

STUDY

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The Role of the European Council in the EU Constitutional Structure



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Abstract

This study was commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee. It examines the evolving role of the European Council in the EU's constitutional structure. As the study demonstrates, the increasing tendency of the European Council to instruct other EU institutions and its limited accountability have established an increasing gap between its *de jure* role under the EU Treaties and its *de facto* power in the larger system of EU governance.

This document was requested by the European Parliament's Committee on Constitutional Affairs.

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LIST OF ABBREVIATIONS

CEAS	Common European Asylum System
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
ECB	European Central Bank
EMU	Economic and Monetary Union
EO	European Ombudperson
EP	European Parliament
EU	European Union
EUCO	European Council
JHA	Justice and Home Affairs
MEP	Member of the European Parliament
MFF	Multiannual Financial Framework
QMV	Qualified Majority Voting
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

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EXECUTIVE SUMMARY

The European Council (EUCO) is increasingly at the centre of EU politics. Its interventions are decisive in shaping the future of the EU and in determining the content of key policies, from responding to the Covid-19 pandemic to providing a roadmap to long-term peace in Ukraine. As this report demonstrates, however, there is a significant gap between the power exercised by EUCO and the role it formally plays in the EU's Treaty framework.

The Treaty ascribes to EUCO three main roles—as a strategic agenda setter, a body to resolve impasses in specific policy areas and an instigator of constitutional change in the Union. In doing so, the Treaty restricts EUCO's role in relation to legislative politics, respecting the democratic agency of the Union's legislative institutions. As the report examines, this Treaty-based role is increasingly supplemented by EUCO's function as an 'instructor' of the EU institutions across a wide-range of policy areas and throughout the policy process.

Gathering empirical data, we break down both the types of instructions EUCO gives to other EU actors and their variance across policy areas. As the report shows, EUCO is no mere setter of general guidelines but extensively tasks other EU institutions, including in areas of policy strongly linked to the Community Method such as the internal market. It is active not just as an agenda setter but as a mediator within the legislative process itself—far beyond areas where such a role is envisaged in the Treaty—and in overseeing the process of policy implementation. We also observe variance in the volume of instruction over time, peaking in the early 2010s but also gradually increasing today in response to recent EU crises.

As the study argues, this rise of EUCO as an 'instructor' raises important questions regarding its accountability. Tracking three different varieties—political accountability, legal accountability and transparency—we find that EUCO carries a weaker regime than other EU institutions, with fewer checks and balances. While other EU institutions have gradually strengthened their accountability regimes as their institutional power has grown, EUCO has bucked this trend with limited evidence of stronger accountability over time. To the contrary, the shift of EUCO's working methods towards oral transmission of information and limited document production actively frustrate accountability goals.

This establishes a case for using accountability mechanisms as a device to give EUCO a stronger constitutional foundation. More extensive *ex ante* controls ('closing the gap' between EUCO's *de jure* and *de facto* functions) as well as stronger *ex-post* accountability to institutions, such as the European Parliament, would constitute important first steps in this direction.

Key findings

- Despite its constitutionally limited role in legislative decision-making, EUCO gives frequent instructions to the Union's legislators, both in politically salient fields and more technical areas of the internal market. In some cases, EUCO interference prompts major decisions, such as the reforms in economic governance during the euro crisis or the adoption of Next Generation EU in 2020. In other cases, however, EUCO involvement can block or significantly delay legislative decision-making, as was the case of asylum policy reform (2018-2023) following the refugee crisis.
- The legal accountability of the European Council has been strengthened by a slowly developing set of cases brought before the Court of Justice (CJEU) and the European Ombudsman (EO). However, the lack of specification regarding EUCO's constitutional role in the Treaties, its multi-

level nature and the limited incentives to litigate produced by the EU's system of remedies makes legal accountability difficult to exercise in practice.

- Politically, existing accountability mechanisms are insufficient. First, national elections and parliaments can only hold individual heads of state or government accountable, but not EUCO as a whole. Second, while Parliament could act as a political counterbalance to EUCO, its members (MEPs) do not have appropriate accountability instruments to scrutinise or challenge EUCO decisions.
- In addition, the consensual nature of EUCO decision-making and its stated need for 'space to think' has rendered EUCO one of the EU's least transparent institutions.
- The gap between EUCO's formal Treaty framework and its increasing political power suggests the need for reforms, either as part of a process of Treaty change or independently from it, to increase its accountability and protect the prerogatives of other institutions. The study explores three paths in this regard: 1) altering EUCO's legal framework, 2) improving mechanisms of ex-post political accountability and 3) altering its transparency regime.

Policy recommendations

1) Improving the legal framework

- **The full range of tasks that EUCO currently carries out, particularly its 'crisis' functions, should be reflected in and limited by the Treaties.** The Treaty could clarify, in particular, that EUCO should play a role in coordinating the EU's response to pressing policy emergencies. At the same time, EUCO's role in tasking EU institutions outside of this context should be limited, for example through the use of an emergency break triggered by other institutions—and subject to review by the CJEU.
- In the absence of Treaty change, **EUCO should respect existing limits on its role in the legislative process, particularly its role in 'impasse breaking'.**

2) Improving political accountability mechanisms

In our view, the only institution that has the political legitimacy to hold EUCO accountable for collective decisions at the EU level is the European Parliament. Not only are MEPs directly elected by EU citizens, but they are also supposed to represent the general European interest and thus act as a counterbalance to national governments in EUCO. We hence propose two mechanisms of political accountability to Parliament:

- **Organise confirmation hearings for the EUCO President:** Similar to the confirmation hearings organized for Commissioners designate, the nominee for EUCO President should go through a confirmation hearing in Parliament with leaders of all political groups. While such a reform would likely require Treaty change, the change could yield significant long-term results by incentivising greater cooperation between the EUCO President and Parliament and providing greater legitimacy to EUCO's increasing role as a mediator within the legislative process.
- **Replace the general debates after EUCO meetings with targeted accountability hearings,** conducted by leaders of political groups and the EUCO President. Taking the example of the Economic Dialogues with the Eurogroup, the hearings with the EUCO President could be divided in blocks of questions and answers, with time divided proportionally among political groups depending on their size in Parliament.

3) Improving transparency mechanisms

- **Publish the progress reports currently conducted orally by the country holding the Presidency of the Council at the beginning of EUCO meetings.** The central logic behind publication would be to provide a yardstick by which progress towards EUCO goals can be tracked over time, thereby facilitating other forms of accountability e.g. towards media, national publics and other EU institutions.
- **Return to the practice of publishing minutes of EUCO meetings,** with a focus on providing insight into the main fault lines of debate within EUCO regarding key EU priorities. The minutes would include an authoritative account of EUCO deliberations, thereby limiting the risk that public perceptions of EUCO are framed by incomplete social media narratives. The publication of minutes would also be of significant assistance to other accountability-rendering institutions (such as the CJEU or EO when determining cases involving EUCO).
- **The Council should produce a separate disaggregated annual report on document access requests directed towards the EUCO President.** As with the annual report on Council document access, this report would identify the areas in which access requests were made, the actors making requests and information on whether requests were complied with. This would be an important first step in understanding whether EUCO complies effectively with the EU's general document access regime.

1. GENERAL INFORMATION

Background

Since the Lisbon Treaty (2009), the role of the European Council (EUCO) in EU decision-making has increased significantly. In the last 15 years, EUCO found itself at the centre of subsequent crisis episodes affecting different policy areas such as economic governance (the euro crisis), migration policy (the refugee crisis), health policy (Covid-19), foreign affairs (the crises in Crimea and Ukraine), or constitutional issues (the Brexit crisis). While EUCO proved apt to provide political leadership under conditions of urgency and uncertainty, its centrality in EU decision-making came to expand way beyond periodic episodes of crisis management. The rising influence of national government via EUCO has important consequences for the EU's inter-institutional balance and the classic Community Method of decision-making—which combines the European Commission's (the 'Commission') right of legislative initiative with decision-making by the Council of the EU ('the Council') and the European Parliament (Parliament, EP). Moreover, the concentration of executive power in EUCO raises questions about the quality of democratic decision-making in the EU more generally.

Aim

Against this background, this study aims to:

- 1) Describe EUCO's evolving role in EU governance in the post-Lisbon period, considering both the mandate given by the Treaties and the changes brought by recurrent crisis situations.
- 2) Analyse to what extent EUCO gets regularly involved in decision-making by providing instructions to other institutions, even during the legislative process.
- 3) Assess whether EUCO's increased influence in EU governance has affected the principles of democratic decision-making.
- 4) Examine existing legal and political mechanisms to ensure EUCO's accountability and transparency of the European Council.
- 5) Give policy recommendations on potential reforms necessary to address EUCO's rising influence in EU decision-making.

KEY FINDINGS

- Though EUCO is formally a 'young' institution, heads of state and government have always played a larger role in EU governance than the tasks ascribed to them by the Treaties.
- In the context of multiple political crises affecting the EU since 2009, EUCO's role has once again expanded beyond the competences enshrined in Treaties.
- Nowadays, EUCO's influence spans across policy areas and stages of the policy process, as heads of state and government provide instructions to other institutions on a regular basis with respect to the content of policy proposals, the speed and direction of decision-making, or the priorities in policy implementation.
- Despite its constitutionally limited role in legislative decision-making, EUCO gives frequent instructions to the EU's legislators, both in politically salient fields and in more technical areas of the internal market. In some cases, EUCO interference prompts major decisions, such as the reforms in economic governance during the euro crisis or the adoption of Next Generation EU in 2020. In other cases, however, EUCO involvement can block or significantly delay legislative decision-making, as was the case of asylum policy reform (2018-2023) following the refugee crisis.
- The legal accountability of the European Council has been strengthened by a slowly developing set of cases brought both before the Court of Justice and the European Ombudsman. This case-law has clarified important questions surrounding for example the legal nature of EUCO conclusions. The lack of specification regarding EUCO's constitutional role in the Treaties, its multi-level nature and the limited incentives to litigate produced by the EU's system of remedies makes legal accountability difficult to exercise in practice.
- Politically, existing accountability mechanisms are insufficient. First, national elections and parliaments can only hold individual heads of state or government accountable, but not EUCO as a whole. Second, while Parliament could act as a political counterbalance to EUCO, its members (MEPs) do not have appropriate accountability instruments to scrutinise or challenge EUCO decisions.
- In addition, the consensual nature of EUCO decision-making and its stated need for 'space to think' has rendered EUCO one of the EU's least transparent institutions.
- The gap between EUCO's formal Treaty framework and its increasing political power suggests the need for reforms, either as part of a process of Treaty change or independently from it, to increase its accountability and protect the prerogatives of other institutions. The study explores three paths in this regard – altering EUCO's legal framework, improving mechanisms of ex-post political accountability and altering its transparency regime.

