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When the European Council Intervenes: Bargaining Success in EU Legislation

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ABSTRACT

Despite the EU treaties limiting the European Council (EUCO)'s role to providing the Union's general political direction, several observers have documented its active intervention in several high-profile dossiers negotiated under the ordinary legislative procedure. This article builds on that insight asking: to what extent does the EUCO affect legislative outcomes? We examine whether EUCO intervention systematically increases the bargaining success of the Council at the expense of the European Parliament. We combine the DEU III and IV datasets with a dataset on EUCO conclusions, matching the national leaders' attention to legislation with the positions of the other EU actors. Our findings are mixed. While the impact of EUCO's involvement on bargaining success is not statistically significant, the effect is both significant and substantial when the focus is restricted to legislation related to core state powers. The findings bear important implications for democratic politics in the EU.

1 | Introduction

One of the most significant developments in European Union (EU) politics over the past two decades has been the rise of the European Council (EUCO) as a key centre of political authority (Fabbrini 2013; Puetter 2014). Its increased prominence has resulted from several interconnected factors: the need for more centralised decision-making in response to the EU's polycrisis (Fabbrini 2025; Smeets and Beach 2022); the preference for advancing integration without further supranationalisation (Bickerton et al. 2015; Fabbrini and Puetter 2016), particularly as EU policymaking has expanded into areas closely tied to the states' core powers (Genschel and Jachtenfuchs 2015, 2018); and the EU's heightened politicisation in the post-permissive-consensus period (Glencross 2016; Puetter 2014).

These developments were reflected in a rewiring of the EU along more intergovernmental lines. This was visible in the growing use—or threatened use—of arrangements outside the EU treaties, the establishment of *de novo* bodies, and the design of new policies

that partially bypassed the traditional functioning of the EU centred on the Community method (Bickerton et al. 2015; Fabbrini 2013; Hodson and Puetter 2025). In these processes, the role of the member states was strengthened, while the influence of supranational institutions was reduced.

The Community method and the ordinary legislative procedure (OLP)—which became the EU's dominant legislative mode—were largely seen as ring-fenced from this development. The OLP was understood to follow its own logic, based on a well-established working relationship between the European Commission, a sectoralised Council of the EU (hereafter, the Council), and an increasingly assertive European Parliament (EP). After all, the EU treaties limit the European Council's role to providing the Union's general political direction and explicitly state that it “shall not exercise legislative functions” (Art. 15(1) TEU). Yet, a growing body of scholarship began to show that the shadow of the EUCO extended even into this protected domain of the Community method. In several prominent cases, the European Council intervened in OLP

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policymaking to break deadlocks, accelerate agreement, and ultimately steer legislative outcomes closer to member state preferences (Bressanelli and Chelotti 2016, 2019; Ripoll Servent 2019; Smeets and Beach 2022).

This article moves from these premises and asks: to what extent does the EUCO affect legislation under the OLP? When the EUCO takes an interest in a legislative file, does this alter the dynamics of the OLP and impact bargaining outcomes? Whereas the studies discussed above focus on a limited set of salient cases, this article examines whether these dynamics operate more broadly across EU legislation. This matters for how we understand the EU as a political system and the forces that drive decision-making within it. It is one thing for the EUCO to exert influence on a small number of prominent cases, likely linked to high political stakes. It is another if that influence is more pervasive and systematically shapes the functioning of the OLP, the central instrument of EU policymaking.

We answer these questions by combining two datasets. The first is the DEU datasets (III and IV), which contain data on around 100 EU legislative dossiers and 300 controversies between 1999 and 2024 (Arregui and Perarnaud 2022; Thomson 2011; Arregui 2027). They record the positions of member states in the Council, the Commission, and the EP at the start of the legislative process, as well as the final outcomes, allowing one to assess their bargaining success. The second dataset measures EUCO involvement in EU legislation by coding references to legislative dossiers in EUCO conclusions (Bressanelli et al. 2026). Conclusions constitute authoritative documents that are closely observed by the other EU institutions, thus providing a useful source to capture EUCO's attention to legislation.

We use these two datasets to test whether the bargaining success of EU legislative actors changes when the EUCO shows interest on a file. More specifically, we examine whether EUCO's involvement increases the bargaining success of the Council at the expense of the EP. The results are mixed. *Per se*, the effect of EUCO's involvement is not statistically significant. However, when we selectively focus on legislative files related to core state powers—such as immigration, internal security and fiscal policies—the effect is both statistically significant and substantial.

The article proceeds as follows. The next section reviews debates on bargaining success in EU legislative politics and identifies the research gap addressed here. It then turns to the EUCO, focusing on the reasons and mechanisms through which it becomes involved in the OLP, including through its conclusions. The subsequent sections present the datasets, variables, and empirical analysis. The conclusions summarise the findings and discuss their implications for democratic decision-making in the EU.

2 | Power and Bargaining Success in EU Legislation

Studies of EU decision-making have long focused on the relative power of EU institutions in the legislative process. At the heart of this literature is the question of which institutions are

most able to shape policy outcomes once the legislative process is under way. Here, institutional power is understood in terms of bargaining success, that is, the “congruence between actors’ stated policy preferences and decision outcomes” (Costello and Thomson 2013, 1027). This strand of the literature concentrates less on agenda-setting and more on how actors’ preferences are reflected in the final text after a proposal has been tabled by the Commission.

