

European Union Law

Topic 2 (of 4): Institutions and law-making.

Lecture 1 (of 3):

The Union's Institutions and Related Bodies

Aim:

To focus on the evolution, functions and continuing proposals for reform of the political Institutions of the EU – the European Council, European Parliament, the Council and the Commission.

Learning Outcomes:

After carefully studying the following notes and other prescribed readings for this lecture, you should be able to:

1. Critically evaluate the assertion that the election (as opposed to appointment) of MEP's together with the EP's influence over the appointment of Members of the Commission, including the President, and the EP's enhanced role in law-making are positive moves towards reducing the democratic deficit within the Community;
2. Discuss the evolution in the voting requirements so as to block decision-making by the Council pre and post the coming into force of the Treaty of Lisbon; and review the UK's attempt to keep the blocking minority vote at 23 on the accession of new Member States in 1995;
3. Discuss the powers of each of the political Institutions, the inter-Institutional power-relationship and how, if at all, the institutional balance will change now that the **Treaty of Lisbon** (The *Reform Treaty*) has entered into force.

The Union's Institutions: Arts.13-19 TEU; and Arts.223-287 TFEU

Arts.13-19 TEU in **Title III** of the Treaty on European Union (*post ToL*) contain 'the Provisions on the Institutions'. **Art.13 TEU** provides that:

1. The Union shall 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 consistency, effectiveness and continuity of its policies and actions.

The Union's institutions shall be:

- (i) The European Parliament;

- (ii) The European Council;
 - (iii) The Council;
 - (iv) The Commission;
 - (v) The Court of Justice of the European Union;
 - (vi) The European Central Bank; and
 - (vii) The Court of Auditors.
2. Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. ...
 3. ... [contains provisions relating to the ECB and CoA]
 4. The European Parliament, the Council and the Commission shall be assisted by an *Economic and Social Committee* [ESC / ECOSOC] and a *Committee of the Regions* acting in an advisory capacity

Institutions and ‘other bodies’

Whereas **Art.13(1) TEU** specifies the Union’s institutions, **Art.13(4)** then notes that three of the principal political institutions may be assisted by other bodies – specifically, two Committees are specified. The difference between institutions and such other bodies as may be provided for is addressed by **Mathijsen**¹ who noted:

“What distinguishes an institution from other Union bodies is the fact that the former, generally speaking, can “act”, i.e., take binding decisions and that its members are either elected nationally (council and Parliament) or appointed by the governments of the Member States or by the Council. The other organs operate in specific fields and either have a purely advisory task or take decisions which are not generally binding”.

The Political Institutions.

(I) The European Parliament: Art.14 TEU and Arts.223-234 TFEU

(ex.Arts.189 - 201 EC / Arts.137 – 144 EC ‘pre-Amsterdam’)

The European Parliament, originally known as the Assembly, is unique amongst the political institutions of the EU in that it is the only institution having democratically elected members. Although proposals were first mooted in 1960, the introduction of democratic elections was delayed until 1979. Prior to that, MEPs were *nominated* by the governments of the Member States and they exercised limited roles. However:

¹**Mathijsen, PSRF.** *A Guide to European Union Law*, 10th edn., 2010. London: Sweet & Maxwell, p61.

the governments of the Member States in September 1976 finally agreed on the **Decision and Act concerning Direct Elections**² in accordance with which the first direct elections were held in 1979. Adjustments have been made to that instrument in order to accommodate the accession of [new Member States].³

In 1962, the then 'Assembly' decided to call itself the European Parliament which, in retrospect, was, perhaps, not the wisest of decisions given that this institution has neither the exclusive power to legislate nor the power of taxation. Moreover, the name 'Parliament' gives the impression of the Union being under democratic control whereas it "is not a body of representation of a sovereign European people"⁴. Nevertheless, the formal recognition of the Parliament as such was given by the **Single European Act, Art.3**.

Numbers of MEPs

Art.14(2) TEU provides that: 'The European Parliament ... shall be composed of representatives of the Union's citizens'. The number of MEPs shall not exceed 750 plus the President⁵. 'Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than [96] seats'.

