1. How the European Union works

1.1. HISTORICAL DEVELOPMENT OF EUROPEAN INTEGRATION

1.1.1. THE FIRST TREATIES

The disastrous effects of the Second World War and the constant threat of an East-West confrontation meant that Franco-German reconciliation had become a top priority. The decision to pool the coal and steel industries of six European countries, brought into force by the Treaty of Paris in 1951, marked the first step towards European integration. The Treaties of Rome of 1957 strengthened the foundations of this integration, as well as the notion of a common future for the six European countries involved.

LEGAL BASIS

— The Treaty establishing the European Coal and Steel Community (ECSC), or Treaty of Paris, was signed on 18 April 1951 and came into force on 23 July 1952. For the first time, six European States agreed to work towards integration. This Treaty laid the foundations of the Community by setting up an executive known as the 'High Authority', a Parliamentary Assembly, a Council of Ministers, a Court of Justice and a Consultative Committee. The ECSC Treaty expired on 23 July 2002 at the end of the 50-year validity period laid down in Article 97. In accordance with the Protocol (No 37) annexed to the Treaties (the Treaty on European Union and the Treaty on the Functioning of the European Union), the net worth of the ECSC's assets at the time of its dissolution was assigned to the Research Fund for Coal and Steel to finance research by Member States in sectors relating to the coal and steel industry.

— The Treaties establishing the European Economic Community (EEC) and the European Atomic Energy Community (EAEC, otherwise known as 'Euratom'), or the Treaties of Rome, were signed on 25 March 1957 and came into force on 1 January 1958. Unlike the ECSC Treaty, the Treaties of Rome were concluded 'for an unlimited period' (Article 240 of the EEC Treaty and Article 208 of the EAEC Treaty), which conferred quasi-constitutional status on them.

— The six founding countries were Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

OBJECTIVES

— The founders of the ECSC were clear about their intentions for the Treaty, namely that it was merely the first step towards a 'European Federation'. The common coal and steel market was to be an experiment which could gradually be extended to other economic spheres, culminating in a political Europe.

— The aim of the European Economic Community was to establish a common market based on the four freedoms of movement (goods, persons, capital and services).

— The aim of Euratom was to coordinate the supply of fissile materials and the research programmes initiated or being prepared by Member States on the peaceful use of nuclear energy.

— The preambles to the three Treaties reveal a unity of purpose behind the creation of the Communities, namely the conviction that the States of Europe must work

together to build a common future as this alone will enable them to control their destiny.

MAIN PRINCIPLES

The European Communities (the ECSC, EEC and Euratom) were born of the desire for a united Europe, an idea which gradually took shape as a direct response to the events that had shattered the continent. In the wake of the Second World War, the strategic industries, in particular the steel industry, needed reorganising. The future of Europe, threatened by East-West confrontation, lay in Franco-German reconciliation.

1. The appeal made by Robert Schuman, the French Foreign Minister, on 9 May 1950 can be regarded as the starting point for European integration. At that time, the choice of coal and steel was highly symbolic: in the early 1950s, coal and steel were vital industries and the basis of a country's power. In addition to the clear economic benefits, the pooling of French and German resources was intended to mark the end of the rivalry between the two countries. On 9 May 1950, Robert Schuman declared: 'Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.' It was on the basis of that principle that France, Italy, Germany and the Benelux countries (Belgium, the Netherlands and Luxembourg) signed the Treaty of Paris, which concentrated predominantly on ensuring:

— Free movement of goods and free access to sources of production;

— Permanent monitoring of the market to avoid distortions which could lead to the introduction of production quotas;

— Compliance with the rules of competition and the principle of price transparency;

— Support for modernisation and conversion of the coal and steel sectors.

2. Following the signing of the Treaty of Paris, and despite France being opposed to the re-establishment of a German national military force, René Pleven was giving thought to the formation of a European army. The European Defence Community (EDC), negotiated in 1952, was to have been accompanied by a Political Community (EPC). Both plans were shelved following the French National Assembly's refusal to ratify the treaty on 30 August 1954.

3. Efforts to get the process of European integration under way again following the failure of the EDC took the form of specific proposals at the Messina Conference (in June 1955) on a customs union and atomic energy. They culminated in the signing of the EEC and EAEC Treaties.

a. The provisions of the Treaty establishing the European Economic Community (EEC Treaty, the Treaty of Rome) included:

— The elimination of customs duties between Member States;

— The establishment of an external Common Customs Tariff;

— The introduction of common policies for agriculture and transport;

— The creation of a European Social Fund;

— The establishment of a European Investment Bank;

— The development of closer relations between the Member States.

To achieve these objectives the EEC Treaty laid down guiding principles and set the framework for the legislative activities of the Community institutions. These involved common policies: the common agricultural policy (Articles 38 to 43), transport policy (Articles 74 and 75) and a common commercial policy (Articles 110 to 113).

The common market is intended to guarantee the free movement of goods and the mobility of factors of production (the free movement of workers and enterprises, the freedom to provide services and the free movement of capital).

b. The Treaty establishing the European Atomic Energy Community (The Euratom Treaty) had originally set highly ambitious objectives, including the 'speedy establishment and growth of nuclear industries'. However, owing to the complex and sensitive nature of the nuclear sector, which touched on the vital interests of the Member States (defence and national independence), those ambitions had to be scaled back.

4. The Convention on certain institutions common to the European Communities, which was signed and entered into force at the same time as the Treaties of Rome, stipulated that the Parliamentary Assembly and Court of Justice would be common institutions. This Convention lapsed on 1 May 1999. All that remained was for the 'Executives' to be merged, so the Treaty establishing a Single Council and a Single Commission of the European Communities of 8 April 1965, known as the 'Merger Treaty', duly completed the process of unifying the institutions.

From then on, the EEC held sway over the sectoral communities, the ECSC, and the EAEC. This amounted to a victory for the general EEC system over the coexistence of organisations with sectoral competence, and an establishment of its institutions.

Mariusz Maciejewski
10/2023

1.1.2. DEVELOPMENTS UP TO THE SINGLE EUROPEAN ACT

The main developments of the early Treaties are related to the creation of Community own resources, the reinforcement of the budgetary powers of Parliament, election of MEPs by direct universal suffrage and the setting-up of the European Monetary System (EMS). The entry into force of the Single European Act in 1986, which substantially altered the Treaty of Rome, bolstered the notion of integration by creating a large internal market.

MAIN ACHIEVEMENTS IN THE FIRST STAGE OF INTEGRATION

Article 8 of the Treaty establishing the European Economic Community (EEC), also known as the Treaty of Rome, provided for the completion of a common market over a transitional period of 12 years, in three stages, ending on 31 December 1969. Its first aim, the customs union, was completed more quickly than expected. The transitional period for enlarging quotas and phasing out internal customs ended as early as 1 July 1968. Even so, at the end of the transitional period there were still major obstacles to freedom of movement. By then, the EEC had adopted a common external tariff for trade with non-EEC countries.

Creating a 'Green Europe' was another major project for European integration. The first regulations on the common agricultural policy (CAP) were adopted and the European Agricultural Guidance and Guarantee Fund was set up in 1962.

FIRST TREATY AMENDMENTS

A. Improvements to the institutions

The first institutional change came about with the Merger Treaty of 8 April 1965, which merged the executive bodies. This took effect in 1967, setting up a single Council and Commission of the European Communities (the European Coal and Steel Community, the EEC and the European Atomic Energy Community) and introducing the principle of a single budget.

B. Own resources and budgetary powers

The Council decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources set up a system of Community own resources, replacing financial contributions by the Member States (1.4.1).

— The Treaty of Luxembourg of 22 April 1970 granted Parliament certain budgetary powers (1.3.1).

— The Treaty amending certain financial provisions of the Treaties establishing the European Economic Communities and of the Treaty establishing a single Council of the European Communities (the Treaty of Brussels) of 22 July 1975 gave Parliament the right to reject the budget and to grant the Commission a discharge for implementing the budget. The same Treaty set up the Court of Auditors, a body responsible for scrutinising the Community's accounts and for financial management (1.3.12).

C. Elections

The Act of 20 September 1976 gave Parliament new legitimacy and authority by introducing election by direct universal suffrage (1.3.4). The Act was revised in 2002 to introduce the general principle of proportional representation and other framework provisions for national legislation on the European elections.

D. Enlargement

The UK joined the Community on 1 January 1973, together with Denmark and Ireland; the Norwegian people had voted against accession in a referendum. Greece became a member in 1981 and Portugal and Spain joined in 1986.

E. EU budget

After the first round of enlargement, there were calls for greater budgetary rigour and reform of the CAP. The 1979 European Council reached agreement on a series of complementary measures. The 1984 Fontainebleau agreements produced a sustainable solution based on the principle that adjustments could be made to assist any Member State with a financial burden that was excessive in terms of its relative prosperity.

PLANS FOR FURTHER INTEGRATION

Building on the initial successes of the economic community, the aim of also uniting the Member States politically resurfaced in the early 1960s, despite the failure of the European Defence Community in August 1954.

A. Failure of an attempt to achieve political union

At the 1961 Bonn summit, the Heads of State or Government of the six founding Member States of the European Community asked an intergovernmental committee, chaired by French ambassador Christian Fouchet, to put forward proposals on the political status of a union of European peoples. The study committee tried in vain, on two occasions between 1960 and 1962, to present the Member States with a draft treaty that was acceptable to all, even though Fouchet based his plan on strict respect for the identity of the Member States, thus rejecting the federal option.

In the absence of a political community, its substitute took the form of European Political Cooperation, or EPC. At the summit conference in The Hague in December 1969, the Heads of State or Government decided to look into the best way of making progress in the field of political unification. The Davignon report, adopted by the foreign ministers in October 1970 and subsequently elaborated on by further reports, formed the basis of EPC until the Single European Act (SEA) entered into force.

B. The 1966 crisis

A serious crisis arose when, at the third stage of the transition period, voting procedures in the Council were to change from the unanimity rule to qualified majority voting in a number of areas. France opposed a range of Commission proposals, which included measures for financing the CAP, and stopped attending the main Community meetings (the 'empty chair' policy). Eventually, agreement was reached on the Luxembourg Compromise (1.3.7), which stated that, when vital interests of one or more countries were at stake, members of the Council would endeavour to reach solutions that could be adopted by all while respecting their mutual interests.

C. The increasing importance of European 'summits'

Though remaining outside the Community institutional context, the conferences of Heads of State or Government of the Member States started to provide political guidance and to settle the problems that the Council of Ministers could not handle. After early meetings in 1961 and 1967, the conferences took on increasing significance with the summit at The Hague on 1 and 2 December 1969, which allowed negotiations to begin on enlarging the Community and saw agreement on the Community finance system, and with the Fontainebleau summit (in December 1974), at which major political decisions were taken on the direct election of the European Parliament and the decision-taking procedure within the Council. At that summit, the Heads of State or Government also decided to meet three times a year as the 'European Council' to discuss Community affairs and political cooperation (1.3.6).

D. Institutional reform and monetary policy

Towards the end of the 1970s, there were various initiatives in the Member States to bring their economic and fiscal policies into line with each other. To solve the problem of monetary instability and its adverse effects on the CAP and cohesion between Member States, the Bremen and Brussels European Councils in 1978 set up the EMS. Established on a voluntary and differentiated basis – the UK decided not to participate in the exchange-rate mechanism – the EMS was based on a common accounting unit, the European currency unit.

At the London European Council in 1981, the Foreign Ministers of Germany and Italy, Hans-Dietrich Genscher and Emilio Colombo, put forward a proposal for a 'European Act' covering a range of subjects: political cooperation, culture, fundamental rights, harmonisation of the law outside the fields covered by the Community Treaties, and ways of dealing with violence, terrorism and crime. It was not adopted in its original form, but some parts of it resurfaced in the 'Solemn declaration on European Union' adopted in Stuttgart on 19 June 1983.

E. The Spinelli project

A few months after its first direct election in 1979, Parliament's relations with the Council were thrown into a serious crisis by the budget for 1980. At the instigation of Altiero Spinelli, MEP, founder of the European Federalist Movement and a former commissioner, a group of nine MEPs met in July 1980 to discuss ways of revitalising the operation of the institutions. In July 1981, Parliament set up an institutional affairs committee, with Spinelli as its coordinating rapporteur, to draw up a plan for amending the existing Treaties. The committee decided to formulate plans for what was to become the constitution of the European Union. The draft treaty was adopted by a large majority on 14 February 1984. Legislative power would come under a bicameral system akin to that of a federal state[1]. The system aimed to strike a balance between Parliament and the Council, but it was not acceptable to the Member States.

THE SINGLE EUROPEAN ACT

Having settled the Community budget dispute of the early 1980s, the European Council decided at its Fontainebleau meeting in June 1984 to set up an ad hoc committee of the personal representatives of the Heads of State or Government, named the

[1]Amato, G., Bribosia, H., De Witte, B., Genesis and destiny of the European Constitution, Bruylant, Brussels, 2007, p. 14.

Dooge Committee after its chairman. The committee was asked to make proposals for improving the functioning of the Community system and of political cooperation. The June 1985 Milan European Council decided by a majority (seven votes to three), in an exceptional procedure for that body, to convene an intergovernmental conference to consider strengthening the powers of the institutions, extending Community activities to new areas and establishing a 'genuine' internal market.

On 17 February 1986, nine Member States signed the SEA, followed later, on 28 February 1986, by Denmark (after a referendum vote in favour), Italy and Greece. The SEA was ratified by the Member States' parliaments in 1986, but, because a private citizen had appealed to the Irish courts, its entry into force was delayed for six months until 1 July 1987. The SEA was the first substantial change to the Treaty of Rome. Its principal provisions were as follows:

A. Extension of the Union's powers

1. Through the creation of a large internal market

A fully operational internal market was to be completed by 1 January 1993, taking up and broadening the objective of the common market introduced in 1958 (2.1.1).

2. Through the establishment of new powers as regards:

— Monetary policy;

— Social policy;

— Economic and social cohesion;

— Research and technological development;

— The environment;

— Cooperation in the field of foreign policy.

B. Improvement in the decision-making capacity of the Council of Ministers

Qualified majority voting replaced unanimity in four of the Community's existing areas of responsibility (amendment of the common customs tariff, freedom to provide services, the free movement of capital and the common sea and air transport policy). Qualified majority voting was also introduced for several new areas of responsibility, such as the internal market, social policy, economic and social cohesion, research and technological development, and environmental policy. Finally, qualified majority voting was the subject of an amendment to the Council's internal rules of procedure, so as to comply with a previous presidency declaration that, in future, the Council could be called upon to vote not only on the initiative of its president, but also at the request of the Commission or a Member State if a simple majority of the Council's members were in favour.

C. Growth of the role of the European Parliament

Parliament's powers were strengthened by:

— Making Community agreements on enlargement and association agreements subject to Parliament's assent;

— Introducing a procedure for cooperation with the Council (1.2.3), which gave Parliament real, albeit limited, legislative powers; it applied to about a dozen legal bases at the time and marked a watershed in turning Parliament into a genuine co-legislator.

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1.1.3. THE MAASTRICHT AND AMSTERDAM TREATIES

The Maastricht Treaty altered the former European treaties and created a European Union based on three pillars: the European Communities, the common foreign and security policy (CFSP) and cooperation in the field of justice and home affairs (JHI). With a view to the enlargement of the Union, the Amsterdam Treaty made the adjustments needed to enable the Union to function more efficiently and democratically.

I. THE MAASTRICHT TREATY

The Treaty on European Union[1], signed in Maastricht on 7 February 1992, entered into force on 1 November 1993.

A. The Union's structures

By instituting a European Union, the Maastricht Treaty marked a new step in the process of creating an 'ever-closer union among the peoples of Europe'. The Union was based on the European Communities and supported by policies and forms of cooperation provided for in the Treaty on European Union. It had a single institutional structure, consisting of the Council, the European Parliament, the European Commission, the Court of Justice and the Court of Auditors which (being at the time strictly speaking the only EU institutions) exercised their powers in accordance with the Treaties. The Treaty established an Economic and Social Committee and a Committee of the Regions, which both had advisory powers. A European System of Central Banks and a European Central Bank were set up under the provisions of the Treaty in addition to the existing financial institutions in the EIB group, namely the European Investment Bank and the European Investment Fund.

B. The Union's powers

The Union created by the Maastricht Treaty was given certain powers by the Treaty, which were classified into three groups and were commonly referred to as 'pillars': the first pillar consisted of the European Communities and provided a framework enabling powers for which Member States had transferred sovereignty in areas governed by the Treaty to be exercised by the Community institutions. The second pillar was the common foreign and security policy laid down in Title V of the Treaty. The third pillar was cooperation in the fields of justice and home affairs laid down in Title VI of the Treaty. Titles V and VI provided for intergovernmental cooperation using the common institutions, with certain supranational features such as involving the Commission and consulting Parliament.

1. The European Community (first pillar)

The Community's task was to make the single market work and to promote, among other things, a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection and equality between men and women. The Community pursued these objectives, acting within the limits of its powers, by establishing a common market and related measures set out in Article 3 of the EC Treaty and by initiating the economic and single monetary policy referred

[1] OJ C 191, 29.7.1992, p. 1–112.

to in Article 4. Community activities had to respect the principle of proportionality and, in areas that did not fall within its exclusive competence, the principle of subsidiarity (Article 5 of the EC Treaty).

2. The common foreign and security policy (CFSP) (second pillar)

The Union had the task of defining and implementing, by intergovernmental methods, a common foreign and security policy. The Member States were to support this policy actively and unreservedly in a spirit of loyalty and mutual solidarity. Its objectives were: to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter; to strengthen the security of the Union in all ways; to promote international cooperation; to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

3. Cooperation in the fields of justice and home affairs (third pillar)

The Union's objective was to develop common action in these areas by intergovernmental methods to provide citizens with a high level of safety within an area of freedom, security and justice. It covered the following areas:

— Rules and the exercise of controls on crossing the Community's external borders;

— Combating terrorism, serious crime, drug trafficking and international fraud;

— Judicial cooperation in criminal and civil matters;

— Creation of a European Police Office (Europol) with a system for exchanging information between national police forces;

— Controlling illegal immigration;

— Common asylum policy.

II. THE AMSTERDAM TREATY

The Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts[2], signed in Amsterdam on 2 October 1997, entered into force on 1 May 1999.

A. Increased powers for the Union

1. European Community

With regard to objectives, special prominence was given to balanced and sustainable development and a high level of employment. A mechanism was set up to coordinate Member States' policies on employment, and there was a possibility of some Community measures in this area. The Agreement on Social Policy was incorporated into the EC Treaty with some improvements (removal of the opt-out). The Community method now applied to some major areas which had hitherto come under the third pillar, such as asylum, immigration, crossing external borders, combating fraud, customs cooperation and judicial cooperation in civil matters, in addition to some of the cooperation under the Schengen Agreement, which the EU and Communities endorsed in full.

[2]OJ C 340, 10.11.1997, p. 115.

2. European Union

Intergovernmental cooperation in the areas of police and judicial cooperation was strengthened by defining objectives and precise tasks and creating a new legal instrument similar to a directive. The instruments of the common foreign and security policy were developed later, in particular by creating a new instrument, the common strategy, a new office, the 'Secretary-General of the Council responsible for the CFSP', and a new structure, the 'Policy Planning and Early Warning Unit'.

B. A stronger position for Parliament

1. Legislative power

Under the codecision procedure, which was extended to the existing 15 legal bases under the EC Treaty, Parliament and the Council became co-legislators on a practically equal footing. With the exception of agriculture and competition policy, the codecision procedure applied to all the areas where the Council was permitted to take decisions by qualified majority. In four cases (Articles 18, 42 and 47 and Article 151 on cultural policy, which remained unchanged) the codecision procedure was combined with a requirement for a unanimous decision in the Council. The other legislative areas where unanimity was required were not subject to codecision.

2. Power of control

As well as voting to approve the Commission as a body, Parliament also had a vote to approve in advance the person nominated as President of the future Commission (Article 214).

3. Election and statute of Members

With regard to the procedure for elections to Parliament by direct universal suffrage (Article 190 of the EC Treaty), the Community's power to adopt common principles was added to the existing power to adopt a uniform procedure. A legal basis making it possible to adopt a single statute for MEPs was included in the same article. However, there was still no provision allowing measures to develop political parties at European level (cf. Article 191).

C. Closer cooperation

For the first time, the Treaties contained general provisions allowing some Member States under certain conditions to take advantage of common institutions to organise closer cooperation between themselves. This option was in addition to the closer cooperation covered by specific provisions, such as economic and monetary union, creation of the area of freedom, security and justice and incorporating the Schengen provisions. The areas where closer cooperation was possible were the third pillar and, under particularly restrictive conditions, matters subject to non-exclusive Community competence. The conditions which any closer cooperation had to fulfil and the planned decision-making procedures had been drawn up in such a way as to ensure that this new factor in the process of integration would remain exceptional and, at all events, could only be used to move further towards integration and not to take retrograde steps.

D. Simplification

The Amsterdam Treaty removed from the European Treaties all provisions that the passage of time had rendered void or obsolete, while ensuring that this did not affect the legal effects derived from them in the past. It also renumbered the Treaty articles.

For legal and political reasons the Treaty was signed and submitted for ratification in the form of amendments to the existing Treaties.

E. Institutional reforms with a view to enlargement

a. The Amsterdam Treaty set the maximum number of Members of the European Parliament, in line with Parliament's request, at 700 (Article 189).

b. The composition of the Commission and the question of weighted votes were covered by a 'Protocol on the Institutions' attached to the Treaty. This provided that, in a Union of up to 20 Member States, the Commission would comprise one national of each Member State, provided that by that date, weighting of the votes in the Council had been modified. At all events, at least a year before the 21st Member State joined, a new intergovernmental conference would have to comprehensively review the Treaties' provisions on the institutions.

c. There was provision for the Council to use qualified majority voting in a number of the legal bases newly established by the Amsterdam Treaty. However, of the existing Community policies, only research policy had new provisions on qualified majority voting, with other policies still requiring unanimity.

F. Other matters

A protocol covered Community procedures for implementing the principle of subsidiarity. New provisions on access to documents (Article 255) and greater openness in the Council's legislative work (Article 207(3)) improved transparency.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament was consulted before an intergovernmental conference was called. Parliament was also involved in the intergovernmental conferences according to ad hoc formulas; during the last three it was represented, depending on the case, by its President or by two of its members.

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1.1.4. THE TREATY OF NICE AND THE CONVENTION ON THE FUTURE OF EUROPE

The Treaty of Nice prepared the European Union only partially for the important enlargements to the east and south on 1 May 2004 and 1 January 2007. Therefore, following up on the questions raised in the Laeken Declaration, the European Convention made an effort to produce a new legal basis for the Union in the form of the Treaty establishing a Constitution for Europe. Following 'no' votes in referendums in two Member States, that treaty was not ratified.

TREATY OF NICE

The Treaty was signed on 26 February 2001 and entered into force on 1 February 2003.

A. Objectives

The conclusions of the 1999 Helsinki European Council required that, by the end of 2002, the EU be able to welcome as new Member States those applicant countries which were ready for accession. Since only two of the applicant countries were more populous than the Member State average at the time, the political weight of countries with a smaller population was due to increase considerably. The Treaty of Nice was therefore meant to make the EU institutions more efficient and legitimate and to prepare the EU for its next major enlargement.

B. Background

A number of institutional issues (which became known as the 'Amsterdam leftovers') had been addressed by the Maastricht and Amsterdam Intergovernmental Conferences (IGCs) but not satisfactorily resolved. These included size and composition of the Commission, weighting of votes in the Council, and extension of qualified majority voting. On the basis of a report by the Finnish Presidency, the Helsinki European Council decided in late 1999 that an IGC should deal with the leftovers and all other changes required in preparation for enlargement.

C. Content

The IGC opened on 14 February 2000 and completed its work in Nice on 10 December 2000, reaching agreement on the institutional questions, and on a range of other points, namely a new distribution of seats in the European Parliament, more flexible arrangements for enhanced cooperation, the monitoring of fundamental rights and values in the EU, and a strengthening of the EU judicial system.

1. Weighting of votes in the Council

Taking together the system of voting in the Council, the composition of the Commission and, to some extent, the distribution of seats in the European Parliament, the IGC realised that the main imperative was to change the relative weighting of the Member States, a subject no other IGC had addressed since the Treaty of Rome.

Two methods of defining a qualified majority were considered: a new system of weighting (modifying the existing one) or application of a dual majority (of votes and of population) – the latter solution having been proposed by the Commission and endorsed by Parliament. The IGC chose the first option. The number of votes was

increased for all Member States, but the share accounted for by the most populous Member States decreased: previously 55% of votes, it fell to 45% when the 10 new members joined, and to 44.5% on 1 January 2007. This was why the demographic 'safety net' was introduced: a Member State may request verification that the qualified majority represents at least 62% of the total population of the Union. If it does not, the decision concerned will not be adopted.

2. The Commission

a. Composition

Since 2005 the Commission has comprised one Commissioner per Member State. The Council has the power to decide, acting unanimously, on the number of Commissioners and on arrangements for a rotation system, provided that each Commission reflects the demographic and geographical range of the Member States.

b. Internal organisation

The Treaty of Nice provides the President of the Commission with the power to allocate responsibilities to the Commissioners and to reassign them during his or her term of office, as well as to select and determine the number of Vice-Presidents.

3. The European Parliament

a. Composition

The Treaty of Amsterdam had set the maximum number of MEPs at 700. At Nice, the European Council thought it necessary, with an eye to enlargement, to revise the number of MEPs for each Member State. The new composition of Parliament was also used to counterbalance the altered weighting of votes in the Council. The maximum number of MEPs was therefore set at 732.

b. Powers

Parliament was enabled, like the Council, the Commission, and the Member States, to bring a legal challenge to acts of the Council, the Commission or the European Central Bank on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or of any rule of law relating to its application, or misuse of powers.

Further to a proposal by the Commission, Article 191 was turned into an operational legal basis for the adoption, under the co-decision procedure, of regulations governing political parties at EU level and rules on their funding.

Parliament's legislative powers were increased through a slight broadening of the scope of the co-decision procedure and by requiring Parliament's assent for the establishment of enhanced cooperation in areas covered by co-decision. Parliament must also be asked for its opinion should the Council adopt a position on the risk of a serious breach of fundamental rights in a Member State.

4. Reform of the judicial system

a. The Court of Justice of the European Union

The Court of Justice was empowered to sit in a number of different ways: in chambers (where it consists of three or five judges), in a Grand Chamber (11 judges) or as the full Court. The Council, acting unanimously, may increase the number of Advocates-General. The Court of Justice of the EU retained jurisdiction over questions referred for a preliminary ruling, but it was able, under its Statute, to refer to the Court of First

Instance types of matters other than those listed in Article 225 of the Treaty Establishing the European Community (TEC).

b. General Court

The powers of the General Court (formerly the Court of First Instance prior to the Lisbon Treaty coming into force on 1 December 2009) were increased to include certain categories of preliminary ruling, with the possibility of judicial panels being established by unanimous decision of the Council. All these operating provisions, notably on the powers of the Court, were thereafter set out in the Treaty itself.

5. Legislative procedures

Although a considerable number of new policies and measures (27) now required qualified majority voting in the Council, co-decision was extended only to a few minor areas (covered by former Articles 13, 62, 63, 65, 157, 159 and 191 of the TEC Treaty); for matters covered by former Article 161 assent was now required.

6. Enhanced cooperation

Like the Amsterdam Treaty, the Treaty of Nice contained general provisions applying to all areas of enhanced cooperation and provisions specific to the pillar concerned. Whereas the Amsterdam Treaty provided for enhanced cooperation under the first and third pillars only, the Treaty of Nice encompassed all three pillars.

The Treaty of Nice made further changes: referral to the European Council ceased to be an option, the concept of ‘a reasonable period of time’ was clarified, and the assent of Parliament was now required in all areas where enhanced cooperation related to a question covered by the co-decision procedure.

7. Protection of fundamental rights

A paragraph was added to Article 7 of the Treaty on European Union (TEU) to cover cases where a patent breach of fundamental rights has not actually occurred but where there is a ‘clear risk’ that it may occur. The Council, acting by a majority of four fifths of its members and after obtaining the assent of Parliament, determines the existence of the risk and addresses appropriate recommendations to the Member State in question. A non-binding Charter of Fundamental Rights was proclaimed.

D. Role of the European Parliament

As with earlier intergovernmental conferences, Parliament was actively involved in preparations for the IGC in 2000. In its resolutions of 18 November 1999 on the preparation of the reform of the Treaties and the next Intergovernmental Conference and of 31 May 2001 on the Treaty of Nice and the future of the European Union, it provided its views on the conference agenda and its progress and objectives. Parliament also expressed its opinion on the substance and judicial implications of the Charter of Fundamental Rights. Parliament insisted that the next IGC should be a transparent process, involving European and national parliamentarians and the Commission, as well as input from ordinary people, and that what it produced should be a constitution-type document.

CONVENTION ON THE FUTURE OF EUROPE

A. Basis and objectives

In accordance with Declaration No 23 annexed to the Treaty of Nice, the Laeken European Council of 14 and 15 December 2001 decided to organise a Convention bringing together the main parties concerned for a debate on the future of the European Union. The objectives were to prepare for the next IGC as transparently as possible and to address the four main issues concerning the further development of the EU: a better division of competences; simplification of the EU's instruments for action; increased democracy, transparency and efficiency; and the drafting of a constitution for Europe's citizens.

B. Organisation

The Convention comprised a chair (Valéry Giscard D'Estaing), two vice-chairs (Giuliano Amato and Jean-Luc Dehaene), 15 representatives of the Member States' heads of state or government, 30 members of the national parliaments (two per Member State), 16 members of the European Parliament and two members of the Commission. The countries that had applied to join the Union also took part in the debate on an equal footing, but could not block any consensus which might emerge among the Member States. The Convention therefore had a total of 105 members.

In addition to the chair and vice-chairs, the Praesidium comprised nine members of the Convention and an invited representative chosen by the applicant countries. The Praesidium had the role of lending impetus to the Convention and providing it with a basis on which to work.

C. Outcome

The work of the Convention comprised: a 'listening phase', in which it sought to identify the expectations and needs of Member States and Europe's citizens, a phase in which the ideas expressed were studied, and a phase in which recommendations based on the essence of the debate were drafted. At the end of 2002, 11 working groups presented their findings to the Convention. During the first half of 2003, the Convention drew up and debated a text which became the draft Treaty establishing a Constitution for Europe.

Part I of the Treaty (principles and institutions; 59 articles) and Part II (Charter of Fundamental Rights; 54 articles) were laid before the Thessaloniki European Council on 20 June 2003. Part III (policies; 338 articles) and Part IV (final provisions; 10 articles) were presented to the Italian Presidency on 18 July 2003. The European Council adopted this text on 18 June 2004, retaining the basic structure of the Convention's draft, albeit with a considerable number of amendments. Approved by the European Parliament, the Treaty was then rejected by France (29 May 2005) and the Netherlands (1 June 2005) in their national referendums. As a result of two 'no' votes in referendums in France and the Netherlands, the ratification procedure for the Treaty establishing a Constitution for Europe was not completed.

D. Role of the European Parliament

The impact of MEPs during the work of the European Convention was seen by most observers as decisive. Thanks to several factors, including their experience of negotiating in an international environment and the fact that the Convention was

meeting on Parliament's premises, MEPs were able to leave a strong imprint on the debates and on the outcome of the Convention. They were also instrumental in the formation of political families comprising MEPs and national MPs. Parliament thus achieved a considerable number of its original aims, and most of that achievement is now safeguarded in the Treaty of Lisbon.

Mariusz Maciejewski
11/2023

1.1.5. THE TREATY OF LISBON

This fact sheet presents the background and essential provisions of the Treaty of Lisbon. The objective is to provide a historical context for the emergence of this latest fundamental EU text from those that came before it. The specific provisions (with article references) and their effects on European Union policies are explained in more detail in the fact sheets dealing with particular policies and issues.

LEGAL BASIS

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (OJ C 306, 17.12.2007); entry into force on 1 December 2009.

HISTORY

The Treaty of Lisbon started as a constitutional project at the end of 2001 (European Council declaration on the future of the European Union, or Laeken Declaration), and was followed up in 2002 and 2003 by the European Convention which drafted the Treaty establishing a Constitution for Europe (Constitutional Treaty) (1.1.4). The process leading to the Treaty of Lisbon is a result of the negative outcome of two referenda on the Constitutional Treaty in May and June 2005, in response to which the European Council decided to have a two-year 'period of reflection'. Finally, on the basis of the Berlin Declaration of March 2007, the European Council of 21 to 23 June 2007 adopted a detailed mandate for a subsequent Intergovernmental Conference (IGC), under the Portuguese Presidency. The IGC concluded its work in October 2007. The Treaty was signed by the European Council in Lisbon on 13 December 2007 and has been ratified by all Member States.

CONTENT

A. Objectives and legal principles

The Treaty establishing the European Community is renamed the 'Treaty on the Functioning of the European Union' (TFEU) and the term 'Community' is replaced by 'Union' throughout the text. The Union takes the place of the Community and is its legal successor. The Treaty of Lisbon does not create state-like Union symbols like a flag or an anthem. Although the new text is, hence, no longer a constitutional treaty by name, it preserves most of the substantial achievements.

No additional exclusive competences are transferred to the Union by the Treaty of Lisbon. However, it changes the way the Union exercises its existing powers and some new (shared) powers, by enhancing citizens' participation and protection, creating a new institutional set-up and modifying the decision-making processes for increased efficiency and transparency. A higher level of parliamentary scrutiny and democratic accountability is therefore attained.

Unlike the Constitutional Treaty, the Treaty of Lisbon contains no article formally enshrining the supremacy of Union law over national legislation, but a declaration was

attached to the Treaty to this effect (Declaration No 17), referring to an opinion of the Council's Legal Service which reiterates consistent case-law of the Court.

The Treaty of Lisbon for the first time clarifies the powers of the Union. It distinguishes between three types of competences: exclusive competence, where the Union alone can legislate, and Member States only implement; shared competence, where the Member States can legislate and adopt legally binding measures if the Union has not done so; and supporting competence, where the EU adopts measures to support or complement Member States' policies. Union competences can now be handed back to the Member States in the course of a treaty revision.

The Treaty of Lisbon gives the EU full legal personality. Therefore, the Union obtains the ability to sign international treaties in the areas of its attributed powers or to join an international organisation. Member States may only sign international agreements that are compatible with EU law.

The Treaty for the first time provides for a formal procedure to be followed by Member States wishing to withdraw from the European Union in accordance with their constitutional requirements, namely Article 50 of the Treaty on European Union (TEU).

The Treaty of Lisbon completes the absorption of the remaining third pillar aspects of the area of freedom, security and justice (FSJ), i.e. police and judicial cooperation in criminal matters, into the first pillar. The former intergovernmental structure ceases to exist, as the acts adopted in this area are now made subject to the ordinary legislative procedure (qualified majority and codecision), using the legal instruments of the Community method (regulations, directives and decisions), unless otherwise specified.

With the Treaty of Lisbon in force, Parliament is able to propose amendments to the Treaties, as was already the case for the Council, a Member State government or the Commission. Normally, such an amendment would require the convocation of a Convention which would recommend amendments to an IGC (the European Council could, however, decide not to convene such a Convention, subject to Parliament's consent (Article 48(3) TEU, second paragraph). An IGC could then be convened to determine amendments to the Treaties by common accord. It is, however, also possible to revise the Treaties without convening an IGC and through simplified revision procedures, where the revision concerns the internal policies and actions of the Union (Article 48(6) and 48(7) TEU). The revision would then be adopted as a decision of the European Council, but might remain subject to national ratification rules.

B. Enhanced democracy and better protection of fundamental rights

The Treaty of Lisbon expresses the three fundamental principles of democratic equality, representative democracy and participatory democracy. Participatory democracy takes the new form of a citizens' initiative (4.1.5).

The Charter of Fundamental Rights is not incorporated directly into the Treaty of Lisbon, but acquires a legally binding character through Article 6(1) TEU, which gives the Charter the same legal value as the Treaties (4.1.2).

The process of the EU's accession to the European Convention on Human Rights (ECHR) was opened when the 14th protocol to the ECHR entered into force on 1 June 2010. This allows not only states but also an international organisation, i.e. the European Union, to become signatories of the ECHR. Accession still requires ratification by all states that are parties to the ECHR, as well as by the EU itself.

Negotiations between Council of Europe and EU representatives led to the finalisation of a draft agreement in April 2013, which, however, was deemed incompatible with Article 6 TEU by the Court of Justice of the European Union in its Opinion 2/2013. Further negotiations will be necessary before accession can take place.

C. A new institutional set-up

1. The European Parliament

Pursuant to Article 14(2) TEU, Parliament is now 'composed of representatives of the Union's citizens', not of representatives of 'the peoples of the States'.

Parliament's legislative powers have been increased through the 'ordinary legislative procedure', which replaces the former codecision procedure. This procedure now applies to more than 40 new policy areas, raising the total number to 85. The assent procedure continues to exist as 'consent', and the consultation procedure remains unchanged. The new budgetary procedure creates full parity between Parliament and the Council for approval of the annual budget. The multiannual financial framework has to be agreed by Parliament.

Parliament now elects the President of the Commission by a majority of its members on a proposal from the European Council, which is obliged to select a candidate by qualified majority, taking into account the outcome of the European elections. Parliament continues to approve the Commission as a college.

The maximum number of MEPs has been set at 751, with citizens' representation being degressively proportional. The maximum number of seats per Member State is reduced to 96, while the minimum number is increased to 6. On 7 February 2018, Parliament voted in favour of reducing the number of its seats from 751 to 705 after the UK's departure from the EU and re-distributing some of the seats thereby freed up among those Member States that were slightly under-represented (1.3.3).

The UK left the EU on 1 February 2020. As of this date, the new composition of 705 MEPs has been applied. Of the 73 seats vacated by the UK's withdrawal, 27 seats have been reallocated to better reflect the principle of degressive proportionality: the 27 seats have been distributed to France (+5), Spain (+5), Italy (+3), the Netherlands (+3), Ireland (+2), Sweden (+1), Austria (+1), Denmark (+1), Finland (+1), Slovakia (+1), Croatia (+1), Estonia (+1), Poland (+1) and Romania (+1). No Member State has lost any seats.

2. The European Council

The Treaty of Lisbon formally recognises the European Council as an EU institution, responsible for providing the Union with the 'impetus necessary for its development' and for defining its 'general political directions and priorities'. The European Council has no legislative functions. A long-term presidency replaces the previous system of six-month rotation. The President is elected by a qualified majority of the European Council for a renewable term of 30 months. This should improve the continuity and coherence of the European Council's work. The President also represents the Union externally, without prejudice to the duties of the High Representative of the Union for Foreign Affairs and Security Policy (see below).

3. The Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy (VP / HR)

The VP / HR is appointed by a qualified majority of the European Council with the agreement of the President of the Commission and is responsible for the EU's common foreign and security policy, with the right to put forward proposals. Besides chairing the Foreign Affairs Council, the VP / HR also has the role of Vice-President of the Commission. The VP / HR is assisted by the European External Action Service, which comprises staff from the Council, the Commission and national diplomatic services.

4. The Council

The Treaty of Lisbon maintains the principle of double majority voting (citizens and Member States). However, the previous arrangements remained in place until November 2014; since 1 November 2014, the new rules have applied.

A qualified majority is reached when 55% of members of the Council (in practice, 15 states out of 27), comprising at least 65% of the population, support a proposal (Article 16(4) TEU). When the Council is not acting on a proposal from the Commission or the VP / HR, the necessary majority of Member States increases to 72% (Article 238(2) TFEU). To block legislation, at least four Member States have to vote against a proposal. A new scheme inspired by the 'Ioannina compromise' allows 55% (75% until 1 April 2017) of the Member States necessary for the blocking minority to ask for reconsideration of a proposal during a 'reasonable time period' (Declaration 7).

The Council meets in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting is divided into two parts, dealing respectively with legislative acts and non-legislative activities. The Council Presidency continues to rotate on a six-month basis, but there are 18-month group presidencies of three Member States in order to ensure better continuity of work. As an exception, the Foreign Affairs Council is continuously chaired by the VP / HR.

5. The Commission

Since the President of the Commission is now chosen and elected taking into account the outcome of the European elections, the political legitimacy of the office is increased. The President is responsible for the internal organisation of the college (appointment of commissioners, distribution of portfolios, requests to resign under particular circumstances).

6. The Court of Justice of the European Union

The jurisdiction of the Court is extended to all activities of the Union with the exception of the common foreign and security policy (CFSP). Access to the Court is facilitated for individuals.

D. More efficient and democratic policymaking with new policies and new competencies

Several so-called passerelle clauses allow for a change from unanimous decision-making to qualified majority voting and from the consultation procedure to codecision (Article 31(3) TEU, Articles 81, 153, 192, 312 and 333 TFEU, plus some passerelle-type procedures concerning judicial cooperation in criminal matters) (1.2.4). In his 2017 State of the Union speech, Commission President Juncker announced initiatives to move away from the unanimity rule in a number of areas by using the passerelle clauses. As a follow-up, the Commission has adopted four communications, proposing

to enhance the use of qualified majority voting instead of unanimity in the fields of CFSP (2018), tax policy (January 2019), energy and climate (April 2019) and social policy (April 2019). These communications aim at rendering decision-making more prompt, flexible and efficient where an EU competence already exists.

In areas where the Union has no exclusive powers, at least nine Member States can establish enhanced cooperation among themselves. Authorisation for its use must be granted by the Council after obtaining the consent of the European Parliament. On CFSP matters, unanimity applies.

The Treaty of Lisbon considerably strengthens the principle of subsidiarity by involving the national parliaments in the EU decision-making process (1.2.2) (1.3.5).

A certain number of new or extended policies have been introduced in environment policy, which now includes the fight against climate change, and energy policy, which makes new references to solidarity and the security and interconnectivity of supply. Furthermore, intellectual property rights, sport, space, tourism, civil protection and administrative cooperation are now possible subjects of EU law-making.

On the common security and defence policy (CSDP) (5.1.2), the Treaty of Lisbon introduces a mutual defence clause which provides that all Member States are obliged to provide help to a Member State under attack. A solidarity clause provides that the Union and each of its Member States have to provide assistance by all possible means to a Member State affected by a human or natural catastrophe or by a terrorist attack. A 'permanent structured cooperation' is open to all Member States that commit themselves to taking part in European military equipment programmes and to providing combat units that are available for immediate action. To establish such cooperation, it is necessary to obtain a qualified majority in Council after consultation with the VP / HR.

ROLE OF THE EUROPEAN PARLIAMENT

See 1.1.4 for Parliament's contributions to the European Convention and its involvement in previous IGCs. With respect to the 2007 IGC, leading to the signature of the Treaty of Lisbon, Parliament for the first time sent three representatives to the conference under the Portuguese Presidency.

Almost a decade after the signature of the Treaty of Lisbon, Parliament acknowledged that some of its provisions were not being exploited to the fullest. As a response thereto, on 16 February 2017 it adopted a resolution on improving the functioning of the European Union by building on the potential of the Lisbon Treaty, which puts forward a number of recommendations on how to unblock this potential in order to enhance the Union's capacity to tackle current global challenges.

On the same day, Parliament also adopted a resolution on the possible evolution of and adjustments to the current institutional set-up of the European Union, suggesting concrete proposals for Treaty reforms.

The EU has lately faced several crises linked to, in particular, Brexit, the rule of law, the multiannual financial framework, the COVID-19 pandemic and the Russian invasion of Ukraine. The handling of these crises has again exposed shortcomings in the current system of governance, and the lack of efficient decision-making has contributed to a decrease in public support for the European project. In response to current challenges, on 10 March 2021, the EU institutions launched the Conference on the Future of Europe, designed to give citizens a say on how to reshape the EU

and increase the effectiveness and transparency of its decision-making procedures. On 9 May 2022, the Conference concluded its work, which resulted in 49 proposals, some of which require changes to the EU Treaties. Consequently, on 9 June 2022, Parliament adopted a resolution on the call for a Convention for the revision of the Treaties, and on 11 July 2023, it adopted a resolution on the implementation of the passerelle clauses in the EU Treaties. Its Committee on Constitutional Affairs has also started to prepare an own-initiative report on the Proposals of the European Parliament for the amendment of the Treaties.

