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European Union Institutions

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1. Introduction

The provision which lays down the institutional framework of the EU is included in Article 13 of the TEU.¹ The catalogue of EU institutions is **complete** and **closed** – other bodies are parts of the institutional framework but they have no formal status of institution (for instance, the European Ombudsman, European Economic and Social Committee).

Article 13 TEU

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 the consistency, effectiveness and continuity of its policies and actions.

¹ The Treaty on European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex-%3A12012M%2FTXT> [accessed: 29.11.2021].

The Union's institutions shall be:

- 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.
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. The institutions shall practice mutual sincere cooperation.
 3. The provisions relating to the European Central Bank and the Court of Auditors and detailed provisions on the other institutions are set out in the Treaty on the Functioning of the European Union.
 4. The European Parliament, the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.

In this institutional set-up, each of these institutions has its own role which is determined by the powers vested under Treaties and is obligated to fulfill its tasks in accordance with all conditions, procedures and objectives provided by primary EU law (Treaties establishing the EU).

The European Council consists of the leaders of all Member States and is formed in order to set broad priorities of the European Union. The European Parliament represents the citizens of each EU state and is a co-legislator together with the Council. It is the European Commission that represents the common interests of the European Union as a whole and is an executive organ of the European Union. On the other hand the national interests of each EU state are defended by the Council of the European Union. The institution responsible for supervision over financing of the EU's activities is the European Court of Auditors. Additionally the control of European monetary policy, stability of prices in the euro area and safety of European banking system belongs to European Central Bank's activities. Finally the Court of Justice upholds the rule of law of EU, giving rulings on the interpretation and validity of EU law.

2. The European Council

The European Council has existed since 1974 and at the beginning it was only a forum for discussion between the heads of state and government of the Member States. Subsequently it was given a reduced formal role in the EU by the Single European Act 1986. Under the Treaty of Lisbon the European Council became an official EU institution.

2.1. Composition

Article 15 of the TEU provides that:

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.

Generally speaking, the European Council consists of heads of state (the President in other words) or Head of Government (in other words Prime Minister), together with the President of European Council and the President of the Commission. It is noteworthy that the High Representative of the Union for Foreign Affairs and Security Policy is entitled to take part in the works of the European Council. However he or she is not a member of the European Council and therefore he or she is not vested with a right to vote.

It follows that the composition of European Council always depends on the actual holding of position of Head of Government or State – and only the President of the European Council is elected for a determined term.

2.2. The President of the European Council

The President chairs The European Council and he is chosen by a qualified majority by the European Council. He is elected for a term of two and a half year and can be elected for that position again only once more. What is more the President of the European Council shall not hold a national office in that moment. The first President of the European Council was Herman Van Rompuy. His successor – Donald Tusk, a Polish politician, became a President and served for the period from 2014 to 2019. Since December 2019 Charles Michel has been elected for that position.

The role of the President of the European Council is set out in Article 15(6) TEU. Generally the President of the European Council is responsible for:

- 1) chairing European Council meetings and driving forward its work;
- 2) ensuring the **preparation** of European Council meetings and the **continuity of their work**, in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council configuration;
- 3) helping to facilitate **cohesion and consensus** within the European Council;
- 4) presenting a report to the European Parliament after each European Council meeting;
- 5) the President of the European Council also ensures the external representation of the EU at the level of heads of state or government:
 - on **issues related to the EU Common Foreign and Security Policy (CFSP)**, alongside the High Representative of the Union for Foreign Affairs and Security Policy who helps put into effect the CFSP and ensure its unity, consistency and effectiveness,
 - at **international summits**, usually alongside the President of the European Commission.

2.3. Organisation of the European Council's work

Under TEU the European Council meets twice every six months in Brussels and these meetings are called European summits. However, the meetings of the European Council are not public. After the meetings, the representatives of Member States usually have press conferences to reveal discussed issues. A summit usually lasts 2 days but it can be prolonged, if needed. All decisions made by the European Council are signed by the President of the European Council and the Secretary General, whose role is to manage the overall organisation of the GSC (the General Secretariat of Council).

