

## 3. Institutions

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### 3.1. Overview

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EU  
institutions

There are several institutions acting within the framework of the (new) EU. The Union's **institutions** (Art 13 TEU) are the European Parliament, the European Council, the Council (of Ministers), the European Commission, the Court of Justice of the EU, the European Central Bank and the Court of Auditors.

Structural  
approach

Further explanations will concentrate on those institutions which play an important role in the legislative process (Commission, Council [of Ministers] and Parliament) as well as the European Court of Justice. Only an overview will be given of the remaining institutions.

- The **European Council** (Art 15 TEU; Art 235 and 236 TFEU) consists of the Heads of State or Government of the Member States, together with its President and the President of the Commission. This institution defines the general political directions, but is not involved in the legislative process. The Treaty of Lisbon introduced the function of a President. He chairs the European Council (but not the Council [of Ministers]; see chapter 3.3.). The current president elected is the Polish *Donald Tusk* 

**N.B.** The European Council must not be confused with the Council of Ministers (see chapter 3.3.) and the Council of Europe, an International Organisation which elaborated the European Convention on Human Rights (see Fig. 1).

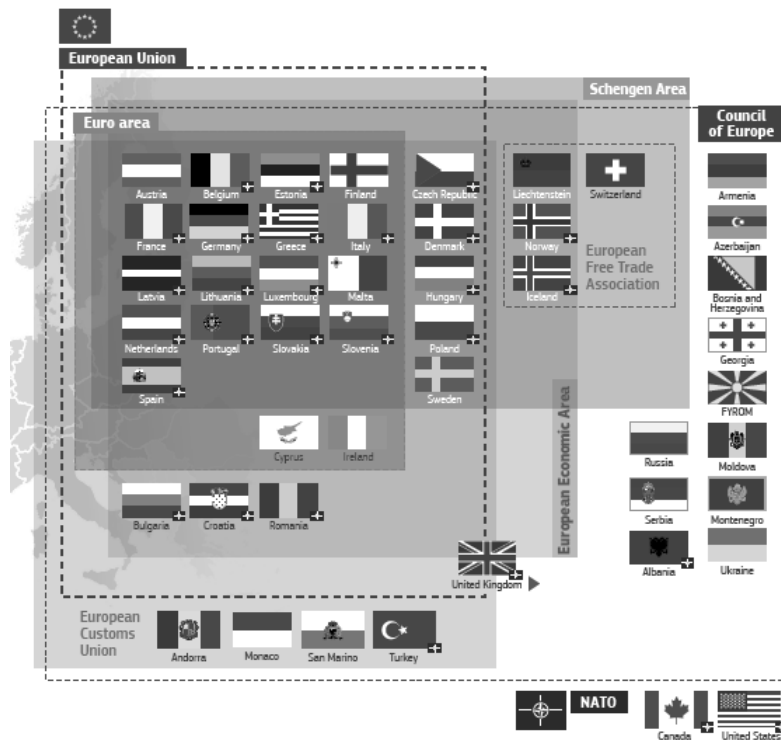


Figure 1: EU, Euro, Schengen, Council of Europe, etc  
(Source: White paper of the European Commission on the Future of Europe)

- The **European Central Bank** (Art 282 to 284 TFEU) based in Frankfurt am Main is responsible for interest rates. Its main task is to ensure price stability in the Euro-zone.
- The **Court of Auditors** (Art 285 to 287 TFEU) is in charge of the economic control whereas the ECJ is in charge of the legal control.
- The **Economic and Social Committee** (ESC) consists of representatives of organisations of employers, of the employed, and of other parties representative of civil society, notably in socio-economic, civic, professional and cultural areas. The **Committee of the Regions** consist of representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly. Both of them exercise only advisory functions (Art 300 to 307 TFEU) within the legislative process.
- The **European Investment Bank** (Art 308 and 309 TFEU) shall grant loans and give guarantees which facilitate the financing of

projects for developing less-developed regions or, for example, projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

- EU citizens can address themselves to the **European Ombudsman** (Art 228 TFEU) concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies (with the exception of the Court of Justice of the EU acting in its judicial role).
- A number of specialised and decentralised EU **agencies** have been established to support the Member States in tasks of a legal, technical and/or scientific nature, such as the European Food Safety Authority in Parma, the European Aviation Safety Agency in Cologne, the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Alicante and the European Union Agency for Fundamental Rights in Vienna.

