

**A BRIEF GUIDE TO THE EUROPEAN UNION AND ITS
LEGISLATIVE PROCESSES**

June 2011

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List of acronyms used in this document

BoE	Bank of England
BTS	Binding Technical Standards
CBA	Cost-benefit analysis
COREPER	Committee of Permanent Representatives
CJEU	Court of Justice of the European Union
CEBS	Committee of European Banking Supervisors
CEIOPS	Committee of European Insurance and Occupational Pension Supervisors
CESR	Committee of European Securities Regulators
EBA	European Banking Authority
EBC	European Banking Committee
EC	European Community
ECON	Committee on Economic and Monetary Affairs
ECOFIN	Economic and Financial Affairs Council
ECSC	European Coal and Steel Community
EEA	European Economic Area
EEC	European Economic Community
EFC	Economic and Financial Committee
EFCC	European Financial Conglomerates Committee
EIOPA	European Insurance and Occupational Pensions Authority
EIOPC	European Insurance and Occupational Pensions Committee
EP	European Parliament
ESAs	European Supervisory Authorities
ESC	European Securities Committee
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	European Union
Euratom	European Atomic Energy Community
FSC	Financial Services Committee
MEP	Members of the European Parliament
QMV	Qualified Majority Voting
SEA	Single European Act
TEU	Treaty on European Union
TFEU	Treaty of the Functioning of the European Union
WTO	World Trade Organization

1. Introduction

1.1 What is the European Union (EU)?

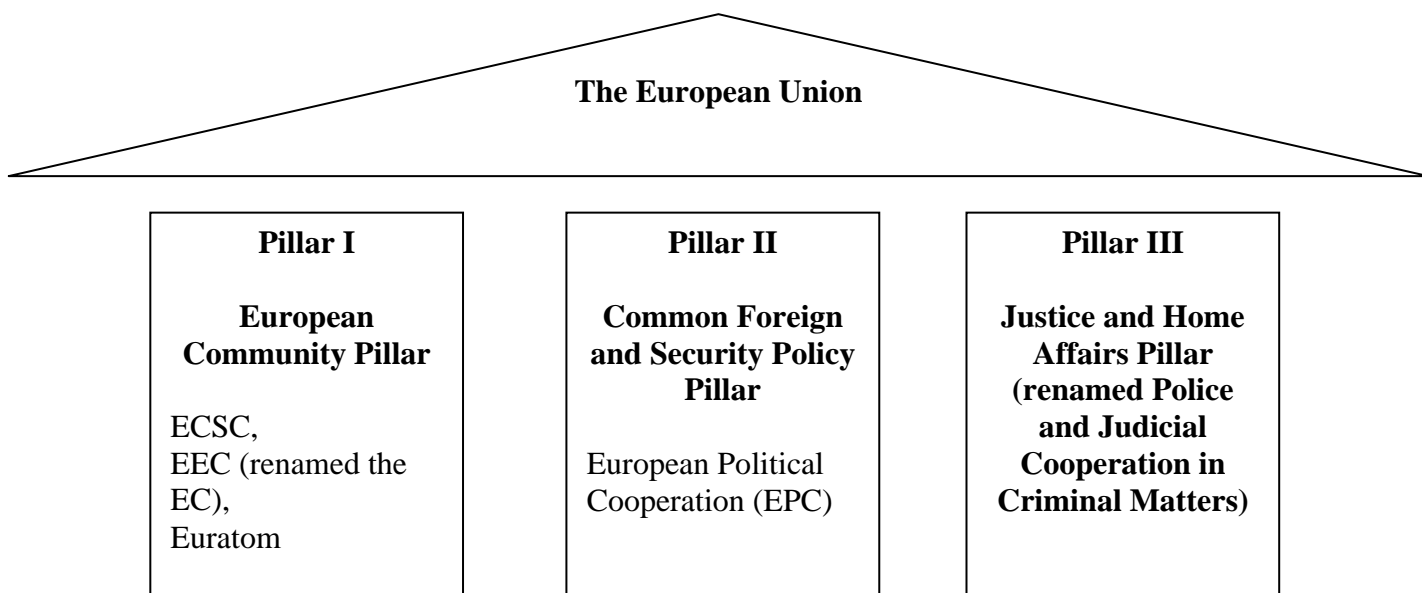
The EU, created by the Treaty of Maastricht¹, is a union of 27 independent states. It was founded to enhance political, economic and social cooperation.

Its origins date back to the 1950s and the establishment of three organisations:

- European Coal and Steel Community (ECSC) —————→ established by the Treaty of Paris²
- European Economic Community (EEC) and } established by the Treaties
- European Atomic Energy Community (Euratom) } of Rome³

Under the Treaty of Maastricht, these three organisations (collectively, under the Treaty of Brussels⁴, the ‘European Communities’) were brought together to comprise the first of three conceptual pillars, which together formed the EU. The Treaty also renamed the EEC the ‘European Community’ (EC), reflecting the determination of the Member States to expand the European Communities’ powers to non-economic domains.

The second and third pillars were borne out of a desire to add powers to the European Communities in the areas of: foreign policy, security and defence policy, asylum and immigration policy, criminal cooperation, and judicial cooperation. However, some Member States deemed these areas too sensitive to national sovereignty for the community method to be used, so they were kept outside the European Communities as Pillars II and III. More intergovernmental in nature, Pillars II and III had reduced roles for the European Parliament, the European Commission and the Court of Justice of the EU (as it is now known).



¹ Signed in 1992; entry into force 1 November 1993.

² Signed in 1951; entry into force 23 July 1952 (expired 23 July 2002).

³ Signed in 1957; entry into force 1 January 1958.

⁴ Signed in 1965; entry into force 1 July 1967.

From 1993 to 2009, the EU was best described using this pillar structure, though the Treaties of Amsterdam⁵ and Nice⁶ made Pillars II and III increasingly supranational.⁷ However, the Treaty of Lisbon, which came into force on 1 December 2009, replaced the pillar structure with an institutional framework in which the EU was given a single, consolidated legal personality to replace and succeed the EC. Consequently, the EU obtained the EC's membership of international organisations, e.g. the World Trade Organization (WTO).

The Member States

Year of accession	Member State
1957	The founding members (already part of the ECSC): Belgium, France, Germany, Italy, Luxembourg and the Netherlands
1973	Denmark, Ireland and the UK
1981	Greece
1986	Portugal and Spain
1995	Austria, Finland, Sweden
2004	Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia
2007	Romania and Bulgaria

Croatia, Turkey, Iceland, Montenegro and the Former Yugoslav Republic of Macedonia are all official candidate countries.

The European Economic Area (EEA) consists of the EU (and therefore the Member States), Norway, Iceland and Liechtenstein. The EEA Agreement (the Agreement) is mainly concerned with the four fundamental pillars of the Internal Market – ‘the four freedoms’ – i.e. the freedom of movement of goods (excluding agriculture and fisheries), persons, services and capital. The Agreement gives Norway, Iceland and Liechtenstein the right to be consulted by the European Commission during the formulation of EU legislation in return for compliance with certain EU law.

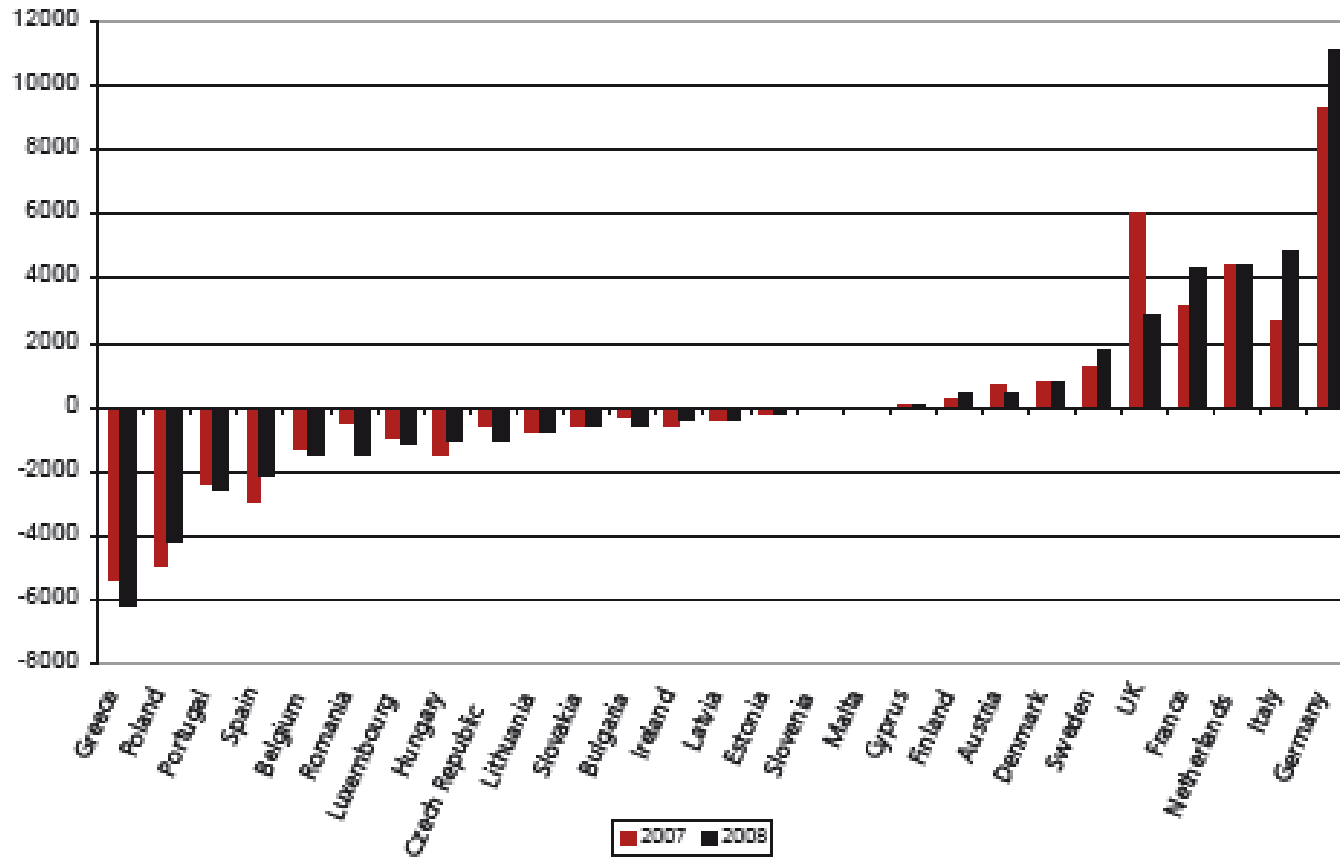
⁵ Signed in 1997; entry into force 1 May 1999.

