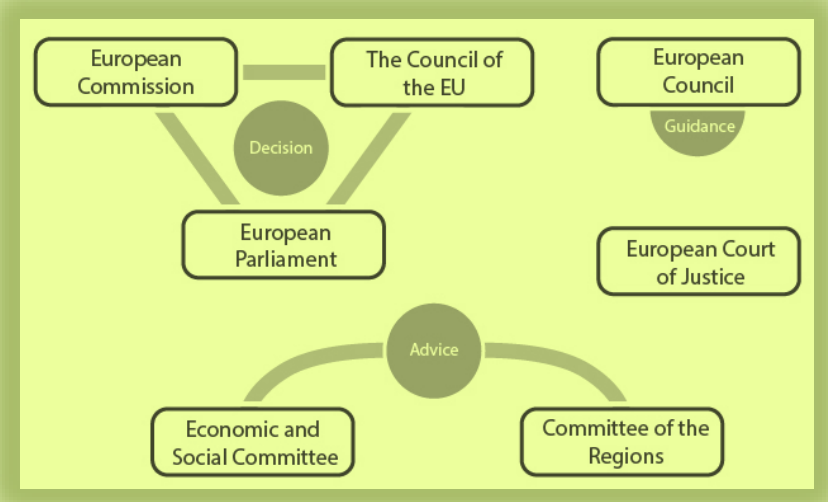
Ioana Nely Militaru

Organization and duties of the European Union institutions



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Organization and duties of the European Union institutions

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Activity

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Chapter 1. Institutions, offices and agencies of the European Union

1.1. The institutional framework of the European Union

✓ The Union has a unique institutional framework aimed at promoting values, pursuing objectives and supporting its interests, of its citizens and Member States, as well as ensuring the coherence, effectiveness and continuity of its policies and actions [art. 13 paragraph (1) of the Treaty on European Union (TEU), Title III, "Provisions regarding institutions"].

The institutions of the Union are:

- European Parliament;
- the European Council;
- the Council;
- European Commission (hereinafter referred to as "the Commission");
- The Court of Justice of the European Union;
- European Central Bank;
- Court of Auditors.

✓ The institutional framework of the European Union[1] is wider than the Community one[2], by adding two institutions: the European Council and the European Central Bank. Thus, through the institutional treaties of the Communities - Treaty establishing the European Coal and Steel Community (TECSC), Treaty establishing the European Economic Community (TEEC), Treaty establishing the European Atomic Energy Community (EAEC - Teuratom) - parallel institutions[3] with similar attributions were created: the Parliamentary Assembly (the European Parliament), the Special Council of Ministers (the Council), the Executive Commission (the Commission) and the Court of Justice. The Parliament and the Court of Justice are joint since 1957 by the Convention on certain common institutions, signed at the same time with the EEC and EAEC Treaties (in Rome), and since 1967 (July 1)[4] the Council and the Commission have been unified by the Merger Treaty of executives, from Brussels.

✓ The three Communities initially had four institutions - the Parliament, the Council, the Commission and the Court of Justice, and since 1993, through

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[1] See A. Fuerea, *Manualul Uniunii Europene*, 5th edition, revised and added after the Lisbon Treaty, Ed. Universul Juridic, Bucharest, 2011, p. 84 et seq.

[2] See R. Joliet, *Le droit institutionnel des Communautés Européennes*, Faculté de Droit d'Economie et de Sciences Sociales de Liège, 1981.

[3] These are the first four: The Parliamentary Assembly (the European Parliament), the Special Council of Ministers (the Council), the Executive Committee (the Commission) and the Court of Justice, because the Court of Accounts later acquired the status of institution through the Maastricht Treaty.

[4] The executive merger treaty was signed in Brussels in 1965 and entered into force in 1967.

the Maastricht Treaty (TMs), the Community institutional mechanism and the Court of Accounts have been added. Through the Lisbon Treaty, in 2009, the Union takes over, in succession, the five Community institutions, to which the European Council and the European Central Bank add.

✓ The community institutions were designed according to the model and according to the principles of the internal public law, therefore we are not in the presence of international institutions, but of internal institutions of a Community[1].

However, the principle of organizing the Communities from an institutional point of view does not conform to the traditional separation of powers between the legislative, executive and judicial spheres, but rather the representation of interests[2], a feature maintained by the Lisbon Treaty.

Therefore, each community institution represents a specific interest in the community decision-making process, as follows:

- The Court of Justice ensures the observance of the law;
- through the Council, the states intervene in the functioning of the Communities, this institution being composed of "one representative from each Member State (...)"[3];
- The Commission represents the general interest of the Communities;
- The European Parliament represents the interests of the people/citizens;
- The Court of Accounts verifies the legality, regularity and reliability of the use of funds by the Community institutions[4].

The same interests are also represented by the Treaty of Lisbon, with the only difference being the replacement of the term "community" with "union".

We add the "interest" represented by the European Council and the European Central Bank (ECB). Thus, the European Council represents the general political interests of the Union, by defining its orientations and priorities, while the ECB and the national central banks of the Member States lead the monetary policy of the Union.

Each institution acts within the limits of the attributions conferred on it by the treaties, in accordance with the procedures, conditions and purposes provided by them (13 par. 2 TEU).

1.2. Bodies of the European Union

The bodies of the Union - its offices and agencies - were created for the exercise of the powers conferred by treaties.

✓ The institutional structure is supplemented by bodies of the Union that

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[1] See L. Cartou, *L'Union européenne. Traités de Paris-Rome-Maastricht*, Dalloz, Paris, 2006, pp. 67-68.
[2] See R. Munteanu, *Drept European*, Ed. Oscar Print, Bucharest, 1996, p. 191.
[3] Art. 203 paragraph (1) TCE.
[4] See C. Lefter, *Fundamente ale dreptului comunitar instituțional*, Ed. Economică, Bucharest, 2003, p. 119.

perform advisory functions or with technical or financial character[1].

Some of these are created by treaties, while others are created by institutions, based on the treaties, in order to exercise the powers conferred by treaties[2].

✓ The following bodies are provided by the treaties:

- The European Economic and Social Committee (EESC) is regulated by art. 13 paragraph (4) YOU, art. 301-304 TFEU and Council Decision (EU, Euratom) 2015/1790 of 1 October 2015 appointing members to the European Economic and Social Committee for the period 21 September 2015-20 September 2020;

- The Committee of the Regions[3] (CR) is regulated by art. 13 paragraph (4) TEU, art. 300 and art 305-307 TFEU and Council Decision (EU) 2015/116 of 26 January 2015 appointing members and alternates to the Committee of the Regions for the period from 26 January 2015 to 25 January 2020;

- The Euratom Technical Committee or the Euratom Supply Agency[4] has legal personality and financial autonomy and is provided by art. 54 TEuratom. The Euratom Supply Agency was established by the Euratom Treaty. It became operational on June 1, 1960.

These bodies exercise advisory functions.

The European Investment Bank (EIB) is regulated by art. 308 and art. 309 of the Treaty on the Functioning of the European Union (TFEU). Additional provisions regarding the EIB are included in art. 15, art. 126, art. 175, art. 209, art. 271, art. 287, art. 289 and art. 343 TFEU[5]. The EIB is a financial body with legal personality, which finances investment projects in such a way as to contribute to a balanced development of the Union (art. 308 TFEU). The EIB finances investment projects through the European Investment Fund (EIF) [6].

Among the bodies set up by the institutions under the treaties, in order to

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[1] The Council and the Commission are assisted by numerous groups and committees, which is why a classification that includes the bodies created by the institutions is difficult to achieve. The Commission has drawn up a list of subsidiary bodies. To be seen R. Munteanu, *op. cit*., p. 259 (and the works cited there).

[2] See R. Munteanu, *op. cit*., pp. 258-259.

[3] See T. Ştefan, B. Andreşan-Grigoriu, *Drept comunitar*, Ed. C.H. Beck, Bucharest, 2007, p. 45.

[4] See Council Decision of 12 February 2008 establishing the Statute of the Euratom Supply Agency (Official Journal L 41 of 15 February 2008); 2008/114/EC, Euratom.

[5] See also Protocol (No. 5) on the Statute of the European Investment Bank and Protocol (No. 28) on economic, social and territorial cohesion, annexed to the TEU and the TFEU.

[6] The EIF was created by a decision of the Board of Governors of May 25, 1993 and began its activity in 1994. It was created to support small businesses. EIF shareholders are the EIB, the Commission and various financial institutions in Europe, together forming the "EIB Group". The EIF offers the following products: venture capital and microfinance for SMEs, especially for new and innovative companies, guarantees for financial institutions intended to cover loans granted to SMEs, aid for EU countries and acceding countries, in order to strengthen venture capital markets. It also provides guarantees to financial institutions, for example banks, to cover loans granted to SMEs. To be seen https://europa.eu/ europeanunion/about-eu/institutions-bodies/european-investment-bank_ro#fondul_european_de_ investiţii_(fei)5.

exercise the powers conferred we mention:

- The Permanent Representatives Committee (Coreper) is composed of the permanent representatives of the governments of the Member States. The committee is responsible for preparing the work of the Council and for executing the mandates inherited by it. The Committee may adopt procedural decisions in the cases provided for in the Council's Rules of Procedure (Article 240 par. 1 TFEU);

- The Political and Security Committee (art. 38 TEU)[1] is created to follow the international situation in the fields related to the common foreign and security policy and to contribute to the definition of policies, issuing opinions addressed to the Council, at its request, of the High Representative of the Union for foreign affairs and security policy or on its own initiative. The Committee oversees the implementation of the agreed policies, without prejudice to the duties of the High Representative. Under the Common Foreign and Security Policy (CFSP), the Committee exercises, under the authority of the Council and the High Representative, political control and strategic management of crisis management operations (referred to in Article 43).

- Structural funds, although they do not have legal personality, have a certain financial autonomy. The Union's objectives regarding economic, social and territorial cohesion are achieved by the Union through the Structural Funds:

  - The European Agricultural Guidance and Guarantee Fund (EAGGF) section "Guidance" [art. 175 paragraph (1) TFEU];
  - European Social Fund [art. 175 paragraph (1) TFEU];
  - European Regional Development Fund (ERDF), EIB and other existing financial instruments (Article 175 TFEU). The ERDF is meant to contribute to the correction of the main regional imbalances in the Union, by participating in the development and structural adjustment of the regions lagging behind and in the conversion of the industrial regions in decline (art. 176 TFEU);
  - The cohesion fund. This fund contributes financially to the realization of projects in the field of the environment and in that of the trans-European networks of transport infrastructure [art. 177 para. (2) TFEU].

- The inter-institutional bodies of the European Union are: The Office for Official Publications of the European Union and the Personnel Selection Office of the European Communities; European School of Administration (ESA):

  - The Office for Official Publications of the European Union (EUR-OP). According to Euratom Decision 2009/496/EC[2],

[1] For example, Coreper set up the Political and Security Committee and the Monetary and Financial Committee.

[2] Decision 2009/496/EC, Euratom, the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee and the

EUR-OP is an interinstitutional office that ensures the publication of Union institutions' publications[1].

- European Personnel Selection Office (EPSO). It was established by Decision 2002/620/EC[2], the organization and functioning of the Office being regulated by Decision 2002/621/EC[3]. EPSO organizes open competitions in order to ensure the employment of officials in the institutions of the European Union.
- The European School of Administration (ESA) was established. by Decision 2005/118/EC[4] and, for economic and efficiency reasons, was affiliated with the European Union Personnel Selection Office. The organization and functioning of the EAS are regulated by Decision 2005/119/EC[5]. The EAS conceives, organizes and evaluates, on behalf of the institutions of the Union: training courses for officials and agents who must or should exercise management positions; initiation courses to start the activity for the new staff members; compulsory training of Union officials within the transition from one group of functions to another[6].

- The decentralized agencies of the European Union[7]. The decentralized agencies cover as a concept several bodies with different official names: office, center, foundation, authority, college, etc. These agencies have been created to

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Committee of the Regions of 26 June 2009 on the organization and functioning of EUR-OP, published in JOUE L 168/41 of 30 June 2009. This Decision represents the last revision of the organization and functioning of EUR-OP.

[1] For details, see D. Vătăman, *Dreptul Uniunii Europene*, Ed. Universul Juridic, Bucharest, 2010, pp. 148-149.

[2] Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing EPSO, published in OJ L 197, 26 July 2002, p. 53

[3] Decision 2002/621/EC of 25 June 2002 of the Secretaries-General of the European Parliament, the Council and the Commission, the Registrar of the Court of Justice, the Secretaries-General of the Court of Auditors, the Economic and Social Committee and the Cornet of the Regions and the Representative of the European Ombudsman on the organization and the functioning of EPSO was modified by Decision 2010/51/EU of 19 January 201, OJ L 26/24 of 30 January 2010.

[4] Decision 2005/118/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions and the European Ombudsman of 26 January 2005 establishing the European School of Administration, published in OJ L 37/14 of 10 February 2005.

[5] Decision 2005/119/EC of the Secretaries-General of the European Parliament, the Council and the Commission, the Registrar of the Court of Justice, the Secretaries-General of the Court of Auditors, the Economic and Social Committee and the Committee of the Regions and the Representative of the European Ombudsman on the organization and functioning of the EAS, published in OJ L, 37/17 of 10 February 2005.

[6] For details, see D. Vătăman, *op. cit*., p. 152; D. Vătăman, *Drept instituțional al Uniunii Europene*, Ed. Universul Juridic, Bucharest, 2010, pp. 191-200.

[7] See D. Vătăman, *op. cit. (Dreptul Uniunii Europene)*, p. 153 et seq. See also https://europa.eu/european-union/about-eu/agencies/decentralised-agencies_ro, including for types of agencies.

perform certain technical and scientific tasks. Their role is to help EU institutions make decisions and implement policies. Decentralized agencies are widespread throughout the EU.

They are established by a legislative act.

In its working documents the Commission distinguishes between two types of Union agencies: executive and "regulatory" agencies.

The executive agencies are set up by a Commission decision under a Council regulation adopted in 2003 and their mission is to implement sectoral financial assistance programs belonging to the Commission, financed by credits which remain in the general budget[1].

The executive agencies are regulated by Regulation (EC) no. 58/2003 of the Council[2].

The regulatory agencies are set up by regulations adopted by the Council with the participation of the European Parliament through the special legislative procedure or jointly by the European Parliament and the Council through the ordinary legislative procedure and are independent and specialized bodies responsible for implementing certain aspects of sectoral policies. of the Union. The tasks of the executive agencies are oriented only towards the management of the Union programs, which is why they are set up for a limited period of time. The Commission is responsible for: setting up, effectively controlling the activity of the agencies and appointing their management staff. The Commission is the one that adopts a standard financial regulation regulating the preparation and execution of the agencies budget. Currently six executive agencies are operating[3].

Regulatory agencies have their own sectoral regulation, often adopted

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[1] *Idem*.

[2] Regulation (EC) no. 58/2003 of the Council of 19 December 2002 establishing the status of the executive agencies to be entrusted with tasks in the management of the Community/Union programs (OJ L 11, 16 January 2003).

[3] The executive agencies of the Union are: The Executive Agency of the European Research Council for the management of the specific Community program - Ideas in the field of border research, established on the basis of Commission Decision 2008/37/EC of 14 December 2008, pursuant to Regulation (EC) no. Council 58/2003: the Executive Agency for Certification for the management of certain fields in the specific Community programs, in the field of research "People, Capacities and Cooperation" established on the basis of Commission Decision 2008/46/EC in application of Council Regulation (EC) 58/2003; the Executive Agency for Competitiveness and Innovation, established on the basis of the Commission Decision of May 31, 2007 amending Decision 2004/20/EC with a view to transforming the "Executive Agency for Intelligent Energy" into the Agency mentioned above; The Executive Agency for Education, Audiovisual and Culture, established by Decision 2005/56/EC, amended by Commission Decision 2009/336/EC; Executive Agency for the Trans-European Transport Network (established by Commission Decision 2007/6010E, amended by Commission Decision 2008/593/EC); the Executive Agency for Health and Consumers, which is the continuation of the Executive Agency for the Public Health Program - PHEA, established by Commission Decision 2004/858/EC. For details, see D. Vătăman, *op. cit. (Drept instituţional...)*, pp. 201-211.

jointly by the European Parliament and the Council, through the ordinary legislative procedure[1], for the most part they are financed by the Union budget[2], they have their own legal personality. Regulatory agencies have various powers, some may take individual decisions with direct effect, applying the standards agreed at Union level, others provide additional technical expertise on the basis of which the Commission can base a decision, others are oriented towards creating a network between national authorities.

The usefulness of regulatory agencies has manifested itself especially in the area of shared competences, as the implementation of the new Union policies must be achieved through close cooperation between the Member States and the Union.

The competences of the regulatory agencies are limited to the adoption of individual decisions in specific fields for which a certain technical expertise is required, under strict and precisely defined conditions and without discretionary competence.

Regulatory agencies may be classified according to their main activities or by reference to their main functions[3], as follows[4]:

1. agents who make legally binding individual decisions against third parties: Community Plant Variety Office (CPVO), Office for Smooth Harmonization of the Internal Market (OSHIM), European Aviation Safety Agency (EASA), European Agency for Chemicals (ECHA);

2. agencies providing direct assistance to the Commission and, where appropriate, to the Member States, in the form of technical and scientific advice and/or inspection reports: European Maritime Safety Agency (EMSA), European Food Safety Authority (EFSA), European Union Agency for Railways (ERA), European Agency for the Evaluation of Medicines (EMEA), European Agency for Network and Information Security (ENISA);

3. agencies in charge of operational activities: European Supervisory Authority of the Global Satellite Navigation System (GSA), Community Fisheries Control Agency (CFCA), European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX), Judicial Cooperation Unit of the European Union (EUROJUST), the European Police Office (EUROPOL), the

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[1] Of the 23 agencies established on the basis of the ECT, 12 have as legal basis art. 308 TEC (article 352 TFEU), the others being created on the basis of sectoral provisions of the Treaty; the statutes of 8 agencies are jointly adopted by the European Parliament and the Council through the special legislative procedure (co-decision procedure).

[2] Except for the agencies set up under the CFSP, they are funded by the Member States; see Dan Vătăman, *op. cit.* (*Drept instituțional ...)*, p. 201-21

[3] Some of these were referred to in the legal doctrine as "institutions of lesser importance"; see in this regard I. Jinga, A. Popescu, *Integrarea Europeană. Dicționar de termeni comunitari*, Ed. Lumina Lex, Bucharest, 2000, p. 50; for details on other bodies and agencies of the Communities, see P. Mathijsen, *Compediu de drept european*, 7th ed., Ed. Club Europa, Bucharest, 2002, pp. 184-192; J. Echkenazi, *Ghidul Uniunii Europene*, Ed. Niculescu, Bucharest, 2008, p. 31.

[4] See D. Vătăman, *op. cit. (Dreptul Uniunii Europene)*, p. 155 et seq.

European Police College (CEPOL);

4. agencies responsible for collecting, analyzing, transmitting or introducing into the network objective, reliable and easily accessible information: European Center for the Development of Vocational Training (CEDEFOP), European Foundation for the Improvement of Living and Working Conditions (EUROFOUND), European Environment Agency (EEA), European Foundation for Vocational Training (ETF), European Monitoring Center for Drugs and Drug Addiction (EMCDDA), European Agency for Safety and Health at Work (EU-OSHA), European Center for Disease Prevention and Control (ECDC), European Union Agency for Fundamental Rights (FRA), the European Institute for Equal Opportunities between Women and Men (EIGE);

5. bodies of the Union providing services to other agencies or institutions: The Translation Center of the Bodies of the European Union (CDT).

The agencies created to coordinate the activities in the field of CFSP are: European Defense Agency (EEA), Satellite Center of the European Union (CSUE), Institute for Security Studies of the European Union (ISS).

What distinguishes the institutions of the Union from its bodies is that, the institutions make binding decisions towards the Member States, towards the natural or legal persons, and their members are elected at national level (Council and Parliament) or appointed by the governments of the Member States or by the Council[1].

Instead, Union bodies operate in specific fields and either carry out purely consultative tasks or make decisions that are not binding.

Also, personality and legal capacity have only the European Union[2], the European Investment Bank and the Euratom Supply Agency.

Thus, "in each of the Member States, the Union has the broadest legal capacity recognized to legal entities by national laws; The Union may, in particular, acquire and train movable or immovable property and may stand trial. To this end, the Union is represented by the Commission" (Article 335 TFEU) [3].

On the other hand, agreements with one or more third countries or international organizations are negotiated by the Commission and concluded by the Council on behalf of the Union (Article 218 TFEU).

✓ In addition to the institutional system of the Union presented, through

[1] See P. Mathijsen, *op. cit*., p. 63; C. Lefter, *op. cit*., p. 117.

[2] See art. 47 TEU with reference to the European Union.

[3] CJEC, 22/70, *Commission v. Council*, 1971, ECR 263 la 274 (4); CMLR 335, the Court ruled that having legal personality means that "in its external relations the Community/Union enjoys the capacity to establish contractual relations with third countries in all areas of the objectives defined in Part 1 of the Treaty". Other bodies with legal personality are: The European Center for the Development of Vocational Training, the European Foundation for the Improvement of Living and Working Conditions and the European Environment Agency.

the Treaty of Maastricht, an organizational structure specific to the monetary union was outlined within the Treaty of the European Communities (TEC)[1]. This includes the European System of Central Banks (ESCB), composed of the European Central Bank (ECB) and national central banks.

The ESCB has been granted complete independence both by the TEC and by the Treaty of Lisbon. In this sense, art. 130 TFEU provides that. "In exercising their powers and in carrying out the tasks and duties conferred upon them by treaties and in full the Statute of the ESCB and of the ECB, the European Central Bank, the national central banks or the members of their decision-making bodies may neither request nor accept instructions from the institutions, the bodies, offices or agencies of the Union, the governments of the Member States or any other body"[2].

1.3. Principles on which the institutional structure of the European Union is based

The legal doctrine[3] includes the following principles regarding the institutional structure: the principle of institutional balance, the autonomy of institutions and loyal cooperation between institutions.

✓ The principle of institutional balance[4] governs the relations between the institutions of the Union. The Court of Justice has stated that the principle of institutional equilibrium implies that each institution exercises its competences while respecting the competences of the other institutions. The principle highlights in particular the "institutional triangle" formed by the Council, the Commission and the European Parliament, which participates in the decision-making mechanism[5] - through "combined functions"[6] - in achieving the objectives set by the treaties; these institutions "cannot be clearly agreed with the traditional distinction between legislative, executive, judicial, and advisory powers (in this sense, the Commission is distinguished, which is known as representing the executive between the Union institutions)"[7].

According to this principle, the competences of the institutions are limited and exclusive.

They are limited, because "each institution acts within the limits of the

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[1] Named in the legal doctrine "specific institutional structure"; see, in this regard, R. Munteanu, *op. cit*., p. 189.

[2] The independence of these bodies also results from Protocol no. 4 on the Statute of the ESCB and of the ECB, annexed to the TFEU.

[3] See R. Munteanu, *op. cit*., pp. 190-196.

[4] See G. Guillermin, *Le principe de l'équilibre institutionnel dans la jurisprudence de la Cour de justice des Comunnautés européennes*, „Journal du Droit international" no. 2/1992, p. 319 et seq.

[5] The institutional triangle is highlighted by art. 289 paragraph 1 and 2 TFEU, which regulates the legislative procedures for the adoption of Union acts: ordinary (co-decision) and special.

[6] See O. Manolache, *Tratat de drept comunitar*, 5th ed., Ed. C.H. Beck, Bucharest, 2006, p. 97.

[7] *Idem*.

powers conferred on it by treaties" (Article 13 TFEU)[1]. Referring to the attributions/competences of the institutions, the TEU uses the notion of "functions" (art. 14 for the for the European Parliament, art. 15 for the European Council, art. 16 for the Council, art. 17 for the Commission).

They are exclusive, because the institutions, in principle, can neither desessify themselves nor share responsibility. Therefore, the balance established by the treaties cannot be altered, the Court specifying in this regard that "the principle prohibits any transfer of powers from one institution to another, any delegation of competence from one institution to an external body or to another institution if delegation changes the institutional balance"[2]. The treaties thus established a system of division of competences between institutions, assigning to each its own mission in the institutional mechanism of the Union.

✓ The principle of the autonomy of the institutions implies that the institutions of the Union can adopt themselves according to the treaties the internal regulation. The principle of autonomy protects the sphere of the internal organization of each institution[3], so that they require the Member States to refrain from any measure that could endanger the achievement of the Union's objectives (Article 4, paragraph 2 TFEU). The provision includes in fact the obligation of the states not to prevent by various measures the internal functioning of the institutions.

✓ The principle of loyal cooperation between institutions. Prior to the Treaty of Lisbon, the Court of Justice interpreted art. 10 TEC (currently repealed and replaced by Article 4 TEU[4]) in order to create an obligation of loyal cooperation between Member States and institutions[5]. In certain cases, the Community Treaties have organized the cooperation between the institutions, in particular in the decision-making process[6], for example, the co-decision procedure in which the institutions of the Council and the European Parliament are involved, or the procedure for concluding the interinstitutional agreements, which will complement the treaties (e.g. Article 295 TFEU)[7]. Currently, art. 13 paragraph (2) TEU

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[1] The Treaty of Lisbon also expressly refers to the principle of attribution on many occasions, for example: "The Union ensures coherence between its different policies and actions, taking into account all the Union's objectives and respecting the principle of attribution of competences" or "the delimitation of the competences of the Union is governed" of the attribution principle"(art. 7 TFEU, respectively art. 5 TEU).

[2] See R. Munteanu, *op. cit.*, p. 193.

[3] *Ibid.*, pp. 195-196.

[4] According to art. 4 par. 3 TEU "On the basis of the principle of loyal cooperation, the Union and the Member States shall respect each other and assist each other in carrying out the tasks arising from the Treaties".

[5] See V. Constantinesco, *L'article 5 CEE, de la bonne foi à la loyauté comununautaire*, in *Du droit international au droit de l'intégration Liber Amicorum Pierre Pescatore*, Nomos Verlag, Baden-Baden, 1987, pp. 97-114.

[6] See R. Munteanu, *op. cit.*, p. 193.

[7] According to art. 295 TFEU, "The European Parliament, the Council and the Commission shall consult each other and jointly organize the conditions for their cooperation. To this end, they may,

expressly provides that "the institutions shall cooperate with each other in a loyal manner".

✓ The principle of attribution of competences. The principle is expressly provided for in the treaties, in the first case it refers to the competences attributed to the institutions, and in the second case, it takes into account the competences attributed to the Union.

In the first case, according to art. 13 par. 2 TEU, "each institution acts within the limits of the powers conferred on it by treaties in accordance with the procedures, conditions and purposes provided by them".

