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**Informal Governance in Legislative Decision-Making:
When the European Council Controls the Council of the EU**

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1. Introduction

Since its creation in 1974 the European Council (EUCO), composed of the heads of state or government (HoSG) and the Commission President, has been a central actor for the development of European integration. Despite increased scholarly attention on the EUCO in recent years, the interactions between the EUCO and single EU institutions are still a black-box in the literature on EU policy-making. Furthermore, scholars have primarily analyzed its relationship with the Commission in EU agenda-setting due to the EUCO's responsibility of defining the broad guidelines of the EU. By contrast, research on the role of EUCO in legislative decision-making is more limited. In particular, the relationship between the EUCO and the Council of the EU ('the Council') has received scarce scholarly attention.¹ This is surprising given that the Council is still the main decision-making body of the EU (cf. Hayes-Renshaw & Wallace 2006) despite the rise of the European Parliament (EP). Thus, my paper focuses on the relationship between the EUCO and the Council in legislative decision-making.

The Treaty of Lisbon (2007) explicitly defined the EUCO as a non-legislative body; stating that the EUCO "shall not exercise legislative functions" (Art. 15(1) TEU). From a purely legal perspective, the EUCO therefore plays no role in legislative decision-making. I argue that the EUCO goes beyond the legal Treaty provision. As principal of the Council the EUCO interferes in the Council's legislative decision-making behavior by controlling the agent through its conclusions. While the EUCO's role in the legislative process has been pointed out in few case studies (e.g. Bressanelli & Chelotti 2016, Kroll 2017), a systematic theoretical and empirical analysis of the extent to which the EUCO controls legislative decision-making in the Council is lacking.

To determine the EUCO's extent of control I use two indicators: first, the frequency of cases in which the EUCO controls the Council and second, the degree to which it limits the Council's zone of discretion. Considering the Council's zone of discretion, which is an agent's leeway to perform the delegated task, gives a more complete picture of the EUCO's control, as a principal might control less issues, but leave an agent a more limited leeway on these issues. Based on the assumption that a principal's control is not constant (cf. Delreux 2009), I formulate expectations on the changes in the principal-agent relationship between the EUCO and the Council. I expect that the EUCO's extent of control varies between policy areas and over time. More specifically, I suggest that the EUCO controls the Council more often and leaves it a smaller zone of discretion in intergovernmental areas, since the post-Lisbon period and during crisis situations. The hypotheses are tested on a novel dataset that I created through a content analysis of all EUCO conclusions from 1975 until 2016.

In total, the EUCO exerted direct control on the Council in 745 cases in the period from 1975-2016. Although the sheer number of cases is small compared to the number of legislative

¹ The terms Council and Council of the EU are used synonymously.

proposals in the EU,² they are important for our understanding of the inter-institutional relationship between the EUCO and the Council in particular and, the EUCO's role in general. The small number of cases in which the EUCO interferes in the Council's work might be due to different reasons. For instance, it might show that the principal-agent relationship between the EUCO and the Council normally functions well with the Council pursuing the interests of the EUCO. Thus, the EUCO as principal does not need to control the agent. Yet, analyzing the reasons why the EUCO interferes in the Council's activities is beyond the scope of this paper. The analysis shows that the EUCO does not control the Council more often in intergovernmental areas since the Maastricht Treaty, but leaves it a smaller zone of discretion in those policy fields. Likewise, crisis situations do not lead to a higher frequency of control, but to a more limited zone of discretion for the Council. Empirical evidence for the frequency of control in the post-Lisbon period is mixed. While the absolute number of cases has slightly increased from 2009 until 2016, the relative number has decreased after the Lisbon Treaty. Furthermore, the EUCO controls the Council stronger since the Lisbon Treaty. This suggests that the decisions of the EUCO have become more operational over time.

² In total, 8.410 legislative proposals existed in the EU from 1976 until 2014 (cf. Häge 2011). Figure 1 in the appendix shows the yearly number of proposals compared to the number of cases in which the EUCO controlled the Council during the study period.

2. The European Council's Control of the Council of the EU in Legislative Decision-Making

The EUCO is widely acknowledged as a key institution of the EU. Paradoxically, the institution still plays a secondary role in research on EU policy-making. While the EUCO's role for setting the broad agenda of the Union is undisputed, its role in legislative decision-making is more controversial. According to its legal mandate the EUCO is responsible for "provid[ing] the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof" (Art. 15 (1) TEU). Thus, several studies have examined the EUCO's role as EU agenda-setter and its relationship with the Commission (e.g. Princen & Rhinard 2006, Bocquillon & Dobbels 2013, Allerkamp 2010, Thaler 2016, Alexandrova 2016).

In comparison, knowledge on the EUCO's impact on legislative decision-making is more limited. While agenda-setting "is the process by which problems and alternative solutions gain or lose public attention" (Birkland 2011: 169), the decision-making process "begins after an issue or problem is placed on the agenda and makes its way through the legislative process until it comes close to the decision agenda" (Birkland 2011: 253). Thus, only those issues that have successfully gained the attention of decision-makers are considered in the decision-making process. In the case of the EU, legislative decision-making starts after the Commission has submitted a legislative proposal to the Council and the EP. More specifically, decision-making can be conceptualized as a process that consists of two sub-phases: policy formulation and policy adoption (Jann & Wegrich 2007: 48, Knill & Tosun 2008). While actors define and discuss alternative courses of action during the policy formulation phase, the formal decision to approve a legislative proposal is made at the subsequent policy adoption phase (Jann & Wegrich 2007: 48, cf. Knill & Tosun 2008: 13).

2.1 The Role of the European Council in Legislative Decision-Making

With regard to the relationship between the EUCO and the Council in legislative decision-making I suggest to distinguish two perspectives (see Figure 2). The first perspective is the formal perspective that is based on the legal provisions on the EUCO and the Council that are codified in the EU treaties. Very briefly, the EUCO does not play a role in legislative decision-making, as it is not a legislative institution. Defining the broad guidelines of the Union, the EUCO is only involved in agenda-setting. In contrast, legislative decision-making is reserved to the Commission who submits legislative proposals and the Council and the EP who adopt them.

In line with the formal perspective several scholars assert that the EUCO is not involved in the legislative process. Bulmer (1996: 31), for example, argues that the EUCO is responsible for “constitutive politics” making decisions on the architecture of the integration process, while “routine decisionmaking [sic!]” on legislative details is within the Council’s remit. Similarly, Puetter (2014: 73) argues that the EUCO and the Council perform different decision-making modes. While the Council is responsible for “legislative decision-making”, the EUCO engages in “political decision-making” by “agree[ing] that other EU bodies or national governments can take certain executive or legislative decisions” (Puetter 2014: 73, see also Fabbrini & Puetter 2016).

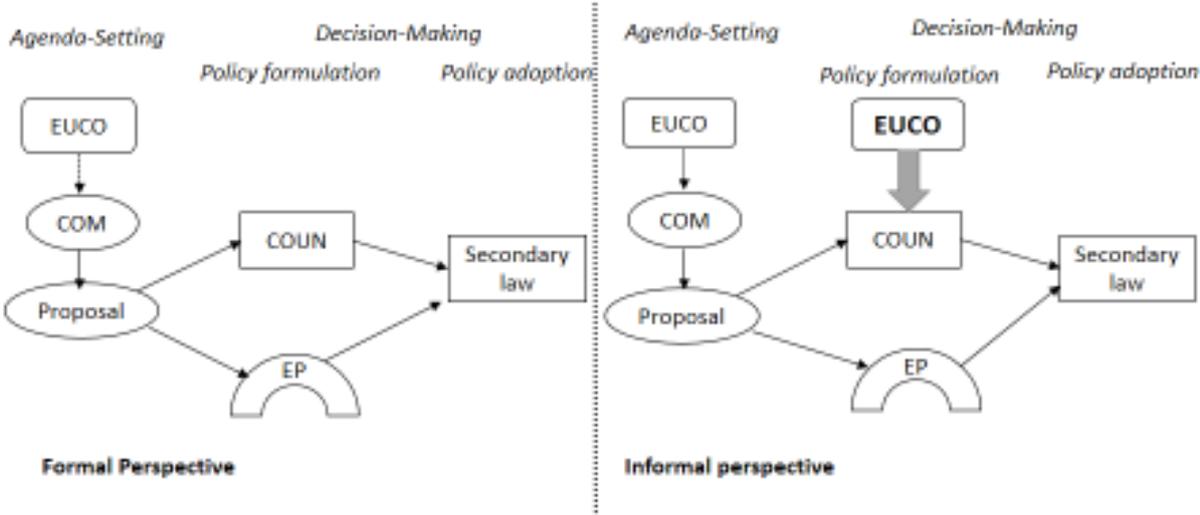
Yet, I argue that the EUCO influences legislative decision-making in the Council. This perspective is called the informal perspective as the EUCO deviates from its role in the EU Treaties (Christiansen & Neuhold 2013, Reh et al. 2013, Kleine 2013: 11). I argue that the EUCO’s position as principal of the Council enables the institution to control the Council’s legislative decision-making behavior. Given that the Council changes its behavior in legislative decision-making because of the EUCO, the EUCO influences the Council. Distinguishing the stage of decision-making more fine grained, the EUCO’s involvement is argued to be confined to the policy formulation stage. Informal governance creates, in general, intermediate outcomes instead of legally binding decisions that need to be formally adopted afterwards to have legal force (Reh et al. 2013: 1115ff.). Since the EUCO is not a legislative institution, it cannot adopt legislative proposals. Instead, the EUCO’s ‘political decisions’ (Werts 2008: 25, Bulmer 1985: 102, Puetter 2014: 73, Hayes-Renshaw & Wallace 2006: 174)³ that are made at the policy formulation stage must be formally adopted by the Council and the EP at the subsequent policy adoption stage for the legislative proposals entering into legal force.

