



Complete EU Law: Text, Cases, and Materials (5th edn)

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Abstract

Titles in the Complete series combine extracts from a wide range of primary materials with clear explanatory text to provide readers with a complete introductory resource. This chapter discusses the official institutions of the EU, covering the composition, functions, and powers of the European Parliament; the Council of the European Union; the Commission; the Court of Justice of the European Union; the European Council; the European Central Bank; and the Court of Auditors. This chapter also briefly discusses the Economic and Social Committee and the Committee of the Regions; and addresses, where applicable, the immediate and potential impact of the Brexit referendum.

Keywords: Brexit, EU, institutional structure, European Parliament, Council of the European Union, European Commission, Court of Justice, European Council, European Central Bank, Court of Auditors

Key Points

By the end of this chapter, you should be able to:

- describe the composition and functions of the key institutions of the European Union (EU);
- appreciate the relative importance and power of these institutions, including the extent of the so-called democratic deficit; and
- be familiar with the role of the Court of Justice within the framework of European Union law.

Introduction

Let us start by posing a question: what do you know about the institutions in the European Union (EU)? You may answer in the following way: 'The institutions are based in Brussels. They sometimes make laws that interfere with people's lives. They have been known to make decisions that are ridiculous, for example the banning of abnormally shaped bananas.' 'Interfering' and 'remote' may be words that spring to mind and might indicate how the EU institutions have been or are perceived.

However you may view the EU, it is true to say that its institutions and the laws and policies which they produce have a direct impact on Member States, on businesses both within the EU and outside it, and on citizens both of the EU and of other countries. These laws and policies will be discussed in the other Chapters of this book, but by looking more closely at the institutions, you will gain an appreciation of their composition and functions. This in turn will help you to understand how much influence or power each institution has in relation to the decision-making process, which will be dealt with in Chapter 3.

The official EU institutions, which have been entrusted with carrying out the tasks of the EU, are listed in Article 13 of the EU Treaty (TEU).

Article 13 TEU

1. The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.

The Union's institutions shall be:

- the European Parliament,
- the European Council,
- the Council,
- the European Commission (hereinafter referred to as 'the Commission'),
- the Court of Justice of the European Union,
- the European Central Bank,
- the Court of Auditors.

2. Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation.

The EU does not strictly conform to the traditional separation-of-powers mode of State governance—that is, having a separate legislature, executive, and judiciary. The EU institutions have overlapping roles (see Figures 2.1 and 2.2 later in the chapter). For example, the Council and the Commission have the role of executive, but only the Commission has the right to initiate legislation, whilst it is the European Parliament, together with the Council, that has the primary role in the legislative decision-making process. Thus the institutions act as collectively, rather than independently, on behalf of the EU.

However, the EU nonetheless has a similar system of checks and balances to that associated with a more formal separation of powers. Each institution mentioned in Article 13 TEU must act within the scope of the powers conferred on it by the Treaties, and this principle of institutional balance ensures that one institution does not encroach on the powers of another. In Case 9/56 *Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community* [1957–58] ECR 133 the Court of Justice noted that ‘the balance of powers which is characteristic of the institutional structure of the Community’ [now the EU] was ‘a fundamental guarantee granted by the Treaty’ (at p 152 of the judgment).

Despite these checks and balances, the EU is often accused of lacking democratic legitimacy—the ‘democratic deficit’ argument. The individual EU Member States (and of course many other countries) are parliamentary democracies, in which dissatisfaction with those responsible for the direction of the country, its policies, and its laws, can be expressed via the ballot box. The accusation is that EU citizens cannot exert comparable influence on the EU institutions, and those institutions are not democratically accountable. A greater understanding of the relationships between the institutions and their links to the Member States will assist you in judging to what extent you consider the accusation of a democratic deficit existing to be legitimate.

2.1 The European Parliament

2.1.1 Composition

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The European Parliament has its official seat in the French city of Strasbourg and its administrative offices in Luxembourg, with certain sessions and committee meetings taking place in Brussels. Members of the European Parliament (MEPs) are directly elected for a term of five years by European citizens in the Member States using proportional representation (PR). They represent almost 450 million European citizens. Following the amendments made by the Treaty of Lisbon, the maximum number of MEPs is fixed at 750, plus the President. The European Council, with the Parliament’s consent, determines the number of MEPs and the seats allocated to Member States on the basis of population size and ‘degressive proportionality’ (MEPs representing the larger Member States by population will represent more people than the smaller States), no one State having more than 96 or fewer than six MEPs (Article 14 TEU). When the UK left the EU, some of its allocation of MEPs was redistributed to other Member States in order to reflect changes in national populations, but the overall number of MEPs was reduced—which will make it easier to accommodate a future expansion if and when more States join the EU (see 1.6 on enlargement of EU membership). The current allocation is shown in Table 2.1.

2. The official institutions of the European Union

Table 2.1 Number of MEPs per Member State (from July 2014)

Member State	Number of MEPs
Germany	96
France	79
Italy	76
Spain	59
Poland	52
Romania	33
Netherlands	29
Belgium; Czech Republic; Greece; Hungary; Portugal; Sweden	21 (each)
Austria	19
Bulgaria	17
Denmark; Finland; Slovakia	14 (each)
Ireland	13
Croatia	12
Lithuania	11
Latvia; Slovenia	8 (each)
Estonia	7
Cyprus; Luxembourg; Malta	6 (each)

2.1.2 Functions and powers

As a parliament, the primary function of the European Parliament is that of a forum for debate and adoption (or rejection) of legislation. However, it enjoys additional functions and powers.

2.1.2.1 Legislative functions and powers

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The European Parliament's role within the decision-making institutional framework has changed dramatically through the amending Treaties. Originally, its participation in the legislative process was purely advisory and consultative. With the amending Treaties, the Parliament's powers in this regard have increased. Notably, where the ordinary legislative procedure (OLP) applies (see further 3.5.1), as is now the case in most policy areas, the European Parliament's approval must be obtained before legislation can be adopted. The European Parliament may also request the Commission to submit such legislative proposals as the Parliament considers necessary.

Cross-Reference

See legislative procedures at 3.5.

This greater involvement of the European Parliament in the legislative process has gone some way towards alleviating allegations of a democratic deficit in the EU. As the only directly elected body of the EU, it is important in both perception and reality that the European Parliament, and therefore 'the people', have a say.

Thinking Point

Return to Chapter 1, which looks at the founding and amending Treaties. Can you chart the development of the greater involvement of the European Parliament in legislative matters? To what extent do you consider this important in ensuring that there is no democratic deficit in the EU?

2.1.2.2 Budgetary responsibilities

Again, originally the European Parliament's role in the EU budget was one of consultation only. However, since the Treaty of Lisbon, the European Parliament has an equal right with the Council to adopt the EU budget (which is drafted by the European Commission) (Article 314 TFEU).

