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The elephant in the room: the European Council's dominance in core state powers during times of crisis

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ABSTRACT

This article examines the role of the European Council in shaping the EU's policy response to three crises in 'core state power' policy areas, namely the COVID-19 pandemic (budgetary and financial assistance policy), the Russian invasion of Ukraine (common foreign and security policy) and the rule of law controversy (identity and constitutional policy). It carries out a theory-building process-tracing analysis of dominance exerted by the European Council over the decision-making process that led to the establishment of the Recovery and Resilience Facility, sanctions against Russia and the rule of law conditionality system respectively. The findings shed light on exactly how the European Council, in the presence of crises involving 'core state powers', is able to exercise decision-making powers beyond the letter of the treaties, relegating the other EU institutions to a consultative or implementing role. These findings can be generalised across different crises framed at the EU level which tap into the realm of core state powers.

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Introduction

Since its formalisation with the Lisbon Treaty (2009), the European Council – the intergovernmental institution comprising the European Union (EU)'s Heads of State or government – has become the 'elephant in the room' (Fabbrini 2021), meaning the pre-eminent decision-making actor within EU governance, especially during crises. Scholarly research has mostly focused on how the functioning of the European Council is conducive to patterns of internal 'domination' by the most powerful member states over the others, undermining consensual policymaking due to the asymmetric distribution of resources across national constituencies (Csehi and Puetter 2020; Wessels 2015). Surprisingly, even when the European Council's increasing inter-institutional influence is investigated (Szép 2020; Van Middelaar 2019), it remains unexplored under what conditions and through what mechanisms the intergovernmental executive comes to dominate the EU's decision-making process vis-à-vis other EU institutions.

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To unpack this black box, the article performs a theory-building process-tracing analysis of the European Council's role in the EU's policy response to three recent crises involving 'core state power' policy areas—i.e. the socio-economic crisis resulting from the outbreak of the COVID-19 pandemic (budgetary and financial assistance policy), which led to the establishment of the Recovery and Resilience Facility (RRF); the security crisis stemming from Russia's invasion of Ukraine (common foreign and security policy), which demanded the adoption of several packages of sanctions against Moscow; and the internal rule of law crisis (identity and constitutional policy), which prompted the establishment of the general regime of conditionality for the protection of the Union's budget. Against this background, this article raises the following research question: How did the European Council shape the EU's policy response to crises that affected member states' core state powers? In response, we demonstrate that, when disagreement arose concerning core state powers policy areas during crises, the European Council was able to dominate key stages of EU policymaking processes. Therefore, based on our observations, we develop a causal mechanism through which the European Council is prone to exercise dominance. Empirically, the article is the first to jointly analyse, in a comparative perspective, the European Council's role in three recent crises involving the member states' sensitive realm of core state powers (Genschel and Jachtenfuchs 2013). The three cases selected for process-tracing reflect crises of a different nature, a variety of policy areas and modes of governance. Thus, the case selection allows us to develop a tentative theory of the European Council's dominance with a high potential for generalisability.

The article defines 'dominance' as the condition in which the European Council exceeds its role as enshrined in the EU treaties, thereby constraining other EU institutions in the exercise of their treaty-based powers. Dominance by the European Council can manifest in a variety of forms, depending on the decision-making regime. Within the framework of the ordinary legislative procedure (OLP), the European Council exerts dominance over the decision-making process if it is able to curb the Commission's right to propose legislation or if it constrains the Council of the EU and/or the European Parliament in the exercise of their legislative powers. This is what happened with the adoption of the RRF during the COVID-19 pandemic and with the rule of law controversy. Within the framework of the intergovernmental decision-making regime, the European Council exercises dominance when it determines the specific content of a policy measure in lieu of the Council of the EU, rather than providing general guidance for its adoption. This occurred with the EU's adoption of sanctions against Russia.

While several studies have explicitly or implicitly diagnosed the European Council's dominant role, none of them has established a plausible causal mechanism via which the European Council is able to dominate the policymaking process at EU level. Therefore, the article aspires to fill this gap by tracing out how the European Council dominates key stages of the policymaking process vis-a-vis other EU institutions through the identification of discrete theoretical expectations and follow-up empirical testing.

The article is organised as follows. The first section elaborates the theoretical framework of the article. The second section presents the data and methodology employed in the study. The third section analyses the European Council's role in each of the three

crises. The last section compares patterns of dominance by the European Council and concludes.

Theoretical framework: the European Council's dominance in crises about core state powers

The European Council is the EU's 'constitutional architect' (Wessels 2015) because it decides treaty revisions by unanimity (Art. 48 Treaty on the European Union or TEU). At the same time, it provides the Union with 'the necessary impetus for its development and shall define [its] general political directions and priorities'. However, the European Council has no additional treaty-based powers, it shall not determine the specific content of EU policies and, most importantly, it 'shall not exercise legislative functions' (Art. 15 TEU). This notwithstanding, especially since the 1992 Maastricht Treaty, the European Council has become the EU's new 'centre of political gravity' (Puetter 2012, 161), epitomising the paradox of 'European integration without further supranationalisation' (Bickerton et al., 2015). Thus, European integration has increasingly been driven by intergovernmental bargaining in the framework of the European Council. To this effect, traditional supranational institutions such as the European Commission and the European Parliament – despite retaining their formal, treaty-based powers – have gradually turned into either implementing or consultative bodies at the service of member state governments, especially when important decisions had to be taken under the urgency of crises (Capati 2025; Fabbrini 2015).