Several scholars have pointed out that the EUCO sometimes gets involved in the legislative process. Hayes-Renshaw and Wallace (2006: 175), for example, state that while the Council “normally act[s] independently” from the EUCO, the two institutions also interact on a large number of dossiers due to their overlapping competences. Examining the legislative negotiations on the ‘Six Pack’ and ‘Two Pack’, Bressanelli and Chelotti (2016: 522) find that although the Council was the key actor in the legislative process, “[t]he Heads encroached in the legislative activities of the Council in a number of ways – dictating the agenda of its work, steering or patrolling the discussions in the Council and solving the impasses between institutions”. Likewise, de Boissieu et al. (2015: 5) find that the EUCO has intervened in specific policy questions to solve deadlock between the member states within the Council or between

³ Some authors argue that the decisions of the EUCO fall under soft law (Wessels 2016: 72, Vogiatzis 2013, Foret & Rittelmeyer 2014: 11). For a discussion on whether the decisions of the EUCO are soft or hard law see Stäsche (2011: 70-82).

different Council formations. Yet, empirical evidence for the informal perspective is mostly based on anecdotal evidence or qualitative case studies. So far, a theoretically-guided and systematic empirical analysis of the relationship between the EUCO and the Council in legislative decision-making is lacking.

Figure 2. The European Council’s Role in the Legislative Process



Source: Own compilation.

2.2 A Dynamic Principal-Agent Relationship: The European Council’s Control of the Council in Legislative Decision-Making

The informal perspective theorizes the relationship between the EUCO and the Council in principal-agent terms. Drawing on the hierarchy between the HoSG and ministers at the national level, the members of the EUCO stand above the members of the Council at the EU level. Although lacking an explicit legalized contract, the EUCO as a collective institution can nevertheless be regarded as the collective principal of the Council (Kroll 2017, Bressanelli & Chelotti 2016: 516, James & Copeland 2014). The EU member states have delegated the responsibility for the adoption of legislation to the Council, the EP and the Commission through the EU Treaties. Delegation can result in desired and undesired consequences. If the agent pursues its own preferences that are in conflict with the principal’s or lacks the resources to perform its delegated task, agency loss is created (Lupia 2003: 43). To mitigate agency loss the principal may control the agent. Through exerting control the principal aims at shaping or reversing the outcomes that result from agent’s actions (Thatcher & Sweet 2002: 5).⁴ The

⁴ This definition of control resembles the relational definition of power (cf. Dahl 1957: 203) and influence (cf. Cox Jacobsen 1973 p. 3 quoted in Arts & Verschuren 1999: 412, March 1955: 438). Yet, an actor

principal can control the agent either manifestly (i.e. directly interfering in agent's choice) or latently (i.e. based on the anticipation of the agent) (Calvert et al. 1989, Ogul & Rockman 1990). Focusing on manifest control in this paper control occurs if the EUCO interferes in the Council's legislative decision-making activities by giving an instruction to the Council. Since the EUCO aims at directing the Council's actions, it limits the Council's autonomy in legislative decision-making.

Yet, control is always imperfect as it is costly or might be even undesirable if multiple principals exist (Epstein & O'Halloran 1994: 698). Thus, the agent always preserves a certain degree of autonomy when deciding how to act even after the principal has controlled it. By controlling the agent, the principal limits the agent's zone of discretion. Following Thatcher and Sweet (2002: 5) the zone of discretion "is constituted by (a) the sum of delegated powers (policy discretion) granted by the principal to the agent, minus (b) the sum of control instruments, available for use by the principals to shape (constrain) or annual (reverse) policy outcomes that emerge as a result of the agent's performance of set tasks". Depending on whether the principal stipulates specific, detailed actions or formulates broad, vague goals, an agent's zone of discretion is low or high (Epstein & O'Halloran 1999, Huber & Shipan 2002, Hawkins et al. 2006). Having low discretion means that the agent has a limited room for manoeuvre for performing the delegated task (here: legislative decision-making), while high levels of discretion imply the opposite.

While for Thatcher and Sweet (2002: 5) "the benefits of delegation decline the more the principal limits the agent's discretion", other authors point out that a smaller zone of discretion might be beneficial for a principal. Limiting an agent's zone of discretion creates costs and benefits for the principal. On the one hand, the principal pays the costs of control and reduces the agent's flexibility to adapt to changing circumstances under a smaller zone of discretion (cf. Epstein & O'Halloran 1994: 701). On the other hand, agency shirking is less likely to go unnoticed under a smaller zone of discretion. At the same time, an agent is more inclined to monitor or anticipate the principal's interests under a smaller zone of discretion (Thatcher & Sweet 2002: 6). Thus, the principal faces a trade-off between the informational gains on the agent's behavior and the distributive losses from the delegation when deciding on the design of agent's discretion (Epstein & O'Halloran 1994: 702).

The control the principal exerts over the agent is assumed to be dynamic. Just as the principal's control an agent's zone of discretion is not constant. Delreux (2009) shows the zone of discretion an agent enjoys varies across decision-making processes. The EUCO's extent

might possess power or influence over another actor without necessarily being a principal. Emphasizing the principal agent relationship between the EUCO and the Council the term control is therefore preferred here.

of control over the Council is measured by 1) the frequency of cases in which the EUCO interferes in the Council's legislative decision-making and 2) the degree to which it limits the Council's zone of discretion. To gain a better understanding of the relationship between the EUCO and the Council, it is important to examine not only *how often*, but also *how much* the EUCO tries to pre-determine the Council's actions. Based on the literature I expect the EUCO's control to vary across three factors.

First, the EUCO's control of the Council in legislative decision-making is expected to vary between policy areas. According to proponents of the new intergovernmentalism the EUCO is the "pivotal decision-making institution" in the new areas of EU activity that have been integrated since the Maastricht Treaty (1993) (Puetter 2015: 165, Bickerton et al. 2015, Puetter 2014, Fabbrini & Puetter 2016). Decisions in those policy areas (i.e. economic governance, social policy, employment policy, the Common Foreign and Security Policy and Justice and Home Affairs) are made through intergovernmental policy coordination. In contrast to intergovernmental areas, the EUCO is suggested to play no role in the classic domains of the Community method which are governed by the Commission, the Council and the EP through the adoption of secondary law.

Hypothesis 1: The European Council controls the Council of the EU more often in intergovernmental policy areas than in areas linked to the classic Community method since the Maastricht Treaty.

Studies on the agenda of the EUCO over time yield ambiguous support for the theory of the new intergovernmentalism. On the one, intergovernmental areas dominate the EUCO's agenda (e.g. Puetter 2015: 169, Carammia et al. 2016). Examining the EUCO's agenda between 1975 and 2011 Carammia et al. (2016) find that the average attention to the intergovernmental areas in the entire period is 59,1%. On the other, the EUCO's overall attention to the intergovernmental areas has not significantly increased after Maastricht, but remained at a rather constant level. More precisely, the average attention of the EUCO to the intergovernmental areas is 61,5% in the period 1993-2011 (*ibid.*). Since Carammia et al.'s (2016) study is confined to the level of attention issues receive, it does not allow for drawing conclusions about the decision-making stage. As stated by the authors whether "the decisions taken by the European Council in these areas [the intergovernmental areas] have become more consequential" (*ibid.*, 816) remains an open question. Upon the assumption that a smaller zone of discretion leaves the Council less autonomy and thus should have more consequences for its behavior, the Council's zone of discretion is taken here into account.

Hypothesis 2: The European Council reduces the Council's zone of discretion more strongly in intergovernmental areas than in areas linked to the classic Community method since the Maastricht Treaty.

Second, while the Maastricht Treaty is considered as turning point for the EUCO by the proponents of the new intergovernmentalism, another watershed moment for the EUCO's institutional development was the Treaty of Lisbon (2007). Previous studies show that an agent's zone of discretion is influenced by factors internally to the relationship between the principal and the agent (e.g. preference homogeneity or informational asymmetry), but also by the institutional environment in which the agent operates ('structure-induced discretion'). Steunenberg (1996) and Franchino (2005) show that the discretion of the Commission differs between legislative procedures. Niemann and Huigens (2011) also find that the bargaining context affects an agent's discretion. Among other things, the informality and flexibility in the G8 format allowed the Commission to enjoy more discretion. Examining conflict resolution in the EU Niemann and Plank (2017) find that the EU institutions enjoy more discretion from the member states since the Lisbon Treaty entered into force.

