Chapter 2a  The EU following the Lisbon Treaty (Reform Treaty)

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- Uses the new numbers of the Treaty provisions (Lisbon renumbering);
- Includes a table of contents including the topic sentences.

This document was prepared within the framework of EUR-charts.

Notes:
The charts contained in this document are intended to supplement the book 'Essential EC Law in Charts'. It deals with important elements of EU law under the Lisbon Treaty. Cross references other than to the present Chapter 2a relate to the book.

The differences between the present law and the 'Lisbon law' can be seen by comparing the original charts and these 'Lisbon charts'.

www.eur-charts.eu - The EC Law in Charts Project
Book orders online via www.eclawincharts.eu (bank payment) or www.eubookshop.com (credit card payment)
Chapter 2a The EU following the Lisbon Treaty (Reform Treaty)

Background: important Treaty revisions
Over the decades, the EC Treaty (and subsequently also the EU Treaty) was repeatedly revised. The most recent revision dates of 2007 (Lisbon revision).

The Intergovernmental Conference 2007
In October 2007, the Intergovernmental Conference (IGC 2007) agreed on a Reform Treaty, which was formally signed on 13 December 2007 in Lisbon (‘Lisbon Treaty’). In terms of content, the Lisbon Treaty is largely based on the Constitutional Treaty.

The European Union before and after the Lisbon Treaty
The Lisbon Treaty does away with the European Union's traditional pillar structure.

Structure of the European Union following the Lisbon Treaty
In the future, the European Union may perhaps be compared to a large planet around which Euratom circulates like a satellite.

Three fundamental texts of equal value
Under the Lisbon Treaty, there are three fundamental EU texts of equal value, namely two Treaties (the EU Treaty and the Treaty on the Functioning of the European Union) and one Charter (the Charter of Fundamental Rights). In the picture of a planet, they represent the core, the mantle and the crust of the planet.

Structure of the EU Treaty following the Lisbon Treaty
The Lisbon Treaty radically alters the structure of the EU Treaty.

Structure of the FEU Treaty following the Lisbon Treaty
The Lisbon Treaty radically alters the structure of what used to be the EC Treaty, now called Treaty on the Functioning of the European Union.

Functioning of the European Union: internal and external action
Within the Treaty on the Functioning of the European Union, an important distinction is made between internal and external action of the Union.

Fundamental values
Under the Lisbon Treaty, the European Union is based on a number of fundamental values, some of which are not explicitly mentioned in the present EU Treaty.

Aims of the European Union
The European Union’s overarching aim is to promote peace, its values and the well-being of its peoples. In order to achieve this aim, the EU Treaty defines a number of specific objectives of the Union.

‘Overarching’ substantive law
In all its areas of activities, the European Union and its Member States must observe the general principles of Union law. Further, the European Union must fulfil certain overarching tasks.

Division of competences between the European Union and its Member States
There are different categories of Union competences. The Treaty on the Functioning of the European Union lists the relevant (principal) fields.
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**Single institutional framework**
The European Union and Euratom are served by a single institutional framework, in which the European Council works together with a number of institutions that were originally set up within the framework of the European Communities.

**The European Council following the Lisbon Treaty**
The European Council is the European Union's top political institution. The Lisbon Treaty provides for a presidency lasting 2.5 years.

**Important changes regarding the structure of other institutions**
The Lisbon Treaty brings about important institutional changes, concerning in particular the size of the European Parliament, the size of the Commission, and the structure of the Court of Justice. It also introduces the new office of the High Representative of the Union for Foreign Affairs and Security Policy.

**Qualified majority voting in the Council**
The Lisbon Treaty introduces a new system of qualified majority voting in the Council. It abandons the system of weighted votes.

**Secondary measures (or legal acts) of the European Union**
Secondary measures are taken by the European Union’s institutions towards the fulfilment of their tasks under Union law. In essence, secondary measures aim to facilitate the attainment of the primary goals of the Treaties. The Lisbon Treaty provides for a distinction between legislative and non-legislative acts of the Union.

**Legislative procedures**
The Lisbon Treaty introduces a distinction between the ordinary legislative procedure (i.e. the codecision procedure) and special legislative procedures.

**Specialised legislative procedures**
The Treaty on the Functioning of the European Union provides for many different specialised legislative procedures.