In the second case, "the Union ensures coherence between its different policies and actions, taking into account all the Union's objectives and respecting the principle of attribution of competences" (art. 7 TFEU) or "the delimitation of the competences of the Union is governed by the attribution principle" (art. 5 TEU). Even if in the latter case the Union is considered, we must take into account the fact that it is represented, depending on the situation, by one institution or another, which means that the principle of attribution concerns the institutions.

✓ The principle of representing interests. The representation of interests is a concept that is found both in the composition of each individual institution and in the analysis of the attributions that each institution of the Union has.

The **European Parliament** is composed of representatives of the citizens of the Union (art. 14, paragraph 2 TEU). Citizens are directly represented, at Union level, in the European Parliament (Article 10, paragraph 2 TEU). Therefore, Parliament represents the interests of the citizens of the Union. The members of Parliament are elected by direct, free and secret universal vote, among the citizens of the 28 Member States. Starting from the provisions of the Maastricht Treaty, according to which the aim was to create a closer union between the peoples of Europe, in which "the decision should be taken as close as possible to the citizen", currently the European Parliament (together with the Council), as co-legislator, exercises legislative and budgetary functions while exercising political control and advisory functions over the institutions of the Union (Article 15 TEU).

The **Council** is composed of a representative at ministerial level of each Member State, empowered to engage the government of the Member State it represents and to exercise the right to vote (Article 16, paragraph 2 TEU). The Council therefore represents the interests of the Member States. Member States are represented in the Council by their governments, which, in their turn, are accountable either to national parliaments or to citizens (Article 10, paragraph 2 TEU). Also, in its capacity as a legislator, the decision-making by this institution at Union level is the will of all Member States.

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in compliance with the treaties, conclude interinstitutional agreements which may be binding". For example, the Interinstitutional Agreement of 3 October 1993, "Democracy, Transparency and Subsidiarity", adopted by the European Parliament, the Council and the Commission.

According to its competence, the European Commission therefore promotes the general interest of the Union through its legislative initiatives and proposals, by overseeing the application of Union law and by its external representation, except for the Common Foreign and Security Policy - CFSP (Article 17 TFEU).

The **European Council**, in its composition of Heads of State and Government of the Member States, represents the interests of the states and their governments, but also of the Union, by its powers to provide the Union with the necessary impetus for its development and by defining the general political orientations and priorities. [Article 15 (1) and (2) TFEU]. Member States are represented in the European Council by their Heads of State and Government, who in turn democratically respond either to national parliaments or to their citizens (Article 10, paragraph 2 TEU). Also, the external representation of the Union in matters concerning the common foreign and security policy is provided by the President of the European Council (Article 15 par. 6 TFEU).

The **EU Court of Justice**, which consists of one judge from each Member State, represents the interests of the law, ensures the observance of the law in the interpretation and application of the treaties (Article 19, paragraph 1 TEU). The Court of Justice shall cooperate with the national courts, ensuring the authentic interpretation of Union law.

The **Court of Accounts**, composed of a national of each Member State, exercises its powers in full independence, in the general interest of the Union. The Court of Accounts guarantees by its activity that the system of the European Union works economically, efficiently, effectively and transparently[1].

The **European Central Bank** and the national central banks of the Member States whose currency is the euro, which constitutes the Eurosystem, conduct the monetary policy of the Union (Article 282 paragraph 1 TFEU). Therefore, the ECB acts in the interest of monetary policy.

[1] See D. Vătăman, *op. cit. (Dreptul Uniunii...)*, p. 157.

Chapter 2. The European Parliament

2.1. Regulation of the institution of the European Parliament

The legal basis of the European Parliament is included in the provisions:
- art. 14 and art. 16 TEU;
- art. 223-234 TFEU.

"The European Parliament is the assembly chosen in accordance with the Treaties [TEU and TFEU], with the Act of 20 September 1976 on the election of the members of the EP by direct universal vote and with the national laws adopted in application of the Treaties"[1].

The European Parliament[2] (EP) is the institution of the European Union composed of the representatives of the citizens of the Union (art. 14 paragraph 2 TEU). As a result, citizens are represented directly at Union level in the European Parliament.

The institution of the European Parliament - hereinafter referred to as the EP - exercises its powers which are conferred on it by treaties, and therefore has the power to abstain.

From the date of entry into force - July 1, 1978[3] - of the "Act on the election of the representatives of the Parliament by direct universal vote"[4], of September 20, 1976, "the representatives in the European Parliament of the people gathered in the Community will be elected by direct universal vote" (art. 1)

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[1] See art. 1 of the EP Rules of Procedure.

[2] The institution of the European Parliament was initially called the Parliamentary Assembly, by the ECSC Treaty.

[3] Until then, the members of the institution of the European Parliament were considered delegates, to be appointed by the national parliaments, among their members, according to the procedure provided by each state in the number predetermined by the EC Treaty, according to art. 138 paragraph (1) and (2) TEC. To be seen O. Manolache, *op. cit.*, p. 98.

[4] Document annexed to Decision no. 76/787 - J. Of. L 278/1 of October 8, 1976. The act in question was amended by Council Decision no. 2002/772 of June 25 and September 23, 2002 - J. Of. L 283/1 of October 21, 2002. The act on the election of the members of the European Parliament by direct universal vote annexed to the Council Decision of September 20, 1976 (with the modification of art. 14) is supplemented, as it denies, by: 1. the resolutions regarding the electoral procedure of Parliament, in particular its resolution of 15 July 1998; 2. Its resolution of 11 October 2007 on the composition of the European Parliament; 3. the conclusions of the Presidency of the European Council of December 14, 2007; 4. Its resolution of May 6, 2010 on the draft protocol amending Protocol no. 36 regarding the transitional provisions regarding the composition of the European Parliament for the rest of the 2009-2014 legislature: the opinion of the European Parliament [art. 48 paragraph (3) EU Treaty]; 5. art. 39 of the Charter of Fundamental Rights of the European Union; 6 art. 9, art. 10, art. 14 paragraph (2) and art. 48 paragraph (2), (3) and (4) of the Treaty on European Union (TEU) and art. 22, art. 223 and art. 225 of the Treaty on the Functioning of the European Union (TFEU); 7. Protocol (No. 7) on the privileges and immunities of the European Union; 8. art. 41, art. 48 paragraph (3) and art. 74a of its Rules of Procedure; 9. report of the Committee on Constitutional Affairs (A7-0000/2010).

The first elections were held on July 7-10, 1979.

The Treaty of Lisbon expressly adopted this provision, specifying that "the members of the European Parliament shall be elected by direct, free and secret universal vote, for a term of five years" (Article 14, paragraph 3 TEU).

The number of EP members has been modified successively[1]. Following the elections for the EP, which took place in 2009, this institution had 736 members[2]. The Treaty of Lisbon expressly provides that the number of Members of Parliament may not exceed seven hundred and fifty, plus the President of the Commission (Article 14, paragraph 2 TEU).

Since Croatia's accession to the European Union, in July 2013, and until the 2014 elections[3], the European Parliament has counted 766 deputies. However, their number was reduced to 751 by the 2014 elections and will remain constant in the future.

The representation of citizens is provided in a proportionate way, with a minimum threshold of six members for each Member State. No Member State shall be assigned less than six seats and no more than ninety-six seats (Article 14, paragraph 2 TEU). The number of seats allocated to each Member State in the EP has been fixed so as to ensure a satisfactory representation based on both demographic and political membership criteria[4].

The European Parliament has three official offices: Luxembourg, Brussels (Belgium) and Strasbourg (France).

Luxembourg is the headquarters of the administrative offices, respectively the "General Secretariat". Meetings of the entire Parliament, called "plenary sessions", are held in Strasbourg and Brussels. Commission meetings are

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[1] According to art. 182 paragraph (2) introduced by the Treaty of Amsterdam, the number of members in the European Parliament may not exceed 700, regardless of the future enlargements of the European Union (following the distribution of seats to be reviewed). This paragraph (2) in art. 182, by the Treaty of Nice, was replaced with the indication that "the number of members of the European Parliament cannot exceed 732".

[2] See for details www.europarl.europa.eu; see J. Echkenazi, *op. cit*., 2008, p. 24.

[3] The elections were held on May 22-25, 2014.

[4] See C. Lefter, *op. cit.*, p. 123. Under the Treaty of Nice, the allocation of seats in the EP, according to the Protocol on the enlargement of the European Union annexed to the EU Treaty and the EC Treaty, is as follows: Germany 99, France, Italy and the United Kingdom 72, Spain 50, Holland 25, Belgium, Greece and Portugal 22, Sweden 18, Austria 17, Denmark and Finland 13, Ireland 12, Luxernburg 6. In the said Protocol for the course of the 2004-2009 legislature, it was also provided that, in the case of the entry into force of the Treaties, the number of members of the EP may temporarily exceed 732 (after the decision taken by the EU Council according to which a condition proportional to the number of representatives to be elected in the Member State file so that the total number is as close as possible to 732). The declaration on the enlargement of the European Union, included in the final act of the Conference, which adopted the Treaty of Nice, the position of the Member States on the allocation of seats for the European Parliament was as follows: Germany 99, United Kingdom, Italy and France 72, Spain and Poland 50, Romania 30, Netherlands 25, Greece, Belgium, Portugal, Czech Republic and Hungary 20, Sweden 18, Bulgaria and Austria 17, Slovakia, Denmark and Finland 13, Ireland and Lithuania 12, Latvia 8, Slovenia 7, Estonia, Cyprus and Luxembourg 6, Malta 5.

held in Brussels.

2.2. Composition and organization of the European Parliament

✓ Members of the European Parliament. The European Parliament consists of 750 members elected in the 28 enlarged EU member states.

Regarding the elections of the members of the European Parliament, as there is no single procedure for electing the representatives of the Parliament, by the Council Decision no. 2002/772 of 25 June and 23 September 2002, amending the Act on the election of the representatives of the European Parliament by direct universal vote, it is stipulated that "the election will be made after a uniform procedure in all the Member States, according to the constitutional norms"[1]. Also, by the same decision, it is recommended to the Member States "that the election be made on the basis of proportional representation".

In the same sense, art. 223 par. 1 TFEU and art. 7 par. 1 and 2 of the said Act provide that this institution "develops a draft to establish the necessary provisions allowing the election of its members by direct universal suffrage in accordance with a uniform procedure in all the Member States or in accordance with the principles common to all the Member States". The necessary provisions are established by the Council[2]. These provisions shall enter into force after they have been approved by the Member States in accordance with their constitutional rules.

The electoral procedure by which the members of the EP are elected is governed by the legislation of each Member State according to its constitutional norms. All Member States apply, with small differences, a system of proportional representation through party lists.

However, the European elections already comply with a number of common rules: direct universal suffrage, proportional representation and a renewable five-year term. As a general rule, seats in Parliament are distributed in proportion to the population of each Member State[3].

Also, the Act on the direct elections of the EP members also includes

[1] Each Member State decides on the way of conducting the elections, but applying the same democratic rules: the right to vote starting from the age of 18, the equality between the sexes and the secret vote.

[2] The Council, acting unanimously, in accordance with a special legislative procedure and after the approval of the EP and which decides with the majority of its members, establishes the necessary provisions [art. 223 paragraph 1 (2) TFEU].

[3] Thus, in 2009, each Member State had a fixed number of seats, a maximum of 99 minimum 5. In terms of gender equality, the representation of women in the European Parliament is constantly increasing. Currently, about one third of the deputies are women.

provisions regarding incompatibilities[1].

Thus, the incompatibilities between the capacity of representative in the EP and that of a member of the European Council and that of a member of the Council, the Commission, the Court of Justice, the Court of Accounts, the Economic and Social Committee or the agent or administrative officer of an institution are disposed of the Union or of a body or the Registry of the Court of Justice[2]. At the national level, other incompatibilities can be instituted (in accordance with national law).

The representatives in the EP are grouped by political parties, largely reflecting the "ideological preferences at national level"[3].

The European Parliament and the Council, acting by regulations on their own initiative, in accordance with an ordinary legislative procedure, establish the status of political parties at European level, in particular, the rules related to their financing (Article 224 TFEU, in conjunction with Article 10 TEU). In this sense, art. 10 TEU states that "political parties at the European level are important as an integration factor in the Union. This contributes to the formation of the European political consciousness and to the expression of a political will of the citizens of the Union".

MEPs are exercising their mandate independently. They are not bound by instructions and cannot receive an imperative mandate[4].

As regards the working time of Members, it is divided between Brussels, Strasbourg and their constituencies, as follows[5]:

- attend meetings of parliamentary committees and political groups in Brussels, as well as additional sessions;

- Plenary sessions are held in Strasbourg. Sessions last one week per month (except August), but additional shorter sessions are held (they are held in Brussels);

- In parallel with these activities, the deputies must also allocate time to their constituencies in the countries of origin.

Statute for Members. Deputies in the European Parliament[6] are not grouped by nationality, but by their political affinities. They exercise their mandate independently.

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[1] See art. 3 paragraph 2 of the Rules of Procedure of the EP, which provides, in this regard, that "any member whose election is notified by the EP must declare in writing, before participating in the parliamentary work, that it does not hold a function incompatible with that of the deputy in EP".
[2] See O. Manolache, *op. cit*., p. 100.
[3] See T. Ştefan, B. Andreşan-Grigoriu, *op. cit.*, 2007, p. 48.
[4] See art. 2 of the EP Rules of Procedure.
[5] See A. Popescu, I. Diaconu, *Organizaţii europene şi euroatlantice*, Ed. Universul Juridic, Bucharest, 2009, p. 219.
[6] Members of the European Parliament whose powers are increasingly important influence all the daily life of the citizens of the Union: environment, consumer protection, transport, as well as education, culture, health, etc.

The statute and the general conditions regarding the exercise of the functions of its members are established by the EP, acting by regulations, on its own initiative, in accordance with a special legislative procedure, after the Commission's opinion and with the approval of the Council (art. 223 par. 2 TFEU). Also, regarding any rule and any conditions regarding the tax regime of the members or former members, the Council decides unanimously (art. 223 par. 2 TFEU)[1].

The deputies enjoy the privileges and immunities provided in Protocol no. 7 regarding the privileges and immunities of the European Union[2].

✓ The rules of procedure distinguish between:

- Members who perform the functions of: EP President, Vice-Presidents and Quaestors[3]. They are elected by secret ballot. Their term of office is established for two and a half years, ie half of the parliamentary term, with the possibility of being renewed;

- deputies who organize themselves in the office, the Conference of Presidents, the Conference of Committee Chairs and al. Conference of Delegation Chairs;

1. The President of the European Parliament[4]. Applications must be submitted only by a political group or at least 40 members. The President represents the institution of Parliament in relations with third parties and other institutions of the Union.

The President conducts all the activities of Parliament and its organs and has all the powers to chair the EP debates and ensure their smooth running.

In this regard, the President of the EP fulfills the following functions[5]:

- opens, suspends and closes Parliament's sittings;

- decides on the admissibility of the amendments, on the questions addressed to the Council and the Commission and on the compliance of the reports with the EP's rules of procedure;

- ensures compliance with the EP's rules of procedure;

- gives the floor to the speakers, declares the debates open;

- vote the questions and announce the results of the vote;

- represents the Parliament in international relations, at ceremonies, in administrative, judicial or financial matters (the President may delegate these powers to the Vice-Presidents);

- at the opening of each European Council meeting, the President of Parliament presents the views and concerns of this institution regarding specific topics and items on the agenda;

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[1] MEPs were currently receiving the same salary as MEPs in the country in which they were elected. In September 2005, a Statute for Members of the European Parliament was adopted, which will eliminate the pay gap and ensure greater transparency of Members' remuneration.

[2] This protocol complements the provisions of art. 5-7 of the EP Rules of Procedure.

[3] See art. 12-19 of the EP Rules of Procedure.

[4] See art. 13 of the EP Rules of Procedure.

[5] See art. 20 of the EP's Rules of Procedure.

- signs the budget of the European Union, after it was adopted by Parliament in second reading. Once signed, the budget becomes operational;

- sign, together with the President of the Council, all the legislative acts adopted by the co-decision procedure (acts adopted by the European Parliament and the Council, together).

2. Vice-Presidents. After the election of the President, the vice-presidents shall be elected on a common bulletin. The candidates who had won the absolute majority of the votes cast in the order of the number of votes obtained are declared elected in the first round, within the 14 seats.

The president may be replaced by one of the vice-presidents, in case of absence, the impossibility of exercising the function or if he wishes to participate in the debate according to the EP's rules of procedure.

3. The Quaestors. After the election of the Vice-Presidents, the Parliament proceeds to the election of five Quaestors. The election of the Quaestors is carried out in accordance with the same rules that apply in the case of the election of the Vice-Presidents. The questionnaires are charged with carrying out the administrative and financial tasks that directly concern the deputies, according to the guidelines adopted by the bureau.

The MEPs are organized in the office, the Conference of Presidents, the Conference of Committee Chairs and the Conference of Delegation Chairs.

1. The Bureau shall be composed of the President of the EP and the 14 Vice-Presidents[1]. The questionnaires are members of the consultative office.

The Bureau shall regulate the financial, organizational and administrative matters concerning the internal organization of Parliament, the Secretariat and the bodies of Parliament, including the conduct of meetings.

The Bureau also establishes:

- the organizational chart of the General Secretariat and the rules regarding the administrative and financial situation of the officials and other agents;

- a preliminary project for estimating Parliament's budget;

- establishes the modalities of application of Regulation (EC) no. 2004/2003 of the EP and the Council on the status and financing of political parties at European level.

The bureau appoints the Secretary-General and two vice-presidents responsible for developing relations with national parliaments. The latter periodically submit to the Conference of Presidents a report on the activities carried out in this field.

At each new EP election, the office at the end of the mandate will remain in office until the first sitting of the new Parliament.

2. The Conference of Presidents[2] is composed of the President of the EP and the presidents of the political groups. At the Conference of Presidents, the EP President invites one of the non-attached Members to attend its meetings,

[1] See art. 23 of the EP's Rules of Procedure.
[2] See art. 24 of the EP's Rules of Procedure.

without having the right to vote.

It organizes Parliament's proceedings and decides on all matters relating to legislative programming. Also, the Conference of Presidents is the competent body for:

- questions concerning the relations of the European Parliament with the other bodies and institutions of the Union, as well as with the national parliaments of the Member States;
- issues related to relations with third countries and with institutions or organizations outside the European Union;
- organizing structured consultations with the European civil society
- the composition and powers of committees and committees of inquiry, as well as of the joint parliamentary committees, permanent delegations and ad-hoc delegations.

3. The conference of committee chairmen[1] shall consist of the chairpersons of all permanent or special committees of the EP, being chaired by a chairperson chosen from among them. It may make recommendations to the Conference of Presidents regarding the work of the committees and the establishment of the agenda during the session. The Bureau and the Conference of Presidents may delegate certain tasks to the Conference of Committee Chairs.

4. The conference of delegation chairmen[2] shall consist of the chairmen of all permanent interparliamentary delegations. It may make recommendations to the Conference of Presidents regarding the work of the delegations. The Bureau and the Conference of Presidents may delegate certain tasks to the Conference of Delegation Chairs.

✓ **Political groups**. The European Parliament does not evaluate the political affinities of the members of a group, but the deputies concerned recognize, by definition, that they have the same political affinities[3]. A political group is made up of Members elected in at least a quarter of the Member States. The minimum number of Members required to form a political group is twenty-five.

The political groups of the EP in the 2014-2019 legislature are as follows[4]:

1. The Group of the European People's Party (Christian Democrats);
2. The Group of the Progressive Alliance of Socialists and Democrats in the European S&D Parliament;
3. Conservatives and Reformists;
4. Alliance of Liberals and Democrats for Europe;
5. The European United Left/Nordic Green Left;
6. Greens/European Free Alliance;

[1] See art. 27 of the EP's Rules of Procedure.
[2] See art. 28 of the EP Rules of Procedure.
[3] See art. 30 of the EP Rules of Procedure.
[4] See J. Echkenazi, *op. cit*., p. 24.

7. Europe Group for Direct Freedom and Democracy;

8. Europe of Nations and Freedom.

There will be 7 political groups in the 2019-2024 legislature[1]:

1. The Group of the European People's Party (Christian Democrats);

2. The Group of the Progressive Alliance of Socialists and Democrats in the European Parliament;

3. The Renew Europe Group;

4. The Greens Group/European Free Alliance;

5. The Identity and Democracy Group;

6. The Group of European Conservatives and Reformists;

7. Confederal Group of the European United Left/Nordic Green Left.

The declaration of formation of a group is published in in the Official Journal of the European Union. Within the organization chart of the General Secretariat, the political groups have a secretariat, administrative facilities and credits provided in the EP budget.

The political groups ensure the internal organization, by appointing a president (or two presidents, in the case of certain groups), an office and a secretariat.

The distribution of the seats of the deputies in the Chamber is made according to the political affiliation, from left to right, with the agreement of the group presidents.

A deputy may belong to a single political group.

Some deputies are not part of any political group, in this case they are non-affiliated deputies.

Before each vote in plenary, the political groups examine the reports drawn up by the parliamentary committees and submit amendments.

The political group adopts a position following the consultations within it. No member may be required to vote.

✓ **The Coordination Group for Brexit[2].** The Brexit Coordination Group operates under the aegis of the Conference of Presidents and aims to coordinate and prepare Parliament's deliberations, reflections and resolutions on the UK's withdrawal from the EU. The Deputy Secretary General supports the work of the Brexit Coordination Group.

✓ **Intergroups.** Intergroups are made up of deputies from any political group or commission. The purpose of their establishment is the subject of informal exchanges of opinions on certain topics and of promoting contact between MPs and civil society.

The intergroups are not parliamentary bodies, they do not express the opinions of the Parliament by denial.

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[1] https://www.caleaeuropeana.ro/parlamentul-european-isi-incepe-noua-legislatura-cu-sapte-grupuri-politice/

[2] See http://www.europarleuropa.eu/brexit-steering-group/en/home/home.html.

Intergroups are regulated by the internal rules adopted by the Conference of Presidents on December 16, 1999 (last updated: September 11, 2014), which establish the conditions under which intergroups can be created at the beginning of each parliamentary term.

The presidents of the intergroups must declare any support they receive, in money or in kind, according to the same criteria that also apply to the deputies individually. The declarations must be updated annually and are recorded in a public register kept by the Quaestors.

At its meeting on December 11, 2014, the Conference of Presidents approved the formation of intergroups during the 2014-2019 parliamentary term[1].

✓ **Administrative services.** General Secretariat of the European Parliament. The European Parliament is assisted by a Secretary-General appointed by the Bureau. The Secretary-General makes a solemn commitment to the Bureau to perform his duties in full impartiality and fairness.

The Secretary General of the EP runs a secretariat whose composition and organization are established by the Bureau.

The Secretary-General is the highest official in the EP and in this capacity:

- provides assistance to the President of the EP, the Bureau, the political bodies and the deputies;

- ensures good parliamentary work under the leadership of the President and the Bureau;

- verifies and signs together with the President all the texts adopted jointly by the Parliament and the Council;

- prepares the basic elements of a report, which will allow the Bureau to elaborate the draft EP budget estimate.

The General Secretariat is headquartered in Luxembourg and Brussels[2], with the task of coordinating legislative work, organizing plenary sittings and other meetings. It also provides technical assistance and advice to parliamentary bodies and members of Parliament in support of the exercise of their mandates[3].

In the subordination of the General Secretariat, it carries out its activity ten general directions[4] that have different powers. The General Secretariat cooperates with the Legal Department, which advises the EP on the legal issues, also

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[1] To see the intergroups in the parliamentary term 2014-2019: http://www.europarl.europa.eu/aboutparliament/ ro/20150201PVL00010/Organisation-and-rules#political-groups.

[2] About 5,000 officials, selected by competition from all the countries of the Union and under the authority of a Secretary-General, work for the European Parliament.

[3] See D. Vătăman, *op. cit. (Dreptui Uniunii...),* p. 71.

[4] The directions under the General Secretariat are: the Directorate-General for the Presidency; Directorate-General for Infrastructure and Logistics; Directorate-General for Internal Policies; Directorate-General for Translation; Directorate-General for Foreign Policy; Directorate-General for Interpretation and Conferences; General Information Directorate; Directorate-General for Finance; Directorate-General for Personnel; Directorate-General for Innovation and Technical Assistance (ITEC); to be seen D. Vătăman, *op. cit. (Dreptul Uniunii...),* p. 71.

ensuring the representation of this institution in justice (before the CJEU).

Political groups have their own collaborators and deputies of parliamentary assistants.

✓ The European Parliament is distinguished from other international organizations by the obligation to ensure comprehensive multilingualism.

The Parliament works in all the official languages of the European Union, in 24 languages, after Croatia's accession on July 1, 2013. All documents in plenary sessions must be translated into 24 languages, with a partial exception applying to the Irish and Maltese languages, because only certain documents are translated into these two languages.

The European Parliament has an interpretation service so that each Member can speak in his or her native language.

The European Parliament is therefore the world's largest employer of interpreters and translators, accounting for one third of the institution's staff.

✓ Regarding the Parliament Sessions, the EP meets in an annual session. The EP meets in law on the second Tuesday in March. It may also be convened during the extraordinary session, at the request of the majority of its members, the Council or the Commission (Article 229 TFEU).

The Parliament decides with the majority of the votes cast, except where the treaties stipulate otherwise (art. 231 TFEU). The quorum is established by the rules of procedure, generally being 2/3 of the actual number of members[1].

✓ **Parliamentary committees.** In order to prepare the plenary sessions of the Parliament, the deputies are constituted in permanent cornices specialized in certain fields[2]. Currently, there are 23 parliamentary committees in the EP[3]. Each committee has a chairman, an office and a secretariat[4]. Parliamentary committees met once or twice a month in Brussels. Their debates are public. Within the parliamentary committees, the deputies elaborate, modify and adopt legislative proposals and reports on their own initiative.

Deputies examine the proposals of the Commission and the Council and, if appropriate, prepare reports that are presented during plenary sessions.

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[1] See D. Vătăman, *op. cit. (Dreptui Uniunii...)*, p. 71.

[2] See art. 188 of the EP Rules of Procedure.

[3] See Appendix no. VII to the EP Rules of Procedure. The standing committees are: the Committee on Foreign Affairs; Committee on Development; Committee on International Trade; Committee on Budgets; Committee on Budgetary Control; Committee on Economic and Monetary Affairs; Committee on Employment and Social Affairs; Committee on the Environment, Public Health and Food Safety; Committee on Industry, Research and Energy; Committee on the Internal Market and Consumer Protection; The Committee on Transport and Tourism; Commission for Regional Development; Commission for Agriculture and Rural Development; Committee on Fisheries; Commission for Culture and Education; Commission for Legal Affairs; Committee on Civil Liberties, Justice and Home Affairs; Committee on Constitutional Affairs; Committee on Women's Rights and Gender Equality; Committee on Petitions. A commission is made up of 28 to 86 deputies. For the duties of the standing parliamentary committees, see the mentioned annex.

[4] The political composition of the committees reflects that of the plenary session.