2. THE EVOLVING ROLE OF EUCO

2.1. EUCO in the Framework of the Treaties

Not uniquely among the EU institutions, EUCO is not a body explicitly established by the Treaties of the EU. Instead, the Treaties have been playing a game of ‘catch-up’ with reality, with the increasing importance and centrality of EUCO in EU governance reflected by the gradual anchoring of EUCO in the Treaty framework over time. As is well known, EUCO grew out of informal meetings between EU heads of state and government in the 1960s, largely concerned with overcoming blockages in the Council. This was then partially formalised in Paris in 1974, where the format for twice yearly meetings under a rotating ‘Presidency’ was agreed. However, it was only the Single European Act¹ that first mentioned the European Council in the Treaty text and the Maastricht Treaty² that formalised some of its functions in any meaningful sense (for example through the addition of the progenitor of what is now Article 15(1) TEU, namely that EUCO should define ‘general political guidelines’ for the Union):

The Lisbon Treaty³ radically increased the imprint of EUCO in the Treaty framework—again largely by confirming and codifying several elements that were already well-established institutional practice by then (Anghel and Drachenberg 2019). The Lisbon Treaty clarified EUCO’s functions in relation to Treaty change and membership of the Union, included rules on EUCO’s internal working and composition, and confirmed its special role in the area of justice and home affairs (JHA). In addition, the Lisbon Treaty also introduced some important innovations. By officially institutionalising EUCO, the Treaty clarified that, as a ‘proper’ EU institution, its acts would be subject to judicial review, provided they produced legal effects (Article 263(1) TFEU). Even more importantly, the Lisbon Treaty established a permanent EUCO Presidency (an issue that had long been discussed in EU affairs and was also envisaged in the failed Constitutional Treaty from which the Lisbon Treaty drew many of its most important reforms).

This means that the Treaty framework lays out several roles for EUCO in EU governance. It may be useful to group these into three broad roles (as will be further discussed, institutional practice suggests a number of further roles in addition to those laid out in the Treaty text).

2.1.1. ‘Planning’ and setting the strategic agenda

The Treaty places EUCO in a central place in the EU’s political system, as it entrusts it with providing the Union ‘with the necessary impetus for its development’. Article 15(1)⁴ TEU contains both a positive and a negative element. Positively, EUCO is asked to define the Union’s ‘general political directions and priorities.’ At the same time, negatively, EUCO is asked by the same article to refrain from exercising

¹ Single European Act amending the Treaty on European Union and the Treaty establishing the European Community (OJ L 169, 28.2.1986, p. 1-28); entry into force on 1 July 1987, Art. 2.

² Treaty of Maastricht amending the Treaty on European Union and the Treaty establishing the European Community (OJ C 191, 29.7.1992, p. 1-112); entry into force on 1 November 1993.

³ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (OJ C 306, 17.12.2007, p. 1-271); entry into force on 1 December 2009.

⁴ According to Article 15(1) TEU, “[t]he European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions”.

legislative functions. As will be discussed further below, EUCO's strategic agenda-setting role as defined by the Treaties asks it to walk a delicate line—to identify and address the Union's most pressing challenges without doing so at a level of detail that would preclude the agency of the Union's other political organs.

Over time, EUCO has used this Treaty power extensively. EUCO meetings and conclusions frequently frame the Union's priorities. As commented upon in the academic literature, this framing power is of high importance, influencing the way legislation is later developed: in the Covid-19 crisis, for example, the gradual shift in EUCO from conceptualising Covid-19 as a public health to an economic problem had an important bearing on the Union's political process over time (Moloney and Princen 2023). It has also, however, used its power to set long-term 'plans' for the Union, including specific measures needed to meet them (with the latter often bringing EUCO close to the dividing line of legislative initiative). Most recently in Granada in October 2023, EUCO discussed its strategic agenda for 2024–2029 (European Council 2023), following a practice of 5-year strategic agendas going back to 2014, which also has its genesis in other EUCO meetings that pioneered 'general plans', such as the Lisbon Strategy introduced at the turn of the millennium (European Council 2000). As the last 2019 strategic agenda⁵ illustrates, such guidelines can often be relatively detailed (mentioning for example the need to replace the Dublin Regulation and to implement the European Pillar of Social Rights through concrete legislative initiatives). The recent strategic plans illustrate both the advantages and drawbacks of such planning: while it allows EU leaders to engage in a strategic discussion beyond simply responding to day to day 'emergencies', such plans can of course be quickly overtaken by events (European Council 2019). Energy independence, cross-border health, and military cooperation therefore have little prominence in the 2019–2024 agenda while becoming dominant parts of EUCO's day-to-day agenda in the period that followed 2019.

The Treaty accompanies this general agenda-setting function for EUCO with a more elaborate and specific function in particular areas. Article 22 TEU gives EUCO a specific power to adopt decisions on strategic objectives in the EU's Common Foreign and Security Policy (CFSP), with the High Representative asked (Article 16) to conduct foreign policy on the basis of EUCO guidelines. This includes identifying threats facing the Union (with EUCO conclusions frequently assessing and commenting upon conflict zones and humanitarian issues both within Europe's neighbourhood and beyond). Similarly, Article 68 TFEU tasks EUCO with defining strategic guidelines for legislative planning in JHA, and Articles 121(2) and 148 TFEU provide it with a role in overseeing the Union's economic and employment coordination.

From a formal Treaty perspective, EUCO is given a stronger agenda-setting role in newer and more sensitive areas of policy, where either intergovernmental institutions predominate in the Treaty framework (e.g. foreign affairs and defence and parts of JHA) or where policy coordination rather than legislation are important modes of EU governance (e.g. economic policy). This carries an understandable logic: in such areas, high thresholds of agreement, or the need to marshal resources held at the national level, make gathering Member State consensus early in the policy-making process particularly important (Puetter 2013). Importantly, however, EUCO's agenda-setting attention in practice (particularly its role in tasking other institutions) ranges well beyond these fields. In fact, the Treaty is silent on many areas where EUCO has nonetheless reserved to itself a significant agenda-setting role. An example is the agreement of the EU budget—in the 2021–2017 Multiannual Financial

⁵ European Council. "A New Strategic Agenda 2019-2024." Press Release, 20 June 2019, 21:10, EUCO 9/19. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2019/06/20/a-new-strategic-agenda-2019-2024/>

Framework (MFF) round, EUCO was highly active in identifying spending priorities prior to the tabling of a Commission proposal (in spite of the absence of Treaty provisions on the budget empowering EUCO in this area) (Drachenberg and Vrijhoeven 2021). This gap—between areas where the Treaty provides EUCO with a significant role and its role in practice—will be further discussed in Section 2.2 below.

2.1.2. Decision-making and (re-)establishing political consensus

A second important function the Treaty framework provides EUCO is its role in fostering agreement between the Member States and in breaking potential deadlocks in the EU's political process. In the academic literature, this task has been given several names, with commentators referring to an 'elevator' function (Anghel and Drachenberg 2019: 10), where items are passed from the Council, or alternatively, EUCO acting as an 'emergency break' where Member States indicate concerns with the course of a proposal (Öberg 2021). This relates back to EUCO's very origins, particularly in overcoming the after-effects of the 'empty chair' crisis precipitated by France's absence from the Council in the 1960s.⁶ Nowadays, increasing political polarisation and the gradual enlargement of the Union also create stress on the Union's political process (with EU institutions therefore turning to EUCO to solve seemingly intractable political conflicts).

EUCO's role in breaking dissensus is mentioned at several points in the Treaty in areas ranging from CFSP to social security and judicial cooperation.⁷ To take the articles on criminal law as an example, Articles 82(3) and 83(3) TFEU states that 'Where a member of the Council considers that a draft directive ... would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council.' The origins of this provision are instructive: as criminal justice measures were shifted in the adoption of the Lisbon Treaty from unanimity to qualified majority voting (QMV), the insertion of this emergency break provision was used to assuage Member States fearful that core elements of their criminal justice system would not be undermined.

Such provisions are not, however, without controversy. Aside from the delays in the legislative process these provisions can create, precisely the difference between the QMV rules applicable in the Council and the consensual decision-making of EUCO can instigate concerns that such provisions in effect undermine the decision-making rules provided for in the Treaty. In several prior resolutions, Parliament has therefore raised questions as to whether EUCO's role in impasse breaking carries the potential to undermine the prerogatives of the other institutions by imposing unanimity rules through the backdoor or otherwise enlarging EUCO's Treaty-based mandate (e.g. European Parliament 2014b). This happened, for instance, in the case of the reform of the Common European Asylum System (CEAS), discussed in Section 3.2.2.

One important question in relation to this fear is whether EUCO's role as an impasse-breaker is a general function or one confined to specific policy fields. The Treaty text provides some weight to the argument that impasse-breaking is *not* formally a general EUCO function. Importantly, the articles that provide

⁶ As discussed in a recent project of the MPI for Legal History, there is a close link between the establishment of EUCO and its consensus culture and attempts to overcome the effects of the French veto on decision-making. See: <https://www.lhlt.mpg.de/research-project/the-legacy-of-the-luxembourg-compromise>

⁷ A summary of Articles within the Treaty in which this impasse-breaking role is discussed can be found in Anghel, S. E. and Drachenberg, R. (2019) *The European Council under the Lisbon Treaty: How has the institution evolved since 2009?*, PE 642.806: European Parliamentary Research Service, European Council Oversight Unit, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/642806/EPRS_STU\(2019\)642806_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/642806/EPRS_STU(2019)642806_EN.pdf), pp. 10-11

for impasse-breaking both mention EUCO's role in this respect *and* provide specific procedures for it e.g. time periods in Article 82(3) TFEU, or making impasse breaking by EUCO conditional either on a QMV in the Council (Article 31(2) TFEU) or on the initiative of a group of 9 states (Article 87 TFEU).

In spite of these provisions, EUCO has frequently acted to break legislative impasses in areas well-beyond the policy areas outlined for this purpose in the Treaties (Anghel and Drachenberg 2019: 27). This includes making efforts to insert emergency breaks into legislative provisions. Following David Cameron's 2016 EU membership 're-negotiation', EUCO agreed to the idea of an emergency break in the context of in-work benefits for migrants, instructing the Commission to draw up a legislative instrument⁸ (that was dropped following the 2016 referendum). Later in 2020, the legislative institutions inserted into the conditionality regulation—following EUCO conclusions on the matter—a promise that the 'impartial' application of conditionality could be discussed at EUCO prior to its application by the Commission.⁹ Many examples of impasse-breaking thus exist in a legal grey-zone, without clear procedures indicating under which circumstances resorting to mediation in EUCO is appropriate and under which circumstances it might not be. We will return to this question in the report's concluding parts.

2.1.3. Constitutional and institutional change

Finally, a third Treaty function concerns important changes to the overall structure of the Union. A logical consequence of the general legal principle of conferral is that only the Member States have the authority to change the Treaties and alter its most basic rules, including the rules on who may be a member of the Union at all. The Treaty gives EUCO the power to activate both the ordinary and 'simplified' Treaty revision procedures (Article 48(3) TEU), to decide on accession (including guidelines on eligibility for membership (Article 49 TEU)), to determine the composition of and size of the other EU institutions (Article 14 and 17(5) TEU), to make important appointments (for instance, for the Commission (Article 17(7) TEU) and the European Central bank (283(2) TFEU) Presidencies) and to determine whether a Member State has committed a consistent and serious breach of the fundamental values listed in Article 2 TEU (Article 7(2) TEU). In many ways, therefore, the ultimate expression of EUCO's power under the Treaties is its ability to author the Treaties and set the overall rules under which the EU engages.

In practice, it is rarely able to carry out these 'constitutional functions' entirely independently. The Brexit process was famously negotiated by a special European Commission taskforce, headed by Michel Barnier, which however operated under general EUCO guidelines, with EUCO deciding on important elements such as extensions of the negotiating period and the UK withdrawal agreement (Schuette 2021). At the same time, both the accession process and the Article 7 procedure are accompanied by extensive Commission activity in the form of coordination and monitoring processes for accession countries and rule of law reports, including recommendations for states found to have breached Article 2 values. Without such processes of coordination and monitoring, it is difficult to imagine EUCO being able to carry out its constitutional functions effectively (even Treaty change in its 'ordinary' form is

⁸ European Council Conclusions of 18-19 February 2016, A new settlement for the United Kingdom within the European Union, section D.

