



THE EUROPEAN COUNCIL: TRULY THE LAW-MAKER-IN-CHIEF?

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SUMMARY

We know that the European Council is a powerful and visible strategic agenda-setter, crisis manager, and impasse-breaker. Yet we are less familiar with the role of national heads of state or government in everyday law-making. By analysing all legislation under the ordinary legislative procedure since 1999, this CEPS Explainer asks whether and – if so – how and how often the European Council refers to these specific laws in its summit conclusions.

We show that the European Council mentions about 20% of all legislation and especially prioritises laws that redistribute money, expand EU competences and respond to a specific crisis. On prioritised laws, the European Council mandates the EU's other institutions and Member States and acts actively and assertively across all stages of the policy process. This is the case even on priorities not shared with the European Commission as the legislative agenda-setter.

In short, this Explainer puts the spotlight firmly on the national leaders who run the show – not just in large, visible summits but also during the follow-up everyday law-making process.



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INTRODUCTION – THE ‘UNKNOWN’ EUROPEAN COUNCIL

Fifty years ago, in March 1975, the European Council held its first official meeting in Dublin. In the decades since, it has become a well-known strategic agenda-setter, crisis manager and impasse-breaker, as well as the EU’s highest constitutional authority.

According to the Treaty, national leaders ‘shall define the general political directions and priorities’ of the EU (art. 15(1) TEU). The institution brings together all national heads of state or government at least four times per year but more often when (crisis) politics calls for additional summits. The summits, which often run late into the night, are highly visible both in EU and national level politics. Afterwards, the leaders brief the press and publish conclusions identifying areas of concerns or actions to be taken. EU policymakers and [citizens know the European Council](#) – be this from the ‘Merkozy’ duo during the eurozone crisis, online summits during the Covid-19 pandemic or decisions taken on Ukraine since 2022.

In 2009, the Lisbon Treaty turned the European Council into a formal EU institution, prepared and chaired by a permanent president. Since December 2024, Portugal’s António Costa has been in this role. The European Commission President, of course currently Ursula von der Leyen, co-prepares and attends summits. The High Representative for Foreign Affairs – Kaja Kallas since December 2024 – also takes part. Despite their defined roles, none of these three have voting rights.

This CEPS Explainer presents a different take on the European Council – namely as an institution that routinely intervenes in the EU’s everyday law-making, that ‘mandates’ the other institutions and Member States, and that operates across the width and depth of the EU policy process. Three empirical sources support this claim:

1. 106 conclusions, published by the European Council after each formal summit (1999-2024).
2. More than 2,500 pieces of co-decided legislation, pending, concluded or ultimately withdrawn under the ordinary legislative procedure (1999-2024)¹.
3. Comprehensive interviews with decision-makers in EU institutions, Permanent Representations and national ministries.

Our key finding is simple but alas unknown beyond anecdotal evidence – national heads of state or government regularly, assertively and systematically mention specific laws in

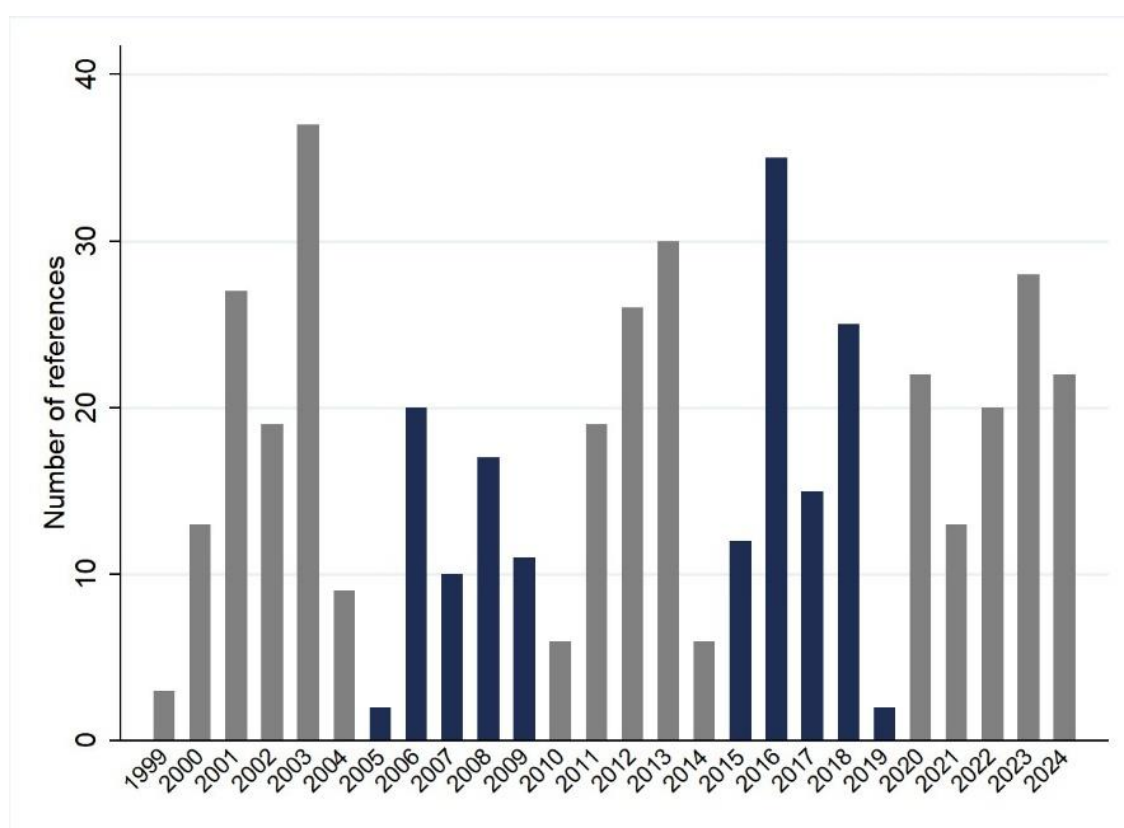
¹ Until the end of the 2019-24 legislative term (i.e. June 2024). In this Explainer, the terms ‘legislation’ or ‘laws’ are used to refer to all proposals and legislation in our data set.