In terms of voting, we can read in Article 6.1 of the Rules of Procedures of the Council “except where the Treaties provide otherwise, decisions of the European Council shall be taken **by consensus**”. It follows that this institution endeavours to reach unanimity. However the provisions may provide the circumstances in which, for example, the simple majority or qualified majority is required. Article 6.5 of the Rules of Procedure of the Council states that “Procedural decisions adopted by the European Council by vir-

tue of these Rules of Procedure shall be adopted by a simple majority”. On the other hand, Articles 23 or 24 specify the situations when qualified majority is required.

2.4. Functions and powers

Article 15(1) of the TEU specifies 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”.

It follows that the European Council lacks the legislative power, therefore this institution does not negotiate and is not entitled to adopt EU law. The European Council decides on overall political direction and priorities relating to the development of EU. Decisions are taken in the form of “CONCLUSIONS”. In the framework of the external actions and common foreign policy, we can also define its powers to identify the strategic interests and objectives of the EU relating to the common foreign and security policy, the appointment of the High Representative of the Union for Foreign Affairs and Security Policy and creating the common defence of all Member States.

3. The European Parliament

European Parliament was initially known as the Common Assembly of the European Coal and Steel Community (ECSC). At that time the Assembly lacked legislative power, it was just a forum for consultation and discussion. In 1958 the Assembly expanded to include 142 members and was renamed as the European Parliamentary Assembly and in 1962 as **European Parliament**, which was confirmed by the provisions of the Single European Act in 1986. In 1970 the European Parliament was vested with some Community Budget powers, and five years later the Parliament was granted powers over the entire budget.

The competences, rules of functioning and the status of Members are regulated by the Article 14 TEU and Articles 223–234 TFUE² and Rules of Procedure.

² Treaty on Functioning of European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT> [accessed: 20.05.2022].

3.1. The Members of the European Parliament

The European Parliament has its official home in Strasbourg and its administrative offices in Luxembourg, however some sessions and committee meetings take place in Brussels.

Members of the European Parliament are representatives of countries belonging to the EU. They are directly elected for a term of five years by European citizens in the Member States. The first election took place in 1979. Formerly, the Members of European Parliament were the delegates of national parliaments. Currently, the members of EP are not allowed to be simultaneously members of European Parliament and of national parliaments.

The European Parliament comprises 705 Members – before the UK's withdrawal it was 751 – under the Treaty of Lisbon the number of Members of the European Parliament was fixed at a maximum of 750 plus the President. It is the European Council with the Parliament's consent that determines the number of Members of European Parliament and seats to allocate on the basis of population size and 'digressive proportionality' (Berry et al. 2019: 55).

3.2. The President

From the Rule 22 of Rules of Procedure of the European Parliament it is implied that the President presides over the proceedings of Parliament, he is elected for a renewable term of two and a half year. The President oversees the work of the Parliament and its constituent bodies. He is also responsible for representing the European Parliament in external relations and with the other EU institutions. What is more his task is to control and ensure that the Parliament follows the Rules of Procedure. At the beginning of every European Council meeting, the President of the European Parliament is also entitled to set out Parliament's point of view and its concerns as regards the items on the agenda and other subjects.

3.3. The Bureau and Questors

The Bureau is the body that lays down internal rules for Parliament. It consists of the President, 14 Vice-Presidents of Parliament and 5 questors. All of them are elected for 2,5 years term. The Bureau is responsible for carrying out the duties which are determined under the Rules of Procedure, duties connected with the financial, administrative and organisational work, conduct of sitting. This body also draws up Parliament's preliminary draft budget.

There are also questors – they have administrative and financial tasks concerning Members of the European Parliament.

3.4. Conference of Presidents

This body consists of the President of Parliament and Chairs of the political groups and is responsible for determining the organisation of Parliament's work and all issues connected with the legislative programme, it draws up the draft agenda of Parliament's part-sessions, makes proposals to Parliament concerning the composition and competence of committees, submits to the Bureau proposals on administrative and budgetary matters concerning the political groups.

3.5. Political groups

The Members of the European Parliament sit in political groups which consist of representatives from all Member States with similar political affinities. Currently there are 7 political groups in the EU. In order to form a political group, 25 Members of the European Parliament must join and it is required that one-quarter of Member States must be represented. The Members of the European Parliament that do not join any of the political groups are called "non-attached" members. Each of the political group has its own chair, bureau and a secretariat.