⁶ Signed in 2001; entry into force 1 February 2003.

⁷ The Treaty of Amsterdam transferred a number of areas from Pillar III to Pillar I, prompting Pillar III to be renamed from ‘Justice and Home Affairs’ to ‘Police and Judicial Cooperation in Criminal Matters’.

The EU budget

Chart 3.C: Net Receipts/Contributions of Member States in 2007 and 2008 (£ million)



Source: Based on data published in the European Commission Report: EU Budget 2008 Financial Report published in September 2009

1.2 The Development of the EU through the Treaties

Based on the Treaties, EU institutions may adopt legislation, which is either directly applicable to Member States or must be implemented by them.

Year signed	Entry into force	Treaty	Key points
1951	1952	Treaty of Paris	Established the European Coal and Steel Community (ECSC).
1957	1958	Treaties of Rome (also known as the Treaty of the European Economic Community (TEEC)⁸ and the Treaty of the European Atomic Energy Community)	<p>Established the European Economic Community (EEC).</p> <p>Established the European Atomic Energy Community (Euratom). Both treaties were signed at the same time and are jointly known as the Treaties of Rome.</p> <p>TEEC was first renamed 'Treaty of the European Community' and then later, under the Treaty of Lisbon, the 'Treaty of the Functioning of the European Union' (TFEU). TFEU provides the organisational and functional details of the EU.</p>
1965	1967	Merger Treaty	Provided for a Single Commission and a Single Council of the then three European Communities.
1986	1987	Single European Act (SEA)	Provided for the adaptations to the TEC that were required to create the Internal Market.
1992	1993	The Treaty of Maastricht (also known as the Treaty on European Union (TEU))	<p>Created the EU and sets out its objectives and principles.</p> <p>Renamed the 'European Economic Community' as simply the 'European Community'.</p> <p>It introduced new forms of cooperation between the Member State governments on foreign and security policy and in the area of 'justice and home affairs'. By adding this inter-governmental cooperation, the Maastricht Treaty created a new three 'pillars' structure, which was</p>

⁸ Subsequently renamed the 'Treaty of the European Community' (TEC), and then the 'Treaty on the Functioning of the EU' (TFEU).

			political as well as economic.
1997	1999	Treaty of Amsterdam	Amended and renumbered the EU and EC Treaties.
2001	2003	Treaty of Nice	Dealt mostly with reforming the institutions so that the EU could function efficiently after its growth to 25 Member States. The Treaty of Nice, the Treaty on European Union and the Treaty of Rome have been merged into one consolidated instrument.
2007	2009	Treaty of Lisbon	<p>A solution to the stalemate in the ratification process of the EU constitution in spring 2005. Limited to the modification of the two fundamental treaties: TEU and TEC (renamed the latter 'TFEU'). Following on from the Treaties of Amsterdam and Nice and the constitutional treaties, it dealt mostly with institutional reform.</p> <p>Its main objectives were to make the EU more democratic, meeting the European citizens' expectations for high standards of accountability, openness, transparency and participation; and to make the EU more efficient and able to tackle today's global challenges such as climate change, security and sustainable development.</p> <p>The EU became a single, consolidated legal entity; the European Council became a formal EU institution; legislative procedure was split into 'ordinary' and 'special'; changes were made to voting procedures in the Council (of Ministers); the possibility of Member State withdrawal was explicitly recognised for the first time.</p>

1.3 Objectives of the EU

Whereas the aims of regulation are narrow and focused on the identification, prioritisation and mitigation of risk, the aims of the EU, as set out in the Treaty of Lisbon, are diverse and ambitious. The main ones are, in summary, to:

- promote peace, the well being of its peoples, and an ever closer union;
- provide the citizens of Europe with an area of freedom, security and justice, without internal frontiers; ensuring the free movement of persons;
- establish an internal market based on the four freedoms of goods, services, establishment and capital;
- promote sustainable development, a competitive social market economy, social justice, equality and non-discrimination, scientific and technological progress, economic and social cohesion, and solidarity among Member States and between generations;
- establish economic and monetary union; and
- promote internationally the values of peace, security and sustainable development.

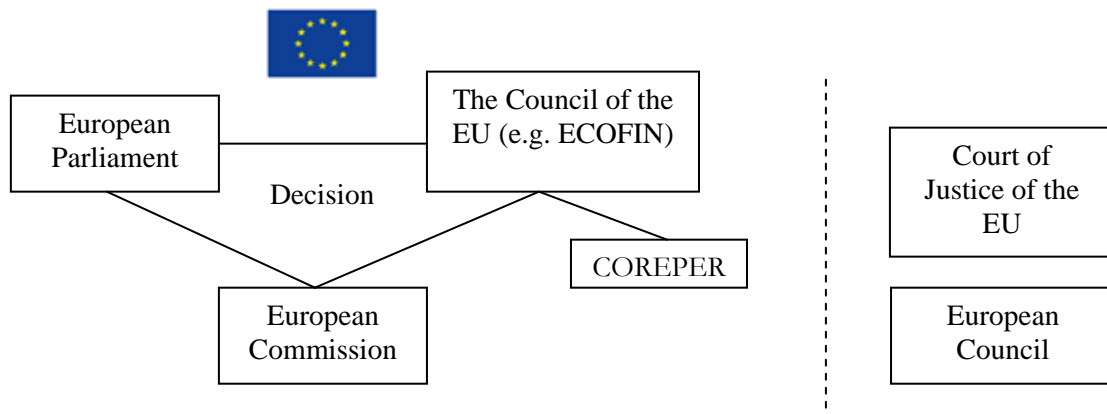
2. The EU Institutions

In the EU, governing functions (legislative, executive, judicial and administrative) are not ascribed to individual institutions; instead, functions may be shared by more than one institution. For example, **though the Council and Parliament are often referred to as ‘the legislature’ and the Commission as ‘the Executive’**, all three institutions collectively produce the policies and laws that apply throughout the EU. The Commission has the sole right to propose new laws, but it is the Parliament and Council that adopt them.

The powers and responsibilities of the EU institutions are laid down in the Treaties, which are the foundation of the EU. They specify the rules and procedures that the institutions must follow.

Each of the principle EU institutions is dealt with below.

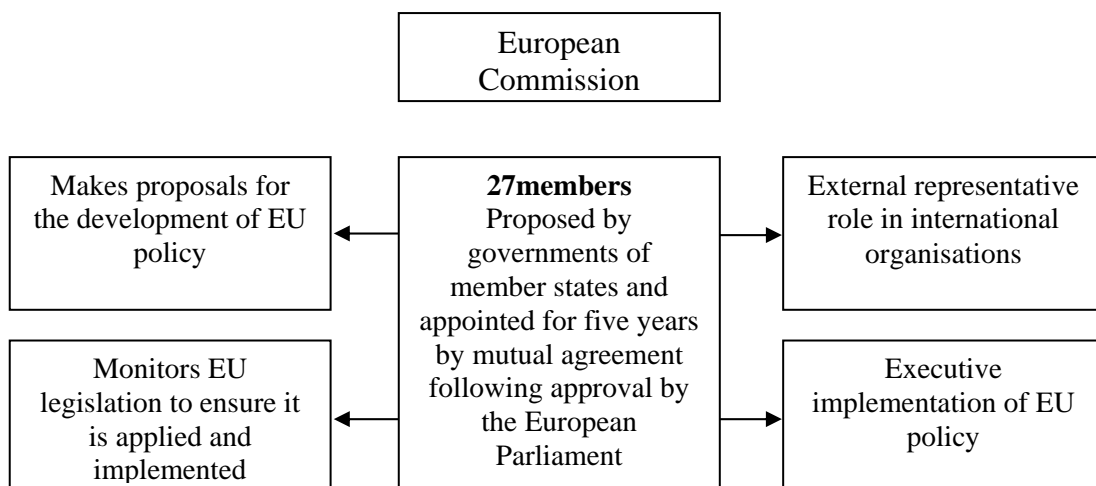
EU Institutions



2.1 The European Commission (the Commission)

The Commission is made up of 27 members. Each Member State appoints one Commissioner for a term of five years.

The Commission is independent of national governments, and represents and upholds the interests of the EU as a whole. It is the guardian of the Treaties and can take action against Member States to pursue the interests of the EU.



2.1.1 The Commission's main tasks

- **Right of legislative initiative:** Every legislative decision taken by the Council has to be based on a proposal from the Commission. This has allowed the Commission to act as an engine of integration, drawing up proposals for the development of EU policy and building steps towards greater harmonisation. The Commission also develops the EU's overall legislative plan for any given year, which is of real significance in shaping EU priorities.
- **Guardian of the Treaties:** The Commission is responsible for monitoring the application of Treaty provisions and legislation. It can appeal to the Court of Justice when possible violations are identified.
- **Executive authority for the implementation of EU policy:** This includes the administration of finances as well as the implementation of EU policies.
- **Enacting technical standards drafted by the European Supervisory Authorities (ESAs).**

2.1.2 Plan for improving the regulatory environment

The better regulation agenda has already led to a significant change in how the Commission makes policy and proposes to regulate. Stakeholder consultations and impact assessments are now essential parts of the policy-making process.

The Commission is stepping up its efforts to embed the concept and use of Impact Assessment throughout the policymaking cycle, from identifying the problem to reviewing the effectiveness of regulation. The agenda it is taking forward is known as 'smart regulation'.⁹

Smart regulation is about the whole policy cycle – from designing a piece of legislation, to implementing, enforcing, evaluating and revising it. The Commission's Communication on smart regulation emphasises the importance of impact assessment in designing new regulation, but also in regularly reviewing the impact of regulation post-implementation.