2.1.2.3 Supervision of the executive

The European Parliament exerts control over the executive in a number of ways. The appointment of the entire Commission, and of its President, is subject to approval by the European Parliament (Article 17(7) TFEU). Furthermore, the Parliament has the power to require the whole Commission to resign from office, as Article 234 TFEU explains.

Article 234 TFEU

If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote.

If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the component Members of the European Parliament, the members of the Commission shall resign as a body and the High Representative of the Union for Foreign Affairs and Security Policy shall resign from duties that he or she carries out in the Commission. They shall remain in office and continue to deal with current business until they are replaced in accordance with Article 17 of the Treaty on European Union. In this case, the term of office of the members of the Commission appointed to replace them shall expire on the date on which the term of office of the members of the Commission obliged to resign as a body would have expired.

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This is an exceptional sanction that could be quite damaging to the EU, and has never been applied. Note that it does not extend to the removal of individual Commissioners or the President of the Commission.

The Parliament also has the power to question the Commission and the Council in writing or orally (Article 230 TFEU), and the right to discuss the Commission's annual general reports (Article 233 TFEU) and other reports submitted to it.

Thinking Point

How much control do you think the European Parliament has over the other institutions of the EU? Given that the Parliament is a directly elected body, do you think this impacts on the 'democratic legitimacy' of those institutions that are not directly elected or are appointed? (You may want to return to this point once you have worked through the chapter.)

From 1992 the European Parliament has had the power to elect a European Ombudsman to receive complaints from EU citizens, and other individuals and businesses based within the EU (Article 228 TFEU). The Ombudsman submits an annual report to the Parliament, as well as submitting individual reports on complaints which have been investigated.

2.1.3 Voting

The European Parliament takes decisions by an absolute majority of votes cast (Article 231 TFEU). A quorum of one-third of all MEPs must be present in order for the vote to be valid (Rule 178(2) of the European Parliament 2019–24 Rules of Procedure).

2.2 The Council of the European Union

You will find references to the Council under several different names. It used to be known as ‘the Council of Ministers’, but was officially renamed by the TEU (1992) (see 1.13) as ‘the Council of the European Union’. It is, however, generally referred to simply as ‘the Council’. To add to the confusion a little more, you may also encounter it being referred to informally as the EU Council, but the danger of this is that it makes it likely to be confused with the European Council—which, as explained at 2.5, is a completely different institution. Such confusion of terminology may also add to the public perception of unnecessary complexity within the EU institutions.

Note

The Council of the European Union should not be confused with the European Council (see 2.5), which is another EU institution—or with the Council of Europe (see 9.1), an institution that has nothing to do with the EU at all.

2.2.1 Composition

The Council comprises ministers of the Member States, its membership changing according to the matter under discussion. So, for instance, if agricultural matters are under consideration, the Council comprises national ministers of agriculture. There are ten different configurations, with the General Affairs Council which is responsible for cross-cutting policy areas such as EU enlargement (see 1.6) ensuring consistency in the work of the different Council configurations. Each configuration is chaired by the relevant minister of the Member State holding the Presidency—except for the Foreign Affairs Council which is chaired by the High Representative of the Union for Foreign Affairs and Security Policy (HR) (see further 2.5.2.3). Council members represent national interests, in contrast to members of the Commission, who are required to act independently of national governments. Thus it is within the Council that national interests are most strongly represented. For this reason, it lacks the cohesion of other EU institutions and could legitimately be said not to be as ‘European’ as the others.


In considering the ‘democratic deficit’ argument and the Council, it should be noted that the relevant ministers that compose the Council are actually elected in national elections. As such, they can be said to have a democratic mandate. However, arguably, their democratic legitimacy does not extend to their work in the Council, since they are not directly elected to this role. This position can be contrasted with Members of the European Parliament (MEPs).

2.2.2 Functions and powers

Article 16 TEU

1. The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Treaties.

[...]

p. 35 The Council has final power of decision on the adoption of secondary legislation, exercised jointly with the European Parliament where the ordinary legislative procedure (OLP) applies (explained at 3.5.1), or alone where the special legislative procedure (SLP) (explained at 3.5.2) applies. It also has the power of decision on the adoption of the EU's budget, again exercised jointly with the European Parliament. The Council can generally act only on a Commission  proposal, but it can require the Commission to frame draft legislation in any specific area. The Council also has the power to enact legislation in specific areas, for example provisions for the harmonization of legislation concerning indirect taxes (Article 113 TFEU).

2.2.3 Voting

Voting in the Council is by unanimity, simple majority, or qualified majority, depending on the Treaty requirement for the particular matter. When unanimity is required, it can be difficult to press ahead with legislation, as any one State has power of veto (power to block the legislation). For that reason, the amending Treaties (see Chapter 1) have continued to extend qualified majority voting (QMV) to more areas of EU activity.

Unanimous voting continues to apply in certain sensitive areas, such as the common security and defence policy, taxation, and social security. Simple majority voting is rarely used, but Treaty amendments have gradually extended the use of QMV, which is required for the adoption of legislation in many areas, including most internal market measures and other areas such as the environment, agriculture, competition, consumer protection, asylum, immigration, and judicial cooperation in civil and criminal matters.

2.2.3.1 The QMV system prior to 1 November 2014

Qualified majority voting used to operate simply as a system of weighted votes. The larger the Member State, the more votes it held, ranging from 29 (for Germany, France, and the UK) down to three (for Malta). Of a total of 352 votes distributed across the Member States, a qualified majority comprised 260 votes, provided that a majority of Member States had voted in favour (for Commission proposals) or two-thirds had voted in favour (in other cases). Additionally, a Member State could ask for confirmation that the votes in favour represented at least 62 per cent of the EU's total population. If not, the legislation could not be adopted.

2.2.3.2 The QMV system from 1 November 2014

Under Treaty of Lisbon amendments, the system was simplified significantly. Now, Article 238 TFEU provides that a qualified majority—known also as a double majority under a system of double majority voting (DMV)—is reached when at least 55 per cent of Member States agree to a proposal (15 out of 27 Member States) and when these States represent at least 65 per cent of the EU population. Where the proposal does not emanate from the Commission, a qualified majority is only reached when at least 72 per cent of Member States agree to a proposal (again representing at least 65 per cent of the EU population). A blocking minority must include at least four Member States representing over 35 per cent of the EU's population, failing which a qualified majority will be deemed attained.

Thinking Point

Does this system of QMV seem equitable to all? What problems can you see with such a system?

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Under the pre-2014 system, QMV was based on distributing votes according to the political, economic, and demographic 'weight' of each Member State. Over the years, the definition of qualified majority and the allocation of votes have been hotly disputed, the smaller States fearing domination by the larger States and the latter often claiming that the smaller States were overrepresented. The new post-Lisbon system is based more closely on the size of the population of a Member State, and in this way is both more equitable and more democratic.

The system of QMV has, however, been subject to much criticism. It means that it is, of course, possible for the Council to impose policy on Member States even where the representative from the Member State did not vote for it. Qualified majority voting therefore creates a particular dynamic in Council decision-making. Ministers representing different national interests across different policy areas frequently seek to 'trade' their agreement in one area in return for support from other Member States in other areas.