To make sense of such integration pattern, we elaborate a theoretical framework of dominance by the European Council based on the combination of two explanatory factors – the activation of EU policymaking in core state power policy areas and the outbreak of crisis. First, the European Council is expected to rise to a preeminent role in EU policymaking when core state powers are at stake (Genschel and Jachtenfuchs 2013; see also Bickerton et al., 2015). Core state powers entail policy areas that have significant implications for national sovereignty, such as foreign policy, defence, taxation, public administration, fiscal policies, border control, asylum policies, and the rule of law. As resources in these sensitive policy areas are limited, the integration of core state powers at the EU level comes with distributive conflicts and political disagreements that are much more pronounced than in other policy fields, such as market integration. Therefore, unlike market regulation, core state powers are generally seen as issues of high policy salience by EU member state governments (Genschel and Jachtenfuchs 2013). In other, non-core state policy areas, even if crisis is pertinent, political necessity to place and keep an issue on agenda of the EUCO fades away, which does not trigger hands-on policy management at EUCO level (Smeets and Beach 2023b). Since the European Council is composed of Heads of State or government, its members act as symbols of national sovereignty and mobilise in defence of their respective national interests when core state powers enter the political agenda. Members of the European Council will thus meet to smooth out their divergent positions with the aim of striking political compromises that shape the direction and substance of EU policies.

The 'core state' nature of such policy areas alone cannot, however, explain dominance by the European Council in EU policymaking. In 'normal times', indeed, other EU decision-making institutions claim and retain their treaty-based powers, with the European Council

having to come to terms with the European Commission, European Parliament and Council of the EU depending on the specific governance system in place. For instance, in EU budgetary policy, the distributive character of the Own Resource Decision within the EU's Multiannual Financial Framework (MFF) typically witnesses highly political negotiations among Heads of State or government driven by the divide between net contributors and net beneficiaries. However, in the inter-institutional negotiations, the European Commission and the European Parliament wield considerable influence over the decision's specific content thanks to their right of legislative initiative and power of consent for approval respectively (Bauer, Becker, and De Feo 2017). This means that, in the absence of urgency or exceptional circumstances, supranational institutions generally do not experience political pressures significant enough to compel them to accommodate the political agreements reached at the level of the European Council.

We thus identify the second explanatory factor behind dominance by the intergovernmental executive as 'the emergence of crisis'. This is consistent with the new intergovernmentalist argument, which states that deliberation and consensus as working principles of the European Council have become the 'guiding norms of day-to-day decision making at all levels' (Bickerton et al., , 29). Indeed, Post-Maastricht European integration has been marred by the outbreak of multiple crises, so much so that the literature has talked about the 'polycrisis' of the EU (Zeitlin, Nicoli, and Laffan 2019).

To be sure, each crisis follows a specific trajectory depending on pre-existing institutional configurations, political contingency as well as feedback loops from previous crises (Anghel and Jones 2023). For instance, despite both the sovereign debt and the migration crisis were exogenous shocks entailing distributional conflicts, they produced different outcomes, with the former bringing about increased functional integration much more than the latter (Schimmelfennig 2018). Also, while the EU's response to the COVID-19 pandemic has arguably resulted in a limited increase of its supranational character (Fabbrini and Capati 2023), the policy response to the Russian invasion of Ukraine took place along largely intergovernmental lines (Genschel, Leek, and Weyns 2023). Moreover, the EU was able to draw policy lessons from its handling of the previous sovereign debt crisis in addressing the pandemic (Capati 2023), and from its reaction to the 2014 Russia's annexation of Crimea in issuing sanctions (Széj 2020).

Despite such differences in crises and in the EU's crisis management, the Heads of State or government have invariably used emergency situations as a peg to take the lead when disagreements about domestically contentious policy areas arise. They have framed crises involving core state powers as EU-wide in order to justify a major policy response at the EU level and take control of policymaking. It is by framing the crisis as EU-wide that the Heads of State and government warrant collective action at the EU level and thereby seek to seize control of policymaking by sorting out their disagreements on policy measures and by selling the resulting political compromises as red lines for other decision-making institutions to follow in the EU's response crises. This is facilitated by the fact that no EU treaty contains specific rules regarding the European Council's powers and competences in crisis management (Wessels 2015).

