

Introduction to Italian Law

European Union.

The institutional framework

Institutional framework – art. 13 TEU

- The Union have an institutional framework which shall
 - aim to promote its values,
 - advance its objectives,
 - serve its interests, those of its citizens and those of the Member States,
 - and ensure the consistency, effectiveness and continuity of its policies and actions.
- The EU possesses the following institutions (art 13 TEU):
 - the European Parliament,
 - the European Council,
 - the Council,
 - the European Commission (hereinafter referred to as ‘the Commission’),
 - the Court of Justice of the European Union,
 - the European Central Bank,
 - the Court of Auditors

European Parliament - Composition

- The number of MEPs for each country is roughly proportionate to its population, but this is by degressive proportionality: no country can have fewer than 6 or more than 96 MEPs
- MEPs are grouped by *political affiliation*, not by nationality.
- *Article 14 TUE*
 - 2. The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number, plus the President. Representation of citizens shall be digressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats (...)
 - 3. The members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot.
 - 4. The European Parliament shall elect its President and its officers from among its members.

EP – Composition after Brexit

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European Parliament : powers

- *Article 14 TUE*
 - 1. The European Parliament shall, jointly with the Council, exercise *legislative* and *budgetary functions*.
 - It shall exercise functions of *political control* and *consultation* as laid down in the Treaties..
 - It *shall elect* the President of the Commission
- *See Articles artt. 223-236 TFUE*
 - constitutional-type powers and ratification powers
 - participation in the legislative process
 - budgetary powers
 - scrutiny over the executive
 - appeals to the ECJ

European Council

- The European Council is now the *summit conference of Heads of State or Government the EU MS*;
 - The first of these ‘European summits’ took place in Paris in 1961 and they have become more frequent since 1969;
 - In the Paris European summit of February 1974, it was decided that these meetings of Heads of State or Government should henceforth be held on a regular basis under the name of ‘European Council’, which would be able to adopt a general approach to the problems of European integration and ensure that Union activities were properly coordinated.
 - The Single Act (1986) for the first time included the European Council in the body of the Community Treaties,
 - The Treaty of Maastricht (1992) formalized its role in the EU’s institutional process.
- The *Treaty of Lisbon* made the **European Council** a *full institution* of the EU (Article 13 TEU) and defined its tasks:

European Council

- *Article 15 TEU and art. 235 TFEU*
- 1. The European Council *shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof.* It shall not exercise legislative functions.
- 2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work.

European Council

- *Article 15 TEU and art. 235 TFEU*
- 3. The European Council shall meet twice every six months, convened by its President. When the agenda so requires, the members of the European Council may decide each to be assisted by a minister and, in the case of the President of the Commission, by a member of the Commission. When the situation so requires, the President shall convene a special meeting of the European Council.
- 4. Except where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus.

President of the European Council

- 5. The European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end the President's term of office in accordance with the same procedure.
- 6. The President of the European Council:
 - (a) shall chair it and drive forward its work;
 - (b) shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;
 - (c) shall endeavour to facilitate cohesion and consensus within the European Council;
 - (d) shall present a report to the European Parliament after each of the meetings of the European Council.

President of the European Council

The *President of the European Council* shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy.

The President of the European Council shall not hold a national office

High Representative of the Union for Foreign Affairs and Security

- *Article 18*
- 1. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the *High Representative of the Union for Foreign Affairs and Security Policy*. The European Council may end his term of office by the same procedure.
- 2. The *High Representative* shall conduct the Union's common foreign and security policy. He shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
- 3. The *High Representative* shall preside over the Foreign Affairs Council.

High Representative of the Union for Foreign Affairs and Security

- 4. The High Representative shall be one of the Vice-Presidents of the Commission. He shall ensure the consistency of the Union's external action. He shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the High Representative shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3.