2.2.4 Presidency of the Council

The Presidency of the Council is held by each Member State, in rotation for six months, working closely together in groups of three (trios). The trio sets long-term goals and prepares a common agenda determining the topics and major issues that will be addressed over an 18-month period. Within this wider programme, each of the three Member States sets out its own programme and priorities for its Presidency. It is often an opportunity for the Member State concerned to make its mark on the direction of the EU, EU policy, and legislation. The Presidency plans and chairs most meetings of the Council and, in so doing, seeks to deliver results that often require compromise proposals and negotiating agreements. To this end, it is important that the Presidency acts as an honest, impartial broker.

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The Presidency also represents the Council in its dealings with the other EU institutions, particularly the Commission and the Parliament.

However, to a large extent, its ability to do so is limited by existing projects and priorities.

Table 2.2 sets out the Member States to hold the Presidency up to 2030.

Table 2.2 Presidency of the Council of the European Union (2022–30)

Member State	Period	Year
France	January–June	2022
Czech Republic	July–December	2022
Sweden	January–June	2023
Spain	July–December	2023
Belgium	January–June	2024
Hungary	July–December	2024
Poland	January–June	2025
Denmark	July–December	2025
Cyprus	January–June	2026
Ireland	July–December	2026
Lithuania	January–June	2027
Greece	July–December	2027
Italy	January–June	2028
Latvia	July–December	2028
Luxembourg	January–June	2029
Netherlands	July–December	2029
Slovakia	January–June	2030
Malta	July–December	2030

2.2.5 COREPER

The Council's work is prepared by the Committee of Permanent Representatives (COREPER).

Article 16 TEU

[...]

7. A Committee of Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council.

[...]

COREPER is composed of representatives from each Member State, who scrutinize legislative proposals drafted by the Commission and help to set the agenda for Council meetings. The Council Secretariat provides administrative support (Article 240 TFEU).

- p. 37 ↪ COREPER is hugely important in ensuring the smooth running of the work of the Council. It ensures that important matters requiring Council discussion are identified (labelled 'category B'), and scheduled accordingly, whilst lesser matters are identified as such (labelled 'category A') and adopted without further discussion. Of course, even if the Council can claim democratic legitimacy by way of its members being indirectly elected as ministers in their own countries, the question of 'democratic deficit' is raised once more in relation to COREPER, whose members are appointed. In sifting through issues that require the attention of the Council (ie 'category B' issues), COREPER effectively acts as a decision-maker for those issues that COREPER itself considers to be straightforward.

Cross-Reference

See 1.18 on the Treaty of Lisbon.

2.3 The Commission

Detailed rules on the operation and organization of the European Commission are set out in the Rules of Procedure of the Commission (C(2000) 3614), OJ 2000 L308/26.

2.3.1 Composition and appointment

The Commission is the most 'European' and least nationalistic of the principal institutions, and it represents the interests of the EU.

- p. 38 ↪ The Commission is currently made up of 27 individual Commissioners, including the Commission President, one from each Member State, each appointed for a five-year period of office which runs concurrently with the five-year term of the European Parliament.

Although Article 17(5) TFEU states that from 2014 the number of Commissioners will correspond to two-thirds of the number of Member States unless the European Council decides otherwise, the original system of one Commissioner per Member State has so far been retained by the European Council.

The President of the Commission is appointed first. The procedure is set out in the first paragraph of Article 17(7) TEU. The remaining Commissioners are appointed after that, in accordance with the second and third paragraphs.

Article 17 TEU

[...]

7. Taking into account the elections to the European Parliament, and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, in accordance with the criteria set out in paragraph 3, second subparagraph, and paragraph 5, second subparagraph.

The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.

In considering the candidate for President, the European Council must take into account the elections to the European Parliament, and from 2014 onwards an even more direct link between those elections and the Commission President has been created, sometimes referred to as 'the Spitzenkandidaten process'. This process enables European political parties to propose candidates for the role of Commission President ahead of European Parliament elections, and the candidate of the largest party is then nominated by the European Council as the President of the Commission. This may address concerns of a democratic deficit since, through electing MEPs, the electorate also has a direct impact on who is appointed the head of the EU's executive (the Commission).

The powers of the President are detailed in Article 17(6) TEU; they lay down guidelines for the work of the Commission, appoint Commissioners to particular portfolios, and can require individual Commissioners to resign. Commissioners' portfolios cover policy areas such as trade, competition, environment, and fisheries.

p. 39 ↵ The Commissioners are chosen on the grounds of their general competence and European commitment from persons whose independence is beyond doubt (Article 17(3) TEU) (see also 2.3.4). The appointment procedure is set out in Article 17(7) TEU: Commissioners are nominated by their national governments, proposed as a body by the Council in agreement with the nominated President, approved by the European Parliament, and finally appointed by the European Council (see 2.5). The Commission is appointed for a renewable five-year term.

2.3.2 Voting

Commission decisions are normally taken by consensus because the Commissioners operate on the principle of collegiality. However, votes can take place, in which case decisions are taken by simple majority.

The principle of collegiality was explained by the Court of Justice in *Case 5/85 AKZO Chemie v Commission* [1986] ECR 2585.

Case 5/85 AKZO Chemie v Commission [1986] ECR 2585

30. ... 'The Commission shall act by a majority of the number of members ... A meeting of the Commission shall be valid only if the number of members laid down in its rules of procedure is present' [ie a quorum equal to a majority of the number of Members specified in the Treaty, under Article 7 of the Rules of Procedure]. The principle of collegiate responsibility thus laid is founded on the equal participation of the members of the Commission in the adoption of decisions and it follows from that principle, in particular, that decisions should be the subject of a collective deliberation and that all the members of the college of Commissioners bear collective responsibility on the political level for all decisions adopted.

As this judgment explains, the Commissioners are equals who deliberate as a college on an issue, and who are jointly responsible for the Commission's decisions and actions. Once a collective decision has been reached, this principle of collegiality means that all of the Commissioners must support this decision and have collective responsibility for it. Decisions are usually made during weekly Commission meetings, but may be made by a written procedure whereby the proposal is circulated in writing to all the Commissioners. Any amendments or reservations must be noted within a specified period and if no amendments or reservations are made, the proposal is tacitly adopted.

2.3.3 Functions and powers

Article 17 TEU makes clear the Commission's pivotal role in the integration process—namely, to 'promote the general interest of the Union'. In fulfilling this role, the Commission has a number of functions, which are set out as follows in Article 17(1) TEU.

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Article 17 TEU

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.

[...]

Review Question

Can you identify how each of the following four descriptions of the Commission could correspond with its functions listed in Article 17(1) TEU?

- Guardian of the Treaties
- Policy initiator
- Legislative power
- Executive power

Answer: There are four relatively common categorizations of the Commission's role.

