The EU Council of Ministers
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Introduction

The Council of the European Union (not to be confused with either the European Council or the Council of Europe in Strasbourg) is the EU institution in which the 28 Member States at ministerial (i.e. political) level meet, discuss, decide and legislate. It is the body to which the European Commission makes its proposals and which, with the European Parliament, adopts EU legislation.

The Council of Ministers is in law a unitary body, i.e. there is in formal, legal terms only a single Council. In practice it has always met in different compositions according to the issues needing to be considered, with the result that there are several formations of the Council (a list appears below), plus the General Affairs Council whose function is to deal with cross-cutting issues and to ensure coherence. Each such formation is attended by the specialist Ministers dealing with the issues in question and is chaired by the Minister from the Member State holding the Presidency at the time (the Presidency rotates every six months). The one exception is the Foreign Affairs Council, which is chaired by the High Representative for Foreign Affairs & Security Policy.

The various formations of the Council meet as often as their business requires: the more active ones monthly. Their meetings are prepared by committees of Member States representatives at official level. The main committees are the two Committees of Permanent Representatives at ambassadorial level. Equivalent committees exist in some specialist areas (agriculture, economy and finance, trade and justice and home affairs). These committees are themselves prepared by working groups of middle-ranking officials from each Member State.

This paper is one of a series of Senior European Experts’ papers on the institutions of the EU; a summary paper in less detail covering all the institutions is also available.

Constitution and Powers of the Council

The main details of how the Council should operate are laid down in Article 16 of the Treaty on European Union (TEU).

The preparatory work for the meeting done in advance by the Committee of Permanent Representatives (see below) means that very often agreement will have been reached by Member States at that level and there will be no need for discussion by Ministers. Items where there is such prior agreement are marked on the agenda as “A” points; other items are “B” points.

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1 The European Council is a meeting of Heads of State or Government of the Member States of the EU; the Council of Europe is a co-operation body to which almost all European states (including Russia) belong.

2 See Senior European Experts, The Institutions of the European Union, July 2012
Council meetings are generally in two parts: that relating to draft legislation and any votes is held in public; other discussions take place in private. Ministers may commit their government to support a particular policy or piece of legislation at a Council meeting and cast their vote accordingly. They might also enter a scrutiny reserve – that is, decline to take a position on the grounds that their parliament is still considering the matter. The UK has European Union scrutiny committees in both Houses of Parliament; it is usual but not invariable for Ministers to wait for them to report on a proposal before committing the UK to a particular position in Council. British Ministers make a statement to parliament on the outcome of each Council.

As the Council is legally one body, any group of ministers meeting as the Council can approve legislation even though it is outside their policy area. For example, if an item of legislation has been agreed on by Member States it may be approved as an “A” item at the next Council meeting even though, for example, it concerns the environment but the meeting is of trade Ministers.

The Lisbon Treaty reduced the number of Council configurations; there are now 10:

- General Affairs (it co-ordinates the work of the EU with the President of the European Council and the Commission)
- Foreign Affairs & Security
- Economic & Financial Affairs
- Justice and Home Affairs
- Transport, Telecommunications & Energy
- Agriculture & Fisheries
- Environment
- Education, Youth, Culture & Sport
- Employment, Social Policy, Health & Consumer Affairs
- Competitiveness (internal market, industry research and space).

There was a separate Budget Council in the past but the EU budget is now adopted by the Economic & Financial Affairs Council (with the European Parliament). The long-term budgetary perspective and envelope covering a seven year period, known as the Multi-Annual Financial Framework, is the responsibility of the General Affairs Council. Council meetings are held in Brussels except for those in April, June and October, which are held in Luxembourg.

Ministers often meet informally, either separately from or during a Council meeting, and agreed conclusions but not legal decisions are sometimes reached at these meetings.3 Although these are not part of the formal proceedings of the Council, Ministers often report brief details about the items discussed to their parliaments afterwards.

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3 Such informal meetings are often called “Gymnich meetings”, after Schloss Gymnich near Bonn, where the first such meeting was held in April 1974: Christopher Hill & Karen E. Smith (eds.), *European Foreign Policy: Key Documents* (London: Routledge, 2000), pp. 97-98
Finance Ministers of Member States in the eurozone invariably meet informally before each Economic & Financial Affairs Council as the Eurogroup; although this body was recognised in a protocol attached to the Treaty of Lisbon, it is not a meeting of the Council and has no power to make decisions that bind the EU. But the eurozone crisis has increased the importance of Eurogroup meetings as it has become the main forum for the eurozone countries to agree on policy on issues that particularly concern them.

Methods of Working

Supporting Committees

As referred to above, the Council in all its various formations is underpinned by a structure of over 150 committees and working groups composed of officials representing Member State governments.