Eeva Pavy
10/2023

1.2. THE EUROPEAN UNION'S LEGAL SYSTEM AND DECISION-MAKING PROCEDURES

1.2.1. SOURCES AND SCOPE OF EUROPEAN UNION LAW

The European Union has legal personality and as such its own legal order which is separate from international law. Furthermore, EU law has direct or indirect effect on the laws of its Member States and becomes part of the legal system of each Member State. The European Union is in itself a source of law. The legal order is usually divided into primary legislation (the Treaties and general legal principles), secondary legislation (based on the Treaties) and supplementary law.

SOURCES AND HIERARCHY OF UNION LAW

— Treaty on European Union (TEU), Treaty on the Functioning of the European Union (TFEU), and their protocols (there are 37 protocols, 2 annexes and 65 declarations, which are attached to the treaties to fill in details, without being incorporated into the full legal text) 1.1.5;

— Charter of Fundamental Rights of the European Union 4.1.2;

— The Treaty Establishing the European Atomic Energy Community (Euratom) is still in force as a separate treaty;

— International agreements 5.2.1;

— General principles of Union law;

— Secondary legislation.

The European Union is a Union based on the rule of law that has established a complete system of legal remedies and procedures designed to enable the Court of Justice of the European Union (CJEU) to review the legality of the EU institutions' acts (Article 263 TFEU). The Treaties and the general principles are at the top of the hierarchy, and are known as primary legislation. Following the entry into force of the Lisbon Treaty on 1 December 2009, the same value was also given to the Charter of Fundamental Rights. International agreements concluded by the European Union are subordinate to primary legislation. Secondary legislation is the next level down in the hierarchy and is valid only if it is consistent with the acts and agreements which have precedence over it. The doctrine of primacy of EU law is a fundamental pillar of the EU legal order and aims to ensure the unity and consistency of EU law. The CJEU formally insists that EU law has absolute primacy over the domestic laws of the Member States, and that this must be taken into account by domestic courts in their decisions. It has always claimed ultimate authority in determining the relationship between EU and domestic law. In the landmark cases van Gend en Loos v Nederlandse Administratie der Belastingen and Costa v ENEL, the CJEU developed the fundamental doctrines of direct effect and primacy of EU law. The CJEU upheld these doctrines in subsequent cases. Notably, it argued in Internationale Handelsgesellschaft that EU law enjoys primacy even with respect to fundamental rights guaranteed in national constitutions.

OBJECTIVES

Creation of a legal order for the Union to achieve the objectives stipulated in the Treaties.

EU SOURCES OF LAW

A. Primary legislation of the European Union 1.1.1, 1.1.2, 1.1.3, 1.1.4, 1.1.5, 4.1.2

B. Secondary legislation of the European Union

1. General points

The legal acts of the Union are listed in Article 288 TFEU. They are regulations, directives, decisions, recommendations and opinions. EU institutions may adopt legal acts of these kinds only if they are empowered to do so by the Treaties. The limits of Union competences are governed by the principle of conferral, which is enshrined in Article 5(1) TEU. The TFEU defines the scope of Union competences, dividing them into three categories: exclusive competences (Article 3), shared competences (Article 4) and supporting competences (Article 6), whereby the EU adopts measures to support or complement Member States' policies. Articles 3, 4 and 6 TFEU list the areas that come under each category of Union competence. In the absence of the necessary powers to attain one of the objectives set out in the Treaties, the institutions may apply the provisions of Article 352 TFEU, and thus adopt the 'appropriate measures'.

The institutions adopt only those legal instruments listed in Article 288 TFEU. The only exceptions are the common foreign, security and defence policies, to which the intergovernmental method still applies. In this area, common strategies, common actions and common positions have been replaced by 'general guidelines' and 'decisions defining' actions to be undertaken and positions to be adopted by the Union, and the arrangements for the implementation of those decisions (Article 25 TEU).

There are, in addition, various forms of action, such as recommendations, communications and acts on the organisation and running of the institutions (including interinstitutional agreements), the designation, structure and legal effects of which stem from various provisions in the Treaties or the rules adopted pursuant to the Treaties.

2. Hierarchy of EU secondary legislation

A hierarchy of secondary legislation is established by Articles 289, 290 and 291 TFEU between legislative acts, delegated acts and implementing acts. Legislative acts are legal acts which are adopted through the ordinary or a special legislative procedure. Delegated acts for their part are non-legislative acts of general application which supplement or amend certain non-essential elements of a legislative act. The power to adopt these acts may be delegated to the Commission by the legislator (Parliament and the Council). The objectives, content, scope and duration of the delegation of power are defined in the legislative act, as are any urgent procedures, where applicable. In addition, the legislator lays down the conditions to which the delegation is subject, which may be the authority to revoke the delegation or the right to express an objection.

Implementing acts are generally adopted by the Commission, which is competent to do so in cases where uniform conditions for implementing legally binding acts are needed. Implementing acts are a matter for the Council only in specific cases which are duly justified and in areas of common foreign and security policy. Where a basic act is adopted under the ordinary legislative procedure, the European Parliament or the Council may at any time indicate to the Commission that, in its view, a draft implementing act goes beyond the implementing powers provided for in the basic act. In this case, the Commission must revise the draft act in question.

3. The various types of EU secondary legislation

a. Regulations

Regulations are of general application, binding in their entirety and directly applicable. They must be complied with fully by those to whom they apply (private individuals, Member States, EU institutions). Regulations are directly applicable in all the Member States as soon as they enter into force (on the date stipulated or, failing this, on the twentieth day following their publication in the Official Journal of the European Union) and do not need to be transposed into national law.

They are designed to ensure the uniform application of Union law in all the Member States. Regulations supersede national laws incompatible with their substantive provisions.

b. Directives

Directives are binding, as to the result to be achieved, upon any or all of the Member States to whom they are addressed, but leave to the national authorities the choice of form and methods. National legislators must adopt a transposing act or 'national implementing measure' to transpose directives and bring national law into line with their objectives. Individual citizens are given rights and bound by the legal act only once the transposing act has been adopted. Member States are given some discretion, in transposing directives, to take account of specific national circumstances. Transposition must be effected within the period laid down in the directive. In transposing directives, Member States guarantee the effectiveness of EU law, in accordance with the principle of sincere cooperation established in Article 4(3) TEU.

In principle, directives are not directly applicable. The CJEU, however, has ruled that certain provisions of a directive may, exceptionally, have direct effects in a Member State even if the latter has not yet adopted a transposing act in cases where: (a) the directive has not been transposed into national law or has been transposed incorrectly; (b) the provisions of the directive are imperative and sufficiently clear and precise; and (c) the provisions of the directive confer rights on individuals.

If these conditions have been met, individuals may invoke the provision in question in their dealings with the public authorities. Even when the provision does not confer any rights on the individual, and only the first and second conditions have been met, Member State authorities are required to take account of the untransposed directive. This ruling is based chiefly on the principles of effectiveness, the prevention of Treaty violations and legal protection. On the other hand, an individual may not rely on the direct effect of an untransposed directive in dealings with other individuals (the 'horizontal effect'; Faccini Dori, Case C-91/92, point 25).

According to the case-law of the CJEU (Francovich, joined cases C-6/90 and C-9/90), an individual citizen is entitled to seek compensation from a Member State which is not complying with Union law. This is possible, in the case of a directive which has not been transposed or which has been transposed inadequately, where: (a) the directive is intended to confer rights on individuals; (b) the content of the rights can be identified on the basis of the provisions of the directive; and (c) there is a causal link between the breach of the obligation to transpose the directive and the loss and damage suffered by the injured parties. Fault on the part of the Member State does not then have to be demonstrated in order to establish liability.

c. Decisions, recommendations and opinions

Decisions are binding in their entirety. Where those to whom they are addressed are stipulated (Member States, natural or legal persons), they are binding only on them, and address situations specific to those Member States or persons. An individual may invoke the rights conferred by a decision addressed to a Member State only if that Member State has adopted a transposing act. Decisions may be directly applicable on the same basis as directives.

Recommendations and opinions do not confer any rights or obligations on those to whom they are addressed, but may provide guidance as to the interpretation and content of Union law.

As actions brought against Member States under Article 263 TFEU must concern acts that have been adopted by EU institutions, bodies, offices or agencies, the CJEU has no jurisdiction over the decisions of the representatives of the Member States, e.g. as regards establishing the seats of the EU agencies. Acts adopted by representatives of the Member States acting, not in their capacity as members of the Council, but as representatives of their governments, and thus collectively exercising the powers of the Member States, are not subject to judicial review by EU courts, according to a judgment of the Court of 14 July 2022 in the case of relocation of the European Medicines Agency (EMA)[1]. The Court held that Article 341 TFEU does not apply to the designation of the location of the seat of a body, office or agency of the Union, only to institutions. The competence to determine the location of the seat of Union agencies lies with the EU legislature, which must act to that end in accordance with the procedures laid down by the substantively relevant provisions of the Treaties. The decision in question was a non-binding measure of political cooperation which is not capable of limiting the discretion of the EU legislature. In that sense, the decision is not capable of limiting the discretion of the EU legislature or the European Parliament.

4. Provisions on competences, procedures, implementation and enforcement of legal acts

a. Legislative competence, right of initiative and legislative procedures: 1.3.2, 1.3.6, 1.3.8 and 1.2.3

Parliament, the Council and the Commission take part in the adoption of the Union's legislation to varying degrees, depending on the individual legal basis. Parliament can ask the Commission to present legislative proposals to itself and to the Council.

b. Implementation of Union legislation

Under primary law, the EU has only limited powers of enforcement, as EU law is usually enforced by the Member States. Furthermore, Article 291(1) TFEU adds that 'Member States shall adopt all measures of national law necessary to implement legally binding Union acts'. Where uniform conditions for implementing legally binding Union acts are needed, the Commission exercises its implementing powers (Article 291(2) TFEU).

c. Choice of type of legal act

In many cases, the Treaties lay down the type of legal act to be adopted. In many other cases, however, no type of legal act is specified. In these cases, Article 296(1) TFEU

[1]See Joined Cases C-59/18 Italy v Council and C-182/18 Comune di Milano v Council, Joined Cases C-106/19 Italy v Council and Parliament and C-232/19 Comune di Milano v Parliament and Council, and Case C-743/19 Parliament v Council).

states that the institutions must select it on a case-by-case basis, 'in compliance with the applicable procedures and with the principle of proportionality'.

C. General principles of Union law and fundamental rights

The Treaties make very few references to the general principles of Union law. These principles have mainly been developed in the case-law of the CJEU (legal certainty, institutional balance, legitimate expectation, etc.), which is also the basis for the recognition of fundamental rights as general principles of Union law. These principles are now enshrined in Article 6(3) TEU, which refers to the fundamental rights as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States and the Charter of Fundamental Rights of the European Union (4.1.2).

D. International agreements concluded by the EU under Articles 216 and 217 TFEU

The Union may, within its sphere of competence, conclude international agreements with third countries or international organisations (Article 216(1) TFEU). These agreements are binding on the Union and the Member States, and are an integral part of Union law (Article 216(2) TFEU). According to Article 217 TFEU, the EU may also conclude agreements establishing an association involving reciprocal rights and obligations, common action and special procedure. The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, was concluded in accordance with this provision. On 28 April 2021, Parliament gave its consent under Article 218, paragraph 6a, TFEU.

According to the case-law of the CJEU, international law takes precedence over (secondary) EU law: 'It should also be pointed out that, by virtue of Article 216(2) TFEU, where international agreements are concluded by the European Union they are binding upon its institutions and, consequently, they prevail over acts of the European Union'.

E. Independent expertise and better law-making

In 2004, Parliament created five policy departments providing high-level independent expertise, analysis and policy advice at the request of committees and other parliamentary bodies. This independent research – connecting MEPs, academia and citizens – should accompany every legislative initiative, from its planning until the evaluation of its implementation. It should contribute to the high quality of legislation and its interpretation, as an indispensable part of preparatory work[2].

Optimal EU legislation can lead to potential gains of over EUR 2 200 billion annually. Research prepared for the European Parliament by the policy departments indicates that annual gains of EUR 386 billion can be achieved for the free movement of goods, EUR 189 billion for the customs union, EUR 289 billion for the free movement of services and EUR 177 billion for the digital single market.

The Interinstitutional Agreement on Better Law-Making covers annual and multiannual programming and all aspects of the policy cycle. It also sets out the institutions' various commitments to deliver high-quality EU legislation that is efficient, effective, simple and clear, and that avoids overregulation and unnecessary burdens for individuals, public authorities and businesses, especially small and medium-sized enterprises.

[2]Maciejewski M., 'Role of the European Parliament in promoting the use of independent expertise in the legislative process', Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, December 2018.

However, recent research commissioned by the European Parliament indicates that the involvement of independent research needs to be: (1) improved at the stage of formulating and planning EU strategies[3], including by shortening delays to introducing legislative reforms, (2) equally applied to all legislative initiatives (e.g. exceptions for urgent files lower the quality of EU legislation in important areas), and (3) equally applied to evaluations of the effects of EU law, which currently lack crucial assessments of quantified effects due to a lack of data collection[4].

ROLE OF THE EUROPEAN PARLIAMENT

Under Article 14(1) TEU: 'The European Parliament shall, jointly with the Council, exercise legislative (via the 'ordinary legislative procedure') and budgetary (via a special legislative procedure under Article 314 TFEU) functions'. Parliament is seeking to simplify the legislative process, improve the drafting quality of legal texts and ensure that more effective penalties are imposed on Member States that fail to comply with Union law. The Commission's Annual Working and Legislative Programme presents the major political priorities of the Commission and identifies concrete actions, either legislative or non-legislative, that translate these priorities into operational terms. Parliament plays a genuine role in creating new laws, since it examines the Commission's Annual Programme of Work and says which laws it would like to see introduced.

Having gained legal personality, the Union can conclude international agreements (Article 216-217 TFEU). Any agreement concluded in the field of the common commercial policy and in all fields whose policies fall under the ordinary legislative procedure require the consent of the European Parliament (Article 218(6)(a) TFEU). For example, Parliament gave its consent on 28 April 2021 to the EU-UK Trade and Cooperation Agreement. On other occasions, Parliament had already shown that it will not hesitate to use its veto if it has serious concerns. For example, it rejected the Anti-Counterfeiting Trade Agreement (ACTA) in 2012.

In July 2022, Parliament adopted an own-initiative report in response to the communication from the Commission entitled 'Better Regulation: Joining forces to make better laws'.

Research commissioned by the policy departments for the European Parliament indicates that reform is necessary for better regulation in the EU[5]. The research also indicates that EU legislation could benefit from a reform of its drafting and its structure, in order to facilitate the digital use of legislation by EU citizens[6].

This fact sheet is prepared by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs.

Udo Bux / Mariusz Maciejewski

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[3]Jones S. et al., 'Better regulation in the EU: Improving quality and reducing delays', Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, June 2022.
[4]Sartor G. et al., 'The way forward for better regulation in the EU – better focus, synergies, data and technology', Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, August 2022.
[5]Jones, S. et al., 'Better regulation in the EU', Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, October 2023.
[6]Xanthaki H., 'The "one in, one out" principle. A real better lawmaking tool?', Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, October 2023.

1.2.2. THE PRINCIPLE OF SUBSIDIARITY

In areas in which the European Union does not have exclusive competence, the principle of subsidiarity, laid down in the Treaty on European Union, defines the circumstances in which it is preferable for action to be taken by the Union, rather than the Member States.

LEGAL BASIS

Article 5(3) of the Treaty on European Union (TEU) and Protocol (No 2) on the application of the principles of subsidiarity and proportionality.

OBJECTIVES

The principles of subsidiarity and proportionality govern the exercise of the EU's competences. In areas in which the EU does not have exclusive competence, the principle of subsidiarity seeks to safeguard the ability of the Member States to take decisions and action and authorises intervention by the Union when the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, 'by reason of the scale and effects of the proposed action'. The purpose of including a reference to the principle in the EU Treaties is also to ensure that powers are exercised as close to the citizen as possible, in accordance with the proximity principle referred to in Article 10(3) of the TEU.

ACHIEVEMENTS

A. Origin and history

The principle of subsidiarity was formally enshrined by the TEU, signed in 1992: the TEU included a reference to the principle in the Treaty establishing the European Community (TEC). The Single European Act, signed in 1986, had already incorporated a subsidiarity criterion into environmental policy, however, albeit without referring to it explicitly as such. In its judgment of 21 February 1995 (T-29/92), the Court of First Instance of the European Communities ruled that the principle of subsidiarity was not a general principle of law, against which the legality of Community action should have been tested, prior to the entry into force of the TEU.

Without changing the wording of the reference to the principle of subsidiarity in the renumbered Article 5, second paragraph, of the TEC, the Treaty of Amsterdam, signed in 1997, annexed to the TEC a Protocol on the application of the principles of subsidiarity and proportionality (hereinafter '1997 protocol'). The overall approach to the application of the principle of subsidiarity, previously agreed at the 1992 European Council in Edinburgh, thus became legally binding and subject to judicial review via the protocol on subsidiarity.

The Treaty of Lisbon amending the TEU and TEC, signed in 2007, incorporated the principle of subsidiarity into Article 5(3) of the TEU and repealed the corresponding provision of the TEC while retaining its wording. It also added an explicit reference to the regional and local dimension of the principle of subsidiarity. What is more, the Treaty of Lisbon replaced the 1997 protocol with a new Protocol No 2, the main difference

being the new role of the national parliaments in ensuring compliance with the principle of subsidiarity (1.3.5).

B. Definition

The general aim of the principle of subsidiarity is to guarantee a degree of independence for a lower authority in relation to a higher body or for a local authority in relation to central government. It therefore involves the sharing of powers between several levels of authority, a principle which forms the institutional basis for federal states.

When applied in the context of the EU, the principle of subsidiarity serves to regulate the exercise of the Union's non-exclusive powers. It rules out Union intervention when an issue can be dealt with effectively by Member States themselves at central, regional or local level. The Union is justified in exercising its powers only when Member States are unable to achieve the objectives of a proposed action satisfactorily and added value can be provided if the action is carried out at Union level.

Under Article 5(3) of the TEU, there are three preconditions for intervention by Union institutions in accordance with the principle of subsidiarity: (a) the area concerned does not fall within the Union's exclusive competence (i.e. non-exclusive competence); (b) the objectives of the proposed action cannot be sufficiently achieved by the Member States (i.e. necessity); (c) the action can therefore, by reason of its scale or effects, be implemented more successfully by the Union (i.e. added value).

C. Scope

1. The demarcation of Union competences

The principle of subsidiarity applies only to areas in which competence is shared between the Union and the Member States. Following the entry into force of the Treaty of Lisbon, the competences conferred on the Union have been more precisely demarcated: Part One, Title I, of the Treaty on the Functioning of the European Union (TFEU) (signed in 2007 and entered into force in 2009) divides the competences of the Union into three categories (exclusive, shared and supporting) and lists the areas covered by the three categories.

2. Where it applies

The principle of subsidiarity applies to all the EU institutions and has practical significance for legislative procedures in particular. The Lisbon Treaty has strengthened the role of both the national parliaments and the Court of Justice in monitoring compliance with the principle of subsidiarity. It not only introduced an explicit reference to the subnational dimension of the subsidiarity principle, but also strengthened the role of the European Committee of the Regions and made it possible, at the discretion of national parliaments, for regional parliaments with legislative powers to be involved in the *ex ante* 'early warning' mechanism.

D. National parliamentary scrutiny

In keeping with the second subparagraph of Article 5(3) and Article 12(b) of the TEU, national parliaments monitor compliance with the principle of subsidiarity in accordance with the procedure set out in Protocol No 2. Under the *ex ante* 'early warning' mechanism referred to above, any national parliament or any chamber of a national parliament has eight weeks from the date of forwarding of a draft legislative act to send to the Presidents of the European Parliament, the Council and the Commission

a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. If reasoned opinions represent at least one third (one vote per chamber for a bicameral parliamentary system and two votes for a unicameral system) of the votes allocated to the national parliaments, the draft must be reviewed ('yellow card'). The institution which produced the draft legislative act may decide to maintain, amend or withdraw it, giving reasons for that decision. For draft acts relating to police cooperation or judicial cooperation in criminal matters, the threshold is lower (one quarter of the votes). If, in the context of the ordinary legislative procedure, at least a simple majority of the votes allocated to national parliaments challenge the compliance of a proposal for a legislative act with the principle of subsidiarity and the Commission decides to maintain its proposal, the matter is referred to the legislator (Parliament and the Council), which takes a decision at first reading. If the legislator considers that the legislative proposal is not compatible with the principle of subsidiarity, it may reject it subject to a majority of 55 per cent of the members of the Council or a majority of the votes cast in the European Parliament ('orange card').

To date, the 'yellow card' procedure has been triggered three times, while the 'orange card' procedure has never been used. In May 2012, the first 'yellow card' was issued with regard to a Commission proposal for a regulation concerning the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services ('Monti II')[1]. In total, 12 out of 40 national parliaments or chambers thereof considered that the content of the proposal was not consistent with the principle of subsidiarity. The Commission ultimately withdrew its proposal, though it took the view that the subsidiarity principle had not been infringed. In October 2013, another 'yellow card' was issued by 14 chambers of national parliaments in 11 Member States following the submission of the proposal for a regulation on the establishment of the European Public Prosecutor's Office[2]. After examining the reasoned opinions received from the national parliaments, the Commission decided to maintain the proposal[3], arguing that it was in line with the subsidiarity principle. In May 2016, a third 'yellow card' was issued by 14 chambers in 11 Member States against the proposal for a revision of the directive on the posting of workers[4]. The Commission gave extensive reasons[5] for maintaining its proposal, given that it did not infringe the principle of subsidiarity, the posting of workers being, by definition, a transnational issue.

The Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) serves as a useful platform for national parliaments to share information related to subsidiarity control. In addition, the Subsidiarity Monitoring Network (SMN) maintained by the European Committee of the Regions facilitates the exchange of information between local and regional authorities and the

[1]Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services, (COM(2012)0130).
[2]Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, (COM(2013)0534).
[3]Communication from the Commission to the European Parliament, the Council and the National Parliaments on the review of the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity, in accordance with Protocol No 2, (COM(2013)0851).
[4]Proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, (COM(2016)0128).
[5]Communication from the Commission to the European Parliament, the Council and the National Parliaments on the proposal for a Directive amending the Posting of Workers Directive, with regard to the principle of subsidiarity, in accordance with Protocol No 2, (COM(2016)0505).

EU institutions. SMN members include regional parliaments and governments with legislative powers, local and regional authorities without legislative powers and local government associations in the EU. It is also open to national delegations of the European Committee of the Regions and chambers of national parliaments.

E. Conference on the Future of Europe

In March 2017, the Commission created a dedicated 'Task Force on subsidiarity, proportionality and doing less more efficiently', as part of the Better Regulation agenda, and in particular the debate on the future of Europe launched by Commission President Juncker's white paper. The Task Force aims to 1) make recommendations on how to better apply the principles of subsidiarity and proportionality; 2) identify policy areas where work could be re-delegated or definitely returned to EU countries; and 3) find ways to better involve regional and local authorities in EU policy-making and delivery.

Based on the recommendations given by the Task Force, the Commission published its subsidiarity package in October 2018, aiming to strengthen the role of the principles of subsidiarity and proportionality in EU policymaking. One of the main Task Force recommendations taken on board was to incorporate a grid for assessing subsidiarity and proportionality in the Commission's better regulation guidance and to use the grid to present the Commission's findings in impact assessments, evaluations and explanatory memorandums.

The principles of subsidiarity and proportionality were also in the spotlight of the Conference on the Future of Europe, in line with the Joint Declaration on the Conference on the Future of Europe signed by the Presidents of Parliament, the Council and the Commission.

F. Judicial review

Compliance with the principle of subsidiarity may be reviewed retrospectively (following the adoption of the legislative act) by means of a legal action brought before the Court of Justice of the European Union. That is also stated in the protocol. The Union institutions enjoy wide discretion in applying this principle, however. In its judgments in cases C-84/94 and C-233/94, the Court found that compliance with the principle of subsidiarity was one of the conditions covered by the requirement to state the reasons for Union acts, under Article 296 of the TFEU. This requirement is met if it is clear from reading the recitals that the principle has been complied with. In a more recent judgment (Case C-547/14, *Philip Morris*, paragraph 218), the Court reaffirmed that it must verify 'whether the Union legislator was entitled to consider, on the basis of a detailed statement, that the objective of the proposed action could be better achieved at Union level'. Concerning procedural safeguards and, in particular, the obligation to state reasons as regards subsidiarity, the Court recalled that observance of that obligation 'must be evaluated not only by reference to the wording of the contested act, but also by reference to its context and the circumstances of the individual case' (paragraph 225).

Member States may bring actions for annulment before the Court against a legislative act on grounds of infringement of the principle of subsidiarity on behalf of their national parliament or a chamber thereof, in accordance with their legal system. The European Committee of the Regions may also bring such actions against legislative acts if the TFEU provides that it must be consulted.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament was the instigator of the concept of subsidiarity and, on 14 February 1984, in adopting the draft Treaty on European Union, proposed a provision stipulating that in cases where the Treaty conferred on the Union a competence which was concurrent with that of the Member States, the Member States could act as long as the Union had not legislated. Moreover, it stressed that the Community should only act to carry out those tasks which could be undertaken more effectively in common than by individual states acting separately.

Parliament was to reiterate these proposals in many resolutions (for example those of 23 November and 14 December 1989, 12 July and 21 November 1990 and 18 May 1995), in which it reaffirmed its support for the principle of subsidiarity.

A. Interinstitutional agreements

Parliament adopted a series of measures to carry out its role under the Treaties as regards the application of the principle of subsidiarity. Pursuant to Rule 43 of its Rules of Procedure, 'during the examination of a proposal for a legislative act, Parliament shall pay particular attention to whether that proposal respects the principles of subsidiarity and proportionality'. The Committee on Legal Affairs is the parliamentary committee with horizontal responsibility for monitoring compliance with the principle of subsidiarity. In this regard, it regularly draws up a report on the Commission's annual reports on subsidiarity and proportionality.

On 25 October 1993, the Council, Parliament and the Commission signed an interinstitutional agreement[6] that demonstrated clearly the three institutions' eagerness to take decisive steps in this area. They thus undertook to comply with the principle of subsidiarity. The agreement lays down, by means of procedures governing the application of the principle of subsidiarity, arrangements for the exercise of the powers conferred on the Union institutions by the Treaties, so that the objectives laid down in the Treaties can be attained. The Commission undertook to take into account the principle of subsidiarity and show that it has been observed. The same applies to Parliament and the Council, in the context of the powers conferred on them.

Under the terms of the interinstitutional agreement of 13 April 2016 between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (replacing the Agreement of December 2003 and the Interinstitutional Common Approach to Impact Assessment of November 2005), the Commission must explain in its explanatory memoranda how the proposed measures are justified in the light of the principle of subsidiarity and must take this into account in its impact assessments. Moreover, in concluding the Framework Agreement of 20 November 2010[7], Parliament and the Commission undertook to cooperate with the national parliaments in order to facilitate the exercise by those parliaments of their power to scrutinise compliance with the principle of subsidiarity.

[6]Interinstitutional agreement of 25 October 1993 between the Parliament, the Council and the Commission on procedures for implementing the principle of subsidiarity, OJ C 329, 6.12.1993, p. 135.
[7]Framework Agreement on relations between the European Parliament and the European Commission, OJ L 304, 20.11.2010, p. 47.

B. European Parliament resolutions

In its resolution of 13 May 1997[8], Parliament already made clear its view that the principle of subsidiarity was a binding legal principle but pointed out that its implementation should not obstruct the exercise by the EU of its exclusive competence, nor be used as a pretext to call into question the *acquis communautaire*. In its resolution of 8 April 2003[9], Parliament added that disputes should preferably be settled at political level, while taking into account the proposals made by the Convention on the Future of Europe concerning the establishment by the national parliaments of an 'early warning' mechanism in the area of subsidiarity. This mechanism was indeed incorporated into the Lisbon Treaty (see above and 1.3.5).

In its resolution of 13 September 2012[10], Parliament welcomed the closer involvement of the national parliaments in scrutinising legislative proposals in the light of the principles of subsidiarity and proportionality and suggested that any ways to alleviate impediments to national parliaments' participation in the subsidiarity control mechanism should be investigated.

In its resolution of 18 April 2018[11], Parliament noted the sharp increase in the number of reasoned opinions submitted by national parliaments, which reveals their growing involvement in the Union's decision-making process. It also welcomed national parliaments' interest in adopting a more proactive role through the use of a 'green card' procedure. In this respect, it recommended making full use of the existing tools enabling national parliaments to participate in the legislative process without creating new institutional and administrative structures.

In its resolution of 13 February 2019 on the state of the debate on the future of Europe[12], Parliament highlighted the fundamental role of local authorities and, in particular, regional parliaments with legislative powers. It also took note of the recommendations of the 'Task Force on subsidiarity, proportionality and doing less more efficiently' but pointed out that many of them, particularly regarding the role of national parliaments and the need to reform the early warning system, had already been highlighted by Parliament.

In its resolution of 24 June 2021[13], Parliament pointed out that local and regional authorities implement and use approximately 70% of EU legislation and called on the Commission to better involve them in its consultation processes, and to integrate a 'model grid' to assess the application of principles of subsidiarity and proportionality throughout the decision-making process. Parliament also highlighted that the current structure of the subsidiarity control mechanism procedure results in national parliaments dedicating excessive amounts of time to technical and legal

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[8]European Parliament resolution on the Commission's report to the European Council — 'Better law-making 1997', OJ C 98, 9.4.1999, p. 500
[9]European Parliament resolution on the Commission report to the European Council on better law-making 2000 (pursuant to Article 9 of the Protocol to the EC Treaty on the application of the principles of subsidiarity and proportionality) and on the Commission report to the European Council on better law-making 2001 (pursuant to Article 9 of the Protocol to the EC Treaty on the application of the principles of subsidiarity and proportionality), OJ C 64E , 12.3.2004, p. 135.
[10]European Parliament resolution of 13 September 2012 on the 18th report on Better legislation – Application of the principles of subsidiarity and proportionality (2010), OJ C 353E, 3.12.2013, p. 117.
[11]European Parliament resolution of 18 April 2018 on the Annual Reports 2015-2016 on subsidiarity and proportionality (2017/2010(INI)), OJ C 390, 18.11.2019, p. 94.
[12]European Parliament resolution of 13 February 2019 on the state of the debate on the future of Europe (2018/2094(INI)).
[13]European Parliament resolution of 24 June 2021 on European Union regulatory fitness and subsidiarity and proportionality - report on Better Law Making covering the years 2017, 2018 and 2019 (2020/2262(INI)).

assessments with short deadlines, which complicates the goal of holding a deeper political discussion on European politics.

Eeva Pavy
03/2024

1.2.3. SUPRANATIONAL DECISION-MAKING PROCEDURES

The Member States of the European Union have agreed, as a result of their membership of the EU, to transfer some of their powers to the EU institutions in specified policy areas. Thus, EU institutions make supranational binding decisions in their legislative and executive procedures, budgetary procedures, appointment procedures and quasi-constitutional procedures.

HISTORY (1.1.1, 1.1.2, 1.1.3, 1.1.4 AND 1.1.5)

The Treaty of Rome gave the Commission powers of proposal and negotiation, mainly in the fields of legislation and external economic relations, and allocated powers for decision-making to the Council or, in the case of appointments, representatives of the Member States' governments. It gave Parliament a consultative power. Parliament's role has gradually grown, in the budgetary domain with the reforms of 1970 and 1975, in the legislative domain with the Single European Act and all the following Treaties, in the first place the Treaty of Maastricht introducing codecision with the Council, which also increased Parliament's role in appointments. Furthermore, the Single European Act gave Parliament the power to authorise ratification of accession and association treaties; Maastricht extended that power to other international treaties of certain kinds. The Treaty of Amsterdam made substantial progress down the road to democratising the Community, by simplifying the codecision procedure, extending it to new areas and strengthening Parliament's role in appointing the Commission. Following this approach, the Treaty of Nice considerably increased Parliament's powers. On the one hand, the codecision procedure (in which Parliament has the same powers as the Council) was applied to almost all new areas where the Council was entitled to decide by qualified majority. On the other hand, Parliament acquired the same powers as the Member States in terms of referring matters to the Court of Justice. The Treaty of Lisbon is a further qualitative step towards full equality with the Council in EU legislation and finance.

LEGISLATIVE PROCEDURES[1]

A. Ordinary legislative procedure (Article 289 and 294 TFEU)

1. Scope

The Lisbon Treaty added 40 further legal bases, in particular in the area of justice, freedom and security and in agriculture, under which the Parliament now decides on legislative acts on equal footing with the Council. Hence, the ordinary legislative procedure, formerly called the codecision procedure, applies to 85 legal bases. The ordinary legislative procedure includes qualified majority voting (QMV) in the Council (Article 294 TFEU). However, it does not apply to several important areas, for example fiscal policy concerning direct taxation or transnational aspects of family law, which require unanimity in the Council.

[1]THE LISBON TREATY ABOLISHED THE COOPERATION PROCEDURE WHICH WAS INTRODUCED BY THE SINGLE EUROPEAN ACT OF 1986.

2. Procedure

The ordinary legislative procedure follows the same steps as the former codecision procedure. However, the wording of the TFEU has changed considerably, notably to underline the equal role of Council and Parliament in this procedure.

a. Commission proposal

b. First reading in Parliament

Parliament adopts its position by a simple majority.

c. First reading in the Council

The Council adopts its position by QMV.

In the fields of social security and police and judicial cooperation in criminal matters, the proposal can be submitted to the European Council at the request of one Member State (Articles 48 and 82 TFEU), and this suspends the ordinary legislative procedure until the European Council reassigns the matter to the Council (at the latest after four months). In the case of Article 82, at least nine Member States may decide to continue deliberations under enhanced cooperation (Article 20 TEU and Article 326-334 TFEU).

If the Council approves Parliament's position, the act is adopted in the wording which corresponds to Parliament's position.

d. Second reading in Parliament

Parliament receives the Council's position and has three months to take a decision. It may thus:

— Approve the proposal as amended by the Council or take no decision; in both cases, the act as amended by the Council is adopted;

— Reject the Council's position by an absolute majority of its Members; the act is not adopted and the procedure ends;

— Adopt, by an absolute majority of its Members, amendments to the Council's position, which are then put to the Commission and the Council for their opinion.

e. Second reading in the Council

— If the Council, voting by a qualified majority on Parliament's amendments, and unanimously on those on which the Commission has delivered a negative opinion, approves all of Parliament's amendments no later than three months after receiving them, the act is adopted.

— Otherwise, the Conciliation Committee is convened within six weeks.

f. Conciliation

— The Conciliation Committee consists of an equal number of Council and Parliament representatives, assisted by the Commission. It considers the positions of Parliament and the Council and has six weeks to agree on a joint text supported by a QMV of Council representatives and a majority of Parliament's representatives.

— The procedure stops and the act is not adopted if the Committee does not reach agreement on a joint text by the deadline.

— If it does so, the joint text is sent to the Council and Parliament for approval.

g. Conclusion of the procedure (third reading)

— The Council and Parliament have six weeks to approve the joint text. The Council acts by a qualified majority and Parliament by a majority of the votes cast.

— The act is adopted if the Council and Parliament approve the joint text.

— If either of the institutions has not approved it by the deadline, the procedure stops and the act is not adopted.

Over the past few years, the number of first reading agreements based on informal negotiations between the Council and Parliament has significantly increased.

Some bridge clauses allow the European Council to extend the application of the ordinary procedure to areas exempted from it (for example social policy: Article 153(2)).

B. Consultation procedure

Before taking a decision, the Council must take note of the opinion of Parliament and, if necessary, of the European Economic and Social Committee and the Committee of the Regions. It is required to do so, as the absence of such consultation makes the act illegal and capable of annulment by the Court of Justice (see judgment in Cases 138 and 139/79). When the Council intends to substantially amend the proposal, it is required to consult Parliament again (judgment in Case 65/90).

C. Consent procedure

1. Scope

As a result of the entry into force of the Lisbon Treaty, the consent procedure applies in particular to the horizontal budgetary flexibility clause, as specified in Article 352 TFEU (former Article 308 TEC). Other examples are action to combat discrimination (Article 19(1) TFEU) and membership of the Union (Articles 49 and 50 TEU). In addition, Parliament's consent is required for association agreements (Article 217 TFEU), accession of the Union to the ECHR (Article 6(2) TEU), and agreements establishing a specific institutional framework entailing major budgetary implications or concerning areas where the ordinary legislative procedure applies (Article 218(6) TFEU).

2. Procedure

Parliament considers a draft act forwarded by the Council; it decides whether to approve the draft (it cannot amend it) by an absolute majority of the votes cast. The Treaty does not give Parliament any formal role in the preceding stages of the procedure to consider the Commission proposal, but as a result of interinstitutional arrangements it has become the practice to involve Parliament informally (see Parliament's Rules of Procedure).

BUDGETARY PROCEDURE (1.2.5)

APPOINTMENT PROCEDURES

A. Parliament elects the President of the Commission (Article 14(1) TEU) (1.3.8).

B. The European Council, acting by qualified majority, appoints the High Representative for Foreign Affairs and Security Policy (Article 18(1) TEU).

C. The Council, acting by qualified majority, adopts:

— The list of the other persons whom it proposes for appointment as Members of the Commission, by common accord with the President-elect (Article 17(7) TEU).

D. The Council adopts the list of:

— The members of the Court of Auditors (Article 286 TFEU), after consulting Parliament and in accordance with the proposals put forward by the Member States;

— Members and alternate members of the Committee of the Regions and the European Economic and Social Committee, drawn up in accordance with the proposals made by each Member State (Articles 301, 302 and 305 TFEU).

E. Parliament elects the European Ombudsman (Article 228 TFEU).

CONCLUSION OF INTERNATIONAL AGREEMENTS

Having gained legal personality, the Union can now conclude international agreements (Article 218 TFEU). The Lisbon Treaty requires the consent of the European Parliament in any agreements concluded in the field of the Common Commercial Policy as well as in all fields whose policies would fall under the ordinary legislative procedure within the EU. The Council decides by QMV, with the exception of association and accession agreements, agreements risking to prejudice the Union's cultural and linguistic diversity, and agreements in fields where unanimity would be required for the adoption of internal acts.

— Procedure: The Commission or the High Representative of the Union for Foreign Affairs and Security Policy (HR) presents recommendations to the Council, the Council defines the mandate for the negotiations and nominates the Union negotiator (from the Commission or the HR) to conduct negotiations. The European Parliament must be immediately and fully informed at all stages of the procedure (Article 218(10).

— Decision: Council, by QMV, except in the fields mentioned above.

— Parliament's role: consent for most agreements (see above), consultation for agreements falling exclusively in the field of foreign and security policy.

QUASI-CONSTITUTIONAL PROCEDURES

A. System of own resources (Article 311 TFEU)

— Proposal: Commission;

— Parliament's role: consultation;

— Decision: Council, unanimously, subject to adoption by the Member States in accordance with their respective constitutional requirements.

B. Provisions for election of Parliament by direct universal suffrage (Article 223 TFEU)

— Proposal: Parliament;

— Decision: Council, unanimously after obtaining Parliament's consent and recommending the proposal to the Member States for adoption according to their constitutional requirements.

C. Adoption of the Statute for Members of the European Parliament (Article 223(2) TFEU) and the Statute for the Ombudsman (Article 228(4) TFEU)

— Proposal: Parliament;

— Commission's role: opinion;

— Council's role: consent (by qualified majority except in relation to rules or conditions governing the tax arrangements for Members or former Members, in which case unanimity applies);

— Decision: Parliament.

D. Amendment of the protocol on the Statute of the Court of Justice (Article 281 TFEU)

— Proposal: Court of Justice (with consultation of the Commission) or Commission (with consultation of the Court of Justice);

— Decision: Council and Parliament (ordinary legislative procedure).

ROLE OF THE EUROPEAN PARLIAMENT

At the 2000 Intergovernmental Conference (IGC), Parliament made several proposals to extend the areas to which the ordinary legislative (formerly 'codecision') procedure would apply. Parliament also repeatedly voiced its opinion that, if there was a change from unanimity to qualified majority, co-decision should apply automatically. The Treaty of Nice endorsed this position but did not fully align qualified majority and codecision. As a result, the issue of simplifying procedures was one of the key elements addressed at the Convention on the Future of Europe. It was proposed that the cooperation and consultation procedures be abolished, that the codecision procedure be simplified and extended to cover the entire legislative field, and that the assent procedure be limited to the ratification of international agreements. Many of these improvements were implemented by the Lisbon Treaty (1.1.5).

With regard to appointments, the Treaty of Lisbon failed to put an end to the wide range of different procedures, although some streamlining was achieved. Unanimity is still applied in some cases, and tends to cause political disputes and reduces the influence of Parliament. Progress was achieved in particular after the entry into force of the Treaty of Nice, with the move from unanimity to qualified majority for the appointment of the Commission President. The Lisbon Treaty provides, in addition, for the election of the Commission President by Parliament. The appointment of the President-elect, after appropriate consultations of Parliament, must take due account of the results of the European elections. This highlights the political legitimacy and accountability of the European Commission. After the elections to the European Parliament in 2014,

these provisions were implemented for the first time. The European Council agreed to designate Jean-Claude Juncker as President of the European Commission because the European People's Party (EPP) was the largest group in the European Parliament following the elections.

Martina Schonard
11/2023

1.2.4. INTERGOVERNMENTAL DECISION-MAKING PROCEDURES

In the Common Foreign and Security Policy (CFSP), as well as in several other fields such as enhanced cooperation, certain appointments and treaty revision, the decision-making procedure is different from that prevailing in the ordinary legislative procedure. The dominant feature in these fields is a stronger component of intergovernmental cooperation. The challenge of the public debt crisis has led to increased use of such decision-making mechanisms, notably in the framework of European economic governance.

LEGAL BASIS

Articles 20, 21-46, 48 and 49 of the Treaty on European Union (TEU); Articles 2(4), 31, 64(3), 81, 89, 103(1), 113, 115, 118, 127, 153, 191(3), 192, 194 (2), 215, 218, 220, 221, 312, 329 and 333 of the Treaty on the Functioning of the European Union (TFEU).

DESCRIPTION

A. Procedure for amendment of the Treaties (Article 48 of the TEU)

— Proposal: any Member State, Parliament or the Commission;

— Commission's role: consultation and participation in the intergovernmental conference;

— Parliament's role: consultation before the intergovernmental conference is convened (the conferences themselves involve Parliament on an ad hoc basis but with increasing influence: for some time it was represented by either its President or two of its Members; at the most recent intergovernmental conference it provided three representatives);

— Role of the Governing Council of the European Central Bank: consultation in the event of institutional changes in the monetary field;

— Decision: common accord of the governments on amendments to the Treaties, which are then put to the Member States for ratification in accordance with their constitutional requirements; before that, a decision by the European Council is required, by a simple majority, on whether or not to convene a Convention, following the consent of Parliament.

B. Procedure for the activation of passerelle clauses

— European Council: activates and decides, unanimously, on the use of the general *passerelle* clause (Article 48 of the TEU) and the specific *passerelle* for the multiannual financial framework (Article 312 of the TFEU). Any national parliament has a right of veto for the general clause;

— Council: other *passerelle* clauses can be decided by the Council, acting unanimously or by qualified majority, depending on the relevant treaty provision (Article 31 of the TEU, Articles 81, 153, 192 and 333 of the TFEU).

C. Accession procedure (Article 49 of the TEU)

— Applications: from any European state which complies with the Union's principles (Article 2 of the TEU); notification of national parliaments and European Parliament; the European Council agrees on conditions of eligibility;

— Commission's role: consultation; it plays an active part in preparing and conducting negotiations;

— Parliament's role: consent, by an absolute majority of its component Members;

— Decision: by the Council, unanimously; the agreement between the EU Member States and the applicant state, setting out the terms of accession and the adjustments required, is put to all the Member States for ratification in accordance with their constitutional requirements.