The Lisbon Treaty was also a turning point in the principal-agent relationship between the EUCO and the Council. First, the EUCO became more clearly separated from the Council because of its official recognition as an EU institution and the establishment of a permanent EUCO President. Second, the institutional capabilities of the EUCO were strengthened. Most importantly, the permanent EUCO President gives the institution more opportunities to control the Council. In principal-agent terms the capacity of the EUCO to directly and actively monitor the Council, its so-called police patrol oversight (McCubbins & Schwartz 1984), has been strengthened through the EUCO President; even though the office of the EUCO President is not a very powerful office *per se* (e.g. Dinan 2016, Dinan 2017, de Waele & Broeksteeg 2012). Just as agents gain discretion through more capabilities (cf. Niemann & Huigens 2011), increased capabilities of the principal should decrease the agent's zone of discretion. In addition, having a permanent instead of a six-month rotating Presidency strengthens the EUCO's ability for long-time steering. Furthermore, the work of the EUCO is less member state-driven than under the rotating Council Presidency, when the member states tried to push their national preferences during their time in office (e.g. Warntjen 2008, Thomson 2008).

Hypothesis 3: The European Council controls the Council of the EU more often since the entry into force of the Treaty of Lisbon (2009).

Hypothesis 4: The European Council reduces the Council's zone of discretion more strongly since the entry into force of the Treaty of Lisbon (2009).

Third, since control is costly and politicians have limited resources, they invest them in those policy fields in which “they care the most” to reduce the uncertainty that agents do not pursue their interests in those fields (Calvert et al. 1989: 590). According to Calvert et al. (1989: 590f.) “all else equal, the more important a policy area [...], the lower the amount of agency discretion”. The importance individuals attach to issues is commonly known as salience. According to Puetter and Fabbrini (2016: 636) the EUCO often defines the framework for other EU institutions on policy issues that are highly salient at the domestic level. Given that the primary goal of politicians is re-election an issue’s salience for elected officials should be determined by the issue’s salience for their constituencies. Thus, principals should limit agents’ zone of discretion stronger on issues that are salient for their voters. Furthermore, agents are stronger controlled on issues that are important to principals’ voters, since ‘fire-alarm oversight’ in which affected third parties provide principals with information on agents’ behavior is concentrated on them (McCubbins & Schwartz 1984).

In times of crisis, uncertainty and the salience of issues increases. During the Eurozone-crisis, for instance, the salience of European integration has increased (Saurugger 2014: 184f., Degner 2017). At the same time, issues that are more salient are more prone to conflict (*ibid.*). The EUCO’s roles to provide strategic leadership and act as arbiter of last resort make it an ideal forum for crisis management. In general, executive branches are more powerful in crisis situations. As stated by Lodge and Wegrich (2012: 2): Crisis “represent the hour of the executive”. As part of the EU’s executive branch (Lelieveldt & Princen 2015: 53, Curtin 2009) the EUCO has been a central actor in various crisis situations, e.g. the institutional crisis after the non-ratification of the Constitutional Treaty (cf. Faber & Wessels 2006, Ludlow 2005), the economic and financial crisis from 2008 onwards (Anghel et al. 2016, Dinan 2011, Dinan 2013a, Dinan 2012, Fabbrini 2016, Smeets & Zimmermann 2013, Fabbrini 2013) or the migration crisis in 2015 (Anghel et al. 2016). In the post-Lisbon period the EUCO has even become a “quasi-permanent forum for crisis management” (Dinan 2013b: 1258). The strong role of the EUCO in crisis situations can be explained by several reasons. First, crisis are domestically salient situations in which the HoSG need and want to show their leadership to their constituencies. Decisions that are taken are often domestically controversial and therefore need the highest legitimacy that can be provided. Second, crisis might occur in areas in which the legislative institutions lack the competences to decide. According to the former EUCO President Herman van Rompuy “in times of crisis the limits of institutions built on attributed competences are quickly reached. The European Union can only act in fields where governments have jointly given it a mandate to do so. But when we enter uncharted territory and new rules have to be set, the European Council [...] is well placed to play its part. Since the 1980s, it has taken upon itself the responsibility to determine the rules of the game within the Union, paying the way for new fields of joint action. [...] Such shifts in competences [to

other EU institutions] naturally require the prior consent of all the countries involved” (van Rompuy 2014: 124). Third, decisions in crisis situations have often costly ramifications. Such decisions are traditionally matters for the EUCO: “It is customary in the Union that the top-three questions – How big the pot? Whence the money? Whither the spending? – are set by the heads of state or government” (van Rompuy 2014: 77). In the case of the financial and economic crisis, for instance, “the amounts [of money at stake] were such that within most countries the decision could only be taken at the highest political level. Many prime ministers would have preferred to leave this issue in the hands of their finance ministers, but the need for national money and therefore the involvement of national leaders and parliaments was simply a fact of life” (van Rompuy 2014: 123f.). Finally, decisions need to be taken quickly in crisis situations; the EUCO’s involvement might accelerate the decision-making process by providing political support to a controversial decision.

Hypothesis 5: The European Council controls the Council of the EU more often, if a crisis situation exists.

On a theoretical basis, the impact of crisis situations on an agent’s zone of discretion is ambiguous. On the one, the high uncertainty of crisis may increase an agent’s zone of discretion (cf. Calvert et al. 1989). Furthermore, since crisis negotiations are often about complex and very technical issues, the principal may leave the agent a higher zone of discretion due to the agent’s informational advantages (cf. Delreux 2009). In times of crisis, the preferences within the EUCO as a collective principal should also be more heterogeneous, since conflict is stronger on the highly salient issues. Preference heterogeneity amongst principals leads to larger agency discretion (cf. da Conceição-Heldt 2011, Delreux 2009). On the other, the heterogeneity of preferences within the collective agent may result in a lower zone of agency discretion. Reaching an agreement might be more difficult due to the heterogeneous preferences, but since the EUCO has a more restricted agenda at extraordinary and special meetings the HoSG might negotiate more details. Previous findings suggest that the EUCO makes decisions on details in crisis situations (cf. Dinan 2011 on the Eurozone crisis).

Hypothesis 6a: The European Council reduces the Council’s zone of discretion more strongly if a crisis situation exists.

Hypothesis 6b: The European Council leaves the Council a larger zone of discretion if a crisis situation exists.

Before testing the hypotheses on the EUCO’s extent of control on the Council in legislative decision-making, I describe the method and the dataset in the following part.

3. Data and Approach

To determine the EUCO's control on the Council's legislative decision-making, all EUCO conclusions published in the period from 1975 until 2016 were analyzed through content analysis. Content analysis has been used for a wide variety of research purposes in political science, e.g. the measurement of policy positions (cf. Laver et al. 2003) or of actors' influence on policy outcomes (cf. Klüver 2009). Originally, content analysis has been defined as a "research technique for the objective, systematic and quantitative description of the manifest content of communication" (Berelson 1952, p. 18 quoted in Krippendorff 2004: 19). Disputing that content analysis is always quantitative and that communication contains one objective single meaning Krippendorff (2004: 18) defines "[c]ontent analysis [...] [as] a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use". Thus, content analysis is an empirical method to systematically evaluate textual data through establishing a set of categories and then counting the number of instances that fall into each category. Content analysis relies on the assumption that "political preferences can be found in content originated within an environment of collective associate memory" (Genovese 2014: 4). Therefore, the documents produced by the EUCO are assumed to be a reliable mirror of the institution's interests.⁵

The population of texts or so-called 'text corpus' of this paper consists of the EUCO conclusions since the first EUCO meeting in March 1975 until December 2016. Since EUCO meetings are held behind closed doors (European Council 2009, Art. 4 (3)) and few persons have access to the room,⁶ only few primary data sources on the EUCO are available. While the secretive nature intends to foster an atmosphere of trust and frank exchange within the institution, it "make[s] it difficult to define its [the EUCO's] outputs and measure its impact" (Alexandrova et al. 2014: 154). The EUCO's primary instrument to exert control are the European Council conclusions⁷ that summarize the debates of each EUCO meeting (Puetter 2014: 134, Wessels 1980: 283, Stäsche 2011). The conclusions are difficult to be ignored by the Council and the other EU institutions due to their adoption by the HoSG by consensus and the EUCO's high political authority. The importance of the EUCO conclusions is also reflected in their lengthy and often controversial preparatory process. After their publication the conclusions are interpreted in detail by the other institutions (Pahre 2008: 103). Thus, once

⁵ This does not mean that the EUCO conclusions are a perfect measurement. The documents, for example, only contain cases of manifest control; omitting cases in which the EUCO controls the Council latently (cf. Kroll 2017).

⁶ The total size of the delegations that have access to the Justus Lipsius building where the EUCO meets has been restricted to 20 persons for each member state and to five for the Commission and the High Representative for CFSP after the Lisbon Treaty (European Council 2009, Art. 4 (4)). Moreover, the foreign ministers of the EU member states that have attended the meetings until the Lisbon Treaty have been replaced by the High Representative for CFSP (de Schoutheete 2012: 46).

⁷ Before the Lisbon Treaty the conclusions of the EUCO were called "Presidency conclusions".

adopted the EUCO conclusions “become(...) easily the bible” (Interview A). Furthermore, references to the EUCO conclusions are used as a negotiation tool to exert pressure on reluctant countries by the Council Presidency or individual member states (Interview B).