From a slightly different angle, Van Middelaar (2019) argues that the EU's rule-based decision-making system is outdated to resolve crises, so to get a grip on unforeseen events, the EU's polity should transform to become a more political, more strategic entity. As a driver of such change, van Middelaar depicts the European Council as part of the

solution, not the problem, since the institution can 'show decisiveness and mobilise the capacity to act' if needed (Van Middelaar 2019, 17). Although the European Council's ability to resolve deadlocks on a whim with an *acquis politique* (a political compromise) could be beneficial, this approach shoves under the carpet potential constitutional issues and inter-institutional imbalances, which pertain to the European Council's rise to a quasi-legislative status.

The recent past indeed has highlighted that any European solution to large-scale crises is only possible through an agreement in the European Council, the highest level of decision-making. Since its creation in 1974, the European Council has acted as a 'crisis manager' by sounding out political compromises (Schramm 2024). For instance, during the sovereign debt crisis, the European Council was the main architect behind the adoption of the European Stability Mechanism (ESM), the Six Pack, and the Fiscal Compact (Csehi and Puetter 2020). Similarly, during the refugee crisis, the European Council casted the shadow of hierarchy over the Dublin reforms (Ripoll Servent 2019). On occasion, the Heads of State or government even managed to shift decision-making outside the remit of the EU's legislative boundaries, such as in the case of the EU-Turkey deal. Accordingly, crises are considered to be *Chefsache*, 'matter of the bosses', although the *political* leadership of the European Council (as the 'control room') often needs the *instrumental* leadership of the European Commission (as the 'machine room') to get things done (Smeets and Beach 2023a).

In sum, crises are key because they give rise to a widespread sense of urgency that justifies swift political action by the highest political body and urges other EU decision-making institutions to follow its lead over fears to delay collective action. In such situations, institutionalised decision-making procedures tend to give way to the European Council as the key policymaking actor, potentially acting beyond the scope of its treaty mandate.

Drawing on the above theoretical framework, we thus expect the European Council to dominate EU policymaking when large-scale crises involving core state powers arise. The following section elaborates the methodological, process-tracing framework to capture exactly how dominance by the European Council takes place, identifying discrete theoretical propositions and their respective empirical fingerprints.

Methods and data

This article carries out a theory-building process-tracing analysis of dominance by the European Council in EU crisis-management policymaking involving core state powers. Theory-building process tracing consists in unpacking a theoretical argument into several 'parts' (or components), whereby specific 'entities' (or actors) engage in specific 'activities' (or actions), thereby leaving fingerprints in the empirical record (Beach and Pedersen 2013). Based on the identification of 'observable implications' for each of the several parts of the process, within-case empirical evidence is collected and analysed to assess whether the general theoretical argument holds in that case and to single out case-specific peculiarities, variants, or divergences of the theorised process (Bennett and Checkel 2014).

This article applies process tracing to three different case studies, namely the outbreak of the COVID-19 pandemic, the Russian military invasion of Ukraine, and the rule of law controversy. All these cases share the same contextual condition, that is, the outbreak of

a crisis in core state power policy areas, such as budgetary and financial assistance policy, common foreign and security policy, and identity and constitutional policy respectively. The contextual condition limits the applicability of a theory to a relatively homogenous population of cases against which the theoretical process is expected to hold. We identify core state powers as the relevant contextual condition because, by affecting aspects of public policy traditionally at the heart of national sovereignty, the common EU response is likely to mobilise national interests and, thus, to produce distributive conflicts among member state governments. For each of the selected case studies, the article identifies a cause (i.e. the outbreak of crisis) and an outcome in the form of the EU's policy response (i.e. the establishment of the RRF, the enactment of sanctions against Russia and the adoption of the Rule of Law regulation respectively). In order to investigate the emergence of dominance by the European Council in EU policymaking (process) between the crisis outbreak and the EU's policy response to it (outcome), the article unpacks the process into the following theoretical parts:

(1) After the crisis outbreak, the EU's Heads of State or government frame the crisis as one concerning the EU as a whole and interpret it as requiring a major policy response at the EU level rather than, or in addition to, national countermeasures;¹ (2) Because nationally sensitive core state powers are at stake and the crisis has a distributive character, the Heads of State or government initially disagree over the substance of the EU's policy response to it; (3) As the EU's policy response becomes contested, the Heads of State or government gather to negotiate in their Brussels-based institutional configuration, the European Council; (4) After one or more of such meetings, the Heads of State or government in the European Council strike a political compromise on the EU's policy response to the crisis; (5) Constrained by the political nature of the compromise and by the urgency of securing a timely policy response to the crisis, other EU institutions with treaty-based powers in the policymaking process follow up on the European Council's agreement and refrain from any substantial amendments to it, thus paving the way for the formal adoption of the policy response. [Table 1](#) below provides an overview of the theoretical mechanism and its observable implications.

The process tracing analysis is built on a set of semi-structured elite interviews ($n = 9$) with EU policymakers directly involved in the EU's response to the three crises, conducted between March 2022 and April 2024, as well as official documents from EU institutions and member state governments, such as European Council conclusions, Council meeting reports, government non-papers, and publicly available individual or collective statements and communications by EU institutional or government representatives, such as letters and press releases, and media reports. To ensure the highest quality of the interviews, respondents were granted confidentiality. Thus, in the Online Appendix, they are identified by letters rather than by their names.

