



3 The institutional framework

■ Introduction

For a long time many observers have lamented the lack of a clear personification of the EU. Take, for example, the European Council – the institution that brings together the Heads of State and Government of the member states. It traditionally made use of a rotating chairman, who came from the member state that happened to hold the Presidency of the EU, a responsibility which lasted for only six months. Because this chairman was the face of the EU when it came to meeting heads of state of other countries, someone like the president of the USA would have to deal with no fewer than eight different EU ‘Presidents’ during his or her four years in office. The Lisbon Treaty tackled this problem by creating the more permanent post of President of the European Council. This new position ensures more continuity in chairing this institution and facilitates more lasting relations with other countries.

In 2014 the European Council had to appoint a successor to its first president, Herman Van Rompuy, who would be stepping down in December after completing his two terms in office. Already over the summer Van Rompuy started extensive consultations with all the members in order to find a candidate that would have the support of all. In the end the members of the European Council agreed on appointing Donald Tusk, the prime minister of Poland, as their new president. Apart from the fact that Tusk had successfully

led two subsequent coalition governments and was a much respected leader, it certainly helped that he came from a ‘new’ member state. After the presidency of the Belgian Van Rompuy, there was general agreement that it was long overdue to now let a candidate from one of these countries occupy this post.

This chapter will show that the appointment of Tusk tells us a lot about the character and nature of the EU’s institutions. The choice of Tusk was a deliberate one to counterbalance the dominance of candidates from the old member states in key positions. And although he could have been elected through a majority vote, the outgoing President Van Rompuy deliberately strived for a unanimous choice. In this chapter we show how the EU’s institutional design fosters this type of decision-making by answering the following questions:

- Which interests do the EU institutions represent and how are executive, legislative and judicial powers allocated to them?
- What are the tasks of each of the institutions and how do they organize their work?
- How should we evaluate the EU’s institutional framework in terms of its capacity, on the one hand, to represent interests and, on the other hand, to act effectively?

The primary purpose of the EU’s institutional set-up is to make sure that all relevant interests – those of member states, citizens and the EU as a whole – are represented in key phases of decision-making. This set-up ensures that decisions are made in a consensual manner and can rely upon the support of all interested parties.

■ The EU institutional framework

Table 3.1 outlines the EU’s institutional framework following Article 13 of the Treaty on European Union (TEU). We can see that there are no fewer than seven official institutions that form the backbone of the EU’s decision-making apparatus. (The table does not list two other bodies that you may run across from time to time: the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR). These are advisory bodies that we discuss further in Chapter 6.) Some institutional names sound very much like those found in national political systems (Parliament, Court of Justice), whilst others have rather unique names that we do not find anywhere else (Commission, Council). All in all this results in a rather peculiar institutional constellation that cannot be readily compared to those of national political systems (nor to that of international organizations).

Despite the fact that there is no one-on-one relation, these institutions perform tasks which are very similar to those of national political institutions. We can understand their role by answering two questions:

- Which interests do the different institutions represent and protect?
- How are the different governmental functions – executive, legislative and judicial – allocated over the different institutions?

Table 3.1 The institutions of the EU as outlined in Article 13 TEU

Name	Role	Representing
European Council	Executive	Member states
Council	Executive/Legislative	Member states
European Commission	Executive	Union
European Parliament	Legislative	Citizens
Court of Justice of the European Union	Judicial	Union
European Central Bank	Executive	Union
Court of Auditors	Control	Union

The ordering of these questions is deliberate. The institutional framework of the EU has been designed in the first place to balance different interests. It is this overriding concern which has subsequently resulted in a rather complex organization of the powers of the institutions, in particular when it comes to legislative and executive powers. Instead of locating executive and legislative power in clearly separated branches of government and basing them on popular sovereignty, the EU has several sources of power and distributes these tasks over multiple bodies.

Representation of interests

Let us first look at the way the institutions seek to incorporate different interests. Ensuring the representation of relevant interests is a major characteristic of democratic political systems. In national political systems this is achieved by making sure citizens can directly affect the composition of the parliament and – in the case of presidential systems – the head of government as well. Such an arrangement follows the principle of popular sovereignty: citizens determine the composition of the legislative and executive branch.

The EU does not neatly follow this principle of popular sovereignty, however. Although it makes sure that citizens can directly affect the composition of one of its institutions – the European Parliament – it seeks to incorporate a much wider range of interests:

- Citizens are represented by the European Parliament, whose members are chosen via direct popular elections in each of the member states.
- Member states are represented in the European Council – bringing together the Heads of State and Government of the member states – and the Council of Ministers – consisting of representatives at ministerial level of the member states.
- The interests of the European Union as a whole are represented and protected by all other institutions: Commission, Court of Justice, Court of Auditors and European Central Bank. Officeholders in each of these

institutions are to act independently and without instructions from any government or other institution.

In Chapter 1 we already noted that those institutions that represent the member states (the European Council and the Council) are labelled as **intergovernmental institutions**, while those representing the Union as a whole are considered to be **supranational institutions**. Note, however, that the European Parliament is also considered to be a supranational institution. The reason for this is that its members represent the EU's citizens not so much on the basis of their nationality, but on

Intergovernmental institutions: EU

institutions that represent the member states: European Council and Council.

Supranational institutions: all those EU institutions that represent the general interest of the EU (Commission, Court of Justice, European Central Bank and Court of Auditors) as well as the European Parliament.

the basis of ideology, creating a body that in practice very often wants different things than the Council wants.

According to political scientist Giandomenico Majone, the EU's set-up can best be compared to that of 'mixed government'. This is a form of government that was employed in seventeenth-century England. In that context it sought to balance the interests of territorial rulers and those of 'estates' who represented social and political interests. Such a balance can also be found in the EU. While in contemporary democracies the executive and legislative powers are ultimately rooted in one clear sovereign (the people), the EU has several sources of power which are represented by different institutions.

Allocation of powers

Having outlined the various interests and their institutions, we can now examine their role in governing the EU, by showing how executive, legislative and judicial powers are allocated:

- Executive tasks consist of giving political direction, implementing policies and externally representing the EU. In the EU these tasks are distributed over four different institutions:
 - The European Council *provides political direction* and *represents* the EU externally in its relations with other countries and international organizations.
 - The Council's executive role consists of the *implementation* of policies.
 - The Commission fulfils all three executive roles. It *initiates* legislation, it *implements* policies (such as in the area of competition) and it *represents* the EU externally with respect to specific policies for which the Commission bears responsibility.
 - The European Central Bank has an executive role in terms of *implementing* monetary policy in the member states that have the Euro as their currency.
- Legislative tasks consist of examining, modifying and adopting legislative measures which provide the basis for EU policies. In the EU the European

Parliament and the Council share legislative powers. This arrangement can somewhat be likened to the organization of a **bicameral legislature** in federal systems. If we analyse the EU in such federal terms, the European Parliament represents the citizens and the Council the member states. The EP and Council, however, lack an important power that is present in national political systems: they do not have the formal right to initiate legislative proposals. This right belongs to the Commission, which has the monopoly on initiating legislation.

