



PECUCS

Participation of European Citizens
in the Union's Climate Strategy



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The European Commission and the Council: Environmental Actions

Federico Ceci

University of Bari «Aldo Moro»

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DEGLI STUDI DI BARI
ALDO MORO**

DIPARTIMENTO DI GIURISPRUDENZA

The institutional framework

- In order to pursue the objectives set out in the Treaty, the Union has a complex institutional apparatus, which in its essentials resembles that of the original Communities
- Article 13 TEU designates seven institutions, which are responsible for promoting the Union's values, 'pursuing its objectives, serving its interests and those of its citizens and Member States, and ensuring the consistency, effectiveness and continuity of its policies and actions'. In addition to these institutions, there are a number of bodies, the character and functions of which are regulated in both the TEU and the EU Treaty.
- The distinction between institutions and organs is not immediately obvious, although it rests on the greater importance of the former.

The Institutions

- According to Article 1 TEU, the Union replaces and succeeds the European Community'.
- There is therefore a single institutional apparatus, which consists, as mentioned, of seven institutions: the five already existing ones
- European Parliament,
- Council, Commission,
- Court of Justice and
- Court of Auditors,
- the European Council and the European Central Bank have been added.



Institutional Triangle

- Over the years, the institutional framework of the Union and its balance have changed profoundly, moving from the initial duopoly of the Commission and the Council to the full involvement of the European Parliament as well, in order to increase the democratic legitimacy of the system as a whole. With the growth of the role of the European Parliament and, more generally, with the increase in the European Union's democratic rate, the institutional framework has evolved considerably. As a whole, it is an institutional system that we do not find in any international or state organisation, as it reflects the peculiar and sui generis characteristics of the Union.
- In this regard, the expression 'institutional triangle' is used to highlight the fundamental role played by the three institutions in the Union's legislative and decision-making process, which consists mainly of the (near) monopoly of the proposal in favour of the institution representing the Union's interests (Commission) and its approval by the institutions representing the interests of the Member States (Council) and European citizens (European Parliament). The latter institution participates to varying degrees in the formation of the Union's rules, depending on the procedure used.



European Council and Court

- In addition to the role of these three institutions, the central role exercised by the European Council, which represents - together with the Council - the interests of the states, sets the Union's political agenda and defines the priorities for its action, which must then be translated into legislative acts by the institutional triangle, cannot be overlooked.
- Alongside the four political institutions is the Court of Justice, which plays a key role in the system of judicial protection and, more generally, makes a decisive contribution to achieving a 'Union of law'.

- The institutional framework changes even more in relation to the Common Foreign and Security Policy, since the thread running through this policy is that the protagonists are the Member States and the institutions that most represent them, the European Council and the Council, as well as the High Representative of the Union for Foreign Affairs and Security Policy. On the other hand, the Commission and the European Parliament are relegated to a secondary role, which does not allow them to balance the power given, directly or indirectly, to the states and their often short-term domestic political needs. In this area there is also no judicial review by the Court of Justice, with the exception of the review of compliance with Article 40 TEU, which defines the boundaries between the CFSP area and the other areas of the Union, and a residual jurisdiction over appeals concerning the review of the legality of restrictive measures against natural or legal persons adopted by the Council

Bodies

- They differ from the organs in that they are the main recipients of the above-mentioned obligation to implement the Treaties and, in particular, to adopt the typical acts of the Union (Art. 288 TFEU); two of them, the European Central Bank and the Court of Auditors, present special features, in that the provisions governing them are contained only in the TFEU, and not also in the TEU as is the case with the others.
- Finally, the Economic and Social Committee and the Committee of the Regions, the latter established by the Maastricht Treaty, are called upon to act as advisory bodies to the European Parliament, the Commission and the Council, and are mentioned in Article 13(4) TEU.