their conclusions, they mandate the Commission, European Parliament (EP), Council of the EU (Council) and Member States to act, and they attempt to initiate, direct, speed up and ‘unblock’ law-making, across many issues and policy areas.

UNPACKING THE DIFFERENT TYPES OF EVERYDAY LEGISLATION

Figures 1 and 2 below illustrate this phenomenon. Figure 1 highlights references to everyday legislation in summit conclusions since 1999. The European Council only became a formal institution in 2009. Nevertheless, we see no difference in mentions before and after Lisbon. The number does vary but interestingly the year with most mentions was pre-Lisbon 2003. This Explainer deep-dives into these laws – from the different types of laws to the various policymaking stages – to explore how and when national leaders really make a difference in EU law-making.

Figure 1. References to legislation in summit conclusions, 1999–2024



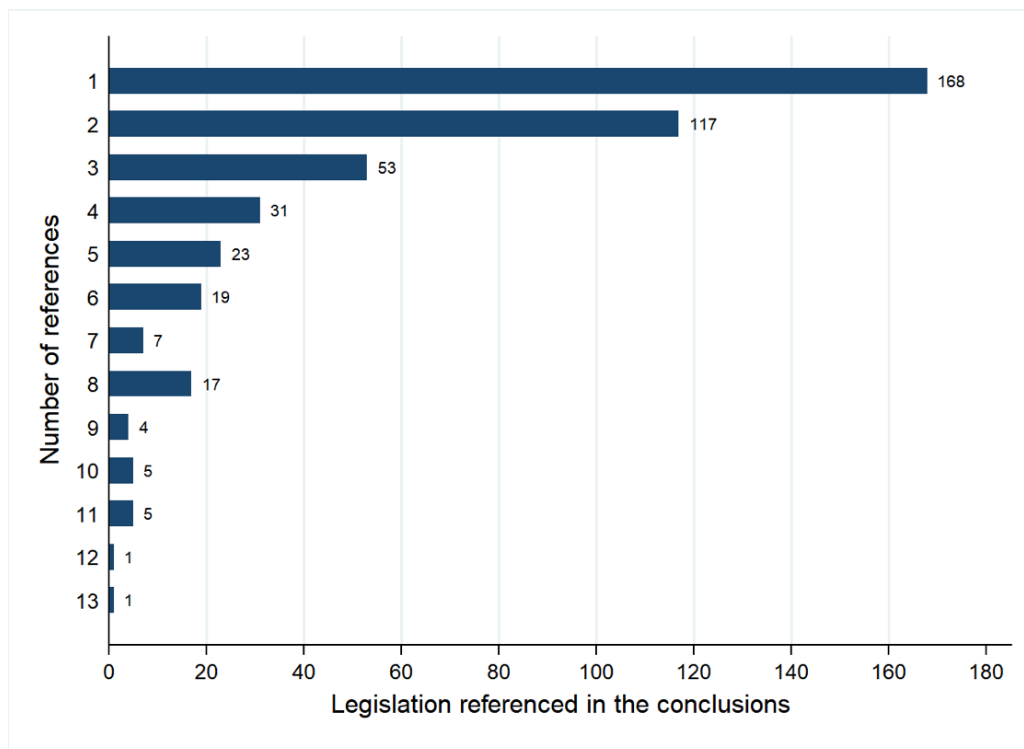
Source: Authors' own elaboration.