At the proposal of the Conference of Presidents, the EP may, at any time, set up special commissions, whose powers, composition and mandate are established at the same time by the decision to set them up[1]. The term of office of these committees is for a maximum of 12 months, unless, at the end of this period, Parliament decides to extend the mandate.

Parliament may, within its powers of control, at the request of a quarter of its members, a commission of inquiry[2], to examine alleged violations of Union law, or cases of maladministration in the application of Union law, which would represent the deed or act. of an institution or body of the Union, either of the public administration of a Member State or of persons mandated by Union law to implement it (Article 226 TFEU)[3]. The decision to set up a commission of inquiry shall be published in the Official Journal of the EU within one month.

The committee chairmen coordinate their work within the Conference of committee chairmen.

✓ **Interparliamentary delegations.** At the proposal of the Conference of Presidents, the Parliament constitutes permanent interparliamentary delegations and determines their nature and the number of members according to their duties. The election of the members of the delegations takes place during the first or the second session of the newly elected EP for the entire term of the legislature.

The general competences of the different delegations are defined by the EP. It may, at any time, extend or restrict them.

The European Parliament currently has 44 delegations. Delegations maintain relations and organize exchanges of information with third country parliaments[4].

The **EP bodies**, in particular the committees, cooperate with corresponding organs of the Parliamentary Assembly of the Council of Europe in areas of common interest, in particular with a view to improving the efficiency of the work and to avoid overlapping[5].

The Conference of Presidents, in agreement with the competent authorities of the Parliamentary Assembly of the Council of Europe, defines the modalities of implementation of these provisions.

The EP may set up joint parliamentary committees together with the parliaments of the states associated with the Union or of the states with which negotiations have been undertaken for accession[6].

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[1] See art. 184 of the EP's Rules of Procedure.

[2] A commission of inquiry is "Money laundering, avoiding tax burdens and tax evasion"; to be seen http://www.europarl. europa.eu/committees/rolparliamentary-committees.html.

[3] See also art. 185 of the Rules of Procedure.

[4] For example, the list of delegations includes relations with North Africa, Iraq, Israel, the Arabian Peninsula, Palestine, the Maghreb countries and the Arab Maghreb Union, etc.; for completing the list, see http://www.europarl. europa.eu/delegations/ro/home.html.

[5] See art. 199 of the Rules of Procedure.

[6] See art. 200 of the Rules of Procedure

These committees may make recommendations to the participating parliaments. The general competences of the various joint parliamentary committees are defined by the European Parliament and by agreements concluded with third countries.

✓ The European Parliament works closely with other institutions of the Union.

In essence, the collaboration between the European Commission - as guardian of the treaties and of the executive body - and the European Parliament materializes through the following:

- The Commission presents, explains and supports legislative proposals before the parliamentary committees and is obliged to take into account the changes requested by the Parliament;

- The Commission may attend all sittings of the European Parliament and, at its request, be heard. The Commission responds orally or in writing to questions asked by the EP or its members (Article 230 TFEU);

- The Commission, in its capacity as a collegiate body, is responsible to the European Parliament (art. 17 paragraph 8 TEU);

- after consulting the Conference of Presidents, the President of the EP may invite the President of the Commission, the Commissioner responsible for relations with the EP or, following an agreement, another Member of the Commission to present a statement to Parliament after each Commission meeting, to present the main decisions taken[1].

Regarding the collaboration of the European Parliament with the Council of the European Union, we summarize the following:

- The Council of the European Union, through its President, participates in the work of the Parliament;

- can intervene in any of the debates in the plenary sessions of Parliament, represented by its President;

- The President of the Council of the European Union (at the beginning of each term) presents his program in front of the European Parliament meeting in plenary and initiates a debate with Members. At the end of the 6 months in office, the President presents his political balance to the European Parliament.

The European Council is represented before the EP by the President of the European Council. At the end of each high-level meeting, the President of the European Council presents to Parliament a report on each European Council meeting [art. 15 paragraph 6 letter d) TUE][2].

The President of the Court of Auditors may be invited by the EP, during the discharge procedure or within Parliament's budgetary control activities, to speak to present the observations contained in the annual report, special reports or opinions of the Court, as well as to explain the Court's work program[3].

[1] See art. 111 of the EP's Rules of Procedure.
[2] See art. 5 of the Rules of Procedure of the European Council.
[3] See art. 112 of the EP's Rules of Procedure.

The President of the European Central Bank presents to Parliament the annual report of the Bank on the activities of the European System of Central Banks and the monetary policy for the previous year and the current year[1].

2.3. Functions of the European Parliament

2.3.1. Regulation of the functions of the European Parliament

With each treaty subsequent to the institutional treaties[2], the European Parliament has acquired new, strengthened powers, starting with the "consultative and supervisory ones" (up to the Single European Act - SEA), continuing the procedure of institutional cooperation[3] (introduced by the SEA) and the codecision procedure - introduced by the TEU, extended and simplified by the Treaty of Amsterdam - generalized by the Treaty of Lisbon.

An increase in the role of the European Parliament in several areas has begun and has continued steadily since the 1970s.

Thus, in the budgetary field, a system of own resources of the European Communities[4] is established, in which Parliament acquires important prerogatives. In this regard, by the Treaty of Luxembourg of April 22, 1970, the European Parliament has the possibility to propose amendments to the draft budget established by the Commission, and regarding the non-binding requests (so called because they do not derive from the Treaty or from acts adopted by the institutions) has the last word[5].

By the Treaty of Brussels of 22 July 1975, the European Parliament has the right to reject the budget as a whole and to give or not discharge the Commission on the implementation of the budget.

The Single European Act introduces a new procedure, called cooperation, in the legislative process, and in the accession and association agreements a right of opinion is recognized in Parliament.

Through the TMs, the two procedures introduced by the SEA have been extended to other areas, also establishing the co-decision procedure, which is

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[1] See art. 113 of the EP Rules of Procedure.

[2] With reference to TEEC, TECSC and TEuratom.

[3] The procedure of institutional cooperation - between the Council, the Commission and the Parliament was introduced by the Single European Act regarding the decisions regarding the internal market.

[4] See Council Decision of 20 April 1970 on the replacement of financial contributions to the Member States by the Communities' own resources (OJEC no. L, of 28 April 1970, p. 19); this decision was replaced by the Decision of 24 June 1988 on the Communities' own resources (OJEC, no. L. 185 of 15 July 1988, p. 24).

[5] See R. Munteanu, *op. cit*., p. 227; the budgetary procedure, as established by the Luxembourg Treaty, has not been modified by the TMs.

characterized by granting the EP veto right, and in case of disagreement, the possibility of a direct dialogue between EP and Council within a conciliation committee[1].

Although the Amsterdam Treaty (TA) extends and simplifies the co-decision procedure in the process of adopting Community legislative acts, thus widening the role of the EP in the Community legislative process, the legislative function within the Union is - in this period - in principal of the Council.

The European Parliament has limited co-decision rights, even as a result of the amendments made by the Treaties of Maastricht, Amsterdam and Nice[2].

✓ Currently, by the Treaty of Lisbon, the European Parliament is in the same position as the Council with regard to the most important functions of a Union institution, legislative and budgetary. Thus, Parliament exercises its powers according to art. 14 par. I TEU and art. 225, art. 227, art. 228, art. 230, art. 233, art. 234, art. 294, art. 314 TFEU.

✓ Enumeration of the powers of the European Parliament

1. According to art. 14 par. 1 TEU, European Parliament:

a) exercises, together with the Council, the functions:

- legislative (according to article 294 TFEU, respectively the co-decision procedure) and

- budgetary (according to art. 314-315, art. 322, art. 318-319 TFEU);

b) performs the functions of:

- political control over the other institutions of the Union (art. 226, art. 227, art. 228, art. 234, art. 230, art. 233, art. 234 TFEU) and

- consultative [art. 127 paragraph (6), art. 129 paragraph (4), art. 332, art. 333 TFEU and others] in accordance with the conditions laid down in the Treaties;

c) elect the President of the Commission (according to art. 17 par. 7 TEU).

2. The judicial status of the Parliament is determined by the possibility of judicial intervention of this institution in cases pending before the EU Court of Justice (articles 263 and 265 TFEU).

2.3.2. Defining the functions of the European Parliament

A. The legislative function of the EP. Prior to the Lisbon Treaty, according to art. 192 TEC, the European Parliament "participates" in the process leading to the adoption of Community acts, not in the sense of highlighting a simple "contributory, participatory" role - non-decisional in this process - but to bring to light the fact that the Community legislative process it was characterized by the cooperation of several community institutions and bodies, even if their

[1] *Idem*.
[2] See G. Gornig, I. E. Rusu, *Dreptul Uniunii Europene*, Ed. C.H. Beck, Bucharest, 2006, p. 42.

participation, it is true, had different weights. Thus, the Council was the main legislative body, followed by the European Parliament, while, in principle, the Commission had (as at present) the competence of legislative initiative and execution of Community acts. The Economic and Social Committee and the Committee of the Regions, as well as the Commission, had (as in, presently) the status of participants in the Community legislative process.

✓ Currently, through the Treaty of Lisbon, the legislative function in the European Union is, in principle, equally the EP and the Council, which is exercised, according to art. 289 TFEU, by:

- the ordinary legislative procedure, which consists in the joint adoption by the EP and the Council of a legislative act (a regulation, a directive or a decision) at the Commission's proposal, also called the co-decision procedure. This procedure is defined in art. 294 TFEU;

- the special legislative procedure, which consists in the adoption of a legislative act (of a regulation, directive or decision) by the EP with the participation of the Council or by the Council with the participation of the EP, at the initiative of a group of Member States or the EP, at the ECB's recommendation or at the request of the CJEU or the EIB.

Among the special procedures, we mention: conciliation, cooperation, approval (the procedure of the assent).

B. The budgetary function of the European Parliament. The European Parliament and the Council, acting in accordance with a special legislative procedure, shall adopt the annual budget of the Union (in accordance with Article 314 and Article 315 TFEU). Each institution of the Union shall, by 1 July, draw up an estimate of its expenditure for the annual budgetary year[1].

The Commission groups these situations into a draft budget proposal, to which is attached an opinion that may contain different estimates (an estimate of revenue and an estimate of expenditure).

The Commission must submit this proposal to the EP and the Council by 1 September of the year preceding the budget execution. Until a conciliation committee is convened, the Commission may amend the draft budget during the procedure.

The Council adopts its position on the draft budget, which it submits, together with the reasons that led to the adoption of the respective position, the EP by October 1 of the year preceding the year of implementation of the budget.

If within forty-two days of transmission, the EP:

- approves the position of the Council, the budget is adopted;

- did not make a decision, the budget is considered approved;

- adopt amendments[2], the draft thus amended shall be forwarded to the Council and the Commission. In this case, the President of the EP, in agreement

[1] See D.L. Roman, *Finanțe publice internaționale*, Ed. Economică, Bucharest, 2006, p. 290 et seq.
[2] With the majority of its members.

with the President of the Council, convenes the conciliation committee without delay. If the Council informs the EP that it approves all its amendments, within ten days, the conciliation committee no longer meets.

The Conciliation Committee[1] has the mission to reach, on the basis of the positions of the EP and the Council, an agreement on a joint project[2] within twenty-one days from the date of its convening.

The Commission participates in all the work of the Conciliation Committee and takes all necessary initiatives to promote the approximation of the EP and Council positions.

The Parliament and the Council approve the joint project, having fourteen days calculated from the date on which the conciliation committee gave its consent for the approval of the joint project (within twenty-one days).

Within the term provided above, for fourteen days:

- the budget is considered to be definitively adopted according to the joint project if the EP and the Council approve each joint project or do not make a decision, or if one of these institutions approves the joint project, and the other does not make a decision;

- The Commission presents a new draft budget if the EP[3] and the Council reject the joint project, or if one of these institutions rejects the joint project and the other does not take a decision;

- The Commission presents a new draft budget if the EP[4] rejects the joint project and the Council approves it;

- The EP approves the joint project, but the Council rejects it, the EP can decide, within fourteen days from the date of rejection by the Council[5], the confirmation of all or only certain amendments.

If one of the EP amendments is not confirmed, the position approved in the Conciliation Committee regarding the budget line that is subject to this amendment is retained. On this basis, the budget is considered to be definitively adopted.

The Commission may also submit a new draft budget if, within the initial twenty-one days granted to the Conciliation Committee, it does not reach an agreement on a joint project.

The EP President notes that the budget is definitively adopted if the procedure for adopting the budget has been fulfilled, according to art. 314 paragraph 1 and 7 TFEU.

With regard to "**Budget execution and budget discharge**"[6] (art. 317-

[1] It brings together the members of the Council or their representatives and all the members representing the EP.

[2] With the qualified majority of the members of the Council or their representatives and with the majority of the members representing the EP.

[3] It decides with the majority of its members.

[4] *Idem*.

[5] It decides with the majority of its members and three-fifths of the total votes cast.

[6] See for details D.L. Roman, *op. cit*., p. 294 et seq.

319 TFEU), the Commission presents annually to the European Parliament and the Council:

- the accounts of the financial year ended, related to the budgetary operations, also communicating a financial balance sheet describing the assets and liabilities of the Union;

- a report evaluating the Union's finances based on the results obtained, referring in particular to the indications of the EP.

Regarding the control over the budget execution, according to art. 78 of the Rules of Procedure, the EP returns by entrusting this task to the competent committees for budget and budgetary control.

Parliament also has the power to grant, on a recommendation from the Council, the Commission's discharge from the execution of the budget (Article 319 TFEU). To this end, the EP shall subsequently, after the Council, draw up the accounts, the financial balance sheet and the aforementioned evaluation report.

In exercising the budgetary function, the EP and the Council[1] adopt by regulations:

a) the financial norms that define, in particular, the procedure to be adopted for establishing and executing the budget and for handing over and checking the accounts;

b) the rules for organizing the control of the participants' responsibility for the execution of the budget, especially of the authorizing officers and accountants (art. 322 paragraph 1 TFEU).

C. The political control function of the EP is exercised in different ways. The control function of the EP over the Commission begins in the first place by choosing the candidate for the position of President of the Commission.

During the term of the Commission's mandate, the EP's control is exercised as follows:

- may request the Commission to submit any appropriate proposal on matters it considers necessary to draw up a Union act for the implementation of the Treaties[2]. If it does not submit proposals, the Commission shall inform the EP of its reasons (eg. 225 TFEU);

- The Parliament is fully informed by the Commission about the cooperation of this institution with the Member States and the coordination of their actions to achieve the objectives mentioned by the treaty in the industrial policy (Article 173 paragraph 2 TFEU);

- in the context of the possibility of the members of the Commission to attend all the sittings of the Parliament, they are audited, at their request, on behalf of the Commission, according to an oral procedure [art. 230 paragraph (1)

[1] Decides in accordance with the ordinary legislative procedure and after consulting the Court of Accounts.

[2] In this case, the EP decides with the majority of its members.

TFEU];

- the Commission is obliged to answer orally (through one or more members) or in writing to questions asked to it by the European Parliament or its members [art. 230 paragraph (2) TFEU];

- the Commission presents the general annual report to the European Parliament, which it debates in public session (Article 233 TFEU).

The general report is accompanied by an annual report on the agricultural situation in the Union[1], a report on competition policy[2], an annual report on the achievement of social policy objectives (Article 159 TFEU), a report on the progress made in achieving economic, social cohesion. and territorial (every three years, according to Article 176 TFEU), an annual report presented by the European Ombudsman on the outcome of his investigations [art. 228 par. I paragraph (3) TFEU], an annual report on the execution of the budget (Article 318 TFEU) and an annual report on achieving the objectives in the field of fraud prevention (Article 325 par. 5 TFEU).

Also, in its annual report to the EP, the Commission devotes a special chapter to social evolution in the Union. The EP can invite the Commission to draw up reports on specific issues of the social situation (Article 161 TFEU). These reports provide Parliament with a source of information on the work of the institutions of the Union.

- Parliamentary committees are set up that will prepare the decisions to be taken by the Parliament, which will establish contacts with the members of the Commission, especially when the Parliament is not actually sitting. The members of the Commission and other officials are heard within them;

- the Commission is accountable to the EP, as a collegiate body (Article 234 TFEU). Thus, the EP, notified by a motion of censure regarding the activity of the Commission, can pronounce on this motion[3] only after at least three days after its submission and only by open vote. If the censorship motion is adopted by a two-thirds majority of the votes cast and by the majority of the members of the EP, the members of the Commission must resign collectively from their positions, and the High Representative for Foreign Affairs and Security Policy must resign. from the functions it exercises within the Commission. They remain in office and continue to manage current affairs until their replacement (Article 17

[1] This practice began in 1975, at the request of the European Parliament; to be seen P. Mathjisen, *op. cit*., p. 80.

[2] Assignment given by the Commission to Parliament on 7 June 1971; see Resolution on competition rules (1971, O. J. C66/11).

[3] Although several motions have been registered, none has been implemented so far (the first motion was registered in 1972, regarding the budgetary powers, which was subsequently rejected in 1976, regarding the surplus of dairy products, another in connection with the export premiums for malt, 1977, regarding the export of butter to the Soviet Union, 1999, for allegations of fraud and mismanagement and nepotism to the Commission). In order to avoid the motion, the Commission may resign, which it did on March 16, 1999; to be seen P. Mathjisen, *op. cit*., p. 81; O. Manolache, *op. cit*., p. 108.

TEU). In this case, the term of office of the members of the Commission appointed to replace them shall expire on the date on which the mandate of the members of the Commission obliged to resign collectively from their duties should expire.

However, this instrument is directed only against the entire Commission, as a collegiate body, and not against the Commissioners individually.

This instrument has the limit that it can be used only against the entire Commission, as a collegial body, and not against the Commissioners individually. In 2000 the Commission and the European Parliament signed a Framework Convention according to which, when Parliament expresses its distrust of a member of the Commission, the President of the Commission will seriously consider if it is not necessary to ask the Commissioner to resign[1]. The Treaty of Nice, more than this political arrangement, modified the art. 217 TEC [paragraph (1), (3) and (4), currently repealed by the Treaty of Lisbon], stipulating that a Commissioner is required to resign if the President of the Commission so requests. In 2005, the Framework Convention was amended in the sense that when Parliament expresses its distrust of a Commissioner the President of the Commission either requests the Commissioner to resign or explains Parliament's decision[2].

Parliament may set up temporary commissions of inquiry to examine alleged violations of law or cases of maladministration by the institutions of the Union or other bodies thereof.

In carrying out its tasks, the EP, at the request of a quarter of its members, may establish a temporary commission of inquiry to examine, without prejudice to the tasks conferred by the TFEU on other institutions or bodies, offices or agencies, the alleged violation of the law or administration rules. defective in the application of the law of the Union, unless the stated facts are examined by a court, and as long as the judicial procedure is not concluded [art. 226 paragraph (1) TFEU].

The temporary commission of inquiry ceases its existence by submitting its report [art. 226 paragraph (2) TFEU]. It follows from this provision that a definite number of commissions can be constituted, how many allegations of crime and maladministration were formulated and were approved by a quarter of the members of Parliament by the request submitted[3].

The modalities for exercising the right of inquiry shall be determined by the EP, acting by regulations, on its own initiative, in accordance with a special legislative procedure, after approval by the Council or the Commission[4].

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[1] Framework Convention on relations between the European Parliament and the Commission (J. Of. C 121, 2001, p. 122, par. 10).

[2] Framework Convention on relations between the European Parliament and the Commission (J. Of. L 44/2005, p. 1, par. 3).

[3] See O. Manolache, *op. cit*., p. 104.

[4] See the Decision of the Parliament, the Council and the Commission of 6 March 1995, regarding the detailed provisions governing the exercise of Parliament's investigative power (J. Of. L 78/1 of

Any citizen of the Union, such as any natural or legal person having his/her residence or registered office in a Member State, has the right to address to Parliament, individually or in association with other citizens or with other persons, a petition on a subject which concerns: the fields of activity of the Union and which concern them directly (Article 227 TFEU)[1].

Thus, any citizen of the EU, as well as any natural or legal person resident or having its registered office in a Member State, is entitled to petition. This right was introduced by the TMs in the TCE through art. 21, currently reformulated by art. 20 paragraph 2 letter d) TFEU, according to which "the citizens of the Union enjoy, inter alia, the right to petition the European Parliament, to the European Ombudsman, and to the right to the institutions and advisory bodies of the Union in any of the languages of the Treaties[2] and to receive an answer in the same language" [under the conditions of art. 20 paragraph 2, letter d) and art. 227 TFEU].

The petitions must look directly at the petitioner[3] and the petition should look at a subject that is related to Union law.

In order for the petitions to be declared admissible, the Parliamentary Committee on Petitions retains the following criteria[4]:

1. the petitions relate to the content of the treaties and the derivative law of the Union;

2. the petitions relate to subjects which, although not exactly related to Union law, may nevertheless refer to a foreseeable evolution of the Union;

3. the petitions relate to the activities of an institution or body of the Union.

Parliament calls on the European Ombudsman[5] to exploit the aforementioned petitioning right[6].

The European Ombudsman is entitled to receive complaints from any citizen of the Union or from any natural or legal person residing or having its registered office in a Member State, concerning cases of maladministration in the

6 April 1995). A temporary commission was set up in connection with the Community transit procedure for examining allegations of criminal offense or maladministration. J. Of. L. 49/1 of February 19, 1997 and J. Of. no. 12/1995 and no. 10/1996, p. 114.

[1] See also art. 201-203 of the EP's Rules of Procedure.

[2] In one of the languages mentioned in art. 55 TEUs (23 languages are considered).

[3] In the event that a petition is signed by several natural or legal persons, the signatories designate a representative and alternate representatives who, according to the EP's rules of procedure, are considered as petitioners (art. 201 paragraph 3 of the rules of procedure).

[4] These criteria are taken from an opinion issued by the legal commission in 1978; to be seen O. Manolache, *op. cit*, p. 105.

[5] See for details of art. 204-206 of the EP Rules of Procedure.

[6] As a name, the institution is equivalent in Romanian law to that of the "People's Advocate" (it is regulated by Law no. 35/1997), but not as a whole of functions. It does not represent the institutionalization of distrust in the administration, but fulfills a mediation function – see G. Fabian, *Drept instituțional comunitar*, Ed. Sfera Juridică, Bucharest, 2004, p. 179; M. Vlad, *Ombudsmanul in dreptul comparat*, Ed. Servo-Sat, Arad, 1999.

activity of the institutions, bodies, offices or agencies of the Union, with the exception of the EU Court of Justice in the exercise of its functions. It investigates the complaints received and draws up a report to this effect [art. 228 par. 1 paragraph (1) TFEU][1].

Only apparently there would be a conflict of competence between the Parliamentary Commission and the Mediator, in reality, the first solves the petitions by which the irregularities detected in the Member States are complained, while the Ombudsman only considers the petitions regarding the "abuses" committed by the institutions, bodies , the offices and agencies of the Union, for example: their unjustified abstentions, the contradictory action with the legal obligations, discrimination, abuse of power, lack or illegally refusing information, inequity, negligence[2].

The Ombudsman's mission is to carry out investigations that he considers to be justified either on his own initiative[3] or on the basis of complaints that have been addressed to him directly or through a member of the EP[4], unless the alleged facts are or have been the subject of a judicial procedure [art. 228 paragraph 1 TFEU].

If the Ombudsman has found a case of maladministration, he or she shall notify the institution, body, office or agency concerned, which has a three-month deadline to communicate his point of view, and will then send a report to the Parliament and the institution concerned. Regarding the outcome of these investigations, the person who lodged the complaint is also informed [art. 228 par. 1 paragraph 2 TFEU].

Moreover, every year the Ombudsman submits a report to Parliament on the results of his investigations [art. 228 paragraph 1 TFEU]. Regarding the mandates of the Ombudsman, according to art. 228 paragraph 2 TFEU, the following is stated:

- The Ombudsman is elected after each election of the EP, during the legislature, for five years;

- its mandate may be renewed;

- can be dismissed by the EU Court of Justice, when the EP complains, if it no longer fulfills the conditions necessary for the exercise of its functions or has committed a serious deviation.

The Ombudsman exercises his functions, according to his mandate, in complete independence. In this regard, it does not request or accept instructions

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[1] The function of European mediator was performed on October 27, 1999 by the Finnish Jacob Magnus Soderman.

[2] See G. Fabian, *op. cit.*, p. 180.

[3] The mediator may also be notified ex officio, but it is assumed that the information he holds for the opening of the procedure has an official community source; to be seen O. Manolache, *op. cit*., p. 106.

[4] The general conditions for exercising the function were established by Decision no. 94/262 of March 9, 1994 of the Parliament - J. Of. L 113/15 of 4 May 1994.

from any government, institution, body, office or agency. It will therefore be subject only to the statute and the general conditions for the exercise of its functions established by the European Parliament, which decides by regulations on its own initiative, in accordance with a special legislative procedure, after the Commission's opinion and with the approval of the Council[1].

During the term of office, the Ombudsman has no right to engage in any other professional activity, whether gainful or not (Art. 228 paragraph 4 TFEU).

The supervisory and control function of the EP is exercised also with respect to the Council, but in very few cases, due to the equality position of these institutions regarding the exercise of legislative and budgetary functions within the Union.

We exemplify in this regard:

- art. 36 paragraph (2) TEU, according to which the EP may address questions[2] to the Council or make recommendations (including to the High Representative for the CFSP) within the CFSP;

- within the framework of economic policy, the Council adopts a recommendation setting out the general guidelines of this policy and on which it informs the European Parliament (art. 121 par. 2 TFEU).

D. The consultative functions of the EP. Previously, the Council exclusively fulfilled the status of legislative forum, being obliged by this statute to consult the EP before adopting a Community act. Through the Single European Act (SEA), as well as through its subsequent treaties[3], increasing the powers of the EP in the decision-making process, the cases in which this institution was consulted for the adoption of a legislative act were reduced proportionately.

The consultative functions of the Parliament result from specific provisions of the treaties, for example, when the Council has the legal obligation to consult the Parliament[4], whether this institution is to give a consensus or advisory opinion. However, the Council has agreed numerous times to consult Parliament and in cases not expressly stipulated in the Treaty (prior to the Treaty of Lisbon,

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[1] The Council, by Decision no. 94/114 of February 7, 1994, approved the Parliament's Decision on the statute and general conditions for the exercise of these functions (J. Of. L 54/1 of February 25, 1994). The act was amended by the Decision of the Parliament no. 2002/262 of March 14, 2002 (J. Of. L 92/13 of April 9, 2002). By communicating the Commission (2002/C 166/03) to the Parliament and the mediator some rules were established regarding the relations with the applicant in relation to the violations of the Community Law J. Of. C 166/3 of 12 July 2002). For a cause in the field of decision no. 94/114, see CPI-C209/00, *Frank Lamberts v. the European Ombudsman*, Decision of April 10, 2002, ECR, 2002, 4-II, 2203-2236; to be seen O. Manolache, *op. cit*., p. 107.

[2] Parliament's right to ask questions has been extended over the years to the Council "beyond what is provided for in the Treaty". See, in this regard, P. Mathjisen, *op. cit*., pp. 79-80.

