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## 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 The former comitology system has been replaced by new legal instruments, namely implementing and delegated acts.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')<sup>[1]</sup>.

### 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<sup>[2]</sup> 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

[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.



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.

## **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<sup>[3]</sup> 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

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



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.

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<sup>[4]</sup>).

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 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<sup>[5]</sup>. 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.

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[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

[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 Maximilian Schrems \('Schrems II'\), Case C-311/18](#) (OJ C 15, 12.1.2022, p. 176), paragraph 28.