The Commission sees smart regulation as a shared responsibility of the European institutions and of Member States. The new European Supervisory Authorities (ESAs) will play their part. They are responsible for the cost-benefit analysis of technical standards and guidelines/recommendations, and they are required to apply impact-assessment methodology when responding to calls from advice emanating from the Commission.










































2.2 The European Parliament (EP)

The EP is a multi-national chamber currently consisting of 736¹⁰ members (MEPs). Elections are held every five years and every EU citizen that is registered as a voter is entitled to vote. The EP expresses the democratic will of the EU's citizens (more than 496 million people) and represents their interests in discussions with the other EU institutions. MEPs sit in seven Europe-wide political groups, rather than in national blocks. Between them they represent all views on European integration, from the strongly pro-federalist to the openly Eurosceptic.

⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0543:EN:NOT>

¹⁰ The Treaty of Lisbon provides for there to be 751 MEPs and transitional arrangements are expected to be adopted to allow for this change.

MEPs by Member State and political group

								NI	Total
	5	5	5	4	1			2	22
	6	4	5					2	17
	2	7			9	4			22
	1	4	3	2	1	1	1		13
	42	23	12	14		8			99
	1	1	3	1					6
	4	3	4			1			12
	8	8		1		3	2		22
	23	21	2	2		1		1	50
	29	14	6	14		5		3	72
	35	22	6				9		72
	2	2				2			6
	3	1	1	1	1	1			8
	4	3	2		1		2		12
	3	1	1	1					6
	14	4			1			3	22
	2	3							5
	5	3	6	3	1	2	1	4	25
	6	4		2				5	17
	28	7			15				50
	10	7				5			22
	14	11	5					3	33
	3	2	2						7
	6	5	1				1		13
	4	2	4	2			1		13
	5	5	4	3		1			18
		13	12	5	25	1	10	6	72
Total								NI	Total
	265	185	84	55	55	35	28	29	736

KEY



= Greens-European Free Alliance



= Socialist & Democrat Party (UK Labour MEPs)

NI

= Non-Inscrits (MEPs who do not sit in one of the political groups)



= Alliance of Liberals & Democrats (UK Lib Dem MEPs)



= European People's Party (Christian Democrats)



= European Conservatives & Reformists Group (UK Conservative MEPs)



= Europe of Freedom and Democracy



= European United Left – Nordic Green Left

2.2.1 The EP's principal roles

- To examine and adopt European legislation. Under the ordinary legislative procedure, Parliament shares this power equally with the Council of the EU.
- To approve the EU budget.
- To exercise democratic control over the other EU institutions by setting up committees of inquiry.
- To assent to important international agreements, such as new country accessions to the EU and trade or association agreements between the EU and other countries.

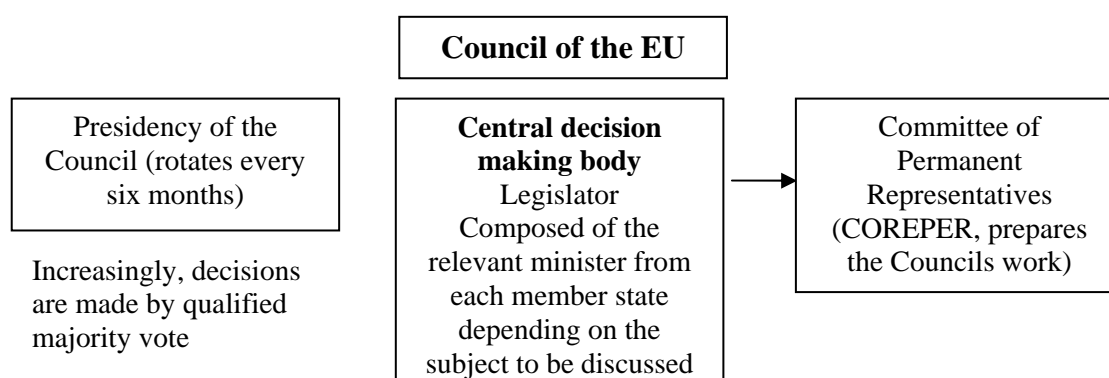
The EP has a number of committees, such as the Committee on Economic and Monetary Affairs (ECON). These committees play a role in the legislative process (ECON is important in the financial services area). A new Commission proposal is assigned to a lead committee, which appoints one of its members to write a first draft opinion on the measure. This opinion forms the basis of wider discussions with any other Parliamentary committees that have a role in the legislation, and with the EP sitting in plenary (i.e. full) session. ECON deals with the following areas of interest:

- The economic and monetary policies of the EU, the functioning of economic and monetary union and the European monetary and financial system (including relations with the relevant institutions or organisations).
- The free movement of capital and payments (cross-border payments, single payment area, balance of payments, capital movements and borrowing and lending policy, control of movements of capital originating in third countries, measures to encourage the export of the Union's capital).
- The international monetary and financial system (including relations with financial and monetary institutions and organisations).
- Rules on competition and state or public aid and tax provisions.
- Regulating and supervising financial services, institutions and markets including financial reporting, auditing, accounting rules, corporate governance and other company law matters specifically concerning financial services.

2.3 The Council of the EU (the Council)

The Council and the EP are responsible for adopting laws proposed by the Commission. The Council is made up of one member from each Member State. The Presidency of the Council rotates every six months to ensure that no Member State has too great an influence in the development of any single policy.¹¹

Meetings of the Council are arranged by subject matter, with different ministers attending from the Member States depending on the subject to be discussed. The respective department member from the Commission is also present. The Council takes different formations depending on the matter in question, and also has a number of sub-committees and working groups.



¹¹ UK presidency last held from 1 July – 31 December 2005. Current Presidency is Hungary until 30 June 2011, followed by Poland until 31 December 2011. List of [Presidencies of the EU Council until June 2020](#).

The Council decides either by unanimity, qualified majority, or simple majority depending on the issue being discussed. Qualified Majority Voting (QMV) requires that 255 votes out of 345, representing a majority of the Member States, are cast in favour of a measure. Further, a Member State may request verification that the qualified majority represents at least 62% of the total population of the EU; if this is found not to be the case, the decision will not be adopted.

The Lisbon Treaty introduced a double majority rule for Council Decisions; ‘From 2014 on, the calculation of qualified majority will be based on the double majority of Member States and people, thus representing the dual legitimacy of the EU. A double majority will be achieved when a decision is taken by 55% of the Member States representing at least 65% of the EU’s population’ (*Europa.eu*). This system, due to be adopted in 2014, will be accompanied by a transition period lasting until 2017.

Country	Council votes	Population (millions)	MEPs
Germany	29	82.1	99
France	29	61.4	72
UK	29	60.5	72
Italy	29	58.0	72
Spain	27	44.7	50
Poland	27	38.1	50
Romania	14	21.7	35
Netherlands	13	16.5	25
Greece	12	11.1	22
Portugal	12	10.6	22
Belgium	12	10.4	22
Czech Republic	12	10.3	22
Hungary	12	10.0	22
Sweden	10	9.1	18
Austria	10	8.3	17
Bulgaria	10	7.3	17
Slovakia	7	5.4	13
Denmark	7	5.4	13
Finland	7	5.2	13
Ireland	7	4.2	12
Lithuania	7	3.4	12
Latvia	4	2.3	8
Slovenia	4	2.0	7
Estonia	4	1.3	6
Cyprus	4	0.8	6
Luxembourg	4	0.5	6
Malta	3	0.4	5
Total Council votes	345		Total MEPs
Qualified majority	255*		736 ¹²
Blocking votes	91		

¹² See footnote 9.

2.3.1 Economic and Financial Affairs Council (ECOFIN)

ECOFIN is one of several configurations of the Council and is composed of the economics and finance ministers of the Member States (and budget ministers when budgetary issues are being discussed). It covers EU policy in a number of areas, including: economic policy coordination, economic surveillance, monitoring Member States' budgetary policy and public finances, the euro (legal, practical and international aspects), financial markets and capital movements, and economic relations with third countries. Decisions are reached mainly by qualified majority with the exception of fiscal matters, which are decided by unanimity.

2.3.2 Economic and Financial Committee (EFC)

The EFC is a sub-committee of the Council. It was established in December 1997 under the chairmanship of Grégoire Brouhns. Its purpose was to study the modalities of debt re-denomination in stage 3 of the Economic and Monetary Union (EMU) and other issues related to government bonds and bills markets in the context of the changeover to the euro. Since then, the mandate of the sub-committee has been to promote further the integration and better functioning of EU government bond markets. Membership of the EFC comprises representatives from all 27 EU Member States who are responsible for managing public debt. They are typically from the debt office, finance ministry or central bank, depending on national structures. The Commission and the European Central Bank are also represented.

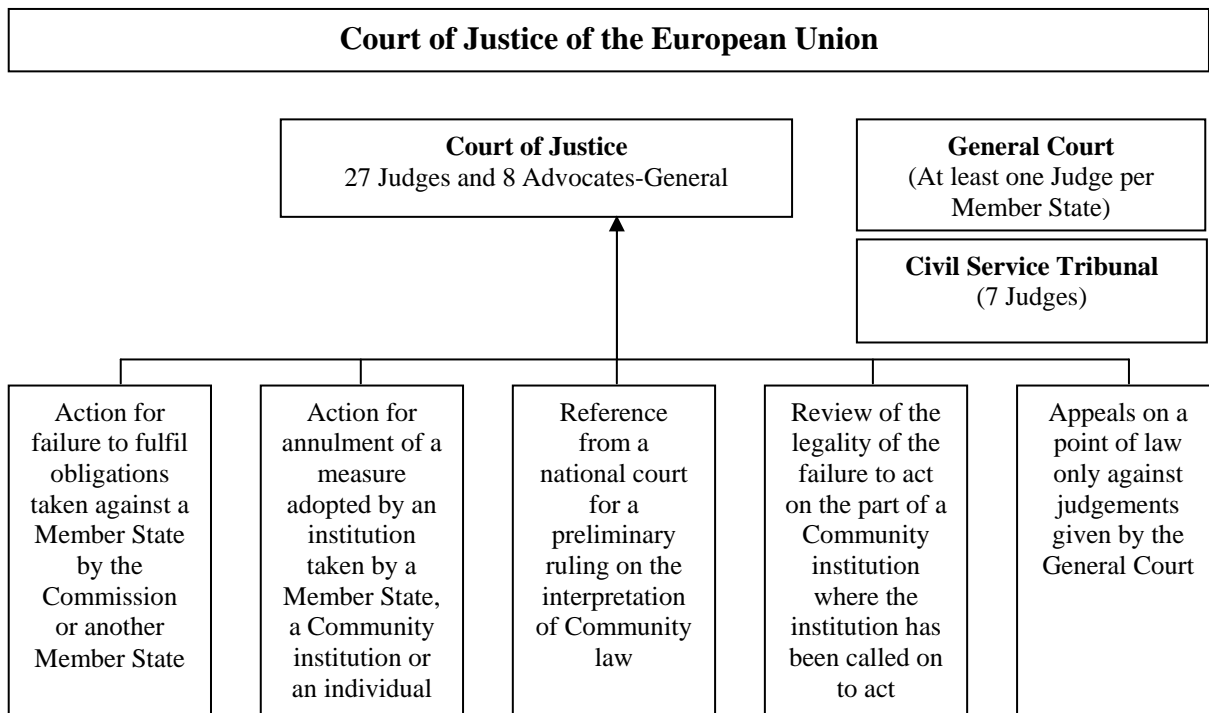
2.3.3 Financial Services Committee (FSC)

The FSC was set up on 18 February 2003 by the ECOFIN Council with a mandate to: provide for cross-sectoral strategic reflection separate from the legislative process; help to define the medium and long-term strategy for financial services issues; consider sensitive short-term issues; assess progress and implementation; and provide political advice and oversight on both internal issues (e.g. single market, including implementation of the Financial Services Action Plan) and external issues (e.g. WTO).