3.6. Committees

The work of European Parliament takes place in the committees. Under the Rules of Procedure we can enumerate:

- **standing committees** – their task is to draw up, adopt or amend legislative proposals and own reports, they are divided into 20 different areas, ex. AFET – foreign affairs, SEDE – Security and Defence, BUDG – Budget). These committees consist of 25–81 Members of the European Parliament and the makeup of the committees reflects that of the plenary assembly;
- **special committees** – the Parliament is entitled to set up these committees handing over detailed tasks, determined on the basis on the Conference of Presidents' proposal;
- **committees of inquiry** – in order to investigate the breach of EU law or maladministration of the EU institutions.

3.7. The Powers of the European Parliament

3.7.1. Legislative power

Formerly the European Parliament's role in the legislative procedure was advisory and consultative. Under amending treaties, the Parliament's legislative power has changed and became wider. In order to analyse legislative procedures we should focus on Article 289 TFEU which states:

1. The **ordinary legislative** procedure shall consist in **the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission**. This procedure is defined in Article 294.
2. In **the specific cases** provided for by the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, shall constitute a **special legislative procedure**.
3. **Legal acts adopted by legislative procedure shall constitute legislative acts.**
4. In the specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.

In order to pass EU legislation 2 legislative procedures are provided under TFEU. TFEU differentiates between **Ordinary Legislative Procedure** (also called co-decision procedure) and this procedure applies to the majority of activities that fall within the competence of the EU. It follows that the European Parliament, together with the Council is entitled to pass legislative acts. These institutions legislate “**on an equal footing**”. As a “co-author” the European Parliament may modify, amend or even reject that proposal.

On the other hand, **Special Legislative Procedure** is provided for specific issues, in more sensitive policy areas. However in that case TFEU does not provide the precise “instructions” for the legislative procedure, but as we can read on the official website of the European Union “these are therefore defined on a case-by-case basis by the treaty articles that

lay down the conditions for their implementation”.³ It is also crucial to mention that the European Parliament’s participation in this procedure is limited to **consultation** or **consent**.

3.7.2. Budgetary role

Similarly as in the case of legislative power, originally the European Parliament’s role in the EU budget was only consultative. Under the Treaty of Lisbon the European Parliament was vested with an equal right alongside the Council to adopt the EU budget. Article 314 TFEU provides the special legislative procedure required for the Union’s annual budget.

3.7.3. Supervisory power

Regarding its supervisory power, the European Parliament exercises control over the executive, for example the European Parliament’s prior approval is required for appointments to the position of President of the Commission. In addition, the entire Commission needs the European Parliament’s approval. Article 17 TUE (7) states that

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

Indeed, with reference to the supervisory power over the executive, the Parliament has also the power:

- to require the whole Commission to resign from office (an exceptional situation),
- to question the Commission and the Council under Article 230 TFEU,
- to request the Commission to submit such legislative proposals as the European Parliament considers necessary (Berry et al. 2019: 59).

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aai0016> [accessed: 20.05.2022].

4. The European Commission

It was the official body of the High Authority that undertook the supranational executive role for the European Coal and Steel Community in 1951. Subsequently in the 1957 appeared a need to form new executives for the European Economic Community and European Atomic Energy Community – two “Commissions” were created. They were disbanded under the Merger Treaty 1965 and combined into one joint executive institution – the Commission of the European Communities.

Some lawyers believe that the European Commission, sometimes called the Commission, is the most European and least nationalistic of the principal institutions – it represents the interest of the EU. What is more the Commissioners, the members of the European Commission, shall be independent especially from the national governments.

4.1. Commissioners

After UK's withdrawal we have 27 commissioners, mostly senior politicians, who must have certain qualities – they are expected to have general competence and they must be independent. As commissioners they must act not as representatives of their national states but independently, showing the interests of the EU during their term of office. A commissioner is not allowed to take instructions from any bodies or their national governments, he or she should also avoid activities that will interfere with their duties.

Court of Justice in Case 5/85 *AKZO Chemie v Commission* stressed that the Commissioners' participation in the Commission is based on the principle of collegiality. The starting point here is the fact that the Commissioners are equals and they work as a collective on an discussed matter. Therefore their responsibility for Commission's decision is joint and collective.

The work and structural organisation of the Commission is regulated in the Treaties and under internal Rules of Procedure of the European Commission. The Commission is appointed for a five-year period of office. The main office is in Brussels and some of their bodies (units) are located in Luxembourg.

