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The institutional architecture of EU environmental policy: from **COREPER** to **Comitology**

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Article 13 TEU

Institutional Autonomy

European civil service

Own budget

The Union is not financially dependent on the Member States, as it has its own budget (Article 17 TEU and Articles 310 to 320 TFEU).



Atypical organisational structure

Each institution
defends a specific
interest

Institutional balance
maintains a community
dynamic

The aim is to avoid the
concentration of power
in the hands of a single
institution ('power
limits power')

Separation of powers



Legislative power: the initiative is reserved for the European Commission (Art. 17 TEU) - the EP has gradually established itself as co-legislator.



Executive power lies with the Member States, the Commission and, to a lesser extent, the Council.



The **administrative function** is exercised by the Commission (representation of the EU in its legal capacity - acquisition, disposal, legal action, administration of EU funds).



Judicial power: the Court of Justice has a monopoly to 'ensure that in the interpretation and application of the Treaties the law is observed (Art. 19 TEU and 268 TFEU).

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Conseil eur

I. European Council

- 27 chiefs of State/govt+President+President of the EC
- Article 15(1) TEU 'General political guidelines and priorities'.
- No legislative function

I. European Council



Conseil eur

- Significant role in determining climate objectives and budgetary resources (July 2021 agreement on NextGenerationEU)
- => 7% of the €672.5 billion Recovery and Resilience Facility is being spent on **climate-related objectives.**



1. European Council – climate neutrality

The European Council of 10-11 December 2020 raised the 2030 climate target to a minimum of 55%, following a proposal from the European Commission, to bring it into line with the objective of a climate-neutral EU by 2050.

2. Council of the EU: composed of 27 ministers



2. Council of the EU

- Article 16.1 TEU. Together with the EP, it exercises 'legislative and budgetary functions'.
- **Ordinary legislative procedure** (289, §1-294 TFEU)
- **Special legislative procedure** (289, §2 TFEU) applicable to the harmonisation of indirect taxation (113 TFEU), certain aspects of environmental policy (land planning, environmental taxes, quantitative water management) (112, §2 TFEU)

2. Council of the EU

10 configurations, several of which are dealing with environmental issues:

- Environment,
- Climate
- Energy
- Transport
- Internal Market
- Agriculture

2. Environment Council configuration (ENV)

- The Environment Council is composed of ministers responsible for matters specifically relating to the environment. The European Commission is represented in meetings by both the Commissioner for the environment and the Commissioner for climate action.
- This configuration is responsible for EU environment policy, including **environmental protection**, prudent **use of resources** and the **protection of human health**.
- It also deals with international environmental negotiations.

Achievements of the Environment Council, Luxemburg, 17 June 2024

- EU environment ministers met in Luxembourg and reached a general approach on the green claims directive, the soil monitoring.
- The Council adopted the – first of its kind – regulation on nature restoration.
- It reached a general approach on a proposal to revise the waste framework directive.
- It engaged in a policy debate on the Commission communication on an EU 2040 climate target.



2. Council of the EU, CAP Configuration

- Article 43, §1 TFEU - Ordinary legislative procedure =>Pursuit of the 'objectives' of the CAP
- Ex/ CAP framework regulation 2023-2027
- Article 43, §2 TFEU - *Sui generis* procedure
- 'fixing and allocation of fishing opportunities

3. COREPER I and the Special Committee on Agriculture (SCA)

- COREPER made up of the 27 EU ambassadors.
- The Member States are thus represented individually by their ambassadors.
- It is 'responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council' (Article 240 TFEU).

3. COREPER: the cornerstone of the decision-making process

- Responsible for examining in advance the dossiers on the Council's agenda (proposals and draft acts submitted by the Commission).
- It is required to examine all the dossiers that will be on the Council's agenda, and endeavours to reach agreement on each dossier.
- The 27 permanent representations of the Member States to the Union are the point of contact for relations between national governments and the Union. They also keep national administrations informed of draft regulations.

3. COREPER, functions

Dialogue: there is constant dialogue between the permanent representatives, who meet in Brussels every week, and between each of them and its capital. COREPER plays a key role in the processing of Commission proposals.

By examining them in advance, it manages to reach a consensus fairly quickly among the ambassadors with a view to facilitating the subsequent adoption of the text by the ministers sitting in the Council.

In this way, it avoids ministers clashing over issues with which they are unfamiliar.

4. European Parliament



4. European Parliament

- Citizen' representation of the EU
- Article 14(1) TEU. Together with the CM, it exercises 'legislative and budgetary functions'.
- **Ordinary legislative procedure** (289, §1-294 TFEU) applicable to environmental, energy, internal market, etc. policies => EP placed on an equal footing with the CM

4. European Parliament

Committee on the Environment, Public Health and Food Safety

With 90 Members, ENVI is one of the two largest committees in the European Parliament.