### 3.2. European Commission

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**Interests and composition** The European Commission (Art 17 TEU; Art 244 TFEU to 250 TFEU) promotes the general **interest** of the Union. This fact is also reflected in its composition, whereby the Commissioners must be completely independent. In other words, they are not allowed to act in the interests of the Member State from which they come. For example, the former Austrian agriculture commissioner *Fischler* was not allowed to act in the interests of Austrian (mountain) farmers. Notwithstanding, a Commissioner represents an important connection between a Member State and “Brussels administration” (compare also OJ 2007 C 306/254).

**Members** At the moment the Commission consists of one national of each Member State, thus **28 Commissioners**. They are appointed by the European Council with approval of the Parliament (OJ 2010 L 38/7). **N.B.** Since 1<sup>st</sup> November 2014 the Treaty of Lisbon provides the possibility for a reduction in the number of Commissioners (Art 17 para. 5 TEU), however, the European Council – for the time being – has abstained from such a reduction (OJ 2013 L 165/98). The Commission decides according to the so-called principle of collegiality, which “is based on the equal participation of the Commissioners in the adoption of decisions, from which it follows in particular that decisions should be the subject of collective deliberation and that all the members of the college of Commissioners should bear collective responsibility at the political level for all decisions adopted” (ECJ 13.12.2001, Case C-1/00, *Commission/France*).



According to its function as a “**motor of integration**” the Commission has the right of initiative. Therefore, in principle, every new project at the European level has to be launched by a Commission’s proposal (for example, the proposal for a Council Regulation on the statute for a European private company, COM[2008] 396 final 25.6.2008).

Motor of  
integration

The European Commission also promotes the interests of the EU by monitoring the proper application of EU law. Acting as a “**guardian of the Treaties**”, the Commission brings Member States who have failed to fulfil their obligations to account at the ECJ by means of so-called infringement proceedings (for example, the Commission brought Austria before the ECJ and Austria was finally condemned for discrimination against foreign students by means of unfair conditions of access to university education; ECJ 7.7.2005, Case C-147/03, *Commission/Austria*).

Guardian of  
the Treaties

### 3.3. Council

The Council (of Ministers) (Art 16 TEU; Art 237 to 243 TFEU) represents the **interests** of the different Member States, which is also reflected in its composition. The Council **consists** of one representative of every Member State (minister or state secretary). Depending on the different topics discussed, different persons meet. For example, when discussing environmental affairs the Austrian environment minister meets his 27 colleagues etc. In total, there are ten such Council configurations, such as Economic and financial affairs, Competitiveness (internal market, industry, research and space), Agriculture and Fisheries, etc (see OJ 2009 L 315/47; OJ 2009 L 325/51; OJ 2010 L 263/12).

Interests and  
composition



At the national level, the ministers are part of the executive power. Even if they have not been elected directly at the European level the Council exercises (jointly with the European Parliament) **legislative functions**.

Legislation

At the beginning, only the Council made decisions while Parliament was merely consulted. Nowadays, as a rule, those two institutions decide (so-called ordinary legislative procedure, see chapter 4.3.1.) as **equal partners**.

Ordinary  
legislative  
procedure

The question of **decision making** is of great importance in the Council, which normally is done by qualified majority (see also chapter 4.3.4.).

Majorities

Every six months, a new Member State **chairs** the Council (see Fig. 2).