Agencies

- They are not bodies of the Union and do not fall within its institutional framework in the strict sense, but they should be remembered for the growing role they have assumed in the integration process, the Agencies. They are separate legal entities, set up to carry out specific tasks - often of a technical and scientific nature, but also management tasks - related to Union law; they respond to the need, felt since the 1970s, to decentralise certain functions previously attributed to the Commission. They have legal personality and financial and organisational autonomy and are based in several Member States.
- They are established by acts of secondary legislation, sometimes by regulations adopted pursuant to Article 352, which lay down their statutes and powers.
- They have very diverse functions, including the dissemination of information and news; technical and scientific advice; and direct administration.
- Particularly important agencies are, for instance, the European Police Office (EUROPOL) based in The Hague; the European Union's Judicial Cooperation Unit (EUROJUST) based in The Hague; the European Border and Coast Guard Agency (FRONTEX), based in Warsaw; the European Asylum Support Office (EA-SO) based in Marsa, Malta; the European Public Prosecutor's Office (EPPO), which became fully operational on 1 June 2021, based in Luxembourg

Notion of institution

- **The notion of the institutions** of the Union has not only a formal meaning, but also significant consequences, as some rules of the EU and TFEU Treaties apply only to them (e.g. in the area of judicial protection, only the institutions may intervene in disputes before the Court of Justice without having to prove their interest in the resolution of the case), although over the years some of their distinctive features have disappeared (e.g. Article 341 TFEU for the fixing of the seat of the institutions has also been used for other bodies).

General principles

- Within the framework of their respective powers, these institutions have the power to organise the way they operate by adopting internal rules of procedure, while respecting two principles: that of assigned competences, which defines **the interinstitutional balance**, and that of **loyal cooperation**

Interinstitutional balance

- Article 13 TEU takes up in paragraph 2 the provision, already present in Article 4 of the 1957 Treaty of Rome, according to which each institution shall act within the limits of the powers conferred upon it by the TEU and the TEU, **'in accordance with the procedures, conditions and objectives laid down therein'**.
- This principle, laid down for the first time by the Court of Justice in its judgment of 13 June 1958, Meroni (Case 10-56), prohibits any encroachment by one institution on the areas of competence conferred on another and **"translates the principle of institutional balance, which characterises the institutional structure of the Union and which implies that each institution exercises its own competences while respecting those of the other institutions"**.
- In particular, as the Court recently held with reference to the adoption by the Council of an incorrect legal basis for the adoption of a decision, "the rules relating to the formation of the will of the institutions of the Union find their source in the Treaties and cannot be derogated from either by the Member States or by the institutions themselves.

Loyal cooperation

- Only the Treaties can therefore, in specific cases, authorise an institution to alter a decision-making procedure provided for by them [...]. To admit the contrary would, according to the judgment, be to allow an institution "to undermine the principle of institutional balance, which requires each institution to exercise its own competences while respecting those of the other institutions (Judgment of 1 March 2022, Commission v. Council, Case C-275/20).
- This balance is not static, however, and must be interpreted in the light of a second principle.
- Article 13 TEU adds the obligation for the institutions to implement loyal cooperation among themselves: this means that they must respect not only the letter of the provisions concerning them, but also the rationale behind them, and pursue in their conduct not only the assertion of their own competences, but the better functioning of the Union and its decision-making processes

- This principle, which incorporates that already set out in Article 4(3) TEU with reference to relations between the Union and the Member States, was anticipated by the Court of Justice in a ruling on the Council's obligation to consult the European Parliament before the adoption of an act (judgment of 30 March 1995, Parliament v. Council, Case C-65/93).
- The Court had in fact held that "in the context of the inter-institutional dialogue on which the consultation procedure is essentially based" the same mutual obligations of loyal cooperation apply that govern relations between the Member States and the Community institutions: consequently, a regulation on which the Parliament itself had deliberately avoided giving its opinion in good time could not be annulled for failure to consult the Parliament, even though this was required by the EEC Treaty at the time. The solution reached by the Court was also transposed into the Treaties. With regard to the conclusion of international agreements by the Union, for example, when the Council has to obtain the opinion of Parliament, it may fix a time limit, after which, in the absence of an opinion, it may act (Art. 218(6)(b))