[3] Treaty of Maastricht, Treaty of Amsterdam, Treaty of Nice, Treaty of Lisbon.

[4] According to art. 140 paragraph (2) TFEU, "after consulting the EP and after discussing it within the European Council, the Council, acting on a proposal from the Commission, shall decide which Member States which are subject to a derogation meet the necessary conditions on the basis of the criteria laid down in the Treaty (with regard to the TFEU)".

with reference to the EC Treaty)[1].

Consultation is the simplest form of Parliament's participation in the legislative process, with the institution having a participatory rather than a decisive role, which is why we consider that the Lisbon Treaty has regulated it as a separate function.

The wording used by the treaties in this case is "the Council adopts the provisions ... after consulting the EP" or "the Council adopts a decision after consulting the EP"[2] (for example, Article 332, Article 333[3], Article 127 (6)[4], Article 129 (4)[5], Article 182 (4)[6] and others[7] TFEU).

When the Council issues legislative acts (regulations, directives or decisions), Parliament's consultation shall be initiated by the Council on the basis of a proposal submitted by the Commission. As long as the Council has not taken a decision (regarding the issuance of the normative act), the Commission may modify its proposal throughout the procedures leading to the adoption of a Union act (Article 293 par. 2 TFEU). By doing so, the Commission is allowed to take account of any opinion of Parliament by submitting a modified proposal in accordance with this opinion[8].

In 1990 (February) the Commission proposed a "Code of Conduct" to ensure more effective cooperation in the decision-making process, Parliament having a more important role in the field of external relations[9]. Parliament's consultation is mandatory[10], although its opinions do not have this For example, in

[1] See O. Manolache, *op. cit*., p. 69.

[2] For example, in matters related to Union Citizenship [art. 25 paragraph (2) TFEU], the Monetary Policy (art. 129 TFEU), the International Agreements (art. 219 paragraph 1 TFEU) and the Judicial and police cooperation in criminal matters (art. 41 paragraph 3 TEU).

[3] The article refers to the authorization of the Member States wishing to establish enhanced cooperation between them. Authorization is given by the Council, on a proposal from the Commission and after consulting Parliament.

[4] In the context of monetary policy, "the Council, acting unanimously through regulations, in accordance with the special legislative procedure, after consulting the EP and the ECB, may entrust the ECB with specific missions (...)".

[5] In the context of monetary policy, many provisions of the TFEU can be modified by the Council, (...) after consulting Parliament.

[6] In the framework of the "Research and technological development and space" policy, the Council decides after consulting Parliament.

[7] For example, it is requested to consult the Parliament in the case: art. 23 TFEU, with a view to the adoption of directives establishing the coordination and cooperation measures necessary to facilitate the protection of any citizen of the Union; art. 109 TFEU, with a view to applying the provisions of the Treaty regarding state aid; art. 150 and art. 153 TFEU, with a view to setting up the Committee on Employment in the field of Employment and Labor Markets; art. 113 TFEU, regarding the adoption of provisions regarding the harmonization of laws and others.

[8] See P. Mathijsen, *op. cit*., p. 70.

[9] E.C. Bull. 4-81, 1990; The Code of Conduct provides that, before Parliament can express its opinion, the Council cannot reach a "political agreement".

[10] Regardless of whether it is a consensus or advisory opinion.

the adopted legislative acts it should be mentioned that the Parliament was consulted [Article 296 paragraph (2) TFEU[1]], and when expressly provided for by the Treaty, Parliament's consultation constitutes an "essential procedural requirement", and the Council's non-compliance with this requirement is a reason for the Court of Justice[2] to annul the regulation in question. Therefore, if the institution of the Council has taken a decision not to comply with the obligation to consult the Parliament, it may be declared void[3].

Also, the normative act adopted by the Council does not have to mention whether the opinion of the Parliament was favorable or not, except in the situation where for the accession of new states the Treaty asks for "the assent" and obtaining a negative opinion in this case stops the accession process[4].

A normative act constituting an amendment to the Commission proposal can only be adopted by the Council by unanimous vote (Article 293 par. 1 TFEU).

The treaties make express reference to the notion of opinion[5] in a few lines, and when they do, they do not express themselves in relation to its nature, according to or consultative.

As stated in the legal literature[6], however, the opinion to be given is mostly consultative, because when the Treaty considered that the opinion should be in conformity, its legal text specified this, we consider, and by using the formula "after Parliament's approval", for example, Article 329 paragraph 1[7] and others[8], all TFEU, cases that fall within the procedure regarding the "assent".

E. The European Parliament shall elect the President of the Commission (Article 14, paragraph 1 TEU). In this regard, the European Council[9] proposes to the EP a candidate for President of the Commission. This candidate is elected by the EP with the majority of its members. If this candidate does not

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[1] Article 296 paragraph (2) TFEU, in this regard, provides that "the legal acts shall be motivated and refer to the proposals, requests or opinions provided by the Treaties".

[2] By introducing the action in the annulment of the act, according to art. 263 TFEU; see P. Mathijsen, *op. cit*., p. 71; see CJCE, 138/79, *Roquette Frères v. Council* and 139/79, *Maizena v. Council*, 1980, ECR, 3333 and 3393, in which the Court annulled the regulation, because the Council, although it transmitted the Commission's proposal to Parliament for expressing an opinion, it adopted the Regulation without having received this opinion.

[3] C. 303/94, Parliament v. Council, decision of June 18, 1996, rec. 18-19, in ECR, 1996, 6 (I), 2968; O. Manolache, *op. cit*., p. 109.

[4] See C. Lefter, *op. cit*., p. 130.

[5] For example, art. 218 par. 3 TFEU, concerning the conclusion of international agreements: "The Council concludes the agreements after consulting the European Parliament (....). The Parliament issues the opinion within a period set by the Council (...). In the absence of an opinion issued within this period, the Council may decide".

[6] See O. Manolache, *op. cit*., p. 109.

[7] In the form of enhanced cooperation, authorization is granted by the Council, which decides on the Commission's proposal and after Parliament's approval.

[8] For example, art.19, art. 223 paragraph 4, art. 352 paragraph 1 and art. 311 TFEU; and in the case of TEU, art. 49 paragraph (1) and others. See, for details, J.-C. Gautron, *Droit européen*, Dalloz, Paris, 1999, p. 129 and p. 176, 177.

[9] It decides by qualified majority.

meet the majority, the European Council[1] shall propose, within one month, a new candidate, who shall be elected by the European Parliament in accordance with the same procedure (Article 17, paragraph 7 TEU).

F. The judicial status of the European Parliament. If, initially, at the beginning of the community building Parliament had only the capacity to intervene in the cases in the role[2], then its position was strengthened. According to the judgments of the Court of Justice (those prior to the Lisbon Treaty), it is also recognized as having the right to bring direct actions before it. The Court accepted the actions brought by the Parliament against the regulations of the Council provided that the respective actions have as an object the assurance of the Parliament's prerogatives[3] - supported by means based exclusively on the violation of these prerogatives - in order to ensure the institutional balance in the Union/Community.

And legally, according to art. 263 TFEU (former Article 230 TEC, as amended by the TMs), the Court controls the legality of legislative acts, Council, Commission and ECB acts, other than recommendations and opinions, and acts of the European Parliament and of the European Council, which are intended to take effect. legal to third parties.

The Parliament can act as a defendant in the following actions:

- the action for annulment (art. 263 TFEU) [4]. The acts of the Parliament may be subject to the control of legality as a result of the modification of art. 230 par. 1 TEC (currently, art. 263 TFEU), through TMs. In the previous regulation there was no such possibility, but it was admitted in the case law of the Court;

- the action regarding the refusal of the Union institutions to act (the deficiency action, pursuant to Article 265 TFEU);

- preliminary reference in the interpretation and validity examination of acts adopted by the institutions of the Union (Article 267 TFEU).

Through the Treaty of Nice, the European Parliament was included among the institutions that have full active legitimacy [art. 263 paragraph (2) TFEU], without making any further reference to the protection of its prerogatives (not provided for by the Court of Accounts and the European Central Bank (ECB) as having the power to bring actions for the purpose of protecting its prerogatives).

The Parliament may also be invited by the Court to provide it with information in the context of direct actions or references in order to obtain a preliminary ruling.

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[1] *Idem*.

[2] See Resolution of December 14, 1979 (1980, O.J. C 4/52) for intervention in cases 138779, *Roquette Frères v. Council* (1980, ECR 3333 and 139/79, *Maizena v. Council*, 1980, ECR 3393.

[3] Case 70/88, *Parliament v. Council* (1990, Ecr I - 2067; 1992 I CMLR 91); Case C-65/90, *Parliament v. Council* (1992, ECR 1-4616).

[4] The action is intended to annul the acts of Parliament intended to produce legal effects vis-à-vis third parties.

The judicial status of the European Parliament is also highlighted by the rules of procedure of this institution[1]. Thus, it is foreseen that "within the deadlines set by the Treaties and the Statute of the CJEU for actions brought by EU institutions or by natural or legal persons, the EP examines Union law and implementing measures to ensure that the Treaties, in particular as regards regarding the rights of the Parliament, they have been fully respected". The action is brought to the Court of Justice by the President, on behalf of Parliament, in accordance with the recommendation of the committee responsible.

G. Other powers of the European Parliament

The EP elects its president and office from among its members (art. 14 par. 4 TEU).

Parliament adopts its rules of procedure, acting by a majority of the votes of its members. The acts of the Parliament are published under the conditions provided in the treaties and by this regulation (art. 232 TFEU).

The EP, acting by regulations on its own initiative, in accordance with a special legislative procedure, establishes the general status and conditions regarding the exercise of the functions of its members (art. 223 par. 2 TFEU).

The EP and the Council, acting through regulations, in accordance with an ordinary legislative procedure, establish the status of political parties at European level [mentioned in art. 10 paragraph (4) of the TEU], in particular their financing rules (Article 224 TFEU).

The EP, acting by regulations on its own initiative, in accordance with a special legislative procedure, establishes the general status and conditions for the exercise of the Ombudsman's functions, following the Commission's opinion and with the approval of the Council (art. 228 par. 4 TFEU).

The Parliament, at the proposal of the committee responsible, appoints a person for the committee consisting of seven persons in charge of controlling the ability of candidates to exercise the functions of judge and general counsel in the Court of Justice and in the General Court (art. 107a of the EP Rules of Procedure).

The EP appoints the members of the Court of Accounts, under the conditions of art. 108 of the EP Rules of Procedure.

The EP appoints the members of the Steering Committee of the European Central Bank, in accordance with art. 109 of the Rules of Procedure of the EP.

The EP may conclude interinstitutional agreements[2]. The EP may conclude agreements with other institutions in the context of the application of the treaties1 or for the purpose of improving or clarifying the procedures. These agreements may be in the form of joint statements, exchanges of letters, codes of conduct, or other appropriate instruments.

[1] See art. 128 of the Rules of Procedure.
[2] See art. 127 of the Rules of Procedure.

2.3.3. The European Parliament's tasks in the Union's external action

✓ The European Parliament should be consulted:

- In the case of the conclusion of agreements between the Union and one or more states or international organizations, under the conditions of art. 218 TFEU, when the Council adopts the decision on the conclusion of the agreement, "after the approval of the EP"[1] (in the case of the assent) or "after the consultation of the Parliament"[2] (in the case of the advisory opinion, according to its advisory competence).

✓ The European Parliament must be informed on the occasion of the conclusion of formal agreements regarding a system of the exchange rate of the euro in relation to the currencies of third countries. In this case, the President of the Council shall inform the EP of the adoption, modification or withdrawal of the central rates of the euro.

✓ Within the CFSP[3], "the High Representative of the Union for Foreign Affairs and Security Policy regularly consults Parliament on the main issues and fundamental options in the field of common foreign and security policy and of the common security and defense policy and informs them of their evolution". It shall ensure that the views of the EP are duly taken into account. Special representatives may be involved in the information activity of the EP.

The European Parliament may ask questions or make recommendations to the Council and the High Representative. "The European Parliament organizes a debate twice a year on the progress made in the area of CFSP implementation, including the common security and defense policy" (Article 36 TEU).

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[1] In the following cases: association agreements (art. 217 TFEU); agreement on the accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; agreements establishing a specific institutional framework by organizing cooperation procedures; agreements that have important budgetary implications for the Union (the notion was explained by the Court of Justice in a judgment of 8 July 1999, *Parliament v. Conseil*, aff. C-164 and 165/97, Rec., I, p. 1139) ; agreements in areas where the ordinary legislative procedure or the special legislative procedure is applied where the approval of the EP is required [art. 219 paragraph 6 letter a) to TFEU].

[2] In all cases, except for those of art. 219 paragraph 6 letter a) TFEU, when the EP issues the opinion within a deadline that the Council can establish according to the urgency of the problem. In the absence of an opinion, within the term, the Council may decide [art. 219 paragraph 6 letter b) TFEU].

[3] Common foreign and security policy (CFSP).

2.3.4. Relations of the European Parliament with national parliaments

✓ Formal cooperation links were established between the European Parliament and national parliaments[1], initially, through systematic meetings between the presidents of national parliaments and subsequently through systematic meetings of factions and parliamentary committees.

By a Declaration (no. 14 attached to the TEC, prior to the Lisbon Treaty), the TMs provided that, when needed, the European Parliament and national parliaments should meet in the form of the "Conference of Parliaments", and that this forum should be consulted on major EU guidelines, without prejudice to the powers of the European Parliament and national parliaments[2].

✓ The national parliaments of the Member States are regularly informed by the Parliament about its activities.

In this regard, based on art. 9 of the Protocol on the role of national parliaments in the EU, a concrete and constant interparliamentary cooperation is organized and promoted, which is negotiated on the basis of a mandate entrusted to the Conference of Presidents, after consulting the Conference of Committee Chairs[3].

To this end, in 1989 a COSAC - Inter-parliamentary conference of specialized bodies in European affairs was set up in Madrid, at which the members of the national parliaments of the EU Member States agreed to strengthen the role of the national parliaments in the report. with community issues, by meeting them in Committees for European Affairs[4].

COSAC was formally recognized in a Protocol to the Treaty of Amsterdam, which was concluded by the Heads of State or Government in June 1997. The Protocol on the role of national parliaments in the EU entered into force on 1 May 1999.

According to this protocol, COSAC, among others, can address to the EU institutions any contribution it deems appropriate in relation to EU legislative activities.

The COSAC objectives are[5]:

1. to allow a permanent exchange of information, as well as best practices and opinions on Union issues, in business, between national parliaments and the European Parliament;

2. to ensure the effective exercise of the powers of national parliaments

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[1] See O.H. Maican, *The role of national parliaments in the Treaty of Lishon*, „Metalurgia Internațional" no. 3/2012, pp. 234-239.
[2] See G. Fabian, *op. cit.*, p. 180.
[3] See art. 130 of the EP's Rules of Procedure.
[4] The first COSAC meeting took place in Paris on November 16-17, 1989. See www.COSAC.eu.
[5] Guide for interparliamentary cooperation in the EU (J. Of. EU, January 31, 2008).

in the EU, especially in the area of monitoring the principles of subsidiarity and proportionality;

3. to promote cooperation with parliaments from third countries.

COSAC meets in biannual meetings, each national parliament is represented by six members. The national parliaments of the candidate countries and the accession countries send three observers as guests.

In the context of these concerns, the Treaty of Amsterdam provided in a "Declaration on the role of national Parliaments in the EU" that it is important to encourage greater participation of national parliaments in EU activities, and that the governments of the Member States should take this into account. that the Commission's proposals be forwarded to the national parliaments in time for information or for consideration[1].

✓ According to the Lisbon Treaty, formal links between national parliaments and the EP are expressly enshrined in the TFEU. In this regard, the national parliaments contribute actively to the good functioning of the Union (Article 12 TEU):

- by participating in interparliamentary cooperation between national parliaments and the EP, in accordance with the Protocol on the role of national parliaments within the EU, mentioned above;

- by participating, within the area of freedom, security and justice, in the mechanisms for evaluating the implementation of Union policies in this area, in accordance with art. 70 TFEU, and by involving in the political control of Europol and in the evaluation of Eurojust activities, in accordance with art. 88 and art. 85 TEU.

First, in order to promote and strengthen operational cooperation in the field of internal security, a permanent committee is set up within the Council, the work of which may be represented by the representatives of the bodies, offices and agencies concerned of the Union. The European Parliament and national parliaments are informed about the progress of these works (Article 70 TFEU).

Secondly, the European Parliament and the Council, acting by means of regulations, in accordance with the ordinary legislative procedure, determine the structure, functioning, scope and tasks of Eurojust[2]. These regulations also establish the conditions for the involvement of the European Parliament and the national parliaments in the evaluation of Eurojust's activities [art. 85 paragraph 1 TFEU].

Thirdly, the European Parliament and the Council, acting by means of

[1] See G. Fabian, *op. cit*., pp. 181-182.

[2] Eurojust's mission is to support and strengthen coordination and cooperation between national criminal investigation and investigation authorities in relation to serious forms of crime affecting two or more Member States [Article 85 (1) TFEU].

regulations in accordance with the ordinary legislative procedure, establish Europol's structure, operation, field of action and attribution[1]. These regulations also establish the procedure for the control of Europol activities by the European Parliament, to which the national parliaments are associated [art. 88 paragraph 2 TFEU].

✓ At the proposal of the President, the Conference of Presidents shall appoint the members of Parliament's delegation to COSAC and may confer a mandate on them[2]. In addition, the Conference of Presidents shall appoint the members of the EP delegation to any conference or equivalent body attended by representatives of parliaments and shall confer on it a mandate in accordance with relevant Parliament resolutions.

[1] Europol's mission is to support and strengthen the action of law enforcement authorities and other law enforcement agencies in the Member States, as well as their cooperation in preventing and combating serious crime affecting two or more Member States [Article 88 (1) TFEU].
[2] See art. 131 of the EP Rules of Procedure.

Chapter 3. The European Council

3.1. Regulation of the institution of the European Council prior to the Lisbon Treaty

✓ The legal basis of the European Council is included in the following provisions:

- art. 13 TEU;
- art. 15, art. 26, art. 27 and art. 42 paragraph (2) TFEU.

✓ The European Council, composed of the Heads of State and Government, should not be confused with the Council (European Union), consisting of one representative from each Member State, at ministerial level, empowered (empowered) to engage the government of this Member State (art. 16 TEU), or with the Council of Europe, established in 1949, which was confined to the social-cultural domain.

By the Treaty of Maastricht, in art. D which has almost identical resumption of the provisions of the Single Act - the European Council acquires an official status. Its role is to give the necessary impetus to the development of the Union and to define its general guidelines. The European Council does not participate in the formal decision-making process established by the Community treaties. It is a political decision only, and the task of implementing Community policy lies with the Community institutions, in particular the EU Council.

In this area, TMs, in art. 13 paragraph (1) and (2), specifies the role of the European Council, because in paragraph (3) to specify how it works with the EU Council in the implementation of the Community policy, as follows:

- defines the general principles and guidelines of the common foreign and security policy, including for problems that have implications in the field of defense;
- establishes common strategies that will be implemented at Union level, in areas where Member States have important common interests. The joint strategies shall specify their objectives and duration, as well as the means to be provided by the Union and the Member States;

The way the European Council works with the EU Council in/and for the implementation of the Community policy is as follows:

- the decisions needed to define and implement the common foreign and security policy are taken by the EU Council, based on the general guidelines established by the European Council;
- The EU Council recommends common strategies for the European Council and implements them, in particular by adopting joint actions and common positions;
- The EU Council ensures the unity, coherence and effectiveness of the Union.

✓ The **Treaty of Amsterdam** confirmed the status of the European Council as the main source of momentum for the integration of Europe. The European Council has the highest political status. Thus, according to art. 99 paragraph (3), the European Council, acting on the basis of the report of the EU Council, adopts conclusions of general orientation of the economic policies of the Member States and of the Communities. Based on these conclusions, the EU Council, acting by a qualified majority, adopts a recommendation setting out the general guidelines.

Therefore, from this perspective, the European Council does not present itself as an institution of the Communities or of the Union, being considered in the doctrine that "it exists and acts rather as a super-Council, in the specified composition"[1].

✓ By the **Treaties of Nice**, according to art. 4 paragraph (3) TMs, the European Council must submit to Parliament a report on each of the meetings and an annual report on the progress made by the Union (provision taken by the Lisbon Treaty).

✓ **Acts of the European Council.** The European Council's principled decisions were adopted by it even before a proposal was made by the Commission or the European Parliament was consulted, which led to some of its decisions being discretionary[2]. Its decisions were not adopted in accordance with the procedure provided for in the Community Treaties (before the Lisbon Treaty), as they did not represent acts of a (Community) institution. Not having, therefore, the legal effects of a Community act, they did not fall within the scope of the judicial control of the Court of Justice and were not the subject of a preliminary reference in interpretation or validity examination, under the conditions of art. 234 TEC (art. 267 TFEU) and art. 156 Euratom[3]. For this reason, the acts of the European Council could not modify the obligations of the Member States established by the provisions of the Community Treaties or by the acts of the Community institutions[4].

However, within the European Council, from its first meetings until recently[5], important decisions were taken regarding: the introduction of direct elections, the extension of the Communities[6], budgetary matters, agreements on new budgets or their correction, granting additional aid for the four Community coun-

[1] See O. Manolache, *op. cit.*, p. 192.
[2] *Ibid*, p. 192.
[3] See B. Ştefănescu, *Trimiterea prejudiciară in faţa Curţii de Justiţie a Comunităţilor Europene*, „Revista de Drept Comunitar" no. 1/2003, pp. 88-90; I. N. Militaru, *Trimiterea prejudiciară în faţa Curţii Europene de Justiţie*, Ed. Lumina Lex, Bucharest, 2005, p. 101 et seq.
[4] See O. Manolache, *op. cit*., p. 192.
[5] Prior to the Treaty of Lisbon.
[6] In December 1992, the Edinburgh Council agreed to receive new members, for example: Austria, Finland and Sweden.

tries considered less developed (Spain, Greece, Portugal and Ireland), the Economic and Monetary Union, the reform of the common agricultural policy, etc.

3.2. The European Council according to the Treaty of Lisbon

✓ According to the Treaty of Lisbon, the European Council has the status of institution of the European Union (art. 15 TEU, art. 235-236 TFEU)[1], offers the Union the necessary impulses for its development, defines its general political orientations and priorities.

3.3. Composition and organization of the European Council

✓ The European Council is composed of the Heads of State and Government of the Member States, as well as its President and the President of the Commission.

Therefore, Member States are represented in the European Council by Heads of State and Government, who, in their turn, democratically respond either to national parliaments or to their citizens [art. 10 paragraph (2) TEU].

When required by the agenda, each member of the European Consib may decide to be assisted by a minister and, as far as the President of the Commission is concerned, by a member of the Commission [art. 15 paragraph (3) TEU][2]. Delegates whose access is authorized shall participate in the building where the European Council meeting is held. The delegations, whose access is authorized in the building where the meeting of the European Council is held, may not exceed 20 persons for each Member State and for the Commission and five persons for the High Representative[3]. This number does not include technical personnel performing specific security or logistical support tasks. The names and functions of the members of the delegations concerned shall be notified in advance to the General Secretariat of the Council.

✓ **The President of the European Council**[4] is elected by a qualified majority of the European Council for a period of two and a half years. His term of office may be renewed only once.

The European Council has the right to terminate its president's term of office in the event of serious obstruction or culpability in accordance with the procedure by which he was elected.

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[1] For details, see the European Council's Rules of Procedure (OJ L 315, 2 December 2009, p. 52 and OJ L 325, 11 December 2009, p. 36). The European Council's Rules of Procedure were adopted by Decision of the European Council 2009/882/EU of 1 December 2009.

[2] See art. 4 paragraph (4) of the Rules of Procedure of the European Council.

[3] *Idem*.

[4] From December 1, 2009, the position of President of the European Council is performed by the Belgian Prime Minister, Herman van Rompuy.

The powers of the President of the European Council, according to art. 15 par. 6 TEUs are:

- chair and promote the work of the European Council;
- ensures the preparation and continuity of the work of the European Council, in cooperation with the President of the Commission and based on the work of the General Affairs Council;
- acts to facilitate cohesion and consensus within the European Council;
- submit a report to the European Parliament after each meeting;
- ensures, at its level and in this capacity, the external representation of the Union in matters relating to the Common Foreign and Security Policy (CFSP), without prejudice to the duties of the High Representative of the Union for Foreign Affairs and Security Policy.

The President of the European Council is forbidden to exercise a national mandate.

Also, the President of the European Council may convene, if required by international evolution, an extraordinary meeting to define the strategic lines of the Union's policy in relation to this evolution [art. 26 paragraph (1) TEU].

The Presidency is responsible for the application of the rules of procedure and ensures the smooth running of the proceedings[1].

✓ The European Council and its president are assisted by a General Secretariat, under the authority of a Secretary General, who has the following tasks[2]:

- Attends European Council meetings;
- take all necessary measures to organize the work of the European Council;
- has full responsibility for the management of the credits included in section II - the European Council and the Council - of the budget and takes the measures considered necessary to ensure the proper management of the credits;
- execute the appropriations in accordance with the provisions of the financial regulation applicable to the Union budget.

✓ **The headquarters.** European Council meetings are usually held in Brussels[3].

3.4. Operation of the European Council

✓ **Meetings of the European Council.** The European Council meets twice a semester at the convening of its President [art. 15 paragraph (3) TEU].

During the crisis, which has been prolonged to the present day, the European Council was forced to meet more often.

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[1] See art. 4 paragraph (4) of the Rules of Procedure of the European Council.
[2] See art. 13 of the Rules of Procedure of the European Council.
[3] For exceptional reasons, for example, a January 2012 air traffic controllers' strike almost forced state leaders to meet in Luxembourg.

For example, in 2012, it met four times. In addition, the following meetings were held: an extraordinary meeting of the European Council, two informal meetings of the members of the European Council and four meetings of the heads of state or government in the euro area (also called the euro area summits). In 2015, it met four times. In addition, the following meetings were held: three high-level meetings of the euro area and three extraordinary high-level meetings on migration[1].

The meetings of the European Council are not public[2].

At least one year before the beginning of the semester and in close cooperation with the Member State holding the presidency during the respective semester, it publishes the data expected for the meetings of the European Council to be held during that semester[3].

The European Council may also meet in an extraordinary meeting, when the situation so requires, at the convening of the president [art. 15 paragraph (3) TEU].

The meetings of the European Council take place in Brussels, and in exceptional situations, the President of the European Council, with the agreement of the General Affairs Council and the Committee of Permanent Representatives, acting unanimously, may decide that a meeting of the Council may take place elsewhere[4].

Each ordinary meeting of the European Council shall be held for a maximum period of two days, unless the European Council or the General Affairs Council decides otherwise, at the initiative of the President of the European Council[5].

The High Representative of the Union for Foreign Affairs and Security Policy participates in the work of the European Council [art. 15 paragraph (2) TEU].

