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Coping with Crisis: The Role of the European Council President

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ESSAY

COPING WITH CRISIS: THE ROLE OF THE EUROPEAN COUNCIL PRESIDENT

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INTRODUCTION

In 2010, the European Union entered the worst crisis in its history. In the wake of a global financial crisis and economic recession, the Greek government revealed that its 2009 budget deficit would be more than four times higher than the three percent of Gross Domestic Product permissible under the rules of Economic and Monetary Union ("EMU").[1] The unsustainability of the Greek deficit and debt resulted in a bailout by the European Union and the International Monetary Fund, the first of three bailouts that Greece received between 2010 and 2015. Other countries bailed out during that time, because of their failing banks or unmanageable sovereign debts, included Ireland, Portugal, Spain, and Cyprus.[2]

The euro crisis was highly consequential for the European Union because it threatened the future of EMU, arguably the European Union's most iconic and politically important achievement. A Greek departure from the Eurozone, either of its own volition or at the behest of other Eurozone members, seemed distinctly possible by 2015. This could have been disastrous not only for Greece, but also

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1. *See Greece's Sovereign Debt Crunch: A Very European Crisis*, ECONOMIST (Feb. 4, 2010), http://www.economist.com/node/15452594.

2. *See* PAUL WALLACE, THE EURO EXPERIMENT (2016).

for the credibility and stability of the Eurozone. The interconnection between the internal market—the European Union's most noteworthy economic achievement—and monetary union meant that destabilization of the Eurozone would have had widespread repercussions for the European Union as a whole. Clearly, the euro crisis endangered the entire European project.

In 2014, a crisis in Ukraine, triggered by Russia's annexation of Crimea and support for militant separatists in the east of the country, sent additional shock waves throughout the European Union.[3] The Ukraine crisis did not threaten the existence of the European Union or the future of a core EU policy area, but it tested EU solidarity and the effectiveness of EU policy toward Russia.[4] Potentially much more damaging for the European Union was the onset in 2015 of yet another crisis, this time caused by a massive inflow of migrants, due to the escalating war in Syria and instability elsewhere in the Middle East and North Africa. The migration crisis was first and foremost a humanitarian catastrophe. Beyond that, it further tested EU solidarity and demonstrated the fundamental weakness of the Schengen free-travel regime, notably the porousness of the European Union's external borders and the failure so far to develop an effective asylum and immigration policy. Just as the euro crisis jeopardized the future of EMU, so did the refugee crisis jeopardize the future of Schengen.[5]

The European Union is no stranger to crisis. Indeed, the history of European integration, stretching back to the early post-World War II period, is replete with events that been called crises, regardless of their severity.[6] The current crisis, embracing the euro, Ukraine, and refugee crises, as well as related political problems pertaining to weak legitimacy and growing Euroskepticism, and related economic problems pertaining to persistent sluggish growth and high unemployment, is different. It threatens to undermine or possibly destroy core policy areas such as monetary union and Schengen, and to change the character of the European Union fundamentally. After

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3. *See* House of Lords*, The EU and Russia Before and Beyond the Ukraine Crisis,* European Union Committee, 6th Report of Session 2014-2015, Feb. 20, 2015, http://www.publications.parliament.uk/pa/ld201415/ldselect/ldeucom/115/115.pdf; *see generally* ANDREW WILSON, UKRAINE CRISIS: WHAT IT MEANS FOR THE WEST (2014).

4. *See id*.

5. *See Europe's Migrant Crisis,* COUNCIL ON FOREIGN RELATIONS (Sept. 23, 2015), http://www.cfr.org/migration/europes-migration-crisis/p32874.

6. *See* DESMOND DINAN, EUROPE RECAST: A HISTORY OF EUROPEAN UNION (2d ed. 2014).

more than sixty years of European economic and political integration, for the first time the European Union faces the prospect of disintegration. As if to highlight the European Union's woes, in June 2016 a majority of United Kingdom voters, in a referendum on European Union membership, decided that their country should leave.[7]

The political salience and fast-moving nature of the crisis have required the close and near-constant involvement of the European Union's leaders. This begs an obvious but not easily answered question: who leads the European Union? Unlike national political systems, the European Union does not have a government. Instead, it has a set of governing institutions. The European Union's core, day-to-day, decision-making institutions are the European Commission, the Council of the European Union, and the European Parliament ("EP"). Each has a President: the European Commission President holds a five-year mandate; the EP President is elected for a two-and-a-half year period; and the presidency of the Council rotates among national governments every six-months. A fourth institution is not involved in day-to-day decision-making, but is paramount politically in the European Union. That institution is the European Council, whose membership consists of the most senior political leaders in the member states—each country's head of state or government—together with the European Commission President and the European Council's own President. The national leaders are the European Council's principals: only they may participate in European Council decision-making, as distinct from discussions and deliberations.[8]

Although the European Council has a relatively small number of treaty-mandated policy and procedural responsibilities, such as approving enlargement of the Eurozone or of the European Union itself, or choosing the President of the European Central Bank ("ECB"), it is also responsible for providing overall direction for the European Union.[9] The European Council was not part of the European Union's original institutional architecture, but emerged in the mid-1970s as a forum in which national leaders could discuss a

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7. *See generally* STEVE PEERS, BREXIT: THE LEGAL FRAMEWORK FOR WITHDRAWAL FROM THE EU OR FOR RENEGOTIATION OF THE EU (2016).