In content analysis different types of units are differentiated. First, the unit of analysis which “is the element on which data are analyzed and for which findings are reported” (Neuendorf 2002: 13). My unit of analysis is the single conclusion of the EUCO. Second, the unit of coding or unit of data collection which is the “element on which each variable is measured” (Neuendorf 2002: 13). In other words, “[u]nits of coding are those parts of the units of analysis that you can meaningful interpret with respect to the categories at hand. They are those units that you assign to a category in your coding frame” (Schreier 2012: 131). My unit of coding are the (quasi-)sentences of the EUCO conclusions. Drawing on the Comparative Manifesto Project “[a] ‘quasi-sentence’ is defined as an argument or phrase which is the verbal expression of one idea or meaning” (Klingemann et al. 2006: xxiii). A quasi-sentence might be part of a natural sentence or consist of several natural sentences. Quasi-sentences in long natural sentences are often indicated by commas, hyphens or (semi-)colons. Yet, units of coding are defined at the content-semantic level related to the meaning of the words and not at the formal-syntactic level that considers the formal characters (Früh 2015: 88-91). Consequently, the exact length of units of coding varies and depends on the categories of the coding scheme (cf. Schreier 2012).

To identify all statements in which the EUCO refers to the Council’s legislative decision-making the conclusions have been analyzed through a two-step procedure. *In a first step*, I identified all EUCO statements that refer to the Council’s legislative decision-making. To do so I scanned all documents for passages in which the EUCO addresses the Council of the EU through searching the text corpus for several keywords. Besides “Council” the keywords “legislator?” and “institution?” were used. After that I identified whether the EUCO referred to legislative decision-making. This was also done through a search of keywords (see Appendix Table 1). The keywords related to decision-making were selected deductively based on information from the EUCO conclusions and secondary literature. Taking into account the two sub-stages of decision-making I divided the keywords further into policy formulation and policy adoption. Keywords that call for a further elaboration of alternative objectives, directions or forms of a legislative proposal are classified as policy formulation. Keywords that refer to the final, formal approval of legislative proposals into EU law are grouped into the policy adoption stage. Yet, the meaning of some keywords varies across the context. These keywords fall into the in-between category. The keyword ‘examine’, for example, might refer to agenda-setting or policy-formulation.

In a second step, I assigned the categories of the coding scheme to the (quasi-)sentences (see Appendix). This was done with ATLAS.ti 7 which is a computer program for qualitative content analysis. The coding scheme was developed deductively-inductively (Kuckartz 2014: 69). More precisely, after an initial deductive development on the basis of the hypotheses (cf. chapter 2.2) I revised the coding scheme inductively after a pilot phase of coding several EUCO conclusions.

The coding scheme consists of nine categories (see Appendix). First, I coded the year in which the EUCO meeting took place to test hypotheses 3 and 4. Second, I coded the type of EUCO meeting to test hypotheses 5 and 6. While ordinary meetings are held regularly and scheduled well in advance, extraordinary and special EUCO meetings are held if the (international) situation so requires (cf. Article 15(3) and Article 26(1) TEU). Thus, extraordinary and special meetings are held in response to crisis or other focusing events. To test hypotheses 1 and 2, I coded the policy area. The classification scheme was taken from the EU project of the Comparative Agendas Project (CAP) (cf. Baumgartner et al. 2008) that coded the agenda of the EUCO (Alexandrova et al. 2014). This allows drawing comparisons between the EUCO's role in agenda-setting and legislative decision-making. Accordingly, 21 major topics are coded.⁸

To measure the Council's zone of discretion I distinguish between substantive and procedural control. While substantive control accounts for policy instructions of the principal (i.e. *what* the agent should exactly do), procedural control accounts for the principal's instructions on the decision-making process (i.e. *how* the agent should do something). Substantive control assumes that the principal controls the agent stronger and leaves the agent a more limited zone of discretion, if the principal makes policy specific instructions. Substantive and procedural control paired together constraint an agent's behavior stronger (Huber & Shipan 2002: 213f.). After all, an instruction that tells the agent how to do what is far more constraining than an instruction that tells the agent to do something. I coded substantive control through the category precision that examines whether the EUCO refers to the content of a legislative proposal in the (quasi-)sentence. Precision can be concrete, broad or vague. If the EUCO specifies the objective and content-related details, I coded the (quasi-)sentence as concretely precise. If the EUCO indicates only the objective the Council shall achieve, I coded the statement as broadly precise. If the EUCO neither mentions the objective nor any substantive details, the precision is coded as vague.

⁸ In the dataset on the agenda of the EUCO the major topics are further distinguished between sub-topics. While these sub-topics served as orientation for the classification of the policy areas, I decided to exclude the coding of the sub-topics as my aim to identify legislative proposals in which the EUCO controlled the Council of the EU is not affected by the broader classification of the policy areas.

Procedural control refers to clauses that are made on the legislative decision-making process. I coded procedural control through three categories. First, I coded whether the EUCO sets a deadline for the Council’s actions. I distinguished deadlines further between deadlines with a specific date (e.g. December 2016) and deadlines with adverbs of time (e.g. as soon as possible or swiftly). Second, I coded the presence of reporting requirements in which the EUCO announces an *ex post* control of the Council (e.g. the EUCO will come back to the issue at its next meeting). Finally, I coded the level of obligation distinguishing mandatory from voluntary modal verbs. This takes into account that the words in the EUCO conclusions are selected purposefully. As commented by an Council official: As political texts the conclusions “have their own language, because there are words which are fixed. This is a fixed language. [...] This is not at all a normal text. Permanent controversies always come up on the verbs ‘take not’ or ‘welcome’. This is a substantive question in the European Council” (Interview C, author’s translation; see also Interview B). An agent’s level of discretion is therefore operationalized as a continuum ranging from low to high discretion. An agent has a low zone of discretion if the principal exerts both, substantive and procedural control. In contrast, a high zone of discretion exists if the principal does neither substantively (i.e. vague level of precision) nor procedurally restrict the agent. Table 2 shows cases in which the EUCO left the Council a low, medium and high zone of discretion.

Table 2: Coding of An Agent’s Zone of Discretion

	Substantive control	Procedural control				Example
	Level of precision	Deadline date	Deadline adverb of time	Reporting requirement	Level of obligation	
High discretion	Vague	No	No	No	Voluntary	“The Council and the European Parliament are invited to speed up work on the money laundering directive and the UCITS directive.” (Conclusion 2000-06-19-20)
Medium discretion	Broad	Yes or No	Yes or No	Yes or No	Mandatory or Voluntary or Other	“The Council will swiftly examine and decide on the proposals contained in the Commission’s “Employment package”, putting emphasis on quality job creation, structural reform of labour markets and investment in human capital.” (Conclusion 2012-06-28-29)
Low discretion	Concrete	Yes	Yes	Yes	Mandatory	“The European Council welcomes the presentation by the Commission of a

						<p>proposal to establish a European Fraud Investigation Office, It takes note of the fact that this proposal calls for an independent interinstitutional office which will be asked to conduct investigations into fraud detrimental to the Community budget both in the Member States and within the Community institutions and bodies. It invites the institutions to examine this proposal with a view to taking a decision without delay and in any case before the Cologne European Council. A review of the fight against fraud will take place at the Helsinki European Council." (Conclusion 1998-12-11-12)</p>
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4. Findings

Some Descriptive Information on the EUCO conclusions

From March 1975 until December 2016 in total 142 EUCO conclusions were published.⁹ Instead of conclusions declarations or press statements are usually published after extraordinary, special and informal EUCO meetings. Due to considerations of data completeness declarations, press statements or press releases that were published after those meetings were analyzed as well. Moreover, documents published after extraordinary, special and informal meetings are not always of a purely declaratory nature, but may also contain “political substance” (Interview D). In total 165 documents (142 EUCO conclusions (4 conclusions have a separately attached addendum)¹⁰, 5 declarations, 1 Conclusions and Plan of Action, 9 statements, 2 press releases, 1 Joint Press Lines and 1 Press Remarks) were analyzed.¹¹

Figure 3 shows the length of the EUCO conclusions measured in pages over time.¹² The total length of all 165 documents is 2.585 pages.¹³ On average, one document consists of 15,76 pages. The minimum length of a document is one page. For instance, the press remarks of the informal EUCO meeting in November 2015 consists of one page. The documents of informal and extraordinary meetings are in general shorter than the conclusions of ordinary meetings. Excluding the documents of informal and extraordinary EUCO meetings, a single conclusion of ordinary meetings consists of at least 3 pages. By far the longest conclusion in the sample is the EUCO conclusion at Edinburgh in December 1992 that consists of 89 pages. Besides clarifications on the application of the subsidiarity principle of the Maastricht Treaty and the Danish opt-outs, the conclusion contains information on the Multi-annual Financial Framework

⁹ If different versions of the EUCO conclusions were published on the same meeting at different dates, the first version of the EUCO conclusion that was issued after the end of the meeting was analyzed. For example, the General Secretariat of the Council published the conclusion on the EUCO meeting of 24 and 25 March 2011 on 25 March 2011 (<http://data.consilium.europa.eu/doc/document/ST-10-2011-INIT/en/pdf>). A revised version was published on 20 April 2011 (<http://data.consilium.europa.eu/doc/document/ST-10-2011-REV-1/en/pdf>). Revised versions usually correct orthographical mistakes (e.g. sentence constructions, punctuation, wrongly selected words), but do not make substantive changes.

¹⁰ The following conclusions have an addendum contained in a separate document: Dublin December 1984; Rome December 1990; Brussels June 2004; Brussels February 2013.