The member of the European Council representing the Member State that holds the Presidency of the Council shall present the work of the Council in consultation with its President. The President of the European Parliament may also be invited to be heard at the work of the European Council; the exchange of views between the representatives of the two institutions takes place at the beginning of the European Council meeting, unless this institution decides otherwise, unanimously.

In this framework, meetings with representatives of third countries, international organizations or other personalities may take place only exceptionally, with the prior agreement of the European Council, acting unanimously, at the

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[1] See P. Novac, April 2017. *Fişe tehnice privind Uniunea Europeană, Consiliul European,* http://www.europarl.europa.eu/aboutparliament/ro/displayFtu.html?ftuld=FTU_1.3.6.html.

[2] See art. 4 paragraph (3) of the European Council's Rules of Procedure.

[3] See art. 1 paragraph (1) of the European Council's Rules of Procedure.

[4] *Idem*, see art. 1 of the Rules of Procedure of the European Council.

[5] *Ibid*, art. 4.

initiative of the president of this institution.

Members of the European Council also met in informal formats, which are usually referred to as "informal" meetings of heads of state or government, such as the one held in Bratislava between the 28 Member States, at September 16, 2016.

Its members also meet in the form of an intergovernmental conference if it were to conclude treaties: for example, the Treaty on the European Stability Mechanism of 2 February 2012, the Treaty on Stability, Coordination and Governance of 2 March and the Transfer Agreement and the sharing of contributions to the Single Resolution Fund of May 21, 2014

Regarding the quorum necessary for the adoption of decisions by vote, the presence of two thirds of the members of the European Council is required, without the quorum of the President of the European Council and of the Commission.

According to art. 15 paragraph (4) TEU, the European Council shall act by consensus, unless the Treaties provide otherwise. In the event of a vote, each member of the European Council may receive a delegation from a single member [art. 235 para. (1) TFEU]. Also, if the European Council decides by vote, its President and the Commission President do not participate in the vote.

✓ The European Council decides, for different situations, with a qualified majority and with simple renewal.

Thus, it decides by qualified majority when:

- adopts a decision establishing the list of Council formations, other than General Affairs and Foreign Affairs [according to art. 16 paragraph (6) TEU];

- adopts a decision regarding the presidency of the Council formations, with the exception of the Foreign Affairs one [according to art. 16 paragraph (9) TEU].

Starting with November 1, 2014, the qualified majority is defined differently, according to art. 16 paragraph (4) TEU and art. 238 para. (2) TFEU, as follows:

1. according to art. 16 paragraph (4) TEU, the qualified majority is at least 55% of the members of the European Council, comprising at least fifteen of them and representing Member States that make up at least 65% of the population of the Union [art. 16 paragraph (4) TEU]. The blocking minority must include at least four members of the European Council, otherwise the qualified majority is considered to have met[1];

2. according to art. 238 TFEU paragraph (2), by derogation from art. 16

[1] The transitional provisions regarding the definition of the qualified majority that will apply until October 31, 2014, as well as those that will apply between November 1, 2014 - March 31, 2017, are provided in the Protocol on the transitional provisions [art. 16 paragraph (4) TEU].

TEU and subject to the provisions set out in the Protocol on transitional arrangements[1], the qualified majority is at least 72% of the members of the European Council representing the participating Member States, which comprise at least 65% of the population of the Union.

The European Council decides by simple majority on procedural issues, as well as on the adoption of the rules of procedure [art. 235 para. (3) TFEU], or in the procedure of ordinary revision of the treaties [art. 48 paragraph (2) and (3) TEU].

3.5. Functions of the European Council

The functions of the European Council are provided, in principle, in art. 15 TEU, which provides that it provides the Union with the necessary impetus for its development and defines its general political orientations and priorities. The European Council does not exercise legislative functions.

In addition to the functions mentioned by art. 15 TEU, the European Council fulfills some tasks considered organic[2], which relate exclusively to the organization of the institutions of the Union, while others pertain to their functioning.

1. The European Council unanimously adopts, at the initiative of the EP and with its approval, a decision establishing the composition of the EP [art. 14 paragraph (2) last sentence TEU].

2. The European Council, acting by a qualified majority, shall propose the EP to a candidate for President of the Commission. If the respective candidate does not meet the majority provided by the treaty[3], the European Council proposes a new candidate [art. 17 paragraph (7) TEU].

3. The European Council appoints the Commission on the basis of an EP approval vote [art. 17 paragraph (8) TEU].

4. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the High Representative of the Union for Foreign Affairs and Security Policy. The European Council may terminate its mandate in accordance with the same procedure [art. 18 paragraph (1) TEU].

The European Council also has a dedicated competence. Thus, within the Union's external action and based on its principles and objectives (provided for in Article 21 TEU):

5. The European Council identifies the strategic interests and objectives of the Union and makes decisions regarding them [art. 22 paragraph (1) TUE].

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[1] If the Council does not decide on the proposal of the Commission or the High Representative for Foreign Policy and Security Policy.

[2] See A. Popescu, I. Diaconu, *op. cit. (Organizații europene...),* p. 228.

[3] With reference to the TEU, art. 7 paragraph (7).

The decisions of the European Council, in the framework of the external action, concern:

- the common foreign and security policy of the CFSP, as well as the other areas of the Union's external action;

- the Union's relations with a country or a region or may address a specific issue. The Council unanimously decides on the recommendation of the Council (art. 22 TEU).

6. The European Council identifies the strategic interests of the Union, sets the objectives and defines the general guidelines of the CFSP, including on matters having defense implications [art. 26 paragraph (1) TEU]. The European Council takes the necessary decisions in this area.

7. Common foreign and security policy - The CFSP is defined and implemented by the European Council and the Council, which unanimously decide, unless the treaties provide otherwise. The CFSP is implemented by the High Representative of the Union for Foreign Affairs and Security Policy and by the Member States [art. 24 paragraph (1) TEU]. And within the competence of defining and implementing the CFSP, the European Council and the Council have the power to take decisions, being excluded the adoption of legislative acts [art. 31 paragraph (1) TEU].

8. The European Council and the Council represent the legal framework for Member States to agree on any matter of general interest in the CFSP field, with a view to defining a common approach (Article 32 TEU).

9. The European Council unanimously decides on the gradual definition in the CFSP of a common defense policy of the Union [art. 42 paragraph (2) TEU].

The European Council has competence in the treaty review procedure.

10. In the ordinary procedure of revision of the treaties, the European Council may adopt (...) by a simple majority a decision favorable to the examination of the proposed changes, in which case the president of this institution convenes a Convention composed of representatives of national parliaments, heads of state. or by the government of the Member States of the EP and the Commission (art. 48 TEU).

Also, the European Council may decide by simple majority (...) not to convene the Convention if the magnitude of the amendments does not justify it.

11. In the procedure of simplified revision of the treaties, according to art. 48 paragraph (6), the European Council:

- may adopt a decision to amend, in whole or in part, the provisions of Part Three of the TFEU;

- decides unanimously (...) in case of institutional changes in the monetary field;

- may adopt decisions authorizing the Council to either decide by a qualified majority in a particular area where it usually decides unanimously, or to adopt legislative acts in accordance with the ordinary legislative procedure, if the

provisions of the TFEU they provide that the respective legislative acts shall be adopted in accordance with the special legislative procedure.

The European Council has competence in the withdrawal of a Member State from the Union.

12. The European Council receives notifications of intent from the Member States which decide to withdraw from the Union and may unanimously, in agreement with the Member State, extend the two-year period after the entry into force of the withdrawal of the member status is in force (Article 50 TEU).

13. The European Council receives notifications from the Council in cases where a member of the Council declares that a draft legislative act, necessary for the establishment of the free movement of workers, does not meet the conditions imposed by the treaty (with reference to the TFEU, respectively Article 48). The European Council has the right to:

a. resubmit the draft of the Council, in which case the ordinary procedure is suspended;

b. does not act in any way or asks the Commission to submit a new proposal [art. 48 letter a) and b)].

The European Council has decision-making and examination powers under Title V - Area of Freedom, Security and Justice (TFEU).

14. With regard to "Judicial cooperation in criminal matters", the European Council may, at the same time or later, adopt a decision extending the powers of the European Public Prosecutor's Office to include combating serious crime of a cross-border dimension and with a view to amending the provisions of the TFEU accordingly. [art. 86 paragraph (2)] regarding the perpetrators and co-perpetrators of serious crimes affecting several Member States [art. 86 paragraph (4) TFEU].

15. With regard to "Police cooperation", the European Council examines the draft measures, regarding the operational cooperation between the authorities in the field, of a group of at least nine Member States on which the Council has not been able to obtain unanimity [art. 87 paragraph (3) TFEU].

16. Within the "Economic Policy", the European Council debates the conclusions regarding the general guidelines of the economic policies of the Member States and of the Union, which emerge from the report of projects elaborated by the Council [art. 121 paragraph (2) TFEU].

17. With regard to "Monetary Policy", the Council (...) decides which Member States are subject to a derogation only after discussing the criteria that Member States must meet, within the European Council [Article 140 (2) TFEU].

18. As part of the "employment" policy, the European Council receives a joint report on this policy annually, including on the implementation of the employment guidelines, drawn up by the Council and the Commission [art. 148 paragraph (5) TFEU].

19. If a Member State is the subject of a terrorist attack or is the victim of a natural or man-made disaster, the other Member States shall assist it at the

request of its political authorities on the basis of a solidarity clause. In this context, in order to enable the Union and the Member States to act effectively, the European Council periodically assesses the threats facing the Union (Article 222 TFEU).

20. European Council and economic governance[1]. Since 2009, due to the global banking crisis, the European Council has decided on ad-hoc or temporary agreements[2] through which several Member States receive financial aid packages.

It was proposed that, in the future, the financial aid be granted through the European Mechanism of permanent stability, which has as legal basis the Decision 2011/199/EU of the European Council which modified the art. 136 TFEU[3]. This decision entered into force on 1 May 2013, following ratification by all Member States.

The governments of the Member States, with the participation of the Commission, the Parliament and the ECB, have drawn up an international treaty - the Treaty on Stability, Coordination and Governance (also called the "Fiscal Pact") - which allows for a tighter control of the budgetary and socio-economic policies of the Member States. Increasingly, this raises questions about the role of the European Commission and the European Parliament in the economic governance of the euro area.

21. The European Council issues political guidelines on macroeconomic, fiscal and structured reform and policies to increase economic growth (in the first semester, at its spring meeting).

22. The European Council approves recommendations stemming from the evaluation of the national reform programs elaborated by the European Commission and discussed within the Council (at the June meeting).

23. It is involved in the negotiation of the multiannual financial framework (MFF), in which it plays an essential role in reaching a political agreement on the key policy issues in the MFF Regulation, such as spending limits, spending programs and (funding) resources[4].

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[1] See P. Novak, April 2017, *op. cit.*

[2] The European Stability Mechanism has approved the release of an 8.5-billion-euro tranche from the assistance program agreed with Greece (July 2017). The agreement was approved in principle, which means it will become effective only after the Fund receives specific and credible assurances from Greece's European partners to ensure debt sustainability and provided that Greece's economic program continues: https://www.dcnews.ro/fmi-imprumut-pentru-grecia-acord-eu-atena_551234.html.

[3] It was adopted on March 25, 2011. Currently, Decision 2011/199/EU of the European Council amending Article 136 TFEU represents the legal basis for stability mechanisms, such as, for example, the European Stability Mechanism.

[4] See P. Novak, April 2017, *op. cit.*

3.6. Relations of the European Council with other institutions of the Union

European Council and Commission. Although the European Council takes decisions independently of other institutions of the Union, the Lisbon Treaty nevertheless maintains an organizational link between the European Council and the Commission, taking into account the fact that the President of the Commission is a (non-voting) member of the European Council, and the High representative of the Union for Foreign Affairs and Security Policy participates in the debates. The European Council also calls on the Commission to submit preparatory reports for its meetings.

European Council and European Parliament. The President of the European Council shall submit a report to the European Parliament after each meeting of the European Council. The President of the European Council meets monthly with the President of the Parliament, as well as with the leaders of the political groups. For example, in February 2011, he agreed to answer written questions from Members of the European Parliament about his political activities.

Also, Parliament can exercise a certain informal influence:

- by the presence of its president at European Council meetings;
- through the meetings of the party leaders within the appropriate European political families, before the meetings of the European Council;
- through the resolutions they adopt on the items on the agenda of the meetings, the outcome of the meetings and the formal reports presented by the European Council[1].

European Council and CFSP. The President of the European Council ensures the external representation of the Union in CFSP matters, without prejudice to the responsibilities of the High Representative of the Union for Foreign Affairs and Security Policy. The latter, whose function was created by the Lisbon Treaties, proposes and implements foreign policy on behalf of the European Council.

[1] *Ibid.*

Chapter 4. The Council

4.1. Regulations of the Council institution

The legal basis of the Council institution consists of the following provisions:

- art. 14 TEU (regarding the exercise of the legislative and budgetary functions) and in art. 16 TEU;
- art. 237-243 TFEU.

The Brussels Merger Treaty[1] established a Council of the European Communities, called the Council, which replaced the Special Council of Ministers of the ECSC, EEC and Euratom. According to art. 2 of the Treaty of Brussels, this single Council "exercises the powers and powers conferred under the conditions provided by each of the three Community Treaties", and as regards the composition, "each government delegates one of its members".

By TMs, the name of the Council is changed in the Council of the European Union, and the composition is defined in new terms, in art. 203 TEC[2]: The Council is composed of a representative at ministerial level of each Member State, empowered to engage the government of that Member State.

Under the Treaty of Lisbon, the Council of the Union is referred to as the "Council" and is regulated by Article 16 TEU and Article 237-243 TFEU.

In almost identical terms as in the TEU, the Council is composed of a representative at ministerial level of each Member State, empowered to engage the government of the Member State it represents and to exercise the right to vote [art. 16 paragraph (2) TEU].

By default, the Council of the Union is the representative body of the Member States through their governments, which are democratically accountable either in front of national parliaments or in front of their citizens [art. 10 paragraph (2) TEU]. Each Member State must establish the mode of representation within the Council, in accordance with art. 16 paragraph (2) TEU (Annex I to the Council Rules of Procedure)[3].

The Council's headquarters are in Brussels, and in April, June and October, the Council meetings are held in Luxembourg[4]. In exceptional circumstances

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[1] Done on 8 April 1965 in Brussels, it entered into force on 1 July 1967.

[2] It is about art. 146 TEU [resulting from art. 2 paragraph (1) of the merger treaty of the executives], becoming art. 203 by the Treaty of Amsterdam.

[3] The current Council Rules of Procedure were approved by Council Decision 2009/937/EU of 1 December 2009. It was modulated by Council Decision no. 795 of December 14, 2010, with effect from January 1, 2011 (2010/795/EU).

[4] See art. 1 paragraph (3) of the Council's Rules of Procedure; see also the single article of the Protocol on the establishment of the headquarters of certain institutions and of certain bodies, offices, agencies and services of the European Union.

and for well-founded reasons, the Council or the Committee of Permanent Representatives of the governments of the Coreper Member States - acting unanimously, may decide that a meeting of the Council may take place elsewhere[1].

4.2. Composition and organization of the Council

The representative in the Council should be empowered to engage the government of the Member State, so not only the holders of the ministerial portfolios, although they only carry out the national policy of a state in a certain area.

Therefore, governments can empower other senior officials than ministers, and may attend council meetings, for example, deputies, state secretaries, representatives of federal (*land*) or regional entities[2]. The meeting of the Council "at the level of Heads of State and Government" of the Member States is excluded, unless the TEC itself expressly provided for this (these are the former articles 121 and 122 articles TEC); the first Council decision "Brought together at the state and government levels" was taken on May 3, 1998 to decide the list of states that meet the conditions necessary for the adoption of the single currency on January 1, 1999[3].

✓ The composition of the Council varies depending on the agenda of the work, respectively on the subject in question, thus calling on different holders of the ministerial departments to become successively part of the Council.

Thus, even if the Ministers of Foreign Affairs are considered, in principle, as the main representatives of the Member States in the Council, the practice has enshrined, depending on the importance of certain areas or of the issues on the agenda, the participation in these meetings and of other ministers (of agriculture), of agriculture, of transport, of economy and of finances, of industry (called specialized or sectoral councils), either with the ministers of Foreign Affairs, or, most often, alone[4]. Because the meeting of "so many Sectoral Councils" led to the elaboration of their own policies lacking unity and coherence, the Ministers of Foreign Affairs met in the General Affairs Council formation to receive the coordinating role of these sectoral formations[5].

The Treaty of Lisbon enshrines the above practice and expressly provides: "The Council meets within the different formations", the list being adopted by a qualified majority by the European Council in accordance with Article 236 TFEU [Article 16 (6) TEU]. Therefore, the European Council adopts:

a. a decision establishing the list of Council formations, other than that of General Affairs and Foreign Affairs, according to art. 16 paragraph (6) TEU;

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[1] See art. 1 paragraph (3) of the Rules of Procedure of the Council.
[2] See O. Manolache, *op. cit*., p. 111.
[3] The Official Journal of the European Communities no. L 139/30 of May 11, 1998; to be seen G. Isaac, M. Blanquet, *Droit communautaire general*, 8 éd, Dalloz, Paris, 2001, p. 51.
[4] See G. Isaac, M. Blanquet, *op. cit.*, p. 51; R. Munteanu, *op. cit*., p. 201.
[5] *Idem*.

b. a decision regarding the presidency of the Council formations, with the exception of the Foreign Affairs one, according to art. 16 paragraph (9) TEU.

The list of formations is fixed by the Council. According to the last list, the Council can be convened[1] in ten formations[2]:

- General Affairs and Foreign Affairs (these are established by Article 16 paragraph 6 TEU);
- Economic and Financial Affairs, also called ECOFIN (including the Budget) [3];
- Justice and Home Affairs (including civil protection);
- Employment, Social policy, Health, Consumers;
- Competitiveness (internal market, industry and research, including Tourism);
- Transport, Telecommunications and Energy;
- Agriculture and Fisheries;
- Medium;
- Education, Youth and Culture (including the audiovisual field).

The eight specialized formations are adopted, as we have shown, by the European Council with qualified majority (art. 236 TFEU). To these are added the "General Affairs Council" and "the Foreign Affairs Council".

Council meetings are held in Brussels and Luxembourg (April, June and October). Currently, three of the 10 formations meet on a regular basis, namely General Affairs, Foreign Affairs (also called the External Relations Formation) and Economic and Monetary Affairs (ECOFIN).

The formation "General Affairs Council" deals with two main areas of activity[4] (for which it meets separately), namely:

- ensures, in collaboration with the Commission, the coherence and continuity of the works of the different formations of the Council within a multiannual program[5];
- prepares the meetings of the European Council and pursues the imple-

[1] At the Helsinki European Council on December 10-11, 1999, the number of Council formations was reduced in order to improve the coordination and coherence of the works. By the Council Conclusions (2000/C174/01) of April 10, 2000, some formations of this institution have been merged. The new formations were established by the rules of procedure from 2002 (in Annex I) and, subsequently, by the rules of procedure from 2004 (in Annex I) and then in 2006 (Annex I); the current Rules of Procedure in force since 2009, amended by Council Decision 2010/795/EU, contains the changes necessary for the implementation of the Lisbon Treaty.

[2] According to Annex I to Council Decision 2009/937/EU of 1 December 2009, which adopted the Council's Rules of Procedure, as amended by Council Decision 2010/795/EU.

[3] It is made up of the ministers of economy and finance; ECOFIN involves meetings of finance and economic ministers from countries that have adopted the single "euro" currency.

[4] According to art. 2 paragraph (2) of the Council's rules of procedure and art. 16 paragraph (6) TEU.

[5] See art. 3 first sentence of the European Council decision of 1 December 2009 on the exercise of the Presidency of the Council.

mentation of the measures adopted, in collaboration with the President of the European Council and the Commission.

His responsibilities include general coordination of policies, institutional and administrative issues, horizontal files affecting several Union policies, such as the multiannual financial framework and enlargement, as well as any files inherited by the European Council, taking taking into account the rules of operation of the Economic and Monetary Union[1].

The formation of the "Foreign Affairs Council" elaborates the Union's external action, in line with the strategic lines established by the European Council and ensures the coherence of the Union's action[2].

It is responsible for the entire external action of the Union, namely the Common Foreign and Security Policy - CFSP, the the Common Security and Defence Policy - CSDP, the common commercial policy, development cooperation and humanitarian aid.

The Presidency of the "Foreign Affairs Council" is provided by the High Representative of the Union for Foreign Affairs and Security Policy. It may be replaced, in case of necessity, by the member of these formations, which represents the Member State exercising the semester presidency of the Council[3].

The Presidency of the Council, with the exception of the Foreign Affairs formation, is provided, for a period of 18 months, by groups predetermined by 3 Member States. These groups are formed on the basis of an equal rotation system of the Member States, given their diversity and the geographical balance of the Union[4].

Each member of a group rotates, for a period of 6 months, the presidency of all the formations of the Council, with the exception of Foreign Affairs[5]. Therefore, the presidency of the formations of the Council, except the one of Foreign Affairs, is provided by the representatives of the Member States within the Council after an equal rotation system, under the conditions established in accordance with art. 236 of the TFEU [art. 16 par. (9) TEU][6].

The other members of the group of states support the presidency in fulfilling all its responsibilities, based on a common program[7]. As a rule, the presidency of the Council changes on January 1 and July 1 of each year.

The presidency will be held until 2020 in the following order: Malta and

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[1] According to art. 2 paragraph (2) of the Council's Rules of Procedure.

[2] According to art. 2 paragraph (5) of the Council's rules of procedure and art. 16 paragraph (6) TEU.

[3] See art. 2 paragraph (5) of the Council's Rules of Procedure.

[4] See art. 1 paragraph (4) of the Council's Rules of Procedure.

[5] *Idem*.

[6] The current order to exercise the presidency of the Council was established by the Council Decision 2007/5/EC, EURATOM, establishing the order to exercise the presidency of the Council, published in OJ L, 4 January 2007, p. 11

[7] See art. 1 paragraph (5) of the Council's Rules of Procedure.

Estonia in 2017, Bulgaria and Austria in 2018, Romania and Finland in 2019 and Croatia and Germany in 2020.

The European Council can modify the order of holding the presidency [art. 236 letter b) TFEU].

The Foreign Affairs Council is chaired by the High Representative of the Union for Foreign Affairs and Security Policy, who is at the same time one of the Vice-Presidents of the Commission[1] [art. 18 paragraph (3) and (4) and art. 27 TEU]. The president's responsibilities[2] were strengthened as the number of specialized Councils increased, by adopting the work program for the Council, by determining the number of meetings of the different Council formations, by establishing their calendar, by distributing the files between the different councils (formations), by preparing meetings, by preparing the agenda and conducting the meeting[3].

The predetermined group of the 3 Member States that hold the Presidency of the Council for the period of 18 months has the following tasks: elaborates a program of the activities of the Council for the period concerned[4]; draws up after the appropriate consultations, for each formation of the Council, draft agenda for the meetings of the Council scheduled for the following semester, presenting as an indicative activity the legislative activity and the operational decisions envisaged[5].

Also, the President of the Council, considering the program for 18 months:

- convenes the meetings of the Council (art. 237 TFEU);
- draws up the provisional agenda for each meeting, which it submits, at least 14 days before the meeting, to the Council, the Commission, the national parliaments and the Member States[6];
- signs the acts adopted by the Council, with the participation of the Parliament and the acts adopted by the Council and the European Parliament through ordinary procedure [art. 297 paragraph (1) TFEU][7];
- has the initiative to vote in the Council, being obliged to initiate a voting procedure at the initiative of a member of the Council or of the Commission[8];

[1] See art. 2 paragraph (5) of the Council's Rules of Procedure.
[2] It is about the "internal role" of the President within the former EC pillar of the European Union; see G. Isaac, M. Blanquet, *op. cit*., p. 53; R. Munteanu, *op. cit*., p. 203.
[3] During the third phase of EMU, the Council Presidency will be able to participate without deliberative vote in the meetings of the Governing Council of the ECB and submit a motion to the deliberation of the Governing Council, see R. Munteanu, *op. cit*., p. 203.
[4] For details, see the Council's Rules of Procedure, art. 2 paragraph (6).
[5] See art. 2 paragraph (7) of the Council's Rules of Procedure.
[6] See art. 3 paragraph (2) of the Council's Rules of Procedure.
[7] In the same sense, art. 15 of the Council's Rules of Procedure.
[8] See art. 11 of the Council's Rules of Procedure.

- represents the Council before the EP and its committees[1]; also, in the case of the Foreign Affairs Council, the president of this formation represents the Council before the EP of its committees[2].

✓ Within the CFSP, the High Representative of the Union for Foreign Affairs and Security Policy, who chairs the Foreign Affairs Council, together with the Council, guarantees respect for the principles of mutual loyalty and solidarity, as long as the Member States work together to strengthen them in their relations [art. 24 paragraph (3) TEU].

In this sense, according to art. 26 and art. 27 TEU, High Representative of the Union:

- contributes through its proposals to the development of the CFSP and ensures the implementation of the decisions taken by the European Council and the Council;

- represents the Union in CFSP matters. It carries out, on behalf of the Union, the political dialogue with third parties and expresses the position of the Union within international organizations and international conferences;

- implements the CFSP with the Member States, using both national and Union means.

In exercising his mandate as President of the Foreign Affairs Council, the High Representative of the Union is supported by a European External Action Service. This service works in collaboration with the diplomatic services of the Member States and consists of the officials of the competent services of the Secretary General of the Council and of the Commission, as well as of the seconded personnel of the national diplomatic services [art. 27 paragraph (2) TEU].

Also, the High Representative of the Union, any Member State or the High Representative for the support of the Commission have the right to notify the Council on any matter related to the CFSP and may present initiatives or proposals to the Council [art. 30 paragraph (1) TEU].

In cases where a speedy decision is required, the High Representative of the Union shall convene either ex officio or at the request of a Member State, within 48 hours or in case of absolute necessity, within a shorter time, an extraordinary meeting of the Council [art. 30 paragraph (2) TEU].

With regard to special political issues, the High Representative has the right to propose to the Council to appoint a special representative. The latter exercises his mandate under the authority of the High Representative of the Union (art. 31 TEU).

Regarding the main aspects and the fundamental options in the field of CFSP and CSDP, the High Representative of the Union consults the EP regularly

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[1]The Council may be represented before the EP or its committees and by a Member State of the group of states predetermined by three Member States (article 26 of the Council's Rules of Procedure).

[2] See art. 26 of the Council's Rules of Procedure.

and informs him regularly about the evolution of these policies. The special representatives appointed under the conditions provided above may be involved in the information activity of the EP (Article 36 TEU). Within and with regard to these policies, the EP has the right to address and make recommendations to the Council and the High Representative.