A first insight from this literature is that OLP outcomes rarely correspond to the position of one actor alone. The most persuasive models of EU legislation are compromise models, in which actors are weighted according to their capabilities and the importance they attach to particular issues (Franchino and Mariotto 2025; Pourebrahimi 2026; Thomson 2011). Outcomes are therefore better understood as reflecting a pattern of distributed gains than the systematic predominance of any single member state or institution.

However, distributed gains do not imply equal success. When the relative bargaining success of the Council, the EP and the Commission is examined, important differences emerge. The Commission's role under the OLP is contested: while some scholars argue that its power has weakened with the rise of trilogues and early agreements (Kreppel and Oztas 2017), others suggest that it may retain influence through informational and technical resources, its capacity to broker inter-institutional compromises and member states’ continued reliance on supranational coordination (Lundgren et al. 2024; Rasmussen and Reh 2013).

The core institutional relationship examined in the bargaining-success literature is that between the Council and the EP. The literature consistently shows that the Council generally emerges as the strongest actor under OLP (Costello and Thomson 2013; Kreppel 2018; Thomson 2011). The EP, despite being a major beneficiary of the introduction and extension of codecision/OLP, has not achieved parity with the Council. Under the OLP, it is “still the junior partner in the legislative game” (Kreppel 2018, 28). The reasons are largely structural: the Council is often closer to the status quo than the EP, while divisions within Parliament weaken its bargaining leverage (Costello and Thomson 2013).

The bargaining-success literature has focused on the two co-legislators and the Commission. This focus reflects the institutional structure of EU legislation, since these are the formal actors that take part in the legislative process. Yet both practitioners and scholars have increasingly emphasised that the European Council has become an important presence once legislative negotiations are under way. This reflects a broader transformation captured by new intergovernmentalist accounts, which argue that, partly as a consequence of the polycrisis of the 2010s, the member states—and the EUCO in particular—have become the centre of political gravity of the Union (Bickerton et al. 2015; Fabbrini and Puetter 2016; Hodson and Puetter 2025).

The European Council's influence has traditionally been understood primarily in agenda-setting terms, with the Heads of state or government—hereafter the Heads—defining broad

political priorities and signalling issues requiring EU-level action (Carammia et al. 2016). More recently, scholars have pointed to a more direct role, as the European Council has become involved not only in setting the Union's long-term direction but also in ongoing policy processes, including files formally negotiated under the OLP.

This is particularly striking, since the EU treaties explicitly prohibit the EUCO from exercising legislative functions. Yet several well-documented episodes suggest that this boundary has become blurred. The EUCO has intervened in high-profile OLP files by exercising active oversight, accelerating negotiations and, in some cases, shaping policy choices, thereby acquiring quasi-legislative powers (Bocquillon and Dobbels 2014; Bressanelli and Chelotti 2016; Puetter and Terranova 2025; Smeets and Beach 2022). The Six-Pack and Two-Pack, adopted in the context of the euro crisis, are a noticeable example. In these files, the European Council's political steering strengthened the inter-governmental character of economic governance reform, casting a shadow over negotiations formally conducted under the Community method. The reform of the Common European Asylum System illustrates a different dynamic: EUCO involvement was closely linked to the salience of migration and internal security, but also showed that intervention by the Heads may intensify conflict or contribute to deadlock when member states remain divided. In the Green Deal, EUCO influence was less file-specific and worked instead through the endorsement of strategic objectives and the coordination of executive actors around a wide legislative programme.

Since these episodes are high-profile and often linked to crisis politics, it remains unclear whether EUCO influence is confined to prominent cases or whether it shapes legislation more broadly. It also remains unclear whether its attention systematically alters OLP outcomes in practice. More specifically, does its involvement affect the bargaining success of the Council and the EP? The next section examines how the European Council becomes involved in EU legislative decision-making and develops the expectations to be tested in the empirical analysis.

3 | The European Council and the OLP Process

The EUCO's encroachment on the EU legislative cycle is neither insignificant nor uncontroversial. Indeed, the EP has repeatedly protested what it sees as the EUCO's illegitimate intrusion (European Parliament 2013). We argue that the EUCO has been able to carve out a role in legislative policy-making because of the political authority that the Heads enjoy within the EU system, resulting in a limited hierarchical relationship with other legislative actors (Bressanelli et al. 2026). This authority derives from several sources, including EUCO's ability to leverage resources to influence the careers of members of other institutions (Bressanelli et al. 2026) and claims to higher political visibility and legitimacy vis-à-vis other EU institutions (van Middelaar 2019). It also stems from functional reasons, as discussions among the Heads provide valuable information to EU legislators about where compromise might emerge. As a Commission official put it, "[i]t is a huge advantage to have all the leaders together. It is very useful to feel the temperature" (Puetter and Terranova 2025, 13).

