CHAPTER 5

The Role of the Council Legal Service in Ensuring Respect for the Law

Michael Bishop and Frederik Naert

1 Introduction

Among the EU institutions, the Council is probably not the one best known to the public or to lawyers. The way in which the Council works in practice is even less known, as is the role of its Legal Service. Not much has been written about the latter.

We therefore thought it would be fitting to offer a glimpse into the work of the Council Legal Service (CLS), the service in which Ricardo Gosalbo Bono spent the latter part of his career in the EU institutions.

As the work of the CLS is an intrinsic part of the work of the Council, it cannot be understood without some knowledge of the main functions of the Council and the way it operates in practice. We will therefore first explain what the Council does and how it operates, before addressing how the CLS participates in this work of the Council.

The work of the Council is linked to that of the European Council, which is now also an institution of the Union in the formal sense, ie within the meaning of Article 13(1) TEU. Moreover, the European Council does not have its own secretariat but is assisted by the General Secretariat of the Council. This also

* The views expressed are those of the authors and do not bind the Council, its General Secretariat, or its Legal Service.


2 See generally Westlake and Galloway (eds) with Digneffe (n 1).

3 In addition to these institutions, the Union also comprises a broader range of entities, such as agencies, bodies and offices. These inter alia include the European External Action Service (EEAS).
means that the Council Legal Service provides legal advice to the European Council as well as to the Council. We will therefore also briefly discuss the European Council.

2 The Council of the EU and Its Main Functions, Organisation and Operation

The Council of the European Union is one of the institutions of the Union within the meaning of Article 13(1) TEU. Its composition, main functions and key features are set out in Article 16 TEU, which is complemented by Articles 237 to 243 TFEU, and by the Council’s Rules of Procedure.4

These legal provisions form the basis for the four components of the Council in the broad sense: (i) the Council in the formal sense, i.e., a meeting composed of representatives of the (currently 28) Governments of the Member States at ministerial level as Council of the EU; (ii) the Presidency (or rather, since the Treaty of Lisbon, Presidencies); (iii) the various Council preparatory bodies; and (iv) the General Secretariat of the Council (GSC), of which the CLS is a part.

We will briefly address each of these four components, as well as the functions of the Council, its decision-making and voting rules, and the issue of transparency of the work of the Council.

2.1 Composition – A Meeting of Ministers

The Council consists of a representative of each Member State ‘at ministerial level, who may commit the government of the Member State in question and cast its vote’ (Article 16(2) TEU). Representatives at ministerial level normally means ministers or State secretaries, but this depends on national constitutional arrangements of each Member State.

The quorum required for the Council to be able to take decisions and to vote is achieved when the majority of its members who are entitled to vote5 are present.6 This is linked to the rule that when a member of the Council


5 See Council’s Rules of Procedure, art 16 on cases where a member of the Council may not participate in a vote under the Treaties.

6 Ibid, art 11(4).