Presidency

### 3. Institutions


Estonia	July-December	2017
Bulgaria	January-June	2018
Austria	July-December	2018
Romania	January-June	2019
Finland	July-December	2019
Croatia	January-June	2020
Germany	July-December	2020
Portugal	January-June	2021
Slovenia	July-December	2021
France	January-June	2022
Czech Republic	July-December	2022
Sweden	January-June	2023
Spain	July-December	2023
Belgium	January-June	2024
Hungary	July-December	2024
Poland	January-June	2025
Denmark	July-December	2025
Cyprus	January-June	2026
Ireland	July-December	2026
Lithuania	January-June	2027
Greece	July-December	2027
Italy	January-June	2028
Latvia	July-December	2028
Luxembourg	January-June	2029
Netherlands	July-December	2029
Slovakia	January-June	2030
Malta	July-December	2030

Figure 2: Council Presidency  
(Source: OJ 2016 L 208/42)


The presidency is in charge of representing the Council, drawing up the agenda and chairing the meetings. It is therefore possible, to a certain extent, for the relevant Member State to decide its focus. In order to guarantee more continuity in its work, the Council’s “Rules of Procedure” (OJ 2009 L 325/35; as amended by OJ 2016 L 348/27) provide so-called 18-month programs (comprising three presidencies; see Fig. 2); compare, for example, the program of the Estonian, Bulgarian and Austrian Presidencies (Council document 9934/17).

### 3.4. European Parliament

**Interests and composition** Finally, the European Parliament (Art 14 TEU; Art 223 to 234 TFEU) represents the **interests** of EU citizens, which is also reflected in its composition. The Parliament is composed of representatives of the Union’s citizens, elected every five years.

<p>The Treaty of Lisbon sets a maximum number of 751 representatives (including the president) from the Member States. Unlike before, it does not attribute a fixed number of <b>seats</b> to each Member State. The representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State and a maximum number of ninety-six seats (see Fig. 4 in chapter 4.3.3.).</p>	 Seats
<p>As mentioned above, the institutional position of the Parliament has been continually strengthened in the course of European development and, in the majority of cases, it decides according to the <b>ordinary legislative procedure</b> together with the Council on an equal footing.</p>	Ordinary legislative procedure

### 3.5. Court of Justice (of the European Union)

<p><b>N.B.</b> The institution, the “Court of Justice of the European Union” (Art 19 TEU; Art 251 to 281 TFEU) comprises the “Court of Justice”, the “General Court” and “specialised courts”. According to the customary abbreviation from before the Treaty of Lisbon, “<b>ECJ</b>” will be used to refer to the “Court of Justice” (and “GC” for the General Court).</p>	Terminology
<p>Unlike the other institutions mentioned so far (Commission, Council and Parliament), the ECJ does not represent any interests. It is in charge of <b>legal control</b> (and the Court of Auditors in charge of economic control).</p>	Legal control
<p><b>N.B.</b> The Treaty of Lisbon increases the ECJ’s competencies, amongst others concerning the <b>Charter of Fundamental Rights of the European Union</b>, which is now legally binding. However, the CFR cannot be invoked against the UK and Poland, which are covered by derogations. The Lisbon Treaty has also given the ECJ competence of reviewing the legality of acts of the European Council (Art 263 TFEU). Some restrictions still remain concerning the ECJ’s competencies in terms of the Common Foreign and Security Policy (CFSP) (Art 275 TFEU), partly also concerning the area of freedom, security and justice (Art 276 TFEU).</p>	Competencies according to the Lisbon Treaty
<p> The Court of Justice consists of one <b>judge</b> from each Member State (i.e. 28 since the accession of Croatia; confer OJ 2013 L 184/6). This is important insofar as different legal systems (like, for example, the common law system in the UK and the civil law system in Austria) are united in the EU as well as in the ECJ, even though the TEU requires “persons whose independence is beyond doubt”. The judges are appointed for six years by common accord of the governments of the Member States. Every three years, there is a partial replacement of the judges in order to guarantee the continuity of its jurisprudence.</p>	Composition
<p>In several <b>procedures</b> (Art 19 para. 3 TEU) the ECJ oversees the lega-</p>	Procedures

