

# Module 05 – European Union Law MQF Level 5, 4 ECTS

## Lecture 2 – Institutions, Preliminary ruling and the jurisdiction of the CJEU.

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Diploma in Law (Malta)



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ADVOCATES

# The Institutions



European Parliament



European Council  
Council of the European Union

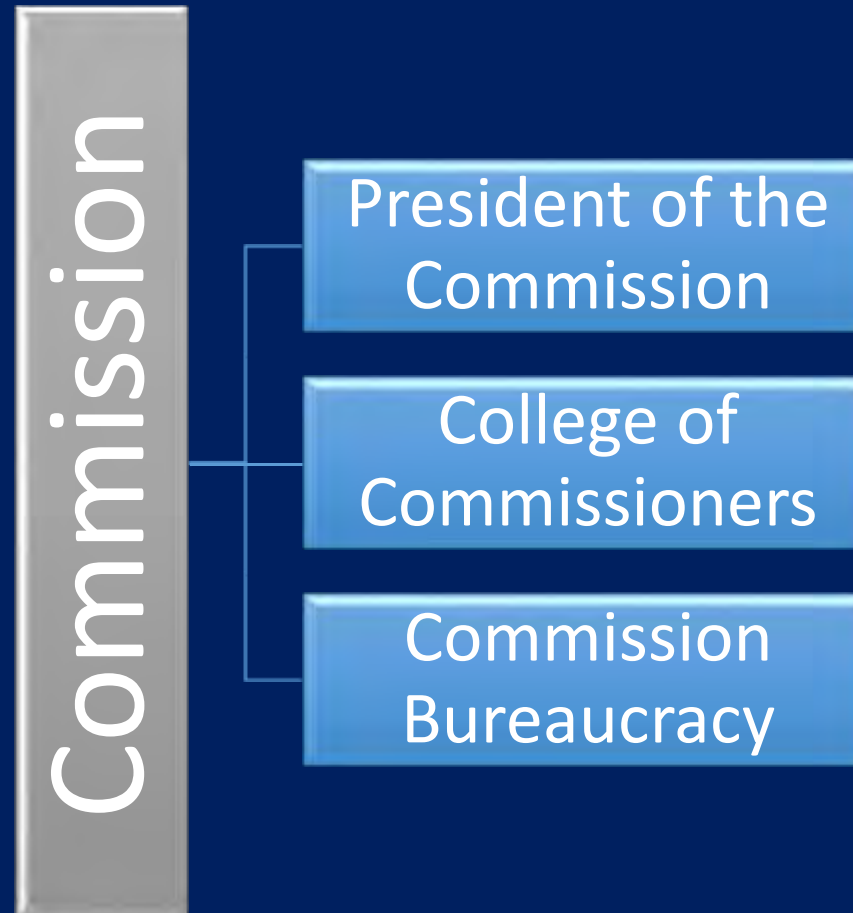


# The Institutions

- The functions, powers and responsibilities of the Institutions are laid down in the TFEU, TEU and in the Lisbon Treaty.
- The 4 main Institutions of the EU are: The European Parliament, the European Council, The Council and the Commission.
- These 4 main EU institutions, with their diverse roles within the Union, work together closely to set the EU's agenda and initiate and coordinate EU law-making.
- In general, the European Council does not make laws. However, it can agree on changes in the TFEU. Its main role is to determine the EU's political direction.
- The European Parliament, the Council of the European Union and the European Commission produce the policies and laws that apply throughout the EU. The process they follow is called the Ordinary Legislative Procedure.
- In principle, the Commission proposes new laws, and the Parliament and Council of the European Union adopt them. The member countries then implement them, and the Commission ensures that the laws are properly applied.



# The Commission



# President of the Commission

- The presidency of the Commission is of real significance. The president's powers have increased over subsequent treaty amendments.
- Lisbon Treaty: Commission President to be indirectly elected.
- The EP was in favour of having them elect the Commission President.
- MSs however were unwilling to surrender all control over the choice of the Commission's President to the EP.
- Art 14(1) of the TEU: the EP shall elect the president of the Commission.
- Retention of state power is reflected in Article 17(7) TEU.



# President of the Commission Cont.

- The EC, acting by qualified majority, after appropriate consultation, and taking into account of the elections to the EP, puts forward to the EP the EC's candidate for Presidency of the Commission. The EP then elects this candidate by majority of its members. If no majority, a new person is put forward.
- The very fact that the Commission President is indirectly elected means that the 'candidate' must normally secure support of the dominant group within the EP.



# What is the President of the Commission responsible for?

- Lays down guidelines for the working of the Commission;
- Decide on the Commission's internal organisation;
- Appoints Vice-Presidents of the Commission.
- Current President = Ursula Von der Leyen
- She has 3 Executive Vice-Presidents and 5 Vice-Presidents, including the High Representative.
- The responsibilities of the Commission are allocated among the Commissioners by the President.
- Commission President may request the resignation of a Commissioner.