8. *See generally* JOHN PETERSON & MICHAEL SHACKLETON, THE INSTITUTIONS OF THE EUROPEAN UNION (3d ed. 2012).

9. *See* Consolidated Version of the Treaty on European Union art. 15 ¶ 1, 2012 O.J. C 326/13 [hereinafter TEU post-Lisbon].

myriad of challenges confronting the then European Community, which at the time was mired in economic recession and political sclerosis. Only the national leaders, it seemed, had the power and perspective to get the European Community going again.[10]

Over the next thirty years, the European Council played a pivotal role in reinvigorating European integration and brokering political agreements that made possible everything from the launch of the single market program in the late 1980s, the European Union in 1993, and monetary union in 1999; to successive rounds of major treaty reform in 1986 (the Single European Act), 1992 (the Maastricht Treaty), 1997 (the Amsterdam Treaty), 2001 (the Nice Treaty), and 2007 (the Lisbon Treaty); to successive rounds of enlargement in 1995, 2004, 2007, and 2013, as a result of which the European Union expanded from twelve to twenty-eight member states. Throughout that time, despite having become the EU's most important decision-making body, the European Council was not officially an EU institution. That changed in December 2009, with the entry into force of the Lisbon Treaty, which not only recognized the European Council as a full-fledged institution but also authorized it to elect its own president, by a qualified-majority vote, for a two-and-a-half year period, renewable once.[11] Hitherto, the presidency of the European Council had rotated among national leaders in the same way as the presidency of the Council of the European Union continues to rotate among national governments.[12]

Implementation of the Lisbon Treaty coincided with the onset of the EU crisis.[13] In addition to its ordinary business, which often included dealing with extraordinary events, the European Council found itself having to cope with a crisis far more serious than any in the history of the European Union. The EP President had much to say about the crisis, but his political influence was circumscribed by the

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10. *See* JEAN-MARC HOSCHEIT & WOLFGANG WESSELS, THE EUROPEAN COUNCIL: 1974-1986: EVOLUTION AND PROSPECTS (1988); JAN WERTS, THE EUROPEAN COUNCIL (2008).

11. *See* TEU post-Lisbon, *supra* note 9, art. 15 ¶ 5.

12. *See generally* EUROPEAN UNION COUNCIL PRESIDENCIES: A COMPARATIVE PERSPECTIVE (Ole Elgström ed., 2003); THE EUROPEAN COUNCIL AND EUROPEAN GOVERNANCE: THE COMMANDING HEIGHTS OF THE EU (François Foret & Yann-Sven Rittelmeyer eds., 2014); *see also* WERTS, *supra* note 10; WOLFGANG WESSELS, THE EUROPEAN COUNCIL (2015).

13. *See* Desmond Dinan, *How Did We Get Here?*, *in* THE EUROPEAN UNION: HOW DOES IT WORK? 41 (4th ed. 2015).

Parliament's institutional role and by his non-membership in the European Council. Historically, the President of the European Commission is a more prominent player in the European Union, and is also a member of the European Council. In recent years, however, the political influence of the Commission presidency has declined, as national leaders have grown more jealous of their prerogatives and more forceful in the conduct of EU affairs.[14] With the onset of the crisis, national leaders have availed of the existence of the European Council, and of their special status as principals within it, to confront the unparalleled challenge facing the European Union. The institution's new president assists national leaders within the European Council, not least in combatting the crisis.

This article examines the performance of the European Council President in coping with the current EU crisis. Under ordinary circumstances—a European Union not in crisis—the arrival of a new institutional actor would be of considerable interest to EU scholars and observers. The contemporaneous onset of the crisis and inauguration of the European Council presidency was fortuitous and has focused additional attention on the new office, and the new office holders. How significant is the European Council presidency? What capacity does the presidency have to provide leadership in the European Union? How effective have the initial office holders been? What contribution has the European Council president made to EU crisis resolution?

I. *THE EUROPEAN COUNCIL PRESIDENT*

The decision to institute a European Council President reflected the increasing prominence and growing workload of the European Council.[15] During the Convention of the Future of Europe in 2002-2003, which paved the way for the ultimately unratified Constitutional Treaty, a number of national representatives floated the idea of replacing the rotating presidency of the European Council

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14. *See generally* REBECCA ADLER-NISSEN, JULIE HASSING NIELSEN & CATHARINA SØRENSEN, SWED. INST. FOR POL'Y STUD., THE DANISH EU PRESIDENCY 2012: A MIDTERM REPORT (2012), http://www.sieps.se/sites/default/files/2012_1op.pdf.