Guardian of the Treaties

- Ensure the application of the Treaties and of measures adopted by the institutions pursuant to them.
- Oversee the application of EU law under the control of the Court of Justice of the European Union (CJEU).

Policy initiator

- Take appropriate initiatives to promote the general interest of the EU.
- Initiate the EU's annual and multiannual programming with a view to achieving inter-institutional agreements.

Legislative power

- Take appropriate initiatives to promote the general interest of the EU.

Executive power

- Execute the budget and manage programmes.
- Exercise coordinating, executive, and management functions.
- Representing the EU externally —with the exception of the Common Foreign and Security Policy (CFSP).

These four aspects of the Commission's role will now be examined in more detail.

2.3.3.1 Guardian of the Treaties

As 'Guardian of the Treaties' the Commission supervises and enforces compliance with EU law.

p. 41 ↺ This includes ensuring the correct implementation of EU law by Member States and taking enforcement proceedings where appropriate. For example, if a Member State has not transposed an EU Directive (see 3.4), the Commission can bring an enforcement action against that State under Article 258 TFEU.

Cross-Reference

For a discussion of Article 258 TFEU, see 7.1.

The Commission also has the power to bring proceedings against the other EU institutions under Article 263 TFEU for a failure to comply with EU law.

Supervision and enforcement is not limited to Member States and the EU institutions, but also includes business undertakings and individuals. For example, the Commission can take enforcement proceedings where undertakings or individuals are in breach of the competition provisions under the Treaty, such as where an agreement between undertakings has the effect of distorting trade (Article 101 TFEU) or an undertaking is abusing its dominant position in the market by charging a premium for its goods (Article 102 TFEU).

Cross-Reference

See Chapter 7 for a discussion of judicial review (Article 263 TFEU). See also Chapter 13 for a discussion of Article 101 TFEU and Chapter 14 for a discussion of Article 102 TFEU.

2.3.3.2 Policy initiator

The Commission plays an important role in developing EU policy and legislation. For example, the Commission has the right to initiate legislation and formulate proposals, and it has an annual work programme that contributes to the development of policy in general. It is not the only actor involved in agenda-setting in the EU, however, as Douglas-Scott observes.

S Douglas-Scott, *Constitutional Law of the European Union* (Harlow: Pearson, 2002), pp 62–3

[T]he Commission [has] considerable scope for developing new initiatives or pushing forward on-going debates. This can take a great variety of forms: the policy concerned might be general, spanning the whole framework of EC activity or quite detailed and sectoral in nature. Some important policy initiatives are taken as a result of decisions in the European Council and the high-profile nature of Council summits can be an important feature in supplying authority to Commission initiatives.

The Commission has described itself as ‘the driving force behind European integration’, but it might be thought that this is an inappropriate role for an unelected body. However, the Commission has the advantage of relatively long terms of office and the benefit of no direct political influence or constraints (unlike national government ministries) so, in fact, it can be quite well-placed to shape and manage policy. It also has better access to information than the Council or Parliament, being, as it has been described, ‘at the hub of numerous highly specialised policy networks of technical experts designing detailed regulations’.

The development of policy can be influenced by a wide range of factors and, as Douglas-Scott notes in the previous extract, the Commission is assisted by its contact with a wide range of interest groups and the two EU advisory groups—namely, the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) (both discussed at 2.8).

p. 42 **2.3.3.3 Legislative power**

The Commission has almost a monopoly right to initiate draft legislation, in particular under the ordinary legislative procedure (OLP) (see further 3.5.1). However, it is excluded from a number of policy areas where the Treaty specifically requires use of the special legislative procedure (SLP) (see further 3.5.2), for example in relation to police and judicial cooperation on criminal and on civil matters, and taxation. The SLP allows the Council to initiate legislation rather than the Commission.

Cross-Reference

For a detailed discussion on the legislative procedures, see 3.5.

From 1 April 2012, EU citizens have had the right to participate directly in the development of EU policy, in that they can petition the Commission to make a legislative proposal. This is known as the European citizens' initiative and is found in Article 11(4) TEU.

Article 11 TEU

[...]

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

[...]

Apart from having the right of initiative, the Commission will also amend draft legislation where either the European Parliament or Council, or both, have not agreed to the draft originally presented to them.

Once an EU law is enacted, the Council or the European Parliament can authorize the Commission to adopt either of two types of non-legislative acts, to ensure that the laws are implemented properly (implementing acts) or updated if necessary (delegated acts).

The Commission has the power to implement EU legislation in circumstances where a greater degree of uniformity in implementation is necessary than would be achieved by the normal practice of Member States taking implementing measures, in specific cases where particularly justified, and where the TEU so provides (Article 291 TFEU). In exercising these implementing powers, the Commission makes use of a system known as comitology.

Review Question

How might the practice of comitology undermine the powers of the Commission?

Answer: The supervising committees are made up of representatives of the Member States and this gives Member States an indirect, but pervasive, influence over the work of the Commission in addition to the direct influence that they already have over the work of the Council.

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Under the Treaty of Lisbon (see 1.8), the system of **comitology** was reformed, in order to provide an enhanced role for the European Parliament which, together with the Council, now has the power to set out the rules and general principles governing the use of the comitology process. These are currently set out in Regulation (EU) No 182/2011, OJ 2011 L55/12 and provide that the European Parliament and the Council are to be given access to the records of all the committees, and that either of them can challenge a draft implementing measure which they consider to exceed the Commission's powers. This effectively provides the European Parliament with a supervisory role in the comitology process and thereby addresses the criticism of a democratic deficit existing in comitology.

comitology

Comitology is a system whereby the Commission exercises its implementing powers with the assistance of committees of representatives from the EU Member States. Those committees give an opinion on implementing measures proposed by the Commission.

Certain pieces of EU legislation give the Commission the power to adopt a delegated act in order to update the legislation in future, which it will do after consulting expert groups of representatives from the Member States. Delegated acts cannot change the essence of the legislation, and either the Parliament and the Council can veto a delegated act.

2.3.3.4 Executive power

The Commission has overall responsibility for the EU's budget, which includes revenue collection and expenditure of the budget. The Commission drafts the budget spending for the year, although this has to be agreed by the European Parliament and the Council. An annual report is produced by the Commission detailing how the budget is implemented.

Thinking Point

As you read this and the following chapters, consider the extent to which you think the Commission fulfils its role and functions under Article 17 TEU.

The Commission has an external relations role in relation to the Common Commercial Policy (CCP), since the Council can authorize it to represent the EU in negotiating on trade agreements with third countries (non-Member States) (Article 207 TFEU). The Commission represents the EU in legal transactions within the Member States, for example in the acquisition or disposal of movable or immovable property (Article 335 TFEU).

2.3.4 Conduct and removal

The Commissioners must have certain qualities—namely, they must possess general competence and 'European commitment', and their independence must be beyond doubt (Article 17(3) TEU).

Article 17 TEU

[...]