The claim that the EUCO plays a legislative role in the OLP requires qualification. We do not mean that it participates in the OLP to the same extent as the Commission, EP and the Council. It seldom engages with policy dossiers in detail throughout all stages of negotiation. Despite the increase in EUCO meetings and the (modest) expansion of its administrative resources after the Lisbon Treaty, the EUCO has limited time and capacity to do so, even in legislative files it follows more closely. Moreover, a more pervasive role would likely provoke stronger institutional resistance and possibly a legal challenge before the EU Court of Justice. Rather, what we mean is that, in OLP files that attract EUCO attention, the Heads join—often in a guiding position—selected EU actors in providing executive leadership over those legislative dossiers (Puetter and Terranova 2025; van Middelaar 2019). In this sense, the EUCO serves as the “control room” of EU policymaking, overseeing and steering the process, while other actors constitute the “machine room,” more involved in working out policy choices and legislative details (Smeets and Beach 2022, 2023).

More specifically, we identify four main mechanisms through which the EUCO intervenes in the OLP process: collective written guidance, public political pressure, interpersonal coordination, and direct problem-solving. Table 1 summarises these mechanisms and provides one illustrative example for each.

First, EUCO conclusions provide collective guidance to actors involved in EU policymaking. Over time, they have developed into authoritative reference points that shape policy agendas and guide institutional action within the EU (Puetter 2014, 133-141). Crucially here, the Heads' conclusions—which provide the basis for our operationalization of EUCO involvement in EU legislation, discussed in greater detail below—regularly refer to specific legislative dossiers. These references range from general endorsements to more detailed instructions to EU legislators, such as advancing or concluding negotiations within given deadlines. In this sense, they operate as political signals: they make the Heads' priorities salient to other EU actors and are, in practice, “very difficult for any member of the relevant [EU] administrations to ignore” (Puetter 2014, 140; also Bressanelli et al. 2026; Puetter and Terranova 2025).

Second, Heads, national governments, and the President of the European Council may also use public political pressure to express their preferences regarding OLP files outside formal conclusions. This includes speeches, interviews, press conferences and public statements. Unlike conclusions, these interventions do not necessarily express the collective position of the EUCO. Their role is rather to politicise ongoing negotiations, signal the importance of a file, and put pressure on the Council, the EP or the Commission by making the preferences of national executives visible (Scotto di Vettimo 2026).

Third, EUCO influence may operate through interpersonal coordination with the Commission and the co-legislators. This includes regular institutional contacts, such as the Commission President's participation in EUCO meetings and the EP President's address at the start of its sessions, as well as more targeted exchanges with Council Presidencies, rapporteurs, and other senior office-holders. Pre-summit meetings of European political parties provide an additional venue, bringing together

TABLE 1 | Mechanisms of EUCO intervention in the OLP.

Mechanism	Mode of intervention	Example
Collective written guidance	EUCO conclusions	Stop-the-clock Directive, 2025: the European Council called on the co-legislators to adopt “the proposal on the stop-the-clock mechanism on sustainability reporting and due diligence without delay and at the latest by June 2025” (EUCO conclusions, 20 March 2025)
Public political pressure	Speeches, interviews, press conferences, public statements by Heads or governments	CEAS reform, 2023: France and Germany publicly called for “finalising the reform of the Common European Asylum System” within the current EP legislative period (Franco-German Declaration, 22 January 2023)
Interpersonal coordination	Meetings with Commission, EP and Council players, party-family actors	EPP pre-summit, 2025: ahead of the March EUCO, EPP-affiliated Heads met with party leaders, the Commission President and the EP President in a pre-summit format aimed at coordinating priorities before the summit (EPP Press Notice, 20 March 2025)
Direct problem-solving	Direct participation in policy drafting, compromise-building and issue settlement	Recovery and Resilience Facility, 2020: the Heads politically settled contested issues including the grant-loan balance and the emergency-brake procedure for disputed disbursements (Smeets and Beach 2023)

party-affiliated Heads with Commissioners, EP leaders and parliamentary group chairs for coordination, socialisation and networking (Drachenberg 2022). In these settings, the Heads can use their prominence within party families to shape discussions and influence the positions taken by affiliated actors in legislative negotiations.

Fourth, the Heads may engage in direct problem-solving when politically salient or blocked OLP files require top-level intervention. It is in relation to these issues that the distinction between the EUCO as the control room and other EU institutions as the machine room is most apt (Smeets and Beach 2022, 2023). On such dossiers, the EUCO may provide strategic guidance as files move between it and other actors during the OLP (Puetter and Terranova 2025; van Middelaar 2019). At times, however, the EUCO also descends into the machine room and becomes a direct participant in the legislative process by shaping “policy, drafting texts and forging compromises” (Smeets and Beach 2022, 1426).

The four mechanisms are analytically distinct, although they may overlap in practice. Our empirical operationalisation captures the first mechanism directly, since references to legislative dossiers in EUCO conclusions provide an observable trace of collective EUCO attention. We treat this measure as a (partial) indicator of EUCO involvement, while recognising that conclusions may also identify files on which public pressure, interpersonal coordination or direct problem-solving are likely to occur.

Following this discussion, we develop two hypotheses about how EUCO involvement affects the bargaining success of OLP actors. Our hypotheses start from the assumption that the European Council and the Council of the EU are likely to share broadly similar preferences. Although they are formally distinct institutions, both are embedded in national executives: the European Council is composed of Heads of state or government, while ministers and officials represent member-state

governments in the Council. Seen through a principal-agent lens, Council negotiators act on behalf of national governments led, in most cases, by those same Heads (Strøm 2000).