### 3. Institutions

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	<p>lity of the activities of the institutions (review of legality and infringement for the failure to act). The ECJ also gives preliminary rulings on the interpretation of EU law or the validity and interpretation of acts adopted by the institutions.</p>
National level	<p>However, it is important to emphasize also the role of national courts. According to Art 19 para. 1 TEU, the <b>Member States</b> shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. Then it is for the <b>courts</b> of the Member States, “to ensure judicial protection of a person’s rights under EU law” (ECJ 14.6.2017, Case C-685/15, <i>Online Games</i>).</p>
Preliminary rulings	<p>This <b>preliminary ruling procedure</b> is a form of collaboration between national courts and the ECJ. A national court applying EU law can refer the question to the ECJ asking for the “validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union”. In Austria, for example, the Austrian Code of Business and Industry (“Gewerbeordnung”, GewO; BGBl 1994/194), prohibits the selling of certain goods from door to door. So the Austrian High court in civil matters (“Oberster Gerichtshof”, OGH), asked the ECJ, whether Art 34 TFEU is to be interpreted in a way that this Austrian law is against the free movement of goods (ECJ 13.1.2000, Case C-254/98, <i>TK-Heimdienst</i>; see also chapter 6.). Even if these procedures have the disadvantage of lasting 14.7 months on average (in 2004 at least 23.5 months) (ECJ Annual reports 2008 and 2016), they form an important instrument in the development of EU law according to a bottom-up principle. In 2016, more than 64 % of all new as well as completed cases were preliminary ruling procedures (ECJ Annual report 2016).</p>
Significance	<p>The judgements of the ECJ which becomes apparent due to the numerous references to it throughout this course manual, is of particular significance for the continual <b>development</b> of EU law. Numerous EU law definitions (for example, the definition of a good or an employee where the fundamental freedoms are concerned; see chapter 6.3.) are not found in the TFEU, but occur instead in the numerous judgements of the ECJ.</p>
Advocate General’s opinion	<p>A function, which is not common to many Member States including Austria, is the so-called “Advocate General” at the ECJ (currently eleven advocates general, confer OJ 2013 L 179/92). Their task is to present <b>opinions</b> on cases in open court, acting with complete impartiality and independence. In this way, they present their points of view on certain cases and suggest a particular solution to the ECJ. The significance of these reasoned submissions lies in the fact that they are usually more detailed than the judgements of the ECJ and the latter follows these judgements in approximately 80–90 % of cases. However, neither the ECJ nor the national courts are “bound either by the Advocate General’s Opinion or by the reasoning on which it is based” (ECJ 22.9.2011, Case C-323/09, <i>Interflora</i>).</p>

## 4.3. Legislation in detail

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### 4.3.1. Procedure

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Even though it is not the only legislative procedure within the EU, in the following, the decision making process will be illustrated in relation to the **ordinary legislative procedure** (Art 294 TFEU), due to its practical significance. **N.B.** The Treaty of Lisbon has renamed the former “co-decision procedure” and describes it in a more user-optimised way – but has not changed it substantially in terms of content. However, as the name already indicates, it will be applied more often and thus its significance is strengthened.

Ordinary  
legislative  
procedure

If a legal basis, as for example, Art 114 TFEU (approximation of laws in the internal market) refers to this Art 294 TFEU, then **Parliament and Council** act as “legislators” on an equal footing.

Institutions

In the following, this decision making process will be described less in terms of the inter-institutional cooperation of the institutions (see, for example, also the inter-institutional agreement on better law-making, OJ 2016 L 123/1), but rather from the perspective of praxis and the following two questions: which institutions have which extent of influence concerning **content** and **when** will the legal act be adopted. Many times, for example, the media reports that the European Parliament has adopted a legal act, whereas, in reality, this was “first reading” (which will be explained in the following pages) only.