Limits

- The operation of the principle of loyal cooperation cannot, however, undermine that of the institutional balance established by the Treaties. As stated in the case-law, since 'loyal cooperation between the institutions of the Union, provided for in Article 13(2) TEU, shall be exercised with due regard for the limits of the powers conferred on each institution by the Treaties [...] such cooperation may not prejudice, in favour of one institution of the Union, the exercise by another institution of its competences' (Judgment of 19 June 2018, Poland v. Council, Case C-5/16; in the same sense, Judgment of 24 November 2022, Parliament v. Council, Case C-259/21).
- Article 295 TFEU complements the obligation of loyal cooperation set out in Article 13(2) TEU by providing that the Parliament, the Council and the Commission shall consult each other and determine by common accord the modalities of their cooperation, including by concluding ad hoc interinstitutional agreements. In fact, the practice of concluding such agreements is very old and has mainly concerned the decision-making process and the adoption of the budget. Under Article 295 TFEU, for example, the Interinstitutional Agreement of 2 December 2013 on budgetary discipline, cooperation and management and the Interinstitutional Agreement on Better Lawmaking of 13 April 2016 were concluded between Parliament, the Council and the Commission.

The European Commission

- https://commission.europa.eu/index_it
- The EU's main executive body. Makes legislative proposals, is guardian of the EU Treaties and ensures that EU law and policies are applied by the Member States. The Commission manages the EU budget and negotiates international agreements on behalf of the EU.
- It is the institution that replaced the ECSC High Authority and the EEC and Euratom Commissions in July 1967.

Composition

- Institution of individuals, meaning that its members exercise their functions in full independence and "shall neither seek nor take instructions from any government or any institution, body, office or agency" (Art. 17(3)(3) TEU), with the exception of the High Representative of the Union for Foreign Affairs and Security Policy (Art. 18(2) TEU).

Follows

- the Treaties had provided for the reduction of the number of Commissioners to only two-thirds of the number of Member States as of 1 November 2014.
- However, at the European Council of 11-12 December 2008, it was decided - as part of the concessions made to Ireland before the second referendum authorising ratification of the Lisbon Treaty was held in that country - that the Commission would continue to be composed of one national of each Member State and that a decision would be taken to that effect.
- The European Council adopted such a decision on 22 May 2013 (2013/272/EU): Article 1 states that 'the Commission shall consist of a number of members, including the President and the High Representative of the Union for Foreign Affairs and Security Policy, equal to the number of Member States'. In this way, all the efforts made to make the Commission's system of functioning more streamlined and effective and to ensure the autonomous, independent and supra-national character of this institution have been thwarted.

The Term of Office

- The term of office of Commissioners is five years and is renewable
- The members of the Commission are chosen on the basis of their general competence and European commitment and from among personalities who offer every guarantee of independence. The Commission exercises its responsibilities in full independence.
- The members of the Commission shall neither seek nor take instructions from any government, institution, body, office or agency. They shall refrain from any action incompatible with their duties or the performance of their tasks.

- Outside the hypothesis of termination of office due to expiry of the mandate, there may be collective resignation (following a motion of censure by the European Parliament, Art. 17(8) TEU and Art. 234 TFEU); or individual resignation (following a voluntary decision, revocation, ruling by the Court of Justice at the request of the Council or the Commission, in the event of the loss of the conditions necessary for the performance of the duties or in the event of a serious fact, Art. 247 TFEU).
- In this respect, the Treaty merely states that 'a member of the Commission shall resign if the President so requests' (Art. 17(5) TEU). The ambiguity of the formula left room for the assumption that the 'request' to resign was limited to mere moral persuasion. On the other hand, such a decision may give rise to some perplexity insofar as commissioners are appointed with the consent of the member states, even though the latter are not involved in the said procedure. In a recent ruling, however, the Union judiciary confirmed the lawfulness of the individual removal from office by the President of the Commission - in this case, communicated orally - also rejecting the claim for damages by the resigning Commissioner

Appointment and election procedure

- The responsibility for appointing the President and members of the Commission lies with the European Council (Art. 17(7) TEU). Nevertheless, according to Declaration No 11, the European Council and the European Parliament are jointly responsible for the whole process leading to the election of the President of the Commission.