Figure 2 depicts the frequency of mentions in the summit conclusions. Out of the 2,585 laws, 451 are mentioned between one and 13 times in summit conclusions. 168 laws are referred to once, 53 laws and 23 laws are mentioned three and five times respectively, and 12 laws are mentioned more than 10 times.

The two most-mentioned laws were the (revised) EU Emission Trading Scheme Directive (EU ETS), adopted in 2009, and the 2006 Services Directive. Legislation mentioned five times includes the European Defence Industrial Development Programme and the Passenger Name Record Directive. Examples of laws mentioned just once vary across policy areas, from legislation such as the Digital Markets Act to Countering Money Laundering by Criminal Law. In sum, Figures 1 and 2 clearly show a European Council that intervenes routinely in everyday law-making and it has done so since 1999.

The EU ETS is an excellent example to illustrate how – and how often – the European Council intervenes in the legislative process, from calling for a proposal to requesting national implementation. Between March 2006 and December 2007, the European Council, as part of the relevant conclusions, ‘invites’ the Commission to review the existing EU law and ‘looks forward’ to a ‘timely presentation’ of new legislative proposals. In March 2008, the leaders noted that the Commission’s proposal offered a ‘good starting point’. Between March 2008 and March 2009, the leaders repeatedly asked the Council and EP to address the proposal ‘urgently’ and to ‘rapidly reach an agreement on [the EU’s] climate and energy package’. Finally, in 2013, the European Council called on Member States to implement the revised EU ETS directive.

Figure 2. References to co-decided legislation in conclusions, 1999-2024



Source: Authors’ own elaboration.

Figure 3 below unpacks the European Council’s legislative priorities and zooms in on policy types. If we understand the types of laws the European Council focuses on, we can

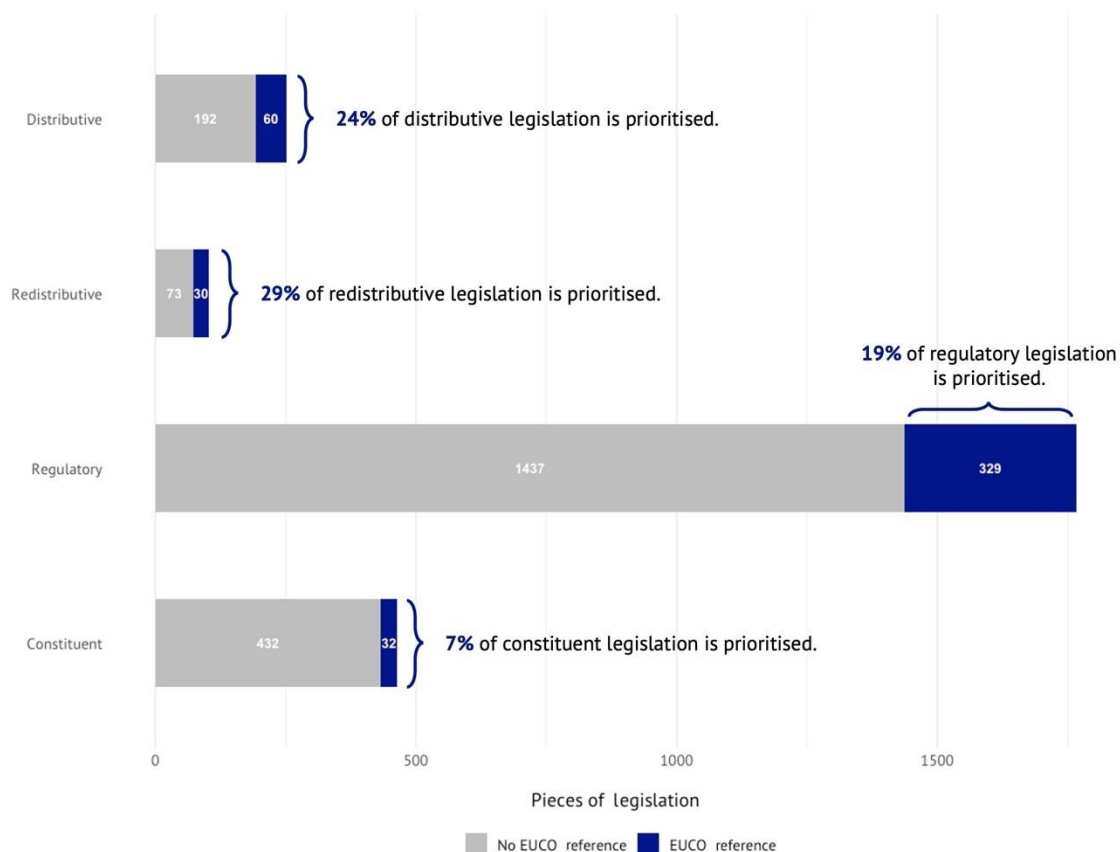
grasp which types of legislation the institution most often involves itself in and ultimately prioritises. We draw on [established approaches](#) and [our own coding](#), from 1999 to 2024, to distinguish four policy types:

