# The Council

## EU 25 – Creating a New Design for the Council

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**Abstract**

The enlargement of the European Union to 25 Member States is having a particularly strong impact on the work of the Council. It has made it all the more important to streamline and better coordinate the Council's configurations and preparatory bodies. The increase from 11 to 20 official languages poses unprecedented practical challenges, and it remains to be seen whether the new linguistic regime will make it possible to cope. New guidelines for the presidency and delegations have been adopted concerning preparation and management of meetings. Other innovations are being explored under the Dutch Presidency. The first months of experience in EU 25 suggest that continuing efforts will be required to ensure that Council business can be managed efficiently and effectively in the coming years.

The Council of the European Union has visibly changed in the Union of 25 Member States. Indeed, its increased diversity can be seen as soon as one enters the newly-decorated cafeteria on floor 50 of the Council's headquarters in the Justus Lipsius building in Brussels, where every Member State contributed to the 'new look' by selecting one particular chair each.[1] Diversity in culture, tradition and history is expressed via different materials, design and style of chairs: all different, yet all serving the same purpose – one Council, with 25 different faces.

The enlargement to 25 Member States has not only increased diversity, however. It has also brought to a head various practical challenges for the management of Council business which had already begun to emerge in EU 15 in view of the ever-increasing scope of EU activities and the political development of the institutional system, notably the creation and extension of the codecision procedure.

Although public attention has focused on the difficult discussions over voting arrangements, the real problems for the Council are to be found elsewhere. The key practical questions which have to be faced include the following:

- How should the Council structure itself in order to ensure coordination and coherence between sectors?
- How will the Council manage the limited resources available for the organisation of meetings?
- How can one plan and manage meetings efficiently with 25 national delegations?

This article addresses these questions in the light of experience in the Council up to October 2004, and offers a preliminary evaluation of some of the solutions which have been proposed to deal with them.

## 1. Streamlining, Coordination and Coherence

### Council configurations

Even though the Council is a single institution for legal purposes, in practice it meets in different configurations. The proliferation of these configurations has led to repeated initiatives in recent years to streamline the Council's work and ensure greater coordination.

Originally, in the European Coal and Steel Community, only the Foreign Ministers came together in the Council. Subsequently, other ministers started meeting within the institutional framework, constantly increasing the number of sectoral Councils. The Foreign Ministers continued to play a more important role than the other ministers, in view of the fact that they were made responsible also for general affairs, and therefore in charge not only of for external relations but also of the overall coordination of the work of the Council. It soon became clear, however, that the number of formations needed to be limited to improve coherence of the work of the Council. Hence, they were reduced from over twenty in the 1990s to 16 in the year 2000 (following the European Council in Helsinki 1999). At the European Council in Seville in 2002, this number was further reduced to nine configurations, later annexed to the new Rules of Procedure.[2]

Before fixing this list, long discussions took place about the idea of separating the General Affairs Council from the External Relations Council. It was widely argued that it made sense to distinguish clearly the coordination tasks from the foreign policy tasks, since these are two completely different areas of action. This idea, however, was resisted by many Ministers of Foreign Affairs. In the end the General Affairs and External Relations Council (GAERC) was left as a single

*Table 1: Council Configurations after the European Council in Seville 2002*

**General Affairs and External Relations (GAERC)** (incl. ESDP and development policy)

**Economic and Financial Affairs (ECOFIN)** (incl. budget)

**Justice and Home Affairs** (incl. civil protection)

**Employment, Social Policy, Health and Consumer Affairs**

**Competitiveness (Internal Market, Industry and Research)** (incl. tourism)

**Transport, Telecommunications and Energy**

**Agriculture and Fisheries**

**Environment**

**Education, Youth and Culture** (incl. audiovisual affairs)

formation, even though in practice it meets separately with separate agendas and it is up to Member States to decide which Minister or Secretary of State should be sent to deal with General Affairs items.[3] The Constitution foresees a definitive splitting of the two functions by creating two different configurations.