⁹ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget OJ L 433I, 22.12.2020, p. 1–10, ELI: <http://data.europa.eu/eli/reg/2020/2092/oj>, Recital 26.

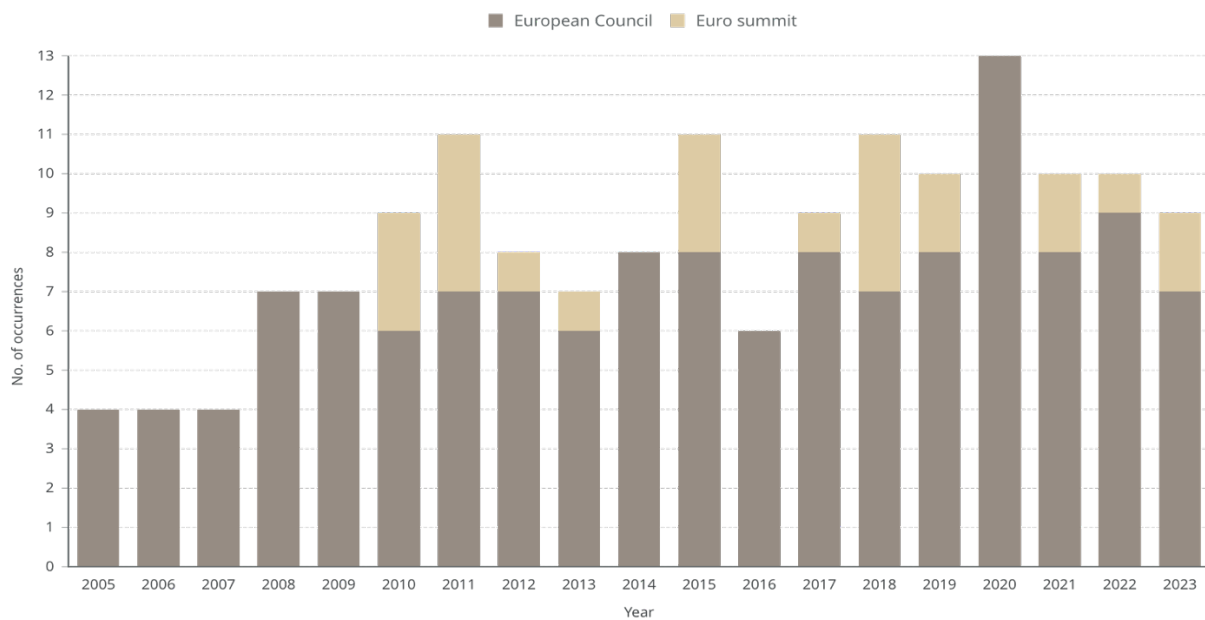
envisaged by the Treaty as being conducted via a larger Convention or conference where reforms can be properly deliberated and drafted). As in other areas of policy, the Treaty therefore makes EUCO both initiator and final decision-maker regarding constitutional change, while still providing room for other institutions to significantly shape policy content. Having specified the EUCO's formal roles, we now turn discussing its practical influence on other EU institutions.

2.2. EUCO as a 'dispenser' of guidelines: the practice

Since the Lisbon Treaty, EUCO's influence in the EU constitutional framework has been de facto expanded by a succession of crises that required rapid decision-making and political leadership at the highest political level. In the last 15 years, EUCO found itself at the centre of subsequent crisis episodes affecting different policy areas such as economic governance (the euro crisis), migration policy (the refugee crisis), health policy (Covid-19), foreign affairs (the Crimea and Ukraine crises), or constitutional issues (the Brexit crisis). In this context, scholars even talked about a 'crisisification' of EU policy-making, which denotes a substantive 'change in the nature of the processes by which collective decisions are made' (Rhinard 2019). Traditionally, EU decision-making took time because it was expected to include extensive analyses of problems, long consultations with stakeholders, and repeated rounds of negotiations within and between institutions. The period 2009 to 2023 challenged this *modus operandi* by bringing a lot of uncertainty, a perception of multiple threats to the integration project, and a sense of urgency to EU decision-making (Boin *et al.* 2005). As media outlets predicted the collapse of the euro (The Economist 2011) or the end of Schengen (Binyon 2015), EUCO became the 'go-to' institution for formulating EU responses to the crises.

At first glance, the expansion of EUCO influence is visible in the increased frequency of meetings of heads of state and government over time. In a 'usual' year, the European Council is supposed to meet four times: in March, June, October, and December (Consilium n.d.). Any other meetings are hence considered additional and labelled as 'informal', 'extraordinary', or 'special' meetings. Since 2010, heads of state or government in the euro area also met separately in the Euro Summit format, which was prominent during the euro crisis but has been convened less often in the last five years. Figure 1 illustrates the breakdown of meetings over time, showing the increased frequency of summits since 2008/2010. This period corresponds to the beginning of the euro crisis, which reached a peak in 2011—when heads of state and government met 11 times in the EUCO or Euro Summit format. There were also 11 meetings in 2015, the year when the refugee crisis hit Europe and EUCO scrambled to find a common solution among Member States (cf. Maricut-Akbik 2021). However, the absolute record was set in 2020, the year the pandemic started, when EUCO met a total of 13 times (but mostly by video conference).

Figure 1: Number of EUCO Meetings since 2005



Source: Based on Van Middelaar and Puetter (2022: 53), updated to 2023.

How does the frequency of meetings translate into influence over EU policy-making? In the following pages, we provide an analysis of the instructions given to core EU institutions in EUCO conclusions. We focus on the conclusions because they constitute the concrete output of EUCO meetings, and they capture the whole range of instructions given to other EU institutions (Section 2.1 above). We are particularly interested in the core decision-making institutions: the Commission, the Council, and Parliament—and hence exclude specialised bodies like the European Central Bank or EU agencies. Before describing the key findings, we explain our method of categorising instructions in different policy areas.

2.2.1. Analysing EUCO Conclusions: Data and method

Considering the entry into force of the Lisbon Treaty (December 2009), our analysis includes all meetings that took place between January 2010 and November 2023.¹⁰ After gathering all conclusions from the EUCO website, we searched the text for keywords capturing the main institutions: the Commission, the Council, and Parliament. At times, the conclusions would mention two institutions together, such as the Commission and the Council, or alternatively, the Council and Parliament (also referred to as the 'co-legislators'). Next, we used qualitative content analysis to categorise relevant sections of text in order to identify four types of instructions, broadly following the stages of the policy cycle. Table 1 summarises the explanation for each category:

¹⁰ At the time of the writing, the last scheduled meeting in December 2023 had not taken place, so that is excluded from the analysis.

Table 1: Types of instructions given by EUCO to other EU institutions

Type of instructions	Description
Information	EUCO asks other institutions to provide information on a given topic or to assess a situation and report back to them or the Council.
Proposal	EUCO invites the submission of a legislative or non-legislative proposal.
Decision-making	<ul style="list-style-type: none"> EUCO gives specific instructions to the Commission/Council on ongoing decisions. EUCO urges the co-legislators (EP/Council) to speed up decision-making on specific files.
Implementation	EUCO asks the Commission/Council to implement given decisions or monitor their enforcement.

Source: Authors' own account.

In addition, we were interested in the policy areas in which EUCO dispenses instructions to other institutions. Our division into policy fields follows the main headings of EU policy areas, such as the Economic and Monetary Union (EMU), CFSP, or JHA. The further categorisation seeks to provide more detail and is inspired by similar analyses in previous studies (e.g. Anghel and Drachenberg 2019; Carammia *et al.* 2016; Puetter 2014). Table 2 provides a summary of our categories, while the next section presents the main findings.

Table 2: Policy areas in which EUCO gives instructions to other institutions

Policy area	Code	Description
Economic and Monetary Union	ECON	Euro area governance, economic, monetary, and fiscal issues
	BANK	Banking union, financial supervision, capital markets union
	CFSP	Foreign policy, defence, European Neighbourhood Policy
External relations	GLOBAL	EUCO preparations for global institutions and forums (climate negotiations, G7/8/20), trade agreements with third countries
	ENLG	Enlargement negotiations
Justice and Home Affairs	MIG	Migration & asylum, expansion of Schengen area
	INT-SEC	Internal security: terrorist attacks, law enforcement cooperation
The Internal Market	MARKT	Single Market issues, industry, and entrepreneurship
	ENER	Energy policy

Environment and Social Affairs	ENV	Climate and other environmental policy issues
	EMSOC	Social and employment policy, poverty, education
	HEALTH	National health systems, Covid-19 vaccines
Institutional issues	BUDG	The EU budget, including discussions on the Multi-Annual Financial Framework
	BREXIT	Negotiations related to the United Kingdom's exit from the EU
	OTHERS	Personnel decisions, EU institutional framework, other policy areas

Source: Authors' own account, inspired by Anghel and Drachenberg (2019: 22–24) and Puetter (2014: 92).

2.2.2. Types of instructions given to other EU institutions

Figure 2 offers a summary of the types of instructions given to other institutions over time. By far, the peak years are 2011 and 2013, at the height of the euro crisis, when EUCO got involved in the minutiae of proposals, decision-making, and policy implementation in EU economic governance. In effect, EUCO was the architect of bespoke agreements on financial assistance, general reforms of EU economic governance rules, and constitutional changes to the EU Treaties—e.g., the Fiscal Compact¹¹. The period from 2010 to 2013 saw the establishment and close monitoring of the new economic governance framework (the European Semester¹²), the creation of the European Stability Mechanism¹³, and the beginnings of the Banking Union¹⁴. In addition, this period corresponds to the Presidency of Herman van Rompuy, who was known to prefer longer and more detailed conclusions compared to his successors (De Schoutheete 2015). For example, Donald Tusk's Presidency (2014–2019) saw a significant decrease in the length of EUCO conclusions and the numbers of instructions given to other institutions, even though his term included the contentious refugee crisis (2015–16). The Presidency of Charles Michel lies somewhere in-between, with more instructions given in 2022—the year when Russia invaded Ukraine—as opposed to 2020, when the pandemic started.

