

Adapting the Council to a Geopolitical Union

by Nicolai von Ondarza

Summary

The Council of the EU is a crucial institution in EU decision-making and European democracy, serving as the main arena for negotiating compromises among member states. This paper discusses potential reforms to enhance the Council's effectiveness in three key areas: making it enlargement-ready, while increasing its capacity to act; strengthening its democratic legitimacy; and improving its role in EU defence ambitions. These reforms are proposed in the context of potential EU enlargement, the need for greater transparency and a growing focus on defence issues. The paper suggests several reforms, including extending qualified majority voting, creating a 'quintet' presidency system, establishing a special body to coordinate reform and enlargement processes, improving transparency in legislative functions, creating a dedicated Defence Council, and turning the Council into a hub for security and defence cooperation. Importantly, these reforms could be implemented without treaty changes, but to do so will require significant political will from the member states.

Keywords Council of the EU – Democratic legitimacy – Defence

Introduction

The Council of the EU is in many ways the engine room of EU decision-making and a crucial pillar of European democracy. It is the main arena for negotiating compromises amongst the different national governments, and is thus where negotiations advance from the technical to the political stage. Through direct representation of all the member state governments, it brings together the political diversity of the Union while also providing a crucial link to national democracy alongside the European Parliament. Looking ahead to the broader challenges facing the EU in the next institutional cycle, reforms in three crucial aspects of the Council are necessary: making its decision-making procedures enlargement-ready, whilst increasing its capacity to act; strengthening its democratic legitimacy; and turning it into a hub for the EU's defence ambitions. In all of these areas reforms could be implemented without treaty change, but this will require significant political will.

State of play: an emerging debate on EU governance reform

In the post-Lisbon EU, the Council is part of a multilayered governance system that connects the national governments to the Union. At the top sits the European Council, an institution in its own right, that brings together the national heads of state and government as well as its own permanent president and the president of the European Commission. But while—at least legally—the European Council focuses on giving political guidelines and steering the EU, the many detailed negotiations, and importantly the legislative, budgetary and operational work, are done within the Council of the EU, often together with the European Parliament. For this, the Council meets in 10 different formations of ministers—for instance, the foreign ministers in the Foreign Affairs Council—underpinned by deliberations within the Committee of Permanent Representatives and many Council Working Groups. Although much of the media attention is focused on the European Council, where issues become '*Chefsache*', the main day-to-day negotiations of the EU take place within the various layers of the Council system. The rules and social norms governing the Council are therefore central to the power balances among both the EU member states and the EU institutions.¹

¹ U. Puetter, 'The Council of the European Union: Co-legislator, Coordinator and Executive Power', in D. Hodson et al. (eds.), *The Institutions of the European Union* (Oxford: Oxford University Press, 2021).

Debates about reforms of the Council have therefore also always been about the power relations within the EU. For instance, during the negotiations for first the Constitutional Treaty and later the Lisbon Treaty, one of the most controversial aspects was the switch of the voting system in the Council from political weighted votes to the current system of qualified majority (QMV), which favours the larger member states. Equally controversial have been any moves from unanimity—guaranteeing each national government an individual veto—to QMV, which increases the EU’s capacity to act but makes it possible for national governments to be outvoted. Precisely because the decisions impact the power balance in the EU so significantly, reforms of the Council and its procedures are considered constitutional decisions and are usually part of wider institutional changes within the EU.

In the new institutional cycle, calls for reform of the Council come from three different directions. The first, and likely most important, is the new dynamic in the EU enlargement process in the wake of the Russian war of aggression against Ukraine. With enlargement now a ‘geostrategic investment in peace, security, stability and prosperity’,² the European Council has opened up accession negotiations with Ukraine and Moldova, granted Georgia candidate status and is working on revitalising accession negotiations with the six countries of the Western Balkans, all with the aim of closing geostrategic grey zones in competition with Russia (as well as China). Although it is unlikely that these accession processes will be completed within the current institutional cycle (2024–9), the vision of an EU of 30+ member states has returned—and with it serious questions about the Union’s governance.³ By its nature, the Council, as the body that brings together all national governments, will be particularly affected by any enlargement.⁴