1. **Redistributive laws** reallocate funds; for instance, via regional and social policy (e.g. the Cohesion Fund or the European Regional Development Fund).
2. **Distributive laws** also deal with funds but they don't reallocate; research grants are a good example (e.g. Horizon Europe).
3. **Regulatory laws** impose constraints and opportunities, for instance on businesses; indeed, many co-decided laws regulate the single market (e.g. improved working conditions for trainees and the digital labelling of products).
4. **Constituent laws** are procedural and set the rules for policymaking (e.g. establishing an agency such as Europol or the Anti-Money Laundering Authority).

Figure 3 shows that the European Council mentions all policy types. Yet redistributive laws are most likely to be mentioned. This isn't surprising as redistributive laws reallocate money; money comes from Member State budgets; and heads of state or government will want to control how these funds are spent.

In short, the European Council intervenes on laws that matter for citizens across Member States and have a financial effect in the countries that the leaders represent.

Figure 3. References per policy type in conclusions, 1999-2024



Source: Authors' own elaboration based on [previous research](#).

Another relevant distinction is between expansive and non-expansive legislation. The European Council frequently refers to co-decided legislation that expands the EU's competences. [Expansive legislation](#) increases the level, the scope or the inclusiveness of EU action. Three well-known recent examples are the 2023 Critical Raw Materials Act, the 2023 Net Zero Industry Act and the 2021 European Defence Fund.

Not all laws passed are expansive. The 2022 exceptional temporary support granted under the European Agricultural Fund for Rural Development (EAFRD) in response to Russia's invasion of Ukraine is a non-expansive act. The European Commission [prioritises](#) expansive laws in its agenda-setting annual work programmes. Similarly, the European Council references expansive laws frequently – 27% are prioritised in one form or another, while this only applies to 10% of non-expansive laws. National leaders are thus almost three times as likely to reference expansive legislation in European Council conclusions.

The frequent mention of expansive legislation is puzzling, as leaders are often perceived as being defenders of national interests and sovereignty. There are two potential reasons to explain this: either the European Commission and European Council 'team up' to push

these laws through or the European Council tries to break an impasse within – or between – the two co-legislators.

A CLOSER LOOK AT CRISIS-RELATED LEGISLATION

The European Council is well-known for its key role in crisis management – from the economic and financial crisis in the late 2000s/early 2010s to the energy crisis in the early 2020s. The European Council publicly and visibly addresses crises and summit agendas are often [crisis-focused](#). Consequently, national leaders are also much more likely to mention [crisis-related laws](#).