At the same time, certain other Council configurations have started to assume strong coordinating powers. This has most notably been the case of the Economic and Financial Affairs (ECOFIN) Council. Moreover, new kinds of horizontal function are being developed. A new 'Competitiveness' Council was created at Seville, responsible for internal market, industry and research. This had the aim not only of reducing the number of configurations, but also of giving more political weight to the policy areas concerned and thus building a counterweight to the powerful ECOFIN. Moreover, the European Council has explicitly called on the Competitiveness Council to exercise the 'horizontal' function of building 'competitiveness' concerns into all EU policies. These moves may also have improved coherence of the Council work, but may have negative impacts on efficiency and practical organisation. In a statement concerning Annex I of the Rules of Procedure it is stated that 'The Presidency will organise Council agendas by grouping together related agenda items, in order to facilitate attendance by the relevant national representatives (…).'[4] Given the completely different organisation and distribution of competences within Member States this is not an easy task. Hence, for practical reasons, some of the parts of merged Councils continue to exist in their own little sub-Council configuration, for example in the area of research, where Councils are held with only research items on the agenda, while still being called 'Competitiveness Council'.

### Council preparatory bodies

Similar efforts have taken place to create greater coherence among the committees and working parties which serve as the Council's preparatory bodies. After increasing over the years to around 250, the number of different Council preparatory bodies has now been significantly reduced to about 160.[5] This reduction went hand in hand with a near doubling of the average number of days that a Council working party meets during a presidency.

At the same time, however, more and more 'high-level groups' have been created. These are often seen as a possible complication for the coordination role of the Permanent Representatives Committee (Coreper), and sometimes seem to be without an added value. The problem is that their creation is mainly due to the political wish of one sectoral Council to underline the importance of a certain policy area, but without following any kind of coordinated strategy, either on national or on EU level.

### The role of Coreper

The importance of the role of Coreper within the Council system has always been recognised, and its co-ordination role has been continuously strengthened, although the two parts of Coreper – Coreper I (the Deputy Permanent Representatives) and Coreper II (the Permanent Representatives) – have undergone slightly different developments.

The role of Coreper I has been strengthened particularly by the codecision procedure, in which it plays the leading role in negotiations with the European Parliament. 'First- and second-reading agreements' are mainly negotiated via the respective working group and Coreper I, and Coreper I usually constitutes the Council

delegation for conciliation meetings.[6] This has also considerably increased the workload of Coreper I, which more and more regularly meets twice a week (on Wednesdays and Fridays).

As for Coreper II, the establishment of the Political and Security Committee (PSC) has been seen by some as a slight loss of influence, but Coreper II was compensated for that by the strengthening of its role (and the role of the GAERC) concerning the preparations of European Council meetings.[7] The overall workload of Coreper II has considerably grown as well, given the increase of dossiers in the area of Justice and Home Affairs.

This means that Coreper must be 'used' within the system with much more care and better preparation. The new Annex IV to the Council Rules of Procedure thus states that a dossier shall be referred to Coreper only when considerable progress has been achieved. The key to a successful Coreper meeting is a good preparation via the Antici and Mertens Groups,[8] on the one hand, and good quality working documents from the General Secretariat of the Council on the other. For the future one may also consider making more use of the Antici and Mertens groups, conferring on them more 'special tasks' in the preparation process and thereby alleviating the workload of Coreper itself. Annex IV suggests, for example, that any other business points for Council meetings should not necessarily be announced in the Coreper meeting itself, but during the preparations for that Coreper meeting, thereby pointing to the Antici and Mertens Groups. In the meantime it has become a practice that these groups spend quite some time in discussing a Council agenda in order to keep the relevant discussions in Coreper as short and as focused as possible. This approach can only be successful if national administrations acknowledge this function and provide the necessary briefing and information to their Antici and Mertens representatives in time.

***Programming of presidencies – more continuity***
It is often claimed that the six-monthly rotation of the Council presidency causes the institution's agenda and work programme to be not very consistent and coherent, which in turn makes practical work all the more complicated. In reality, however, the room for manoeuvre available to presidencies in the area of agenda-setting has become very small, given that the topics are more and more predetermined by the 'rolling agenda' which is handed over from one presidency to the next. In addition, at least in areas of Community competence, the presidency can only work on the basis of a Commission proposal for all new legislative initiatives. Without such a proposal, the presidency can only launch political initiatives with no legal value, for example by adopting atypical acts like 'Council conclusions' (which

are precisely the kind of acts which should be avoided even more in the future so as to focus the work of the Council on legislative issues and not waste precious time and resources on the adoption of acts which are only the expression of political will with no further implications).

