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University of Freiburg (Germany), Faculty of Law
– Public Law, European Administrative and Information Law

Introduction to European Public Law

Post-Graduate Program of the Law Faculty
University of São Paulo, September 12-16 2016



*Faculdade de Direito da
Universidade de São Paulo*

Session 1:

- History and basic structures of the EU
- EU institutions: Commission, Council, EP, CJEU, ...

Albert-Ludwigs-Universität Freiburg

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Member States and Enlargements of the EU



Map of the European Union

- 1957 The Original Six
- 1973 The first enlargement
- 1981 The first Mediterranean enlargement
- 1986 The second Mediterranean enlargement
- 1995 The EFTA enlargement
- 2004 The first Eastern enlargement
- 2007 & 2013 Further enlargements
- Candidate countries
- Potential candidate countries

Refer to www.oxfordtextbooks.co.uk/orc/craiganddeburca6/ for interactive version of map and further information on Member States



Freiburg



<http://www.europewatchdog.info/wp-content/uploads/2014/01/CoE-Staaten.jpg>





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Albert-Ludwigs-Universität Freiburg

| | | |
|--------------------|----------------|---------------------|
| Freiburg: | 225.000 | inhabitants |
| University: | 25.000 | students |
| Faculty: | 2.200 | law students |

**UNI
FREIBURG**

Our programme



Day 1:

- History and basic structures of the EU
- EU institutions: Commission, Council, EP, CJEU, ...

Day 2:

- Sources of EU law: Primary law – Secondary law (regulations, directives, ...)
- The relationship between the EU and its Member States: competences of the EU, direct effect and supremacy of EU law, subsidiarity, infringement procedures

Day 3:

- Market freedoms of goods, services, workers, establishment and capital
- Non-discrimination, fundamental rights and citizenship
- General principles of EU law: proportionality, legitimate expectations, transparency

Day 4:

- Implementation of EU law: direct (central) – indirect (decentral) – shared (composite)
- EU administrative law I: direct implementation by EU authorities
- Competition law and state aid law as examples of direct implementation

Day 5:

- EU administrative law II: indirect implementation by MS authorities
- EU administrative law III: (vertical and horizontal) shared implementation
- Outlook: Europe after the Brexit – between globalization and re-nationalization

History

of the EU



➤ The background: the traditional enmity between Germany and France & World War I



Battle of Nations at Leipzig in 1813



Franco-German War 1870/71 and proclamation of the German Empire in Versailles 1871



Battleground at Ypern in 1917 during World War I



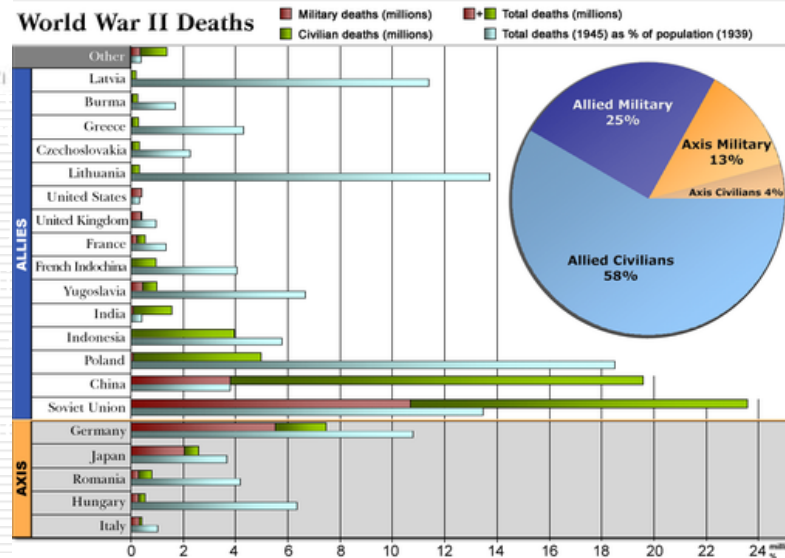
Graves at Verdun





History of the EU

➤ The background: World War II (1939-1945)



<http://mtviewmirror.com/wp-content/uploads/world-war-2.jpg>
https://en.wikipedia.org/wiki/World_War_II

<http://i2.cdn.turner.com/cnnnext/dam/assets/140828132519-06-world-war-ii-horizontal-large-gallery.jpg>
<https://commons.wikimedia.org/wiki/File%3AWorldWarII-DeathsByCountry-Barchart.png>



History of the EU

➤ The background: World War II ⇔ Cold War between East/West



https://en.wikipedia.org/wiki/Cold_War

<https://firaterin.files.wordpress.com/2014/04/schuetze1.jpg>

https://en.wikipedia.org/wiki/Cold_War

https://upload.wikimedia.org/wikipedia/commons/2/20/Bundesarchiv_Bild_173-1282,_Berlin,_Brandenburger_Tor,_Wasserwerfer.jpg

Member States and Enlargements of the EC/EU



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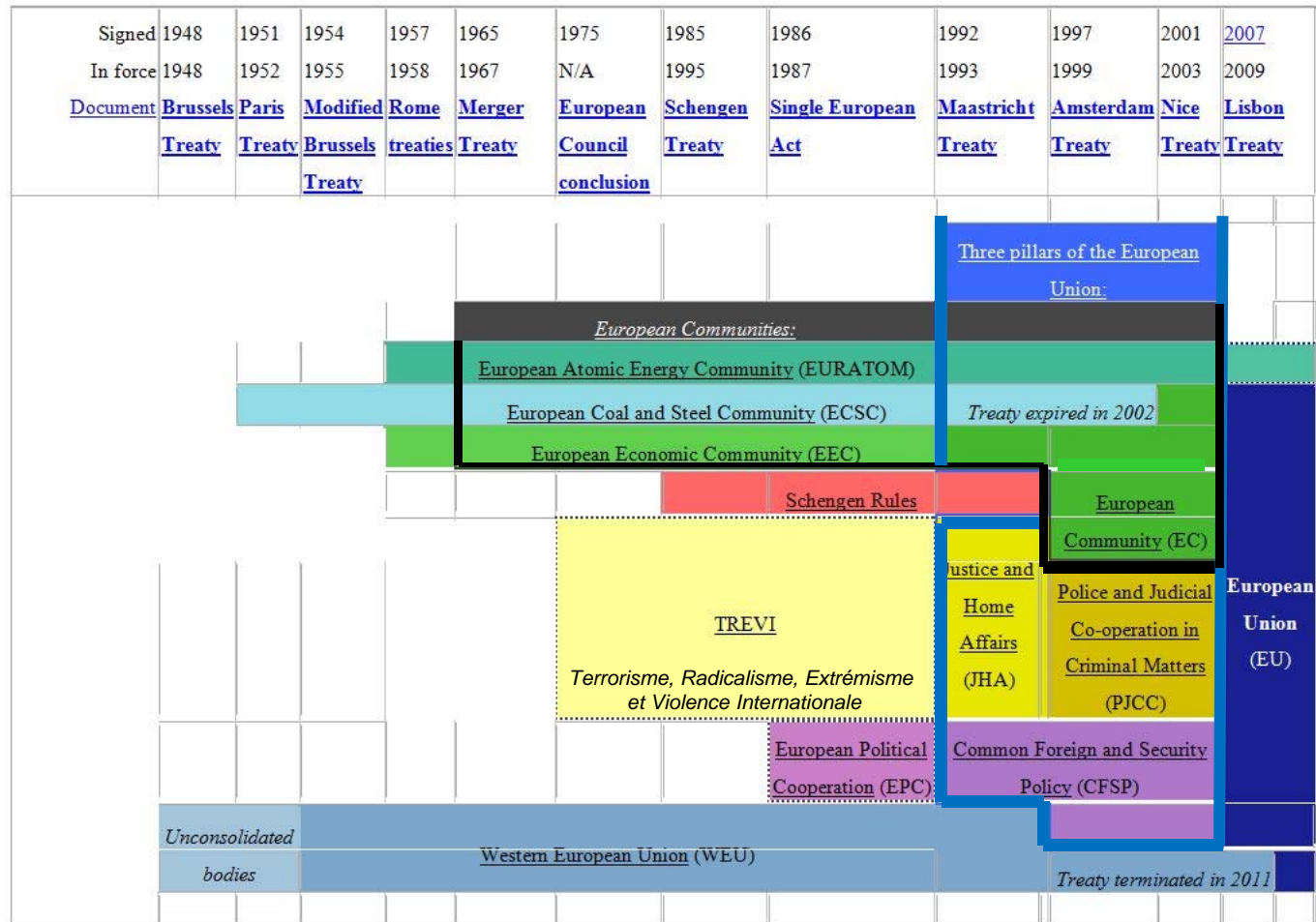
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<http://www.europewatchdog.info/wp-content/uploads/2014/01/CoE-Staaten.jpg>

History and basic structures of the EU

Ratified EU Treaties (= EC/EU primary law)



https://en.wikipedia.org/wiki/Treaties_of_the_European_Union



History and basic structures of the EU

- The founding period (1950-1958)
 - ECSC (Paris 1952), EEC + Euratom (Rome 1958)
 - BE, DE, FR, IT, LUX, NL (the original six)
- “consolidation” (and enlargement) ↔ stagnation (1958-1986)
 - Merger Treaty 1967: three communities with common institutions
 - French empty chair policy against Qual. Majority Voting (6/65-1/66) + Luxembourg Accords
 - supranationalism ↔ inter-governmentalism
 - 1973: DK, IRL, UK 1981: GR 1986: ES, PT => 12 MS
- institutional reform and completion of the common market (1986-1993)
 - Single European Act (1986): Council/EP coop. & harmonisation (= positive integration) with qualified majority in the Council (Art. 100a EEC/Art. 114 TFEU)
 - EU as a neo-liberal economic concept ↔ a social model
- “Constitutionalization” (1993-2007): EU (= EC; CFSP; JHA/PJCC); Co-Dec Proc; EMU; CFR
 - Maastricht (1993); Amsterdam (1999); Nice (2003); [Const.T (2004)]; Lisbon (2007)
 - 1995: A, FL, SWE (EU-15) 2004: CS, CY, ET, LT, LV, MT, PL, SK, SL, HU 2007: BG, RO
- Crisis – reinforcement of intergovernmentalism – re-nationalisation? (2008-...)
 - financial crisis (Lehmann / state debts) – refugee crisis – Brexit
 - 2013: Croatia (EU-28)

basic structures of the EU

The EU political system

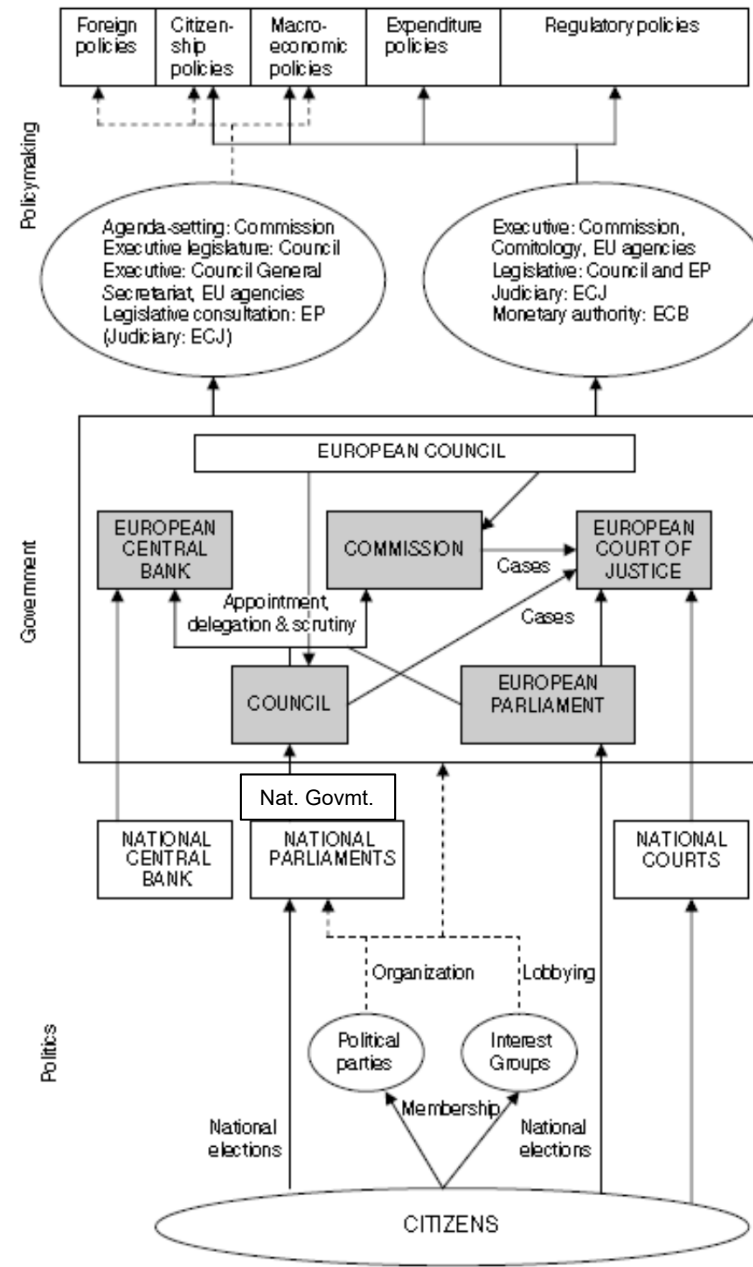


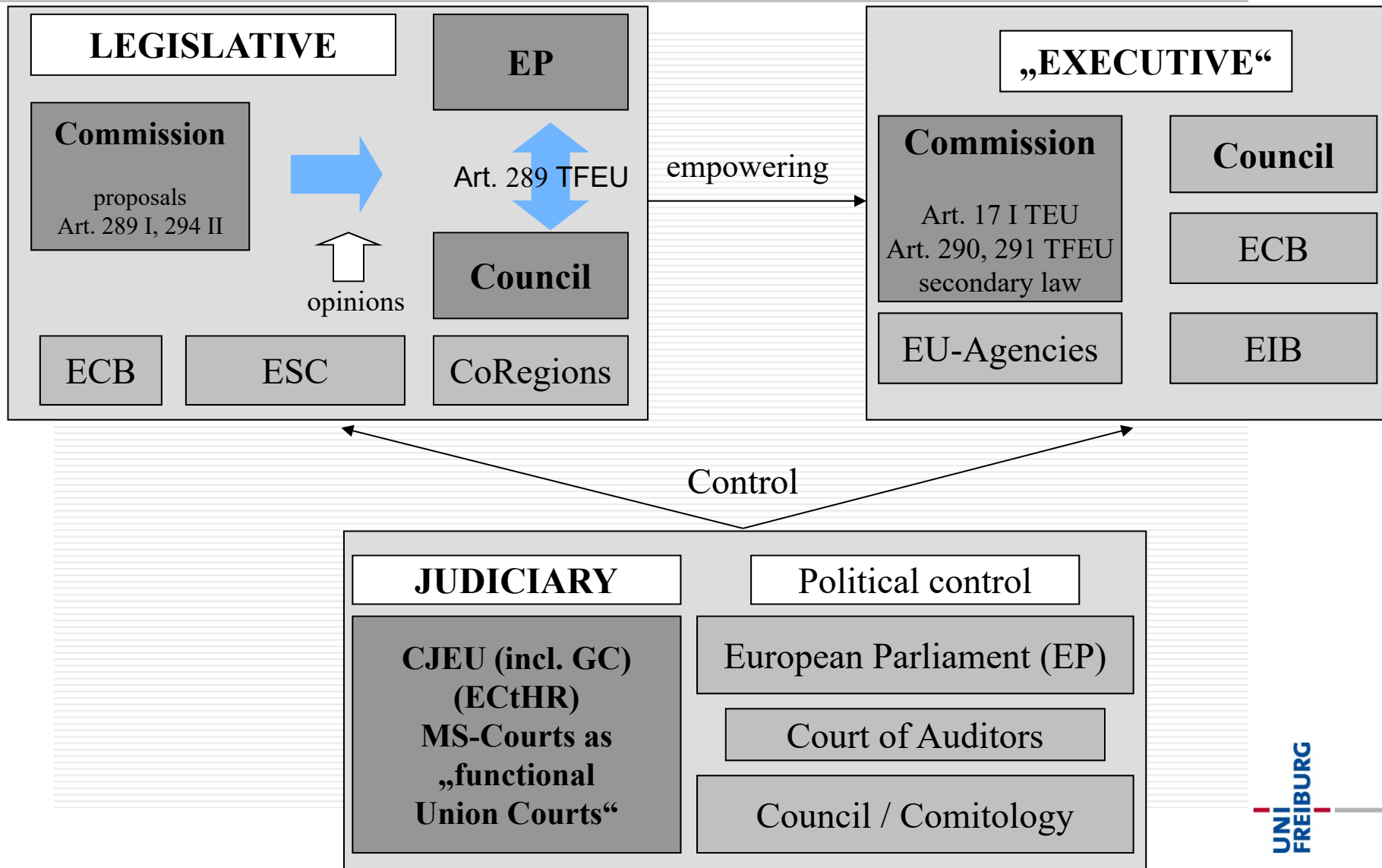
Fig 2.1 The EU political system

Source: A modified and amended version of SHix (2005), *The Political System of the European Union* (Palgrave Macmillan), Fig 1.1, p 6.

Executive Power of the European Union. Deirdre Curtin.

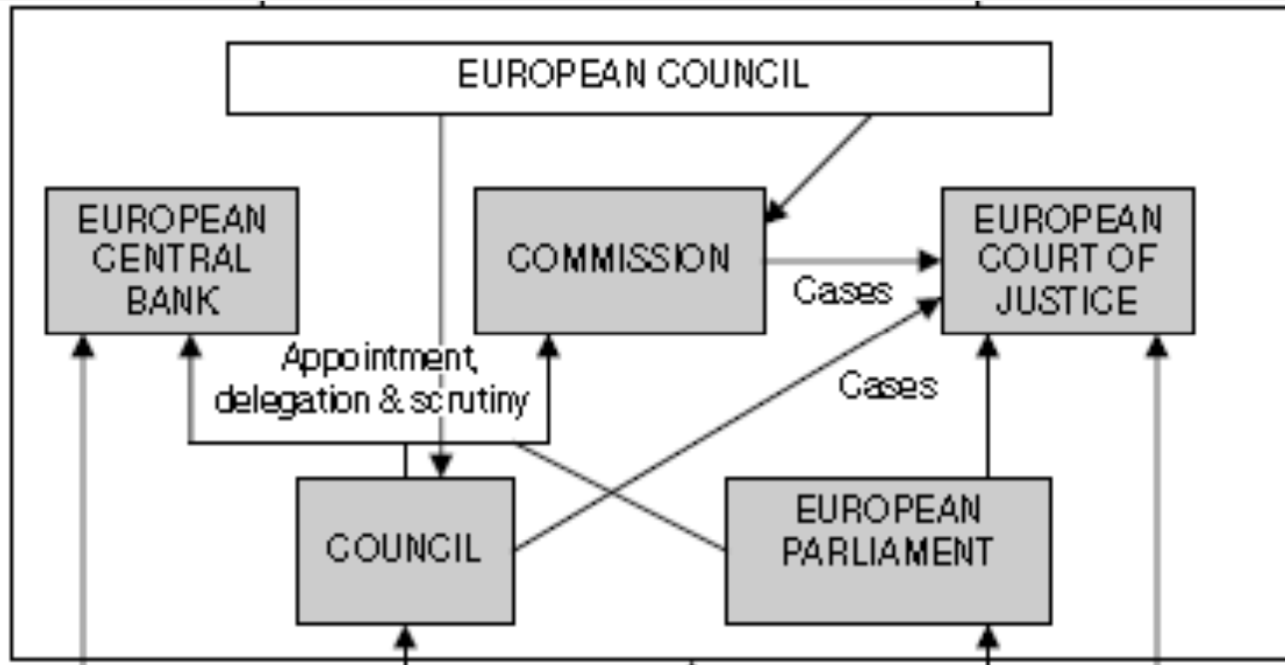
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Inter-institutional balance of powers in the EU



The EU institutions

Art. 13-19 TEU, Art. 223-287 TFEU



Executive Power of the European Union. Deirdre Curtin.
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The European Parliament

Art. 14 TEU, Art. 223-234 TFEU



Treaty of the EU



Article 14

1. The **European Parliament** shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission.
2. The European Parliament shall be composed of representatives of the Union's citizens.

Article 16

1. The **Council** shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Treaties.
2. 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.
3. The Council shall act by a qualified majority except where the Treaties provide otherwise.

The European Parliament

Art. 14 TEU, Art. 223-234 TFEU



- The European Parliament is – together with the Council – the EU's **law-making body**. The 751 MEPs are **directly elected by EU voters** every 5 years. The last elections were in May 2014.

- **Established in:** 1952 as Common Assembly of the European Coal and Steel Community, 1962 as European Parliament,
 - first direct elections in 1979; until then delegated MS-MPs
- **Location:** Strasbourg (France), Brussels (Belgium), Luxembourg

- **Functions**
 - **Legislative**
 - **Supervisory**
 - Electing the Commission President and approving the Commission as a body. Possibility of voting a motion of censure, obliging the Commission as a body to resign
 - **Budgetary**

The European Parliament

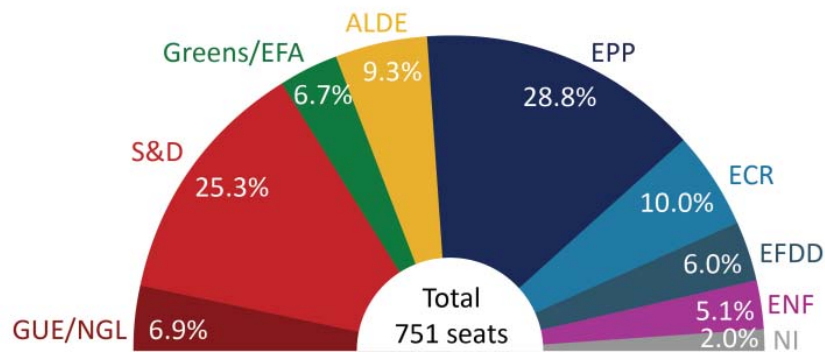
Art. 14 TEU, Art. 223-234 TFEU



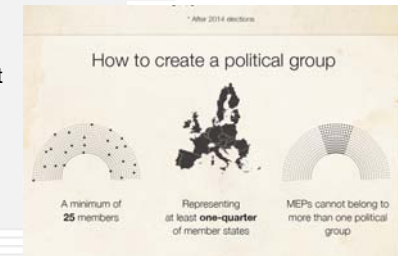
- The number of MEPs for each country is roughly **proportionate to its population**, but this is by **degressive proportionality**: no country can have fewer than 6 or more than 96 MEPs and the total number cannot exceed 751 (750 plus the President). MEPs are grouped by political affiliation, not by nationality.

European Parliament, 2014-19

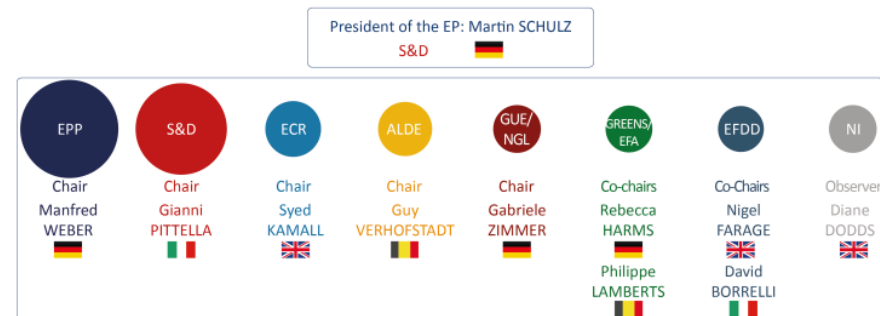
Proportion of Members in each political group



- EPP**: Group of the European People's Party (Christian Democrats)
- S&D**: Group of the Progressive Alliance of Socialists and Democrats
- ECR**: European Conservatives and Reformists Group
- ALDE**: Group of the Alliance of Liberals and Democrats for Europe
- GUE/NGL**: Confederal Group of the European United Left –Nordic Green Left
- Greens**: Group of the Greens–European Free Alliance
- EFDD**: Europe of Freedom and Direct Democracy
- ENF**: Europe of Nations and Freedom
- NI**: Non-attached (Non-inscrits)



Main governing bodies in the EP Conference of Presidents



ENF Chair: Marine Le Pen (France)

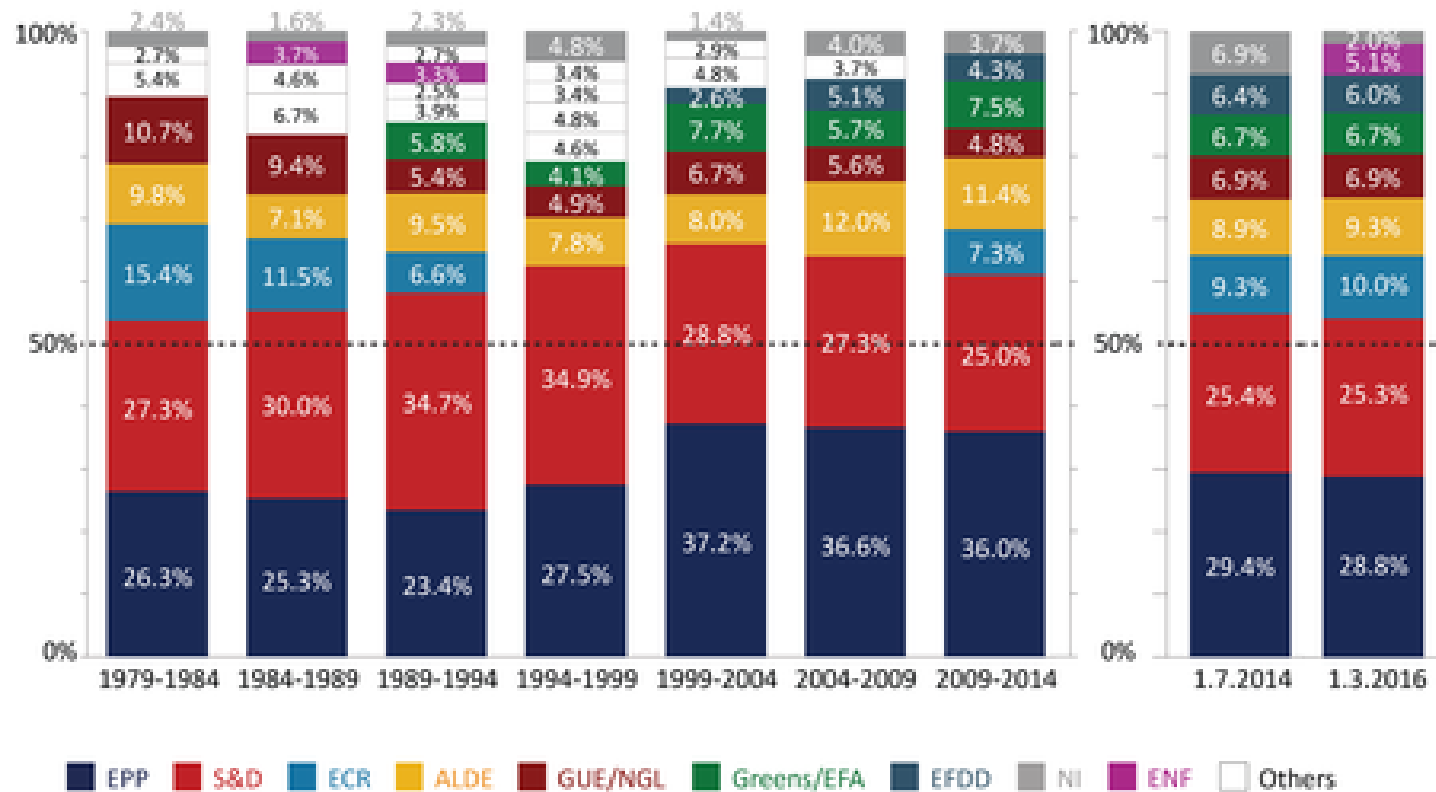
The European Parliament

Art. 14 TEU, Art. 223-234 TFEU



European Parliament, 1979-2014

Strengths of the political groups in each parliamentary term



<https://epthinktank.eu/2014/11/26/european-parliament-facts-and-figures/ep-facts-and-figures-fig-1/>