Coalition politics helps specify how this preference alignment can be sustained. Ministers may enjoy portfolio discretion and, in coalition governments, may belong to parties other than that of the Head of government. Yet ministerial discretion is subject to political control. Government leaders can use cabinet hierarchy and coordination, coalition agreements and legislative review to monitor ministers and limit deviations from the government's agreed position (Thies 2001; Martin and Vanberg 2005). EUCO involvement can therefore reinforce executive control over the positions defended by ministers in the Council. The same logic extends below the ministerial level. Much of the Council's preparatory work takes place in Coreper, specialised committees and working parties. Signals from the Heads may reverberate through the Council machinery, linking the priorities expressed by the Heads to the positions defended by national officials in Council negotiations (Häge and Naurin 2013).

We argue that the political authority of the Heads may also shape the EP's bargaining behaviour. Their control over party-political and career resources, combined with their greater political visibility and stronger claim to democratic legitimacy, can make resistance costly for members of the EP (Bressanelli and Chelotti 2018; van Middelaar 2019). Once the EUCO publicly identifies a file and a preferred outcome as their political priority, the EP risks been portrayed as obstructing a mandate endorsed by national leaders. We therefore expect the EP to exercise greater restraint on EUCO-prioritised files and to challenge the Council's position less forcefully than it otherwise would.

On this basis, we expect EUCO involvement to shift bargaining success away from the EP and towards the Council. The first hypothesis applies this argument across all areas of EU

policymaking. The EUCO's remit is broad, with virtually no EU issue lying outside its agenda. After all, from a new inter-governmentalist perspective, these dynamics are expected to extend across the EU policy spectrum, as the distinction between market integration and high politics has become increasingly blurred (Hodson and Puetter 2025, 40). The first hypothesis therefore states that:

H1. *EUCO involvement is associated with higher bargaining success for the Council across all EU policy areas.*

The second hypothesis tests whether the relationship between EUCO involvement and Council bargaining success is more likely to emerge in relation to “core state powers”. These areas are especially salient for member states because European integration has expanded into domains that were traditionally considered core state responsibilities, raising fundamental questions about sovereignty, the (re)distribution of economic resources and the definition of political identity (Genschel and Jachtenfuchs 2015, 2018). In domains such as migration, internal security and taxation, the political costs of agency loss are higher for national executives. The Heads have therefore stronger incentives to ensure that Council negotiations remain aligned with their preferences. EU politics in these areas is also more strongly shaped by intergovernmental logics: member states tend to lead, while actors such as the EP face greater constraints and have less influence for strategic and normative reasons (Bressanelli and Chelotti 2018, 2019; Ripoll Servent 2019). On such bases, we expect the Council-favouring implications of EUCO involvement to be especially visible in core state power domains.

H2. *EUCO involvement is associated with higher bargaining success for the Council on core state power issues.*

4 | Data and Operationalisation

4.1 | Dataset

To test our hypotheses, we created a new dataset which combines information included in the DEU III and IV datasets (Arregui 2027; Bicchi and Arregui 2026; Arregui and Perarnaud 2022; Thomson et al. 2012) with information on legislation mentioned in the conclusions of EUCO summits (Bressanelli et al. 2026). By combining the DEU III and the DEU IV datasets, we cover legislation negotiated in the period from 1999 to 2024.

The unit of analysis is the individual controversy in legislative dossiers negotiated under the OLP. Our dataset includes 175 controversies from the DEU III, for 67 legislative procedures, and 113 controversies from the DEU IV dataset, for 30 dossiers. Controversies are specific and important negotiation issues over which different positions among the involved actors emerge. Typically, legislation selected by the DEU research teams includes multiple controversies: in our dataset, legislation in the period covered by the DEU III dataset—i.e., legislation concluded between 2000 and 2019—features an average of 3.4 controversies per dossier, while legislation included in the DEU

IV dataset—concluded in the period 2022–2024—has 4.1 controversies.

By creating this aggregated dataset, some aspects ought to be stressed. The DEU III dataset does not include—unlike the DEU IV dataset—an aggregate measure of the position of the Council, but it codes the position on a specific controversy of all member states represented in the Council. Conversely, the DEU IV dataset does not provide measures of the positions of individual member states, but only of the Council (common position) as a whole. This asymmetry had to be carefully considered for the calculation of our independent and some control variables (below). Second, the policy positions of the political groups have only been systematically measured in the DEU IV which, in any case, also provides an aggregate measure of the EP position.¹

The integrated DEU dataset includes information on the policy positions of the key actors in the EU legislative process: the Council (and/or the member states), the Commission, the EP (and/or its political groups). The DEU III dataset also provides information on the salience that each actor attributes to each controversy. The scores capture the positions of the actors at the onset of the legislative process. They are supplemented by the position of the status quo (or reference point)—which is the existing policy that is in force before any new legislation is adopted—and the final legislative outcome. All positions are measured on a scale ranging from 0 to 100, which is determined for each controversy assessing the actors' most extreme positions and the options within the two poles.