The role of the presidency today is more one of setting priorities within the existing programme rather than thinking of new initiatives to be added. The Seville European Council tried to address the continuing problems regarding coherence. It established a three-year working programme for the six presidencies concerned, and provided that each year the two presidencies involved have to establish an annual operational programme of Council activities for the following year, thus moving from the rather short-term approach of a six-month presidency programme to more long-term planning of the work of the Council. The first of these three-year programmes for the period of 2004-2006 was presented in December 2003, where the first annual programme – that of the Irish and Dutch presidencies – was also presented after discussion in the General Affairs and External Relations Council. In December 2004, the second annual programme for the Council will be presented by Luxembourg and the UK. Together with the planning cycle of the Commission, this sets a quite clear framework for each presidency and is further improving the coherence of the work of the Council.

### 2. Limited Resources Linked to the Question of Languages

The most obvious, and also the most difficult, practical challenge for the Council is the near doubling of the number of official languages from 11 to 20. The institutions started to prepare for this some time ago, adapting the technical facilities in the meeting rooms on the one hand and organising recruitment of new staff (translators and interpreters) on the other. There are presently two rooms in the Council building with interpretation facilities for a full '20-20'[9] language regime, and additional meeting facilities are under construction. The main problem, however, concerns the number of translators and interpreters needed to handle the new languages. It will take some time for the linguistic divisions and available interpreters to be brought up to their full complement. This is having a serious impact on the speed and the amount of translations that can be carried out by the Council Secretariat and limits the number of interpreters available for meetings.[10]

Already at the Helsinki European Council in 1999, it was stated that 'new imaginative and pragmatic solutions are needed on these issues, while respecting the basic principles, if the Council is to continue to

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operate effectively.'[11]  Following a presidency report to the Copenhagen European Council in December 2002, the Council was invited to look into possible solutions and put a new system in place.

Concerning translation, the Council Secretariat took the decision that only so-called 'core documents' will be translated into all the languages. These are, in the first place, all documents for Council meetings (including Council agendas, A-item notes, opinions of the Legal Service, documents for adoption or discussion and others), as well as documents produced at so-called 'milestone stages', which means working documents (draft legislation) which are presented at an 'important stage' in the working party and when the file is referred to Coreper.  In practice this means that many working documents which are discussed on the working group level will be available in only a limited number of languages.[12]

Even for these core documents, however, resources are limited. Hence, the presidency is asked to establish clear priorities. Council activities need to be carefully planned by the presidency and the General Secretariat, respecting the deadlines set out in the rules of procedure, but always leaving some space and capacities for urgent last minute requests.

Concerning interpretation, something very remarkable has happened – the simple fact that it was even discussed. In the past, the issue of languages has been virtually taboo for most Member States. Given the shared – and obviously urgent – goal of enabling the Council to work efficiently, Member States did work out new arrangements, since it was obvious that a full language regime (20-20) for all meetings would simply be impossible to implement. These foresee different interpretation regimes for different kinds of meetings, ensuring full interpretation only for a limited number of meetings (European Councils, ministerial Council meetings, Conciliation committees and a list of 20 preparatory bodies). The number of working parties which would meet without any interpretation was doubled from about 25 to about 50. For all the other meetings a system of 'interpretation on request' applies. A lump sum is foreseen for each language in the Council budget. If this is exceeded, the Member States in question will have to cover the interpretation costs themselves.

This means in practice that the resources to organise meetings have become quite limited. The presidency, which is responsible for the planning of meetings, therefore has to invest a lot of time and energy in thorough planning and preparations, and to set clear priorities. The diversified system, with different arrangements applying for different kinds of meetings, leaves the presidency much less flexibility. If a meeting of the environment group, for example, needs to be cancelled, the room, the interpretation team cannot automatically be used for another working group, since their language needs might be different. It also means that the meetings taking place will need to be even more efficient in getting their work done.

It is quite likely that, given the possible difficulties in organising formal meetings, informal consultations will become even more important than in the past. This means that the presidency and the Council Secretariat will have to make an extra effort to ensure transparency, and to avoid Member States feeling excluded from certain consultations and thus creating a negative atmosphere for the formal negotiations.