- *Judicial tasks* consist of the interpretation of EU law as well as the adjudication of conflicts involving EU institutions, member states and all other parties that may be involved (citizens, corporations). These tasks are in the hands of the Court of Justice.
- Providing additional supportive tasks, the Court of Auditors examines the EU's revenues and expenses. Its reports and observations are used by the European Parliament and Council in exercising their powers to control the EU's budget.

Below we outline the EU's six major institutions. We start with the most political, intergovernmental institution, the European Council, and then examine its older cousin, the Council. We then turn our attention to the supranational institutions: the Commission, the EP, Court of Justice and the European Central Bank. Finally, we reflect upon the nature and purpose of the EU's institutional framework.

■ The European Council

The European Council may be one of the younger institutions of the EU but easily qualifies as its most important. Founded in 1974 it brings together the heads of government (prime ministers) and heads of state (this applies in particular to France, who will be represented by the French president, and not the prime minister). By bringing together the government leaders of the EU member states, the European Council is capable of committing all the member states at its highest level and hence has enormous political clout. As a result European Council meetings are one of the most closely watched events, easily drawing 1,500 journalists to Brussels to cover its deliberations and outcomes.

In addition to the prime ministers or presidents of the member states the European Council has three other members, who are, however, not allowed to vote:

- The President of the European Council. He or she chairs the meetings, prepares the agenda and represents the Council externally. The members of the European Council elect their president for a renewable term of two and a half years.
- The High Representative of the Union for Foreign Affairs and Security Policy (High Representative). This person is responsible for executing the

Bicameral legislature: legislature consisting of two houses or chambers. In federal systems one house represents the national population, whilst the other house represents regional populations by province, state or canton.

EU's foreign policies and in charge of the External Action Service, the EU's *corps diplomatique*. The High Representative is also responsible for the EU's developmental policies and humanitarian aid operations. The High Representative is also a member of the Commission ensuring coordination of the work of the Council with that of the Commission.

- The President of the Commission represents the Commission and his or her presence at European Council meetings ensures coordination with the activities of the Commission.

Tasks

Although the European Council is one of the EU's most important institutions, its formal powers are surprisingly limited. For one thing, the Treaty on European Union explicitly states that it does not have legislative powers. Still, the European Council is able to affect policy-making to an enormous extent because it represents the governments of the member states at the highest and most general level. Hence its powers are derived from its political status and the leverage of each of its members over the actions of their respective governments. In practice the European Council is concerned with the following four tasks:

- **Providing political direction.** The European Council sets the long-term strategic agenda of the EU both with respect to internal policies and the Common Foreign and Security Policy (CFSP). This agenda-setting role is formulated in Article 15 of the TEU which states that 'it shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof'. Large projects such as the road to the Single Market or the establishment of European Monetary Union or the EU's climate strategy all have first received their 'blessings' from the European Council. It is then up to the other institutions to develop concrete policies and adopt necessary legislation. On a regular basis the European Council reviews major policy developments concerning the EU's economic development, foreign relations and security issues. Finally the European Council gives authoritative guidance on opening up, progress and finalizing of accession negotiations with aspiring member states (formal decisions on these are taken by the Council).
- **Problem solver and ultimate arbiter.** In this second capacity, the European Council acts as the ultimate intergovernmental decision-making body for issues that cannot be resolved by the Council. For example, the European Council handled the UK's problem with its financial contribution to the EU budget and arranged and approved a special rebate. It also managed the difficult revision of the Constitutional Treaty, by first calling a period of reflection and then negotiating the major terms for its revision into the Lisbon Treaty. The European Council also was the centre of gravity in the midst of the financial crisis, where it took several ad hoc emergency decisions in order to avoid the collapse of the Euro.

Briefing 3.1

Revising the EU treaties

The procedures for amending a treaty as outlined in Article 48 of the TEU provide a good illustration of the way different interests are taken into account when making decisions in the EU. In the *ordinary revision procedure* any member state, the European Parliament or Commission can submit proposals for revision to the Council, which will subsequently forward this request to the European Council. The European Council then decides by a simple majority on convening an Intergovernmental Conference (IGC) where member states have to agree unanimously on the proposed changes. These changes finally need to be approved by all the member states using their own proper ratification procedures. The EU can also make use of two different *simplified revision procedures*, which do not require the convening of an IGC. In the first of these the EP, Commission or any member state can request a change to any of the EU's internal policies as long as it does not imply an increase in the EU's competences. The European Council decides on this on the basis of unanimity, after consulting the Commission, EP and – in the case of monetary affairs – the ECB. The decision then has to be approved by all the parliaments in the member states. In 2011 the European Council for the first time made use of this procedure to enable the establishment of a financial stability mechanism for the Eurozone countries. The European Council can also use a simplified revision procedure when it wants to change decision procedures in the Council from unanimity to qualified majority voting or from the special legislative procedure to the ordinary legislative procedure (see Chapter 4 for further information about these procedures). The European Council adopts these proposals by unanimity after they have been approved by a majority of the EP. National parliaments are informed of this decision and if one or more of these voice objections to it within a period of six months, the decision is not adopted.

- **Treaty revisions.** The European Council has a formal role in revising the treaties. In the *ordinary revision procedure* it decides by a simple majority vote to convene an Intergovernmental Conference (IGC) where representatives of the member states will discuss treaty changes. For so-called *simplified revision procedures* it needs to unanimously agree on changing the EU's policies or decision-making procedures. (See Briefing 3.1 for further information about treaty revisions.)
- **Appointments.** The European Council is involved in a range of key appointments. It appoints its own president. It moreover appoints the President of the Commission and the Union's High Representative. Because these two functionaries are also members of the Commission, their appointments need to be confirmed by the EP. Finally it appoints the members of the executive board of the European Central Bank.

Organization and decision-making

The European Council meets four times a year in Brussels and can if necessary meet for additional extraordinary or informal sessions. A normal meeting lasts for two days, but in fact does not take up more than twenty-four hours. This obviously necessitates elaborate preparations on the part of the president. The agenda, draft decisions and conclusions are as much as possible prepared by the General Affairs Council – one of the configurations of the Council of Ministers (see below). The president will also engage in bilateral contacts to explore member states' positions on issues and early on identify areas of agreement and contention. In the early days it was customary to visit all member state capitals as part of this preparation, but with twenty-eight member states this is not feasible anymore.

Day one starts in the afternoon with a meeting with the President of the European Parliament, who will inform the European Council of the most pressing issues. This is followed by a first working session which is usually devoted to discussing general issues. The session is adjourned for the 'family photo' and followed by a dinner which is used for further bilateral discussions and deliberations on outstanding issues. During the night the president will finalize the draft decisions and conclusions which will be discussed on the second day. This day starts with a second working session which is devoted to discussing foreign policy issues and finalizing these conclusions. After the meeting is over, the president will call a press conference, as will the member states who meet with journalists in their press rooms in the Council building.

To keep the meetings as effective and informal as possible, deliberations take place behind closed doors and attendance is limited to the Heads of State and Government only. Only if the issue at hand necessitates may they be joined by one additional member of their government, such as a foreign minister or minister of finance. Member state delegations are briefed on the proceedings every twenty minutes by a member of the Council secretariat which summarizes the main points to the so-called Antici group, consisting of the personal assistants of the permanent representatives of the member states. They will subsequently communicate this information to the other members of their delegation.