3. ... The members of the Commission shall be chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt.

In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.

[...]

During the course of their term in office Commissioners must act not as national representatives but independently, reflecting the interests of the EU. The independence of the Commissioners is guaranteed by the Treaties, which provides that a Commissioner must not seek or take instructions from any government or from any other body, must avoid activities which are incompatible with their duties, and must not engage in any other occupation during their term of office.

Article 245 TFEU

The Members of the Commission shall refrain from any action incompatible with their duties. Member States shall respect their independence and shall not seek to influence them in the performance of their tasks.

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 247 or deprived of his right to a pension or other benefits in its stead.

Upon entering their term of office, a Commissioner must solemnly undertake to respect the obligations and to behave with integrity and discretion. The Court of Justice may, on application by the Council or Commission, compulsorily retire a Commissioner for failure to perform their duties or for serious misconduct (Article 247 TFEU), and the President of the Commission can require a Commissioner to resign (Article 17(6) TEU). The European Parliament can remove the entire Commission by vote of censure, but has no power to remove individual Commissioners.

Thinking Point

Does the fact that the Commission is responsible to the European Parliament adequately address concerns over the lack of democratic legitimacy of the most European of the principal institutions?

Review Question

What are the arguments for and against the proposition that the EU lacks democratic legitimacy?

A brief summary of the main issues underlying the democratic deficit argument is set out in Figure 2.1. However, the argument encapsulates not only which institutions have a right to engage in the legislative process, and the democratic accountability of those institutions as outlined earlier, but other concerns such as the perceived lack of transparency, the spatial distance from the seats of power, and apathy in European Parliamentary elections. On the other hand, a comparison with national democracies can be instructive. For example, all EU citizens can vote in European Parliament elections, just as citizens of individual countries can vote in their own parliamentary elections. The leaders of many countries are not directly elected to their office any more than members of the Council; for example, the British prime minister is simply the leader of the party with most members of Parliament and is not elected as prime minister. Equally, senior servants at national level are not usually elected any more than the Commission is, and indeed their appointment is not subject to the same level of scrutiny by national parliaments as that of the Commission by the European Parliament.

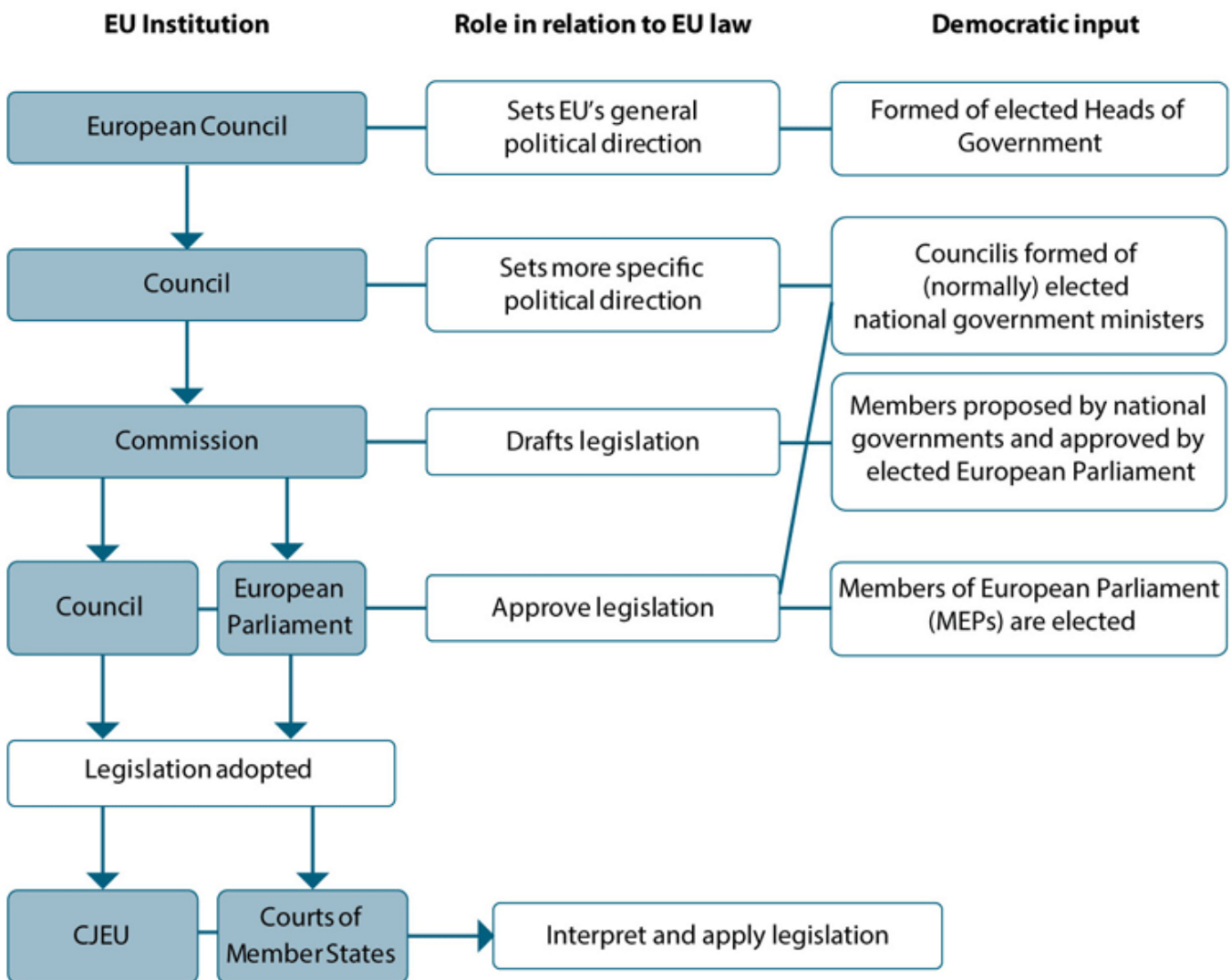


Figure 2.1 Creation of EU law and democratic accountability

2.4 The Court of Justice of the European Union

The EU has two courts: the Court of Justice and the General Court (formerly known as the Court of First Instance). The European Parliament and the Council can, in accordance with the ordinary legislative procedure (OLP) (see further 3.5.1), set up specialized courts (formerly known as judicial panels) attached to the General Court (GC) to hear cases in specific areas at first instances, but there are currently no such courts. All of these courts are now collectively referred to as the Court of Justice of the European Union (CJEU) (Article 19 TEU).

The judges and Advocates General of the CJEU are chosen 'by common accord' of the Member State governments from among persons whose independence is beyond doubt (Articles 253 and 254 TFEU) and who meet the other criteria: judges of the Court of Justice and Advocates General must possess the qualifications required for the highest judicial office in their respective jurisdictions or be jurisconsults of

recognized competence (Article 253), and judges of the General Court must possess the ability required for appointment to high judicial office (Article 254). Appointments are scrutinized by a panel which includes former judges of the Court of Justice and judges of national supreme courts.

