

The European Parliament

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The European Parliament

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SUMMARY The European Parliament is one of the main institutions of the European Union (EU) and is its only directly elected body. It has 751 members that belong to eight political groups. Members are grouped together according to political affiliation and not by nationality. Elections to the European Parliament take place every five years in all twenty-eight EU Member States. National election rules may vary, however. A reform of the electoral rules is currently underway to increase transparency, democratic legitimacy, and eliminate differences between national rules.

The role and powers of the European Parliament have changed and been expanded over time. Originally, it had mainly a consultative function and its members were appointed by the Member States. Direct elections were held for the first time in 1979. In 1992, the Maastricht Treaty created the “co-decision procedure” for some policy areas, which allowed the European Parliament to adopt legislative acts in conjunction with the Council. Subsequent treaties gave additional powers to the European Parliament, with the latest amendment, the Treaty of Lisbon in 2009, strengthening its financial, legislative, and supervisory powers. The co-decision procedure became the standard procedure for passing legislation at the EU level, with the European Parliament acting as a co-legislator on an equal footing with the Council.

I. Background

A. General History

In the aftermath of the Second World War, the governments of France, Germany, Italy, Belgium, Netherlands, and Luxembourg were looking for ways to rebuild the European economy and to further European integration in order to ensure lasting peace on the continent. In 1952, on the basis of the Schuman Declaration,¹ they created the European Coal and Steel Community (ECSC).² The ECSC was set up as a supranational organization, meaning that the national governments transferred part of their sovereign powers to it. The ECSC Treaty established a High Authority, a Common Assembly, a Special Council of Ministers, and a Court of Justice—the basis for the current institutions of the European Union (EU). The Common Assembly, however, had merely a consultative role and its members were not elected, but appointed by the respective parliaments of the Member States.³ On July 23, 2002, the ECSC Treaty expired as provided in its article 97.

¹ Schuman Declaration, May 9, 1950, https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en, archived at <http://perma.cc/6JUM-85WQ>.

² Treaty Establishing the European Coal and Steel Community (ECSC Treaty), Apr. 18, 1951, not published in the Official Journal [O.J.], <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11951K:EN:PDF>, archived at <http://perma.cc/Z65Y-8F2T>.

³ *Id.* arts. 20–25.

The common coal and steel market of the ECSC was seen as the first step towards achieving a more politically united Europe and ultimately a “European federation.”⁴ Plans for a European Defense Community (EDC)⁵ and a European Political Community (EPC)⁶ were soon presented. The French National Assembly, however, was opposed to the establishment of an EDC, in particular to a German remilitarization, and rejected the treaty in August 1954. The EDC Treaty therefore did not enter into force.⁷ As the EPC was supposed to be the institutional corollary to the EDC,⁸ both plans were abandoned.

At the Messina Conference that took place in Italy in June 1955, the process of European integration was revived. The decision⁹ to work together in the economic field and set up a “common European market, free from all customs duties and all quantitative restrictions” ultimately led to the signing of the “Treaties of Rome” on March 25, 1957. The Treaties of Rome consist of two different treaties—the Treaty establishing the European Economic Community (EEC Treaty)¹⁰ and the Treaty establishing the European Atomic Energy Community (Euratom Treaty)¹¹—and established what would later become the EU. The Euratom Treaty is still in force today, whereas the EEC Treaty has been renamed and superseded by subsequent treaties. The EEC Treaty is now called the Treaty on the Functioning of the European Union (TFEU).¹²

The Euratom Treaty, which is focused on the atomic energy sector, set up a legal framework to coordinate Member States’ research programs on the peaceful use of nuclear energy in order to

⁴ Schuman Declaration, *supra* note 1.

⁵ Treaty Constituting the European Defense Community, May 27, 1957, available at <http://aei.pitt.edu/5201/1/5201.pdf>, archived at <http://perma.cc/6J4M-Z5ZU>.

⁶ Draft Treaty Embodying the Statute of the European Community, Mar. 10, 1953, doc. 10, p. 52, available at http://aei.pitt.edu/991/1/political_union_draft_treaty_1.pdf, archived at <http://perma.cc/LML4-RBKS>.

⁷ GENERAL SECRETARIAT OF THE COUNCIL, A UNION OF LAW: FROM PARIS TO LISBON. TRACING THE TREATIES OF THE EUROPEAN UNION 6 (2012), <http://www.consilium.europa.eu/media/30388/qc3111407enc.pdf>, archived at <http://perma.cc/62AZ-9DSV>.

⁸ EDC Treaty art. 38.

⁹ Resolution Adopted by the Ministers of Foreign Affairs of the Member States of the E.C.S.C. at Their Meeting at Messina, June 1 to 3, 1955, available at https://www.cvce.eu/content/publication/1999/1/1/d1086bae-0c13-4a00-8608-73c75ce54fad/publishable_en.pdf, archived at <http://perma.cc/6KWB-FPQ4>.