Allocation of the numbers of MEPs to each Member State

'Degressively proportional' simply means that the bigger the population of a Member State the fewer seats it has relative to its population. Indeed, that the allocation of seats to each Member State is **not** proportional to the State's population is noted by **Hartley**⁶ who notes that:

the population of the United Kingdom is more than 130 times that of Luxembourg. [Yet it has fewer than thirteen times the number of seats]. To put it another way: the vote of one Luxembourger is worth more than those of ten British citizens. This is not consistent with the principle of equality among voters.

Indeed, in the June 1994 elections, the variation in size of population per MEP ranged from 1:820,000 voters in Germany to 1:65,000 voters in Luxembourg.⁷

Nugent⁸ asserts that the reason the smaller states are over-represented is to ensure 'that the representations of small states are not totally swamped in the decision-making process.'

² **Council Decision 76/787**

³ Extract from: **Lasok, D.** *Law and Institutions of the European Union*, 6th edn., 1994. London: Butterworths, p215.

⁴ Quotation attributable to the German constitutional Court and noted in *Mathijsen*, op cit. fn.1, p61.

⁵ Declaration No.4 to the ToL provides that the President of the EP will count towards the total of 750.

⁶ **Hartley, T.C.** *The Foundations of European Union Law*, 7th edn., 2010. Oxford: OUP, p14.

⁷ See: **Nugent, N** *The Government and Politics of the European Union*, 3rd edn., 1994. Basingstoke: The Macmillan Press Ltd., pp186-189; and the marginally amended figures in the 4th edn., 1999, p221.

Election of MEPs

Prior to the June 1999 elections, the U.K. was the only Member State where all the electorate did *not* elect its MEPs by proportional representation. British MEPs (i.e. those from England, Scotland and Wales) were elected by the traditional ‘first past the post’ system, whereas ‘in Northern Ireland ... proportional representation has been used to ensure that the Catholic minority wins a seat.’⁹ The U.K.’s insistence on maintaining the traditional voting system for electing MEP’s meant that the uniform procedure provided for under the *EC Treaty* (Art.190(4) EC / Art.138(3) EEC) had not been adopted until June 1999 – an election that brought about the election of the first MEPs from *Plaid Cymru* the Party of Wales and a dramatic turn of fortune for the Conservative Party following its annihilation in the 1994 election.

Council Decision 76/787 was amended in 2002¹⁰ and this now provides that MEPs “shall be elected¹¹ on the basis of proportional representation, using the list system or the single transferrable vote [but that] Member States may authorise voting based on a preferential list system in accordance with the procedure they adopt”. As this is a matter for each Member State, then:

“ ... the Parliament cannot challenge the administration of these elections even when it believes that Member States have not followed their own electoral procedures or some dubious practice has taken place. National law is taken as the exclusive basis for verifying this: *Joined Cases C-393/07* and *C-9/08, Italy v Parliament*”¹².

Political Groups

MEPs (The “representatives of the Union’s citizens”) sit in multinational political groups. They include groups such as the *Greens / European Free Alliance* – which includes *Plaid Cymru* and the SNP {55 members in September 2009}; the *Progressive Alliance of Socialists and Democrats* – which includes Labour MEPs from Britain and Social Democrats from other Member States {184 members}; and the *Europe of Freedom and Democracy Group* {32 members}. A ‘group’ is recognised (by the EP’s ‘Rules of Procedure’) once it has at least 20 members representing, overall, at least one-quarter of the Member States¹³.

The importance of political parties is recognised in **Art.10(4) TEU** (ex.Art.191EC / Art.138aEEC) which provides that they “contribute to forming European political awareness and to expressing the will of citizens of the Union”.

⁸ *ibid.*, p188 (3rd edn); and p221, 4th edn.

⁹ *Nugent*, op.cit, 3rd edn., p188.

¹⁰ By *Decision 2002/772*.

¹¹ With regard to the citizenship requirement for voting and the right of persons in Gibraltar to vote, see *Case C-145/04, Spain v UK*

¹² Extracted from *Chalmers et al, European Union Law*, 2nd edn., 2010. Cambridge: CUP, p82.

¹³ *Rules of Procedure, r.30.2*; and see *Joined Cases C-486/01* and *C-488/01, Front National*.

Absence of a Single Seat for the EP: The Multi-Site Fiasco.

Art. 341 TFEU (ex. Art. 289 EC / Art. 216 EEC) provides that:

The seat of the institutions of the Union shall be determined by common accord of the Governments of the Member States.