D. Withdrawal procedure (Article 50 of the TEU)

— Request: the Member State concerned notifies the European Council of its intention, in accordance with its own constitutional requirements;

— Conclusion: takes the form of a withdrawal agreement concluded by the Council after obtaining the consent of Parliament, and acting by a special qualified majority (Article 238(3)(b) of the TFEU); this is defined as 72 % of the members of the Council representing the participating Member States (i.e. excluding the state concerned), comprising at least 65 % of the population of these Member States.

E. Sanctions procedure for a serious and persistent breach of Union principles by a Member State (Article 7 of the TEU)

1. Main procedure

— Proposal for a decision determining the existence of a serious and persistent breach: one third of the Member States, or the Commission;

— Parliament's consent: adopted by a two-thirds majority of the votes cast, representing a majority of its Members (Rule 83(3) of Parliament's Rules of Procedure);

— Decision determining the existence of a breach: adopted by the European Council, unanimously, without the participation of the Member State concerned, after inviting the State in question to submit its observations on the matter;

— Decision to suspend certain rights of the Member State concerned: adopted by the Council by a qualified majority (without the participation of the Member State concerned).

2. The Treaty of Nice supplemented this procedure with a precautionary system

— Reasoned proposal for a decision determining a clear risk of a serious breach of Union principles by a Member State: on the initiative of the Commission, Parliament or one third of the Member States;

— Parliament's consent: adopted by a two-thirds majority of the votes cast, representing a majority of its component Members;

— Decision: adopted by the Council by a four-fifths majority of its members, after hearing the Member State in question. The Council can address recommendations to the Member State before taking such a decision.

F. Enhanced cooperation procedure

1. General rules (Article 20 of the TEU, Article 329(1) of the TFEU)

— Proposal: exclusive right of the Commission; Member States which intend to establish enhanced cooperation can address a request to the Commission to that effect;

— Parliament's role: consent;

— Decision: by the Council, acting by a qualified majority.

2. Cooperation in the field of the CFSP (Article 329(2) of the TFEU)

— Application to the Council by the Member States concerned;

— Proposal forwarded to the High Representative of the Union for Foreign Affairs and Security Policy (HR), who gives an opinion;

— Information of Parliament;

— The Council acts on the basis of unanimity.

A similar procedure exists for initiating a structured cooperation in defence policy introduced by the Treaty of Lisbon (5.1.2).

G. Procedure for decisions in foreign affairs

The Treaty of Lisbon abolished the three-pillar structure of the previous treaties but kept foreign policy separate from the other EU policies. The objectives and provisions of the CFSP are included in the Treaty on European Union. They are now better drafted and more coherent than in the previous treaties.

A major institutional change is the creation of the office of the HR, who is assisted by a new European External Action Service and can propose initiatives under the CFSP. The CFSP has been integrated into the Union framework but follows specific rules and procedures (Article 24(2) of the TEU).

— Proposal: any Member State, the HR or the Commission (Article 22 of the TEU);

— Parliament's role: regularly informed by the Presidency and consulted on the main aspects and basic choices. Under the interinstitutional agreement on financing the CFSP, this consultation process is an annual event on the basis of a Council document;

— Decision: European Council or Council, acting unanimously. The European Council defines the priorities and strategic interests of the EU; the Council takes decisions or actions. The HR and the Member States put these decisions into effect, making use of national or Union resources. The President of the European Council can convene an extraordinary meeting of the European Council if international developments so require.

H. Other legislative measures (2.6.8)

Intergovernmental decision-making is also maintained in a number of specific, politically sensitive areas of EU policy, in particular:

— Justice and home affairs: measures regarding judicial cooperation in criminal matters, judicial cooperation (Article 89 of the TFEU);

— The internal market: restrictions on movement of capital (Article 64(3) of the TFEU), competition policy (Article 103(1) of the TFEU), tax harmonisation measures (Article 113 of the TFEU), approximation of laws affecting the establishment of the internal market (Article 115 of the TFEU), intellectual property rights (Article 118 of the TFEU);

— Monetary policy: conferral of specific prudential supervision tasks on the European Central Bank (ECB) (Article 127 of the TFEU);

— Other policy fields such as social policies and employment (Article 153 of the TFEU), energy (Article 194(2) of the TFEU) or environment (Article 191(3) of the TFEU).

I. Financial crisis management (2.6.8)

The advent of grave financial difficulties in some Member States in 2010 has made it necessary to come to their rescue in different guises. Some components of the aid package are managed by the Union, for instance the European Financial Stabilisation Mechanism. The major part, notably the contributions to the European Financial Stability Facility (EFSF), is paid directly by the Member States. The EFSF is a 'special-purpose vehicle' created by an intergovernmental agreement among the euro area Member States. The decisions required for such intergovernmental measures have therefore had to be taken at the level of the European Council, or of the Heads of State or Government of the Eurogroup, including ratification in the Member States according to their national constitutional requirements. Two important reasons for this development are the no-bail-out clause (Article 125 of the TFEU) and the resistance of some national constitutional courts to a further transfer of financial and budgetary powers to the European Union.

An amendment to Article 136 of the TFEU (economic policy coordination) was adopted by the European Council on 25 March 2011, under the simplified treaty revision procedure, without convening a Convention (European Council Decision 2011/199/EU). It entered into force in April 2013, thus enabling permanent crisis prevention mechanisms such as the European Stability Mechanism (ESM) to come into operation. The latter was created by an intergovernmental treaty between the members of the euro area, which entered into force on 27 September 2012. Voting procedures on its executive board include a so-called 'emergency procedure', which provides for a qualified majority of 85 % if the Commission and the ECB conclude that an urgent decision related to financial assistance is needed. Finally, the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG) was drawn up by Member State governments and entered into force on 1 January 2013, after 12 contracting parties whose currency is the euro deposited their instrument of ratification. The treaty provides, in particular, for a requirement for a balanced budget rule in domestic legal orders (the Fiscal Compact). Of the 25 contracting parties to the TSCG, a total of 22 are formally bound by the Fiscal Compact (the 19 euro area Member States, as well as Bulgaria, Denmark and Romania).

J. Appointments

— The European Council, acting by a qualified majority, appoints the President, the Vice-President and the other four members of the Executive Board of the European Central Bank, on a recommendation by the Council and after consulting Parliament (Article 283(2) of the TFEU);

— The European Council, acting by a qualified majority and with the agreement of the President of the Commission, appoints the High Representative of the Union for Foreign Affairs and Security Policy (Article 18(1) of the TEU); in his/her capacity as a Vice-President of the Commission, the HR is nevertheless subject, together with the President of the Commission and the other members of the Commission, to a vote of consent by the European Parliament;

— The Governments of the Member States appoint by common accord the judges and advocates-general of the Court of Justice and the General Court (formerly the Court of First Instance) (Article 19(2) of the TEU);

— The Council appoints the Members of the Court of Auditors by qualified majority, on the recommendation of each Member State and after consulting Parliament (Article 286(2) of the TFEU).

ROLE OF THE EUROPEAN PARLIAMENT

In the run-up to the 1996 Intergovernmental Conference, Parliament had already called for 'communitisation' of the second and third pillars, so that the decision-making procedures applicable under the Treaty establishing the European Community would also apply to them.

Following Parliament's continued efforts during the European Convention to make the former second and third pillars part of the Union's structure (1.1.4), the Treaty of Lisbon extended supranational decision-making to the former third pillar (justice and home affairs) and introduced a coherent institutional framework for foreign and security policy, with important innovations such as the long-term President of the European Council and the position of High Representative of the Union for Foreign Affairs and Security Policy.

In a context of increasing inter-governmentalisation of economic and fiscal governance, Parliament played its part in ensuring appropriate participation of the EU institutions in the negotiations on the international treaty mentioned above in section I.

In February 2019, Parliament adopted a resolution on the implementation of the Treaty provisions concerning enhanced cooperation[1], in which it issued recommendations for the future evolution of enhanced cooperation. In particular, Parliament considered it necessary to devise a procedure for the fast-track authorisation of enhanced cooperation in fields of high political salience to be accomplished within a shorter timeframe than the duration of two consecutive Council presidencies. It also called on the Commission to propose a regulation to simplify and unify the relevant legal framework for enhanced cooperation.

In its resolution of 13 February 2019 on the state of the debate on the future of Europe[2], Parliament advocated the use of the general *passerelle* clauses (Article 48(7)(1) and 48(7)(2) of the TEU) and other specific *passerelle* clauses to help overcome the deadlock of requiring unanimous voting without having to seek intergovernmental solutions outside the scope of the Treaties. The report on the final outcome of the Conference on the Future of Europe, which was presented to the Presidents of the three institutions on 9 May 2022, highlights the importance of reviewing the decision-making

[1] European Parliament resolution of 12 February 2019 on the implementation of the Treaty provisions concerning enhanced cooperation (OJ C 449, 23.12.2020, p. 16).
[2] European Parliament resolution of 13 February 2019 on the state of the debate on the future of Europe (OJ C 449, 23.12.2020, p. 90).

processes based on unanimity. On 11 July 2023, Parliament adopted a resolution[3] on the implementation of *passerelle* clauses in the EU Treaties'.

Eeva Pavy
03/2024

[3]European Parliament resolution of 11 July 2023 on the implementation of the passerelle clauses in the EU Treaties, texts adopted.

1.2.5. THE BUDGETARY PROCEDURE

Parliament's role in the budgetary process has progressively expanded since the 1970 and 1975 Budgetary Treaties. In 2009, the Treaty of Lisbon gave Parliament an equal say with the Council over the entire EU budget.

LEGAL BASIS

— Article 314 of the Treaty on the Functioning of the European Union (TFEU) and Article 106a of the Treaty establishing the European Atomic Energy Community;

— Articles 39 to 55 of the Financial Regulation (Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012);

— Interinstitutional Agreement (IIA) between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management.

OBJECTIVES

The exercise of budgetary powers consists in determining the overall amount and distribution of annual EU expenditure and the revenue necessary to cover it, as well as exercising control over implementation of the budget. The budgetary procedure itself involves the preparation and adoption of the budget (1.4.1 for details on EU revenue, 1.4.2 for details of expenditure, 1.4.3 for details of the multiannual financial framework, 1.4.4 for details of implementation and 1.4.5 for details of budgetary control).

DESCRIPTION

A. Background

The European Parliament and the Council together form the budgetary authority. Prior to 1970, budgetary powers were vested in the Council alone, with Parliament having only a consultative role. The Treaties of 22 April 1970 and 22 July 1975 increased Parliament's budgetary powers:

— The 1970 Treaty, while maintaining the Council's right to have the last word on 'compulsory expenditure' resulting from Treaty obligations or from acts adopted under the Treaty, gave Parliament the final say on 'non-compulsory expenditure', which initially amounted to 8% of the budget;

— The 1975 Treaty gave Parliament the right to reject the budget in its entirety.

Until the Treaty of Lisbon came into force, the Council and Parliament each undertook two readings in the course of the budgetary procedure, at the end of which Parliament could either adopt the budget or reject it in its entirety.

No substantial modifications were introduced by subsequent Treaties until the major changes brought by the Treaty of Lisbon, which introduced a simpler and more transparent budgetary procedure (budgetary codecision). The modifications derive mainly from the removal of the distinction between compulsory expenditure and non-compulsory expenditure. This allows for equal treatment of all expenditure under the same procedure, which has been further simplified, with only one reading in each institution, based on the draft budget presented by the Commission.

B. The stages of the procedure

Article 314 TFEU sets out the stages and time limits applicable during the budgetary procedure. Current practice, however, is for the institutions to agree on a 'pragmatic' calendar each year prior to the start of the budgetary procedure.

1. Stage one: submission of the draft budget by the Commission

Parliament and the Council lay down guidelines on the priorities for the budget. The Commission draws up the draft budget and forwards it to the Council and Parliament (no later than 1 September under Article 314(2) TFEU, but according to the pragmatic timetable, by the end of April or beginning of May). The Commission may modify the draft budget at a later stage to take account of new developments, but no later than the point at which the Conciliation Committee (see below) is convened.

2. Stage two: adoption of the Council's position on the draft budget

The Council adopts its position on the draft budget and forwards it to Parliament (under Article 314(3) TFEU it must be submitted by 1 October at the latest, but according to the pragmatic timetable it is sent by the end of July). The Council must inform Parliament in full of the reasons why it adopted its position.

3. Stage three: Parliament's reading

Parliament has 42 days in which to respond. During this period, it may either approve the Council's position or decline to take a decision, in which case the budget is deemed finally adopted, or else Parliament can propose amendments if they are adopted by a majority of its members, in which case the amended draft is referred back to both the Council and the Commission. The President of Parliament, in agreement with the President of the Council, must then immediately convene a meeting of the Conciliation Committee.

4. Stage four: meeting of the Conciliation Committee and adoption of the budget

From the day on which it is convened, the Conciliation Committee (composed of equal numbers of representatives of the Council and of Parliament) has 21 days to agree on a joint text. To do so, it must take its decision by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of Parliament. The Commission takes part in the Conciliation Committee's proceedings and takes all the necessary initiatives to seek to reconcile the positions of Parliament and the Council.

Should the Conciliation Committee fail to find an agreement on a joint text within the 21 days referred to above, a new draft budget must be submitted by the Commission. If the Conciliation Committee agrees on a joint text within the deadline, then Parliament and the Council have 14 days from the date of that agreement in which to approve the joint text. The following table summarises the possible outcomes at the end of that 14-day period.

Process of approval of the conciliation joint text

Positions on the joint text	Parliament	Council	Outcome
+ = adopted − = rejected None = no decision taken	+	+	Joint text adopted
		−	Back Parliament position, possibly[1]
		None	Joint text adopted
	None	+	Joint text adopted
		−	New draft budget from Commission
		None	Joint text adopted
	−	+	New draft budget from Commission
		−	New draft budget from Commission
		None	New draft budget from Commission

If the procedure is successfully completed, the President of Parliament declares that the budget has been definitively adopted. In the event that no agreement has been reached by the beginning of a financial year, a system of provisional twelfths is put in place until an agreement can be reached. In this case, a sum equivalent to no more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter of the budget. That sum must not, however, exceed one twelfth of the appropriations provided for in the same chapter of the draft budget. However, under Article 315 TFEU, the Council may, on a proposal from the Commission, authorise expenditure in excess of one twelfth (in accordance with Article 16 of the Financial Rules) unless Parliament decides within 30 days to reduce the expenditure authorised by the Council.

5. Supplementary and amending budgets

In the event of unavoidable, exceptional or unforeseen circumstances (in accordance with Article 44 of the Financial Rules), the Commission may propose draft amending budgets to amend the budget adopted for the current year. These amending budgets are subject to the same rules as the general budget.

ROLE OF THE EUROPEAN PARLIAMENT

A. Powers conferred by Article 314 TFEU

In 1970, Parliament gained the right to have the last word on non-compulsory expenditure. The proportion of non-compulsory expenditure rose from 8% of the budget in 1970 to more than 60% in the 2010 budget, the last year in which the distinction was made. With the abolition of the distinction between compulsory and non-compulsory expenditure, Parliament now has joint powers with the Council to determine overall budget expenditure. Parliament's position can even be considered stronger than that of the Council since the latter can never impose a budget against the will of Parliament, while Parliament may in some circumstances have the last word and impose a budget against the will of the Council (see B.4 above). However, this is rather unlikely and it would be more appropriate to say that the new budgetary procedure is based, for the most part, on a genuine (albeit specific) codecision procedure in which Parliament and the Council act on an equal footing, covering all Union expenditure.

[1]This occurs if Parliament confirms some or all of its previous amendments, acting by a majority of its members and three-fifths of the votes cast. If Parliament does not reach the required majority, the position agreed in the joint text is adopted.

Parliament has rejected the budget in its entirety on two occasions (in December 1979 and December 1984) since acquiring the power to do so in 1975. Under the new rules agreed in the Treaty of Lisbon, the Conciliation Committee has failed to reach agreement on three occasions (on the 2011, 2013 and 2015 budgets). In all three cases, the new draft budget presented by the Commission, reflecting the near-compromise in conciliation, was finally adopted.

In the case of the 2023 budget, Parliament and the Council reached a provisional agreement on 14 November 2022, within the deadline of the conciliation period. The Council adopted the final agreement on the budget on 22 November and Parliament adopted it in plenary the following day, with the President of Parliament then signing off on the final text.

As agreed between Parliament and the Council, the 2023 budget sets an overall level of appropriations of EUR 186.6 billion in commitments and EUR 168.6 billion in payments.

Parliament fought for and obtained better support in the 2023 EU budget – over EUR 1 billion more than the Commission's original proposal – to address the consequences of the war in Ukraine, energy, climate and the recovery from the pandemic.

B. The interinstitutional agreements on budgetary discipline (IIAs) and the multiannual financial frameworks (MFFs) (1.4.3)

Following repeated disputes about the legal basis for the implementation of the budget, the institutions adopted a joint declaration in 1982, which also laid down measures designed to ensure smoother completion of the budgetary procedure. This was followed by a series of interinstitutional agreements covering the periods 1988-1992, 1993-1999, 2000-2006 and 2007-2013. The interinstitutional agreement for 2021-2027 entered into force in December 2020. These successive agreements provided an interinstitutional reference framework for the annual budgetary procedures that considerably improved the way the budgetary procedure works.

The current IIA aims to enforce budgetary discipline, improve the functioning of the annual budgetary procedure and cooperation between the institutions on budgetary matters, and ensure sound financial management. It is also designed to deliver cooperation and set out a roadmap towards the introduction, over the course of the 2021-2027 MFF, of new own resources sufficient to cover the repayment of the EU Recovery Instrument established under Council Regulation (EU) 2020/2094.

Although MFFs do not replace the annual budgetary procedure, the interinstitutional agreements have introduced a form of budgetary codecision procedure, which allows Parliament to assert its role as a fully fledged arm of the budgetary authority, to consolidate its credibility as an institution and to direct the budget towards its political priorities. The Treaty of Lisbon and the Financial Regulation also stipulate that the annual budget must comply with the ceilings set in the MFF, which must itself comply with the ceilings established in the decision on own resources.

C. The European Semester

On 7 September 2010, the Economic and Financial Affairs Council approved the introduction of the 'European Semester', a cycle of economic policy coordination at EU level with the aim of achieving the Europe 2020 targets. This is a six-month period every year during which the Member States' budgetary and structural policies are reviewed to detect any inconsistencies and emerging imbalances. On the basis of

the analytical economic assessment, the Commission provides policy guidance and/or recommendations to the Member States on fiscal, macroeconomic and structural reforms. The aim of the European Semester is to strengthen coordination while major budgetary decisions are still under preparation at national level. In addition to coordination between national budgets, Parliament also seeks to exploit synergies and strengthen coordination between the national budgets and the EU budget.

For more information, see the website of the Committee on Budgets.

Eleanor Remo James
04/2023

1.3. EUROPEAN UNION INSTITUTIONS AND BODIES

1.3.1. THE EUROPEAN PARLIAMENT: HISTORICAL BACKGROUND

The origins of the European Parliament lie in the Common Assembly of the European Coal and Steel Community (ECSC), which became the common assembly of the three supranational European communities that existed at the time. The assembly subsequently acquired the name 'European Parliament'. Over time, the institution, whose members have been directly elected since 1979, has undergone profound changes: evolving from an assembly with appointed members to an elected parliament that is recognised as a political agenda-setter of the European Union.

LEGAL BASIS

— The original Treaties (1.1.1, 1.1.2, 1.1.3, 1.1.4, 1.1.5);

— Decision and Act concerning the election of the representatives of the Assembly by direct universal suffrage (20 September 1976), as amended by the Council Decision of 25 June and 23 September 2002.

— Article 14(2) of the Treaty on European Union (TEU).

THREE COMMUNITIES, ONE ASSEMBLY

Following the establishment of the European Economic Community and the European Atomic Energy Community, the ECSC Common Assembly was expanded to cover all three communities. With 142 Members, the new assembly met for the first time in Strasbourg on 19 March 1958 as the 'European Parliamentary Assembly', changing its name to the 'European Parliament' on 30 March 1962.

FROM APPOINTED ASSEMBLY TO ELECTED PARLIAMENT

Before the introduction of direct elections, Members of the European Parliament (MEPs) were appointed by each of the Member States' national parliaments. All MEPs thus had a dual mandate.

The summit conference held in Paris on 9 and 10 December 1974 determined that direct elections 'should take place in or after 1978' and asked Parliament to submit new proposals to replace its original draft convention of 1960. In January 1975, Parliament adopted a new draft convention, on the basis of which the Heads of State or Government, after settling a number of differences, reached agreement at their meeting of 12 and 13 July 1976.

The Decision and Act concerning the election of the representatives of the Assembly by direct universal suffrage were signed in Brussels on 20 September 1976. Following ratification by all Member States, the act entered into force on July 1978, and the first elections took place on 7 and 10 June 1979.

ENLARGEMENTS

When Denmark, Ireland and the United Kingdom joined the European Communities on 1 January 1973 (the first enlargement), the number of MEPs was increased by 198.

For the second enlargement, with the accession of Greece on 1 January 1981, 24 Greek MEPs were appointed to Parliament by the Greek Parliament, to be replaced in October 1981 by directly elected MEPs. The second direct elections were held on 14 and 17 June 1984.

On 1 January 1986, with the third enlargement, the number of seats rose from 434 to 518 with the arrival of 60 Spanish and 24 Portuguese MEPs, appointed by their national parliaments and subsequently replaced by directly elected MEPs.

Following German unification, the composition of Parliament was adapted to reflect the demographic change. In accordance with the proposals outlined by Parliament in its resolution of 10 June 1992 entitled 'a uniform electoral procedure: a scheme for allocating the seats of Members of the European Parliament', the number of MEPs rose from 518 to 567 for the June 1994 elections. After the fourth EU enlargement, the number of MEPs increased to 626, with a fair allocation of seats for the new Member States in line with the resolution mentioned above.

The Intergovernmental Conference, which met throughout 2000 in Nice (France), introduced a new distribution of seats in Parliament, which was applied to the European elections in 2004. The maximum number of MEPs (previously set at 700) was increased to 732. The allocation of seats to the 15 existing Member States was reduced by 91 (from 626 to 535). The remaining 197 seats were distributed among all of the existing and new Member States on a pro rata basis.

With the accession of Bulgaria and Romania on 1 January 2007, the number of seats in Parliament was temporarily raised to 785 in order to welcome MEPs from those countries. Following the 2009 elections, held from 4 to 7 June, the number of seats was reduced to 736. As the Treaty of Lisbon, pursuant to Article 14(2) TEU, had set a maximum number of 751 MEPs, to be temporarily raised to 754 until the next elections, 18 MEPs were added to the 736 elected in June 2009 during the 2009-2014 term, following the ratification by the Member States of an amending protocol adopted at the Intergovernmental Conference of 23 June 2010. With the accession of Croatia on 1 July 2013, the maximum number of seats was temporarily raised to 766, in order to welcome the 12 Croatian MEPs who were elected in April 2013 (in accordance with Article 19 of the Act concerning the conditions of accession of the Republic of Croatia).

For the 2014 elections, the total number of seats was again reduced to 751. The distribution of seats was then reviewed again (with 705 MEPs) in view of the withdrawal of the United Kingdom, which took effect on 1 February 2020 (1.3.3). Reflecting demographic changes in the Member States since the 2019 elections, an additional 11 seats were allocated according to a proposal by Parliament in its resolution of 15 June 2023. It is up to the European Council to adopt the final decision by unanimity, which would then require Parliament's consent.

GRADUAL INCREASE IN POWERS

The replacement of Member State contributions by the Community's own resources (1.4.1) led to the first extension of Parliament's budgetary powers under the Treaty

of Luxembourg, signed on 22 April 1970. A second treaty on the same subject, strengthening Parliament's powers, was signed in Brussels on 22 July 1975 (1.1.2).

The Single European Act of 17 February 1986 enhanced Parliament's role in certain legislative areas (cooperation procedure), and made accession and association treaties subject to its assent.

The Treaty on European Union of 7 February 1992, by establishing the European Union (EU) and by introducing the codecision procedure in certain areas of legislation and extending the cooperation procedure to others, marked the beginning of Parliament's metamorphosis into the role of co-legislator. It gave Parliament the power of final approval over the membership of the Commission: this represented an important step forward in terms of Parliament's political control over the EU executive (1.1.3).

The Treaty of Amsterdam of 2 October 1997 extended the codecision procedure to most areas of legislation and reformed it, making Parliament a co-legislator on an equal footing with the Council. The appointment of the President of the Commission was made subject to Parliament's approval, thus increasing its powers of control over the executive. The Treaty of Nice further extended the scope of the codecision procedure.

The Treaty of Nice**,** which amended the TEU, the Treaties establishing the European Communities (TEC) and certain related acts, was signed on 26 February 2001 and entered into force on 1 February 2003. The aim of this new treaty was to reform the institutional structure of the EU so that it could withstand the challenges of future enlargement. Parliament's legislative and supervisory powers were increased and qualified majority voting was extended to more areas in the Council (1.1.4).

The Treaty on the Functioning of the European Union (TFEU) (1.1.5) of 13 December 2007 constituted another important extension of both the application of qualified majority voting in the Council (using a new method as of 1 November 2014 – Article 16 TEU) and the application of the codecision procedure (now extended to some 45 new legislative domains). This 'ordinary legislative procedure' became the most widely used decision-making procedure, covering all important policy areas of the TFEU (Article 294 – ex Article 250 TEC). Parliament's role in the preparation of future treaty amendments also became more significant (Article 48 TEU). Moreover, as part of the Treaty of Lisbon (and, initially, as part of the unsuccessful draft treaty establishing a constitution for Europe), the Charter of Fundamental Rights of the European Union**,** which was signed by the Presidents of Parliament, the Commission and the Council at the European Council in Nice on 7 December 2000, became legally binding (4.1.2).

With the European elections of 23 to 26 May 2019, it became clear that Parliament had made full use of the provisions of Article 14 TEU, which states that 'the European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission'.

Recent research on Parliament's contribution to growth indicates that the legislation it prepares contributes over EUR one trillion annually to the EU's GDP, by strengthening the rights of EU residents and businesses[1]. Another significant contribution is provided

[1]Maciejewski M., 'Contribution to Growth: Delivering economic benefits for citizens and businesses', Publication for the Committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019.

by the EU budget (1.4.3)[2]. Evidence and expertise-based legislation is supported by studies and workshops delivered by five policy departments providing high-level independent expertise, analysis and policy advice at the request of committees, delegations, the President, the Bureau and the Secretary-General.

For both the 2014 and 2019 elections, European political parties (1.3.3) presented lead candidates for the office of Commission President to voters. It can be safely argued that the lead candidate system proved successful in increasing voter participation in the European elections.

Following the signature, on 24 January 2020, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Parliament gave its consent to the Council's decision to conclude this withdrawal agreement (Article 50(2) TEU). The vote by 621 to 49 on 29 January 2020 was also the final time that MEPs from the UK sat in Parliament, as its withdrawal took effect on 1 February 2020.

On 28 April 2021, Parliament gave its consent (Article 218(6)a TFEU) to the conclusion of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part.

The next Parliament elections will take place on 6-9 June 2024.

This fact sheet was prepared by Parliament's Policy Department for Citizens' Rights and Constitutional Affairs.

Udo Bux / Mariusz Maciejewski
11/2023

[2]Stehrer R. et al., 'How EU funds tackle economic divide in the European Union', Publication for the Committee on Budgets, Policy Department for Budgetary Affairs, European Parliament, Luxembourg, 2020.

1.3.2. THE EUROPEAN PARLIAMENT: POWERS

Parliament asserts its institutional role in European policy-making 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.

LEGAL BASIS

Articles 223 to 234 and 314 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

As an institution representing the citizens of Europe, Parliament forms the democratic basis of the European Union. If the EU is to have democratic legitimacy, Parliament must be fully involved in the EU's legislative process and exercise political scrutiny over the other EU institutions on behalf of the public.

CONSTITUTIONAL-TYPE POWERS AND RATIFICATION POWERS (1.2.4)

Since the Single European Act (SEA), all treaties marking the accession of a new Member State and all association treaties have been subject to Parliament's assent. The SEA also established this procedure for international agreements with important budgetary implications for the Community (replacing the conciliation procedure established in 1975). The Maastricht Treaty introduced it for agreements establishing a specific institutional framework or entailing modifications to an act adopted under the codecision procedure. Parliament must also give its assent to acts relating to the electoral procedure (since the Maastricht Treaty). Since the Amsterdam Treaty, its assent has been required if the Council wants to declare that a clear danger exists of a Member State committing a serious breach of the EU's fundamental principles, before addressing recommendations to or imposing penalties on that Member State. Conversely, any revision of the Statute for Members of the European Parliament has to receive the consent of the Council.

Since the entry into force of the Lisbon Treaty, Parliament has been able to take the initiative for treaty revision and has the final say over whether or not to convene a convention with a view to preparing a future treaty amendment (Article 48(2) and (3) of the Treaty on European Union (TEU)).

PARTICIPATION IN THE LEGISLATIVE PROCESS (1.2.3)

Parliament takes part in the adoption of the Union's legislation to varying degrees, according to the individual legal basis. It has progressed from a purely advisory role to codecision on an equal footing with the Council.

A. Ordinary legislative procedure

From the entry into force of the Treaty of Nice (1.1.4), the codecision procedure applied to 46 legal bases in the Treaty establishing the European Community (EC Treaty). This put Parliament, in principle, on an equal footing with the Council. If the two institutions agreed, the act was adopted at first or second reading; if they did not agree, it could only be adopted after a successful conciliation.

With the Lisbon Treaty (1.1.5), the codecision procedure was renamed the ordinary legislative procedure (Article 294 of the TFEU). Following that treaty, more than 40 new policies became subject to this procedure for the first time in the areas of freedom, security and justice, external trade, environmental policy and the common agricultural policy (CAP), for example.

B. Consultation

The consultation procedure continues to apply in areas covered by Articles 27, 41 and 48 of the TEU and to taxation, competition, the harmonisation of legislation not related to the internal market and some aspects of social policy.

C. Cooperation (abolished)

The cooperation procedure (former Article 252 of the EC Treaty) was introduced by the SEA and extended under the Maastricht Treaty to most areas of legislation where the Council acts by majority. This procedure obliged the Council to take into account at second reading amendments by Parliament that had been adopted by an absolute majority and taken over by the Commission. Its introduction marked the beginning of real legislative power for Parliament but was abolished after the entry into force of the Treaty of Lisbon (1.1.5).

D. Consent

The consent procedure, formerly known as the ‘assent procedure’, was introduced by the SEA in 1986. Following the Maastricht Treaty, the procedure applied to the few legislative areas in which the Council acts by unanimous decision, limited since the Amsterdam Treaty to the Structural and Cohesion Funds.

Under the Lisbon Treaty, some new provisions fall under the consent procedure, such as Articles 7, 14, 17, 27, 48 and 50 of the TEU, Articles 19, 83, 86, 218, 223, 311 and 312 of the TFEU and measures to be adopted by the Council when action by the EU is considered necessary and the Treaties do not provide the necessary powers (Article 352 of the TFEU).

E. Right of initiative

The Maastricht Treaty gave Parliament the right of legislative initiative, but it was limited to asking the Commission to put forward a proposal. This right was maintained in the Lisbon Treaty (Article 225 of the TFEU), and it is spelled out in more detail in an interinstitutional agreement between Parliament and the Commission. In addition, there are a few specific cases where Parliament has been given the direct right of initiative. This direct right applies to the regulations concerning its own composition, the election of its Members and the general conditions governing the performance of the duties of its Members, as well as to the setting up of temporary committees of inquiry and to the regulations and general conditions governing the performance of the Ombudsman.

In a resolution adopted in June 2022, Parliament stated that it ‘strongly believes that the Treaties should be revised so that Parliament, as the only directly elected EU institution

and hence the institution that represents the voice of the citizens in the EU decision-making process, is granted a general and direct right to initiate legislation'

BUDGETARY POWERS (1.2.5)

The Lisbon Treaty eliminated the distinction between compulsory and non-compulsory expenditure and put Parliament on an equal footing with the Council in the annual budgetary procedure, which now resembles the ordinary legislative procedure.

Parliament remains one of the two arms of the budgetary authority (Article 314 of the TFEU). It is involved in the budgetary process from the preparation stage, notably in laying down the general guidelines and the type of spending. It adopts the budget and monitors its implementation (Article 318 of the TFEU). It gives a discharge on the implementation of the budget (Article 319 of the TFEU).

Finally, Parliament has to provide its consent to the multiannual financial framework (MFF) (Article 312 of the TFEU). The MFF for 2014–2020 is the first to be covered under the rules laid down in the TFEU.

SCRUTINY OVER THE EXECUTIVE

Parliament has several powers of scrutiny. In particular, it discusses the annual general report submitted to it by the Commission (Article 233 of the TFEU) and oversees, together with the Council, the Commission's implementing and delegated acts (Articles 290 and 291 of the TFEU).

A. Investiture of the Commission

Parliament began informally approving the investiture of the Commission in 1981 by examining and approving its programme. However, it was only when the Maastricht Treaty came into force in 1992 that its approval was required before the Member States could appoint the President and Members of the Commission as a collegiate body. The Amsterdam Treaty took matters further by requiring Parliament's specific approval for the appointment of the Commission President, prior to that of the other Commissioners. Parliament also introduced hearings of Commissioners-designate in 1994. According to the Lisbon Treaty, the candidate for Commission President has to be chosen in accordance with the results of the European elections. Consequently, in its resolution of 22 November 2012 on the elections to the European Parliament in 2014, Parliament urged the European political parties to nominate candidates for the position of President of the Commission in order to reinforce the political legitimacy of both institutions. Since 2014, a so-called Spitzenkandidaten procedure has been in place, whereby European political parties, ahead of European elections, appoint lead candidates for the role of Commission President. Although in the end discarded in 2019, the process is considered important for the transparency and political legitimacy of the EU institutions. (1.3.3).

B. Motion of censure

There has been provision for a motion of censure (also called a 'vote of no confidence') against the Commission ever since the Treaty of Rome. Today, general provisions of the Parliament's right to vote on a motion of censure of the Commission are included in Article 17(8) of the TEU and in Article 234 of the TFEU. Such a motion requires a two-thirds majority of the votes cast, representing a majority of Parliament's component members. A successful vote on a motion of censure leads to the resignation

of the Commission as a body, including the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy with regard to their duties carried out in the Commission. To date, Parliament has tried several times unsuccessfully to use the relevant Treaty provisions and their predecessors to remove a Commission College.

C. Parliamentary questions

Questions with a request for a written answer may be put by any Member to the President of the European Council, the Council, the Commission or the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy. According to Article 230 of the TFEU, the Commission must reply orally or in writing to questions put to it by Parliament or its Members, and the European Council and the Council must be heard by Parliament in accordance with the conditions laid down in the Rules of Procedure of the European Council and those of the Council.

Consequently, parliamentary questions take the form of written and oral questions with or without debate and questions for Question Time.

D. Committees of inquiry

According to Article 226 of the TFEU, Parliament has the power to set up a temporary committee of inquiry to investigate alleged contraventions or maladministration in the implementation of EU law. The same article provides that the detailed provisions governing the exercise of the right of inquiry are to be determined by Parliament itself, acting by means of regulations on its own initiative after obtaining the consent of the Council and the Commission. Until such a regulation is adopted, the right of inquiry is exercised in accordance with a 1995 interinstitutional agreement annexed to Parliament's Rules of Procedure. Parliament has repeatedly expressed the need to improve communication and cooperation between the three institutions in order to be able to fulfil its mandate based on Article 226 of the TFEU. In 2014, it adopted a position on a proposal for a regulation on the detailed provisions governing the exercise of the European Parliament's right of inquiry. However, the negotiations between the three institutions on the proposal have constantly been in a deadlock. Consequently, in April 2019, Parliament adopted a resolution in which it expressed its deepest disagreement with the attitude of the Council and the Commission, which, after more than four years of informal meetings, continue to prevent a formal meeting to discuss possible solutions to the problems identified. In its resolution, Parliament considers that the Council and the Commission have failed to comply with the principle of interinstitutional cooperation and invites them to resume negotiations on the matter with the newly elected Parliament.

E. Scrutiny over the common foreign and security policy

Parliament is entitled to be kept informed in this area and may address questions or recommendations to the Council. It must be consulted on the main aspects and basic choices of the common foreign and security policy (CFSP) (Article 36 of the TEU). The implementation of the interinstitutional agreement on budgetary discipline, on cooperation in budgetary matters and on sound financial management has also improved CFSP consultation procedures as far as financial aspects are concerned. The creation of the role of High Representative of the Union for Foreign Affairs and Security Policy has enhanced Parliament's influence, as the High Representative is also a Vice-President of the Commission.

APPEALS TO THE COURT OF JUSTICE OF THE EUROPEAN UNION

Parliament has the right to institute proceedings before the Court of Justice of the European Union (CJEU) in cases of violation of the Treaty by another institution.

It has the right to intervene, i.e. to support one of the parties to the proceedings, in cases before the CJEU. In a landmark case, it exercised this right in the Isoglucose judgment (Cases 138 and 139/79 of 29 October 1980), where the CJEU declared a Council regulation invalid because the Council was in breach of its obligation to consult Parliament. In an action for failure to act (Article 265 of the TFEU), Parliament may institute proceedings against an institution before the CJEU for violation of the Treaty, as for instance in Case 13/83, in which the CJEU ruled against the Council for failing to take measures relating to the common transport policy.

With the Treaty of Amsterdam, Parliament acquired the power to bring an action to annul an act of another institution, but only for the purpose of protecting its own prerogatives. Since the Treaty of Nice, Parliament has no longer had to demonstrate a specific interest, and is therefore now able to institute proceedings in the same way as the Council, the Commission and the Member States. Parliament may be the defending party in an action against an act adopted under the codecision procedure or when one of its acts is intended to produce legal effects vis-à-vis third parties. Article 263 of the TFEU thus upholds the CJEU's rulings in Cases 320/81, 294/83 and 70/88.

Finally, Parliament is able to seek a prior opinion from the CJEU on the compatibility of an international agreement with the Treaty (Article 218 of the TFEU).

PETITIONS (4.1.4)

When EU citizens exercise their right of petition, they address their petitions to the President of the European Parliament (Article 227 of the TFEU).

EUROPEAN CITIZENS' INITIATIVE (4.1.5)

Parliament organises a hearing with the proponents of successfully registered ECIs under the auspices of the Committee on Petitions. On 17 April 2019, Parliament and the Council formally adopted Regulation (EU) 2019/788 on the European citizens' initiative, which came into force on 1 January 2020.

APPOINTING THE OMBUDSMAN

The Treaty of Lisbon provides that Parliament elects the European Ombudsman (Article 228 of the TFEU) (1.3.16).

Eeva Pavy
04/2024

1.3.3. THE EUROPEAN PARLIAMENT: ORGANISATION AND OPERATION

The organisation and operation of the European Parliament are governed by its Rules of Procedure. The political bodies, committees, delegations and political groups guide Parliament's activities.

LEGAL BASIS

— Article 14 of the Treaty on European Union (TEU) and Articles 223, 224, 226, 229, 231 and 232 of the Treaty on the Functioning of the European Union (TFEU);

— Rules of Procedure of the European Parliament.

MEMBERSHIP AND COMPOSITION

The general rules for the composition of the European Parliament are laid down in Article 14(2) TEU, which stipulates that the European Council shall adopt by unanimity, on the initiative of Parliament and with its consent, a decision establishing composition. It also states that Parliament is to be composed of no more than 751 representatives of the EU's citizens (750 Members plus the President). In addition, 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 degressive proportionality 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. This concept has been further defined in the successive European Council decisions taken under Article 14(2) TEU since the entry into force of the Treaty of Lisbon.

The next elections of the European Parliament will be held from 6 to 9 June 2024. On 22 September 2023, following Parliament's legislative resolution of 15 June 2023 on the composition of the European Parliament, the European Council adopted a decision establishing the composition of Parliament, increasing the total number of seats in Parliament from 705 to 720. The number of MEPs to be elected per Member State will be as follows:

Belgium	22
Bulgaria	17
Czech Republic	21
Denmark	15
Germany	96
Estonia	7
Ireland	14
Greece	21
Spain	61
France	81

Croatia	12
Italy	76
Cyprus	6
Latvia	9
Lithuania	11
Luxembourg	6
Hungary	21
Malta	6
The Netherlands	31
Austria	20
Poland	53
Portugal	21
Romania	33
Slovenia	9
Slovakia	15
Finland	15
Sweden	21

After every election, Parliament has to meet, without needing to be convened, on the first Tuesday after expiry of an interval of one month (Act of 20 September 1976). In accordance with Article 229(1) TFEU, Parliament must also meet, without needing to be convened, on the second Tuesday in March each year.

ORGANISATION

A. The President

Under the Rules of Procedure, the President of Parliament is elected from among its Members for a renewable term of two and a half years (Rule 19). The President represents Parliament vis-à-vis the outside world and in its relations with the other EU institutions. The President oversees the debates in plenary and ensures that Parliament's Rules of Procedure are adhered to. At the beginning of every European Council meeting, the President of the European Parliament sets out Parliament's point of view and its concerns as regards the items on the agenda and other subjects. After the EU budget has been adopted by Parliament, the President signs it, rendering it operational. The Presidents of both Parliament and the Council of the European Union sign all legislative acts adopted under the ordinary legislative procedure. One of the 14 Vice-Presidents (Rule 23) can replace the President.

B. The plenary

The plenary is the European Parliament sensu stricto and its sittings are chaired by the President. It meets in Strasbourg every month (except August) for a 'part-session' lasting four days from Monday to Thursday. Additional part-sessions are held in Brussels. The part-session is divided into daily sittings (Rule 153). The places assigned to Members in the Chamber are decided by political affiliation, from left to right, by agreement with the group Chairs. The President opens the sitting, sometimes with a tribute or a speech on a topical issue. The President is assisted in this task by the 14 Vice-Presidents, who may take over the Chair. The Commission and the Council of the European Union take part in the sittings in order to facilitate cooperation between the institutions in the decision-making process. If Parliament so requests, the

representatives of the two institutions may also be called upon to make declarations or to give an account of their activities.

C. Political bodies

Parliament's political bodies comprise the Bureau (Rule 24 – the President and 14 Vice-Presidents), the Conference of Presidents (Rule 26 – the President and the political group chairs), the five Quaestors (Rule 28 – responsible for Members' administrative and financial business), the Conference of Committee Chairs (Rule 29) and the Conference of Delegation Chairs (Rule 30). The term of office of the President, the Vice-Presidents and the Quaestors, as well as of the committee and delegation chairs, is two and a half years (Rule 19).

D. Committees and delegations

Members sit on 20 committees, three subcommittees and 39 delegations (interparliamentary delegations and delegations to joint parliamentary committees, parliamentary cooperation committees, and multilateral parliamentary assemblies)[1]. Parliament also sends a delegation to the Joint Assembly set up under the agreement between the African, Caribbean and Pacific states and the EU[2]. Parliament may also establish special committees (Rule 207) or committees of inquiry (Article 226 TFEU and Rule 208).

On the basis of Rule 213, each committee or delegation elects its own Bureau, consisting of a Chair and up to four Vice-Chairs.

E. Political groups

Members do not sit in national delegations, but according to their political affinities in transnational groups. Under the Rules of Procedure, a political group must comprise Members elected from at least one quarter of the Member States and must consist of at least 23 Members (Rule 33). The political groups hold regular meetings during the week before the part-session and in part-session weeks, as well as seminars to determine the main principles of their activity. Certain political groups correspond to supranational political parties operating at EU level.