Decision  
making

**N.B.** Apart from the final adoption of a legal act it might be that the latter enters into force only after a certain period of time (so-called “**vacatio legis**”), which makes it easier to get accustomed to this new legal act. For example, the above-mentioned SE regulation was adopted on 8.10.2001, published in the OJ on 10.11.2001 and finally entered into force on 8.10.2004.

- After the Commission has submitted a proposal (the Commission’s right of initiative as so-called “motor of integration”), the Parliament adopts its position in **first reading** (in terms of a so-called “legislative resolution”).
- If the Council does not approve the amendments proposed by the Parliament, the Council adopts (in its **first reading**) its position (formerly: “common position”).
- Then the Parliament again deals with this legislative project (in **second reading**) within a timeframe of basically three months (in terms of a so-called “recommendation”). Parliament can either reject the Council’s position by a majority of its component members (this



is rarely the case, so, for example, in the context of the Proposal for a Directive of the European Parliament and of the Council on the patentability of computer-implemented inventions, COM[2002] 92 final 20.2.2002; see OJ 2006 C 157E/265). On the contrary, if Parliament (only) proposes amendments (and the Council does not accept them in its **second reading**), then the “toing and froing” between Council and Parliament comes to an end. Also in the case of the Council, the timeframe for this second reading basically comprises three months.

- In this case, a **Conciliation Committee**, consisting of members of Parliament and Council, is convened. The Commission takes part in the Conciliation Committee’s proceedings. The Conciliation Committee, within six weeks of its being convened, has the task of reaching agreement on a joint text. Both Council and Parliament can allow this project to fail.
- Otherwise, Parliament and Council (in a **third reading**) have a period of six weeks from that approval in which to adopt the act in question.

**N.B.** The periods in this proceeding can be extended by a maximum of one third in each case.

Summary	<b>Summing up</b> , one could – in simple terms – speak of two “rounds” (readings) in both the Parliament and the Council, before the Conciliation Committee is convened. Earlier agreement is always possible. Apart from the political level, which might be difficult to appraise, one can at least roughly estimate when (from the date of the Commission’s proposal) a legislative project will be adopted.
Statistics	From a <b>statistical</b> perspective, it is only seldom the case that all of the levels mentioned will be passed. Between 2009 and 2014 85 % and between 2014 and 2016 75 % of the files were concluded in the first reading (these numbers and further information is available at <a href="http://www.europarl.europa.eu/ordinary-legislative-procedure/en/conciliation.html">http://www.europarl.europa.eu/ordinary-legislative-procedure/en/conciliation.html</a> ).
Special legislative procedure	Apart from the just-mentioned ordinary legislative procedure and its described course of action, there is also a <b>special legislative procedure</b> (Art 289 para. 2 TFEU). For the latter there is no similarly determined course of action. It can rather be characterised by a modification (by the miscellaneous articles of the TFEU, according to the already mentioned principle of conferral) of the institutions’ interaction in different ways (for example unanimity instead of qualified majority voting in the Council; Parliament is only consulted).
Example SPE	As already mentioned, the legal basis for the plans to create a European limited liability company ( <b>SPE</b> with a minimum capital of € 1 only) was the so-called gap-filling clause (Art 352 TFEU). According to this provision the Council made the decisions (after proposal of the Commission), while the Parliament was merely consulted. The Parliament’s posi-

tion is now strengthened, as it has to consent. **N.B.** The proposal for a European limited liability company has been withdrawn in the meantime.

**N.B.** for the issue of the **consequences** of the entry into force of the Treaty of **Lisbon** for on-going inter-institutional decision-making procedures compare the corresponding Commission's communication, COM(2009) 665 final 2.12.2009.

The Treaty of Lisbon also established a **contribution of the national parliaments** in the EU's decision making process (compare Art 12 TEU). National parliaments have to be informed, and can express their views during the decision-making process (OJ 2007 C 306/148 ff). After a legislative act has been adopted, an action may be filed by them at the ECJ in the case of a breach of the principle of subsidiarity (OJ 2007 C 306/150 ff).