In fact, meetings of the EP may be in Strasbourg, France (the principal site), Brussels, Belgium and even Luxembourg. The cost and inefficiency of the European Parliament being peripatetic leads to ridicule when it is known that a new Parliament building for 700 MEP's was opened in Brussels in February 1998 and one opened in Strasbourg in July 1999 – even though the original building was built in Strasbourg only 20 years earlier, in 1979! Political 'in-fighting' within the Community has led to failure to agree on a single site for the European Parliament.

Powers and Influence of the European Parliament.

Nugent¹⁴ notes that:

... whilst it is true that the EP's constitutional powers are not as strong as those of national legislatures, developments over the years have come to give it a considerable influence in the EU system. As with national parliaments this influence is exercised in three main ways: through the legislative process, through the budgetary process, and through control and supervision of the executive¹⁵.

(i) European Parliament and EU Legislation.

Prior to the 1997 Treaty of Amsterdam being ratified and coming into force on the 1st May 1999, the EP could be said to have had no more than a weak, albeit continuing to develop, genuine legislative role. This is not too surprising given that, as originally constituted, *the Assembly* was an Institution not intended to be a legislative body. Prior to the enactment of the Single European Act (SEA), the basic procedure consisted of the Council consulting the Parliament before passing legislative acts. This was a simple but essential procedural requirement with failure to consult leading to annulment. A Treaty provision embracing the consultation procedure would provide: "the Council shall, on a proposal from the Commission and after *consulting* the European Parliament ...". It was the ECJ that recognised this as an "essential procedural requirement" and a Council act that was passed in the absence of a response (favourable or otherwise) was annulled: Cases 138/79, Roquette Frères v Council; and 139/79, Maizena v Council. To be able to rely on this sanction, however, the Parliament must not be in breach of its duty to cooperate by unduly delaying a response: Case C-65/93, Parliament v Council.

¹⁴ 4th edn., p205

¹⁵ See, also, the provisions of **Arts. 194** [the right to petition Parliament] & **195 EC** [the Ombudsman].

A more elaborate consultation procedure, known as the “Cooperation procedure” [now defunct] was, along with the “Assent” procedure introduced by the **SEA**. A fourth and final legislative procedure, the “Co-decision procedure”, under which the EP has the ultimate power of veto, was introduced via the **TEU** (“Maastricht”). *Post-ToA*, the co-decision procedure (renamed ‘ordinary legislative procedure’ under the *ToL*) has become the ‘norm’¹⁶ and a remarkable evolution from the EP having no effective input into the legislative procedure to becoming a co-legislator has been completed.¹⁷

Under the **TFEU**, **Art.288** confirms that the European Parliament acting jointly with the Council can make legislative provisions and **Art.225 TFEU** gives the EP the authority to *request* the Commission to submit any appropriate proposal on which the EP considers that a Union act is required for the purpose of implementing the Treaties. Clearly, the latter provision boosts the EP’s *initiating* powers of legislation albeit the ‘power’ is confined to a request.

Weaknesses are evident, however, in that, by contrast to national parliaments, the EP does not have the ultimate authority to determine what is or is not to become law - and it did not have anything approaching such authority until the 1997 **ToA** was ratified. So, at present, it still does not have the capacity to initiate, develop *and* pass into law its own proposals; neither can it unfailingly veto *all* proposals for legislation though it does have a delaying power.

(ii) The EP’s Role in Controlling and Supervising the Executive.

Art.13(2) TEU provides that the EP, along with all other institutions, ‘shall act within the limits of the powers conferred on it in the Treaties ...’. Undoubtedly, the principal power the EP has wielded - prior to its recently, greatly enhanced, role in law-making – is its ability to compel the Commission to resign en bloc: **Art.234 TFEU** (*ex.Art.201EC*). *The EP does not have the power to dismiss an individual Commissioner, only the College of Commissioners*. To be effective, this requires a two-thirds majority of the votes cast and to represent a majority of all MEPs. The threat of using the power of dismissal may be used as a ‘tactical weapon’, however. For example, first, in January 1999, 232 MEPs voted in support of a motion of censure that was called to dismiss the **Jaques Santer** College of Commissioners. Whereas that motion did not succeed in its aim, the publication of a report in March 1999 highly critical of the Commission led to the collective resignation of the Commission. The resignation pre-empted an almost certain-to-succeed vote on a motion of censure that would have ensued had the resignation not been tendered.