¹⁰ Treaty Establishing the European Economic Community (EEC Treaty), Mar. 25, 1957, not published in O.J., <http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:11957E/TXT&from=EN> (in French), archived at <http://perma.cc/4DSP-NQWL>, unofficial English translation available at https://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_3_antlasmalar/1_3_1_kurucu_antlasmalar/1957_treaty_establishing_eec.pdf, archived at <http://perma.cc/A6T3-QHLY>.

¹¹ Consolidated Version of the Treaty Establishing the European Atomic Energy Community (Euratom Treaty), 2016 O.J. (C 203) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:203:FULL&from=EN>, archived at <http://perma.cc/HN4M-ATUG>.

¹² Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), 2016 O.J. (C 202) 47, http://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_3&format=PDF, archived at <http://perma.cc/8TVM-PUJW>.

develop Europe's nuclear industries and to ensure the supply of nuclear energy.¹³ The EEC Treaty set up a Common Market in which “the free movement of goods, persons, services and capital is ensured”¹⁴ and a customs union with a common trade policy among the Member States.

The institutions that were established to achieve the tasks of the EEC were a Parliamentary Assembly (now called the European Parliament), the Council, the Commission, and the Court of Justice.¹⁵ The Parliamentary Assembly, however, had mainly a consultative function and its members were appointed by the Member States.¹⁶ Decisions were taken by the Council on a proposal from the Commission.¹⁷ The Council is made up of government ministers from each EU country.¹⁸ The Commission is the executive body of the EU and is made up of one commissioner from each Member State.¹⁹ The EEC Treaty included a provision that called upon the Assembly to draw up proposals for elections of the members of the Assembly by direct universal suffrage.²⁰ That provision was not implemented until 1979.

The role of the European Parliament has been expanded over time in order to address the “democratic deficit” of the EU. The term “democratic deficit” is used to describe the perceived lack of democratic legitimacy of the EU institutions and its decision-making processes.²¹ One of the most important changes in this regard was implemented by the Treaty on European Union (Treaty of Maastricht) in 1992.²² The Maastricht Treaty created the “co-decision procedure,” which allows the European Parliament to adopt legislative acts in conjunction with the Council. Subsequent treaties gave additional powers to the European Parliament, with the latest amendment, the Treaty of Lisbon,²³ strengthening its financial, legislative, and supervisory powers.

¹³ Euratom Treaty art. 2.

¹⁴ Single European Act art. 13, 1987 O.J. (L 169) 1, http://eur-lex.europa.eu/resource.html?uri=cellar:a519205f-924a-4978-96a2-b9af8a598b85.0004.02/DOC_1&format=PDF, archived at <http://perma.cc/MY95-HRP7>.

¹⁵ EEC Treaty art. 4.

¹⁶ *Id.* arts. 137, 138.

¹⁷ *Id.* art. 145.

¹⁸ Consolidated Version of the Treaty on European Union (TEU) art. 16, para. 2, 2016 O.J. (C 202) 13, http://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_2&format=PDF, archived at <http://perma.cc/V92F-NZZG>.

¹⁹ TEU art. 17, para. 5; European Council Decision of 22 May 2013 Concerning the Number of Members of the European Commission art. 1, 2013 O.J. (L 165) 98, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D0272&from=EN>, archived at <http://perma.cc/9JZ9-5AV9>.

²⁰ EEC Treaty art. 138, para. 3.

²¹ *Glossary of Summaries, Democratic Deficit*, EUR-LEX, http://eur-lex.europa.eu/summary/glossary/democratic_deficit.html (last visited Jan. 25, 2018), archived at <http://perma.cc/XX64-2SDU>.

²² Treaty on European Union (Treaty of Maastricht), 1992 O.J. (C 191) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11992M/TXT&from=EN>, archived at <http://perma.cc/UD26-HJ4W>.

²³ Treaty of Lisbon, 2007 O.J. (C 306) 1, http://publications.europa.eu/resource/cellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0007.01/DOC_19.

B. Physical Location of the Parliament

The European Parliament is located in Brussels, Belgium; Strasbourg, France; and Luxembourg City, Luxembourg. The official seat of the Parliament is in Strasbourg where the twelve main plenary sessions are held. Additional plenary sessions and committee meetings are held in Brussels. The General Secretariat of the European Parliament and its departments are located in Luxembourg.²⁴

II. Constitutional Status and Role

The European Union is currently made up of twenty-eight Member States.²⁵ Although the Member States remain independent, sovereign states, they have transferred some of their sovereign powers to the institutions of the EU. The EU is therefore described as a supranational organization—not a fully federal system like the United States, but also not a loose intergovernmental cooperation like the United Nations.