The European Parliament

Art. 14 TEU, Art. 223-234 TFEU



Size of political groups in the EP by Member State (as of 1 March 2016)

| | EPP | S&D | ECR | ALDE | GUE/ NGL | Greens/ EFA | EFDD | ENF | NI | Total |
|----|-------|-------|-------|------|----------|-------------|------|------|------|-------|
| DE | 34 | 27 | 8 | 4 | 8 | 13 | | | 2 | 96 |
| FR | 20 | 13 | | 7 | 4 | 6 | 1 | 20 | 3 | 74 |
| IT | 15 | 31 | 2 | | 3 | | 17 | 5 | | 73 |
| UK | | 20 | 21 | 1 | 1 | 6 | 22 | 1 | 1 | 73 |
| ES | 17 | 14 | | 8 | 11 | 4 | | | | 54 |
| PL | 23 | 5 | 19 | | | | 1 | 2 | 1 | 51 |
| RO | 12 | 15 | 1 | 3 | | | | 1 | | 32 |
| NL | 5 | 3 | 2 | 7 | 3 | 2 | | 4 | | 26 |
| BE | 4 | 4 | 4 | 6 | | 2 | | 1 | | 21 |
| CZ | 7 | 4 | 2 | 4 | 3 | | 1 | | | 21 |
| EL | 5 | 4 | 1 | | 6 | | | | 5 | 21 |
| HU | 12 | 4 | | | | 2 | | | 3 | 21 |
| PT | 7 | 8 | | 2 | 4 | | | | | 21 |
| SE | 4 | 6 | | 3 | 1 | 4 | 2 | | | 20 |
| AT | 5 | 5 | | 1 | | 3 | | 4 | | 18 |
| BG | 7 | 4 | 2 | 4 | | | | | | 17 |
| DK | 1 | 3 | 4 | 3 | 1 | 1 | | | | 13 |
| SK | 6 | 4 | 3 | | | | | | | 13 |
| FI | 3 | 2 | 2 | 4 | 1 | 1 | | | | 13 |
| IE | 4 | 1 | 1 | 1 | 4 | | | | | 11 |
| HR | 5 | 2 | 1 | 2 | | 1 | | | | 11 |
| LT | 2 | 2 | 1 | 4 | | 1 | 1 | | | 11 |
| LV | 4 | 1 | 1 | 1 | | 1 | | | | 8 |
| SI | 5 | 1 | | 1 | | 1 | | | | 8 |
| EE | 1 | 1 | | 3 | | 1 | | | | 6 |
| CY | 2 | 2 | | | 2 | | | | | 6 |
| LU | 3 | 1 | | 1 | | 1 | | | | 6 |
| MT | 3 | 3 | | | | | | | | 6* |
| | 216 | 190 | 75 | 70 | 52 | 50 | 45 | 38 | 15 | 751 |
| | EPP | S&D | ECR | ALDE | GUE/ NGL | Greens/ EFA | EFDD | ENF | NI | Total |
| | 28.8% | 25.3% | 10.0% | 9.3% | 6.9% | 6.7% | 6.0% | 5.1% | 2.0% | 100% |

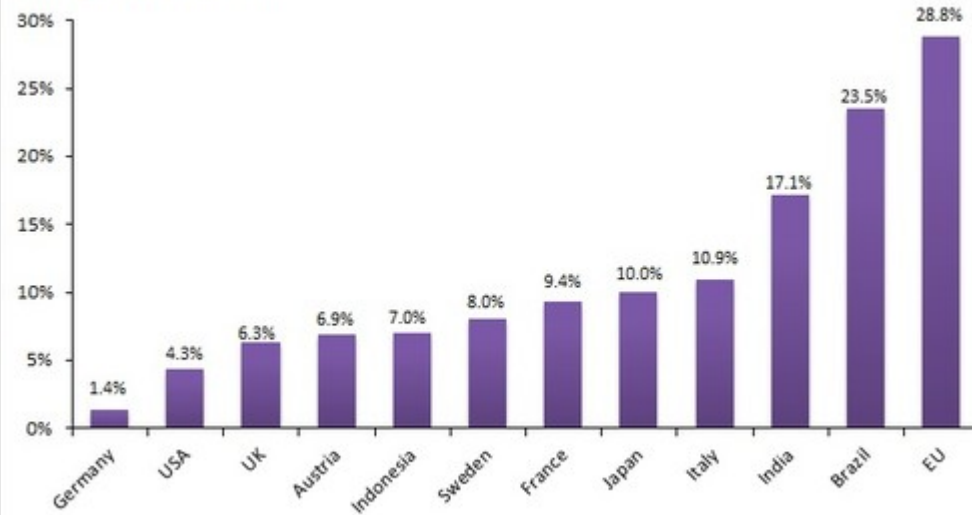
<https://epthinktank.eu/2014/11/26/european-parliament-facts-and-figures/ep-facts-and-figures-fig-1/>

The European Parliament

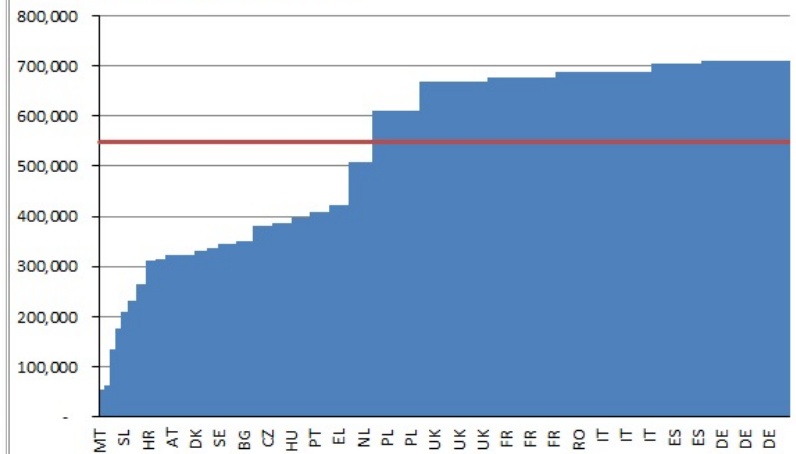
Art. 14 TEU, Art. 223-234 TFEU



Voting Gini Coefficients



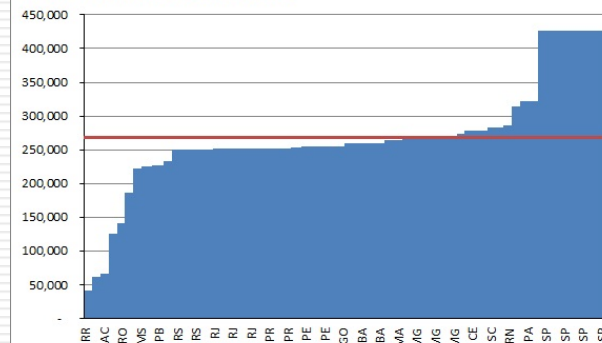
EU Parliament: Average Voting-Age Population per MEP, 2009 (751 proportionally represented seats)



German Bundestag: Average Voting-Age Population per Constituency, 2013 (299 single-member constituencies and 299 proportionally represented members)



Brazil Chamber of Deputies: Average Voting-Age Population per Deputy, 2010 (513 proportionally-represented deputies)



<http://bruegel.org/2014/05/how-unequal-is-the-european-parliaments-representation/>

Council of the European Union / European Council

Art. 16 TEU, Art. 237-243 TFEU

/ Art. 15 TEU, Art. 235-236 TFEU



Treaty of the EU



Article 14

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2. 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.
3. The Council shall act by a qualified majority except where the Treaties provide otherwise.

Council of the European Union

Art. 16 TEU, Art. 237-243 TFEU



- Together with the European Parliament, the Council is the **main decision-making body** of the EU.

- In the Council, **government ministers from each EU country** meet to
 - discuss, amend and adopt laws (together with the EP),
 - adopt the annual EU budget,
 - develop the EU's **foreign & security policy**, based on European Council guidelines
 - and coordinate other MS's policies.
 - There are **no fixed members** of the EU Council. Instead, the Council meets in **10 different configurations**, each corresponding to the policy area being discussed. Depending on the configuration, each country sends their minister responsible for that policy area.
 - **Overall consistency** is ensured by the General Affairs Council - which is supported by the Permanent Representatives Committee (**COREPER**). This is composed of national ambassadors to the EU.
 - Each EU country holds the **presidency** on a 6-month rotating basis

- The Council of the EU should not to be confused with:
 - European Council - quarterly summits, where MS heads of state and other EU leaders meet to set the broad direction of EU policy making (Art. 15 TEU, Art. 235-236 TFEU)
 - Council of Europe - not an EU body at all.
 - an international organisation focused on promoting human rights, democracy and the rule of law in Europe; founded in 1949; 47 member states
 - European Convention on Human Rights (ECHR, 1950/1953); European Court of HR (Strasbourg)

Council of the European Union

Art. 16 TEU, Art. 237-243 TFEU

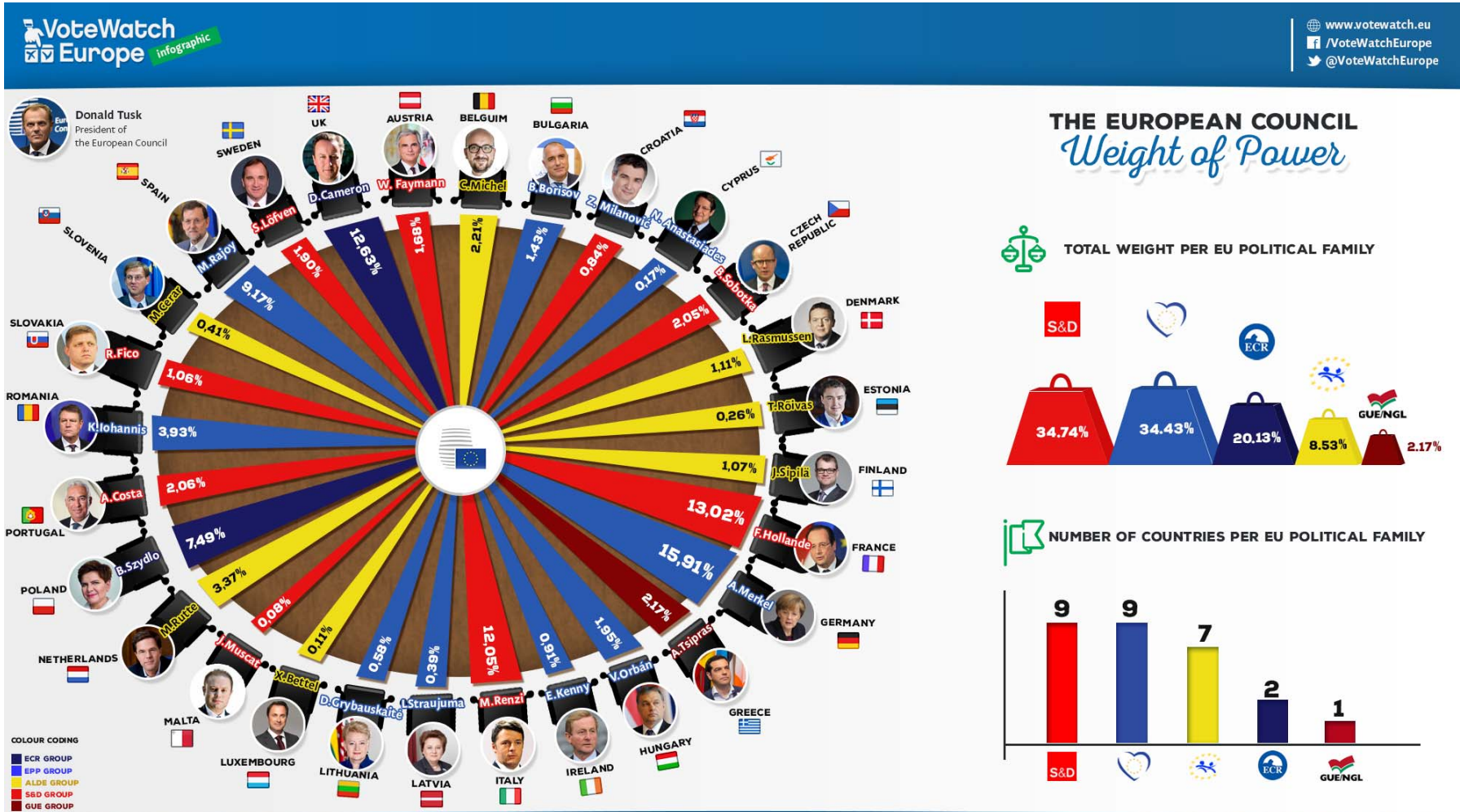


How does the Council work?

- legislative **discussions & votes** take place in public.
 - Art. 16(8) TEU ⇔ Art. 5(1) Council Rules of Procedure
- to be passed, decisions usually require a **qualified (double) majority** :
 - 55% of countries (with 28 current members, this means **16 countries**)
 - representing at least 65 % of total EU population
 - to **block a decision**, at least 4 **countries** are needed (representing at least 35% of total EU population)
 - used when the Council takes decisions during the ordinary legislative procedure, also known as co-decision with the EP. About **80% of all EU legislation** is adopted with this procedure.
 - Until 31 March 2017, member states can still request to use a previous rule for qualified majority voting. Under this rule, each member state representative has a certain number of votes, as set out in the EU treaties. The **weighting of votes** roughly reflects the size of population of each member state. Under this previous rule, a qualified majority is reached in the Council if the following **conditions** are met:
 - a **majority of member states** - 15 member states - vote in favour
 - a minimum of **260 votes out of the total 352** votes are cast in favour
- **Exception** - sensitive topics like foreign policy and taxation require a **unanimous vote** (all countries in favour).
 - In the beginning of the EC/EU unanimous voting was the rule!
- **Simple majority** is required for procedural & administrative issues

Council of the European Union

Art. 16 TEU, Art. 237-243 TFEU

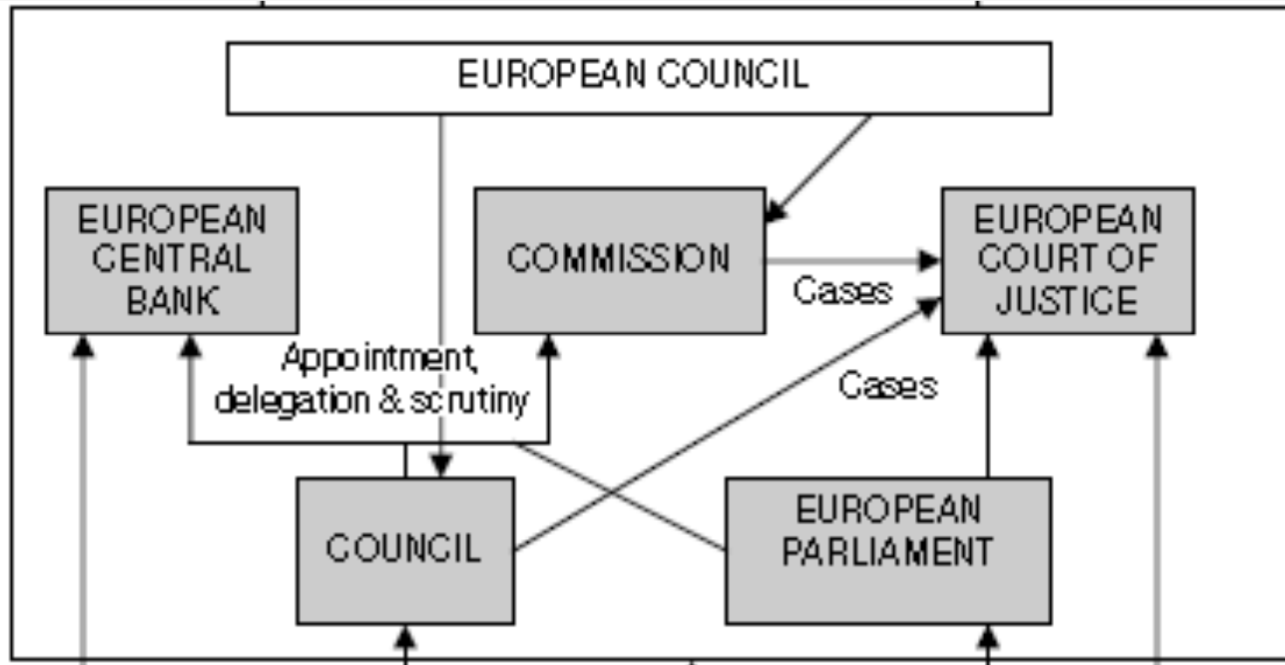


State of play in 2015, annual update!



The EU institutions

Art. 13-19 TEU, Art. 223-287 TFEU



Executive Power of the European Union. Deirdre Curtin.
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The European Commission (COM)

Art. 17 TEU, Art. 244-250 TFEU





European Commission

PRESIDENT JEAN-CLAUDE JUNCKER

First Vice-President

Frans Timmermans

*Better Regulation,
Inter-Institutional Relations,
Rule of Law & Charter of Fundamental
Rights*

High Representative

Federica Mogherini

*High Representative of the Union
for Foreign Policy & Security
Policy/Vice-President*

Vice-President

Kristalina Georgieva

Budget & Human Resources

Vice-President

Andrus Ansip

Digital Single Market

Vice-President

Alenka Bratušek

Energy Union

Vice-President

Jyrki Katainen

*Jobs, Growth, Investment
& Competitiveness*

Vice-President

Valdis Dombrovskis

*The Euro
& Social Dialogue*

Commissioner

Věra Jourová

*Justice, Consumers
& Gender Equality*

Commissioner

Günther Oettinger

Digital Economy & Society

Commissioner

Pierre Moscovici

*Economic and Financial
Affairs, Taxation and
Customs*

Commissioner

Marianne Thyssen

*Employment, Social Affairs,
Skills & Labour Mobility*

Commissioner

Corina Crețu

Regional Policy

Commissioner

Johannes Hahn

*European Neighbourhood Policy
& Enlargement Negotiations**

Commissioner

Dimitris Avramopoulos

Migration & Home Affairs

Commissioner

Vytis Andriukaitis

Health & Food Safety

Commissioner

Jonathan Hill

*Financial Stability,
Financial Services &
Capital Markets Union*

Commissioner

Elżbieta Bieńkowska

*Internal Market, Industry,
Entrepreneurship & SMEs*

Commissioner

Miguel Arias Cañete

Climate Action & Energy

Commissioner

Neven Mimica

*International Cooperation
& Development*

Commissioner

Margrethe Vestager

Competition

Commissioner

Maroš Šefčovič

Transport & Space

Commissioner

Cecilia Malmström

Trade

Commissioner

Karmenu Vella

*Environment, Maritime Affairs
& Fisheries*

Commissioner

Tibor Navracsics

*Education, Culture, Youth
& Citizenship*

Commissioner

Carlos Moedas

*Research, Science
& Innovation*

Commissioner

Phil Hogan

*Agriculture
& Rural Development*

Commissioner

Christos Stylianides

*Humanitarian Aid
& Crisis Management*

**The HRVP may ask this
Commissioner (and other
Commissioners) to deputise
for her in areas related to
Commission competence.*

The European Commission (COM)

Art. 17 TEU, Art. 244-250 TFEU



- The European Commission is the EU's **politically independent executive arm**. It is alone responsible for drawing up proposals for new European legislation, and it implements the decisions of the European Parliament and the Council of the EU.
- **Political leadership** is provided by a team of 28 Commissioners (one from each EU country) – led by the Commission President, who decides who is responsible for which policy area.
 - The College of Commissioners, includes the President of the Commission, his seven Vice-Presidents, including the First Vice-President, and the High-Representative of the Union for Foreign Policy and Security Policy and 20 Commissioners in charge of portfolios.
- The **day-to-day running** of Commission business is performed by its staff (lawyers, economists, etc.), organised into departments known as Directorates-General (DGs), each responsible for a **specific policy area**.
- **Appointing the President**

The candidate is put forward by national leaders in the European Council, taking account of the results of the European Parliament elections. He or she needs the support of a majority of members of the European Parliament in order to be elected.
- **Selecting the team**
 - The Presidential candidate selects potential Vice-Presidents and Commissioners based on suggestions from the EU countries. The list of nominees has to be approved by national leaders in the European Council.
 - Each nominee appears before the European Parliament to explain their vision and answer questions. Parliament then votes on whether to accept the nominees as a team. Finally, they are appointed by the European Council, by a qualified majority.

The European Commission (COM)

Art. 17 TEU, Art. 244-250 TFEU



Collective decision making

- Decisions are taken based on collective responsibility. All Commissioners are equal in the decision-making process and equally accountable for these decisions. They do not have any individual decision-making powers, except when authorized in certain situations.
 - The Vice-Presidents act on behalf of the President and coordinate work in their area of responsibility, together with several Commissioners.
 - Commissioners support Vice-Presidents in submitting proposals to the College. In general, decisions are made by consensus, but votes can also take place. In this case, decisions are taken by simple majority, where every Commissioner has one vote.

- The relevant Directorate-General (headed by a Director-General, answerable to the relevant Commissioner) then takes up the subject. This usually done in the form of draft legislative proposals.

- These are then resubmitted to the Commissioners for adoption at their weekly meeting, after which they become official, and are sent to the Council and the Parliament for the next stage in the EU legislative process.

The European Commission (COM)

Art. 17 TEU, Art. 244-250 TFEU



➤ restricted parliamentary supervision

- shared and limited competences in selecting the commissioners, Art. 17(7) TEU
- only collective parliamentary accountability, Art. 17(8) TEU
 - also collective budgetary discharge, Art. 319 TFEU
- but
 - compulsory retirement order by the Court on application by the Council (or the Commission) in case of „serious misconduct“, Art. 247 TFEU
 - As a reaction to Cresson/Santer: duty of individual commissioners to resign if the President so requests, Art. 17(6)2 TEU

➤ Fall of the Santer-Commission 1999

- Contracting-out of implementing financial programs on Technical Assistance Offices with minimal accountability structures
- Clear nepotism by Commissioner Cresson with regard to contracting-out

➤ The reform of the Commission under President Prodi

- Reduction of Commission tasks and adequate human resources
- Enhanced internal accountability and control structures
- Better structured and supervised externalisation of Commission's duties

Treaty of the EU

Article 17

1. The **Commission** shall promote the general interest of the Union [...]. It shall ensure the application of the Treaties, [...]. It shall oversee the application of Union law under the control of the Court of Justice of the [EU]. It shall execute the budget [...]. It **shall exercise** coordinating, **executive** and management **functions**, [...] it shall ensure the Union's external representation. [...]

2. Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. [...]

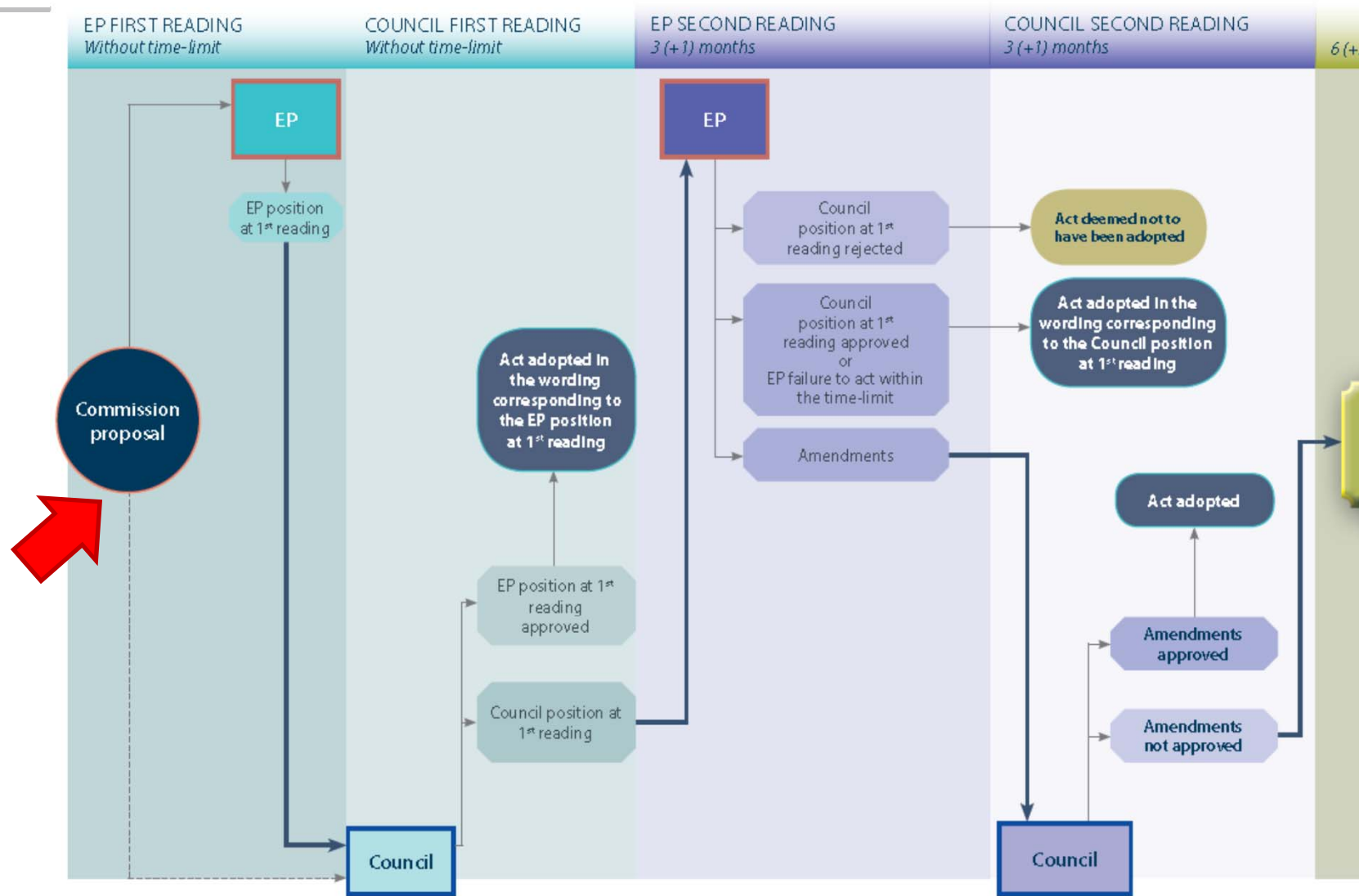
3. [...] the Commission shall be completely independent. [...] the members of the Commission shall neither seek nor take instructions from any Government [...]

7. Taking into account the elections to the European Parliament [...], the European Council [...] 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. [...]

The Council, by common accord with the President-elect, shall adopt the list [...] for appointment as members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, [...]

The President [...] and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.

