European Parliament

The European Council's role in the EU policy cycle

INTRODUCTION

Since its establishment in 1975, the European Council, which is made up of the Heads of State or Government of EU Member States, has wielded considerable influence over the development of the European Union. According to the Treaties, the European Council's primary role is to 'define the general political directions and priorities' (Article 15(1) of the Treaty on European Union). This role has rapidly evolved over the past decade, and today the European Council's involvement in the EU policy cycle is much broader, covering tasks from agenda-setting to exercising scrutiny. In practice, its activities often exceed the role envisaged in the Treaties. This level of involvement has a significant impact both on the role of the other EU institutions within the policy cycle and the functioning of the ordinary legislative procedure.

EU policy cycle
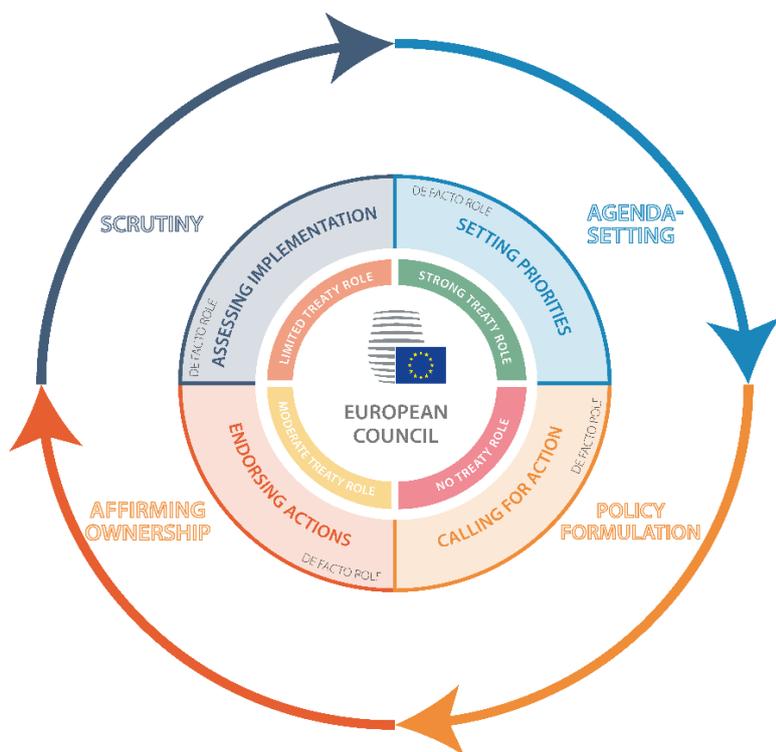
The European Council uses the conclusions of its formal meetings to exercise its role in the different stages of the policy cycle.

In stage 1, it sets long-term objectives (agenda-setting); in stage 2, it calls for action by other EU institutions (policy formulation); in stage 3, it endorses actions of other EU institutions (affirming ownership); and in stage 4, it assesses policy implementation at European and national levels (scrutiny). As the stages influence each other, their dividing lines are often fluid.

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Agenda-setting

The European Council has a strong Treaty-based role in setting the EU's policy agenda. Article 15(1) TEU states that the European Council 'shall provide the Union with the necessary impetus for its development' and define its 'general political directions and priorities'. Two key examples in this regard are the adoption by the European Council of the EU strategic agenda for 2014-2019 in June 2014, and the corresponding 2019-2024 agenda in June 2019.

In addition to this overall role, the European Council also has agenda-setting responsibilities in a number of specific policy areas. With regard to the Common Foreign and Security Policy (CFSP), for instance, the European Council must 'identify the EU's strategic interests and define general guidelines' (Article 26(1) TEU). Examples of how it has handled its strategic role in CFSP are its 2010 debate on strategic partnerships and its success in keeping the Member States united in their stance during the Ukraine crisis. Likewise, the European Council defines 'strategic guidelines for legislative and operational planning within the area of freedom, security and justice' (Article 68 TFEU). In line with this role, it set strategic guidelines for that area at its meeting of 26-27 June 2014. The next strategic guidelines for that area are expected as a follow-up to the 2019-2024 strategic agenda.

Legislative and policy formulation

Theoretically, no role is envisaged for the European Council in legislative decision-making as such. Article 15(1) TEU specifies that it 'shall not exercise legislative functions'. Nevertheless, while not being involved in legislation per se, it has considerable say on legislative and policy formulation.

The European Council often uses its conclusions to invite the European Commission to draft policy strategies or legislative proposals, thereby influencing its right of (legislative) initiative. Examples include inviting the Commission 'to prepare, as soon as possible, draft legislation enacting the proposals made by the High-level Expert Group on interoperability' regarding information systems for migration and security, or inviting it 'to put forward a European approach to artificial intelligence by early 2018'. Particularly in crisis situations, these invitations have a high degree of precision, as was the case when the European Council, through its specific task force, influenced the Commission's 'six-pack' and 'two-pack' sets of legislative proposals. Later on in the legislative process, its conclusions are also used to influence the speed of adopting legislation that is being reviewed by, or negotiated, between the co-legislators (the European Parliament and the Council of the EU) e.g. inviting them 'to agree, before the end of the current legislature, on as many of the pending proposals relevant for the Single Market as possible'; or asking EU legislators 'urgently [to] adopt a strong and effective European Passenger Name Records directive with solid data protection safeguards'.