Article 15.4 TEU states that decisions are made by *consensus*, except when the Treaty provides differently. One of those exceptions is the appointment of its president which does not require unanimity. Still, as we saw in the introduction to this chapter, the heads of government strived for a *consensus* and did not vote on the appointment of Tusk. This is characteristic of decision-making in the European Council. All in all formal votes are rarely taken.

■ The Council

The Council (also known as Council of Ministers) is the older cousin of the European Council and has been around from the start of the EU as the

Table 3.2 Council configurations and average number of meetings per year, 2009–14

Council configuration	Number of meetings
Foreign Affairs	13
General Affairs	11
Economic and Financial Affairs (ECOFIN)	11
Agriculture and Fisheries	10
Transport, Telecommunications and Energy	6
Cooperation in the fields of Justice and Home Affairs (JHA)	6
Competitiveness	5
Employment, Social Policy, Health and Consumer Affairs	4
Environment	4
Education, Youth and Culture and Sport	3

Source: Council agendas as reported on the Council website (www.consilium.europa.eu).

institution representing the member states at the European level. The European Council may attract much more media attention than the Council meetings, but the Council in fact does most of the actual work and meets much more often. It essentially has a say over all of the EU's policies, and is the major policy-making organ when it comes to the CFSP. Whilst in an institutional sense the Council operates as a singular entity, it is in practice a multifaceted organ. It operates in different configurations which focus upon specific policy areas (see Table 3.2). Member states themselves can determine who they send to a specific meeting as long as it is someone 'at ministerial level who may commit the government of the Member State in question and cast its vote' (Article 16.2 TEU). This gives governments some flexibility in choosing their delegate: they can also send one of their **permanent representatives** to attend the meeting.

Permanent representatives: member states' ambassadors to the EU who reside in Brussels and prepare much of the work of the European Council and Council.

Tasks

The Council's nature has frequently been characterized as chameleonic. This not only applies to its capacity to operate in different configurations but also to the fact that it has both legislative and executive tasks.

- First, with respect to all of the internal policies of the EU the Council acts as a legislator. In most of these areas it is co-legislator together with the European Parliament, and can be considered as one of the EU's two legislative chambers, with the EP acting as the representative of the EU's citizens and the Council representing the interests of the member states. The Council also concludes international agreements with third countries and international bodies in the areas of Common Commercial Policy, Development Aid and Humanitarian Operations.

- Second, in its executive role the Council is responsible for the EU's external relations through the CFSP. The Council adopts conclusions, recommendations, decisions and sanctions on a wide range of issues such as armed conflicts, human rights issues, terrorism and the proliferation of nuclear weapons. The Council is also able to take operational measures in this area via its European Security and Defence Policy. It can send civilian, police and military missions to contribute to peacekeeping, state-building and the rule of law in countries with an unstable political climate. The Union's High Representative for Foreign Affairs and Security Policy is responsible for implementing these policies. He or she is in charge of the European External Action Service, the EU's own *corps diplomatique*. Finally, the Council also makes the key formal decisions in the accession procedure of new member states by officially declaring countries as candidate members and deciding upon their accession process following the Copenhagen criteria.

One of the consequences of this double role of having both executive and legislative powers is that Council meetings are only partly public. In its executive role the Council deliberates behind closed doors, while in its role as legislator the proceedings are public and transmitted via the EU's audiovisual services.

Organization

There are currently ten different configurations in which the Council meets (see Table 3.2). The most important consists of the General Affairs Council which meets monthly and is responsible for the overall coordination of the Council's work. This includes acting as a transmission belt to the European Council. It prepares the meetings of the European Council and is responsible for following up on decisions being made there. The Foreign Affairs Council discusses all matters relating to the EU's foreign relations. Other important Councils are those on Economic and Financial Affairs (ECOFIN) and the Agriculture and Fisheries Council.

In line with the intergovernmental nature of the Council, member states take turns in presiding over Council meetings for a period of six months. In this period the country assumes the so-called *Presidency* of the European Union. The member state in question chairs all the Council meetings and those of the bodies that prepare them. The only exception is the Foreign Affairs Council which is always chaired by the Union's High Representative.

Member states can use the presidency to set the agenda of the Council and focus on specific priorities, but their room for manoeuvre is limited. First, most of the work of the Council consists of debating and deciding on legislation in progress, the workload of which is largely decided by the Commission, which initiates most legislation. Second, external events – such as a global financial crisis – may seriously upset any new initiatives a member state might want to

launch. Third, experience shows successful Presidencies are those where member states have sought to facilitate rather than dominate Council meetings, because such an attitude will usually lead to concrete results. This underlines the EU's decision-making culture which values small, incremental steps over far-reaching and too ambitious plans that will never be able to take root in the mere six months of a country's presidency.

Just as is the case in national political systems, most of the Council's work is prepared at the administrative level by civil servants who debate, discuss, negotiate and decide upon the bulk of issues on the basis of mandates from their governments. There is an elaborate system of around 250 working parties in which specialists from the member states hammer out every detail of a proposed policy.

It is only after deliberations in these forums that proposals find their way to the **Committee of Permanent Representatives**

(Coreper). The EU's permanent representatives meet in Coreper II and discuss all political, financial and foreign policy issues. More technical matters in specific policy areas are discussed in Coreper I, which is attended by the deputy permanent representatives of the member states. Finally, in some policy areas the meetings of the Council are prepared by special committees, such as the Special Committee on Agriculture (SCA) or the Political and Security Committee (known by its French acronym COPS).

Coreper: Committee of Permanent Representatives. Highest preparatory body for meetings of the Council and European Council.

The myriad system of preparatory bodies and groups helps resolve the bulk of decision-making issues that are on the table. As a result, in Council meetings about 80% of the decisions are so-called A-points that do not require any further deliberation and can be rubber-stamped by the ministers. This enables the Council to spend the rest of its time on so-called B points, for which agreement needs to be found at the highest level before definite decisions can be taken.

The Council's meetings involve more than deciding upon legislation. On the one hand, it is involved in thinking and deliberating about issues which might at some point in time become the subject of legislation; on the other hand, it takes executive decisions – for example, on extending sanctions against a certain country or on the continuation of external missions.

■ The Commission

The Commission is the third institution with executive tasks. It is different from the European Council and the Council because instead of representing member state interests it 'shall promote the general interest of the Union and take appropriate initiatives to that end' (Article 17 TEU). For this reason commissioners are supposed to do their work independently.

The Commission is headed by a College of Commissioners, which currently consists of twenty-eight members, including its president. They need to swear an oath before the Court of Justice promising 'neither to seek nor to take

instructions from any government or from any other body' and to work in the 'general interest of the Community'.

The oath in Luxembourg rounds off a long process which involves all of the EU's major institutions as well as the member state governments. This process starts with the nomination of a President of the Commission by the European Council, 'taking into account the elections to the European Parliament and after having held appropriate consultations'. This clause, which was added to the Lisbon Treaty, enabled the EP to actively nominate the candidate for Commission President in 2014 EP elections by having all major political groups nominate their own *Spitzenkandidat*, and agreeing to propose the candidate of the largest political group to the European Council. Following the formal nomination by the European Council, the EP subsequently needs to approve this candidate with a simple majority. After the president has been elected, each of the member states nominates a commissioner in consultation with the president-elect, who is in charge of allocating the portfolios amongst these nominees. The Council formally nominates the other members of the Commission, after which the European Parliament has to formally approve of the Commission as a whole. Having secured the approval of the EP, the European Council finally appoints the Commission on the basis of a qualified majority vote.