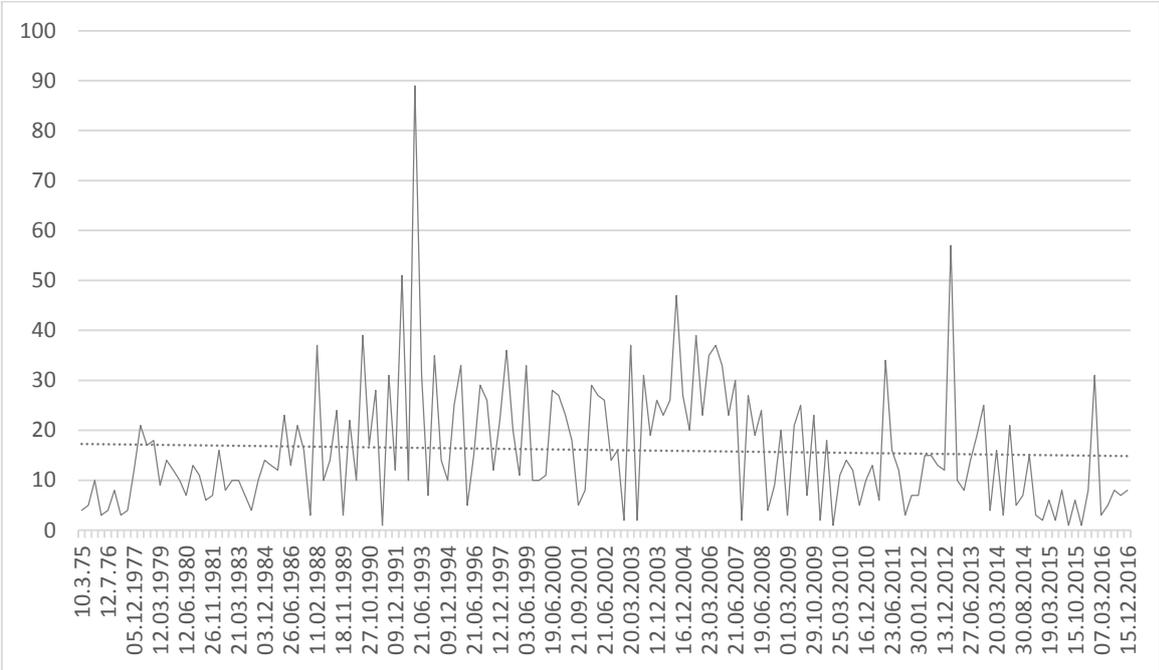
¹¹ For some EUCO meetings no information was available. In total, information on 12 EUCO meetings are missing: nine informal meetings (Majorca September 1995, Noordwijk May 1997, Pörtlach October 1998, Bonn February 1999, Brussels April 1999, Biarritz October 2000, Hampton Court October 2005, Lahti October 2006, Brussels November 2008, Brussels February 2014), one extraordinary (Brussels July 1994) and one special (Dublin October 1996) meeting. In Athens in December 1983 the EUCO issued no conclusions.

¹² Statements of the EUCO in the annex were included in the measurement. All other information (e.g. corrigenda, background information or reports that have been provided to the EUCO as well as any statements or reports of other institutions (e.g. the Commission, the Eurogroup) were excluded.

¹³ Although the measurement in pages is a rather crude measurement, it was chosen because it was not possible to measure the length in words due to the PDF format of the EUCO conclusions.

Delors II. Over time, the EUCO conclusions have become shorter as Figure 3 shows, although the tendency is minimal.

Figure 3: Length of the European Council Conclusions

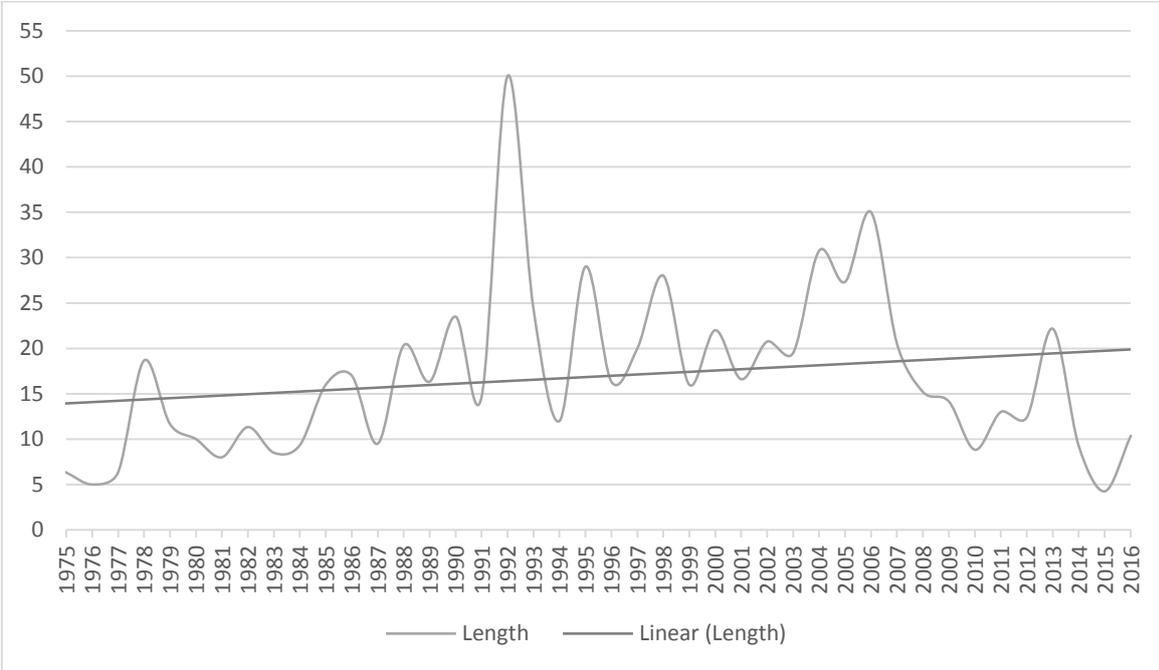


Source: Own compilation.

Figure 4 shows the yearly length of the EUCO conclusions over time. In contrast to the length of the conclusions measured across all meetings, the yearly length of the EUCO conclusions has increased over time. Yet, this finding should be treated cautiously, as it does not take into account the varying number of EUCO meetings over time. As shown in Figure 5, the number of EUCO meetings has increased from 1999 until 2016. In the period from 2008 till 2016 the EUCO has met at least six times each year. While the conclusions from 1975 until 1984 were relatively short with on average 12 pages (with the exception of 1978), the documents became longer after the adoption of the Single European Act (1984) until the adoption of the Maastricht Treaty (1991). On average, the yearly length of the conclusions in the period from 1984-2006 is 21 pages. Thus, the length seems to be related to the competences of the EU. Although it was agreed to shorten the conclusions at the Seville in 2002, a remarkable decline is only discernible after the adoption of the Lisbon Treaty in 2007. In the period from 2007 until 2016 the yearly length of the conclusions is 13 pages. In line with the perception of several EU officials (Interview B, C) the conclusions have become shorter after Donald Tusk became EUCO President. From December 2014 until December 2016, a single conclusion was on average approx. 7 pages long. Under the former EUCO President, Herman van Rompuy, who chaired the EUCO from December 2009 until October 2014, the conclusions were longer with

approx. 13 pages on average. Yet, since the analysis under Tusk’s term of office is only two years, there is no sound evidence for the ‘Tusk effect’.

Figure 4: Yearly Length of the European Council Conclusions

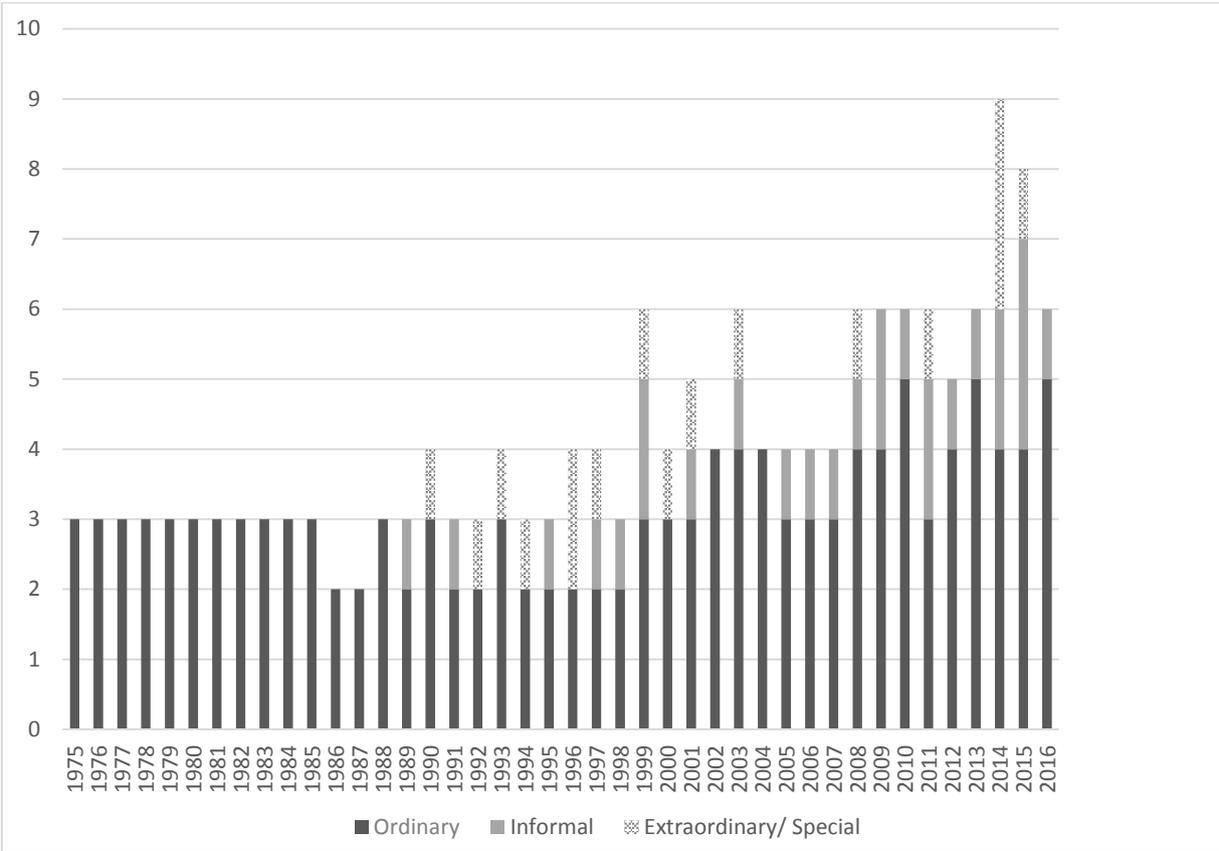


Source: Own compilation.