F. European political parties and foundations

Parliament recommends the creation of an environment that is conducive to the development of truly European political parties and foundations, including the adoption of framework legislation. Article 224 TFEU provides a legal basis for the adoption, in accordance with the ordinary legislative procedure, of a statute for European-level political parties and of rules on their funding. In 2003, a system for the funding of European political parties was established, which allowed political foundations to be set up at EU level[3]. As a response to certain abusive practices, these rules were amended by Regulation (EU, Euratom) 2018/673 of 3 May 2018, with a view to strengthening the European dimension of European political parties, ensuring a fairer distribution of funds and improving enforcement.

The European political parties currently in existence are: the European People's Party, the Party of European Socialists, the Alliance of Liberals and Democrats for Europe

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[1]Numbers of members per committee are laid down in paragraph 1 of the European Parliament decision of 15 January 2020 on the numerical strength of the committees (OJ C 270, 7.7.2021, p. 117).
[2]See the Cotonou Agreement, as revised in Ouagadougou on 22 June 2010, Article 17.
[3]Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations (OJ L 317, 4.11.2014, p. 1).

Party, the European Green Party, the European Conservatives and Reformists Party, the Party of the European Left, the Identity and Democracy Party, the European Democratic Party, the European Free Alliance and the European Christian Political Movement. Supranational parties work in close cooperation with the corresponding political groups in the European Parliament.

Some of the most important European political foundations include: the Wilfried Martens Centre for European Studies, the Foundation for European Progressive Studies, the European Liberal Forum, the Green European Foundation, the Institute of European Democrats, Transform Europe, and New Direction – The Foundation for European Reform.

On 22 November 2012, Parliament adopted a resolution urging the European political parties to nominate candidates for the Presidency of the Commission, with a view to strengthening both Parliament's and the Commission's political legitimacy. These arrangements were implemented ahead of the 2014 elections, when lead candidates ran for the very first time. Following those elections, one of the lead candidates, Jean-Claude Juncker, was elected as Commission President by Parliament on 22 October 2014. In its decision of 7 February 2018 on the revision of the Framework Agreement on relations between Parliament and the Commission, Parliament stated that it would be ready to reject any candidate for the Commission Presidency who was not nominated as a lead candidate of a European political party (*Spitzenkandidat*) ahead of the 2019 European elections. Although in the end it was discarded for the 2019 elections, the lead candidate process has been regarded as creating a broader platform for debate among candidates, bringing both increased transparency and political legitimacy to the role of Commission President and enhancing the involvement and awareness of EU citizens in the process. On 3 May 2022, Parliament adopted its position at first reading on the reform of electoral law in which it considered that the lead candidate process could be formalised by a political agreement between the European political entities and by an Interinstitutional Agreement between Parliament and the European Council. It also called on European political parties, European associations of voters and European electoral entities to nominate their candidates for the position of President of the Commission at least 12 weeks before the election day and said that it expected candidates to be placed in the first position of the corresponding list of the Union-wide constituency.

In 2018, in its communication on institutional options for making the European Union's work more efficient, the Commission put forward the idea of transnational lists as a step towards improving the legitimacy of the EU institutions in the eyes of the citizens. Creating a Europe-wide constituency could strengthen the European dimension of the European elections, as it would give citizens the opportunity to connect with candidates across Europe. Parliament, however, considered that the time was not yet right for the creation of a transnational constituency for the 2019 European elections, but left the door open for future debate. In its above-mentioned position on the reform of electoral law, Parliament suggested 'introducing binding geographical representation in the lists for the Union-wide constituency' and encouraged 'European political parties, European associations of voters and other European electoral entities to appoint candidates in the Union-wide lists coming from all Member States'. This electoral reform should see the creation of 28 transnational seats for the EU-wide constituency on top of the current 705 seats, with full respect for geographical and gender balance.

G. Parliament's Secretariat

Parliament's Secretariat is headed by the Secretary-General, who is appointed by the Bureau (Rule 234). The Secretariat's composition and organisation are also determined by the Bureau: it currently comprises 12 Directorates-General and the Legal Service. Its task is to coordinate legislative work and organise the plenary sittings and meetings. It also provides technical, legal and expert assistance to parliamentary bodies and MEPs to support them in the exercise of their mandates. The Secretariat provides interpretation and translation for all meetings and formal documents.

OPERATION

Under the Treaties, Parliament organises its work independently. It adopts its Rules of Procedure, acting by a majority of its component Members (Article 232 TFEU). Except where the Treaties provide otherwise, Parliament acts by a majority of votes cast (Article 231 TFEU). It decides the agenda for its part-sessions, which primarily cover the adoption of reports prepared by its committees, questions to the Commission and the Council of the European Union, topical and urgent debates, and statements by the Presidency. Committee meetings and plenary sittings are held in public and are webstreamed.

SEAT AND PLACES OF WORK

From 7 July 1981 onwards, Parliament has adopted several resolutions on its seat, calling on the governments of the Member States to comply with the obligation incumbent upon them under the Treaties to establish a single seat for the institutions. Since they failed to do so for a long time, Parliament took a series of decisions concerning its organisation and its places of work (i.e. Luxembourg, Strasbourg and Brussels). At the Edinburgh European Council of 11 and 12 December 1992, the Member States' governments reached an agreement on the seats of the institutions, whereby:

— Parliament should have its seat in Strasbourg, where the 12 monthly part-sessions should be held, including the session at which the decision on the annual EU budget is taken;

— Additional part-sessions should be held in Brussels;

— The parliamentary committees should meet in Brussels;

— Parliament's secretariat and back-up departments should remain in Luxembourg.

This decision was criticised by Parliament. However, the Court of Justice of the European Union (judgment of 1 October 1997 – C-345/95) confirmed that the seat of Parliament was determined in accordance with what is now Article 341 TFEU. The substance of this decision was included in the Treaty of Amsterdam in a protocol annexed to the Treaties.

Although Parliament criticised these decisions, it has been obliged to draw up its annual calendar accordingly on a proposal by its Conference of Presidents. In general, in the course of a year, Parliament holds 12 four-day part-sessions in Strasbourg and six two-day part-sessions in Brussels. Several initiatives have been launched by Members to avoid meeting in Strasbourg. For 2012, for example, a calendar was adopted which included two two-day part-sessions during the same calendar week in October in

Strasbourg, reducing the overall meeting time in Strasbourg by four days. Following a complaint by France, however, the Court of Justice of the European Union ruled that two full part-sessions are required (Case C-237/11) to comply with the decisions taken.

Pursuant to Article 229 TFEU, Parliament may hold extraordinary part-sessions, at the request of a majority of its component Members or at the request of the Council of the European Union or the Commission. On 18 December 2006, Parliament held, for the first time, a supplementary plenary sitting in Brussels directly after the European Council of 14 and 15 December 2006. This practice of immediate follow-up of European Council meetings has been consolidated since then.

Due to the COVID-19 pandemic, Parliament has also put in place measures enabling Members to participate in plenary sessions remotely and use remote voting procedures.

MEMBERSHIP OF PARLIAMENT BY GROUP AND MEMBER STATE

A table providing an overview of the political groups and their composition can be found at Parliament's dedicated webpage.

Eeva Pavy
10/2023

1.3.4. THE EUROPEAN PARLIAMENT: ELECTORAL PROCEDURES

The procedures for electing the European Parliament are governed both by European legislation laying down rules common to all Member States and by specific national provisions, which vary from one state to another. The common provisions lay down the principle of proportional representation, rules on thresholds and certain incompatibilities with the Member of the European Parliament mandate. Many other important matters, such as the exact electoral system used and the number of constituencies, are governed by national laws.

LEGAL BASIS

Article 14 of the Treaty on European Union (TEU); Articles 20, 22 and 223 of the Treaty on the Functioning of the European Union (TFEU) and Article 39 of the Charter of Fundamental Rights.

Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage, last amended by Council Decision (EU, Euratom) 2018/994 of 13 July 2018.

COMMON RULES

A. Principles

The founding Treaties (1.1.1) stated that Members of the European Parliament (MEPs) would initially be appointed by the national parliaments, but made provision for election by direct universal suffrage. This provision was implemented by the Council before the first direct elections of 1979 through the Act of 20 September 1976 concerning the election of the representatives of the European Parliament by direct universal suffrage (1976 Electoral Act). It profoundly changed the institutional position of the European Parliament and was the founding document of a more democratic European Union.

In 1992, the Maastricht Treaty (1.1.3) provided that elections had to be held in accordance with a uniform procedure and that the European Parliament was to draw up a proposal to this effect, for unanimous adoption by the Council. However, since the Council was unable to agree on any of the proposals, the Treaty of Amsterdam introduced the possibility of adopting 'common principles'. Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002 modified the 1976 Electoral Act accordingly, introducing the principle of proportional representation and a number of incompatibilities between national and European mandates.

The last amendments to the 1976 Electoral Act were adopted by Council Decision (EU, Euratom) 2018/994 of 13 July 2018, which includes provisions on the possibility of different voting methods (advance voting, electronic, internet and postal voting); on thresholds; on the protection of personal data; on the penalisation of 'double voting' by national legislation; on voting in third countries; and on the possibility of the visibility of European political parties on ballot papers.

With the Treaty of Lisbon (1.1.5), the right to vote and to stand as a candidate acquired fundamental right status (Article 39 of the Charter of Fundamental Rights of the European Union).

B. Application: common provisions in force

1. Right of non-nationals to vote and to stand as candidates

Under Article 22(2) TFEU, 'every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides'. The arrangements for implementing this right were adopted under Council Directive 93/109/EC, as last amended by Council Directive 2013/1/EU, Article 6 of which lays down that 'any citizen of the Union who resides in a Member State of which he is not a national and who, through an individual judicial decision or an administrative decision provided that the latter can be subject to judicial remedies, has been deprived of his right to stand as a candidate under either the law of the Member State of residence or the law of his home Member State, shall be precluded from exercising that right in the Member State of residence in elections to the European Parliament'.

2. Electoral system

Under the amended 1976 Electoral Act, European elections must be based on proportional representation and use either the list system or the single transferable vote system. Member States may also authorise voting based on a preferential list system.

In addition to the voluntary minimum threshold for the allocation of seats of up to 5% of valid votes cast at national level, the recent amendments to the 1976 Electoral Act, adopted by Council Decision (EU, Euratom) 2018/994, establish an obligatory minimum threshold of between 2% and 5% for constituencies (including single-constituency Member States) with more than 35 seats in Member States where the list system is used. Member States will have to comply with this requirement in time for the 2024 elections at the latest.

Pursuant to that decision, Member States may also provide for advance voting, postal voting and electronic and internet voting. Where they do so, they must ensure, in particular, the reliability of the result, the secrecy of the vote and the protection of personal data.

3. Incompatibilities

Under Article 7 of the 1976 Electoral Act, as amended by Council Decision 2002/772/EC, Euratom, the office of Member of the European Parliament is incompatible with that of member of the government of a Member State, member of the Commission, judge, advocate-general or registrar of the Court of Justice, member of the Court of Auditors, member of the European Economic and Social Committee, member of committees or other bodies set up pursuant to the Treaties for the purpose of managing the Union's funds or carrying out a permanent direct administrative task, member of the Board of Directors, Management Committee or staff of the European Investment Bank, and active official or servant of the institutions of the European Union or of the specialised bodies attached to them. Further incompatibilities remain for members of the Committee of the Regions (added in 1997); for members of the Board of Directors of the European Central Bank, the Ombudsman of the European Union and, most importantly, members of a national parliament (added in 2002).

ARRANGEMENTS SUBJECT TO NATIONAL PROVISIONS

In addition to these common rules, the electoral arrangements are governed by national provisions, which can vary a great deal; the electoral system can therefore be considered a polymorphic electoral system.

A. Electoral system and thresholds

All Member States must use a system based on proportional representation. In addition to the voluntary threshold for the allocation of seats of up to 5% at national level, Council Decision (EU, Euratom) 2018/994 established an obligatory minimum threshold of between 2% and 5% for constituencies (including single-constituency Member States) with more than 35 seats. This requirement must be met in time for the 2024 European elections at the latest.

Currently, the following Member States apply thresholds: France, Belgium, Lithuania, Poland, Slovakia, Czechia, Romania, Croatia, Latvia and Hungary (5%); Austria, Italy and Sweden (4%); Greece (3%); and Cyprus (1.8%). The other Member States apply no threshold, although Germany tried to do so, but in two decisions of 2011 and 2014, the German Constitutional Court declared the country's existing thresholds for EU elections (which were first 5%, then 3%) to be unconstitutional.

B. Constituency boundaries

In European elections, most of the Member States function as single constituencies. However, four Member States (Belgium, Ireland, Italy and Poland) have divided their national territory into a number of regional constituencies.

C. Entitlement to vote

The voting age is 18 in most Member States except Austria, Belgium, Germany and Malta, where it is 16, and Greece, where it is 17.

Voting is compulsory in five Member States (Belgium, Bulgaria, Luxembourg, Cyprus and Greece): the obligation to vote applies to both nationals and registered non-national EU citizens.

1. Voting by non-nationals in their host country

Citizens of the Union residing in a Member State of which they are not nationals have the right to vote in elections to the European Parliament in their state of residence, under the same conditions as nationals (Article 22 TFEU). However, the concept of residence still varies from one Member State to another. Some countries require voters to have their domicile or usual residence within the electoral territory (e.g. Estonia, France, Germany, Poland, Romania and Slovenia), to be ordinarily resident there (e.g. Cyprus, Denmark, Greece, Ireland, Luxembourg, Slovakia and Sweden) or to be listed in the population register (e.g. Belgium and Czechia). To be eligible to vote in some countries (e.g. Cyprus), EU citizens must also satisfy a requirement for a minimum period of residence. In all Member States, nationals from other EU countries are required to register to vote before election day. Deadlines for registration vary from one Member State to another.

2. Voting by non-resident nationals in their country of origin

Almost all Member States allow the possibility of voting from abroad in European elections. In some Member States, voters are required to register with their national

electoral authorities in order to be eligible to vote from abroad by post or at an embassy or consulate. In other Member States, postal votes may take place at embassies or consulates. In some Member States, the right to vote abroad is only granted to citizens living in another Member State (e.g. Bulgaria and Italy). In addition, most Member States make special arrangements for diplomats and military personnel serving abroad.

The fact that some non-nationals are able to vote both in their host country and as nationals in their country of origin could give rise to abuse, notably double voting, which is a criminal offence in some Member States. In this regard, the recent amendments to the 1976 Electoral Act, adopted by Council Decision (EU, Euratom) 2018/994, require Member States to ensure that double voting in elections to the European Parliament is subject to effective, proportionate and dissuasive penalties.

D. Right to stand for election

The right to stand as a candidate in elections to the European Parliament in any other Member State of residence is also an application of the principle of non-discrimination between nationals and non-nationals and a corollary of the right to move and reside freely within the European Union. Any person who is a citizen of the Union and not a national of their Member State of residence but satisfies the same conditions in respect of the right to stand as a candidate as that state imposes by law on its own nationals has the right to stand as a candidate in elections to the European Parliament in the Member State of residence unless deprived of those rights (Article 3 of Council Directive 93/109/EC).

Apart from the requirement of citizenship of a Member State, which is common to all the Member States, conditions vary from one country to another. No person may stand as a candidate in more than one Member State in the same election (Article 4 of Council Directive 93/109/EC). The minimum age to stand for election is 18 in most Member States, the exceptions being Belgium, Bulgaria, Cyprus, Czechia, Estonia, Ireland, Latvia, Lithuania, Poland and Slovakia (21), Romania (23), and Italy and Greece (25).

E. Nominations

In some Member States, only political parties and political organisations may submit nominations. In other Member States, nominations may be submitted if they are endorsed by the required number of signatures or electors, and in some cases a deposit is also required.

European Council Decision (EU) 2018/937 of 28 June 2018 establishing the composition of the European Parliament lays down how the seats in the European Parliament provided for in Article 14(2) TEU are to be allocated, applying the principle of 'degressive proportionality' (1.3.3).

F. Election dates

Pursuant to Articles 10 and 11 of the 1976 Electoral Act, as amended, elections to the European Parliament are held within the same period starting on a Thursday morning and ending on the following Sunday; the exact date and times are set by each Member State. In 1976, it was the Council, acting unanimously after consulting the European Parliament, that determined the electoral period for the first elections in 1979. Subsequent elections since 1979 have taken place in the corresponding period during the last year of the five-year period referred to in Article 5 of the Electoral Act (1.3.1).

Concerning the 2014 elections, the Council, by its decision of 14 June 2013, moved the dates, originally set for June, to 22-25 May, so as to avoid a clash with the Whitsun

holidays, applying the following provision of Article 11: 'Should it prove impossible to hold the elections […] during that period, the Council acting unanimously shall, after consulting the European Parliament, determine, at least one year before the end of the five-year term referred to in Article 5, another electoral period which shall not be more than two months before or one month after the period fixed pursuant to the preceding subparagraph'. Subsequent elections are to take place in the corresponding period in the final year of the five-year period (Article 11 of the 1976 Act). Accordingly, the 2019 elections took place between 23 and 26 May. The 2024 European Parliament elections will take place between 6 and 9 June.

G. Voters' options to alter the order of candidates on lists

In most Member States, voters may cast preferential votes to change the order of the names on the list. However, in six Member States (Germany, Spain, France, Portugal, Hungary and Romania) the lists are closed (no preferential vote). In Malta and Ireland, voters list the candidates in order of preference (single transferable vote).

H. Filling seats vacated during the electoral term

In some Member States, seats falling vacant are allocated to the first unelected candidates on the same list (possibly after adjustment to reflect the votes obtained by the candidates). In other Member States, vacant seats are allocated to substitutes and if there are no substitutes, the order of candidates on the lists is the decisive criterion. In some other Member States, MEPs have the right to return to the European Parliament once the reason for their departure has ceased to apply.

ROLE OF THE EUROPEAN PARLIAMENT

Since the 1960s, the European Parliament has repeatedly voiced its opinion on issues of electoral law and has put forward proposals in accordance with Article 138 of the EC Treaty (now Article 223 TFEU). The lack of a genuinely uniform procedure for election to the European Parliament shows how difficult it is to harmonise different national traditions. The option provided for in the Treaty of Amsterdam of adopting common principles has only partially enabled these difficulties to be overcome. The ambition set out in Article 223 TFEU of adopting a uniform procedure, requiring the consent of the European Parliament, has yet to be fulfilled. Parliament's continuing efforts to modernise and 'Europeanise' the common electoral procedure led in 1997 to a proposal for a uniform electoral procedure; its substance was incorporated into the 2002 Council decision. On 11 November 2015, the European Parliament adopted a resolution on the reform of the electoral law of the European Union. The legislative initiative from the Constitutional Affairs Committee proposed amendments to the 1976 Electoral Act with a view to making the European elections more democratic and to increasing public participation in the election process. Parliament's proposed amendments were partly accepted and incorporated into Council Decision (EU, Euratom) 2018/994 of 13 July 2018. However, the Council could not agree on Parliament's proposal that a joint constituency be established and lead candidates appointed for the post of Commission President.

Following its resolution of 7 February 2018 on the composition of the European Parliament, Parliament voted in favour of reducing the number of its seats from 751 to 705 after the UK's departure from the EU and of re-distributing some of the seats to be freed up by Brexit among those EU countries that are slightly under-represented (1.3.3). On 13 September 2023, the European Parliament adopted a resolution giving

its consent to the European Council's draft decision increasing the number of seats in the European Parliament for the 2024 elections from 705 to 720.

On 22 November 2012, the European Parliament adopted a resolution urging the European political parties to nominate candidates for the position of President of the Commission during the 2014 elections, so as to reinforce the political legitimacy of both Parliament and the Commission. These arrangements were implemented ahead of the 2014 elections and, for the first time, lead candidates ran in the 2014 elections. Finally, as a result of the 2014 elections, one of those candidates, Jean-Claude Juncker, was elected as Commission President on 22 October 2014 by the European Parliament. In its decision of 7 February 2018 on the revision of the Framework Agreement on relations between the European Parliament and the European Commission, Parliament stated that it was ready to reject any candidate for President of the Commission not nominated as a lead candidate ('Spitzenkandidat') of a European political party ahead of the 2019 European elections; however, after the 2019 elections, Ursula von der Leyen, who had not been a Spitzenkandidat, was elected President of the Commission. On 22 November 2023, Parliament's plenary voted on proposals to amend the Treaties, including an overhaul of the way that the Commission is elected.

In 2003, a system for the funding of European political parties was established which also allows for the establishment of political foundations (1.3.3) at EU level. Regulation (EC) No 2004/2003 was repealed and replaced by Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations. The 2014 regulation was amended following Parliament's resolution of 15 June 2017 on the funding of political parties and political foundations at European level. In the resolution, shortcomings were highlighted regarding the level of co-financing and the possibility for MEPs' multi-party membership, in an effort to ensure that public money is used properly in the funding of European political parties and foundations through Regulation (EU, Euratom) 2018/673 of the European Parliament and of the Council of 3 May 2018.

Recent events have demonstrated the potential risks to electoral processes and democracy that can arise from online communication (manipulating personal data in an electoral context). To prevent unlawful use of personal data, new amendments to the 2014 Regulation on the statute and funding of European political parties and European political foundations were subsequently adopted (Regulation (EU, Euratom) 2019/493 of the European Parliament and of the Council of 25 March 2019 amending Regulation (EU, Euratom) No 1141/2014 as regards a verification procedure related to infringements of rules on the protection of personal data in the context of elections to the European Parliament). The new rules agreed on by Parliament and the Council are designed to protect the electoral process from online disinformation campaigns that misuse voters' personal data and they allow for financial sanctions to be imposed on European political parties and foundations that deliberately influence, or attempt to influence, the outcome of the European elections by taking advantage of breaches of data protection rules.

In addition, following Parliament's resolution of 15 June 2017 on online platforms and the digital single market, where it called on the Commission to look into the possibility of a legislative intervention to limit the dissemination of fake content, in April 2018 the Commission issued a communication entitled 'Tackling online disinformation: a

European approach' and proposed an EU-wide Code of Practice, which was signed by three online platforms in September 2018. The Commission's December 2018 action plan against disinformation, among other measures, urges the online platforms to swiftly and effectively implement the commitments and to focus on actions that are urgent for the European elections, including deleting fake accounts, labelling messaging activities by 'bots' and cooperating with fact-checkers and researchers to detect disinformation and make fact-checked content more visible. In the run-up to the May 2019 European elections, the Commission asked the three platforms signatory to the Code of Practice to report on a monthly basis on their actions undertaken to improve the scrutiny of ad placements, to ensure transparency of political and issue-based advertising and to tackle fake accounts and the malicious use of bots.

In its resolution of 26 November 2020 on stocktaking of European elections, Parliament recommended that the following be examined with a view to improving the European electoral process, in particular during the Conference on the Future of Europe:

— New remote voting methods for citizens during European elections in specific or exceptional circumstances;

— Common election admission rules for candidates and common campaign and funding rules;

— Harmonised standards for passive and active voting rights across Member States, including a reflection on decreasing the minimum age of voters in all Member States to 16;

— Provisions on periods of absence for Members, for example for maternity leave, parental leave or severe illness.

Parliament called on the Member States to ensure that all their nationals who enjoy the right to vote, including EU citizens living outside their country of origin, homeless people and prisoners who are granted this right under national law, can exercise it.

REFORM OF THE EUROPEAN ELECTORAL ACT

With its position of 3 May 2022 on the proposal for a Council regulation on the election of the Members of the European Parliament by direct universal suffrage, Parliament launched a reform of the European Electoral Act, seeking to transform the 27 separate elections and their diverging rules into a single European election with common minimum standards. Under Parliament's proposed system, each voter would have two votes: one to elect MEPs in national constituencies, and one in an EU-wide constituency of 28 additional seats. To ensure balanced geographical representation within these lists, the Member States would be divided into three groups depending on the size of their population. The lists would be filled proportionately with candidates taken from those groups. EU-wide lists of candidates would be submitted by European electoral entities, such as coalitions of national political parties and/or national associations of voters or European political parties.

Other proposals include:

— 9 May as the common European voting day;

— The right to stand for election for all Europeans aged 18 or over;

— A mandatory electoral threshold of at least 3.5% for large constituencies of 60 seats or more;

— Equal access to the elections for all citizens, including those with disabilities, and the option to vote by post;

— Mandatory gender equality through ‘zipped lists’ or quotas;

— The right for citizens to vote for the President of the Commission in a lead candidate (Spitzenkandidaten) system through the EU-wide lists.

A new European electoral authority would be set up to oversee the process and ensure compliance with the new rules.

As established in Article 223 TFEU, Parliament’s legislative initiative would need to be unanimously approved by the Council. It would then come back to Parliament so that MEPs could give their consent, before being approved by all Member States in accordance with their respective constitutional requirements. Negotiations with the Council would commence once the Member States adopted their positions.

The draft legislative act is now being analysed by the Council in its General Affairs configuration. It held a first policy debate on the proposal on 18 October 2022. The reservations identified by some Member States relate to the proposals for an EU-wide constituency based on transnational lists and to the elements of the proposal that imply a harmonisation of the electoral system used in European elections.

This fact sheet was prepared by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs.

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11/2023

1.3.5. EUROPEAN PARLIAMENT: RELATIONS WITH THE NATIONAL PARLIAMENTS

Moves towards closer European integration have altered the role of the national parliaments. A number of instruments for cooperation between the European Parliament and the national parliaments have been introduced with a view to guaranteeing effective democratic scrutiny of European legislation at all levels. This trend has been reinforced by provisions introduced by the Lisbon Treaty.

LEGAL BASIS

Article 12 of the Treaty on European Union (TEU), Protocol No 1 on the role of national parliaments in the European Union and Protocol No 2 on the application of the principles of subsidiarity and proportionality.

OBJECTIVES

A. Rationale for cooperation

The very process of European integration involves transferring responsibilities hitherto exercised by national governments to joint institutions with decision-making powers, thus diminishing the role of the national parliaments (NPs) as legislators, budgetary authorities and bodies responsible for scrutinising the executive. While several of the responsibilities transferred from national to EU level initially rested with the Council, the European Parliament has progressively acquired a full parliamentary role.

— The NPs have come to see more effective scrutiny of their governments' EU activities and closer relations with Parliament as a way of increasing their influence on EU policy-making and at the same time ensuring that the EU is built on democratic principles.

— For its part, Parliament has generally taken the view that close relations with the NPs would help to strengthen its legitimacy and bring the EU closer to its citizens.

B. The evolving context of cooperation

The role of the NPs initially diminished as European integration progressed: the EU's powers have increased and its areas of competence have broadened, while majority voting has become the rule in Council and Parliament's legislative powers have also increased.

Until 1979, Parliament and the NPs were linked organically, because MEPs were appointed from within the NPs. Direct elections to Parliament broke those ties, and for some 10 years relations dwindled almost to nothing. The need to restore them became apparent after 1989: talks were held and a start was made on establishing new ties to replace the original organic ones. The Maastricht Treaty helped by devoting two declarations (No 13 and No 14) to the subject, which provided in particular for:

— Proper acknowledgement of the NPs' role in the functioning of the European Union (their respective governments must inform them 'in good time' of EU legislative proposals and joint conferences must be held where necessary);

— Closer cooperation between Parliament and the NPs, in the form of more systematic liaison, exchanges of information, regular meetings and, possibly, the granting of reciprocal facilities.

Additionally, NPs progressively acquired powers of scrutiny over their governments' EU activities as a result of constitutional reforms, government undertakings, changes to their own operating methods and interpretations of national constitutional rules issued by some Member States' constitutional courts. Their committees specialising in EU affairs have played a major role in these developments, in cooperation with Parliament.

The Protocol on the role of the NPs annexed to the Treaty of Amsterdam encouraged greater involvement on the part of the NPs in EU activities and required consultation documents and proposals to be forwarded promptly so that the NPs could consider them before the Council took a decision. The NPs played an important role in the discussions held in the Convention on the Future of Europe (1.1.4), and they were also the subject of one of the Convention's 11 working groups. In May 2006, the Commission agreed to forward all new proposals and consultation papers to the NPs. With the advent of the Lisbon Treaty, this 'political dialogue' has become a legal requirement for the Commission. The Treaty on the Functioning of the European Union gives the NPs the right to receive a broader range of information from the EU institutions, which are required to forward all draft legislative acts and notify the NPs of applications for accession to the EU. The Lisbon Treaty further enhanced the role of the NPs by involving them in the procedures for revising the Treaties as well as in the evaluation mechanisms for the implementation of EU policies in the areas of freedom, security and justice. It also formalised interparliamentary cooperation between NPs and Parliament in accordance with the Protocol on the role of national parliaments in the EU.

In addition, the Lisbon Treaty stepped up the role of the NPs in the EU legislative process considerably by introducing an early warning mechanism (EWM), i.e. a system which enables the NPs to check that legislative proposals are consistent with the subsidiarity principle (Protocol No 1 on the role of national parliaments in the European Union and Protocol No 2 on the application of the principles of subsidiarity and proportionality). Within eight weeks from the date of transmission of a legislative proposal, NPs may send a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission stating why they consider that the draft in question does not comply with the subsidiarity principle. Legislative proposals can be blocked if there is a consensus among a majority of chambers. However, the final decision rests with the legislative authority (the European Parliament and the Council) (1.2.2). This mechanism has been triggered three times since the Lisbon Treaty entered into force: in May 2012 in relation to a proposal for a Council regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services ('Monti II')[1] in October 2013 in relation to a proposal for a Council regulation on the establishment of the European Public Prosecutor's Office[2], and in May 2016 in relation to a proposal for a review of the Posted Workers Directive[3]. NPs can raise concerns over subsidiarity and trigger the orange and yellow cards when the necessary thresholds are reached. This subsidiarity check is an exclusive competence of NPs. The role of regional Parliaments in this procedure can be found in Article 6 of Protocol 2 that reads as follows: 'It will be

[1]COM(2012)0130.
[2]COM(2013)0534.
[3]COM(2016)0128.

for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.' Therefore, direct submissions received from regional Parliaments are not considered, according to the Treaties, as national Parliaments' submissions concerning subsidiarity. Their views should be channelled via the NP. However, when the European Parliament receives a submission from a regional Parliament, this is transmitted for information to the relevant services, including the committee responsible for the content, to the Committee on Regional Development, as the committee responsible for relations with regional authorities, and to the research and documentation services. The Treaty also contains new articles clarifying the role of the NPs in the EU institutional set-up (Articles 10 and 12 TEU).

Since the start of the sovereign debt crisis in the EU in March 2010, the role of the Eurozone NPs in ratifying or revising rescue packages has highlighted the importance of close cooperation and continuous exchanges of information between the NPs and Parliament. Article 13 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, which entered into force in January 2013, provides for specific cooperation between the NPs and Parliament in exercising parliamentary oversight in the areas of economic and financial governance.

ACHIEVEMENTS: COOPERATION INSTRUMENTS

A. Conferences of speakers of the parliamentary assemblies of the European Union

Following meetings in 1963 and 1973, the conferences were formally introduced in 1981. Comprising the presidents of the NPs and Parliament, they were initially held every two years. They are prepared at meetings of the secretaries-general and provide a forum for detailed discussion of issues relevant to cooperation between the NPs and Parliament. In recent years, the presidents have met every year. Since 1995, Parliament has maintained close relations with the parliaments of the associate and applicant countries. The presidents of Parliament and these countries' parliaments have met regularly to discuss accession strategies and other topical matters.

B. The ECPRD

The 'grand conference' held in Vienna in 1977 set up the European Centre for Parliamentary Research and Documentation (ECPRD). The Centre is a network of documentation and research services that cooperate closely in order to facilitate access to information (including national and European databases) and coordinate research so as to avoid duplication of work. It centralises research and circulates findings and has created a website to improve exchanges of information. Its directory helps the member parliaments' research departments liaise with one another. The Centre is jointly administered by Parliament and the Parliamentary Assembly of the Council of Europe. It comprises parliaments from the Member States of the EU and of the Council of Europe, and its services may also be used by parliaments of states which have observer status in the Parliamentary Assembly.

C. Conference of Parliaments of the Community

This idea was given practical form in Rome in 1990, under the name 'European assizes'. Their topic was 'the future of the Community; the implications, for the Community and the Member States, of the proposals concerning Economic and Monetary Union and Political Union and, more particularly, the role of the national

parliaments and of the European Parliament' and there were 258 participants, 173 from the NPs and 85 from Parliament. There has not been another such meeting since.

D. Conference of Parliamentary Committees for Union Affairs of the Parliaments of the European Union — COSAC

Originally proposed by the President of the French National Assembly, the Conference has met every six months since 1989, bringing together the NPs' EU affairs committees as well as Members of the European Parliament. At its meetings, each parliament is represented by six Members. Convened by the parliament of the country holding the presidency of the EU and prepared jointly by Parliament and the parliaments of the presidency 'troika', each conference discusses major topics relevant to European integration. COSAC is not a decision-making but rather a parliamentary consultation and coordination body that adopts its decisions by consensus. The Protocol on the role of the NPs in the European Union specifically states that COSAC may submit any contribution it deems appropriate to the EU institutions. COSAC contributions are in no way binding on the NPs, however, and are without prejudice to their position.

E. Joint Parliamentary Meetings

Drawing on the experience of the European Convention, parliamentarians from both Parliament and the NPs felt that it would make sense to establish a permanent forum for political cooperation to deal with specific topics. Since 2005, therefore, MEPs and national MPs have held joint parliamentary meetings to deal with important issues affecting parliaments in the context of the process of EU policy-making and institution-building.

F. Other cooperation instruments

Most of Parliament's standing committees consult their national counterparts through bi- or multilateral meetings and visits by chairs and rapporteurs.

Contacts between Parliament's political groups and the NPs' equivalents have developed to differing degrees, depending on the country or political party involved.

Administrative cooperation is developing in the form of traineeships at Parliament and exchanges of officials. Most NP representatives' offices are located in the same Parliament building as the Directorate for Relations with National Parliaments. Reciprocal information-sharing on parliamentary work, especially on legislation, is becoming increasingly important and draws on modern information technology, such as the Internet-based IPEX network, which is backed up by an electronic data exchange and communication platform: the Platform for EU Interparliamentary Exchange.

ROLE OF THE EUROPEAN PARLIAMENT

On 19 April 2018, Parliament adopted a resolution on the implementation of the Treaty provisions concerning national parliaments[4], in which it points out that NPs are improving and contributing actively to the good constitutional functioning of the European Union, thus providing for more pluralism and democratic legitimacy. It also acknowledges that national governments' accountability to national parliaments remains the 'keystone of the role of national parliamentary chambers in the European Union'. While recalling that the EWS has seldom been used since the entry into force

[4]European Parliament resolution of 19 April 2018 on the implementation of the Treaty provisions concerning national parliaments, OJ C 390, 18.11.2019, p. 121.

of the Treaty of Lisbon, Parliament believes that it could be reformed within the current Treaty framework. In this respect, it calls on the Commission to implement 'a technical notification period' in order to grant additional time between the date on which draft legislative acts are received by NPs and the date on which the eight-week period begins. Additionally, Parliament supports the possibility for NPs to submit constructive proposals to the Commission in order to influence positively the European debate and the Commission's power of initiative. Finally, it puts forward a number of suggestions aiming at reinforcing the existing instruments of cooperation between Parliament and NPs.

Every year, Parliament's Directorate for Relations with National Parliaments publishes an annual report on the relations between the European Parliament and EU national parliaments. The report gives an overview of all activities and developments in interparliamentary cooperation with national parliaments, which involves 39 national parliaments and chambers across the 27 Member States and the European Parliament. According to the Annual Report 2022, the major topics discussed in the interparliamentary meetings in the course of that year were EU security and external action in response to the war in Ukraine, the post-COVID-19 pandemic recovery, the state of the rule of law in the Member States, NextGenerationEU and economic recovery plans, and the outcome of the Conference on the Future of Europe.

Eeva Pavy
10/2023

1.3.6. THE EUROPEAN COUNCIL

The European Council, formed by the heads of state or government of the Member States, provides the necessary impetus for the development of the European Union and sets out the general political guidelines. The Commission President is also a non-voting member. The President of the European Parliament addresses the European Council at the beginning of its meetings. The Lisbon Treaty established the European Council as an institution of the Union and endowed it with a long-term presidency.

LEGAL BASIS

Articles 13, 15, 26, 27 and 42(2) of the Treaty on European Union (TEU).

HISTORY

The European Council is now the summit conference of heads of state or government of the EU Member States. The first of these 'European summits' took place in Paris in 1961 and they have become more frequent since 1969.

In the Paris European summit of February 1974, 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', which would be able to adopt a general approach to the problems of European integration and ensure that EU activities were properly coordinated.

The Single European Act (1986) included the European Council in the body of the Community Treaties for the first time, defining its composition and providing for biannual meetings.

The Treaty of Maastricht (1992) formalised its role in the EU's institutional process.

The Treaty of Lisbon (formally known as the Treaty on European Union, 2009) made the European Council a full institution of the EU (Article 13) 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' (Article 15). The European Council and the Council of the European Union (hereinafter 'the Council') have agreed to share section II of the EU budget (Article 43(b) of the Financial Regulation), which is why the general budget only has 10 sections and not 11, although the European Council and the Council are separate institutions.

ORGANISATION

Convened by its president, the European Council brings together the heads of state or government of the 27 Member States and the President of the Commission (Article 15(2) TEU). The High Representative of the Union for Foreign Affairs and Security Policy takes part in its work. The President of the European Parliament is usually invited to speak at the beginning of the meeting (Article 235(2) of the Treaty on the Functioning of the European Union (TFEU)).

The president is elected by the European Council itself for a two-and-a-half-year term that may be renewed once and represents the EU to the outside world. The President's

role is set out in Article 15 TEU. The current President Charles Michel started his first term on 1 December 2019 and was re-elected in March 2022 for a second term from 1 June 2022 to 30 November 2024.

The European Council usually decides on issues by consensus, but a number of important appointments are made by qualified majority (in particular that of its own president, the choice of candidate for the post of President of the European Commission, and the appointment of the High Representative of the Union for Foreign Affairs and Security Policy and the President of the European Central Bank).

The European Council normally meets at least four times a year. Since 2008, it has met more often, in particular during the financial crisis and the subsequent euro area debt crisis. Lately, migration flows to the EU and internal security issues have also greatly occupied the European Council.

In 2016, the heads of state and government started to meet in an 'EU-27' format, without the United Kingdom (UK). These meetings were at first informal, prior to the UK's formal notification of withdrawal from the EU under Article 50 TEU in March 2017. After the notification, several formal 'European Council (Article 50)' meetings of the EU-27 took place alongside regular meetings.

In addition, 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 in 2009, this was the only procedure for treaty revision. It is now called the 'ordinary revision procedure'. The IGC, convened by the President of the European Council, decides on treaty changes unanimously.

ROLE

A. Place in the EU's institutional system

Under Article 13 TEU, the European Council forms part of the 'single institutional framework' of the Union. However, its role is to provide a general political impetus rather than act as a decision-making body in the legal sense. It takes decisions with legal consequences for the EU only in exceptional cases (see point C (2) below), but has acquired a number of institutional decision-taking powers. The European Council is now authorised to adopt binding acts, which may be challenged before the Court of Justice of the European Union, including for failure to act (Article 265 TFEU).

Article 7(2) TEU gives the European Council the power to initiate the procedure suspending the rights of a Member State as a result of a serious breach of the EU's principles, subject to the consent of Parliament.

B. Relations with the other institutions

The European Council takes decisions with complete independence and in most cases does not require a Commission initiative or the involvement of Parliament.

However, the Lisbon Treaty maintains an organisational link with the Commission, since its president is a non-voting member of the European Council, and the High Representative of the Union for Foreign Affairs and Security Policy attends the debates. Moreover, the European Council often asks the Commission to submit reports in preparation for its meetings. Article 15(6)(d) TEU requires the President of the European Council to submit a report to Parliament after each of its meetings. The

President of the European Council also meets the President of Parliament, as well as leaders of political groups, on a monthly basis. In February 2011, the president at the time agreed to answer written questions from MEPs concerning his political activities. However, Parliament is also able to exercise some informal influence through the presence of its President at European Council meetings and pre-European Council meetings of the party leaders in their respective European political families, as well as through the resolutions it adopts on items on the agenda for meetings, on the outcome of meetings and on the formal reports submitted by the European Council.

With the Lisbon Treaty, the new office of High Representative of the Union for Foreign Affairs and Security Policy became an additional actor proposing and implementing foreign policy on behalf of the European Council. The President of the European Council is responsible for the external representation of the EU 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.

C. Powers

1. Institutional

The European Council provides the EU with 'the necessary impetus for its development' and defines its 'general political directions and priorities' (Article 15(1) TEU). It also decides by qualified majority on the formation of the Council and the calendar of the rotating presidencies.

2. Foreign and security policy matters (5.1.1) and (5.1.2)

The European Council defines the principles of, and general guidelines for, the common foreign and security policy (CFSP), and decides on common strategies for its implementation (Article 26 TEU). It decides unanimously whether to recommend to the Member States to move towards a progressive framing of a common EU defence policy, under Article 42(2) TEU.

If a Member State intends to oppose the adoption of a decision for important reasons of national policy, the Council may decide by qualified majority to refer the matter to the European Council for a unanimous decision (Article 31(2) TEU). The same procedure may apply if Member States decide to establish enhanced cooperation in this field (Article 20 TEU).

The Conference on the Future of Europe's adopted citizens' recommendation No 21 requests that the EU improve its ability to make speedy and effective decisions, notably through switching from unanimity to qualified majority voting in the field of CFSP, and through strengthening the role of the High Representative of the Union for Foreign Affairs and Security Policy. In its resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties, Parliament submitted proposals for treaty amendments to the Council, under the ordinary revision procedure laid down in Article 48 TEU. One key proposal was to allow decisions in the Council by qualified majority voting instead of unanimity in relevant areas, such as the adoption of sanctions and in the event of an emergency. Parliament's Committee on Constitutional Affairs is also preparing a report on the implementation of *passerelle* clauses in the EU Treaties (i.e. clauses that allow the alteration of a legislative procedure without a formal amendment of the treaties), proposing that *passerelle* clauses be activated in some priority policy areas, such as common foreign and security policy.

3. Economic governance and multiannual financial framework (MFF) (1.4.3)

Since 2009, the sovereign debt crisis has made the European Council and the euro summits the prime actors in tackling the fallout from the global banking crisis. Several Member States have received financial aid packages through ad hoc or temporary agreements decided by the heads of state or government and later ratified in the Member States. Since 2012, financial aid has been channelled through the permanent European Stability Mechanism (ESM). Member State governments, with the active participation of the Commission, Parliament and the European Central Bank, have drawn up an international treaty – the Treaty on Stability, Coordination and Governance (also called the 'Fiscal Compact') – permitting stricter control of Member States' budgetary and socio-economic policies. This increasingly raises questions about the role of the Commission and Parliament in the economic governance of the euro area.

The European Council also plays an important role in the European Semester. At its spring meetings, it issues policy orientations on macroeconomic, fiscal and structural reform and growth-enhancing policies. At its June meetings, it endorses recommendations resulting from the assessment of the National Reform Programmes drawn up by the Commission and discussed in the Council.

It is also involved in the negotiation of the multiannual financial framework (MFF), where it plays a pivotal role in reaching a political agreement on the key political issues in the MFF regulation, such as expenditure limits, spending programmes and financing (resources).

4. Police and judicial cooperation in criminal matters (4.2.6 and 4.2.7)

At the request of a member of the Council, the European Council decides whether to establish enhanced cooperation in an area related to this field (Article 20 TEU). The Lisbon Treaty introduced several new bridging clauses enabling the European Council to change the decision-making formula in the Council from unanimity to majority voting (1.2.4).

ACHIEVEMENTS

The European Council has set a five-year strategic agenda (2019–2024) identifying priority areas for longer-term EU action and focus. In addition to the strategic agenda, its shorter-term work programmes, the so-called Leaders' Agendas, set out topics for forthcoming European Council meetings and international summits. For example, the indicative Leaders' Agenda published in February 2023 set out the indicative priorities for the period from January to July 2023, which included, in particular, continued EU support to Ukraine in response to Russia's war of aggression, the economy and boosting long-term competitiveness in the EU and EU's strategic autonomy, including for security and energy.