2.3.4 Committee of Permanent Representatives (COREPER)

COREPER prepares items for discussion in the Council. There are two levels. COREPER II is the more important and comprises ambassadors from the Member States' permanent representations in Brussels. It works on more contentious issues such as economic and financial affairs, justice and home affairs, and external relations. COREPER I comprises deputy ambassadors and is responsible for issues such as environment, social affairs, and the internal market. Both committees meet at least weekly and usually instruct working groups to carry out preparatory work. Where working groups cannot reach agreement on a proposal, the issue is escalated to the relevant COREPER committee.

2.4 The Court of Justice of the European Union (CJEU)



The CJEU¹³ encompasses the whole judiciary and comprises the Court of Justice, the General Court and the Civil Service Tribunal.

The Court of Justice has a role similar to that of courts existing in the Member States. It is responsible for ruling on legal disputes between Member States, between the EU and Member States, between EU institutions and authorities, as well as between individual citizens and the EU. In addition, judges in Member States can turn to the Court of Justice to rule on questions of interpretation of EU law in cases pending in the national courts.

The General Court¹⁴ was established in 1988, following a Treaty amendment introduced by the Single European Act. Its initial purpose was to relieve the burden on the Court of Justice; subsequent Treaties have widened the jurisdiction of the Court to assist with that task.

The Civil Service Tribunal deals with disputes involving the EU civil service, including between all bodies or agencies and their staff where jurisdiction is conferred on the CJEU. For example, the ESAs confer jurisdiction on the CJEU in this regard. This jurisdiction was previously exercised by the Court of Justice and then, following its creation in 1988, by the General Court.

2.5 The European Council (not to be confused with the Council of the EU)

The European Council consists of the heads of state or government of the Member States and the President of the Commission. This institution was not originally envisaged by the founding Treaties but evolved over time from a series of ad hoc summits. It was first recognised legally in the Single European Act. The European Council plays a central political role in setting the pace, shape and political direction of the development of EU policy. The Treaty of Lisbon granted the European Council status as a formal EU institution and created the permanent role of President.

¹³ This institution was established in 1952 as the ‘Court of Justice of the European Steel and Coal Community’. Between 1958 and 2009, it was known as the ‘Court of Justice of the European Communities’. Under the Treaty of Lisbon, it became the ‘Court of Justice of the European Union’.

¹⁴ Created in 1989 as the ‘Court of First Instance’, it became the ‘General Court’ under the Treaty of Lisbon.

2.6 Subsidiarity

Subsidiarity means that – except in the areas where it has exclusive powers – the EU acts only where action will be more effective at EU-level than at national level. The principle of subsidiarity entered the EU Treaties with the Maastricht Treaty. A general statement of subsidiarity has been preserved in Article 5 TEU as follows (the words in italics were added by the Treaty of Lisbon):

‘In areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, *either at central level or at regional and local level*, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level’.

The Treaty of Lisbon introduced new procedures known as the ‘yellow and orange cards’, giving national parliaments the power to enforce subsidiarity. Under these procedures, within eight weeks from ‘the date of transmission of a draft legislative act in the official languages of the Union’, any parliament or chamber may submit ‘a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity’. A voting system then applies, with two votes for each national parliament.

- If at least one third of national parliaments consider that the proposal is not in line with subsidiarity, the originator of the proposal (usually the Commission) has to re-examine it and decide whether to maintain, adjust or withdraw it, giving reasons for its decision. For proposals on judicial cooperation in criminal matters and police cooperation, the threshold is one quarter of votes (‘yellow card’ procedure).
- The ‘orange card’ procedure applies only to the ordinary legislative procedure. It involves a higher threshold and more stringent consequences. If a simple majority of available votes are cast against a proposal, the Commission must review it. It may then maintain, amend or withdraw it. If it maintains the proposal, it must give reasons. Before the end of first reading, the EP and the Council must consider the proposal against the subsidiarity principle, in light of the reasoning offered by national parliaments and by the Commission. If the Council, by a majority of 55%, or the EP, by majority of the votes cast, finds against the proposal, it fails.

3. EU legislation

3.1 Introduction

There are three distinct types of EU law:

- primary legislation;
- secondary legislation; and
- case law.

Together, the body of European law is called the 'acquis communautaire' and must be adopted by candidate countries (amending their domestic legislation accordingly) in order for them to become EU members.

3.2 Primary legislation

Primary legislation consists of the various Treaties that have been negotiated and ratified by the Member States. The Treaties establish the constitutional framework of the EU. The functions of the various institutions/bodies involved in the decision-making process are defined in the Treaties, as are the procedures for making and implementing EU law.

3.3 Secondary legislation

3.3.1 Regulations

Regulations are directly applicable and binding throughout the EU. They may not be transposed into national law; rather, citizens and Member States are directly bound by such measures, as they would be by national law.

3.3.2 Directives

A directive is binding on Member States in relation to the objectives to be achieved, but gives Member States discretion to determine how the legal measure should be incorporated into domestic law. Directives acquire full legal force and effect following expiration of the transposition period (the time allowed for Member States to implement the measure). Member States are generally required to provide a correlation table to the Commission demonstrating how directives have been implemented.

Where a Member State does not implement a directive within the time prescribed, the Commission may initiate proceedings in the Court of Justice against that state (commonly known as 'infraction' or 'infringement' proceedings). There are numerous examples of these proceedings; for example, in the case C32/98 Commission v. Germany, the Commission initiated proceedings against Germany for failure to transpose Directive 94/19/EC on deposit-guarantee schemes within the prescribed period.

As directives are directly addressed to Member States, they do not generally impose obligations or confer rights on EU citizens. The source of the rights and obligations of the EU citizens derive from the measures enacted by Member States to implement the directive. However, to secure the rights conferred by the directive, EU citizens can, in certain circumstances, plead in an action in national courts that the directive has 'vertical direct effect', i.e. they can be enforced directly against the state or emanations of the state (which would include the FSA). The principle of vertical direct effect will apply in circumstances where:

- the provision is laid down with sufficient clarity and precision;
- the provision is unconditional;

- the provision's operation is not dependent on further action being taken by the EU or national authorities;
- the time limit for implementation has expired; and
- rights are conferred on individuals/legal persons.

Directives are not capable of having 'horizontal direct effect', i.e. they cannot be enforced by private parties against each other. There is, however, the concept of 'indirect effect', which in broad terms, requires national courts to interpret national legislation, so far as possible, to be compatible with a directive.

3.3.3 Decisions

Decisions are directly applicable and binding in their entirety on those to whom they are addressed (Member State or individual). Decisions may require the addressee to perform or refrain from an action, or may confer rights or impose obligations on them. Addressees must be named or categorized (without the possibility of the category being extended in the future) and are the only ones bound by a decision.

The Commission often uses a decision to communicate its findings of abuse of a dominant position, for example, in a competition law matter. Another example is Council Decision 1999/468/EC on Comitology; this established the procedures for the exercise of implementing powers conferred on the Commission (Level 2 of the Lamfalussy Process).

3.3.4 Opinions and recommendations

A 'recommendation' is a suggestion that a particular course of action be adopted by the addressee. An 'opinion' gives the views of the EU institutions on a particular issue. These measures are non-binding and are of persuasive authority only.

3.3.5 Resolutions and declarations

'Resolutions' outline the jointly held views/intentions of the European Parliament, European Commission and Council of the EU. Resolutions provide political direction to the future action of the Council.

There are two types of declarations:

- those concerned with EU development; and
- those detailing the views of Council members on the interpretation of the Council decisions.

3.4 Case law

Case law includes judgments from the Court of Justice and the General Court.

3.5 The legislative process

The legislative powers of the EU are specified in treaty provisions, which authorise it to adopt legislation and other legal acts in pursuit of the objectives set out in the treaties. Legislative power is spread out among the EU institutions, the principle players being the Council of the EU, the EP and the Commission.

The extent of a particular institution's involvement in the legislative process depends on the legislative procedure used, which in turn depends on the legislative proposal's legal base.¹⁵ The legal base entitles

¹⁵ All EU legislation must be based on a specific Treaty article set out in the TEU and TFEU, which is referred to as its 'legal base'.

the EU to legislate in the given field and sets out the scope for such legislation. It also determines the legislative procedure to be used and the types of laws that may be adopted.

Under the Treaty of Lisbon, as specified in Article 289 TFEU, there are two over-arching legislative procedures: ‘ordinary’ and ‘special’.

3.5.1 Legislative procedures

3.5.1.1 Ordinary legislative procedure

This procedure is based on the principle of parity and requires the European Parliament and Council to adopt legislation jointly. Before the Treaty of Lisbon, the procedure (which has remained essentially unchanged) was known as ‘co-decision’; the Treaty established it as the standard means of decision-making for most policy areas. The steps in the procedure are set out at Annex 1.

3.5.1.2 Special legislative procedures

The special legislative procedures relate to a certain number of other legal bases. They include, for example, consultation and consent (formerly known as ‘assent’) (the cooperation procedure was abolished). Under special legislative procedures, either the Council or, more rarely, the EP, may adopt legislation alone, with only the participation of the other. A general ‘bridging’ clause offers the option of switching to the ordinary legislative procedure provided certain conditions are met.