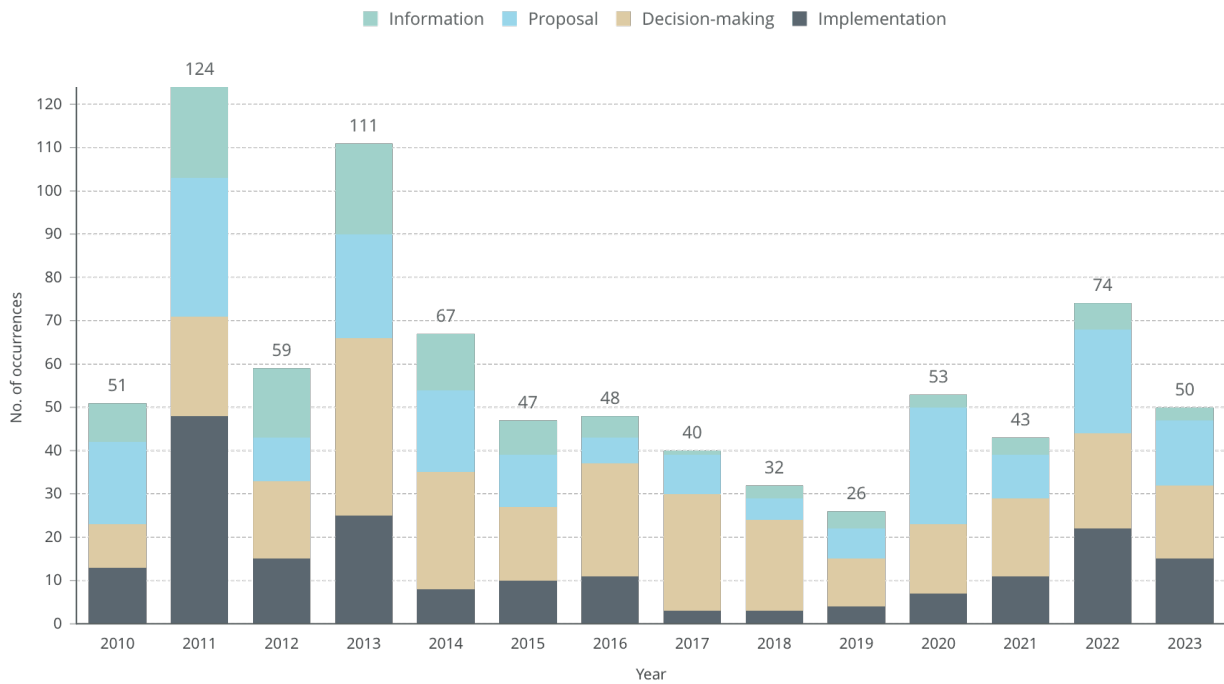
11 Treaty on Stability, Coordination and Governance in the Economic and Monetary Union of 2 March 2012; entry into force on 1 January 2013. — not published in the Official Journal, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42012A0302\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42012A0302(01)).

12 Introduced in 2011, the European Semester is an annual framework to coordinate economic, fiscal, employment and social policy within the EU. For more information, see: <https://www.consilium.europa.eu/en/policies/european-semester/>.

13 Treaty Establishing the European Stability Mechanism, signed on 2 February 2012, <https://www.esm.europa.eu/system/files/document/2023-10/05-TESM2-HR1.en12.pdf>.

14 Established in 2014, the Banking Union aims to ensure the stability of the banking sector in the euro area. For more information, see <https://www.consilium.europa.eu/en/policies/banking-union/>.

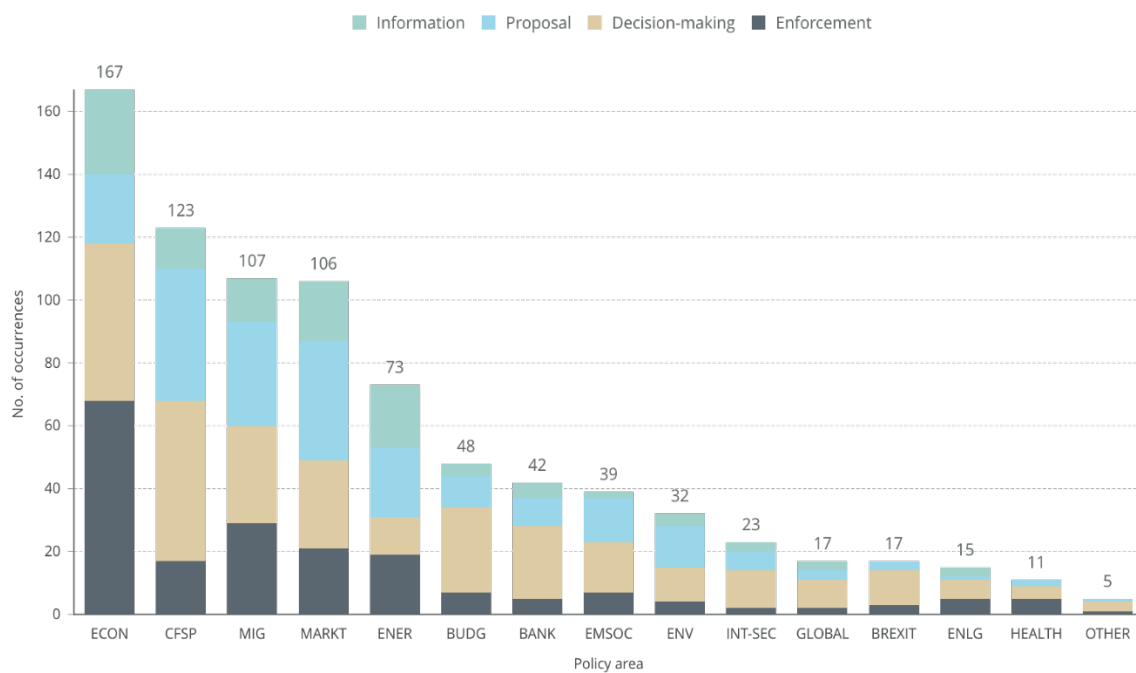
Figure 2: Types of instructions given to other institutors over time



Source: Authors' own calculation.

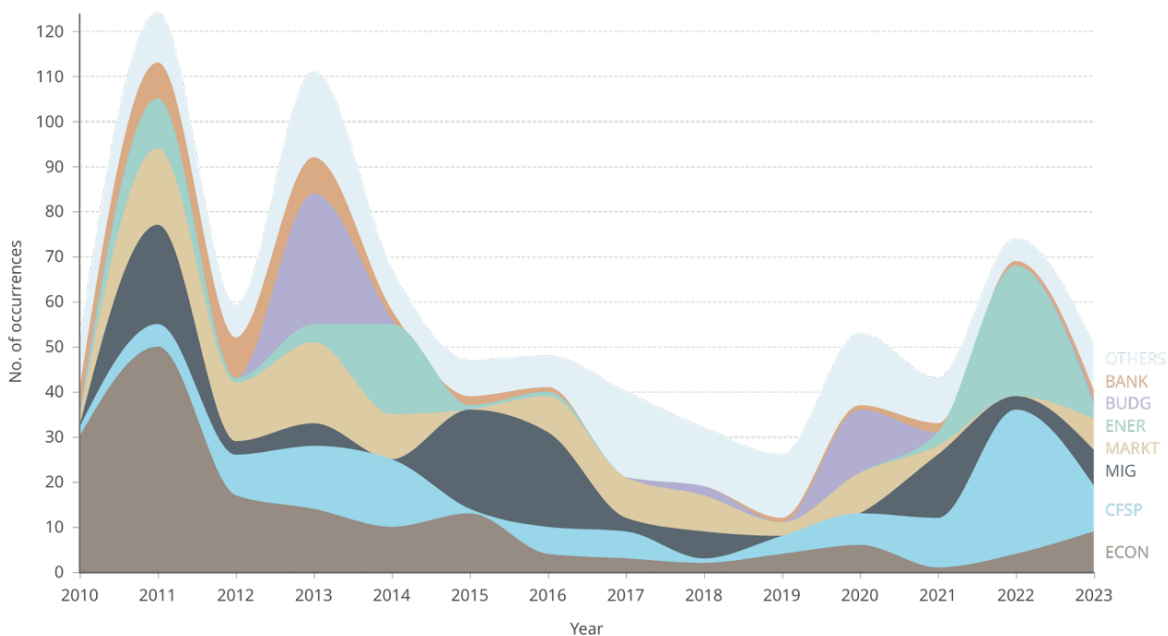
Next, in terms of policy areas (Figure 3), the distribution follows the general attention to issues paid by EUCO over the years (see also Anghel and Drachenberg 2019: 22–24; Puetter 2014: 92). Overall, economic and foreign policy issues lead the agenda, not least because of the euro crisis and the EU response to Russia’s annexation of Crimea (2014) and the invasion of Ukraine (2022). In economic governance, there are more instructions on decision-making and implementation than invitations to submit proposals or provide information. This was particularly the case between 2010 and 2015, when EUCO openly directed the Eurogroup (the Council configuration comprising ministers of the euro area) and the Commission on decisions related to financial assistance or the implementation of the European Semester (Figure 4). In close connection to EMU, there are instructions on the completion of the banking union (‘BANK’ code in the two figures), which are also more numerous during 2010–2013.

Figure 3: Types of instructions given to other institutions per policy area



Source: Authors' own calculation.

Figure 4: The seven most popular policy areas of EUCO instructions over time



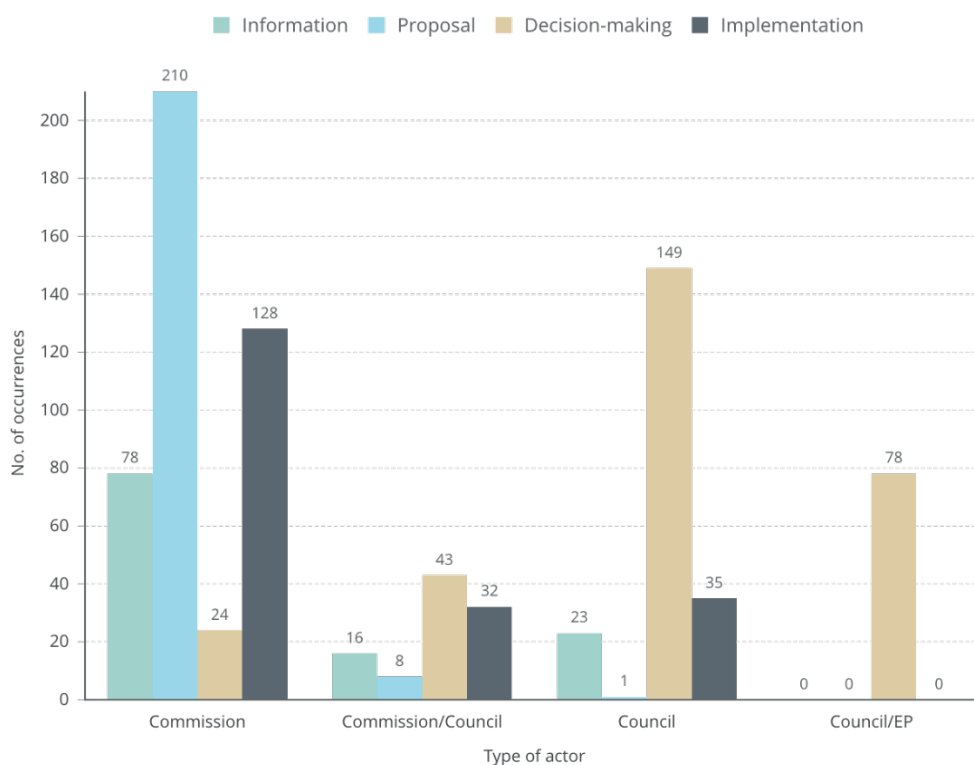
Source: Authors' own calculation.

Second, in foreign policy and defence, EUCO often takes the initiative on new proposals and decision-making, instructing the Commission, the Council, and the High Representative on various issues. Figure 4 shows the impact of the war in Ukraine on EUCO conclusions, which became a dominant topic in 2022 in both CFSP and energy policy. With respect to the latter, we can observe a higher number of requests for proposals, as member states demanded new ideas to reduce their energy dependence on Russia.

Next, the third most discussed topic is migration, with a spike of instructions given during the refugee crisis (2015–2016). In this field, EUCO gets involved at all levels, providing guidelines for Commission proposals, giving directions on decision-making (see section 3.2.2 below), and following up on the implementation of adopted measures. In fourth place we find the internal market, which is somewhat surprising to the extent that this is a domain of legislative decision-making, where the institutional triangle—the Commission, the Council, and Parliament—has always played a major role (for more details, see Section 3.1). Budgetary issues come in fifth place and peak every 7 years, when the MFF is discussed: in 2012–2013 and 2019–2020 (Figure 4). We discuss these dossiers in more depth in Section 3.3.