Recognising this challenge, in its December 2023 conclusions, in connection with the opening of accession negotiations with Ukraine and Moldova, the European Council stated that it would be necessary to pursue the debates on accession and internal EU reform in parallel.⁵ The member states agree that these reforms should address ‘key questions related to its priorities and policies as well as its capacity to act’,⁶ but are far from unified regarding what shape these reforms should take. In June 2024 the Belgian Presidency presented an update on the state of negotiations, breaking down the internal EU preparations into four baskets: EU values, policies, budget and governance. According to this update, the predominant preference among EU member states was to make use of the flexibility of the Lisbon Treaty to the full extent, with only limited support for a wide extension of QMV in the Council and almost none for treaty change.⁷

These initiatives are not limited to making the Council more enlargement-ready in the long term, but also aim to improve its capacity to act in the medium term. Driven by the more confrontational geostrategic environment, in 2023, 11 member states formed the ‘Group of Friends of QMV in Common Foreign and Security Policy’, pushing for an extension of QMV in foreign policy. The group specifically stressed its aim of making use of the ‘passerelle’ clauses (rather than treaty change), its focus on the Common Foreign and Security Policy, and its emphasis on not pre-deciding the wider debate on QMV. A similar push has been made by Germany and Slovenia for introducing QMV into the enlargement process, specifically into the technical decisions such as on the opening of new chapters, while retaining unanimity for the final decision.⁸

² European Council, ‘The Granada Declaration’, 6 October 2023.

³ N. von Ondarza, ‘Getting Ready’, *Verfassungsblog*, 22 December 2022.

⁴ O. Costa and D. Schwarzer et al., *Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century*, Report of the Franco-German Expert Group on Institutional Reform (19 September 2023).

⁵ European Council, *European Council Meeting (14 and 15 December 2023) – Conclusions*, EUCO 20/23 (15 December 2023).

⁶ *Ibid.*, 4.

⁷ Belgian Council Presidency, *Future of Europe – Presidency Progress Report*, 10411/24 (10 June 2024).

⁸ N. von Ondarza, ‘The State of Consensus in the EU. What Is the Way Forward in the Debate About Expanding Qualified Majority Decisions?’, *SWP Comment* 16/2024 (19 April 2024).

From a very different direction, there is an ongoing discussion on transparency and democratic legitimacy in the Council. Under the ordinary legislative procedure, the Council is the co-legislator together with the European Parliament. Although the Lisbon Treaty stipulates that the negotiations in the Council on legislative files are to be made public, often only the final, formal proceedings are, whereas the crucial negotiations at a lower level, remain largely opaque. During the last couple of years, citizens participating in the Conference on the Future of Europe,⁹ as well as the EU Ombudsman and the European Court of Justice in its 2023 *De Capitani* ruling,¹⁰ have called for more transparency in the Council.

A push for adaptations to the Council also comes from a third direction, the growing focus on defence. In its Strategic Agenda for 2024–9, the European Council has designated defence and the defence industry as one of the four core priorities for the EU. Likewise, Commission President von der Leyen made defence a core pillar of her re-election bid, both as the European People’s Party lead candidate for the June 2024 European elections and for getting a majority in the newly elected European Parliament. She has also designated a commissioner for defence and space, who has been given the tasks of developing a single market for defence and producing a European defence industrial strategy, amongst others.¹¹ The European Parliament is planning to turn its Sub-Committee on Defence into a full Defence Committee. However, the Council still has no formation for defence ministers, who only come together informally, usually twice a year, as part of the ‘jumbo’ Foreign Affairs Council, together with their foreign affairs counterparts. Together with the new high representative, there will be a need in the new institutional cycle to streamline and focus EU defence discussions in the Council.

Prospects: squaring the diplomatic circle

In terms of the prospects for reforms in these areas, the most important prerogative is political will. All these reforms have two things in common—they are all possible without treaty change, but most of them still require unanimity from the member states to be implemented. Below we will look at the issues in detail.