Tasks

The Commission is responsible for preparing, coordinating, managing and implementing EU policies. Its tasks fall into four categories:

- **Preparing and initiating legislation.** In all areas – except CFSP and some policies regarding police cooperation – the Commission has the monopoly to initiate legislation and send legislative proposals to the Council and EP. In order to properly carry out this task the Commission spends a considerable amount of time preparing legislative texts on the basis of evaluations of existing policies and via different types of consultations. Once the Commission has sent legislative proposals to the Council and EP it is responsible for managing the legislative process and negotiating adjustments with these two institutions.
- **Implementing policies.** The Commission's tasks as a daily executive involve administering the EU's budget and keeping track of revenues and expenses. It also manages programmes – for example, in the area of development aid. The Commission is authorized to make executive decisions in order to implement Community legislation, ranging from determining the warning texts on cigarette packaging to approving mergers between two companies on the basis of EU competition law.
- **External representation.** In many policy areas the Commission is the external representative for the EU. For example, in trade negotiations the EU is represented by the Commissioner for Trade who negotiates on behalf of the member states.

- **Guardian of the treaties.** The Commission monitors the correct application of Community law in the EU and the correct implementation of policies by the member states and private actors such as corporations. It can enforce a correct implementation of these laws by sending warnings, imposing fines or bringing a case before the Court of Justice (see Chapter 11 for further information on these actions).

Hence if we review the tasks of the Commission we see two different roles. The first three tasks – initiating, implementation and representation – are similar to those of any executive in governmental systems. The fourth task, however, is peculiar to the EU's unique institutional set-up. The Commission monitors the obligations of the member states and all other actors that are under the influence of EU law and is empowered to take legal action if they fail to live up to these obligations. Given all these tasks it is not surprising that many think the Commission is very powerful. Still, as Briefing 3.2 shows, the Commission is, just like any other EU institution, dependent upon other institutions to exercise many of these powers.

Organization

The structure of the Commission follows the classic hierarchical pattern of government bureaucracies. At the top of the hierarchy the College of Commissioners acts as the highest decision-making body and is politically accountable for its decisions to the European Parliament. It is chaired by a president who is responsible for the overall policy coordination and who is assisted in this by several commissioners acting as vice-presidents. The president also allocates the portfolios amongst the commissioners (with the exception of the CFSP portfolio which is reserved for the High Representative of the Union for Foreign Affairs and Security Policies). Most commissioners bring with them extensive experience as former (prime) ministers in their home countries. The weight and relevance of portfolios they get differs considerably, however. Highly coveted portfolios include the areas of competition, trade, internal market and agriculture, because on these terrains the EU has considerable powers. Concerns about the effectiveness of the Commission have kept pace with the increase in the number of member states and hence the number of commissioners. Over time this has resulted in giving the Commission president a greater say over the work of individual commissioners and empowering him or her to demand that commissioners resign if they fail in their duties. Moreover, in 2014 Jean-Claude Juncker, the new Commission president, decided to elevate the status of the Commission's vice-presidents and make them responsible for broad policy areas in an attempt to better coordinate policy-making.

Every commissioner has a small support staff in the form of a cabinet with around six members. The cabinet is responsible for managing the relations with fellow commissioners and with the administrative apparatus of the Commission. The Commission meets every Wednesday

Briefing 3.2

The power of the Commission

'The Commission is often attributed powers of mythic proportions, a bureaucratic monster whose sole purpose is to force its poor, unsuspecting citizens into a straitjacket of uniformity. [...] In reality this view greatly overestimates the power of the Princess's 22,500 loyal servants. They are by no means in control of everything and are frequently overwhelmed by the sheer magnitude of their task. Their motto is "enough is enough" and "too much" is definitely to be avoided at all costs. They have neither an army, nor a police force at their disposal and live in a world made exclusively of paper. True, they do have considerable influence on a number of economic and political matters, allowing them to affect the daily comings and goings of some 500 million European citizens. But they can rarely dictate binding legislation.'

The Princess opens the dance, moving gracefully to the centre of the floor, in the hope that her Ministers and her Members of Parliament will follow. Sadly, this is not always the case. More often than not, the Princess trips over their outstretched feet. She assumes the general public admires her unreservedly, but in this she is gravely mistaken. Her aim is the unification of Europe, whether the public wants it or not. And often, the public does not want it at all! For this reason, she sometimes dreams of a more grateful public, and she despairs when she realises that this is never going to happen.'

Source: Derk-Jan Eppink, Life of a European Mandarin: Inside the Commission (Lannoo, 2007: 11–12).

morning and deliberates behind closed doors. The Wednesday meetings of the Commission are prepared on Mondays by the heads of the cabinets of the commissioners (so-called chefs' meetings), enabling the commissioners to focus on those topics that cannot be resolved there. Decisions are usually made on the basis of consensus, but any commissioner can ask for a vote in which case a simple majority suffices to adopt a decision. Only about 2% of Commission decisions are actually made during these meetings. Others are made through a written procedure or delegated to individual commissioners.

The Commission bureaucracy consists of forty departments in the form of directorates-general which focus on specific policy areas (environment, competition) and services (communication, translation, budget). The departments are led by a director-general who oversees the activities of several directorates which are further subdivided into units. All in all the Commission staff numbers around 25,000 employees. Commission officials are selected via a highly competitive procedure (the *concours*) consisting of several examinations. When successful the candidates will be placed on a reserve list, from which the departments select their personnel.

Briefing 3.3

A handful of presidents

The EU abounds with presidents. In fact all of the EU's institutions are chaired by a president. The European Council, the EP, the Court, the ECB: all of them have a president who heads their respective institution. In addition to these presidents, institutions such as the Commission and the EP are also very generous in appointing a string of vice-presidents. Finally, to make life even more complicated there is also the figure of the *Presidency of the Union*, which is the rotating chairmanship of the Council by the member states.

With all these presidents around it should not be surprising that major events in the EU usually feature several of them. Take, for example, the formal taking up of the presidency by a member state every half year. By now such an event features the President of the European Council, the President of the Commission as well as the prime minister of the country assuming the Presidency of the Union. With such a crowded stage it is often difficult to address general questions from the media. Out of respect for the other's presidential status, none of them wants to be the first to answer, often resulting in a comedy of mutual deferrals until at last one of the presidents dares to pick up the tab.

■ The European Parliament

On its website the European Parliament prides itself as the 'only supranational institution whose members are democratically elected by direct universal suffrage'. Its 751 members are elected for a fixed term of five years in nationally administered elections. The number of seats per member state is related to the population using a so-called degressively proportional formula, with a guaranteed minimum of six seats for the smallest member state (Malta, one seat per 70,000 inhabitants) and a maximum of ninety-six for the largest member state (Germany, one seat per 840,000 inhabitants).

European Parliament elections are essentially fought between national parties in each of the member states and are often dominated by national issues (something which we discuss in detail in Chapter 5). Hence political parties in the EP are organized not according to nationality but along ideological lines. In the EP members of different national parties sit together in political groups on the basis of these ideological affinities. Currently there are seven political groups representing the major ideological viewpoints such as the Christian Democrats, Social Democrats and Liberals (these groups are discussed in detail in Chapter 7).