Consequences of the Lisbon Treaty

Contribution of national parliaments

#### 4.3.2. Commission

At the beginning of every projected legislative act at the European level stands, as a rule of thumb, a Commission's proposal, both in ordinary legislative procedures and in others. As mentioned above, the Commission is the "motor of integration" due to its **right of initiative**.

This right of initiative is important in terms of two different aspects. On the one hand, it is up to the Commission to decide if and **when** a proposal for a projected legislative act is presented (question of necessity). In the case of the already mentioned SPE, the Commission was hesitant for a long time, probably due to the long and difficult genesis of the SE, and was asked several times (even under the threat of an infringement proceeding) by the Parliament to act. (**N.B.** In principal, the Commission cannot be forced in terms of an infringement proceeding to present a proposal; compare *Gellermann*, in *Streinz* 2012, 2473.)

On the other hand, it is up to the Commission to shape the **content** of the relevant legislative project. The significance of the Commission's proposal should not be underestimated, even though in the end it has to be adopted by Parliament and Council (in several readings) and certainly can be amended by them. **N.B.** When certain lobbying groups want to influence a new project, the best and easiest way is probably to concentrate on the first proposal of the Commission and not on the amendments of the latter.

The following **case study** (concerning the already mentioned SPE) will demonstrate how the assessment of the necessity and the shaping of the content take place in practice.

- In this context the Commission financed a **feasibility study** (which was then presented in 2005), in the course of which 2,147 enterprises were consulted in all 25 Member States (at the time).

Right of initiative

Timeframe

Content

Case study  
SPE

- The Commission also made use of the so-called European Business Test Panel (EBTP). With those **consultation mechanisms**, the Commission gets feedback on the possible positive or negative impact of a new legislative project. In terms of the SPE, for example, 56.1 % of companies consulted, answered the question on the usefulness of an SPE in the affirmative (timeframe of the EBTP in terms of the SPE: 3.10. to 5.11.2007).
- The Commission's consultation mechanism is not restricted to enterprises. Also via the internet **everyone** has the opportunity to express their opinion on new proposals to the Commission ([https://ec.europa.eu/info/law/contribute-law-making\\_en](https://ec.europa.eu/info/law/contribute-law-making_en)). Concerning the SPE (timeframe: end of July to 31<sup>st</sup> October 2007) a majority was in favour of "maximum flexibility" (compare IP/07/1146, and [http://ec.europa.eu/internal\\_market/company/docs/epc/consultation\\_report.pdf](http://ec.europa.eu/internal_market/company/docs/epc/consultation_report.pdf)), which was taken into account by the Commission in its proposal.
- On 10<sup>th</sup> March 2008, the Commission also organised a **conference** in order to get some input from different **experts** (compare IP/08/411).
- It is then up to the relevant Directorate General (DG) of the Commission (in this case DG Internal Market and Services) to shape the content of the proposal, before the college of Commissioners decides on it (**Proposal for a Council Regulation** on the statute for a European private company, COM[2008] 396 final 25.6.2008).

Majority

**Decision making** within the Commission is not very spectacular. Decisions are taken by a majority of its members (Art 250 para. 1 TFEU).

Citizens' initiative

Concerning the Commission's right of initiative, the Treaty of Lisbon introduces a new aspect, (the so-called **citizens' initiative**), as at least one million citizens who are nationals of a significant number of Member States (7 out of 28), can invite the Commission to submit an appropriate proposal (Art 11 para. 4 TEU). The necessary details are entailed in Regulation (EU) 211/2011 on the citizens' initiative (OJ 2011 L 65/1); further information can be found at the following page: <http://ec.europa.eu/citizens-initiative/public/welcome?lg=en>.