3.5.1.2.1 Consultation procedure

Before a legislative proposal from the Commission can be adopted by the Council, the consultation procedure requires an opinion to be provided from the EP. There is no obligation on the Commission or Council to accept the amendments detailed in the EP's opinion, nor is providing such an opinion mandatory.

The process can be summarised into three stages:

1. the Commission submits a proposal to the Council;
2. the Council consults the Parliament; and
3. the Council adopts the measure, either by QMV or by unanimity, depending on the field in question.

3.5.1.2.2 Consent (formerly known as Assent)

In those limited areas in which the Council acts by unanimous decision, the consent procedure is applicable.

Under this procedure, the EP is given the right of veto. It must approve or reject the legislative proposal without further amendments. The Council cannot overrule the EP's opinion.

This procedure is required for:

- certain international agreements;
- the accession of new Member States or arrangements for withdrawal from the EU; and
- cases where sanctions have been imposed on Member States for serious and persistent breaches of fundamental rights.

3.5.2 The European Commission (the Commission) and new legislation

A green paper constitutes the basis of a proposal for new legislation. It is a document published by the Commission that represents a discussion paper on a specific policy area. The text details proposals for action or legislation and normally serves to initiate a wider consultation before forming a final proposal. The Commission will only propose action at EU level if the problem cannot be more effectively resolved by action at national or regional levels. This is the principle of 'subsidiarity' (i.e. the principle of action at the lowest level).

The Commission enjoys sole responsibility for formulating proposals for new EU legislation (i.e. the 'right of initiative'). The Council of the EU and the EP receive Commission proposals. The Commission consults the Economic and Social Committee¹⁶ and the Committee of the Regions¹⁷ on most items of draft legislation.

3.5.3 Council of the EU and new legislation

The Council receives the Commission's proposal for formal consideration; it must respond by adopting, amending or ignoring the proposal. Depending on the subject, the Council acts by simple majority, qualified majority, or unanimous decision.

- The proposal will initially be referred to the competent working group of national representatives, which will then attempt to reach agreement on the text. Once the working group cannot continue any further with a proposal (i.e. agreement has been reached on most/few issues), the proposal will be referred to the Committee of Permanent Representatives (COREPER). This Committee is concerned with policy considerations and political implications as opposed to technical details. Any differences stemming from the working group will (wherever possible) be eliminated. Where this is not feasible, areas of possible agreement may be identified. The proposal will then revert (for further consideration) to the working group, or will be sent (for political consideration) to the ministers.
- Formal approval of the proposal must be by way of a ministerial meeting of the Council. Proposals will normally be adopted without discussion where agreement has been reached by a lower level of the Council. However, in the event that outstanding issues remain and agreement cannot be reached, the proposal may then:
 - revert down the Council machinery;
 - be referred (with a request for changes) to the Commission; and
 - be deferred for a future ministerial meeting.

3.5.4 The European Parliament (EP) and new legislation

The degree of the EP's involvement in the legislative process varies depending on the legal basis and associated procedures defined in the treaties.

The EP can request that the Commission put forward a proposal; consequently, it has a limited right of initiative. In addition, the EP has the right to initiate proceedings before the Court of Justice, in circumstances where another institution is alleged to have violated the treaty.

¹⁶ In policy discussions with the Commission, Council and Parliament – the Economic and Social Committee presents the views and defends the interests of: - employers; trade unions; consumers; farmers and other interest groups.

¹⁷ An advisory body (consisting of representatives of Europe's regional and local authorities), which presents local and regional points of view on EU legislation, by issuing opinions on Commission proposals.

4. European supervisory architecture

4.1 Introduction

The financial crisis provided considerable drive for reform to the financial regulatory architecture of Europe. Regulations to establish a European Systemic Risk Board (ESRB) and replace each of the three Level 3 Lamfalussy Committees with a European Supervisory Authority (ESA) entered into force on 16 December 2010 and 1 January 2011, respectively.

The process of reform was formally initiated by Mr. José Manuel Barroso, President of the European Commission. In November 2008, he established an expert committee, tasked with formulating a proposal for a new supervisory architecture for European financial markets and institutions. The committee, chaired by Mr. Jacques de Larosière, published its final report in February 2009 (the 'de Larosière Report'). It recommended the establishment of an EU-level body, mandated to oversee risk in the financial system as a whole, as well as the replacement of the three Level 3 committees (Commission advisory bodies) with EU agencies.

This new structure has been designed to address both micro and macro prudential weaknesses in the previous system by creating a single EU rule-book and improving coordination between national supervisors, raising the quality of supervision within Member States and promoting the convergence of supervisory outcomes.

On 4 March 2009, the Commission published a communication in support of the 'main thrust' of the Report's recommendations; two weeks later, the Council agreed to use the report as a basis for action to improve the regulation and supervision of financial institutions within the EU.

4.2 European System of Financial Supervision (ESFS)

The ESAs and ESRB lie at the heart of the ESFS, the name given to the entire network of national and EU supervisory authorities within the EU.

The ESAs build on the Lamfalussy arrangements, succeeding and replacing the Level 3 committees.

- Committee of European Banking Supervisors (CEBS) is now the European Banking Authority (EBA).
- Committee of European Insurance and Occupational Pension Supervisors (CEIOPS) is now the European Insurance and Occupational Pensions Authority (EIOPA).
- Committee of European Securities Regulators (CESR) is now the European Securities and Markets Authority (ESMA).

(Each of these bodies will now have its own internal resources)

The ESAs' defined legal powers and status as EU agencies, as opposed to Commission advisory bodies, means they are better equipped to ensure coordinated decision making and the consistent determination and application of rules.

The powers of the ESAs include:

- the power to take decisions binding on individual competent authorities or financial institutions and to temporarily ban financial products/services;
- the right to draft binding technical standards (where Level 1 legislation so provides);

- the power to adopt guidelines and recommendations which are to be treated by national supervisors on a “comply-or-explain” basis;
- arbitration in disputes between national supervisors, where the Level 1 legislation so provides;
- the right to participate as an observer in supervisory colleges;
- the power to undertake peer review, and to promote supervisory convergence and good practice;
- the power to investigate alleged breaches of EU law; and
- direct supervision of credit rating agencies (CRAs) – this power belongs to ESMA.

In addition to the above, the ESAs collect and provide aggregate data to the ESRB on firms (and individual firm data, where justified) to aid it in monitoring risk in the financial system.

The ESRB was established to conduct macro-prudential analysis at the EU level. It comprises mainly the heads of central banks and national supervisors and chairpersons of the ESAs.

The ESRB’s mandate is to monitor, identify and predict systemic risks and potential threats to financial stability that arise at the macro-economic level, providing warnings and issuing recommendations to the country, group of countries, or ESA concerned where necessary.¹⁸ While the ESRB has no legal powers over Member States, if an addressee of an ESRB recommendation does not comply with the recommendation it will need to explain the reasons for its inaction. Furthermore, if the ESRB considers such explanation to be unconvincing, it may inform the Council of the EU.

The ESRB works closely with organisations such as the IMF and FSB and other third-country counterparts, as well as with the ESAs for whom it provides the necessary macro-prudential input to enable them to carry out their functions.

4.3 The Lamfalussy process

Based on the recommendations of ‘The Committee of Wise Men’ chaired by Baron Alexandre Lamfalussy, the Lamfalussy arrangements were designed to improve the quality and speed of the legislative process. They were initially piloted in the securities area, and later extended to cover banking, insurance and pensions legislation

The Lamfalussy framework set out a four-fold approach to EU requirements. This approach applies to Directives and Regulations adopted prior to the entry into force of the Treaty of Lisbon. This approach will continue to apply until this legislation is amended and brought into line with the Treaty of Lisbon and the European System of Financial Supervision (ESFS).

The table below sets out the Lamfalussy framework, as currently applicable.

Level 1 (Legislative Acts¹⁹)	Framework legislation is proposed by the Commission and adopted by the Council and Parliament, generally under the ordinary legislative procedure, otherwise through the special legislative procedures. This legislation (Directive or Regulation) specifies in individual articles whether legislative power is delegated to the Commission to adopt Level 2 measures.
Level 2 implementing measures	Secondary legislation is drafted and adopted by the Commission in line with the delegation of legislative competence in the Level 1 text. The Commission does so with the assistance of four specialist committees of finance ministry experts (Level 2). These are the EBC, the ESC, EIOPC and the EFCC (see the table below on the Level 2 specialist committees.) The Commission submits its draft measure to the relevant

¹⁸ The ESRB may decide whether the recommendation should be kept confidential or made public.

¹⁹ Legal acts adopted through legislative procedure (ordinary or special).

	committee for discussion and an opinion. The oversight by the Council and Parliament of the exercise of this delegated Commission power depends on the comitology procedure specified in the Level 1 text. There are five types of procedure that the legislation may specify. Many of the delegations in the financial services area use the regulatory procedure with scrutiny. ²⁰ This empowers the EP by simple majority to prevent adoption of the package as a whole, while the Council may do so if it can achieve a qualified blocking majority of votes. The Commission will often seek advice from the relevant ESA on the implementing measures which the Commission then uses as it sees fit.
Level 3	<p>The ESAs advise the Commission when it prepares detailed Level 2 requirements.</p> <p>Extensive consultation between the EBA, ESMA and EIOPA and providers/users of financial services takes place, where time permits.</p> <p>The ESAs are also empowered to adopt guidance, which is to be treated on a comply-or-explain basis by national supervisors. The ESAs are required to consult and undertake CBA on this ‘where appropriate’.</p>
Level 4 Enforcement	The Commission, as the guardian of the Treaties, is responsible for ensuring that directives are properly transposed and that EU legal requirements are then applied, pursuing enforcement action where required. The Commission has tended to concentrate its resources on the first of these. The ESAs provide an additional resource and opportunity to investigate alleged breaches of EU law. In the event that a breach is ascertained, the ESA may recommend a course of action to the competent authority concerned. If the competent authority fails to respond, the matter may be escalated. This may lead to the Commission issuing a formal opinion and, if certain conditions are met, a decision addressed to an individual financial institution.

In addition to the still operative pre-Lisbon Lamfalussy framework, there is a separate framework for post-Lisbon legislation.