In the area of CSDP, the Council makes decisions only at the proposal of the High Representative of the Union (or at the initiative of a Member State). Also, in this area, the High Representative may propose the use of national means, as well as Union instruments, as the case may be, together with the Commission [art. 42 paragraph (2) TEU]. To this end, the High Representative, under the authority of the Council and in close contact with the Political and Security Committee, oversees the coordination of the civil and military aspects of the mission of a group of states, entrusted by the Council, in order to defend the Union's values and to serve its interests [art. 42 paragraph (5) and art. 43 paragraph (2) TEU].

Regarding the permanent structured cooperation, within the CSDP, the High Representative is notified of the intention of any Member State wishing to participate in this cooperation [art. 46 paragraph (1), (2) and (3) TEU].

Within the Council, a Committee consisting of permanent representatives of the governments of the Member States, called abbreviated Coreper[1], is responsible, according to art. 240 paragraph (1) TFEU:

- preparing the Council's work;
- the execution of the mandates that are entrusted to him, especially.

Also, Coreper has the right "to censure, amend and unanimously approve any proposal or initiative taken by a majority in the Commission which is to become a Community act"[2].

According to art. 19 of the Council's Rules of Procedure[3], in all situations, Coreper ensures the consistency of the Union's policies and actions and ensures that the following principles and rules are observed:

- the principles of legality, subsidiarity, proportionality and justification of acts;
- the rules for establishing the competences of the institutions, bodies, offices and agencies of the Union;
- budgetary provisions;

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[1] It was established by the Treaty of Brussels of April 8, 1965, establishing a single Council and a single Commission of the European Communities, also called the Treaty of Merger of Executives; entered into force in 1967.

[2] The Coreper mechanism is meant to paralyze even those daring decision-makers whom the Treaties of Rome (TEC and TEuratorn) maintained under the attribution of the "supranational" Commission. See B. Ștefănescu, *op. cit*., p. 26.

[3] The provisions of art. 19 of the Rules of Procedure regarding Coreper are without prejudice to the role of the Economic and Financial Committee provided for in art. 134 TFEU and the existing Council decisions on this committee (O.J. L. 358/13 December 1998, p. 109 and O.J. L. 5/9 January 1999, p. 71).

- the rules regarding the procedure, transparency and quality of the drafting of documents. Coreper first examines all items on the agenda of a Council meeting, unless Coreper decides otherwise.

Coreper also ensures that the files are properly presented to the Board and, if it deems necessary, presents guidelines, options or suggestions for solutions.

In case of emergencies, the Council may decide to deliberate without this preliminary examination taking place. Coreper may set up or approve the setting up of committees or working groups for the purpose of carrying out certain preparatory work or pre-defined studies. The General Secretariat updates and publishes the list of training groups. Only the committees and working groups on this list can meet as Council preparatory groups.

Among these committees, the treaties regulate the activity:

- The economic and financial committee, within the framework of the monetary policy, to promote the coordination of the policies of the Member States to the extent necessary for the functioning of the internal market [art. 134 par. (1) TFEU][1];

- The political and security committee, in the field of CFSP, empowered to follow the international situation in the fields related to CFSP (art. 38 TEU);

- the Standing Committee, in the field of "Area of freedom of security and justice", to ensure within the Union the promotion and strengthening of operational cooperation in the field of internal security (art. 71 TFEU);

- the Employment Committee, in the field mentioned by the Committee itself, in order to promote the coordination between the Member States of policies regarding employment and labor market; the committee is consultative (art. 150 TFEU);

- the Social Protection Committee, with the aim of promoting cooperation on social protection between the Member States with the Commission; the committee is consultative (art. 160 TFEU).

The Coreper Presidency is provided, according to the items on the agenda, by the Deputy Permanent Representative of the Member State holding the Presidency of the General Affairs Council.

The Presidency of the Political and Security Committee is provided by a representative of the High Representative of the Union.

The presidency of the other preparatory groups and of the Council formations, with the exception of the Foreign Affairs formation, is provided by a delegate of the Member State that ensures the presidency of the respective formation.

[1] The Statute of the Committee was adopted by the Council on March 18, 1958. Initially it was called the Monetary Committee and it was established by art. 109, inserted by the TEU, and replaced at the beginning of the third phase of the Monetary Union by the Economic and Financial Committee.

Coreper may take procedural decisions in the cases provided by the Council's Rules of Procedure [art. 240 paragraph (1) and art. 19 paragraph (7)].

✓ The Council is supported by a General Secretariat, headed by a Secretary General appointed by the Council. The Council decides by a simple majority on the organization of the General Secretariat [art. 240 paragraph (2) TFEU].

The Secretary-General shall take all necessary measures to ensure the proper functioning of the General Secretariat. The General Secretariat has the role of:

- be closely and continuously involved in the organization, coordination and control of the consistency of the Council's work and the implementation of its 18-month program;

- to assist the Council in identifying the solutions under the responsibility and guidance of the Presidency[1].

The Secretary-General shall perform the following tasks:

- submit to the Council a draft estimate of the Council's expenses in a timely manner, to ensure that the deadlines provided in the financial provisions are respected;

- has full responsibility for the management of the credits included in Section II - the European Council and the Council - of the budget and takes all necessary measures to ensure their good management;

- executes the mentioned credits in accordance with the provisions of the financial regulation applicable to the Union budget.

Decisions taken by the Council or by Coreper, on the basis of the Rules of Procedure, are adopted by a simple majority, unless it provides for another method of voting.

4.3. Operation of the Council. Council meetings

The Council shall meet at the convening of its chairman, on his own initiative, of one of its members or of the Commission (Article 237 TFEU).

As we have shown, the Council meets within the different formations, their list being adopted in accordance with art. 236 TFEU.

The Council shall meet in public session when it deliberates and votes on a draft legislative act. To this end, each session of the Council is divided into two parts devoted to deliberations on the legislative acts of the Union, respectively to the activities without legislative character [art. 16 paragraph (8) TEU].

The Commission is invited to the meetings of the Council, including the ECB, where it exercises its right of initiative. However, the Council may decide to deliberate without the ECB or the Commission being present[2]. The members of the Council and the Commission may be accompanied by officials assisting

[1] See art. 23 paragraph (3) of the Council's Rules of Procedure.
[2] See art. 5 paragraph (1) and (2) of the Council's Rules of Procedure.

them.

Until 1992, the Council meetings were not open to the public. Subsequently, the Council establishes in the Rules of Procedure the conditions under which the public has access to the documents of the Council[1].

Currently, according to the rules of procedure, in force, when the Council deliberates and votes on a draft legislative act, the agenda includes a part entitled "Legislative deliberations". The part "Legislative deliberations" is open to the public, this is done through the audiovisual means, in an additional room, by transmitting in all the official languages of the institutions of the European Union, by broadcasting live video (video streaming). And the result of the vote is indicated by visual means[2].

The Regulation also provides for other cases of Council deliberations open to the public and public debates[3].

Thus, if a non-legislative proposal is submitted to the Council regarding the adoption of rules that are legally binding in or for the Member States, by means of regulations, directives or decisions based on the relevant provisions of the Treaties, With the exception of internal measures, administrative or budgetary acts, acts on interinstitutional or international relations or non-binding acts (such as conclusions, recommendations, resolutions), the first deliberation of the Council on new important proposals is open to the public. The Presidency may decide, on a case-by-case basis, and that subsequent Council deliberations on the above-mentioned proposals shall be open to the public, unless the Council and Coreper decide otherwise[4].

The Council may vote only in the presence of the majority of the members of the Council who have the right to vote in accordance with the treaties[5]. When the President votes, he is assisted by the General Secretariat, which checks whether the quorum is met. A member of the Council who cannot attend a meeting may take steps to be represented. Thus, in the event of a vote, each member of the Council may receive a mandate from one other member (Article 239 TFEU)[6].

The deliberations of the Council fall within the scope of professional secrecy, except in the cases and unless the Council decides otherwise[7].

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[1] Following the Edinburgh European Council, from December 11 and 12, 1992, the possibility for the future of the debates to be public, including by audiovisual means, was opened. The first of its kind took place on February 1, 1993.

[2] *Idem*.

[3] See art. 8 of the Council's Rules of Procedure.

[4] *Idem*.

[5] *Ibid*, art. 11 paragraph (4).

[6] The same content also has art. 11 paragraph (3) of the Council's Rules of Procedure.

[7] See art. 16 paragraph (1) of the Council's Rules of Procedure.

4.4. How to make decisions within the Council?

✓ One issue that has always given rise to divergences even in the formulations of the Community Treaties is that of voting in the Council.

The "voting mode" was foreseen to evolve during the transitional periods for the achievement of an economic union, eventually reaching the majority decisions, the unanimity being required only for making decisions on the issues of the highest importance[1]. Under the EEC Treaty, the transition from unanimous decision to majority decision had to be made at the end of 1965 (the year that experienced one of the most powerful crises that even threatened the existence of the Common Market)[2]. I agree with the renunciation of the unanimity rule by practicing the so-called "empty chair" policy. This consisted in France's[3] refusal to participate in the work of all community institutions, thus blocking their activity. Eventually, on January 29, 1966, Luxembourg signed an "agreement on the disagreement"[4] whereby France succeeds in imposing that from that moment "on the Ministerial Council (now the Council) any decision by unanimity or place", the majority rule being postponed *sine die* as a threat to the sovereignty of the Member States[5]. According to the Luxembourg Compromise, in the case of decisions adopted by a majority of votes - at the proposal of the Commission - concerning the vital interests of one or more members - the members of the Council will endeavor, in the interim, to arrive at a solution that respects their interests and to be accepted by all members of the Council[6]. The Luxembourg agreement is not binding, but on the basis of it has emerged a practice according to which decisions concerning the vital interests of the Member States are subject to a discussion which will continue until a unanimous agreement is reached[7].

The vote in the Council is expressed by the representative of each state, in alphabetical order, by raising his hand - the voting procedure can be avoided by the Presidency of the Council if it finds unanimity.

For the adoption of the decisions it is necessary: the simple majority, the qualified majority or the unanimity of the votes.

The simple majority is assembled when a decision is made if there are

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[1] See B. Ştefănescu, *op. cit*., p. 26.
[2] *Idem*.
[3] France has refused to apply the rules of the majority vote in the Council, considering that its interests in financing the general agricultural policy are threatened.
[4] EEC Bulletin no. 3/1966, pp. 9-11.
[5] See B. Ştefănescu, *op. cit*., p. 26.
[6] See G. Gornig, I. E. Rusu, *op. cit*., p. 37.
[7] Another form of blocking the Council's work took place in 1996, the vote cast by the United Kingdom of Great Britain on all Council work, which had to be adopted unanimously, regardless of their purpose. By doing so, the United Kingdom has protested against the high trade restrictions against this country due to cases of bovine spongiform encephalopathy (BSE). See G. Gornig, I.E. Rusu, *op. cit*., p. 37.

more votes "for" than "against". Each member of the Council has one vote.

The simple majority rule applies when the Treaty does not provide otherwise, according to art. 238 paragraph (1) TFEU.

The simple majority (50% + 1) was provided as a rule in the decision-making process, but, given the numerous express derogations from it, it is presented as an exception.

In the case of deliberations for which a simple majority is required, the Council decides with the majority of its members [art. 238 paragraph (1) TFEU].

The Council decides by simple majority:

- in procedural matters, as well as regarding the adoption of the procedural regulation [art. 240 paragraph (3) TFEU];

- at the request of studies and proposals of the Commission, for achieving the common objectives (art. 241 TFEU);

- when adopting the status of the committees provided by the treaties (art. 242 TFEU);

- by setting limits and conditions for the Commission regarding the request and receipt by it of all the necessary information (art. 337 TFEU).

In practice, the simple majority rule applies only to the adoption of a small number of decisions, for example: the Rules of Procedure of the Council, the organization of the General Secretariat of the Council and the rules governing the activity of the commissions provided for in the Treaty[1].

The Treaty provides that decisions requiring more votes than the simple majority shall be adopted by a qualified majority. Therefore, the rule "one vote from each Member State" no longer applies.

Thus, each country has a certain number of votes, depending on its population [art. 205 paragraph (2) TEC and, from November 2014, art. 238 TFEU].

According to the Lisbon Treaty, the qualified majority has become a rule in the adoption of decisions by the Council and the European Council, and the provisions regarding this majority enter into force on 1 November 2014.

Until October 31, 2014, for the deliberations of the European Council and of the Council, which require a qualified majority, the provisions mentioned in the Protocol on transitional provisions regarding the qualified majority, attached to the Treaty of Lisbon, remain in force. Taking into account Croatia's accession to the European Union, from July 1, 2013, for the deliberations of the European Council and the Council, which requires a qualified majority, the votes of the members are weighted, as follows:

> the total number of votes is 352 (73.86%), these are distributed among the Member States according to the table below:

- Germany, Great Britain, France and Italy .....29 votes,
- Spain and Poland ..... 27 votes,
- Romania ..... 14 votes,

[1] See P. Novac, April 2017, *op. cit.*

- Netherlands..... 13 votes,
- Greece, Czech Republic, Belgium, Hungary and Portugal.....12 votes,
- Sweden, Bulgaria and Austria ..... 10 votes,
- Slovakia, Denmark, Finland, Ireland, Lithuania and Croatia ..... 7 votes.
- Latvia, Slovenia, Estonia, Cyprus and Luxembourg ..... 4 votes,
- Malta .....3 votes.

> the deliberations are concluded if they receive at least 260 favorable votes expressed by the majority of the members, if, under the treaties, they must be adopted at the proposal of the Cornice;

> in the other cases, the deliberations shall be concluded if at least 260 favorable votes cast by at least two thirds of the members.

A member of the European Council or of the Council may, upon adoption by a qualified majority of an act by the European Council or by the Council, verify that the Member States constituting the qualified majority represent at least 62% of the total Union population[1], calculated according to the population figures established in art. 1 of Annex III[2] of the Rules of Procedure of the Council. Therefore, the fulfillment of the latter criterion must be requested by a Member State.

If it is found that this condition is not met, the act in question is not adopted[3].

Until October 31, 2014, in cases where, under the Treaties, not all Council members participate in the vote, respectively in cases where reference is made to the qualified majority defined in accordance with art. 238 paragraph (3) TFEU [former art. 205 paragraph (3) TEC, the qualified majority is defined as the same proportion of weighted votes and the same proportion of the number of members of the Council, as well as, if necessary, the same percentage of the population of the Member States as those established by paragraph (3) of the mentioned article.

The Treaty of Lisbon gave up the system of weighted votes.

Thus, between November 1, 2014 and March 31, 2017, if a qualified majority decision is to be adopted, a member of the Council may request that this decision be adopted by a qualified majority as defined in paragraph (3) in art. 238 TFEU.

In this case, two situations are regulated, "a simple rule of the double majority"[4], namely:

> first situation - derogation from art. 16 paragraph (4) TEU if the Council does not decide on the proposal of the Commission or the High Representative

[1] See Protocol on Transitional Provisions, with reference to the qualified majority.

[2] See Council Decision 2010/795/EU of 14 December 2010, which entered into force on 1 January 2011, which amends Decision 2009/795/EU of 1 February 2009, approving the Council's Rules of Procedure. Beginning with January 1 of each year, the Council, in accordance with the available data of the EU Statistical Office, on September 30 of the previous year amends the figures set out in art. 1 of the mentioned Annex [art. 2 paragraph (2) of Annex III], to the Council's rules of procedure.

[3] See Protocol on Transitional Provisions, with reference to the qualified majority.

[4] See P. Novac, April 2017, *op. cit.*

of the Union for Foreign Affairs and Security Policy[1];

> the second situation, in which, according to the treaties, not all the members of the Council participate in the vote, the qualified majority is defined as follows:

a. The qualified majority is defined as at least 55% of the members of the Council representing the participating Member States, which comprise at least 65% of the population of these states. The blocking minority must include at least the minimum number of members of the Council, which represents more than 35% of the population of the participating Member States plus one member, otherwise the qualified majority is considered to be assembled.

Article 16 paragraph (4) the TEU defines the qualified majority in similar terms, being equal to at least 55% of the members of the Council, comprising at least 15 of them and representing Member States that comprise at least 65% of the population of the Union.

The blocking minority must comprise at least four members of the Council, otherwise the qualified majority is considered to have met.

b. The qualified majority is defined as at least 72% of the members of the Council representing the participating states, which bring together 65% of the population of the respective states, if the Council does not decide on the proposal of the Commission or the High Representative of the Union for Foreign Affairs; security policy. It is worth mentioning that, in order to avoid any confusion, regarding the voting method according to the qualified majority rule, the treaties provide according to which article and paragraph the qualified majority is defined whenever the Council decides in this way[2].

The Community treaties have gradually expanded the scope of the areas in which the decisions of the Council are adopted by a majority of votes. Along the same lines is included the Treaty of Lisbon, which provides for the adoption of decisions with a qualified majority in the areas: asylum, immigration, Europol, Eurojust, border control, the common transport policy, the objectives and the organization of the structural and cohesion funds, the initiatives of the High Representative of the Union, for the appointment of the President and the members of the Commission, the members of the Court of Accounts, the European Economic and Social Committee and the Committee of the Regions[3].

It should be mentioned that in most cases the qualified majority was extended together with the introduction of the ordinary legislative procedure. Also, it is foreseen to introduce the action with qualified majority of the Council in new

[1] These are the specific cases provided for in the Treaties, in which the legislative acts may be adopted at the initiative of a group of Member States or the EP, at the recommendation of the ECB or at the request of the Court of Justice or the European Investment Bank, according to art. 289 paragraph (4) TFEU.

[2] For example, art. 136 paragraph (2), art. 138 paragraph (3) the last sentence, art. 140 paragraph (2) the last TFEU sentence and others.

[3] See A. Popescu, I. Diaconu, *op, cit. (Organizaţii europene...)*, p. 232.

areas of competence of the Union, such as: space policy, energy, civil protection, structured cooperation in the field of defense, services of general interest and others[1].

Some decisions of the Council are adopted on the basis of the principle of unanimity of votes. Thus, the abstentions of the members present or represented do not prevent the adoption of the decisions of the Council for which unanimity is required [art. 238 paragraph (4) TFEU].

Unanimity means the approval of the decision by all members. In some areas, considered sensitive to the Member States, the Council must act unanimously, although the qualified majority has gradually become, through successive amendments of the TEEC/TEC, the SEA, TMs, Treaty of Amsterdam and the Treaty of Nice, the quorum prevailing in the European Union.

For example, by the Treaty of Nice new provisions were introduced according to which the unanimity rule applies, for example, in the field of intellectual property (art. 262 TFEU).

It should be mentioned that, according to the Treaty of Lisbon, the Council unanimously votes only in accordance with the special legislative procedure.

The areas that the Member States consider sensitive are reserved to the principle of unanimity of votes:

- measures to combat discrimination [art. 19 paragraph (1) TFEU];
- the field of capital and payments [art. 64 paragraph (3) and art. 65 paragraph (4) TEU];
- the fields of judicial cooperation in civil matters [art. 81 paragraph (3) TFEU], of cooperation in criminal matters [art. 82, paragraph (2) letter d) and art. 83 paragraph (1) TFEU] and police cooperation [art. 87 paragraph (3) and art. 89 TFEU];
- transport policy (art. 92 TFEU);
- measures regarding the harmonization of the legislation on turnover taxes, excise duties and other indirect taxes (art. 113 TFEU);
- the field of state aid (art. 108 paragraph (2) TFEU];
- the fields of harmonization of legislation on turnover tax, excise duties and other indirect taxes (art. 113 TFEU) and approximation of laws (art. 115 and 118 TFEU);
- the fields of economic policy [art. 126 paragraph (14) TFEU] and social [art. 153 paragraph (2) TFEU];
- environmental policy [art. 192 paragraph (2) TFEU];
- the field of the common commercial policy [art. 207 paragraph (4) TFEU];
- the procedure for concluding the agreements between the Union and third countries or international organizations [art. 218 paragraph (8) TFEU];
- the language regime of the Union institutions (art. 342 TFEU);

[1] *Idem*, p. 233.

- within the Union's subsidiary competence (art. 352 TFEU);
- decisions regarding the CFSP (art. 42 TEU).

Introducing new areas, considered sensitive, the Treaty of Lisbon lays down the unanimity rule for the establishment of a European Public Prosecutor's Office starting with Eurojust [art. 86 paragraph (1) TFEU and for energy policy [art. 194 paragraph (3) TFEU].

But in order to avoid the institutional blockade in a Union of 28 Member States, the Treaty of Lisbon, as we have shown, as in the previous treaty, from Nice[1], has greatly expanded the scope of the qualified majority in new areas. .

However, the provisions of art. 48 paragraph (7) TEU a gateway clause that allows the Council to decide by qualified majority instead of unanimously in certain areas. Moreover, in the case of certain policies, the Council may decide (unanimously) to extend the use of the qualified majority, for example, art. 81 paragraph (3) TFEU on measures concerning family law which have cross-border implications[2].

In general, the Council tends to seek unanimity even in areas where it is not required[3]. The situation explains the preference of the Council expressed by the "Luxembourg compromise" from 1965-1966, when France refused to accept the unanimous passage of the qualified majority vote in certain areas, by not participating in the Council's work. In this sense, the text of the compromise states: "When, in the case of decisions which can be taken by a majority of votes at the proposal of the Commission, very important interests of one or of the many partners are at stake, the members of the Council will endeavor, within a reasonable period of time, to find solutions that can be adopted by all members of the Council, while respecting their mutual interests and those of the Community".

In 1994, through the "Ioannina compromise", the attitude of certain member states that had almost met the minority blocking decisions is protected by the "compromise" text, which essentially states that "if these states have expressed their intention in order to oppose a decision by the Council by a qualified majority, the Council should do everything in its power, within a reasonable time, to reach a satisfactory solution for most states"[4].

More recently, the possibility of delaying the introduction of the new system based on the double majority from 2014 to March 31, 2017 was created, which allowed, at the request of a Member State, the application of the old rule regarding obtaining the qualified majority provided for in the Treaty of Nice[5].

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[1] For example, the free movement of persons, the fight against discrimination, increased cooperation, judicial cooperation, industrial policy, trade agreements on services and intellectual property.
[2] See P. Novac, April 2017, *op. cit.*
[3] *Idem*.
[4] *Ibid*.
[5] See M. Schonard, May 2017, Datasheets on the European Union, "*Supranational Decision-Making Procedures*", http://www.europarl.europa.eu/aboutparliament/ro/displayFtu.html?f tuld=FTU_1.4.1.html.

4.5. Functions of the Council

4.5.1. Regulation and definition of Council functions

The powers of the Council are regulated in a general manner in art. 16 paragraph (1) TEU, but, according to the Treaties, the Council institution has other powers.

The Council exercises the legislative and budgetary functions together with the EP. It exercises the functions of defining the policies and coordinating it, in accordance with the conditions stipulated in the treaties [art. 16 paragraph (1) TEU].

A. The legislative function of the Council is exercised in various ways:

a. The Council deliberates and votes on a draft legislative act. In this case, the Council shall meet in public session. To this end, the agenda includes a portion of "Legislative Deliberations"[1]. Coreper pre-examines these projects with guidelines, options or suggestions for solutions. Proposals and draft acts are verified by the legal service under the Interinstitutional Agreement of December 22, 1998 regarding the common guidelines[2] for the quality of the drafting of the Community legislation;

b. The Council, acting by a simple majority, may request the Commission to carry out all the studies it considers appropriate for the achievement of the common objectives and to submit any appropriate proposals to it (art. 241 TFEU and art. 12 TEuratom). The Council sometimes asks for specific proposals, sometimes gives opinions and adopts resolutions addressed to the Commission to make legislative proposals[3]. If the Commission does not submit a proposal, it shall communicate the reasons to the Council (art. 241 TFEU);

c. The Council may delegate to the Commission the power to adopt new regulations in a field. In its capacity as legislative body, the Council is empowered, according to art. 290 paragraph (1) TFEU, to delegate to the Commission the power to adopt non-legislative acts of general application, supplementing or amending certain non-essential elements of a legislative act.

We exemplify in this regard the Regulation of the EP and of the Council amending Regulation (EC) no. 485/2008 on the controls carried out by the Member States regarding the operations that are part of the financing system through the European Agricultural Guarantee Fund. Following the entry into force of the Treaty of Lisbon, the powers conferred on the Commission under Regulation (EC) no. 485/2008 must be aligned with art. 290 TFEU. So the proposal to amend

[1] See art. 7 of the Council's Rules of Procedure.
[2] OJ L. 73/17 March 1991, p. 1; see art. 22 paragraph (1) of the Council's Rules of Procedure.
[3] See A. Popescu, I. Diaconu, *op. cit. (Organizaţii Europene...),* p. 230.

the regulation in question is in line with the alignment with the Treaty of Lisbon[1].

d. The legislative competence of the Council is highlighted in the most obvious way through:

- the ordinary legislative procedure (co-decision), through the adoption by the EP and the Council together of a regulation, a directive or a decision on a proposal from the Commission [art. 289 paragraph (1) and art. 294 TFEU];

- the special legislative procedure, through the adoption of a regulation, a directive or a decision by the EP, with the participation of the Council or the Council with the participation of the EP [art. 289 paragraph (2) TFEU]. In this case, the legislative initiative comes from a group of Member States or Parliament, at the recommendation of the ECB or at the request of the Court of Justice or the European Investment Bank.

According to the rules of procedure of the Council, after being analyzed by the committees and working groups, the draft normative act is sent for debate and negotiation within Coreper, after which it is passed on one of the two agendas of the Council. The exercise of the legislative competence of the Council, in all cases, is subject to the views of the European Parliament, the Commission or other institutions of the Union in the form of opinions or proposals.

The Council adopts an act of a specific nature only when this is expressly provided by the Treaty, for example: directives or decisions, according to art. 143 paragraph 2 TFEU, or only decisions, according to art. 153 paragraph 3 and 126 paragraph (6), (11) and (12) TFEU.

However, if the treaties do not provide for the type of act to be adopted, the institutions choose it on a case-by-case basis, respecting the applicable procedures and the principle of proportionality (article 296 TFEU). In this sense we exemplify art. 43 paragraph (2) and (3) and art. 48 TFEU, which use the term "measures".

B. The budgetary function of the Council, which is exercised together with the European Parliament [art. 16 paragraph (1) TEU and art. 314 TFEU].

To this end, the European Parliament and the Council, acting in accordance with a special legislative procedure, shall adopt the annual budget of the Union (article 314 TFEU).

Although this competence is divided between the EP (which has a decisive role) and the Council, the institution of the Council has important powers, namely:

- adopts its position on the draft budget and submits it to the European Parliament by October 1 of the year preceding the year of budget execution;

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[1] Even in the regulation in question it is stipulated: "The Commission has the power to adopt delegated acts, in accordance with art. 290 TFEU, in order to supplement or amend certain non-essential elements of Regulation (EC) no. 485/2008. It is necessary to define the elements on which the said competence can be exercised, as well as the conditions to which the respective delegation is subject". See Brussels, December 17, 2010, COM (2010), 761 final; 2010/0366/COD (through the co-decision procedure).