The European Parliament is one of the main institutions of the EU.²⁶ It exercises legislative and budgetary functions together with the Council, as well as supervisory and consultative functions.²⁷ Most laws are adopted jointly by the European Parliament and the Council in the ordinary legislative procedure.²⁸ The Parliament also shares the power to decide on the entire annual budget of the EU with the Council and supervises the implementation of the budget by the Commission.²⁹

In addition to supervising the implementation of the budget by the Commission, the European Parliament is also in charge of generally supervising the work of the Commission.³⁰ The Commission regularly submits reports to the European Parliament and is required to reply to oral and written questions from Members of Parliament.³¹ The European Parliament can censure the Commission and ultimately dismiss it.³²

²⁴ Protocol No. 6 on the Location of the Seats of the Institutions and of Certain Bodies, Offices, Agencies and Departments of the European Union art. 1(b), 2016 O.J. (C 202) 265, http://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_4&format=PDF, archived at <http://perma.cc/39U6-93KA>.

²⁵ A list of the Member States is available on the website of the EU. *EU Member Countries in Brief*, EU, https://europa.eu/european-union/about-eu/countries/member-countries_en (last updated Jan. 25, 2018), archived at <http://perma.cc/VE4P-44TW>.

²⁶ TEU art. 13.

²⁷ *Id.* art. 14, para. 1.

²⁸ More on the ordinary legislative procedure in Part V(C)(1), below.

²⁹ TFEU arts. 310, 314, 318, 319.

³⁰ TEU art. 17, para. 8.

³¹ TFEU arts. 230, 233.

³² TEU art. 17, para. 8; TFEU art. 234.

Furthermore, it has the right to elect the President of the European Commission.³³ The European Council³⁴ nominates a person for President of the Commission, taking into account the results of the European elections.³⁵ The candidate that receives a qualified majority in the European Parliament, meaning at least 376 out of 751 votes, will be elected.³⁶ If no candidate receives the required majority, the European Council must propose a new candidate within one month.³⁷

The other members of the Commission are subject as a body to a vote of consent by the European Parliament.³⁸ For this purpose, the Commissioners-designate appear before the appropriate parliamentary committees according to their prospective fields of responsibility.³⁹ The committees draw up letters of evaluation and forward them to the President of the European Parliament.⁴⁰

The Parliament also elects the European Ombudsman, who investigates complaints from EU citizens about maladministration in EU institutions and bodies.⁴¹ It must be consulted before the President, Vice-President, and Executive Board of the European Central Bank (ECB) are appointed by the European Council⁴² and before the members of the Court of Auditors are appointed by the Council.⁴³

The European Parliament may ask the Court of Justice of the EU to review the legality of acts of bodies, offices, or agencies of the EU.⁴⁴

The European Parliament and the Council may also establish specialized courts attached to the General Court⁴⁵ to hear and determine at the first instance certain classes of actions or proceedings

³³ TEU art. 14, para. 1.

³⁴ The European Council consists of the heads of state or government of the EU Member States. It defines the general political direction and priorities of the EU. *See* TEU art. 15, para. 2.

³⁵ *Id.* art. 17, para. 7.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Rules of Procedure of the European Parliament, rule 118, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+RULES-EP+20170116+0+DOC+PDF+V0//EN&language=EN>, archived at <http://perma.cc/DS33-M9NW>.

⁴⁰ *Id.* annex VI, art. 4.

⁴¹ TFEU art. 228.

⁴² *Id.* art. 283.

⁴³ *Id.* art. 286, para. 2.

⁴⁴ *Id.* art. 263.

⁴⁵ The General Court is one of the two components of the Court of Justice of the European Union (CJEU), the other component being the Court of Justice (ECJ). The General Court deals primarily with competition law, state aid, trade, agriculture, and trademarks. *See Court of Justice of the European Union (CJEU)*, EU, https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en (last updated Jan. 25, 2018), archived at <http://perma.cc/3AE8-7U6G>.

brought in specific areas.⁴⁶ As an example, in 2004, the Civil Service Tribunal was established to determine disputes between the EU and its staff. However, it ceased operations on September 1, 2016, after its jurisdiction was transferred to the General Court.⁴⁷

III. Structure and Composition

A. Members

The number of Members of the European Parliament (MEPs) is capped at 751. The minimum number of members per Member State is six, whereas the maximum number is set at ninety-six seats. Seats are allocated on the basis of the population of each Member State according to the principle of “degressive proportionality.”⁴⁸ “Degressive proportionality” means that while larger Member States receive more total seats, MEPs from larger Member States represent more citizens than MEPs from smaller Member States. Larger Member States thereby agree to be underrepresented in the interests of solidarity with smaller Member States.⁴⁹

The number of MEPs varies with each parliamentary term depending on changes in the number of Member States and demographic trends in their population. For the 2014–2019 parliamentary term, Malta, Luxembourg, Cyprus, and Estonia each have the minimum number of six seats, whereas Germany is the only Member State with the maximum number of ninety-six seats.⁵⁰ The United Kingdom (UK) currently holds seventy-three seats, which will be vacated after the impending EU exit (“Brexit”). The European Parliament’s Constitutional Affairs Committee has adopted a proposal that would reduce the total number of seats after Brexit to 705, redistribute twenty-seven of the UK seats among slightly underrepresented EU countries, and make the other forty-six seats available for a pan-European list or for new countries joining the EU.⁵¹ In a next step, the proposal must be voted on by the full European Parliament and the European Council.⁵²

⁴⁶ TFEU art. 257.