The first challenge relates to getting the EU institutions ready for enlargement whilst strengthening the Union’s capacity to act. The most discussed element here is the extension of QMV in the Council using the passerelle clauses, both in the short to medium term for (some) EU foreign policy decisions, and in the longer term as part of a wider change to QMV under the next accession process in order to make the Council enlargement-ready.

The discussions between member states that have taken place in the past two years have highlighted two challenges. First, where unanimity is currently needed, member states are divided roughly into three groups: those calling explicitly for more QMV (such as the group mentioned above); many, in particular smaller member states, which are not opposed in principle to QMV, but fear that they could be overruled in areas of vital national interest; and a small minority, including the current Hungarian government, which is fundamentally opposed to QMV. The second issue to note is that without time pressure those in the second group are unlikely to embrace a change to QMV as, so far, the Council has regularly pushed decisions on using the passerelle clauses further into the future. To address this challenge, it might be necessary to attach the discussion on governance, including QMV, to the accession process, giving it a clearer timeline in order to create the momentum necessary for a wider discussion. Part of this discussion should then be about the mechanisms needed to protect vital national interests when QMV applies, such as a sovereignty safety net, which would allow member states to transfer certain questions to the European Council for negotiation by the heads of state and government.

⁹ Conference on the Future of Europe, *Report on the Final Outcome* (May 2022).

¹⁰ European Court of Justice, Case T-163/21, *De Capitani v Council* [25 January 2023], ECLI:EU:T:2023:15.

¹¹ U. von der Leyen, *Mission Letter. Andrius Kubilius – Commissioner-Designate for Defence and Space* (17 September 2024).

The second major proposal to increase the Council’s capacity to act and make it enlargement-ready is a small but relevant reform of the Council Presidency. Even if the Presidency currently comes around to each member state only once every 13.5 years—and potentially even less frequently in an enlarged EU—it remains an important mechanism through which member states can engage their administrations in EU affairs and take ownership of the work of the Council. However, the legislative cycle often takes longer than six months, leading to disjointed priorities.¹² With a change to the Council’s rules of procedure (by simple majority) the current ‘trio Presidency’ could be turned into a ‘quintet’, with each quintet lasting for 2.5 years, that is, half of each legislative cycle. This could allow for long-term planning of the legislative agenda whilst retaining the principle of a rotating Presidency.

The third proposal in this area addresses the need for coordination in the reform and enlargement processes. The European Council and the General Affairs Council have now agreed that these should be conducted in parallel. Both will be long-term processes, with considerable political stamina and guidelines needed, especially with regard to questions that transcend the four baskets (EU values, policies, budget and governance). To achieve this, the Council should create a special body under its own auspices to bring together these reforms and the enlargement process. This could be modelled after the A50 Council which helped to foster unity in the EU during the Brexit process, including through close coordination with the Commission and the Parliament. This could be established at any time by the Council Presidency; the upcoming Polish Presidency in the first half of 2025, which wants to focus on driving the enlargement process forward, would be the perfect starting point.

The second major challenge is strengthening democracy in and the transparency of the Council. The Council, with its direct representation of the nationally elected governments, is already a core pillar of EU democracy. This should be improved upon by transforming the working methods of the Council into those of a second chamber whenever it acts in a legislative capacity together with the European Parliament. This should include enhancing the transparency of Council votes and negotiated amendments to increase its democratic accountability. The negotiations themselves should retain the necessary confidentiality. This should address the concerns raised by the Conference on the Future of Europe and the European Court of Justice in its *De Capitani* judgment, whilst improving public access to EU policymaking. This could be achieved either by a simple Council decision or by revising the Council’s rules of procedure, and as the Council’s role in EU legislation would be unchanged, there would be no need for a treaty change.