It remains to be seen whether Member States will be open to even greater flexibility on the language issue if it appears that the efficiency of the Council work and progress in European integration as a whole may be threatened by the linguistic arrangements.

## 3.    Managing Meetings and Achieving Results

The increased number of delegations around the table, and the limited time and resources available for meetings, mean that efficient management of meetings is now all the more important.  To this end, a Code of Conduct was worked out and then integrated into the new Rules of Procedure of the Council as Annex IV, called 'Working methods for an enlarged Council'. These set out some general guidelines for the presidency and for delegations concerning how to prepare and conduct meetings. In Article 20 of the Rules of Procedure, the presidency is asked to ensure compliance with these provisions.

Five main ideas underlying the specific provisions can be identified:
- more written contributions,
- grouping of like-minded Member States,
- greater discipline from delegations in meetings (under the guidance of the presidency),
- making efficient use of Coreper, and
- a strong and active role of the presidency during and be-tween meetings.

Concerning the first two points, delegations are asked to put forward their position in writing before meetings. These should include, if appropriate, specific drafting suggestions. They may either be presented by one delegation or, where possible, jointly by like-minded delegations. The idea of submitting joint position papers from several delegations on a regular basis seems to be rather difficult to implement. Even in the case of 'similar' positions, Member States may diverge at a certain stage during the negotiations, given the different backgrounds that lead to any particular position. It is also suggested that those like-minded Member States should nominate one speaker, who takes the floor in the meeting – also on ministerial

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level – on their behalf. Judging from experience up to October 2004, in particular concerning Council meetings, it is mainly the new Member States which make an effort to comply with these provisions. They are responsible for by far the greatest share of the written contributions received, and they also try to apply the concept of 'group speakers'. The 'old' Member States seem to be more hesitant in this respect. This practice also poses quite a new challenge for national coordination systems. Coalition-building has always been an important point, and is usually the key to successful negotiations, but it is quite a different matter to put a 'joint' position in writing, or to agree on a 'group speaker', rather than just forming part of a more or less 'loose coalition'.

The presidency is asked to advance work between meetings by carrying out oral or written consultations of some or all delegations on specific points, always reporting back on the results. The presidency is to give delegations all information needed by them for properly preparing the next meeting, to set out its intentions during the meetings on the different agenda points, and 'give as much focus as possible to discussion'. A presidency which is not able to show a certain amount of leadership concerning the managing of the meetings may be seen as very friendly and pleasant, but at the end of the day will be criticised for having wasted precious time. It is also up to the presidency to remind delegations of time-saving behaviour during the meetings – such as limited speaking time or not repeating positions already stated – and itself to comply with the provisions foreseen for that purpose, such as not having full table rounds.

A particular challenge will be how to keep ministerial Council meetings sufficiently interesting for ministers to want to attend, and to ensure that real political discussions take place at this level, rather than letting ministers engage in simple drafting exercises. It seems to be a general tendency in all sectoral Council meetings in particular, that real political discussions have become less common. This trend could be accentuated by the enlargement, with 25 ministers now sitting around the table and more than 100 people in the meeting room itself.

The idea of having so-called 'lead speakers' on certain agenda items (mainly those for general 'orientation debate') is currently being tested by the Dutch presidency and must be seen as 'work in progress'. The fact that everyone who wants is appointed often leads to there being up to 10 or more lead speakers on one point, while not avoiding that other ministers may also want to take the floor. It is also unclear whether these lead speakers will concentrate on their own national position, present general ideas linked to the topic or

operate as 'group speakers' taking the floor on behalf of several Member States as outlined before. The future will show if this concept can be further improved and if it can contribute to more efficient Council meetings.

The ECOFIN Council provides one example of how business can be conducted in a different, and quite efficient, way. For certain agenda items, the chair of the Economic and Financial Committee or another key actor introduces the agenda item, outlining the two or three main outstanding political points, and addressing direct questions to the ministers. This normally ensures a focused debate in which ministers do not only read out their prepared speaking notes, but enter into real discussions and negotiations. A similar function could be played more strongly by the presidency – for example also giving the floor to the Coreper I or Coreper II chairman for introducing agenda items, if appropriate – or by the Commission in other Council configurations.