- <https://www.europarl.europa.eu/committees/en/envi/home/members>

5. European Commission

- An archetype of the Community method, the Commission sees itself as the neutral representative of the 'general interest of the EU' (art. 17, §1 TEU).
- It exercises its mandate 'with complete independence' (art. 17, §3 TEU).
- EC is 'accountable' to the EP (art. 17, §8 TEU).

**Spearhead of the
environnemental and
climate policies**



Commission européenne

***5. Tasks
assigned by
the EU
treaties to the
European
Commission***



Managing the budget of the EU



Initiating legislative proposals



Control of the implementation of EU law by the Member States



Negotiating international agreements (art 218 TFUE)

5. European Commission

It has a **monopoly on legislative initiative** (Article 17(1) and (2) TEU); it drafts legislative texts (directives and regulations) and submits them to the Council for deliberation and, where required (ordinary legislative procedure), to the European Parliament, depending on the matters concerned and/or the procedure to be followed.

It is responsible for ensuring 'the application of Union law under the control of the Court of Justice' (Article 17(1) TEU).

Member States have a **general obligation to inform** the Commission of any national measure likely to affect EU law (pr. of loyal cooperation, art. 4, §3 TEU).

Actions for failure against MSt not fulfilling their obligations (Article 258 TFEU).



5. Commission DG in charge of environmental and natural resources policies

- Economic and monetary affairs
- Agriculture
- Climate
- International Trade
- Competition
- Development
- Energy

- Environment
- Internal market
- Fisheries
- Regional policy
- Research
- SANCO (health and consumer protection)
- Transport

5. Tasks conferred by the EU lawmaker to the Commission

Delegated Powers (290 TFEU)

Adoption of **non-legislative acts of general application** which supplement or amend certain **non-essential elements of the legislative act**

Implementing Powers (291 TFEU)

Adoption of **non-legislative acts that have specific application; they** lay down detailed rules.

Eg. Authorisation regarding a chemical substance, a GMO

5.1. Delegated Powers

- Legislative powers may be delegated by the Council/EP (the legislator) to the Commission in order to adopt **non-legislative acts of general application** which supplement or amend certain **non-essential elements of the legislative act** (delegated acts) (Article 290 TFEU).
- The legislator may monitor the exercise of the powers conferred on the Commission. The EP and the Council have a right of revocation and/or a right of objection.

5.1. Article 290 TFEU

1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain **non-essential elements of the legislative act**.

The **objectives, content, scope** and **duration** of the delegation of power shall be explicitly defined in the legislative acts. The **essential elements** of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

- (a) the European Parliament or the Council may decide to **revoke the delegation**;
- (b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

5.1. Illustration of Delegated Acts: Taxonomy

Regulation (EU) 2020/852 the European Parliament and the Council of the European Union of 18 June 2020 on the establishment of a framework to facilitate sustainable investment.

That Regulation establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of determining the degree to which an investment is environmentally sustainable.

- The criteria for environmentally sustainable economic activities are applied in the light of six environmental objectives (Article 9 of that regulation).

5.1. Illustration of Delegated Acts: Taxonomy and climate change mitigation

Regarding transitional economic activities, Article 10(3) of **Regulation 2020/852** provides that the European Commission is to **adopt a delegated act**

- first, to establish technical screening criteria for determining the conditions under which a specific economic activity qualifies as **contributing substantially to climate change mitigation,**
- and, second, to establish, **for each relevant environmental objective,** **technical screening criteria** for determining whether an economic activity in respect of which technical screening criteria have been established causes significant harm to one or more of those objectives.

Article 11

Substantial contribution to climate change adaptation

1. An economic activity shall qualify as **contributing substantially to climate change adaptation** where that activity:
 - (a) includes adaptation solutions that either substantially reduce the risk of the adverse impact of the current climate and the expected future climate on that economic activity or substantially reduce that adverse impact, without increasing the risk of an adverse impact on people, nature or assets; or
 - (b) provides adaptation solutions that, in addition to satisfying the conditions set out in Article 16, contribute substantially to preventing or reducing the risk of the adverse impact of the current climate and the expected future climate on people, nature or assets, without increasing the risk of an adverse impact on other people, nature or assets.
2. The **adaptation solutions** referred to in point (a) of paragraph 1 shall **be assessed and ranked** in order of priority using the best available climate projections and shall, at a minimum, prevent or reduce:
 - (a) the location-specific and context-specific adverse impact of climate change on the economic activity; or
 - (b) the potential adverse impact of climate change on the environment within which the economic activity takes place.
3. The Commission shall adopt a **delegated act** in accordance with Article 23 to:

5.1. European Commission Delegated Regulation (EU) 2021/2139

Conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.