Furthermore, Figure 5 shows the breakdown of instructions per actor, which corresponds to the division of competences in the EU political system. Specifically, requests for proposals are largely addressed to the Commission, instructions on decision-making are mostly dispensed to the Council or the co-legislators (the Council/EP)—depending on the policy area—whereas guidelines on implementation are directed at the Commission and to a lesser extent at the Council.

Figure 5: Types of instructions given to other institutions per actor



Source: Authors' own calculation.

Importantly, requests addressed to the Council/EP only refer to the legislative decision-making, i.e., occasions when EUCO makes requests of the co-legislators concerning specific dossiers. In the next section, we turn our attention to these issues more closely.

3. THE EUROPEAN COUNCIL AND LEGISLATIVE POLITICS

Among academic researchers and political commentators working on EUCO, there are two interpretations of its rising influence on EU decision-making. For some observers, EUCO's role as the Union's de facto 'crisis manager' (Van Kemseke 2014) or the 'new centre of EU politics' (Puetter 2013) has developed as a matter of necessity and can now be taken for granted in the EU institutional framework. In this context, Van Middelaar (2019: 11) distinguished between the *politics of rules* (capturing the regular law-making process in areas like the internal market) and the *politics of events* (referring to unanticipated situations that threaten the survival of the Union and require rapid responses). From this perspective, EUCO is considered far better suited to deal with the politics of events, which require a level of adaptability and capacity for improvisation that is uncharacteristic of the classic Community Method of decision-making. For scholars taking this approach, the puzzle is to disentangle the complex process of agenda-setting in the EU and subsequently identify changing powers relations among the four main institutions (EUCO, the Commission, the Council, and Parliament). With respect to the Commission's traditional right of legislative initiative, scholars agree that EUCO has indeed taken over many agenda-setting tasks from the Commission, but the Commission has adapted to its new dynamic (Bocquillon and Dobbels 2014; Werts 2021). In fact, the Commission is now proactively putting things on the EUCO agenda in advance of its meetings as a way to show political support for its preferred positions from the highest level (Nugent and Rhinard 2016). For its part, the Council has lost decision-making powers, as major decisions that used to be taken by ministers are nowadays often moved to the EUCO agenda by being labelled 'chefsache'—the German word to describe a matter for the bosses (van Middelaar and Puetter 2022: 66). The relationship with Parliament is less clear because formally EUCO is not supposed to have a legislative role; however, as will be shown below, heads of state and government tend to pressure Parliament into adopting certain dossiers swiftly and being amenable to the urgency of situations.

At the opposite pole, there are scholars who criticize EUCO's rising influence as a signal of the EU establishing an 'intergovernmental union' which poses challenges both from a problem-solving (Fabbrini 2013) and a democratic accountability perspective (Curtin 2014a). In relation to the euro crisis, scholars associated EUCO's centrality in decision-making with the emergence of hierarchical power relations between Member States (the creditor-debtor dichotomy) and a lower capacity to address collective action problems when compared to the Community Method (Dehousse 2013; Fabbrini 2016). Indeed, when Member States cannot agree on common solutions—as was the case of the response to the 2015-16 refugee crisis—EUCO's intervention becomes a barrier rather than an engine of decision-making (Maricut 2016; Ripoll Servent 2019). From a democratic perspective, EUCO's quasi-permanent crisis manager role implies a level of executive discretion that breaks established norms of EU decision-making (White 2015). More generally, governing by emergency is perilous because it assumes a concentration of power in the hands of a few actors that cannot be held accountable properly (Auer and Scicluna 2021; see also section 4).

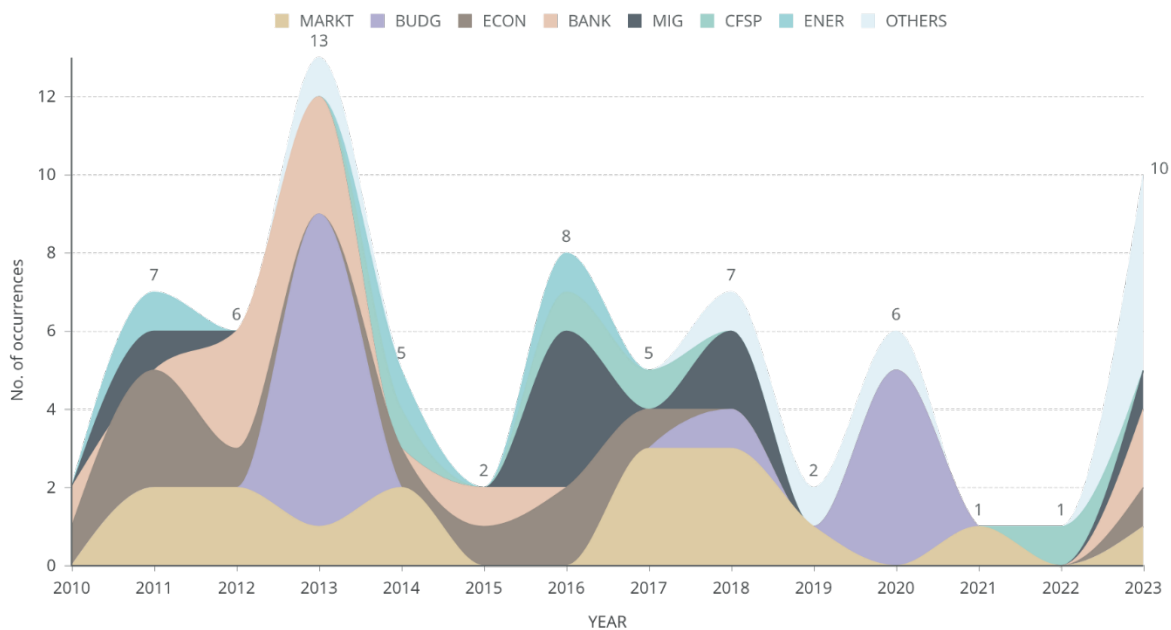
In the next pages, we take stock of EUCO's involvement in legislative decision-making. For this purpose, we exclude instructions given to the Commission on legislative proposals (which is within its Treaty rights) and decision-making guidelines given to the Council alone (which include many items in CFSP, a mostly non-legislative policy field). Accordingly, we focus on EUCO instructions given simultaneously to the Council and Parliament in the legislative process.

3.1. How frequently does EUCO get involved in legislative decisions?

As shown in Section 2.2.2, the analysis of the period 2010–2023 identified 78 explicit instructions given by EUCO to the Council and Parliament in the legislative process, which amount to 9% of the total number of instructions found in the conclusions. While this may not seem much in absolute numbers, the dossiers under focus were often salient politically and hence essential for both the policy direction of the EU and Parliament's role thereof. When giving instructions to co-legislators, it is important to note that EUCO tends not to mention explicitly which decision should be taken; instead, the conclusions focus on the speed of negotiations. For instance, in the text of the conclusions, EUCO often calls on the Council and Parliament 'to rapidly adopt the legislative proposals on [...]', 'to give particular priority to the speedy examination of the proposal', or work towards the 'early' or the 'swift' adoption of the Commission's proposals on specific files. On other occasions, EUCO gives concrete deadlines, asking the co-legislators to find agreement by 'summer 2011', 'June 2013', 'in the first half of 2017', 'by the end of the current legislative period', and so forth. At first sight, the emphasis on speed does not suggest interference with the legislative process, but merely a concern that decisions are taken quickly given the gravity or urgency of a crisis (e.g. during 2010–2013). Upon reflection, prioritising speed comes at the expense of depth and proper inclusion of different viewpoints in the decision-making—a trademark of the EU's Community Method. At the same time, **while EUCO does not explicitly ask the co-legislators to translate their preferences into law, the details of the conclusions are sometimes so extensive that they go well beyond an emphasis on the need for fast decision-making.**

Figure 6 provides a breakdown of instructions given to Parliament and the Council over time in the seven most frequent policy areas mentioned in EUCO conclusions. The peak years are 2013 (in relation to the euro crisis and negotiations of the MFF) and 2023 (when there were multiple files related to climate and sustainability policy, such as the Critical Raw Materials Act or the Net-Zero Industry Act). Surprisingly, when EUCO addresses the co-legislators explicitly, this happens most often in relation to internal market policies, e.g. the adoption of the Single Market Acts I and II, the negotiations over the General Data Protection Regulation, or the debates over the Digital Market Act and the AI Act. Next, EUCO gives instructions to Parliament and the Council in the context of negotiations over the MFF, which took place in 2013 and 2020. In substance, EUCO's influence on the MFF is far broader, as explained in Section 3.2.3.

Figure 6: Instructions given to the co-legislators across time, per policy area



Source: Authors' own calculation.

Figure 6 also captures instructions given on economic governance and the banking union, which were numerous in the context of the euro crisis (2010–2015) and re-emerged in 2023 as political pressure built up to accelerate the completion of the Capital Markets Union. Finally, we can observe multiple instructions on migration dating back to 2016 and 2018 in relation to the planned reforms to the CEAS. In the next section, we discuss some of the most salient cases in detail.

3.2. Examples of legislative influence

While there are many examples of EUCO influence on EU legislation in the last 14 years, three cases stand out as instances of ‘interference’ in legislative decision-making—at least from the perspective of Parliament. All examples were politically salient and featured in different policy areas: economic governance (the introduction of the European Semester, 2011–2013), migration policy (the reform of the CEAS, 2016–2023), and the negotiations of the long-term budget (the MFF, discussed in 2013 and 2020 respectively).

3.2.1. The introduction of the European Semester

The European Semester is one of the major reforms triggered by the euro crisis in the area of economic and fiscal policy coordination. Its goal, in general terms, was to reinforce debt and deficit rules, ‘broaden economic surveillance, [and ensure] stronger coordination of national fiscal frameworks’ (European Council 2010: 11). The idea of the Semester originated in the economic governance Task Force headed by EUCO’s permanent president, Herman van Rompuy (European Council 2010). The recommendations of the Task Force were translated into the legislative process through a series of regulations and directives that became known as the Six-Pack (adopted in 2011) and the Two-Pack (adopted in 2013). In the agenda-setting stage, the Six-Pack triggered inter-institutional tensions between EUCO and the Commission, as the latter sought to retain its formal right of initiative by publishing its legislative

proposals on the topic in advance of the Task Force recommendations, albeit the content was almost identical (Bocquillon and Dobbels 2014: 31). Once in the legislative process, EUCO sought to push through the reforms quickly by repeatedly calling for a swift agreement and stressing the need for Parliament to 'be responsible' on the matter (Bressanelli and Chelotti 2016: 519). In the end, the text of the Six-Pack (and later the Two-Pack) closely resembled EUCO instructions and demonstrated its leadership role in economic governance (Warren 2018).

In the academic literature, Parliament's limited influence in these files has been interpreted as a consequence of decision-making in areas of core state powers—such as fiscal policy—in which 'the EP is expected to act within the boundaries' defined by Member States, despite the use of the co-decision (Bressanelli and Chelotti 2018: 72). For its part, Parliament was critical of these developments, as described by former President Martin Schulz in 2012:

Over the past two years, summits of the heads of state and government meant "the representatives of the peoples of Europe have essentially been reduced to the role of rubberstamping agreements reached between governments in backrooms in Brussels: the European Parliament will not stand idly by and watch this process continue (Schulz, cited in European Parliament Press Release 2012).