At the lowest level are the working groups, where the detailed negotiations among Member States take place to arrive at common solutions. Between the working groups and Ministerial/Council levels are several senior/ambassadorial level committees. They can take a wider view of outstanding issues not soluble at the lower level. They also prepare the ministerial level discussion or negotiation if they cannot settle the issue themselves.

These committees are: the Committee of Permanent Representatives (known by its French acronym as COREPER) for external relations and general affairs and for co-ordinating the work of the EU as a whole; the deputy permanent representatives, who are responsible for a large amount of Community legislation; the Economic and Financial Committee; the Special Committee for Agriculture; the 133 Committee, for trade policy issues (known by the treaty article which created it); the Co-ordinating Committee for Justice and Home Affairs (COSI); and the Political and Security Committee (PSC), for foreign, security and defence policy. Member States now appoint an ambassador in addition to their permanent and deputy permanent representatives to the EU to serve on the PSC; a reflection of the increased importance of this Committee since it was first established on an interim basis in 2000. The PSC is chaired by a senior member of staff within the EU’s External Action Service.

The Presidency

While the role of the rotating Presidency was reduced by the Lisbon Treaty, it still matters, particularly in respect to legislation where negotiation with the European Parliament is necessary.

Voting

When legislating, the Council acts on proposals from the European Commission (although it can amend it – unanimously if the Commission does not agree – or reject it\(^4\)). Member States and the High Representative for Foreign & Security Policy (rather than the Commission) have the right of initiative in foreign and security policy matters.\(^5\) In relation to justice and home affairs, in addition to the Commission having a general right to initiate legislation, a quarter of Member States acting collectively can put forward a legislative proposal.\(^6\)

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\(^4\) Unanimity is not required to amend a Commission proposal concerning the budget or the multi-annual financial framework

\(^5\) Consolidated Version of the Treaty on European Union, art 42(4), 2012 OJ C 326/13, p. 39

\(^6\) Consolidated Version of the Treaty on the Functioning of the European Union, art. 76, 2012 OJ C 326/47, p. 75
Although the Treaty lays down whether decisions in the Council require unanimity or a qualified majority in favour, Ministers prefer to achieve consensus, deciding most questions without recourse to a vote even if the matter could be decided by qualified majority voting (QMV). If there is no agreement or favourable decision by vote, a proposal is usually abandoned, withdrawn or resubmitted after amendment. Sometimes the Minister in the chair will call an indicative vote, meaning that he or she asks for the voting intention of each Member State without a formal vote being held in order to see how far the Council is from reaching agreement.

When QMV votes take place votes are weighted according to a formula laid down in the treaties. The weighting defined in the treaties gives each Member State a specific percentage. The UK, as one of the four largest states together with France, Germany and Italy, gets 8.4 per cent of the weighted votes; other Member States get a lower share with Poland and Spain the next largest with 7.8 per cent each down to Malta with the lowest share at 0.9 per cent.

Three criteria have to be met for a vote to pass: 55 per cent of Member States have to vote in favour, with at least fifteen in support and representing at least 65 per cent of the population of the EU. In addition, to block the Council from taking a decision (a blocking minority), at least four Member States must be opposed.

Transparency

Whether or not the Council should hold its discussions in public was long an area of controversy. The difficulty was that the Council is both a legislative body which helps to make the law of the EU and an inter-governmental negotiating forum. Legislatures are normally open in their deliberations but negotiations between governments are generally held in private. This conflict was resolved by the Treaty of Lisbon, which requires Council meetings to be in two parts: as mentioned above, it meets in public when deliberating and voting on legislative acts but in private when discussing non-legislative activities. Many Council documents are now made public and available to the public on the Europa website.

Assessment

The Council is pivotal to the work of the EU because it is the main forum in which the governments of Member States meet regularly to debate and decide policy issues, negotiate their differences and to approve legislation in co-decision with an increasingly influential European Parliament. As such its effectiveness – or lack of it – impacts on all the work of the EU.

When unanimity is required the Council often does become bogged down, unable to reach agreement on key issues because of national differences. This was most notable in the period before the Single European Act (1986) introduced QMV for single market measures. As most policy areas in the EU are now covered by QMV, a Member State wishing to block a piece of legislation must find allies – in the Council and in the Parliament. Despite the introduction of QMV however, Member States have shown a preference for reaching consensus in the Council; a reflection no doubt of the fact that being outvoted is rarely likely to be popular at home and Ministers share a desire to avoid such a situation. This approach means that the passing of legislation is often a tortuous process taking many months or even years.

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7 In the case of proposals made by another institution or body, the majority of countries increases to 67 per cent
The Council has been criticised by some in the EU for the tendency of its members to establish linkages in negotiation between different items of legislation in order to obtain the result they want. This is a normal negotiating tactic in an international forum and it is a practice unlikely to disappear. Every Member States makes use of it.

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The Senior European Experts Group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, and former officials of the institutions of the EU.

The group provides high-quality, fact based briefing materials on EU issues.

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