Figure 5 shows the number of EUCO meetings from 1975 until 2016. In total, 174 meetings were held during this period with 130 ordinary meetings, 26 informal meetings and 17 extraordinary or special meetings. The average number of ordinary meetings has increased over time with four meetings being the usual practice since 2001 (with the exceptions of 2005, 2006, 2007 and 2011). Likewise, the number of extraordinary and informal EUCO meetings has increased over time. Until 1988, no informal or extraordinary EUCO meeting was convened. Since then at least one informal or extraordinary EUCO meeting was held each year except in the years 2002 and 2004. Tentative evidence for the EUCO’s role as crisis manager is the higher number of EUCO meetings in times of crisis as visible by the extraordinary and special meetings of the EUCO. Since the outbreak of the economic crisis in 2008 the EUCO met at least five times per year. During the migration crisis that started in 2015, for instance, the EUCO met eight times with three informal and one extraordinary meeting.¹⁴

¹⁴ The highest number of meetings in 2014 is due to two special meetings of the EUCO that were devoted to the nomination of executive actors in the aftermath of the EP elections, i.e. the nomination of Jean-Claude Juncker as Commission President in May 2014 and the election of Donald Tusk as EUCO President and Frederica Mogherini as High Representative of the Union for Foreign Affairs in August 2014.

Figure 5: Number of European Council Meetings, 1975-2016



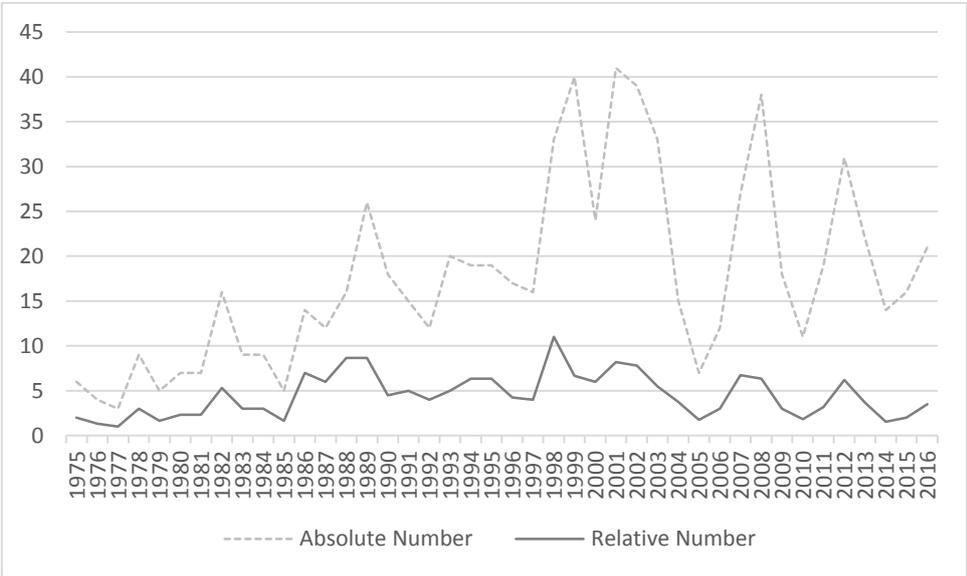
Source: Own depiction and own calculation based on the official website of the European Council and the Archive for European Integration.
 Note: Ordinary meetings are held at regular intervals and prepared well ahead. Informal meetings are meetings that allow for a more confidential exchange of views, since no conclusions are published afterwards. Extraordinary and special meetings are triggered by an unforeseen event (e.g. an terrorist attack).

The Frequency of Direct Control of the EUCO on the Council

Figure 6 shows the number of cases in which the EUCO controlled the Council over time. In total, the EUCO controlled the Council in legislative decision-making in 745 cases. In the majority of cases, the EUCO instructed the Council to do something at the adoption stage, while 240 cases are related to the policy formulation stage. In 2001, the EUCO controlled the Council most often with 41 instructions. Least control occurred in 1977 with three quasi-sentences being coded. From the EUCO’s first meeting in 1975 until 1985 the institution did not control the Council very often. On average, the EUCO controlled the Council in 7 cases during this period. Most control occurred in the period from 1998 until 2003 with an average of 35 cases. As expected by hypothesis 3 the European Council controls the Council more often since the Lisbon Treaty entered into force in 2009. On average, the EUCO controlled the Council from 2009-2016 in 19 cases yearly. In the period from 1975-2008, the EUCO controlled

the Council in 17 cases yearly. Yet, a consistent pattern of more control in the post-Lisbon period is not discernible. Instead, the EUCO’s control fluctuates strongly across the years. While the body made 31 instructions in 2012, the number decreased to 22 cases in 2013 and to 14 cases in 2014. The absolute number of cases does also not take into account the varying number of EUCO meetings (see Figure 5). In contrast to the absolute number, the relative number of cases across meetings is lower in the post-Lisbon period. On average, the EUCO controlled the Council in 4,79 cases from 1975-2008, while it controlled the Council in 3,11 cases on average in the period 2009-2016. Thus, sound evidence for more control by the EUCO in the post-Lisbon period does not exist.

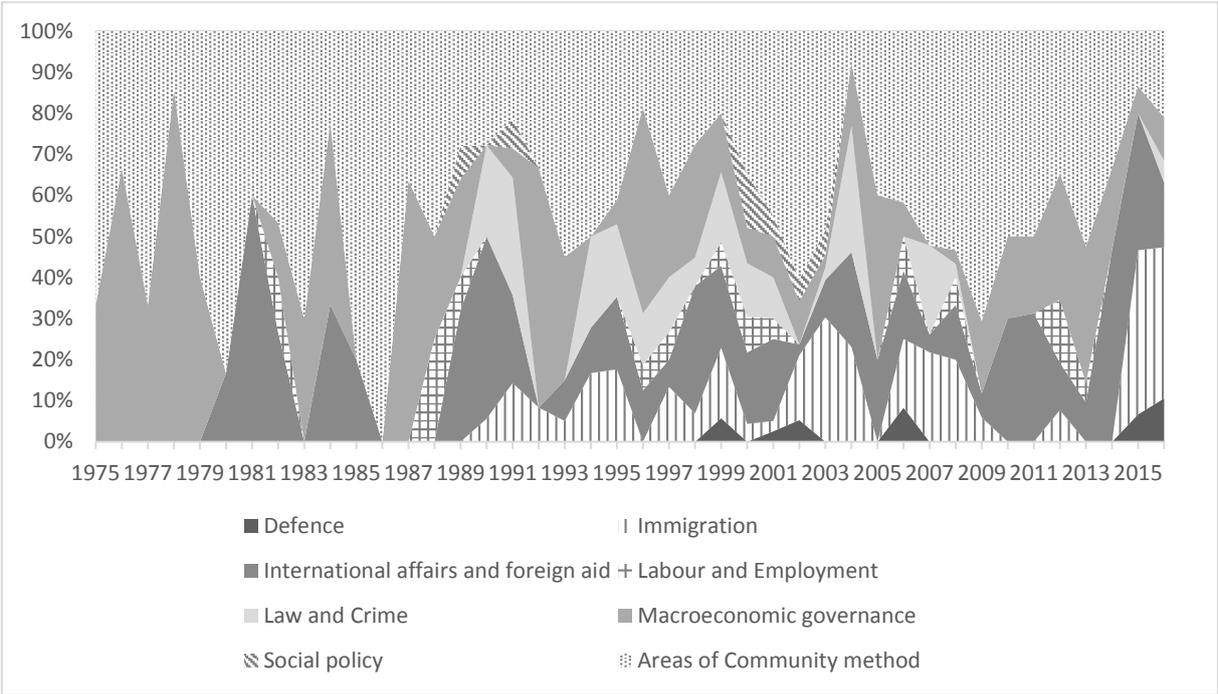
Figure 6: Extent of Control of the EUCO Over Time



Source: Own depiction and calculation.