**Lisbon renumbering**
The Lisbon Treaty provides for the renumbering of the articles, sections, chapters and parts of the Treaties. After the Amsterdam renumbering, this is the second comprehensive renumbering of the Treaty provisions.
## Background: The EU following the Lisbon Treaty (Reform Treaty)

### Important revisions of the E(E)C Treaty

#### Founding Treaty

<table>
<thead>
<tr>
<th>Treaty Name</th>
<th>Year of signature / entry into force</th>
<th>Main Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>EEC Treaty</td>
<td>Signed 1957, entry into force 1 January 1958</td>
<td></td>
</tr>
</tbody>
</table>

#### Important Treaty Revisions

<table>
<thead>
<tr>
<th>Name of Treaty</th>
<th>Year of signature / entry into force</th>
<th>Main Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Merger Treaty</td>
<td>1965 / 1 July 1967</td>
<td>Introduction of a single institutional framework for the three Communities. (Note: the Communities as such were not merged.)</td>
</tr>
<tr>
<td>Act concerning the direct election of representatives of the European Parliament</td>
<td>1976 / first applied in 1979</td>
<td>Establishment of direct elections to the European Parliament</td>
</tr>
<tr>
<td>Single European Act</td>
<td>1986 / 1 July 1987</td>
<td>A new timetable for the internal (common) market, institutional reform</td>
</tr>
<tr>
<td>Maastricht Treaty</td>
<td>1992 / 1 November 1993</td>
<td>Revision of the three Communities, setting up of the EU</td>
</tr>
<tr>
<td>Amsterdam Treaty</td>
<td>1997 / 1 May 1999</td>
<td>Revision of the EU and of the Communities</td>
</tr>
<tr>
<td>Nice Treaty</td>
<td>2001 / 1 February 2003</td>
<td>Revision of the EU and of the Communities, Amsterdam 'left-overs', enlargement</td>
</tr>
<tr>
<td>Constitutional Treaty</td>
<td>2004 (not in force)</td>
<td>Abolition of the EC, reform of the EU; see Chart 2/17</td>
</tr>
<tr>
<td>Lisbon Treaty</td>
<td>&lt;...&gt; (signed on 13 December 2007 / ratification ongoing)</td>
<td>Saving parts of the Constitutional Treaty; see Chart 2/18</td>
</tr>
</tbody>
</table>
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The Intergovernmental Conference 2007

Topic:
In October 2007, the Intergovernmental Conference (IGC 2007) agreed on a Reform Treaty, which was formally signed on 13 December 2007 in Lisbon ('Lisbon Treaty'). In terms of content, the Lisbon Treaty is largely based on the Constitutional Treaty.

The Intergovernmental Conference 2007

In its meeting of 21 and 22 June 2007 in Brussels, the European Council gave the Portuguese Presidency of the European Union the mandate to convene an Intergovernmental Conference (IGC) before the end of July 2007, with the task of drafting a so-called 'Reform Treaty'.

Most important aspects of the mandate for the IGC 2007

Modified structure of the EU:
- The EU is based on two treaties: the Treaty on European Union and the 'Treaty on the Functioning of the European Union' (new name for the EC Treaty). The EU replaces and succeeds the EC;
- Euratom remains.

Institutional reform:
Based on the Constitutional Treaty (see Chart 2/17), with certain modifications, including in particular:
- Qualified majority voting within the Council: no weighting of votes in principle as of 1 November 2014;
- New High Representative for Foreign Affairs and and Security Policy (rather than a 'Minister').

Content:
Based on the Constitutional Treaty (see Chart 2/17), with the modifications specified in the Draft Mandate for the IGC 2007. Important: there will not be any references to 'Constitution'.

Towards the Reform Treaty / Lisbon Treaty
- Based on the Draft Mandate, the IGC 2007 discussed a draft Reform Treaty drawn up by the Portuguese Council Presidency. Political agreement was reached on 18 October 2007.
- The Reform Treaty was signed on 13 December 2007 in Lisbon (hence: 'Lisbon Treaty').

National referenda?
Whether ratification requires national popular votes (referenda) depends upon the respective national law of, and/or the political decisions in, the various Member States.
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The European Union before and after the Lisbon Treaty

Topic:
The Lisbon Treaty does away with the European Union's traditional pillar structure.

The effect of the Lisbon Treaty on the structure of the EU

The EU before the Lisbon Treaty:

Three Treaties (Nice versions):
- The EU Treaty (overall structure);
- The EC Treaty (first pillar);
- The Euratom Treaty (first pillar).

See Chart 2/8, Chart 2/11

The Lisbon Treaty (Reform Treaty) contains the changes to the present Treaties.