Council

- The *Council* exercises the powers conferred on it under Article 16 TEU and Articles 237-243 TFEU
- *Legislation*
 - On the basis of proposals submitted by the Commission, the Council adopts EU legislation either jointly with Parliament (Article 294 TFEU (ordinary legislative procedure) or alone, following consultation of Parliament.
- *Budget*
 - The Council is one of the two arms of the budgetary authority, the other being Parliament, which adopts the European Union's budget
- *Other powers*

Council

- *Membership*
- The Council consists of a representative of each Member State at ministerial level, who '*may commit the government of the Member State in question*' (Article 16(2) TEU).
- *Presidency*
- With the exception of the Foreign Affairs Council, the Council is chaired by the *representative of the Member State that holds the European Union's presidency: this changes every six months, in the order decided by the Council* (Article 16(9) TEU).
- The presidency of all Council formations except foreign affairs is held by pre-established groups of three Member States for periods of 18 months, with each member chairing the Council for six months.
- The order of presidencies for the next years is as follows:
 - Croatia and Germany in 2020, Portugal and Slovenia in 2021, France and the Czech Republic in 2022, and Sweden and Spain in 2023.
- The European Council can change the order (Article 236(b) TFEU).

Council

- *Configurations*

- The Council shall meet in different configurations, the list of which shall be adopted in accordance with Article 236 of the TFEU
- The General Affairs Council shall ensure consistency in the work of the different Council configurations. It shall prepare and ensure the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission.
- The Foreign Affairs Council shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.

Council

- **Decision-making and Voting**

- Depending on the area concerned, the Council takes its decisions by a *simple majority*, a **qualified majority** or *unanimity*;
- When the Council acts in a legislative capacity, its meetings are open to the public (Article 16(8))

- *1. Simple majority*

- This means that a decision is deemed to have been taken when there are more votes for than against. Each member of the Council has one vote. The simple majority rule is applicable when the Treaty does not provide otherwise (Article 238(1) TFEU).
- It is thus the default decision-making process: in practice, however, it applies only to a small number of decisions:

Council

- **Qualified majority (QMV)**
 - The Council shall act by a qualified majority except where the Treaties provide otherwise. It requires more votes than a simple majority of votes.
 - *(Till November 1st2014, in such cases there is no longer equality of voting rights. Each country has a certain number of votes proportionate to its population (Art- 205(2) TEC and, from November 2014, Art- 238 TFEU).*
 - The *Treaty of Lisbon* discarded the system of weighted votes in favor of a *simple double-majority rule*:
 - 55% of the Members of the Council (72% if the proposal does not come from the Commission or the High Representative), comprising at least 16 of them (or 21 in the absence of an initiative by the Commission or the High Representative)
 - and representing at least 65% of the Union's population.
 - The new system has been applicable since November 1st2014.

Council

- *Unanimity*
 - Unanimity is only required by the Treaty for decisions in a few areas, which are, however, among the most important (taxation, social policy, etc.).
 - This was maintained by the Treaty of Lisbon. However, Article 48(7) TEU provides a bridging clause which enables the Council to adopt decisions on certain subjects by a qualified majority instead of unanimity. Moreover, for certain policies the Council may decide(unanimously) to extend the use of QMV (e.g. Article 81(3) TFEU on family law with cross-border implications).

COREPER (Article 240 TFEU)

- *Preparatory bodies*
- A committee consisting of the permanent representatives of the Member States (*COREPER*) prepares the Council's work and carries out the tasks which the Council assigns to it (Article 240 TFEU).
- *COREPER* meets every week to prepare the work of the Council and coordinate activities relating to co-decision with the European Parliament. It is divided into two groups
 - *COREPER* I, comprising the deputy permanent representatives, prepares work in the more technical areas, including agriculture, employment, education and the environment;
 - *COREPER* II addresses matters falling more within the field of 'high politics', in particular foreign, economic and monetary affairs and justice and home affairs
- The agenda of the weekly meeting is divided into:
 - a part "I" (**I points**, items scheduled without debate) and
 - a part "II" (**II points**, items scheduled for debate).