With regard to the first hypothesis Figure 7 shows the EUCO’s extent of control across policy areas. Following Carammia et al. (2016: 816) the seven policy fields of the coding scheme are intergovernmental areas: ‘macroeconomics’, ‘labour and employment’, ‘immigration’, ‘law and crime’, ‘social policy’ and ‘international affairs and foreign aid’. The remaining 14 policy fields are linked to the Community method. As Figure 7 shows, the overall extent of control to the intergovernmental areas has not consistently increased after the Maastricht Treaty (1993). Already since 1987, more than 50 per cent of the EUCO’s control has been related to the intergovernmental policy fields. Furthermore, the extent of control in each of the areas shows considerable fluctuations over time. The most pronounced change can be seen in the area of immigration in which no control occurred from 1975 until 1989. In the period from 1990-2016 on average 12 per cent of the EUCO’s control concerned immigration issues. Since the outbreak of the migration crisis in 2015, immigration has become an even more important topic with approx. 38 per cent of the EUCO’s control occurring in that policy area.

Figure 7: Control in Policy Areas, 1975-2016



Source: Own depiction and calculation.

To test the impact of crisis situations (hypothesis 5) the EUCO’s extent of control at ordinary meetings is compared with its control at extraordinary/ special meetings. Extraordinary/ special are triggered by events and are usually held during crisis situations. While the EUCO controlled the Council in 610 cases at ordinary meetings, it made 38 instructions to the Council at extraordinary/ special meetings and 15 instructions at informal meetings. On average, the EUCO made 4,69 instructions to the Council at each ordinary meeting, while it made 2,23 instructions to the Council at each extraordinary/ special meeting. The expectation that the EUCO controls the Council more often during crisis situations is therefore not confirmed. Even less control occurs at informal meetings with an average of 0,57 instructions per meeting. This supports that the HoSG use informal meetings to exchange their opinions instead of taking decisions.

Table 3: Control of the EUCO in Crisis Situations

	<i>Number of cases</i>	<i>Number of meetings</i>	<i>Average</i>
<i>Ordinary meetings</i>	610	130	4,69
<i>Extraordinary/ Special meetings</i>	38	17	2,23
<i>Informal meetings</i>	15	26	0,57

The Strength of Direct Control of the EUCO on the Council

In the period 1975-2016, the EUCO left the Council in 80 per cent of the cases a medium zone of discretion. In 18 per cent of the cases, the EUCO gave the Council a high zone of discretion, while a low zone of discretion with substantive and procedural instructions occurred very rarely in only 2 per cent of the cases. Thus, the EUCO clearly prefers setting broad objectives for the Council; leaving substantive details for it to decide.

To test the expectations on the agent's zone of discretion Table 4 shows the codes co-occurrence table (CCT). The CCT shows the frequency that one code co-occurs with another code. In addition, each cell shows a so-called c-coefficient that indicates the strength of the relation between the two codes and resembles the Jacquard Coefficient which is a similarity measure (Frieze 2014: 189). The c-coefficient varies from 0 (i.e. codes do not co-occur) to 1 (codes co-occur whenever they are used). The entry n/a indicates that the pair of codes does not co-occur anywhere in the data. A yellow circle shows that there is an inherent issue with the c-coefficient that is distorted by code frequencies that differ too much.

Table 4 shows that low and medium zones of discretion occur more often in intergovernmental policy areas than in areas linked to the Community method. Thus, the EUCO controls the Council more strongly in intergovernmental policy areas than in Community areas; supporting hypothesis 2. Yet, as the EUCO leaves the Council mostly a medium zone of discretion in both, Community and intergovernmental areas, as indicated by the frequency and c-coefficient, this finding should be treated with caution. In the pre-Lisbon period, the EUCO left the Council more often with high discretion than in the post-Lisbon period; controlling the Council stronger after the Lisbon Treaty (hypothesis 4). Despite this, the EUCO's control resulted mostly in a medium level of discretion for both periods. Supporting hypothesis 6a the CCT shows that the EUCO controls the Council more strongly at extraordinary/ special meetings than at ordinary meetings. While the EUCO left the Council never high discretion at an extraordinary/ special meeting, a high zone of discretion occurred 42 times at ordinary meetings.

Table 4: Codes Co-Occurrence Zone of Discretion

	11_meet %ex	11_meet %intl	11_meet %or	Community A	IG areas	Post-Lisbon	Pre-Lisbon
High discretion	n/a	n/a	42 - 0,07	8 - 0,03	34 - 0,09	3 - 0,02	37 - 0,07
Low discretion	1 - 0,02	1 - 0,05	3 - 0,00	n/a	5 - 0,01	2 - 0,01	3 - 0,01
Medium discretion	15 - 0,08	3 - 0,02	151 - 0,24	67 - 0,18	104 - 0,23	32 - 0,12	136 - 0,25

Source: Own depiction and calculation.

Since the key difference between the agent's zone of discretion is related to the level of precision (see Table 5), Table 5 shows the results if the strength of control is measured solely in substantive terms; ignoring any procedural control. Substantive control can result in a *low* zone of discretion if the precision is *concrete*, a *medium* zone of discretion if the precision is *broad* or a *high* zone of discretion if the precision is *vague*. Measuring discretion through the code precision the EUCO left the Council high discretion in 62 per cent, medium discretion in 25 per cent and low discretion in 13 per cent of the cases. This supports the finding that the EUCO prefers the Council having a larger than a smaller zone of discretion. Table 5 shows that the EUCO controls the Council more strongly at extraordinary/ special meetings than at ordinary ones. While the EUCO made by far mostly vague or broad instructions at ordinary meetings, the institution gets more concrete at extraordinary/ special meetings. This supports the previous finding that the EUCO controls the Council more strongly if a crisis situation exists (hypothesis 6a). As suggested the EUCO leaves the Council a smaller zone of discretion in intergovernmental areas than in areas linked to the Community method. As indicated by the c-coefficient the relation between concrete precision is stronger for intergovernmental areas than in the Community areas. In contrast to hypothesis 4, the EUCO decided on concrete details more often in the pre- than in the post-Lisbon period and the level of precision was mostly vague in both periods.

Table 5: Codes Co-Occurrence Level of Precision

	11_meet %extra	11_meet %infor	11_meet %ord	Community N	IG areas	Post-Lisbon	Pre-Lisbon
6_precis %broad	15 - 0,08	3 - 0,02	152 - 0,24	68 - 0,18	104 - 0,23	32 - 0,12	137 - 0,25
6_precis %conc	7 - 0,06	2 - 0,02	84 - 0,14	41 - 0,12	54 - 0,13	18 - 0,09	71 - 0,13
6_precis %vag	16 - 0,04	11 - 0,03	454 - 0,78	225 - 0,47	267 - 0,49	103 - 0,23	364 - 0,64

Source: Own depiction and calculation.

5. Conclusion

This paper examines the EUCO's extent of control on the Council of the EU in legislative decision-making from 1975-2016. Regarding the control a principal exerts to be dynamic I expected that the EUCO controls the Council more often and stronger in intergovernmental areas since the Maastricht Treaty, after the Lisbon Treaty entered into force and if a crisis situation exists. My analysis shows that the EUCO does not control the Council more often in intergovernmental areas since the Maastricht Treaty, although it leaves the Council a smaller zone of discretion in intergovernmental areas than in areas linked to the Community method. Likewise, while a significant increase in the frequency of control after the Lisbon Treaty is not discernible, the EUCO's instructions have become more concrete; leaving the Council with less discretion. Thus, it seems that the decisions of the EUCO have become less, but more concrete over time. The analysis shows that the EUCO does also not control the Council more often if a crisis situation exists. Yet, if control occurs in a crisis situation the EUCO leaves the Council a lower zone of discretion than in normal times. The mixed findings on the impact of crisis situations might be due to its measurement through extraordinary/ special meetings. This ignores that crisis usually cover a longer time period and that decisions on crisis measures might be taken at ordinary EUCO meetings as well.

Focusing on the principal-agent relationship between the EUCO and the Council contributes to our theoretical and empirical understanding of EU policy-making. Yet, future research might widen the focus to include the EP as co-legislator examining, for instance, the negotiations between the co-legislators after the EUCO has directly controlled the Council.

The analysis shows that the EUCO interferes in the legislative process informally by making instructions to the legislative EU institutions on how to act. Yet, the paper leaves the question of how the Council acts after the EUCO's interference open. Depending on the Council's zone of discretion a deviation of it from the EUCO should be more or less likely. Although the total number of 745 cases in which the EUCO has controlled the Council in the period from 1975 till 2016 is not extremely high,¹⁵ it also shows that the EUCO's involvement in legislative decision-making is not exceptionally. Instead, the institution plays informally a role in legislative decision-making.

¹⁵ The actual number of cases in which the EUCO controls the Council is probably higher, since only statements in which the Council was explicitly addressed were coded and legislative packages were coded as one case (e.g. the 'Six Pack' which consists of six legislative proposals was coded as one case).

