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EU INSTITUTIONS AND DECISION-MAKING

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WHAT IS THE EU?

The [European Union \(EU\)](#), the world's largest multi-nation trading bloc, is a group of independent European states whose governments form an economic and political partnership. Since January 2007, the EU comprises 27 Member States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. On July 1, 2013, Croatia will become the 28th EU Member State.

Any European country can join the EU provided it accepts the entire body of EU laws and obligations associated with the treaties and agreements to which the EU is a party. Iceland, the Former Yugoslav Republic of Macedonia, Montenegro and Turkey are candidates to join the EU. Each treaty admitting a new member requires the unanimous approval of all the Member States.

The [“Single Market”](#) is the EU's economic foundation. It is the common area between the 27 Member States where goods, services, capital and persons can move freely in accordance with the Treaty establishing the EU. Member States may restrict the free movement of goods only in exceptional cases, e.g. when there is a food safety, public health or environmental risk. Free movement can only be guaranteed when all aspects are covered by EU-harmonized legislation. Aspects not covered by EU-harmonized legislation are subject to the national laws of the Member States. For example: the EU regulates vitamins and minerals that may be used in food supplements but herbal ingredients and botanicals are subject to Member State legislation.

HOW DOES THE EU WORK?

EU Member States delegate part of their national decision-making power to common institutions they have created: the European Commission, the Council of the European Union and the European Parliament. In specified areas established by the Treaty on the Functioning of the EU, the Member States work together through these institutions to set common policies such as the and the Common Fisheries Policy (CFP). The EU has the power to enact laws that are directly binding in all the Member States. These laws (regulations, directives and decisions) take precedence over national law.

The EU operates according to the principle of “subsidiarity”. This means that the EU institutions - especially the European Commission - must justify the need for common rules and actions and demonstrate that the envisaged objectives cannot be successfully achieved by the Member States acting individually. The Lisbon Treaty allows national parliaments to object to a legislative proposal if it breaches the principle of subsidiarity. It also clarifies the division of competences between the EU and the Member States. For agriculture and certain aspects of

fisheries, the EU and Member States share competence which means that Member States may exercise their competence as long as the EU has not exercised its competence or when the EU decides not to exercise it.

There are three EU institutions involved in decision-making:

- The European Commission
- The Council of the European Union
- The European Parliament

This “institutional triangle” produces policies and laws that apply throughout the EU. The European Commission proposes new legislation while the Council and the European Parliament adopt the laws. The Commission then implements and enforces EU laws and the Member States implement them.

WHAT IS THE LISBON TREATY?

The Treaty of Lisbon entered into force on December 1, 2009. The Treaty of Lisbon does not repeal or replace the existing treaties but amends and updates them. The EU is now governed by two consolidated Treaties: the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

The main change for agriculture is the extension of the “ordinary legislative procedure” to agriculture and fisheries. Where before Commission proposals in these areas were adopted by the Council only, the Lisbon Treaty gives the European Parliament equal legislative power. The Lisbon Treaty also introduces a new procedure to adopt the EU budget and a new role for national parliaments who now have 8 weeks to scrutinize draft EU laws.

For more information on the Treaty of Lisbon see:

- European Commission website at http://europa.eu/lisbon_treaty/index_en.htm
- Council website: <http://www.consilium.europa.eu/treaty-of-lisbon>
- European Parliament website:
<http://www.europarl.europa.eu/aboutparliament/en/0042423726/Parliament-and-the-Lisbon-Treaty.html>

WHO ARE THE KEY PLAYERS IN EU DECISION-MAKING?

EUROPEAN COMMISSION
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EUROPEAN COMMISSION

The European Commission is the “guardian of the Treaties” and the EU’s executive organ. The Commission drafts proposals for new EU laws and presents them to the Council and European Parliament. It manages the day-to-day business of implementing common policies such as the Common Agricultural Policy (CAP) and the administration of the EU budget. The Commission also ensures that Member States act in accordance with the provisions of the Treaties and EU laws. The Commission is composed of 27 Commissioners, one from each Member State, and is appointed for a period of five years.

The Commission is divided into several “Directorates-General” (DGs) and services. Agricultural, food safety, trade and environmental issues are dealt with by [DG Agriculture and Rural Development](#) (AGRI), [DG Health and Consumers](#) (SANCO), [DG Trade](#) (TRADE) and [DG Environment](#) (ENV). The complete list of the Commission’s DGs and services can be consulted at http://ec.europa.eu/about/ds_en.htm.

