meetings, especially when negotiations were making little progress, was the *tour de table* procedure, whereby the chair invited each delegation to give a summary of its thinking on the matter under consideration. This ensured that the discussion was not totally dominated by a few, and more importantly it allowed the position of each member state to be established. It could thus help to reveal possible grounds for agreement and provide useful guidance to the President as to whether a compromise was possible and/or whether an attempt should be made to proceed to a decision. Enlargement has made the use of this procedure less practical because it is so time consuming, but Presidencies do still sometimes employ it if there seems to be no other way forward. When it is employed, only representatives from states that are opposed to a proposal are encouraged to speak, and then their interventions are normally restricted to three minutes.

Enlargement has also had another effect on the conduct of meetings: by greatly increasing the number of people who attend it has made meetings more formal. It is not practically possible to engage in 'real' negotiations in a room of 150 or so, with microphones being used, with a considerable physical distance often between people who are addressing each other, and with a heavy reliance on translators. The fact is that since the 2004 enlargement an increasing amount of time at Council meetings – especially at ministerial level meetings – is taken up with heads of delegations virtually reading out what amount to pre-prepared statements.

The nature of meetings thus places a considerable burden on the Presidency to find a way forward on disputed matters. Much of this task is most fruitfully undertaken before and between formal meetings and

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... involve, for example, leaning on the Commission ... amend its proposal, persuading a disgruntled state ... take a softer line, and seeking to isolate the most ...-line' state in the hope that it will back down. ... the Presidency can use formal meetings too. So, ... example, an astute and sensitive chairperson is ... able to judge when a delegation that is causing ... ties is not terribly serious: when, perhaps, it is ... awkward for domestic political reasons and will ... ultimately stand in the way of a decision being ... A poor chairperson, on the other hand, may ... a proposal to drag on, or may rush it to such ... extent that a state which, given time, would have ... to a compromise may feel obliged to dig in ... heels.

Informal processes and relationships

... final feature of Council decision-making proce-
...res, that has already been suggested but merits
... made explicit, is the extremely important role of
... processes and relationships. Three examples
... be taken to demonstrate this.

First, many understandings and agreements are
...ched at the lunches and dinners that are very
... a part of ministerial meetings. These meals are
... only by ministers and a minimal number of
...slators (most ministers can converse directly with
... another, usually in French or English).

Second, when difficulties arise in ministerial nego-
...ations a good chairperson will make advantageous
... of scheduled or requested breaks in proceedings to
...lore possibilities for a settlement. This may involve
...ding off-the-record discussions with a delegation
...at is holding up an agreement, or it may take the
...rm of a tour of key delegations – perhaps in the
...mpany of the relevant Commissioner and a couple
... officials – to ascertain 'real' views and fall-back
...ositions.

Third, what happens between meetings, at all lev-
...els, is frequently crucial in shaping and determining
...cisional outcomes. When problems arise, EU policy
...ractitioners – in the institutions, in the national
...Permanent Representations, and in national capitals
...oo – are in frequent contact with one another via
...telephone, email, and informal conversations. Indeed,
...many of the policy practitioners who are based in

Brussels come to know each other extremely well as a result of dealing with the same *dossiers* and attending the same meetings. They use these contacts – which can become social as well as professional – to assist with the resolution of policy difficulties. So, for example, national officials based in the Permanent Representations may know their counterparts in other Permanent Representations well enough to be able to judge when a state is posturing and when it is serious, and when and how a deal may be possible. A sort of code language may even be used between officials to signal their position on proposals. So if, for example, a national representative declares that 'this is very important for my minister', or 'my minister is very strongly pressurised on this', the other participants recognise that a signal is being given that further delib-
erations are necessary at their level if more serious dif-
ficulties are to be avoided when the ministers gather.

Concluding Remarks

In recent years a number of important reforms have been made to the structure and functioning of the Council. These have sought to deal with such per-
ceived problems as power being too dispersed, insuffi-
cient cohesion between and sometimes within sectoral Councils, and decision-making processes still often being rather cumbersome and slow.

Arguably the reforms have still not gone far enough. Many have argued that what is most needed to deal with at least some of the weaknesses is the creation of a 'super' Council of European Ministers, armed with the authority to impose an overall policy pattern on subsidiary sectoral Councils. However, though such a Council could indeed be useful for identifying priori-
ties and knocking heads together, it would be unwise to hold out too many hopes for it, even if the practical obstacles to its establishment could be overcome. For, other than at the most general of policy levels, any dream of the national politicians who are at the apex of the Council system being able to rationally for-
mulate and implement clear and overarching policy frameworks in some sort of detached way that would serve the 'EU interest' just does not accord with politi-
cal realities.