Substantively, Parliament obtained only one clear 'victory' from the negotiations, namely the introduction of democratic accountability provisions in both the Six-Pack and the Two-Pack: in practice, this meant Parliament gained additional powers of scrutiny over the Commission and the Council, which are now required to appear regularly in committee hearings and respond to MEPs' questions (Akbik 2022; Schoeller and Héritier 2019). However, as a legislator, Parliament's role had clearly been reduced to a cog in the EU's metaphorical 'machine room', as EUCO got to play the role of the 'control room' directing the other institutions to formalize its brokered agreements (Beach and Smeets 2020).

3.2.2. The reform of the Common European Asylum System

The second salient example of EUCO interference in legislative decision-making occurred in the aftermath of the 2015–2016 refugee crisis. As hundreds of thousands of people crossed EU borders over a short time and applied for asylum in a handful of Member States, the need to reform the CEAS became pressing. The key problem was burden-sharing in a system that placed responsibility for asylum applications on the countries where refugees entered the EU, creating significant inequality between Member States in terms of the resources required to host people and process their applications (Thielemann 2018). In contrast to the euro crisis, EUCO was split on the adequate response to the crisis and proposed multiple measures in parallel, at times at odds with each other: 1) some governments pushed for the creation of a refugee relocation scheme through which Member States could show solidarity with one another; 2) other governments sought the physical closure of borders along the Balkan route, and yet 3) others prioritised a deal with Turkey to send back migrants who arrived illegally in Greece (Maricut 2016: 546). In the words of a famous EUCO commentator, 'migration was one of the most toxic dossiers' during the period 2014–2019 (Werts 2021: 87).

The absence of consensus in EUCO translated into a lack of concrete instructions to other institutions, at least in 2015—at the height of the crisis (see Figure 6). In 2016, EUCO conclusions included four guidelines to Parliament and the Council related to speeding up visa liberalisation legislation (with Turkey) and reforming the Schengen entry-exit system. The reform of the CEAS was explicitly referenced in the conclusions from January and October 2017, as EUCO called for 'further convergence towards an agreement which strikes the right balance between responsibility and solidarity and

ensures resilience to future crises" (European Council 2017). However, the legislative package became deadlocked in 2018, opposed by both Southern European and Visegrad countries (Czechia, Hungary, Poland, Slovakia). The latter successfully lobbied EUCO to include the necessity to reach decisions on CEAS reform by consensus, which effectively meant replacing the QMV rule with unanimity among Member States (Zaun 2022: 211). This speaks to a point made earlier in the study – an element of respect for institutional balance and the limits of powers conferred upon EUCO by Art. 15(1) is that it must respect the decision-making procedures the Treaty provides, including in the legislative process.

As EUCO explicitly mentioned the need for consensus in its June 2018 conclusions, the negotiations in the Council stagnated, despite Parliament's attempts to move dossier along. In other words, EUCO's interference in this case cast 'a shadow of hierarchy' over the other institutions and prevented decision-making as opposed to aiding it (Ripoll Servent 2019). In September 2020, the Commission introduced new amendments to the CEAS proposals as part of its New Pact on Migration and Asylum; after years of new negotiations—in December 2023—the Council and Parliament finally reached an agreement on the package of reforms, without EUCO involvement (Council of the European Union 2023b).

3.2.3. The negotiations over the long-term budget

The third and final case discussed here concerns the negotiations over the EU's seven-year budget cycle, known as the MFF. Legally, the MFF is adopted through a special legislative procedure that requires unanimity in the Council and the consent of Parliament, which means the latter cannot make amendments to the proposal but must vote on the file as a whole (Consilium 2023). In practice, EUCO provided extensive political guidance to Council negotiations and actively got involved in details about specific figures (de la Porte and Jensen 2021; Schramm and Wessels 2023). The development is not new; back in 2014, Parliament adopted a resolution on 'lessons learned' from the MFF negotiations which was very critical of EUCO's 'top-down approach' to the size of the budget and the political horse-trading involved (European Parliament 2014b). An analysis of EUCO's role in the last two negotiations rounds found a significant amount of legislative 'trespassing' by heads of state and government, as EUCO provided 48 pages of conclusions on the MFF 2014-2020, and even longer guidelines—of 67 pages—for the MFF 2021-2027 in connection to the launch of Next Generation EU (Drachenberg and Vrijhoeven 2021: 14). In other words, while EUCO only mentions Parliament explicitly a handful of times, the co-legislators receive elaborate instructions about the size and expected conditions of the MFF. Moreover, in case of political deadlock at a later stage in the legislative process, EUCO simply comes back to the issue and facilitates new negotiations between Member States, as was the case of the guidelines on the rule of law conditionality mechanism adopted in December 2020.

This example constitutes one of the clearer cases in which EUCO instructions seemingly went beyond the boundaries of Art. 15(1) and the principle of institutional balance. By inserting into its December Conclusions the requirement that the Commission wait for a CJEU ruling and adopt guidelines on the application of the conditionality regulation before applying it, EUCO seemingly interfered with a core element of the legislative process, namely the decision over from which point it should apply. This episode also demonstrates, however, Parliament's willingness to police institutional balance as a constitutional principle (or at least call attention to instances of it being breached). In that context, Parliament adopted another resolution in which it emphasised that the content of EUCO conclusions on the matter is superfluous and not binding on the Commission; moreover, since EUCO is not allowed to exercise legislative functions, the institution cannot offer interpretations of EU legislation in the same way as the CJEU (European Parliament 2020).

In sum, EUCO's influence in legislative decision-making is extensive and goes well beyond agenda-setting. While all three traditional law-making institutions have been disadvantaged by the situation, Parliament has clearly had the most to lose. Since both EUCO and the Council represent national governments in EU decision-making, the latter is unlikely to perceive EUCO's influence as problematic. The last decade has also shown little pushback from the Commission on this matter, as the supranational institution learned how to use the EUCO's influence to advance its preferred policy proposals. For MEPs, however, the solution to the problem is not straightforward, as EUCO is neither their counterpart in decision-making nor an institution they can hold accountable. In the last section, we address the topic of EUCO accountability in more detail.

4. THE ACCOUNTABILITY OF THE EUROPEAN COUNCIL

At a basic level, accountability requires public officials—whether elected or not—to justify their conduct in front of a higher authority (Mulgan 2000). In a broader sense, accountability is about making amends for past errors and thus correcting inappropriate conduct or ill-conceived policies (Oliver 1991: 28). Furthermore, the ability to hold public actors accountable is linked to legitimacy considerations, namely the extent to which government decisions are seen as acceptable because they can be justified through rules, evidence, or consent by the population (Bentham 1999: 3). In this context, transparency plays a key role as a necessary but insufficient condition of accountability: to put it differently, governments cannot be held accountable if we are unaware of their decisions in the first place (Curtin 2017). For the functioning of a democratic system, two types of accountability are crucial: 1) legal accountability (exercised by courts of law as they check compliance with legal rules), and 2) political accountability (exercised through elections or parliamentary oversight of executive actors). In the following sections, we discuss the two types of accountability applicable to EUCO. The last section addresses 3) the transparency of the institution.

4.1. Legal accountability

In theory, EUCO is subject to an extensive regime of legal accountability. EUCO's establishment as a formal institution of the EU and its institutionalisation within the Lisbon Treaty make it subject to the normal scheme of judicial review applicable to EU institutions as a whole. It is possible for individuals who carry legal standing, or other EU institutions and Member States, to challenge the validity of acts of EUCO intended to have legal effects through the annulment procedure. Several cases have therefore been brought against EUCO before both the Court of Justice of the EU and, non-judicially, to the European Ombudsman (as this section will detail).

The legal accountability of EUCO is limited, however, by several factors. The first is the Treaty framework itself. The Treaties lay out and limit the tasks of EUCO in far less detail than other similarly powerful EU institutions. As already discussed above, there is a significant gap between the formal tasks EUCO carries under the Treaty and its *de facto* tasks, making it difficult to use Treaty articles as a benchmark to challenge EUCO activities or to circumscribe its institutional role.

The second challenge is EUCO's multi-level nature. Actors within EUCO have two types of constitutional responsibility. On the one hand, they carry constitutional functions within their state (an example being a role heads of state might play in Treaty ratification procedures); on the other, they carry a collective role within EUCO (EUCO is also an EU institution). It can therefore be difficult to disentangle the two—when is the legally responsible actor EUCO itself and when is EUCO merely a 'forum' in which its members are acting purely in a national capacity? The Treaty often intentionally blurs these roles (see Treaty change as a prominent example whereby EUCO members both initiate Treaty changes at the EU level and play a role in domestic ratification).

A third challenge pertains to the barriers to contesting EUCO decisions in practice. The Union's infamously restrictive standing rules make it difficult for individual and private actors to challenge EUCO decisions at the EU level. At the same time, EUCO's practice of consensual decision-making mean that Member States, as one privileged set of applicants, have little incentive to challenge its decisions, while other actors (like the Commission or Council) may face political risks from raising legal action. An

example would be the controversial EUCO conclusions of December 2020 on the agreement of the MFF which, dispute frequently being lambasted from the perspective of institutional balance, were never challenged judicially. This influences the real availability of legal accountability: despite formal opportunities for judicial review, the Court of Justice has only dealt with a handful of cases against this institution.

This case-law nonetheless gives some important lessons on how the CJEU has defined EUCO's constitutional responsibilities. Let us start with the more positive aspects of the Court's contribution to EUCO's legal accountability. As part of the EU's institutional balance, the CJEU plays a crucial role in delineating the division of power between EU institutions. Several cases of the Court have dealt with the dividing lines between EUCO's function in priority and guideline-setting, and the role of EU legislative bodies. In the case *Poland v Parliament and Council*, the Polish government challenged the EU's market stability reserve, a core element of the EU's emission trading scheme, on the grounds that it had been phased-in prior to the date promised in EUCO conclusions.¹⁵ As the Court argued, however, conferring on EUCO the power to set such a starting date would have the effect of EUCO 'being given the power to interfere directly in the legislative sphere, contrary to the principle of conferral'.¹⁶ In this jurisprudence, the Court goes to some lengths to defend the legislative process as defined in the Treaty text: as stated by the Court, 'more broadly the principle of institutional balance, characteristic of the institutional structure of the EU, means that it is for those institutions alone to decide the content of a measure'.¹⁷

In a further case, *Slovakia and Hungary v Council*, two member states challenged the EU's refugee re-settlement regime on the grounds that it departed from agreed EUCO conclusions.¹⁸ As the Court made clear, however, EUCO conclusions cannot be considered to have legally binding effects which preclude the decisions of the EU's legislative institutions. Importantly, in this case, the Court commented specifically on the potential use of EUCO to displace the decision-making rules provided for under the Treaty. The applicants had argued that the adoption of the re-settlement regime explicitly contradicted a promise made under EUCO conclusions to adopt changes to re-settlement rules by consensus. The Court, however, firmly rejected the ability of EUCO conclusions to alter such rules unilaterally. As the Court stated (referring to qualified majority voting), 'the principle of institutional balance prevents the European Council from altering that voting rule by imposing on the Council... a rule requiring a unanimous vote'.¹⁹ These cases, therefore, make clear that the Court is willing to police the boundaries of EUCO's prerogatives in the legislative sphere, particularly the implications of its conclusions for the decision-making of other EU bodies.