Delegated Regulation (EU) 2021/2139 establishing additional technical screening criteria for determining the conditions under which certain economic activities qualify as contributing substantially to climate change mitigation or climate change adaptation and for determining whether those activities cause no significant harm to any of the other environmental objectives

Article 1

The technical screening criteria for determining the conditions under which an economic activity qualifies as **contributing substantially to climate change mitigation** and for determining whether that economic activity causes no significant harm to any of the other environmental objectives laid down in Article 9 of Regulation (EU) 2020/852 are set out in Annex I to this Regulation.

Article 2

The technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to **climate change adaptation** and for determining whether that economic activity causes no significant harm to any of the other environmental objectives laid down in Article 9 of Regulation (EU) 2020/852 are set out in Annex II to this Regulation.

1. Afforestation plan and subsequent forest management plan or equivalent instrument

The area on which the activity takes place is covered by an **afforestation plan** of a duration of **at least five years**, or the minimum period prescribed in national law, developed prior to the start of the activity and continuously updated, until this area matches the definition of forest as set out in national law or where not available, is in line with the FAO definition of forest.

The afforestation plan contains all elements required by the national law relating to **environmental impact assessment of afforestation**.

1.2. Preferably through the afforestation plan, or if information is missing, through any other document, detailed information is provided on the following points:

- (a) description of the area according to its gazetting in the land registry;
- (b) site preparation and its impacts on pre-existing carbon stocks, including soils and above-ground biomass, in order to protect land with high carbon stock ⁽³⁾;
- (c) management goals, including major constraints;
- (d) general strategies and activities planned to reach the management goals, including expected operations over the whole forest cycle;
- (e) definition of the forest habitat context, including main existing and intended forest tree species, and their extent and distribution;
- (f) compartments, roads, rights of way and other public access, physical features including waterways, areas under legal and other restrictions;
- (g) measures deployed to establish and maintain the good condition of forest ecosystems;
- (h) consideration of societal issues (including preservation of landscape, consultation of stakeholders in accordance with the terms and conditions laid down in national law);
- (i) assessment of forest related risks, including forest fires, and pests and diseases outbreaks, with the aim of preventing, reducing and controlling the risks and measures deployed to ensure protection and adaptation against residual risks;
- (j) assessment of impact on food security;
- (k) all DNSH criteria relevant to afforestation.

5.1. Limits to delegation

The delegated act cannot change the essential elements of the law.

The legislative act must define the objectives, content, scope and duration of the delegation of power.

Parliament and Council may revoke the delegation or express objections to the delegated act.

5.2. Implementing Powers

The Commission is competent to adopt implementing acts which, unlike delegated acts, do not supplement legislative acts but lay down detailed rules for their implementation (Article 290(2) TFEU).

5.2. Article 291 TFEU – Implementing Acts

1. **Member States** shall adopt all measures of national law necessary to implement legally binding Union acts.
2. Where **uniform conditions** for implementing legally binding Union acts are needed, those acts shall confer **implementing powers on the Commission**, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.
3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

5.2. Implementation of EU legislative acts

No need for uniform conditions

Member States must adopt all measures of national law necessary to implement legally binding Union acts.

Uniform conditions are needed

=> European Commission under the supervision of committees

COMITOLGY. Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers

Rules and general principles governing the mechanisms which apply where a legally binding Union act (a 'basic act') identifies the need for uniform conditions of implementation and requires that the adoption of implementing acts by the Commission be subject to the control of Member States.

5.3.

COMITOLOGY



5.3. When does comitology apply?

- The EU legislator may empower the Commission to adopt ‘implementing acts’ through specific rules written into a legislative act (the **‘basic act’**).
- Each legislative act specifies the scope of the implementing powers conferred on the Commission by the Council/EP.
- This is done when it is necessary to put in place uniform conditions for the implementation of EU law, instead of letting each Member State implement it on its own in a potentially divergent manner.
- In this context, the Commission is assisted by a **committee**, under a procedure known as ‘comitology’.

5.3. How does comitology work?

When the Commission adopts implementing acts, one of the following procedures applies:

- **examination procedure** – used particularly for (i) measures with general scope and (ii) measures with a potentially significant impact (in areas such as taxation or agricultural policy)
- **advisory procedure** – generally used for all other implementing acts.

Both procedures require that a committee composed of MSt representatives (civil servants) vote the Commission's proposed measures.

5.3. Examination procedure

- if a qualified majority (55% of EU countries representing at least 65% of the total EU population) votes in favour of the proposed implementing act, the Commission **must adopt it**
- if a qualified majority votes against the proposed act, the Commission **may not adopt it**
- if there is no qualified majority either for or against the proposed act, the Commission can either **adopt it** or **submit a new, amended draft**.