The European Council's role in the COVID-19 pandemic: the establishment of the RRF

Crisis framing and early disagreements among EU Heads of state or government

On 17 March 2020, the European Council framed the COVID-19 pandemic as a common European crisis to be addressed at the EU level. In his conclusions, European Council

Table 1. Process-tracing framework: theoretical expectations and empirical fingerprints for dominance of the European Council in the EU's response to crises involving core state powers. Source: authors' own elaboration.

		Process: Dominance by the European Council					Outcome:
		Part 1	Part 2	Part 3	Part 4	Part 5	EU's policy response
		<i>Crisis framing</i>	<i>Disagreements</i>	<i>Meetings</i>	<i>Compromise</i>	<i>Follow-up</i>	
Cause: Crisis outbreak							
Theoretical expectations	Crisis is framed as having EU-wide impact, requiring major policy response at the EU level	Because of its distributive character, Heads of State or government disagree on the EU's policy response to the crisis	Heads of State or government meet in the European Council to negotiate the EU's policy response to the crisis	Heads of State or government in the European Council reach a political compromise on the EU's policy response to the crisis	Recognising the political nature of the compromise and constrained by high urgency, the other EU institutions follow up on the European Council's agreement among Heads of State or government		
Empirical fingerprints	Individual or collective statements and documents by EU institutional and government representatives highlighting the crisis' effects for the EU and advocating political action at the EU level	Personal or collective statements by EU Heads of State or government supporting different policy solutions to the crisis; official documents by the European Council and Council suggesting disagreements	European Council's Conclusions reporting Heads of State or government on the EU's policy response to the crisis	European Council's Conclusions reporting final agreement among Heads of State or government on the EU's policy response to the crisis	Statements and official documents by institutions and institutional representatives agreeing on the EU's policy response based on European Council's Conclusions		
Contextual condition: Crisis involving core state powers							

President Charles Michel voiced the need ‘to work together and to do everything necessary to tackle the crisis and its consequences’. He also invited the Eurogroup to ‘adopt without delay a coordinated policy response’ to the socio-economic consequences of the pandemic (European Council 2020a). Meanwhile, EU government representatives started presenting contrasting policy solutions to the crisis. In a letter to Charles Michel, nine government leaders – including the French, Italian, and Spanish – acknowledged the exceptional nature of the crisis and advanced the proposal for the establishment of a large-scale crisis-management instrument based on the emission of common debt (Wilmès et al. 2020).

At the European Council videoconference meeting of 26 March, the leaders of the self-defined Frugal Four – including the Netherlands, Austria, Denmark, and Sweden – strongly opposed the letter. Dutch Prime Minister Mark Rutte clarified that the Netherlands would prefer making a one-off ‘gift’ to European countries in economic trouble rather than have a common debt instrument at the EU level. Similarly, German Chancellor Angela Merkel argued that ‘the ESM, which already [exists], could be a highly effective instrument in the present situation’ (Ludlow 2020, 38–39). On 9 April, the Eurogroup presented its report on the economic policy response to the pandemic, which put forward a major Recovery Fund that would be ‘temporary, targeted and commensurate’ (Council of the EU 2020a). Even so, because of an ongoing confrontation among government leaders, the Eurogroup referred a decision on the specific features of the Recovery Fund to the European Council. At the European Council meeting of 23 April, because of continued disagreements on the exact shape of the instrument, the European Council asked the European Commission to analyse the exact needs and to urgently come up with a proposal that is commensurate with the challenge we are facing’ (European Council 2020b) based on the magnitude of the challenge.

European Council meetings and political compromise on the EU’s policy response

On 28 May 2020, following the European Council’s mandate, the European Commission presented the first legislative proposal for the adoption of the RRF, defining the general features of the instrument – its size, composition, and governance. In particular, the RRF would consist of €603 billion divided between €335 billion in grants and €268 billion in loans. The Commission would assess member states’ National Recovery and Resilience Plans (NRRPs) and decide on the activation of financial assistance, limiting the Council of the EU’s role to the suspension of payments on a Commission recommendation (European Commission 2020).

The Commission’s proposal gave rise to a confrontation between two inter-state coalitions. The first coalition, led by France and Germany and including most Southern European member states, endorsed the legislative scheme. The second coalition, led by the Dutch government and comprising the Frugal Four, opposed the Commission proposal, especially in terms of composition and governance. Dutch EU Permanent Representative De Groot said the Council of the EU should approve NRRPs by unanimity along the lines of ESM rules of procedure. He also suggested that the Dutch government was sceptical of grants and would not support financing them through the issuance of common debt (Politico 2020). Before the Council of the EU and Parliament could move forward with their legislative negotiations, the government leaders thus decided to meet

to find a preliminary agreement. At the end of that meeting, which took place online on 19 June, Michel took stock of the ‘emerging consensus’ but admitted that ‘it is necessary to continue to discuss’ (European Council 2020b) and convened to that effect an in-person summit for mid-July 2020.