European Commission website: http://ec.europa.eu/index_en.htm

COUNCIL OF THE EUROPEAN UNION

The Council of the European Union, also known as the Council of Ministers, defends the interests of the Member States. The Council Presidency rotates between the Member States every six months. The Council shares with the European Parliament the responsibility for passing EU laws. The Council and European Parliament also share the authority for approving the EU’s annual budget and the multi-annual financial programming. The Council consists of ministers from the Member States’ national governments. Council meetings are attended by the ministers responsible for the items on the agenda. There are 10 “sectoral” Councils: “General Affairs”, “Foreign Affairs”, “Economic and Financial Affairs”, “Justice and Home Affairs”, “Transport, Telecommunications and Energy”, “Agriculture and Fisheries”, “Environment”, “Education, Youth, Culture and Sport”, “Employment, Social Policy, Health and Consumer Affairs” and “Competitiveness”.

The Council takes decisions by a vote of Member State Ministers. Each Member State has a number of votes roughly reflecting the size of its population but weighted in favor of smaller countries. There are three types of votes depending on the Treaty provisions: “simple majority”, “qualified majority” and “unanimity”. Most decisions are subject to the qualified majority

voting system. Qualified majority means at least 255 out of 345 votes are cast in favor, approved by a majority of Member States (at least 14) and favorable Member States represent at least 62% of the EU population.

Council of the European Union website: <http://www.consilium.europa.eu/homepage?lang=en>

EUROPEAN PARLIAMENT

The European Parliament is directly elected every 5 years by EU citizens to represent their interests. Each Member State holds a number of seats roughly proportional to the size of its population. There are currently 754 Members of the European Parliament (MEPs). MEPs do not sit in national blocks but in EU-wide political groups. The European Parliament shares with the Council the responsibility to pass EU laws on the basis of proposals presented by the Commission. The European Parliament and Council also share the authority for approving the EU's annual budget and the multi-annual financial programming. Most of the legislative work is done by specialized committees – such as the Agriculture and Rural Development Committee - that prepare reports that will later be voted on in plenary. The complete list of parliamentary committees can be consulted at <http://www.europarl.europa.eu/committees/en/parliamentary-committees.html>. The main meetings of the European Parliament known as “plenary sessions” are held in Strasbourg (France); other meetings, such as the Committee meetings, are held in Brussels (Belgium).

The European Parliament uses two voting systems: “simple majority” which means the majority of MEPs voting and “absolute majority” which means the majority of its component members (currently 378 votes out of 754).

European Parliament website: <http://www.europarl.europa.eu/portal/en>

HOW IS EU LEGISLATION ADOPTED?

IMPACT ASSESSMENTS

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IMPACT ASSESSMENTS

Before the European Commission proposes new initiatives, it must assess the economic, social and environmental impact that proposals may have and present the findings in an autonomous

report. An Impact Assessment sets out possible policy options and analyzes the advantages and potential problems. A formal Impact Assessment is required for regulatory proposals included in the [Commission's Work Program](#).

More information on the Impact Assessment procedure can be found on the European Commission's website: http://ec.europa.eu/governance/impact/index_en.htm.

ORDINARY LEGISLATIVE PROCEDURE

The standard decision-making procedure in the EU is the “ordinary legislative procedure” formerly known as “co-decision”. Under this procedure, set out in Article 249 of the Lisbon Treaty, the Council and European Parliament share legislative power. Both institutions act on a proposal by the Commission which has the sole right of initiative (unless the Lisbon Treaty provides otherwise). Commission proposals for new or amended framework legislation are forwarded simultaneously to the Council and the European Parliament but also to the national Parliaments. National Parliaments have 8 weeks to check Commission proposals for compliance with the subsidiarity principle. See also “How does the EU work?”

The Council and European Parliament have up to three readings, with a possibility to conclude at each stage, to agree on a Commission proposal. If no agreement is reached at the end of the second reading, the proposal is brought before a Conciliation Committee made up of an equal number of representatives of the Council and the European Parliament. If the Conciliation Committee agrees on a “joint text”, the text is sent to the Council and the European Parliament for a third reading. The final agreement of both legislators is essential before a proposal can become law.