The Treaty of Lisbon amended the previous Treaty provisions on the delegation to the Commission of legislative competence. It provided for two kinds of delegations, under Article 290 and Article 291.

Article 290 delegations are called ‘delegated acts’ and seek to supplement or amend non-essential elements of the directive or regulation – e.g. providing more details on what constitutes a clear, fair and not misleading advertisement. The framework legislation must clearly define the objectives, content, scope and duration of the delegation and any conditions imposed on it. The EP or Council may revoke the delegation and the Article 290 delegated acts may only enter into force if neither the EP (by a majority) nor the Council (by a qualified majority) object.

Article 291 delegations are called ‘implementing acts’ and seek to amplify how the requirement will be applied or enforced where uniform conditions for implementing EU law are needed.²¹ The EP is not given a role in approving implementing acts; however, Article 291(3) requires the EP and the Council to agree on how the delegation to the Commission is to be controlled by Member States and to put the appropriate procedures in place. For this purpose the EP and Council have adopted Regulation 182/2011 (the Comitology Regulation) which lays down the rules and general principles concerning control by Member States of the Commission’s implementing powers.

²⁰ The five comitology procedures are: Advisory, Management, Regulatory, Safeguard, and Regulatory Procedure with Scrutiny.

²¹ Article 291 allows for powers to be conferred on the Council in certain cases.

The framework for the post-Lisbon procedure is set out in the box below.

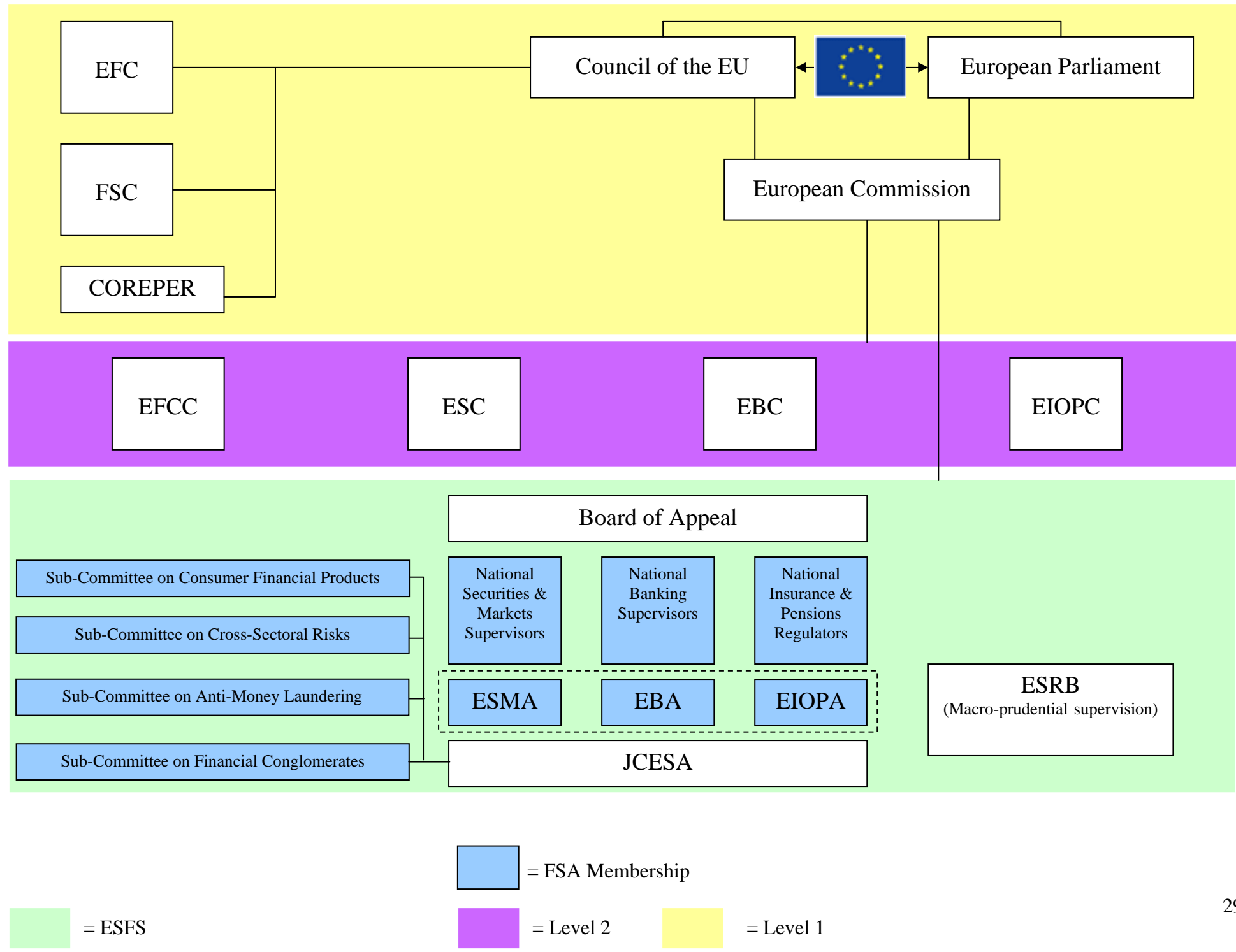
<p>Level 1 (Legislative Acts²²)</p>	<p>Framework legislation is proposed by the Commission and adopted by the Council and Parliament, generally under the ordinary legislative procedure, otherwise through the special legislative procedures. This legislation (Directive or Regulation) specifies in individual articles whether legislative power is delegated to the Commission under Articles 290 or 291, and whether the process the Commission is to follow requires the relevant ESA to submit to the Commission draft legislation (for non-legislative acts that are binding technical standards) or whether the exercise of the delegation will formally involve only the Commission and, in the case of article 290 delegations, the Council and Parliament (non-legislative acts that are not binding technical standards).</p>
<p>Level 2 (Non-legislative Acts)²³</p>	<p>Specific provisions in directives or regulations delegate legislative authority to the Commission. Under the Treaty of Lisbon, these delegations may be made under Article 290 or Article 291 TFEU. As described above the procedures under which Article 290 and 291 measures are adopted are different.</p> <p>For Article 291 measures the Comitology Regulation sets out how the procedures work. There are two procedures, either the ‘advisory’ or ‘examination’ procedure. In both cases, committees, comprising representatives of Member States and chaired by the Commission, are in charge of scrutinising the proposed implementing acts.</p> <p>The basic act will specify which procedure is to be used taking into account the nature or impact of the implementing act required. The examination procedure should apply to the adoption of acts of general scope designed to implement basic acts and specific implementing acts with a potentially important impact. The advisory procedure should apply to all other cases or where it is considered appropriate. It is envisaged that most financial services measures will be adopted under the examination procedure.</p> <p>The ‘examination committee’ must deliver a binding qualified-majority vote on the draft measure, whereas the ‘advisory committee’ only issues non-binding opinions. If the result of the vote is positive, the Commission adopts the implementing act (it may only refrain from doing so in exceptional circumstances or if new elements arise); if negative, the Commission may amend its proposal and resubmit to the same committee or send it to an ‘appeal committee’. In cases where the examination committee delivers a ‘no opinion’ verdict, the Commission may decide whether or not to adopt the measure, taking into account the positions expressed within the committee (subject to conditions laid out in the basic act). In exceptional cases, the Commission may adopt measures, despite a negative opinion delivered by the committee in charge; however, such measures may be adopted for a limited period of time.</p> <p>For Article 290 measures comitology in its pre-Lisbon form no longer applies (though ‘advisory’ committees composed of national experts continue to exist in this area); instead the Council and EP are able to either block or revoke the delegations in the manner set out above.</p> <p>Level 2 Specialist Committees</p> <p>These committees, composed of representatives of Member States (finance ministers) and chaired by a Commission official, advise the Commission on policy issues involving the areas of securities, insurance and occupational pensions and banking.</p>

²² Legal acts adopted through legislative procedure (ordinary or special).

²³ Adopted by executive (Commission) under the authority of a legislative act or for implementing a legislative act.

	<p>They are also consulted by the Commission when drafting legislative proposals in their policy areas.</p> <ul style="list-style-type: none"> • The European Securities Committee (ESC) deals with securities policy issues. The ESC also acts as a regulatory committee in the context of work on conferring implementing powers on the Commission for future legislative proposals. • The European Banking Committee (EBC) deals with policy issues relating to banking activities; it superseded the Banking Advisory Committee. • The European Insurance and Occupational Pensions Committee (EIOPC) examines issues relating to the application of EU provisions concerning the insurance, reinsurance and occupational pensions sectors, and in particular, directives relating to those sectors. • The European Financial Conglomerates Committee (EFCC) deals with policy issues relating to cross-sector groups.
<p>Level 2 Binding Technical Standards (BTS)</p>	<p>The Level 1 text may delegate to the Commission the power to adopt delegated acts or implementing acts that have been drafted by the ESAs. To avoid confusion, these are termed ‘regulatory technical standards’ (if the delegations are made under Article 290) and ‘implementing technical standards’ (if the delegations are made under Article 291). The ESA legislation sets out that these ESA drafted standards (known collectively as binding technical standards) are to be differentiated from the Level 2 delegated acts and implementing acts in that they ‘should be technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based’.</p> <p>The procedure for these binding technical standards is laid down in the regulations establishing the ESAs and is broadly as follows:</p> <ul style="list-style-type: none"> • The ESA drafts the technical standard and is required to consult and do cost benefit analysis (CBA) unless to do so would be disproportionate or in case of urgency. • The Commission then considers the standards and has three months to decide whether to endorse them and adopt them as regulations or decisions. • Where it decides not to endorse them or it endorses them in part or amends them, it shall give reasons and send it back to the ESA, which may in turn amend the draft regulation and re-submit to the Commission within six weeks. • The Commission then has the final say on what it adopts as law, but may not change the content without prior coordination with the ESA. • If the Level 1 text has a time limit by which the binding technical standard must be submitted to the Commission, then the Commission may do the drafting if the ESA has not submitted the draft by the deadline. However, the Commission would still have to consult and do CBA and request an opinion from the relevant ESA stakeholder group, e.g. the Securities and Markets Stakeholder Group, in the case of ESMA.