15. *See generally* Christopher J. Bickerton, Dermot Hodson & Uwe Puetter, *The New Intergovernmentalism: European Integration in the Post-Maastricht Era*, 53 J. COMMON MKT. STUD. 703 (2015); Uwe Puetter, *Europe's Deliberative Intergovernmentalism: The Role of the Council and European Council in EU Economic Governance*, 19 J. EUR. PUB. POL'Y 161 (2012).

with a standing, elected President. Their rationale was to improve the functioning of the European Council by providing consistency in the preparation and conduct of meetings, continuity from one meeting to the next, and follow-through after each meeting, thereby improving the effectiveness of the European Union as a whole. They also hoped to enhance the European Union's international standing by making the European Council President a focal point of the European Union's external representation.

The idea was not without controversy, not least because its champions were the representatives of big member states, notably France, Spain, and the United Kingdom. For their part, representatives of some small member states feared that the big member states would monopolize the proposed new position, which would reinforce what they saw as a troubling imbalance of national power in the European Union. Small member states would especially miss the influence and international stature that came with occasionally presiding over the European Council. Eventually, representatives of reluctant member states were won over by the obvious need to improve the functioning of the European Council, and by concessions in other institutional arrangements. Accordingly, European Council reform became part of the Constitutional Treaty and of the ensuing, and ultimately successful, Lisbon Treaty.[16]

On December 1, 2009, the day on which the Lisbon Treaty entered into force, Herman van Rompuy became the European Council's first elected president.[17] Van Rompuy was reelected for a second term in mid-2012.[18] Donald Tusk, so far the only other person to hold the position, succeeded Van Rompuy in December 2014.[19]

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16. *See generally* SIMONE BUNSE, SMALL STATES AND EU GOVERNANCE: LEADERSHIP THROUGH THE COUNCIL PRESIDENCY (2009); CTR. FOR EUR. POL'Y STUD., EGMONT & EUR. POL'Y CTR., THE TREATY OF LISBON: A SECOND LOOK AT THE INSTITUTIONAL INNOVATIONS (2010), https://www.ceps.eu/system/files/book/2010/09/Studia_Lisbonne_II%20COPYRIGHT.pdf; DEVELOPING A CONSTITUTION FOR EUROPE (Erik Oddvar Eriksen, John Erik Fossum & Agustín José Menéndez eds., 2004); PETER NORMAN, THE ACCIDENTAL CONSTITUTION: THE MAKING OF EUROPE'S CONSTITUTIONAL TREATY (2d ed. 2005).

17. *See* Tony Barber, *The Appointments of Herman Van Rompuy and Catherine Ashton*, 48 J. COMMON MKT. STUD. 55, 55 (2010).

18. *See* Constant Brand, *Second Term for Van Rompuy: European Council President Re-elected*, POLITICO (Apr. 12, 2014, 10:53 PM), http://www.politico.eu/article/second-term-for-van-rompuy/.

19. *See* European Council Press Release EUCO 258/14, Remarks by President of the European Council Donald Tusk at the Handover Ceremony with the Outgoing President Herman Van Rompuy (Dec. 1, 2014).

The two office holders are different in many respects. Van Rompuy came from a small, old member state (Belgium); Tusk from a big, new member state (Poland). Belgium was a founding member of the Eurozone; Poland has not yet adopted the euro. Both have been prime ministers of their respective countries, but Van Rompuy for less than one year, Tusk for nearly seven years. Van Rompuy came from a political tradition that values compromise and consensus building; Tusk from a political tradition of confrontation and conflict. Van Rompuy is unassuming and self-effacing; Tusk is assertive and forceful. Each brought to the job a different set of abilities and skills.[20]

Personal qualities matter greatly in any presidential position, but especially in a job that involves dealing on a daily basis with the EU's national political leaders who, as a rule, are extremely competitive, have towering egos, and are used to special treatment. All national leaders are equal in the European Council but, given the nature of international politics, some are more equal than others. The Chancellor of Germany and the President of France have privileged positions in the European Council, reflecting their countries' economic and political ascendancy in the European Union and iconic partnership in the history of European integration. Other national leaders vie for influence, based on their personal qualities and on their countries' particular circumstances. The European Council President needs to tread carefully among the European Council's principals.[21]

The onset of the EU crisis changed the dynamics of the European Council and made additional demands on the European Council President. An already difficult job became unexpectedly arduous almost immediately after the new position came into being. Meetings of the European Council became more frequent, their conduct more urgent, and their outcomes more consequential. Though symbolically still important, the Franco-German partnership gradually gave way to undisguised German hegemony.[22] As a result, the

20. *See* Desmond Dinan, *The Post-Lisbon European Council Presidency: An Interim Assessment*, 36 WEST EUR. POL. 1256, 1256-73 (2013); *A Task for Tusk*, ECONOMIST (Oct. 31, 2015), http://www.economist.com/news/europe/21677211-polands-former-prime-minister-desperately-seeks-ensure-europes-centre-can-hold-task.

21. *See* WOLFGANG WESSELS, THE EUROPEAN COUNCIL (2015).

22. *See* Simon Bulmer & William E. Paterson, *Germany as the EU's reluctant hegemon? Of economic strength and political constraints*, 20/10 J. EUR. PUB. POL'Y 1387, (2013); William E. Paterson, *The Reluctant Hegemon? Germany Moves Centre Stage in the European Union*, 49 J. COMMON MKT. STUD. 57, 57-75 (2011).