4.2. President

The powers of the President are detailed in Article 16(6) TEU. The President leads the cabinet of Commissioners, sets out the policy guidelines for the

Commission, represents the Commission, decides on its internal organisation and assigns special responsibilities (“portfolios”) to Commissioners on particular policy (such as trade, competition, environment and fisheries) and can also reshuffle the portfolios during the Commission’s term of office.

The President is assisted by the Commission’s secretary-general (a secretary general is responsible for preparing and conducting meetings of Commission). He or she appoints vice-presidents, other than the High Representative of the Union for Foreign Affairs and Security Policy.

4.3. Cabinets and Directorate-General

It is also noteworthy that each Commissioner has own cabinet – the role of that cabinet is to assist him or her in completing the tasks and preparing for making decisions. The cabinet acts also as a bridge between the Commissioner and the Directorate-General of the Commissioner’s policy area, providing all needed information to ensure that the commissioner is familiar with all the current issues.

The Directorates-General, administrative departments, are responsible for preparing and implementing the Commission’s tasks, they put the policy priorities and guidelines set out by the president into action. These Directorates-General are divided into the departments. The Directorates-General differ depending on the delegated responsibilities (CLIMA – activities connected with climate, ENER – energy, ENV – environment, COMM – social communication, EAC – education and culture, BUDG – budget).

4.4. Internal decision making process

There are 4 possible ways to take internal decisions under the Article 4 of the Rules of Procedure of the Commission.

The first one, **the oral procedure** – usually takes place at meetings once a week, it concern the most controversial issues (mainly political and economic).

The second one, called **the written procedure** provides that the project in the written form is made available to all Commissioners for consideration during an agreed time period and all of them have to express their opinion on the project or amendment.

The next one, **empowerment procedure** is provided for the circumstances when one or more commissioners is empowered to take decisions (to take

management or administrative measures on the Commission's behalf), on condition that the principle of collective responsibility is respected.

The last one procedure is called **delegation procedure**. In that situation, the Commission delegates to directors-general or heads of departments to take some decisions on the Commission's behalf, on the condition that the principle of collective responsibility is respected.

4.5. The functions

The Article 17 TEU sets forth the Commission's main role – “**to promote the general interest of the Union**”. In the process of fulfilling this task, the Commission has various functions, set out as follows in Article 17 TEU. Generally the functions of the Commission can be analysed from the perspective of the Commission's role as a guardian of the Treaties, as a policy initiator, as an institution with legislative and executive powers.

4.5.1. Guardian of the Treaties

The Commission is called **the guardian of the treaties** as its supervisory competences involve ensuring the correct implementation of EU law by Member States and taking enforcement proceedings when needed. For instance, Article 258 TFEU provides Commission's enforcement action against a Member State which had not transposed an EU Directive. Another example can be found in the Commission's power under Article 263 TFEU to bring appropriate proceedings against the other EU institution under Article 263 if it do not comply with EU law. In addition, the supervisory power is not limited to a Member State and the EU institutions. It applies also to business entities and individuals, especially in case of breach of the competition provisions under the Treaty (for example Article 101 TFEU).

4.5.2. Legislative Power

The Commission's participation in the legislative process is also noticeable as the Commission is vested with almost a sole **right to initiate draft legislation**. However there are many policy areas which are excluded, where the Treaty specifically requires the Council or Parliament to start the special legislative procedure, for example in the area of police and judicial cooperation on criminal and on civil matters and taxation.

In addition, since 1 April 2012, each citizen of the European Union has had the right to have direct influence on the development of EU policy and this results in the right of petitioning the Commission for legislative proposal. This is called the European citizens' initiative and is stipulated in Article 11(4) TEU:

Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

4.5.3. Policy Initiator

The Commission has also its role in the process of the EU policy formation and development. It can be found in the Commission's right to initiate legislation and submit proposals, the Commission also formulates an annual work programme that leads to the development of EU policy in general.

4.5.4. Executive Power

The European Commission is responsible for the EU budget and this is found in the revenue collection and expenditure of the budget. The Commission draws up an annual report which includes details how the budget is to be implemented.

5. The Council of the European Union

This institution is not only known as Council of the European Union. Earlier, it was called the Council of Ministers – when three different Council of Ministers for each community existed. In 1967 these three councils were combined into one Council of Ministers for all communities. Under TEU (1992), it was given official name the Council of the European Union, but in fact it is “the Council”. The Council of the European Union is regarded as not as “European” as other institutions of EU because it is the Council in which national interests play crucial role.