- approves or, as the case may be, rejects the joint draft budget on which a steering committee, convened by the President of the Council, and the EP President have reached an agreement.

If, at the beginning of a budget year, the budget has not yet been definitively adopted, the expenses may be incurred monthly by chapter, according to the provisions of the regulation adopted for the implementation of art. 322 TFEU, up to a twelfth of the appropriations opened in the corresponding chapter of the budget of the previous financial year. The Council, on a proposal from the Commission, may authorize expenditure in excess of the twelfth provided in accordance with the provisions of the regulation adopted for the implementation of art. 322 TFEU.

Also, the Council, acting on a proposal from the Commission and after consulting the EP and the Court of Auditors, establishes the methods and procedure by which the budgetary revenues provided for by the Union's own resources regime are made available to the Commission and defines the measures to be taken to respond, if it is the case, the treasury needs [art. 322 paragraph (2) TFEU].

C. The function of politician definition and coordination (art. 16 TEU). The common foreign and security policy - the CFSP is defined by the European Council and the Council, acting unanimously, unless the treaties provide otherwise [art. 24 paragraph (1) TEU]. Also, the Council, when drafting the CFSP, adopts the necessary decisions for its definition [art. 26 paragraph (2) TEU].

The TFEU expressly provides that "the Member States shall coordinate their economic policies within the Union". To this end, the Council shall adopt measures and, in particular, the general guidelines of these policies [Article 5 (1) TFEU]. shall be adopted, in accordance with Article 5 (2) and (3) TFEU, regarding:

- coordinating the employment policies of the Member States and, in particular, by defining the orientations of these policies;

- initiatives to ensure the coordination of the social policies of the Member States. Being a matter of common interest[1], the action to support, coordinate or supplement the action of the Member States by the Union, according to art. 6 TFEU, covered the following areas: protection and improvement of human health (art. 168 TFEU), industry (art. 173 TFEU), culture (art. 167 TFEU), tourism (art. 195 TFEU), education, vocational training, youth and sport (art. 165 TFEU), civil protection (art. 196 TFEU), administrative cooperation (art. 197 TFEU).

Within this task, the Council has the general mission of coordinating between the Member States and the Union. In this regard, the Council publishes annually a recommendation on the general guidelines of the economic policies of

[1] Article 121 paragraph (1) TFEU.

the Member States and of the Union[1], for example, "Member States consider their economic policies as a matter of common interest and coordinate them within the Council" [art. 121 paragraph (1) TFEU].

The coordination of economic policies is carried out, in principle, on the basis of deliberations, studies, consultants, recommendations, in order to bring the views of the Member States closer, not excluding in certain cases and the intervention of mandatory acts. To this end, "the Council, on the recommendation of the Commission, shall draw up a draft on the general guidelines of the economic policies of the Member States and of the Union and shall submit a report to the European Council. The European Council, on the basis of the Council report, debates the conclusions on the general guidelines of the economic policies of the Member States and of the Union. On the basis of these conclusions, the Council adopts a recommendation setting out the general guidelines" [art. 121 paragraph (2) TFEU].

In order to ensure closer coordination of economic policies and a sustainable convergence of the economic performance of the member states, the Council monitors the economic evolution in each of the Member States and in the Union, as well as the conformity of the economic policies with the general guidelines (...) and carries out periodically. an overall evaluation [art. 121 paragraph (2) and (3) TFEU].

This coordination is carried out by the EU Council in Economic and Financial Affairs.

In completing and developing the mentioned functions, the Council has the following attributions necessary to achieve the objectives set by the treaties:

D. The Council has the decision-making competence also by adopting acts without legislative character (except the adoption of the implementing acts). Therefore, the decision-making competence of the Council concerns, in addition to the analyzed legislative function, the competence to adopt acts without legislative character, according to art. 3 paragraph (1) of the Council's Rules of Procedure. Thus, the provisional agenda of the provisional Council has two parts devoted to deliberations on legislative acts[2] and, respectively, activities without legislative character[3]. The latter, in accordance with the Council's rules of procedure, concern the adoption of acts that are legally binding in or for the Member States, through regulations, directives, framework decisions or decisions. Also, without legislative character are: internal measures, administrative or budgetary acts, acts regarding inter-institutional or international relations or non-binding

[1] See Recommendation of 19 June 2000 (J. Of. L 210/1, 2000) and Recommendation of 12 of February 2001 on the elimination of deviations from the general guidelines of economic policies in Ireland (J. Of. 69/22, 2001) and the decision to make it public (J. Of. L 69/24, 2001); P. Mathjisen, *op. cit*., p. 105.

[2] In the case of legislative projects, the Council meets in public meeting [art. 5 paragraph (1), the Council's Rules of Procedure].

[3] See art. 3 paragraph (6), the Council's rules of procedure.

acts: conclusions, recommendations, resolutions[1].

In making its decisions, whether or not they are legislative in nature, the Council, as a rule, acts on the basis of proposals or recommendations of the Commission and, as the case may be, after consulting the European Parliament or other institutions or bodies, for example the Court of Accounts (art. 322 TFEU), ECB [art. 140 paragraph (3) TFEU], the Economic and Social Committee and the Committee of the Regions [art. 164, art. 165 paragraph (4), art. 172 and art. 177 TFEU], or only to one of the Committees [art. 169 paragraph (4) and art. 167 paragraph (5) TFEU], of the Commission and the Court of Justice [art. 257 paragraph (1) TFEU]; or even the ECB [art. 138 paragraph (1) and (2) and art. 140 paragraph (3) TFEU].

E. If the unitary conditions for the implementation of the legally binding acts of the Union are required, these acts confer the executive powers on the Council, in special and duly justified cases, as well as in the cases provided by art. 24 and art. 26 TEU.

The implementing acts are not legislative in nature.

Thus, according to art. 24 TEU, CFSP is defined and implemented by the European Council and the Council. In this regard, the Council adopts the necessary decisions for the definition and implementation of the CFSP [art. 26 paragraph (2) TEU].

Also, among the special cases in which the Council has enforcement powers, we exemplify:

- within the framework of the "Area of freedom of security and justice", the Council, acting on a proposal from the Commission, shall adopt measures for the implementation of the appropriate rules (article 75 TFEU);

- in the field of competition policy, the Council adopts regulations or directives useful for the application of the principles governing this field [art. 103 paragraph (1) TFEU];

- within the framework of "state aid", the Council, at the proposal of the Commission and after consulting the EP, may adopt all the regulations useful for the application of the TFEU rules governing state aid, and may also establish the conditions for applying some of these rules (art. 109 TFEU);

- within the "economic policy", the Council, at the proposal of the Commission and after consulting the EP, establishes the rules and provisions for the application of the Protocol on the procedure applicable to excessive deficits, annexed to the Treaties [article 126 paragraph (14) last sentence of the TFEU];

- implements by a decision the solidarity clause in case a Member State is the object of a terrorist attack, or a natural or man-made disaster [art. 222 paragraph (1) TFEU].

F. The Council has the power to decide the imposition of fines in a certain amount, in the procedure provided in art. 126 paragraph (11) the last

[1] See art. 8 paragraph (1), the Council's rules of procedure.

TFEU thesis on budget deficits; has the power to apply sanctions under the conditions of art. 7 paragraph (2) and (3) TEU.

If the Council finds that in a Member State there is an excessive deficit or such a deficit is about to occur and the State concerned refuses to follow the recommendations and surnames received, the Council may decide to impose fines on it. - an amount that he considers appropriate [art. 126 paragraph (7), (8), (9), (10) and (11) last sentence of TFEU].

The European Council can find - at the motivated proposal of a third of the Member States, of the Commission and with the approval of the European Parliament - that there is a serious and persistent violation of the principles set out in art. 2 TEU by a Member State. If the above situation has been ascertained, the Council, acting by a qualified majority, may decide to suspend certain rights vested in the Member State concerned following the treaties, including the right to vote in the Council for the representative of the government of that Member State. In doing so, the Council shall take into account the possible consequences of such suspension on the rights and obligations of natural and legal persons [art. 7 paragraph (2) and (3) TEU].

G. Has the right to make recommendations to the states [art. 121 paragraph (2) TFEU], at the recommendation of the Commission; art. 165 paragraph (4) and art. 166 paragraph (4) TFU (on a proposal from the Commission).

In the field of "economic and monetary policy", respectively "economic policy", based on the conclusions of the European Council - on the draft on the general guidelines of the economic policies of the Member States and the Union, drawn up by the Council - the Council institution adopts a recommendation which sets out the guidelines general [art. 121 paragraph (2) TFEU].

In the field of "education, training, youth", the Council adopts:

- after consulting the Economic and Social Committee and the Committee of the Regions, encouraging actions, except for any harmonization of the legislative acts and administrative rules of the Member States, in accordance with the codecision procedure[1] [art. 165 paragraph (4) TFEU];

- recommendations, on a proposal from the Commission [art. 165 paragraph (4) and art. 166 paragraph (4) TFEU].

H. In the context of the Union's external action, with the exception of the CFSP, the Council concludes international agreements (Part V TFEU).

In the framework of the "common commercial policy", the Council unanimously decides on the negotiation and conclusion of agreements:

- in the field of trade in cultural and audiovisual services, if these agreements risk undermining the cultural and linguistic diversity of the Union;

- in the field of trade in social, education and health services, in case these agreements can seriously disrupt the organization of these services at national level and undermine the responsibility of the Member States for the provision of

[1] According to art. 294 TFEU.

these services[1].

Draws up agreements between the Union and third countries or international organizations that have been negotiated in advance by the Commission, according to art. 218 TFEU. The Council authorizes the commencement of negotiations, adopts the negotiating directives, authorizes the signature and concludes the agreements.

Unless the agreement refers exclusively to the CFSP, according to art. 218 TFEU, the Council adopts the decision on the conclusion of the agreement:

a. after EP approval in the following cases: 1. association agreements; 2. agreement on the accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; 3. agreements establishing a specific institutional framework by organizing cooperation procedures; 4. agreements that have important budgetary implications for the Union; 5. agreements in the fields in which the ordinary legislative procedure or the special legislative procedure applies if EP approval is required;

b. after consulting the EP in the other cases.

The Council may also conclude formal agreements on a system of the exchange rate of the euro in relation to the currencies of third countries [art. 219 paragraph (1) TFEU].

By concluding these agreements, the Council fulfills a representative function within the Union. This function results from art. 217 TFEU, which provides: "The Union may conclude agreements with one or more third countries or international organizations (...)", referring further to the association agreements that are concluded by the Council by representation on behalf of the Union.

I. Has the capacity of depositary of the agreements concluded, through its Secretary General[2].

In close connection with the previous assignment, if the Secretary General is designated as the depositary of an agreement concluded between the Union or TEuratom and one or more Member States or organizations, the acts of ratification, acceptance or approval of the agreements shall be submitted to the Council.

In such cases, the Secretary General performs the duties of depositary and ensures that the dates of entry into force of the agreements in question are published in the Official Journal of the European Union.

J. It has a decisive role in the process of amending the treaties [art. 48 paragraph (1) and (2) TEU] in the decision to receive new members in the Union [art. 49 paragraph (1) TEU], as well as in the withdrawal procedure of a Member State of the Union (art. 50 TEU).

• The Council is presented to the Council by the government of any Member State, the EP or the Commission on draft amendments to the Treaties under-

[1] The procedure for concluding these agreements is regulated by art. 218 TFEU.
[2] See art. 25 of the Council's Rules of Procedure.

lying the European Union - both in the ordinary review procedure and in the simplified procedure [art. 48 paragraph (1) and (2) TEU].

• Any European state that respects the values stated in art. 2 TEU[1] and who are committed to promoting them may apply to become a member of the Union. The requesting State shall address its request to the Council, which shall act unanimously, after consulting the Commission and after approving the European Parliament, which shall act with the majority of its members (article 49 TEU).

• The Member State which decides to withdraw from the Union shall notify its intention to the Council. The Union negotiates and concludes with this State an agreement establishing the conditions for withdrawal. This agreement is negotiated under art. 218 paragraph (3) TFEU. The agreement is concluded by the Council, on behalf of the Union, which decides by qualified majority, after approval by the EP (article 50 TEU).

K. It has the power to adopt, to revoke, to modify, the safeguard clauses.

If, in exceptional circumstances, the movement of capital from or destined to third countries causes or threatens to cause serious difficulties in the functioning of the economic and monetary union, the Council, on a proposal from the Commission and after consulting the ECB, may adopt, in relation to third countries, safeguard measures for a period of six months if these measures are strictly necessary (article 66 TFEU).

In the field of monetary policy, the Commission authorizes the Member State which is the object of a derogation, in difficulty, to take safeguard measures whose conditions and rules define them. The Council may revoke this authorization and modify these conditions and norms [art. 143 paragraph (3) TFUE].

In the event of an unexpected crisis in the balance of payments (...), at the recommendation of the Commission and after consulting the Economic and Financial Committee, the Council may decide that the Member State concerned is obliged to modify, suspend or eliminate the safeguard measures [art. 144 paragraph (3) TFEU].

L. Has competence in its internal organization and in the allowances due to some of the presidents and members of other institutions of the Union.

• The Council appoints the Secretary General; under whose authority the General Secretariat is located. The Council decides by a simple majority on the organization of the General Secretariat [art. 240 paragraph (2) TFEU].

• The Council decides by simple majority:

- in procedural matters, as well as regarding the adoption of its rules of

[1] Art. 2 TEU has the following content: "The Union is based on the values of respecting human dignity, freedom, democracy, equality, the rule of law, as well as respecting human rights, including the rights of persons belonging to minorities. These values are common to the member states in a society characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men".

procedure [art. 240 paragraph (3) TFEU];

- adopts, after consulting the Commission, the status of the committees provided for in the Treaties (art. 242 TFEU).

- The Council sets the salaries, allowances and pensions of the President of the European Council, the President of the Commission, the High Representative of the Union for Foreign Affairs and Security Policy, the members of the Commission, the presidents, members and clerks of the Court of Justice of the European Union, and the Secretary general of the Council. The Council also establishes all allowances that take place in remuneration (art. 243 TFEU).

M. The Council shall adopt the decision authorizing a form of enhanced cooperation when that institution establishes that the objectives pursued by such cooperation cannot be achieved within a reasonable time by the Union as a whole, and under at least nine states. members participate in this cooperation [art. 20 paragraph (2) TEU].

N. The Council has powers in the field of CFSP, in particular decisions, without legislative character, as follows:

- CFSP is defined and implemented by the Council and the European Council [art. 24 paragraph (1) TEU];

- elaborates the CFSP and takes the necessary decisions for the definition and implementation of the CFSP, based on the general guidelines established by the European Council (art. 26 paragraph 2 TEU);

- adopts the decision establishing the organization and functioning of the European service for external action [art. 27 paragraph (3) TEU];

- adopts the necessary decisions in case an international situation requires an operative action from the Union, including the decisions that defined the Union's position in a certain geographical or thematic matter (art. 29 TEU), being notified of any CFSP issue[1];

- it can be convened in an extraordinary meeting in cases where a fast decision is required in the CFSP [art. 30 paragraph (2) TEU];

- appoint a special representative to whom a mandate is given concerning special political issues (art. 33 TEU);

- authorizes the Political and Security Committee, in order to manage a crisis situation, and during its duration, to make the appropriate decisions in accordance with those established by the Council (art. 38 TEU)[2];

- adopts the decisions to establish the norms regarding the protection of

[1] It can be notified by any Member State, the High Representative of the Union for Foreign Affairs and Security Policy or the High Representative with the support of the Commission [according to art. 30 paragraph (1) TEU].

[2] In order to ensure political control and strategic guidance in the event of a crisis, the Nice European Council of 2000 decided to establish permanent political-military structures under the aegis of the Union Council, for example: Political and Security Committee (PSC), Military Committee EU (MCEU) and EU Military Major Statute (MMSEU). The latter is composed of military experts seconded by the Member States to the General Secretariat of the Council. To be seen S. Scăunaș, *Uniunea Europeană*, Ed. All Beck, Bucharest, 2005, p. 96.

the natural persons regarding the processing of personal data by the Member States (art. 39 TEU);

- adopts a decision establishing the special procedures for guaranteeing rapid access to the allocations from the Union budget for emergency financing of the initiatives under the CFSP [art. 41 paragraph (3) TEU].

Also, the decision-making powers of the Council are also exercised within the framework of the Common Security and Defense Policy of the CSDP, which is an integral part of the CFSP [art. 42 paragraph (4) and art. 43 paragraph (2) TEU].

The implementation of the PSAC led to the establishment of the Agency in the field of development of defense, research, procurement and armament capabilities, called the "European Defense Agency", which is under the authority of the Council [art. 42 paragraph (3) and art. 45 paragraph (1) TEU] The institution of the Council is also the one that adopts a decision defining the statute, the headquarters and the operating rules of the Agency.

In this area, the Council establishes, by decision, the permanent structured cooperation of the Member States, including the list of participating Member States, and the whole Council adopts the decision confirming the participation of a Member State wishing to participate in this cooperation, as well as suspending the participation of that State [art. 46 paragraph (1), (2) and (3) TEU].

O. The objective of the Union is to provide its citizens with an "area of freedom, security and justice", comprising mainly the chapters on "Judicial cooperation in civil matters" and "Judicial cooperation in criminal matters", within which the Council, together with the EP, it adopts most of the legislative measures.

The coordination and cooperation activity between the national authorities of investigation and prosecution in connection with the serious forms of crime affecting two or more Member States falls within the mission of Eurojust, whose structure, functioning, fields of action and attributions are decided by the Council and the EP [art. 81 paragraph (1) TFEU]. To this end, the Council, acting by regulations in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office starting with Eurojust.

Also, "Police cooperation", which involves the action of police authorities and other law enforcement services of the Member States, as well as their cooperation in preventing and combating serious crime affecting two or more Member States, is conducted under the authority of "Europol" [art. 88 paragraph (1) TFEU] The Council and the EP establish, by means of regulations, the structure, functioning, scope and tasks of Europol [art. 88 paragraph (2) TFEU].

It is the Council that sets the conditions and limits under which the competent authorities (Europol, Eurojust) can intervene in the territory of another Member State, in cooperation and with the agreement of the authorities of the respective state (art. 89 TFEU).

In these areas, Member States shall inform and consult each other within the Council.

Chapter 5. European Commission

5.1. Regulation of the institution of the European Commission

The legal basis of the institution of the European Commission are the provisions:

- art. 17 TUE;

- art. 234, art. 244-250, art. 290 and art. 291, art. 244-250, art. 290 and art. 291 of the TFEU;

- Treaty establishing a single Council and a single Commission of the European Communities (Merger Treaty)[1].

The European Commission was established, through the Treaty establishing the European Coal and Steel Community (ECSC Treaty) - signed in Paris, in 1951, entered into force the following year - under the name of High Authority, a supranational institution with discretionary decision-making powers, in the light of this treaty[2].

In 1967, by the Treaty of Brussels, also called the Merger Treaty of the executives[3], the two EEC Commissions, respectively Euratom and the High Authority, merged to form a single institution exercising the powers in accordance with the provisions of the three treaties (in fact, in the fundamental problems, the treaties of Rome are identical even in the formulations)[4].

The TMs[5] have repealed the articles of the Brussels Merger Treaty on the composition and organization of the Commission[6], instead inserting provisions in the three Community treaties having identical content. The main news brought by the TEU concerns the appointment and duration of the Commission's mandate - from 4 to 5 years.

Also called the "guardian of the treaties"[7], the Commission, through its members, exercising their functions in complete independence, is the institution that promotes the general interest of the Union (art. 17 paragraph TEU). In this capacity and, especially, from the perspective of the exercise Within the competence of the legislative proposal, the Commission, by requesting the opinions of experts and experts from the Member States, harmonizes the Union's interest with the national one.

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[1] OJ P 152, July 13, 1967, p. 2. The Merger Treaty was signed on April 8, 1965 and entered into force on July 1, 1967.

[2] See B. Ştefănescu, *op. cit*., p. 29.

[3] The treaty was signed on April 8, 1965.

[4] See B. Ştefănescu, *op. cit*., p. 24.

[5] It is about art. P. paragraph 1.

[6] It is about art. 9 and art. 10 of the Treaty of merger of executives, from Brussels, signed in 1965, entered into force in 1967.

[7] Due to art. 17 TFEU, which states: "The Commission oversees the application of Union law" P. Mathjisen, *op. cit*., p. 112; J. Echkenazi, *op. cit*., p. 20; C. Lefter, *op. cit*., p. 172.

Regarding the supranational character of the Commissioner, highlighted on numerous occasions since its inception, it is explained that its members - commissioners, although jointly appointed by the governments of the Member States among their citizens, act in complete independence, and are not subject to any influence from the part of the states that proposed it.

5.2. Composition and organization of the European Commission

✓ Currently, the Commission is composed of 28 members[1] - named commissioners elected based on their general competence and their commitment to the European idea, among the personalities who present all the guarantees of independence [art. 17 paragraph (3) TEU].

✓ Between the date of the entry into force of the Treaty of Lisbon, December 13, 2009 and October 31, 2014, the Commission is composed of one representative from each Member State, including the President and the High Representative of the Union for Foreign Affairs and Security Policy, who is one. of its vice-presidents [art. 17 paragraph (4) TEU].

As of November 1, 2014, the Commission is composed of a number of members, including the President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, as long as the European Council does not decide to change this number, acting unanimously [art. 17 paragraph (5) TEU].

However, in 2009 the European Council decided that the Commission institution should continue to be composed of a number of members equal to the number of Member States[2].

✓ **The term of office for commissioners.** The term of office of the Commission is five years. The appointment takes place within six months of the elections to the European Parliament. This explains the change in the mandate of the commissioners from 4 to 5 years, in order to ensure a match between the term of office of the members of the European Parliament and of the members of the Commission[3].

The members of the Commission are elected on the basis of their general competence and their commitment to the European idea among the personalities who present all the guarantees of independence.

The Commission exercises its responsibilities in complete independence.

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[1] Following Croatia's accession to the European Union on July 1, 2013, a Croatian national is appointed to the Commission from the date of accession until October 31, 2014. His term of office ceases at the same time as that of the members in office on the date of accession. See Treaty between the EU Member States and the Republic of Croatia on the accession of the Republic of Croatia to the European Union - art. 21.

[2] See P. Novac, April 2017, *Fişe tehnice privind Uniunea Europeană, Comisia Europeană*, http://www.europarl.europa.eu/aboutparliament/roidisplayFtu.html?ftuId=FTU_1.3.8. html.

[3] See, for details, R. Munteanu, *op. cit*., p. 214, footnote no. 2.

The members of the Commission do not request or accept instructions from any government, institution, body, office or agency. They refrain from any act incompatible with their functions or the performance of their duties [art. 17 paragraph (3) TEU and art. 245 TFEU]. Member States respect their independence and do not seek to influence them in the performance of their tasks (art. 245 TFEU). The Statute of the Commissioners, customized by this maximum independence in the fulfillment of their mandate, highlights the maintenance of the supranational character and, at present, of the European Commission.

Election of Commissioners

Prior to the Lisbon Treaty, the procedure for appointing commissioners was carried out according to art. 214 paragraph 2 TEC, subject to art. 201 TEC[1], if applicable, by curn follows:

1. The governments of the Member States jointly designated the person they intended to appoint as President of the Commission;

2. The governments of the Member States, in agreement with the President-designate, appointed the other persons whom they intended to appoint as members of the Commission;

3. The President and the other members of the Commission so appointed were subject, as a collegial body, to a vote of approval of the European Parliament;

4. After approval by the European Parliament, the President and the other members of the Commission were jointly appointed by the governments of the Member States.

Of the members thus appointed, the Commission appointed one or two vice-presidents (art. 217 TEC). Although the term of office for which they were appointed was not stipulated, it should correspond to the five-year term for which they were appointed as members[2]. Two vice-presidents have been appointed for the current mandate of the Commission. If the President is prevented from exercising his functions, they shall be carried out by one of the Vice-Presidents or the members elected in the order established by the Commission[3]. Over time, the number of Commission members has changed. Thus, by the Treaty of Brussels, from 1965, it was established that the big countries have two commissioners (Germany, France, Italy, Spain, the United Kingdom), and the small ones, one each.

[1] Art. 201 TEC stipulates: The European Parliament, notified with a motion of censure on the acfivity of the Commission, can only rule on it after at least three days after its submission and only by public vote. If the motion of censure is adopted by a two-thirds majority of the votes cast, representing the majority of the members of the European Parliament, the members of the Commission must resign in bulk. They continue to manage current affairs until the time of their replacement, according to art. 214 TEC. In this case, the term of office of the members of the Commission appointed to replace them expires on the date on which the mandate of the members obliged to resign as a whole should expire.

[2] See O. Manolache, *op. cit*., p. 126.

[3] See art. 20 of the Commission's Rules of Procedure.

Thus, when the European Union had 15 states, the Commission had 20 commissioners, corresponding to those mentioned above[1].

With the enlargement of the Union to central and eastern Europe, "it was decided to change the number of Commissioners in order to respect the equality of rights of all the states of the Union"[2]. established that, once the first enlargement of the Union has been completed, the Commission shall be composed of one national of each Member State, provided that the share of votes in the Council is altered.

Subsequently, this Protocol was repealed by another Protocol on the enlargement of the European Union annexed to the Treaty of Nice, respectively to the Treaty on European Union and to the Treaties establishing the European Communities.

According to the latter act, which repeals the old Protocol, decided that[3]:

- on January 1, 2005, respectively from the moment the first Commission established after this date assumes its duties, "the members of the Commission are elected on the basis of their general competence and their independence which is undeniable; The Commission consists of one person having the nationality of each of the Member States; the number of members of the Commission can be modified by the Council, which decides unanimously" (art. 4 paragraph 1 of the Protocol). Thus, with the accession of the ten states, also called "the great enlargement", when the Union had 25 member states, The Commission was composed of as many commissioners as many Member States made up the European Union[4];

- "when the Union will be composed of 27 Member States, which was achieved on January 1, 2007, by the accession of Romania and Bulgaria - the number of Commission members will be smaller than the number of Member States. The members of the Commission will be elected on the basis of a rotation system based on the principle of equality, for which the Council will unanimously adopt the implementing arrangements (starting with the mandate following the accession of the two states, ie from 2009). The number of members of the Commission will be determined by the Council, by unanimous vote. This amendment shall apply from the date on which the first Commission will begin its mandate

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[1] The doctrine stated that the formula proved to be reasonable in a Union of 15 Member States, although this number posed logistical problems; see T. Ştefan,, B. Andreşan-Grigoriu, *op. cit*., p. 54.

[2] See C. Lefter, *op cit*., p. 164.

[3] See I. Jinga, *Uniunea Europeană in căutarea viitorului. Studii europene*, Ed. C.H. Beck. Bucharest, 2008, p. 93; O. Manolache, *op. cit*., pp. 121-122; C. Lefter, *op cit.*, pp. 164-165; F. Cotea, *Drept comunitar european*, Ed. Wolters Kluwer, Bucharest, 2009, pp. 339-340.