Inter-institutional Balance: The Ordinary Legislative Procedure

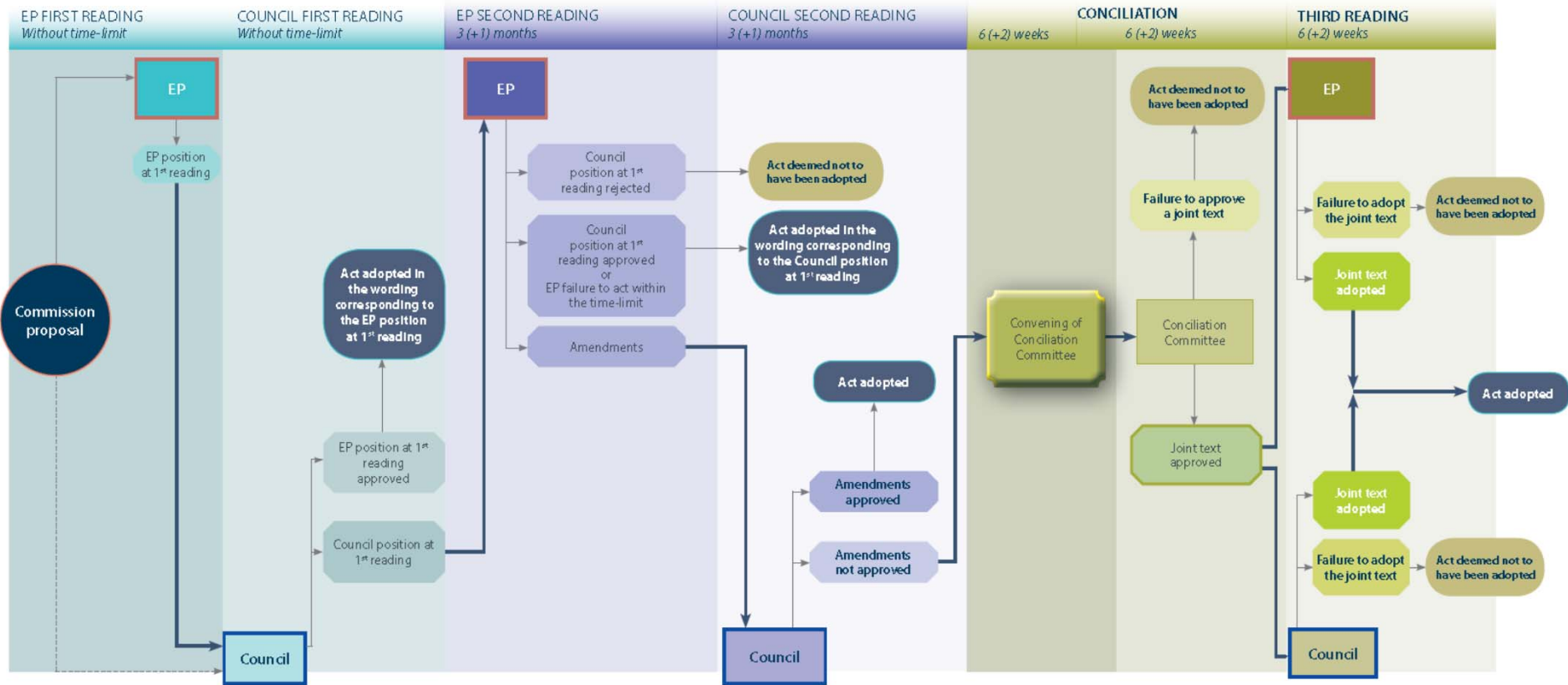


Inter-institutional Balance: The Ordinary Legislative Procedure



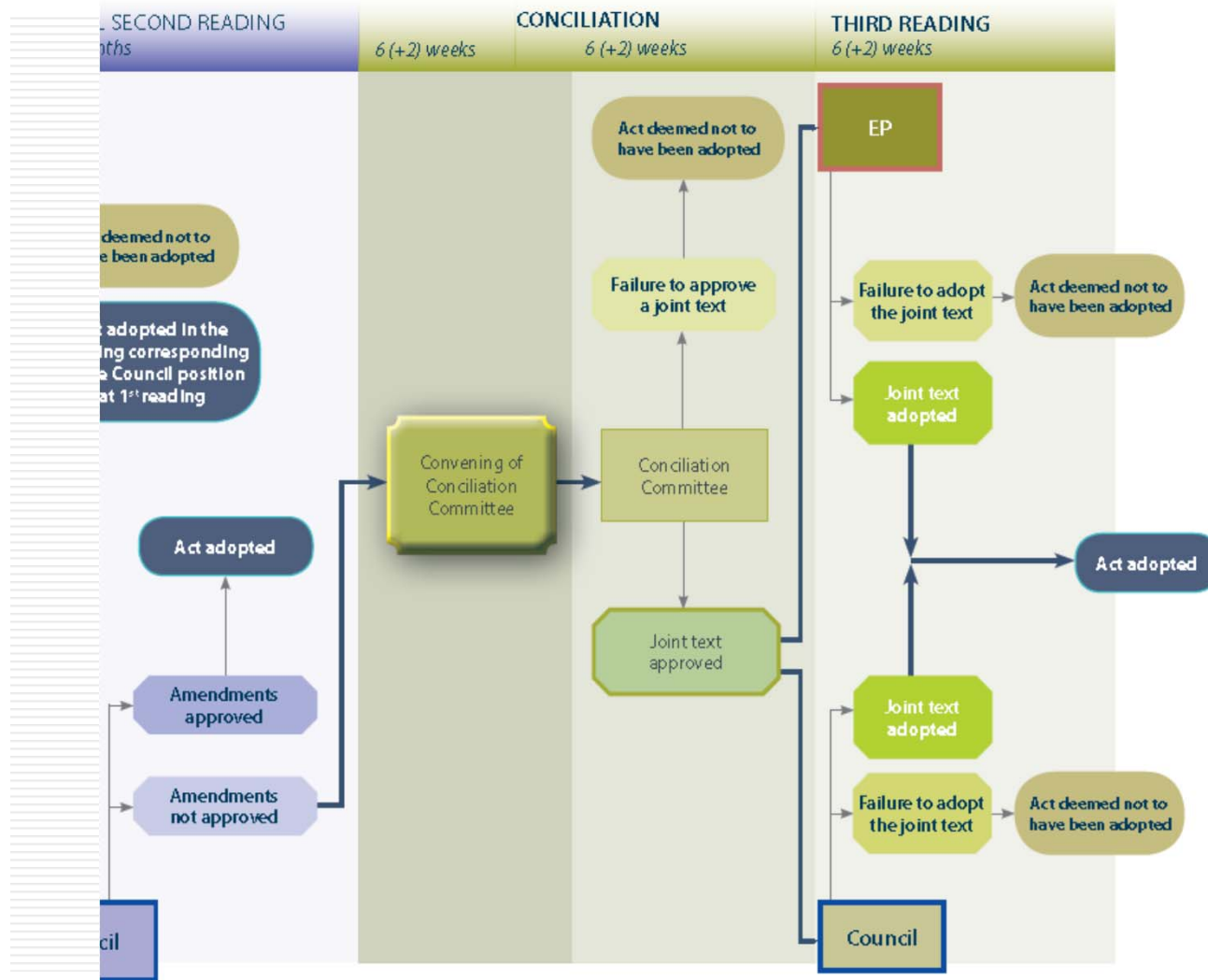
ORDINARY LEGISLATIVE PROCEDURE — SUMMARY TABLE

ANNEX V



March 2016 | EN | GUIDE TO THE ORDINARY LEGISLATIVE PROCEDURE 45

Inter-institutional Balance: The Ordinary Legislative Procedure



The Ordinary Legislative Procedure



Co-decision procedure



<https://epthinktank.eu/2014/11/26/european-parliament-facts-and-figures/ep-facts-and-figures-fig-1/>



Our programme for the next session

- Day 2:
- Sources of EU law: Primary law – Secondary law (regulations, directives, ...)
- The relationship between the EU and its Member States: competences of the EU, direct effect and supremacy of EU law, subsidiarity, infringement procedures
- Material:
 - CJEU, Case 26/62 Van Gend en Loos v Nederlandse Administratie der Belastingen [1963] => direct effect
 - You may focus on pages 10-14
 - Please note: Art. 12 EECT => Art. 30 TFEU; Art. 169 EECT => Art. 258 TFEU; Art. 170 EECT => Art. 259 TFEU; Art. 177 EECT => Art. 267 TFEU
 - CJEU, Case 6/64 Costa v ENEL (1964) => supremacy
 - You may focus on pages 592-594, 598
 - Please note: Art. 4 EECT => Art. 4(3) TEU; Art. 7 EECT => Art. 18 TFEU; Art. 177 EECT => Art. 267 TFEU; Art. 189 EECT => Art. 288 TFEU
 - Only for further reading: Dieter Grimm, The Democratic Costs of Constitutionalisation: The European Case, European Law Journal Vol 21 (2015), S. 460-473

Discussion



- Compare the Brazilian impeachment procedure with its EU counterparts:
 - Art. 17(6)2 TEU: duty of individual commissioners to resign if the President of the Commission so requests
 - Art. 17(8) TEU; Art. 234 TFEU: Possibility of an EP's voting on a motion of censure, obliging the Commission as a body to resign
 - Art. 247 TFEU: compulsory retirement order by the Court on application by the Council in case of „serious misconduct“

- Compare the EU institutions with its counterparts
 - in the Brazilian political system
 - in the Mercosul political system
 - in the UNASUL political system

The Court of Justice of the European Union (CJEU [ECJ])

Art. 19 TEU, Art. 251-281 TFEU



G. Fessy © CJU



G. Fessy © CJUE



G. Fessy © CJUE



The Court of Justice of the European Union



Article 19 TEU

1. 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.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

2. The Court of Justice shall consist of one judge from each Member State. It shall be assisted by [eight] Advocates-General.

The General Court shall include at least one judge per Member State. [...]

3. The Court of Justice of the European Union shall, in accordance with the Treaties:

(a) rule on actions brought by a Member State, an institution or a natural or legal person;

(b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions; [...]

The Court of Justice of the European Union (CJEU [ECJ])

Art. 19 TEU, Art. 251-281 TFEU



- The Court is divided into **3 bodies**:
 - Court of Justice – deals with requests for preliminary rulings from national courts, certain actions (by MS or the Institutions) for annulment and appeals against decisions of the General Court.
 - 1 judge from each MS (+ 11 Advocates General providing preparatory opinions)
 - cases will be decided by chambers of 3, 5, a Grand Chamber of 15 judges or in exceptional cases as a full court (e.g. dismissal of COM-Members)
 - General Court – rules on actions for annulment brought by individuals, companies and, in some cases, EU governments. In practice, this means that this court deals mainly with competition law, state aid, trade, agriculture, trade marks.
 - Civil Service Tribunal - rules on disputes between the EU and its staff.
- Each **judge and advocate general** is appointed for a renewable 6-year term, jointly by national governments. In each Court, the judges select a **President** who serves a renewable term of 3 years.
- The CJEU (Luxembourg) should not be confused with the ECtHR (Strasbourg)

The Court of Justice of the European Union (CJEU [ECJ])

Art. 19 TEU, Art. 251-281 TFEU



- The Court gives rulings on cases brought before it. The most common types of case are:
 - **interpreting the law** (preliminary rulings, Art. 267 TFEU): If a national court is in doubt about the interpretation or validity of an EU law, it can ask the Court for clarification. The same mechanism can be used to determine whether a national law or practice is compatible with EU law.
 - **enforcing the law** (infringement proceedings, Art. 258-260 TFEU) – this type of case is taken against a national government for failing to comply with EU law. Can be started by the COM or another MS.
 - **annulling EU legal acts** (actions for annulment, Art. 263, 264 TFEU) – if an EU act is believed to violate EU treaties or fundamental rights, the Court can be asked to annul it – by an EU government, the Council of the EU, the COM or (in some cases) the EP or even by directly affected private individuals or companies.
 - **ensuring the EU takes action** (actions for failure to act, Art. 265 TFEU) – the EP, Council and COM must make certain decisions under certain circumstances. If they don't, MS, other EU institutions or (under certain conditions) individuals or companies can complain to the Court.
 - **sanctioning EU institutions** (*actions for damages*, Art. 268, 340 TFEU) – any person or company who has had their interests harmed as a result of the action or inaction of the EU or its staff can take action against them through the Court.



basic structures of the EU

The EU political system

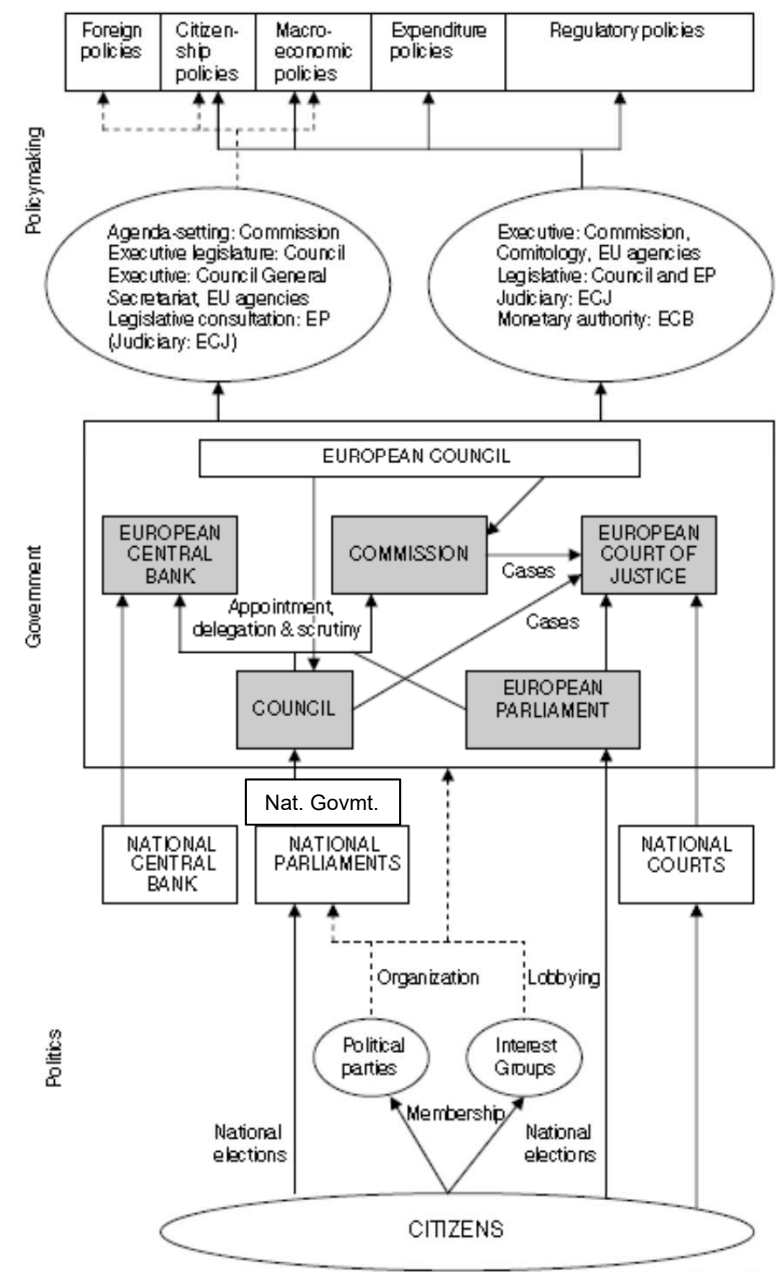


Fig 2.1 The EU political system

Source: A modified and amended version of SHix (2005), *The Political System of the European Union* (Palgrave MacMillan), Fig 1.1, p 6.

Executive Power of the European Union. Deirdre Curtin.
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BURG



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Introduction to European Public Law

Post-Graduate Program of the Law Faculty
University of São Paulo, September 12-16 2016



*Faculdade de Direito da
Universidade de São Paulo*

Session 2:

- Sources of EU law: Primary law – Secondary law (regulations, directives, ...)
- The relationship between the EU and its Member States: competences of the EU, direct effect and supremacy of EU law, subsidiarity, infringement procedures

Albert-Ludwigs-Universität Freiburg

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Our programme



Day 1:

- History and basic structures of the EU
- EU institutions: Commission, Council, EP, CJEU, ...

Day 2:

- **Sources of EU law: Primary law – Secondary law (regulations, directives, ...)**
- **The relationship between the EU and its Member States: competences of the EU, direct effect and supremacy of EU law, subsidiarity, infringement procedures**

Day 3:

- Market freedoms of goods, services, workers, establishment and capital
- Non-discrimination, fundamental rights and citizenship
- General principles of EU law: proportionality, legitimate expectations, transparency

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- Implementation of EU law: direct (central) – indirect (decentral) – shared (composite)
- EU administrative law I: direct implementation by EU authorities
- Competition law and state aid law as examples of direct implementation

Day 5:

- EU administrative law II: indirect implementation by MS authorities
- EU administrative law III: (vertical and horizontal) shared implementation
- Outlook: Europe after the Brexit – between globalization and re-nationalization



Sources of EU law

➤ Primary law (see Art. 6(1), 51 TEU)

- TEU including protocols (& declarations?) to TEU provisions
- TFEU including protocols (& declarations?) to TFEU provisions
- CFR

➤ Secondary law (legislative acts) – Art. 288 (2), (3) TFEU

- regulations
 - “A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.”
- directives
 - “A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.”

➤ Non-legislative (administrative) acts

- single case decision-making: unilateral ⇔ contractual
- acts of general application (administrative rulemaking)

➤ Excursus: non legally binding acts (soft law)

- recommendations, opinions, information management, communications, guidelines (?)

The relationship between the EU and its Member States: competences of the EU & subsidiarity, proportionality



- EU competences (↔ MS sovereignty / competences)
 - Principle of conferral, Art. 5(2) TEU [ex. Art. 5(1), 7(1) ECT]
 - EEC-Treaty: many broad and horizontal competences
 - Reform by the Lisbon Treaty:
 - more structured approach: Art. 2-6 TFEU
 - but still some broad and horizontal competences:
 - Art. (107-109); 114; 352 TFEU

- Subsidiarity as a vague limitation of EU competencies
 - Maastricht treaty 1993; now Art. 5(3) TEU & Protocol No. 2
 - Reluctance of the CJEU => proceduralization incl. MS parliaments

- Proportionality as a more effective limitation of EU competencies
 - Art. 5(4) TEU & Protocol No. 2
 - Art. 52(1)2 CFR

The relationship between the EU and its Member States: competences of the EU & subsidiarity, **proportionality**



- Established as an unwritten general principle of EU law
 - CJEU, Case 11/70 Internationale Handelsgesellschaft [1970]
- Today enshrined in the Treaties
 - Art. 5(4) TEU

Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

 - Protocol No. 2, Art. 1

Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union.
 - Art. 52(1)2 CFR

Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

The relationship between the EU and its Member States: competences of the EU & subsidiarity, **proportionality**



- established as an unwritten general principle of EU law
 - CJEU, Case 11/70 Internationale Handelsgesellschaft [1970]
- developed as a three-step-test like in Germany
 - CJEU, Case C-265/87 Schröder [1989], para. 21
 - “The Court has consistently held that the **principle of proportionality** is one of the general principles of Community law. By virtue of that principle, measures (...) are lawful provided that the measures are
 - **appropriate** [suitable] and
 - **necessary** for meeting the objectives legitimately pursued by the legislation in question. Of course, when there is a choice between several [similar] appropriate measures, the least onerous measure must be used and
 - the [measures] must **not be disproportionate** [not excessive] to the aims pursued.”
- Different application towards MS (strict) ↔ EU (light) actions?

The relationship between the EU and its Member States: infringement procedures, direct effect & supremacy



- „**public enforcement**“ by COM/MS & CJEU through **infringement procedures** under Art. 258-260 TFEU
 - rather cumbersome (multi-stage process)
 - “danger” of politicisation / political deals

- **Direct effect** of EU law as basis for “**private enforcement**” by individuals through MS courts & preliminary rulings (Art. 267 TFEU):
 - CJEU, Case 26/62 **Van Gend en Loos** v Nederlandse Administratie der Belastingen [1963] => direct effect of Treaty provisions
 - CJEU, Case 41/74 Van Duyn [1974] => direct effect of directives

- **Supremacy** of all types of EU law with regard to all types of MS law
 - CJEU, Case 6/64 **Costa v ENEL** (1964) => supremacy of Treaty provisions
 - CJEU, Case 11/70 Intern, Handelsgesellschaft [1970] => Supremacy over MS constitutional law

The relationship between the EU and its Member States: infringement procedures, **direct effect** & supremacy



- **Direct effect** of EU law as basis for “private enforcement” by individuals through MS courts & preliminary rulings (Art. 267 TFEU):
 - CJEU, Case 26/62 **Van Gend en Loos** [1963] => direct effect of **Treaty provisions** (Art. 12 EEC = Art. 30 TFEU)
 - textual reasoning: preamble (citizens); Art. 267 (not limited to cases with public bodies as parties)
 - teleological / functional reasoning:
 - new legal order of internat. law not only among the states, but empowering their citizens
 - effectiveness (effet utile) of treaty enforcement needs supplementation of public enforcement (through cumbersome infringement proc.)
 - subsequent broadening of the conditions => provision needs to be sufficiently clear, precise, and unconditional to be invoked by an individual
 - CJEU, Case 41/74 **Van Duyn** [1974] => direct effect of **directives**
 - effectiveness; Art. 267 refers to all acts (dir. not excluded)
 - estoppel: MS concerned is responsible for non-transformation

Treaty establishing the European Economic Community 1957



HIS MAJESTY THE KING OF THE BELGIANS,
THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,
THE PRESIDENT OF THE FRENCH REPUBLIC,
THE PRESIDENT OF THE ITALIAN REPUBLIC,
HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG,
HER MAJESTY THE QUEEN OF THE NETHERLANDS,

DETERMINED to establish the **foundations of an ever closer union among the European peoples**,

DECIDED to ensure the economic and social progress of their countries by common action in eliminating the barriers which divide Europe,

DIRECTING their efforts to the essential purpose of **constantly improving the living and working conditions of their peoples**,

RECOGNISING that the removal of existing obstacles calls for concerted action in order to guarantee a steady expansion, a balanced trade and fair competition, ...

Article 267 TFEU

- preliminary rulings



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.

The relationship between the EU and its Member States: infringement procedures, **direct effect** & supremacy



- **Direct effect** of EU law as basis for “private enforcement” by individuals through MS courts & preliminary rulings (Art. 267 TFEU):
 - CJEU, Case 26/62 **Van Gend en Loos** => direct effect of **Treaty provisions**
 - textual reasoning: preamble (peoples); Art. 267 (not limited to cases with public bodies as parties)
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➤ Excursus: non legally binding acts (soft law)

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The relationship between the EU and its Member States: infringement procedures, direct effect & **supremacy**



- **Supremacy** of all types of EU law with regard to all types of MS law
 - CJEU, Case 6/64 **Costa v ENEL** (1964) => supremacy of Treaty provisions
 - Please note: Art. 4 EECT => Art. 4(3) TEU; Art. 7 EECT => Art. 18 TFEU; Art. 177 EECT => Art. 267 TFEU; Art. 189 EECT => Art. 288 TFEU
 - Treaty creates its own legal order as an integral part of MS legal orders
 - effectiveness of the Treaty
 - equality of Member States, no patchwork legal order
 - MS obligations should not be contingent by being subject to later legislative acts of MS
 - CJEU, Case 11/70 Intern, Handelsgesellschaft [1970] => Supremacy over MS constitutional law

- **dissenting concepts of most national courts**, for example:
 - BVerfG (Germany): the German constitution permits expressly transfer of powers to the EU and thus limited supremacy of EU law (www.bverfg.de)
 - limits may follow in exceptional cases from fundamental rights, ultra vires control, guarantee of constitutional identity => so far never activated

- open question of **Kompetenz-Kompetenz**: Has the CJEU or the MS Court ultimate authority concerning transgression of competencies?

Discussion



- Compare the style of the CJEU judgements with Brazilian courts
- How convincing is the CJEU jurisprudence on
 - Direct effect
 - Supremacy of EU law
- Are there disadvantages of this facets of constitutionalization?

Dieter Grimm, The Democratic Costs of Constitutionalisation: The European Case, European Law Journal Vol 21 (2015), S. 460-473



- Europe: the constitutionalisation of the treaties
 - The cause: Supremacy of EU Law (citing Joseph Weiler, 1991)
 - Van Gend & Loos (1963); Costa v ENEL (1964)
 - Methodological turn: cautious interpret of Intl. Law => objectivised/teleological interpretation of Constitutions (effet utile)
 - The effect: De-Politicisation
 - Competences: bias towards EU competences
 - Transformation of 4 market freedoms from objectiv principles for legislation into subjective rights of market actors
 - Transforming anti-protectionist rules => anti-regulatory (impediments) rules
 - Direct applicability of not transposed directives with state liability
 - broad scope of application of the CFR
- Democratic costs
 - Over-constitutionalisation
 - Legislative establishment of the single market => CJEU/COM powers
 - Treaties not confined to purely constitutional issues
 - Consequences
 - Objective interpretation limits the role of MS as “masters of the Treaties”
 - Non-constitutional content of Treaties immunises COM/CJEU
- Re-Politicisation as remedy
 - Limited democratic resources of the EP without a EU public discourse
 - Indirect democratic resources of the Council via MS elections should be preserved (unanimity!)
 - Scale back the Treaties to truly constitutional elements

EU Competition Law

– Rules applying to undertakings, Art. 101 TFEU



1. The following shall be **prohibited** as incompatible with the internal market: **all agreements between undertakings**, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the **prevention, restriction or distortion of competition** within the internal market, and in particular those which:
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article **shall be automatically void**.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of: ...



History and basic structures of the EU

- The founding period (1950-1958)
 - ECSC (Paris 1952), EEC + Euratom (Rome 1958)
 - BE, DE, FR, IT, LUX, NL (the original six)
- “consolidation” (and enlargement) ↔ stagnation (1958-1986)
 - Merger Treaty 1967: three communities with common institutions
 - French empty chair policy against Qual. Majority Voting (6/65-1/66) + Luxembourg Accords
 - supranationalism ↔ inter-governmentalism
 - 1973: DK, IRL, UK 1981: GR 1986: ES, PT => 12 MS
 - Van Gend & Loos (1963); Costa v ENEL (1964) Dassonville (1974); Cassis (1979)
- institutional reform and completion of the common market (1986-1993)
 - Single European Act (1986): Council/EP coop. proc. & harmonisation (= positive integration) with qualified majority in the Council (Art. 100a EEC/Art. 114 TFEU)
 - EU as a neo-liberal economic concept ↔ a social model
- “Constitutionalization” (1993-2007): EU (= EC; CFSP; JHA/PJCC); Co-Dec Proc; EMU; CFR
 - Maastricht (1993); Amsterdam (1999); Nice (2003); [Const.T (2004)]; Lisbon (2007)
 - 1995: A, FL, SWE (EU-15) 2004: CS, CY, ET, LT, LV, MT, PL, SK, SL, HU 2007: BG, RO
- Crisis – reinforcement of intergovernmentalism – re-nationalisation? (2008-...)
 - financial crisis (Lehmann / state debts) – refugee crisis – Brexit
 - 2013: Croatia (EU-28)

Discussion



- Compare the Brazilian impeachment procedure with its EU counterparts:
 - Art. 17(6)2 TEU: duty of individual commissioners to resign if the President of the Commission so requests
 - Art. 17(8) TEU; Art. 234 TFEU: Possibility of an EP's voting on a motion of censure, obliging the Commission as a body to resign
 - Art. 247 TFEU: compulsory retirement order by the Court on application by the Council in case of „serious misconduct“

- Compare the EU institutions with its counterparts
 - in the Brazilian political system
 - in the Mercosul political system
 - in the UNASUL political system

Our programme for the next session



Day 3:

- Market freedoms of goods, services, workers, establishment and capital
- Material:
 - CJEU, Case 8/74 Procureur du Roi v. Dassonville [1974]
 - Art. 36 EECT => Art. 36 TFEU
 - You may focus your reading on pp. 851-853
 - CJEU, Case C-120/78 Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein (Cassis de Dijon) [1979]
 - Art. 30 EECT => Art. 34 TFEU
 - You may focus your reading on pp. 660-664



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*Faculdade de Direito da
Universidade de São Paulo*

Session 3:

- Market freedoms of goods, services, workers, establishment and capital
- Non-discrimination, fundamental rights and citizenship
- General principles of EU law: proportionality, legitimate expectations, transparency

Albert-Ludwigs-Universität Freiburg

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- The relationship between the EU and its Member States: competences of the EU, direct effect and supremacy of EU law, subsidiarity, infringement procedures

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- **Market freedoms of goods, services, workers, establishment and capital**
- **Non-discrimination, fundamental rights and citizenship**
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- Outlook: Europe after the Brexit – between globalization and re-nationalization

Market freedoms as one component of the establishment of the Common / Single Market



| Negative coordination | Positive coordination |
|--|---|
| <p>Market freedoms</p> <ul style="list-style-type: none"> • Goods, Art. 28 ff.; 110-112 (tax) • Establishment, Art. 49, 51 f, 54 f • Services, Art. 56 f, 60 ff • Capital, Art. 63 ff. | <p>harmonisation: Art 114 <u>and</u></p> <ul style="list-style-type: none"> • Art. 31(customs); Art. 113 (tax) • Art. 50, 53 • Art. 59, 58/90 ff (transport) • [Art 119 ff (EMU)] |
| <p>Market freedoms</p> <ul style="list-style-type: none"> • Workers, Art. 45 | <ul style="list-style-type: none"> • Art. 46 ff; 151 ff (social security) • Art. 145 ff (employment) |
| <p>Non-discrimination, Art. 18 ff.</p> | |
| <p>Competition law</p> <ul style="list-style-type: none"> • Cartels, misuse of market power, mergers, Art. 101 ff. | <p>Consumer Protection, Art. 169 Environment, Art. 191 ff Energy, Art. 194</p> |
| <p>Competition law</p> <ul style="list-style-type: none"> • Public undertakings, Art. 106 | <p>services of general econ. interest, Art 14 Trans-European Networks, Art. 170 ff</p> |
| <p>Competition law</p> <ul style="list-style-type: none"> • Prohibition of state aids, Art. 107ff. | <p>Common Agricultural Policy, Art. 38 ff. Cohesion, Art. 174 ff/ESF, Art 162 f</p> |





Market freedoms as one component of the establishment of the Common / Single Market



Negative coordination

Positive coordination

Market freedoms


-   Goods, Art. 28 ff.; 110-112 (tax)
 - Establishment, Art. 49, 51 f, 54 f
-  Services, Art. 56 f, 60 ff
-  Capital, Art. 63 ff.

harmonisation: Art 114 and

- Art. 31(customs); Art. 113 (tax)
- Art. 50, 53
- Art. 59, 58/90 ff (transport)
- [Art 119 ff (EMU)]

Market freedoms

-  Workers, Art. 45

- Art. 46 ff; 151 ff (social security) 
- Art. 145 ff (employment)

Non-discrimination, Art. 18 ff.

Competition law

- Cartels, misuse of market power, mergers, Art. 101 ff.