# New European Commission



**URSULA VON DER LEYEN**  
EUROPEAN COMMISSION PRESIDENT

## VICE-PRESIDENTS



**FRANS TIMMERMANS**  
*Executive Vice-president*  
European Green Deal



**MARGRETHE VESTAGER**  
*Executive Vice-president*  
Europe Fit for Digital Age



**VALDIS DOMBROVSKIS**  
*Executive Vice-president*  
An Economy that Works for People



**JOSEP BORRELL**  
*High Representative*  
A Stronger Europe in the World



**MAROŠ ŠEFČOVIČ**  
Interinstitutional Relations and Foresight



**VĚRA JOUROVÁ**  
Values and Transparency



**DUBRAVKA ŠUICA**  
Democracy and Demography



**MARGARITIS SCHINAS**  
Promoting the European Way of Life





**JOHANNES HAHN**  
Budget and Administration



**PHIL HOGAN**  
Trade



**MARIYA GABRIEL**  
Innovation, Research, Culture,  
Education and Youth



**DIDIER REYNDERS**  
Justice



**HELENA DALLI**  
Equality



**YLVA JOHANSSON**  
Home Affairs



**NICOLAS SCHMIT**  
Jobs and Social Rights



**PAOLO GENTILONI**  
Economy



**JANUSZ WOJCIECHOWSKI**  
Agriculture



**JANEZ LENARČIČ**  
Crisis Management



**ADINA VĂLEAN**  
Transport



**OLIVÉR VÁRHEGYI**  
Neighbourhood and Enlargement



**THIERRY BRETON**  
Internal market



**ELISA FERREIRA**  
Cohesion and Reforms



**STELLA KYRIAKIDES**  
Health and food safety



**JUTTA URPILAINEN**  
International Partnerships



**KADRI SIMSON**  
Energy



**VIRGINIJUS SINKEVIČIUS**  
Environment, Oceans and Fisheries

# The Commissioners

# College of Commissioners

- The Lisbon Treaty opted for the slimmed-down Commission.
- Till 31 October 2014, the Commission would consist of one national from each MS, including President and High Representative for Foreign Affairs.
- After this date, Commission is to consist of members, including the President and High Representative for Foreign Affairs, who correspond to 2/3rds of the MSs, unless the European Council, acting unanimously, decides to alter this number.
- The composition of the Commission must reflect the demographic and geographic range of all MSs.



# College of Commissioners Cont.

- The European Council decided that the European Commission would continue to consist of a number of members equal to the number of Member States.
- One commissioner per state – no Member State would have been willing to give up its seat in the Commission.
- Commissioners must be chosen on grounds of general competence & their independence must not be in doubt.
- They must be completely independent in their performance of their duties and can neither seek nor take instructions from a government or any other body.



# College of Commissioners Cont.

- They work in the general interest of the European Union. While they come from Member States, **THEY DO NOT REPRESENT THEIR OWN STATE.**
- They meet collectively as the College of Commissioners.
- The Commissioners take decisions by majority vote.
- They have their own personal staffs (or cabinets).
- • Compulsorily retired if he/she no longer fulfils the conditions for performance of the job or for serious misconduct – made by the ECJ on application by the Council.
- A Commissioner shall resign if the President so requests.



# Decision Making of the Commission

- The College of Commissioners operates in 4 different ways:
  1. Important matters are dealt with through weekly meetings of the College, and the agenda is prepared by the Secretariat-General.
  2. The **written procedure** is used where 'deliberations in College do not seem to be necessary because all points have been agreed by the relevant DGs and approval has been given by the Legal Service. The Proposal is sent to the Commissioners' Cabinet, and if there is no objection within a specified period the decision is made. Any Commissioner can raise objections and request that the measure be considered at a College meeting.
  3. Third Mode of Decision-Making = Empowerment. Commission empowers an individual Commissioner to make a decision, while respecting the principle of collective responsibility.
  4. Possibility of delegating decision making to the Director's General and heads of service, who act on behalf of the Commission, which is used for routine business.

# Commission Bureaucracy

- Directorates-General (DG) cover the major internal areas over which the Commission has responsibility.
- There are essentially four layers within the Commission Bureaucracy:
  1. The Commissioner – Who has a portfolio for a particular area
  2. The Director General – Who is the head bureaucrat of a particular DG, with responsibility to the Commissioner. {There is also a Deputy Director General}
  3. Directors – A DG will have a number of Directorates, each of which will normally be headed by a Director who is responsible to the Director General or the Deputy Director General.
  4. The Head of Division or Unit – These divisions or units are parts of the directorates, each division or unit will have a Head, who will be responsible to the relevant Director.



# Powers of The Commission

- 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.*
2. *Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide.*



# 1. Legislative Power

- The Commission is first of all the driving force behind Union policy. It is the starting point for every Union action, as it is the Commission that has to present proposals and drafts for Union legislation to the Council.
- The Commission is the only institution which is **allowed to propose new laws**. After which, the Council and Parliament can adopt them. This is known as the ordinary legislative procedure. This is also known as **the right of initiative**.
- The Commission's main role is to take the initiative in **proposing EU legislation**, for instance, the College of Commissioners was the first to conceive of the possibility of reducing roaming tariffs in Europe. This proposal was then examined and adopted by the other European institutions.
- It draws up proposed acts to be adopted by the two-decision making institutions, Parliament and the Council.
- The power of proposal is the complete form of power of initiative, as it is always exclusive and constrains the decision-making authority to the extent that it cannot take a decision unless there is a proposal and its decision has to be based on the proposal as presented.
- **The Commission is not free to choose its own activities. It is obliged to act if the Union interest so requires.**



# How does the Commission impact on the legislative process?

1. The Commission plays a central part in the legislative process. It is accorded the right of legislative initiative. Most proposals will have to be approved by the Council and the EP, **but the Commission's right of initiative has enabled it to act as a 'motor of integration' for the EU.** The Council is, however, *de facto* the catalyst for many legislative initiatives.
2. Secondly, the Commission develops the overall **legislative plan for any single year.** The agenda-setting aspect of the Commission's work is significant in shaping the EU's priorities for the forthcoming year. This role is framed in terms of the Commission initiating the annual and multi-annual programme with a view to achieving inter-institutional agreement.
3. The Commission affects EU policy by developing general policy strategies.
4. The Commission exercises legislative power through its capacity, in certain limited areas, to enact EU norms without the formal involvement of any other EU institutions.
5. Finally, the Commission exercises delegated power. The Council and the EP delegate power to the Commission to make further regulations within particular areas.