The DEU dataset has been integrated with information on legislation mentioned in the European Council's conclusions (Bressanelli et al. 2026). As we argued in the previous section, while the conclusions are non-binding legally, they are a key instrument of political leadership that commits actors politically. Arguably, conclusions allow us to capture the involvement of EUCO in legislation more systematically than any other available source. In the conclusions, the Heads “mandate” the other EU institutions, asking the Commission to propose legislation; acknowledging ongoing legislative work; calling on the co-legislators to conclude negotiations and addressing the Member States for implementation. Out of the over 2000 legislative proposals made by the European Commission between 1999 and 2024, most of them are never mentioned in the conclusions, but about 14 percent are referred to at least once and, in several cases, legislation is mentioned in several conclusions. For instance, the Services Directive and the ETS Directive are mentioned more than ten times (Bressanelli et al. 2025, 3–4).

4.2 | Variables

To assess the bargaining power of the co-legislators (H1 and H2), our dependent variable is relative *Bargaining success*. It is computed based on Costello and Thomson (2013, 1033) by comparing the position of the Council and the EP with the decision outcome. It is calculated as the absolute difference between the Council and the outcome minus the absolute

¹ The DEU III dataset only included the political group positions for a small sub-set of observations, as part of the post-2004 study (Thomson et al. 2012, 609).

difference between the EP and the outcome. If the variable takes a positive value, it means that the outcome is closer to the EP (i.e., EP's success); if it is negative, it indicates that the position of the Council is closer to the outcome (i.e., Council's success). Its computation required additional work on the DEU III dataset, which exclusively provides information on the positions of the individual member states. Following again Costello and Thomson (2013, 1033-1034), we calculated the collective position of the Council as the weighted average of national positions on each controversy. The weights combine the salience of each issue for Member State—computed on a 0-100 scale and available in the DEU III dataset—and the voting power of each country according to the Banzhaf index (Antonakakis et al. 2014; Kirsch 2016).³

The independent variable to test H1 and H2—*European Council involvement*—is a categorical variable with three categories, corresponding to: “0”: no mention of specific legislation in the conclusions; “1”: mild involvement captured by only one reference or by more than one reference but without clear instructions to other institutions or deadlines; “2”: strong involvement with more than one reference to specific legislation, providing instructions or deadlines to other EU institutions.⁴ Bressanelli et al. (2026) analysed conclusions—official conclusions, agreed in ordinary or special summits, rather than leaders' statements or declarations, usually adopted in informal meetings—searching for every clear mention of legislation (to be) concluded under the OLP. *European Council involvement* captures legislation explicitly mentioned in the conclusions (i.e., by its name or “nickname”) or more implicitly referred to (i.e., with a clear mention of a regulation or directive within a specific policy area). It should be emphasised that the coding captures unambiguous references to legislation and it is not about general policy priorities (e.g., Carammia et al. 2016; Scotto di Vettimo 2026). As a robustness check, we also computed an alternative operationalisation of *European Council involvement* as a continuous variable (see Table B in the online Appendix).

An interaction variable between *European Council involvement* and the dichotomous variable *Core state powers* was created to test H2. The latter captures those policy areas that are most closely associated with the essence of state sovereignty or, in Genschel and Jachtenfuchs's terminology (2015; 2018), “core state powers.” We employed Koop et al.'s (2022) classification of legislation in 17 policy areas based on the categories of the Comparative Manifesto Project and preliminarily coded as “1” those legislative dossiers falling under the categories of external relations, crime and justice, macroeconomic policy and migration. We then delved deeper into each and every legislative file, confirming the attribution to “core state powers” (or assigning it ex novo) if it touched on coercive or fiscal-monetary powers, or EU capacities.⁵

We added several control variables. First, in line with previous research, we expect closeness to the status quo to be a relevant predictor of success. We thus created the variable *Status quo* as

a categorical variable coded 2 when the Council is closer to the status quo and 1 when it is the EP. When no status quo exists, we assigned the value 0 and used it as the reference category in the models. Second, we measure *EP cohesion*—replicating and updating Costello and Thomson (2013)—looking at the final roll call vote of the responsible committee before the EP's first reading. We used a simple dummy variable capturing whether the committee voted unanimously (1) or split (0). Abstentions have been counted as meaningful voting choices. Third, we also computed *Council cohesion* based on its voting record. We could not replicate Costello and Thomson (2013) as their measure requires the policy positions of the Member States, not available for the DEU IV dataset. We therefore looked at the recorded votes of the ministerial meetings—missing for 36 observations and 18 legislative dossiers—and, similarly to *EP cohesion*—created a dummy coded 1 when the Council votes unanimously and 0 if any Member State splits. Fourth, we added the variable *Distance to Commission* to take into consideration the role of the Commission in the law-making process. We computed it as the distance between the Council and the Commission, minus the distance between the EP and the Commission (cf. Costello and Thomson 2013, 1034). We also used another dummy variable—*Policy type*—to assess whether the Council is more successful on (re)distributive and constitutive policies, that is in those policy areas that respectively involve money and the inter-institutional balance of power. Policy type draws on Koop et al. (2022) and takes ‘regulatory’ as baseline category.⁶