There is also, however, a more negative side to how the CJEU has defined EUCO's legal accountability. The flip side of assigning limited legal effect to EUCO conclusions is that this not only protects *other institutions* from their effects; it also makes it difficult to challenge these conclusions and the policy consequences that might flow from them. The case-law surrounding the infamous Turkey deal at the height of the migration crisis is a foremost example. In *NF v European Council*, the applicant, a Pakistani national who had entered Greece through the Mediterranean, challenged a EUCO statement

¹⁵ Case C-5/16. Judgment of the Court of 21 June 2018, *Poland v Parliament and Council*, C-5/16, ECLI:EU:C:2018:483.

¹⁶ Para. 85.

¹⁷ Para. 84.

¹⁸ C-643 & 647/15. Joined Cases C-643/15 and C-647/15, *Slovakia and Hungary v Council*, ECLI:EU:C:2017:631

¹⁹ Para. 148.

concluding an agreement between the EU and Turkey on the management of the refugee crisis.²⁰ While the statement was published on the Council's website as an act of EUCO, the General Court deemed that the statement was not in fact a measure adopted by EUCO itself but rather the Member State heads of state or government acting in their national capacity.²¹ This determination by the Court was criticised in much of the academic literature given for example, the degree of EU law regulating the area of policy and that the statement explicitly nominates 'the Members of the European Council' as its author (Cannizzaro 2017; Hillary 2021). This would, under the normal rules of attribution of international law, make EUCO itself the responsible institution and not just its members individually.

A further example of relevance concerns the Sharpston case, which concerned not EUCO as such but the conference of the representatives of the Member States.²² Following Brexit, the General Secretariat of the Council published a Press Release announcing the appointment of a new Advocate-General of the Court of Justice. This AG would replace the then British AG, Eleanor Sharpston, whose term was deemed to end with the UK's departure – a decision that Sharpston challenged before the General Court. The challenge failed, largely on the basis that acts adopted by a conference of the representatives of the Member State were not among the legal acts covered by Article 263 TFEU and therefore were not subject to judicial review and annulment. While this case does not explicitly deal with a EUCO measure, it points to a broader difficulty whereby decisions of the heads of government and states collectively can escape judicial review at the EU level on the basis that they were not 'European' but 'national' decisions. The lack of clarity surrounding important elements of EUCO's legal framework, and the difficulty of disentangling the legal responsibilities of EUCO and that of its members, are barriers to the use law as a channel to render EUCO accountable.

This limited usefulness of judicial review is partly, however, compensated by other mechanisms of legal accountability. As part of their mandate, the European Ombudsman (EO) has also dealt with several EUCO cases. These range from cases involving document access²³ and text exchanges²⁴ to requests for EUCO to disclose meetings between EUCO members and industry representatives. The involvement of the EO carries the potential to overcome many of the obstacles to legal accountability through judicial review mentioned above. As a body with a broad mandate to investigate 'maladministration', the EO is not (unlike the Court) confined to assessing EUCO activities against the limited standards contained in the Treaty only. The EO is also able to conduct investigations on its own initiative, carrying high levels of operational independence, thus overcoming many of the practical barriers to CJEU litigation. The EO has used these powers vis-a-vis EUCO, for example, through writing an open letter to the EUCO Presidency on the transparency and predictability of measures associated with tackling the Covid-19 crisis.²⁵

At the same time, as is to be expected with an institution without formal sanctioning powers, the degree of EUCO compliance with EO recommendations is mixed. Concerning several cases dealing with

²⁰ [CURIA - Documents \(europa.eu\). Order of the General Court of 28 February 2017, *NF v European Council*, T-192/16, ECLI:EU:T:2017:128.](#)

²¹ Paras. 69-70.

²² [CURIA - Documents \(europa.eu\). Order of the Vice-President of the Court of 10 September 2020, *Council v Sharpston*, C-423/20, ECLI:EU:C:2020:700.](#)

²³ Complaint 531/2012/MMN; Complaint 2049/2014/NF.

²⁴ Complaint 1219/2020/MIG.

²⁵ See: [Letter to the President of the European Council concerning transparency of the EU Covid-19 crisis response | Correspondence | European Ombudsman \(europa.eu\).](#)

failures of EUCO to reply to individual letters²⁶, and a well-known case involving a refusal to release ex post documents held by the economic governance task-force²⁷, EUCO complied fully with EO transparency requests. The picture is not, however, uniform. Replying to a letter in December 2017 of the EO, requesting that the EUCO President and his cabinet participate in the EU's transparency register, President Tusk committed to personally doing so.²⁸ At the same time, he did not comply with a second request, namely to publishing leaders' agenda and progress reports, on the basis that the Member State holding the Presidency conduct progress reports orally and not in written form. As will be discussed later, such reports could provide an important basis precisely to hold EUCO accountable i.e. to monitor to what extent and how EUCO is implementing its stated policy goals. In a further 2020 complaint, the EO agreed with EUCO that text message exchanges between EUCO and other heads of state need not be disclosed to journalists under the EU's document access regime but at the same time held that text exchanges would fall under the relevant Regulation and therefore should be integrated in EUCO's document management practices and rules.²⁹ To the authors' knowledge, no such consistent practice of recording such exchanges is yet in place.³⁰

In this sense, legal mechanisms remain an important avenue to hold EUCO accountability. EU citizens and institutions have used judicial review and the EO to clarify EUCO's constitutional role and to prod EUCO into more transparent practices. The barriers to using these mechanisms effectively, however, remain relatively high with EUCO asked to answer before legal institutions at far lower levels than the EU's other main institutions (in spite of its considerable political power). In the concluding section, we will return to possible measures to improve such legal accountability practices.

4.2. Political accountability

In the academic literature, the political accountability of intergovernmental bodies in EU governance is fiercely disputed. For a handful of scholars, EUCO has no legitimacy problems because its members are accountable to their respective national parliaments and electorates (Moravcsik 2002). As described in the Treaties:

²⁶ Complaint 1488/2021/TM; Complaint 1489/2022/LDS.

²⁷ Complaint 2049/2014/NF.

²⁸ See: [Reply from President Tusk to the European Ombudsman concerning the administration of the European Council | Correspondence | European Ombudsman \(europa.eu\)](#).

²⁹ See: [Decision in case 1219/2020/MIG on how the European Council dealt with a request for public access to mobile phone based messages supposedly sent by its then President to heads of state and government | Decision | European Ombudsman \(europa.eu\)](#).

³⁰ On the use of such text exchanges by the Commission Presidency, see: [Recommendation on the European Commission's refusal of public access to text messages exchanged between the Commission President and the CEO of a pharmaceutical company on the purchase of a COVID 19 vaccine \(case 1316/2021/MIG\) | Recommendation | European Ombudsman \(europa.eu\)](#).

Box 1: Representation and accountability in the EU governance

The functioning of the Union shall be founded on representative democracy.

Citizens are directly represented at Union level in the European Parliament. Member States are represented in the EUCO by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

Source: Article 10 TEU.

Yet while national governments are accountable to national parliaments and citizens, the problem at the EU level is that decisions are taken collectively—often behind closed doors (Curtin 2014b; Hillebrandt and Novak 2016)—which means it is impossible to disentangle individual responsibility (Brandsma 2013: 50–51). Moreover, negotiations are based on compromises, so national governments can rarely achieve domestic preferences as indicated by their electorates. This makes it difficult for voters to assign blame via the ballot box and thus hold EU actors accountable for poor performance (Hobolt und Tilley 2014). While national governments can be replaced, there is little voters or national parliaments can do to change their Member States' bargaining power in intergovernmental negotiations.

In response, defenders of intergovernmental decision-making point to national parliaments as the appropriate political accountability forum for EUCO. There is, however, significant variation among national parliaments regarding their involvement in EU decision-making and oversight, depending on their respective constitutional powers and relative 'strength' vis-à-vis their governments (Auel 2007; Raunio 2005). Since the euro crisis, the inequality between national parliaments has deepened in the context of bailout negotiations and fiscal reforms that transferred new powers to the EU level (Crum 2018; Moschella 2017). Most authors agree that the role of national parliaments in scrutinising budgetary and fiscal decisions of their respective Member State has been reduced since the crisis (Fasone 2014; Jancic 2017). Structurally, the problem remains the distinction between individual decisions of national governments and collective decisions of intergovernmental bodies. National parliaments can only hold their respective government accountable, but not EUCO as a whole.

Moving to the possibility of political accountability at the EU level, EUCO has been required 'to submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union' (Article 4 TEU). Before the Lisbon Treaty and the creation of a permanent President of the EUCO, the task typically fell to the rotating Presidency of the Council, which attended EP plenary sessions after each EUCO meeting in order to inform MEPs of summit conclusions. The right to be 'informed' put Parliament in a weak accountability position from the beginning: MEPs heard the decisions of the EUCO but could do nothing about them (van de Steeg 2009).

After the Lisbon Treaty, the EUCO President became responsible for informing Parliament of the outcomes of EUCO meetings (Article 15[6] TFEU). According to the Rule 132 of the Parliament's Rules of Procedure (European Parliament 2010b), "the President of the European Council shall make a statement after each of its meetings. Consequently, in each session, the EUCO President gives a long opening statement about the discussions and conclusions of the summit, followed by similarly long

remarks by the Commission President. According to the same Rule, “[t]he President of Parliament shall decide when the statement may be made and whether it is to be followed by a full debate or by a period of brief and concise questions from Members lasting 30 minutes”. . In practice, the ‘debate’ has been the usual format for plenary sessions on the conclusions of EUCO meetings. Speaking time is allocated first equally among political groups and later in proportion to the total number of their members (Rule 171). In the first round, each political group appoints a speaker who takes the floor in the order of the relative size of the groups in Parliament. Sometimes the EUCO President speaks after the first round and answers some of the questions raised (European Parliament 2010a), other times he just takes the floor at the end for a closing statement (e.g. European Parliament 2014). In any case, MEPs are not allowed to speak twice in order to request a specific reply for a question that was evaded (van de Steeg 2009: 5).

Overall, this type of plenary debates cannot be considered a platform for political accountability because the format does not allow MEPs to systematically ask questions and receive answers from the EUCO President. If anything, plenary debates offer the space for MEPs to give speeches outlining the vision of their political groups on the issues discussed by EUCO. In practice, MEPs have often criticised the outcome of EUCO meetings—and even acted in an ‘adversarial’ way towards its President—but the debates have barely been covered in the media and the subsequent resolutions adopted by Parliament have hardly had any effect on EUCO proceedings (Werts 2021: 321). By contrast, a smaller parliamentary hearing (focused on questions and answers) would be more suitable for scrutinising EUCO decisions, allowing MEPs to actually challenge parts of the conclusions after each meeting of heads of state and government (see Section 5).

4.3. Transparency

An important element of EUCO’s accountability regime concerns the extent to which it is seen by the public, and by other actors, as sufficiently open and transparent. From its very inception, EUCO has carried a difficult relationship with the principle of transparency. The more it has been formalised as a ‘normal’ institution, the more the EU’s general standards regarding democracy, transparency and open communication should apply to EUCO, just as to any other institution. At the same time, EUCO remains committed to a more deliberative and informal mode of decision-making that is both vital, in the view of EUCO members, to reaching consensus on delicate issues, and explicitly clashes with principles of open decision-making. Like other EU institutions, such as the European Central Bank (ECB), EUCO has to square a seemingly impossible circle: on the one hand, to be transparent, and on the other hand to shield itself from direct public and media scrutiny in order to allow it greater freedom and ‘space to think’ (Curtin 2014a: 20; Hillebrandt and Novak 2016).