5.1. General overview – national institution

Generally speaking, the Council is the main, next to the European Council, intergovernmental institution of EU. Article 16(2) of TEU sets forth that “the Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote”. It follows that the Council comprises ministers of the Member States. However there is no one permanent composition of the Council. Rather, it changes according to the matter that is discussed. For example if agricultural matters are discussed, the Council includes ministers of agriculture from each Member State. There are 10 different configurations. It is the General Affairs Council that is responsible for ensuring consistency in the work of said configurations.

The Council’s internal structure is not complex. The Council is chaired by President who is at the same time the representative of the Member State that currently holds the presidency.

5.2. Presidency

The Presidency of the Council is held by each Member State in rotation for six months formed in a group of three Member States. This group decides about long term goals that are deemed to be of pivotal nature and is responsible for preparing a common agenda assigning major issues that will be given priority over an 18-months period of the Presidency. In fact, the Presidency provides an opportunity to have influence and impact the direction of European Union’s policy – each of the three Member States sets out its own programme for its Presidency.

5.3. COREPER

The Committee of Permanent Representatives (COREPER) comprises the permanent representatives from each Member State and is responsible for preparing the Council’s work, namely for: setting the agenda for meetings of the Council and analysing proposals for legislation drafted by the Commission. The Committee’s role is to identify and categorise the matters to be discussed into “category B” or into “category A” that do not require further formal discussion before being adopted.

5.4. Voting

There are 3 options of voting in the Council: **by unanimity, simple majority and qualified majority**. In fact, the requirement of unanimity implies the lack of objection. However, each Member State has the power of veto and in such situation it may lead to difficulties to put forward the legislation. That may explain why the amending treaties have continued to extent qualified majority voting to more areas of EU activity. However under the Treaty of Lisbon requirement of unanimity is still provided for such areas as: common foreign, security and defence policy, taxation and social security.

5.5. Legislative power

Until 1993, the Council was vested with the exclusive right to adopt binding legal acts such as regulations, directives and decisions. Now the Council has final power of decision on the adoption of secondary legislation jointly with the European Parliament in cases when the treaty provides ordinary legislative procedure. The Council has an indirect right of legislative initiative as it can demand from the Commission the carrying out all analysis that in the Council's opinion are crucial to achieve joint goals (Barcz, Górka, Wyrozumska 2017: 162).

5.6. Other powers

The Council has also supervisory power in some sensitive policy areas, for instance when a Member State infringes the rule of freedom, democracy and human rights. The Council may decide about the risk of a serious breach by a Member State of said values and is entitled to suspend certain of the rights deriving from the application of the Treaties to the breaching Member State. The Council is also entitled to enter into international agreements with international organisations and states not belonging to the European Union on behalf of European Union.

6. The Court of Justice of the European Union

Under Article 19(2) TEU The Court of Justice of the European Union (sometimes called simply European Court of Justice) includes the Court of Justice, the General Court and specialised courts.

The Court of Justice of the EU is the judicial institution of the European Union. The general task of the Court of Justice is to secure the rule of law, to verify if **in the interpretation and application of the Treaties the law is observed** and to rule in case of the EU law infringement. In other words its role is to examine the legality of EU measures and ensure the uniform interpretation and application of EU law.

6.1. Composition of Court of Justice of European Union

Article 19(1) TUE specifies that:

The Court of Justice of the European Union shall include the **Court of Justice, the General Court and specialised courts**. It shall ensure that in the interpretation and application of the Treaties the law is observed.

It follows that the Court of Justice of European Union is divided into Court of Justice, the General Court and specialised courts.

The Court of Justice is composed of 27 judges and 11 Advocates General. They are appointed by common accord of the governments of each Member State – firstly the choice is consulted with a panel which role is to give an opinion if a candidate can suit for that position. They are appointed for a term of office of six years and it is required by the Rules of Procedure that the candidates must be independent, they must have the qualifications that are required for the judicial position in their national countries and their competences are widely recognised.