⁴⁷ *Civil Service Tribunal: Presentation*, CURIA, https://curia.europa.eu/jcms/jcms/T5_5230/en/ (last visited Jan. 31, 2018), archived at <http://perma.cc/9LW8-A6Q9>.

⁴⁸ TEU art. 14, para. 2.

⁴⁹ Composition of the European Parliament. European Parliament Resolution of 11 October 2007 on the Composition of the European Parliament (2007/2169(INI)) no. 5, 2008 O.J. (C 227E) 132, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CE.2008.227.01.0013.01.ENG&toc=OJ:C:2008:227E:TOC#CE2008227EN.01013201>, archived at <http://perma.cc/5W3N-KCQC>.

⁵⁰ European Council Decision of 28 June 2013 Establishing the Composition of the European Parliament, Decision 2013/312/EU, 2013 O.J. (L 181) 57, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D0312&from=EN>, archived at <http://perma.cc/MB56-BCHN>.

⁵¹ Press Release, European Parliament, EU Elections 2019: MEPs Pave Way for Pan-European Constituency Post Brexit (Jan. 23, 2018), <http://www.europarl.europa.eu/news/en/press-room/20180123IPR92301>, archived at <http://perma.cc/V98C-N92G>.

⁵² TEU art. 14, para. 2.

B. Political Groups

Members of Parliament are grouped together by political affiliation and not by Member State.⁵³ They may also be registered as “unattached” (*non-inscrit*, NI).⁵⁴ A political group may only be formed, if twenty-five members that represent at least one quarter of the Member States participate.⁵⁵ MEPs cannot be member of more than one political group.⁵⁶ Currently, there are eight political groups in the European Parliament:

- Group of the European People’s Party (Christian Democrats) (EPP)
- Group of the Progressive Alliance of Socialists and Democrats in the EP (S&D)
- European Conservatives and Reformists Group (ECR)
- Group of the Alliance of Liberals and Democrats for Europe (ALDE)
- Confederal Group of the European United Left-United Green Left (GUE/NGL)
- Group of the Greens-European Free Alliance (Greens/EFA)
- Europe of Freedom and Direct Democracy Group (EFDD)
- Europe of Nations and Freedom Group (ENF)

The EPP holds the largest share of seats with 217 seats (28.9%), the S&D has 189 seats (25.2%), the ECR 74 seats (9.9%), ALDE 68 seats (9.1%), the GUE/NGL 52 seats (6.9%), the Greens/EFA 51 seats (6.8%), the EFDD 45 seats (6%), and the ENF 37 seats (4.9%). Eighteen seats (2.4%) are held by unaffiliated MEPs.⁵⁷

C. Committees

The European Parliament has twenty standing committees that specialize in a particular policy area.⁵⁸ The standing committees carry out the main legislative work. If a committee receives a legislative proposal, it will allocate it to a political group, which will nominate a rapporteur. The rapporteur will draw up the report on behalf of the committee.⁵⁹

⁵³ Rules of Procedure of the European Parliament, *supra* note 39, rule 32, no. 1.

⁵⁴ *Id.* rule 35.

⁵⁵ *Id.* rule 32, no. 2.

⁵⁶ *Id.* rule 32, no. 4.

⁵⁷ *MEPs: Seats*, EUROPEAN PARLIAMENT, <http://www.europarl.europa.eu/meps/en/hemicycle.html> (last visited Jan. 31, 2018), archived at <http://perma.cc/DMS7-W3WY>.

⁵⁸ A list of the standing committees is available on the website of the European Parliament. *List of Committees*, EUROPEAN PARLIAMENT, <http://www.europarl.europa.eu/committees/en/parliamentary-committees.html> (last visited Jan. 25, 2018), archived at <http://perma.cc/FU6M-2K39>. The responsibilities of the individual standing committees are defined in Annex V of the Rules of Procedure of the European Parliament, *supra* note 39.

⁵⁹ Rules of Procedure of the European Parliament, *supra* note 39, rule 49.

Temporary committees on specific issues may be set up at any time.⁶⁰ These special committees have a twelve-month mandate, with the possibility of extension.⁶¹ The chairs of the standing and special committees meet regularly in the Conference of Committee Chairs to coordinate their work, facilitate cooperation, and discuss common problems and best practices.⁶²

D. Delegations

MEPs may also join delegations that develop relations with the parliaments of non-EU countries, regions, or organizations and promote the values of the EU.⁶³ The number of members varies.⁶⁴ Currently there are forty-four standing delegations.⁶⁵

E. President of the European Parliament

The President of the European Parliament is elected for a renewable term of two-and-a-half years.⁶⁶ He chairs the plenary sittings of Parliament and applies the Rules of Procedure. In addition, he represents the European Parliament in all administrative, legal, and financial matters and in its international relations.⁶⁷

F. The Conference of Presidents

The Conference of Presidents consists of the President of the European Parliament and the Chairs of the political groups.⁶⁸ It is responsible, *inter alia*, for the organization of the European Parliament's work, legislative planning, relations with the other institutions and bodies of the EU, relations with the national parliaments of the Member States, and relations with non-member countries and non-EU institutions and organizations.⁶⁹

⁶⁰ *Id.* rule 197, no. 1.