	<ul style="list-style-type: none"> • The delegation of legislative power, which is to the Commission, not the ESA, may be revoked by the EP or the Council. <p>For regulatory technical standards only (i.e. Article 290 measures) the EP or the Council may object within three months from the date at which the standard has been adopted by the Commission. This time limit is reduced to one month where the Commission has adopted the technical standard unamended.</p> <p>For implementing technical standards (i.e. Article 291 measures) there is no further scrutiny once they are adopted by the Commission, i.e. the comitology process does not apply.</p>
Level 3	See the text in the table setting out the Lamfalussy framework above.
Level 4	See the text in the table setting out the Lamfalussy framework above.



5. National Institutions

5.1 The National Institutions in the UK

5.1.1 The Treasury

The Treasury is responsible for the overall institutional structure of regulation and legislation. It has no operational responsibilities for the activities of the FSA or the Bank of England. It is for the FSA and the Bank of England to decide whether to inform the Treasury of potentially serious problems arising in the domestic and European and global markets. The Treasury has significant seats on a number of committees with roles at Level 2.

5.1.2 Financial Services Authority (FSA)

The FSA is currently responsible for the authorisation and prudential supervision of banks, building societies, investment firms, insurance companies and friendly societies. It is also the national supervisor of financial markets and clearing and settlement systems, taking enforcement action when firms breach FSA rules or a provision of FSMA. The FSA advises on the regulatory implications of initiatives (e.g. EU directives) and market developments, both domestic and international, for firms and markets. It has representation at senior level on each of the ESAs; Thomas Huertas (FSA Director of International) is Alternate Chairperson of the EBA, and Alexander Justham (FSA Director of Markets) and Hector Sants (FSA CEO) occupy positions on the Management Boards of ESMA and EIOPA, respectively. The government has proposed that the FSA will be divided into two institutions in 2012: the Prudential Regulatory Authority (PRA) and the Financial Conduct Authority (FCA). The PRA will be the UK member of the EBA and EIOPA, and the FCA will be the UK member of ESMA (though an authority other than the 'lead' authority may be represented at sub-group/standing committee level or in 'ad-hoc' groups, where appropriate).

5.1.3 Bank of England (BoE)

At the national level, the BoE exists to ensure monetary stability and to contribute to financial stability. In addition to its monetary policy function, the BoE has oversight of the stability of payments systems infrastructure in England as well as on a European scale. It is placed in a unique position to oversee the financial system as a whole and can advise on the implications of developments in the domestic and international markets and payment schemes for financial stability. It also assesses the impact of events on monetary conditions in the financial sector. The BoE holds a seat on the General Council of the European Central Bank (the ECB has a role at Level 2 of the Lamfalussy process). The Governor of the Bank of England is also the vice-chair of the ESRB, a voting member of the General Board and sits on the Steering Committee.

5.1.4 Cabinet Office (or the Ministerial Committee on European Policy)

The Cabinet Office engages at the highest political level on EU strategy and co-ordinates Whitehall departments in their engagement with the EU. It has close links with the UK's members of the Council's Permanent Representatives (COREPER.) The UK COREPER Representative sits on the Committee on European Policy held in the UK, together with the Treasury, the Foreign and Commonwealth Office (FCO), and any other significant and interested departments. They discuss major issues to be proposed in the Council and settle tactics and preparation.

5.1.5 Department for Business, Innovation and Skills (BIS)

BIS has responsibilities within European comitology and, more specifically, within the sub-councils of the Council (particularly the Competitiveness Council). BIS is the lead government department in the areas of:

- consumer credit;
- unfair commercial practice;
- consumer protection cooperation;
- e-commerce directive; and
- unfair terms in consumer contracts.

The Competitiveness Council has played a key role in driving forward the Lisbon economic reform agenda and regulatory reform in the EU, which are vital to secure the right framework conditions for business to flourish. It also deals with legislative proposals in its different fields of activity (internal market, industry and research), taking decisions by qualified majority, generally in co-decision with the EP under ordinary legislative procedure.

5.1 Standing committees and committee membership

The Bank of England's (BoE's) deputy governor is a member of the FSA board and the FSA chairman sits on the Court of the BoE. In addition, there is a standing committee of representatives of the Treasury, BoE and the FSA (Tri-partite committee) which meets on a monthly basis to discuss cases of significance and other developments affecting, or relevant to, financial stability, both domestically and internationally, and most notably, EU issues. At a national level, the BoE and the FSA work closely together to inform the Treasury of developments in European regulation.

The FSA and the BoE participate fully in international regulatory groups and committees. Both entities sit on the Basel Committee of Banking Supervisors and the European Monetary Institute Banking Supervisors Committee.

The FSA

ESMA (European Securities and Markets Authority) (Role at Levels 2 and 3)

EIOPA (European Insurance and Occupational Pensions Authority) (Role at Levels 2 and 3)

EBA (European Banking Authority) (Role at Levels 2 and 3)

The Bank of England

ECB (European Central Bank)

ESRB (the Governor is deputy-chair)

The Treasury

ECOFIN (Role at Level 1)

FSC (Financial Services Committee)

EFC (Economic and Financial Committee)

ESC (European Securities Committee) (Role at Level 2)

EIOPC (European Insurance and Occupational Pensions Committee) (Role at Level 2)

EBC (European Banking Committee) (Role at Level 2)

EFCC (European Financial Conglomerates Committee) (Role at Level 2)

BIS

Competitiveness Council (Role at Level 1)

Cabinet office

Leads the UK's EU strategy and co-ordinates Whitehall departments on EU issues

Links with COREPER and European General Secretariat

Under plans to split the FSA into the PRA and FCA in 2012, the responsibilities of the above institutions and their representation on EU committees will change.

6. EU terms and acronyms

Acquis communautaire

The content, principles and objectives of the:

- treaties;
- existing EC legislation;
- judgments of the European Court of Justice; and
- international agreements concluded by the EU.

New members must accept the *acquis* in its entirety.

Approximation

Similar to the harmonisation of laws, but allows national legislators more flexibility, focusing on the outcome to be achieved.

Assent procedure

Before decisions falling under this procedure can be taken, the Council of the EU must obtain the consent of the EP. The EP can only accept or reject the proposal, without further amendments, and the Council cannot overrule the EP's decision. This is now known as the 'consent procedure'.

Co-decision

For EU legislation subject to the co-decision procedure to be adopted, it must be accepted by both the Council of the EU and the EP. Under the Treaty of Lisbon, co-decision has been extended to most policy areas and is now referred to as the 'ordinary legislative procedure'.

Comitology

'Comitology' describes the pre-set procedures²⁴ that must be followed where, within the framework legislation (referred to as the parent instrument/Act), the EP and the Council (the legislature) delegate to the Commission (the executive) the power to adopt more detailed requirements.

Comitology was developed in the 1960s out of necessity; it was proving very difficult for the Council (at the time, the sole legislator) to determine and agree on all aspects of implementing legislative acts. Consequently, certain non-essential elements of these acts were delegated to the Commission as a means of improving the efficiency of the legislative process.

The Council created what became known as 'comitology' committees, comprising representatives of the Member States and chaired by the Commission, to supervise and control the Commission's exercise of these delegated powers.

In the following years, the case law of the Court of Justice made delegation to the Commission the norm.

The Treaty of Lisbon, which entered into force in 2009, brought about substantial changes to comitology rules.

²⁴ Before the entry into force of the Treaty of Lisbon in 2009 (i.e. under Article (202) TEC (now repealed), and the 2006 amendment of Council Decision 1999/468/EC) there were five different comitology procedures, all of which required the use of a comitology committee: advisory, management, regulatory, regulatory with scrutiny, and the safeguard procedure.

It replaced the legal basis of the comitology system, Article 202 of the Treaty of the European Community (TEC)²⁵, with two provisions: Articles 290 and 291 of TFEU. In doing so, it divided the previously broadly defined area of ‘implementation’ into two categories, thereby providing two possible routes for delegating powers to the Commission.

Article 290 TFEU created the category of Delegated Acts. Article 291 TFEU created the second category of Implementing Acts. Only Implementing Acts that are not ESA technical standards remain subject to comitology committees (see Article 291(3), which allows for ‘mechanisms for control by Member States of the Commission’s exercise of implementing powers’). However, directives and regulations, which were adopted before the Treaty of Lisbon (unless they are amended) continue to apply pre-Lisbon procedures for adopting Level 2 requirements.

Committee of European Securities Regulators (CESR)

CESR was an independent committee made up of the heads of the securities regulators of the 25 Member States, plus Norway and Iceland. It was one of the two committees envisaged in the Lamfalussy Report and was established by the European Commission on 6 June 2001, through Decision 2001/527/EC.

Its role was to:

- act as an advisory committee to assist the Commission, in particular in its preparation of draft implementing measures in the field of securities;
- work to ensure more consistent and timely day-to-day implementation of EU legislation; and
- improve coordination between securities regulators.

On 1 January 2011, CESR was replaced and succeeded by ESMA.

Committee of European Banking Supervisors (CEBS)

CEBS was comprised of high-level representatives from the banking supervisory authorities and central banks of the EU. It was established through Decision 2004/5/EC of 5 November 2003.

Its role was to:

- advise the Commission, either at the Commission’s request within a time limit the Commission may lay down according to the urgency of the matter, or on the Committee’s own initiative, in particular regarding the preparation of draft implementing measures in the field of banking activities;
- contribute to the consistent implementation of EU Directives and to the convergence of Member States’ supervisory practices throughout the EU; and
- enhance supervisory cooperation, including the exchange of information.

²⁵ This states that the Council shall:

‘[c]onfer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the opinion of the European Parliament.’

The imposition of ‘certain requirements’ includes the obligation to consult comitology committees.

On 1 January 2011, CEBS was replaced and succeeded by the EBA.

Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)

CEIOPS was comprised of high-level representatives from the insurance supervisory authorities. It was established through Decision 2004/6/EC of 5 November 2003.

Its role was to:

- improve coordination and convergence between insurance and occupational pensions regulators by providing a forum for supervisory cooperation and the exchange of information on supervised institutions;
- advise the Commission, particularly with the preparation of draft implementing measures for insurance, reinsurance and occupational pensions directives;
- ensure a more consistent and timely implementation of EU legislation in the Member States.

On 1 January 2011, CEIOPS was replaced and succeeded by EIOPA.