SPECIAL LEGISLATIVE PROCEDURE

The “Special Legislative Procedure” is a collective name for a number of procedures set out in the Lisbon Treaty. As their name already indicates, these procedures are exceptions to the standard “Ordinary Legislative Procedure” and apply to specific cases defined in the Lisbon Treaty. Under the Special Legislative Procedures, the Council of the EU is in practice the sole legislator but must either consult or obtain the consent from the European Parliament depending on the case.

One of the special legislative procedures is the consent procedure used to adopt international agreements (Articles 216-218 of the Lisbon Treaty). The EU's annual budget is also adopted under a special legislative procedure (Article 314 of the Lisbon Treaty). For more information see the European Commission's website:

http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/ai0016_en.htm.

FINDING INFORMATION ON THE STATUS OF A COMMISSION PROPOSAL

Beware of the word “adopted”! Press releases will tell us that the European Commission, the Council or the European Parliament adopted a proposal but this does not necessarily mean that a proposal has reached the final phase of the decision-making process. “[Prelex](#)” a European Commission database provides information on the major stages of the decision-making process between the Commission and the other EU institutions. Another source of information on the status of legislative proposals is the European Parliament’s “[Legislative Observatory](#)” which also monitors the EU decision-making process.

DELEGATED AND IMPLEMENTING ACTS

The Council and European Parliament can delegate legislative power to the European Commission to adopt measures necessary for the execution of the general principles and objectives set out in framework legislation. The Commission only holds this power if the basic legal acts so provides. The objective of this delegation of power is to save time as all details for the implementation of framework legislation would otherwise need to be adopted under the lengthy “ordinary legislative procedure. For example, in the EU’s Food Additives Regulation (framework legislation) the Council and European Parliament delegate the task to add or delete additives to/from the EU positive list to the Commission. The Lisbon Treaty amended the previous Treaty provisions on legislative delegation and introduced two types of delegation: “delegated acts” and “implementing acts”. This new system partially replaces the old system known as “Comitology” in EU jargon.

Delegated Acts: Article 290 of the Lisbon Treaty introduces the novel concept of “delegated acts” to supplement or amend non-essential elements of framework legislation, i.e. issues of **general** scope. On a case-by-case basis, the Council and European Parliament set the conditions for the delegation of power: objectives, content, scope and duration of the delegation are defined in each basic legal act. The Council or European Parliament may revoke this delegation and a delegated act adopted by the Commission can only enter into force if no objection has been raised by one of the legislators within a time period set by the basic act.

Delegated Acts are used for sensitive policy issues and cover the same type of measures as those adopted under the “Regulatory Procedure with Scrutiny” before the entry into force of the Lisbon Treaty.

Example: In the EU’s new food labeling regulation 1169/2011, the Council and European Parliament delegate the power to adjust and adapt the definition of engineered nanomaterials to technical and scientific progress to the Commission for a period of 5 years.

Implementing Acts: Article 291 of the Lisbon Treaty stipulates that: “where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers to the Commission.” As required by the Lisbon Treaty, a new framework regulation –

Regulation 182/2011 – was adopted to set out procedures for the adoption of implementing acts. Regulation 182/2011 entered into force on March 1, 2011 and (partially) repeals the old “Comitology” Decision 1999/468/EC. Implementing Acts are used for routine implementation of framework legislation and cover issues of **general OR individual** scope.

Example: The authorization of GMO’s is done on a case-by-case basis and is therefore an issue of **individual** scope. Each new authorization is adopted as an Implementing Act. Fixing the standard import values to calculate the entry price for imports of fruits and vegetables from third countries is an issue of general scope. The standard import values are published as Implementing Acts.

COMITOLOGY

“Comitology” is EU jargon for the procedure the Commission follows to execute its implementing powers conferred on it by the EU legislators (Council and European Parliament). It refers to the committees that deliver an “opinion” on draft implementing measures before the Commission can adopt them. “Comitology Committees” consist of representatives from each EU Member State and are chaired by a Commission official. Comitology Committees act as a forum for discussion on implementing measures and as a communication channel between the Commission and the Member States’ national authorities. The extent to which the committees’ opinions are binding depends on the type of procedure.