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Energy, Art. 194

Competition law

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services of general econ. interest, Art 14

Trans-European Networks, Art. 170 ff

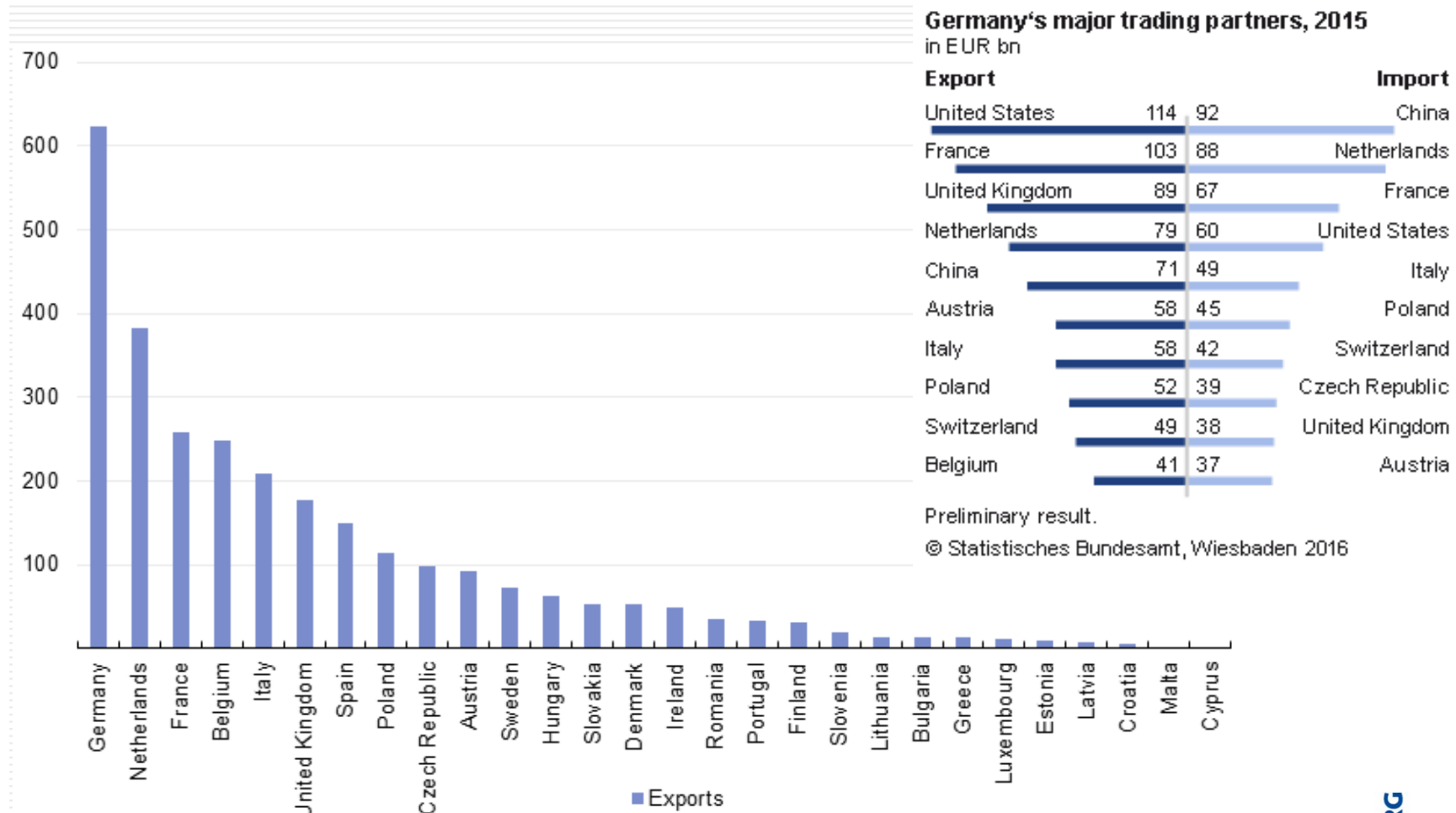
Competition law

- Prohibition of state aids, Art. 107ff.

Common Agricultural Policy, Art. 38 ff.

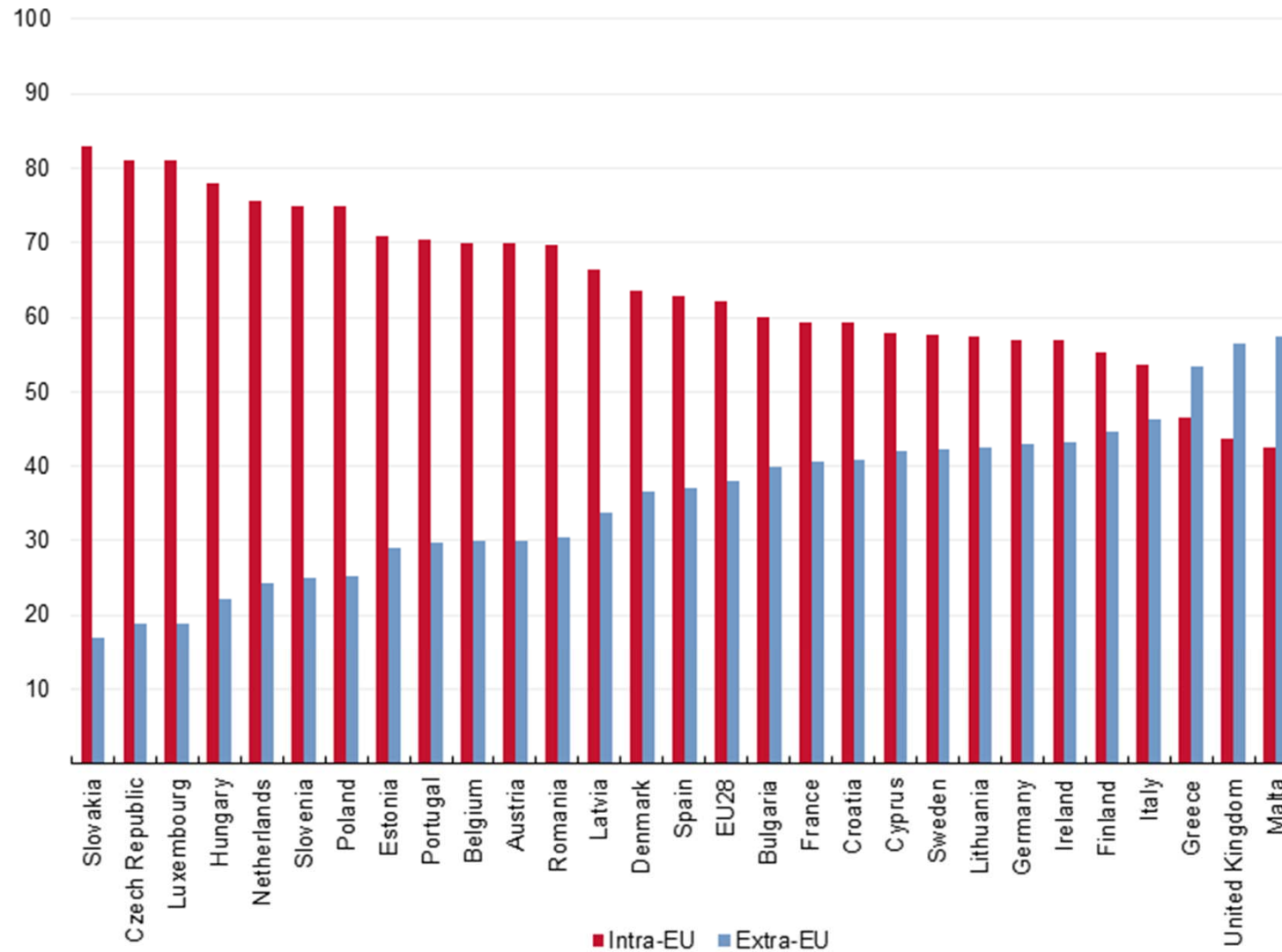
Cohesion, Art. 174 ff/ESF, Art 162 f

Eurostat: Intra-EU trade in goods - recent trends

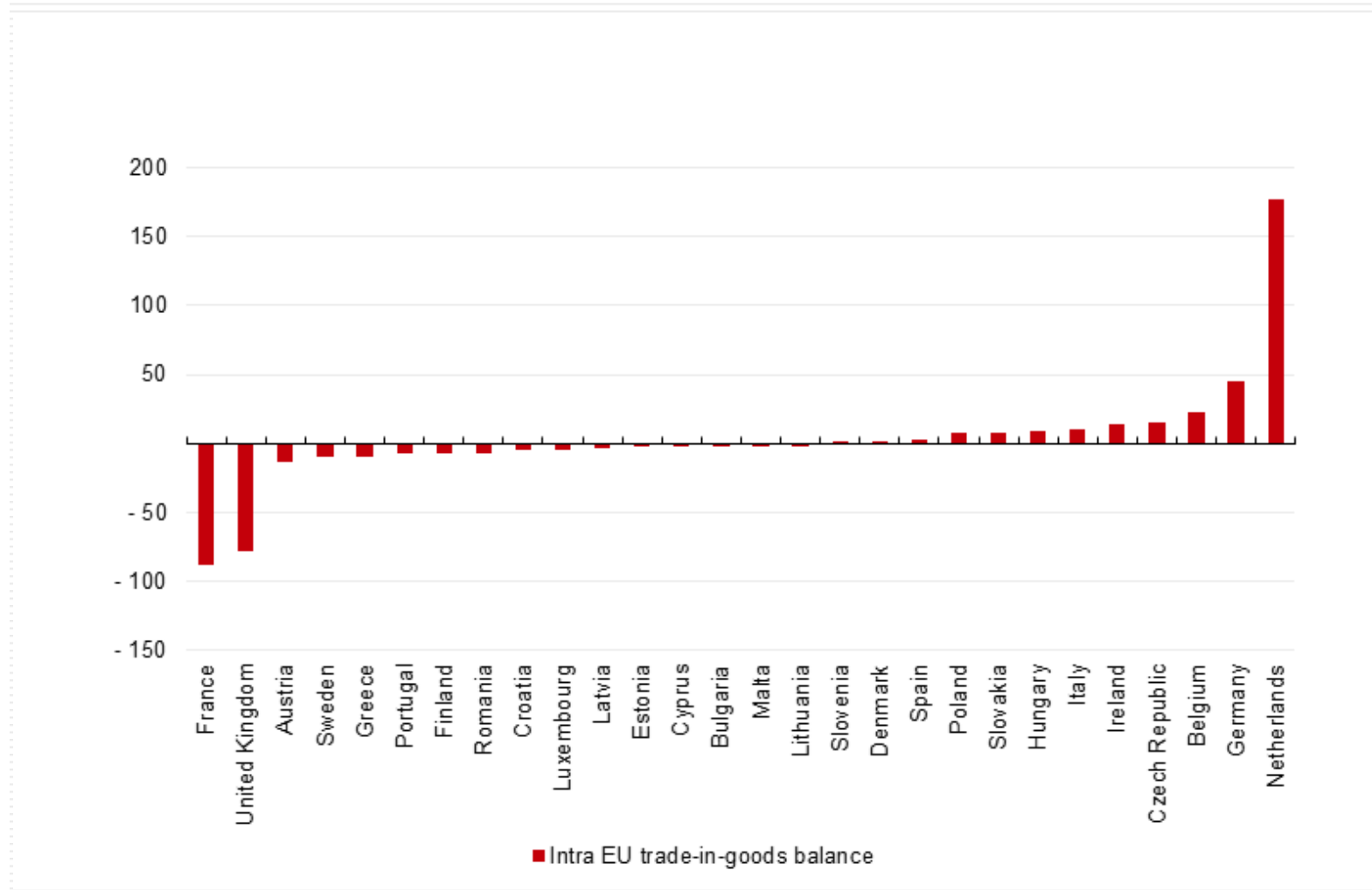


[http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Exports_to_other_Member_State,_2013_\(EUR_1_000_million\).png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Exports_to_other_Member_State,_2013_(EUR_1_000_million).png)

Eurostat: Intra-EU trade in goods - recent trends



Eurostat: Intra-EU trade in goods - recent trends



TITLE III

AGRICULTURE AND FISHERIES



Article 38

1. The Union shall define and implement a common agriculture and fisheries policy.
The internal market shall extend to agriculture, fisheries and trade in agricultural products. 'Agricultural products' means (...).
2. Save as otherwise provided in Articles 39 to 44, the rules laid down for the establishment and functioning of the internal market shall apply to agricultural products. (...)
4. **The operation and development of the internal market for agricultural products must be accompanied by the establishment of a common agricultural policy.**

Article 39





1. The objectives of the common agricultural policy shall be:
 - (a) **to increase agricultural productivity** by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
 - (b) **thus to ensure a fair standard of living for the agricultural community**, in particular by increasing the individual earnings of persons engaged in agriculture; (...)

Market freedoms as one component of the establishment of the Common / Single Market



Negative coordination

Market freedoms

-   Goods, Art. 28 ff.; 110-112 (tax)
 - Establishment, Art. 49, 51 f, 54 f
-  Services, Art. 56 f, 60 ff
-  Capital, Art. 63 ff.


Market freedoms

-  Workers, Art. 45

Positive coordination

harmonisation: Art 114 and

- Art. 31(customs); Art. 113 (tax)
- Art. 50, 53
- Art. 59, 58/90 ff (transport)
- [Art 119 ff (EMU)]

- Art. 46 ff; 151 ff (social security) 
- Art. 145 ff (employment)

Non-discrimination, Art. 18 ff.

Competition law

- Cartels, misuse of market power, mergers, Art. 101 ff.

Consumer Protection, Art. 169

Environment, Art. 191 ff
Energy, Art. 194

Competition law

- Public undertakings, Art. 106


services of general econ. interest, Art 14

Trans-European Networks, Art. 170 ff

Competition law

- Prohibition of state aids, Art. 107ff.

Common Agricultural Policy, Art. 38 ff.

Cohesion, Art. 174 ff/ESF, Art 162 f   

TITLE XVIII

ECONOMIC, SOCIAL AND TERRITORIAL COHESION



Article 174

In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion.

In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions.

Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as (...).

Article 177





Without prejudice to Article 178, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and consulting the Economic and Social Committee and the Committee of the Regions, shall define the tasks, priority objectives and the organisation of the Structural Funds, (...)

Market freedoms as one component of the establishment of the Common / Single Market



Negative coordination

Market freedoms

-   Goods, Art. 28 ff.; 110-112 (tax)
 - Establishment, Art. 49, 51 f, 54 f
-  Services, Art. 56 f, 60 ff
-  Capital, Art. 63 ff.


Market freedoms

-  Workers, Art. 45

Positive coordination


harmonisation: Art 114 and

- Art. 31(customs); Art. 113 (tax)
- Art. 50, 53
- Art. 59, 58/90 ff (transport)
- [Art 119 ff (EMU)]

- Art. 46 ff; 151 ff (social security) 
- Art. 145 ff (employment)


Non-discrimination, Art. 18 ff.

Competition law





-  Cartels, misuse of market power, mergers, Art. 101 ff.

Consumer Protection, Art. 169
Environment, Art. 191 ff
Energy, Art. 194

- Competition law  ↔ 
- **Public undertakings**, Art. 106

services of general econ. interest, Art 14 
Trans-European Networks, Art. 170 ff

- Competition law
- Prohibition of state aids, Art. 107ff.

Common Agricultural Policy, Art. 38 ff. 
Cohesion, Art. 174 ff/ESF, Art 162 f   

EU Competition Law

– Rules applying to undertakings, Art. 101 TFEU



1. The following shall be **prohibited** as incompatible with the internal market: **all agreements between undertakings**, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the **prevention, restriction or distortion of competition** within the internal market, and in particular those which:
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article **shall be automatically void**.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of: ...

EU Competition Law

– Public Undertakings



Article 106

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, **Member States shall neither enact nor maintain in force any measure contrary to the rules** contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109.
2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly **shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.** The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.
3. The **Commission shall ensure the application of the provisions** of this Article and shall, where necessary, address appropriate directives or decisions to Member States.







Market freedoms as one component of the establishment of the Common / Single Market



Negative coordination

Market freedoms

-   Goods, Art. 28 ff.; 110-112 (tax)
 - Establishment, Art. 49, 51 f, 54 f
-  Services, Art. 56 f, 60 ff
-  Capital, Art. 63 ff.

Market freedoms

-  Workers, Art. 45


Positive coordination

harmonisation: Art 114 and

- Art. 31(customs); Art. 113 (tax)
- Art. 50, 53
- Art. 59, 58/90 ff (transport)
- **[Art 119 ff (EMU)]**   ↔    
- Art. 46 ff; 151 ff (social security) 
- Art. 145 ff (employment)

Non-discrimination, Art. 18 ff.

Competition law

-  Cartels, misuse of market power, mergers, Art. 101 ff.

Consumer Protection, Art. 169

- Environment, Art. 191 ff
- Energy, Art. 194

Competition law

-  ↔ 
 - Public undertakings, Art. 106

services of general econ. interest, Art 14

- Trans-European Networks, Art. 170 ff 

Competition law

- Prohibition of state aids, Art. 107ff.

Common Agricultural Policy, Art. 38 ff.

- Cohesion, Art. 174 ff/ESF, Art 162 f   

Market freedoms as one component of the establishment of the Common / Single Market




The Brexit trade-off

Negative coordination


Positive coordination

- Market freedoms  <=  
-   Goods, Art. 28 ff.; 110-112 (tax)
 - Establishment, Art. 49, 51 f, 54 f
 -  Services, Art. 56 f, 60 ff
 -  Capital, Art. 63 ff.
- Market freedoms
-  Workers, Art. 45






- harmonisation: Art 114 and
- Art. 31(customs); Art. 113 (tax)
 - Art. 50, 53
 - Art. 59, 58/90 ff (transport)
 - [Art 119 ff (EMU)]   ↔   
 - Art. 46 ff; 151 ff (social security) 
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Non-discrimination, Art. 18 ff.

- Competition law
-  Cartels, misuse of market power, mergers, Art. 101 ff.

- Consumer Protection, Art. 169
Environment, Art. 191 ff
Energy, Art. 194

- Competition law  ↔ 
- Public undertakings, Art. 106

- services of general econ. interest, Art 14 
Trans-European Networks, Art. 170 ff

- Competition law
- Prohibition of state aids, Art. 107ff.

- Common Agricultural Policy, Art. 38 ff. 
Cohesion, Art. 174 ff/ESF, Art 162 f   



Free Movement of Goods, Art. 28 ff. TFEU

- Prohibition of
 - customs duties and charges, Art. 28-30
 - discriminatory tax provisions, Art. 110-112
- **Prohibition of quantitative restrictions**, Art. 34 ff.
 - and of “all measures having equivalent effect”
 - CJEU, Case 8/74 Procureur du Roi v. Dassonville [1974]: extremely wide interpretation
 - modified the prohibition of restrictions to a prohibition of impairments
 - Art. 36: written justifications of (discriminatory) restrictions
 - narrowly interpreted
 - unwritten justification of indistinctly applicable (mandatory) requirements
 - CJEU, Case C-120/78 Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein (Cassis de Dijon) [1979]

Free Movement of Goods, Art. 28 ff. TFEU

– Prohibition of quantitative restrictions, Art. 34 ff.



➤ Scope of application of Art 34 TFEU

- From discrimination to simple impediments (anti-protectionist => anti-regulatory)
 - Step 1: extension (Dassonville; Cassis)
 - Direct and indirect discrimination
 - rules merely inhibiting trade
 - Step 2: unsuccessful refinement (Keck)
 - Limitation to product related requirements, exclusion of selling requirements
 - Step 3: unfinished refinement
 - Discriminating rules
 - Product requirements
 - Rules inhibiting market access (boundaries not yet settled)
- Possible justifications of restrictive measures
- Consequences

Free Movement of Goods, Art. 28 ff. TFEU

– Prohibition of quantitative restrictions, Art. 34 ff.



- Broad scope of application of Art 34 TFEU
- **Possible justifications of restrictive measures**
 - Supremacy of EU harmonization acts (positive integration)
 - Restrictive interpretation of (written) justifications in Art. 36 TFEU
 - applicable also to discriminatory measures
 - Supplemented by mandatory requirements (Cassis rule of reason)
 - applicable only to non-discriminatory measures??
 - Proportionality control
 - Balancing market integration ⇔ other social goods
 - Balancing market integration ⇔ consumer protection
 - Labeling as similar adequate measures?
- Consequences

Free Movement of Goods, Art. 28 ff. TFEU

– Prohibition of quantitative restrictions, Art. 34 ff.



- Broad scope of application of Art 34 TFEU
- Possible justifications of restrictive measures
- **Consequences**
 - Negative integration by obligation to mutual recognition
 - pressure towards deregulation in import state
 - Regulatory competition (race to the bottom?)
 - EU acquired harmonisation competence under Art. 114 TFEU concerning potential mandatory requirements
 - Supported by Directive 98/34 on MS obligations to provide information about new technical standards (transparency directive)
 - Shift of power to EU
 - Compare Cassis paras 8, 12(3)
 - Centralized model ⇔ competitive model ⇔ decentralized model

Dieter Grimm, The Democratic Costs of Constitutionalisation: The European Case, European Law Journal Vol. 21 (2015), S. 460-473



- Europe: the constitutionalisation of the treaties
 - The cause: Supremacy of EU Law (citing Joseph Weiler, 1991)
 - Van Gend & Loos (1963); Costa v ENEL (1964)
 - Methodological turn: cautious interpret of Intl. Law => objectivised/teleological interpretation of Constitutions (effet utile)
 - The effect: De-Politicisation
 - Competences: bias towards EU competences
 - Transformation of 4 market freedoms from objectiv principles for legislation into subjective rights of market actors
 - Transforming anti-protectionist rules => anti-regulatory (impediments) rules
 - Direct applicability of not transposed directives with state liability
 - broad scope of application of the CFR
- Democratic costs
 - Over-constitutionalisation
 - Legislative establishment of the single market => CJEU/COM powers
 - Treaties not confined to purely constitutional issues
 - Consequences
 - Objective interpretation limits the role of MS as “masters of the Treaties”
 - Non-constitutional content of Treaties immunises COM/CJEU
- Re-Politicisation as remedy
 - Limited democratic resources of the EP without a EU public discourse
 - Indirect democratic resources of the Council via MS elections should be preserved (unanimity!)
 - Scale back the Treaties to truly constitutional elements

General principles of EU law: proportionality, legitimate expectations, transparency



- **Proportionality** (now codified in Art. 5(4) TEU, Art. 52(1)2 CFR)
 - established as an unwritten general principle of EU law
 - CJEU, Case 11/70 Internationale Handelsgesellschaft [1970]
 - developed as a three-step-test like in Germany
 - CJEU, Case C-265/87 Schröder [1989], para. 21
 - appropriate (suitable) / necessary / not be disproportionate (not excessive)
- **Legitimate expectations**
 - Actual retroactivity (definitively concluded past events): CJEU, Case 63/83 – Regina v Kent Kirk [1984]
 - Apparent retroactivity (not yet definitively concluded past events): CJEU, Case 7/56 – Algeria [1957]; ...
- **Transparency**
 - Open decision-making: Art. 1/10(3); Art. 11(2)/15(1); 11(3); 16(8) TEU
 - Access to documents: Art. 15(3) TEU; Art. 42 CFR => Regulation 1049/2001

Elements of constitutionalisation: Non-discrimination, fundamental rights and citizenship



➤ **Non-discrimination**, Art. 2, 3(3) TEU

- concerning nationality: Art. 18, 45, 49, 56-57 TFEU
- concerning sex, race, colour, origin, ...: Art. 19, 157 TFEU, Art. 21(1) CFR

➤ **Fundamental rights**

- The ECJ started reluctantly, but established – after a demand of the German BVerfG – fundamental rights as unwritten principles of EU law
- The Court drew extensively on the European Convention of Human Rights
- The treaties justified subsequently this jurisprudence, see now Art. 6 (3) TEU
- Since 2009 the CFR is the most important source of fundamental rights

➤ **Citizenship**

- Introduced by the Maastricht Treaty (1993) as part of a political union
- See today: Art. 9 TEU; Art. 20-24 TFEU
- Further developed by the CJEU but with restrictions on “benefits tourism”

Discussion



- How convincing are the CJEU judgements in Dassonville und Cassis de Dijon?
- Are there similar discussions about negative and positive coordination in the Mercosul context?
- Read the CFR and compare it with Brazilian fundamental rights
 - Similarities
 - Differences



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Introduction to European Public Law

Post-Graduate Program of the Law Faculty
University of São Paulo, September 12-16 2016



*Faculdade de Direito da
Universidade de São Paulo*

Session 4:

- Implementation of EU law: direct (central) – indirect (decentral) – shared (composite)
- EU administrative law I: direct implementation by EU authorities
- Competition law and state aid law as examples of direct implementation

Albert-Ludwigs-Universität Freiburg

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Our programme



Day 1:

- History and basic structures of the EU
- EU institutions: Commission, Council, EP, CJEU, ...

Day 2:

- Sources of EU law: Primary law – Secondary law (regulations, directives, ...)
- The relationship between the EU and its Member States: competences of the EU, direct effect and supremacy of EU law, subsidiarity, infringement procedures

Day 3:

- Market freedoms of goods, services, workers, establishment and capital
- Non-discrimination, fundamental rights and citizenship
- General principles of EU law: proportionality, legitimate expectations, transparency

Day 4:

- Implementation of EU law: direct (central) – indirect (decentral) – shared (composite)
- EU administrative law I: direct implementation by EU authorities
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Day 5:

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- EU administrative law III: (vertical and horizontal) shared implementation
- Outlook: Europe after the Brexit – between globalization and re-nationalization

Concepts of Admin Law in a Comparative Perspective



| USA | EU | Germany |
|--|---|--|
| focussed on administrative actions of | | |
| federal agencies | MS bodies/COM (evolving) | local/regional bodies |
| covering the following administrative actions | | |
| (informal / formal) rulemaking (formal) adjudication | rulemaking (Art 290/291 TFEU) composite decision- making | (informal) single case decision-making, local zoning plans |
| constitutional back-ground | | |
| separation of powers due process | coordination of EU and MS powers inter-institutional balance of powers | rule of law, fundamental rights; democratic legitimation federal coordination |



the evolving concept of EU Admin Law

- **evolving number of administrative bodies**
 - **Member State authorities:** national, regional, local (**indirect implementation**)
 - **EU Commission:** as college or individual commissioners (DGs) (**direct implement.**)
 - MS oversight via comitology committees
 - universe of advisory (expert) bodies/committees
 - budget implementation via executive agencies
 - decentralized “regulatory” agencies: mainly information gathering, advisory, but ...
 - (Council) ((other institutions))

- covering following actions ...

- constitutional background: legality, effectiveness, efficiency of admin actions ...



the evolving concept of EU Admin Law

- **evolving number of administrative bodies**
 - **Member State authorities:** national, regional, local (**indirect implementation**)
 - **EU Commission:** as college or individual commissioners (DGs) (**direct implement.**)

- covering following actions
 - implementing actions on MS level
 - principles of effectiveness, non-discrimination, coherence
 - often **composite procedures** with vertical/horizontal inter-admin. Cooperation
 - => **shared implementation**
 - non-legislative **EU rulemaking as re-structured by Lisbon Treaty (2009)**, especially:
 - delegated acts, Art. 290 TFEU
 - implementing acts, Art. 291 TFEU
 - (formal/informal) single case decision-making by EU authorities (COM, agencies; ..)
 - mainly unilateral acts (decisions), also contracts

- constitutional background: legality, effectiveness, efficiency of admin actions



the evolving concept of EU Admin Law

- **evolving number of administrative bodies**
 - **Member State authorities:** national, regional, local (**indirect implementation**)
 - **EU Commission:** as college or individual commissioners (DGs) (**direct implement.**)

- covering following actions
 - implementing actions on MS level
 - non-legislative **EU rulemaking as re-structured by Lisbon Treaty (2009)**,
 - (formal/informal) single case decision-making by EU authorities (COM, agencies; ..)

- constitutional background: legality, effectiveness, efficiency of admin actions
 - complex “separation” and coordination of Union and MS powers
 - **inter-institutional balance of powers**
 - rule of Law and fundamental rights
 - democratic legitimation of administrative action

Treaty of the Functioning of the EU

Article 291

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. (= > Comitology Reg)

4. The word 'implementing' shall be inserted in the title of implementing acts.

Treaty of the Functioning of the EU

Article 290

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.

3. The adjective 'delegated' shall be inserted in the title of delegated acts.

Delegation of Rulemaking powers in EU law



➤ to the Commission

- Art. 290 TFEU – delegated regulations / directives
 - to supplement or amend certain non-essential elements of the legislative act
 - objections / revocation of delegation by EP or Council
- Art. 291 TFEU – implementing regulations / directives
 - uniform conditions for implementing EU Law by MS
 - MS supervision according to Comitology Reg. 182/2011
 - advisory procedure, Art.4
 - evaluation procedure, Art. 5: veto with qualified majority
 - Right of scrutiny for EP and Council, Art. 11

➤ to EU agencies?