## 2. Administrative Power

- Article 17(1) – the Commission shall manage programmes. Policies, once made, have to be administered. Legislation, once enacted, must be implemented.
- The Commission implements the budget. Once the budget has been adopted, each Member State makes the payments due to the EU through monthly contributions to the EU budget which are deposited in a bank account in the name of the European Commission at the national ministry of finance or central bank.
- It also enforces competition rules.
- The Commission also administers a number of executive agencies which helped the European Commission manage EU programs.
- The Commission exercises the powers conferred on it for the implementation of the legislative acts laid down by Parliament and the Council.
- The Commission will maintain a general supervisory overview, to ensure that the rules are properly applied within the Member States.
- It has become common for the Commission to exercise direct administrative responsibility for the implementation of certain EU policy.
- Simply put someone needs to run the EU on a daily basis and the Commission does a large part of administrative and executive work.



# 3. Executive Power

- Two are of particular importance:
- **(1) Those relating to finance -**
- The Commission plays an important role in the establishment of the EU's budget: it draws up the draft budget, which it proposes to the Council and Parliament.
- Every year, each institution other than the Commission draws up estimates, including all its revenue and expenditure which it sends to the Commission. The Commission then sends the EU agencies' statement of estimates to parliament and the Council and proposes the amount of the contribution for every EU body and the number of staff it considers it needs for the following financial year.
- It also has significant powers over expenditure and structural policy.



# 3. Executive Power Cont.

- (2) Those concerning external relations -
  1. It represents and acts on behalf of the EU both in **formal negotiations** and in the more **informal and explanatory exchanges**.
  2. It has **important negotiating and managing responsibilities** in respect of the various special external agreements that the EU has with many countries.
  3. It **represents the EU at international organizations**.
  4. It has responsibilities for acting as a **key point of contact between the EU and nonmember States**.
  5. It is entrusted with important responsibilities with regard to **applications for EU membership**.
- Where the Council has given a mandate, the Commission is responsible for negotiating international agreements which are then submitted to the Council with a view to their conclusion.
- As regards FSP, it is the High Representative who negotiates agreements.
- The Commission has representations in all EU member States and 139 delegations across the globe, for example, to negotiate trade agreements between the EU and other countries.

## 4. Judicial Power

- The Commission enforces European Law, acting as Guardian of the treaties.
- It is required under the Treaties to ensure that the treaties themselves, and any decisions taken to implement them are properly enforced.
- This role is exercised mainly through the procedure applied to Member States where they have failed to fulfil an obligation under the Treaties.
- All Member States are primarily responsible for the correct and timely application of EU Treaties and legislation. The Commission, however, monitors the application of Union law.
- If a Member State fails to properly incorporate directives into national law, or if it is suspected of breaching EU law, the Commission could open the formal infringement procedures. Eventually the Commission may even refer the Member State to the European Court of Justice, but this usually is not necessary.



# 4. Judicial Power Cont.

- Two kinds of judicial powers – Article 17(1) TEU:
  - (1) The Commission shall **ensure the application of the Treaties and the law** made pursuant thereto,
  - (2) It shall **oversee the application of Union law under the control of the ECJ.**
- The Commission brings actions against Member States when they are in breach of EU law. The actions will assume the form of *Commission v. UK etc.* (Recourse to formal legal action will be a last resort and will be preceded by Commission efforts to resolve the matter through negotiation.)
- The Commission also acts in certain areas as investigator and initial judge of a Treaty violation, whether by private firms or by Member States. The two most important areas are competition policy and state aids. The Commission's decision will be reviewable by the General Court.
- The Commission's investigative & adjudicative powers provide it with a significant tool for the development of EU policy.
- Closely connected with the role of the guardian is the task of representing the Union's interests. As a matter of principle, the Commission may serve no interest other than those of the Union. It must constantly endeavour, in what often prove to be difficult negotiations within the Council, to make the Union interest prevail and seek compromise solutions that take account of that interest.

# The Council of the EU



- It is in the Council that the individual interests of the Member States and the Union interest are balanced. Even though the Member States primarily defend their own interests in the Council, its members are at the same time obliged to take into account the objectives and needs of the Union as a whole.
- The Council is a Union institution and not an intergovernmental conference. Consequently, it is not the lowest denominator among the Member States that is sought in the Council's deliberations, but rather the right balance between the Union's and the Member State's interests.

# The Council - Composition

- Article 16 (2) TEU – The Council shall consist of a representative of each Member State at ministerial level, who is authorised to commit the government of that state.
- The council is therefore the gathering of the Ministers of each MS. Hence, politicians.
- These change according to the area which is being discussed at council level.





# The Council – Organisation & Operation

- The Council meets when convened by the President of the Council on his or her own initiative, or at the request of one of its members, or at the request of the Commission.
- The Lisbon Treaty now provides that meetings are divided into two parts:
  - (1) Those dealing with legislative acts – must meet in public,
  - (2) Those dealing with non-legislative acts.
- Council meetings are arranged by subject matter with different ministers attending from the Member States and are regulated by the Council's Rules of Procedure.
- The Council of the EU is a single legal entity, but it meets in 10 different 'configurations', depending on the subject being discussed.
- There is no hierarchy among the Council configurations, although the General Affairs Council has a special coordination role and is responsible for institutional, administrative and horizontal matters. The Foreign Affairs Council also has a special remit.
- The General Affairs Council (GAC) deals with matters that affect more than one EU policy and also has the important job of preparing the agenda for the European Council.