German Chancellor occupied a special position within the European Council. Greece, the weakest link in the Eurozone and in the Schengen system, required careful handling in the European Council, as did the United Kingdom, given the country's negotiation of a reform package as a precondition for the membership referendum. A change of government in Poland in October 2015, when the nationalist, conservative Law and Justice Party replaced Tusk's Civic Platform, caused intrinsic tension between the recently-elected European Council President and the newly-elected Polish Prime Minister.[23]

II. *COPING WITH THE CRISIS*

In December 2009, when the Lisbon Treaty came into effect, the global financial crisis and the great recession had already happened, but the euro crisis had not yet occurred. Nevertheless, developments in Greece were a cause of serious concern. So much so that an extraordinary meeting of the European Council, which Van Rompuy had convened in February 2010 to discuss the European Union's general economic circumstances, was devoted instead to the rapidly deteriorating Greek situation.[24] This would become the first of many meetings of the European Council, either scheduled far in advance or convened at short notice, devoted to the EU crisis between 2010 and 2015.

The EU Treaty calls for four meetings of the European Council a year, but allows the President to convene extraordinary or special meetings. Given the busy schedules of national leaders, convening an extraordinary meeting of the European Council is not done easily or lightly. The President would never do so without first contacting the offices of key national leaders, at whose behest the President occasionally convened such meetings. Nevertheless, the ability at least to call for an extraordinary meeting gives the President a degree of political influence by allowing him to put additional pressure on national leaders to reach agreement on pressing issues. In addition to the twenty regularly scheduled meetings of the European Council held between 2010 and 2015, there were twenty-two extraordinary

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23. *See A Task for Tusk*, *supra* note 20.

24. *See Statement by the Heads of State or Government of the European Union*, BRUSSELS EUROPEAN COUNCIL (Feb. 11, 2010), http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/112856.pdf.

meetings, far more than during comparable periods in EU history.[25] The profusion of extraordinary meetings demonstrated the seriousness of the crisis. Although some national leaders complained about an excessive number of extraordinary meetings, there was general agreement within the European Council that the crisis warranted such a response. There was also agreement that Van Rompuy and Tusk had used their prerogative to convene extraordinary meetings wisely and well.

As well as meeting in the European Council, leaders of countries in the Eurozone began to meet separately in the Euro Summit, which became institutionalized in the Treaty on Stability, Coordination and Governance of 2012, and whose rules of procedure the European Council adopted in 2013.[26] French President Nicolas Sarkozy championed the Euro Summit, which he saw as the pinnacle of a new system of economic governance for the Eurozone. National leaders designated Van Rompuy President of the Euro Summit at the same time that they re-elected him President of the European Council.[27] Donald Tusk took over the presidency of both bodies when he succeeded Van Rompuy, despite the fact that Poland, Tusk's country of origin, was not in the Eurozone.[28] This demonstrated the denationalization of the office of European Council President, even though Tusk remained a controversial figure in Poland, an important member state.

The Euro Summit met seven times between 2010 and 2012, often immediately after meetings of the European Council. This meant that leaders of countries not in the Eurozone often had to leave the room before the Euro Summit could begin, thereby accentuating the outsider status within the European Union of non-Eurozone members. Moving difficult discussions about the euro crisis into a separate forum for national leaders may have helped "facilitate cohesion and consensus within the European Council," which is a responsibility of the European Council President, by avoiding

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25. *See* Suzana Elena Anghel et al., European Council Oversight Unit, The European Council and Crisis Management (Feb. 2016), http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/573283/EPRS_IDA(2016)573283_EN.pdf.

26. *See* European Council, EUCO 23/13, European Council 14/15 March 2013: Conclusions (Mar. 14, 2013).

27. *See* European Council Press Release, EUCO 37/12, Herman Van Rompuy Re-Elected President (Mar. 1, 2012).

28. *See* European Council, EUCO 163/14, Special Meeting of the European Council (30 August 2014): Conclusions (Aug. 30, 2014).

ruptures between the euro ins and outs.[29] But it emphasized the inherent divisiveness of a highly important policy area from which two member states (Denmark and the United Kingdom) had formal opt-outs; in which one member state (Sweden) refused to participate; and in which several Central and Eastern European member states were not yet eligible to participate.

The Euro Summit met only once in 2013 and not at all in 2014, reflecting a trough in the euro crisis and the fact that Sarkozy, the main driving force behind the initiative, had left office. By contrast, Tusk convened the Euro Summit three times within four weeks in July-August 2015, when the crisis again escalated and Greece required yet another bailout. In that case, the Euro Summit proved an ideal forum in which to hammer out a financial assistance agreement on which the future of the euro possibly hinged.

An added value of the standing European Council presidency was that, unlike the previous, rotating presidency, the new President could work exclusively and continuously on European Council business. That meant being able to concentrate fully on preparing the agenda of the European Council, overseeing the preparation of background documents, and drafting the meetings' conclusions. All of this took place in close consultation with the offices of national leaders and other EU institutional actors, notably the Commission President. As with convening extraordinary summits, the European Council President had some discretion in the performance of these tasks. In particular, responsibility for sending formal letters of invitation before each summit to other members of the European Council gave the President some leeway in shaping the agenda.