The Lisbon Treaty does away with the EU's traditional pillar structure. The Union will no longer be based on the European Communities. The EC will be replaced and succeeded by the EU. Euratom will exist outside the framework of the EU Treaty.

See Chart 2a/4

The EU and Euratom following the Lisbon Treaty:

Three Treaties (Lisbon versions):
- Two Treaties on the EU: the EU Treaty and the Treaty on the Functioning of the European Union (former EC Treaty);

See Chart 2a/4, Chart 2a/5
In the future, the European Union may perhaps be compared to a large planet around which Euratom circulates like a satellite.

**The European Union**

The European Union of 1992, though now based on two Treaties; see **Chart 2a/5**:

- The Treaty on European Union (TEU);
- The Treaty on the Functioning of the European Union (TFEU, i.e. the former EC Treaty, as amended through the Lisbon Treaty).

Art. 1(3) TEU:

'[...] The Union shall replace and succeed the European Community.'

Art. 47 TEU:

'The Union shall have legal personality.' [New, compare **Chart 2/7**]

**Euratom**


Art. 1(21) of the Lisbon Treaty:

The provisions of Title IV of the present EU Treaty (previous changes to the Euratom Treaty) are incorporated into the Euratom Treaty.

Protocol No. 2 to be annexed to the Lisbon Treaty:

- Contains new changes to the present Euratom Treaty.
- Certain provisions of the TEU and TFEU apply to the Euratom Treaty; compare **Chart 2a/13**.
Chapter 2a  The EU following the Lisbon Treaty (Reform Treaty)

Three fundamental texts of equal value

Topic:

Under the Lisbon Treaty, there are three fundamental EU texts of equal value, namely two Treaties (the EU Treaty and the Treaty on the Functioning of the European Union) and one Charter (the Charter of Fundamental Rights). In the picture of a planet, they represent the core, the mantle and the crust of the planet.

Three texts of equal value: the core, the mantle and the crust of the planet

Art. 1(3) TEU: ‘The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union [...]. Those two Treaties shall have the same legal value.’

Art. 6(1) TEU: The Charter of Fundamental Rights of 7 December 2000, as adapted on 12 December 2007, ‘shall have the same legal value as the Treaties’.

Note: The Charter itself is not a Treaty, as it needed no ratification.
## Chapter 2a  The EU following the Lisbon Treaty (Reform Treaty)

### Structure of the EU Treaty following the Lisbon Treaty

**Topic:**

The Lisbon Treaty radically alters the structure of the EU Treaty.

### Structure of the EU Treaty after the Lisbon Treaty

<table>
<thead>
<tr>
<th>Title</th>
<th>Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title I</td>
<td>Common provisions</td>
</tr>
<tr>
<td>Title II</td>
<td>Provisions on democratic principles</td>
</tr>
<tr>
<td>Title III</td>
<td>Provisions on the institutions</td>
</tr>
<tr>
<td>Title IV</td>
<td>Provisions on enhanced cooperation</td>
</tr>
<tr>
<td>Title V</td>
<td>General provisions on the Union’s external action and specific provisions on the Common Foreign and Security Policy</td>
</tr>
<tr>
<td>Title VI</td>
<td>Final provisions</td>
</tr>
</tbody>
</table>

**Notes:**

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Structure of the Treaty on the Functioning of the EU following the Lisbon Treaty

**Topic:**
The Lisbon Treaty radically alters the structure of what used to be the EC Treaty, now called Treaty on the Functioning of the European Union.

<table>
<thead>
<tr>
<th>Part One</th>
<th>Principles</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>Deals with categories and areas of Union competence and provisions having general application.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part Two</th>
<th>Non-discrimination and citizenship of the Union</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>Includes the present Arts. 12 and 13 EC and the provisions on EU citizenship.</em></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Part Three</th>
<th>Union policies and internal actions (see Chart 2a/8)</th>
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</thead>
<tbody>
<tr>
<td></td>
<td><em>Includes in particular:</em></td>
</tr>
<tr>
<td></td>
<td>• <em>The present Title X on customs cooperation;</em></td>
</tr>
<tr>
<td></td>
<td>• <em>The present third pillar of the EU on police and judicial cooperation in criminal matters.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part Four</th>
<th>Association of the overseas countries and territories</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Part Five</th>
<th>External action by the Union (see Chart 2a/8)</th>
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</thead>
<tbody>
<tr>
<td></td>
<td><em>New part. Includes in particular:</em></td>
</tr>
<tr>
<td></td>
<td>• <em>The present Title IX on Common Commercial Policy;</em></td>
</tr>
<tr>
<td></td>
<td>• <em>The present Title XX on Development cooperation;</em></td>
</tr>
<tr>
<td></td>
<td>• <em>The present Title XXI on Economic, financial and technical cooperation with third countries.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part Six</th>
<th>Institutional and budgetary provisions</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Part Seven</th>
<th>Final provisions</th>
</tr>
</thead>
</table>