If formal meetings do not remain attractive for ministers, more and more political discussions may be shifted to the informal level: informal ministerial meetings, lunches or dinners during Council meetings or even informal bi- or multilateral consultations between certain Member States. One of the main advantages of all these informal meetings is that there quite simply are less people around the table and that the atmosphere is completely different. Ministers feel more comfortable to discuss the real political problems among themselves, not in the presence of hundred officials around the table, as is the case during formal Council meetings. It also has the advantage that they can 'freely' discuss the political issues without having to refer to the specific wording in a formal document. On the other hand, this also entails some risks. First, the danger of 'misunderstandings' grows with the degree of informality of negotiations. The task of the Presidency (and Coreper) of putting the agreement into concrete wording in a document can become quite challenging. Second, informal consultations with only a limited number of delegations may make other ministers feel left out, which could in turn lead to strong opposition from these Member States for purely procedural reasons.

The last point to be mentioned here is the issue of qualified-majority voting. In the past, the tradition has always been to aim at consensus, even if it was a decision to be taken by qualified majority, and as far as possible to avoid Member States being outvoted. This general strategy has been very successful and is an expression of that 'special EU spirit'. The future will show whether it will be possible to continue with this tradition. In all events, the presidency will have to be even better at judging the atmosphere in a meeting, deciding whether a dossier is ripe for conclusion and if a compromise is in the air.

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## Concluding Remarks

The Council in the enlarged Union faces major challenges. At the moment it is quite difficult to judge the impact of the changes and to assess whether the responses which have been proposed so far will be sufficient to deal with them efficiently.

Meetings, in particular those of the Council and Coreper, do not presently last longer than they did in EU 25 and work is progressing. Yet this must be seen in the light of the quite special situation prevailing in the autumn of 2004. In particular, the workload surrounding Community legislation is considerably reduced at present, compared to what would be usual at this time of year. This is mainly due to the facts that a large number of first and second reading agreements were reached before May 2004, that the new European Parliament started work only after the summer and that a new Commission was only scheduled to take office on 1 November – a date which has now been further delayed. But from the experience gained so far, it is the level of the Council of Ministers where most emphasis will have to be given concerning further reforms rather than the preparatory bodies. There seems to be little doubt that delays are to be foreseen within the decision-making procedure because of languages (translation of documents). This is something that will improve over time, once the recruitment of the full number of necessary translators and interpreters has been concluded. It remains to be seen, however, whether further reforms may need to be envisaged.

Dealing with these challenges requires, in the first place, better planning, preparation, programming and prioritisation on the part of the presidency and the Council Secretariat. The suggested reforms demand discipline and commitment from each and every delegation around the table if they are to be successful. Some first, important, steps have already been taken. However, reforming the Council's working methods and adapting to the changes affecting the conduct of Council business, will be a continuing process.

The next presidencies, together with the Council Secretariat and the other delegations and institutions involved, will have to evaluate the impact of the different measures which are being implemented in order to ensure that the successful ones provide the greatest possible results, while continuing to develop creative ideas and approaches for the future.

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## NOTES

[1]  The refurbishing of the cafeteria was an initiative organised and financed by the Dutch presidency.
[2]  Council Decision of 22 March 2004 adopting the Council's Rules of Procedure, Annex I. Official Journal of the European Union, L 106 of 15 April 2004.
[3]  ibid,. Art. 2 and Annex I.
[4]  ibid. Annex I.
[5]  Doc. 11931/04 of the Council of the European Union.
[6]  The Member State holding the presidency is represented on ministerial level.
[7]  Introduction of the so called "draft annotated agenda" to prepare the Presidency Conclusions of European Councils, mainly discussed and drafted in Coreper II.
[8]  The Antici Group is composed of officials from each Permanent Representation and the Commission tasked with preparing the work of Coreper II. The Mertens Group does the same for Coreper I.
[9]  20-20 meaning that all the 20 official languages can be spoken in and listened to.
[10]  For interpretation at meetings within the Council framework interpreters of DG SCIC (Commission) are used.
[11]  Presidency Conclusions of the European Council of Helsinki, December 1999, Annex III: 'An effective Council for an enlarged Union – guidelines for reform'.
[12]  The Commission proposal is available in all the official languages. ❏