Being fulltime also allowed the President to keep in contact with members of the European Council between meetings, often by visiting key principals in person, in order to ascertain their positions on important agenda items. Based on detailed knowledge of most national preferences and familiarity with the agenda, the standing European Council President was generally in a better position than presidents in the previous, rotating system to mediate among national leaders and help forge agreement.[30]

29. *See* TEU post-Lisbon, *supra* note 9, art. 15 ¶ 6(c).

30. *See* Agnes Batory & Uwe Puetter, *Consistency and Diversity? The EU's Rotating Council Presidency*, 20 J. EUR. PUB. POL'Y 95, 100-09 (2013).

The political environment during the crisis was nevertheless exceedingly challenging. Van Rompuy faced the powerful duopoly of French President Nicolas Sarkozy and German Chancellor Angela Merkel during most of his first term in office. Merkel was slow to respond to the euro crisis, initially underappreciating its magnitude. Once she grasped the seriousness of the situation, Merkel reacted cautiously. This reflected her sensitivity to domestic public opinion, which blamed Greece for the country's difficulties and was averse to offering generous financial assistance. Merkel was equally sensitive to the position of the German central bank, which saw itself as the guardian of EMU orthodoxy and also opposed large-scale assistance for Greece, and to the possibility of challenges before the German constitutional court in the event that the government appeared to exceed the Maastricht Treaty's provisions on EMU. Only as the extent of the Greek debacle became fully apparent did Merkel concede to a bailout, with the involvement of the International Monetary Fund together with the European Union, via the Commission and the European Central Bank.[31]

Organizing the financial assistance packages—first on an ad hoc basis, second by means of the temporary European Financial Stabilization Mechanism and the European Financial Stability Facility, and third by means of the permanent European Stability Mechanism—took considerable time and effort in the European Council and preoccupied its President in the early years of the crisis. It helped that Van Rompuy was an economist by training and had considerable familiarity with Belgium's complicated public finances. Financial assistance for countries in difficulty came with conditions attached. Those conditions included drastic cuts in government expenditure, higher rates of taxation or at least better rates of tax collection, and structural economic reforms. This was consistent with the policy of austerity, which Germany advocated as a cure for the crisis. Having undertaken economic reforms in the early 2000s, and amended its constitution in 2009 to include a balanced budget provision, Germany wanted other EU countries to follow its lead, even though many economists warned that fiscal retrenchment during

31. *See* FRANZ-JOSEF MEIERS, GERMANY'S ROLE IN THE EURO CRISIS: BERLIN'S QUEST FOR A MORE PERFECT MONETARY UNION (2015).

an economic downturn risked exacerbating unemployment and sluggish growth.[32]

Intellectually, Van Rompuy may have understood the arguments against austerity, but politically, he had little choice but to follow Germany's lead. Most national leaders found themselves in the same position. As the European Union's largest economy and most influential member state, Germany was able to set the terms of the European Council's crisis response. Austerity policy had an ideological edge; it was rooted in right-wing economic orthodoxy. It was no accident that Germany's pro-austerity government was dominated by the center-right. Other center-right governments in the European Union agreed with austerity; those on the center-left went along with it either in deference to Germany or because of austerity's intrinsic appeal at a time of serious fiscal imbalances.

France, under the center-right presidency of Nicolas Sarkozy, strongly supported austerity and strict conditionality for EU bailouts. Within the European Council, Merkel and Sarkozy were close allies. Largely at their behest, in 2011, national leaders negotiated the Treaty on Stability, Coordination and Governance ("the Fiscal Compact"), which committed its signatories to implement in national law measures to ensure a balanced budget. Van Rompuy was instrumental in drafting the Fiscal Compact, but would have preferred that it not require EU Treaty change, given the likely ratification difficulties in many member states. Britain did not agree to the Treaty, not because of the government's opposition to austerity—the Conservative government was a major proponent of austerity—but because of Britain's aloofness from EMU and unwillingness to take on additional EU obligations. As the Czech Republic also declined to participate, only twenty-five of the then twenty-seven member states signed the Fiscal Compact in March 2012, which formally was not part of the EU Treaty framework.[33]

Merkel and Sarkozy's tendency to work closely together, often to the point of reaching agreement between themselves, which they then imposed on the European Council, inevitably aroused the antipathy of other national leaders. This put Van Rompuy in a

32. *See generally* Paul De Grauew & and Yuemei Ji, *Panic-Driven Austerity in the Eurozone and its Implications*, VOXEU.ORG (Feb. 21, 2013), http://www.voxeu.org/article/panic-driven-austerity-eurozone-and-its-implications.