Finally, we selected and analysed an exemplary case of legislation - Regulation (EU) 2017/458, amending the Schengen Borders Code to reinforce checks against relevant databases at the Union's external borders—touching on central attributes of sovereignty, such as internal security and border control. The regulation, proposed in the aftermath of the November 2015 terrorist attacks in Paris, introduced systematic identity checks on EU citizens crossing the Union's external borders to primarily address the threat posed by terrorist foreign fighters returning to the EU from abroad. Drawing on broad documentary evidence, we examined whether and how the European Council intervened in the legislative process. In the DEU-III dataset, the Council was coded as closer to the outcome than the EP on the specific issue of additional checks at airports. Focusing on the regulation as a whole rather than this specific controversy, the case study provides an illustration of the mechanisms through which the Heads intervene in law-making supporting the Council.

5 | Empirical Analysis

5.1 | Statistical Models

The empirical analysis uses a multilevel mixed-effect linear regression to account for the clustering of observations (i.e., controversies) within legislative dossiers. Table 2 presents three

³Our weighted measures correlate highly ($p = 0.995$) with the aggregate measures kindly provided to us by Nicholas Bicchi. Any difference is likely to be due to the rounding of figures.

⁴Conclusions are available through the public register of documents on the website of the European Council/Council of the EU: <https://www.consilium.europa.eu/en/european-council/conclusions/>.

⁵Table C in the online Appendix provides details on those legislative dossiers coded as “core state powers” that have been mentioned by the European Council in its conclusions.

⁶The correlation between the variables *Core state powers* and *Policy type* is weak ($r = 0.23$).

TABLE 2 | Relative bargaining success of the Council of the EU and the EP under the OLP.

	Model 1		Model 2		Model 3	
	b	SE	b	SE	b	SE
European Council involvement						
Mild	7.18	6.33	12.07*	7.01	11.34	6.89
Strong	4.37	6.64	10.64	7.16	10.26	6.67
Core state powers			16.82	12.80	8.73	12.19
EUCO priority*Core state						
Mild*Core state			−29.44*	17.03	−20.02	16.69
Strong*Core state			−40.16**	18.22	−35.78**	16.79
Status quo						
Council	−1.24	6.01	−1.62	6.03		
European Parliament	−1.12	8.56	0.42	8.53		
EP cohesion	3.21	10.14	3.01	10.06		
Council cohesion	6.63	5.23	7.76	5.22		
Distance to the Commission	0.15***	0.05	0.17***	0.05	0.15***	0.05
Policy type (reference: regulatory)	−16.83**	8.18	−19.38**	8.59	−11.48	7.67
Constant	−11.31*	6.14	−12.84**	6.38	−10.78***	3.41
Wald chi-square	15.77**		22.38**		17.41**	
Number of observations	227		227		227	

* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$; levels are issues and procedures.

models: Model 1 includes the main predictor *European Council involvement* for testing H1 and all controls; Model 2 adds the interaction term between *European Council involvement* and *Core state powers* to test H2; Model 3 keeps only those variables with a significant effect in the previous model. All models are fitted on 227 observations in 73 groups, i.e. legislative procedures, because of missing data on some of our independent and control variables.

We do not find support for H1. The effect of *European Council priority* is not statistically significant. In general, the Heads' attention to specific legislative dossiers—as reflected in the summits' conclusions—does not appear to sway outcomes in favour of the Council. However, as hypothesised in H2, it is under *Core state powers* that the effect of the European Council on legislation can be observed. As Model 2 shows, when the EUCO strongly places its attention on legislation in areas such as, for instance, migration, internal security or fiscal policy, the bargaining success of the EP decreases by about 40 points compared to the Council. When the EUCO's involvement is less strong, but present, the bargaining success of the EP still decreases by about 29 points vis-à-vis the Council. This further corroborates the findings of recent research (e.g., Bressanelli et al. 2026) showing that the European Council plays, under specific conditions, an important and consequential role in the EU legislative process.

Turning to our controls, two variables appear to significantly affect bargaining success. First, the position of the Commission and its proximity to the co-legislators (*Distance to the Commission*) is an important explanatory factor. This finding is

robust across model specifications and indicates that the Commission is more than a broker; securing its support matters to sway legislative outcomes closer to one's own policy preferences. Second, in redistributive and constitutive policies the Council is more successful than the EP by more than 10 points. Although this result is significant (at the 5 percent level) only in Models 1 and 2, it suggests that when money and institutional issues are negotiated it is the Council which tends to have the upper hand.

Neither the *Status quo* nor the internal cohesion of the co-legislators are, instead, statistically significant. In contrast to what Costello and Thomson found (2013, 1035), while a cohesive Parliament is more successful by about 3 points, we may speculate that the non-significant result may be driven by the fact that in the ninth EP (i.e., the period covered by DEU IV) the final committee votes are less unanimous and partisan differences appear more prominent at the committee stage already.⁷

To better understand the effect of the interaction term, Figure 1 predicts bargaining success for core state powers compared to other policy areas, at different levels of EUCO's involvement. While this is not associated with higher bargaining success for the Council across legislation in general, it has a significant impact on legislation related to core state powers, and particularly when the involvement of the European Council is strong. In the figure, the point estimates show an overall change of about 30 points in favour of the Council as the Heads make strong references to legislation, in areas of core state powers, in their conclusions.