¹⁶ ‘The ordinary legislative procedure’ (a name that would have been given to it by the Treaty establishing a Constitution for Europe: see **Art.I-34**).

¹⁷ See Topic 2, Lecture 3 for more details.

Nugent¹⁸ commented that: “The resignation was widely interpreted as a triumph for the EP and as a highly significant step forward in its long campaign to exercise greater control over Commission activities.” Nevertheless, the **Santer** caretaker/outgoing Commission remained in office until the new Commission under the Presidency of **Romano Prodi** was approved by the Parliament in September 1999.

Secondly, to add to the power of dismissal, the **Treaty of Amsterdam** increased the influence of the EP over the *appointment* of Commissioners. Moreover, the appointment of the President of the Commission henceforth required consent (via a vote of approval) of the European Parliament¹⁹. Indeed, the refusal of the EP in 2004 to sanction the Commission of **José Barroso** led to the replacement of two Commissioners before the new Commission took office three weeks later than scheduled, on 22nd Nov 2004.

Under **Art.17(7) TEU** (*post-ToL*), the **President of the Commission**, the **High Representative of the Union for Foreign Affairs and Security Policy** and all other Commissioners are subject to a vote of consent by the EP

(iii) The European Parliament and the EC Budget

The extent to which the EP may influence or bring about change in the EC budget is no longer dependent on whether the expenditure is classified as ‘compulsory’ or ‘non-compulsory’ (as was the case under the EC Treaty). The former is that expenditure which is committed under Treaty provisions or Union legislation, e.g. the Common Agricultural Policy (CAP). Compulsory expenditure accounts for more than half of the total Union’s budget. The latter, non-compulsory expenditure, applies to (say) social or regional policies or aid to non-EU States in Central and Eastern Europe.

It is **Art.314(4) TFEU** that provides that the EP may amend any part of the draft budget and that it may adopt the amendment(s) by a majority of its component members.

Other Functions and Powers of the European Parliament

See **Arts.: 226 TFEU** – setting up temporary committees of inquiry; **228 TFEU** – the election of an ombudsman empowered to receive complaints from any citizen of the Union concerning instances of maladministration; and **231 TFEU** – the general rule being that the EP acts by an absolute majority of the votes cast.

¹⁸ 4th edn., p217

¹⁹ The **Treaty of Lisbon** has extended the power of the Parliament by giving it the right to elect the President of the Commission.

(II) The European Council: Art.15 TEU & 235-236 TFEU

The European Council evolved from informal meetings of *Heads of State or Government of the Member States* and their respective Foreign Ministers. The present composition is provided for in **Art.15(2) TEU**, viz;

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.

The European Council, which was first given recognition by **Art.2** of the *SEA*, generally meets at least twice every six months, with the meetings being held in the State having Presidency of the Council. In essence, meetings of the European Council remain intergovernmental summit meetings.

The significance of the European Council is encapsulated in **Art.15(1) TEU** (ex.Title 1, Article D of the Treaty on European Union ('Maastricht')) where it is stated that:

“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”

President of the European Council

In common with the Council of the EU, the European Council is a body whose members promote their own national interests. Accordingly, commentators, such as *Urwin*, see this as undermining the supranational character of the EC. That aside, the European Council has acquired the status of an institution under the *Treaty of Lisbon* and one person, at present **Herman Von Rompuy**, is elected (by the European Council on a qualified majority vote) **President of the European Council** for a period of 2½ years, renewable once.

(III) The Council of the European Union (“The Council”): Art.16 TEU and Arts.237-243 TFEU. (ex.Arts.202 – 210 EC ‘post-Amsterdam’)

“The Council of the European Union²⁰ (the “Council”) is the political and legislative organ of the EU. The national interests of each Member State are represented on it. It is the principal and ultimate decision-making body of the EU. Prior to the entry into force of the Maastricht Treaty in November 1993, the Council’s full title was the Council of the European Communities (colloquially known as the Council of Ministers). It ... renamed itself to take into account its additional role under the Maastricht Treaty in the context of the foreign and security policy and [Provisions on police and judicial cooperation in criminal matters]”.²¹

²⁰ The Council adopted a Decision in 1993, *Decision 93/591*, and renamed itself “The Council of the European Union”.

²¹ *Bright, C. The EU: Understanding the Brussels Process*. Chichester: Wiley & Sons, 1995, p15.