The adoption of the Strategic Agenda 2023–2029 is planned for June 2024. In order to launch discussions in advance, President Michel sent a letter ahead of the June 2023 European Council. He suggested four major areas for the forthcoming agenda: consolidating the EU's economic and social base (the green and digital transitions, competitiveness, innovation, health); tackling the energy challenge; strengthening the EU's security and defence capabilities; and deepening engagement with the rest of the world. In addition, he suggested strengthening the EU's overall approach on migration.

A. Multiannual financial framework

In order to help the EU to rebuild after the pandemic and support investment in the green and digital transitions, the European Council leaders agreed, in their special meeting of 17-21 July 2020, on a comprehensive package of EUR 1 824.3 billion combining both the multiannual financial framework (MFF) and an extraordinary recovery effort under the Next Generation EU (NGEU) instrument.

B. Foreign and security policy

Since the beginning of the 1990s, foreign and security policy has been an important item at the European Council's summit meetings. Decisions taken in this area have included:

— International security and the fight against terrorism;

— European neighbourhood policy and relations with Russia;

— Relations with the Mediterranean countries and the Middle East.

Meeting in Helsinki on 10 and 11 December 1999, the European Council decided to reinforce the CFSP by developing military and non-military crisis management capabilities.

In its meeting of 12 December 2003, the European Council approved the European security strategy.

In its meeting of 22 and 23 June 2017, the European Council agreed on the need to launch permanent structured cooperation (PESCO) to strengthen Europe's security and defence. PESCO was established by the Council decision of 11 December 2017. All EU Member States take part in PESCO, except for Denmark and Malta. In total, 46 projects are currently in place under PESCO.

In its above mentioned special meeting of 17 to 21 July 2020, the European Council agreed that a European Peace Facility would be established as an off-budget instrument to finance actions in the field of security and defence. The financial ceiling for the Facility for the period 2021–2027 was set at EUR 5 billion, to be financed as an off-budget item outside the MFF through contributions from Member States based on a gross national income (GNI) distribution key.

In its special meeting of 30 and 31 May 2022, the European Council condemned Russia's war of aggression against Ukraine and agreed on the sixth package of sanctions, covering crude oil and petroleum products delivered from Russia to Member States. A temporary exception for crude oil delivered by pipeline was introduced. Leaders urged the Council of the European Union to finalise and adopt the new sanctions without delay.

According to the conclusions of the European Council meeting of 23 March 2023, the 'European Union stands firmly and fully with Ukraine and will continue to provide strong political, economic, military, financial and humanitarian support to Ukraine and its people for as long as it takes.'

C. Enlargement (5.5.1)

The European Council has set the terms for each round of EU enlargement. At Copenhagen in 1993, it laid the foundations for a further wave of accession

(Copenhagen criteria). Meetings in subsequent years further specified the criteria for admission and the institutional reforms required beforehand.

The Copenhagen European Council (12 and 13 December 2002) decided on the accession on 1 May 2004 of Cyprus, Czechia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Romania and Bulgaria joined the Union on 1 January 2007.

Meeting in Luxembourg on 3 October 2005, the Council approved a framework for negotiations with Croatia and Türkiye on their accession to the EU. The Accession Treaty with Croatia was signed on 9 December 2011, and Croatia acceded on 1 July 2013.

On 14 December 2021, the General Affairs Council adopted its conclusions on the enlargement, stabilisation and association processes for Montenegro, Serbia, Türkiye, the Republic of North Macedonia, Albania, Bosnia and Herzegovina and Kosovo, which took stock of progress made in each of these candidate and potential candidate countries.

On 23 June 2022, the European Council granted candidate status to Ukraine, following its membership application of 28 February 2022, and invited the Commission to report to the Council on the fulfilment of the conditions specified in the Commission's opinion on the membership application. Further steps would be decided by the Council once all these conditions had been fully met.

In the conclusions of its special meeting of 9 February 2023, the European Council 'acknowledge[d] the considerable efforts that Ukraine has demonstrated in recent months towards meeting the objectives underpinning its candidate status for EU membership. It welcome[d] Ukraine's reform efforts in such difficult times and encourage[d] Ukraine to continue on this path and to fulfil the conditions specified in the Commission's opinion on its membership application in order to advance towards future EU membership.'

D. The UK's withdrawal from the European Union

On 23 March 2018, the European Council (Article 50), meeting in an EU-27 format, adopted the guidelines on the framework for a future relationship with the UK after Brexit. According to the guidelines, the EU wanted to have the closest possible partnership with the UK, which would cover trade and economic cooperation, and security and defence, among other areas.

On 17 October 2019, the European Council, meeting in an EU-27 format, endorsed the revised withdrawal agreement and approved the revised political declaration that the EU and UK negotiators had agreed to on the very same day. This deal was intended to allow the orderly departure of the United Kingdom from the European Union.

On 29 October 2019, following a request from the UK, the European Council adopted a decision to extend the period referred to in Article 50(3) TEU until 31 January 2020, in order to allow more time for the withdrawal agreement to be ratified. The Withdrawal Agreement entered into force on 31 January 2020. It marked the end of the period under Article 50 TEU and the beginning of a transition period that lasted until 31 December 2020. The UK is now no longer an EU Member State, but a third country.

E. Institutional reforms

The European Council meeting in Tampere (15 and 16 October 1999) decided on the arrangements for drafting the EU Charter of Fundamental Rights (4.1.2). The Helsinki European Council (December 1999) convened the intergovernmental conference in preparation for the Treaty of Nice.

The Laeken European Council (14 and 15 December 2001) decided to convene a Convention on the Future of Europe, which drew up the ill-fated Constitutional Treaty (1.1.4). After two and a half years of institutional stalemate, the European Council of 21 and 22 June 2007 adopted a detailed mandate for an intergovernmental conference, which led to the signature on 13 December 2007 of the Lisbon Treaty, which entered into force on 1 December 2009 (1.1.5). On 25 March 2011, the European Council adopted the decision amending Article 136 and paving the way for the creation of the ESM in 2012.

On 28 June 2018, the European Council adopted a decision on the composition of the European Parliament, which enabled Member States to enact the necessary domestic measures for organising the elections to Parliament for the 2019–2024 term[1].

Recent crises, in particular the COVID-19 pandemic and the war in Ukraine, have highlighted the need for institutional reforms to enhance the EU's ability to react to urgent situations in a timely and effective manner.

In its resolution on the outcome of the Conference on the Future of Europe adopted on 4 May 2022, Parliament welcomed the Conference's conclusions and recommendations, acknowledged that Treaty changes were necessary and asked its Committee on Constitutional Affairs to prepare proposals to reform the EU Treaties through a convention in line with Article 48 TEU. On 9 June 2023, Parliament adopted a resolution on the call for a Convention for the revision of the Treaties. One key proposal is to reform voting procedures and allow decisions in the Council by qualified majority voting instead of unanimity in relevant areas, such as the adoption of sanctions and so-called *passerelle* clauses, and in the event of an emergency.

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[1] European Council Decision (EU) 2018/937 of 28 June 2018 establishing the composition of the European Parliament.

1.3.7. THE COUNCIL OF THE EUROPEAN UNION

Together with Parliament, the Council is the institution that adopts EU legislation through regulations and directives and prepares decisions and non-binding recommendations. In its areas of competence, it takes its decisions by a simple majority, a qualified majority or unanimously, according to the legal basis of the act requiring its approval.

LEGAL BASIS

In the European Union's single institutional framework, the Council exercises the powers conferred on it under Article 16 of the Treaty on European Union (TEU) and Articles 237 to 243 of the Treaty on the Functioning of the European Union (TFEU).

ROLE

A. Legislation

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 in accordance with Article 294 of the TFEU (ordinary legislative procedure) or alone, following consultation of Parliament (1.2.3). The Council also adopts individual decisions and non-binding recommendations (Article 288 of the TFEU) and issues resolutions. The Council and Parliament establish the general rules governing the exercise of the implementing powers conferred on the Commission or reserved for the Council itself (Article 291(3) of the TFEU).

B. Budget

The Council is one of the two arms of the budgetary authority, the other being Parliament. Together they adopt the European Union's budget (1.2.5). The Council also adopts, pursuant to a special legislative procedure and acting unanimously, decisions laying down the provisions applying to the EU's own resources system and the multiannual financial framework (Articles 311 and 312 of the TFEU). In the latter case, Parliament must give its consent by a majority of its Members. The most recent multiannual financial framework (2021–2027) was adopted by Parliament in November 2020. The Council shares Section II of the European Union's budget with the European Council (Article 43(b) of the Financial Regulation), though they are separate institutions.

C. Other powers

1. 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 (Article 289 of the TFEU).

2. Appointments

The Council, acting by qualified majority (since the Treaty of Nice), appoints the members of the Court of Auditors, the European Economic and Social Committee and the European Committee of the Regions.

3. Economic policy

The Council coordinates the economic policies of the Member States (Article 121 of the TFEU) and, without prejudice to the powers of the European Central Bank, takes political decisions in the monetary field. Special rules apply to the members of the Eurogroup, who elect a president for a two-and-a-half-year term (Articles 136 and 137 of the TFEU). Usually, the finance ministers of the Eurogroup meet one day before the meeting of the Economic and Financial Affairs Council.

The Council also carries out a number of economic governance functions in the context of the European Semester. At the start of the cycle, in autumn, it considers the specific recommendations for the euro area on the basis of the annual growth survey, and then in June and July, it adopts the country-specific recommendations after they have been endorsed by the European Council.

Article 136 of the TFEU was amended by European Council Decision 2011/199/EU and entered into force on 1 May 2013, following ratification by all the Member States. It now provides the legal basis for stability mechanisms such as the European Stability Mechanism (2.6.8).

4. Common foreign and security policy (5.1.1) and (5.1.2)

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.

The former troika arrangement has been replaced by a new system: chaired on a permanent basis by the High Representative of the Union for Foreign Affairs and Security Policy, the Foreign Affairs Council now collaborates closely with the Commission. It is assisted by the Council's General Secretariat and by the European External Action Service.

ORGANISATION

A. Membership

1. Members

The Council consists of a representative of each Member State at ministerial level, who 'may commit the government of the Member State in question' (Article 16(2) of the TEU).

2. Presidency

With the exception of the Foreign Affairs Council, the Council is chaired by the representative of the Member State that holds the European Union's presidency: this changes every six months, in the order decided by the Council acting unanimously (Article 16(9) of the TEU). The presidency of all Council formations except foreign affairs is held by pre-established groups of three Member States for periods of 18 months, with each member chairing the Council for six months.

The order of presidencies for the next five years is as follows: Sweden and Spain in 2023, Belgium and Hungary in 2024, Poland and Denmark in 2025, Cyprus and

Ireland in 2026 and Lithuania and Greece in 2027. The European Council can change the order (Article 236(b) of the TFEU).

3. Preparatory bodies

A committee consisting of the permanent representatives of the Member States prepares the Council's work and carries out the tasks which the Council assigns to it (Article 240 of the TFEU). This committee, known as Coreper, is chaired by a representative of the Member State chairing the General Affairs Council, i.e. the rotating presidency. However, the Political and Security Committee, which monitors the international situation in areas covered by the common foreign and security policy, is chaired by a representative of the High Representative of the Union for Foreign Affairs and Security Policy.

Coreper meets every week to prepare the work of the Council and coordinate activities relating to codecision with Parliament. It is divided into two groups: Coreper I, comprising the deputy permanent representatives, prepares work in the more technical areas, including agriculture, employment, education and the environment; Coreper II addresses matters falling more within the field of 'high politics', in particular foreign, economic and monetary affairs and justice and home affairs. Coreper is assisted in its preparatory work by some ten committees and around a hundred specialised working parties.

B. Operation

Depending on the area concerned, the Council takes its decisions by a simple majority, a qualified majority or unanimously (1.2.3) and (1.2.4). When the Council acts in a legislative capacity, its meetings are open to the public (Article 16(8) of the TEU). The Secretary-General of the Council is appointed by the Council pursuant to Article 240 of the TFEU. Council meetings are held in Brussels, but also in Luxembourg (sessions in April, June and October). At present there are 10 Council configurations, three of which meet regularly (General Affairs, Foreign Affairs, and Economic and Financial Affairs (Ecofin)).

1. Simple majority

This means that a decision is deemed to have been made when there are more votes for than against. Each member of the Council has one vote. Therefore, simple majority is reached if 14 Council members vote in favour. The simple majority rule is applicable when the Treaty does not provide otherwise (Article 238(1) of the TFEU). It is thus the default decision-making process. In practice, however, it applies only to a small number of decisions: internal Council rules, the organisation of the Council's General Secretariat, and rules governing committees provided for in the Treaty.

2. Qualified majority

a. Mechanism

The Council's qualified majority rule can be found in the Treaty of Lisbon, in Article 16 (4, first paragraph) of the TEU. Under this article, a favourable vote is required from at least 55% of the members of the Council representing at least 65% of the EU's population. In practice, this means at least 15 Member States out of 27. In cases where the proposal does not come from the Commission or the High Representative, the so-called 'reinforced qualified majority' rule applies, under which the required percentage

of Council members voting in favour is 72% (comprising at least 20 Member States out of 27), again representing at least 65% of the EU's population.

b. Scope

The Treaty of Lisbon again extended the scope of decision-making by qualified majority voting (QMV). For 68 legal bases it either introduced or extended QMV, mostly in conjunction with the introduction of the ordinary legislative procedure (including many former third-pillar areas). QMV also applies to the appointment of the President and Members of the Commission and the members of the Court of Auditors, the European Economic and Social Committee and the European Committee of the Regions (1.2.3 and 1.2.4).

3. Unanimity

Unanimity is only required by the Treaty for decisions in a few areas, such as taxation and social policy. This was maintained by the Treaty of Lisbon. Article 48(7) of the TEU provides a general *passerelle* clause applicable to all EU policies which, under certain conditions, gives the possibility to derogate from the legislative procedures initially provided for by the treaties. Consequently, it enables the Council to adopt decisions on certain issues by a qualified majority instead of unanimity: *passerelle* clauses allow for switches from the special legislative procedure to the ordinary legislative procedure and from voting by unanimity to QMV. However, a *passerelle* clause can still only be activated if a decision is adopted unanimously by the Council or the European Council. Consequently, all Member States must be in agreement before such a clause can be activated.

In his 2018 State of the Union speech, President Juncker announced a comprehensive review of *passerelle* clauses. As a result, the Commission has to date published four communications, on common foreign and security policy (September 2018), taxation (January 2019), energy and climate (April 2019) and social policy (2019).

In general, the Council tends to seek unanimity even when it is not required to do so. This preference dates back to the 1966 Luxembourg Compromise, which ended a dispute between France and the other Member States in which France had refused to move from unanimity to QMV in certain areas. The text of the compromise read: 'Where, in the case of decisions which may be taken by a majority vote on a proposal from the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community'.

A similar solution was found in 1994 when the Ioannina Compromise was reached to protect Member States which were close to constituting a blocking minority. Under this arrangement, if the countries in question stated their intention to oppose the taking of a decision by the Council by qualified majority, the Council would do everything in its power to reach a solution acceptable to a large majority of Member States within a reasonable period of time.

According to Article 48 of the TEU, any revision of the founding treaties requires unanimity, which has been considered a major constraint in reforming the Union of 27 Member States. To overcome the unanimity requirement, Member States have concluded international agreements outside the EU legal order. This happened for the first time as a result of the euro crisis, with the adoption, in 2012, of the Treaty on

Stability, Coordination and Governance in the Economic and Monetary Union (the fiscal compact) and the Treaty establishing the European Stability Mechanism (ESM), as well as, in 2014, the Intergovernmental Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund (SRF Agreement). According to Article 14(3) of the fiscal compact, it will apply as from the date of its entry into force only to those states which have ratified it. Requiring ratification by just 12 euro area countries, it set approval by a minority of Member States as a condition for its entry into force.

In the context of the Conference on the Future of Europe and the COVID-19 pandemic, Parliament, in its resolution on EU coordinated action to combat the COVID-19 pandemic and its consequences, proposed 'greater powers for the Union to act in the case of cross-border health threats' and called for activating 'the general *passerelle* clause to ease decision-making process in all matters which could help to cope with the challenges of the current health crisis'. In its resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties, Parliament submitted proposals for treaty amendments to the Council under the ordinary revision procedure laid down in Article 48 TEU. The suggested amendments would allow decisions in the Council to be made by qualified majority voting instead of unanimity in relevant areas, such as the adoption of sanctions and in the event of an emergency.

In her speech at the closing event of the Conference on the Future of Europe on 9 May 2022, the Commission President, Ursula von der Leyen, reaffirmed the Commission's willingness to implement the adopted citizens' proposals on overcoming the deadlock of unanimity voting. According to the Commission, 'it is now up to us to take the most direct way there, either by using the full limits of what we can do within the Treaties, or, yes, by changing the Treaties if need be'. On 11 July 2023, Parliament adopted a resolution on the implementation of the passerelle clauses in the EU Treaties, proposing that *passerelle* clauses be activated in some priority policy areas, in particular the common foreign and security policy, energy policy and taxation matters with an environmental dimension.

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1.3.8. THE EUROPEAN COMMISSION

The Commission is the EU institution that has the monopoly on legislative initiative and important executive powers in policies such as competition and external trade. It is the principal executive body of the European Union and is formed by a College of members composed of one Commissioner per Member State. The Commission oversees the application of Union law and respect for the Treaties by the Member States; it also chairs the committees responsible for the implementation of EU law. The former comitology system has been replaced by new legal instruments, namely implementing and delegated acts.

LEGAL BASIS

Article 17 of the Treaty on European Union (TEU), Articles 234, 244 to 250, 290 and 291 of the Treaty on the Functioning of the European Union (TFEU), and the Treaty Establishing a Single Council and a Single Commission of the European Communities ('Merger Treaty')[1].

HISTORY

At the beginning, each Community had its own executive body: the High Authority for the European Coal and Steel Community (ECSC) (1951) and a Commission for each of the two communities set up by the Treaty of Rome in 1957: the EEC and Euratom. By means of the Merger Treaty of 8 April 1965, both the executive structures of the ECSC, EEC and Euratom and the budgets of those institutions (with the most important being the Commission) were merged into a single Commission of the European Communities (1.1.2). When the ECSC Treaty expired 50 years after its establishment in 2002, it was decided[2] that ECSC assets should revert to the Commission, which would be responsible for winding up outstanding operations, for managing the ECSC's assets and for ensuring the financing of research activities in sectors related to the coal and steel industry.

COMPOSITION AND LEGAL STATUS

A. Number of members

For a long time the number of Commissioners per Member State had to be no less than one and no more than two. The Treaty of Lisbon originally stipulated that the membership of the Commission, from 1 November 2014, was to be equivalent to two thirds of the number of Member States. At the same time, it introduced an element of flexibility by allowing the European Council to determine the number of Commissioners (Article 17(5) TEU). In 2009, the European Council decided that the Commission would continue to consist of a number of members equal to the number of Member States.

[1]OJ 152, 13.7.1967, p. 2.
[2]Council Decision 2003/78/EC of 1 February 2003 laying down the multiannual technical guidelines for the research programme of the Research Fund for Coal and Steel, OJ L 29, 5.2.2003, p. 28.

B. Method of appointment

The Treaty of Lisbon stipulates that the results of the European elections have to be taken into account when the European Council, after appropriate consultations (as set out in Declaration 11 on Article 17(6) and (7) TEU as an annex to the Treaty) and acting by a qualified majority, proposes the candidate for President of the Commission to Parliament. This candidate is elected by Parliament by a majority of its component members (Article 17(7) TEU).

The Council of the European Union (hereinafter 'the Council'), acting by a qualified majority and by common accord with the President-elect, adopts the list of the other persons whom it proposes for appointment as members of the Commission, on the basis of the suggestions made by Member States.

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

Since the Treaty of Maastricht, a Commissioner's term of office has matched the European Parliament's five-year term and is renewable.

C. Accountability

1. Personal accountability (Article 245 TFEU)

Members of the Commission are required:

— To be completely independent in the performance of their duties, in the general interest of the Union; in particular, they may neither seek nor take instructions from any government or other external body;

— Not to engage in any other occupation, whether gainful or not.

Commissioners may be compulsorily retired by the Court of Justice, at the request of the Council or of the Commission itself, if they breach any of the above obligations or have been guilty of serious misconduct (Article 247 TFEU).

2. Collective accountability

The Commission is collectively accountable to Parliament under Article 234 TFEU. If Parliament adopts a motion of censure against the Commission, all of its members are required to resign, including the High Representative of the Union for Foreign Affairs and Security Policy as far as his or her duties in the Commission are concerned.

ORGANISATION AND OPERATION

The Commission works under the political guidance of its President, who decides on its internal organisation. The President allocates the sectors of its activity among the members. This gives each Commissioner responsibility for a specific policy sector and authority over the administrative departments concerned. After obtaining the approval of the College, the President appoints the Vice-Presidents from among its members. The High Representative is automatically a Vice-President of the Commission. A member of the Commission must resign if the President so requests, subject to the approval of the College.

The Commission has a Secretariat-General consisting of 33 directorates-general, which develop, manage and implement EU policy, law and funding. In addition, there

are also 20 special departments (services and agencies), which deal with ad hoc or horizontal issues. These include the European Anti-Fraud Office, the Legal Service, the Historical Archives, the Publications Office, the European Political Strategy Centre and the Taskforce on Article 50 negotiations with the United Kingdom. There are also six executive agencies, such as the Research Executive Agency, which perform tasks delegated to them by the Commission but which have their own legal personality. Barring a few exceptions, the Commission acts by a majority of its members (Article 250 TFEU).

The Commission meets every week to discuss politically sensitive issues and adopt the proposals that need to be agreed by oral procedure, while less sensitive matters are adopted by written procedure. Measures relating to management or administration can be adopted through a system of empowerment, whereby the College gives one of its members the authority to take decisions on its behalf (this is particularly relevant in areas such as agricultural aid or anti-dumping measures), or through sub-delegation, where decisions are delegated to an administrative level, usually to Directors-General.

POWERS

A. Power of initiative

As a rule, the Commission has a monopoly on the initiative in EU law-making (Article 17(2) TEU). It draws up proposed acts to be adopted by the two decision-making institutions, Parliament and the Council.

1. Full initiative: the power of proposal

a. Legislative initiative

The power of proposal is the complete form of the 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 draws up and submits to the Council and Parliament any legislative proposals (for regulations or directives) needed to implement the treaties (1.2.3).

b. Budgetary initiative

The Commission draws up the draft budget, which it proposes to the Council and Parliament under Article 314 TFEU (1.2.5). Every year, each institution other than the Commission draws up estimates, including all its revenue and expenditure, which it sends to the Commission before 1 July (Article 39(1) of the Financial Regulation). Also, each body which is set up under the Treaties, which has legal personality and receives a contribution charged to the budget sends estimates to the Commission by 31 January each year. 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.

With regard to the EU's system of own resources, the basic Own Resources Decision must be adopted unanimously by Council, upon a proposal from the Commission (Article 17 TEU) and after consulting Parliament, in accordance with a special legislative procedure. It is possible to establish new categories of own resources and abolish existing ones at any time (Article 311(3) TFEU), but such decisions can only be adopted on the basis of a Commission proposal (Article 17(2) TEU). Also, acting on a proposal

from the Commission and after consulting the European Parliament and the Court of Auditors, the Council determines the methods and procedure whereby the budget revenue is made available to the EU budget (Article 322(2) TFEU).

c. Relations with non-member countries

Where the Council has given a mandate, the Commission is responsible for negotiating international agreements under Articles 207 and 218 TFEU, which are then submitted to the Council with a view to their conclusion. This includes negotiations for accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6(2) TEU). As regards foreign and security policy, it is the High Representative who negotiates agreements. Under Article 50 TEU and Article 218(3) TFEU, the Commission also submits recommendations on the opening of negotiations regarding withdrawal from the EU.

2. Limited initiative: the power of recommendation or opinion

a. In the context of Economic and Monetary Union (2.6.2)

The Commission has a role in managing Economic and Monetary Union (EMU). It submits to the Council:

— Recommendations for the draft broad guidelines for the Member States' economic policies, and warnings if those policies are likely to be incompatible with the guidelines (Article 121(4) TFEU);

— Assessment proposals to enable the Council to determine whether a Member State has an excessive deficit (Article 126(6) TFEU);

— Recommendations on measures to be taken if a non-euro area Member State is in difficulties as regards its balance of payments, as provided for in Article 143 TFEU;

— Recommendations for the exchange rate between the single currency and other currencies and for general orientations for exchange-rate policy, as provided for in Article 219 TFEU;

— An assessment of national policy plans and presentation of country-specific draft recommendations falling under the European Semester.

b. Under the Common Foreign and Security Policy

In this area, many competences have been transferred from the Commission to the High Representative of the Union for Foreign Affairs and Security Policy and the European External Action Service (EEAS). However, the Commission may support the High Representative (HR) in submitting any decision to the Council concerning the Common Foreign and Security Policy (Article 30 TEU). The HR is also a Commission Vice-President.

B. Power to monitor the implementation of Union law

The Commission is required under the Treaties to ensure that the Treaties themselves, and any decisions taken to implement them (secondary legislation), are properly enforced. Therein lies its role as guardian of the Treaties. This role is exercised mainly through the procedure applied to Member States where they have failed to fulfil an obligation under the Treaties, as set out in Article 258 TFEU.

C. Implementing powers

1. Conferred by the Treaties

The main powers vested in the Commission are as follows:

— Implementing the budget (Article 17(1) TEU, Article 317 TFEU). Once the budget has been adopted, from 1 January of the following financial year each Member State makes the payments due to the EU[3] 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;

— Authorising the Member States to take safeguard measures laid down in the Treaties, particularly during transitional periods (e.g. Article 201 TFEU);

— Enforcing competition rules, not least by keeping State aid under review, in accordance with Article 108 TFEU.

In the financial rescue packages dealing with the debt crises of some Member States, the Commission is responsible for the management of the funds raised through and guaranteed by the EU budget. It also has the power to alter the voting procedure in the European Stability Mechanism (ESM), enabling the Board of Governors to act by a special qualified majority (85%) instead of acting unanimously if it decides (in agreement with the ECB) that a failure to adopt a decision to grant financial assistance would threaten the economic and financial sustainability of the euro area (Article 4(4) of the ESM Treaty) (2.6.8).

2. Delegated by Parliament and the Council

In accordance with Article 291 TFEU, the Commission exercises the powers conferred on it for the implementation of the legislative acts laid down by Parliament and the Council.

The Treaty of Lisbon introduced new ‘rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers’ (Article 291(3) TFEU and Regulation (EU) No 182/2011). They replace the previous committee mechanisms with two new arrangements, namely the advisory procedure and the examination procedure. The right of scrutiny accorded to Parliament and the Council is formally included, as is a provision for an appeal procedure in cases of conflict.

3. Delegated acts

The Treaty of Lisbon also introduced a new category of acts, ranking between legislative and implementing acts. These ‘delegated non-legislative acts’ (Article 290 TFEU) are ‘acts of general application to supplement or amend certain non-essential elements of the legislative act’ (also called the ‘basic act’). In principle, Parliament enjoys the same rights of oversight as the Council.

D. Regulatory and consultative powers

The Treaties seldom give the Commission full regulatory powers. One exception to that rule is Article 106 TFEU, which empowers the Commission to enforce Union rules on public undertakings and undertakings operating services of general economic interest and, where necessary, to address appropriate directives or decisions to Member States.

[3]As specified in Council Regulation (EC, Euratom) No 609/2014, OJ L 168, 7.6.2014, p. 39.

The Treaties provide the Commission with the power to make recommendations or deliver reports and opinions in many instances. They also provide for it to be consulted on certain decisions, such as on the admission of new Member States to the Union (Article 49 TEU). The Commission is also consulted, in particular, about changes in the statutes of other institutions and bodies, such as the Statute for Members of the European Parliament, of the European Ombudsman and of the Court of Justice.

ROLE OF THE EUROPEAN PARLIAMENT

The Commission is the principal interlocutor of Parliament in legislative and budgetary matters. Parliamentary scrutiny of the Commission's work programme and its execution is increasingly important for ensuring better democratic legitimacy in EU governance. The annual draft budget is a proposal containing the draft budget to be submitted to the European Parliament and to the Council by 1 September of the year preceding that in which the budget is to be implemented (year n -1). The Commission also transmits that proposal, for information, to the national parliaments. In addition, the Commission draws up its own statement of estimates, which it also sends separately to Parliament and the Council for approval. In accordance with Article 319 TFEU, Parliament has the right to grant discharge to the Commission.

The Own Resources Decision is taken in accordance with a special legislative procedure (Article 289(2) TFEU), upon a proposal from the Commission (Article 311(2) TFEU) and after **consulting Parliament**. Whereas the basic Own Resources Decision is adopted under this consultation procedure, the corresponding implementing measures (in accordance with Article 291(2) TFEU) are adopted by the Council after obtaining the **consent of Parliament**, on the basis of a Commission proposal (Article 311(3) TFEU).

The European Commission should maintain continuous dialogue with the European Parliament throughout its entire term, starting with the hearings of Commissioners-designate and continuing with the specific commitments undertaken during these hearings, the mid-term tracking of those commitments and systematic structured dialogue with specific Parliamentary committees.

Under the Treaty of Maastricht, enhanced by the Lisbon Treaty, the European Parliament has a right of legislative initiative that allows it to ask the Commission to submit a proposal. The European Parliament may also introduce reporting requirements in its legislation, obliging the European Commission to present implementation reports.

The European Commission sometimes fails to comply with the European Parliament's requests for proposals (such as in the case of the European Parliament's recommendation of 15 June 2023 to the Council and the Commission following the investigation of alleged contraventions and maladministration in the application of Union law in relation to the use of Pegasus and equivalent surveillance spyware) or delays the presentation of important implementation reports (e.g. the first report on application and functioning of the Law Enforcement Directive[4]).

After the *Schrems II* case led to the invalidation of Commission Implementing Decision (EU) 2016/1250 on the adequacy of the protection provided by the EU-US agreement

[4]Vogiatzoglou P. et al., 'Assessment of the implementation of the Law Enforcement Directive', Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, December 2022

on exchange of data, due to concerns that EU citizens were not protected in transatlantic data exchanges, the European Parliament criticised the fact that the Commission had put relations with the US ahead of the interests of EU citizens, and that the Commission had thereby left the task of defending EU law to individual citizens[5]. Despite this criticism, and a further Parliament resolution concluding that the EU-US Data Privacy Framework fails to create essential equivalence in the level of protection, on 10 July 2023 the Commission adopted its third decision on the adequate level of protection of personal data under the EU-US Data Privacy Framework.

This fact sheet was prepared by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs.

Mariusz Maciejewski
11/2023

[5]European Parliament resolution of 20 May 2021 on the ruling of the CJEU of 16 July 2020 – Data Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems ('Schrems II'), Case C-311/18 (OJ C 15, 12.1.2022, p. 176), paragraph 28.

1.3.9. THE COURT OF JUSTICE OF THE EUROPEAN UNION

The Court of Justice of the European Union (CJEU) is one of the EU's seven institutions. It consists of two courts of law: the Court of Justice proper and the General Court. It is responsible for the jurisdiction of the European Union. The courts ensure the correct interpretation and application of primary and secondary EU law in the EU. They review the legality of acts of the EU institutions and decide whether Member States have fulfilled their obligations under primary and secondary law. The Court of Justice also provides interpretations of EU law when so requested by national judges.

COURT OF JUSTICE

A. Legal basis

— Article 19 of the Treaty on European Union (TEU), Articles 251 to 281 of the Treaty on the Functioning of the European Union (TFEU), Article 136 of the Euratom Treaty, and Protocol No 3 annexed to the Treaties on the Statute of the Court of Justice of the European Union ('the Statute');

— Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union;

— EU Budget (Section 4).

B. Composition and Statute

1. Membership

a. Number of members (Article 19 TEU and Article 252 TFEU)

One judge per Member State (27). The Court is assisted by 11 advocates-general. The judges of the Court of Justice elect, from among themselves, a President and a Vice-President for a renewable term of three years.

b. Requirements (Article 19 TEU and Article 253 TFEU)

— Judges and advocates-general must possess the qualifications required for appointment to the highest judicial offices in their respective countries or be recognised legal experts;

— Their independence must be beyond doubt.

c. Appointment procedure (Article 253 TFEU)

As the end of terms of office of judges and advocates-general approaches, the representatives of Member State governments proceed to the appointment of judges or advocates-general to the Court of Justice by common accord after consultation with a panel responsible for giving an opinion on prospective candidates' suitability (Article 255 TFEU).

2. Characteristics of the office

a. Duration (Article 253 TFEU and the Statute)

Six years. Partial replacement every three years, half of the judges and of the advocates-general are replaced alternately. Retiring judges and advocates-general may be reappointed.

b. Privileges and immunities (the Statute)

Judges and advocates-general are immune from legal proceedings. After they have ceased to hold office, they continue to enjoy immunity in respect of acts they performed in their official capacity. They may be removed from office only by a unanimous decision of the Court.

c. Obligations (the Statute)

Judges and advocates-general:

— Take an oath (swearing independence, impartiality and preservation of secrecy) before taking up their duties;

— May not hold any political or administrative office or engage in any other occupation;

— Give an undertaking that they will respect the obligations arising from their office.

C. Organisation and operation (Article 253 TFEU and the Statute)

1. Institutional set-up

The Statute must be laid down in a separate Protocol, annexed to the Treaties (Article 281 TFEU). The Court elects its President and a Vice-President from among its members for a renewable term of three years (Article 9a of Protocol No 3). The President directs the work of the Court and presides at hearings and deliberations of the full Court or the Grand Chamber. The Vice-President assists the President in the exercise of their duties and takes their place when necessary. The Court appoints its Registrar. The Registrar is the institution's Secretary-General and manages its departments under the authority of the President of the Court.

2. Operation

The Court establishes its Rules of Procedure, which require the approval of the Council, acting by a qualified majority. The Court may sit as a full Court with 27 judges, in a Grand Chamber of 15 judges or in chambers of three or five judges. The institution is financed from the EU budget, where it has its own dedicated section (Section 4).

D. Achievements

The Court of Justice has shown itself to be a driving force of the European integration process.

1. General practice

Its judgment of 15 July 1964 in the *Costa* v *ENEL* case was fundamental in defining Community law as an independent system taking precedence over national legal provisions, establishing the principle of the primacy of EU law[1]. Similarly, its judgment

[1]Ziller J., *La primauté du droit de l'Union européenne*, European Parliament Directorate-General for Internal Policies, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, May 2022.

of 5 February 1963 in the *Van Gend & Loos* case established the principle that Community law was directly applicable in the courts of the Member States. Other significant judgments concerning the protection of human rights include the judgment of 14 May 1974 in the *Nold* case, in which the Court stated that fundamental human rights are an integral part of the general principles of law that it upholds (4.1.2).

2. In specific matters

— Right of establishment: judgment of 8 April 1976 in the *Royer* case, in which the Court upheld the right of a national of a Member State to stay in any other Member State independently of any residence permit issued by the host country;

— Free movement of goods: judgment of 20 February 1979 in the *Cassis de Dijon* case, in which the Court ruled that any product legally manufactured and marketed in a Member State must in principle be allowed on the market of any other Member State;

— The external jurisdiction of the Community: the European Agreement on Road Transport judgment of 31 March 1971, in the *Commission/Council* case, which recognised the Community's right to conclude international agreements in spheres where Community regulations apply;

— Recent judgments establishing an obligation on Member States to pay damages when they have failed to transpose directives into national law or failed to do so in good time;

— Various judgments relating to social security and competition;

— Rulings on breaches of EU law by the Member States, which are vital for the smooth running of the common market;

— Data protection: rulings on Safe Harbour in Schrems I (2015) and on the EU-US Privacy Shield in Schrems II (2020), which invalidated the Commission's adequacy decisions on the United States with the aim of protecting the fundamental principles of European law and ensuring a strong set of data protection requirements.

One of the great merits of the Court has been its statement of the principle that the Treaties must not be interpreted rigidly but must be viewed in the light of the state of integration and of the objectives of the Treaties themselves. This principle has allowed the EU to legislate in areas where there are no specific Treaty provisions, such as the fight against pollution (in a judgment of 13 September 2005 (Case C-176/03), the Court in fact authorised the EU to take measures relating to criminal law where 'necessary' in order to achieve the objective pursued as regards environmental protection).

In 2022, 806 cases were brought before the Court of Justice, of which 546 concerned preliminary ruling proceedings, 37 direct actions and 209 appeals against decisions of the General Court. 808 cases were resolved, including 564 preliminary ruling proceedings, 36 direct actions and 196 appeals against decisions of the General Court. The Member States from which the most requests originated were Germany (98), Italy (63), Bulgaria (43) and Spain (41). The average duration of proceedings was 16.4 months[2]. 1 111 cases were pending as of 31 December 2022.

[2] CJEU, Annual report 2022.

GENERAL COURT

A. Legal basis

Articles 254 to 257 TFEU, Article 40 of the Euratom Treaty, and Title IV of Protocol No 3 annexed to the Treaties on the Statute of the Court of Justice of the European Union.

B. Duration and Statute (Article 254 TFEU)

1. Membership

a. Number (Article 19 TEU and Article 254 TFEU)

Article 254 TFEU provides that the number of judges shall be determined by the Statute. Article 48 of Protocol No 3 on this Statute, as last amended by Regulation (EU, Euratom) 2016/1192 of 6 July 2016, provides that the General Court is to consist of two judges per Member State (currently 54). Judges are appointed by common accord of the governments of the Member States after consultation with a panel responsible for giving an opinion on candidates' suitability to perform the duties of a judge. Their term of office is six years, and is renewable. The judges may be called upon to perform the task of advocate-general as, unlike the Court of Justice, the General Court does not have permanent advocates-general.

b. Requirements

Identical to those of the Court of Justice (Article 19 TEU). For appointment to the General Court, candidates must possess the abilities required for appointment to high judicial office.

c. Appointment procedure

Identical to that of the Court of Justice.

2. Characteristics of the office

Identical to those of the Court of Justice.

C. Organisation and operation

The judges appoint their President from among their number for a period of three years and their Registrar for a six-year term of office, although the General Court uses the services of the Court of Justice for its administrative and linguistic requirements.

In agreement with the Court of Justice, the General Court establishes its Rules of Procedure (Art. 254.5 TFEU). The General Court sits in chambers of three or five judges. The General Court sits as a full court or in a Grand Chamber or is constituted by a single judge. More than 80% of the cases brought before the General Court are heard by a chamber of three judges. Recent amendments to the Rules of Procedure (April 2023) permit use of videoconferencing during hearings (Art. 107a Rules of Procedure). There will also be the new concept of a 'pilot case' (Art. 71a Rules of Procedure), raising the same issue of law. If the conditions are met, one of the cases may be identified as the pilot case and the others stayed.

Proceedings may primarily be brought before the General Court, at first instance, in direct actions brought by natural or legal persons, where they are concerned directly and individually, and by Member States against acts of the institutions, bodies, offices or agencies of the EU, and in direct actions seeking compensation for damage caused by the institutions or their staff. The decisions of the General Court may be subject to

appeal, limited to points of law, before the Court of Justice. On average, around 30 % of decisions by the General Court are challenged.

Parliament and the Council may establish specialised courts attached to the General Court to hear and determine at first instance certain categories of actions or proceedings brought in specific areas. To establish these courts, Parliament and the Council act under the ordinary legislative procedure.

In 2022, 904 cases were brought before the General Court and 858 cases were resolved, of which 792 concerned direct actions (270 on intellectual and industrial property, 76 on State aid and competition, 66 on the EU civil service, and 380 on other direct actions). A party that is unable to meet the costs of proceedings may apply for free legal aid (54 cases in 2022). The average duration of proceedings was 16.2 months. 1 474 cases were pending as of 31 December 2022[3].

THE FORMER EUROPEAN UNION CIVIL SERVICE TRIBUNAL

The European Union Civil Service Tribunal (established in 2004) was responsible for ruling on disputes between the EU institutions and their staff where these were not the responsibility of a national court. As part of an overall increase in the total number of judges of the Court of Justice, the Civil Service Tribunal was dissolved on 1 September 2016 and integrated into the General Court by Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants. Cases pending before the Civil Service Tribunal on 31 August 2016 were transferred to the General Court with effect from 1 September 2016. The General Court continues to deal with these cases as found at that date, with the procedural steps taken by the former Civil Service Tribunal remaining applicable.

ROLE OF THE EUROPEAN PARLIAMENT

As early as 1990, a Court of Justice ruling on a case brought by Parliament as part of the legislative procedure on the adoption of health measures to be taken following the Chernobyl nuclear accident granted Parliament the right to bring before the Court of Justice actions to have decisions declared void for the purpose of safeguarding its prerogatives under the legislative procedure.

According to Article 257 TFEU, Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish specialised courts attached to the General Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. Parliament and the Council are required to act by means of regulations either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation with the Commission.

According to Article 281 TFEU, the Statute of the Court of Justice of the European Union is amended by Parliament and the Council, which act in accordance with the ordinary legislative procedure (in the form of a regulation of the European Parliament and of the Council). An example of Parliament's participation is the Court of Justice's own proposal of 26 March 2018 to amend its Statute, which pertains to the possibility

[3]CJEU, Annual report 2021.

of certain changes to the division of jurisdiction between the Court of Justice and the General Court with regard to preliminary rulings.

Parliament is one of the institutions mentioned in Article 263 TFEU that may bring an action (as a party) before the Court of Justice.

According to Article 218(11) TFEU, Parliament can request an opinion from the Court of Justice as to whether a planned international agreement is compatible with the Treaties. Where the opinion of the Court of Justice is adverse, the planned agreement may not enter into force unless it is amended or the Treaties are revised. For example, in July 2019 Parliament asked for a legal opinion on whether the proposals for the accession by the EU to the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) were compatible with the Treaties (Opinion 1/19).

With the entry into force of the Lisbon Treaty, candidates for the post of judge and advocate-general are now first appraised by a panel of seven persons, one of whom is proposed by Parliament (Article 255(2) TFEU and Rule 128 of Parliament's Rules of Procedure) by means of a plenary resolution.

In accordance with Article 3(1) of Regulation (EU, Euratom) 2015/2422, on 21 December 2020 the Court of Justice submitted a report on the functioning of the General Court, which was drawn up by an external consultant. In particular, Article 3(1) of Regulation (EU, Euratom) 2015/2422 required the report to focus on the efficiency of the General Court, the necessity and effectiveness of the increase to 56 judges, the use and effectiveness of resources, and the further establishment of specialised chambers and/or other structural changes.

On 19 September 2023 the JURI Committee adopted a draft report on a proposal to amend Protocol No 3 on the Statute of the Court of Justice of the EU (CJEU). The proposal aims to transfer jurisdiction on preliminary rulings in a number of specific areas from the Court of Justice to the General Court and to extend the requirement to obtain permission to appeal in the case of appeals against certain General Court decisions. The JURI Committee report was tabled for plenary on 27 September 2023, which confirmed the JURI Committee's decision to enter into interinstitutional negotiations on 4 October 2023.

This fact sheet was prepared by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs.

Udo Bux / Mariusz Maciejewski
11/2023

1.3.10. COMPETENCES OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

This fact sheet describes the competences of the Court of Justice of the European Union (CJEU), which consists of two courts, the Court of Justice proper and the General Court, and offers various means of redress, as laid down in Article 19 of the Treaty on European Union (TEU), Articles 251-281 of the Treaty on the Functioning of the European Union (TFEU), Article 136 Euratom, and Protocol No 3 annexed to the Treaties on the Statute of the Court of Justice of the European Union.

COURT OF JUSTICE

A. Direct proceedings against Member States or an institution, body, office or agency of the European Union.

The Court gives a ruling on proceedings against states or institutions that have not fulfilled their obligations under EU law.

1. Proceedings against a Member State for failure to fulfil an obligation

These actions are brought:

— Either by the Commission, after a preliminary procedure (Article 258 TFEU): opportunity for the state to submit its observations and reasoned opinion (1.3.8);

— Or by a Member State against another Member State after it has brought the matter before the Commission (Article 259 TFEU).