**Note:**
According to Art. 1(11) of the Lisbon Treaty, the provisions of Title II of the present EU Treaty (previous changes to the EC Treaty) are incorporated into the Treaty on the Functioning of the European Union.
Within the Treaty on the Functioning of the European Union, an important distinction is made between internal and external action of the Union.

### Internal and external action of the Union

| Part Three: Union policies and internal actions | Title I: The internal market [includes the present Title X on Customs cooperation] |
| Title II: Agriculture and fisheries |
| Title III: Free movement of persons, services and capital |
| Title IV: Area of freedom, security and justice [includes the present third pillar of the EU] |
| Title V: Transport |
| Title VI: Common rules on competition, taxation and approximation of laws |
| Title VII: Economic and monetary policy |
| Title VIII: Employment |
| Title IX: Social policy |
| Title X: The European Social Fund |
| Title XI: Education, vocational training, youth and sport |
| Title XII: Culture |
| Title XIII: Public health |
| Title XIV: Consumer protection |
| Title XV: Trans-European networks |
| Title XVI: Industry |
| Title XVII: Economic, social and territorial cohesion |
| Title XVIII: Research and technological development and space |
| Title XIX: Environment |
| Title XX: Development cooperation |
| Title XXI: Tourism [new title] |
| Title XXII: Civil protection [new title] |
| Title XXIII: Administrative cooperation [new title] |

| Part Five: External action by the Union | Title I: General provisions on the Union’s external action [new title] |
| Title II: Common Commercial Policy |
| Title III: Cooperation with third countries and humanitarian aid |
| Title IV: Restrictive measures [instead of the present Art. 301 EC] |
| Title V: International agreements [includes the present Art. 24 EU] |
| Title VI: The Union’s relations with international organisations and third countries and Union delegations |
| Title VII: Solidarity clause [new Title] |
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Fundamental values

Topic:
Under the Lisbon Treaty, the European Union is based on a number of fundamental values, some of which are not explicitly mentioned in the present EU Treaty.

Art. 2 TEU (new version of the present Art. 6(1) EU)

'The Union is founded on the values of....'

- Respect for human dignity
  [new; compare Chart 1/13]
- Freedom
  [formerly 'liberty'; compare Chart 1/13]
- Democracy
- Equality
  [new; compare Chart 1/13]
- The rule of law
  The ECJ in relation to the EC: the Community is 'a Community based on the rule of law'; Les Verts (1986).
- Respect for human rights, including the rights of persons belonging to minorities

Art. 2 TEU (continued):

'These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

Specifically: human rights

Under the present Treaties, there is a non-binding Charter of Fundamental Rights. However, the ECJ long ago recognised respect for fundamental rights as an integral part of the general principles of the (then) European Economic Community; see Chart 1/13.

Under the Lisbon Treaty, there are two distinct sources of human rights:
- According to Art. 6(1) TEU, the Charter of Fundamental Rights has the same value as the Treaties (i.e. it is binding on the Member States); see Chart 2a/5;
- According to Art. 6(3) TEU, the fundamental rights guaranteed by the European Convention on Human Rights constitute general principles of the Union’s law; see Chart 2a/11. According to Art. 6(2) TEU, the Union shall accede to the Convention; see Protocol relating to Art. 6(2) TEU to be annexed to the Treaties.
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Aims of the European Union

Topic:

The European Union's overarching aim is to promote peace, its values and the well-being of its peoples. In order to achieve this aim, the EU Treaty defines a number of specific objectives of the Union.

Overarching aim of the Union

Art. 3(1) TEU: to promote peace, the Union's values and well-being of its peoples

Specific objectives

(as defined in the Lisbon Treaty; compare Chart 1/10)

Area of freedom, security and justice

Art. 3(2) TEU: 'The Union shall offer its citizens an area of freedom, security and justice, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.'

In doing so, the EU shall work for:
- The sustainable development of Europe;
- A highly competitive social market economy;
- A high level of protection and improvement of the quality of the environment;
- Scientific and technological advance.

Note: Throughout the Treaties, the term 'common market' is replaced by the term 'internal market'.