Follows

- The Lisbon revision of the Treaties formally opened the way for the system of leading candidates (so-called Spitzenkandidaten).
- The nomination procedure laid down in Article 17(7) TEU states that the European Council shall propose to the Parliament a candidate for the office of President of the Commission 'taking into account the elections'. Although the provision does not explicitly refer to this system, it in fact tied the choice of the future President of the Commission to the approval of the newly formed European Parliament, and thus to the approval of the majority that emerged at the elections.
- The European Council was thus obliged to award the presidency of the Commission to the leading candidate chosen by the European political party that had obtained the largest number of seats in Parliament.

Follows

- The new selection procedure of the primus inter pares commissioner, inaugurated with the 'Juncker Commission', reflected the will to further consolidate the relationship of 'trust' established between the Parliament and the Commission, binding the European executive even more significantly to the democratic institution directly elected by the citizens of the Union.
- However, in the 2019 election round, a person other than the Spitzenkandidat winner of the elections was nominated as the new President of the Commission, putting an end to the affirmation of the new lead candidate mechanism.

Current system (Art. 17(7) TEU)

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

Example

- The European Parliament has rejected the nominations of three of the twenty-six commissioners proposed for the 2019-2024 term by the new Commission President Ursula von der Leyen. These are the French Sylvie Goulard, nominated for the Internal Market portfolio; the Romanian Rovana Plumb, running for the Transport directorate; and the Hungarian Laszlo Trocsanyi, candidate Commissioner for Enlargement.
- With regard to the latter two, it is peculiar that the rejection came even before the regular hearings in the hemicycle. What is more, this resulted in the postponement of the entry into office of the new Commission, initially scheduled for 1 November 2019. The transitional period was managed by the outgoing Commission under ordinary administration.

Follows

- The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as Members of the Commission.
- These personalities are selected on the basis of proposals submitted by the Member States, in accordance with the criteria of competence and independence.
- At this stage, the candidates are submitted to the hearings of the various parliamentary committees: if a negative opinion emerges on the election of the chosen candidates, the Council and the President propose new nominations
- The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission are collectively subject to a vote of approval by the European Parliament.
- Following this approval, the Commission shall be appointed by the European Council, acting by qualified majority.

Solemn undertaking

- The second sentence of Article 245(2) TFEU states that Commissioners shall, from the moment they take office, give a solemn undertaking to respect the obligations arising from their office as a member of the Commission throughout the duration of their term of office. Although no modalities are expressly prescribed, it is established practice that this undertaking is given at a formal hearing before the Court of Justice

Still on the appointment procedure

- While the appointment procedure has, through successive amendments, strengthened the role of Parliament, it also strengthens the figure of the President of the Commission, who is also given the task of setting the political guidelines of the institution (Art. 17(6) TEU).
- This procedure also leads to a consolidation of the Commission as a whole, through greater 'political' accountability to Parliament.

President

- The Lisbon Treaty has further accentuated the role and responsibilities of the President of the Commission, now in a position of clear supremacy over the other Commissioners, modelled on a real head of government
- The President is entrusted with the internal organisation and coordination of the work of the Commission

Read more

- In addition to defining the Commission's political direction, he enjoys fairly wide-ranging power in structuring and allocating powers to individual Commissioners, powers that he may even reduce during their term of office; subject to approval by the College, he appoints the Vice-Presidents, with the exception of the High Representative for Foreign Affairs, and may cause the members of the Commission to resign; more generally, each member of the Commission exercises the functions assigned to him or her under the authority of the President (Art. 17(6) TEU)

Follows

- Within the limits of the principle of collegiality, and under the direct control and steering power of the President, therefore, each Commissioner has responsibility for a field of activity (internal market, agricultural policy, regional policy, competition, for example) and can adopt specific management measures
- Acts pertaining to the Commission must be approved by the College. Consequently, in order to avoid excessively cumbersome meetings and excessively long periods of time, deliberations are filtered through preparatory meetings, either of the Commissioners most concerned, or of the Heads of Cabinet meeting, or through the written procedure, the latter being used in particular for repetitive and less problematic deliberations. This procedure involves the prior transmission of the pro mail to all Commissioners and adoption if there is no opposition (by consensus).