Judgment is drafted first in the language of the case. It will include a brief summary, the report of the hearing containing the facts and procedure, and a summary of the arguments of the parties. Judgments of the Court of Justice (but not the GC) will normally include the Opinion of an Advocate General (explained below), and the grounds for judgment, presented in numbered paragraphs. Cases are reported in the CJEU's own European Court Reports, cited as ECR. They are published in all official languages (currently 24) and are equally authentic in each.

The CJEU's task is to ensure that, in the interpretation and application of the Treaties, the law is observed and to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law.

Article 19(1) TEU outlines the general function of the Court.

Article 19 TEU

1. The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

[...]

2.4.1 The Court of Justice

p. 47 The Court of Justice has jurisdiction to give preliminary rulings on the interpretation of EU law under Article 267 TFEU (see Chapter 6), and to review the legality of acts or omissions ↵ of the institutions under Article 263 TFEU (see Chapter 7) where the action is brought by a Member State against the European Parliament or the Council, or by one EU institution against another. The Court consists of one judge from each Member State and (currently) 11 Advocates General.

The Court of Justice is not strictly bound by its own decisions, but nevertheless seeks to maintain consistency in its judgments and thus tends to follow its own previous judgments.

Advocates General assist the Court by giving reasoned Opinions. Although these do not bind the Court or, as a consequence, national courts, and are not always followed by the Court in the case, they carry considerable weight. Where no new points of law are raised, the Court's Statute permits it to reach a determination without an Advocate General's submission.

The Court sits in plenary session (ie all judges are present) for cases of exceptional importance. It sits as a Grand Chamber of 13 judges when a Member State or institution that is a party to the proceedings so requests and, in the majority of cases, it sits in chambers of three or five judges.

The Court of Justice has played a key role in the development of EU law, using its jurisdiction creatively in ground-breaking decisions, for instance in establishing the principles of direct effect and State liability, upholding the fundamental principles of the free market, and furthering the rights of individuals (see the key legal developments referred to in 1.8).


2.4.2 The General Court

The General Court (previously known as the Court of First Instance) was set up under the Single European Act 1986 (SEA) to reduce the Court of Justice's workload (see further 1.10). Since then, its jurisdiction has been extended to include most direct actions (including actions to review the legality of acts and omissions of the institutions under Article 263 TFEU (see Chapter 7) where the action is brought by individuals or businesses, and damages actions under Article 340 TFEU (see Chapter 8)). It also has jurisdiction to give preliminary rulings under Article 267 TFEU, and to hear appeals from the specialized courts, but at present its Article 267 jurisdiction has not been exercised and all such cases are dealt with by the Court of Justice, and there are no specialized courts in existence.

The General Court must comprise at least one judge from each Member State, and at present comprises two judges from each Member State (Article 19(2) TFEU). It may sit as a full court or in smaller chambers. In contrast to the Court of Justice, the General Court does not have permanent Advocates General. However, in exceptional circumstances, a judge may act as Advocate General to the General Court.

2.4.3 Specialized courts

The possibility of judicial panels, now known as specialized courts, was established by the Treaty of Nice. However, the only specialized court to be set up so far, the Civil Service Tribunal set up to hear cases involving the EU institutions and their employees, was dissolved in 2016.

Specialized courts may be set up by the Council and the European Parliament to hear certain classes of action at first instance (Article 257 TFEU). Appeal lies to the General Court and,  if there is a serious risk to the consistency of EU law, the Court of Justice may exceptionally review the General Court's decision.

p. 48

2.5 The European Council

Note

The European Council should not be confused with the Council of the European Union (see 2.2) or the Council of Europe (see 9.1).

2.5.1 Composition

The European Council comprises the heads of state or government of the Member States, together with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy (HR) (see further 2.5.2.3) also takes part in its work. Its meetings, which normally take place twice every six months, are known as European summits. The President of the European Council (see 2.5.2.2) can convene a special meeting if needed.

The European Council began informally in 1974 as a forum for discussion between the heads of state and government of the Member States. It was given a formal role within the EU institutions by the SEA 1986 (see 1.10), and rapidly developed into the body that fixed goals and priorities for the EU. The Treaty of Lisbon (see 1.18) gave the European Council full official EU institution status.

2.5.2 Functions and powers

Article 15 TEU

1. The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.
[...]

The European Council therefore has a broad non-legislative role, consulting on topical political issues, setting the general political and policy direction and priorities of the EU, and dealing with complex or sensitive issues that cannot be resolved at a lower level of intergovernmental cooperation. Importantly, it gives the necessary political impetus for the development of the EU.

The European Council normally acts by consensus (Article 15(4) TEU).

p. 49 2.5.2.1 Democratic legitimacy?

Since the members of the European Council are themselves usually elected individuals (as heads of state or government), it is an institution that can be considered to have democratic accountability. However, the limited control that the European Parliament and national parliaments exercise over the European Council means that it is likely that the democratic legitimacy of the European Council will always be questioned. Indeed, the confidential and non-transparent nature of the deliberations of the European Council further exacerbate the issue. Given the supreme political power of the European Council, such accusations are likely to remain, but it should be remembered that the European Council does not itself enact EU law.

2.5.2.2 The President of the European Council

The Treaty of Lisbon (see 1.18) created the new role of President of the European Council. The President is elected by the European Council by QMV (which works in the same way as QMV in the Council—see 2.2.3) for a term of two-and-a-half years (renewable once), and is not allowed to hold national office whilst holding the Presidency.

The role of the President of the European Council is set out in Article 15(6) TEU.

Article 15 TEU

[...]

6. The President of the European Council:

- (a) shall chair it and drive forward its work;
- (b) shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;
- (c) shall endeavour to facilitate cohesion and consensus within the European Council;
- (d) shall present a report to the European Parliament after each of the meetings of the European Council.

The President of the European Council shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy.

[...]

Thus the President of the European Council ensures the preparation and continuity of the European Council's work, in cooperation with the President of the Commission (see 2.3.1), and reports to the European Parliament (see 2.1).

2.5.2.3 High Representative of the Union for Foreign Affairs and Security Policy

The Treaty of Lisbon (see 1.18) created the new role of High Representative of the Union for Foreign Affairs and Security Policy (HR). The HR is a member of the Commission and acts as its Vice-President.

p. 50 ↪ The HR is appointed by the European Council by qualified majority and with the agreement of the President of the Commission (Article 18(1) TEU).

The role of the HR is set out in Article 18 TEU.

Article 18 TEU

[...]

2. The High Representative shall conduct the Union's common foreign and security policy. He shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
3. The High Representative shall preside over the Foreign Affairs Council.
4. The High Representative shall be one of the Vice-Presidents of the Commission. He shall ensure the consistency of the Union's external action. He shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. ...