Internal market

Art. 3(3) TEU: 'The Union shall establish an internal market.'

Economic and Monetary Union

Art. 3(4) TEU: 'The Union shall establish an economic and monetary union whose currency is the euro.'

Union values and interests in the wider world

Art. 3(5) TEU: 'In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens.'

In doing so, the EU shall contribute to:
- Peace;
- Security;
- The sustainable development of the Earth;
- Solidarity and mutual respect among peoples;
- Free and fair trade;
- Eradication of poverty;
- The protection of human rights;
- Strict observance and development of international law.
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‘Overarching’ substantive law

In all its areas of activities, the European Union and its Member States must observe the general principles of Union law. Further, the European Union must fulfil certain overarching tasks.

Certain rules have to be observed, and certain tasks have to be pursued, in all areas of Union law.

Overarching rules

- General principles of Union law (part Treaty-enshrined, part case law-based)
  See Chart 7/5
- Prohibition of discrimination on grounds of nationality, Art. 18 TFEU (formerly Art. 12 EC)
  See Chart 7/9
- EU citizenship for natural persons, in particular Art. 21(1) TFEU on movement and residence (formerly Art. 18(1) EC)
  See Chart 7/12

Overarching tasks

- Equality of EU citizens, Art. 8 TEU [new]
- Observing the principle of equality of EU citizens
- Sex equality, Art. 8 TFEU (formerly Art. 3(2) EC)
- Elimination of inequalities, and promotion of equality, between men and women; see Chart 10/6
- Employment and other social aims, Art. 9 TFEU
  Promoting a high level of employment, the guarantee of social protection, the fight against social exclusion, and a high level of education, training and protection of human health (regarding human health, formerly Art. 152(1) EC)
- Combating discrimination, Art. 10 TFEU
  Combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation
- Environmental protection, Art. 11 TFEU (formerly Art. 6 EC)
  Integration of environmental protection requirements, in particular with a view to promoting sustainable development
- Consumer protection, Art. 12 TFEU (formerly Art. 153(2) EC)
  Taking into account consumer protection requirements
- Animal welfare, Art. 13 TFEU (formerly Protocol on animal welfare)
  Paying full regard to the welfare requirements of animals
Topic:
There are different categories of Union competences. The Treaty on the Functioning of the European Union lists the relevant (principal) fields.

### Three basic types of Union competences

**Exclusive competences of the Union**
- Exclusively the Union.
- Art. 2(1) TFEU: all powers to act in the relevant field are given to the Union. The Member States may no longer act, except:
  - Where they are empowered by the Union;
  - For the implementation of Union acts.

**Shared competences as between the Union and the Member States**
- Both the Union and the Member States, though the Member States may no longer act, except:
  - Where they are empowered by the Union;
  - For the implementation of Union acts;
- Art. 2(2) TFEU: the Member States exercise their competence to the extent that the Union has not exercised its competence. Insofar as the field is occupied by Union law, the Member States have lost their competence; see Chart 11/2.
- Union action supersedes Member State competence.

**Supporting, coordinating or supplementing competences of the Union**
- Both the Union and the Member States, though the Union only to support, coordinate or supplement the actions of the Member States.
- Art. 2(5) TFEU: Union action does not supersede the Member States’ competences.
- Binding acts of the Union must not entail harmonisation.
- Within the limits set by the Treaty, Union action is parallel to Member State action.

### Relevant fields

**Few, listed in Art. 3 TFEU**:
- Customs union;
- Competition rules necessary for the functioning of the internal market;
- Monetary policy for the Member States whose currency is the Euro.
- Conservation of marine biological resources under the common fisheries policy;
- Common Commercial Policy;
- Conclusion of international agreements under certain conditions; compare Chart 3/7.

**All areas not covered by either Art. 3 (exclusive EU competences) or 6 TFEU (supporting, coordinating or supplementing EU competences).**

- Principal areas listed in Art. 4 TFEU; including e.g.:
  - Internal market;
  - Social policy, for the aspects defined in the TFEU;
  - Environment;
  - Transport;
  - Energy;
  - Area of freedom, security and justice;
  - Common safety concerns in public health matters, for the aspects defined in the TFEU.

**Few, listed in Art. 6 TFEU**:
- Protection and improvement of human health;
- Industry;
- Culture;
- Tourism;
- Education, vocational training, youth and sport;
- Civil protection;
- Administrative cooperation.