President and a Vice-President are elected by the judges amongst themselves for a renewable term of three years. The President is responsible for directing the work of the Court and presiding at hearings and deliberations of the full Court or the Grand Chamber. The Vice-President's role is to assist the President in the exercise of his duties and takes his place when necessary.⁴

6.2. Advocates General

At the Court of Justice there are also 11 assisting advocates-general. Their duty is to present “an opinion” on a case which is supposed to be impartial and independent. In fact, these opinions are solution presented by the

⁴ https://curia.europa.eu/jcms/jcms/Jo2_7024/en/#composition [accessed: 20.05.2022].

Advocate General to that case, they cover the circumstances of the case in the context of the EU law especially case law. The opinions of Advocates General are not binding therefore the judges are not obliged to follow that solution however they often take it into account issuing the judgment. The present Polish Advocate General is Maciej Szpunar.

The Court of Justice usually sits in the chamber of 5 and 3 judges, but it may also sit as a full court (in cases of exceptional importance and when the Statute of the Court requires, for instance proceedings to dismiss the European Ombudsman), in a Grand Chamber of 15 Judges – when a Member State or an institution which is a party to the proceedings so requests, and in cases which are particularly complex.

The General Court was formed under Single European Act 1986 in order to diminish the workload of the Court of Justice. Since then, the competences of the General Court have been changing. Currently, it decides on more direct actions (for example annulment actions, actions for failure to act, and damages actions) and deals mainly with competition law, State aid, trade, agriculture, trademarks. The General Court comprises two judges from each Member State and, unlike Court of Justice, does not have permanent Advocates General. The judges sit in chambers of five or three Judges or, as a single Judge. It may also sit as a Grand Chamber (composed of fifteen judges) when the importance and complexity of the case so requires.

6.3. Procedure

The procedure in the Court of Justice is similar to the procedure used in General Court and specialised courts as it consists of two “steps”. The first one is **written procedure**, which is regulated in Articles 53–75 Rules of Procedure – the parties lodge all required pleadings. Finally, **during the oral procedure**, the Court hears the interested parties and witnesses, the Court also hears the opinion of the Advocate General.

6.4. Preliminary rulings

One of the most crucial CJ’s judicial competences is issuing judgments in preliminary proceedings. It should be noted that national courts apply EU law independently in each country – in fact this could lead to different interpretations of provisions in each Member State. However, since EU law is supreme across all Member States, the EU law must have a uniform meaning.

For that reason, the TFEU provides the procedure, which can be started by preliminary reference – a question submitted by the national courts or tribunal on particular issues concerning EU law. These questions are answered by the Court of Justice in the form of preliminary rulings. It is important to stress that this procedure takes place prior to final judgment being given in particular case in the court of the Member State by the national court.

Article 267 is a fundamental provision regulating the preliminary proceedings. It states forth:

Article 267 (ex Article 234 TEC)

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the **interpretation of the Treaties**;
- (b) the **validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union**;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal **may**, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending **before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law**, that court or tribunal **shall** bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

As it follows, under Article 267, the Court of Justice has jurisdiction to give rulings on following issues:

- the **interpretation of the EU Treaties and secondary legislation**,
- the **validity of secondary EU legislation**.

However with regard to some sensitive EU policy areas, the Court of Justice's jurisdiction has been limited. For instance, Article 275 TFEU stipulates that “the Court of Justice of the European Union shall not have jurisdiction with respect to the **provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions** [...]”. Another provision that should be mentioned is Article 276 TFEU that states that the Court has no jurisdiction to review the validity or

proportionality of operations carried out by national police or law enforcement authorities or of the exercise of MS' responsibilities for the maintenance of law and order and internal security. It is also crucial to mention that CJ's jurisdiction is **not only limited to certain sensitive issues of EU law such as common foreign and security policy but does not extend to national law of each Member State.**

We can conclude from the Article 267 that if a particular court of tribunal is one against whose decisions there is a judicial remedy under national law, it has a choice as to whether to pose a question to the Court of Justice. Please note that Article says that such a court *may* make a reference. It is crucial to mention that there are, however, some guidelines as to whether and when a national court, in such situations, should or should not submit a question.

On the other hand, there is also another situation, when there is an *obligation* to make a reference to the Court of Justice. Such obligation is imposed on the national courts and tribunals against whose decisions there is no judicial remedy under national courts.

6.4.1. Acte clair

One of those guidelines that should be taken into account when considering whether to make reference is *acte clair* – it is of particular importance. This rule implies that if the provisions of EU law under consideration are *acte clair* – their meaning is clear and, therefore, a reference made by a national court as to their correct interpretation of provision is unnecessary. However it is not as obvious as it seems because EU law applies in all Member States that have different legal system and different legal tradition.