A third proposal to better connect citizens to the work of the EU and the Council is the use of citizens’ assemblies. The Conference on the Future of Europe was a unique exercise in trans-European participatory democracy, but it was overshadowed by inter-institutional rivalries and complexities. As a follow-up, the Commission has established single-issue-focused citizens’ panels to advise on specific questions, such as EU legislation with regard to the metaverse. In the future, the Presidencies of a quintet could each host one citizens’ assembly on a priority of their choice as part of chairing the Council. This could be done by the Presidencies themselves, thus improving their visibility, and ensure citizens’ involvement and—with expectations managed correctly—input into the EU’s decision-making.

The third major challenge, given the geostrategic context, is for the Council to become a strategic driver for security and defence policy. The necessary next step should be the more direct involvement of national defence ministers. During the early days of the European Security and Defence Policy, as the focus was primarily on external crisis management, the EU made a conscious decision not to create a Council of Defence but to leave this policy area largely under the supervision of the foreign ministers in the Foreign Affairs Council. Given the geopolitical challenges facing the EU and the prioritisation of defence industrial cooperation, this is no longer

¹² R. Coman and V. Sierens (eds.), *EU Council Presidencies in Times of Crisis* (Cham: Palgrave MacMillan, 2024).

appropriate. This is especially true now that the Commission has created the post of a commissioner for defence with a major focus on defence industrial cooperation. It is therefore high time for a Council formation for defence ministers, which would enable defence ministers to oversee this development and, along with their ministries, be involved much more regularly and directly in EU defence cooperation. Such a Defence Council could be created at any time by a decision of the European Council with a qualified majority.¹³

With the creation of a Defence Council, there will be a clear need to streamline EU external relations. In the previous institutional cycle, relations between the Commission president, the high representative and the president of the European Council were strained at best, and sometimes openly competitive. Add in a commissioner for defence and the rotating presidency of a new Defence Council, and the need for streamlining increases even further. This could partly be achieved by reducing the overstretch of the high representative, for instance, by shifting the leadership of the European Defence Agency to the new defence commissioner.

At the same time, the Council could act as a hub to link the EU's new initiatives in security and defence with those of its close European allies. These fall into two broad categories. On the one hand, they include important non-EU NATO allies such as the UK, Norway and Turkey. In particular, the UK, with its new Labour government, aims to negotiate an ambitious EU–UK Security Pact. Although the shape of this is as yet unclear, the EU should consider whether and on which occasions it should invite the UK and potentially other non-EU NATO allies to the regular consultations in the Council. On the other hand, with enlargement now firmly a geostrategic investment of the EU, but with full accession at best years, if not at least a decade, away, the EU should also invite candidate countries to take part in selected foreign affairs or defence ministerials. If those invited fully align with EU foreign policy, especially sanctions, this could be a powerful symbol and would be a concrete instrument with which to engage candidate countries before they become full members as part of the regular enlargement process.

Conclusion

The Council of the EU is core to EU policy- and law-making and, with its many layers, functions as the linchpin of the Brussels compromise machine. Given the challenges facing the Union geopolitically, economically and internally, it is in need of a calibrated update in three central areas: making its procedures enlargement-ready and increasing its capacity to act, strengthening democratic legitimacy by turning it into a true second chamber when law-making with the European Parliament, and becoming a hub for the EU's reinforced foreign, security and defence policy efforts.

The analysis has shown that in all three areas, processes are already underway to work on these issues, but that a reinforced push is required. Importantly, in all three areas all the proposed reforms are possible without treaty changes, although crucial ones—such as the extension of QMV with a sovereignty safety net to protect vital national interests—will require unanimity and therefore likely a larger package deal. Other proposals, such as the creation of a Defence Council or the expansion of transparency, could be adopted by qualified majority themselves, although it would be best to strive for consensus on such matters wherever possible. If followed through, these changes would contribute significantly to strengthening the EU's capacity to act, its democracy and its defence efforts.

¹³ Art. 236 Treaty on the Functioning of the European Union.