Structure

- The Commission is structured into thematic departments, known as directorates-general (DGs), which are responsible for different policy areas. DGs develop, implement and manage EU policies, law and funding programmes. There are also departments that deal with specific administrative issues. Executive agencies, on the other hand, manage programmes established by the Commission.
- The administrative structure includes, in addition to the common services (Legal Service, Spokesman, Information, Statistical Office, Publications Office), a large number of Directorates-General in relation to the different competences

Functions

- the Commission has a central role in the institutional set-up, in that it promotes the general interest of the Union, participates substantially in the process of rule-making, monitors the timely implementation of rules and represents the Union, with the exception of the common foreign and security policy. It also has an autonomous power of decision in areas specifically defined by the Treaties and, where the Council and Parliament so provide in the acts they adopt, a delegated power.

Legislative initiative

- The power to propose legislative acts is exclusive to the Commission, unless the Treaties provide otherwise
- According to Article 289(4) TFEU, in the specific cases provided for in the Treaties, legislative acts may be adopted at the initiative of a group of States or the European Parliament, on a recommendation of the European Central Bank (to amend the Statute) or at the request of the Court of Justice (to amend parts of the Statute or to establish specialised courts) or the European Investment Bank.

Follows

- This also means, on the one hand, that the Council can only amend the Commission's proposal by unanimity and, on the other hand, that the Commission may at any time, up to the adoption of the act, amend its own proposal, thus having a major influence on the approval stage itself in the Council (Art. 293 TFEU).
- For non-legislative acts, the opposite rule applies: they are adopted on a proposal from the Commission only if the Treaties so provide (Art. 17(2) TEU).

Follows

- The Commission's proposal may also be requested by the Council (Art. 241 TFEU) or by the Parliament (Art. 225 TFEU) or by citizens of the Union, at least one million in number, who are nationals of a significant number of Member States (Art. 11(4) TEU).
- All in all, these hypotheses stop at the state of the pre-legislative initiative, since the Commission enjoys a discretionary power of assessment and is not obliged, except morally or politically, to act on such requests, but must give reasons for its refusal.

Legislative technique

- The legislative proposal is the result of technical, economic and partly also political considerations. In fact, a draft proposal, which originates within the competent directorate-general, is examined by the legal service and by commissions of experts, also from outside the structure, normally sent by the competent administrations of the member countries; the professional bodies and, if necessary, the social partners are then consulted; finally, it is submitted for collective approval.

Compliance with EU law

- The Commission is responsible for the implementation of the Treaties and the acts deriving therefrom, in terms of both monitoring compliance with Union law and enforcement in the proper sense.
- "It shall ensure that the Treaties and the measures taken by the institutions pursuant thereto are applied. It shall oversee the application of Union law under the control of the Court of Justice of the European Union".

Follows

- It is a general power and is expressed mainly in the verification of Member States' compliance with their obligations.
- To this end, there is a general mechanism for contesting infringements (Article 258 TFEU), which the Commission activates vis-à-vis the offending Member State by means of a letter of formal notice and then a reasoned opinion; and which, in the event of persistent non-compliance, leads to the Commission bringing an action before the Court of Justice for a judicial determination of the infringement.

Coordination function

- It exercises coordinating, executive and management functions under the conditions laid down in the Treaties.

Implementing power

- It implements the budget and manages the programmes.
- Pursuant to Article 291 it also issues binding acts if uniform conditions of implementation are required

External representation

- It ensures the external representation of the Union, with the exception of the common foreign and security policy and other cases provided for in the Treaties.