# The Council – Organisation & Operation

## Cont.

- The Foreign Affairs Council is chaired by the High Representative for Foreign Affairs and Security Policy, and national foreign ministers will normally attend.
- Any of the Council's 10 configurations can adopt an act that falls under the remit of another configuration. Therefore, with any legislative act the Council adopts no mention is made of the configuration.
- **The ministers responsible for these matters (the configurations) within the Member States will attend such meetings. They will be supported by their own delegations of national officials with expertise in the relevant area.**
- The Commission attends Council meetings and has a particular role in relation to the GAC.



# Presidency of the Council - Appointment

- The regime in the Lisbon Treaty is that the High Representative of the Union for Foreign Affairs presides over the Foreign Affairs Council (FAC).
- The European Council decides by qualified majority on the list of other Council formations, and **the Presidency of these formations**.
- The Presidency of Council formations other than the FAC must be in accord with **the principle of equal rotation**.
- The presidency of the Council, other than the FAC, is held by pre-established groups of three Member States for a period of 18 months. **The groups are made on a basis of equal rotation among the Member States**. Each member of the group in turn chairs for a six-month period all Council configurations, except the FAC.
- The President will, 7 months before taking office, set the dates for Council meetings in consultation with the Presidencies preceding and following its term in office.
- Every 18 months, the 3 Presidencies due to hold office prepare, in consultation with the Commission, the High Representative, and the President of the European Council, **a draft programme of Council activities for that period**, which has to be endorsed by the GAC.
- During the actual 6-month tenure, the President sets the provisional agenda for 14 days before the meeting. This agenda is divided into legislative activities and non-legislative activities.



# Presidency of the Council - Role

- The position of President of the Council has assumed greater importance in recent years. It has become vital to the good working of the Council.
- The President may develop policy initiatives within areas of concern either to the Council, or to the Member State that holds Presidency.
- Prior to the Lisbon Treaty the President of the Council also held the Chair of the European Council. This is no longer so – there is a separate president of the European council, who holds office for two-and-a half years.



# Preparatory Bodies - COREPER

- Article 16(7) TEU & Article 240(1) TFEU – the work of the Council is to be prepared by the Committee of Permanent Representatives (Coreper) and that it shall carry out the tasks assigned to it by the Council.
- Coreper is **the Council's main preparatory body**. All items to be included into the Council's agenda (except for some agricultural matters) must first be examined by Coreper, unless the Council decides otherwise.
- It is **not an EU decision-making body**, and **any agreement it reaches can be called into question by the Council**, which alone has the power to make decisions.
- Coreper does not have the power to make formal substantive decisions, but in practice Coreper 'has evolved into a veritable decision-making factory'.
- It is assisted in its preparatory work by some ten committees and around a hundred specialised working parties.



# COREPER - Composition

- Coreper is composed of the **'permanent representatives'** from each member state, who, in effect, are their country's ambassadors to the EU. They express the position of their government.
- It is staffed by senior national officials.
- It operates at 2 levels:
  - 1. Coreper I:** is composed of each country's **deputy permanent representatives**. Its meetings are chaired by the deputy permanent representative of the country holding the presidency of the General Affairs Council.
  - 2. Coreper II:** is composed of each member states' **permanent representatives**. It is chaired by the permanent representative of the country holding the presidency of the General Affairs Council. It is more important and consists of permanent representatives who are of ambassadorial rank. It deals with the more contentious matters.
- The two configurations of Coreper (Coreper I and II) meet every week.



# COREPER – Main Tasks

- Coordinates and prepares the work of the different Council configurations
- Ensures consistency of the EU's policies
- Works out agreements and compromises which are then submitted for adoption by the Council.
- Coreper plays an important part in EU decision-making because it considers draft legislative proposals that emanate from the Commission and help to set the agenda for Council meetings. The agenda is divided into 2 parts: A & B.



# The Council Secretariat

- In addition to Coreper, the Council also has its own General Secretariat, under the responsibility of a Secretary-General, which provides direct administrative support to it.
- In all this, the Ministers who sit in the Council are supported by the General Secretariat and the Committee of Permanent Representatives (COREPER).
- The General Secretariat functions as a general supporting staff preparing meetings, drafting reports, agendas and so on. They are Civil Servants of the EU and do not represent an individual Member State.
- COREPER, in contrast, is composed of representatives from the States themselves such as ambassadors and national Civil Servants. They prepare the work of the Ministers taking seats in the Council and where the Council shares power with Parliament, COREPER works with them.





# Powers of the Council

## *Article 16*

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.

So, what does the council really do with the support of COREPER and the General Secretariat?



# 1. Legislative Powers

- On the basis of proposals submitted by the Commission, the Council adopts EU legislation in the form of regulations and directives, either jointly with Parliament (ordinary legislative procedure) or alone, following a consultation of Parliament.
- All proposals for new EU law must be checked by the Council. The Council may then choose to **approve, amend or reject it**. As such, the Council can stop almost every new law from being implemented.
- The Council has to vote its approval of virtually all Commission legislative initiatives before they become law. The draft proposal from the Commission will be scrutinized by Coreper and the working parties.
- The vote will be by unanimity, qualified, or simple majority depending upon the particular Treaty Article, **although it is deemed to act by qualified majority unless the Treaty stipulates to the contrary**.



# 1. Legislative Powers Cont.

- The Council has become more proactive in the legislative process through Article 241 TFEU. This states that the Council may by simple majority request the Commission to undertake any studies which the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.
- The Council can delegate power to the Commission, enabling the latter to pass further regulations within a particular area.
- The increasing complexity of the EU's decisions-making process has necessitated greater inter-institutional collaboration between the Commission, the Parliament, and the Council.