Pre- Lisbon Comitology

Before the entry into force of the Lisbon Treaty, [Council Decision 1999/468/EC](#) set out all the different comitology procedures:

- Advisory procedure: The Commission is not obliged to follow the committee’s opinion. This procedure is used for politically non-sensitive issues.
- Management procedure: If the comitology committee delivers a “negative” opinion the draft measure cannot be adopted and is referred to the Council. This procedure is used to manage programs affecting the EU budget incl. CAP.
- Regulatory procedure: If the comitology committee delivers a “negative” opinion or “no opinion” the draft measure cannot be adopted and is referred to the Council. The European Parliament has the “RIGHT of scrutiny” but cannot veto a proposal. This procedure is used to adopt measures of general scope that apply essential provisions of basic legal acts and measures designed to adapt and update non-essential elements of basic legal acts.
- Regulatory procedure with scrutiny: In this procedure, introduced in 2006 as an amendment to Council Decision 1999/468/EC, both the Council and European Parliament can veto a proposal. Even if the comitology committee delivers a “positive” opinion, the Council or European Parliament can still block the draft measure. This

procedure is used to adopt measures of general scope designed to amend non-essential elements of basic legal acts adopted by co-decision.

Post-Lisbon Comitology

Article 291 of the Lisbon Treaty on “Implementing Acts” [link to Implementing Acts](#) explicitly required a new framework regulation to set out procedures for the adoption of implementing measures under the control of the Member States. [European Parliament and Council Regulation 182/2011](#) which entered into force on March 1, 2011 maintains the **system of comitology committees** and sets out two comitology procedures instead of four: the “advisory procedure” and the “examination procedure”. The examination procedure replaces the management procedure and the regulatory procedure. References to the management and regulatory procedures in legislation adopted before March 1, 2011 are to be understood as references to the examination procedure. Under the examination procedure, the Commission may only adopt a draft measure if the comitology committee delivers a positive opinion. If a negative opinion – and in certain cases a “no opinion” – is delivered, the Commission may either propose an amended version of the draft measure or refer the matter to the “Appeal Committee”. Referral to the Council has been replaced with referral to the Appeal Committee which is composed of Member State representatives of the “appropriate level”.

[European Parliament and Council Regulation 182/2011](#) repeals Council Decision 1999/468. However, for basic legal acts adopted before the entry into force of the Lisbon Treaty, the regulatory procedure with scrutiny is provisionally maintained until 2014 at the latest. Although the regulatory procedure with scrutiny covers the same type of measures as “Delegated Acts” there is no automatic alignment. Basic legal acts are being revised to align them to the new distinction between “delegated” and “implementing” acts established by the Lisbon Treaty. Until this alignment is finalized, the regulatory procedure with scrutiny will continue to exist.

PUBLICATION OF EU LEGISLATION

EU regulations, directives and decisions are published in the Official Journal. Amendments to EU legislation are usually published in new and separate regulations and directives.

Consolidated texts, i.e. the consolidation of a basic legal act and all its subsequent amendments into one text, are available on the European Commission’s [“Eur-lex” website](#).

WHAT IS THE DIFFERENCE BETWEEN A REGULATION, DIRECTIVE AND DECISION?

- **Regulations** have binding legal force throughout every Member State and enter into force on a set date in all the Member States.
 - **Directives** lay down certain results that must be achieved but each Member State is free to decide how to transpose directives into national laws.
 - **Decisions** are EU laws relating to specific cases and directed to individual or several Member States, companies or private individuals. They are binding upon those to whom they are directed.
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WHERE CAN I FIND INFORMATION ON EU INSTITUTIONS AND DECISION-MAKING?

- Commission Website: http://ec.europa.eu/index_en.htm
- Council Website: <http://www.consilium.europa.eu/homepage?lang=en>
- European Parliament Website: <http://www.europarl.europa.eu/portal/en>
- Status of legislative proposals “Pre-Lex”: <http://ec.europa.eu/prelex/apcnet.cfm?CL=en>
- European Commission legislative database “Eur-Lex”: <http://eur-lex.europa.eu/en/index.htm>
- European Parliament legislative database: <http://www.europarl.europa.eu/oeil/home/home.do>
- Gateway to national law “N-Lex”: http://eur-lex.europa.eu/n-lex/index_en.htm
- European Union Delegation to the USA: <http://www.eurunion.org/eu/>
- “A Guide for Americans: the European Union”: <http://www.eurunion.org/eu/images/stories/guideforamer2011.pdf>
- EU Budgetary system explained: http://ec.europa.eu/budget/explained/budg_system/index_en.cfm
- Comitology Register: <http://ec.europa.eu/transparency/regcomitology/index.cfm?CLX=en>