Strictly speaking, the competences in the fields listed in Art. 6 TFEU are shared in nature. However, the Lisbon Treaty does not use the term in this context but reserves it for competences where the Member States act on the basis of the principle of 'occupying the field'.
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The Union’s institutional framework

Topic:
The European Union and Euratom are served by an institutional framework, in which the European Council works together with a number of institutions that were originally set up within the framework of the European Communities.

The EU’s institutional framework:
Art. 13-19 TEU (formerly Arts. 3-5 EU) plus Part Six of the TFEU.
These provisions also apply to the Euratom Treaty, Art. 106a EA [new provision].

The European Council was set up as an original EU institution through the Maastricht Treaty (1992/1993). It had informal origins (namely meetings of the Member States' governments outside the framework of the Communities; see Chart 2/16).

Excerpt for the ECB, these institutions were set up within the framework of the original European Communities and were also used by the EU since the Maastricht Treaty (1992/1993); see Chart 2/16.

Top political institution:
The European Council

Note:
Even though Art. 13 TEU mentions the European Parliament as the first EU institution, the European Council is still the true top political institution, since it is the European Council that makes the Treaties; see Chart 2a/14.

Former Community institutions
(polynomial, judicial, and financial institutions)

- Political: the European Parliament (EP);
- Political: the Council or Council of Ministers;
- Political: the Commission;
- Judicial: the Court of Justice (ECJ);
- Financial: the European Central Bank (ECB) [new in this context, not mentioned in Art. 5 EU];
- Financial: the Court of Auditors.

Bodies, offices and agencies not called 'institutions', e.g.:

- Advisory bodies: the Economic and Social Committee and the Committee of Regions, Art. 13(4) TEU and Arts. 300 TFEU et seq.;
- The European Investment Bank, Arts. 308 TFEU et seq.;
- The High Representative of the Union for Foreign Affairs and Security Policy [new office]; see Chart 2a/15.
- Numerous agencies; see Chart 4/2.

Notes:
- The European Council and the Council of Ministers are not to be confused with the Council of Europe, which is an international organisation distinct from the European Union; see Chart 2/3.
- Originally, the European Communities had only the EP and the ECJ in common; a single institutional framework was created through the Merger Treaty (1965/1967); see Chart 2/16.
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The European Council following the Lisbon Treaty

Topic:
The European Council is the European Union's top political institution. The Lisbon Treaty provides for a presidency lasting 2.5 years.

The European Council

President
Determined by the European Council, for the duration of 2.5 years, Art. 15(5) TEU [new].

Other members of the European Council
Art. 15(2) TEU:
• The Heads of State or Government of the Member States.
• The President of the Commission.

Participating or assisting in the work
• End of Art. 15(2) TEU: the High Representative of the Union for Foreign Affairs and Security Policy (see Chart 2a/15) takes part in the work of the European Council.
• Art. 15(3) TEU: when the agenda so requires, the members of the European Council may decide to be assisted by a minister (in the case of the President of the Commission: a Commission member).

Task
Art. 15(1) TEU:
Discussion of the EU's development and decision making as to its general political guidelines.

Note:
• This includes in particular the making and revising of the Treaties, following Art. 48 TEU (ordinary or simplified revision procedure [new distinction]).
• Conversely, it does not include the making of secondary legislation (see Art. 15(1) TEU: 'It shall not exercise legislative functions:'). Secondary law is made by the other political institutions; see Chapter 5.
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Important changes regarding the structure of other institutions

**Topic:**

The Lisbon Treaty brings about important institutional changes, concerning in particular the size of the European Parliament, the size of the Commission, and the structure of the Court of Justice. It also introduces the new office of the High Representative of the Union for Foreign Affairs and Security Policy.

**Structural changes concerning the EP, the Commission and the Court of Justice**

- **Smaller European Parliament**
  - Change in the size of the EP:
    - In the future, no more than 750 Members plus the President, Art. 14(2) TEU.
    - Italy gets one additional MEP; Declaration No. 4 to be annexed to the Final Act on the Lisbon Treaty.

- **Smaller Commission**
  - Change in the size of the Commission:
    - Reduction to 2/3 of the number of the Member States, Art. 17(5) TEU:
      - 'As of 1 November 2014, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number. [...]'.
      - Commission seats are attributed based on a system of strictly equal rotation between the Member States, to be established by the European Council.