Composition and Configuration of the Council

By contrast to the Commission, the Council represents the Member States. **Art.16(2) TEU** (ex.Art.203EC / Art.146EEC) provides that the Council is composed of ‘a representative of each Member State at ministerial level authorised to commit the government of that Member State.’ Each government delegates to the Council one of its members according to the matter being discussed at any particular meeting. For example, national Ministers of Agriculture make up the Agriculture and Fisheries Council, and national Ministers of Finance constitute the Economic and Finance Council; the General Affairs and External Relations meetings are attended by Ministers of Foreign Affairs. In total, as from the coming into force of the **Treaty of Lisbon**, the Council may sit in **ten** configurations (during the 1990s there were 22!), viz;

- General Affairs;
- Foreign Affairs;
- Economic and Financial Affairs;
- Justice and Home Affairs;
- Agriculture and Fisheries;
- Environment;
- Education, Youth and Culture;
- Employment, Social Policy, Health and Consumer Affairs;
- Competitiveness; and
- Transport, Telecommunications and Energy.

It is **Art.16(6) TEU** and **Art.236 TFEU** that provide for the Council to meet in different configurations. Whatever the configuration, the Council is a unitary institution, which means, to quote **Wyatt & Dashwood**²²: “it is the same institution with the same powers under the Treaties, whatever the particular national responsibilities of the ministers attending a given meeting”.

Council Presidency

The Council has had a rotating presidency of its configurations, which was provided in turn, by each Member State taking the presidency for six months at a time: 1st January – 30th June; and 1st July – 31st December. Essentially, this procedure is retained under the amendments made by the ToL, other than for Foreign Affairs, as part of a team Presidency in that 3 Member States work together for a period of 18-months during which time each Member State acts in turn as President of the Council assisted by the other two Member States.

Functions of the Council

Article 16(1) TEU (ex.Art.202EC) provides that:

²² **Arnall, A, et al.** *Wyatt & Dashwood's European union Law*, 5/e. London: Sweet & Maxwell, 2006, p32.

The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Treaties.

Meetings and Decision-making: Voting.

Art.238 TFEU ('old' Art.204EC) provides that: 'The Council shall meet when convened by its President on his own initiative or at the request of one of its members or of the Commission.' The seat of the Council is in Brussels, although in April, June and October, meetings are held in Luxembourg.

With respect to voting, **Art.238(2) and (3) TFEU** ('old' Art.205EC) provide for qualified majority voting to be based solely on 'percentages' of votes available, **Art.238(3)** being the more significant provision and requiring, as from 1st November 2014²³, the following for a measure to be adopted:

... 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

By contrast, to 'reject' or block a measure:

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member [i.e., a minimum of 4 Member States], failing which the qualified majority shall be deemed attained.

The allocation of votes has undergone many changes since the Community came into force (1958). Currently, (and up to the 31st October 2014) there are 345 votes allocated to the 27 Member States (Germany, France, Italy and the UK each having the most votes: 29; and Malta has the smallest allocation with 3 votes). The qualified majority is 255, the blocking minority being $91 \{ \{345-255\} +1 \}$ ²⁴. Moreover, a QMV must represent at least 62% of the total population of the EU, if such verification is requested by a member of the Council.

Historical note: amending the qualified majority voting system.

Prior to the accession of Finland, Sweden and Austria in 1995, the total number of votes distributed amongst the then 12 Member States of the EC was 76. The number of votes required to pass a motion was 54: this was the qualified majority. It represented 71% of the available votes and could only be achieved by a majority of States voting in favour of the motion, e.g: 4 (x 10) + 1 x 8 (from Spain) + 1 x 5 (from any one of Belgium, Greece, The

²³ Although a transition period is in force until 1st April 2017; and only then is the provision fully in force.

²⁴ Immediately prior to the accession of Bulgaria and Romania on 1st January 2007, the figures were: 321 votes available in Council; 232 required for QMV and 90 for a blocking minority vote.

Netherlands or Portugal) + 1 x 2 (from Luxembourg). Thus, not only was it impossible for a numerical minority of the largest States to outvote the majority, it was also impossible for any two of the largest States acting in concert to constitute a blocking minority: if 54 votes were required to pass a motion, then 23 would suffice to block it: $(76 - 54) + 1 = 23$. Accordingly, at least three States would have to combine if a motion was to be rejected.