33. *See generally* European Council Press Release, Fiscal Treaty Signed: Strengthened Fiscal Discipline and Convergence in the Euro Area (Mar. 2, 2012).

difficult position. On one hand, he had to be sensitive to the preferences of Merkel and Sarkozy, the EU's most powerful national politicians. On the other hand, he could not ignore the concerns of other European Council members. A widespread perception that he had been selected as European Council President largely at the behest of Merkel and Sarkozy deepened Van Rompuy's dilemma. His propensity to support Merkel and Sarkozy, out of either conviction or convenience, reinforced the perception that he was indeed their man.[34]

The election of François Hollande as President of France in May 2012 changed the tenor of Franco-German relations in the EU, as did France's increasingly evident economic weakness. Hollande, a socialist, opposed austerity. Moreover, he had promised during the campaign that, if elected, he would stand up to Merkel. Hollande found eager allies among other national leaders who also resisted Germany's leadership and whose countries suffered from the impact of austerity. Matters came to a head at an ill-tempered meeting of the European Council in June 2012 when Merkel was put on the defensive.[35] Once again, Van Rompuy was torn between two extremes and tried to bridge the difference. Opinion within the European Council soon swung back in Merkel's favor, reflecting the predominance of Germany's position and the inherent logic of Franco-German relations. Despite his opposition to austerity, Hollande realized that France could not stand apart from Germany and act independently in the European Union.

Despite having to hew closely to Merkel's position, Van Rompuy had some influence of his own on the European Council's crisis response. In March 2010, at the outset of the crisis, EU leaders asked him to "establish, in cooperation with the Commission, a Task Force with representatives of the Member States, the rotating Presidency [of the Council] and the ECB" to report on "the measures needed to [remedy the crisis], exploring all options to reinforce the

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34. *See Jean-Claude Juncker on Saving the Euro: 'It Would Be Wrong to Create Taboos'*, DER SPIEGEL (Jan. 24, 2011, 10:43 AM), http://www.spiegel.de/international/europe/jean-claude-juncker-on-saving-the-euro-it-would-be-wrong-to-create-taboos-a-741183.html.

35. *See* Pierre de Boissieu et al, *Saving the Euro*, *in* NATIONAL LEADERS AND THE MAKING OF EUROPE: KEY EPISODES IN THE LIFE OF THE EUROPEAN COUNCIL (Pierre de Boissieu et al. eds., 2015) at 258-75; *see also* European Council, EUCO 76/12, European Council 28/29 June 2012: Conclusions (June 29, 2012).

[European Union's] legal framework."[36] Building on the work of the 2010 Task Force, Van Rompuy directed a series of reports on establishing "a genuine EMU," released under the auspices of the presidents of the European Council, the European Commission, the Eurogroup (of Eurozone finance ministers), and the European Central Bank, which the European Council approved in December 2012.[37]

The fundamental weakness of EMU, which was apparent at the time of the Maastricht negotiations, was the absence of a banking and a fiscal union. Though willing to establish a monetary union, national governments were unwilling to surrender additional sovereignty in the areas of banking regulation and fiscal policy.[38] Twenty years later, the key to resolving the euro crisis seemed to be "More Europe:" finally establishing a banking union and a fiscal union—core elements of economic union—alongside monetary union. Van Rompuy, an ardent European federalist, advocated such an outcome, buttressed by political union.[39] Even in the depths of the euro crisis, however, and partly because of the political fallout from it, most national governments refused to cede substantially more sovereignty to the European Union. Few were willing to embark upon the time-consuming and politically demanding intergovernmental negotiations necessary to bring about the requisite EU Treaty change.

Though impressive by the standards of the Maastricht Treaty and the 1997 Stability and Growth Pact (an additional set of "rules of the road" for EMU), the amount of legislation passed and number of agreements reached to strengthen monetary union since the onset of the crisis did not amount to a truly genuine EMU. Undoubtedly, the framework for EMU was much more robust in 2015 than it had been in 2010, with stronger economic governance, closer fiscal coordination among national governments, and a rudimentary banking union. This had been achieved on the basis of both supranational and intergovernmental decision-making. Van Rompuy had helped nudge

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36. GENERAL SECRETARIAT OF THE COUNCIL, THE EUROPEAN COUNCIL IN 2010 (Jan. 2011), http://www.consilium.europa.eu/en/documents-publications/publications/2011/pdf/qc3010507enc_pdf/.

37. *See* HERMAN VAN ROMPUY, TOWARDS A GENUINE ECONOMIC AND MONETARY UNION (2012), http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/134069.pdf.

38. *See* KENNETH DYSON & KEVIN FEATHERSTONE, THE ROAD TO MAASTRICHT: NEGOTIATING ECONOMIC AND MONETARY UNION (1999).

39. *See* HERMAN VAN ROMPUY, EUROPE IN THE STORM: PROMISE AND PREJUDICE (2014).

the European Union toward deeper economic and political integration, but would have liked it to go farther, in a supranational direction. Being realistic, especially from the perspective of the European Council presidency, he understood that national governments had conceded as much as possible, under the circumstances. Parts of the various reports that he helped draft were intentionally aspirational rather than attainable.[40] Such is the nature of European integration.