- **New structure of the Court of Justice, possibly more AGs**
  - Change in the structure of the ECJ and in the names of the different component parts of the Court, Art. 19(1) TEU:
    - The Court of Justice;
    - The General Court [i.e. the present Court of First Instance];
    - Specialised courts [including the Civil Service Tribunal, which at present is a mere panel attached to the CFI; see Chart 4/7].
  - More Advocates-General:
    - If the ECJ requests an increase by three AGs (from eight to eleven), the Council will, acting unanimously, agree on such an increase; Declaration No. 38 to be annexed to the Final Act on the Lisbon Treaty.

**The High Representative of the Union for Foreign Affairs and Security Policy (HR CFSP)**

New office, instead of the Foreign Policy Minister foreseen by the Constitutional Treaty (see Chart 2/17). The HR CFSP is one of the Commission's Vice-Presidents, Arts. 17(4) and 18(4) TEU. Task: the HR CFSP conducts the CFSP, Art. 18(2) TEU.

Relationship with other institutions:
- European Council: the HR CFSP takes part in the work of the European Council, Art. 15(2) TEU;
- EP: the HR CFSP regularly consults and informs the EP, Art. 36(1) TEU;
- Council (of Ministers): the HR CFSP chairs the Foreign Affairs Council, Art. 18(3) TEU.
Chapter 2a    The EU following the Lisbon Treaty (Reform Treaty)

Qualified majority voting in the Council

**Topic:**
The Lisbon Treaty introduces a new system of qualified majority voting in the Council. It abandons the system of weighted votes.

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**Qualified majority voting in the Council**

Art. 16(3)-(5) TEU, Art. 238 TFEU, Protocol relating to the implementation of Art. 9C(4) TEU (numbering of the Lisbon Treaty), to be annexed to the Treaties

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**Decisive change:**
System no longer based on the weighting of votes (see Chart 5/3)

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**Requirements for a qualified majority under Art. 16(4) TEU**

- **55% of the members of the Council**
  - 55% of the Member States must approve, in some cases 72%.

- **15 members of the Council**
  - The Council members approving must represent at least 15 Member States.

- **65% of the EU population**
  - The Council members approving must represent at least 65% of the total population of the Union.

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**Blocking minority:**
4 members of the Council
A blocking minority must include at least 4 members, in some cases at least the minimum number of Council members representing more than 35% of the population, plus one member.

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**Application of the new system in terms of time:**

- Art. 16(4) TEU: in principle as of 1 November 2014.
- Art. 16(5) TEU: transitional periods until 31 October 2014 and from 1 November 2014 to 31 March 2017.
- Transitional period 1 (until 31 October 2014): present system, based on the weighting of votes (see Chart 5/3), Art. 3(3) and (4) of the Protocol on transitional provisions to be annexed to the Treaties.
- Transitional period 2 (from 1 November 2014 to 31 March 2017): present system, if requested by a Member State, Art. 3(2) of the Protocol on transitional provisions to be annexed to the Treaties.
Secondary measures (or legal acts) of the Union

**Topic:**
Secondary measures are taken by the European Union's institutions towards the fulfilment of their tasks under Union law. In essence secondary measures aim to facilitate the attainment of the primary goals of the Treaties. The Lisbon Treaty provides for a distinction between legislative and non-legislative acts of the Union.

**Legal acts of the Union**

- **Art. 288 TFEU (formerly Art. 249 EC):** 'To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.'

  - **Regulations**
    - Automatically become part of the national legal order (implies that their provisions are clear and precise).
    - 'Monist approach' in terms of public international law; see Chart 1/5.

  - **Directives**
    - Must be implemented (i.e. transposed into national law) within a certain period.
    - 'Dualist approach' in terms of public international law; see Chart 1/5.

  - **Decisions**
    - Binding, concrete, may be specific (i.e. addressed to a limited number of persons).
    - This includes decisions in the traditional sense as well as decisions taken within the framework of the CFSP [new].

  - **'Soft law', i.e. policy papers and the like**
    - Not binding.
    - E.g.:
      - Recommendations;
      - Opinions;
      - Resolutions;
      - Communications.
    - Note: Art. 288 TFEU is not exhaustive; ERTA (1971, in relation to Art. 249 EC).

- **Art. 289(3) TFEU:** measures adopted by legislative procedure are legislative acts; see Chart 2a/18.

**Note:**
Decisions in the traditional sense are concrete and specific; Fruits et légumes (1962). Conversely, decisions taken within the framework of the CFSP are not traditional decisions.
Chapter 2a  The EU following the Lisbon Treaty (Reform Treaty)

Legislative procedures

**Topic:**
The Lisbon Treaty introduces a distinction between the ordinary legislative procedure (i.e. the codecision procedure) and special legislative procedures.