Thus, as well as acting as a Vice President of the Commission and taking responsibility for foreign affairs within the Commission, the HR conducts the EU's Common Foreign and Security Policy (CFSP) and takes part in the work of the European Council. The role was created to ensure greater consistency, coherence, visibility, and effectiveness in external affairs. It is described as a 'triple-hatted' post on the basis that it consolidates several previous roles (the former High Representative for Common Foreign and Security Policy, European Commissioner for External Affairs, and chair of the Foreign Affairs Council) into one.

2.5.2.4 Directorates-General and Cabinets

The Commission is supported by a staff based largely in Brussels and organized into administrative departments known as Directorates-General (DGs)—for example the Directorate-General for Competition (DGCOMP)—each of which is headed by a Director-General. Each Commissioner also has a private office, known as a cabinet, which makes sure that the Commissioner is properly informed about matters arising from within their portfolio, for example content and political policy priorities. The cabinet will also keep the Commissioner informed on other policy areas, which is necessary since all Commissioners are collectively responsible for decision-making (see further 2.3.2). The cabinet acts as a bridge between the Commissioner and the Directorate-General of the Commissioner's policy area, transmitting information to ensure that the Commissioner is kept up to date.

2.6 The European Central Bank

The European Central Bank (ECB) was created by the TEU (1992) (see 1.13). It is run by a Governing Council which consisting of the governors of the national central banks of the Eurozone countries, and an Executive Board (Protocol (No 4) on the Statute of the European

Central Bank). The Executive Board has six members, who are appointed on a recommendation from the Council after it has consulted the European Parliament and the Governing Council, and who must be of recognized standing and professional experience in monetary or banking matters.

The key functions of the ECB are set out in Article 282 TFEU, and this Article makes it clear that the ECB must act independently of the other EU institutions and of the Member States when exercising these functions.

Article 282 TFEU

1. The European Central Bank, together with the national central banks, shall constitute the European System of Central Banks (ESCB). The European Central Bank, together with the national central banks of the Member States whose currency is the euro, which constitute the Eurosystem, shall conduct the monetary policy of the Union.
2. The ESCB shall be governed by the decision-making bodies of the European Central Bank. The primary objective of the ESCB shall be to maintain price stability. Without prejudice to that objective, it shall support the general economic policies in the Union in order to contribute to the achievement of the latter's objectives.
3. The European Central Bank shall have legal personality. It alone may authorise the issue of the euro. It shall be independent in the exercise of its powers and in the management of its finances. Union institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence.
4. The European Central Bank shall adopt such measures as are necessary to carry out its tasks in accordance with Articles 127 to 133, with Article 138, and with the conditions laid down in the Statute of the ESCB and of the ECB. In accordance with these same Articles, those Member States whose currency is not the euro, and their central banks, shall retain their powers in monetary matters.
5. Within the areas falling within its responsibilities, the European Central Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level, and may give an opinion.

From this extract it can be seen that the ECB, together with the national central banks of the Member States whose currency is the euro, is responsible for the framing and implementation of the EU's monetary policy. It can also be seen that it works with the central banks of all Member States, together forming the European System of Central Banks (ESCB), the primary objective of which is to maintain price stability. The role of the ESCB is explained in more detail in Article 127 TFEU, which provides that the ESCB supports the general economic policies of the EU in order to contribute to the achievement of the EU's general objectives set out in Article 3 TEU (see further 1.3) and must act in accordance with the economic principles of the EU set out in Article 119 TFEU (see further 1.14).

2.7 The Court of Auditors

2.7.1 Composition

The Court of Auditors is composed of one member from each Member State, who must have belonged to external audit bodies or be otherwise qualified for the role (Article 286 TFEU). They are appointed by the Council, after consulting the European Parliament, for a renewable six-year term. Members elect a President from their number for a renewable term of three years.

The Court of Auditors must be completely independent of the other institutions, as detailed in Article 286 TFEU as follows.

Article 286 TFEU

1. The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective States to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.
[...]
3. In the performance of these duties, the Members of the Court of Auditors shall neither seek nor take instructions from any government or from any other body. The Members of the Court of Auditors shall refrain from any action incompatible with their duties.
4. The Members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.
[...]

2.7.2 Functions and powers

These are set out in Articles 285 and 287 TFEU, the key elements of which are set out below.

Article 285 TFEU

The Court of Auditors shall carry out the Union's audit.

Article 287 TFEU

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union. It shall also examine the accounts of all revenue and expenditure of all bodies, offices or agencies set up by the Union in so far as the relevant constituent instrument does not preclude such examination.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the Official Journal of the European Union.

[...]

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

[...]

3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Union, on the premises of any body, office or agency which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions of the Union, any bodies, offices or agencies managing revenue or expenditure on behalf of the Union, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing Union expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of Union expenditure and revenue managed by the Bank.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions of the Union and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the Official Journal of the European Union.

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the Union.

[...]

It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

[...]

p. 54 ↩ Thus the Court of Auditors performs a range of budgetary functions, principally including auditing expenditure of the EU institutions for legality and sound financial management, and has a wide range of powers to enable it to perform these functions. It also has the right to audit any person or organization handling EU funds. Its production of an annual report which is debated by the European Parliament contributes to the democratic legitimacy of the EU.

2.8 The European Economic and Social Committee and the Committee of the Regions

The European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) are advisory bodies that must be consulted on proposed legislation concerning matters within their respective remits. The EESC represents Europe's employers, workers, and other interest groups. The CoR represents local and regional authorities within the EU. Both have 353 members.

2.9 The impact of Brexit

Brexit has not impacted on the functions of the EU institutions, although of course it has changed their composition because the UK is no longer represented on them. It has also given rise to a number of additional EU–UK bodies designed to oversee the implementation of the Withdrawal Agreement and the TCA (see further 16.2.2 and 16.3.4).

Summary

- There are seven official EU institutions:
- the European Parliament;

2. The official institutions of the European Union

- the European Council;
- the Council;
- the European Commission;
- the Court of Justice of the European Union (CJEU);
- the European Central Bank (ECB); and
- the Court of Auditors.

See **Figure 2.2** for a summary of these institutions.