⁶¹ *Id.* rule 197, no. 2.

⁶² *Id.* rule 29.

⁶³ Implementing Provisions Governing the Work of Delegations and Missions outside the European Union, Conference of Presidents Decision of 29 October 2015, art. 3, <http://www.europarl.europa.eu/cmsdata/123721/IMPLEMENTING-PROVISIONS-GOVERNING-WORK-DELEGATIONS-MISSIONS-OUTSIDE-EU.pdf>, archived at <http://perma.cc/3HY6-DZT7>.

⁶⁴ Rules of Procedure of the European Parliament, *supra* note 39, rule 212.

⁶⁵ The different delegations are listed on the website of the European Parliament. *Delegations: Alphabetical List of Delegations*, EUROPEAN PARLIAMENT, <http://www.europarl.europa.eu/delegations/en/list/byname> (last visited Jan. 31, 2018), archived at <http://perma.cc/CA87-BSV4>. The Delegation for Relations with the United States is one such delegation. *Id.*

⁶⁶ Rules of Procedure of the European Parliament, *supra* note 39, rule 19.

⁶⁷ *Id.* rule 22.

⁶⁸ *Id.* rule 26.

⁶⁹ *Id.* rule 27.

IV. Elections

Since 1979, members of the European Parliament have been elected by direct universal suffrage in the Member States.⁷⁰ The European Parliament is the only directly elected EU institution. Elections are held every five years.⁷¹ The current legislative term started in 2014 and will end in 2019. Every citizen of the EU residing in a Member State of which he or she is not a national has the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he/she resides, under the same conditions as nationals of that Member State.⁷²

Elections are governed by national legislation and common rules codified in the 1976 Electoral Act, as well as by the provisions on EU citizenship in the Treaties and Council Directive 93/109/EC.⁷³ A secret ballot⁷⁴ and proportional representation⁷⁵ must be guaranteed in every Member State, but the countries have leeway with regard to other requirements. Important areas in which national rules differ include minimum voting age, age to stand as a candidate, the deadline for completion of the electoral lists, thresholds for obtaining seats in the European Parliament, and the right to vote abroad.⁷⁶

In 2015, the European Parliament agreed on a reform of the Electoral Act of 1976 in order to increase transparency and democratic legitimation, and eliminate differences between national rules.⁷⁷ Article 223 of the TFEU provides that the European Parliament has the right to initiate the

⁷⁰ Act Concerning the Election of the Representatives of the Assembly by Direct Universal Suffrage (1976 Electoral Act), 1976 O.J. (L 278) 5, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41976X1008\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41976X1008(01)&from=EN), archived at <http://perma.cc/8MQ6-TH7V>, consolidated version for documentary purposes available at Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01976X1008\(01\)-20020923&qid=1516393771995&from=en](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01976X1008(01)-20020923&qid=1516393771995&from=en), archived at <http://perma.cc/F4FP-EWDT>; TEU art. 14, para. 3.

⁷¹ TEU art. 14, para. 3; Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage art. 5.

⁷² TFEU art. 20, para. 2(b).

⁷³ Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage, *supra* note 70; Council Directive 93/109/EC of 6 December 1993 Laying Down Detailed Arrangements for the Exercise of the Right to Vote and Stand as a Candidate in Elections to the European Parliament for Citizens of the Union Residing in a Member State of Which They Are Not Nationals, 1993 O.J. (L 329) 34, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31993L0109&from=EN>, archived at <http://perma.cc/4UUF-6TBS>.

⁷⁴ TEU art. 14, para. 3; Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage art. 1, para. 3.

⁷⁵ The requirement that the elections are conducted on the basis of proportional representation was introduced through an amendment in 2002. *See* Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage art. 1, para. 1.

⁷⁶ *2014 European Elections: National Rules*, EUROPEAN PARLIAMENTARY RESEARCH SERVICE (EPRS) (Apr. 10, 2014), <http://www.europarl.europa.eu/eplibrary/InfoGraphic-2014-European-elections-national-rules.pdf>, archived at <http://perma.cc/FLG8-ATJN>.