Role of the Court:

— Confirming that the state has failed to fulfil its obligations, in which case the state is required to put an immediate end to the infringement.

— If, after a further action is brought by the Commission, the Court finds that the Member State concerned has not complied with its judgment, it may impose on it a financial penalty (a fixed lump sum and/or a periodic penalty payment), the amount being determined by the Court on the basis of a Commission proposal (Article 260 TFEU).

2. Proceedings against the EU institutions for annulment and for failure to act

Subject: cases where the applicant seeks the annulment of a measure supposedly contrary to EU law (annulment: Article 263 TFEU) or, in cases of infringement of EU law, where an institution, body, office or agency has failed to act (Article 265 TFEU).

Referral: actions may be brought by the Member States, the institutions themselves or any natural or legal person if the actions relate to a measure (in particular a regulation, directive or decision) adopted by an EU institution, body, office or agency and addressed to them.

Role of the Court: the Court declares the act void or declares that there has been a failure to act, in which case the institution at fault is required to take the necessary measures to comply with the Court's judgment (Article 266 TFEU).

3. Other direct proceedings

As the General Court has jurisdiction in all first instance actions referred to in Articles 263, 265, 268, 270 and 272 TFEU, only actions against Commission decisions imposing penalties on firms (Article 261) are to be brought to the Court of Justice, as well as those provided for in the Statute for the Court of Justice (as last amended by Regulation (EU, Euratom) 2019/629 of 17 April 2019). Article 51 of the Statute of the Court of Justice provides that, by way of derogation from the rule laid down in Article 256(1) of the Treaty on the Functioning of the European Union, jurisdiction shall be reserved to the Court of Justice in the actions referred to in Articles 263 and 265 of the Treaty on the Functioning of the European Union when they are brought by a Member State against:

— An act of or failure to act by the European Parliament or the Council, or by those institutions acting jointly, except for:
    — decisions taken by the Council under the third subparagraph of Article 108(2) of the Treaty on the Functioning of the European Union;
    — acts of the Council adopted pursuant to a Council regulation concerning measures to protect trade within the meaning of Article 207 of the Treaty on the Functioning of the European Union;
    — acts of the Council by which the Council exercises implementing powers in accordance with the second paragraph of Article 291 of the Treaty on the Functioning of the European Union;
— An act of or failure to act by the Commission under the first paragraph of Article 331 of the Treaty on the Functioning of the European Union.

Jurisdiction is also reserved to the Court of Justice in the actions referred to in the same Articles when they are brought by an institution of the Union against an act of or failure to act by the European Parliament, the Council, both those institutions acting jointly, or the Commission, or brought by an institution of the Union against an act of or failure to act by the European Central Bank.

B. Indirect proceedings: question of validity raised before a national court or tribunal (Article 267 TFEU - preliminary rulings)

— The national courts are normally responsible for applying EU law when a case so requires. However, when an issue relating to the interpretation of the law is raised before a national court or tribunal, the court or tribunal may seek a preliminary ruling from the Court of Justice. If it is a court of last instance, it is compulsory to refer the matter to the Court. The national court submits the question(s) about the interpretation or validity of a provision of EU law, generally in the form of a judicial decision, in accordance with the national procedural rules. However, in its judgment of 11 December 2018 in Case C-493/17 (Weiss), the Court ruled that ‘it must refuse to give a ruling on a question referred by a national court where it is quite obvious that the interpretation, or the determination of validity, of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose, or where the problem is hypothetical’. The Registry notifies the request to the parties to the national proceedings and also to the Member States and the institutions of the European Union. They have two months within which to submit any written observations to the Court of Justice.

C. Responsibility at second instance

The Court has the jurisdiction to review appeals limited to points of law in rulings and orders of the General Court. The appeals do not have suspensory effect.

If the appeal is considered admissible and well-founded, the Court of Justice sets aside the General Court's decision and decides the case itself, or else must refer the case back to the General Court, which is bound by the decision.

ACHIEVEMENTS

The Court of Justice has shown itself to be a very important factor - some would say even a driving force - in European integration.

A. In general

Its judgment of 5 February 1963 in Case 26-62 (Van Gend & Loos) established the principle that Community law is directly applicable in the courts of the Member States. Similarly, its judgment of 15 July 1964 in Case 6-64 (Costa v E.N.E.L.) was fundamental in defining Community law as an independent system taking precedence over national legal provisions. The Court has always claimed ultimate authority in determining the relationship between EU and domestic law. In the landmark cases *Van* Gend & Loos and Costa v E.N.E.L., the Court developed the fundamental doctrines of the primacy of EU Law. According to these doctrines, EU law has absolute primacy over domestic law, and this primacy has to be taken into account by domestic courts in their decisions. In its judgment of 17 December 1970 in Case 11-70 (Internationale Handelsgesellschaft) the Court ruled that EU law enjoyed primacy even vis-à-vis fundamental rights guaranteed in national constitutions. In point 3 of its grounds for a decision in this case, the Court stated: 'The validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the constitution of that state or the principles of a national constitutional structure.' The Court has confirmed these doctrines in later cases (see Case 106/77, Simmenthal (1978), Case 149/79, Commission v Belgium (1980), Cases C-46/93 & C-48/93, Brasserie du Pêcheur and Factortame II (1996), Case C-473/93, Commission v Luxemburg, (1996), Case C-213/07, Michaniki, (2008)). In this case-law, the Court has developed doctrinal instruments to give Member States' courts a certain amount of discretion and to take their interests seriously. Also, the Court sometimes implicitly adjusts its own case-law in order to take concerns of Member States' courts into account. Most famously, the Court developed case-law in the field of fundamental rights under the pressure of Member States' courts: after the foundation of the European Communities, the Court of Justice had initially resisted the introduction of fundamental rights into the EC legal order (Case 36/59, Ruhrkohlen-Verkaufsgesellschaft (1960)). However, when constitutional courts of the Member States resisted, the Court changed course. Pre-empting judgments of the German Federal Constitutional Court and the Italian Constitutional Court, the Court of Justice held that fundamental rights 'form an integral part of the general principles of law' in the Internationale Handelsgesellschaft case.

B. In specific matters

— Protection of human rights include the judgment of 14 May 1974 in Case 4-73 (Nold Kohlen- und Baustoffgroßhandlung v Commission of the European Communities),

in which the Court stated that fundamental human rights are an integral part of the general principles of law that it upholds (4.1.1).

— Free movement of goods: judgment of 20 February 1979 in Case 120/78 (Cassis de Dijon), in which the Court ruled that any product legally manufactured and marketed in a Member State must in principle be allowed on the market of any other Member State.

— Free movement of persons: the judgment of 15 December 1995 in Case C-415/93 (Bosman) stated that professional sport is an economic activity whose exercise may not be hindered by rules of football federations governing the transfer of players or restricting the number of nationals of other Member States.

— The external jurisdiction of the Community: the judgment of 31 March 1971 in Case 22-70 (Commission v Council), which recognised the Community's right to conclude international agreements in spheres where Community regulations apply.

— In its judgment of 19 November 1991 in Cases C-6/90 and C-9/90 (Francovich and Others), the Court developed another fundamental concept: the liability of a Member State towards individuals for damage caused to them by an infringement by that Member State owing to its failure to transpose a directive into national law or to do so in good time.

— Various judgments relating to social security (Case 43-75, Defrenne (1976), regarding equal pay for men and women) and health and safety of workers (Case C-173/99, BECTU (2001)).

Concerning the principle of proportionality, in its judgment of 16 June 2015 (Case C-62/14, Gauweiler and Others), the Court ruled that according to the settled case-law of the Court, the principle of proportionality requires that acts of the EU institutions should be appropriate for attaining the legitimate objectives pursued by the legislation at issue and should not go beyond what is necessary to achieve those objectives. EU institutions and bodies must therefore weigh up the various interests involved in such a way as to prevent disadvantages that are manifestly out of proportion to the objectives pursued[1].One of the great merits of the Court has been its statement of the principle that the Treaties must not be interpreted rigidly but must be viewed in the light of the state of integration and of the objectives of the Treaties themselves. This principle has allowed legislation to be adopted in areas where there are no specific Treaty provisions, such as the fight against pollution: in its judgment of 13 September 2005 in Case C-176/03 (Commission v Council), the Court authorised the European Union to take measures relating to criminal law where 'necessary' in order to achieve the objective pursued as regards environmental protection.

The Judicial Network of the European Union (JNEU) was created on the initiative of the President of the CJEU and the Presidents of the constitutional and supreme courts of the EU Member States, on the occasion of the 60th anniversary of the signature of the Treaties of Rome in 2017.

It is designed to promote the exchange of information on jurisprudence between the participating national courts and the CJEU. On a site with limited access, the participating national courts and the CJEU publish information on their jurisprudence

[1]Case C-493/17 (Weiss), paragraph 93.

concerning EU law, on questions which the national courts had referred to the CJEU for a preliminary ruling, and on notes and studies.

The collaborative JNEU platform available in all EU languages, pools the work carried out by the judges of the Court of Justice of the EU and national judges in the course of their judicial activities. Judges have access to a tool enabling them to make their case-law and research and analysis work available to their counterparts, with a view to sharing knowledge and improving efficiency.

It has more than 2 000 users in the constitutional and supreme courts of the Member States.

GENERAL COURT

(1.3.9)

A. Jurisdiction of the General Court (Article 256 TFEU)

The Court of Justice of the European Union consists of two courts, the Court of Justice proper and the General Court. As the Court of Justice has exclusive jurisdiction over actions between the institutions and those brought by a Member State against the European Parliament and/or against the Council, the General Court has jurisdiction, at first instance, in all other actions of this type, particularly in actions brought by individuals and those brought by a Member State against the Commission.

The TFEU provides that the General Court has jurisdiction to hear at first instance actions referred to in Articles 263, 265, 268, 270 and 272 TFEU, particularly in the areas set out below, unless the actions are brought by Member States, EU institutions or the European Central Bank, in which case the Court of Justice has sole jurisdiction (Article 51 of the Statute of the Court of Justice of the EU):

— Actions for annulment of acts of the institutions, bodies, offices or agencies of the EU or for failure to act brought against the institutions by individuals or legal persons (Articles 263 and 265 TFEU);

— Actions brought by Member States against the Commission;

— Actions for the reparation of damage caused by the institutions or the bodies, offices or agencies of the EU or their staff (Article 268 TFEU);

— Disputes concerning contracts concluded by or on behalf of the Union which expressly give jurisdiction to the General Court (Article 272 TFEU);

— Actions relating to intellectual property brought against the European Union Intellectual Property Office (EUIPO) and against the Community Plant Variety Office;

— Disputes between the Union and its servants, including disputes between all institutions and all bodies, offices or agencies, on the one hand, and their servants, on the other.

The Statute may extend the General Court's jurisdiction to other areas.

In general, judgments given by the General Court at first instance may be subject to a right of appeal to the Court of Justice, but this is limited to points of law.

B. Preliminary rulings

The General Court has the jurisdiction to give preliminary rulings (Article 267 TFEU) in the areas laid down by the Statute (Article 256(3) TFEU). However, since no provisions have been introduced into the Statute in that regard, the Court of Justice currently has sole jurisdiction to give preliminary rulings.

C. Responsibility for appeals

Rulings made by the General Court, limited to points of law, may, within two months, be subject to an appeal to the Court of Justice.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

On 1 September 2016 disputes between the Union and its servants were transferred to the General Court (1.3.9), which meant the dissolution of the European Union Civil Service Tribunal created in 2004. Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants therefore repealed Council Decision 2004/752/EC, Euratom, establishing the European Union Civil Service Tribunal. Cases pending before the Civil Service Tribunal were transferred to the General Court, which continues to deal with those cases as it finds them at that date, the procedural steps taken by the former Civil Service Tribunal in those cases remaining applicable.

A transitional regime was introduced in respect of appeals under examination when jurisdiction was transferred on 1 September 2016, or brought after that date, against decisions of the Civil Service Tribunal. The General Court is to continue to have jurisdiction to hear and determine such appeals. Accordingly, Articles 9 to 12 of Annex I to the Statute of the Court must remain applicable to the proceedings concerned.

ROLE OF THE EUROPEAN PARLIAMENT

According to Article 257 TFEU, Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish specialised courts attached to the General Court to hear and determine at first instance certain classes of action or proceedings brought in specific areas. Parliament and the Council are required to act by means of regulations either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation of the Commission.

According to Article 281 TFEU, the Statute of the Court of Justice of the European Union is laid down in a separate Protocol 3, and the European Parliament and the Council, acting in accordance with the ordinary legislative procedure[2], may amend this Statute. The European Parliament is currently reviewing a proposal to amend Protocol 3.

Parliament is one of the institutions mentioned in Article 263 TFEU that may bring an action (as a party) before the Court.

In accordance with Article 218(11) TFEU, Parliament can request an opinion of the Court of Justice as to whether an envisaged international agreement is compatible with

[2]Regulation (EU, Euratom) No 741/2012 of 11 August 2012, Regulation (EU, Euratom) 2015/2422 of 16 December 2015 and Regulation (EU, Euratom) 2016/1192 6 July 2016 of the European Parliament and of the Council.

the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised.

This fact sheet is prepared by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs.

Udo Bux / Mariusz Maciejewski
11/2023

1.3.11. THE EUROPEAN CENTRAL BANK (ECB)

The European Central Bank (ECB) is the central institution of the Economic and Monetary Union, and has been responsible for monetary policy in the euro area since 1 January 1999. The ECB and all EU national central banks constitute the European System of Central Banks (ESCB). The primary objective of the ESCB is to maintain price stability. Since 2014, the ECB has been responsible for tasks relating to the prudential supervision of credit institutions under the Single Supervisory Mechanism.

LEGAL BASIS

— Articles 3 and 13 of the Treaty on European Union (TEU);

— Articles 3(1)(c), 119, 123, 127-134, 138-144, 219 and 282-284 of the Treaty on the Functioning of the European Union (TFEU);

— Protocol (No 4) on the Statute of the European System of Central Banks (ESCB) and of the European Central Bank (ECB); Protocol (No 16) on Certain Provisions Relating to Denmark; appended to the TEU and the TFEU;

— Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (the Single Supervisory Mechanism (SSM) Regulation);

— Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms (the Single Resolution Mechanism (SRM) Regulation).

ORGANISATION AND OPERATIONS

According to the Treaties, the ECB's main responsibilities include conducting monetary policy for the euro area. In addition, the SSM Regulation conferred certain supervisory functions for credit institutions on the ECB as of November 2014.

A. Monetary function

The European System of Central Banks (ESCB) is made up of the European Central Bank (ECB) and the national central banks of all the Member States, including those that have not adopted the euro. The Eurosystem, meanwhile, comprises the ECB and the national central banks of only those Member States that have adopted the euro. The TFEU refers to the ESCB rather than to the Eurosystem, since it was drawn up on the premise that all Member States would eventually adopt the euro. For Member States that have not yet adopted the euro (because they have a derogation or opt-out), certain Treaty provisions referring to the ESCB are not applicable, which means that general Treaty references to the ESCB in practice mainly refer to the Eurosystem. The ECB's independence is enshrined in Article 130 TFEU: 'When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union

institutions, bodies, offices or agencies, from any government of a Member State or from any other body'.

1. Decision-making bodies

The ECB's decision-making bodies are the Governing Council, the Executive Board and the General Council. The ESCB is governed by the decision-making bodies of the ECB.

a. Governing Council

The Governing Council of the ECB comprises the members of the ECB Executive Board and the Governors of the national central banks of euro area Member States. It formulates monetary policy and establishes the necessary guidelines for its implementation. The Governing Council adopts the Rules of Procedure of the ECB, exercises advisory functions and decides how the ESCB is to be represented in international cooperation. The Governing Council may also delegate certain powers to the Executive Board. The Governing Council usually meets twice a month and has a monthly rotating system of voting rights. The Governors from the countries ranked first to fifth according to the size of their economies and their financial sectors share four voting rights. The 15 remaining countries share 11 voting rights. In addition to the national central bank Governors, the ECB's Executive Board members hold permanent voting rights.

b. Executive Board

The Executive Board comprises the President, the Vice-President and four other members. They are appointed by the European Council by qualified majority on a recommendation from the Council after it has consulted Parliament and the Governing Council. The term of office is eight years, and is not renewable. The Executive Board is responsible for the current and day-to-day business of the ECB. It implements monetary policy in accordance with the guidelines and decisions adopted by the Governing Council. It also provides instructions to national central banks and prepares the Governing Council's meetings.

c. General Council

The General Council is the third decision-making body of the ECB, but only as long as there are Member States that have not yet adopted the euro. It consists of the President and Vice-President of the ECB and the Governors of the national central banks of all the Member States. Other Executive Board members may participate in meetings of the General Council, but do not have voting rights.

2. Objectives and tasks

According to Article 127(1) TFEU, the primary objective of the ESCB is to maintain price stability. Without prejudice to this, the ESCB also supports the Union's general economic policies in order to help achieve the Union's objectives, which are outlined in Article 3 TEU. The ESCB acts in accordance with the principle of an open market economy with free competition and in compliance with the principles set out in Article 119 TFEU. The basic tasks carried out through the ESCB are: defining and implementing the Union's monetary policy; conducting foreign exchange operations consistent with the provisions of Article 219 TFEU; holding and managing the official foreign reserves of the Member States; and promoting the smooth operation of payment systems.

3. Powers and instruments

The ECB has the exclusive right to authorise the issue of euro banknotes. Member States may issue euro coins subject to the ECB's approval of the volume of the issue (Article 128 TFEU). The ECB passes regulations and takes decisions necessary for carrying out the tasks entrusted to the ESCB under the Treaty and the ECB Statute. It also makes recommendations and delivers opinions (Article 132 TFEU). The ECB must be consulted on any proposed EU act in its fields of competence, and by national authorities on any draft legislative provision in its fields of competence (Article 127(4) TFEU). It may submit opinions about the issues on which it is consulted. The ECB is also consulted on decisions establishing common positions and on measures relating to unified representation of the euro area in international financial institutions (Article 138 TFEU). Assisted by the national central banks, the ECB collects the necessary statistical information either from the competent national authorities or directly from economic agents (Article 5 of the ECB Statute). The ECB Statute lists various instruments that the ECB may use in order to fulfil its monetary functions. The ECB and the national central banks can open accounts for credit institutions, public entities and other market participants, and accept assets as collateral. It can conduct open market and credit operations and require minimum reserves. The Governing Council may also decide on other instruments of monetary control by a two-thirds majority. However, Article 123 TFEU prohibits financing monetary financing, and sets limits on the use of monetary policy instruments. To ensure efficient and sound clearing and payment systems, the ECB may provide infrastructure and establish oversight policies. The ECB may also establish relations with central banks and financial institutions in other countries and with international organisations.

4. Member States with a derogation or opt-out

Articles 139-144 TFEU lay down special provisions for Member States which have a Treaty obligation to adopt the euro but have not yet fulfilled the conditions to do so ('Member States with a derogation'). Certain Treaty provisions are not applicable to these Member States, e.g. the objectives and tasks of the ESCB (Article 127(1)-(3), (5) TFEU) and the issue of euro coins (Article 128 TFEU). Denmark has been granted an opt-out, and is thus not obliged to join the euro area, as defined in Protocol No 16 attached to the TFEU.

B. Supervisory function

Since November 2014, the ECB has been responsible for the supervision of all credit institutions in the Member States participating in the SSM, either directly for the largest banks, or indirectly for other credit institutions. It cooperates closely in this function with the other entities in the European System of Financial Supervision. The SSM is made up of the ECB and the national competent authorities of the euro area Member States. The competent authorities of non-euro area Member States may participate in the SSM. The ECB directly supervises the largest banks, while the national supervisors continue to monitor the remaining banks.

1. Supervisory Board

The Supervisory Board of the ECB is composed of a Chair, a Vice-Chair, four representatives of the ECB (whose duties may not be directly related to the monetary function of the ECB) and one representative of the national competent authority in each Member State participating in the SSM. The European Parliament must approve the

ECB's nominations for Chair and Vice-Chair. Decisions by the Supervisory Board are taken by simple majority. The Supervisory Board is an internal body tasked with the planning, preparation and execution of the supervisory functions conferred upon the ECB. It prepares and proposes complete draft supervisory decisions to the Governing Council. These are adopted if the Governing Council does not reject them within a specified time frame. If a non-euro area participating Member State disagrees with a draft decision by the Supervisory Board, a special procedure applies and the Member State concerned may even request termination of the close cooperation.

2. Objectives and tasks

As a banking supervisor, the ECB's tasks include granting and withdrawing authorisation for credit institutions, ensuring compliance with prudential requirements, conducting supervisory reviews and participating in supplementary supervision of financial conglomerates. It is also tasked with addressing systemic and macro-prudential risk.

3. Powers and instruments

In order to fulfil its supervisory role, the ECB has investigative powers (information requests, general investigations and on-site inspections) and specific supervisory powers (e.g. authorisation of credit institutions). The ECB also has the power to impose administrative penalties. It may also require credit institutions to hold higher capital buffers.

C. Other functions

Other legal bases confer additional tasks on the ECB. The European Stability Mechanism Treaty (in force as of September 2012) conferred certain tasks on the ECB in relation to granting financial assistance, mainly assessment and analysis. According to the founding regulations of the European Systemic Risk Board (ESRB), which is responsible for the macro-prudential oversight of the financial system within the EU, the ECB provides the secretariat for the ESRB and the President of the ECB also acts as chair of the ESRB. The ECB has an advisory role in assessing the resolution plans of credit institutions under the Bank Recovery and Resolution Directive and the Single Resolution Mechanism Regulation. Within the Single Resolution Mechanism , the ECB assesses whether a credit institution is failing or likely to fail, and informs the Commission and the Single Resolution Board accordingly.

ROLE OF THE EUROPEAN PARLIAMENT

The ECB President reports to Parliament on monetary issues in a quarterly Monetary Dialogue. The ECB also prepares an annual report on monetary policy which is presented in Parliament. Parliament adopts a resolution on this annual report. MEPs may put forward questions for written answer to the ECB. Parliament is also consulted in the procedure to appoint members of the ECB's Executive Board.

The new supervisory responsibilities of the ECB are matched with additional accountability requirements under the SSM Regulation. The practical modalities for this are governed by an interinstitutional agreement between Parliament and the ECB. The accountability arrangements include the attendance of the Chair of the Supervisory Board at hearings of the Committee on Economic and Monetary Affairs; answering questions asked by Parliament; and confidential oral discussions with the Chair and Vice-Chair of the competent committee upon request. In addition, the ECB prepares

an annual supervisory report, which is presented to Parliament by the Chair of the Supervisory Board.

Dražen Rakić / MAJA SABOL
04/2023

1.3.12. THE COURT OF AUDITORS

The European Court of Auditors (ECA) is in charge of the audit of EU finances. As the EU's external auditor, it contributes to improving EU financial management and acts as the independent guardian of the financial interests of the citizens of the Union.

LEGAL BASIS

— Articles 285 to 287 of the Treaty on the Functioning of the European Union (TFEU).

— Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (see in particular Title XIV on external audit and the discharge).

STRUCTURE

A. Members

1. Number

One Member per Member State (the Nice Treaty formalised what had hitherto only been the recognised procedure), thus in principle 27.

2. Requirements

The Members must:

— Belong or have belonged in their respective countries to external audit bodies, or be especially qualified for this office;

— Show that their independence is beyond doubt.

3. Appointment procedure

Members are appointed:

— By the Council, by qualified majority;

— On the recommendation of each Member State regarding its own seat;

— After consulting the European Parliament.

B. Term of office

1. Duration

Six years, renewable.

2. Status

Members enjoy the same privileges and immunities as Judges of the Court of Justice.

3. Duties

Members must be 'completely independent in the performance of their duties'. This means:

— They must not seek or take instructions from any external source;

— They must refrain from any action incompatible with their duties;

— They may not engage in any other professional activity, paid or unpaid;

— If they infringe these conditions, the Court of Justice can remove them from office.

C. Organisation

The College elects its President from among its Members for a renewable term of three years.

The Court organises itself around five chambers with responsibility for specific areas of expenditure and revenue:

— Chamber I: Sustainable use of natural resources;

— Chamber II: Investment for cohesion, growth and inclusion;

— Chamber III: External action, security and justice;

— Chamber IV: Regulation of markets and competitive economy;

— Chamber V: Financing and administering the European Union.

Each Chamber has two areas of responsibility: firstly, to adopt special reports, specific annual reports and opinions; secondly, to prepare draft observations for the annual reports on the general budget of the EU and the European Development Fund, and draft opinions for adoption by the Court as a whole.

The Court has around 980 staff and is based in Luxembourg.

POWERS

A. The Court's audits

1. Area of responsibility

The Court's remit covers the examination of any revenue or expenditure accounts of the European Union or any EU body. It carries out its audits in order to obtain a reasonable assurance as to:

— The reliability of the annual accounts of the European Union (financial audit);

— The legality and regularity of the underlying transactions (compliance audit); and

— The soundness of financial management (performance audit).

2. Auditing methods

The Court's audit is continuous; it may be carried out before the closure of accounts for the financial year in question. It is based on records and may also be carried out on the premises of:

— EU institutions and agencies;

— Any body that manages revenue or expenditure on the EU's behalf;

— Any natural or legal person in receipt of payments from the EU budget.

In the Member States, the audit is carried out in liaison with the national Supreme Audit Institutions. Auditees are required to forward to the Court any document or information it considers necessary for its purposes.

The Court does not have investigative powers. It therefore reports cases of possible fraud and corruption to the European Anti-Fraud Office and/or the European Public Prosecutor's Office, which then handle the cases according to their respective competences.

3. Audit reports

Following its audits, the Court publishes:

— Annual reports on the implementation of the EU budget and the European Development Fund, including the Statement of Assurance, focusing on compliance and regularity (by 15 November, or earlier); since 2022, performance aspects are again being treated in the framework of the annual reports and in special reports (in contrast to the years 2019-2021 when there was an annual report on the performance of the EU budget);

— Specific annual reports on the EU agencies, decentralised bodies and joint undertakings;

— Special reports on topics of interest, in particular on issues of sound financial management and specific spending or policy areas;

— Reviews that cover policies and management topics from a wide angle, present an analysis of areas or issues not yet audited or establish a factual basis on certain topics.

B. Advisory powers

In accordance with Article 287(4) of the TFEU, other institutions may ask the Court for its opinion whenever they see fit. The Court's opinion is mandatory when the Council:

— Adopts financial regulations specifying the procedure for establishing and implementing the budget and for presenting and auditing accounts;

— Determines the methods and procedure whereby the EU's own resources are made available to the Commission;

— Lays down rules concerning the responsibility of financial controllers, authorising officers and accounting officers; or

— Adopts anti-fraud measures.

THE COURT'S ANNUAL REPORTS FOR 2022

A. The ECA annual report for 2022

The overall error rate of expenditure increased from 3.0% in 2021 to 4.2% in 2022. Of the spending audited, 66% was high-risk expenditure, meaning mainly reimbursement-based payments, for which complex rules and eligibility criteria apply. This type of payment is often made under cohesion policy and rural development programmes, which are administered under shared management between the Commission and the Member States.

The error rate for this payment type is estimated at 6% (compared to 4.7% in 2021 and 4.0% in 2020), which is above the materiality threshold and was classified as 'pervasive'. Therefore, for the fourth consecutive year, the Court issued an adverse opinion on the regularity of the transactions underlying the accounts (rather than a qualified opinion, as was the case for the years 2016-2018), highlighting persistent problems that need to be addressed.

In addition to its audit of spending under the regular EU budget, the Court provided a separate opinion on expenditure under the Recovery and Resilience Fund (RRF). It will continue to do so during the lifetime of the fund. Funding from the RRF is

disbursed once certain milestones and targets are achieved. The Court audited all 13 grant payments made in 2022, amounting to EUR 46.9 billion and including the clearing of the related pre-financing of EUR 6.8 billion, and checked whether the 281 milestones and targets related to these grant payments had been fulfilled, including the Commission's preliminary assessments. It found that 15 of the 281 milestones and targets had been affected by regularity issues and had either not been satisfactorily fulfilled or did not comply with eligibility conditions. While their minimum financial impact is estimated to be close to the materiality threshold, no error rate is provided, as the Commission methodology for suspending payments is based on judgments and therefore open to interpretation. The Court recommends that the Commission improve the preliminary assessments and ex post audits in order to (a) ensure that the payments are made during the eligibility periods and that the grants are not used to substitute recurring national budgetary expenditure; and (b) ensure that targets and milestones already reached are not reversed. Moreover, the Commission should verify whether the reviewed national recovery and resilience plans clearly define all milestones and targets and cover all key elements of a measure.

B. Performance of the EU budget – Chapter 3 of the Annual Report

For 2019, 2020 and 2021, the Court split its annual report into two parts as part of a pilot project – first, its annual report focusing on the reliability of EU accounts and the legality and regularity of underlying transactions and, second, a report on the performance of EU budget spending programmes.

In 2022, the Court discontinued the annual performance report and reintegrated performance aspects into Chapter 3 of the annual report. This chapter provides an overview of the results of 28 ECA special reports in 2022 across five strategic areas, namely (i) the COVID-19 response, (ii) competitiveness, (iii) resilience and European values, (iv) climate change, environment and natural resources; and (v) fiscal policies and public finances. Following the summary of the key messages for each area, the annual report gives examples of Commission actions in the follow-up to the special reports and summarises the reactions of the European Parliament and the Council.

ROLE OF THE EUROPEAN PARLIAMENT

The Court of Auditors was established in 1977 on Parliament's initiative. It was made an EU institution in 1993. Since then, it has assisted Parliament and the Council in exercising their role of controlling the implementation of the budget. The annual reports and special reports serve as the basis for Parliament's yearly discharge exercise.

The Court's Members are invited to present their reports at committee meetings and to reply to questions raised by MEPs – primarily in Parliament's Budgetary Control Committee (CONT), but also in joint meetings of the CONT Committee with one or more specialised committees, or, sometimes, in cases of limited interest for the CONT Committee, only in a specialised committee. Each year, the Court of Auditors and CONT hold meetings at which CONT members discuss with the Members of the Court their political priorities, the Court's annual work programme, detailed arrangements for cooperation, etc. Once a year, the ECA President attends a meeting of Parliament's Conference of Committee Chairs to present the ECA's annual work programme and invite all committees to submit their suggestions for the next programming exercise. Parliament also makes suggestions on these issues in its annual resolutions on the Court of Auditors' discharge.

It should also be noted that CONT holds hearings of Members-designate of the Court. Furthermore, the Court's expertise helps MEPs in drafting legislation on financial matters.

For more information on this topic, please visit the website of the Committee on Budgetary Control.

Vera Milicevic
03/2024

1.3.13. THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

The European Economic and Social Committee (EESC) is a consultative body of the European Union, based in Brussels. It is composed of 329 members. Its opinions are required on the basis of a mandatory consultation in the fields established by the Treaties or a voluntary consultation by the Commission, the Council, or Parliament. It may also issue opinions on its own initiative. Its members are not bound by any instructions. They are to be completely independent in the performance of their duties, in the EU's general interest.

LEGAL BASIS

Article 13(4) of the Treaty on European Union (TEU), Articles 300-304 of the Treaty on the Functioning of the European Union (TFEU), Council Decision (EU) 2019/853 determining the composition of the European Economic and Social Committee and subsequent Council decisions appointing the members of the EESC, proposed by different Member States, and Council Decision (EU) 2020/1392 appointing the members of the European Economic and Social Committee for the period from 21 September 2020 to 20 September 2025.

COMPOSITION

A. Number and national allocation of seats (Article 301 TFEU and Council Decision (EU) 2019/853 determining the composition of the European Economic and Social Committee).

The EESC currently has 329 members, divided between the Member States as follows:

— 24 each for Germany, France and Italy;

— 21 each for Poland and Spain;

— 15 for Romania;

— 12 each for Austria, Belgium, Bulgaria, Czechia, Greece, Hungary, the Netherlands, Portugal and Sweden;

— 9 each for Croatia, Denmark, Finland, Ireland, Lithuania and Slovakia;

— 7 each for Estonia, Latvia and Slovenia;

— 6 each for Luxembourg and Cyprus;

— 5 for Malta.

Overall, the size of the committee was reduced from 350 to 329 members with effect from 1 February 2020 (following the United Kingdom's withdrawal from the EU).

B. Method of appointment (Article 302 TFEU)

The members of the committee are appointed by the Council by qualified majority, on the basis of proposals by the Member States (as in this example). The Council consults the Commission on these nominations (Article 302(2) TFEU). The Member States must ensure that the various categories of economic and social activity are

adequately represented. In practice, one third of the seats goes to employers, one third to employees and one third to other groups (farmers, retailers, the liberal professions, consumers, etc.).

The maximum number of EESC members allowed by the Treaty of Lisbon is 350 (Article 301 TFEU). This was briefly exceeded between July 2013 and September 2015 owing to the accession of Croatia on 1 July 2013. By adding nine new seats for the new Member State, total membership increased to 353 (from 344). Council Decision (EU) 2015/1157 adapted the composition of the EESC following the accession of Croatia: the number of members for Estonia, Cyprus and Luxembourg was reduced by one each in order to address the discrepancy between the maximum number of EESC members set out in the first paragraph of Article 301 TFEU and the number of members following the accession of Croatia. Therefore, the number of members for Luxembourg and Cyprus was decreased from six to five each and the number of Estonian members from seven to six. Council Decision (EU) 2019/853 determined the final composition of the EESC in line with the distribution of seats in the Committee of the Regions, which also has 329 members, and in the light of the withdrawal of the UK from the EU, which resulted in 24 vacant seats. As a result, the number of members for Luxembourg and Cyprus was increased from five to six once more and the number of Estonian members from six to seven.

C. Type of mandate (Article 301 TFEU)

The members of the committee are nominated by national governments and appointed by the Council for a renewable five-year term of office (Article 302 TFEU). They are drawn from economic and social interest groups in Europe. The latest renewal was in October 2015 for the 2015-2020 term of office.

They belong to one of three groups:

— Employers (Group I);

— Workers (Group II);

— Diversity Europe (Group III).

The members must be completely independent in the performance of their duties, in the general interest of the EU (Article 300(4) TFEU). Every time a member's or alternate member's seat on the EESC becomes vacant following the end of their term of office, a separate Council decision is needed to replace that member.

ORGANISATION AND PROCEDURES

The EESC is not among the institutions listed in Article 13(1) TEU. However, Article 13(4) states that the EESC assists Parliament, the Council and the Commission by exercising advisory activities.

— The President and the Bureau, each with a term of office of two and a half years, are appointed by the Committee from among its members.

— The committee adopts its own rules of procedure.

— It may meet on its own initiative, but it normally meets at the request of the Council or the Commission.

— To help prepare its opinions, it has the following six specialised sections for the various fields of EU activity (and can set up subcommittees to deal with specific subjects):
    — Agriculture, Rural Development and the Environment (NAT);
    — Economic and Monetary Union and Economic and Social Cohesion (ECO);
    — Employment, Social Affairs and Citizenship (SOC);
    — External Relations (REX);
    — The Single Market, Production and Consumption (INT);
    — Transport, Energy, Infrastructure and the Information Society (TEN).

The EESC is assisted by a general secretariat, headed by a Secretary-General who reports to the President. The general secretariat provides the EESC's members with policy, communication, organisational, linguistic and material support. The general secretariat is made up of approximately 700 staff members. For the sake of efficiency, the EESC shares its permanent secretariat services in Brussels with the secretariat of the Committee of the Regions (with regard to its seat in Brussels, see Protocol No 6 to the Lisbon Treaty on the location of the seats of the institutions). In addition, the Bureau of Parliament also entered into an agreement with the Committee, in the framework of the 2014 budgetary procedure, to jointly increase efficiency in the area of translation. The Committee has an annual administrative budget, included in section VI of the EU budget, of EUR 142.5 million (2020) – a 4.22 % increase compared to the 2019 budget – of which EUR 130.9 million was spent or carried forward to 2021 as commitments. The total increase for the draft 2022 budget estimates compared to 2021 is EUR 5 970 705 or 4.12 %.

POWERS

The EESC was set up by the 1957 Rome Treaties in order to involve economic and social interest groups in the establishment of the common market and to provide institutional machinery for briefing the Commission and the Council of Ministers on European issues. The Single European Act (1986) and the Maastricht Treaty (1992) extended the range of issues that must be referred to the committee. The Amsterdam Treaty further broadened the areas for referral to the committee and allowed it to be consulted by Parliament. On average, the EESC delivers 170 advisory documents and opinions a year (of which about 15 % are issued on its own initiative). Opinions are published in the Official Journal. The committee also has an advisory function (Article 300 TFEU). Its purpose is to inform the institutions responsible for EU decision-making of the opinions of the representatives of economic and social activity.

A. Opinions issued at the request of EU institutions

1. Mandatory consultation

In certain specifically mentioned areas, the TFEU stipulates that a decision may only be taken after the Council or Commission has consulted the EESC. These areas are:

— Agricultural policy (Article 43);

— Free movement of persons and services (Articles 46, 50 and 59);

— Transport policy (Articles 91, 95 and 100);
— Harmonisation of indirect taxation (Article 113);
— Approximation of laws on the single market (Articles 114 and 115);
— Employment policy (Articles 148, 149 and 153);
— Social policy, education, vocational training and youth (Articles 156, 165 and 166);
— Public health (Article 168);
— Consumer protection (Article 169);
— Trans-European networks (Article 172);
— Industrial policy (Article 173);
— Economic, social and territorial cohesion (Article 175);
— Research and technological development and space (Articles 182 and 188);
— The environment (Article 192).

2. Voluntary consultation

The EESC may also be consulted by Parliament, the Commission or the Council on any other matter as they see fit. When these institutions consult the committee, whether on a mandatory or voluntary basis, they may set a time limit (of at least one month) after which the absence of an opinion cannot prevent them from taking further action (Article 304 TFEU).

B. Issuing an opinion on its own initiative

The committee may decide to issue an opinion whenever it considers such action appropriate.

ROLE OF THE EUROPEAN PARLIAMENT

Under the cooperation agreement between Parliament and the EESC of 5 February 2014, both institutions committed to cooperate in order to reinforce the democratic legitimacy of the EU. Specifically, they agreed that:

— The EESC will prepare impact assessments with information and relevant materials from civil society on how existing EU legislation is working and what deficiencies need to be taken into account in making and revising EU legislation. This is sent to Parliament in due time before the start of the amendment procedure;
— In all relevant parliamentary committee meetings, one seat will be reserved for an EESC member. EESC rapporteurs will be invited to present substantial opinions in hearings of the relevant parliamentary committees;
— General legislative cooperation and the work plan are discussed twice a year between the Chair of the Conference of Committee Chairs, Parliament committee Chairs and the President of the EESC.

Udo Bux / Mariusz Maciejewski
11/2023

1.3.14. THE COMMITTEE OF THE REGIONS

The Committee of the Regions is made up of 329 members representing the regional and local authorities of the 27 Member States of the European Union. It issues opinions sought on the basis of mandatory (as required by the Treaties) and voluntary consultation and, where appropriate, own-initiative opinions. Its members are not bound by any mandatory instructions. They are independent in the performance of their duties, in the European Union's general interest.

LEGAL BASIS

Article 13(4) of the Treaty on European Union (TEU), Articles 300 and 305 to 307 of the Treaty on the Functioning of the European Union (TFEU), and various Council decisions appointing the members and alternate members of the Committee, as proposed by the Member States, for their five-year term of office.

OBJECTIVES

Created in 1994 after the entry into force of the Maastricht Treaty, the Committee of the Regions (CoR) is an advisory body which represents the interests of regional and local authorities in the European Union and addresses opinions on their behalf to the Council and the Commission. Members can be, for example, leaders of regional authorities, mayors or elected or non-elected representatives of regions and cities of the 27 EU Member States.

In the words of its mission statement, the CoR is a political assembly of holders of a regional or local electoral mandate serving the cause of European integration. It provides institutional representation for all the EU's territorial areas, regions, cities and municipalities.

Its mission is to involve regional and local authorities in the European decision-making process and thus encourage greater participation by citizens. It is a political body bringing together and empowering Europe's locally elected representatives, including 329 members and 329 alternate members from 300 regions, 100 000 local authorities and 1 million local politicians representing 441 million EU citizens.

In order to better fulfil this role, the CoR has long sought the right to refer cases of infringement of the principle of subsidiarity to the Court of Justice. Following the entry into force of the Treaty of Lisbon, it now has this right under the terms of Article 8 of Protocol No 2 on the application of the principles of subsidiarity and proportionality.

According to the CoR's three political priorities for 2020-2025, adopted in July 2020, all decisions taken at EU level to tackle the major societal transformations facing villages, cities and regions today, such as global pandemics, the green and digital transitions, demographic challenges and migratory flows, must be taken as close to citizens as possible in line with the principle of subsidiarity.

Priority 1: Bringing Europe closer to people: democracy and the future of the EU. Modernising and reinforcing democracy at all levels of government in order for the EU to respond more efficiently to people's real needs.

Priority 2: Managing fundamental societal transformations: building resilient regional and local communities, responding to global pandemics, climate, digital and demographic transitions, as well as the flow of migration through a coherent, integrated and local European approach.

Priority 3: Cohesion, our fundamental value: place-based EU policies that put the EU at the service of its people and their places of living. Cohesion is not money, it is a fundamental EU value designed to foster economic, social and territorial cohesion.

ORGANISATION

A. Composition (Article 305 TFEU, Council Decision (EU) 2019/852[1])

1. Number and national allocation of seats

In accordance with the provisions of Council Decision (EU) 2019/852 of 21 May 2019, the Committee of the Regions is made up of 329 members and an equal number of alternate members, split between the Member States as follows:

— 24 for Germany, France and Italy;

— 21 for Spain and Poland;

— 15 for Romania;

— 12 for Austria, Belgium, Bulgaria, Czechia, Greece, Hungary, the Netherlands, Portugal and Sweden;

— 9 for Croatia, Denmark, Finland, Ireland, Lithuania and Slovakia;

— 7 for Latvia, Estonia and Slovenia;

— 6 for Cyprus and Luxembourg;

— 5 for Malta.

2. Method of appointment

Members are appointed for five years by the Council acting unanimously on proposals made by the Member State concerned (Article 305 TFEU). For the period from 26 January 2020 to 25 January 2025, the Council adopted Decision (EU) 2019/2157 on 10 December 2019 appointing the members and alternate members of the Committee. On 20 January 2020, the Council adopted Decision (EU) 2020/102, whereby it also appointed the members and alternate members for whom it received proposals from the respective Member State after 20 December 2019. The term of office is renewable. Members must either hold a regional or local authority electoral mandate, or be politically accountable to an elected assembly (Article 300(3) TFEU). Every time a member or alternate member's seat on the CoR becomes vacant at the end of their term of office (e.g. at the end of the regional or local mandate on the basis of which the member was proposed), a separate Council decision becomes necessary.

B. Structure (Article 306 TFEU)

The Committee of the Regions elects its President and officers from among its members for a term of two and a half years. It adopts its Rules of Procedure on the basis of Article 306 TFEU and submits them to the Council for approval. As a rule, it holds six

[1]Council Decision (EU) 2019/852 of 21 May 2019 determining the composition of the Committee of the Regions, OJ L 139, 27.5.2019, p. 13.

plenary sessions per year. According to the political affiliation of its Members, it currently operates in six political groups.

The presidents of those groups meet as the Conference of Presidents, which prepares the work of the Plenary Assembly, the Bureau and the commissions and facilitates the search for political consensus on decisions to be taken.

The plenary is chaired by the assembly's President (Article 306 TFEU) and its main functions are to adopt opinions, reports and resolutions, adopt the CoR's draft estimates of expenditure and revenue, adopt its political programme at the beginning of every term, elect the President, the First Vice-President and the remaining members of the Bureau, set up policy commissions within the institution, and adopt and revise its Rules of Procedure.