At the European Council meeting of 17–21 July, the size and composition of the instrument were negotiated jointly. The governments agreed to enlarge the size of the RRF from €603 billion to €672.5 billion but reduced the grants component (down to €312.5 billion) in favour of the loan component (up to €360 billion). In terms of governance, the leaders provided the Council of the EU with the power to approve the Commission’s proposals for the disbursement and withdrawal of financial assistance by qualified majority voting (QMV) and reverse qualified majority voting (RQMV) respectively. As a further concession to the Frugal Four, the governments also introduced an ‘emergency brake’ whereby any member state could stop the approval of an NRRP and bring the matter before the European Council in case they found a serious deviation from the relevant criteria (European Council 2020c). The European Parliament (EP) was left with no formal role in the governance of the RRF. Indeed, it was excluded from the procedures for both the activation and the suspension of financial assistance. In sum, the European Council was eventually able to strike a final deal on the size, composition and governance of the RRF, and submitted a revised version of the Commission proposal to the Council of the EU and EP for approval. In other words, ‘the European Council presented the co-legislators with a ready-made dish that could only be taken or left as a whole’ (Interview A).

Other EU institutions follow up on European Council agreement

As a legal officer of the Council of the EU admitted, when the European Council agreed on the size and governance of the mechanism in its July meeting, that was it. When the revised Commission proposal got to the [Council of the EU’s] Working Parties, everyone wanted it to go through along the lines of the European Council conclusions (Interview B). However, on 23 July, the EP issued a resolution on the European Council’s conclusions, stating that such conclusions ‘represent no more than a political agreement between the Heads’ and stressing that ‘the Parliament will not rubber-stamp a *fait accompli*’ (European Parliament 2020a). As one interviewee revealed, ‘the EP believed, or pretended to believe, that after the agreement at the level of the European Council a completely new negotiation could start. But at that stage, the changes [with respect to the European Council conclusions] could only be marginal’ (Interview C).

On 6 October, EU economic and finance ministers reached a political agreement on the RRF which reflected all the key elements of the European Council conclusions of 17–21 July, including the instrument’s financial size and governance. On 9 October, the EU ambassador formally agreed on the Council of the EU’s position on the RRF, underlining its consistency with ‘political guidance’ provided by the European Council (Council of the EU 2020b). Following intensive dialogue, the German presidency of the Council of the EU was able to reach a deal with EP’s negotiators on 10 November. The deal preserved the red lines traced by the European Council on all relevant aspects of the RRF, to which the EP had finally consented. In exchange for that, the EP received concessions in terms of increased financial capacity of other NGEU instruments, such as Horizon Europe,

EU4Health and Erasmus+. In the aftermath of the agreement, German permanent representative to the EU Michael Clauss stressed that ‘this is a well-balanced deal, which addresses the issues raised by the Parliament while respecting the guidance received from the European Council in July’ (Council of the EU 2020c). In fact, under unprecedented political pressure to deliver in a time of exceptional emergency, the EP eventually set aside its opposition to the European Council political compromise among government leaders and accepted a consolation prize in return.

While retaining their formal law-making powers, the Council of the EU and EP operated within the boundaries established by the European Council on the recovery instrument and, given the urgency of the situation, *de facto* implemented the changes proposed by the government leaders.

The European Council’s role in the EU’s reaction to the Russian invasion of Ukraine: the adoption of sanctions

Crisis framing and early disagreements among EU Heads of state or government

On 24 February 2022, Russia invaded Ukraine. EU Heads of State or government immediately framed the invasion as an ‘unprovoked and unjustified military aggression (...) that undermines European and global security and stability’ (Council of the EU 2022,1) and, thus, needed a joint European response. The EU opted for ‘packages’ of sanctions, which are restrictive measures against specific actors, such as travel bans or asset freezes, or sectors, such as the restriction on imports and exports. They are proposed by the Commission and the High Representative of the Union for Foreign and Security Policy (HR) and the decision – and the accompanying regulation – is unanimously adopted by the Council of the EU (Art. 29 TEU). Sanctions belong to the Common Foreign and Security Policy, where the European Council can ‘identify the Union’s strategic interests, determine the objectives of, and define general guidelines (Art. 26 TEU). However, the Council of the EU – and not the European Council – has the task to negotiate and define the detailed content of sanctions (Schütze 2025).

Already on 24 February 2022, Charles Michel set the European Council as the key actor for providing guidelines on sanctions, claiming that it has the necessary authority and legitimacy to do so. Hence, the same day, as part of the first package, the European Council agreed on restrictive measures against Russia’s financial, energy, and transport sector (European Council 2022a).