EU Law consists of the:

- founding Treaties (primary legislation);
- provisions of instruments enacted by the EU institutions (secondary legislation e.g. regulations, directives etc.); and
- case law (Court of Justice, General Court).

Consultation procedure

The EP is permitted to provide its opinion on a Commission proposal. However, it is not mandatory for the Council of the EU to follow the advice of the EP.

Competence

The authority of the European Union (based on Treaty articles) to undertake specific action or propose legislation in a particular policy area.

Conciliation committee

Committee comprised of an equal number of representatives of the Council of the EU and the European Parliament, which seeks to settle disputes between the two bodies on issues subject to the ordinary legislative procedure.

Committee of Permanent Representatives to the Council (COREPER)

COREPER, the French acronym by which the Committee of Permanent Representatives is known, consists of the Member States' Permanent Representatives (Ambassadors). It is responsible, at the stage of preliminary negotiations, for assisting the Council of the EU in dealing with the items on its agenda (proposals and drafts of instruments put forward by the Commission).

Within COREPER, officials discuss the political issues on the agenda for the next Council meeting, ahead of the meeting itself, and attempt to reach agreement on the matters wherever possible. Decisions are also taken within COREPER as to whether matters should be submitted to the Council of Ministers for decision or whether they can be placed on the agenda as so-called 'A points'. An A point is submitted to the Council for adoption without debate.

COREPER occupies a pivotal position in the EU decision-making system, in which it is simultaneously a forum for dialogue and a body that exercises political control (by laying

down guidelines for, and supervising, the work of expert groups). It is in fact divided in two to enable it to deal with all the tasks it has to carry out:

- COREPER I, consisting of the Deputy Permanent Representatives; and
- COREPER II, consisting of the Permanent Representatives themselves.

Decision

Legal measure that is fully binding on those to whom it is addressed.

Directive

Legal measure that is binding on each Member State about the result to be achieved, but leaves national authorities discretion over the precise form and methods to be used when transposing into national law.

European Banking Authority (EBA)

The EBA officially replaced and succeeded CEBS as of 1 January 2011.

One of the three European Supervisory Authorities in the European System of Financial Supervision, the EBA is an independent advisory body to the EP, the Council of the EU and the Commission.

Its core responsibilities are to support the stability of the financial system, the transparency of markets and financial products, and the protection of depositors and investors.

EBA website: www.eba.europa.eu.

European Banking Committee (EBC)

The EBC was established in 2005, by the Commission Decision of 5 November 2003, as a Level 2 committee to advise the Commission on policy issues relating to banking activities (it superseded the Banking Advisory Committee).

European Central Bank (ECB)

The ECB is the central bank for Europe's single currency, the euro. The ECB's main task is to maintain the euro's purchasing power and price stability in the euro area. The euro area comprises the 17 EU countries that have introduced the euro since 1999.

Economic and Finance Committee (EFC)

This is comprised of members from all 27 EU Member States responsible for managing public debt, typically from the debt office, finance ministry or central bank, depending on national structures. The Commission and the ECB are also represented.

European Financial Conglomerates Committee (EFCC)

The EFCC is a Level 2 Committee that advises the Commission on policy issues relating to financial conglomerates. It is similar to the ESC, EIOPC and EBC.

European Insurance and Occupational Pensions Authority (EIOPA)

EIOPA officially replaced and succeeded CEIOPS as of 1 January 2011. One of the three European Supervisory Authorities in the European System of Financial Supervision, EIOPA is an independent advisory body to the EP, the Council of the EU and the Commission.

Its core responsibilities are to support the stability of the financial system, the transparency of markets and financial products, as well as the protection of insurance policyholders, pension scheme members and beneficiaries.

EIOPA website: www.eiopa.europa.eu.

European Insurance and Occupational Pensions Committee (EIOPC) – Previously the Insurance Committee

The Committee advises the Commission, at the latter's request, on policy issues relating to insurance, reinsurance and occupational pensions, as well as Commission proposals in these fields. The Committee also examines any question relating to the application of EU provisions in these fields, and in particular, related directives.

European Securities Committee (ESC)

This was established by the Commission decision of 6 June 2001 (2001/1493/EC). It acts as both an advisory body to the Commission and as a regulatory committee. Its membership comprises representatives of Member States and it is chaired by a representative from the Commission. The Committee may invite technical experts or observers to take part in meetings. The ESC votes on the Level 2 implementing measures submitted to it by the Commission.

European Securities and Markets Authority (ESMA)

ESMA officially replaced and succeeded CESR as of 1 January 2011.

One of the three European Supervisory Authorities in the European System of Financial Supervision, ESMA is an independent advisory body to the EP, the Council of the EU and the Commission.

Its core responsibilities are to support the stability of the financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection.

ESMA website: www.esma.europa.eu

European Supervisory Authorities (ESAs)

These EU agencies are responsible for creating a single rule book for financial regulation in Europe and ensuring that national supervisors comply with EU law. National supervisors remain responsible for day-to-day supervision (except in the case of credit rating agencies). The ESAs are designed to improve coordination, consistency and collaboration between national supervisors, and strengthen supervision across the EU.

Financial Services Action Plan (FSAP)

In May 1999, the Commission published a Communication containing a Financial Services Action Plan (FSAP), which was endorsed by the Lisbon European Council in March 2000. The FSAP, consisting of a set of 42 measures, provided the framework for the creation of a single market in financial services in Europe. Though it was largely targeted towards integration of the securities sector, it also contained proposals for new legislation and actions in relation to the banking and insurance sectors, with a view to completing the single wholesale markets, to developing open and secure markets for retail financial services and to achieving 'state-of-the-art' prudential rules and supervision. The original timeframe for completion was 2003, but this was later extended to 2005 for wholesale capital market integration.

Financial Services Committee (FSC)

The FSC was set up on 18 February 2003 by the ECOFIN Council, with a mandate to: provide for cross-sectoral strategic reflection separate from the legislative process; help to define the medium and long-term strategy for financial services issues; consider sensitive short-term issues; assess progress and implementation; and provide political advice and oversight on both internal issues (e.g. single market, including implementation of the FSAP) and external issues (e.g. WTO).

Green paper

A document produced by the Commission that is intended to stimulate debate and launch a process of consultation at European level on a particular topic.

Home country; Host country

Directives refer to home Member States and host Member States. We use home country and host country for the purposes of this summary. A competent authority will have varying responsibilities as home or host, depending on how the 'home country' is defined in the applicable directive/regulation and the responsibilities allocated to it.

Joint Committee of the ESAs (JCESA)

Together, representatives of the EBA, ESMA and EIOPA form the JCESA, a committee designed to ensure cross-sectoral consistency within the ESAs as well as coordination and cooperation between national supervisors in the case of financial conglomerates (via the JCESA's sub-committee on Financial Conglomerates).

Lamfalussy Report

This is the final report of the Committee of Wise Men on the Regulation of European Securities Markets (an expert committee chaired by Baron Alexandre Lamfalussy). It proposed a four-level approach to European securities legislation, based on two new committees: the European Securities Committee (ESC), and the Committee of European Securities Regulators (CESR). Both Committees were set up by the Commission in June 2001 (see IP/01/792 and MEMO/01/213).

- **Level one:** Framework legislation
- **Level two:** Implementing measures
- **Level three:** Supervisory convergence
- **Level four:** Enforcement

The Lamfalussy structure was first envisaged to apply to the securities sector and was later extended to banking, insurance and pensions. The Lamfalussy arrangements have since been altered in line with the Treaty of Lisbon, which entered into force in 2009, and the ESA and ESRB Regulations, which entered into force in 2010 and 2011, respectively.

De Larosière Report

Produced by the High Level Expert Group on Financial Supervision in the EU (an expert committee established by the Commission in November 2008 and chaired by Jacques de Larosière), this report outlines the proposal for a new supervisory architecture for European financial markets and institutions, including the replacement of the three Level 3 Lamfalussy committees with EU agencies and the establishment of a European Systemic Risk Council.

Markets in Financial Instruments Directive (MiFID)

MiFID provides harmonised regulation for investment services across the European Economic Area, and forms the basis by which European investment firms can passport their services to other EEA countries. It replaced the Investment Services Directive as of 1 November 2007.

Official Journal (OJ)

The OJ 'L' series (legislation) is the record of the text of all the agreed legislation. The OJ 'C' series (information and notices) contains official communications, including legislative proposals, lists of cases before the Court of Justice, minutes of the sittings of the EP, and invitations to tender.

Opinion

Non-binding, declaratory instrument. An opinion can be issued by the main EU institutions (Commission, Council, Parliament), the Committee of the Regions and the European Economic and Social Committee.

Qualified Majority Voting (QMV)

In the Council of the EU, each member's vote is 'weighted' to give rough recognition to different population sizes.

Passport

A term describing the right to conduct financial services across the EU based on a single authorisation or approval. Firms authorised in one Member State acquire passporting rights enabling them to provide cross-border services and establish branches in other Member States (see, for example, Articles 31 and 32 MiFID). Under the Prospectus Directive, issuers have their prospectus approved by their home competent authority in one Member State and are then allowed to 'passport into' any of the other Member States, i.e. to use that prospectus to raise capital in those other Member States without needing further approvals.

Regulated market

A market place, trading system or exchange which meets the minimum EU standards set out in title III of the MiFID. Under MiFID, entities that offer multilateral trading for financial instruments (such as an order book), must be organised as either a regulated market or a multilateral trading facility (MTF), with slightly different standards applying to each. 'Regulated market' is, however, the core concept across the FSAP directives for securities markets: admission to trading on a regulated market triggers prospectus obligations under the Prospectus Directive, disclosure and accounting obligations under the Transparency Directive, and market abuse obligations under the Market Abuse Directive (MAD).

See MiFID Article 4(14) and Recital 6. (The description in MAD Article 1.4 refers to the Investment Services Directive description of a regulated market.)

Recommendation

Non-binding, declaratory instrument.

Regulation

Legal measure that is binding in its entirety and directly applicable in all Member States.

Subsidiarity

The principle by which decisions are to be taken at the lowest level of government consistent with effective action.

Transparency

A concept meaning openness.

Unanimity

This requires agreement by all Member States meeting in the Council, before a proposal can be adopted.

White paper

A document (produced by the European Commission) containing proposals for EU action in a specific area. A white paper will follow on from a green paper published to launch a consultation process at European level.

Annex 1: Ordinary legislative procedure