The CoR's work is carried out in six specialist commissions, which draw up draft opinions and resolutions that are then submitted for adoption in plenary: the Commission for Citizenship, Governance, Institutional and External Affairs (CIVEX), the Commission for Territorial Cohesion Policy and EU Budget (COTER), the Commission for Economic Policy (ECON), the Commission for Environment, Climate Change and Energy (ENVE), the Commission for Natural Resources (NAT) and the Commission for Social Policy, Education, Employment, Research and Culture (SEDEC).

In the interests of efficiency, some of its permanent Secretariat's services at its seat in Brussels (see Protocol No 6 on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the EU) are shared with the Secretariat of the European Economic and Social Committee. The European Parliament's Bureau also agreed with the CoR to jointly realise efficiency gains in the area of translation. The CoR (Section 7 of the EU budget) has an administrative budget of approximately EUR 101.5 million (2020).

ATTRIBUTIONS

A. Opinions issued at the request of other institutions

1. Mandatory consultation

The Council and the Commission are required to consult the Committee of the Regions before taking decisions on matters concerning:

— Education, vocational training and youth (Article 165 TFEU);

— Culture (Article 167 TFEU);

— Public health (Article 168 TFEU);

— Trans-European transport, telecommunications and energy networks (Article 172 TFEU);

— Economic and social cohesion (Articles 175, 177 and 178 TFEU).

2. Voluntary consultation

The Commission, the Council and Parliament may also consult the Committee of the Regions on any other matter as they see fit.

When Parliament, the Council or the Commission consult the Committee of the Regions (whether on a mandatory or voluntary basis), they may set a time limit (at least one month in accordance with Article 307 TFEU) for its response. Should the deadline

expire without an opinion being issued, they may proceed without the benefit of an opinion. As an example of voluntary cooperation, in December 2020 the Commission and the CoR agreed a partnership on the integration of migrants with the aim of joining forces to support the work on integration into EU cities and regions. This partnership builds on the CoR's 2019 'Cities and Regions for Integration of Migrants' initiative and provides a political platform for European mayors and regional leaders to share information and showcase positive examples of the integration of migrants and refugees.

B. Issuing an opinion on its own initiative

1. Every time the European Economic and Social Committee is consulted, the Committee of the Regions is informed and may also issue an opinion on the matter if it considers that regional interests are involved.

2. As a general rule, the CoR may issue an opinion whenever it considers such action to be appropriate. The Committee has, for instance, issued opinions on its own initiative in the following areas: small and medium-sized enterprises (SMEs), trans-European networks, tourism, structural funds, health (the fight against drugs), industry, urban development, training programmes and the environment.

C. Referral to the Court of Justice of the European Union – ex-post judicial review

The Committee may also institute proceedings before the Court of Justice in order to safeguard the prerogatives allocated to it (Article 263 TFEU). In other words, it may bring proceedings before the Court of Justice if it considers that it has not been consulted when it should have been or if the consultation procedures have not been applied correctly (annulment of acts (1.3.10)).

The right to bring proceedings under Article 8 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, annexed to the Lisbon Treaty, if consultation procedures have not been correctly applied, enables the Committee of the Regions to ask the Court of Justice to ascertain whether a legislative act falling within the Committee's sphere of competence complies with the subsidiarity principle.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament's Rules of Procedure (Annex VI, point XII) make the Committee on Regional Development (REGI) responsible for maintaining relations with the CoR, interregional cooperation organisations and local and regional authorities.

Under the Cooperation Agreement between the European Parliament and the CoR of 5 February 2014:

— The CoR prepares impact assessments on proposed EU legislation, which it sends to Parliament in due time before the start of the amendment procedure. These impact assessments include detail at national, regional and local level on how existing legislation is working, plus opinions on improvements to the proposed legislation;

— One member from the CoR is invited to all relevant Parliament committee meetings. This rapporteur or spokesperson presents the CoR's opinions. In turn, Parliament rapporteurs can attend CoR committee meetings;

— The general legislative cooperation and the work plan are discussed twice a year between the Chair of the Conference of Committee Chairs of Parliament and the Chair's counterpart in the Committee of the Regions.

Since 2008, the REGI Committee and COTER Commission have organised an annual joint meeting in the framework of the 'Open Days: European Week of Regions and Cities' event.

This fact sheet is prepared by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs.

Udo Bux / Mariusz Maciejewski
11/2023

1.3.15. THE EUROPEAN INVESTMENT BANK

The European Investment Bank (EIB) furthers the objectives of the European Union by providing long-term project funding, guarantees and advice. It supports projects both within and outside the EU. Its shareholders are the Member States of the EU. The EIB is the majority shareholder in the European Investment Fund (EIF), and the two organisations together make up the EIB Group.

LEGAL BASIS

— Articles 308 and 309 of the Treaty on the Functioning of the European Union (TFEU). Further provisions regarding the EIB are contained in Articles 15, 126, 175, 209, 271, 287, 289 and 343 TFEU;

— Protocol (No 5) on the Statute of the European Investment Bank and Protocol (No 28) on Economic, Social and Territorial Cohesion, appended to the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

According to Article 309 TFEU, the task of the EIB is to contribute to the balanced and steady development of the internal market in the interest of the Union. The EIB, in all sectors of the economy, facilitates the funding of projects that:

— Seek to develop less-developed regions;

— Seek to modernise or convert undertakings, or develop new activities which cannot be completely financed by means available in individual Member States;

— Are of common interest to several Member States.

It also contributes to the promotion of economic, social and territorial cohesion in the Union (Article 175 TFEU and Protocol No 28). In addition, it supports the implementation of measures outside the EU which support the development cooperation policy of the Union (Article 209 TFEU). EIB activities focus on six priority areas: climate and environment; development; innovation and skills; small businesses; infrastructure; and cohesion.

RESOURCES AND INSTRUMENTS

A. Resources

In the pursuit of its objectives, the EIB mainly has recourse to its own resources and the international capital markets (Article 309 TFEU).

1. Own resources

The own resources are provided by the members of the EIB, i.e. the Member States (Article 308 TFEU). The contribution to the capital by each individual Member State is laid down in Article 4 of the EIB's Statute and is calculated in accordance with Member States' economic weight. Member States can increase their capital subscriptions on a voluntary basis. The EIB's total subscribed capital amounts to EUR 248.8 billion.

2. Capital markets

The EIB raises the greater part of its lending resources from international capital markets, mainly through the issuing of bonds. It is one of the largest supranational lenders in the world. In order to acquire cost-efficient funding, an excellent credit rating is important. The major credit rating agencies currently attribute the highest rating to the EIB, reflecting the quality of its loan portfolio. The EIB generally finances one third of each project, but supportive financing can reach 50%.

B. Instruments

The EIB uses a wide range of different instruments, but mainly loans and guarantees. However, a number of other, more innovative instruments with a higher risk profile have also been developed. Further instruments will be designed in cooperation with other EU institutions. Financing provided by the EIB may also be combined with financing from other EU sources (inter alia, the EU budget), a process known as blending. Besides financing projects, the EIB also operates in an advisory capacity.

Lending is mainly provided in the form of direct or intermediate loans. Direct project loans are subject to certain conditions, e.g. the total investment costs must exceed EUR 25 million, and the loan can only cover up to 50% of the project costs. Intermediate loans consist of lending to local banks or other intermediaries which, in turn, support the final recipient. The majority of lending takes place in the EU.

In addition to its more traditional lending activities, the EIB also uses blending facilities to blend its loans with grants from public bodies or philanthropic organisations.

GOVERNANCE AND STRUCTURE

A. Governance

The EIB has legal personality, in accordance with Article 308 TFEU. It is directed and managed by a Board of Governors, a Board of Directors and a Management Committee. An Audit Committee audits the activities of the Bank.

The Board of Governors consists of the ministers designated by the Member States. It lays down general directives for the credit policy of the Bank and ensures its implementation. It is required, among other things;

— To decide whether to increase the subscribed capital;

— To determine the principles applicable to financing operations undertaken within the framework of the Bank's tasks;

— To take decisions in respect of the granting of finance for investment operations to be carried out, in whole or in part, outside the EU;

— And to approve the annual report of the Board of Directors, the annual balance sheet, the profit and loss account, and the Rules of Procedure of the Bank.

The Board of Directors consists of 28 directors and 31 alternate directors. The directors are appointed by the Board of Governors for five years. Each Member State nominates a director, as does the Commission. The Board of Directors takes decisions in respect of: Granting finance, in particular in the form of loans and guarantees; raising loans; fixing the interest rates on loans granted, as well as the commission and other charges. It ensures that the Bank is properly run and is managed in accordance with the

provisions of the Treaties and of the Statute and with the general directives laid down by the Board of Governors.

The Management Committee consists of a President and eight Vice-Presidents, appointed for a period of six years by the Board of Governors on the proposal of the Board of Directors. Their appointments are renewable. It is responsible for the day-to-day business of the Bank, under the authority of the President and the supervision of the Board of Directors; it prepares the decisions of the Board of Directors, and ensures that these decisions are implemented.

The Audit Committee consists of six members, appointed by the Board of Governors. It checks annually that the operations of the Bank have been conducted and its books kept in a proper manner.

B. Structure

The EIB Group was established in 2000 and consists of the EIB and the EIF, which was founded in 1994 and set up as a public-private partnership with three main shareholder groups: the EIB, as majority shareholder with 62.2%, the Commission (30%), and several public and private financial institutions (7.8%). The EIF provides various forms of risk capital instruments, e.g. venture capital. The lending focus of the EIF is small and medium-sized enterprises (SMEs), and it uses a wide range of innovative instruments with the aim of improving access to finance for SMEs.

AN INVESTMENT PLAN FOR EUROPE

Since the onset of the global economic and financial crisis, the EU has been suffering from low levels of investment. The Commission communication entitled 'An Investment Plan for Europe' provided guidance on how to revive investment in the EU, create jobs and foster long-term growth and competitiveness. To this end, Regulation (EU) 2015/1017 creating the European Fund for Strategic Investments (EFSI) was adopted on 25 June 2015.

The EFSI aimed to generate private investment via the mobilisation of public money and to create an investment-friendly environment. An initial EU guarantee of EUR 16 billion to the EIB, together with a EUR 5 billion commitment from the EIB itself, was used to mobilise private money, and by mid-2018 the EFSI had surpassed its aim of generating an additional EUR 315 billion in finance for investment in the EU.

The EFSI Regulation also established the European Investment Advisory Hub (EIAH), which aimed to provide advisory and technical assistance for the identification, preparation and development of investment projects.

The EFSI 2.0 Regulation was adopted in December 2017 and entered into force on 1 January 2018. This regulation extended the duration of the EFSI (until the end of 2020) and made further enhancements to the fund and the EIAH, with a view to mobilising EUR 500 billion of additional financing for investment.

INVESTEU

Adopted in March 2021 as the successor of the Investment Plan for Europe, InvestEU brings together the EFSI and 13 other EU financial instruments. It focuses on four main policy areas (sustainable infrastructure; research, innovation and digitisation; SMEs; social investment and skills) and aims to mobilise EUR 372 billion in additional

investment between 2021 and 2027. The programme consists of the InvestEU Fund, the InvestEU Advisory Hub and the InvestEU Portal.

Member States have the option of using InvestEU to implement their recovery and resilience plans under the Recovery and Resilience Facility (RRF).

THE EU'S 'CLIMATE BANK'

In June 2019, the European Council invited the EIB to 'step up its activities in support of climate action'. The EIB responded in November 2019 with a new climate strategy and energy lending policy.

The EIB has committed to align all its financing activities with the goals of the Paris Agreement. Most notably, the EIB will increase the share of investments under its 'climate action and environmental sustainability' priority to 50% by 2025. The EIB stopped financing fossil fuel projects at the end of 2021.

The EIB's new energy lending policy, which will govern its activities in the energy sector, is based on five principles:

— Prioritising energy efficiency with a view to supporting the new EU target under the EU Energy Efficiency Directive;

— Enabling energy decarbonisation through increased support for low or zero carbon technology, with the aim of achieving a 32% renewable energy share throughout the EU by 2030;

— Increasing financing for decentralised energy production, innovative energy storage and e-mobility;

— Ensuring the grid investment that is essential for new, intermittent energy sources like wind and solar, as well as strengthening cross-border interconnections; and

— Increasing the impact of investment to support energy transformation outside the EU.

RESPONSE TO THE COVID-19 CRISIS

In 2020, as part of the EU's response to the economic consequences of the COVID-19 crisis, the EIB created a EUR 25 billion guarantee fund to enable the EIB Group to scale up its support for companies in all Member States by mobilising an additional amount of up to EUR 200 billion.

This came on top of an immediate support package of up to EUR 40 billion, which consisted of:

— Dedicated guarantee schemes for banks based on existing programmes, for immediate deployment, mobilising up to EUR 20 billion of financing;

— Dedicated liquidity lines for banks to ensure an additional EUR 10 billion of working capital support for SMEs and mid-caps; and

— Dedicated asset-backed securities purchasing programmes to allow banks to transfer risk on portfolios of SME loans, mobilising another EUR 10 billion of support.

RESPONSE TO THE RUSSIAN INVASION OF UKRAINE

EIB activities related to Ukraine date back to 2007. It operates in Ukraine in line with the European neighbourhood policy, the Eastern Partnership and other EU bilateral agreements. Since the Russian invasion of Ukraine, the EIB has stepped up its support. The funding from the instrument aims to help Ukraine fix damaged infrastructure, restart municipal services and support urgent energy-efficiency measures in preparation for the cold seasons. Furthermore, the EIB has coordinated humanitarian aid donations, prioritising emergency relief for people impacted by the conflict in Ukraine and its neighbouring countries.

ROLE OF THE EUROPEAN PARLIAMENT

In accordance with Article 308 TFEU, Parliament is consulted when the Statute of the EIB is amended. The EIB is directly accountable to the Member States. It does not have formal reporting obligations to Parliament, nor is it accountable to it. However, in a gesture of goodwill, the EIB President accepts invitations to appear in plenary and at relevant Parliament committee meetings, and the EIB is open to questions from MEPs.

Every year, the Committee on Budgetary Control (CONT) reviews the EIB's activities and presents a report in plenary, to which the EIB President is invited.

Under the existing regulation, Parliament approves the appointment of the Managing Director and the Deputy Managing Director of the EFSI. The annual appropriations from the EU budget related to the guarantee fund are authorised by Parliament and the Council as part of the annual budgetary procedure.

Parliament was involved, as a co-legislator, in the adoption of the EFSI and InvestEU initiatives.

For more information on this topic, please see the website of the Committee on Economic and Monetary Affairs.

Christian Scheinert
10/2023

1.3.16. THE EUROPEAN OMBUDSMAN

The European Ombudsman conducts inquiries into cases of maladministration by European Union institutions, bodies, offices and agencies, acting on their own initiative or on the basis of complaints from EU citizens, or any natural or legal person residing or having their registered office in a Member State. The Ombudsman is elected by the European Parliament for the duration of the parliamentary term.

LEGAL BASIS

Articles 20, 24 and 228 of the Treaty on the Functioning of the European Union (TFEU) and Article 43 of the Charter of Fundamental Rights of the European Union.

The European Ombudsman's status and duties were spelt out by the European Parliament in a decision of 9 March 1994 taken after consulting the European Commission and with the approval of the Council of the European Union[1]. The European Ombudsman then adopted provisions implementing that decision. The decision was repealed and substituted by a European Parliament Regulation of 24 June 2021, following the same procedure[2]. The procedures for electing and dismissing the European Ombudsman are laid down in Rules 231 to 233 of the European Parliament's Rules of Procedure.

OBJECTIVES

Established by the Maastricht Treaty (1992), the European Ombudsman is a body that aims to:

— Improve the protection of citizens or any natural or legal person residing or having their registered office in a Member State in connection with cases of maladministration by European Union institutions, bodies, offices or agencies; and

— Thereby enhance openness and democratic accountability in the decision-making and administration of the EU's institutions.

A. Status

1. Election

a. Requirements

The European Ombudsman must be chosen from persons who:

— Are citizens of the EU;

— Have full civil and political rights;

— Offer every guarantee of independence;

[1]OJ L 113, 4.5.1994, p. 15 – amended by the European Parliament decisions of 14 March 2002 (OJ L 92, 9.4.2002, p. 13) and of 18 June 2008 (OJ L 189, 17.7.2008, p. 25).
[2]Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom (OJ L 253, 16.7.2021, p. 1).

— Meet the conditions required for the exercise of the highest judicial office in their country or have the acknowledged competence and qualifications to undertake the duties of the European Ombudsman;

— Have not been members of national governments or members of the European Parliament, the European Council or the European Commission within the two years preceding the date of publication of the call for nominations.

b. Procedure

At the start of each parliamentary term or in the event of the death, resignation or dismissal of the European Ombudsman, the President of the European Parliament calls for nominations for the office of European Ombudsman and sets a time limit for their submission. Nominations must have the support of at least 40 Members of the European Parliament from at least two Member States. Nominations are submitted to the European Parliament's Committee on Petitions, which considers their admissibility. The committee may ask to hear the nominees. A list of admissible candidates is then put to the vote in the European Parliament. The European Ombudsman is elected by a majority of the votes cast.

2. Term of office

a. Length

The European Ombudsman is elected by the European Parliament after each European election for the duration of its legislature. They may be re-elected.

b. Obligations

During the term of office, the European Ombudsman must:

— Be completely independent and impartial in the exercise of their duties;

— Not seek or take instructions from any government, institution, body, office or entity;

— Refrain from any act incompatible with their duties;

— Not engage in any other political or administrative duties, or any other occupation, whether gainful or not.

3. Dismissal

The European Ombudsman may be dismissed by the Court of Justice of the European Union (CJEU) at the request of the European Parliament if they no longer fulfil the conditions required for the exercise of their duties or are guilty of serious misconduct.

B. Role

1. Scope

The European Ombudsman deals with cases of maladministration by European Union institutions, bodies, offices or agencies.

a. The European Ombudsman may find maladministration if an institution fails to respect:

— Fundamental rights;

— Legal rules or principles;

— The principles of good administration.

The European Ombudsman's inquiries mainly concern:

— Transparency in decision-making and in lobbying/accountability;

— Access to documents;

— Culture of service;

— Respect for procedural rights;

— Proper use of discretion;

— Respect for fundamental rights;

— Recruitment;

— Good management of EU personnel issues and appointments;

— Sound financial management;

— Ethics;

— Public participation in EU decision-making.

Around one third of the inquiries the European Ombudsman carries out every year concern a lack of or refusal to provide information.

b. Exceptions

The following matters cannot be investigated:

— Action by the CJEU acting in its judicial role. The European Ombudsman's inquiries concerning the CJEU relate only to its non-judicial activities, for example tenders, contracts and staff cases;

— Complaints against local, regional or national authorities, even when these complaints refer to matters connected to the European Union;

— Actions by national courts or ombudsmen: the European Ombudsman does not serve as a court of appeal against decisions taken by these bodies;

— Any cases which have not previously been through the appropriate administrative procedures within the organisations concerned;

— Complaints against individual EU officials in relation to their conduct.

2. Referrals

The European Ombudsman conducts inquiries for which they find grounds either on their own initiative or on the basis of complaints submitted by EU citizens or any natural or legal person residing or having their registered office in a Member State, either directly or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings.

3. Powers of enquiry

The European Ombudsman can request information from:

— Institutions and bodies, which must comply and provide access to the files concerned, unless they are unable to do so on duly substantiated grounds of secrecy;

— Officials and other staff of said institutions and bodies, who are required to testify at the request of the European Ombudsman, although continuing to be bound by the rules to which they are subject;

— The Member States' authorities, which must comply unless such disclosure is prohibited by law or regulation. Even in such cases, however, the European Ombudsman can obtain the information on the understanding that it will not be passed on.

If the European Ombudsman does not obtain the assistance requested, they inform the European Parliament, which takes appropriate action. The European Ombudsman can also cooperate with their counterparts in the Member States, subject to the provisions of the national law concerned. If the information appears to relate to a matter of criminal law, however, the European Ombudsman immediately notifies the competent national authorities and the European Anti-Fraud Office (OLAF). If appropriate, the European Ombudsman may also inform the EU institution to which the official or member of staff is answerable.

4. Outcome of inquiries

Wherever possible, the European Ombudsman acts in concert with the institution or body concerned to find a solution satisfactory to the complainant. Where the European Ombudsman establishes that maladministration has occurred, their recommendations are referred to the institution or body concerned, which then has three months in which to inform the European Ombudsman of its views. If the institution does not accept the proposed recommendations, the European Ombudsman can draw up a special report for submission to the European Parliament. The European Parliament may in turn draw up a report on the special report submitted by the European Ombudsman. Finally, the European Ombudsman informs the complainant of the result of the inquiry, the opinion delivered by the institution or body concerned and any personal recommendations.

C. Administration

The European Ombudsman is assisted by a secretariat, whose staff are subject to the rules of the European civil service. The European Ombudsman appoints the head of the secretariat.

D. Activities

The first European Ombudsman, Jacob Söderman, served two terms of office, from July 1995 to 31 March 2003. During his term, the Code of Good Administrative Behaviour was approved by the European Parliament (in 2001). This is a procedural code which takes account of the principles of EU administrative law contained in the case law of the CJEU and draws inspiration from national laws. The European Ombudsman uses this code when investigating whether there has been maladministration, drawing on its provisions in their inquiries. In addition, the code acts as a guide and a resource for EU officials, encouraging the highest standards of administration.

Nikiforos Diamandouros was European Ombudsman from April 2003 to 14 March 2013, when he resigned with effect from 1 October 2013. On 11 July 2006, he submitted a proposal on adjustments to the European Ombudsman's Statute, which was supported by the European Parliament's Committee on Petitions, by the European Parliament and by the Council of the European Union. The statute was amended to strengthen

and clarify the role of the European Ombudsman, for instance in terms of access to documents and notification of information to OLAF when it might fall within its remit.

The former Irish Ombudsman, Emily O'Reilly, following her election by the European Parliament at the July 2013 part-session, took up office as European Ombudsman on 1 October 2013 and has been reconfirmed twice, following the 2014 and 2019 European elections. She has enhanced the visibility of the European Ombudsman's role by focusing on the most relevant issues for EU citizens, by ensuring that the EU delivers the highest standards of administration, transparency and ethics. She has promoted transparency in the EU decision-making process and notably in trilogues and in the Council of the European Union, as well as in relation to lobbying, expert groups, conflicts of interest, revolving doors, EU agencies (such as the European Border and Coast Guard Agency, Frontex), and international negotiations (such as the Transatlantic Trade and Investment Partnership). She has worked to improve the rules on whistleblowing, on the European Citizens' Initiative and on disabilities. She has also examined instances of maladministration in relation to the appointment of a former European Commission Secretary-General. The European Ombudsman also coordinates the European Network of Ombudsmen and since 2017 has handed out the 'Award for Good Administration' once every two years.

ROLE OF THE EUROPEAN PARLIAMENT

Although entirely independent in the exercise of their duties, the European Ombudsman is a parliamentary ombudsman. This is why Article 228 TFEU is cited in Chapter 1, which deals with the European Parliament. The European Ombudsman has very close relations with the European Parliament, which has sole power to elect and ask the Court of Justice to dismiss them, lays down rules governing the exercise of their duties, assists with investigations and receives their reports. The European Parliament's Committee on Petitions, on the basis of the Rules of Procedure (Rule 232), draws up a report every year on the annual report on the activities of the European Ombudsman. In these reports, it has repeatedly expressed full support for the work of the European Ombudsman and emphasised that the EU institutions should fully cooperate with it in order to increase the EU's transparency and accountability, notably by implementing its recommendations. On 12 February 2019, the European Parliament adopted a resolution on a draft regulation proposing an updated statute of the European Ombudsman, with the aim of strengthening its independence and powers. After obtaining the European Commission's opinion and the Council of the European Union's consent on 18 June 2021, on 24 June 2021 the European Parliament adopted the Regulation laying down the new Statute of the European Ombudsman, which codifies many of the office working practices, such as the power to launch own initiative inquiries.

Georgiana Sandu
10/2023

1.4. FINANCING

1.4.1. THE UNION'S REVENUE

The EU budget is financed in large part (over 90 %) from own resources. Annual revenue must completely cover annual expenditure. The system of own resources is decided by the Council on the basis of unanimity, having regard to the opinion of the European Parliament, and needs to be ratified by the Member States. A reform of the own resources system composed of two packages of new own resources was proposed by the Commission in 2022 and 2023.

LEGAL BASIS

— Articles 311 and 322(2) of the Treaty on the Functioning of the European Union and Articles 106a and 171 of the Treaty establishing the European Atomic Energy Community;

— Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union;

— Council Regulation (EU, Euratom) 2021/768 of 30 April 2021 laying down implementing measures for the system of own resources of the European Union, Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements, Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 on the definitive uniform arrangements for the collection of own resources accruing from value added tax, and Council Regulation (EU, Euratom) 2021/770 of 30 April 2021 on the calculation of the own resource based on plastic packaging waste that is not recycled, on the methods and procedure for making available that own resource, on the measures to meet cash requirements, and on certain aspects of the own resource based on gross national income.

OBJECTIVE

To provide the European Union with financial autonomy within the bounds of budgetary discipline.

HOW IT WORKS

The Own Resources Decision of 21 April 1970 provided the European Economic Community (EEC) with its own resources. Per Council Decision (EU, Euratom) 2020/2053 of 14 December 2020, the level of own resources that can be called on per year is currently limited to a maximum of 1.4% of EU gross national income (GNI). As overall spending cannot exceed total revenues, expenditure is also restricted by this ceiling (1.4.3). In practice, the current multiannual financial framework (MFF) 2021-2027 (1.4.3) sets the expenditure ceiling at a level equivalent to around 1.4% of EU GNI.

REVENUE COMPOSITION

1. ‘Traditional’ own resources

These consist of customs duties, agricultural duties and sugar levies collected since 1970. The percentage that may be retained by Member States to cover collection costs has been raised back up to 25% from 20%. ‘Traditional’ own resources now usually account for around 10-15% of own resource revenue[1].

2. The VAT-based own resource

This consists of the transfer of a percentage of the estimated value added tax (VAT) collected by the Member States to the Union. Although provided for in the 1970 decision, this resource was not applied until the VAT systems of the Member States were harmonised in 1979. The VAT resource now also accounts for around 10% of own resource revenue.

3. The GNI-based own resource

This own resource consists of a uniform percentage levy on Member States’ GNI set in each year’s budget procedure, and was created by Council Decision 88/376/EEC of 24 June 1988. Originally it was only to be collected if the other own resources did not fully cover expenditure, but it now finances the bulk of the EU budget. The GNI-based resource has tripled since the late 1990s, and now makes up around 60-70% of own resource revenue.

4. Plastic own resource

This is a new category of own resources introduced from 1 January 2021 by the 2020 Own Resources Decision. It is a national contribution on the basis of the quantity of non-recycled plastic packaging waste, with a uniform call rate of EUR 0.80 per kilogram. The contributions of Member States with a GNI per capita below the EU average are reduced by an annual lump sum corresponding to 3.8 kilograms of plastic waste per capita. The revenue from this resource provides around 3-4% of the EU budget.

5. Other revenue and the balance carried over from the previous year

Other revenue includes taxes paid by EU staff on their salaries, contributions from non-EU countries to EU programmes, interest payments, and fines paid by companies found in breach of EU laws. If there is a surplus, the balance from each financial year is entered in the budget for the following year as revenue. Other revenue, balances and technical adjustments usually make up around 2-8% of total revenue.

6. Correction mechanisms

The own resources system has also been used to correct budgetary imbalances between Member States’ net contributions. Although the ‘UK rebate’ introduced in 1984 no longer applies, lump sum corrections will continue to benefit Denmark, Germany, the Netherlands, Austria and Sweden over the 2021-2027 period.

7. Borrowing

The EU budget cannot run a deficit, and funding its expenditure through borrowing is not allowed. However, in order to finance the grants and loans provided by the NextGenerationEU (NGEU) recovery scheme, the Commission was authorised on an

[1] Consolidated Annual Accounts of the European Union for the Financial Year 2021.

exceptional and temporary basis to borrow up to EUR 750 billion (in 2018 prices) on capital markets. New net borrowing should stop at the end of 2026, after which only refinancing operations will be allowed. The Commission is applying a diversified borrowing strategy, combining the use of long-term bonds, green bonds and short-term bills sold by syndication and auctions, coupled with open and transparent communication via annual borrowing decisions and semi-annual funding plans.

TOWARDS THE REFORM OF EU OWN RESOURCES

The Treaty of Lisbon reiterated that the budget should be financed wholly from own resources, and maintained the power of the Council, after consulting Parliament, to unanimously adopt a decision on the system of own resources of the Union[2], to establish new categories of own resources and abolish existing ones. It also established that the Council can only adopt the implementing measures for these decisions with the consent of Parliament.

In January 2017, the high-level group created in 2014 to undertake a general review of the own resources system ('Monti group') presented its final report on more transparent, simple, fair and democratically accountable ways to finance the EU budget. The main conclusion was that the EU budget needed reform, on both the revenue and the expenditure sides, so as to be able to address current challenges and achieve tangible results for EU citizens.

Based on this report and the subsequent Reflection paper on the future of EU finances, the Commission made proposals[3] on 2 May 2018 to simplify the current VAT-based own resource and to introduce a basket of new own resources. The Commission also proposed abolishing all rebates and reducing from 20% to 10% the share of customs revenues that Member States keep as collection costs, as well as an increase in the ceiling on annual calls for own resources to take account of a smaller total GNI of the EU-27 and of the proposed integration of the European Development Fund into the EU budget.

THE EUROPEAN PARLIAMENT'S VIEWS

Building on the new provisions of the Treaty of Lisbon, Parliament has repeatedly called for an in-depth reform of the system of own resources in a number of positions and resolutions over the past years[4]. Parliament has highlighted problems with the own resources system, particularly its excessive complexity and its financial dependence on national contributions.

With a view to achieving a more stable EU budget designed to support EU policy objectives, it repeatedly called for an ambitious and balanced basket of new EU own resources that is fair, simple, transparent and fiscally neutral for citizens. Parliament also pushed for reforms to make revenue collection simpler, more transparent and

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[2]Any such decision needs to be ratified by the Member States.
[3]The Court of Auditors delivered an opinion on the proposals on 29 November 2018 (Opinion No 5/2018).
[4]Position of 17 December 2014 on the system of the European Communities' own resources; position of 16 April 2014 on the draft Council decision on the system of own resources; resolution of 6 July 2016 entitled 'the preparation of the post-electoral revision of the MFF 2014-2020: Parliament's input ahead of the Commission's proposal'; resolution of 26 October 2016 on the mid-term revision of the MFF 2014-2020; resolution of 24 October 2017 on the Reflection Paper on the Future of EU Finances; resolution of 14 March 2018 on reform of the European Union's system of own resources; resolution of 30 May 2018 on the 2021-2027 multiannual financial framework and own resources; resolution of 14 November 2018 on the Multiannual Financial Framework 2021-2027, resolution of 10 October 2019 on the 2021-2027 multiannual financial framework and own resources: time to meet citizens' expectations.

more democratic, to reduce the share of GNI contributions, to reform or scrap the VAT resource and to phase out all forms of rebate.

REFORM PROPOSALS

At the European Council meeting of 17-21 July 2020, the Heads of State or Government agreed on a new MFF, the NGEU, raising the ceiling for payments, and a new own resource based on non-recycled plastic waste to be applied from January 2021. This was based on the Commission proposal of 28 May 2020, to borrow up to EUR 750 billion by issuing bonds on the international markets on behalf of the EU with maturities of 3 to 30 years, in order to counter the effects of the COVID-19 pandemic. To underpin the liabilities incurred by the EU to eventually reimburse the market finance raised, the Commission proposed to raise the own resources ceiling exceptionally and temporarily by 0.6% of the EU's GNI on top of the proposed permanent increase from 1.2% to 1.4% of GNI in order to take account of the new economic context. .

In its resolution of 23 July 2020, Parliament stressed that only the creation of additional new own resources can help to repay the EU's debt while salvaging the EU budget and alleviating the fiscal pressure on national treasuries and EU citizens. On 16 September 2020, Parliament's opinion under the consultation procedure reiterated calls for the introduction of new own resources following a roadmap, and for the abolition of all rebates.

On 10 November 2020, Parliament, Council and Commission negotiators reached a political agreement on the MFF, own resources and certain aspects concerning the governance of the recovery instrument. A new annex to the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline, cooperation in budgetary matters and sound financial management established a roadmap for the introduction of new own resources over the 2021-2027 period. Income from new own resources should be sufficient to cover the repayment of NGEU, while any remaining revenue should fund the EU budget, in line with the principle of universality. The binding calendar required the Commission to make proposals by June 2021 for new own resources based on a carbon border adjustment mechanism, on a digital levy and on a revised ETS (to be introduced by 1 January 2023), and to make proposals by June 2024 on additional new own resources, which could include a Financial Transaction Tax and a financial contribution linked to the corporate sector (possibly a new common corporate tax base). Under the new Own Resources Decision adopted on 14 December 2020, rebates for certain Member States were maintained and the collection costs on customs duties were increased from 20% to 25%.

Following its ratification by all Member States by 31 May 2021, the Own Resources Decision has applied retroactively since 1 January 2021.

After the proposals of 14 July 2021 for the revision of the EU ETS and the introduction of a carbon border adjustment mechanism, a proposal for a next generation of EU own resources was published on 22 December 2021. It specifies that 25% of revenues from ETS allowances auctioned, 75% of the income generated by the carbon border adjustment mechanism and 15% of the share of the residual profits reallocated to EU Member States under the OECD/G20 agreement on international corporate taxation ('pillar one') would be paid into the EU budget. On 23 November 2022, Parliament

adopted amendments to the proposal, which is awaiting Council decision. Parliament also adopted a resolution on 10 May 2023 suggesting additional new own resources.

On 20 June 2023, the Commission published its proposals for a second package of own resources. This included a temporary statistical own resource, paid as a national contribution on company profits at 0.5% of the notional EU company profit base (based on the gross operating surplus for the sectors of financial and non-financial corporations, calculated by Eurostat). Eventually, this will be replaced by a genuine own resource based on corporate taxation, a contribution from a future Business in Europe: Framework for Income Taxation (BEFIT). The proposal also envisages an increase of the call rate of the ETS own resource from 25% to 30%, justified by the increasing carbon prices. The proposed package could bring in additional annual revenues of about EUR 23 billion from 2024 and EUR 36 billion from 2028, which corresponds to around 18-20% of the total revenues.

Andras Schwarcz
10/2023

1.4.2. THE EU'S EXPENDITURE

Budget expenditure is approved jointly by the Council and Parliament. The annual EU budget must respect the expenditure ceilings agreed under the multiannual financial framework (MFF) for different headings, i.e. categories of expenditure, such as those on the single market, cohesion and natural resources. Flexibility instruments ensure that the EU can react in the event of unexpected needs. The use of budgetary guarantees and financial instruments creates a leverage effect as regards EU spending. In addition to the MFF, the total EU expenditure for 2021-2027 includes the temporary recovery instrument NextGenerationEU, which will help the EU economy to recover from the COVID-19 crisis.

LEGAL BASIS

— Articles 310-325 and 352 of the Treaty on the Functioning of the European Union (TFEU) and Articles 106a, 171-182 and 203 of the Treaty establishing the European Atomic Energy Community;

— Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014 and Decision No 541/2014/EU, and repealing Regulation (EC, Euratom) No 966/2012;

— Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (the MFF Regulation);

— Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis;

— Interinstitutional Agreement (IIA) of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources.

OBJECTIVE

To finance the European Union's policies within the bounds of budgetary discipline, in line with the rules and procedures in place.

BASIC PRINCIPLES

The EU budget obeys the nine general rules of unity, budgetary accuracy, annuality[1], equilibrium, unit of account (the euro), universality, specification (each appropriation

[1]The principle that appropriations entered in the budget are authorised for a financial year running from 1 January to 31 December.

is allocated to a particular kind of expenditure), sound financial management and transparency, pursuant to Articles 6 to 38 of the Regulation on the financial rules applicable to the general budget of the EU.

The annuality rule has to be reconciled with the need to manage multiannual actions, which have grown in importance within the budget. The budget therefore includes differentiated appropriations consisting of:

— Commitment appropriations, covering the total cost during the current financial year of legal obligations contracted for activities lasting a number of years;

— Payment appropriations, covering expenditure in connection with implementing commitments contracted during the current financial year or previous ones.

The IIA of 16 December 2020 stipulates that the Commission must prepare an annual report providing an overview of the financial and budgetary consequences of various EU activities, whether financed by or outside the EU budget. This report must contain information on the assets and liabilities of the EU, various lending and borrowing operations - including the European Stability Mechanism and the European Financial Stability Facility (2.6.8) - and other possible future mechanisms. In addition, the report must include information on climate expenditure, expenditure contributing to halting and reversing the decline of biodiversity, the promotion of equality between women and men, and the implementation of the United Nations Sustainable Development Goals in all relevant EU programmes.

BUDGET STRUCTURE BASED ON THE CHARACTERISTICS OF THE APPROPRIATIONS

1. Operating expenditure/administrative expenditure/individual activity budgets

The general budget is divided into 10 sections, one for each institution. While the other institutions' sections consist essentially of administrative expenditure, the Commission section (Section III) consists of operational expenditure on finance actions and programmes, and the administrative costs of implementing them (technical assistance, agencies and human resources). In 2022, the overall administrative expenditure corresponds to 6.26% of the total budget of EUR 169.52 billion.

The Commission uses a budget nomenclature that presents resources by policy area and programme, aligning the programme areas with 'programme clusters', thus making it easier to assess the cost and effectiveness of each EU policy.

2. Multiannual financial framework (MFF) (1.4.3)

Since 1988, Community/EU expenditure has been placed in a multiannual framework, which breaks the budget down into headings corresponding to broad policy fields, with expenditure ceilings reflecting the main budgetary priorities for the period covered. The first programming period lasted five years, with the length of the subsequent and current periods being seven years. The annual budgets must respect the limits set out in the multiannual framework.

EU expenditure for 2021-2027 totals EUR 1 824.3 billion, consisting of EUR 1 074.3 billion for the MFF and EUR 750 billion for the NGEU. The MFF budget will be increased by a further EUR 11 billion thanks to the programme-specific adjustment set out in Article 5 of the MFF regulation.

The new EU budget supports modernisation through some flagship programmes such as Horizon Europe, InvestEU and the Integrated Border Management Fund, and the green and digital transitions through the Just Transition Fund and the Digital Europe programme.

Modernised agricultural policy remains the largest policy in terms of budgetary allocation, closely followed by cohesion policy, both of which have the aim of supporting the digital and green transitions. The table below provides the breakdown of the 2022 budget by policy field, as defined under the MFF for 2021-2027.

2022 EU budget: breakdown of commitment appropriations into MFF categories

MFF heading	EUR billion	%
Single Market, Innovation and Digital	21.78	12.9%
Cohesion, Resilience and Values	56.04	33.1%
Natural Resources and Environment	56.24	33.2%
Migration and Border Management	3.09	1.8%
Security and Defence	1.79	1.1%
Neighbourhood and the World	17.17	10.1%
European Public Administration	10.62	6.3%
Thematic Special Instruments	2.8	1.7%
Total	169.52	100.0%

3. Flexibility and thematic special instruments

On top of expenditure programmed in order to finance the EU's policies under multiannual programmes, some financial resources have been reserved in the EU budget for the purpose of responding to unexpected crises and situations. These special flexibility and thematic instruments may be used in the event of economic crises (e.g. EGF - the European Globalisation Adjustment Fund), natural disasters, public health crises and humanitarian emergencies (e.g. SEAR - the Solidarity and Emergency Aid Reserve) or other unexpected needs (e.g. the Flexibility Instrument) in EU Member States, candidate countries or outside the EU. Such funding allows limited exceptional financial needs to be covered.

EUROPEAN UNION RECOVERY INSTRUMENT - NEXTGENERATIONEU (NGEU)

Under this instrument, the Commission will mobilise EUR 750 billion at 2018 prices, of which up to EUR 390 billion may be used for grants and up to EUR 360 billion may be used for providing loans, on top of the long-term 2021-2027 budget, in order to help rebuild a post-COVID-19 EU. The Commission has been empowered, under Article 5(1) of the Own Resources Decision[2], to borrow funds on capital markets on behalf of the EU. The repayment of the principal of such funds to be used for expenditure (EUR 390 billion in 2018 prices) and the related interest due will have to be financed by the general budget of the EU, including by sufficient proceeds from new own resources introduced gradually from 2021. (1.4.1)

[2]Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union, OJ L 424, 15.12.2020, p. 1.

The NGEU should in particular focus on (a) restoring employment and job creation; (b) reforms and investments to reinvigorate the potential for sustainable growth and employment in order to strengthen cohesion among Member States and increase their resilience; (c) measures for businesses, especially small and medium-sized enterprises, affected by the economic impact of the COVID-19 crisis, and strengthening sustainable growth in the EU, including direct financial investment in enterprises; (d) measures for research and innovation in response to the COVID-19 crisis; (e) increasing the level of crisis preparedness and enabling a quick and effective EU response to major emergencies, including the stockpiling of essential supplies and medical equipment, and acquiring the necessary infrastructure for rapid crisis response; (f) measures to ensure that a just transition to a climate-neutral economy will not be undermined by the COVID-19 crisis; (g) measures to address the impact of the COVID-19 crisis on agriculture and rural development.

To support the Member States with investments and reforms, the new Recovery and Resilience Facility (RRF) was agreed on 12 February 2021. The facility will make EUR 672.5 billion (in 2018 prices) in loans and grants available to the Member States to be implemented through the national recovery and resilience plans (NRRPs). The plans need to contain reforms and investments covering key policy areas (six pillars[3]), advance the green and digital transitions, and address European Semester country-specific recommendations.

In the context of the Russian invasion of Ukraine, the Commission adopted the 'REPowerEU' communication on 18 May 2022, which lays down a strategy for reducing the EU's dependency on Russian energy imports. According to the Commission's assessment, such a strategy would require EUR 210 billion of additional investments for achieving its goal. With that aim, the Commission proposed, among other measures[4], to amend the RRF Regulation to reshuffle up to EUR 225 billion of the leftover loans from the RRF. These resources would be used for funding a new chapter of NRRPs identifying specific measures to diversify energy supplies and reduce dependence on fossil fuels.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament shares budgetary authority with the Council, and powers in this area were among the first to be acquired by MEPs in the 1970s (1.2.5). The budgetary powers relate to the establishment of the overall amount and distribution of annual EU expenditure, as well as the exercise of control over the implementation of the budget.

Parliament's Committee on Budgets is responsible for negotiations for the MFF and the adoption of the annual budget on behalf of Parliament and represents Parliament's views in the negotiations with the Council. It has usually been successful at reversing most of the Council's cuts and taking on board priority increases resulting from its amendments (although not always of their initial magnitude).

In the negotiations for the 2021-2027 MFF, Parliament notably defended and largely secured (a) an increase of the MFF ceiling and a reinforcement of a number of flagship

[3]Green transition; digital transformation; economic cohesion, productivity and competitiveness; social and territorial cohesion; health, economic, social and institutional resilience; policies for the next generation.
[4]REPowerEU also foresees new funding through the allocation of EUR 20 billion of emissions trading system (ETS) allowances held in the Market Stability Reserve, as well as transfers from cohesion funds (up to 12.5% of Member States' allocations) and rural development (EAFRD) transfers (also 12.5% of their allocation).

programmes; (b) a commitment to introduce new EU own resources with the aim of covering at least the costs related to the NGEU (principal and interest); (c) its role in the implementation of the Recovery Instrument, in line with the Community method; (d) the importance of the EU budget contribution to the achievement of the climate and biodiversity objectives and gender equality; (e) the introduction of the new mechanism to protect the EU budget from breaches of the principles of the rule of law (1.4.3).

Parliament has also been systematically insisting on budgetary transparency and proper scrutiny of all operations and instruments financed from the EU budget.

Parliament is the discharge authority (Article 319 of the TFEU) for which the Committee on Budgetary Control prepares all the work on political scrutiny of budgetary implementation (1.4.5). Each year, the discharge procedure reflects its conclusions at the end of a process on the way in which the Commission and other institutions and bodies have used the EU budget. It aims to verify whether implementation was carried out in accordance with relevant rules (compliance), including the principles of sound financial management (performance).