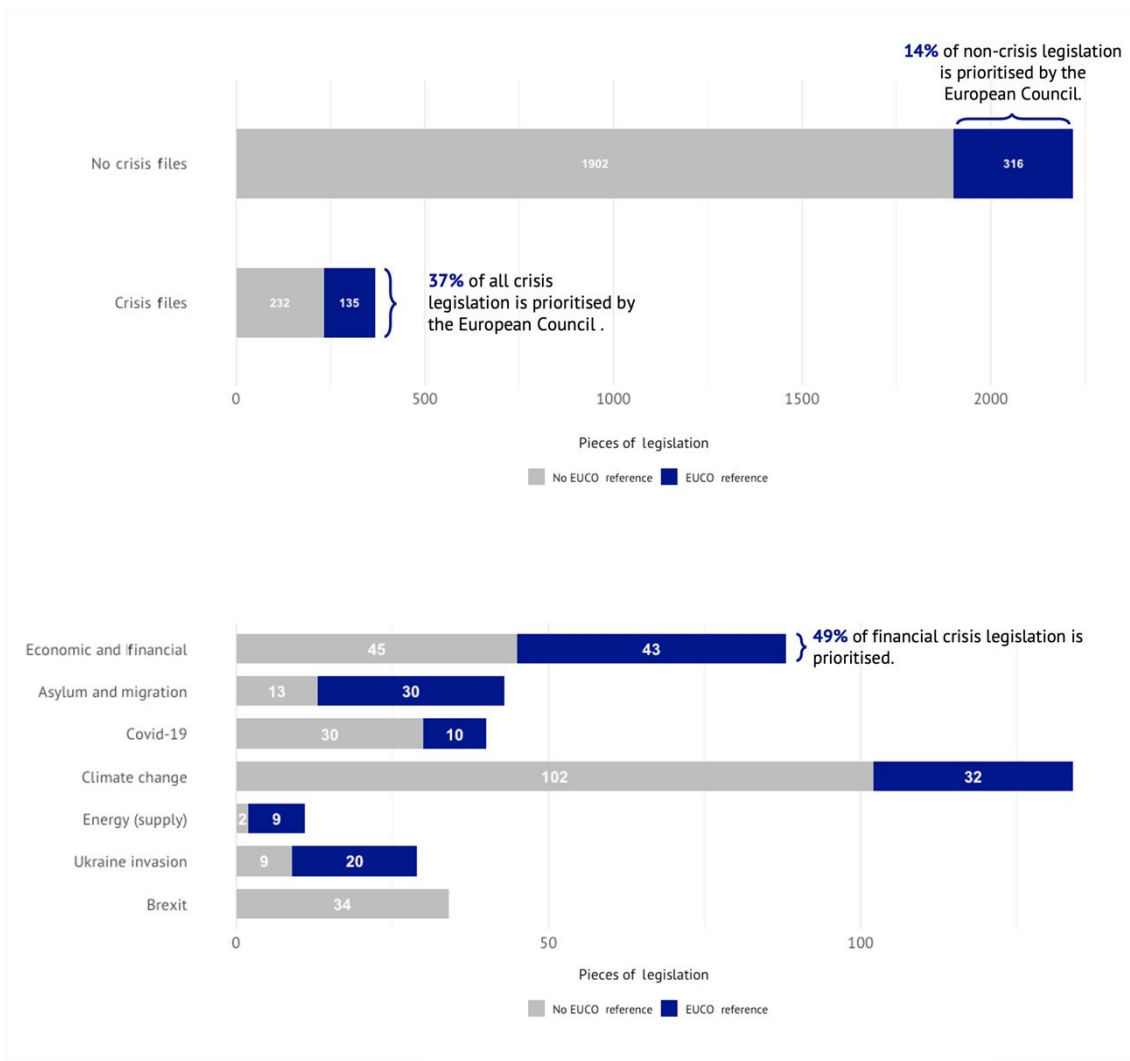
Figure 4 below illustrates this. It breaks down legislation into crisis-related and ‘standard’ laws; both types are mentioned in the conclusions but crisis-related laws are more likely to fall into that category. While 14% of non-crisis legislation is referenced by the European Council, no less than 37% of crisis legislation features in its conclusions.

Figure 4 also breaks down crisis-related laws into the different crises faced by the EU. The European Council responds to these urgent policy challenges not only via crisis politics but by direct interventions on specific laws. The various crises lasted for different lengths of time and thus offered different opportunities to be prioritised – the eurozone crisis kept national leaders busy for several years, while the Covid-19 pandemic was relatively brief but has had long-lasting consequences. Of course, climate change is an ongoing crisis.

Summit by summit, the European Council decides whether and which crisis-related laws are referenced in the conclusions and which aren’t. The Bank Recovery and Resolution Directive is a good example of the former and Brexit illustrates the latter – the leaders did discuss EU-UK relations during various summits but they never once mentioned Brexit legislation in their conclusions.

In short, Figure 4 shows us a European Council that isn’t just the most visible crisis manager in Brussels, which has already been discussed in the wider political and academic debate, as well as in our interviews with key stakeholders. We also see leaders who regularly combine high-level crisis politics with interventions into the everyday legislative responses to crises.

Figure 4. References to crisis vs non-crisis related legislation, 1999-2024



Source: Authors' own elaboration.

EUROPEAN COUNCIL MANDATES TO OTHER ACTORS – FROM POLICY PROPOSAL TO IMPLEMENTATION

Our next two figures introduce the European Council's mandates, given to the other EU institutions and Member States, at all stages of the policy process. These mandates are crucial directives that allow us to understand the European Council's involvement in the legislative landscape. Based on the summit conclusions, we identify four types of mandates (Figure 5 below). The leaders:

1. Ask for proposals (about 13% of mandates).
2. Acknowledge ongoing legislative work (22%).
3. Call on the co-legislators to decide (53%).