⁷⁷ European Parliament, Resolution of 11 November 2015 on the Reform of the Electoral Law of the European Union, 2015/2035(INL), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0395+0+DOC+PDF+V0//EN>, archived at <http://perma.cc/J8F9-HUD2>.

reform of its own electoral procedure, with the aim of establishing a uniform procedure in all Member States. The proposal suggests the following:

- Ballot papers used in the European elections should give equal visibility to the names and logos of national parties and the European political parties to which they are affiliated to create a clear link
- A twelve-week deadline for the completion of the national electoral lists
- Introduction of a mandatory threshold for obtaining seats in the European Parliament for bigger EU-countries, ranging between 3% and 5%
- Right to vote abroad for all EU citizens living outside the EU
- Introduction of electronic and internet voting possibilities, as well as postal voting
- Introduction of EU-wide “lead candidates” (*Spitzenkandidaten*) for the EU Commission Presidency and a common deadline of twelve weeks for their nomination by the European political parties
- Creation of a cross-border joint European constituency, in which lists are headed by each political group’s nominee for the post of president of the Commission⁷⁸

The reform is currently blocked by the Council, which has expressed criticism with regard to the “lead candidate” idea, and by certain national parliaments, which allege that the European Parliament has overreached the legal basis on which the act is to be adopted in violation of the principle of subsidiarity.⁷⁹ The principle of subsidiarity states that in policy areas in which the EU and the Member States share competences, the EU may only act if an EU objective can be better achieved at the EU level than at the national level.⁸⁰

V. Legislative Process

A. Definition of EU Law

EU law is divided into primary law and secondary law. Primary law is made up of the founding treaties, now after several amendments called the TEU and the TFEU,⁸¹ the amending EU treaties, the protocols annexed to the founding and amending treaties, as well as the accession treaties for new EU Member States (collectively, “the Treaties”).⁸² Legal acts adopted on the basis of the

⁷⁸ *Id.*

⁷⁹ *Legislative Train Schedule: Reform of the Electoral Law of the EU*, EUROPEAN PARLIAMENT, <http://www.europarl.europa.eu/legislative-train/theme-union-of-democratic-change/file-reform-of-the-electoral-law-of-the-eu> (last updated Dec. 20, 2017), archived at <http://perma.cc/JS5W-D2GW>.

⁸⁰ TEU art. 5, para. 3.

⁸¹ See TFEU, *supra* note 12, and TEU, *supra* note 18.

⁸² *Primary Law*, EUROPEAN UNION, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:114530> (last updated Aug. 12, 2010), archived at <http://perma.cc/LF39-XXEH>.

Treaties are known as secondary law.⁸³ According to article 288 of the TFEU, the EU institutions may adopt regulations, directives, decisions, recommendations, and opinions to achieve the aims set out in the Treaties.⁸⁴ Regulations, directives, and decisions are binding legislative acts, whereas recommendations and opinions are nonbinding, nonlegislative acts.⁸⁵

Regulations are directly applicable in all EU Member States once they enter into force without any national implementing legislation needed.⁸⁶

Directives on the other hand must be transposed into national law by the Member States. They are only binding with regard to the goal that the EU countries must achieve. The means are up to the individual Member States.⁸⁷ The national method of implementation must be communicated to the Commission and must take place within a deadline specified in the directive. If a Member State does not transpose the directive by the deadline or transposes it incorrectly, the Commission may initiate infringement proceedings against the Member State before the European Court of Justice (ECJ).⁸⁸

A decision is binding in its entirety on the specific addressee, which can be an EU Member State, an individual, or a company.⁸⁹ Decisions enter into force upon notification to the addressee.⁹⁰

B. Legislative Initiative

In general, new EU legislation is proposed by the Commission.⁹¹ However, the EU Parliament, acting by a majority of its MEPs, and the Council, respectively, may request the Commission to submit any appropriate legislative proposal. If the Commission refuses to submit the proposal requested, it must explain its reasons.⁹² As an exception, a proposal for a legislative act may be submitted on the initiative of a group of Member States, on a recommendation by the European Central Bank, or at the request of the ECJ if provided for in the Treaties.⁹³

⁸³ *Sources of European Union Law*, EUROPEAN UNION, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A114534> (last updated Aug. 18, 2010), archived at <http://perma.cc/9F6A-B7LD>.

⁸⁴ TFEU art. 288, para. 1.

⁸⁵ *Id.* art. 288, para. 5; art. 289, paras. 1, 3.

⁸⁶ *Id.* art. 288, para. 2.

⁸⁷ *Id.* art. 288, para. 3.

⁸⁸ *Id.* art. 258.

⁸⁹ *Id.* art. 288, para. 4.

⁹⁰ *Id.* art. 288, para. 2.

⁹¹ TEU art. 17, para. 2; TFEU art. 294, para. 2.

⁹² TFEU arts. 225, 241.

⁹³ *Id.* art. 289, para. 4; art 294, para. 15.