EUCO’s Rules of Procedure thus establish an institution with lower standards of transparency than other EU institutions. Unlike the Council, its meetings are not televised or public (European Council Decision 2009/882/EU, Art 4(3)). Those members that do attend are bound by a general obligation of professional secrecy as provided under EUCO’s Rules of procedure (European Council Decision 2009/882/EU, Art 11). This lack of public openness has frequently been defended by EUCO members, with EUCO’s first permanent President calling immediately for fewer written documents and more focused discussions among a limited number of individuals as a key means of improving the efficiency and output of EUCO meetings (van Rompuy 2010). At the same time, EUCO has adopted a number of measures to increase its transparency over time. In addition to publishing Presidency conclusions, regular press conferences are conducted by the President after EUCO meetings, and by the Council

Presidency Chair once the Presidency has concluded. These conferences are designed to signal to the public and media the main outcomes and priorities pursued in EUCO meetings. The current President has also instigated a practice of publishing on EUCO's website his weekly schedule and the report he makes to the Parliament on the outcome of EUCO meetings as well as other speeches. In terms of document access, EUCO has extended the general document access regime applicable to the Council to its own documents. The Rules of Procedure additionally allow EUCO to release minutes and outcomes of votes subject to the institution's own discretion (for example on appointment procedures). Until 2015, EUCO even carried a practice of publishing minutes of meetings on its website: de facto, however, these minutes were so cursory that their value was limited. They were frequently merely listing areas discussed without indicating substantive positions nor prioritisation.

A number of factors continue to limit the practical usefulness of this transparency framework. A first is a more general problem of the EU's existing document access regime. While Regulation 1049/2001 regarding public access to the Parliament, Council and Commission documents applies to EUCO, the latter is particularly well placed to make use of its exceptions, in particular Article 4(3), allowing document access refusal where release of a document would be likely to seriously undermine the institution's decision-making process.³¹ While the Court has an extensive case-law policing this provision, it has also, in its *Turco* decision, allowed a 'general presumptions' doctrine, which applies to 'certain categories of documents, as considerations of a generally similar kind are likely to apply to requests for disclosure relating to documents of the same nature.'³² As EUCO only keeps a narrow range of documents, it is well placed to generally refuse access to documents which might reveal the positions of states (on the grounds that doing so could impede the impunity of states to discuss and think freely within meetings). Unfortunately, it is highly difficult to ascertain how the Council secretariat de facto deals with EUCO document requests. While the Council's 2022 report on document access indicates that there were over a thousand document access requests in that year (Council of the European Union 2023a: 21), there is no specific report on EUCO document requests (with such data being mixed with that of the Council more broadly). We therefore have no indication of who is requesting EUCO documents, in which areas, and how many requests have been refused (and for what reasons).

A second problem concerns EUCO's tendency to limit document production and rely on the oral transmission of information. While therefore EUCO meetings regularly contain progress reports, where the holder of the Council Presidency updates EUCO members on the implementation of EUCO priorities, these reports do not officially exist in written form but are given orally. Legal advice from the Council's legal service may also often be given orally, allowing EUCO to respond to document access requests, such as over the legality of the EU-Turkey deal, with the simple explanation that document access is impossible (as it simply does not exist). The oral transmission of information thus limits transparency—even a more liberal attitude to document access would yield limited results if accurate and broad document keeping practices are not observed (Izuzquiza 2016).

In comparison to other EU institutions, EUCO thus carries a weak transparency framework. Certainly, this is so with respect to the Council, where for example minutes of meetings may provide an overview of diverging positions, allowing the public to understand the contours of public debate. EUCO's level of transparency seems more comparable to that of the ECB, which also uses press briefings as a major

³¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

³² Joined Cases C-39/05 P and C-52/05 P, *Sweden and Turco v Council*, ECLI:EU:C:2008:374 at, paragraph 50.

means of communication and whose monetary policy decisions lay-out, in a non-attributed form, the collective reasoning of the governing Council (European Central Bank 2023). This leaves us with the open question of whether EUCO has a comparably strong justification for limiting public access to its decision-making. While the ECB's intransparency is linked to its operational independence and the danger of releasing market sensitive information, it is not clear that EUCO, as a political body, carries a similarly strong justification for providing such limited information on its deliberations. The reality of EUCO meetings provides further weight to this argument—as indicated by other research, while EUCO members carry a de jure obligation of professional secrecy, this has not stopped them from frequently tweeting the contents of meetings as they occur, providing a potentially biased public account of the substance of deliberations (Drachenberg and Phillips 2021: 20–21). Providing the public with more detailed minutes of EUCO meetings, i.e. of the general outlines of discussions and diverging viewpoints (even without attribution) could therefore contribute both to enlightening the public on what is driving EUCO's agenda and providing an authoritative account free of bias.

5. CONCLUSION AND POLICY RECOMMENDATIONS

If the European Council did not exist, the EU would surely have to invent it. The shift of the EU to new vital policy domains, from strong economic policy coordination to health, security and defence, has brought the EU ever closer to its Member States. In this context, EUCO plays a crucial role in improving the credibility of EU policy, providing the Union with a type of institutional leadership that the Commission alone could not provide.

For the very same reasons, however, EUCO increasingly outstrips its legal framework. The legal framework does not accurately describe the range of functions EUCO displays, particularly in times of emergency (a period which is increasingly the norm rather than the exception in EU affairs). As this study has shown, EUCO's emergency functions have led to an increasing tendency to task other EU institutions. This tasking occurs across time, across policy domains and throughout the policy process, further blurring the line between EUCO's legitimate leadership role and the exclusive rights of other EU institutions in the legislative process. This problem is further exacerbated by a lack of robust accountability mechanisms. While the CJEU and European Ombudsman have made important decisions regarding EUCO's responsibilities, the latter lacks strong legal or political accountability mechanisms capable of effectively checking its activities. Additionally, EUCO maintains comparatively low levels of transparency with the general public.

This leaves the question of how to improve EUCO's place in the EU constitutional structure. The study therefore concludes with **three sets of recommendations**: one focused on **reforming EUCO's legal framework**, the second on **improving political accountability**, particularly to Parliament, and the last on **establishing greater transparency**, allowing the media and citizens to better track EUCO's performance. While some reforms, especially the legal framework, require amendments to Treaties, many changes can be easily carried out without a Treaty change. We hope they can provide a starting point in addressing the constitutional gaps identified in this study.

5.1. Improving the legal framework

- **The full range of tasks that EUCO currently carries out, particularly its 'crisis' functions, should be reflected in and limited by the Treaties.** While the Lisbon Treaty codified a number of EUCO functions, it did not specify what the last decade has shown is a significant EUCO task, namely its role in responding to 'emergency' and crisis politics in the EU. Any future Treaty reform process could reflect on EUCO's functions in this context. The Treaty could clarify, in particular, that EUCO should play a role in coordinating the EU's response to pressing policy emergencies and can, for example, legitimately task EU institutions with developing legislative proposals, speeding up the adoption of existing legislation or considering new funding instruments in the context of emergency (for a similar argument, see Kreuder-Sonnen 2023). At the same time, EUCO's role in tasking EU institutions outside of this context should be limited. Different mechanisms could be envisaged for enforcing the dividing line between EUCO's emergency and 'normal' political functions to safeguard abuse—the EU's legislative institutions could, for example, apply an emergency break where one or both institutions were of the view that emergency powers had been over-extended. In addition, such a provision would be subject to review by the CJEU. The purpose of such Treaty provisions would be to limit EUCO's increasing tendency to 'task' EU institutions across the policy cycle: a tendency amplified by the EU's seemingly never-ending series of policy crises.

- In the absence of a Treaty change, **EUCO should respect existing limits on its role in the legislative process, particularly its role in ‘impasse breaking’**. As the report has demonstrated, legislative files are frequently referred back to EUCO in areas well beyond those specified in the Treaties, potentially threatening the decision-making rules provided for in the Treaty. Any future Treaty reform should consider whether impasse-breaking should be a general function of EUCO or extended to other policy areas, and more importantly, should specify a threshold for legislative files to be referred to EUCO for resolution. Existing rules (such as the request to break deadlock only after a time-period has lapsed, or where voted for by QMV within the Council) provide a useful inspiration in this regard. Regardless of Treaty changes, both EUCO and the EU’s legislative institutions should be more cognisant of the applicable Treaty rules.

5.2. Improving political accountability mechanisms

Since heads of state and government take collective decisions in EUCO meetings, we consider national political mechanisms (via elections or parliamentary scrutiny) insufficient to ensure that EUCO is held accountable for decisions affecting the EU as a whole. In our view, the only institution that has the political legitimacy to hold EUCO accountable at the EU level is Parliament. Not only are MEPs directly elected by EU citizens, but they are also supposed to represent the general European interest and thus act as a counterbalance to national governments in EUCO. We propose two mechanisms of political accountability to Parliament:

- **Organize confirmation hearings for the EUCO President:** Similar to the confirmation hearings organized for Commissioners designate, the nominee for EUCO President should go through a confirmation hearing in Parliament with leaders of all political groups. To ensure that the appointment process is not politicised over minor issues and thereby undermine EUCO’s ability to appoint its own President, MEPs can only vote to reject the proposed nominee with a two-third majority of the votes cast—similar to the procedure for a motion of censure against the Commission (Art 234 TFEU). While such a reform would likely require Treaty change, it could also yield significant long-term results (for example by incentivising greater cooperation between the EUCO President and Parliament and providing greater legitimacy to EUCO’s increasing role as a mediator within the legislative process).
- **Replace the general debates after EUCO meetings with targeted accountability hearings,** conducted by a restricted number of MEPs and the EUCO President. Taking the example of the Economic Dialogues with the Eurogroup, the hearing with the EUCO President could be divided in blocks of questions and answers, with MEPs required to ask a question in the first two minutes of their intervention so as to avoid the tendency of making lengthy political declarations. Given the high profile of the EUCO President, only leaders of political groups (or their substitutes) would be allowed to take the floor and ask questions. Time could be divided proportionally depending on the size of political groups in Parliament, starting with the largest political group, which would have a 15-minute slot to question the EUCO President. The purpose of this change would be to transfer the EUCO’s President’s interactions with Parliament from an information exchange into a more meaningful exercise in political scrutiny.

5.3. Improving transparency mechanisms

- **Publish the progress reports currently conducted orally by the country holding the Presidency of the Council** at the beginning of EUCO meetings. These reports should reflect on progress conducted by EUCO both in regard to its general five-year strategy reviews and specific points raised in prior EUCO meetings that require follow-up. The central logic behind publication would be to provide a yardstick by which progress towards EUCO goals can be tracked over time, thereby facilitating other forms of accountability e.g. towards media, national publics and other EU institutions.
- **Return to the practice of publishing minutes of EUCO meetings.** Such minutes should go beyond formally stating subjects covered by EUCO but also need not name the preferences of specific states. Rather minutes should provide insights into the main fault lines of debate within EUCO regarding key EU priorities. The minutes would aim to provide an authoritative account of EUCO's deliberations, thereby limiting the risk that public perceptions of EUCO are framed by incomplete social media narratives. Once again, they would likely be of significant assistance to other accountability-rendering institutions (such as the CJEU or Ombudsman when determining cases involving EUCO).
- **The Council should produce a separate disaggregated annual report on document access requests directed towards the EUCO President.** As with the annual report on Council document access, this report would identify the areas in which access requests were made, the actors making requests and information on whether requests were complied with. This would be an important first step in understanding whether EUCO's complies effectively with the EU's general document access regime.

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