⁷The mean for *EP cohesion* is 0.10 for the period covered in the DEU III dataset, and 0.03 for the period of the DEU IV dataset.

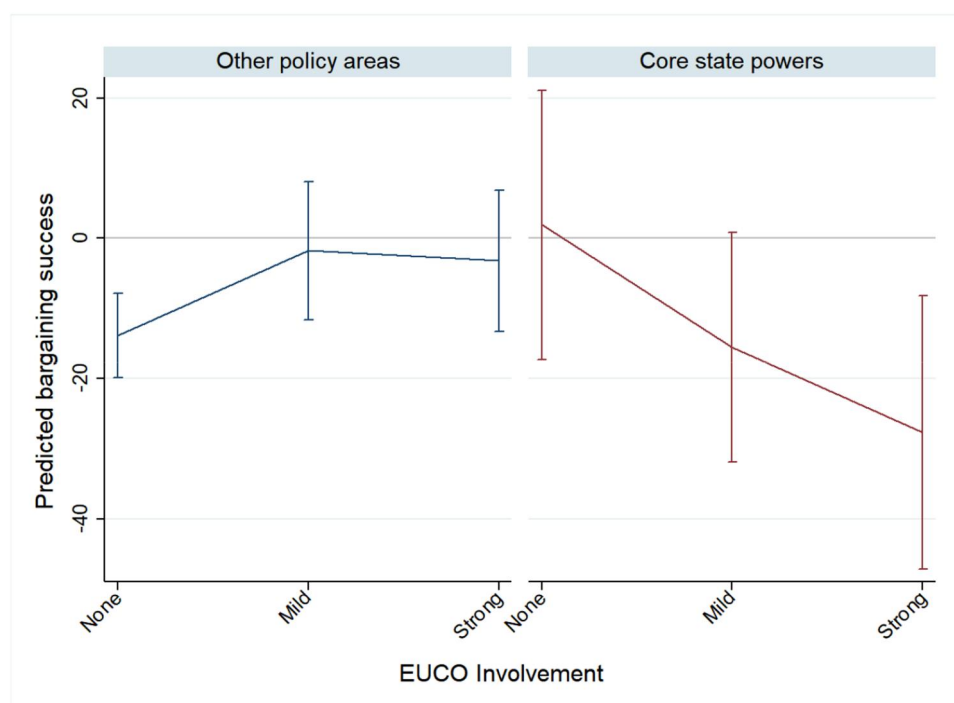


FIGURE 1 | When the EUCO intervenes: Predicted bargaining success. *Note:* predictions based on Model 2.

5.2 | Case Study: Amending the Schengen Borders Code

The European Commission tabled its legislative proposal in mid-December 2015. The proposal followed an explicit call by the Heads to revise the Schengen Borders Code, first made at the informal European Council meeting of February 2015. On 15 October 2015, the Heads reiterated their commitment, welcoming the “Commission’s intention to rapidly present a package of measures with a view to improving the management of our external borders.” Following the Paris attacks of 13 November, the Justice and Home Affairs Council, on 20 November, likewise called for a targeted revision of the border rules; the Commission subsequently tabled its proposal.

At its December summit, the European Council asked the Council “to rapidly examine the Commission proposals.” A heightened sense of urgency surrounded the initiative, with the European Council President Donald Tusk stating that the EU was “failing to protect [its] external borders. That is why leaders have decided to speed up on all these issues” (Barigazzi and Baume 2015). The incoming Dutch Council Presidency made Schengen reform a key priority. On 22 February 2016, it indicated that, “bearing in mind also the Conclusions of the European Council in December 2015 and February 2016”, agreement on the regulation was “a matter of absolute priority” (Presidency of the Council of the EU 2016a, 1). Just 2 months after the Commission had submitted its proposal, the Council adopted its general approach.

In the EP, the dossier was scrutinised by the LIBE Committee, with Monica Macovei of the European Conservatives and Reformists (ECR) group appointed rapporteur. In April, Macovei met the chair of the Council Working Party on Frontiers. She endorsed the principle of systematic checks at the

Union’s external borders and expressed hope that “the regulation is concluded as soon as possible” (Macovei 2016a). On 21 June, the LIBE Committee voted on its report, with Macovei supporting systematic checks, in line with the Council’s position (ECR group 2016).

On 13 July, the first trilogue opened interinstitutional negotiations. Before the second trilogue, the Slovak Council Presidency issued a note identifying four outstanding points of contention—including the transitional period for air borders coded in DEU-III—and stated:

The Presidency wishes to underscore that during all the above negotiations it has repeatedly justified why diverting too much from the current Council position would deprive the future legal instrument from a substantial part of its added value regarding security and thus, would go counter to the explicit mandate received by the European Council and the Council. This mandate was most recently reiterated at the informal meeting of the Heads of State or Government at Bratislava on 16 September 2016

(Presidency of the Council, of the EU 2016b, 3)

Late 2016 was marked by particularly strong pressure on the EP from both the Member States (Free Group 2016; Agence Europe 2016) and the Commission (Macovei 2016b). At its October summit, the European Council called “for a swift adoption” of the revised Schengen Borders Code. Within Parliament, both the ECR and EPP openly supported the Council’s position. In a detailed account of the outstanding disagreements, for example, the EPP Group explicitly stated that it “agree[s] with EU ministers,” thereby pressuring the other political groups—especially S&D and ALDE—to follow suit (EPP group 2016).