Member states have considerable leeway in organizing and administering the elections as long as they use a system of proportional representation in allocating the seats. As a result, national idiosyncrasies find their way into the

EP elections as well, resulting, for example, in different minimum age requirements for candidates (from eighteen in most member states to twenty-five in Italy), nomination requirements (by political parties, or by a specified number of individual citizens) and the day of election (weekdays in the Netherlands and the UK, Sundays in other countries).

Powers

The powers of the EP can be divided into four categories:

- budgetary powers;
- legislative powers;
- scrutiny of the executive;
- appointment and dismissal of the Commission.

Budgetary powers

While the Treaty of Rome already involved the EP in drawing up the Community's budget, it would be 1970 before it received the right to approve it. For a long time the EP only had a say on a limited number of budget categories, but since the Lisbon Treaty it has been able to modify any expenditures as long as it stays within the bounds of the so-called multi-annual framework. The EP also discharges the Commission on a yearly basis for its management of the budget.

Legislative powers

Ever since the beginning of the ECSC, the Parliamentary Assembly – as the EP's precursor was called – had been given advisory powers on legislative issues. The launch of the Single European Act in 1985 for the first time granted the EP real legislative powers through the introduction of the *assent procedure* (giving it only the right to approve or reject a proposal) and the *cooperation procedure* (allowing it to suggest modifications before the Council cast a definitive vote). The 1992 Treaty of Maastricht set the EP on an equal footing with the Council by introducing co-decision.

In a co-decision procedure both the Council and the EP need to agree on legislation proposed by the Commission. Both the Council and the EP can propose amendments to the proposal. Co-decision initially applied to fifteen policy fields (such as internal market, services, environment), and was gradually extended to cover more and more areas. Under the Lisbon Treaty the procedure now covers eighty-five legal bases and applies to more than 95% of Community legislation. For this reason it is now called the *ordinary legislative procedure*. It will be further explained in Chapter 4.

The EP does not have the right to initiate legislation – something which is the Commission's prerogative. However, through the adoption of its own initiative reports, motions for resolutions and written declarations it can press the Commission to take action on a certain policy issue. Since the Treaty of Maastricht the EP has also obtained the right to formally demand that the

Commission submit legislative proposals ‘on matters on which it considers that a union act is required for the purpose of implementing the treaties’ (Article 225 TFEU). The Commission does not have the obligation to yield to those demands, but if it does not do so, it has to provide an explanation.

Scrutiny of the executive

The EP has several means to scrutinize the behaviour of the EU’s executive institutions. First, the EP has the right to ask for and receive information, by submitting written or oral questions to the Commission, Council and European Council. The right to ask for information thus provides a first way to keep these executive bodies accountable and is used quite frequently. In 2013 the EP submitted more than 12,000 written questions to the Commission and the other institutions, a number that has been steadily rising over the years.

A second tool of scrutiny concerns the EP’s right to set up temporary commissions of inquiry to investigate ‘contraventions or maladministration in the implementation of Union law’ (Article 226 TFEU). These committees work as fact-finding missions in all those cases where the EP feels that it has been insufficiently informed about certain developments. The EP has set up such committees to investigate things as diverse as the existence of the espionage network ECHELON, and organized crime, corruption and money laundering in the EU. While the Commission, Council and member states are to provide all relevant information upon request, the EP ultimately depends upon the willingness of these actors to cooperate. Information may be withheld because of considerations of secrecy or national security and witnesses cannot be forced to appear at hearings.

Third, the EP is able to submit cases to the Court of Justice. The EP can challenge decisions when it believes that they have been made on the wrong legal basis. In 2006 the EP challenged a Council decision on providing guarantees to the European Investment Bank, because its treaty basis – economic cooperation – only gave the EP a consultative role. The EP successfully argued that the decision also involved development cooperation, and hence required a co-decision procedure, giving it a much larger say in the decision-making process. In 2010 the EP challenged the legality of a unilateral decision by the Council on allowing the use of force as part of the surveillance of the EU’s external sea borders, resulting in its annulment by the Court in 2012. The Court agreed with the EP that the Council should have involved the EP as a co-legislator on this issue.

Appointment and dismissal of the Commission

Above we outlined that the EP has the right to approve the President of the Commission and needs to approve the full Commission before they can take office. Over time the EP has become more assertive in the way it has used these rights. Since 1995 it has made use of public hearings to scrutinize the candidates, whilst from 1999 onwards the terms of the Commission were aligned

with those of the EP, enabling it to hold these hearings right after the EP elections. In the run-up to these hearings candidates have to submit testimonials on their professional experience, their outlook on the EU and on their portfolio. The hearings for the Barroso I Commission in 2004 were the first to lead to the replacement of one of the candidate commissioners, as a result of closer scrutiny by the EP. The EP committee on Justice and Liberty disapproved of the candidature of the designated Commissioner for Justice, Freedom and Security – the Italian Rocco Buttiglione – because of his views on homosexuality. After it became clear that the EP would withhold its vote of consent, Italy was forced to come up with another candidate. The replacement of Buttiglione was accompanied by a reshuffling of some of the portfolios to achieve a better match between commissioners and their policy responsibilities. This pattern was repeated during the hearings of subsequent Commissions, in 2009 and 2014: in both instances one of the candidates did not survive parliamentary scrutiny and had to be replaced.

In the run-up to the 2014 EP elections the EP became also more assertive in the selection of the candidate for Commission president, by having each political group put forward a candidate and agreeing to nominate the candidate of the winning political group as the preferred Commission president. This arrangement was the result of a rather expansive reading of the treaty provision that requires the European Council to take account of the outcome of the EP elections when nominating the Commission president. It was only after the EP elections that the government leaders discovered that by agreeing to this course of action, they in fact had given the EP the power to actively propose the candidate for Commission president.

In addition to having the power to approve the College of Commissioners, the EP also has the ability to dismiss the College. The procedure to do this is quite demanding. First, a motion of censure needs to be tabled, after which at least three days need to pass before it can be voted upon. The adoption of the motion requires at least two-thirds of the votes, and the votes in favour of dismissal need to represent at least half of the members of the EP. Hence a double majority is required to dismiss the full Commission.

Aside from these procedural hurdles, the most important hurdle for dismissal of the Commission is the fact that the EP has to send away the full Commission. This means that in practice only a severely malfunctioning Commission will be disapproved of to such an extent that a double majority will be obtained. It should not be a surprise that only seven motions of censure have been tabled since 1972 and none of them has been adopted. Still, one of these motions succeeded in getting the Commission to resign. In 1999 the Santer Commission stepped down following allegations of financial mismanagement. When it became clear that the motion of censure would obtain the double majority if tabled, the College did not await the actual vote but resigned beforehand. This event is another indication of the EP's assertiveness in making the most of its powers to appoint and dismiss the Commission.

Controversy 3.1

Should the European Parliament elect all the members of the Commission?