	Programme 1	Programme 2	Programme 3
	Getting the Council enlargement-ready and increasing its capacity to act	Strengthening the democratic actions of the EU via the Council	Turning the Council into a strategic driver for European security and defence
Project 1	Use the passerelle clauses for a wide extension of QMV in the Council—albeit balanced with a ‘sovereignty safety net’ for sovereignty-sensitive policy areas.	Turn the Council into a second chamber for legislative votes.	Create a separate ‘Council for Defence’, whose work would be prepared by the Political and Security Committee, and align it with the new role of defence commissioner.
Project 2	Reform the Council Presidency to have a ‘quintet’ of five Presidencies for each half of the legislative cycle, with a pronounced joint agenda for major legislative files.	Ensure the full transparency of all votes and amendments when acting as a legislative second chamber, while maintaining the necessary room for informal negotiations.	Streamline EU external relations and rework the relationship between the high representative, the European External Action Service, the European Defence Agency, the Foreign Affairs Council, and the new Defence Affairs Council and defence commissioner.
Project 3	Steer the process of enlargement and reform as a core task of the next institutional cycle through the use of a special committee modelled on the A50 Council and Council Working Group.	Improve the link between the Council’s work and citizens by hosting a citizens’ assembly once during each Presidency on one of its core projects.	Use the Foreign Affairs Council and the new Defence Affairs Council as a hub for European security. To this, invite non-EU European partners (in particular the UK, Ukraine and Norway) to involve them in foreign, security and defence decisions, without voting rights.

Bibliography

Belgian Council Presidency, *Future of Europe – Presidency Progress Report*, 10411/24 (10 June 2024), accessed at <https://data.consilium.europa.eu/doc/document/ST-10411-2024-INIT/en/pdf> on 8 August 2024.

Coman, R. and Sierens, V. (eds.), *EU Council Presidencies in Times of Crisis* (Cham: Palgrave Macmillan, 2024).

Conference on the Future of Europe, *Report on the Final Outcome* (May 2022), accessed at <https://www.europarl.europa.eu/resources/library/media/20220509RES29121/20220509RES29121.pdf> on 8 August 2024.

Costa, O. and Schwarzer, D. et al., *Sailing on High Seas: Reforming and Enlarging the EU for the 21st century*, Report of the Franco-German Expert Group on Institutional Reform (19 September 2023), accessed at <https://www.auswaertiges-amt.de/blob/2617322/4d0e0010ffcd8c0079e21329bbbb3332/230919-rfaa-deu-fra-bericht-data.pdf> on 8 August 2024.

European Council, *European Council Meeting (14 and 15 December 2023) – Conclusions*, EUCO 20/23 (15 December 2023), accessed at <https://www.consilium.europa.eu/media/68967/europeanCouncilConclusions-14-15-12-2023-en.pdf> on 8 August 2024.

European Council, ‘The Granada Declaration’, 6 October 2023, accessed at <https://www.consilium.europa.eu/en/press/press-releases/2023/10/06/granada-declaration> on 8 August 2024.

European Court of Justice, Case T-163/21, *De Capitani v Council* [25 January 2023], ECLI:EU:T:2023:15.

Puetter, U., ‘The Council of the European Union: Co-legislator, Coordinator and Executive Power’, in D. Hodson et al. (eds.), *The Institutions of the European Union* (Oxford: Oxford University Press, 2021), 78–105.

von der Leyen, U., *Mission Letter. Andrius Kubilius – Commissioner-Designate for Defence and Space* (17 September 2024), accessed at https://commission.europa.eu/document/download/1f8ec030-d018-41a2-9759-c694d4d56d6c_en?filename=Mission%20letter%20-%20KUBILIUS.pdf on 23 September 2024.

von Ondarza, N., ‘Getting Ready’, *Verfassungsblog*, 22 December 2022, accessed at <https://verfassungsblog.de/getting-ready/> on 8 August 2024.

von Ondarza, N., ‘The State of Consensus in the EU. What Is the Way Forward in the Debate About Expanding Qualified Majority Decisions?’, *SWP Comment* 16/2024 (19 April 2024), accessed at <https://www.swp-berlin.org/10.18449/2024C16/> on 8 August 2024.