## 2. Budgetary Power

- The Council is one of the two arms of the budgetary authority, the other being Parliament, which adopts the European Union's budget.
- Like new legislation, **the EU budget must be approved by the Council before money can be spent.** This power is shared with Parliament.
- The Council, together with the EP, plays a major role in relation to the EU's budget, on which many initiatives depend.



# 3. Foreign Affairs

- The Treaty of Lisbon gave legal personality to the European Union, which replaced the European Community. The new Treaty also abolished the three-pillar structure. Justice and Home affairs became a fully integrated EU policy area, in which the ordinary legislative procedure applies in almost all cases. **However, in foreign and security policy the Council still acts under special rules when it adopts common positions and joint actions or draws up conventions.**
- Besides normal legal instruments, **the Council also decides on the EU's Common Foreign and Security Policy (CFSP)** which the High Representative then carries out.



## 3. Foreign Affairs Cont.

- The Council decides on the leading principles and guidelines for the CFSP as well as uncommon strategies that the EU will follow. Based on these leading principles and guidelines, the Council then adopts joint actions aimed at specific situations where the EU actions are deemed necessary, and it adopts common positions which cover more general geographical and thematic areas and form general guidelines that the Member States must conform to.
- The Council has significant powers in relation to the Common Foreign and Security Policy (CFSP). Thus, it will be the Council which takes the necessary decisions for defining and implementing the CFSP in the light of the guidelines of the European Council.



## 4. International Agreements

- The Council concludes the European Union's international agreements, which are negotiated by the Commission and in most cases require Parliament's consent.
- The Council also concludes agreements on behalf of the EU with third states or international organizations.



# The Council – Decision Making & Operation

- Depending on the area concerned, the Council takes its decisions:
  1. by a simple majority;
  2. qualified majority; or
  3. unanimously.



Unanimity

## Unanimous vote

Votes on sensitive matters and to over-rule the Commission



## Qualified majority

Votes on a proposal from the Commission or the High Representative



## Simple majority

Non-legislative votes on administrative or procedural questions



# Qualified Majority

- As a general rule, a qualified majority is sufficient.
- The Council makes decisions by qualified majority which means that, to make a decision, it must be supported by the ministers of 55% of the countries representing at least 65% of the EU's population but this qualified majority can force its will on a protesting minority.
- Four countries representing at least 35% of the population can block decision by voting against it and we have another exception: when making decisions on some subjects, qualified majority is not enough but instead unanimity is needed because these are subjects that lie at the heart of State Sovereignty and Member States prefer to keep these matters on an intergovernmental level rather than handing these powers over to the EU.
- In practice, however, the Council tries to reach unanimity not only on these subjects but also on subjects that only require qualified majority. As a result, there tends to be very few votes against or abstentions.
- Due to the sharing of the legislative and budgetary powers with Parliament, the decision only passes when Parliament also signs off on it except in the case of the subject mentioned before where the Council must decide with unanimity. In those cases, Parliament's approval is not needed.
- In general, the Council tends to seek unanimity even when it is not required to do so.



# The Council of the European Union vs the European Council



# The European Council



The summit conference of the heads of state or government of the EU Member States.

# The European Council - History

- The first of these 'European Summits' took place in Paris in 1961 and they have become more frequent since 1969.
- The early European Council summits were viewed with suspicion by the Commission, since they were normally secret and the Commission was usually excluded.
- In the Paris European summit of February 1979, it was decided that these meetings of Heads of State or Government should henceforth be held on a regular basis under the name of 'European Council'.
- The SEA included it in the body of Community Treaties for the first time, defining its composition and providing for biannual meetings.
- The Treaty of Maastricht formalised its role in the EU's institutional process.
- The Treaty of Lisbon made the European Council a full institution of the EU and defined its tasks, which are **'to provide the Union with the necessary impetus for its development and define the general political directions and priorities thereof'**.



# The European Council - Composition

1. The Heads of State or Government of the Member States.
2. President of the European Council.
3. President of the European Commission.
4. High Representative of the Union for Foreign Affairs and Security Policy.

- The European Council members meet in the format of 'intergovernmental conferences' (IGCs). These conferences of representatives of the governments of the Member States are convened to discuss and agree on EU treaty changes. Before the Lisbon Treaty came into force, this was the only procedure for treaty revisions. It is now called the 'ordinary revision procedure'.
- The IGC, convened by the President of the European Council, decides on treaty changes unanimously.
- The European Council meets around 4 times a year. Presidency rotates on a 6 monthly basis.



# Role of the European Council

- A classic example of change in the original institutional structure of the Treaty to accommodate political reality.
- • It evolved from a series of ad hoc meetings outside the letter of the Treaty to a more structured pattern of summits.
- • It is central to the EU's decision-making process but DOES NOT EXERCISE LEGISLATIVE FUNCTIONS.
- • The reality is that no important developments internally or externally occur without having been considered by the EC. The concluding resolutions do not have the force of law, but they nonetheless provide the framework in which the other institutions consider specific policy issues.
- • It has become the institutional mechanism whereby the Commission can secure broad agreement from Member States for major initiatives.
- • The European Council's agenda is prepared by the GAC.
- The Commission President is a member of the European Council, and many European Council initiatives are the result of Commission suggestions fed into the agenda prepared by the GAC.



# HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY

- There were debates in the Convention on the Future of Europe as to the changes that should be made concerning institutional responsibility for external relations – the Constitutional Treaty created the post of EU Minister for Foreign Affairs, who was to conduct the Union's common foreign and security policy.
- The substance of the provisions in the Lisbon Treaty is, however, the same as in the Constitutional Treaty.
- **The High Representative is appointed by the European Council by qualified majority, with the agreement of the Commission President** (the EC usually decides on issues by consensus, but a number of important appointments are made by QMV).
- **The European Council defines the principles of and general guidelines for, the CFSP, and decides on common strategies for its implementation.**
- The incumbent is one of the Vice-Presidents of the Commission and is responsible for external relations and for coordinating other aspects of the Union's external action.



# High Representative of the Union for FASP - Powers

1. Conducts the EU's Common Foreign and Security Policy,
2. Takes part in the work of the European Council,
3. Chairs the Foreign Affairs Council,
4. A Vice-President of the Commission.





# High Representative of the Union for FASP - Roles

- The idea that executive power within the Union is shared between the European Council and the Commission is personified in this post.
- It has been argued that the triple hats worn by the High representative could lead to institutional schizophrenia, with the incumbent being subject to conflicting loyalties.
- The High Representative is Vice-President within the Commission, with responsibility for external relations. Hence, more effective and strategic role.



# The European Parliament

The EP represents the people of the EU Member States.

Parliament asserts its institutional role in European policymaking by exercising its various functions.

Parliament's participation in the legislative process, its budgetary and control powers, its involvement in treaty revision and its right to intervene before the Court of Justice of the European Union enable it to uphold democratic principles at European level.



European Parliament

# The European Parliament - History

- The story of the EP is one of gradual transformation from a relatively powerless Assembly under the 1952 ECSC Treaty to the considerably strengthened institution it is today.
- The Assembly was given few powers under the ECSC Treaty and under the original EEC and Euratom Treaties – it was intended to exercise consultative supervisory powers, but not to play any substantial legislative role.
- The EP now exercises substantial powers of a legislative, budgetary and supervisory nature.
- Although it is the only European Institution which is directly elected, the problems of the EU's democratic legitimacy are still very present.



# EP – Composition and Functioning

- Parliament sits in Strasbourg, but there is a secretariat based in Luxembourg. In fact certain sessions and committee meetings take place in Brussels to facilitate contact with the Commission & Council.
- Article 14(2) TEU:

The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number, plus the President. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.

The European Council shall adopt by unanimity, on the initiative of the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph.



# EP – Composition and Functioning Cont.

- The representation of citizens is ‘degressively proportional’, with a minimum threshold of six members per Member State. No Member State can have more than 96 seats.
- The concept of ‘degressively proportional’ means that although the total number of seats is allocated on the basis of Member State population size, more populous Member States agree to be under-represented in order to favour a greater representation of less populous Member States: the larger the country, the smaller the number of seats relative to its population.
- The Bureau is made up of the President, 14 Vice-Presidents and 5 Quaestors.
- There is also a **Conference of Presidents**, which consists of the President of the Parliament and the chairmen of the political groups – responsible for the organisation of the Parliament’s work, and relations with the other EU institutions and with non-Union institutions.
- MEPs have a uniform salary which is paid from the EU budget.



# EP - Powers

1. Legislative Power
2. Dismissal & Appointment Power
3. Supervisory Power
4. Budgetary Power



# Legislative Powers

- Historically the EP only had a right to be consulted on legislation, and that was only where the particular Treaty Article so specified.
- The Single European Act introduced the cooperation procedure, which brought the EP into the legislative process more fully.
- The co-decision procedure was introduced by the Maastricht Treaty, and in effect made the EP a co-equal partner with the Council in the areas where it applied.
- The co-decision procedure has been renamed the ordinary legislative procedure in the Lisbon Treaty.



# Legislative Powers Cont.

- Today, the EP shall jointly with the Council, exercise legislative and budgetary functions.
- The EP now has a veto power over delegated acts.
- The EP has full locus standi alongside the Commission, the Council, and the Member States to bring annulment proceedings.





# Dismissal and Appointment Power

- The Commission's accountability to the Parliament has gradually been strengthened.
- The EP has always had the power to censure the Commission and require its resignation. (This has never been used)
- Since Maastricht Treaty, the EP also has the right to participate in the Commission's appointment.



# Supervisory Power

- EP Monitors the activities of other institutions, principally the Commission through questions and committees of inquiry.
- The Maastricht Treaty also provided for the appointment by the Parliament of an Ombudsman.



# Budgetary Power

- The EP also has important powers in relation to the budget. It used its powers over the budget to pressure for more general changes in the inter-institutional allocation of power, and conflicts not infrequently ended up in the Court. The procedure for adoption of the budget is complex and is contained in Article 314 TFEU, which is a variant of the ordinary legislative procedure.



# EP - Role

- EP has become of greater importance in EU decision-making since the Single European Act.
- Its powers have increased





## Diploma in Law (Malta)



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ADVOCATES

# Courts of Justice of the European Union

The term 'Court of Justice of the European Union' includes the Court of Justice, the General Court, and specialized courts.



Article 19(1) TEU provides that:

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

# A. Court of Justice

- There shall be one judge per member state.
- They must be independent, and they have to possess qualifications for the appointment to the highest judicial offices in their respective countries.
- Term of Office is 6 years but there is a possibility of re-appointment.
- Appointments are staggered so there is a partial replacement every 3 years.
- Court elects its President from amongst its own judges, and a Vice-President, also appoints its Registrar.
- The CJEU is assisted by Advocates General. Qualifications same as judges.