Article 41 CFR

Right to good administration



1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
 - a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Competition law as one component of the establishment of the Common / Single Market



| Negative coordination | Positive coordination |
|--|---|
| <p>Market freedoms</p> <ul style="list-style-type: none"> • Goods, Art. 28 ff.; 110-112 (tax) • Establishment, Art. 49, 51 f, 54 f • Services, Art. 56 f, 60 ff • Capital, Art. 63 ff. | <p>harmonisation: Art 114 <u>and</u></p> <ul style="list-style-type: none"> • Art. 31(customs); Art. 113 (tax) • Art. 50, 53 • Art. 59, 58/90 ff (transport) • [Art 119 ff (EMU)] |
| <p>Market freedoms</p> <ul style="list-style-type: none"> • Workers, Art. 45 | <ul style="list-style-type: none"> • Art. 46 ff; 151 ff (social security) • Art. 145 ff (employment) |
| <p>Non-discrimination, Art. 18 ff.</p> | |
| <p>Competition law</p> <ul style="list-style-type: none"> • Cartels, misuse of market power, mergers, Art. 101 ff. | <p>Environment, Art. 191 ff Energy, Art. 194</p> |
| <p>Competition law</p> <ul style="list-style-type: none"> • Public undertakings, Art. 106 | <p>Trans-European Networks, Art. 170 ff</p> |
| <p>Competition law</p> <ul style="list-style-type: none"> • Prohibition of state aids, Art. 107ff. | <p>Common Agricultural Policy, Art. 38 ff. Cohesion, Art. 174 ff/ESF, Art 162 f</p> |

EU Competition Law

– Rules applying to undertakings, Art. 101 TFEU



1. The following shall be **prohibited** as incompatible with the internal market: **all agreements between undertakings**, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the **prevention, restriction or distortion of competition** within the internal market, and in particular those which:
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article **shall be automatically void**.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of: ...

EU Competition Law

– Rules applying to undertakings, Art. 105 TFEU



1. Without prejudice to Article 104, **the Commission shall ensure** the application of the principles laid down in Articles 101 and 102. On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, which shall give it their assistance, **the Commission shall investigate** cases of suspected infringement of these principles. If it finds that there has been an infringement, **it shall propose appropriate measures** to bring it to an end.
2. If the infringement is not brought to an end, **the Commission shall record** such infringement of the principles **in a reasoned decision**. The Commission may publish its decision and authorise Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation.
3. The **Commission may adopt regulations** relating to the categories of agreement in respect of which the Council has adopted a regulation or a directive pursuant to Article 103(2)(b).

EU Competition Law

– Public Undertakings

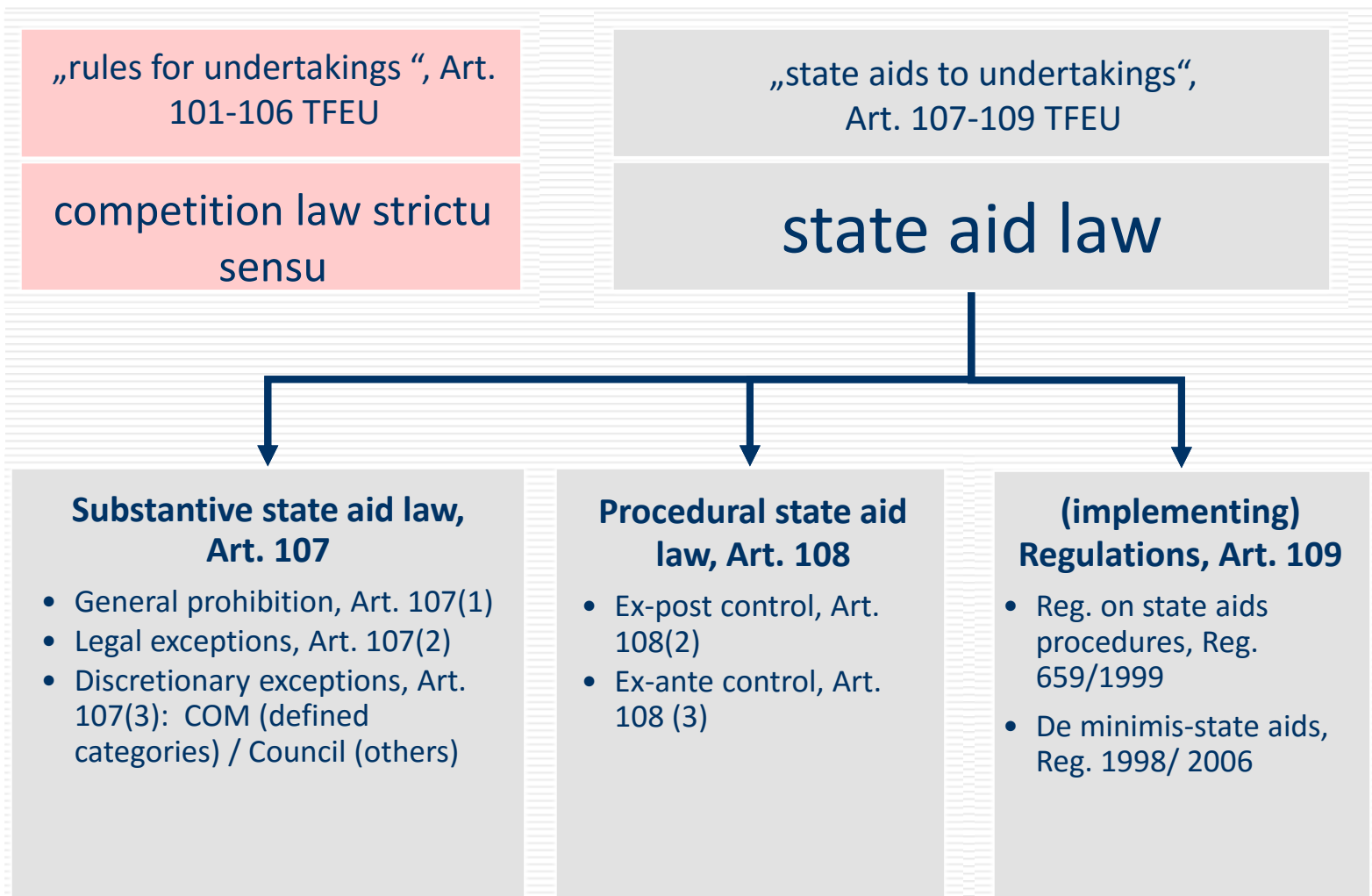


Article 106

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, **Member States shall neither enact nor maintain in force any measure contrary to the rules** contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109.
2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly **shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.** The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.
3. The **Commission shall ensure the application of the provisions** of this Article and shall, where necessary, address appropriate directives or decisions to Member States.



Titel VII Chapter 1 TFEU: competition law



EU State Aid Law

– Art. 107 TFEU



1. Save as otherwise provided in the Treaties, **any aid** granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods **shall**, in so far as it affects trade between Member States, **be incompatible** with the internal market.
2. The **following shall be compatible** with the internal market:
 - a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; ...
3. The **following may be considered to be compatible** with the internal market:
 - a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation; ...
 - e) such other categories of aid as may be specified by **decision of the Council** on a proposal from the Commission.

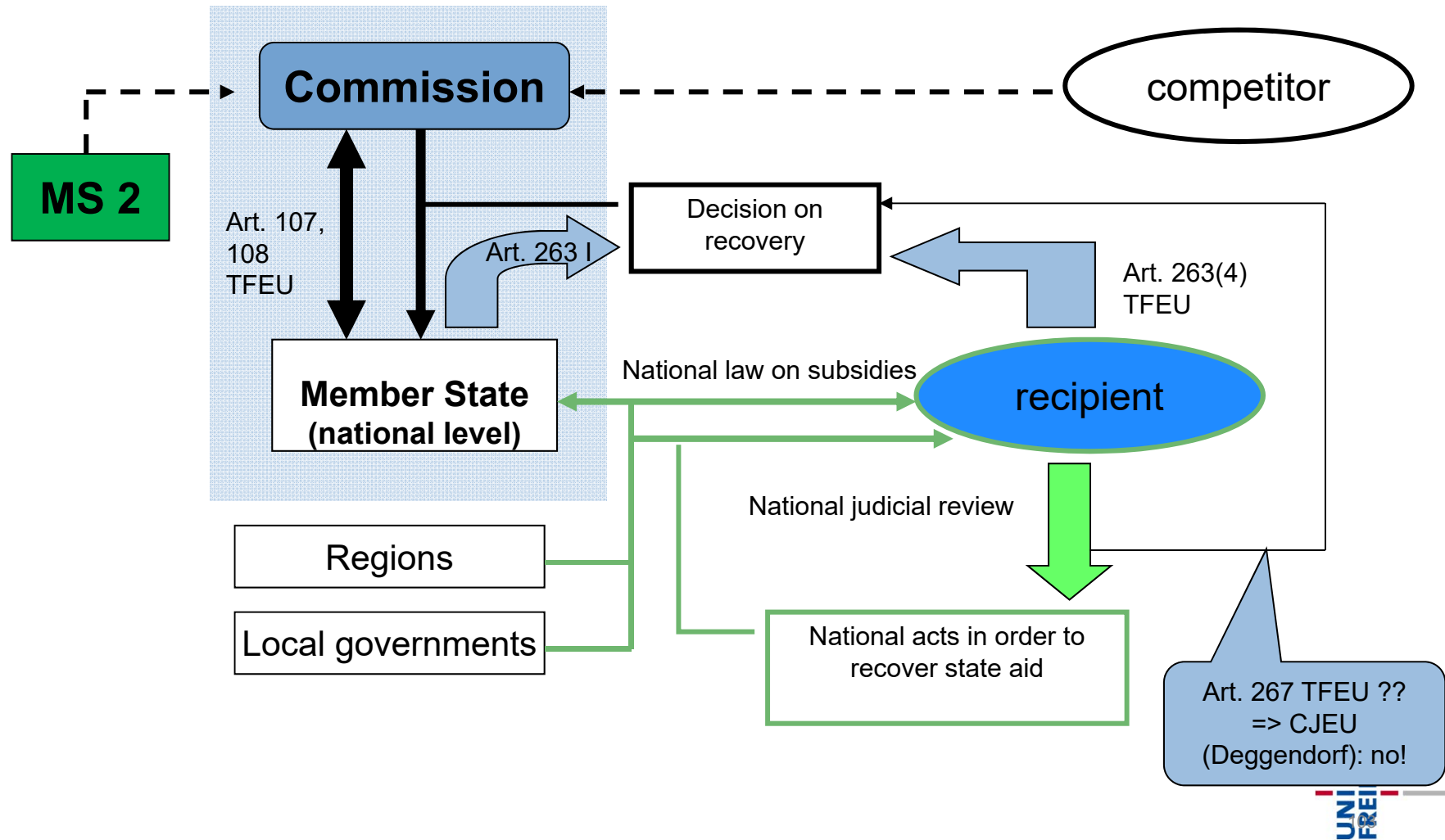
EU State Aid Law

– Art. 108 TFEU



1. The **Commission** shall, in cooperation with Member States, keep under **constant review** all systems of aid existing in those States. (...)
2. If, after giving notice to the parties concerned to submit their comments, the **Commission** finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it **shall decide that the State concerned shall abolish** or alter such aid within a period of time to be determined by the Commission.
If the State concerned does not comply with this decision within the prescribed time, the Commission (...) may (...) refer the matter to the Court of Justice of the European Union direct.
On application by a Member State, **the Council may**, acting unanimously, decide that aid (...) shall be considered to be compatible with the internal market (...) if such a decision is justified by exceptional circumstances. (...)
3. The Commission shall **be informed**, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. (...) The Member State concerned **shall not put its proposed measures into effect until** this procedure has resulted in a final decision.

EU multi-level-administration – state aid law as an example





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*Faculdade de Direito da
Universidade de São Paulo*

Session 5:

- EU administrative law II: indirect implementation by MS authorities
- EU administrative law III: (vertical and horizontal) shared implementation
- Outlook: Europe after the Brexit – between globalization and re-nationalization

Albert-Ludwigs-Universität Freiburg

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EU administrative law II: indirect implementation by MS authorities – CJEU, Case C-205/82 et al. Deutsche Milchkontor v. Germany [1983]

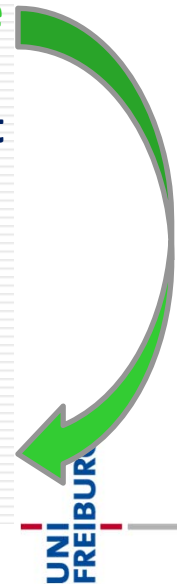


para. 17: According to the general principles (...) which govern the relations between the Community and the Member States, it is for the Member States (...) to ensure that Community regulations (..) are implemented (..). In so far as Community law (...) does not include common rules to this effect, the national authorities (...) act in accordance with the procedural and substantive rules of their own national law; **however**, (...) this rule must be reconciled with the **need to apply Community law uniformly** so as to **avoid unequal treatment** of producers and traders.

para. 19: (...) the rules and procedures laid down by **national law must not have the effect of making it virtually impossible to implement Community regulations** and national legislation must be applied in a manner which is **not discriminatory compared to procedures for deciding similar but purely national disputes**.

CJEU, Case C-24/95 Alcan [1997], para 24:

In particular, the **interests of the Community must be taken fully into consideration** in the application of a [national] provision (...)



EU administrative law II: indirect implementation by MS authorities – general principles



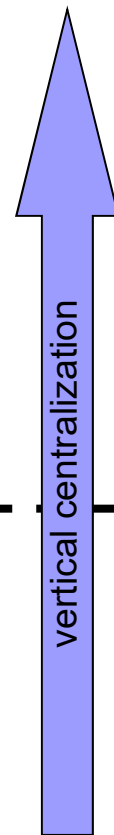
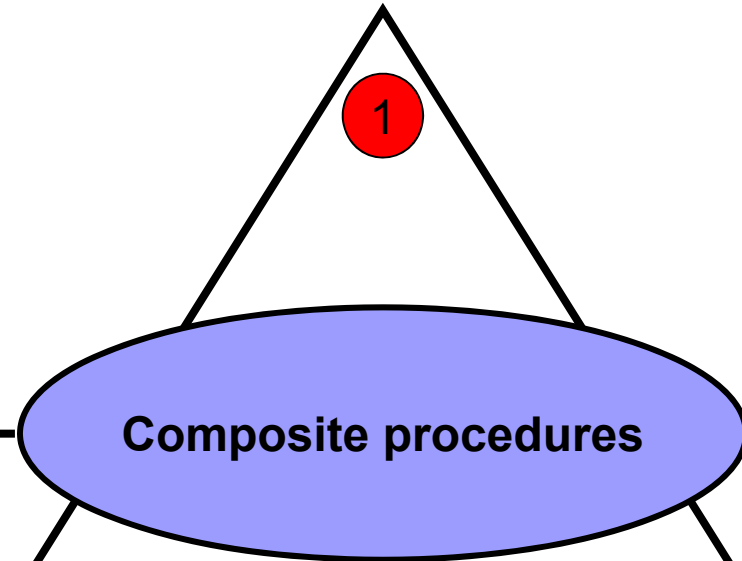
- Institutional autonomy of MS ⇔ need to apply Community law uniformly
- **Procedural principles / rights of defense concerning indirect implementation**
 - Art. 41 CFR (right to good administration) applies only to EU authorities
 - **Right to hearing** as a general principle directly applicable to MS
 - MS-decision in the scope of Union law
 - Potential of adverse effects including refusal of benefits
 - Statement of facts and legal options of the person concerned
 - Obligation to take statement into account
 - But, restriction in the public interest possible
 - Supplemented by access to his/her file and duty to give reasons
 - **Remedies in case of non-compliance according to national procedural law**
 - But Milchkontor-principles of effectiveness, non-discrimination

EU administrative law III: (vertical and horizontal) shared implementation

Europeanized authorisations for products and judicial competences

Union level

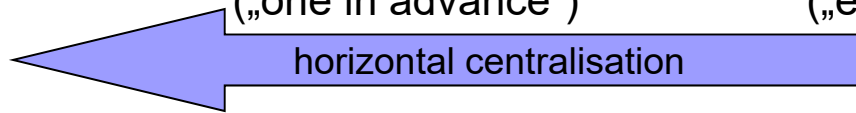
Direct implementation



Transnational decisions
(„one for all“)

Reference decisions
(„one in advance“)

Separated implementation
(„everyone on its own“)



Member state level

EU administrative law III: (vertical and horizontal) shared implementation

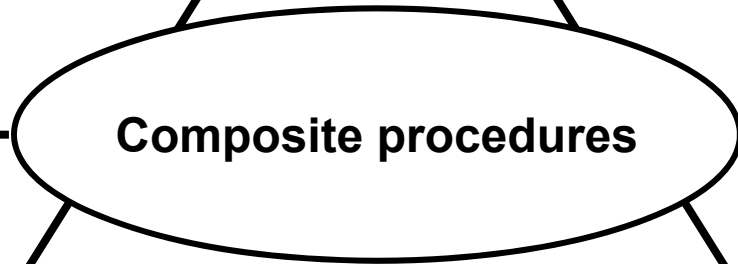
Europeanized authorisations for products and judicial competences

Union level

Direct implementation



1



Composite procedures



3

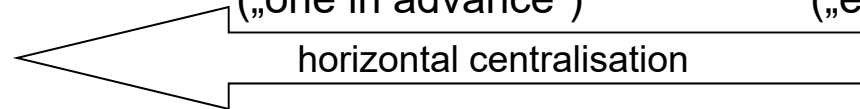
2a

2

Transnational decisions („one for all“)

Reference decisions („one in advance“)

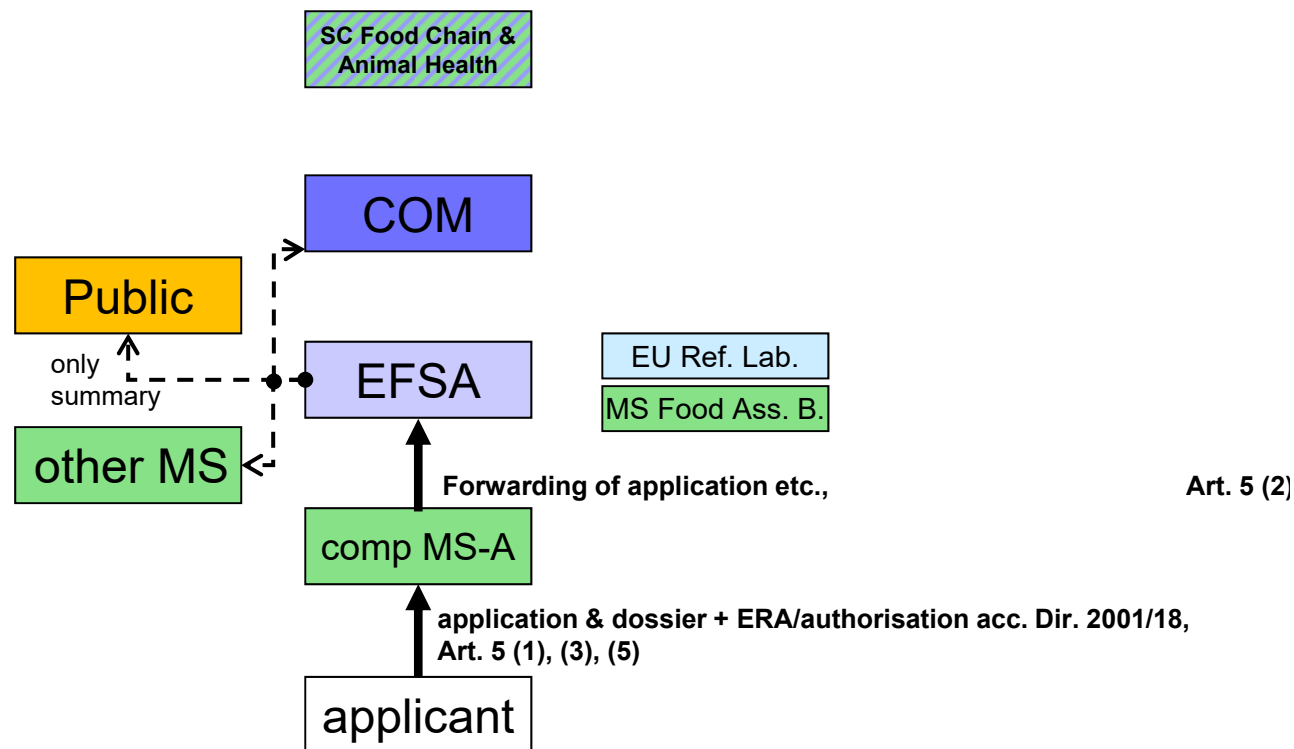
Separated implementation („everyone on its own“)



Member state level

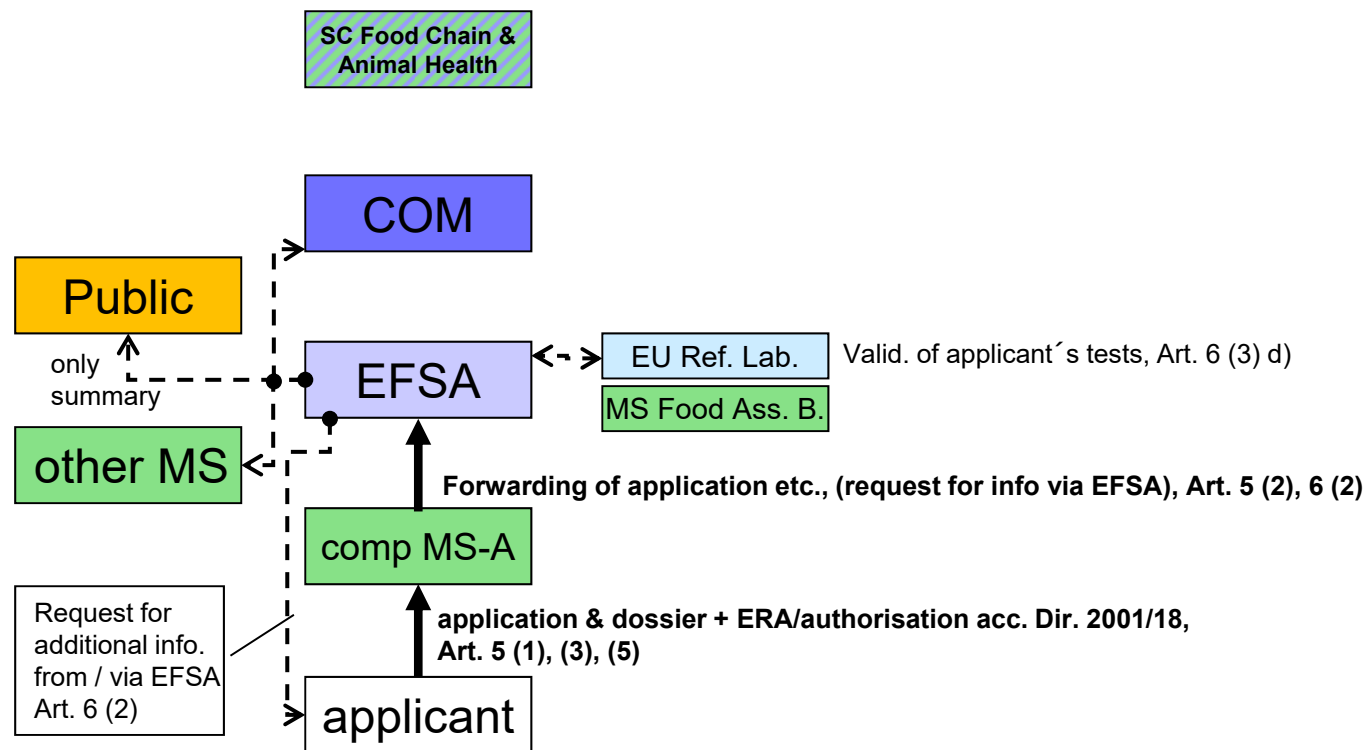
Composite procedures concerning the authorisation of genetically modified organisms for food or feed use (Reg. 1829/2003)

Authorization of GMOs



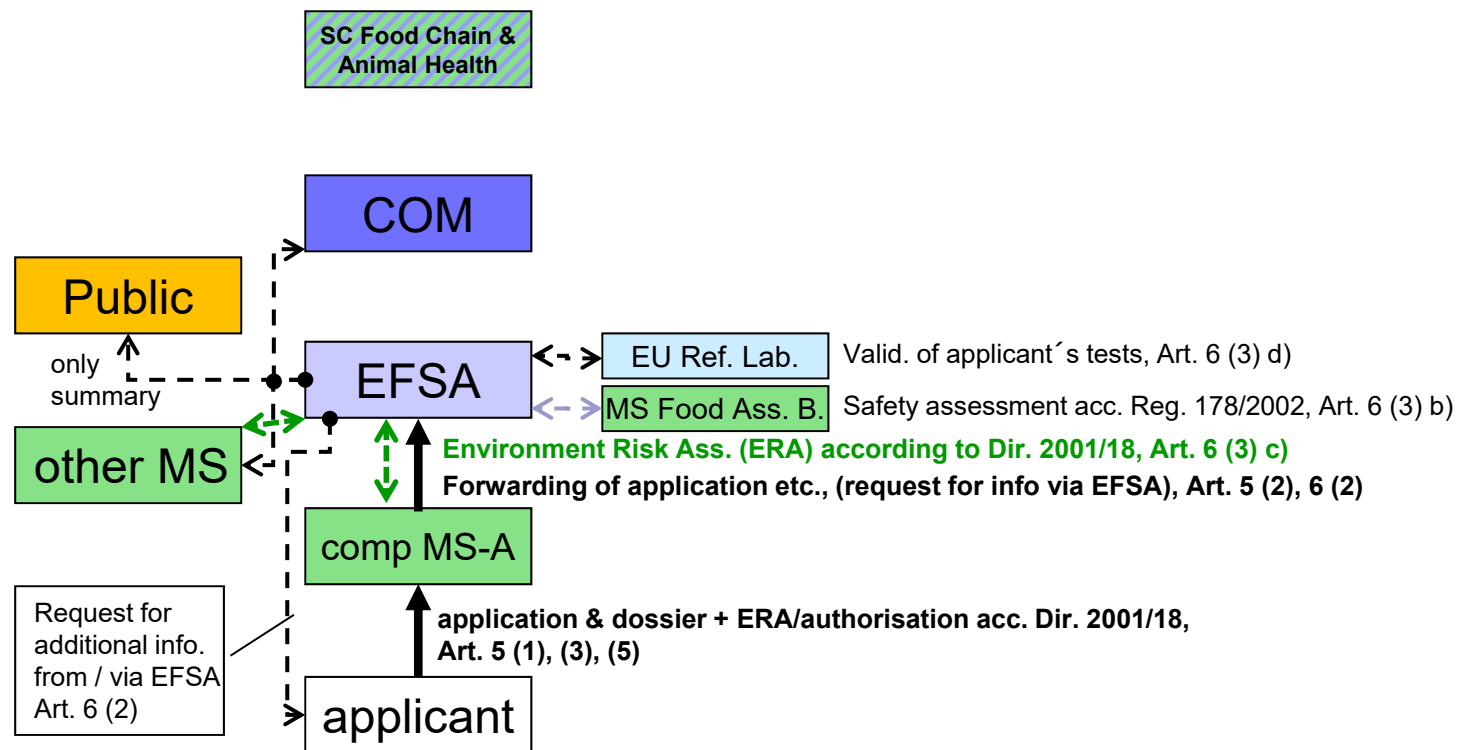
Composite procedures concerning the authorisation of genetically modified organisms for food or feed use (Reg. 1829/2003)

Authorization of GMOs



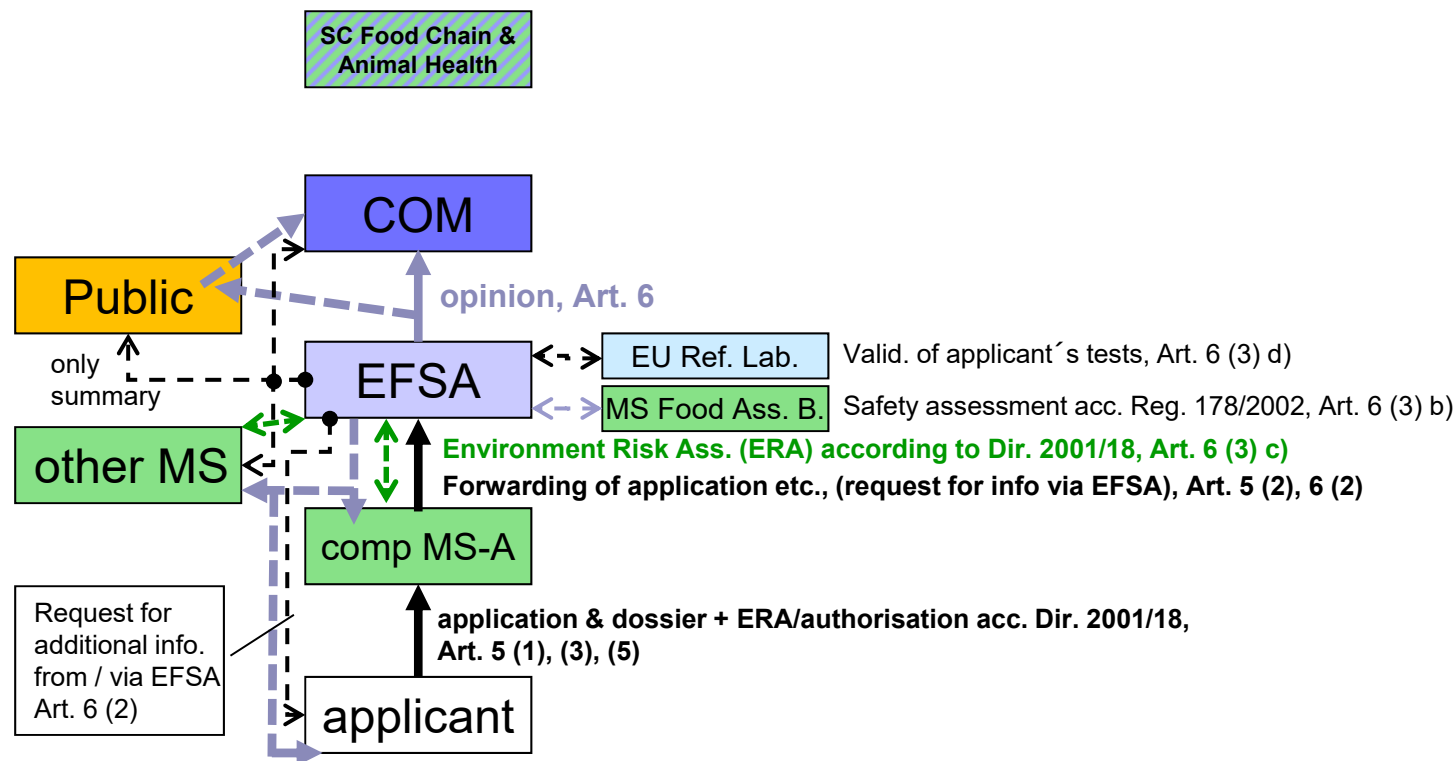
Composite procedures concerning the authorisation of genetically modified organisms for food or feed use (Reg. 1829/2003)