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### 4.3.3. Parliament

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1<sup>st</sup> level:  
political  
parties

The contribution of the European Parliament (cooperating with the Council) has already been mentioned. It can be supposed that decision making in a national Parliament (in terms of political compromises between the different political parties) is well known. In terms of the European Parliament, there is an interesting difference as the **level of the political parties** is not the only one. In the 8<sup>th</sup> parliamentary term (2014 to 2019) the composition of the European Parliament appears as follows:

4.3. Legislation in detail

















































											TOTAL
	4	4	4	6			2		1		21
	7	4	2	4							17
	7	4	2	4	3			1			21
	1	3	4	3	1	1					13
	34	27	6	4	8	13	1	1	2		96
	1	1		3		1					6
	4	1	1	1	4						11
	5	4	1		6					5	21
	17	14		8	11	4					54
	20	13		7	4	6	1	20	3		74
	5	2	1	2		1					11
	15	31	2		3	1	15	6			73
	1	2	1		2						6
	4	1	1	1		1					8
	3	2	1	3		1	1				11
	3	1		1		1					6
	12	4				2				3	21
	2	3									5
	5	3	2	7	3	2		4			26
	5	5		1		3		4			18
	22	5	19				1	2	2		51
	8	8		1	4						21
	12	14	1	3				1			31
	5	1		1		1					8
	6	4	3								13
	3	2	2	4	1	1					13
	4	6		3	1	4	2				20
		20	20	1	1	6	20	1	3		72
TOTAL											TOTAL
	215	189	73	68	52	51	42	40	18		748

Figure 4: Members of the European Parliament  
 (Source: <http://www.europarl.europa.eu/meps/en/crosstable.html> [Sourced 10th July 2017])

#### 4. Legislation (Competencies, fields of activity and procedure)

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2 <sup>nd</sup> level: Member States	As one can see from this overview, besides the political parties, there is also the level of the <b>Member States</b> . So it might be the case that, in terms of environmental standards, northern Member States have different points of view than southern ones.
Majority	In the Parliament, <b>decision making</b> is not very spectacular either, as, in principal, decisions are passed by a majority of the votes cast (Art 231 TFEU).

#### 4.3.4. Council

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Majority	<p>By contrast, in the Council, the issue of <b>decision making</b> is a very complex one.</p> <ul style="list-style-type: none"><li>▪ One possibility would be to pass all decisions by majority of the Member States (<b>simple majority</b>, thus at the moment 15 out of 28). However, this is only rarely the case (for example, according to Art 240 para. 3 TFEU concerning the adoption of its Rules of Procedure). The reason for not choosing the simple majority more often is simply the fact that in this case neither population numbers nor the geographical size (and therefore often the political standing) of a country would be taken into account.</li><li>▪ Also, <b>unanimity</b> (consent of all members) would not be a good solution either as one single Member State could obstruct the unification process with his veto right (for example, according to Art 19 TFEU concerning the adoption of secondary legislation in order to combat discrimination, and according to Art 342 TFEU concerning the rules governing the languages of the institutions of the Union).</li><li>▪ Except where otherwise stated in the Treaties, the Council acts by <b>qualified majority</b> (Art 16 para. 3 TEU). The complexity (compare even more OJ 2009 L 314/73) of the system (described in the following only in a simplified way) reflects how important decision making is for the Member States.<ul style="list-style-type: none"><li>– Since <b>1<sup>st</sup> November 2014</b>, a qualified majority is defined as at least <b>55 %</b> of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least <b>65 %</b> of the population of the Union (“double majority”; for numbers of the total population of each Member State see OJ 2016 L 348/27). In this case there is a special quorum where the Council does not act on a proposal from the Commission (72 % of the members of the Council and 65 % of the population of the Union).</li></ul></li></ul>
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### 4.3.5. Excursus: Lobbying