The Commission may alter or withdraw its proposals at any time as long as the Council has not acted, meaning as long as the Council has not adopted its position after the first reading.⁹⁴ If the Commission decides to withdraw a proposal, it must state to the European Parliament and the Council the reasons for it, including, if necessary, supporting evidence.⁹⁵ The Council may amend a Commission proposal by unanimous vote.⁹⁶

A Commission proposal is also forwarded to the national parliaments⁹⁷ and, in cases required by the Treaties, to the Economic and Social Committee and the Committee of the Regions. National parliaments have a right to verify the compatibility of a legislative proposal with the principle of subsidiarity and proportionality and may submit a reasoned opinion within eight weeks if they consider these principles violated.⁹⁸ As noted above, the principle of subsidiarity provides that in policy areas in which both the EU and the Member States may adopt legislation, the matter will be left to the national level unless the objective can be better achieved at the EU level.⁹⁹ The principle of proportionality provides that EU action must be limited to what is necessary to achieve the objectives of the Treaties.¹⁰⁰ If at least one-third of the national parliaments consider that a proposal violates the principle of subsidiarity, the Commission must review it and decide to maintain, amend, or withdraw it.¹⁰¹ If, during the ordinary legislative procedure, a simple majority of the national parliaments is of the opinion that a proposal does not comply with the principle of subsidiarity, the proposal must be reviewed by the Commission and, if maintained, must be reviewed by the European Parliament and the Council with regard to its compatibility before completion of the first reading.¹⁰²

C. Types of EU Legislative Procedures

EU legislative acts may be adopted by using the ordinary legislative procedure or special legislative procedures.¹⁰³ Most EU legislation is adopted jointly by the European Parliament and the Council in the “ordinary legislative procedure.” The ordinary legislative procedure applies in

⁹⁴ *Id.* art. 293, para. 2; Case C-409/13, Council of the European Union v. European Commission, ECLI:EU:C:2015:217, [http://perma.cc/F8CG-8GXY](http://curia.europa.eu/juris/celex.jsf?celex=62013CJ0409&lang1=en&type=TXT&ancre, archived at <a href=).

⁹⁵ Case C-409/13, para. 76.

⁹⁶ TFEU art. 293, para. 1.

⁹⁷ TEU art. 12.

⁹⁸ Protocol No. 1 on the Role of National Parliaments in the European Union (Protocol No. 1) arts. 3, 4, 2016 O.J. (C 202) 203, http://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_4&format=PDF, archived at <http://perma.cc/39U6-93KA>; Protocol No. 2 on the Application of the Principles of Subsidiarity and Proportionality (Protocol No. 2) art. 6, 2016 O.J. (C 202) 206, http://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_4&format=PDF, archived at <http://perma.cc/39U6-93KA>.

⁹⁹ TEU art. 5, para. 3.

¹⁰⁰ *Id.*

¹⁰¹ Protocol No. 2, *supra* note 98, art. 7, para. 2.

¹⁰² *Id.* art. 7, para. 3.

¹⁰³ TFEU art. 289, paras. 1, 2.

eighty-five policy areas including, *inter alia*, the internal market, transport, environment, justice and home affairs, employment, social affairs, agriculture, fisheries, and common commercial policy.¹⁰⁴

In other cases—special legislative procedures—the European Parliament has a more limited role and does not act as a co-legislator on an equal footing with the Council. These cases include taxation, internal market exemptions, and competition law.

1. Ordinary Legislative Procedure (“Co-Decision”)

The ordinary legislative procedure, formerly called a “co-decision” procedure, is the standard procedure used for the adoption of EU legislative acts. It requires the joint adoption by the European Parliament and the Council of legislative acts on a proposal by the Commission.¹⁰⁵ There are up to three readings and the two institutions have to approve an identical text. Within the European Parliament, the proposals are examined by the appropriate committee (or several committees), which adopts a report and presents it to the plenary session.¹⁰⁶ Within the Council, the proposals move from the working party (the equivalent of committees in the European Parliament), to the Committee of Permanent Representatives of the Governments of the Member States (Coreper), to the whole Council.¹⁰⁷

a. First Reading

The Commission submits its proposal to the European Parliament and the Council, and both institutions examine the proposal simultaneously. The European Parliament, however, has to adopt its position first and communicate it to the Council. The European Parliament, acting by a simple majority,¹⁰⁸ may accept, reject, or amend the proposal. The position is communicated to the Council. If the Council approves the European Parliament’s position, the act will be adopted.¹⁰⁹ If the Council proposes amendments, a second reading will take place in which the European Parliament considers the Council’s position.¹¹⁰

¹⁰⁴ EUROPEAN PARLIAMENT, HANDBOOK ON THE ORDINARY LEGISLATIVE PROCEDURE 2 (Nov. 2017), <http://www.epgencms.europarl.europa.eu/cmsdata/upload/10fc26a9-7f3e-4d8a-a46d-51bdadc9661c/handbook-olp-en.pdf>, archived at <http://perma.cc/D6T8-FXPS>.

¹⁰⁵ TFEU art. 289, para. 1; art. 294.

¹⁰⁶ Rules of Procedure of the European Parliament, *supra* note 39, rules 49–55.

¹⁰⁷ Council Decision of 1 December 2009 Adopting the Council’s Rules of Procedure (Rules of Procedure of the Council), annex, art. 19, 2009 O.J. (L 325) 35, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009D0937&from=EN>, archived at <http://perma.cc/NX9M-XY3T>.