Authorization of GMOs



Composite procedures concerning the authorisation of genetically modified organisms for food or feed use (Reg. 1829/2003)

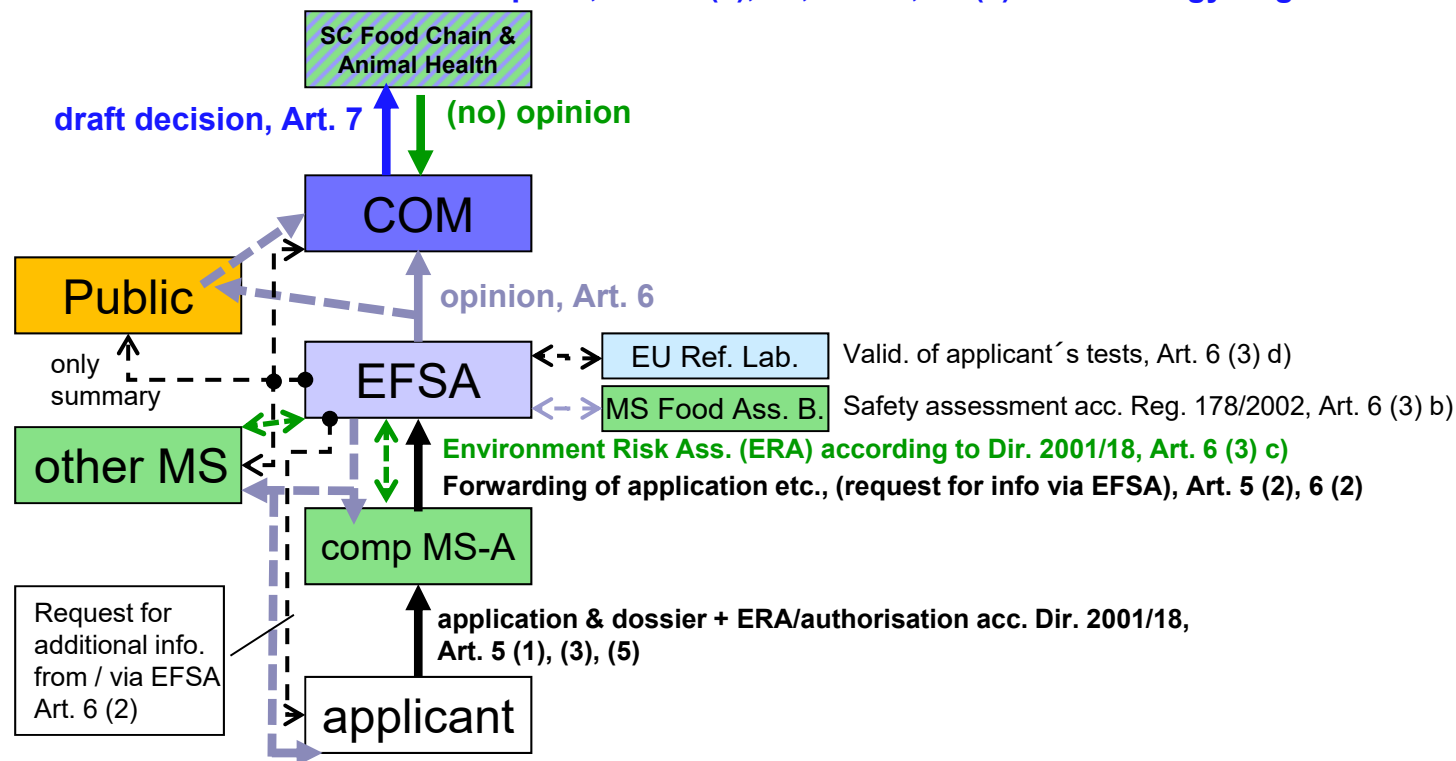
Authorization of GMOs



Composite procedures concerning the authorisation of genetically modified organisms for food or feed use (Reg. 1829/2003)

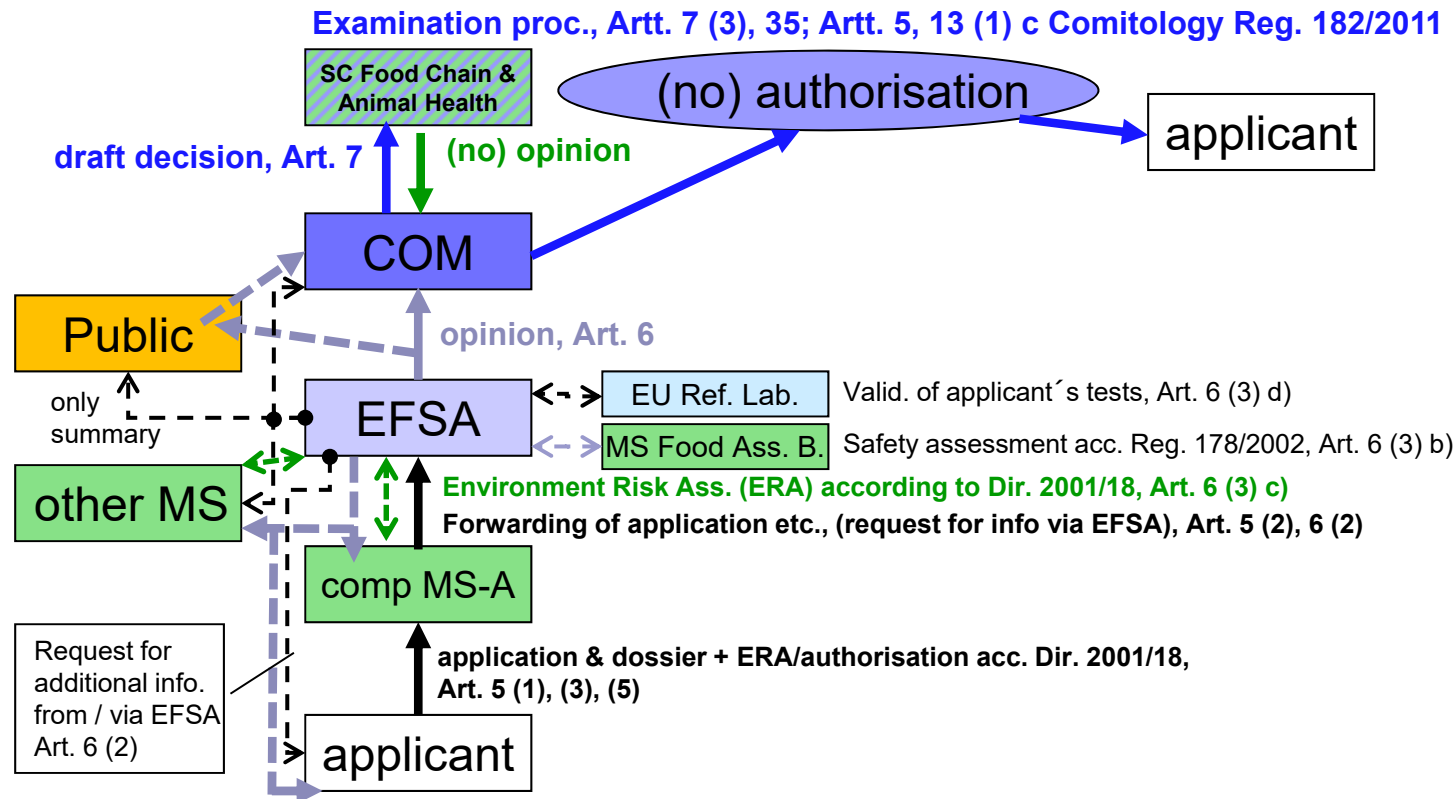
Authorization of GMOs

Examination proc., Artt. 7 (3), 35; Artt. 5, 13 (1) c Comitology Reg. 182/2011



Composite procedures concerning the authorisation of genetically modified organisms for food or feed use (Reg. 1829/2003)

Authorization of GMOs

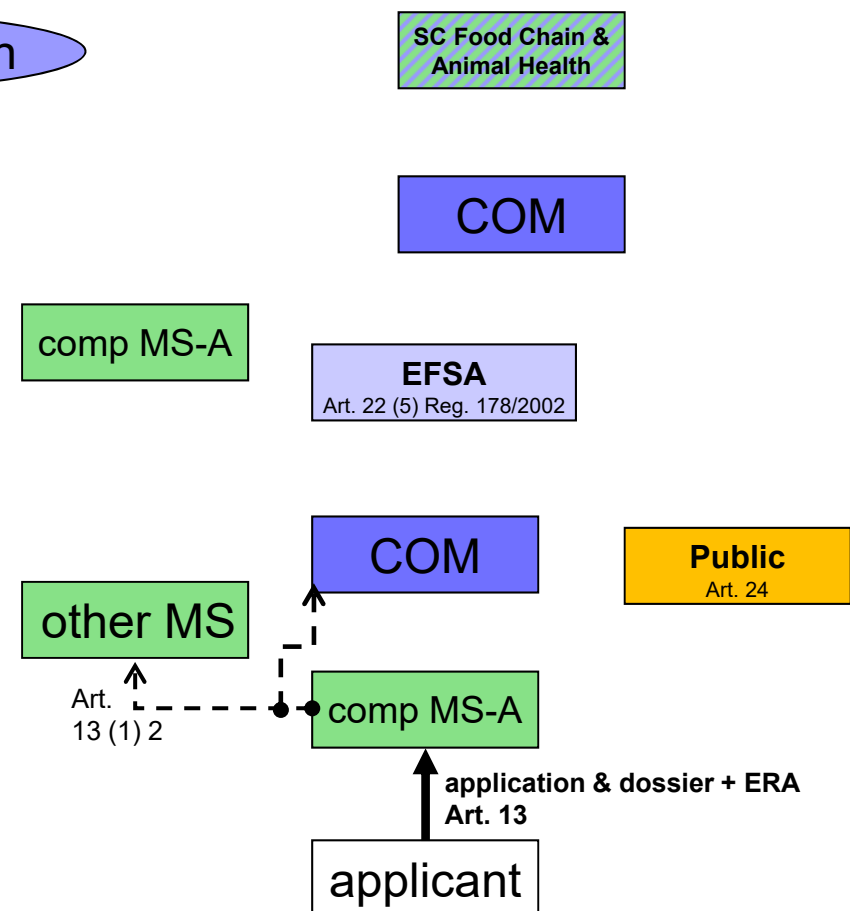
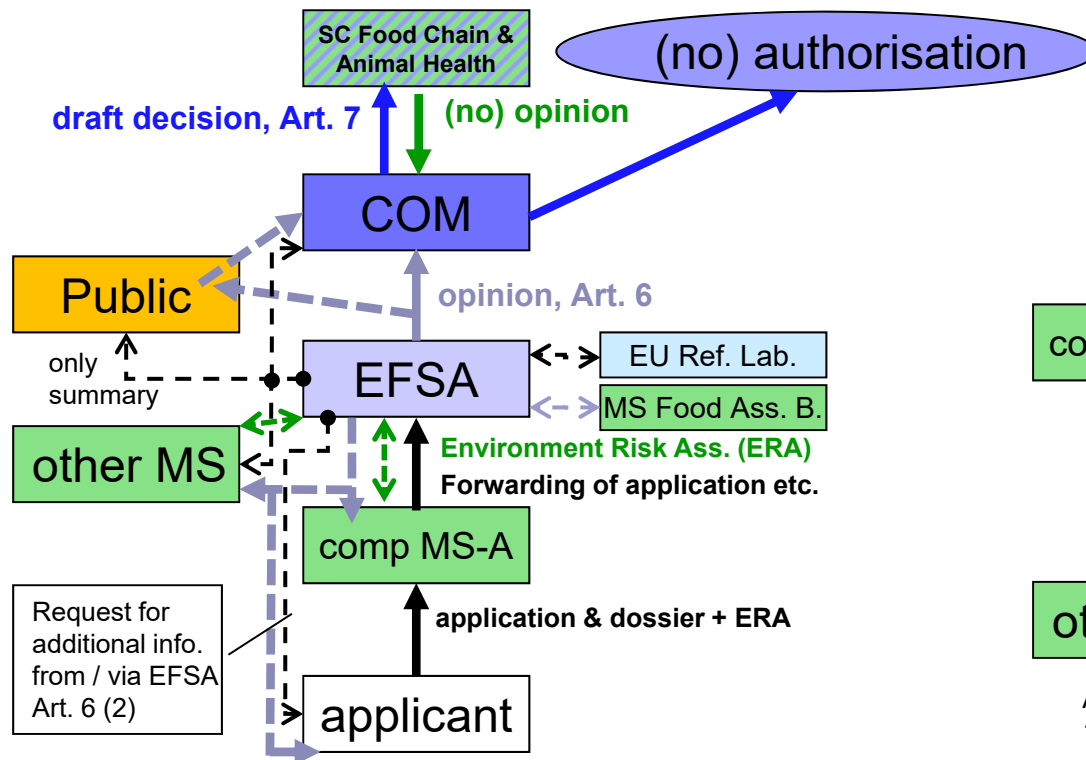


Composite procedures concerning the authorisation of genetically modified organisms

Authorization of GMOs for food or feed use under Reg. 1829/2003

Authorization of GMOs products under Dir. 2001/18

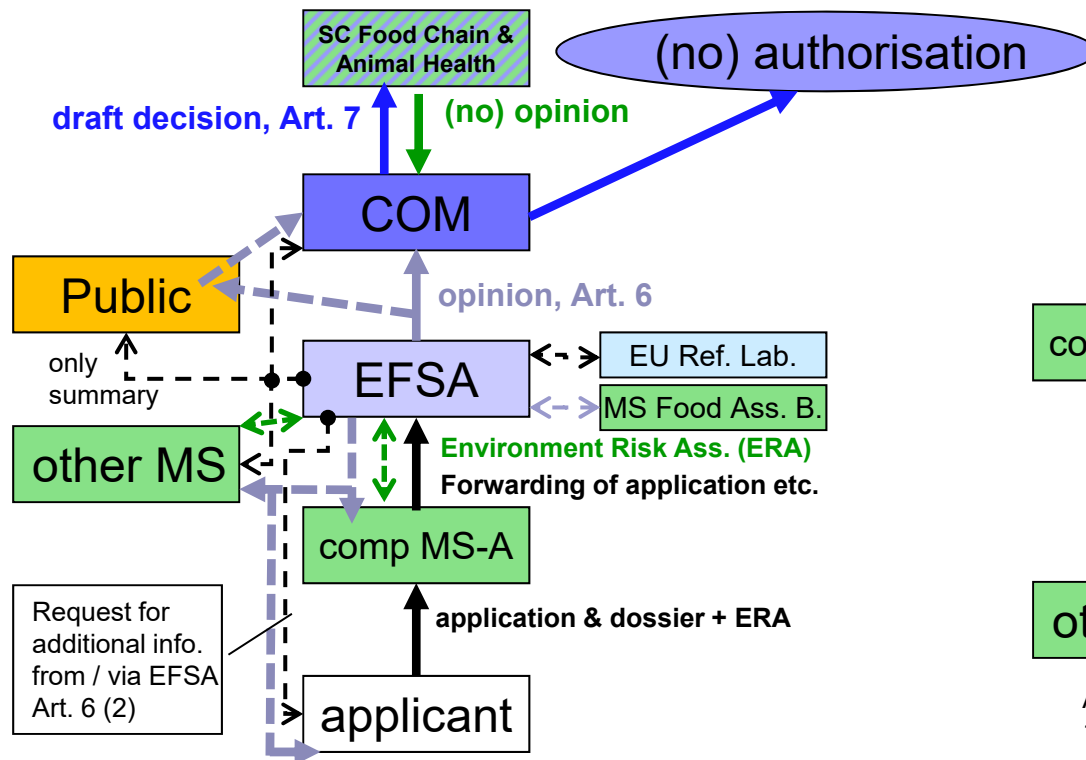
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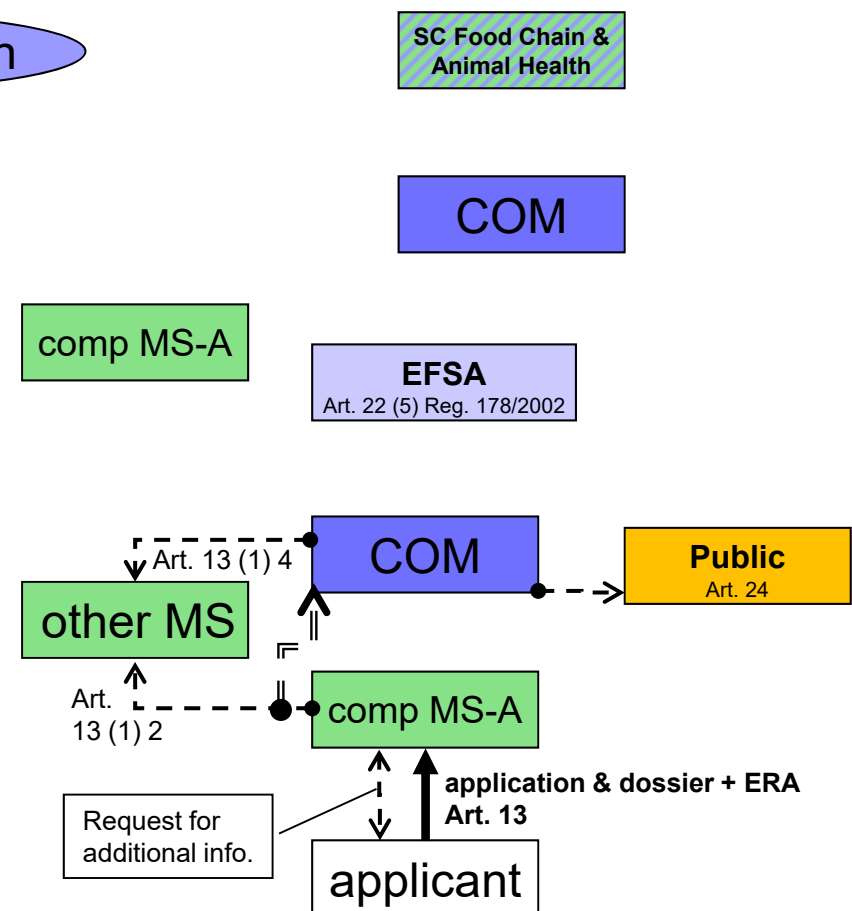
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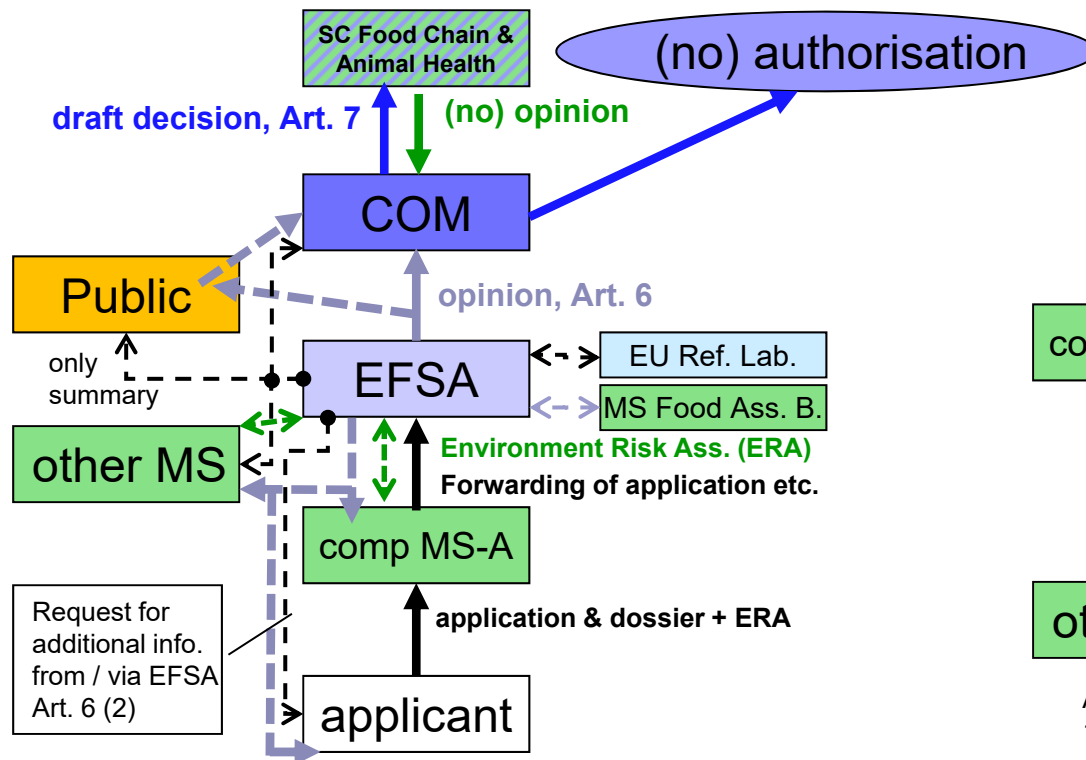
Authorization of GMOs products under Dir. 2001/18



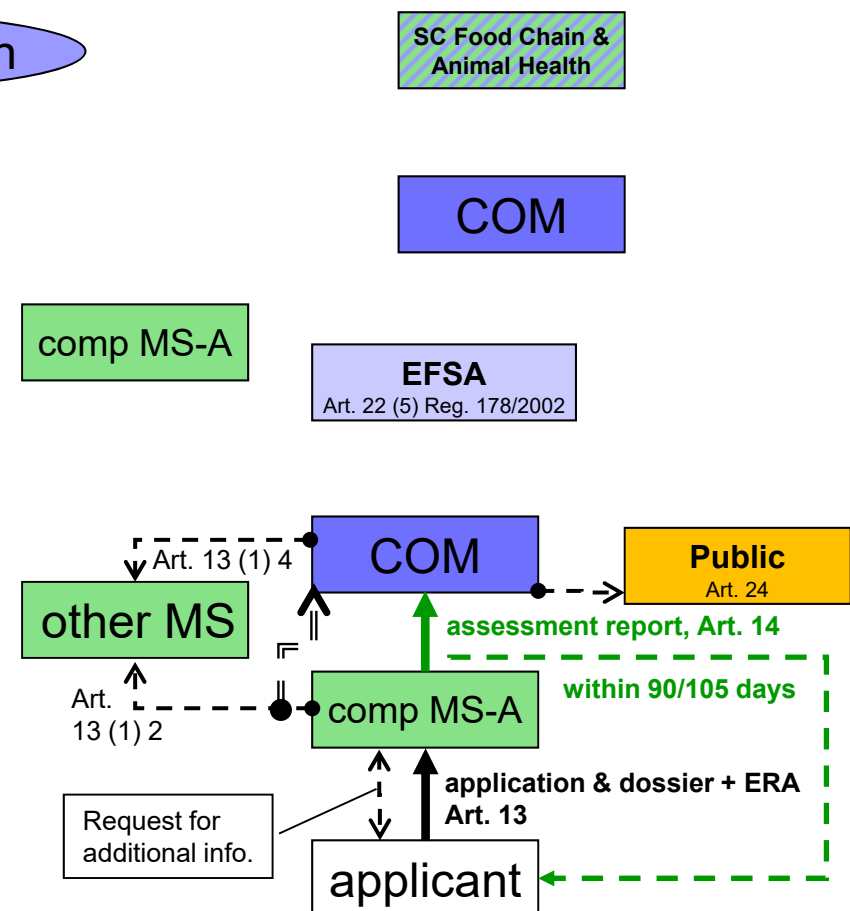
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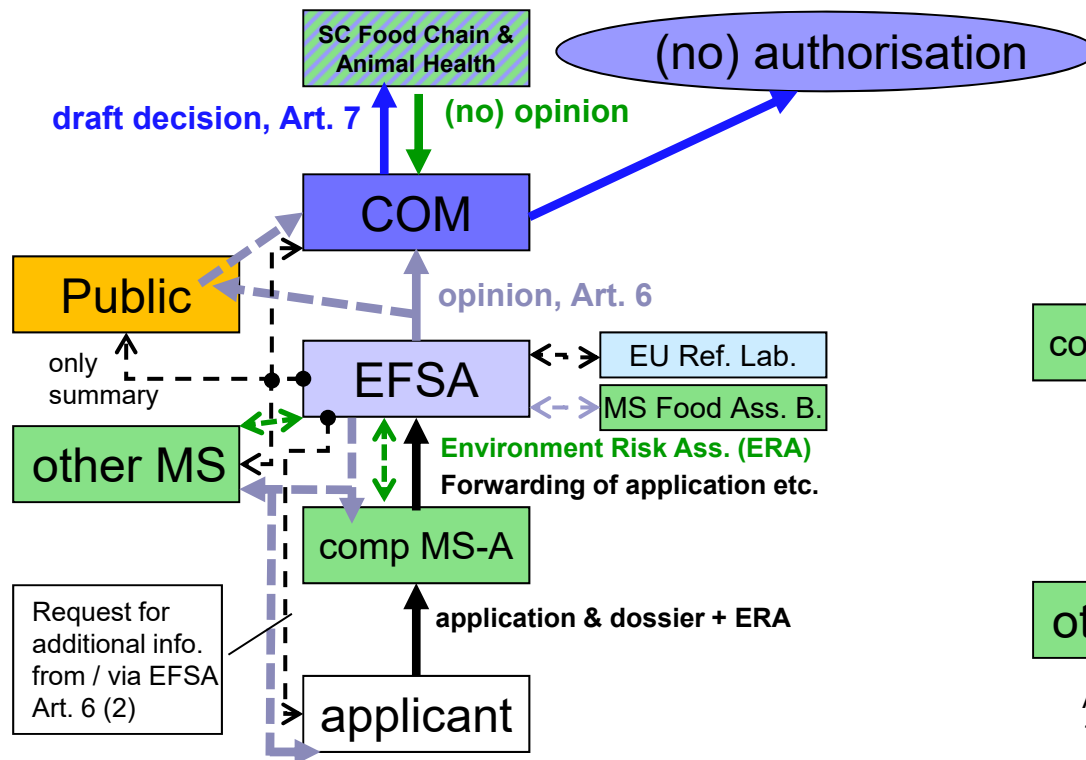
Authorization of GMOs products under Dir. 2001/18