# A. Court of Justice cont.

- AGs duty is principally 'to make, in open court, reasoned submissions on cases'.
- V.Imp – An Opinion of the AG is NOT required in every case.
- A judge or AG who, in the unanimous opinion of the other judges and AGs no longer fulfils the conditions and obligations of office may be removed.
- Their period of office may be terminated on death, resignation or on removal from office.
- The CJEU may sit as a:
  - Grand Chamber (full Court) – 15 judges: When case is exceptionally important or subject warrants so.
  - In Chambers – 3 or 5 Judges: Most cases are heard as such.



## B. General Court

- Role: To ensure that the law is observed in the interpretation and application of the Treaty.
- The GC comprises 'at least' one judge per Member State.
- The number of GC Judges had increased to 54, 2 per MS.
- A judge may be called upon to perform the task of an AG.
- The GC elects its president from amongst its judges, and appoints its Registrar.
- It sits in Chambers of 3 and 5 Judges, or sometimes as a single judge.
- There is an appeal to the CJEU within 2 months from the GCs decision. Appeal limited to questions of law, and this covers:
  - Lack of Competence of the General Court
  - A breach of Procedure before it which adversely affects the interests of the appellant
  - As well as the infringement of Union Law by the General Court.



## B.General Court Cont.

- GC was created to relive the burden from the CJEU.
- GC has jurisdiction over most, although not all direct actions, the jurisdiction is regulated by Article 256 TFEU.
- Direct enforcement actions against MSs under Art.258+259 TFEU remain jurisdiction of CJEU.
- GC can hear actions against decisions of specialised Courts. And the GCs rulings can be reviewed by the CJEU in exceptional circumstances, 'where there is a serious risk of the unity or consistency of Union law being affected'.
- Indirect actions begin in national courts, which seek a preliminary ruling from the CJEU on EU Law pursuant to Article 267 TFEU.

## C. Specialised Courts

- There to ease the load from CJEU and GC.
- Article 257 TFEU: the EP and the Council, acting via the ordinary legislative procedure, may establish specialised courts attached to the GC to hear at first instance certain classes of action in specific areas.
- Decisions given by specialised courts are subject to appeal only on law, subject to the caveat that there can be appeal on fact if the regulation establishing a particular specialised court so provides.
- Members of Specialised Court: Independence beyond doubt, and ability to be appointed to judicial office.
- They are appointed by the Council, acting unanimously.



# Procedure Before the Court

- Procedure before the CJEU and GC is governed by their respective rules of procedure.
- Procedure before the CJEU:
  1. Written Stage: All Applications, statements of case, defences and any submissions or relevant documents are communicated to the parties & institutions whose decisions are being contested.
  2. Oral Stage: Limited & Short. The *Juge-rapporteur*, the judge assigned in a given case, prepares and presents to the Court the 'report of the hearing', which summarizes the facts of the case and the arguments of the parties. The legal representatives may make oral submissions to the Court, who can in turn question them.

# Procedure Before the Court cont.

- There is an appeal from the specialised courts to the GC.
- There are appeals on points of law from the GC to the CJEU.
- NO Further appeal from judgements of the CJEU.
- HOWEVER, MS, EU institutions and parties may under certain conditions contest a judgement delivered without their being heard, when it is prejudicial to their rights.
- Revision of a judgement within 10 years of its being given can be sought 'only on discovery of a fact which is of such nature as to be a decisive factor' and which was unknown at the time the judgement was given.
- NO strict system of precedent.



# Role of the Court

- Preserving the 'Rule of Law'
- CJEU, as interpreter of the Treaties, adjudicates on the limits of EU Competence as against the MSs.
- Court has fashioned principles of the EU Legal order: Direct effect, supremacy, and state liability in damages.
- Court examines the whole context in which a particular provision is situated, and gives the interpretation most likely to further what the Court considers that provision sought to achieve.





**Diploma in Law (Malta)**



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# Preliminary Rulings





# Art.267 – *'Jewel in the Crown'* of the Court's Jurisdiction

- (1) The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:**
  - (a) the interpretation of the Treaties;**
  - (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;**
- (2) Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.**
- (3) Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.**
- (4) If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.**

# Questions that can be referred

- A preliminary reference can be made in two types of case:
  1. The interpretation of the Treaties
  2. The validity & interpretation of acts of the institutions, bodies, offices or agencies of the EU.
- Interpretation of the Treaties (Article 267(1)(a)):
  - Court has given many judgements on direct effect & supremacy
  - The CJEU does not, however, pass judgement on the validity of a national law.
  - It interprets the Treaty.
  - Consequence? A National law is incompatible with EU Law.
  - Supremacy of EU Law = there is an obligation on the national court to redress the situation.

# Questions that can be referred Cont.

- The validity & interpretation of acts of the institutions, bodies, offices or agencies of the EU (Article 267(1)(b)):
  - References can be made irrespective of whether or not the EU provision is directly effective, in order, for example, to clarify the interpretation of the relevant provision.
  - ECJ has also held that a preliminary reference may be made where a provision of national law is based on or makes some reference to EU law, even if the consequence is that the ambit of EU law is extended by the national provisions.



# Courts or Tribunals that CAN refer

- Article 267 (2) & (3) tells us which courts or tribunals of a MS, MAY or MUST make a reference.
- It is for the CJEU to decide whether the body is a court or tribunal.
- *Cartesio Case*: Although Art.267 TFEU does not make reference dependant on the proceedings being inter partes, such a reference could only be made if there were a case pending before the national court which led to a decision of a judicial nature.
- *Broekmeulen Case*: A reference could not, by way of contrast, be made where a national court made what was in essence an administrative decision that did not resolve a legal dispute, since the national court could not be regarded as exercising a judicial function in this instance.
- It is necessary that the body making the reference be a court or tribunal of a Member State. (Problem with *Arbitration*)

# Courts or Tribunals that MUST refer

- Article 267(3) imposes a duty and obligation to refer, provided that a decision on a question is necessary to enable judgement to be given.
- Rationale behind Article 267(3)? To prevent a body of national case law that is not in accordance with EU law from being established in any Member State.
- Types of Bodies Covered by Article 267(3)?
  1. Abstract Theory: Covers only bodies whose decisions are never subject to appeal
  2. Concrete Theory: Real test is whether the court or tribunal's decision is subject to appeal in the type of case in question.