European Commission

- Article 17 TUE and Articles 244-250 TFEU
- The Commission is the EU institution that has the monopoly on legislative initiative and important executive powers in policies such as competition and external trade.
- It is the principal executive body of the European Union.
- The Commission oversees the application of Union law and respect for the Treaties by the Member States; it also chairs the committees responsible for the implementation of EU law.
- At the beginning, each Community had its own executive body: the High Authority for the European Coal and Steel Community (1951) and a Commission for each of the two communities set up by the Treaty of Rome in 1957, the EEC and Euratom.
- These were merged into a single European Commission on 8 April 1965 by the Merger Treaty (Treaty of Bruxelles)

European Commission

- *Composition*

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

European Commission

- *Appointment*

- The Treaty of Lisbon stipulates that the results of the European elections have to be taken into account when the European Council, after appropriate consultations and acting by a qualified majority, proposes the candidate for President of the Commission to Parliament. This candidate is elected by Parliament by a majority of its component members (Article 17(7) TEU).
- The Council of the EU (‘the Council’), acting by a qualified majority and by common accord with the President-elect, adopts the list of the other persons whom it proposes for appointment as members of the Commission, on the basis of the suggestions made by Member States.
- The President and the other members of the Commission, including the High Representative of the Union for Foreign Affairs and Security Policy, are subject to a vote of consent, as a body, by Parliament and are then appointed by the European Council, acting by a qualified majority.
- Since the Treaty of Maastricht a Commissioner’s term of office has matched the European Parliament’s five-year term and is renewable.

European Commission

- *Accountability*
- 1. Personal accountability (Article 245 TFEU)
- Members of the Commission are required:
 - To be completely independent in the performance of their duties, in the general interest of the Union; in particular, they may neither seek nor take instructions from any government or other external body;
 - Not to engage in any other occupation, whether gainful or not.
 - Commissioners may be compulsorily retired by the Court of Justice, at the request of the Council or of the Commission itself, if they breach any of the above obligations or have been guilty of serious misconduct (Article 247 TFEU).
- 2. Collective accountability
 - The Commission is collectively accountable to Parliament under Article 234 TFEU. If Parliament adopts a motion of censure against the Commission, all of its members are required to resign, including the High Representative of the Union for Foreign Affairs and Security Policy as far as his or her duties in the Commission are concerned.

European Commission

- *Powers*
- *Legislative initiative*
 - The power of proposal is the complete form of the power of initiative, as it is always exclusive and constrains the decision-making authority to the extent that it cannot take a decision unless there is a proposal and it has to base its decision on the proposal as presented.
 - The Commission draws up and submits to the Council and Parliament any legislative proposals (for regulations or directives) needed to implement the treaties (1.2.3).
- *Budgetary initiative*
 - The Commission draws up the draft budget, which it proposes to the Council and Parliament under Article 314 TFEU (1.2.5).

European Commission

- *Power to monitor the implementation of Union law*
 - The Commission is required under the Treaties to ensure that the Treaties themselves, and any decisions taken to implement them (secondary legislation), are properly enforced. Therein lies its role as guardian of the Treaties. This role is exercised mainly through the procedure applied to Member States where they have failed to fulfil an obligation under the Treaties, as set out in Article 258 TFEU.
- *Relations with non-member countries*
 - Where a mandate has been given by the Council, the Commission is responsible for negotiating international agreements under Articles 207 and 218 TFEU, which are then submitted to the Council with a view to their conclusion

- *In the context of Economic and Monetary Union*
 - The Commission has a role in managing Economic and Monetary Union (EMU). It submits to the Council:
 - Recommendations for the draft broad guidelines for the Member States' economic policies, and warnings if those policies are likely to be incompatible with the guidelines (Article 121(4) TFEU);
 - Assessment proposals to enable the Council to determine whether a Member State has an excessive deficit (Article 126(6) TFEU);
 - Recommendations on measures to be taken if a non-euro area Member State is in difficulties as regards its balance of payments, as provided for in Article 143 TFEU;
 - Recommendations for the exchange rate between the single currency and other currencies and for general orientations for exchange-rate policy, as provided for in Article 219 TFEU;
 - Assessment of national policy plans and presentation of country-specific draft recommendations falling under the European Semester.

European Commission

- *Implementing powers*
 - 1. Conferred by the Treaties
 - 2. Delegated by Parliament and the Council
 - 3. Delegated acts