While the EP has some impact on appointing the Commission, its influence is not comparable to that of legislatures in most of its member states which have a parliamentary system. In these systems the government emerges from parliament and is fully and solely dependent upon its support to stay in power. The advantage of this model is that this allows citizens to indirectly affect the composition of the executive via its votes in parliamentary elections. As a result the political preferences of voters will ultimately be reflected in the composition of the cabinet.

Some scholars such as British political scientist Simon Hix have suggested that the EU should follow this model when it comes to the composition of its core executive: the Commission. Hence, they applaud the increased involvement of the EP in selecting the Commission president and the de facto right of the EP to veto any candidates it finds unsuitable for the job. As a next step, one could envision giving the EP the possibility to nominate all commissioners as well as empower it to dismiss them, just as national parliaments can send away individual ministers. What are the advantages and disadvantages of this increased dependence of the Commission on the EP? How would it affect the institutional balance that we have outlined in this chapter?

Source: Simon Hix, *What's Wrong with the European Union and How to Fix It* (Polity, 2009).

In order to better grasp the role of the EP in the institutional framework Table 3.3 summarizes its tasks and compares it to those of national parliaments. In other words: how do the EP's powers compare to those of a typical parliament (in the case of bicameral systems, the lower house) in one of the member states? (Obviously there may be slight deviations from the table in some countries, but it gives the most common features of the practices in the EU member states.)

The table reveals that the EP's powers are similar to, but in all cases less extensive than, those of national parliaments. There are two critical differences. First, unlike national parliaments the EP does not have the right to initiate legislation. Second, the EU executive is not fully accountable to the EP because the Council and European Council have an independent existence.

Organization

The EP is autonomous in organizing its work and has established its own Rules of Procedure which provide a detailed overview of its organizational structure

Table 3.3 Comparing the powers of the EP and national parliaments

	European Parliament	Lower house in parliamentary systems
Legislative and budgetary powers	<ul style="list-style-type: none"> • No right to initiate legislation • Can modify Community legislation 	<ul style="list-style-type: none"> • Right to initiate legislation • Can modify all legislation
Scrutiny of the executive	<ul style="list-style-type: none"> • Has limited say over treaty revisions • Can submit oral and written questions • Can conduct investigations but has no legal means to enforce cooperation 	<ul style="list-style-type: none"> • Needs to approve changes to the constitution • Can submit oral and written questions • Can conduct parliamentary enquiries and summon witnesses to be heard under oath
Appointment and dismissal of the executive	<ul style="list-style-type: none"> • Elects the Commission president on proposal of the European Council and approves the College of Commissioners as a whole. Does not determine the composition of the Council or European Council • Can dismiss the College of Commissioners (not individual commissioners) requiring a two-thirds majority of the votes. Cannot dismiss the Council or European Council 	<ul style="list-style-type: none"> • Cabinet emerges from parliament and depends upon parliamentary support • Can dismiss the government and individual cabinet members through a simple majority vote

and its *modus operandi*. Its internal organization strongly resembles that of national parliaments. A paramount feature of this is the division of labour and specialization via specialized **parliamentary committees**.

Parliamentary committee: subdivision of Parliament dealing with specific policy areas. Prepares and debates proposals before sending them to the full, plenary Parliament for final decision-making.

In addition to meeting in plenary, subgroups of the EP meet on a much more regular basis in one of these committees. Hence, while the media tend to favour pictures of the plenary chambers of the EP in Brussels or Strasbourg,

most of the work of the EP is actually done in one of the countless smaller meeting rooms that are rarely featured in newscasts.

Currently the EP has twenty standing committees each focusing on a specific policy area and which are identified by their French acronyms – such as PECH for fisheries and JURI for legal affairs. The committees bear primary responsibility for all the legislative groundwork in their respective policy areas. Committees range in size between twenty-five and seventy-one members and their political composition should reflect that of the plenary Parliament, with chairmanships being distributed according to the size of the political groups.

Briefing 3.4

Draft agenda of the EP Committee on Foreign Affairs

Committee on Foreign Affairs (AFET)

Meeting Monday 31 March 2014, 15.00–19.30

Tuesday 1 April 2014, 9.00–12.30

Brussels

1. Adoption of agenda
2. Chair's announcements
3. Approval of minutes of meetings of 10–11 February 2014, 17 February 2014, 27 February, 2014, 3 March 2014, 10 March 2014, and 17–18 March 2014
4. Analysis on the Egyptian constitution, the constitutional processes in Egypt and Tunisia and of the constitution development in Libya
5. Exchange of views with Fathallah Sijilmassi, Secretary General of the Union for the Mediterranean.

*** *Electronic vote* ***

6. EU – Albania: Protocol to the Stabilisation and Association Agreement (accession of the Republic of Croatia) *Rapporteur: Nikola Vuljanić (GUE/NGL)* *Responsible: AFET – Opinions: INTA, AGRI*
7. Framework Agreement between the EU and its Member States, of the one part, and the Republic of Korea, of the other part *Rapporteur: Norica Nicolai (ALDE)* *Responsible: AFET – Opinions: INTA – Robert Sturdy (ECR)*
8. EU strategy towards Iran *Rapporteur: María Muñiz De Urquiza (S&D)* *Responsible: AFET*
9. EU foreign policy in a world of cultural and religious differences *Rapporteur: Marietta Giannakou (PPE)* *Responsible: AFET*
*** *End of electronic vote* ***
10. Exchange of views with a delegation from the Eerste Kamer of the Kingdom of the Netherlands on EU-Russia relations and the Eastern Partnership
11. Exchange of views with Štefan Füle, European Commissioner for Enlargement and European Neighbourhood Policy, on the state of play of the ENP and on the progress reports
12. Public hearing on the political and economic situation in Belarus (see separate programme)
13. Exchange of views with Nabil Fahmi, Minister of Foreign Affairs of Egypt, on the current situation in Egypt
14. Exchange of views with Greek Foreign Minister Evangelos Venizelos on maritime security (to be confirmed)
15. Presentation of the final report on the monitoring of journalists trials in Turkey by the ad-hoc delegation of the European Parliament
16. Any other business
17. Date of next meeting

Briefing 3.4 shows a draft agenda of one committee and underlines that the first and foremost of the committee's activities consists of debating legislative proposals. Depending upon the type of legislation such debates may in fact

Rapporteur: Member of Parliament responsible for summarizing a committee's opinion and its modification proposals on a specific piece of legislation.

involve several committees. For every piece of legislation one of the committee's members is appointed as a **rapporteur**. Obviously some legislative dossiers are much more prestigious and important than others. Securing those rapporteurships is one of the most challenging tasks of the different political groups and often generates enormous strife between and within them. In order to distribute these positions fairly each political group is allocated a number of points based upon its size in the EP. In a kind of auction the rapporteurships are awarded to the group willing to bid the highest number of points.

The rapporteur's task is to summarize the committee's opinion and consolidate all the possible amendments in a draft report. In case legislation touches upon the work of different committees, one committee will be assigned the leading role and incorporate the opinions of other committees in its final report. It is only after the committee has agreed on the rapporteur's draft report that it is submitted to the plenary Parliament and votes are taken on all the amendments.

As Briefing 3.4 attests there is more to committee work than debating legislation, however. In principle committees can discuss and deliberate on any issue they deem to be important for their policy area. Such debates may involve hearing representatives of the Council, Commission or any other experts as the sample agenda shows. In addition to being members of committees, Members of the European Parliament (MEPs) may also be part of one or more of the EP's delegations. These delegations maintain contacts with the parliaments of other countries, including those of candidate member states.