Summary of key EU institutions

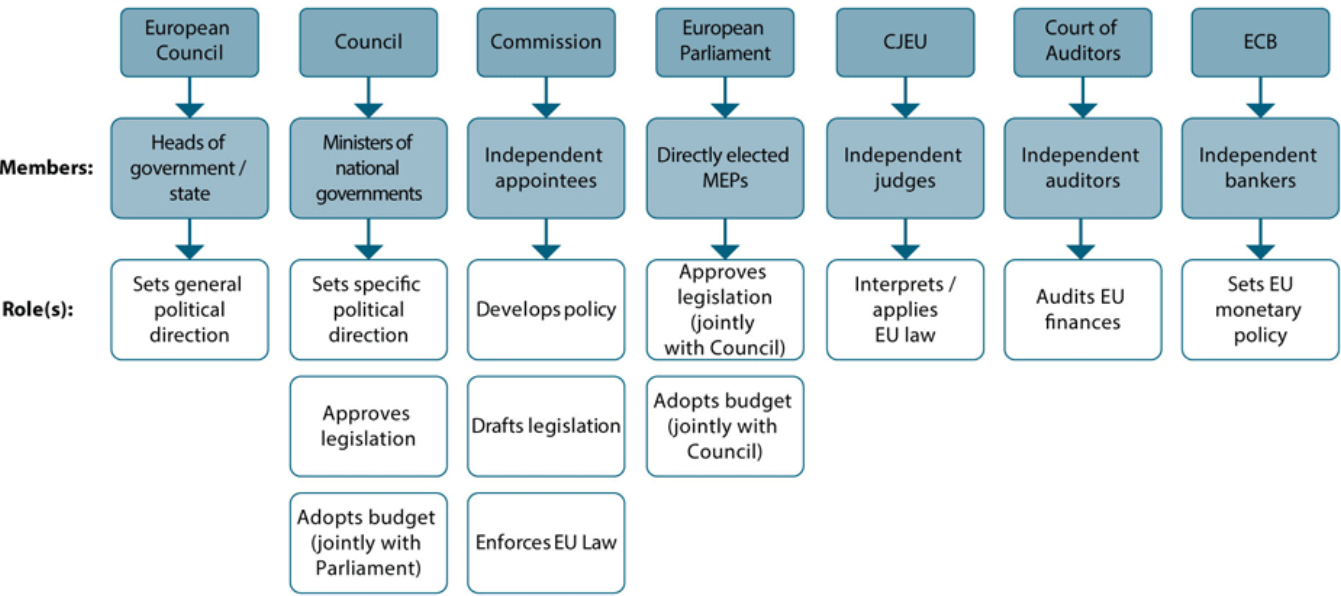


Figure 2.2 Summary of the EU institutions

- The European Parliament is the only directly elected body. Its primary function is that of a forum for discussion and debate. However, it enjoys legislative, budgetary, and supervisory powers.
- The Council of the European Union comprises ministers of the Member States, its membership changing according to the matter under discussion. Council members represent national interests. It exercises legislative and budgetary functions alongside the Parliament, and it has a general requirement to carry out policymaking and coordinating functions, as laid down in the Treaties.
- The Commission is the most European of the principal institutions and represents the interests of the EU. There are 28 Commissioners at time of writing (one from each Member State), including the President of the Commission and the High Representative of the Union for Foreign Affairs and Security Policy (HR) (who also acts as the Vice-President of the Commission). *Commissioners must possess general competence and their independence must be beyond reasonable doubt.* They must act not as national representatives but independently, reflecting the interests of the EU during the course of their term in office. The Commission’s roles can be seen as falling within four areas:
 - as guardian of the Treaties;

p. 55

2. The official institutions of the European Union

- policymaking;
- legislative power; and
- executive power.

■ The CJEU combines the Court of Justice, the General Court (formerly known as the Court of First Instance), and the specialized courts (formerly the judicial panels). Its task is to ensure that, in the interpretation and application of the Treaties, the law is observed and to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law. The Court of Justice consists of one judge from each Member State and eight Advocates General, chosen ‘by common accord’ of Member State governments from among persons whose independence is beyond doubt and who possess the qualifications required for the highest judicial office in their respective jurisdictions. Advocates General assist the Court by giving reasoned Opinions. The General Court comprises at least one judge from each Member State and sits as a full court or in smaller chambers. One judge may act as Advocate General in complex cases.

■ The European Council comprises the heads of state or government of the Member States. It has a broad non-legislative role, consulting on topical political issues, setting the general political and policy direction, as well as the priorities, of the EU. The Treaty of Lisbon created two new roles: the President of the European Council; and the High Representative of the Union for Foreign Affairs and Security Policy (HR).

p. 56 ■ The ECB manages the EU’s single currency and safeguards price stability in the EU. It is responsible for the framing and implementation of the EU’s economic and monetary policy. Its main purpose is to keep prices and the financial system stable.

■ The Court of Auditors performs budgetary functions, auditing expenditure of the institutions for legality and sound financial management. It is composed of one member from each Member State, appointed by the Council for a renewable six-year term.

Brexit

■ The UK is no longer represented in the EU institutions, but there are a number of new EU–UK bodies designed to oversee the implementation of the Withdrawal Agreement and the TCA.

Further Reading

Articles

M Dougan, ‘The Treaty of Lisbon 2007: Winning Minds, Not Hearts’ (2008) 45 CML Rev 617

A constructive account of the Treaty of Lisbon.

JT Lang, ‘Checks and Balances in the European Union: The Institutional Structure and the “Community Method”’ (2006) 12 EPL 127

A critical appraisal of the EU’s institutional structure.

2. The official institutions of the European Union

S Warntjen, 'Steering the Union: The Impact of the EU Presidency on Legislative Activity' (2007) 45 JCMS 1135

A consideration of the EU Presidency and its impact upon EU legislative activity.

Books

A Arnall, *The European Court of Justice*, 2nd edn (Oxford: Oxford University Press, 2006)

Leading text on the role of the Court of Justice.

R Corbett, F Jacobs, and M Shackleton, *The European Parliament*, 8th edn (London: Catermill, 2011)

Authoritative guide on the European Parliament, for academics and practitioners alike.

J Peterson and M Shackleton, *The Institutions of the European Union*, 2nd edn (Oxford: Oxford University Press, 2006)

A rigorous, but accessible, review of the key institutions of the EU.

Web Links

<https://curia.europa.eu/> <<https://curia.europa.eu/>>

The Court of Justice of the European Union

<http://ec.europa.eu/> <<http://ec.europa.eu/>>

The European Commission

<https://eca.europa.eu> <<https://eca.europa.eu>>

The Court of Auditors

<https://www.consilium.europa.eu/> <<https://www.consilium.europa.eu/>>

The Council of the European Union

<https://www.ecb.int> <<https://www.ecb.int>>

The European Central Bank

<http://www.europarl.europa.eu/> <<http://www.europarl.europa.eu/>>

The European Parliament

Question

‘The EU is, and always has been, characterized by its “democratic deficit”.’ Critically evaluate this statement, with reference to the composition and function of the EU institutions.

Visit the online resources for an outline answer to this question [_<https://iws.oup.support.com/ebook/access/content/eulaw-complete5e-student-resource/eulaw-complete5e-chapter-2-guidance-on-answering-assessment-questions?options=showName>](https://iws.oup.support.com/ebook/access/content/eulaw-complete5e-student-resource/eulaw-complete5e-chapter-2-guidance-on-answering-assessment-questions?options=showName), **and additional self-test questions** [_<https://iws.oup.support.com/ebook/access/content/eulaw-complete5e-student-resource/eulaw-complete5e-chapter-2-self-test-questions?options=showName>](https://iws.oup.support.com/ebook/access/content/eulaw-complete5e-student-resource/eulaw-complete5e-chapter-2-self-test-questions?options=showName) **with feedback.**

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