Finally, the co-legislators reached a compromise at the third tria-
logue meeting, which the EP plenary later approved, despite critical
remarks voiced by several groups, including the S&D and the
ALDE. Most vehemently, Marie-Christine Vergiat, the GUE/NGL
shadow rapporteur, argued that “under pressure from the Council,
once again, a system has been adopted and put in place quickly
without any proof of its reliability” (GUE/NGL 2017). The Eur-
opean Council “welcome[d] the agreement,” calling for its “swift
implementation by the Member States.”

This case study illustrates that, in an area of core state power, the
European Council intervened repeatedly throughout the legislative
process. Its conclusions provided the Council and its Presidency
with a political mandate—reiterated in subsequent conclusions and
informal declarations—that they could invoke and defend in the
legislative negotiations. The mandate enabled the Council to make
a politically credible claim that its hands were tied and accom-
modating the EP’s demands entailed high political costs.

6 | Discussion and Conclusions

This article addressed the following question: to what extent is
the EUCO able to shape legislation under the OLP? We com-
bined two datasets with information on the policy positions of
the key legislative actors and the final outcomes of the legisla-
tive process—collected in different waves of the DEU project
(i.e., Arregui and Perarnaud 2022; Bicchi and Arregui 2026;
Thomson 2011)—with references to OLP legislation in Eur-
opean Council conclusions (Bressanelli et al. 2026). The em-
pirical evidence is not completely clear-cut, but it is sufficiently
robust to suggest that the EUCO does not limit itself to set the
strategic direction of the Union. Our analysis shows—albeit
with an important qualification—that the Heads have the
capacity to affect legislative bargaining in favour of the Council
(and, ultimately, themselves).

This is a significant finding, as it applies to a relatively large number
of legislative controversies, extending therefore our knowledge on
the role of the EUCO in the legislative process beyond prominent
case studies (Bressanelli and Chelotti 2016, 2019; Ripoll Ser-
vent 2019; Smeets and Beach 2022). At the same time, however, the
impact of the European Council is conditional on core state powers
(Genschel and Jachtenfuchs 2015, 2018). It is only in policies such
as immigration, internal security or fiscal policies that the effect of
EUCO’s involvement in the legislative process can be observed.

Given our research design, we can only speculate on the causal
mechanisms that make EUCO’s attention to legislation particularly
consequential. It is possible that the Heads’ involvement gives a
boost to “their” ministries, which can conduct inter-institutional
negotiations exploiting the political capital provided by the leaders.
It is also likely that the EP faces significant informal constraints
when the Heads intervene, finding it particularly difficult to be
assertive in areas where the member states have traditionally run
the show. Be it as it may, the relevance of the EUCO in core state
powers calls for a careful reconsideration of the latter’s role in
models on legislative bargaining.

Some additional considerations should be made on the Eur-
opean Commission. In line with the findings of the extant

literature (Costello and Thomson 2013), our evidence also
highlights the importance of being supported by the Commis-
sion in the legislative process. While traditionally being seen as
the supranational ally of the EP, it should be remembered that
the President of the Commission is formally part of the Eur-
opean Council, and it is instrumental in ensuring that what the
“control room” decides is then followed through in the
“machine room” (Smeets and Beach 2022, 2023).

The findings have important implications for democratic law-
making in the EU. Notwithstanding the OLP, the EP’s bargaining
success is much weaker on legislation touching on key aspect of
state sovereignty, and which the Member State may still regard as
their own competence. For both institutional and political
reasons—which future research should explore further—the EP
may find it difficult to resist the Heads’ pressure. On the one hand,
it could then be normatively questioned whether the European
Council should make its presence so visible in an institutional
domain, the law-making process, where other actors—the Council,
the EP and the Commission—are formally in charge. On the other,
the fact that the impact of the Heads remains confined to policies
classically belonging to the “intergovernmental Union”
(Fabbrini 2013) may reassure on the proper functioning of the
‘Community method’ elsewhere.

While we believe that these findings allow us to better under-
stand the EU legislative process and its distributional conse-
quences, we shall also be conscious of the limits of our
endeavour. First, the available data captures only a limited
sample of legislative procedures. Notwithstanding the high
labour-intensive efforts required to further expand the DEU
dataset, this may well be worth doing to strengthen
results. Second, a systematic assessment of the mechanisms
through which the Heads seek to affect the legislative process
would require a different research design. Through an in-depth,
comparative investigation of selected cases, further light would
be cast on how EUCO conclusions influence the EU’s law-
making process and inter-institutional relations more broadly.

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The authors declare no conflicts of interest.

Data Availability Statement

The data that support the findings of this study are available from the
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Supporting Information

Additional supporting information can be found online in the Supporting Information section.

Supporting File: epa270060-sup-0001-EPA_ONLINE_APPENDIX.docx.