The Ukraine crisis posed a different set of challenges for the EU, for the European Council, and for the European Council President. The crisis tested EU solidarity and the effectiveness of the EU's foreign and security policy. Variations of history, geography, and economy among the EU's member states explain disparities in national governments' dealings with Russia and reactions to the unfolding events in Ukraine. Whereas all governments deplored Russia's annexation of Crimea and support for the separatist movement in eastern Ukraine, some were reluctant to incur the cost of imposing a wide range of economic sanctions against Russia. The European Council discussed the Ukraine crisis throughout 2014 and 2015, including in several extraordinary meetings. Member states soon forged a common position and gradually increased the intensity of sanctions against Russia, despite Russia's imposition of countermeasures, which affected some member states more than others. The downing of a Malaysian Airlines flight over eastern Ukraine in July 2014, purportedly by separatists armed with Russian missiles, outraged opinion in the European Union and strengthened the resolve of the European Council to stand up to Russia.[41]

The European Council President played a prominent part in orchestrating the European Council's response to the Ukraine crisis. As a former Prime Minister of Poland, a country having historically tense relations with Russia, Donald Tusk, who became European Council President in December 2014, took an especially keen interest in the issue and advocated a tough EU response. Chancellor Merkel and President Hollande took the lead in trying to broker an agreement between Russia and Ukraine, with the support of the European Council and its President. Though serious for the European Union, the

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40. *See id.*

41. *See* Peter Spiegel & Geoff Dyer, *EU and US Present United Front with Tough Sanctions Against Russia,* FINANCIAL TIMES (July 29, 2014), http://www.ft.com/cms/s/0/1905aac0-1738-11e4-87c0-00144feabdc0.html#axzz43IY1YnQ6.

Ukraine crisis did not threaten core EU policies, or indeed the future of the European Union, in the same way that the euro and migration crises did. Nevertheless, the failure of the European Union to respond forcefully to Russia's aggression would have been a blow to its self-esteem and international credibility, especially during the debilitating euro crisis.

No sooner had the Ukraine crisis ebbed—though not ended—in 2015 than the migration crisis erupted. An exodus of migrants from North Africa, in the aftermath of the Arab Spring in 2010, was a harbinger of things to come. The loss of over 360 lives following a shipwreck off the Italian island of Lampedusa, in October 2013, shocked European opinion and promoted the European Council to call for "determined action" to prevent such tragedies happening again.[42] In addition, the European Council recognized the importance of tackling the "root causes of migration flows," and the need to reinforce "Frontex activities in the Mediterranean" (Frontex is the European Union's border protection agency).[43] Italy, the member state most affected by large-scale migration across the Mediterranean, pressed its EU partners to follow through on the European Council's conclusions, but little happened until the massive influx of migrants into the European Union in summer 2015, as a result of the rapidly deteriorating situation in Syria.

If developments in North Africa and the Middle East were the "push" factors in the migration crisis, a crucial "pull" factor was Chancellor Merkel's announcement in September 2015 that Germany would not impede the flow of migrants entering the country.[44] Though laudable on humanitarian grounds, this proved to be a risky declaration, as tens of thousands of migrants seized the opportunity to reach Germany, a preferred destination for those seeking asylum or better economic opportunities. There were no restrictions on cross-border travel within the Schengen Area, whose external borders were supposedly secure. In fact, the external borders were extremely porous. Moreover, the Dublin Regulation, which specifies procedures for registering and processing asylum seekers as they enter the

42. *See* European Council, EUCO 169/13, European Council 24/25 October 2013: Conclusions (Oct. 25, 2013).

43. *Id.*

44. *See Mother Angela: Merkel's Refugee Policy Divides Europe*, DER SPIEGEL (Sept. 21, 2015, 5:21 PM), http://www.spiegel.de/international/germany/refugee-policy-of-chancellor-merkel-divides-europe-a-1053603.html.

European Union, proved unworkable when a sudden upsurge in migrants inundated the system. A number of countries responded by restoring intra-EU border restrictions, which is permitted under the Schengen rules, as long as it is for a limited duration.[45] As the crisis escalated, the risk increased that temporary restrictions would become permanent, and that Schengen would collapse.

In the meantime, the migration crisis posed serious humanitarian and logistical challenges for Germany and a handful of other countries to which migrants flocked in huge numbers. It posed a particular challenge for Greece, the first EU country on the Balkan route through which most migrants passed from the Middle East into Europe. Relations between Germany and Greece were already strained because of the euro crisis. As the migration crisis intensified, relations deteriorated further, with Germany accusing Greece of not fulfilling its Schengen obligations, notably with respect to border security and implementing the Dublin Regulation. Some other countries, which resented Germany's advocacy of austerity during the euro crisis, seemed to take malicious pleasure in Germany's newfound predicament, and were noticeably unenthusiastic about helping Merkel solve the problem.

The enormity of the migrant crisis, together with the degree of acrimony among member states, complicated efforts in the European Council to find a solution. In addition to the regular meetings of the European Council, Tusk convened three extraordinary meetings in 2015 to discuss the crisis. He also participated in summits between the EU leaders and the leaders of non-EU countries directly affected by the situation, notably Turkey and countries in the Western Balkans. The European Council proposed various measures to cope with the crisis, ranging from saving lives at sea; to fighting human trafficking; to distributing migrants among all member states; to setting up hotspots (areas on the border of frontline member states, such as Greece and Italy, where migrants could be quickly registered and processed); to providing financial and other assistance to non-EU frontline states, especially Turkey; to strengthening the EU's external borders and reinforcing Frontex.[46]

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45. *See* Convention Implementing the Schengen Agreement of 14 June 1985 Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at Their Common Borders, art. 2 ¶ 2, 1985, O.J. L 239.