When, in 1994, it appeared that four more States would join the EC in 1995, the issue of qualified majority voting/size of the block vote made headline news in *The Times*²⁵ because of the isolated stance adopted by the United Kingdom. The newspaper²⁶ referred to:

“ ... the acrimonious dispute that is threatening the admission of four new members to the European Union.

“At the heart of the dispute is a proposed change in voting procedures to take into account the expansion of the Community to include Austria, Sweden, Norway and Finland next year. ... At the moment, legislation can be blocked if there are 23 votes out of 76 against the proposal. Most members want to change that to 27 out of 90 when the Community grows, but Britain and Spain want to keep the ‘blocking minority’ at 23.

“[However, a compromise changed] the blocking minority to 27 with a promise that a minority of 23 or more would not be overruled without a ‘reasonable delay’ for further consideration of the issue. Spain last night accepted the compromise.”

Writing in *The Observer*²⁷, **Andrew Rawnsley's** view of the crux of the issue was that:

“So isolated has Britain become in Europe, so unsure of its ability to find allies for its limited vision of the EU, that it cannot risk accepting a requirement to find three other countries out of 15, instead of two out of 11, to stop directives it does not like.”

Nevertheless:

“In Commons scenes suggesting that support for Mr Major was draining away, he [Mr Major] [confirmed that the compromise] had been accepted by the Cabinet in spite of objections from four right wing ministers and many Tory MPs.”²⁸

That, in fact, three and not four States acceded to the EC Treaty on 1st January 1995 took the total of weighted votes to 87. This led to adoption by qualified majority vote requiring 62 votes to succeed.²⁹ So, bringing up to date the points made above, **Bright** noted that:

²⁵Monday 28, Tuesday 29 and Wednesday 30 March 1994.

²⁶Monday 28 March.

²⁷Sunday 20 March 1994. See also: (1994) 31 CMLRev 453-457

²⁸The Times 30 March 1994.

²⁹See the ‘old’ Art.148(2) EC {now Art.205EC}

“The compromise eventually reached raises the blocking minority to 26 votes, although a dissenting minority of at least 23 will be entitled to a ‘reasonable delay’ before a final vote is taken. During that period the Commission will be obliged to try to reach agreement. Once a Member State considers a reasonable delay to have elapsed, it can request a final vote to be taken. If a simple majority agrees, the proposals may then only be blocked by a dissenting minority of 26 votes. As a last resort, it may still be possible to invoke the Luxembourg compromise.”

The whole issue of the weighting of votes in Council and the size of the blocking vote in a motion based on QMV has undergone a considerable evolution over the past 16 years. Moreover, there has, however, been a ‘significant increase’ in the amount of decision-making by qualified majority voting since the 1997 Treaty of Amsterdam came into force, in May 1999.

The Luxembourg Accord / Compromise.

The move towards a greater use of qualified majority voting was frustrated in 1965 when France absented itself from the Council for the latter part of that year. During the period 1963-65, a high degree of tension between France and the then five other Member States had developed over disagreement over a range of matters including De Gaulle’s veto of UK membership of the EEC in 1963, rifts over opinion and strategy in defence (which led to the withdrawal of France from the NATO military command structure in 1966) and clashes over the Common Agricultural Policy. When compromise was not attained, “France simply refused thereafter to attend any further meetings of the Council of Ministers, provoking what came to be known as the ‘empty chair’ crisis.”³⁰

The effect of the disagreements could have been devastating for the EEC if it were not for the compromise which is known as the Luxembourg Compromise or Luxembourg Accord, also known as the ‘agreement to disagree.’ The compromise reached in 1966 provided that:

I. Where in the case of decisions which may be taken by majority vote on a proposal of the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community, in accordance with Article 2 of the Treaty.

³⁰Urwin, D.W. *The Community of Europe: A History of European Integration Since 1945*, 2/e. London: Longman, 1995, p111.

II. With regard to the foregoing paragraph, the French delegation considers that where very important interests are at stake the discussion must be continued until unanimous agreement is reached.

III. The six delegations note that there is a divergence of views on what should be done in the event of failure to reach complete agreement.

IV. The six delegations nevertheless consider that this divergence does not prevent the Community's work being resumed in accordance with the normal procedure.

N.B.: the Luxembourg Accord does NOT have Treaty status.