5.3. Examination procedure:

EU Customs Code Committee and imported BEVs from China

Following an anti-subsidy investigation, European Commission's proposal to impose definitive countervailing duties on imports of battery electric vehicles (BEVs) from China.

On 4 October 2024, MSt Representatives voted in favour of imposing tariffs of up to 45 % on Chinese electric vehicles for at least five years.

- 10 member states supported the measure,
- 12 abstained,
- and another 5 voted against the tariffs.

Lack of a qualifying blocking majority gave the green light to the European Commission

The Commission can now proceed with the CVDs before a 30 October deadline.

5.3. Advisory procedure

The Commission decides on its own whether to adopt the proposed act, but must 'take the utmost account' of the committee's opinion before deciding.

5.3. Appeal committee

If the Commission is prevented from adopting a proposed implementing act (particularly where the comitology committee voted against it), it can refer the case to the appeal committee.

The appeal committee functions in a similar way to the other comitology committees: it is made up of EU countries' representatives but at a higher level of representation. It is chaired by the Commission and follows the same voting rules.

It gives EU countries the opportunity to have a second discussion.

If the appeal committee rules against the Commission's proposed implementing act, the Commission must abide by its decision.

5.3. Scrutiny by EU Council and Parliament

- **Right of information** – all proposed Commission actions discussed in the committees are simultaneously disclosed to Parliament and Council.
- **Right of scrutiny** – where Commission actions relate to a legislative act passed by the ordinary legislative procedure, Parliament and/or Council can object to the proposed implementing act if it exceeds the Commission's powers defined in the initial act. The Commission is then obliged to review its proposed act in the light of this input and decide whether to maintain, amend or withdraw.

5.3. Comitology

Committees are discussion forums made up of representatives of the Member States and chaired by the Commission. They enable the Commission to establish a dialogue with national administrations before adopting implementing measures.

By allowing the Member States to control the executive tasks of the Commission, comitology provides a **counterweight** to curb the executive's attempts at obtaining greater powers. In this way, comitology regulates the institutional balance.

5.3. Comitology Drawbacks

- Lack of transparency of comitology committees
- Comitology's opaque mode of operation
- Members of the European Parliament (MEPs) are excluded from the comitology process

5.3. Scientific committees in charge of the environmental/climate policies

- Nature Restoration Regulation committee
- Deforestation-free regulation (eudr) committee
- Climate Change Committee
- Committee for the adaptation to scientific and technical progress of the directive on conservation of wild birds (ORNIS)

5.3. Examination committees in charge of the environmental/climate policies

- Committee on fluorinated greenhouse gases
- Committee on ozone-depleting substances



Renewal of active the substance «glyphosate»

Commission Implementing Regulation (EU) 2017/2324 of 12 December 2017 renewing the approval of the active substance glyphosate in accordance with Regulation (EC) No 1107/2009

Article 1.

The approval of the active substance glyphosate, as specified in Annex I, is renewed subject to the conditions laid down in that Annex.



CAP
Regulation (UE) 2021/2115 - article
148, § 1

Article 148 - Measures to resolve specific problems

1. In order to resolve specific problems, the Commission shall adopt implementing acts which are both necessary and justifiable in an emergency. Such implementing acts may derogate from provisions of this Regulation to the extent and for such a period as is strictly necessary.

6. Advisory Bodies (article 300, §1^{er} TFEU)

- **Committee of the Regions** (305 et seq. TFEU)



- **ECOSOC** (301 et seq. TFEU)

- Opinions are not binding.

Example: opinion of the 2 committees requested under

Article 192, §1 TFEU

Article 192, §1 TFEU

'The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting

- the [Economic and Social Committee](#)
- and the [Committee of the Regions,](#)

shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191'.



Principle of Loyal Cooperation between EU Institutions

- The institutions must mutually ensure that the EU system functions properly.
- On the other hand, they must refrain from putting obstacles in the way of the other institutions.

7. EU Agencies dealing with environmental issues

- European Environment Agency (EEA)
- European Food Safety Authority (EFSA)
- European Chemicals Agency



**European
Environment
Agency**

**European Environment
Agency (EEA)**

- Informs decision-makers and the public about the state of Europe's environment, climate change and wider sustainability issues.
- Research and not administration

European Food Safety Authority (EFSA)



EFSA provides **independent scientific advice** on **food-related risks**.

EFSA issues advice on existing and emerging food risks. This advice informs European laws, rules and policymaking – and so helps **protect consumers from risks in the food chain**. Its remit covers:

- food and feed safety
- nutrition
- animal health and welfare
- plant protection
- plant health.



- Implements the EU's chemicals legislations

**European Chemicals
Agency**