Other competences

- The Commission also has the general power, within the limits and under the conditions laid down by the Council (Article 337 TFEU), to gather all the information and carry out all the checks necessary for the performance of the tasks entrusted to it (e.g. competition and dumping, as well as supervisory powers in respect of State aid to undertakings).
- Lastly, the Commission has autonomous regulatory power in certain hypotheses which are exhaustively specified by the TFEU, for example: in Article 45(3)(d) TFEU (free movement of workers); in Article 101(3) TFEU (individual exemptions in competition matters); in Article 106(3) TFEU (public undertakings); in Article 108(2) TFEU (State aid).

The climate and environment agenda

- Targets 2030
- Targets 2040
- Targets 2050



The Council

- The EU Council represents the governments of the Member States. It is where ministers and national experts from each EU country meet to
- negotiate and adopt EU legislation
- conclude international agreements on behalf of the EU
- adopt the EU budget
- develop EU foreign and security policy
- coordinate Member States' policies in specific areas

Composition

- The Council consists of one representative of each Member State at ministerial level, authorised to commit the government of the Member State it represents and to exercise its voting rights.
- The Council is therefore a body of states, as its members represent their respective member states and are accountable to them.
- It is a body of variable composition and therefore meets in ten different formations depending on the subject matter (e.g. agriculture, environment, transport, etc.),

Variable Composition

- The Council meets in various configurations, the list of which is adopted in accordance with Article 236 of the Treaty on the Functioning of the European Union.
- The General Affairs Council ensures consistency in the work of the various Council configurations. It prepares European Council meetings and ensures their follow-up in liaison with the President of the European Council and the Commission.
- The Foreign Affairs Council elaborates the Union's external action along the strategic lines defined by the European Council and ensures the consistency of the Union's action.
- There is no hierarchy between the different Council formations, although the General Affairs Council has a special coordinating and responsible role in relation to institutional, administrative and horizontal issues.



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Presidency

- The presidency of Council formations - except for the Foreign Affairs Council - is exercised by predetermined groups of three member states for a period of eighteen months, according to a system of equal rotation, established by a resolution, by qualified majority, of the European Council (Art. 16(9) TEU).
- The incumbent President is assisted in his work by his predecessor and successor (the so-called Troika). Precisely, according to Declaration No. 9 annexed to the Lisbon Treaty, these groups are composed taking into account the diversity of the Member States and the geographical balance in the Union.
- Each of the three states holds the presidency in turn, for a period of six months, and the other two assist it on the basis of a jointly agreed programme.
- The Lisbon Treaty, while maintaining the rotation between states anchored to the six-month presidency, introduces an eighteen-month programme, a longer timeframe that makes it possible to set more demanding goals.



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Follows

- The presidency, which recurs in all the representative bodies of the Member States, also has a not entirely negligible political significance, which can be manifested both in the convening of meetings and more generally in the impetus to be given to the various subjects of discussion and deliberation.
- The Council meets when convened by the President, at the latter's initiative or at the initiative of one of its members or of the Commission.

Secretary General

- The Council is assisted by a General Secretariat, which is its functional and administrative support.
- This body has a structure articulated in several directorates-general and a legal service, based in Brussels, and is placed under the operational responsibility of a Secretary-General (Art. 240(2) TFEU).
- The Secretariat sometimes plays a mediating role in the negotiations, facilitating preparatory contacts between the delegations of the Member States

COREPER

- The Committee of Permanent Representatives of the Member States is responsible for preparing the work of the Council and carrying out the tasks assigned to it
- an autonomous body that largely compensates for the variability of the Council's composition and helps to mitigate the essentially international nature of this body
- composed of the diplomatic representatives (generally ambassadors) of all the Member States accredited to the Union, has over time become increasingly important

Two formations

- COREPER I, composed of the Deputy Permanent Representatives, prepares the work of six Council configurations (agriculture and fisheries, including financial issues or technical measures relating to veterinary, phytosanitary or food legislation; competitiveness; education, youth, culture and sport; employment, social policy, health and consumer affairs; environment; transport, telecommunications and energy)
- COREPER II, consisting of the permanent representatives, prepares the work of four other Council formations (General Affairs, Foreign Affairs, Economic and Financial Affairs, Justice and Home Affairs).