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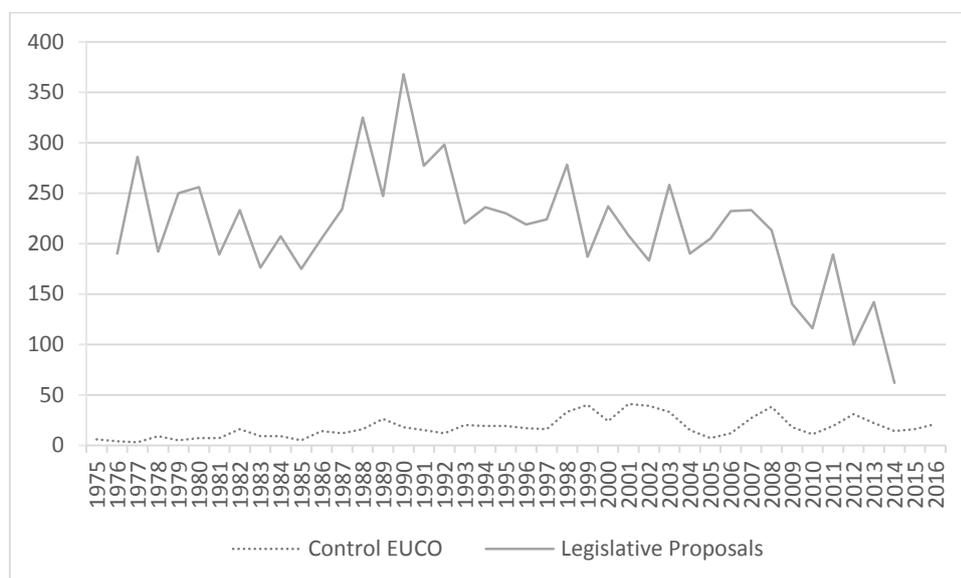
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Interview	Affiliation of the interviewee	Date of the interview	Place of the interview
A	General Secretariat of the Council of the EU	05 October 2015	Brussels
B	Permanent Representation of a Member State	11 March 2016	Brussels
C	General Secretariat of the Council of the EU	29 September 2015	Brussels
D	Permanent Representation of a Member State	17 March 2016	Brussels

Appendix

Figure 1: Comparison of the legislative proposals with the European Council's control



Source: Own depiction. The number of legislative proposals is from the EUPOL dataset by Häge (2011).
 Note: Information on the number of legislative proposals for the years 1975, 2015 and 2016 are missing in the EUPOL dataset. Legislative proposals include all decisions, regulations and directives.

Table 1: Keywords of Decision-Making for the Content Analysis

In-Between	Decision-Making	
	Policy formulation	Policy adoption
<ul style="list-style-type: none"> - "consider" - "give consideration" - "to study" - "examine" - "speed up/ advance work" - "explore" 	<ul style="list-style-type: none"> - "resolve all outstanding issues" - "work out in detail" - "settle the outstanding points/ issues" - "call for progress" - "find solutions to these problems" - "prepare a draft decision/ the binding legal provisions" - "continue discussion/ proceedings/ efforts" - "would like decisive progress" - "deliberate" - "assess" - "elaborate an approach" - "study X to finding an effective arrangement" - "pursue their work" - "consider a solution" - "take work forward" - "cooperate" 	<ul style="list-style-type: none"> - "adopt" - "take the (appropriate) decisions/ measures/ steps" - "endeavor to reach a decision" - "reach/ arrive at an agreement" - "decide" - "agree" - "complete deliberation/ proceedings/ work" - "finalize" - "create the necessary legal framework conditions"

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**Project: The Interactions between the European Council and the Council of the
EU in EU Decision-Making**

Codebook for European Council Conclusions

Version July 2017

The codebook lists the codes that are used for coding the statements of the European Council (EUCO) conclusions. The coding aims at determining the influence of the EUCO on the legislative decision-making activities of the Council of the EU. Those statements of the EUCO that refer to the legislative decision-making activities of the Council of the EU are coded as cases in which the EUCO controlled the Council of the EU.

The unit of analysis are the EUCO conclusions from 1975 until 2016. The unit of coding are the (quasi-)sentences of the EUCO conclusions. One (quasi-)sentence contains one statement or message, but might consist of one or several natural sentences.

Text

(Quasi)-sentence being coded

1. Year

Year when the meeting of the European Council took place

2. Meet (Type of meeting)

Type of meeting of the European Council

- 1 Ordinary
- 2 Extraordinary/ special
- 3 Informal

NOTE: Ordinary meetings are held regularly and planned well-ahead. Extraordinary or special meetings are called on short notice in response to an event (e.g. war outbreak or terrorist attack). Informal meetings are also often triggered by an external event and are orientation debates for the HoSG allowing a confidential exchange of views.

3. Counform (Council Formation)

Is a specific Council formation addressed in the statement?

- 0 No
- 1 Yes

- 1.1 General Affairs
- 1.2 Foreign Affairs
- 1.3 Economic and Financial Affairs
- 1.4 Justice and Home Affairs
- 1.5 Employment, Social Policy, Health and Consumer Affairs
- 1.6 Competitiveness
- 1.7 Transport, Telecommunications and Energy
- 1.8 Agriculture and Fisheries
- 1.9 Environment
- 1.10 Education, Youth and Culture
- 1.11 Other (e.g. Budget, Development, Industry & Research, Internal Market)

NOTE: Prior to the Lisbon Treaty the General Affairs and Foreign Affairs Council were subsumed into the General Affairs and External Relations Council. If the General Affairs and External Relations Council is mentioned, the statement is coded either as General Affairs or Foreign Affairs depending on the issue covered.

NOTE: If the finance ministers are addressed, the statement is coded as directed at the Economic and Financial Affairs Council.

NOTE: If the Trevi group is addressed, the statement is coded as Justice and Home Affairs Council.

4. Rec (Recipient)

Are other actors besides the Council of the EU addressed in the statement?

- 0 No
- 1 Yes

- 1.1 European Parliament
- 1.2 Commission
- 1.3 European Council (e.g. future activities of the European Council “The European Council will adopt its final position” or European Council President)
- 1.4 General (e.g. the Community, the Community institutions, the Union, the institutions, the EU, the competent bodies, the relevant bodies/ actors, all concerned)
- 1.5 Others (e.g. third countries, national parliaments, International Organizations, consultative EU bodies, Troika, member states, industry, European Investment Bank, European Monetary Institute, Court of Justice, private sector, social partners, High Representative, Secretary General, IMF)

NOTE: If the statement is directed at the legislators or co-legislators, it is coded as addressing the Council of the EU and the European Parliament. However, if the statement is directed at the legislator, it is coded as addressing the Council of the EU solely.

NOTE: If a statement includes other actors, but their activity is not related to legislative decision-making, the statement should be coded no.

e.g. the Council should adopt the decision, on a proposal of the Commission

5. Polfiel (Policy-field)

Which policy field is addressed in the statement?

Codes adopted from the codebook of the European Union Policy Agendas Project that lists 21 topics that are divided into subtopics.

- 1 Macroeconomics
- 2 Civil Rights, Minority Issues and Civil Liberties
- 3 Health
- 4 Agriculture and Fisheries
- 5 Labour and Employment
- 6 Education
- 7 Environment
- 8 Energy
- 9 Immigration
- 10 Transportation
- 12 Law and Crime
- 13 Social Policy
- 14 Regional and Urban Policy and Planning
- 15 Banking, Finance and Internal Trade
- 16 Defence
- 17 Space, Science, Technology and Communications
- 18 Foreign Trade
- 19 International Affairs and Foreign Aid
- 20 EU Governance and Government Operations
- 21 Public Lands, Water Management and Territorial Issues
- 23 Culture and Media

NOTE: The numbers were taken over from the codebook of the European Union Policy Agendas Project. To allow for a comparison of the two datasets, the mistakes in the numbering of the policy areas (*i.e.* policy fields 11 and 22 are missing) were taken over.

6. Preci (Precision)

How precisely is the statement formulated?

- 1 Concrete (i.e. objective and details of the substance/ content are specified)
- 2 Broad (i.e. objective is specified (e.g. towards more harmonization) or if the EUCO refers to past decisions/ reports/ guidelines/ agreements of it or the Council(e.g. “the European Council asks the Council to adopt before the end of the year the system of interest-rate subsidies for SMEs decided upon at the Copenhagen and Brussels European Council”)
- 3 Vague (i.e. neither the objective nor substantive details are mentioned)

7. Deadl (Deadline)

Does the statement set a deadline?

- 0 No
- 1 Yes
 - 1.1 Specific date (e.g. until May 2015, before the next European Council meeting, at its (next) Session, during the Dutch Presidency)
NOTE: If statement refers to a time frame that was agreed, it should be coded as a specific date.
 - 1.2 Adverbs of time (e.g. as soon as possible; swiftly; once circumstances permit; matter of urgency; rapidly; without delay; early decision; in the near future; at an early date; immediate decision; promptly; early agreement; quick decision)

8. Report (Reporting requirement)

Does the statement include a reporting mechanism? (e.g. the European Council will refer to this matter at its next meeting)

- 0 No
- 1 Yes

NOTE: If the deadline is set until the next European Council meeting, the statement should be coded as yes.

9. Obli (Level of Obligation)

Is the statement formulated in voluntary or mandatory terms?

- 1 Voluntary
- 2 Mandatory
- 3 Other

Dictionary of the keywords

Voluntary	Mandatory	Other
“may” “might” “invite” “ask” “express the wish” “hopes” recommend “can/ could” “would like the Council” “encourage”	“must” “needs to” “have to” “urge on” “calls upon/ for/ on” “requests” “stress the importance” “be made” “insists” “shall/ should” “instruct” “expects” “emphasizes/ underlines the need”	“will/ would” “trusts” “recalls”

	<p>“the Council is given the task” “expects the Council” “we task the Council” “mandates the Council” “to be agreed/ adopted by the Council” “the Council ensures”</p>	
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