The EP is the only parliament in the world that has multiple seats. Its official seat is in Strasbourg where it has to meet in plenary session twelve times a year. Most of its work is done in Brussels, however, where it holds additional plenary sessions, and MEPs meet in committees and political groups. While the Parliament itself favours Brussels as its sole location, both France – hosting the EP's seat in Strasbourg – and Luxembourg – which hosts the Parliament's secretariat – have vetoed such a move for obvious reasons. The location of the Strasbourg seat is now enshrined in the Treaty and it is unlikely that France will ever accept a treaty revision that would abolish it. The result is a monthly travelling circus of members, support staff and translators, costing the EU an estimated €200 million a year.

■ The Court of Justice

While the EU's executive and legislative powers are spread over different institutions, judicial powers in the EU are clearly allocated to one institution: the Court of Justice (CJ). In that sense the Court – which in everyday parlance is

often also called the European Court of Justice (ECJ) – can be considered as the EU's judicial branch. Like any court in a democratic political system, the Court and its judges enjoy full independence in order to properly carry out their work. The Court's judges are 'appointed by common accord of the governments of the Member States' (Article 19 TEU). All candidates are reviewed by a panel consisting of judges from the Court as well as legal experts from the member states. Judges normally have considerable judicial experience in their member state, including their country's highest court, or are highly regarded legal scholars with an excellent track record in academia. They are appointed for a renewable term of six years.

Tasks

While the Court concerns itself with a quite diverse set of tasks, there are three main areas of jurisdiction that form the core of its activities:

- **Reviewing the legality of acts.** The Court is allowed to assess whether the activities of the EU's institutions have been based on the proper judicial basis and carried out using the appropriate procedures (Article 261 TFEU). This is one of the classic tasks of any court. Member states, EP, Council and Commission are all allowed to bring cases before the Court – called **actions for annulment** – if they believe any of the institutions has not acted in accordance with EU law (the section on the EP above gives two examples of these types of cases). Natural (citizens) or legal persons (corporations, associations) are also allowed to submit cases but they have to show that they have a direct interest in the case (*locus standi*).
- **Establishing infringements.** If member states fail 'to fulfil an obligation under the Treaties' (Article 258 TFEU) the Commission is allowed to bring a case before the Court. The Commission will ask the Court to formally establish that a member state has not acted in accordance with EU law. If the Court agrees, it will rule that the member state has to remedy the error. If the member state does not follow up on the Court's ruling, another case can be brought before the Court and fines may be imposed. Member states are also allowed to start these **infringement procedures** against other member states (see Chapter 11 for a detailed overview of this procedure).
- **Giving preliminary rulings.** The third task of the Court is to advise courts in the member states on cases which touch upon EU law. The principles of supremacy and direct effect require courts in the member states to apply EU law in all relevant cases. In those cases where they feel uncertain about the precise interpretation of EU law they can submit their case to the Court

Action for annulment: case brought before the Court of Justice in which an interested party asks the Court to declare a decision by any of the EU's institutions to be void.

Infringement procedure: legal procedure set in motion against a member state if it does not comply with EU legislation.

Preliminary ruling: binding interpretation on a matter of EU law delivered by the Court of Justice at the request of a member state court.

and ask it to give a **preliminary ruling** on the matter (Article 267 TFEU). The ruling is preliminary because the referring court will make the final judgment and has to incorporate

the Court's opinion in its ruling. Obviously, if it fails to do so, interested parties can appeal the ruling in higher level national courts or – if it concerns a ruling of the highest national court – start a case before the Court.

As far as EU law is concerned, the Court by now can be said to stand at the pinnacle of the EU's judicial order. Accordingly some scholars have compared its role to that of the US Supreme Court. There are, however, important limitations on the Court's powers. The Court has been excluded from some areas of EU policy-making. It cannot rule on acts issued in the area of CFSP, except when it concerns reviewing the legality of sanctions against persons or organizations. It also has limited jurisdiction in the areas of judicial cooperation in criminal matters and police cooperation.

Organization

The Court actually consists of three different courts:

- The Court of Justice forms the highest court. It deals with all references for preliminary rulings as well as infringement proceedings initiated by the Commission. It decides upon actions for annulment brought by member states against the EP or the Council. It rules in those very rare instances where any high-level EU appointee (commissioners, European Ombudsman, fellow judges) might have seriously breached their obligations. The Court also acts as an appeal court for cases on which the General Court (below) has ruled. The Court has twenty-eight judges (one per member state) and eleven advocates-general who assist the Court in its proceedings. These advocates-general, who are appointed in a similar manner to the judges, prepare the ground for the judges in cases that are particularly difficult. Their opinions are meant to provide the judges with a first take on the case at hand and are usually guiding for the final ruling.
- The General Court deals with direct actions brought by natural or legal persons seeking the annulment of acts as well as cases brought by member states against the Commission. It also handles issues of intellectual property and decides on a range of other cases. (Until the entry into force of the Treaty of Lisbon it was called Court of First Instance.) There are at least twenty-eight judges (one per member state).
- The Civil Service Tribunal deals with labour disputes between EU civil servants and their employer, the EU. The seven judges in this court issue rulings on all kinds of employment-related conflicts regarding salaries, promotions or lay-offs.

Court cases consist of a written and an oral part. The oral part of the procedure is open to the public. Deliberations of the judges take place behind closed

doors. If necessary, the uneven number of judges in each chamber ensures that it is always possible to take a definite vote on a ruling. The Court is located in Luxembourg where it employs some 2,100 people. As is the case with all of the EU's institutions, many employees are concerned with providing translations of documents.

■ The European Central Bank

In political systems central banks serve a variety of purposes: to issue a country's currency, act as a lender of last resort and implement monetary policies. The adoption of the Euro as the EU's single currency required the setting up of an EU-wide central bank that would take care of these tasks for the Eurozone. In 1998, one year before the introduction of the Euro, the European Central Bank (ECB) was established in order to serve this function. Together with the central banks of the Eurozone countries, the ECB constitutes the European System of Central Banks (ESCB).

The **Eurozone** consists of all member states that have adopted the Euro as their currency. The ministers of finance of the Eurozone countries form the **Eurogroup**, whilst the ECB and the national banks of the countries that have adopted the Euro are called the **Eurosystem**.

Tasks

- **Conducting the EU's monetary policy.** As the central bank for the Eurozone, the ECB has the monopoly to issue the Euro currency and decides on the Eurozone's monetary policy. Article 282 of the TFEU states that the primary objective of the ECB's monetary policy is to maintain price stability, while its policies should also support the general economic policies of the Union. Setting the interest rates at which commercial banks can borrow and deposit money at the ECB is the main tool for this.
- **Maintaining the financial stability of the Eurozone system.** As a result of its responsibility to provide for a smooth operation of payment systems, the ECB keeps track of the financial health of the Eurozone and its banks and other financial institutions. Together with the central banks of the member states it analyses the assets of the commercial banks and their capacity to withstand financial shocks. On the basis of this it can demand banks to take measures to remedy any unacceptable risks.
- **Conducting foreign exchange operations and maintaining the Eurozone's foreign reserves.** To ensure the liquidity and the stability of the Eurozone, the ECB may buy or sell foreign reserves. Most of these reserves are in the hands of the Eurozone members, but the ECB manages these in close coordination with national central banks.