The first five packages of sanctions did not cause major political disagreement among member states. They were approved with relative unity due to the initial shock of the invasion of Ukraine. These sanctions mainly targeted Moscow’s financial sector and some Russian oligarchs. As such, they hit Russia without causing major setbacks to the EU (Euronews 2023). In view of the sixth package, on 4 May 2022, the Commission’s President, Ursula von der Leyen, proposed a complete ban on imports of crude oil and refined petroleum from Russia by the end of the year, with a transition phase of six months (Von der Leyen 2022). Among the various packages (eighteen in total at the time of writing), the sixth sanctions package was the first – chronologically speaking – to be highly controversial and divisive, as it concerned two resources – crude oil and refined petroleum – that are vital to the economies of

the member states (Sanus, Akgül-Açıkmeşe, and Karaoguz 2024). This can also be interpreted as a lesson the EU learned from the 2014 sanctions against Russia following the annexation of Crimea, when strategic assets such as crude oil and natural gas were less strongly targeted in order to protect the economic interests of the member states (Szép 2020).

On 6 May 2022, in COREPER II, Hungary, Slovakia, and Czech Republic, which relied heavily on the supply of Russian oil, argued they would not support the sixth package and called for a much longer transition period to adjust their economies (Politico 2022a). Hungary also demanded the oil supplied through pipelines to be excluded from the full ban (Interview D). At the same time, Poland and the Baltic states pushed to phase out Russian oil as soon as possible. In addition, Hungary threatened to veto the sixth package unless Patriarch Kirill, the head of the Russian Orthodox Church, was removed from the list of sanctioned individuals (Reuters 2022). As the most influential religious figure in Russia, Patriarch Kirill strongly contributes to Putin's support among the Russian population, and he openly endorses Putin's pro-war stance. Hungary pushed for Kirill's 'delisting' to keep its good relationship with Russia and because the Patriarch embodies those traditional family and religious values that the Orbán government supports. However, this went against the position of most of the other Heads of State or government (Euronews 2022).

COREPER II met on 6 and 8 May 2022, but failed to strike a deal (Politico 2022b). After the Council of the EU's meeting on 16 May, the HR, Josep Borrell, said: 'Unhappily today, it has not been possible to reach an agreement to finalise the 6th sanctions package. The issue will go back to the COREPER and [EU] Ambassadors will continue discussing' (Borrel 2022). Yet, on 29 May, COREPER II was unable to make a deal because it 'had to consider extra details' such as the exemption from the full oil ban, the transition period, and the individuals targeted by sanctions (Politico 2022c).

European Council meetings and political compromise on the EU's policy response

To break the deadlock, before the special European Council meeting of 30 May, Michel clearly set the European Council in charge to find a compromise by stating that "the sixth package of sanctions has been on the table for many weeks, and it's important to decide (...). And I'm confident that we'll be able to take a decision all together (...) on that important topic. It's not easy because there are different sensitivities, different concerns." Eventually, on 31 May, the European Council confirmed the import ban on crude oil and refined petroleum products. However, 'a temporary exception for oil will be made' (European Council 2022b, 2) – thus accomplishing the request by Hungary, Croatia, Czech Republic and Bulgaria. Moreover, Patriarch Kirill was removed from the list of sanctioned persons. The last-minute compromise was found 'for pragmatism, so that the sixth package can come into force' (Politico 2022d), Crucially, unlike what happened in the past, in the case of the sixth package, the European Council regulated all the sensitive details that have a high political impact, such as those on exceptions and targeted individuals, which are usually negotiated and approved in the Council of the EU (Interview E). This constrained not only the Council's room to manoeuvre when taking the final decision on sanctions, but also the HR and the Commission in their proposal for a Council's regulation.

Other EU institutions follow up on European Council agreement

Having reached a political compromise, the European Council explicitly ‘urged the Council to finalise and adopt the sixth package of sanctions without delay’ (European Council 2022b, 2). By stating that it ‘will revert to the issue of the temporary exception (. . .) as soon as possible’ (*ibid.*), the European Council signalled that it intends to remain in charge of the issue.

Constrained by the high-level agreement reached by the Heads of State or government and pressured by the urgency to react to Russia’s aggression, the Council of the EU confirmed both the temporary exception for the ban on crude oil and the ‘delisting’ of Patriarch Kirill. Similarly, in their proposal for the Council regulation, the HR and the Commission did not substantially change the content of the sixth package as was agreed by the European Council. Although the Council of the EU could still negotiate further details of the sixth package, it could not change those politically sensitive details on exceptions and target people where the European Council had set ‘red lines’ (Interview F). Eventually, the Council’s regulation included all cornerstones of the European Council’s position (Council Decision CFSP 2022/884; Council Regulation 2022/879).

Already at the time of Russia’s annexation of Crimea in 2014, the European Council had decided the adoption of sanctions in the first place, but then ‘the details of the sanctions regime could be prepared by the Council’ (Szép 2020, 858). In 2022, the sixth package was the politically most sensitive one because it concerned crude oil and refined petroleum products, two essential goods for member state economies. As a result, the novelty of 2022 was that the European Council was determined not only to issue political guidelines on the use of sanctions but also to *ex ante* agree on their detailed content, particularly the scope and the temporary exception of sanctions. It expected the other EU institutions to leave high-level compromises untouched and simply ‘implement’ them through legislation. As a result, in the sixth package of sanctions, the European Council exercised a ‘lock-in’, prescriptive type of dominance, and embraced a quasi-legislative function, *de facto* going beyond its treaty role because it strongly reduced the room of manoeuvre of the Council of the EU, the Commission, and the HR.