<p>The European Commission defines the term <b>lobbying</b> as “all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions” (compare the Green Paper – European transparency initiative, COM[2006] 194 final 3.5.2006, 5). In this context this term is also often referred to the picture of the “lobby” of the English Parliament, where certain groups tried to influence the parliamentarians before the voting took place.</p>	Definition
<p>The term lobbying is seen as a negative one in many countries (as, for example, in Austria), whereas the Commission has a more differentiated approach and also recognizes a possible valuable <b>input</b>.</p>	Image
<p>According to estimations of the European Parliament, in 2008 there were about <b>15,000 individual lobbyists</b> and 2,500 lobbying organisations in Brussels (OJ 2009 C 271 E/48), as of July 2017, the lobbying register (see below) contains roughly 11,300 entries.</p>	Figures
<p>Where should lobbying start most appropriately? As mentioned before, it might make most sense already to influence the content of the <b>Commission’s</b> proposal. The underlying principle will be well known: Influencing the further discussion in a significant way can be achieved by being the first to draft a proposal, whereas all the others might have the need to border their position with regard to this first proposal.</p>	Commission
<p>Also the <b>European Parliament</b> will be the object of lobbying activities in the context of its afore-mentioned influence in the ordinary legislative procedure. Especially the relevant rapporteur, who drafts the report which then has to be voted in plenary, might be of interest for lobbyists.</p>	Parliament
<p>As mentioned before, the relevant Ministers meet in the <b>Council</b>. Therefore, besides the relevant working groups in Brussels (and the country holding the presidency; see chapter 3.3.) also the national governmental departments will be a target group of lobbyists.</p>	Council
<p>Even though lobbying is also perceived as something positive, Brussels is aware of possible risks. Therefore the European Parliament and the Commission have established a common “Transparency Register” (OJ 2014 L 277/11), which is freely available via internet (<a href="http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en#en">http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en#en</a>). This <b>common register</b> covers all activities “carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions, irrespective of where they are undertaken and of the channel or medium of communication used”. Thus, a very wide definition which excludes only certain activities concerning the provision of legal and other professional advice, certain activities of the social partners etc.</p>	Common register

#### 4. Legislation (Competencies, fields of activity and procedure)

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Code of conduct	Those two institutions have also set up a <b>Code of conduct</b> (OJ 2014 L 277/21), which imposes certain obligations on lobbyists. They always have to identify themselves, shall not obtain or try to obtain information dishonestly, and have to ensure that, to the best of their knowledge, that information, which they provide is complete, up-to-date and not misleading. Furthermore, they shall, for example, if employing former officials or other staff of the EU, or assistants or trainees of Members of EU institutions, respect the obligation of such employees to abide by the rules and confidentiality requirements which apply to them.
Sanctions for non-compliance	<b>Non-compliance</b> with the code of conduct may lead to removal from the register (up to two years), de-activation of the authorisation for access to European Parliament premises and loss of other incentives.
Council	The European Council and the <b>Council</b> are reluctant to join this register, even though they “are invited” to do so.
Future	At the moment, there are plans to for a <b>future mandatory</b> system of the lobbying rules (IP/16/462).

### 4.4. Sources of law

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#### 4.4.1. Overview

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Overview	The following chapters will focus on these sources of law which are of special importance in practice: the regulation and the directive (both secondary law). Moreover, a short <b>overview</b> will mention other sources of law in the context of the EU.
Modifications by Lisbon Treaty	<p>One of the objectives of the <b>Treaty of Lisbon</b> was to reduce the number of different sources of law. Accordingly, the following overview is relatively short.</p> <ul style="list-style-type: none"><li>▪ <b>Primary law</b> comprises all sources of law, which are created and amended by all Member States. This includes the CFR, the TEU, the TFEU, as well as all modifications (for example, accession treaties and treaty revisions; see chapters 2.1.2. and 2.1.3.). <b>N.B.</b> Therefore, for example, the Treaty of Lisbon could only enter into force after all (!) Member States had ratified it.</li><li>▪ <b>Secondary law</b> comprises all sources of law which are created and amended by the institutions (for decision-making see chapter 4.3.). This also includes, for example, recommendations and opinions, which both have no binding force and also decisions. <b>N.B.</b> According to the Treaty of Lisbon, the “legal effects of the acts</li></ul>