Organisation Related to the Council

That the government Ministers who participate in the Council of Ministers also have national responsibilities means that they cannot permanently be present in Brussels. However, this isn't a bar to consistency and continuity in the work of the Council: a subsidiary body known as the **Committee of Permanent Representatives** (COREPER, the French acronym) has been created to undertake two principal roles: to provide liaison between national governments and Community institutions for the exchange of information; and to prepare draft Community legislation with the Commission for final submission to the Council itself: **Art.240 TFEU** (ex Art.207EC).

(IV) The Commission: Art.17 TEU and Arts.244-250 TFEU; (ex.Arts.211-219EC)

In essence, the Commission acts as the executive of the EC. Its principal functions are provided for in **Art.17(1) TEU** which states:

The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and measures adopted by the institutions pursuant to them. It shall oversee the application of the Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage the programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, ..., it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.

The Commission is a collegiate body consisting of 27 Commissioners³¹ one of whom will be nominated by the **common accord** of the governments of the Member States to act as the President of the Commission but it is for the EP to elect him / her. In May 1999, **Romano Prodi** was nominated and approved by the European Parliament and his Commission took office from September to the end of December 1999 and then for a full five-year term after that. In November 2004, the Prodi Commission was replaced by the Commission under the presidency of **José Barroso**. The current Commission, under the second-term Presidency of Jose Barroso took office in February 2010.

Art.245 TFEU (ex. Art.213EC) provides, in essence, that the members of the Commission 'shall be chosen on the grounds of their general competence and whose independence is beyond doubt. ... Only nationals of Member States may be members of the Commission.' Art.245 TFEU also stipulates the standard of behaviour expected of Commissioners. It states that:

The members of the Commission shall refrain from any action incompatible with their duties. Member States shall respect their independence and shall not seek to influence them in the performance of their tasks.

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council ... or Commission, rule that the member concerned be, according to the circumstances, either compulsorily retired ... or deprived of his right to a pension or other benefits ...

Art.17(3) TFEU provides that the members of the Commission are appointed for a period of five years. Their term of office is renewable.

The 'big five' States: France, Germany, Italy, Spain and the U.K., each nominated two Commissioners prior to the **Barroso** Commission coming into office in 2004. Pre-May 1st 2004, the other ten Member States each nominated one Commissioner. Chris Patten (External Relations) and Neil Kinnock (Vice President, Internal Reform) were the "U.K's" Commissioners in the last **Prodi** Commission. **Peter Mandelson** (Trade) was – until his

³¹The ToN provided that once the number reached 27, the Council would determine the future number of Commissioners and the process by which they are chosen. However, the proposed number of that equating to two-thirds of the number of Member States never materialised nor will it under the Treaty of Lisbon – despite provisions to the contrary. This was the result of a political compromise to satisfy Ireland and to pave the way for a second Irish referendum on the ToL.

surprising appointment as Business Secretary in Gordon Brown's Labour Government - the UK nominee under the Barroso Commission. The current Commissioner from the UK is **Catherine Ashton** – who is the **High Representative of the Union for Foreign Affairs and Security Policy**.

The Commission in office between 2009 and 2014 will remain composed of one national per Member State. Moreover, as noted, the composition of the Commission will remain the same as from 1st November 2014 and **NOT** be composed of a number of members corresponding to two-thirds of the number of Member States “unless the European Council, acting unanimously, decides to alter this number”.

Commission as Guardian of the Treaties

With regard to its executive, or supervisory, powers contained in **Art.17(1) TEU**, i.e., the Commission ‘shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them’ coupled with its power under **Art.258 TFEU** (ex.Art.226 EC) to investigate and bring before the ECJ Member States that have failed to fulfil their **Art.4(3) TEU** obligations under Union law prompted the remark that:

The Commission is, at one and the same time, the guardian of the Treaties and the motive force of integration, capable of accepting with courage the dialectic consequences which go with its twofold task - exercising the vigilance that is needed to preserve us from risks run by the venturesome and acting to correct any excess of vigilance which would inevitably lead to stagnation.³²

Similarly, the Commission is empowered to institute proceedings before the **ECJ** against any Union institution considered to have acted outside its powers: **Art.263 TFEU** (ex. Art.230EC).

With regard to natural and legal persons, the Commission has a non-exclusive power concerning the application of EU competition rules: Case 127/73, BRT v. Sabam.

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³²Statement to the European Parliament (15 September 1970), p22