See

- COREPER is a structure for liaison between the Union and the Member States and for coordinating the work of the many technical committees that prepare the Council's legislative work and, at the same time, is its political filter.
- In fact, the Council transmits the Commission's legislative proposals to COREPER, which, once they have been examined and discussed, seeks a unanimous position on each of them. If unanimity is achieved, the proposal is placed under point A on the Council agenda, which, as a rule, approves it without re-discussion; otherwise, the matter is placed under point B and is discussed in the Council on the basis of the preliminary report submitted by COREPER
- a privileged mediation forum where each national delegation supports its government's position and tries to make it prevail over the others.

Regulatory and coordinating power

- The Council has been granted extensive regulatory and coordinating power.
- According to Article 16 TEU: 'The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions'.
- It also exercises 'policy-making and coordinating functions under the conditions laid down in the Treaties'.
- responsibility for external relations: the Council authorises the Commission to negotiate international agreements, authorises their signature and concludes them.

Flexibility

- The exception is the competence of the Council under Article 352 TFEU (as well as the corresponding EAEC rule), a key provision of the entire system, which allows the Council to adopt legislation by unanimity in matters not expressly attributed to the sphere of competence of the Union
- "if action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties without these Treaties having provided the necessary powers".

Voting: outline of previous discipline

- Unless otherwise provided for, Council deliberations are taken by qualified majority.
- This majority was calculated with reference to the weighting of votes for each Member State, i.e. giving the votes of each Member State a different weight according to their importance (geographical, demographic and economic). This system applied until 31 March 2017 and was replaced by the 'double majority' rule, which started to be used from 1 November 2014
- Under this weighting system, 29 votes were allocated to Germany, France, Italy and the United Kingdom, 27 to Poland and Spain, 14 to Romania, 13 to the Netherlands, 12 to Belgium, Greece, Portugal, the Czech Republic and Hungary, 10 to Austria, Bulgaria and Sweden, 7 to Denmark, Finland, Ireland, Lithuania and Slovakia, 4 to Cyprus, Estonia, Latvia, Luxembourg and Slovenia, 3 to Malta

Qualified majority

- In the new system, a qualified majority is defined as at least 55% of the members of the Council, representing at least 15 Member States representing at least 65% of the Union's population, when the Council acts on a proposal from the Commission or the High Representative.
- In this way, formal equality between the states, each of which has one vote, is combined with the population criterion in order to prevent a majority of only small but very populous states from prevailing.
- On the other hand, the blocking minority must comprise at least four members of the Council, which excludes that only three large states can block the decision (Art. 16(4)(2) TEU).
- Where the Council does not act on a proposal from the Commission or the High Representative, the decision is adopted if there is a so-called enhanced qualified majority, which consists of 72% of the members of the Council representing Member States comprising at least 65% of the population of the Union (Art. 238(2) TFEU).

Follows

- The rules change in the event that not all Member States participate under the Treaties, as the prescribed majorities apply in proportion to the number of States participating in the deliberations.
- In these cases, a qualified majority shall be defined as at least 55% of the participating Council members representing at least 65% of the population of the participating Member States, and the blocking minority must comprise at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one other member

Blocking minorities

- With Declaration No. 7 annexed to the Lisbon Treaty, it was stipulated that if states constituting a blocking minority, but representing 55% of the population or 55% of the number of member states, express their intention to oppose the adoption of an act by qualified majority, the Council shall discuss the matter.
- Through this discussion, the Council - assisted by the Commission - must aim to reach a solution that also satisfies the states in the minority bloc

Further hypotheses

- Simple majority
- Unanimity

Follows

- Unanimity is required whenever the Council wishes to depart from the position formally expressed by the Commission or when there has been a negative vote by Parliament on the Council's position.
- The cases in which unanimity is required have been further reduced by the Lisbon Treaty, also by virtue of the increase in the number of member states, and essentially concern the Common Foreign and Security Policy (Art. 24 and 42 TEU) or situations in which the Council is called upon to act in a general way and with loosely defined limits
- Example: certain general environmental policy actions (Art. 192 TFEU)

Thank you for your attention!

- Federico.ceci@uniba.it