6.4.2. Other procedures

Under EU law, there are also three other possible procedures before the Court of Justice. The Court of Justice has a competence to rule on the actions for failure to fulfil obligations, actions for annulment and actions for failure to act.

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Study questions

1. What are the functions of the Commission? What does it mean that the Commission is the guardian of the Treaties?
2. What does it mean that the Council is the most “national” institution of the EU?
3. Describe the role of the President of the European Council.
4. Describe the functions of the European Council.
5. Describe the role of preliminary reference (Article 267 TFEU).
6. Describe the ordinary legislative procedure (Article 294 TFEU).
7. What is the role of Advocate General and the character of his/her opinion.
8. What are the competences of the Court of Justice of European Union.

Multiple choice questions

1. Which institution exerts legislative and budgetary power jointly with the Council?
 - a) The European Parliament
 - b) The Commission
 - c) European Court of Justice
 - d) High Assembly
2. What is the maximum number of the MEPs provided by the Treaties?
 - a) 705
 - b) 751
 - c) 750
 - d) 570
3. How long can a Member of the European Parliament hold an office?
 - a) 5 years
 - b) 2 years
 - c) 2,5 years
 - d) 3 years
4. Which statement is true:
 - a) For the adoption of legislative and non-legislative acts the legislative procedure is required.

- b) The President represents the Parliament's stance in international relations.
 - c) The Conference of Presidents consists of the President and 14 Vice-Presidents
 - d) Political groups are organised by the nationality.
5. Which body decides on the matters concerning the Member of the European Parliament?
- a) The President
 - b) Questers
 - c) Bureau
 - d) The Conference of Presidents
6. Which of the following roles doesn't match to the European Parliament?
- a) Budgetary role
 - b) Supervisory role
 - c) Legislative role
 - d) Executive role
7. Which statement is false:
- a) The European Parliament may demand the Commission's resign from office.
 - b) The Parliament must give its approval to the candidate to the position of the President of the Council.
 - c) The European Parliament has equal right with the Council to adopt EU budget.
 - d) The European Parliament was formerly only consultative institution without legislative powers.
8. Which role does the European Council have?
- a) represents the EU citizens
 - b) represents the national interests of the Member States
 - c) defines the political direction for the development of EU
 - d) checks the financial activity of the EU
9. When did the European Council obtain the formal role as an institution?
- a) 1974
 - b) 1992 under Lisbon Treaty
 - c) 1986 under Single European Act
 - d) 1956
10. Who is the present President of the European Council?
- a) Donald Tusk
 - b) Herman Van Rompuy
 - c) Ursula von der Leyen
 - d) Charles Michel

11. European Council is entitled to adopt:
 - a) treaty
 - b) recommendation
 - c) conclusion
 - d) directive
12. "Portfolios" are assigned responsibilities to the:
 - a) Directorates-general
 - b) Vice-presidents
 - c) Commissioner
 - d) High Representative of the Union for Foreign Affairs
13. Which of the following institution has legislative initiative?
 - a) Court of Justice of the EU
 - b) The Commission
 - c) The European Council
 - d) Council of the European Union
14. Which statement is true:
 - a) The most frequent method of voting in the Council is QMV.
 - b) The use of simple majority in the Council is gradually extended.
 - c) The unanimity is required for the adoption of legislation in the area of immigration.
 - d) Only some Member States have veto right.
15. Which of the following institutions doesn't belong to the European Union?
 - a) The European Council
 - b) The Council of the European Union
 - c) The Council of the Europe
 - d) The Council
16. In which procedure do the directors-general have power to decide on the Commission's behalf?
 - a) The written procedure
 - b) The delegation procedure
 - c) The empowerment procedure
 - d) The oral procedure
17. In which institution do the members act under the principle of the collegiality?
 - a) The Parliament
 - b) The European Council
 - c) The Commission
 - d) The Council

18. Which of the following statements is false:

- a) The European Council has the legislative role in the European Union.
- b) The Commission bears the responsibility for the EU's budget.
- c) The petition of the EU's citizens for the legislative proposal should be submitted to the Commission.
- d) The European Council's role is to define the general political direction and priorities.

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