# Courts or Tribunals that MUST refer

- *Costa Case*: suggested that the ECJ favoured the concrete theory. Affirmed in *Lyckeskog*, although it may still be difficult to decide whether a court's decision is truly final in the particular type of case.
- ECJ held that decisions of a national appeal court that could be challenged before a national Supreme Court did not come within Article 267(3). Therefore exhaust all remedies first. Why?
- Because then if a question concerning the interpretation of EU Law arose before the Supreme Court it would be under an obligation to refer pursuant to Article 267(3), either when examining admissibility or at a later stage.



# Relationship between National Courts

- *Cartestio*: ECJ supported the ability of lower courts to refer to the ECJ, even in the face of a negative decision by a higher national court.
- It is for the national court to decide whether to make a reference. The mere fact that a question has been made, does not necessarily mean that a reference in terms of this article should be done.
- *Da Costa*: Initiated what is in effect a system of precedent. The national court can still refer a matter to the Court, even where it has ruled on the issue. However, such an application must raise some new factors or argument. The existence of an earlier ruling can deprive the national court's obligation to refer.
- Therefore a previous ruling CAN be relied on, even if it did not emerge from the same type of proceedings, and even though not strictly identical.

# The existence of a question: The '*Acte Clair*' Doctrine

- A national court may feel that the answer to the issue is so clear that no reference to the CJEU is required. This may be an issue not to refer.
- *CILFIT Case*: However the national court must be convinced that the matter is equally obvious to the courts of another MS and to the Courts of Justice. Only in this case may the national court refrain from submitting the question.
- In *CILFIT* the ECJ accepted the *Acte Clair* doctrine with restrictions in the MS would only refuse to refer when matters really were unequivocally clear.





# Summary till now

- The relationship between national courts and the CJEU has been transformed by the development of precedent, acte clair, and sectoral delegation of responsibility.
- These developments have made national courts EU Courts in their own right. They can dispose of cases without the need for a further reference to the CJEU. They can do so where there is an EU decision on the point, where the matter is so clear as to obviate the need for a reference, or where more general responsibility has been delegated to them in a particular area.
- The combined effect has been to render the relationship more vertical and multilateral than it was at the inception of the EU, albeit with the potential of some greater decentralization through relaxation of the acte clair conditions if this becomes the new reality.



# The Decision to Refer: National Court's Perspective

- There are two criteria that must be satisfied before a reference may be made:
  1. The question must be raised before the court or tribunal of the MS
  2. The national court must consider that a decision on the question is necessary to enable it to give judgement.



# The Decision to accept the reference: CJEU Perspective

- ECJs initial approach was very liberal and it would, wherever possible, read the reference so as to preserve its ability to pass judgement on the case.
- It is clear, that the CJEU regards itself as having the ultimate authority to decide whether a reference is warranted or not. *Foglia Case*.
- *Foglio (No 2)* – The ECJ would be the ultimate decider of its own jurisdiction. The ECJ was not simply to be a passive receptor, forced to adjudicate on whatever was placed before it. It would assert some control over the suitability of the reference.



# Recommendations to National Courts on Preliminary References

- The order for reference should contain:
  1. A statement of reasons which is succinct but sufficiently complete to give the Court a clear understanding of the factual and legal context of the main action;
  2. A statement setting out the subject matter of the dispute and the essential facts;
  3. The relevant national law;
  4. Identify as accurately as possible the EU provisions relevant to the case;
  5. The reasons why the national court referred the national court referred the matter
  6. The relationship between the provisions of EU Law and national provisions applicable to the action
  7. A summary of the parties' arguments where appropriate.

# Limits of the Power to Decline a Case

- The CJEU will decline to give a ruling only if the issue of EU law on which an interpretation is sought is manifestly inapplicable to the dispute, or bears no relation to the subject matter of that action.
- A reference will be deemed inadmissible only:
  1. where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose,
  2. where the problem is hypothetical, or
  3. where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.



# The Decision on the reference: Interpretation vs Application

- Art.267 gives the CJEU the power to interpret the Treaty, but does not empower it to apply the Treaty to the facts of a particular case.
- There is a division of authority between the CJEU and national Courts.
- CJEU – Interprets the Treaty
- National Courts – Apply that interpretation to the facts of the particular case.
- It is common for the CJEU to give guidance to the national courts as to how the law should be applied in the instant case, which further diminished the line between interpretation and application.
- *Van Gend en Loos* – it was argued that the question presented concerning the tariff classification of urea-formaldehyde required, not an interpretation of the Treaty, but rather an application of the relevant Dutch customs legislation. Court, rejected the argument, stating that the question related to interpretation: the meaning to be attributed to the notion of duties existing before the coming into force of the Treaty.

# Conclusions

- CJEU is not a fully developed federal Supreme Court, either procedurally or institutionally.
- The CJEU does not actually decided the case, but rules on the point referred to it.
- The relationship between the CJEU and national courts remains cooperative, but many developments have transformed the relationship from horizontal and bilateral, to vertical and multilateral.
- Reform of the EU's judicial architecture will remain on the agenda, notwithstanding the Lisbon Treaty.
- There will be continuing efforts to alleviate the workload of both the CJEU and the GC.