The European Council’s role in tackling the rule of law crisis: the general regime of conditionality

Crisis framing and early disagreements among EU Heads of state or government

Initially, rule of law (RoL) breaches – most notably in Hungary and Poland – did not receive unequivocal crisis framing that would require an EU-wide response.

Crisis framing proper started after a number of alarm bells were rung. The so-called 2018 Sargentini Report, drafted in the EP’s LIBE Committee, expressed serious concerns regarding corruption, judicial autonomy, and media freedom in Hungary, while the Commission in 2016 started a RoL Dialogue with Poland. Eventually, by the Parliament and the Commission respectively, Article 7 was triggered against both countries, which was a signal of EU institutions’ apprehension. EU members, especially net-contributor countries felt the urgency to resolve the mismanagement of EU funds due to corruption and other RoL hiccups when negotiations of the new MFF cycle of 2021–27 were initiated.

In 2019 the Finnish rotating presidency made RoL backsliding a programme priority, while the Dutch Parliament conducted extensive discussions about the issue (Finland's Presidency of the Council of the European Union 2019; Parliament 2019). Accordingly, the Commission proposed the establishment of a new RoL instrument (European Commission 2018).

Conflict arose in parallel to the incrementally increasing sense of urgency, as those countries where breaches were detected opposed the RoL instrument. Poland's then Europe Minister Konrad Szymański' (Bayer and Gray 2018) and then Justice Minister of Hungary Judit Varga repeatedly underlined that the RoL had been used as a 'political weapon' (Bayer and Gray 2018; Varga 2019). Therefore, the Commission's proposal of establishing the new RoL instrument was cajoled in one single package along with the MFF. That was indicative of the conditionality mechanism's sensitive nature, and the Commission's anticipation of conflicts, which would likely have to be resolved at the highest political level (Interview G, H, I). The MFF, the own resources regulation and the RoL conditionality were essentially three items in one political negotiation (Interview G). Policy negotiations were escalated to the European Council when urgency reached its apex, both due to the nearing conclusion of the MFF negotiations and the establishment of the RRF, an unprecedented tool to manage the financial repercussions of the COVID pandemic.

European Council meetings and political compromise on the EU's policy response

The European Council intervened in the policy-making process in two phases, first regarding the activation mechanism of the RoL conditionality tool. Originally, in case due consultation between the notified member state and the Commission didn't bear sufficient results, the Commission could have proposed appropriate punitive measures to be accepted or rejected in the Council of the EU by a reverse QMV (Zalan 2020). According to Kirst (2021, 106), RQMV arrangements would have created a more robust tool than simple QMV, 'since it would have put the burden of proof upon the accused member state'. Even though the Council Legal Services in its 2018 opinion found RQMV to be compatible with EU treaties (Council of the EU 2018), some member states such as Bulgaria, Italy, Slovakia, Poland and Hungary found RQMV problematic (Interview G, H). While technical talks between counterparts in COREPER II occurred frequently regarding the activation mechanism (Interview H), the first communication of a change to simple QMV came from the highest political level: initially from the President of the European Council and then in the July European Council conclusions. Charles Michel had already suggested during budget talks in February 2020 that a simple qualified majority of member states should be needed to initiate sanctions (European Parliament 2020b). Thus, the European Council acted earlier than the publication of the German rotating presidency's amendments on 29 September 2020, as well as the Council of the EU's mandate the day after, both of which altered RQMV to simple QMV, in line with the European Council's communication (Council of the EU (2020d; 2020e).

The second phase of shifting the decision-making to the European Council was even more apparent. After an inter-institutional compromise had been reached on 5 November 2020 between the Council of the EU and the Parliament (European Parliament 2020c), the conditionality regulation was expected to be adopted soon,

according to the rules of the OLP. However, on 19 November, Hungary and Poland decided to veto the MFF and the own resources borrowing plan due to the conditionality mechanism, which triggered a round of emergency meetings in the European Council on 10–11 December 2020. The emergency talks were specifically demanded by the Polish and Hungarian PMs on 26 November in a joint declaration signed in Budapest (Morawiecki and Orbán 2020). The document criticised the inter-institutional compromise for failing to ‘conform to the agreement reached at the July European Council’ (Morawiecki and Orbán 2020) as the RoL instrument was too wide in scope and wasn’t restricted to the protection of the EU budget. The inter-institutional agreement removed all references to ‘generalised deficiencies as regards the RoL’, including in the title, to emphasise the succinctly budgetary purpose of the tool and ease doubts about the legal basis of the regulation, yet, the Hungarian and Polish PMs found these alterations insufficient. Hence, the December Conclusions reiterated the sole budgetary purpose of the instrument and made further cosmetic alterations in the text of the regulation.