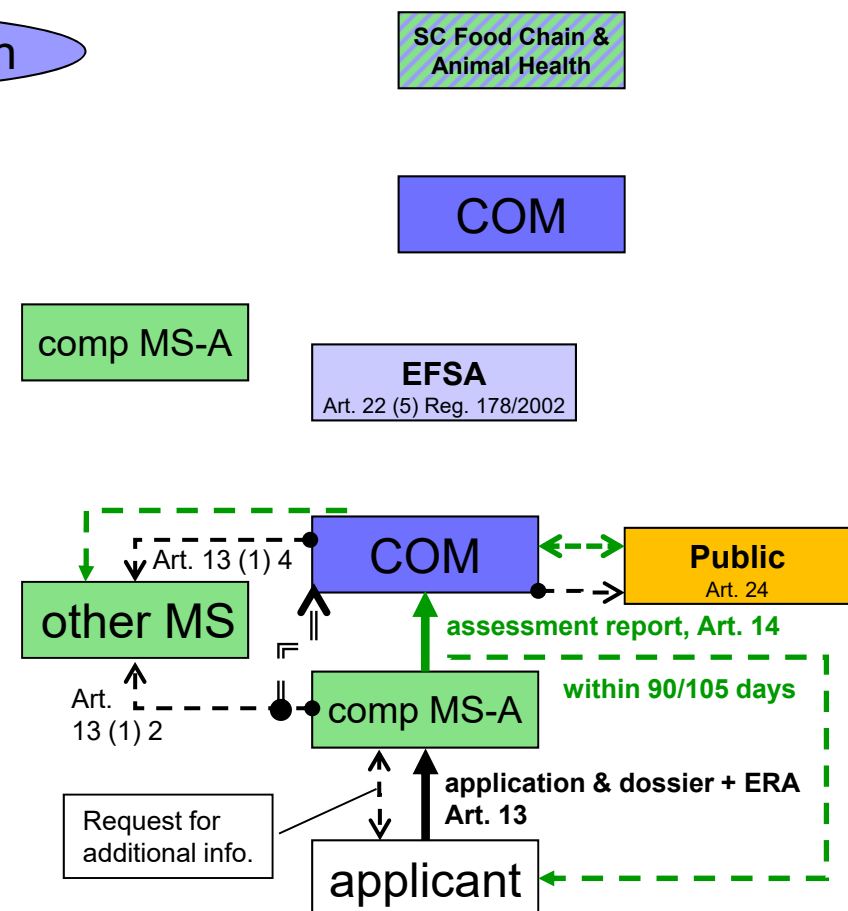
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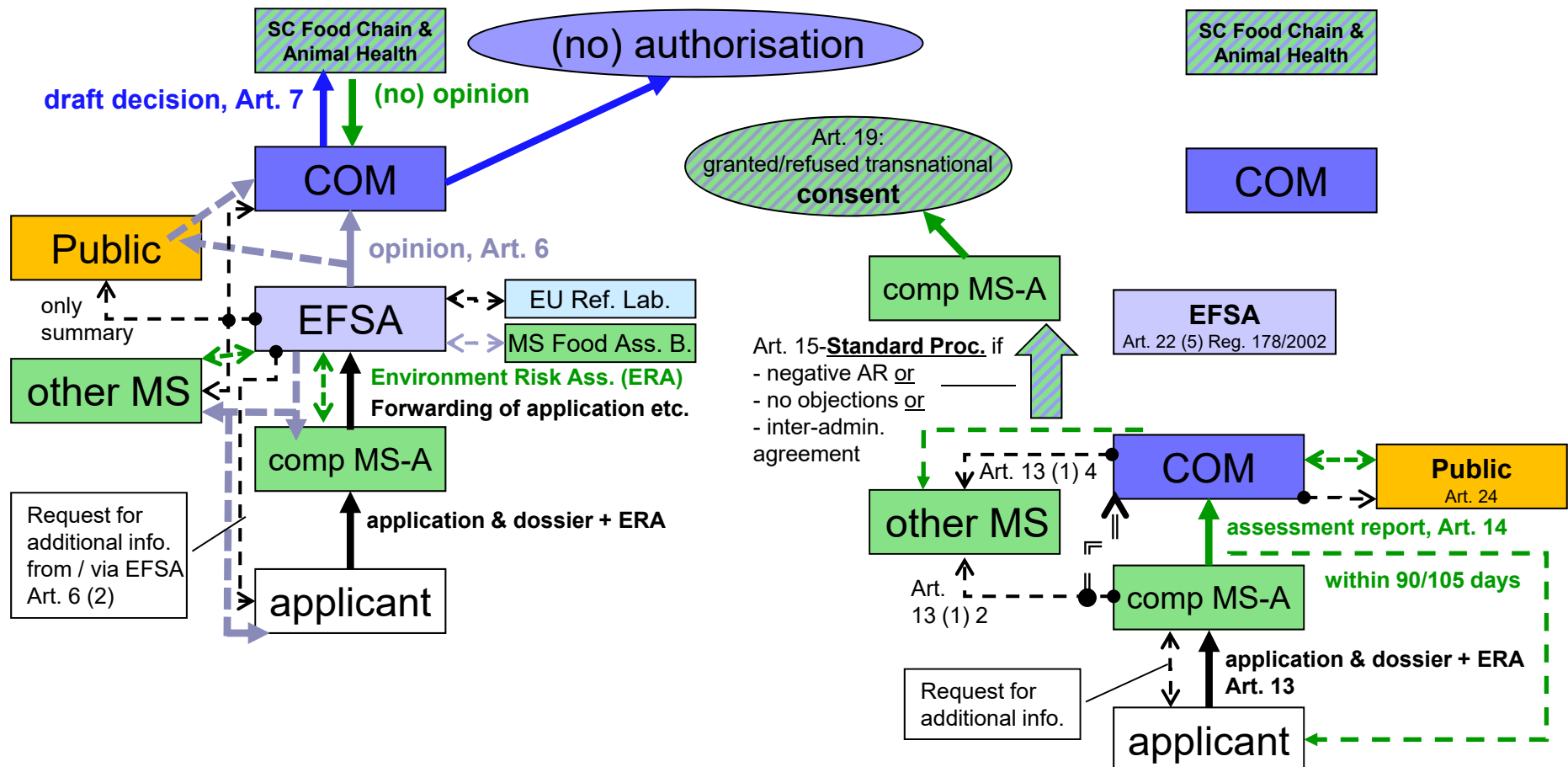


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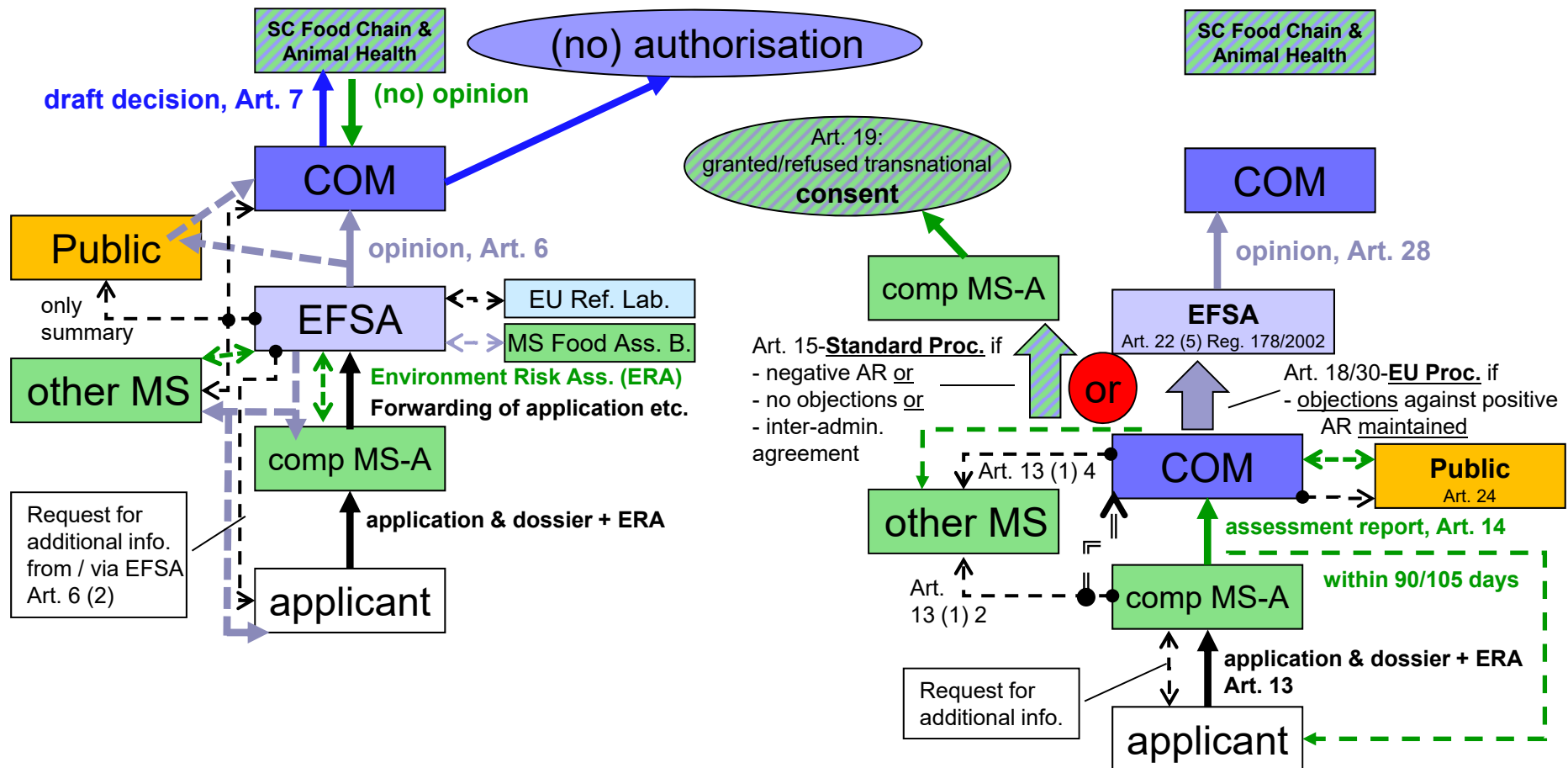


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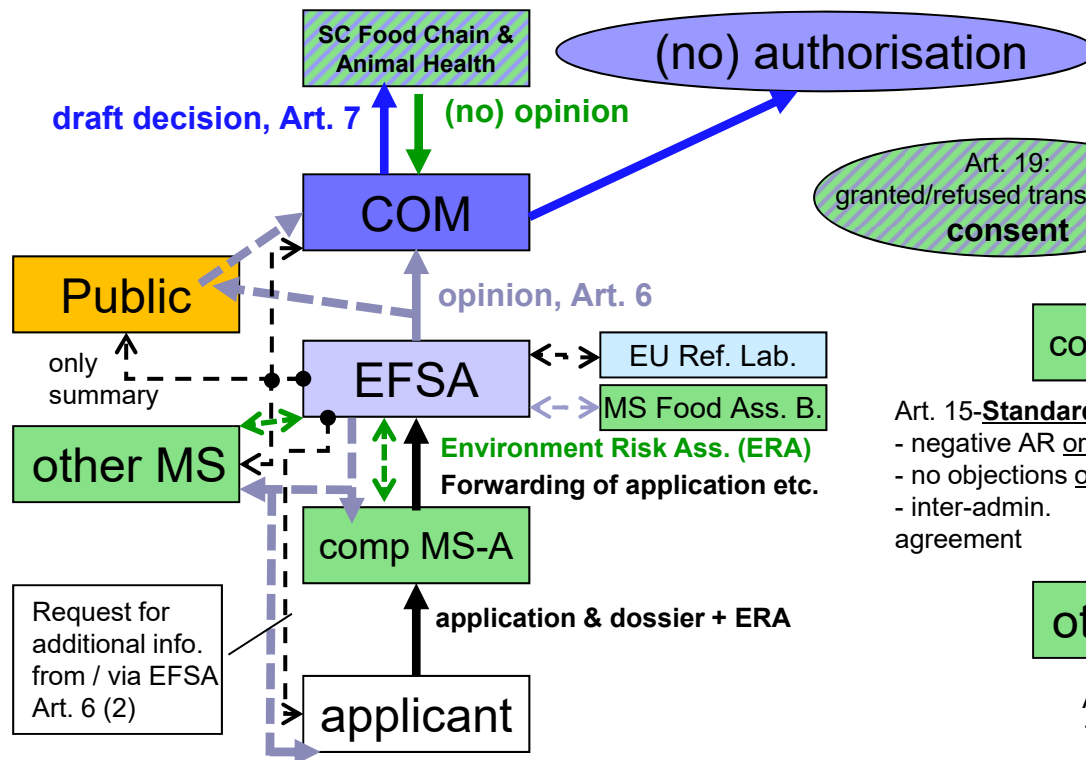
Examination proc., Artt. 7 (3), 35; Artt. 5, 13 (1) c Comitology Reg. 182/2011



Composite procedures concerning the authorisation of genetically modified organisms

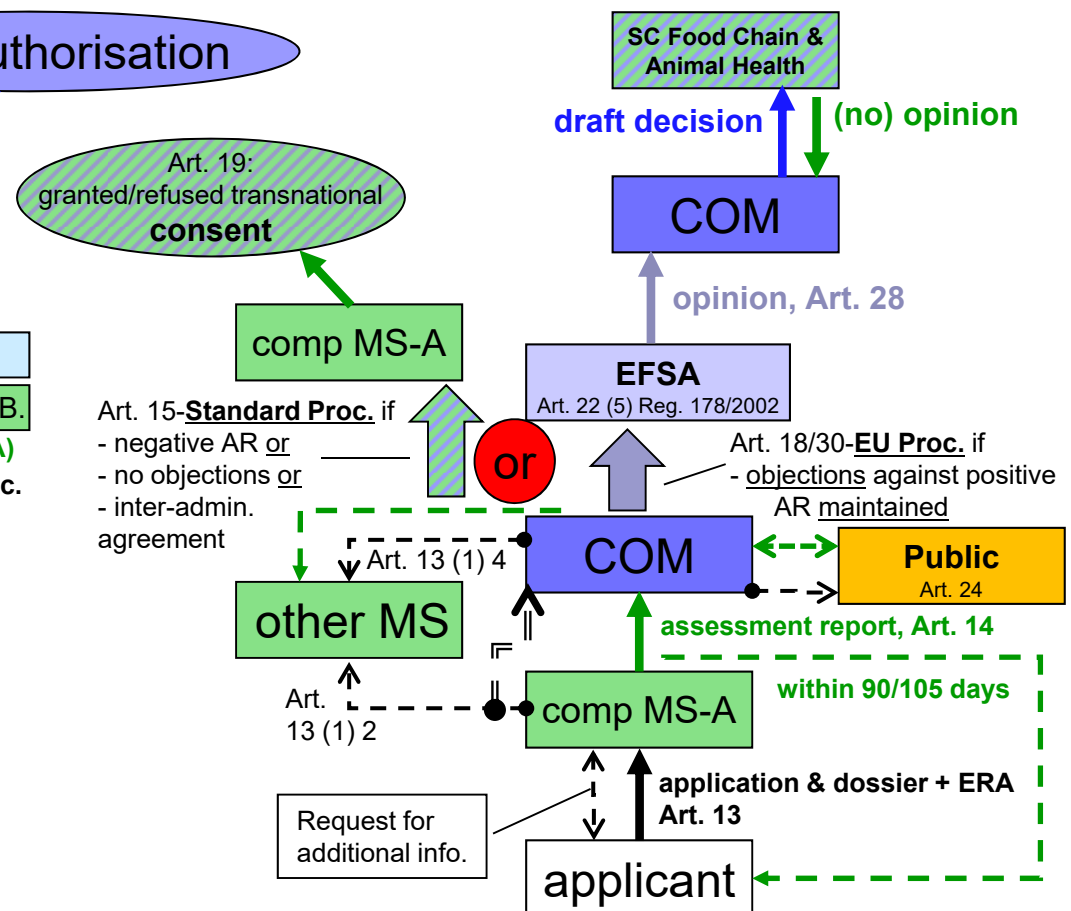
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Authorization of GMOs products under Dir. 2001/18

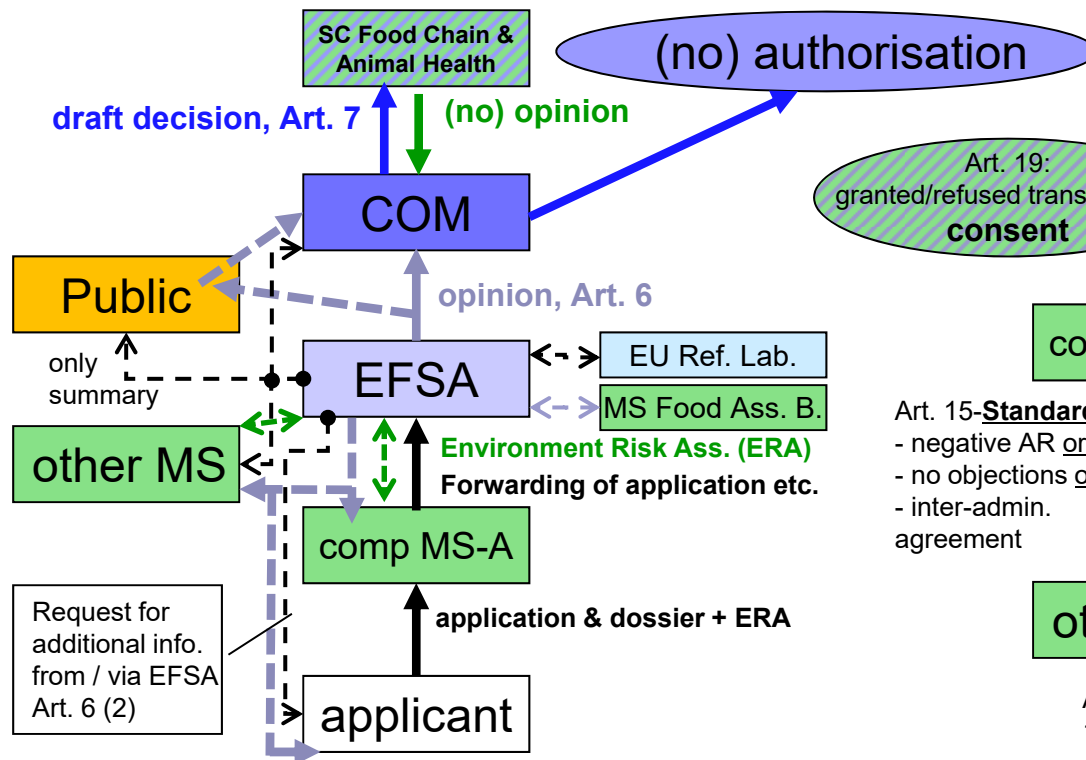
Examination proc., Artt. 18 (1), 30



Composite procedures concerning the authorisation of genetically modified organisms

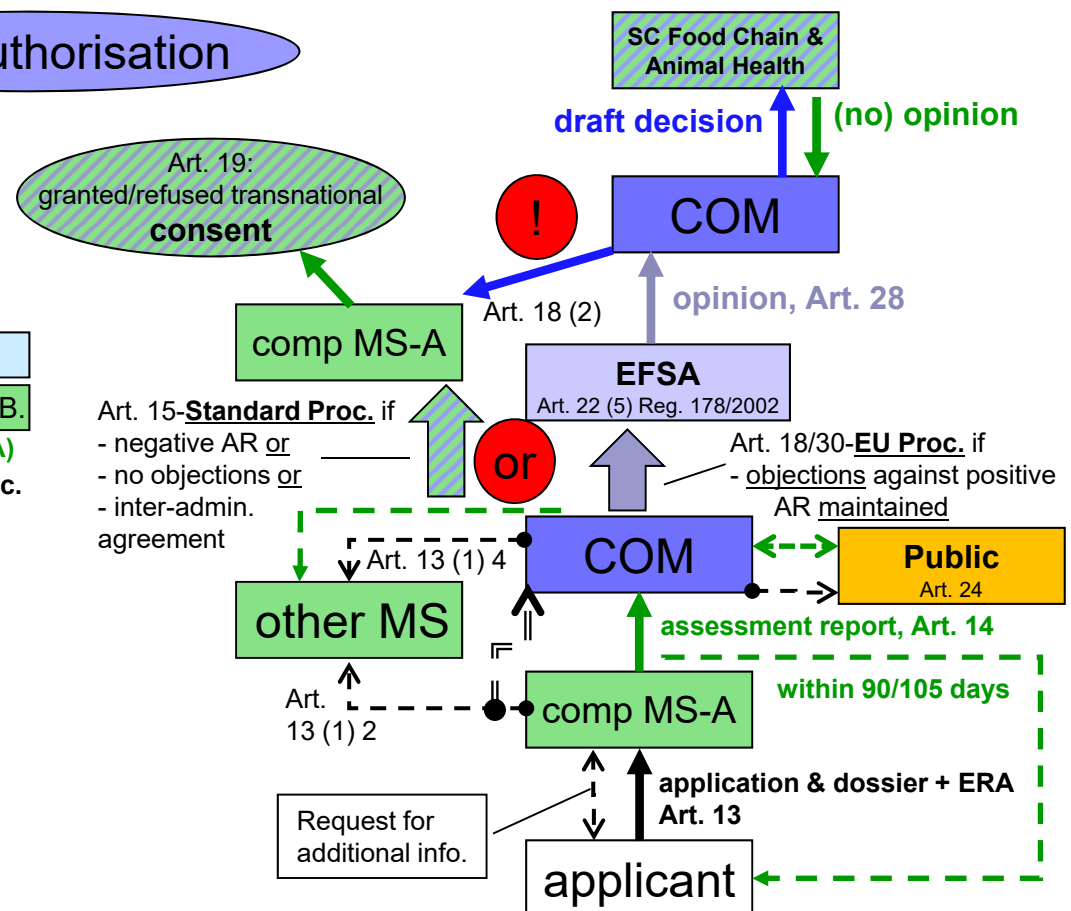
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Examination proc., Artt. 7 (3), 35; Artt. 5, 13 (1) c Comitology Reg. 182/2011



Authorization of GMOs products under Dir. 2001/18

Examination proc., Artt. 18 (1), 30



Europeanized authorisations for products and judicial competences

Union level

Direct implementation



1

Composite procedures



3

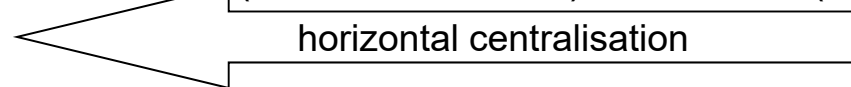
2a

2

Transnational decisions („one for all“)

Reference decisions („one in advance“)

Separated implementation („everyone on its own“)

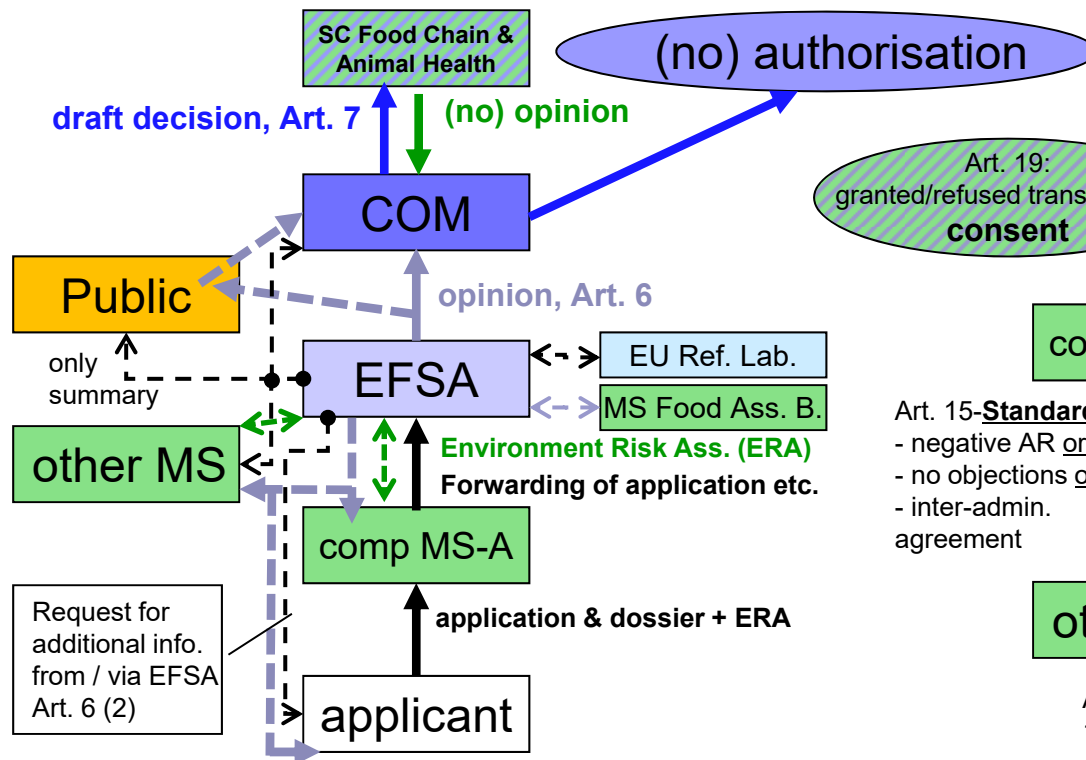


Member state level

Composite procedures concerning the authorisation of genetically modified organisms

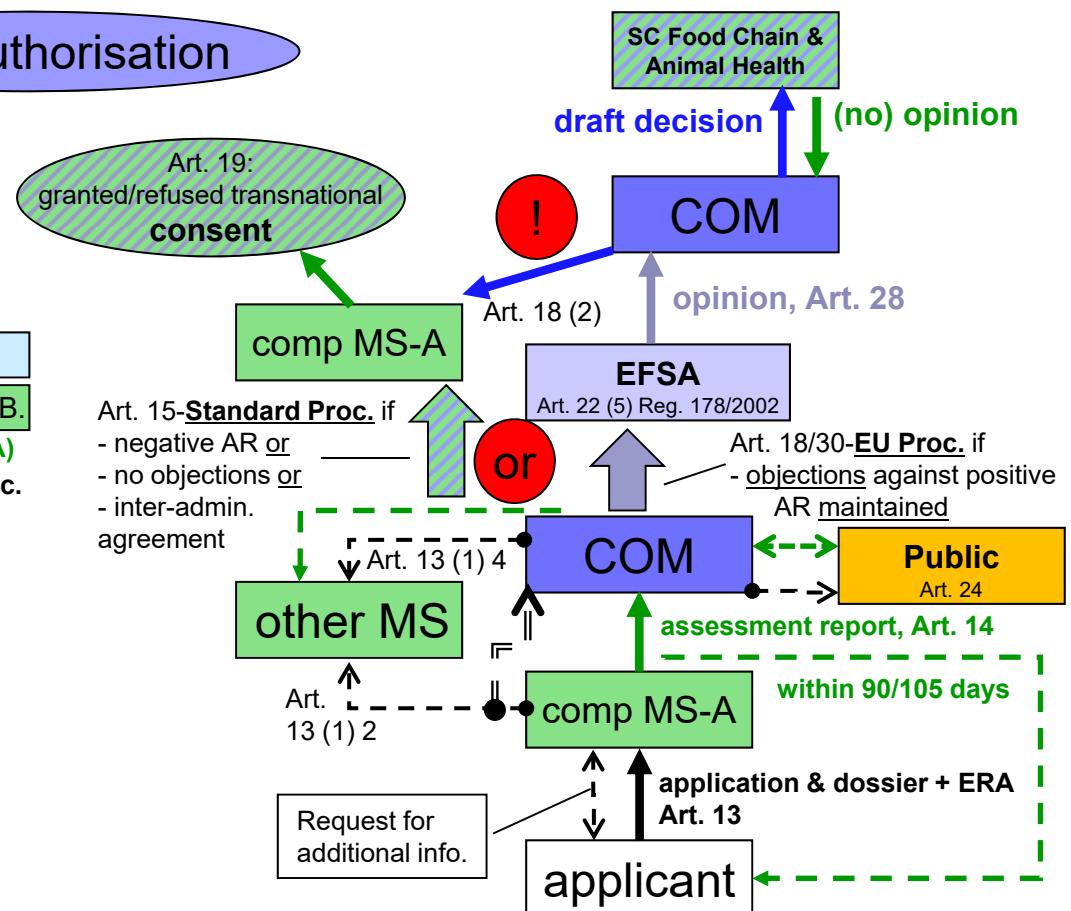
Authorization of GMOs for food or feed use under Reg. 1829/2003