46. *See* European Council, EUCO 169/13, *supra* note 42.

Proposals such as these were easier to formulate than to implement, especially in view of the scale of the crisis and the political atmosphere in which it unfolded. What Tusk has identified as a "delivery deficit"—the gap between the rhetoric of summit conclusions and the reality of EU and member state action—has long characterized the work of the European Council.[47] One of the reasons for establishing the standing presidency was to try to improve follow-through from European Council meetings, although the President's powers are limited to persuasion. Notwithstanding the existence of a standing presidency, the migration crisis revealed the extent of the European Council's poor record of implementation in the face of member states' unwillingness to share the burden of relocation and the cost of other emergency measures.

By 2016, the European Union was still far from having overcome the migration crisis, while the euro crisis and Ukraine crisis seemed to be dormant, though by no means resolved. The damage caused to the European Union was considerable. The impact of the crises tarnished the European Union's image and further undermined popular support for European integration. Euroskepticism—opposition to the existence of the European Union or to particular its policies and programs—soared. Under the circumstances, governments were more likely to advocate specific national interests than common European interests. Divisions within the European Union widened between eurozone members and non-members; between creditor and debtor countries; between older and newer member states; between northern and southern, eastern and western member states; between Germany and France; between Britain and the rest. The fabric of European integration seemed to be fraying.

III. *ROLE OF THE EUROPEAN COUNCIL PRESIDENCY*

The installation of a new European Council Presidency—the replacement of a rotating, national presidency with a standing, elected president—could not have come at a better or a worse time. The onset of the crisis just as the first elected president took office meant that the European Council was inherently better equipped to deal with a

47. European Council Press Release, EUCO 17/16, Report by President Donald Tusk to the European Parliament on the Outcome of the December European Council (Jan. 19, 2016).

series of unexpected and unexpectedly challenging events, but that the new president faced a surprisingly difficult situation in a job that was already extremely exacting. It is hard to imagine that the European Council, for all its faults, would have managed as well as it did during the last six years without a full-time president to provide continuity between meetings, convene extraordinary sessions, and help draft the roadmap for a stronger monetary union, apart from doing the usual presidency work of preparing the agenda, chairing meetings, and drafting conclusions. Clearly, in times of crisis or not, the European Council is better served by having a standing presidency.

The European Council President is in a leading position in the European Union's leading institution but is not a leader of that institution, let alone of the European Union. The two incumbents so far are former prime ministers and therefore have prior experience of the European Council and have had the same status as the European Council's current principals. But they are no longer on a par with those principals. Their authority derives form their prior status and experience and from having been elected as European Council President. This gives the president considerable stature and visibility in the European Union's leadership structure but less than that of the European Union's most prominent national leaders.

Van Rompuy and Tusk brought different attributes and skills to the task of crisis management. Van Rompuy's ease with economics allowed him to grasp complicated aspects of the euro crisis. Tusk is less comfortable with economics, but apart from the tense negotiations surrounding the third Greek bailout in 2015, he did not have to focus as much as Van Rompuy on the euro crisis. By contrast, Tusk is more familiar with foreign policy problems facing the European Union, especially having to do with Russia. If anything, Tusk may have been too forceful in advocating a tough position against Russia, although this was what the European Council eventually adopted. No European Council President or national leader could have been prepared for the magnitude of the migration crisis. As with the Ukraine crisis, Tusk was criticized for having pushed national leaders during the migration crisis further than they seemed willing to go. This may have reflected his recent experience as prime minister of a large member state, when he was used to taking strong stands rather than leading discreetly from a less prominent position.

The European Council President needs to be a good communicator, within and outside the institution. The president makes frequent public appearances, speaking in settings ranging from the European Parliament to universities and think tanks. The President also engages extensively with media, ranging from post-summit press conferences to one-on-one interviews. In general, however, the president does not have a high public profile. The office of European Commission President has been around much longer than that of the European Council President and continues to attract more public attention, though far less than a prime minister attracts in a member state or than prominent national leaders attract in the European Union as a whole. The European Council President has not become a well-known public face of the European Union or even of the European Council.

The most persistent criticism of the European Council's handling of the euro crisis is that it did too little, too late; and that austerity impeded rather than aided the European Union's economic recovery. Even if valid, this criticism does not necessarily reflect badly on the European Council President. Van Rompuy, in office during the worst of the euro crisis, was hardly in a position to dissuade Merkel and likeminded national leaders from advocating austerity. As for specific measures to deal with the crisis, such as financial assistance packages and new institutional arrangements for economic governance, Van Rompuy played a relatively prominent and constructive role, without which the European Union's response may have been even less satisfactory.

The crisis has been a wrenching experience for the European Union. It has tested institutions and policies as never before. The European Council, the European Union's leading institution, has been at the forefront of EU affairs during the crisis years. The standing presidency has served the European Council well. Even if the European Council President managed to ameliorate the crisis only marginally, it was better to have a standing President than not. At a time of grave crisis, having a steady hand on the European Council tiller is surely not a bad thing.