Other EU institutions follow-up on European Council agreement

The main innovation in the December European Council conclusions was delaying the implementation of the RoL mechanism by making Commission activation subject to two conditions: first, the CJEU’s decision on Poland’s and Hungary’s request for annulment; and second, the European Commission’s compilation of a thorough RoL guidance (European Council 2020d). It should be noted that member states and EU institutions are free to initiate action for annulment against any regulation within 2 months of the publication of the contested measure. However, setting out implementing conditions as requested in the December Conclusions was controversial, since they were neither debated by the EU’s legislative bodies nor mentioned in the final version of Regulation 2020/2092. The December Conclusions also stated that the RoL mechanism could be triggered only ‘as an integral part of the new budgetary cycle’ (European Council 2020d), which means it would not apply to ongoing projects and the previous MFF cycle. Yet again, this caveat was not stated in the Regulation *per se*. Furthermore, the Commission respected all indications when activating the mechanism against Hungary in April 2022. According to an EU civil servant, who was involved in the negotiations of the conditionality mechanism, it is one of the most contentious points in the December 2020 European Council conclusions (Interview 1) as the European Council managed to shape the content of the Regulation from the outside, even without enshrining these conditions in the text of the Regulation.

To call out the European Council’s hands-on management of the RoL conditionality regulation, the European Parliament (2020a, 2020d) issued two resolutions, both after the July and December Conclusions, which invited the European Council not to exercise legislative functions. However, these resolutions did not bear any tangible results and the EP was *de facto* sidelined, despite having an equal footing in the legislative process. In a symbolic move, in October 2021, the EP took the Commission to the CJEU for failing to initiate the RoL conditionality procedure against Hungary and Poland. Nevertheless, the Commission did not waver and pursued the enactment of the RoL process in line with the European Council’s implementing conditions.

Conclusions: the European Council's strategies to become a dominant crisis-manager

This article has explained how and why the European Council was able to exercise decision-making powers beyond the letter of the treaties and dominate the EU's response to three recent crises. The article has identified the core state powers nature of policy areas and the rise of emergency circumstances as the two explanatory factors behind dominance by the European Council in EU policymaking. Moreover, it has put forward and tested the causal process through which dominance by the European Council takes place, which resulted in the European Council monopolising aspects of the EU's own crisis response. While the causal process held across cases, dominance took different forms. In the case of the RRF and the rule of law conditionality, the European Council performed quasi-legislative decision-making powers denied by the treaties. Specifically, it amended the European Commission's proposal for the adoption of the two instruments through a series of political compromises on their substance and used its Conclusions as a red line for subsequent legislative negotiations between the European Parliament and the Council of the EU, or as implementing criteria. In the case of Russia's invasion of Ukraine, stepping beyond its task to provide political guidance, the European Council defined the content of the sixth sanction package in minute details, which constrained the High Representative's and the European Commission's proposals. The European Council exerted political authority to shape the detailed content of the politically salient restrictive measures before the Council of the EU's unanimous adoption of the sanction package. In all cases, institutions such as the Council of the EU and the European Parliament followed up on the political compromises by the Heads of State or government.

This article makes both a theoretical and an empirical contribution. First, while studies have so far provided diagnostic evidence for the existence of executive dominance in the EU during crises, they have neither theorised nor empirically investigated the process through which the European Council comes to dominate the decision-making process. This article fills this crucial gap in the literature by unpacking the black box of dominance by the European Council in policy negotiations during times of crisis. The article theorises that the Heads of State or government exploit inherent disagreements in the management of crises with distributive effects to transfer the locus of decision-making to a higher, political level. Compromises of highly political nature agreed in the European Council then have the strength to create an *acquis politique* (Szép 2020) that constrains the Commission, the EP, and the Council of the EU, who enjoy very limited room to *ex post* change the red lines set by the Heads of State or government in the context of urgency that the crisis produces.

Secondly, as an empirical contribution, the article has documented the procedural steps through which dominance by the European Council occurs, highlighting similarities and differences across crises while also proving the consistency of the broader theoretical process. In particular, the article has demonstrated that the causal process holds across different decision-making regimes (OLP and intergovernmental coordination), policy areas (budgetary and financial assistance policy; common foreign and security policy; identity and constitutional policy), and types of crisis (exogenous and endogenous).

Further research should investigate whether and how the European Council is able to exercise dominance when crises and conflicts arise in other policy fields, such climate and

energy policy. Moreover, it remains to be seen to what extent our findings can travel beyond a context of crisis. Lastly, the article could serve as a reference for those who research the EU's democratic deficit as our causal process sheds light on mechanisms that upset both the federal balance between institutions representing European citizens and national interests, and the EU's quest to democratise its federal-type system.

Note

1. Crisis framing might be immediate (such as in the case of the COVID-19 pandemic and the Russian invasion of Ukraine) or delayed (such as in the case of the rule of law crisis) depending on crisis dynamics.

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