**Different legislative procedures under EU law**

**Ordinary legislative procedure (codecision procedure)**

Art. 289(1) TFEU:
Parliament and Council act as co-legislators on proposal from the Commission.

Definition in Art. 294 TFEU (formerly Art. 251 EC): three readings, conciliation committee (the term 'third reading' refers to the decision by the Council and the EP after approval of a joint text by the Conciliation Committee, see **Chart 5/6**), qualified majority voting in the Council; see **Chart 2a/16**. The procedure was originally introduced through the Maastricht Treaty (1992/1993); see **Chart 2/16**.

**Specialised legislative procedures**

Art. 289(2) TFEU:
Adoption of a legislative act by the Parliament with the participation of the Council, or by the Council with the participation of the Parliament.

See **Chart 2a/19**

**Examples of specific legal basis provisions**

- Art. 46 TFEU: free movement for workers (formerly Art. 40 EC);
- Art. 91(1) TFEU: rail, road and inland waterway transport (formerly Art. 71(1) EC; see Art. 100(1) TFEU);
- Art. 192(1) TFEU: environmental protection (formerly Art. 175(1) EC).

**General legal basis provision**

Art. 114 TFEU(formerly Art. 95 EC)

**Note:**
- Under the Lisbon Treaty, the order of Arts. 94 and 95 EC is reversed.
- Under the EC Treaty, Art. 95 EC is a derogation from Art. 94 EC. Under the Lisbon Treaty, Art. 115 TFEU (formerly Art. 94 EC) is made a derogation from Art. 114 TFEU (formerly Art. 95 EC).
Chapter 2a  The EU following the Lisbon Treaty (Reform Treaty)

Specialised legislative procedures

Topic:
The Treaty on the Functioning of the European Union provides for many different specialised legislative procedures.

Different specialised legislative procedures under the TFEU

Helpful focus point: role of the Parliament (degree of influence).

Particularly important specialised legislative procedures:

- **Consultation procedure**
  
  Commission proposes, Parliament consults, Council disposes. Adoption of the act (usually) requires a unanimous vote; see *Chart 5/4*. Has been in existence since the beginning.
  
  E.g.:
  - Art. 103(1) TFEU (formerly Art. 83(1) EC): principles set out in Arts. 101 and 102 TFEU (competition law);
  - Art. 115 TFEU (formerly Art. 94 EC): general legal basis provision derogating from Art. 114 TFEU (formerly Art. 95 EC).

- **Consent procedure**
  
  Role of Commission and Council depends on the legal basis provision; Parliament must give its consent.
  
  E.g.:
  - Art. 19(1) TFEU (formerly Art. 13 EC): combating discrimination (formerly consultation procedure);
  - Art. 49 TFEU: membership of the Union;
  - Art. 50 TFEU: agreement setting out the arrangements for withdrawal from the Union [new];
  - Art. 352 TFEU (formerly Art. 308 EC): subsidiary general legal basis provision (formerly consultation procedure).

Examples of other procedures, involving the following institutions:

- **Council and Commission**
  
  E.g. Art. 31 TFEU (formerly Art. 26 EC): Common Customs Tariff

- **Commission**
  
  E.g. Art. 106(3) TFEU (formerly Art. 86(3) EC): undertakings with a special position.

- **Commission, Social Partners, Council**
  
  Arts. 154 and 155 TFEU (formerly Arts. 138 and 139 EC); see *Chart 5/7*. Originally introduced through the Social Agreement, for the participating Member States; see *Chart 10/5*.

Note:
Under the Lisbon Treaty, the cooperation procedure (see *Chart 5/2* and *Chart 5/5*) is abolished.
Chapter 2a  The EU following the Lisbon Treaty (Reform Treaty)

Lisbon renumbering

Topic:
The Lisbon Treaty provides for the renumbering of the articles, sections, chapters and parts of the Treaties. After the Amsterdam renumbering, this is the second comprehensive renumbering of the Treaty provisions.

Renumbering the Treaties

Art. 5 of the Lisbon Treaty:
'The articles, sections, chapters, titles and parts of the Treaty on European Union and of the Treaty establishing the European Community, as amended by this Treaty, shall be renumbered in accordance with the tables of equivalence set out in the Annex to this Treaty, and which form an integral part of this Treaty.'

Note:
Through the Lisbon Treaty, the 'Treaty establishing the European Community' is renamed 'Treaty on the Functioning of the European Union'.

Changes to particularly important articles

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