Another way for the European Council to determine the content of legislation in areas where the co-legislators have a strong Treaty-based role is through its implicit influence on the Council. While the European Council does not directly intervene in the routine business of the Council, the latter will often refer its most controversial items to the European Council. The Treaty provides for such referral in a number of cases. If a minister – for vital and stated reasons of national policy – vetoes the adoption of a decision to be taken by qualified majority within the CFSP, the Council can, acting by a qualified majority, 'request that the matter be referred to the European Council for a decision by unanimity' (Article 31(2) TEU). Other areas where the Treaty envisages this transfer of responsibility include certain cases of social security (Article 48 TFEU), judicial cooperation in criminal matters (Articles 82(3) and 83(3) TFEU), and police cooperation (Article 87(3) TFEU).

The European Parliament has repeatedly voiced its disapproval of the fact that 'the Council, by not using qualified majority voting (QMV), has too often referred legislative matters to the European Council'. In 2018, the then-President of the Parliament, Antonio Tajani, asked the European Council 'why the Council does not apply the qualified majority rule, but continues to insist on seeking a

consensus instead' with regard to the reform of the common European asylum system. In practice, such referrals can also be observed in areas not explicitly provided for by the Treaties, leading to accusations of 'legislative trespassing' on the part of the European Council. An example of such 'trespassing' are the negotiations on Banking Union legislation, held at the peak of the euro-area debt crisis, which the European Council justified by the urgency of the situation. Another example is the European Council's direct interference in the June 2012 draft regulation on the European patent. As a result, when referred to the European Council, legislation falling under QMV is in fact decided upon by consensus in some cases.

Such 'trespassing' goes beyond the strictly legislative sphere, touching upon the competences of the two budgetary authorities, Council and Parliament. One of the most striking recent examples is the decision-making process for the 2014-2020 multiannual financial framework (MFF). The European Council does not have a Treaty-based role in the procedure leading to the adoption of the MFF, yet in 2013 it approved detailed conclusions on the MFF defining its ceilings and the financial envelopes for all policy sectors for the seven-year MFF period. Parliament has deplored the fact that, despite its strong objections, 'the European Council MFF agreement of 8 February 2013 contained a significant number of legislative elements that should have been decided upon under the ordinary legislative procedure' (since the conclusions pre-defined the long-term programme features).

Affirming ownership

In the policy legitimisation stage, the European Council affirms its ownership of on-going processes in several ways. The Treaties assign the European Council a role in reviewing other institutions' progress in certain policy areas, notably related to the economy and employment, where the Council and the Commission must report to the European Council (Article 121(2) TFEU, Article 148(1) and (5) TFEU). Beyond the areas provided for in the Treaties, the European Council also assumes ownership of specific initiatives. For instance, in its conclusions, it often welcomes or endorses other EU institutions' policy activities (for example, welcoming 'the agreement reached on the Facility for Refugees in Turkey'; welcoming 'the establishment of ambitious and inclusive permanent structured cooperation (PESCO)'; or endorsing 'the policy priority areas of the Annual Growth Survey'). Sometimes it even adopts other EU institutions' policy initiatives (such as the European internal security agenda 2010-2014) in full. By endorsing or welcoming the policy activities of other European institutions, the European Council therefore legitimises the initiatives as well as their content.

Scrutiny of policy implementation

The European Council also plays a role in the scrutiny stage of the EU policy cycle by reviewing EU policy implementation. However, its role under the Treaty is rather limited, the only relevant provision in this respect being set out in Article 222(4) TFEU, which states that the European Council has the responsibility to 'regularly assess the threats facing the Union …'.

Beyond this limited Treaty role, the European Council uses a number of procedures to scrutinise the implementation of its conclusions, which can be distinguished by period. With regard to short-term evaluation, the European Council has established the practice that the Head of State or Government of the Member State chairing the rotating presidency of the Council reports on the implementation of the conclusions of the most recent European Council meeting. Both short and medium-term evaluations can take the form of requests for implementation reports from other EU actors, which are often addressed to the Council presidency, the Commission or the High Representative of the Union for Foreign Affairs and Security Policy. Comments in the European Council conclusions on whether EU agreements or EU legislation have been transposed and implemented at national level can be considered as a medium-term evaluation (for example, further action is required 'to accelerate the implementation of the existing relocation and resettlement schemes'; calls upon

Member States 'to continue and step up their engagement under the Partnership Framework'). Finally, long-term evaluations can be seen in the assessments of its multiannual strategies (for instance, the 2014-2019 justice and home affairs strategy).

Regarding the scrutiny of its own work, the European Council sometimes commits to keeping certain unresolved issues under review, regularly revisits them, and even organises special meetings to address important ones. Examples include the [Valletta Summit on migration](), which brought together EU and African leaders to discuss challenges and cooperation on migration, and the [EU-League of Arab States Summit in Sharm El-Sheikh](), which focused on regional developments and possibilities to strengthen the partnership between the two regions.

Conclusion

Since the coming into force of the Lisbon Treaty and the multiple crises experienced in the EU over the last decade, the European Council has consolidated its central position in the EU institutional system. The European Council is today involved at all stages of the policy cycle, with this involvement often going beyond what was envisaged in the Treaties. However, while the Treaties assign important responsibilities to the European Council at some stages of the policy cycle, first and foremost in setting the agenda, these responsibilities are more limited at others. Whilst policy formulation is the European Council's most limited formal responsibility, its activities nevertheless exceed this remit and the correspondence between the European Council's role under the Treaties and its de facto role is lowest at this stage of the policy cycle. Nevertheless, although the Treaties explicitly prohibit the European Council from performing legislative functions at the policy formulation stage, its role in legitimisation and scrutiny are more implicitly permissive. The European Council's activities at all stages of the policy cycle therefore often impact on the work of the other EU institutions and consequently require careful scrutiny.

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