4. Stress the need to implement laws (12%).

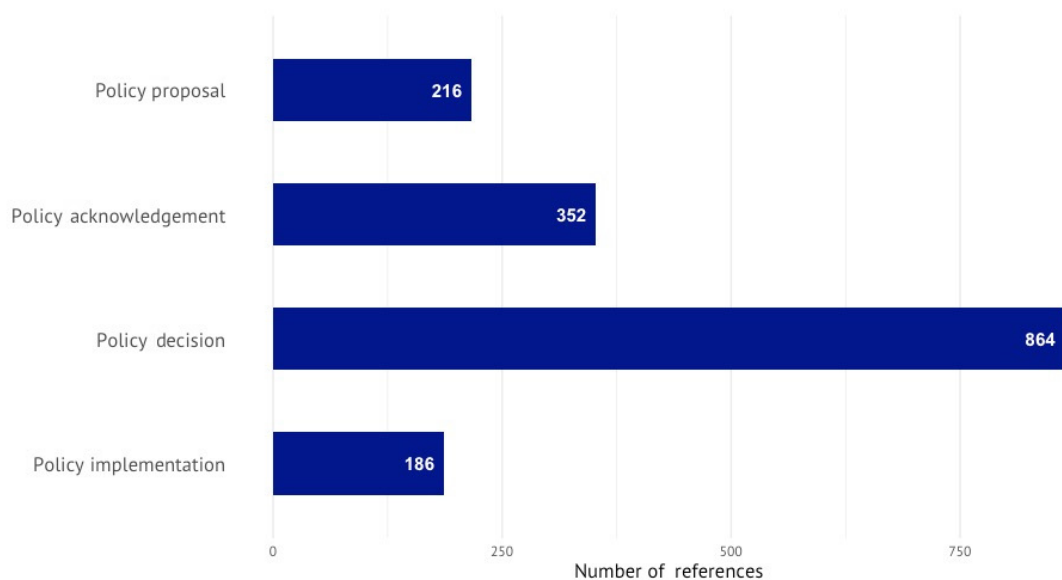
The Council's General Secretariat has long debated the [specific role](#) of the summit conclusions. As stated in the 2017 Court of Justice of the EU (CJEU) judgment *Slovak Republic and Hungary v Council of the European Union* and confirmed by several of our interviewees, conclusions are not legally binding – but they do commit actors politically.

Indeed, summit conclusions – and their scope – have been challenged before the CJEU. A [recent study](#) published for the EP explains the distinct challenges to judicial accountability faced by the Court: relatively imprecise Treaty articles, the EU's multi-level system, strict standing rules and consensual decision-making.

Yet the study also shows how the CJEU, in two cases – on the market stability reserve ([Case C-5/16](#)) and on refugee relocation (joined cases [C-643/15](#) and [C-647/15](#)), brought by Poland and by Slovakia and Hungary respectively – did explicitly constrain the European Council's power to set guidelines and did not allow a *de facto* change of decision rules via the summit conclusions. The challenges to legal accountability notwithstanding, the CJEU did limit leaders' ability to interfere with the established inter-institutional balance in law-making.

However, this legal specification hasn't deterred the European Council from providing direction to different EU institutions. **Figure 5** shows that it routinely intervenes in everyday law-making, by using mandates frequently and across all policy stages. Under 'policy proposal', leaders 'call for' or 'invite' new legislation. Under 'policy acknowledgement', leaders 'encourage', 'note' or 'welcome'. Under 'policy decision', the European Council 'urges' or 'expects adoption'. The leaders also ask the co-legislators to 'speed up' and set deadlines, such as 'by the end of the year' or 'before the European Parliament elections'. Finally, under 'policy implementation', the European Council calls for the domestic implementation of EU laws.

Figure 5. Types of mandates exercised by the European Council, 1999-2024



Source: Authors' own elaboration.