¹⁰⁸ A “simple majority” means the majority of the votes cast.

¹⁰⁹ TFEU art. 294, paras. 3, 4.

¹¹⁰ *Id.* art. 294, para. 5.

b. Second Reading

If the European Parliament accepts the Council's amendments in a second reading, or if it does not act within three months of receipt of the communication from the Council, the act is adopted.¹¹¹ If the Parliament rejects the Council's position by a majority of its component members (qualified majority), the act will not be adopted.¹¹² If the European Parliament suggests amendments to the Council's position and the Council agrees to these amendments in its second reading by a qualified majority,¹¹³ the act will be adopted.¹¹⁴ If however, the Council only agrees to some of the amendments, the proposal will be sent to the Conciliation Committee.¹¹⁵ The amendments are also forwarded to the Commission, which delivers an opinion on the amendments.¹¹⁶ If the Commission delivers a negative opinion on the proposed amendments, the Council can only accept them with a unanimous vote.¹¹⁷

c. Conciliation and Third Reading

The Conciliation Committee is made up of the members of the Council and an equal number of MEPs (fifty-six members total). The task of the Conciliation Committee is to come up with a compromise text within six weeks. The joint text must be adopted by a qualified majority of the members of the Council and by a majority of the members representing the European Parliament in the Conciliation Committee.¹¹⁸ The Commission participates in the meetings but cannot vote on the joint text.¹¹⁹ If the Conciliation Committee cannot agree on a joint text within six weeks, the act will not be adopted.¹²⁰ If the Conciliation Committee reaches an agreement on a joint text, it will be sent to the European Parliament and the Council for a third reading. If the joint text is approved after the third reading by a simple majority in the European Parliament and by a qualified majority in the Council, the act will be adopted. If the joint text is rejected by either institution or if the institutions do not make a decision within six weeks, the act will not be adopted.¹²¹

¹¹¹ *Id.* art. 294, para. 7(a).

¹¹² *Id.* art. 294, para. 7(b).

¹¹³ A "qualified majority" in the Council means 55% of the Member States (16 out of 28), representing at least 65% of the EU population. *See* TEU art. 16, para. 4; TFEU art. 238, para. 3.

¹¹⁴ TFEU art. 294, para. 8(a).

¹¹⁵ *Id.* art. 294, para. 8(b).

¹¹⁶ *Id.* art. 294, para. 7(c).

¹¹⁷ *Id.* art. 294, para. 9.

¹¹⁸ *Id.* art. 294, para. 10.

¹¹⁹ *Id.* art. 294, para. 11.

¹²⁰ *Id.* art. 294, para. 12.

¹²¹ *Id.* art. 294, para. 13.

2. *Special Legislative Procedures*

There are two types of special legislative procedures: consent and consultation. The Treaties do not specify how to conduct special legislative procedures and the rules are defined *ad hoc* on the basis of the relevant article that provides for this procedure.

If the consent of the European Parliament is required, the European Parliament may only accept or reject a legislative proposal, but does not have the power to amend it. The Council has no veto right if the European Parliament rejects the proposal. The consent procedure is used when a proposal is adopted under article 352 of the TFEU, when it concerns the approval of an international agreement, in the case of a serious breach of fundamental rights that results in the suspension of certain rights of the Member State in question, for the accession of new EU members, or in arrangements for the withdrawal of a Member State from the EU, among others.¹²²

In a consultation procedure, legislation is adopted by the Council, taking into account the nonbinding position of the European Parliament.¹²³ Until the amendment of the Treaties in 2009, the consultation procedure was the most-used legislative procedure.¹²⁴ The European Parliament may accept, reject, or propose amendments to the proposal by a simple majority. Although the opinion of the European Parliament is nonbinding, the Council may not take a decision without having received it. The consultation procedure is used in policy areas such as competition, monetary policy, employment and social policy, and certain measures of a fiscal nature in the areas of environment and energy.

D. Signature and Entry into Force

If a legislative act is adopted according to the ordinary legislative procedure, it will be signed by the President of the European Parliament and the President of the Council. If a legislative act is adopted under a special legislative procedure, it will only be signed by the President of the institution that adopted it.¹²⁵ All legislative acts are published in the Official Journal of the European Union (O.J.). They enter into force on the date specified in the legislative act, or on the twentieth day following publication in the O.J. if no date has been specified.¹²⁶

¹²² TEU arts. 7, 49, 50; TFEU art. 218.

¹²³ TFEU art. 289, para. 2.

¹²⁴ EUROPEAN PARLIAMENT, ACTIVITY REPORT ON CODECISION AND CONCILIATION. 14 JULY 2009 – 30 JUNE 2014 (7TH PARLIAMENTARY TERM) 3, http://www.europarl.europa.eu/code/information/activity_reports/activity_report_2009_2014_en.pdf, archived at <http://perma.cc/2NXX-BDSY>.

¹²⁵ TFEU art. 297, para. 1.

¹²⁶ *Id.*