Parliament's Committee on Budgetary Control holds an annual meeting with the European Investment Bank (EIB) (1.3.15) to scrutinise its financial activities, and prepares an annual report assessing the EIB's past performance and results. Parliament's Committee on Budgets and Committee on Economic and Monetary Affairs agreed to produce an annual report assessing the EIB's current and future actions; they alternate as the lead committee. While considering that financial instruments can be a valuable tool in multiplying the impact of EU funds, Parliament has stressed that they should be implemented under strict conditions, avoiding budgetary risks. To that end, detailed rules for the use of financial instruments have been included in the Financial Regulation.

Parliament's Committee on Budgets and Committee on Economic and Monetary Affairs are jointly responsible for the scrutiny of the RRF, by means of a Working Group and bi-monthly Recovery and Resilience Dialogues with the Commission.

Francisco Padilla Olivares
03/2023

1.4.3. MULTIANNUAL FINANCIAL FRAMEWORK

There have been six multiannual financial frameworks (MFFs) to date, including 2021-2027. The Treaty of Lisbon transformed the MFF from an interinstitutional agreement into a regulation. Established for a period of at least five years, an MFF is there to ensure that the EU's expenditure develops in an orderly manner and within the limits of its own resources. It sets out provisions with which the annual budget of the EU must comply. The MFF Regulation sets expenditure ceilings for broad categories of spending called headings. After its initial proposals of 2 May 2018 and in the wake of the COVID-19 outbreak, on 27 May 2020 the Commission proposed a recovery plan (NextGenerationEU) that included revised proposals for the MFF 2021-2027 and own resources, and the setting up of a recovery instrument worth EUR 750 billion (in 2018 prices). The package was adopted on 16 December 2020 following interinstitutional negotiations. A review of the functioning of the MFF, and, as appropriate, proposals for a revision, are due by 1 January 2024, a date which Parliament has called to bring forward.

LEGAL BASIS

— Article 312 of the Treaty on the Functioning of the European Union;

— Council Regulation (EU, Euratom) No 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021-2027;

— Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis;

— Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources.

BACKGROUND

In the 1980s, a climate of conflict in relations between the institutions arose out of a growing mismatch between available resources and actual budgetary requirements. The concept of a multiannual financial perspective was developed as an attempt to lessen conflict, enhance budgetary discipline and improve implementation through better planning. The first interinstitutional agreement (IIA) to this end was concluded in 1988. It contained the financial perspective for 1988-1992 (also known as the Delors I package), which aimed to provide the resources needed for the budgetary implementation of the Single European Act. A new IIA was agreed on 29 October 1993, together with the financial perspective for 1993-1999 (the Delors II package), which enabled the Structural Funds to be doubled and the own resources (1.4.1) ceiling to be increased. The third IIA, on the financial perspective for 2000-2006, also known as Agenda 2000, was signed on 6 May 1999, and one of its main goals was to

secure the necessary resources to finance enlargement. The fourth IIA, covering the period 2007-2013, was agreed on 17 May 2006.

The Treaty of Lisbon transformed the MFF from an interinstitutional agreement into a Council regulation to be adopted unanimously, subject to the consent of the European Parliament, under a special legislative procedure. In addition to determining the 'amounts of the annual ceilings on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations', Article 312 of the Treaty on the Functioning of the European Union (TFEU) states that the MFF must also 'lay down any other provisions required for the annual budgetary procedure to run smoothly'.

The fifth MFF, covering the period 2014-2020, was the first to see a decrease in overall amounts in real terms. One of Parliament's preconditions for accepting the MFF was therefore a mandatory mid-term revision allowing a reassessment and adjustment of budgetary needs during the MFF period, if necessary. The agreement also secured, inter alia, enhanced flexibility to enable full use of the amounts planned and an understanding on the way towards a true system of own resources for the EU. A revised MFF for 2014-2020 was adopted on 20 June 2017 with additional support for migration-related measures, jobs and growth. The Flexibility Instrument and the Emergency Aid Reserve were also reinforced, allowing for further funds to be shifted between budget headings and years, in order to be able to react to unforeseen events and new priorities.

THE 2021-2027 MULTIANNUAL FINANCIAL FRAMEWORK

On 2 May 2018, the Commission presented legislative proposals for an MFF covering the years 2021 to 2027. The Commission's proposal amounted to EUR 1 134.6 billion (2018 prices) in commitment appropriations, representing 1.11% of the EU-27's GNI. It contained increases for border management, migration, security, defence, development cooperation and research, among others. Cuts were proposed in particular for cohesion and agricultural policy. The overall architecture was to be streamlined (from 58 to 37 expenditure programmes) and the Commission proposed a set of special instruments outside the MFF ceilings to improve flexibility in EU budgeting. The European Development Fund (EDF) would be integrated into the MFF. The Commission also proposed modernising the revenue side, with the introduction of several new categories of own resources.

Parliament adopted resolutions on the MFF for 2021-2027 on 14 March 2018 and 30 May 2018. On 14 November 2018, Parliament further outlined its negotiating mandate, including amendments to the MFF Regulation and IIA proposals and a complete set of figures with a breakdown by heading and by programme. It specified that the MFF ceiling for commitments should increase from 1.0% (for the EU-28) to 1.3% of EU GNI (for the EU-27), i.e. EUR 1 324 billion (2018 prices), an increase of 16.7% on the Commission proposal. Allocations for the common agricultural policy and cohesion policy should remain unchanged in real terms, while several priorities should be further reinforced, including Horizon Europe, Erasmus+ and LIFE; a new Child Guarantee (EUR 5.9 billion) and a new Energy Transition Fund (EUR 4.8 billion) should be created; financing for decentralised agencies involved in migration and border management should increase more than fourfold (to more than EUR 12 billion). The EU budget's contribution to the achievement of climate objectives should be set at a minimum of 25% of MFF expenditure for 2021-2027, be mainstreamed across

relevant policy areas, and rise to 30% no later than 2027. Mid-term revision of the MFF should be mandatory.

On 30 November 2018 and 5 December 2019, the Council published a draft 'negotiating box', also comprising horizontal and sectoral issues that were normally in the remit of expenditure programmes subject to the ordinary legislative procedure (which was criticised by Parliament)[1]. The Council was in favour of an overall MFF amount of EUR 1 087 billion in commitment appropriations, in 2018 prices (1.07% of the EU-27 GNI), well below Parliament's expectations.

On 10 October 2019 and 13 May 2020, Parliament updated its mandate following the European elections and requested that the Commission submit a proposal for an MFF contingency plan to provide a safety net to protect the beneficiaries of EU programmes in the event that the ongoing MFF needed to be extended, given the disagreement within the European Council.

Meanwhile, on 14 January 2020, the Commission had put forward a proposal for a Just Transition Fund as an additional element in the package of MFF proposals, as part of the European Green Deal.

Following the COVID-19 crisis and the serious economic effects of the necessary lockdowns, the Commission published amended proposals on 27 and 28 May 2020[2] for an MFF of EUR 1 100 billion and an additional recovery instrument, NextGenerationEU (NGEU)[3], worth EUR 750 billion (in 2018 prices), EUR 500 billion of which in the form of grants and EUR 250 billion as loans. The package involved legislative proposals for new financial instruments as well as changes to MFF programmes already on the table. The financing of the additional package was to be secured by borrowing on the financial markets. For this purpose, the Commission also modified the proposal for an Own Resources Decision to enable the borrowing of up to EUR 750 billion. Finally, the Commission package included a EUR 11.5 billion increase in the MFF 2014-2020 commitments ceiling for the year 2020, in order to begin mobilising support before the new MFF.

On 21 July 2020, the European Council adopted conclusions[4] on the recovery effort (NextGenerationEU), the 2021 2027 MFF, and own resources. The recovery effort was endorsed at EUR 750 billion for the years 2021-2023. However, the grant component was reduced from EUR 500 to 390 billion and the loan component was increased from EUR 250 to 360 billion. The European Council rejected the upward revision of the MFF ceiling for the year 2020. The overall ceiling for commitments in the 2021-2027 MFF was set at EUR 1 074.3 billion. Furthermore, the conclusions stated that a regime of conditionality to protect the budget and NGEU would be introduced. A new own resource was agreed from 1 January 2021 based on non-recycled plastic packaging waste and work towards the introduction of other own resources in the course of the 2021-2027 MFF was planned, to be used for early repayments of borrowing under the NGEU. The proposed legal basis of the NGEU was Article 122 of the TFEU, which allows the EU to establish measures appropriate to the economic situation with a qualified majority in the Council, without involving Parliament in the legislative procedure.

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[1]See, for example, paragraphs 14-16 of its resolution of 10 October 2019.
[2]The EU budget powering the recovery plan for Europe.
[3]Proposal for a Council Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic.
[4]Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – Conclusions.

Parliament immediately reacted to these conclusions in a resolution adopted on 23 July 2020, in which it called the creation of the recovery instrument a historic move, but deplored the cuts made to future-oriented programmes. It insisted that targeted increases on top of the figures proposed by the European Council must single out programmes relating to the climate, the digital transition, health, youth, culture, infrastructure, research, border management and solidarity. It reiterated, furthermore, that it would not give its consent to the MFF without an agreement on the reform of the EU's own resources system, with the aim of covering at least the costs related to the NGEU (principal and interest), so as to ensure its credibility and sustainability. Parliament also demanded, as part of the budgetary authority, to be fully involved in the recovery instrument, in line with the Community method.

Trilateral talks involving Parliament, the Council and the Commission started in August 2020 and were concluded on 10 November 2020. The Council regulation on the MFF 2021-2027 was adopted on 17 December, following Parliament's consent.

All 27 Member States ratified the Own Resources Decision by 31 May 2021, enabling the EU to begin issuing debt on the capital markets under NGEU.

A new mechanism to protect the EU budget from breaches to the principles of the rule of law, another condition set by Parliament for its consent, entered into force on 1 January 2021.

Multiannual financial framework (EU-27) (EUR million, 2018 prices)

Commitment appropriations	2021	2022	2023	2024	2025	2026	2027	Total 2021-2027
1. Single market, innovation and digital	19 712	19 666	19 133	18 633	18 518	18 646	18 473	132 781
2. Cohesion, resilience and values	49 741	51 101	52 194	53 954	55 182	56 787	58 809	377 768
2a. Economic, social and territorial cohesion	45 411	45 951	46 493	47 130	47 770	48 414	49 066	330 235
2b. Resilience and values	4 330	5 150	5 701	6 824	7 412	8 373	9 743	47 533
3. Natural resources and environment	55 242	52 214	51 489	50 617	49 719	48 932	48 161	356 374
of which: market-related expenditure and direct payments	38 564	38 115	37 604	36 983	36 373	35 772	35 183	258 594
4. Migration and border management	2 324	2 811	3 164	3 282	3 672	3 682	3 736	22 671
5. Security and defence	1 700	1 725	1 737	1 754	1 928	2 078	2 263	13 185
6. Neighbourhood and the world	15 309	15 522	14 789	14 056	13 323	12 592	12 828	98 419
7. European public administration	10 021	10 215	10 342	10 454	10 554	10 673	10 843	73 102
of which: administrative expenditure of the institutions	7 742	7 878	7 945	7 997	8 025	8 077	8 188	55 852
TOTAL COMMITMENT APPROPRIATIONS	154 049	153 254	152 848	152 750	152 896	153 390	155 113	1 074 300

TOTAL PAYMENT APPROPRIATIONS	156 557	154 822	149 936	149 936	149 936	149 936	149 936	1 061 058

The political agreement covers not only the 2021-2027 MFF, but also the future system of own resources and flanking measures for the new NGEU recovery instrument. In addition to the MFF Regulation of 17 December 2020, the compromise is reflected in an interinstitutional agreement (IIA) and a set of joint declarations.

Parliament was able to secure, in particular:

— EUR 15 billion extra compared to the July 2020 proposal, going to flagship programmes: Horizon Europe, Erasmus+, EU4Health, InvestEU, the Border Management Fund, the Neighbourhood, Development and International Cooperation Instrument (NDICI), Humanitarian Aid, Rights and Values, Creative Europe;

— A legally binding roadmap for the introduction of new EU own resources;

— A progressive increase of the overall ceiling for the 2021-2027 MFF from EUR 1 074.3 to EUR 1 085.3 billion in 2018 prices (explained below);

— A further EUR 1 billion for the Flexibility Instrument;

— A new procedural step (the 'budgetary scrutiny procedure') for the setting up of future crisis mechanisms based on Article 122 of the TFEU, with potential appreciable budgetary implications;

— Parliament's involvement in the use of NGEU external assigned revenue (EAR), a general reassessment of EAR and borrowing and lending in the next revision of the Financial Regulation, and of arrangements for cooperation in future MFF negotiations;

— An enhanced climate tracking methodology to reach the target of at least 30% of MFF/NGEU expenditure to support climate objectives[5];

— A new annual biodiversity target (7.5% in 2024 and 10% in 2026 and 2027) and the design of a methodology to measure gender expenditure;

— A reform of the collection, quality and comparability of data on beneficiaries in order to better protect the EU budget, including NGEU expenditure.

Other components of the MFF 2021-2027 corresponding to Parliament's priorities include:

— Integration of the EDF into the EU budget;

— Overall levels of funding for agriculture and cohesion of a size comparable to 2014-2020;

— Creation of the Just Transition Fund.

The main source for the increases (EUR 11 billion) come from a new mechanism linked to fines collected by the Union and result in automatic additional allocations to the programmes concerned in 2022-2027. The overall ceiling of the seven-year MFF will therefore incrementally reach EUR 1 085.3 billion in 2018 prices, i.e. EUR 2 billion higher in real terms than the equivalent 2014-2020 MFF ceiling (EUR 1 083.3 billion

[5]On 21 June 2022, the Commission published its approach to climate mainstreaming in the 2021-2027 MFF and the NGEU in a staff working document.

in 2018 prices, without the UK, with the EDF). Further top-ups (EUR 2.5 billion) come from margins left unallocated within the ceilings set by the European Council. EUR 1 billion comes from reflows from the ACP Investment Facility (EDF), to the benefit of the NDICI. EUR 0.5 billion come from decommitted appropriations in the area of research, to the benefit of Horizon Europe (Article 15(3) of the Financial Regulation).

Under the IIA, repayments and interests of recovery debt are to be financed by the EU budget under the MFF ceilings for the 2021-2027 period, 'including by sufficient proceeds from new own resources introduced after 2021'. This is without prejudice to how this matter will be addressed in future MFFs from 2028 onwards and the express aim is to preserve EU programmes and funds.

On 22 December 2021, the Commission proposed new own resources and a targeted amendment of the MFF Regulation. Parliament adopted an interim resolution concerning this amendment on 13 September 2022. The amendment is, inter alia, aimed at introducing a new mechanism that allows ceilings to automatically increase from 2025 in order to accommodate any additional revenue yielded by new own resources for the early repayment of NGEU debt.

The Commission stated that it would present a review of the functioning of the MFF by 1 January 2024[6], and, as appropriate, proposals for a revision. In its communication of 18 May 2022 on Ukraine relief and reconstruction, it stated that the 'unforeseen needs created by war in Europe are well beyond the means available in the current multiannual financial framework'.

Council Regulation (EU, Euratom) 2022/2496 amended the MFF as part of a package adopted by Parliament on 24 November 2022, under an urgency procedure. It extends the budgetary coverage currently applicable to the loans to the Member States to macro-financial assistance loans to Ukraine, for the years 2023 and 2024: in case of default, the necessary amounts would be mobilised over and above the MFF ceilings, up to the limits of the own resources ceiling (from the so-called headroom). A total of EUR 18 billion in macro-financial assistance is due to be provided to Ukraine in 2023.

On 19 May 2022, Parliament requested 'a legislative proposal for a comprehensive MFF revision as soon as possible and no later than the first quarter of 2023'. To set the agenda, on 15 December 2022 Parliament adopted a resolution on 'Upscaling the 2021-2027 Multiannual Financial Framework: a resilient EU budget fit for new challenges', setting out its key demands:

— Sufficient flexibility and crisis response capacity,

— Extra resources to fund new policy ambitions or make up for existing under-financing,

— Placing NGEU debt repayment over and above the spending ceilings to reduce pressure from increasing interest rates, safeguard programmes and create space for the budget to respond where needed.

For more information on this topic, please see the website of the Committee on Budgets.

Alix Delasnerie

[6]This was confirmed in the State of the Union 2022 letter of intent of 14 September 2022 addressed by the Commission to Parliament and the Council.

04/2023

1.4.4. IMPLEMENTATION OF THE BUDGET

The Commission is responsible for implementing the budget in cooperation with the Member States, subject to political scrutiny by the European Parliament.

LEGAL BASIS

— Articles 290, 291, 317, 318, 319, 321, 322 and 323 of the Treaty on the Functioning of the European Union (TFEU) and Article 179 of the Euratom Treaty;

— The Financial Regulation, i.e. Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union;

— The Interinstitutional Agreement (IIA) of 16 December 2020 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources.

OBJECTIVE

The Commission is responsible for implementing the revenue and expenditure of the budget in accordance with the Treaties and the provisions and instructions set out in the Financial Regulation, and within the limit of the appropriations authorised (1.4.3).

The Member States cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management, i.e. economy, efficiency and effectiveness.

DESCRIPTION

A. Basic mechanism

The implementation of the budget involves two main operations: commitments and payments. As regards the commitment of expenditure, a decision is taken to use a particular sum from a specific budgetary line in order to finance a specific activity. Once the corresponding legal commitments (e.g. contracts) have been established, and the relevant services, works or supplies have been performed or provided, the expenditure is authorised and the sums due are paid.

B. Methods of implementation

The Commission may implement the budget in one of the following ways:

— Directly (‘direct management’) by its departments, or through executive agencies;

— Jointly with Member States (‘shared management’);

— Indirectly (‘indirect management’), by entrusting budget implementation tasks to entities and persons, e.g. non-EU countries, international organisations and others.

In practice, some 70% of the budget is spent under 'shared management' arrangements (with Member States distributing funds and managing expenditure), around 20% under 'direct management' by the Commission or its executive agencies, and the remaining 10% under 'indirect management'[1].

The Financial Transparency System provides information on the beneficiaries of funds directly managed by the Commission. Each Member State is responsible for publishing data on the beneficiaries of the funds it administers under indirect and shared management.

Article 317 TFEU specifies that the Commission must implement the budget in cooperation with the Member States and that the regulations made pursuant to Article 322 TFEU must lay down the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities.

Furthermore, in the broader context of the implementation of EU legislation, Articles 290 and 291 TFEU set out the provisions governing the delegated and implementing powers conferred on the Commission and, in particular, the control exercised over the Commission in this regard by the Member States, the Council and the European Parliament.

Under Article 290 TFEU, a legislative act may delegate to the Commission the power to adopt non-legislative acts to supplement 'certain non-essential elements of the legislative act'. Parliament and the Council have the right to revoke such delegation of powers to the Commission, or to object to it, thereby preventing it from entering into force.

Article 291 TFEU governs the implementing powers conferred on the Commission. Whereas Article 291(1) stipulates that Member States are responsible for the adoption of all measures of national law necessary to implement legally binding Union acts, Article 291(2) provides for these acts to confer implementing powers on the Commission or, in the case of Articles 24 and 26 of the Treaty on European Union (TEU), on the Council, where 'uniform conditions for implementing legally binding Union acts are needed'. Pursuant to Article 291(3) TFEU, Parliament and the Council lay down, by means of regulations, the rules concerning mechanisms for control of the Commission's exercise of implementing powers.

A new IIA 'on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources' was agreed by the institutions in 2020. Adopted in parallel to the Multiannual Financial Framework (MFF) Regulation for 2021-2027, its aim is not just to ensure the continued cooperation between institutions on budgetary matters, but also to improve the Union's annual budgetary procedure and, through a roadmap set out in an annex, facilitate the introduction of new own resources for the EU under this MFF.

Article 291 TFEU is supplemented by Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. This control is exercised through committees composed of representatives of the Member States and chaired by a representative of the Commission. The regulation lays down two new types of procedure, applicable

[1]Data for 2021-2027 provided by the Commission's Directorate-General for Budget.

depending on the scope of the act in question: under the examination procedure, the Commission cannot adopt the measure if the committee has delivered a negative opinion; under the advisory procedure, the Commission is obliged to take 'utmost account' of the committee's conclusions, but is not bound by the opinion.

Member States which implement the budget incorrectly are penalised under the clearance-of-accounts procedure and in the context of eligibility checks: following audits carried out by the Commission and the Court of Auditors, the revenue that national governments receive from the EU budget is offset by a request for repayment of funds unduly allocated. Decisions concerning such corrections are taken by the Commission in accordance with the aforementioned procedures for the exercise of implementing powers (1.4.5).

The implementation of the budget in particular sectors has repeatedly been the subject of criticism by the Court of Auditors (1.3.12).

C. Implementation rules

The Financial Regulation sets out all the principles and rules governing the implementation of the budget. It is horizontal in scope, being applicable to all areas of expenditure and all revenue. Further rules applicable to the implementation of the budget are to be found in sector-based regulations covering particular EU policies.

The first Financial Regulation was adopted on 21 December 1977. In September 2016, the Commission submitted a proposal for a new Financial Regulation to replace the previous one (together with its rules of application), as well as amend 14 other sectoral regulations and a decision, each of these also containing financial rules. The stated objectives of the proposal were to have a single rule book, to simplify EU financial rules and to make them more flexible. The Committee on Budgets and the Committee on Budgetary Control were to be the committees responsible in Parliament. The legislative process ran until July 2018, when Parliament adopted the agreed text in plenary[2]. The Financial Regulation was then published in the Official Journal on 30 July 2018 and entered into force on 2 August 2018. However, most of the provisions of the new Financial Regulation concerning the implementation of the European institutions' administrative appropriations did not enter into force until 1 January 2019[3].

The Commission's main tool for implementing the budget, and for monitoring its execution, is its computerised accounting system ABAC (accruals-based accounting). The Commission has taken action to meet the highest international accounting standards, in particular the International Public Sector Accounting Standards (IPSAS) established by the International Federation of Accountants (IFAC). An important aspect of budgetary implementation is compliance with EU legislation applicable to public procurement contracts (supply, works and services 2.1.10). In addition, the Early Detection and Exclusion System (EDES) enhances the protection of the Union's financial interests. It makes for the early detection of unreliable persons and entities applying for EU funds or having entered into legal commitments with the Commission or other institutions and provides for their exclusion from procedures and the imposition of financial penalties on them[4].

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[2]The Council adopted the act that same month.
[3]Article 282(3)(c) of the new Financial Regulation.
[4]It is governed by the Financial Regulation and is consistent with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the EU institutions, bodies, offices and agencies and on the free movement of such data.

ROLE OF THE EUROPEAN PARLIAMENT

Firstly, as one of the two arms of the budgetary authority, Parliament has 'prior' influence on the implementation of the EU budget by means of amendments made and decisions taken in the context of the budgetary procedure (1.2.5) to allocate funds. Parliament may decide to make use of the budget reserve mechanism, whereby, if it has doubts regarding the justification of expenditure or the Commission's ability to implement it, Parliament may decide to place the funds requested in the reserve until the Commission provides appropriate evidence. The evidence in question is provided as part of a request to transfer funds from the reserve. Both Parliament and the Council are required to approve proposals for transfers. Appropriations cannot be implemented until they have been transferred from the reserve to the relevant budget line.

Secondly, the discharge procedure (1.4.5) enables Parliament to control the implementation of the current budget. Although most questions raised concern the discharge period, many of the questions put to the Commission by Parliament's Committee on Budgetary Control – as part of the discharge procedure – refer to the implementation of the current budget. The discharge resolution, which is an integral part of the discharge decision, sets out requirements and recommendations addressed to the Commission and other bodies involved in the implementation of the budget.

Under the Treaty of Lisbon, Parliament along with the Council, is responsible for establishing 'the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts' (Article 322(1) TFEU).

Furthermore, in almost all policy areas, Parliament influences the implementation of the budget through its legislative and non-legislative activities, e.g. by reports and resolutions or simply by addressing oral or written questions to the Commission.

Over the past few years, Parliament has strengthened its political scrutiny over the Commission by introducing instruments which make for exchanges of information on the implementation of funds and the amount of commitments outstanding (i.e. legal commitments which have not yet been honoured by means of payment). The latter can become a problem if they accumulate over longer periods, and Parliament is therefore pushing the Commission to keep these under control.

New tools are being developed to make for better monitoring of the implementation process and to improve the value for money offered by EU programmes. For this purpose, Parliament calls for high-quality Activity Statements (to be prepared by the Commission in the context of its working documents on the preliminary draft general budget) and the regular submission of cost-effectiveness analyses for EU programmes.

For more information on this topic, please see the website of the Committee on Budgets.

Stefan Schulz
04/2023

1.4.5. BUDGETARY CONTROL

Each EU institution and the Member States scrutinise the EU budget. The European Court of Auditors and the European Parliament perform detailed checks at various levels. Each year, Parliament scrutinises the implementation of the budget with a view to granting discharge to the Commission, the other EU institutions and the decentralised EU agencies.

LEGAL BASIS

— Articles 287, 317, 318, 319, 322 and 325 of the Treaty on the Functioning of the European Union (TFEU);

— Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014 and (EU) No 283/2014 and Decision No 541/2014/EU, and repealing Regulation (EU, Euratom) No 966/2012 (see in particular Title II, Chapter 7, on the principle of sound financial management and performance, and Title XIV, on external audit and the discharge);

— Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources, Part III;

— Rules of Procedure of the European Parliament, Title II, Chapter 6, Rules 99, 100 and 104; Title V, Chapter 2, Rule 134; Annex V.

OBJECTIVES

Ensuring the legality, accuracy and sound financial management of budget operations and financial control systems, as well as the sound financial management of the EU budget (economy, efficiency and effectiveness), and, with regard to the role of the European Court of Auditors and the European Parliament, ensuring that these objectives are achieved (performance criteria).

ACHIEVEMENTS

A. Control at national level

Initial control of revenue and expenditure is carried out to a large extent by national authorities. They have kept their powers, particularly on traditional own resources (1.4.1), an area in which they can carry out the procedures required to collect and verify the amounts concerned. Budgetary control is also exercised by combating irregularities and fraud (1.4.6). The operational expenditure of instruments falling under shared management, such as the European Regional Development Fund, the European Social Fund (which together make up the Structural Funds), as well as the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural

Development (EAFRD) is also scrutinised in the first instance by the Member State authorities.

B. Control at EU level

1. Internal

In each institution, control is exercised by authorising officers and accountants and then by the institution's internal auditor.

2. External: by the European Court of Auditors (1.3.12)

External control is carried out by national audit institutions and by the European Court of Auditors (ECA), which submits detailed reports each year to the budgetary authority in accordance with Article 287 of the TFEU, i.e.:

— The 'statement of assurance as to the reliability of accounts and the legality and regularity of the underlying transactions' (known as the DAS);

— The annual report on the implementation of the general budget, including the budgets of all the institutions and satellite bodies;

— Specific annual reports on the EU agencies and bodies;

— Special reports on specific issues (performance and compliance audits);

— Opinions (on new or amended laws that have a significant impact on the EU's financial management);

— Reviews that cover policies and management topics, analyse areas or issues not yet audited or establish a factual basis on certain topics;

— In a two-year pilot project, the ECA published a report on the overall performance of the EU budget for the 2019 and 2020 discharge procedures respectively.

The ECA also regularly draws up reports on borrowing and lending operations and the European Development Fund (EDF), which has been integrated into the EU budget with the 2021-2027 MFF.

3. Control at political level: by the European Parliament

Within the European Parliament, the Committee on Budgetary Control is responsible for preparing Parliament's position and in particular for:

— Scrutinising implementation of the EU budget and of the EDF (up to and including 2020);

— Preparing the decisions on discharge, including the internal discharge procedure;

— Closing, presenting and auditing the accounts and balance sheets of the EU, its institutions and any bodies financed by it;

— Scrutinising the financial activities of the European Investment Bank (1.3.15);

— Monitoring the cost-effectiveness of the various forms of EU funding in connection with the implementation of EU policies;

— Appointing members of the ECA, considering its reports;

— Looking into fraud and irregularities in connection with implementation of the EU budget, adopting measures to prevent fraud and irregularities and bring prosecutions in such cases, and protecting the EU's financial interests in general.

THE DISCHARGE PROCEDURE

Once a year, on a recommendation from the Council, Parliament grants discharge to the Commission in respect of the implementation of the budget for the year n-2, after having examined the activity reports of the Commission's DGs, the Commission's annual management and performance report, the evaluation report (Article 318 of the TFEU), the ECA's annual report and the replies from the Commission and the other institutions to Parliament's questions (Article 319 of the TFEU). The Committee on Budgetary Control prepares Parliament's stance on the ECA's special reports, often in the form of working papers to guide the general rapporteur on the discharge. The Commission and the other institutions are required to act on the observations made by Parliament in its discharge resolutions (Article 319(3) of the TFEU and Article 262 of the Financial Regulation). Parliament also grants discharge annually to the other institutions and to the decentralised agencies. Parliament's discharge decision and resolution concerning the implementation of the EU general budget, Section I — European Parliament, are addressed to the President of Parliament.

As a general rule, Parliament considers the discharge reports at a part-session before 15 May (Article 260 of the Financial Regulation). Thus, other than in exceptional circumstances, the votes on granting discharge are taken at the May part-session or, in the event of a postponement, at the October part-session. If a proposal to grant discharge is not carried by a majority, or if Parliament decides to postpone its discharge decision, Parliament informs the institutions or agencies concerned of the reasons. The latter are required to act without delay to remove the obstacles to a discharge decision. The Committee on Budgetary Control then submits a fresh report, within six months, containing a fresh proposal to grant or refuse discharge.

ROLE OF THE EUROPEAN PARLIAMENT

A. Development of powers

From 1958 to 1970, Parliament was kept informed of decisions on discharge given by the Council to the Commission in respect of its implementation of the budget. In 1971, it secured the power to grant discharge together with the Council. Since 1 June 1977, when the Treaty of 22 July 1975 entered into force, it alone has the power to grant discharge, once the Council has given its recommendation. Through its relevant committees, Parliament also holds hearings of Commissioners-designate, and the Committee on Budgetary Control holds hearings for Members-designate of the ECA, the candidates shortlisted for the post of Director-General of the European Anti-Fraud Office (OLAF) and the members of the OLAF Supervisory Committee. These posts cannot be filled until the hearings have been held. It should be noted, lastly, that the Director-General of OLAF is appointed by the Commission, after consulting Parliament and the Council, and that the members of the OLAF Supervisory Committee are appointed by common accord by Parliament, the Council and the Commission.

B. Use of the discharge

Parliament may decide to postpone discharge where it is dissatisfied with particular aspects of the Commission's management of the budget. Refusing to grant discharge can be regarded as tantamount to requiring the Commission to resign. This threat was put into effect in December 1998: following a vote in plenary to reject the discharge motion, a group of five independent experts was established, which reported on

accusations of fraud, mismanagement and nepotism against the Commission. The Commissioners then resigned *en bloc* on 16 March 1999.

With regard to the implementation of the EU general budget by the Commission, Parliament introduced two new features during the discharge procedures for 2011 and 2012: verification of the lawfulness and regularity of expenditure, which go hand in hand with a performance evaluation (Article 318 of the TFEU); an evaluation report on the EU#s finances based on the results achieved, and the provision stipulating that a discharge decision may be 'counterbalanced# by reservations concerning particular policy areas. In the discharge procedure for 2019, for the first time in four years the ECA had to issue an adverse opinion on the legality and regularity of the expenditure underlying the accounts. However, in its first report on the overall performance of the EU budget, the ECA found that satisfactory procedures were in place. Parliament upheld the ECA's suggestion that the Commission's information quality should be further improved, and emphasised that result and impact indicators are better suited for performance measurement than input and output indicators.

Although the Treaty refers only to discharge for the Commission, for reasons of transparency and democratic oversight Parliament also grants separate discharge to the other institutions and bodies and to each agency or similar entity (discharge provisions for the decentralised agencies and public-private partnerships are set out in their Founding Regulations). Parliament has been refusing to grant discharge to the Secretary-General of the Council since 2009, due to the Council's lack of cooperation in the discharge procedure.

During the 2019 discharge procedure, Parliament also examined shortcomings in the European Border and Coast Guard Agency's (Frontex) budgetary and finance management, and found the agency's explanations insufficient. Parliament decided to postpone Frontex's discharge from spring 2021 to 21 October 2021, when the plenary voted in favour of granting the agency discharge, but put EUR 90 million – or around 12% of the agency's total budget – under reserve. These funds can only be released if Frontex fulfils certain conditions, namely recruiting 20 missing fundamental rights monitors and three deputy executive directors who must be sufficiently qualified to fill these positions as well as setting up a mechanism for reporting serious incidents on the EU's external borders and a functioning fundamental rights monitoring system. During the subsequent discharge procedure (for the 2020 budget) Parliament postponed its decision on Frontex's accounts because it felt that Frontex had not met the conditions Parliament had set in October 2021. Additionally, the agency still had to address the findings of an EU Anti-Fraud Office (OLAF) investigation into harassment, misconduct and migrant pushbacks, and to report on its progress to Parliament.

As stated above, the Commission, the other institutions and the decentralised agencies must report on the action taken on the observations made by Parliament in discharge resolutions. Member States must inform the Commission of the measures they have taken in response to Parliament's observations, and the Commission must take them into account in its own follow-up report (Article 262 of the Financial Regulation).

Parliament's specialised committees also help to ensure that EU funds are spent efficiently in the best interests of the EU taxpayer. The members of the Committee on Budgetary Control have, on a number of occasions, held discussions with representatives of the equivalent committees in Member State parliaments, with national audit authorities and with representatives of customs agencies.

The Treaty of Lisbon bolsters the control arrangements, focusing on the results achieved by EU programmes and requires the Commission, as part of the annual discharge procedure, to submit to Parliament and the Council, taking account of the recommendations they have made, a comprehensive evaluation report.

For more information on this topic, please see the website of the Committee on Budgetary Control.

Diána Haase
10/2023

1.4.6. COMBATING FRAUD AND PROTECTING THE EU'S FINANCIAL INTERESTS

The European Union's action in the field of budgetary control is based on two principles: on the one hand, ensuring that the EU's budget is properly spent and, on the other, protecting the Union's financial interests and combating fraud. The European Anti-Fraud Office (OLAF) has the power to investigate fraud against the EU budget, corruption and serious misconduct and develops anti-fraud policy. The European Public Prosecutor's Office (EPPO) investigates, prosecutes and brings to justice crimes against the EU budget.

LEGAL BASIS

— Articles 310(6) and 325 of the Treaty on the Functioning of the European Union (TFEU) on combating fraud;

— Article 287 TFEU on the European Court of Auditors;

— Article 86 TFEU on the establishment of a European Public Prosecutor's Office;

— Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, Titles XIII and XIV;

— Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources, Part III;

— Rules of Procedure of the European Parliament, Title II, Chapter 6, Rules 92, 93 and 94; Title V, Chapter 1, Rule 129, Chapter 2, Rule 134 and Chapter 4, Rule 142; Annex V.

OBJECTIVES

For citizens to be confident that their money is being used properly, the European Union, together with its Member States, needs to protect the financial interests of the Union. It is also important to monitor and supervise the work of OLAF and the EPPO and to support their actions to combat fraud and irregularities in the implementation of the EU budget.

BACKGROUND

The fight against fraud and corruption and the protection of the EU's financial interests was formalised with the creation of the Anti-Fraud Coordination Unit task force in 1988. The Convention on the protection of the European Communities' financial interests was introduced by the Council Act of 26 July 1995. OLAF was established in 1999. Council

Regulation (EU) 2017/1939 of 12 October 2017 established the EPPO, which became operational in June 2021.

In recent years, the number of legislative texts and recommendations on the protection of the EU's financial interests has grown. These texts in essence seek to achieve the following objectives:

— Guaranteeing the protection of financial interests by means of criminal law and administrative investigations, through an integrated policy to safeguard taxpayers' money and through the Commission's anti-fraud strategy;

— Improving OLAF's governance and strengthening procedural safeguards in investigations;

— Supporting the EPPO;

— Reforming Eurojust and improving the protection of the EU's financial interests.

LEGISLATION

A. Strengthening anti-fraud mechanisms

In 2004, the first Hercule programme was introduced with the aim of protecting the EU's financial interests by combating irregularities, fraud and corruption affecting the EU budget. Hercule I was succeeded by Hercule II (2007-2013) and Hercule III (2014-2020). All Hercule programmes were administered by OLAF. In the context of the multiannual financial framework (2021-2027), a new EU anti-fraud programme was introduced. It is designed to replicate and improve on the Hercule III programme, and combine it with the Anti-Fraud Information System (AFIS), which is the technical infrastructure for fraud-related information exchange between the national and EU administrations, and the Irregularity Management System (IMS), which is the data sharing information system for the EU institutions concerning OLAF investigations, both of which are managed by OLAF.

Parliament has supported the Commission's action plan to step up the fight against tax fraud and tax evasion, proposed as part of the package for fair and simple taxation. This would entail a strategy for improved and multidimensional cooperation and coordination among the Member States themselves, as well as between the Member States and the Commission. Particular attention should be paid to the development of mechanisms for prevention, early detection and customs transit monitoring. The Commission has introduced two new systems to combat fraud. The first is the AFIS, which supports the application of the law on customs and agricultural matters by providing tools to exchange information and assist in the operational activities. The second programme is the IMS, which is an electronic system that facilitates the reporting of irregularities in various domains. This system is provided to the Member States and the beneficiaries. The IMS is part of the AFIS and is currently used by 35 countries.

On 18 February 2020, new measures were adopted to transmit and exchange payment data in order to fight e-commerce VAT fraud, including the launch of a Central Electronic System of Payment Information (CESOP), which will, as of 2024, keep records of cross-border payment information within the EU, as well as payments to third countries or territories. This will allow tax authorities to properly monitor the correct fulfilment of VAT obligations on cross-border business-to-consumer (B2C) supplies of goods and services. In recent years, Parliament has urged the Commission to take action to ensure complete transparency for all beneficiaries of EU funds in the Member States

by publishing a list of all beneficiaries on the Commission's website. Parliament also called on the Member States to cooperate with the Commission and provide full and reliable information on the beneficiaries of the EU funds that they manage.

As of 1 January 2016, the Commission introduced the Early Detection and Exclusion System (EDES). The system is used for the protection of the EU's financial interests by detecting unreliable persons and entities applying for EU funds or having legal commitments with EU institutions, bodies, offices and agencies. Article 135 of the Financial Regulation sets out the rules for EDES.

Arachne is an IT tool used for data mining and data enrichment. It is used for administrative controls and management checks in the field of the structural funds. Arachne is able to identify project beneficiaries, contracts and contractors that might conduct fraud, conflicts of interest and other irregularities.

B. New European anti-fraud policy and programmes

In early 2019, the European Court of Auditors stressed in its Special Report No 01/2019 entitled 'Fighting fraud in EU spending: action needed' that the EU must step up its fight against fraud, and that the Commission should take a leading role in this respect and reconsider the role and responsibility of its anti-fraud office.

In April 2019, the Commission presented a new strategy (the Commission Anti-Fraud Strategy – CAFS) updating the anti-fraud strategy of 2011. The new strategy aimed at improving consistency and coordination in the fight against fraud among the Commission's various departments. This strategy should also pave the way for more data-driven anti-fraud measures in the coming years. Although the CAFS itself is still valid, the action plan accompanying it was updated in 2023 to tackle the problems related to inflation, post-pandemic recovery, climate change and the Russian war of aggression on Ukraine. The action plan now comprises 44 actions divided over seven chapters.

The introduction of the NextGenerationEU recovery plan led to a new operation to protect the EU's financial interests under the supervision of Europol. Operation Sentinel specifically targets fraud concerning COVID-19 EU recovery funds. Launched on 15 October 2021, the operation involves cooperation between Europol, the EPPO, Eurojust, OLAF and 19 Member States.

A regime of conditionality on the rule of law to protect the EU budget was introduced with the adoption of Regulation (EU, Euratom) 2020/2092. The regulation was created to tackle ongoing violations of the principles of the rule of law. It entered into force on 1 January 2021.

C. Directive on the fight against fraud and the protection of the EU's financial interests

Member States[1] were required to implement Directive (EU) 2017/1371 ('PIF Directive') on the fight against fraud to the Union's financial interests by means of criminal law transposed into their national laws.. The new rules increase the level of protection of the EU budget by harmonising the definitions, sanctions and limitation periods of criminal offences affecting the EU's financial interests.

[1]In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the TFEU, Denmark was not required to adopt this directive and is not bound by it or subject to its application.

INSTITUTIONS

A. European Anti-Fraud Office (OLAF)

OLAF functions independently of the Commission and has the power to investigate fraud against the EU budget, corruption and serious misconduct within the European institutions and develops anti-fraud policy for the Commission. Parliament, the Council and the Commission signed an interinstitutional agreement on internal investigations in 1999 to ensure that OLAF's investigations run smoothly. Some of those rules, which are now incorporated into the Staff Regulations of Officials of the European Union, require staff to cooperate with OLAF, and provide a degree of protection for officials who disclose possible fraud or corruption.

The new OLAF regulation was adopted in 2013 and amended in July 2016. The new text makes substantial improvements, which have made OLAF more effective, efficient and accountable, while safeguarding its investigative independence. In particular, it provides a clearer definition of the legal framework for anti-fraud investigations. It also includes definitions of 'irregularity', 'fraud, corruption and any other illegal activity affecting the financial interests of the Union', and the concept of an 'economic operator'. It refers to the Charter of Fundamental Rights, safeguarding the right to defence and procedural guarantees, the rights of witnesses and whistle-blowers, and the right of access to records and other relevant documentation during OLAF investigations.

The latest version of the regulation arranges OLAF investigations in the light of the establishment of the EPPO with a view to ensuring maximum complementarity and enhancing the effectiveness of OLAF's investigative functions as regards, among other matters, on-the-spot checks, inspections, assistance for national authorities, bank account information, the admissibility of evidence collected by OLAF, anti-fraud coordination services and coordination activities.

The Commission issues an annual report on the protection of the EU's financial interests (PIF Report), which provides an assessment of the achievements of the year in combating fraud and protecting the EU's financial interests.

B. European Public Prosecutor's Office (EPPO)

The rules governing the creation of the EPPO are detailed in Article 86 TFEU, which states that, 'In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust.'

The regulation establishing the EPPO was adopted under the enhanced cooperation procedure on 12 October 2017, and entered into force on 20 November 2017. Currently, there are 22 participating countries.

The EPPO is a decentralised European Union prosecution office with exclusive competence for investigating, prosecuting and bringing to justice crimes against the EU budget. It has uniform investigative powers throughout the participating Member States based on and integrated into their national law systems.

The EPPO's seat is in Luxembourg. In September 2019, Parliament and the Council agreed to appoint Laura Codruța Kövesi as the first European Chief Prosecutor. She will sit for a non-renewable term of seven years. She was sworn in before the Court of

Justice on 28 September 2020 together with the 22 European Public Prosecutors. The EPPO started operations on 1 June 2021.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament is a co-legislator for the 2021-2027 EU anti-fraud programme, which was adopted on 29 April 2021. It was also a co-legislator for the PIF Directive, which was adopted by Parliament and the Council on 5 July 2017.

Every year Parliament examines the PIF Report and comments on it by means of a resolution, the most recent one being adopted on 19 January 2023.

Parliament's Budgetary Control Committee holds hearings for Members-designate of the Court of Auditors, as well as the shortlisted candidates for the post of Director-General of OLAF. These posts cannot be filled without these parliamentary hearings.

The Director-General of OLAF is appointed by the Commission, after consultation with Parliament and the Council, while the members of the OLAF Supervisory Committee are appointed by agreement among Parliament, the Council and the Commission.

Parliament and the Council also agree on the appointment of the European Chief Prosecutor of the EPPO, the role to which Laura Codruța Kövesi was appointed on 14 October 2019.

For more information on this topic, please see the website of the Committee on Budgetary Control.

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