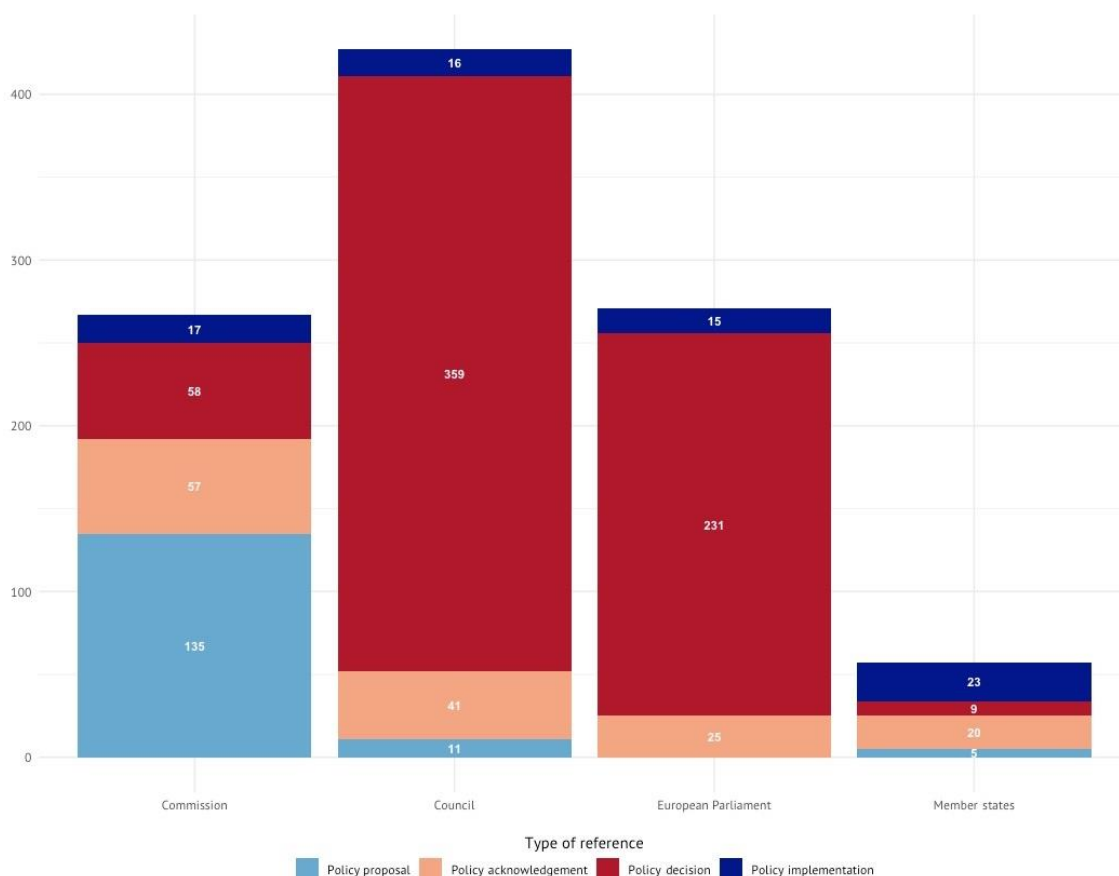
Figure 6 moves from policy stages to the actors addressed. The Treaty asks the European Council to define the EU's 'general political directions' (art. 15(1) TEU). The frequent calls for proposals, directed almost entirely at the Commission (26% of all total references to institutions), may not be surprising, even if they do substantively impinge upon the latter's almost exclusive right of legislative initiative.

To level the playing field, national heads should also be keen to see co-decided laws implemented in their home countries. Thus, calls for implementation, targeting the Commission and Member States (5.5%), won't be surprising either. By contrast, the frequency of calls to encourage, speed up and urge the actual adoption of laws – the most frequently given mandate, directed at the Council (about 42%) and EP (26.5%) as co-legislators – is more puzzling. Using mandates in such a way depicts assertive leaders, ready to take a pro-active stance in the EU's everyday law-making, across all stages of the policy process.

Like the above-mentioned EP study, we interpret the frequent 'speed up calls' as the leaders expressing the need for urgent legislative action.

Overall, the mandates don't just make suggestions to the other institutions and Member States; instead, the European Council instructs, prompts action, highlights priorities and emphasises the urgency of law-making.

Figure 6. Mandates to EU institutions and Member States, 1999-2024



Source: Authors' own elaboration.

LEGISLATIVE PRIORITIES – COOPERATION OR COMPETITION?

Our interviews, the European Council's 2009 [Rules of Procedure](#), and a 2022 [policy publication](#) tell us that the European Commission is consulted on and discusses the European Council's draft agenda and draft conclusions. Before summits, the Commission is involved via the European Council President and their cabinet; during summits, the Commission President directly interacts with national leaders and sometimes uses their guidance in 'downstream' law-making. Thus, we would expect that the legislative priorities expressed in the Commission's [annual work programmes](#) and in the European Council's summit conclusions are closely aligned.