Examination proc., Artt. 7 (3), 35; Artt. 5, 13 (1) c Comitology Reg. 182/2011



Authorization of GMOs products under Dir. 2001/18

Examination proc., Artt. 18 (1), 30



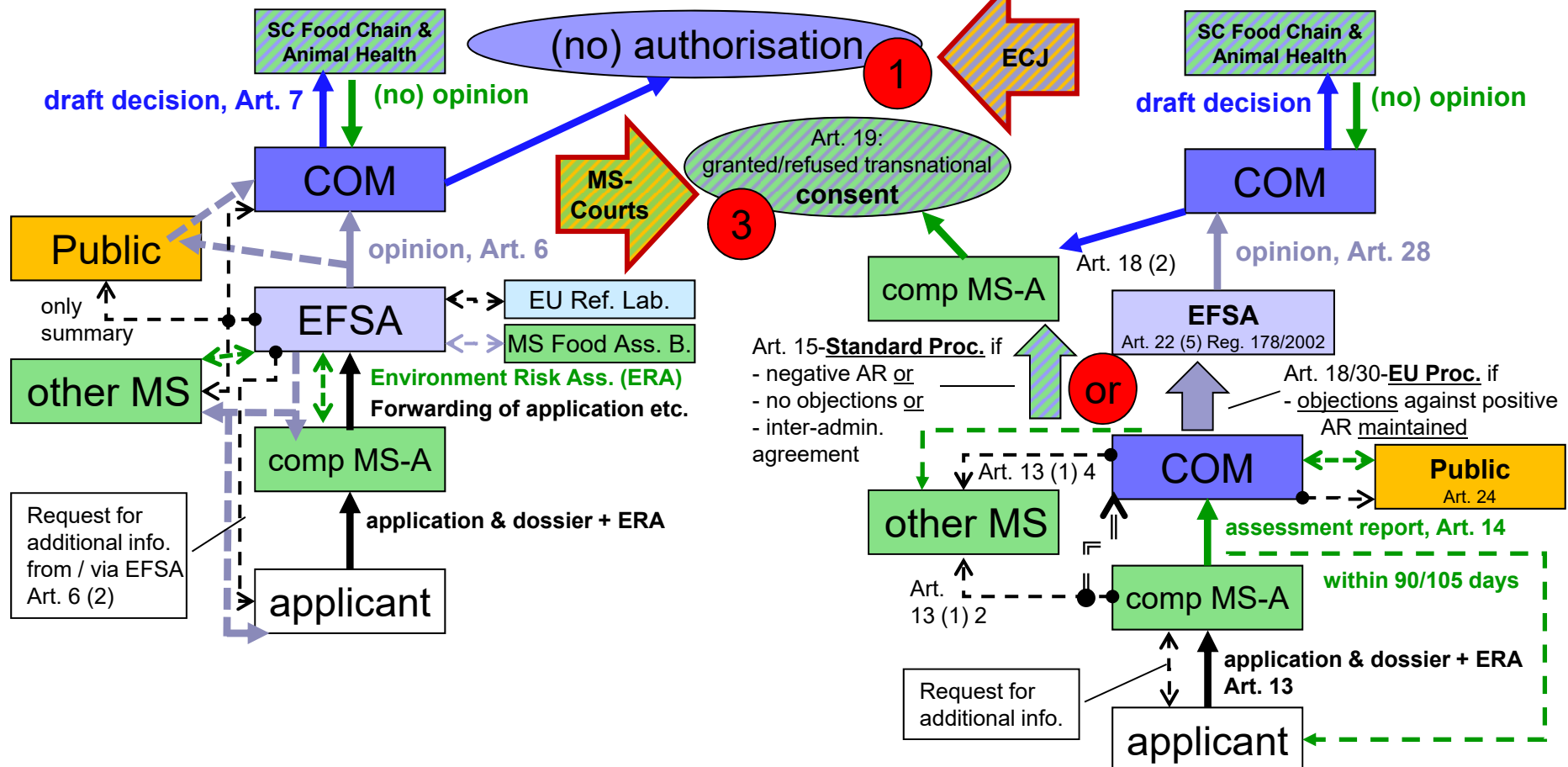
Composite procedures concerning the authorisation of genetically modified organisms

Authorization of GMOs for food or feed use under Reg. 1829/2003: „Direct implement.“

Authorization of GMOs products under Dir. 2001/18: Transnational decision („one for all“)

Examination proc., Artt. 7 (3), 35; Artt. 5, 13 (1) c Comitology Reg. 182/2011

Examination proc., Artt. 18 (1), 30

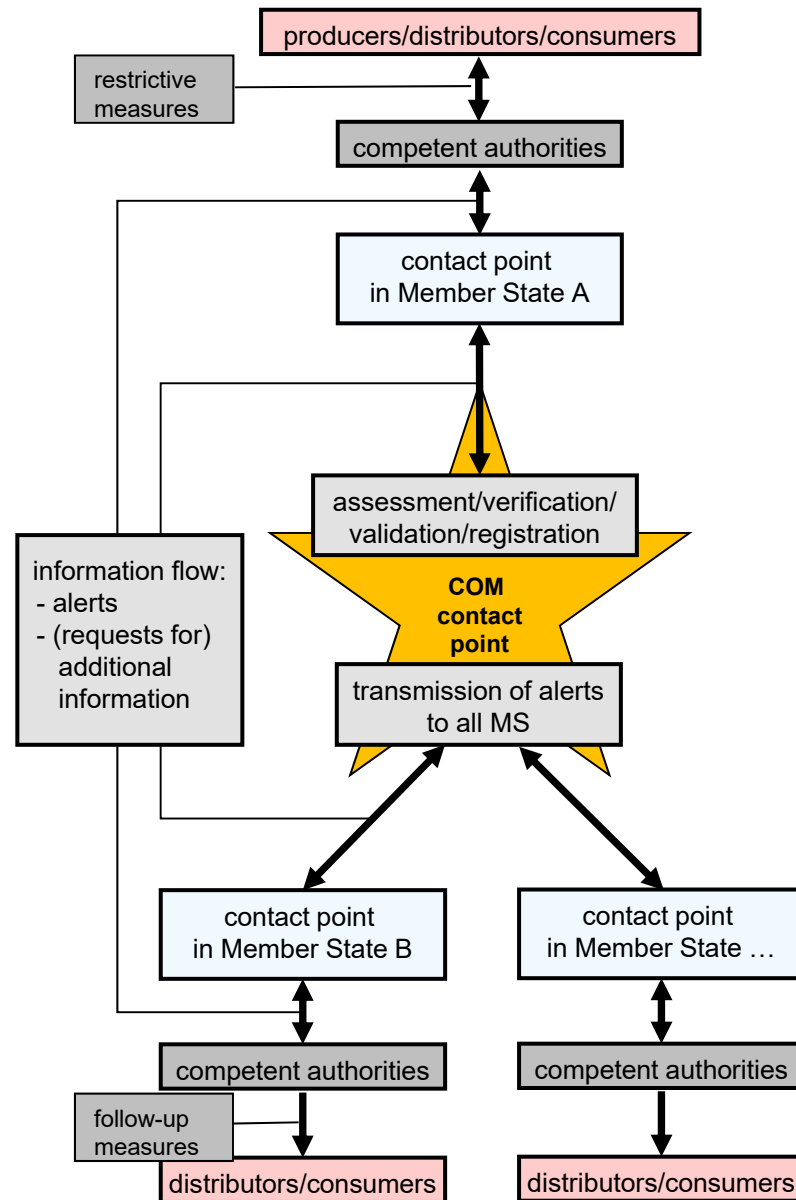


RASFF, RAPEX

RAPEX: Rapid Alert System for non-food consumer products

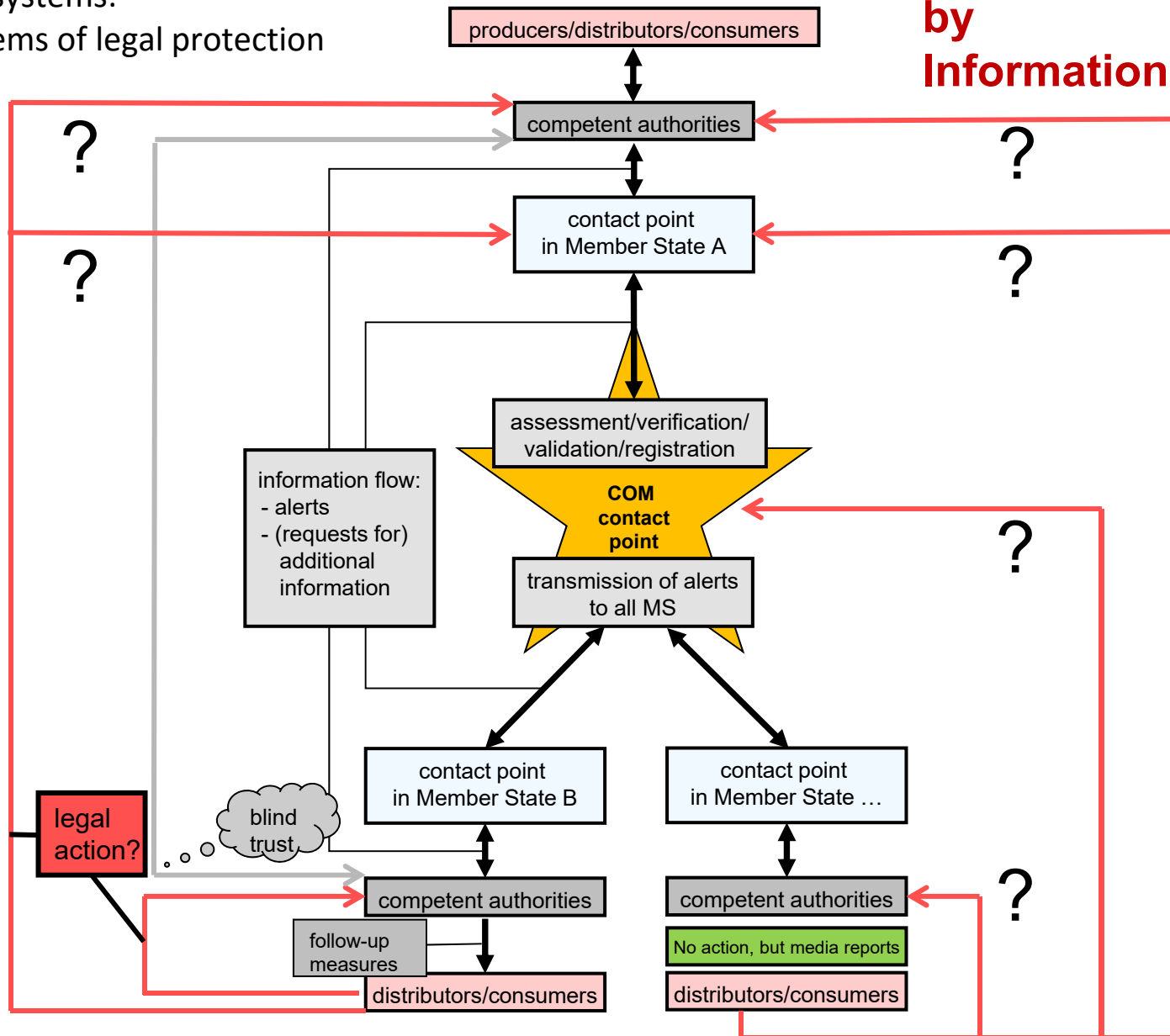
RASFF: Rapid Alert System for Food and Feed

Shared implementation by Information networks



Alert systems:
problems of legal protection

**Shared implementation
by
Information networks**



Brexit

- The legal framework: Art. 50 TEU



1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A **Member State** which decides to withdraw shall notify the European Council of its intention. In the light of the **guidelines provided by the European Council**, the **Union [COM?!] shall negotiate** and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be **concluded on behalf of the Union by the Council**, acting by a qualified majority, after obtaining the **consent of the European Parliament**.
3. **The Treaties shall cease to apply to the State** in question from the date of entry into force of the withdrawal agreement or, failing that, **two years after the notification** referred to in paragraph 2, **unless** the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
4. (...)

Brexit

- options for England & Wales / Scotland / Northern Ireland



- The Norwegian Model: Full Single Market “by Fax”
 - Full access to the single market including banking passport
 - But
 - Free movement of workers included (not Schengen for Non-EU-migrants!)
 - No voice or vote in new (binding) single market rules
 - Obligation to contribute to the EU budget without voice/vote on expenditures

- The Swiss “Cheese” Model: limited Single Market access
 - Combination of various agreements for different policy fields
 - No banking passport [and termination of Internal Market access in the future?]
 - until recently because of non-cooperation in tax matters (Banking secret); now resolved by automatic tax information exchange
 - new problems arising from a referendum obliging the Swiss government to negotiate a quantitative limit to migration from EU countries to Switzerland

Market freedoms as one component of the establishment of the Common / Single Market

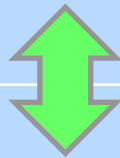


The Brexit trade-off

Negative coordination


Positive coordination

- Market freedoms  <=  
-   Goods, Art. 28 ff.; 110-112 (tax)
 - Establishment, Art. 49, 51 f, 54 f
 -  Services, Art. 56 f, 60 ff
 -  Capital, Art. 63 ff.
- Market freedoms
-  Workers, Art. 45






- harmonisation: Art 114 and
- Art. 31(customs); Art. 113 (tax)
 - Art. 50, 53
 - Art. 59, 58/90 ff (transport)
 - [Art 119 ff (EMU)]   ↔   
 - Art. 46 ff; 151 ff (social security) 
 - Art. 145 ff (employment)

Non-discrimination, Art. 18 ff.




- Competition law
-  Cartels, misuse of market power, mergers, Art. 101 ff.

- Consumer Protection, Art. 169
Environment, Art. 191 ff
Energy, Art. 194

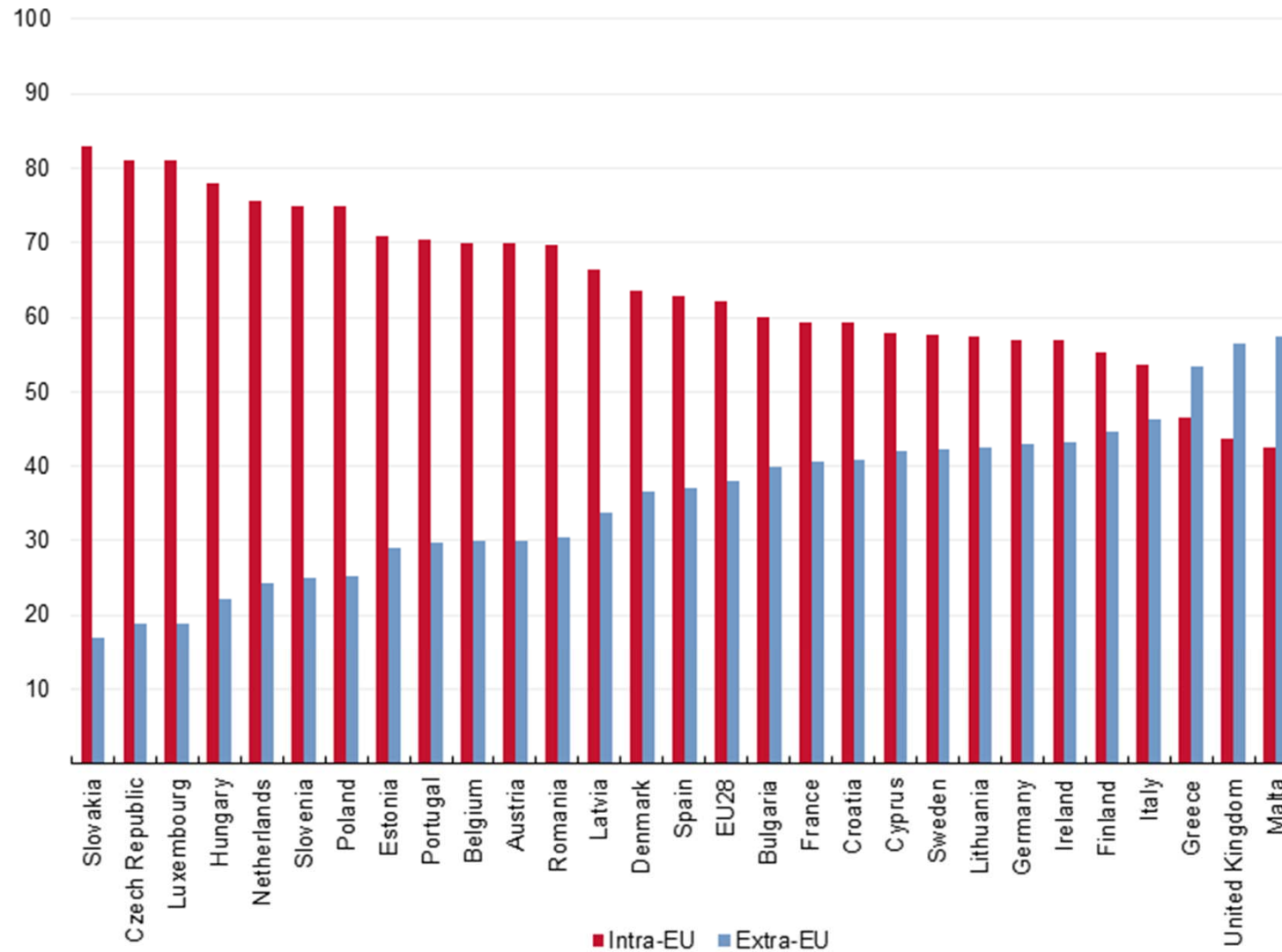
- Competition law  ↔ 
- Public undertakings, Art. 106

- services of general econ. interest, Art 14 
Trans-European Networks, Art. 170 ff

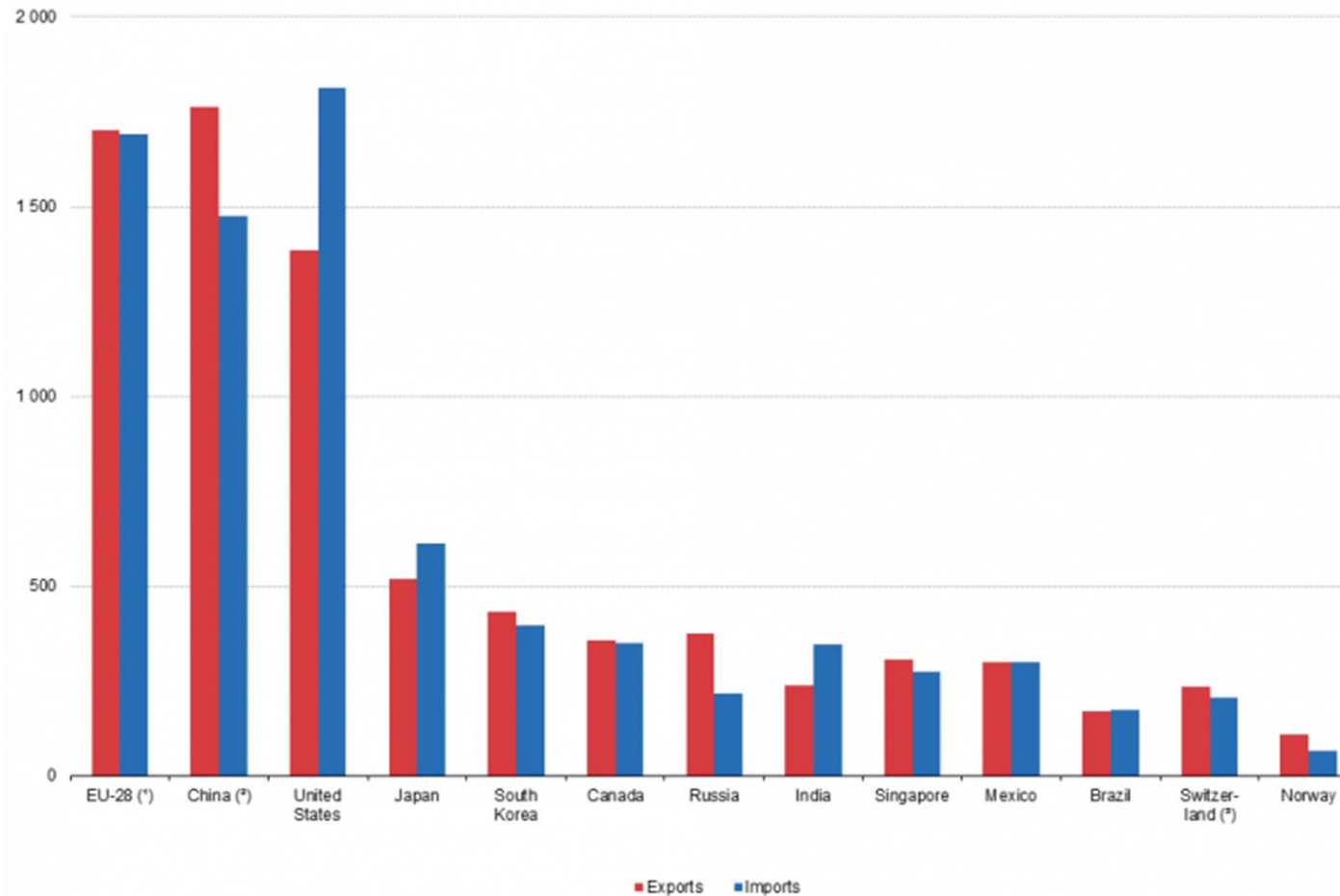
- Competition law
- Prohibition of state aids, Art. 107ff.

- Common Agricultural Policy, Art. 38 ff. 
Cohesion, Art. 174 ff/ESF, Art 162 f   

Eurostat: Intra-EU trade in goods - recent trends



Eurostat: International trade in goods



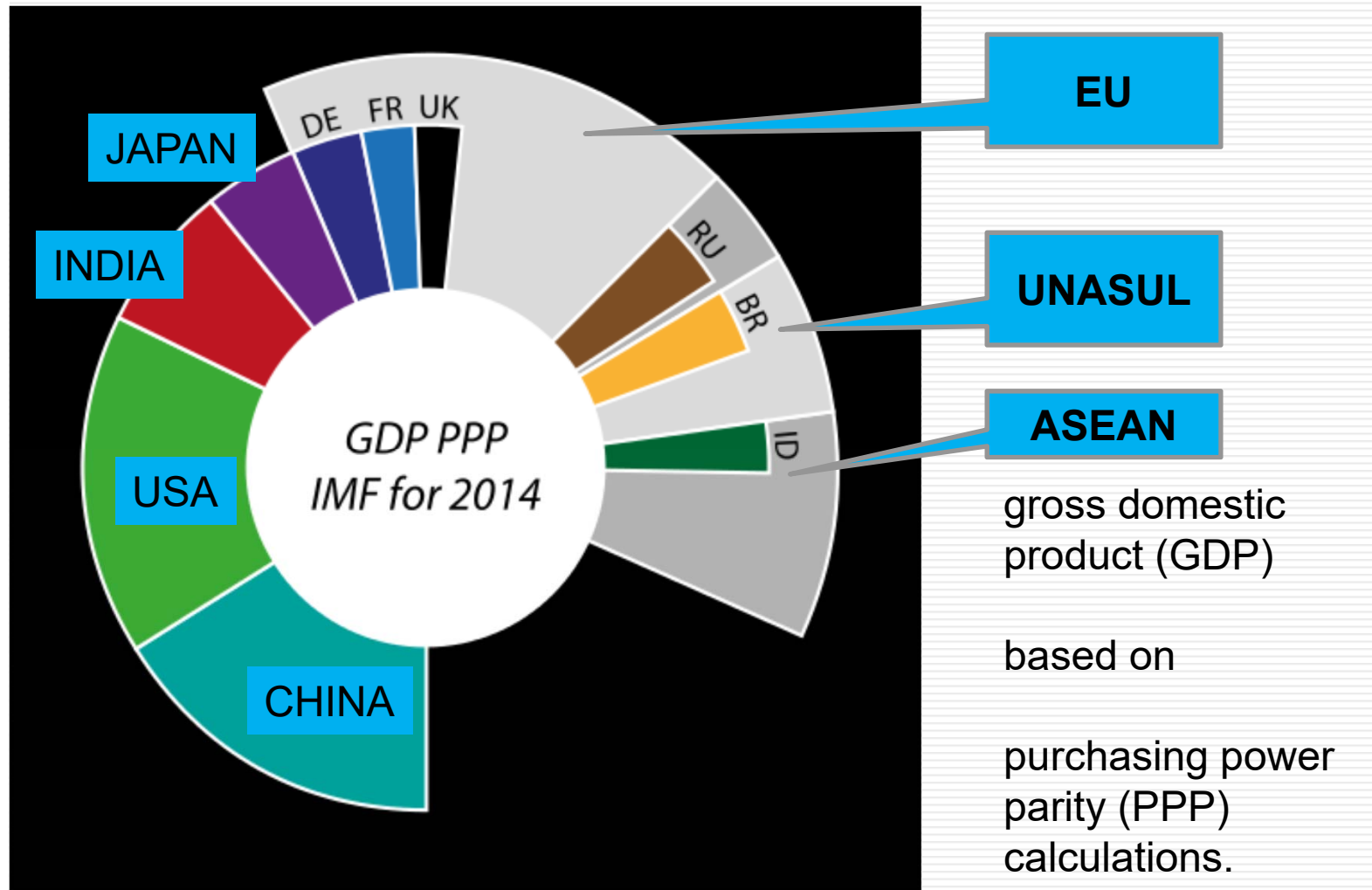
(*) External trade flows with extra EU-28.

(*) Excluding Hong Kong.

(*) Including Liechtenstein.

Source: Eurostat (online data codes: ext_it_introle and ext_it_intercc)

Outlook: Europe after the Brexit – between globalization and re-nationalization



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History and basic structures of the EU

- The founding period (1950-1958)
 - ECSC (Paris 1952), EEC + Euratom (Rome 1958)
 - BE, DE, FR, IT, LUX, NL (the original six)
- “consolidation” (and enlargement) ↔ stagnation (1958-1986)
 - Merger Treaty 1967: three communities with common institutions
 - French empty chair policy against Qual. Majority Voting (6/65-1/66) + Luxembourg Accords
 - supranationalism ↔ inter-governmentalism
 - 1973: DK, IRL, UK 1981: GR 1986: ES, PT => 12 MS
 - Van Gend & Loos (1963); Costa v ENEL (1964) Dassonville (1974); Cassis (1979)
- institutional reform and completion of the common market (1986-1993)
 - Single European Act (1986): Council/EP coop. & harmonisation (= positive integration) with qualified majority in the Council (Art. 100a EEC/Art. 114 TFEU)
 - EU as a neo-liberal economic concept ↔ a social model
- “Constitutionalization” (1993-2007): EU (= EC; CFSP; JHA/PJCC); Co-Dec Proc; EMU; CFR
 - Maastricht (1993); Amsterdam (1999); Nice (2003); [Const.T (2004)]; Lisbon (2007)
 - 1995: A, FL, SWE (EU-15) 2004: CS, CY, ET, LT, LV, MT, PL, SK, SL, HU 2007: BG, RO
- Crisis – reinforcement of intergovernmentalism – re-nationalisation? (2008-...)
 - financial crisis (Lehmann / state debts) – refugee crisis – Brexit
 - 2013: Croatia (EU-28)



Prof. Dr. Jens-Peter Schneider

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– Public Law, European Administrative and Information Law



Albert-Ludwigs-Universität Freiburg

| | | |
|--------------------|----------------|---------------------|
| Freiburg: | 225.000 | inhabitants |
| University: | 25.000 | students |
| Faculty: | 2.200 | law students |

**UNI
FREIBURG**



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– Public Law, European Administrative and Information Law

Introduction to European Public Law

Post-Graduate Program of the Law Faculty
University of São Paulo, September 12-16 2016



*Faculdade de Direito da
Universidade de São Paulo*

Additional material and references

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History

of the EU



➤ The background: the traditional enmity between Germany and France & World War I

Napoleonic wars

=> Battle of Jena (1806) with a nearly total defeat of the Prussian army

=> Befreiungskriege 1813/14: the Battle of Nations at Leipzig 1813

Rheinkrise 1840/41: Ansprüche Frankreichs auf alle linksrheinischen Territorien und nationalistische Reaktion in DE

⇒ „Sie sollen ihn nicht haben, den freien deutschen Rhein“

⇒ Die Wacht am Rhein

⇒ Lied der Deutschen (seit 1922 deutsche Nationalhymne)

Deutsch-Französischer Krieg 1870/71 und die Reichsgründung in Versailles

WW I und Vertrag von Versailles

<http://mtviewmirror.com/wp-content/uploads/world-war-2.jpg>

https://en.wikipedia.org/wiki/World_War_I

<http://i2.cdn.turner.com/cnnnext/dam/assets/140828132519-06-world-war-ii-horizontal-large-gallery.jpg>

<https://commons.wikimedia.org/wiki/File%3AWorldWarII-DeathsByCountry-Barchart.png>



History of the EU

➤ The background: the traditional enmity between Germany and France & World War I

➤ The founding period (1950-1953)

- ECSC (1950-1958), EAEC (1958-1958)
- ECSC, EAEC, OEEC (EU - the original one)

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From https://de.wikipedia.org/wiki/Deutsche_Reichsgr%C3%BCndung#/media/File:Wernerprokla.jpg

Frank Hurley - This image is available from the Collection Database of the Australian War Memorial under the ID Number: E01220 This tag does not indicate the copyright status of the attached work. A normal copyright tag is still required. See Commons:Licensing for more information.Български | English | Français | हिन्दी | Македонски | Português | +/-Polish Wikipedia uploaded by pl:Wikipedysta:Tompot, Gemeinfrei,

<https://commons.wikimedia.org/w/index.php?curid=1446191>

<http://www.badische-zeitung.de/ausland-1/wie-schueler-heute-das-schlachtfeld-von-verdun-erleben--91145265.html>

➤ The European Coal and Steel Community (1950-1957)

- Single European Act (1986), Council of Economic Cooperation with qualified majority in the Council (Art. 100a, 106/Art. 117-118)

➤ "Community pillar" (1993-2007) (EEC, EC, ECSP, EEA/PRC), EMU, CFR

- Maastricht (1992), Amsterdam (1997), Nice (2001), Council (2004), Lisbon (2007)
- 1991: A, H, SWF 2002: CS, FT, IV, ME, PI, W, S, EU 2007: U3, R3

➤ Crisis - reinforcement of intergovernmentalism - re-nationalisation? (2008 -)

- financial crisis - eurozone crisis - Brexit
- 2017 - Croatia