Organization

The ECB's main decision-making body is the Governing Council, which consists of the members of the ECB's executive board and the governors of the banks of

the Eurozone countries. The president and the five members of the executive board are elected by the European Council for a non-renewable term of eight years. Just like the judges of the Court of Justice, these members are selected on the basis of their competence and expertise and are required to act independently.

The bank's governing council meets twice a month and decides every month on the key interest rates at which commercial banks can deposit or borrow money. The decision is always watched closely by financial markets as it guides all the interest rates that commercial parties will set in the money market. Decision-making takes place by simple majority vote, but most decisions are actually taken by consensus. Since the accession of Lithuania as the eighteenth Eurozone member, the voting rights of the bank governors have rotated on a monthly basis, with the countries with the five largest economies sharing four votes and the remaining countries sharing eleven votes. The secrecy of decision-making is highly prized because any sign of disagreement among the bank's board members would be likely to cause instability in the financial system. The advent of the financial crisis has increased the bank's role as a policy-maker and policy adviser, not only with respect to the management of the financial system, but also with respect to supervising the fiscal policies of the member states (see also Chapter 8). The president of the ECB participates in the meetings of the Eurogroup, comprised of the ministers of finance of the Eurozone countries. In addition to the powers with respect to monetary policies, it has a strong advisory role in determining the EU's budgetary and economic policies. The ECB is based in Frankfurt, Germany, and employs around 1,750 people.

■ Making sense of the institutional framework

At the start of this chapter we showed that the EU's institutional hardware is somewhat different to that of national political systems. This applies in particular to executive and legislative functions which are both *shared* between the different institutions. This means that the core policy-making functions in the EU are not in the hands of one institutional actor, but require cooperation and collaboration between different bodies that represent different interests. This complicated arrangement is very different from those found in national states which make use of presidential and parliamentary systems. Let us briefly point out why the EU does not fit either of these models.

On the one hand, the EU clearly is not organized along the lines of a presidential system. In these systems, such as the USA, executive power is vested in a single, unitary executive (the president), which derives its democratic legitimization via direct popular election. In the EU, however, executive tasks are distributed over the European Council, Council, and Commission, and none of them is directly elected.

The EU does not qualify as a parliamentary system either. In those systems, the executive emerges from the legislature, via the composition of a cabinet

that rests on majority support of parliament (this is the principle of parliamentary sovereignty). The executive can be forced to step down via a vote of no confidence.

It is clear that this constellation does not apply to the EU either. Two of the executive powers (European Council and Council) do not emerge from Parliament nor can they be dismissed by it. The third, the Commission, emerges as a result of a complex nomination process which involves not only the EP but also many other actors. This is clearly different from the principle of parliamentary sovereignty, which ultimately boils down to the idea that the legislature determines the composition of the executive. And while Parliament can send away the Commission, this is a difficult and demanding procedure that is not comparable to the one available to national parliaments.

Still, it is possible to characterize the EU's organizational philosophy using models that have been put forward to typify national political systems. Political scientist Arend Lijphart has pointed out that all democratic political systems essentially boil down to two different models of democracy. *Majoritarian* political systems seek to concentrate executive power and put relatively few constraints on its exercise. As the term indicates, these political systems value the ability to actually govern over the need to secure the consent of all interested parties. Hence, such systems give all executive power to the party that simply has the majority of votes, even if it is only a bare majority. The United Kingdom provides the most clear-cut example of such a political system.

Consensual political systems are based on a different philosophy. In these systems the institutions have been designed in such a way that they disperse power and restrain its use. For example, this is achieved by using a system of proportional representation which results in election outcomes where none of the political parties has a majority of the seats. Accordingly, the government will most of the time consist of coalitions that usually command a sizeable majority of the seats in parliament. Consensual systems put a strong emphasis on ensuring broad support for policies. Such systems usually also allow courts to review the legality of acts in order to further restrain the exercise of power. Consensual models are especially appropriate in political systems that are heterogeneous in terms of ethnicity, religion and language. Switzerland, with its many religions and languages, provides a good example.

If we have to characterize the EU it is clear that its system fits into the category of consensual political systems. This explains the EU's emphasis on balancing all relevant interests when making decisions. As we have outlined in this chapter the EU has an institutional configuration in which almost no decision can be taken by one institution on its own, but always needs to be approved by, confirmed by or negotiated with other institutions. A further restraint on the powers of the executive is achieved via the power of the Court to review these executive and legislative decisions.

In the next chapter we will gain further insight into this consensual nature of decision-making in the EU. As we will see there, many decisions not only require the assent of multiple institutions, but decision-making within

institutions often requires qualified majorities or even unanimity in order to protect the interests of all actors. And even if formal rules only prescribe a simple majority – such as was the case with the appointment of the EU president – actors will in many cases nevertheless strive for unanimity, and as such respect the culture of consensus which permeates the EU's institutional framework.

■ Summary

- The EU's institutional framework consists of seven institutions, each of which represents different interests and has been allocated executive, legislative, judicial and other powers (see Table 3.1 for an overview).
- Executive powers are exercised by the European Council and Council, which represent the member states, and the Commission and ECB, which represent the general interest of the Union. Legislative powers are in the hands of the Council, representing the member states, and the European Parliament, representing the citizens. Judicial powers are in the hands of the Court of Justice.
- The organizational structure of the EU's executive and legislative institutions is characterized by a horizontal and vertical division of labour. The Council, Commission and EP have organized themselves according to different policy sectors. In addition each of these institutions prepares and discusses policies at lower levels (in committees), allowing the top level to rubber-stamp most of the decisions and concentrate on unresolved issues.
- The division of labour between these different institutions cannot be readily compared to those of national political systems. The EU does not have a presidential or a parliamentary system because legislative and executive powers do not emanate solely from the people. Instead it can be better characterized as 'mixed government' or as 'a polity with many principals'.
- While the institutional hardware of the EU is unique, it is based upon a common model for organizing democratic systems: that of consensualism. It aims to disperse power and constrain the use of it.

Further reading

A good overall source on institutions is John Peterson and Michael Shackleton, *The Institutions of the European Union* (Oxford University Press, 2012). Further and more detailed insights on individual institutions can be found in Uwe Puetter, *The European Council and the Council: New Intergovernmentalism and Institutional Change* (Oxford, 2014), Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (John Harper, 2014) and Takis Tridimas, *The European Court of Justice and the EU Constitutional Order* (Hart, 2014). A highly recommended reflection on the EU's institutional evolution is Jan Zielonka, *Europe as Empire: The Nature of the Enlarged European Union* (Oxford, 2007).

Websites

- A useful gateway to all of the EU's institutions can be found at <http://europa.eu/about-eu/institutions-bodies>
- For a full overview of the organization and tasks of the different institutions it is indispensable to take a look at Title III of the Treaty on European Union as well as Part VI of the Treaty on the Functioning of the European Union. Both of them can be found at http://europa.eu/lisbon_treaty

Navigating the EU

On the website www.navigatingthe.eu you will find online exercises for this chapter.