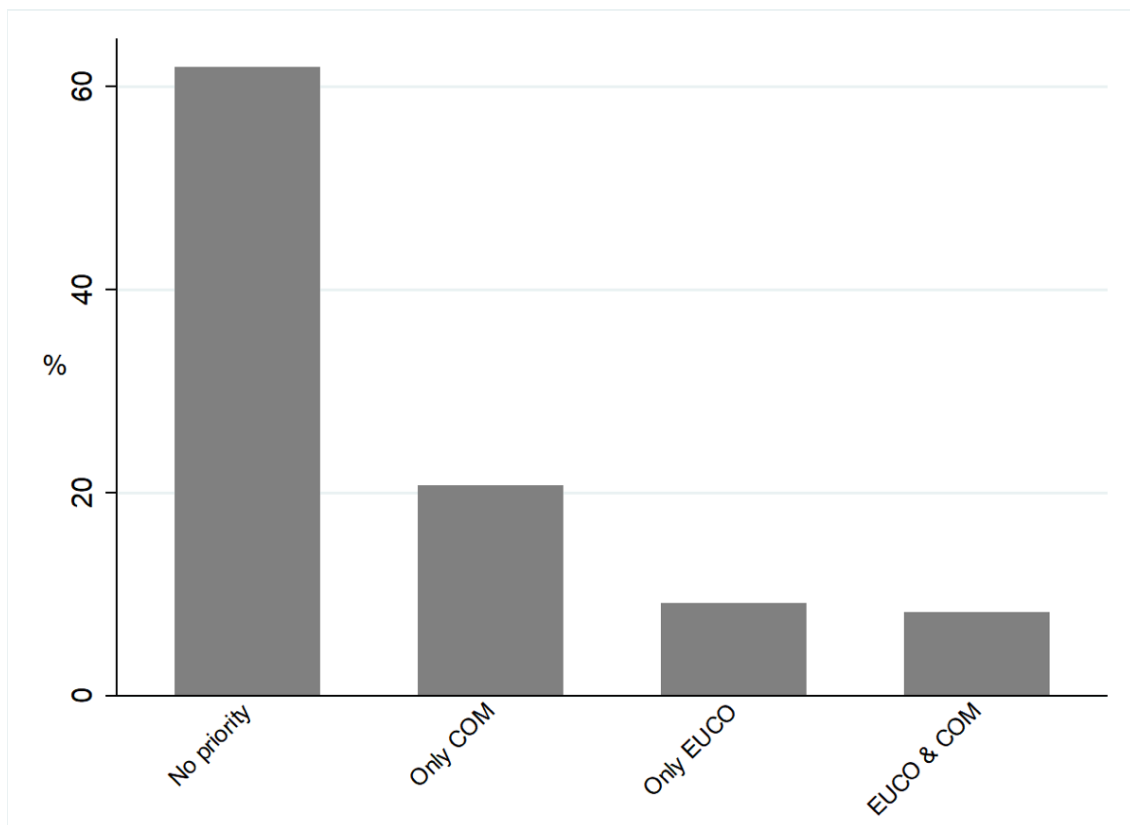
Yet, as our final figure demonstrates, this is not the case.

Figure 7 shows that more than 60% of EU legislation is not prioritised by either the European Council or the Commission; less than 5% are shared priorities. Yet more than 20% of legislation is prioritised only by the Commission and less than 10% is prioritised only by the national leaders.

This is an interesting finding that echoes two points mentioned in our interviews. First, the European Commission, which contributes to summit preparations, may explicitly ‘ask’ the national leaders for mandates, to jumpstart progress on ‘stuck’ proposals. Second, as suggested by our interviewees, the Commission President seems to ‘use’ the summits to informally explore options with national leaders – no matter whether these laws do or do not become priorities in the summit conclusions or future work programmes.

As such – and in stark contrast to the EP – the Commission seems to be much more at ease with the European Council’s assertiveness in the everyday law-making process.

Figure 7. Legislative priorities by the European Council and the Commission



Source: Source: Authors’ own elaboration based on [previous research](#).

CONCLUSIONS

This CEPS Explainer has presented an ‘unknown’ European Council – an institution that doesn’t just set the EU’s strategic agenda but also actively, regularly and systematically intervenes in everyday law-making. In particular, the European Council:

- Prioritises specifically redistributive and expansive legislation.
- Is not only a political crisis manager but prioritises crisis-responses in law.
- Assertively mandates the EU’s other institutions, most notably the co-legislators, and Member States at *all* stages of the policy process.

So, what are the implications of these frequent interventions across the policy process for the balance of power within the EU? The European Council is a singularly powerful actor. But its routine interventions in the everyday politics of co-decision should puzzle national and supranational policymakers and parliamentarians, citizens, civil society and business representatives, as well as scholars who work on and with the EU’s daily legislative politics.

Some observers may argue that the leaders’ strong guidance, particularly during times of crisis, is not only beneficial but necessary for the EU to effectively function. Here, the European Council could be seen as a stabilising force that helps steer the EU through difficult challenges. However, our findings do not suggest that these interventions stem from a crisis-driven need for leadership.

Instead, and notwithstanding the above CJEU rulings, the leaders’ mandates appear to be regular and systematic, and they extend across different policy areas and stages of decision-making. As such, the European Council’s assertive interventions complicate our traditional understanding of EU policymaking and of the ‘classic’ roles assigned to the EU’s legislative players.

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