[4] The opinion that a Commissioner from each Member State should be appointed is criticized in the doctrine, arguing that, in this way, the Commission departs from its presumed role, that of an institution that defends the Community interest beyond any national interests. See, for details, P. Moreau Defarges, *Les institutions européennes*, 6th edition, Armand Colin,, Paris, 2002, version translated into Romanian, Ed. Amarcord, Timişoara, 2002, p. 16.

after the accession of the 27th Member State of the Union" (art. 4, paragraph 2 of the Protocol);

- "after the signing of the Treaty of Accession of the Twenty-seventh Member State of the Union, the Council, acting unanimously, shall adopt:

• number of Commission members;

• the rules governing the rotation system based on the principle of equality, which include the criteria and rules necessary for automatically establishing the formation of successive colleges, according to the following principles:

a) Member States are in a position of legal equality with regard to establishing the succession and the period of time when their citizens are members of the Commission; therefore, the difference between the total number of mandates held by the citizens of any two Member States can never be greater than one;

b) subject to the letter a), each of the successive colleges is constituted in such a way as to reflect satisfactorily the demographic and geographical diversity of the whole of the Member States of the Union" (art. 4 paragraph 3 of the Protocol).

"Any State which accedes to the Union shall be entitled, at the time of its accession, to have a citizen of its own as a member of the Commission until such time as the provisions of par. 2, mentioned above" (art. 4 paragraph 4 of the Protocol).

By the Treaty of Lisbon, according to art. 17 paragraph (5) TEU, as from 1 November 2014, the members of the Commission shall be elected from the nationals of the Member States in accordance with a strictly equal rotation system between the Member States, reflecting the demographic and geographical diversity of all Member States. This system is established by the European Council, which unanimously decides (in accordance with art. 244 TFEU).

The rotation system established, according to art. 244 TEU, by which the members of the Commission are elected, is based on the following principles:

a) Member States shall be treated in an absolutely equal manner with regard to establishing the order of rotation and the duration of their representatives' presence within the Commission; Consequently, the difference between the total number of mandates held by the nationals of two given Member States can never be greater than one;

b) each of the successive Commissions, taking into account the above provisions, is constituted so as to reflect satisfactorily the demographic and geographical diversity of the Member States.

✓ The procedure for electing the President of the Commission, according to art. 17 paragraph (7) TEU, implies the following:

- The European Council, acting by a qualified majority, proposes to the EP a candidate for the position of President of the Commission, taking into account the elections for the EP and after having carried out the necessary consultations;

- the candidate is elected by the EP with the majority of its members;

- if this candidate does not meet the majority, the European Council, acting by a qualified majority, proposes, within one month, a new candidate, who is elected by the EP in accordance with the same procedure.

✓ The procedure for electing the members of Cornice - the commissioners - according to art. 17 paragraph (7) TEU, involves the following steps:

1. Member States shall propose the members of the Commission on the basis of the criteria established by the TEU, paragraph (3) (regarding their general competence, their commitment to the European idea, the guarantees of independence, the rotation system between the Member States);

2. The Council, in agreement with the President-elect, shall adopt the list of other personalities which it proposes, on the basis of suggestions made by the Member States, to be appointed members of the Commission;

3. The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission are subject, as collegiate bodies, to an EP approval vote;

4. The Commission, on the basis of this approval, is appointed by the European Council, which shall act by a qualified majority.

During their term of office, members of the Commission may not engage in any other professional activity, whether paid or unpaid (art. 245 TFEU).

The members of the Commission solemnly commit, when taking office, that during the exercise of the mandate and after its termination, it respects the obligations imposed by the mandate and, in particular, the obligation of honesty and prudence in accepting, after the term of the mandate, certain functions or advantages.

If these obligations are violated, the Court of Justice, at the notification of the Council, which decides by simple majority, or the Commission may decide, as the case may be, to dismiss the respective members, under the conditions of art. 247 TFEU, or to declare him deprived of the right to a pension or other equivalent benefits (art. 245 TFEU)[1].

The President of the Commission exercises his authority over the members of this institution, according to art. 248 TFEU, under the conditions in which it is entitled:

1. to structure and distribute among its members the responsibilities of the Commission;

2. to modify the distribution of the responsibilities of the members during the mandate.

The members of the Commission shall also exercise the functions assigned by the President under his authority (article 248 TFEU).

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[1] See Council Decision of 9 July 1999 with reference to the Bangeman case brought before the Court of Justice, on the fact that the member of the Commission accepted appointments after the termination of the mandate of Telefonica Company. O.J. L 192/95 of July 24, 1999. See, for details, O. Manolache, *op. cit*., p. 120.

✓ The function of the members of the Commission ceases:

1. by ordinary replacement, at the end of the five-year term of office of the entire Commission;

2. individually, by voluntary resignation (under the conditions of article 246 TFEU), by dismissal or by death.

The person concerned, who has resigned or died, is replaced for the remainder of his term by a new member, having the same citizenship, appointed by the Council, in agreement with the President of the Commission, after consulting the EP and in accordance with the criteria set out in the TEU [mentioned previous art. 17 paragraph (3)], regarding the members of the Commission. The Council, acting unanimously, on a proposal from the President of the Commission, may decide that it is not necessary for the replacement to take place, in particular if the time remaining until the term of office of the Member of the Commission is short (article 246, paragraph 2, TFEU).

In cases of resignation, dismissal or death, the president is replaced for the remaining time in office. For its replacement, the same procedure as for the appointment is applicable [respectively art. 17 paragraph (7) TEU].

In cases of resignation, dismissal or death, the High Representative of the Union for Foreign Affairs and Security Policy shall be replaced, until the end of the term (article 246 TFEU). The European Council is competent, acting by a qualified majority and with the agreement of the President of the Commission, to put an end to it, to replace it and, therefore, to appoint the High Representative of the Union [art. 18 paragraph (1) TEU].

In the case of the resignation of all the members of the Commission, they remain in office and continue, for the remaining period, until the end of the mandate, until their replacement, to manage the current affairs (in accordance with article 17 TEU).

3. by dismissal by the Court of Justice, at the request of the Council or the Commission. If it no longer fulfills the conditions necessary for the exercise of its functions or has committed a serious misconduct, any member of the Commission may be dismissed by the Court of Justice, at the request of the Council, acting by a simple majority or by the Commission (article 247 TFEU);

4. by the motion of censure adopted by the EP against the Commission, because the Commission, as a collegiate body, responds to the EP [art. 17 paragraph (8) TEU]. The EP can rule on this motion only after at least three days after its submission and only by open vote. If the motion of censure is adopted by a two-thirds majority of the votes cast and by the majority of the members of the EP, the members of the Commission must resign collectively from their duties, and the High Representative of the Union for Foreign Affairs and Security Policy must resign from the functions of the Commission. They remain in office and continue to manage current affairs until their replacement (in accordance with article 17 TEU). In this case, the term of office of the members of the Commission

appointed to replace them expires on the date on which the mandate of the members of the Commission obliged to resign collectively from their duties should expire (article 234 TFEU).

✓ **Commission functioning.** In order to ensure its functioning and its services, the Commission establishes its rules of procedure and ensures its publication[1] [art. 249 para. (1) TFEU].

The Commission functions as a collegiate body, in accordance with the provisions of the Rules of Procedure, fulfilling its mission in compliance with the political guidelines established by its president [art. 17 paragraph (8) TFEU in conjunction with art. 1 of its Regulation].

In the functioning of the Commission, the President plays a decisive role, namely[2]:

- ensures the representation of the Commission;
- establishes the political orientations;
- designates those members of the Commission who assist him in this task;
- has the right to assign to the members of the Commission special areas of activity, areas in which they are expressly responsible for preparing the Commission's work and executing its decisions. The President may also modify these powers at any time;
- it may set up working groups of the members of the Commission and appoint their chairmen.

The Commission, as a collegiate body, sets its priorities and adopts its work program annually. Also, in this capacity, all acts that treaties or implementing regulations expressly entrust to them - regulations, decisions, proposals - must be taken by the Commission, assuming its responsibility as an institution[3].

According to art. 4 of the Rules of Procedure, the Commission decisions are adopted:

- in the hearing, by oral procedure[4];
- by written procedure[5];
- through the enabling procedure[6];
- by delegation procedure[7].

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[1] The Commission operates in accordance with its Rules of Procedure of 29 November 2000 (O.J. 308/26 of 8 December 2000 and Bull. EU no. 11/2000, p. 128). Subsequently, the Regulation was amended by Commission decisions in 2001, 2002, 2003, 2006, 2007. The current Rules of Procedure were adopted by the Commission Decision of 24 February 2010 amending the Rules of Procedure (2010/138/EU, Euratom) , published in JOEU L 308, March 5, 2010.

[2] Under the conditions of art. 3 of the Commission's Rules of Procedure.

[3] See R. Munteanu, *op. cit.*, p. 217.

[4] See art. 5-11 of the Commission's Rules of Procedure.

[5] See art. 12 of the Commission's Rules of Procedure.

[6] See art. 13 of the Commission's Rules of Procedure.

[7] See art. 14 of the Commission's Rules of Procedure.

The meetings are convened by the president. The rule is for the Commission institution to meet once a week. In addition, it meets whenever necessary. Commission members are required to attend meetings. The agenda of any meeting shall be established by the President.

The decisions of the Commission shall be made on the proposal of one or more of its members. The decisions of the Commission are validly adopted with the majority of its members, the quorum being established by the Rules of Procedure (art. 250 TFEU).

The Commission shall vote at the request of one of its members, whether it concerns either the initial proposal or a proposal modified by a member[1].

The meetings of the Commission are not public and the debates are confidential. The Secretary-General shall attend meetings unless there is a contrary Commission decision to that effect. The absence of a member of the Board may be filled by his chief of staff, who shall state his opinion. The Commission may decide to hear any other person.

At each meeting of the Commission, a report is drawn up which, at the draft stage, is submitted to the Commission for approval at a later meeting. The approved minutes are authenticated by the signatures of the president and the secretary general.

Written procedure. The agreement of the members of the Commission on a project submitted by one or more members may be expressed by written procedure, provided that it has previously obtained the favorable opinion of the Legal Service, as well as the agreement of the services consulted in accordance with the Commission's rules of procedure[2].

The text of the proposal is communicated in writing to all the members of the Commission, under the conditions established by it, in accordance with the implementing rules (mentioning the deadline for communicating reservations or amendments to the proposal).

During the written procedure, any member may request that the proposal be subject to debate. In this regard, the member of the Commission makes a reasoned request to the president.

If no member of the Commission has made or maintained a request to suspend a project within the time limit granted for the written procedure, that project shall be deemed to have been adopted by the Commission. The proposals adopted by the Commission are recorded in a jumble note, which is mentioned in the minutes of the next Commission meeting.

Enabling procedure. Provided that the principle of collective responsibility is respected, the Commission may enable one or more of its members to take management or administration measures on its behalf, within the limits and conditions set by the Commission.

The Commission may also, with the agreement of the President, instruct

[1] See art. 8 of the Commission's Rules of Procedure.
[2] See art. 23 of the Commission's Rules of Procedure.

one or more members to adopt the final text of an act or proposal to be forwarded to the other institutions, the content of which has already been established within the framework. deliberations. The powers thus conferred may be the subject of a sub-delegation to the Directors-General and Heads of Services, provided that the decision of empowerment does not expressly prohibit this.

Delegation procedure. Provided that the principle of collegial responsibility is fully respected, the Commission may delegate the adoption of management or administration measures on its behalf to the Directors-General and Heads of Service, within the limits and conditions established by it.

The decisions taken through the empowerment and delegation procedure are recorded in a journal note mentioned in the minutes of the next meeting.

✓ The Rules of Procedure include regulations regarding the preparation and execution of Commission decisions. To this end, members of the Commission may form groups of members that contribute to the coordination and preparation of the Commission's activities[1] and offices charged with assisting the Cornish members in fulfilling their duties and in preparing the Commission's decisions[2].

✓ The general coordination of the internal structures of the Commission is provided by the General Secretariat, which deals with the preparation and holding of the weekly meetings of the Commission. The General Secretariat is headed by the Secretary General, who responds directly to the President. The Secretary General has the following powers[3]:

- assists the President so that, within the political guidelines defined by the President, the Commission fulfills the priorities it has set;

- assists the President in the preparation of the activities and the management of the meetings of the Commission;

- assists the presidents of the established groups of members. The Secretary General provides the secretariat of these groups;

- ensures the implementation of decision-making procedures. In this regard, the Secretary-General:

• take the necessary measures to ensure the notification and publication in the Official Journal of the EU of Commission acts, as well as the transmission of Commission documents and its services to other EU institutions and national parliaments;

• is responsible for disseminating written information that the members of the Commission wish to transmit to the Commission.

- ensures official relations with the other EU institutions, subject to the

[1] In accordance with the political guidelines and mandate defined by the president; see art. 18 of the Commission's Rules of Procedure.

[2] Each member of the Commission has its own cabinet; art. 19 of the Commission's Rules of Procedure.

[3] See art. 20 of the Commission's Rules of Procedure.

powers that the Commission decides to exercise itself or to assign to its members or services. In this context, the Secretary-General contributes to ensuring general coherence by coordinating services during the procedures in which the other institutions are involved;

- ensures the proper information of the Commission on the state of the internal and interinstitutional procedures.

✓ For the purpose of the Regulation, by acts are understood the acts that dress one of the forms provided in art. 288 TFEU and at art. 161 TEuratom, and annuals: regulations, directives, decisions, opinions, recommendations.

For documents with general applicability, the authentic languages are all the official languages of the Union, and for the other acts, which do not have general applicability, the language or languages of the recipients is authentic.

✓ **Commission services[1].** In order to prepare and implement its actions and to achieve the political priorities and orientations defined by the President, the Commission establishes a series of general directions and assimilated services that form a single administrative service.

The general directions and assimilated services are divided into directions, and the directions, into units. The president, in particular, can create specific functions and structures, entrusted with precise missions, to which he sets the tasks and the way of functioning.

In order to ensure the effectiveness of the Commission's action, the services work in close cooperation and in a coordinated manner from the beginning of the elaboration or implementation of the Commission's decisions.

Thus, the service responsible for the preparation of an initiative ensures, from the beginning of the preparatory activity, the effective coordination between all the services that have a legitimate interest for the respective initiative, under the fields of competence and attributions or by the nature of the subject.

Before a document is submitted to the Commission, the responsible service consults in a timely manner the services that have a legitimate interest in the project in accordance with the implementing rules.

The general services and directions of the Commission which must be consulted are:

 The legal service, in case1 of all the draft acts and proposals of legal acts, as well as of all the documents that could have a legal impact. Consultation of the legal service is mandatory before the initiation of the procedures: written, empowered and delegated.

 The General Secretariat, in case of any initiative that:

- is subject to approval by oral procedure;
- it is of political importance;
- it is part of the annual work program of the Commission or of the programming instrument in force;

[1] See art. 21-23 of the Commission's Rules of Procedure.

- deals with institutional issues;
- is subject to impact assessment or public consultation; -
- in the case of any common position or initiative that could engage the Commission in front of other institutions or entities.

 The general directorate responsible for the budget, the general directorate responsible for human resources and security, in case of all the documents that have a possible impact on the budget, finances, personnel and administration, respectively.

 The service responsible for combating fraud, when appropriate. The responsible service is working to develop a proposal that meets the agreement of the consulted services. If no agreement is reached, the responsible service must attach to its proposal the different opinions of the consulted services[1].

5.3. Functions of the European Commission

5.3.1. Regulation of the functions of the European Commission

The functions of the European Commission are provided in art. 17 paragraph (1) TEU, which provides:

1. takes appropriate initiatives to promote the general interest of the Union;

2. proposes for adoption the legislative acts of the Union, unless the treaties provide otherwise. Proposes for adoption the other acts, if the treaties provide for this;

3. has its own decision-making power.

[1] The directions and assimilated services are organized by activity areas, as follows: Economic and financial agencies; Executive agencies; Agriculture and rural development; Joint Research Center, Competition; Education and culture, Energy and Transport; Taxation and customs union; Business and industry; Justice, freedom and security; Environment; Employment, social affairs and equal opportunities; Maritime affairs and fisheries; The internal market and services; Regional Policy, Health and Consumers; Information society and media; Humanitarian Aid, Trade, Development, EuropeAid Cooperation Office; Enlargement, External Relations, Communication; Eurostat; European Anti-Fraud Office (OLAF conducts investigations into the fight against fraud, corruption and other illegal activities within the EU and cooperates with the competent authorities of the Member States to facilitate the coordination of their actions); Publications Office; Office of European Policy Advisers; Budget, Informatics, Infrastructure and Logistics - Brussels, Infrastructure and Logistics - Luxembourg; Interpretation, Office of Administration and Payment of Individual Rights; Personnel and administration; Responsible for data protection within the European Commission; Internal audit service; Legal Service, Translations. The general directorates and the services assimilated to them may change their name when a new Commission is appointed, but the structure and responsibilities are maintained. To be seen F. Cotea, *op. cit*., pp. 347-348.

5.3.2. Defining the functions of the European Commission

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to this end, according to art. 17 paragraph (1) TEU. As we have shown, each institution of the Union represents an interest within it, therefore the Commission represents the interest of the Union, initially of the Communities, thereby explaining the pronounced supranational character of this institution, from its inception.

The representation of the general interest of the Union is expressed by the fact that it:

1.a. it ensures the application of the treaties and of the measures adopted by the institutions under them (execution function);

1.b. supervises the application of Union law under the control of the Court of Justice of the European Union (as guardian of the treaties);

1.c. executes the budget and manages the programs;

1.d. exerts coordination, execution and administration functions, in accordance with the conditions stipulated by the treaties;

1.e. ensures the external representation of the Union, except the CFSP;

1.f. adopts the annual and multiannual programming initiatives of the Union, with a view to concluding interinstitutional agreements;

1.a. it ensures the application of the treaties and of the measures adopted by the institutions under them. As a matter of principle, Member States shall take the necessary national law to implement legally binding Union acts[1], but where unitary conditions for their implementation are required, those acts shall confer implementing powers on the Commission. (art. 290 paragraphs 1 and 2 TFEU).

As regards the exercise of the implementing powers of the Commission, it is controlled by the Member States by regulations of the EP and the Council, in accordance with the ordinary legislative procedure, which establish in advance the general rules and principles of the control mechanisms (art. 291 paragraph 3 TFEU, as a general regulation)[2]. Examples in this regard:

- art. 105 TFEU - The Commission ensures the application of the principles set out in art. 101 and art. 102 TFEU, on the principles governing competition policy;

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[1] See art. 97 TFEU, which provides for the following: "The Commission may issue recommendations to the Member States for the purpose of applying this Article", referring to the fees and charges levied by the carrier at the border crossing.

[2] See European Commission, Brussels, 9 March 2010, COM (2010) 83 final, 2010/0051 (COD) C7-0073/10, Proposal for a Regulation of the European Parliament and of the Council laying down general rules and principles on mechanisms for control by the Member States of the Commission's exercise of implementing powers.

- art. 106 TFEU - The Commission ensures the application of the provisions of article 106 TFEU and addresses to the Member States, where necessary, the appropriate directives and decisions (provisions regarding undertakings responsible for managing services of general economic interest);

- art. 43 par. 1 TFEU - The Commission presents proposals on the elaboration and implementation of the common agricultural policy, including the replacement of national organizations with one of the forms of organization provided for by the Treaty (article 40 TFEU), as well as the implementation of Title III on "Agriculture and fisheries".

1.b. Supervises the application of Union law under the control of the Court of Justice of the European Union. This attribution defines the Commission's quality of being "guardian of the treaties".

Guaranteeing the Union's interest, the Commission monitors the treaties and acts of the institutions by individuals (natural or legal persons), Member States and even institutions.

The duties of "guardian of the treaties" are translated by[1]:

- powers of information and prevention;

- powers of control and prosecution of non-compliance with Union law and, ultimately, to impose it;

- the power to manage safeguard clauses.

The right of the Commission to inform itself corresponds to the obligation of the Member States to take any general or special measures to ensure the fulfillment of the obligations arising from the treaties or resulting from the acts of the institutions of the Union. In this regard, Member States:

- facilitates the Union's accomplishment of its mission;

- abstain from any measure that could endanger the achievement of the Union's objectives (provided for in article 4 paragraph 3 TEU);

- fulfill the obligations stipulated in special provisions, for example: art. 108 paragraph (1) TFEU[2], art. 114 paragraph (4) TFEU[3], art. 121 paragraph (3) TFEU[4].

The Commission's right to be informed also stems from the acts of the

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[1] See G. Isaac, M. Blanquet, *op. cit.*, p. 61.

[2] In the field of state aid, for example, "The Commission, together with the Member States, constantly checks the aid schemes in these states. The Commission shall propose to them the useful measures required for the gradual development or operation of the common market".

[3] In the matter of approximation of laws, for example, "if, after the adoption by the Council or Cornice of a harmonization measure, a Member State considers it necessary to maintain national provisions justified by important considerations, provided in art. 36 TFEU or, for the protection of the working environment or the environment, shall notify the Commission, indicating the reasons for maintaining these provisions".

[4] In the field of economic policy, for example, "in order to carry out multilateral surveillance (by the Council) Member States shall transmit to the Commission information on the important measures they have taken in the field of their economic policy, as well as any other information they consider necessary" .

institutions - in particular those directives containing a clause requiring the Member State to notify the Commission of the measures to be taken to comply with that directive. This competence of information and verification concerns both natural and legal persons, for example art. 337 TFEU, according to which "in order to carry out the tasks entrusted to it, the Commission may request and receive all the information and may carry out all necessary checks, within the limits and conditions laid down by the Council, acting by a simple majority, in accordance with the provisions of the Treaties"[1].

On the basis of its preventive power, the Commission is empowered to draw the attention, in particular, to the Member States of the risks of criminal offenses, in view of which they have a general competence expressed through recommendations (article 60 TFEU[2]; article 97 TFEU[3]) and opinions [article 258[4], article 126 (2), (3) and (4)[5], article 228 (4)[6], article 144 (3) TFEU] addressed to them.

If necessary, the Commission has the power to control, to follow the non-compliance with the Union law (primary and secondary law) and to impose the legislation in question, in order to be respected by individuals, Member States and (Union) institutions.

Violations of Union law committed by individuals (natural persons, legal persons) are pursued and sanctioned, in principle, by national authorities, but the Commission itself may apply sanctions in particular in the areas of competition and transport - areas where the Commission may impose fines and penalties[7] or in matters of security control, based on TEuratom[8].

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[1] In this regard, the European Anti-Fraud Office plays an important role.

[2] In the field of services, with reference to the liberalization of services.

[3] In the field of transport, for the establishment of taxes and fees charged by the carrier at the border crossing.

[4] If the Commission considers that a Member State has breached any of its obligations under the Treaties, it shall issue a reasoned opinion on this matter, after giving the State concerned the opportunity to submit its comments.

[5] In order to avoid obvious errors (registered in the field of economic and monetary policy), the Commission monitors the evolution of the budgetary situation and the level of public debt in the Member States. The Commission examines in particular whether the budgetary discipline has been respected. If the Commission considers that there is an excessive deficit in a Member State (...), it shall address an opinion to the Member State concerned and inform the Council accordingly.

[6] Following the Commission's opinion, the European Parliament establishes the general status and conditions for the exercise of the Ombudsman's functions.

[7] We exemplify, in this regard, art. 105 paragraph 1 TFEU (in the field of competition), according to which the Commission ensures the application of the competition principles established by art. 101 and art. 102 TFEU. The Commission investigates the alleged cases of violation of the mentioned principles. And in the event of such an infringement being found, the Commission proposes appropriate measures to stop it. Also, art. 95 paragraph 4 TFEU (in the field of transport) states: "The Commission ... examines cases of discrimination in the field and takes the necessary decisions after consulting the Member States". Also in the field of transport, for example, see article 96 and article 99 TFEU.

[8] See G. Isaac, M. Blanquet, *op. cit*., p. 62.

With respect to the Member States, the Commission has control powers, over the special procedures imposed by art. 96[1], art. 106 paragraph 3[2] and art. 108[3] TFEU, based on art. 258 TFEU and art. 141 TEuratom (under the same conditions as article 258 TFEU), having the possibility to refer the Court of Justice, following a pre-litigation procedure, by which it is able to ascertain the breaches by the Member States of the obligations stipulated in the treaties[4].

The Commission may initiate legal proceedings vis-à-vis the institutions when it considers that their acts violate Union law both contentiously (article 265 TFEU[5]; article 263 TFEU[6]) and advisory by the Court of Justice (article 218 par. 11 TFEU[7]).

Commission's right to manage safeguard clauses. This right lies in the Commission's ability to authorize, in particular cases, derogatory measures from the provisions of the Treaties.

We exemplify in this regard:

- especially during transitional periods, if the level of customs duties applicable to goods imported from a third country can cause, upon entry into a country or territory, (...) the diversion of trade to the detriment of one between Member States, it may request the Commission to propose to the other Member States the non-appropriate measures to remedy this situation (art. 201 TFEU);

- in the field of capital and payments, only at the proposal of the Commission and after consulting the ECB, the Council may adopt, in relation to third countries, safeguard measures for a period of up to six months, if these measures are strictly necessary (art. 66 TFEU);

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[1] In the field of transport, "The Commission, after examining the tariffs and conditions referred to in the provisions of art. 96 paragraph 1, at his own initiative or at the request of a Member State, (...) shall take the necessary decisions, after consulting any Member State".

[2] In the field of competition, "the Commission shall ensure the application of the competition provisions and shall address to the Member States, where necessary, the relevant directives or decisions".

[3] In the field of state aid, according to art. 108 paragraph 1 TFEU, "The Commission, together with the Member States, constantly checks the aid schemes in these states. The Commission proposes to them the useful measures required by the development of the common market (...), the non-observance of these decisions leads the Commission or any other interested Member State to refer the Court of Justice, by derogation from art. 258 and art. 259 TFEU, which regulates the action in ascertaining the failure of states to fulfill the obligations arising from the treaties".

[4] See the action in ascertaining the failure of states to fulfill the obligations arising from the treaties, according to art. 258 TFEU and art. 141 TEuratom.

[5] If, in breach of the provisions of the Treaties, the European Parliament, the European Council, the Commission or the ECB abstain from deciding, the Member States and the other institutions, and therefore the Commission, may refer the matter to the Court of Justice for such infringement.

[6] The Court of Justice is competent to rule on actions brought by a Member State, the European Parliament, the Council or the Commission, for reasons of incompetence, breach of fundamental procedural wrongdoing, breach of treaties or any rule regarding their application or power base.

[7] If the Court gives its opinion on the compatibility of an external agreement with the provisions of the Treaties at the request of the Commission (a Member State or the Council).

- in the field of harmonization of laws, the Commission analyzes, if necessary, a special public health problem that has been the subject of harmonization measures, proposing appropriate measures to the Council. These measures may also include a safeguard clause (art. 114, paragraphs 8, 9 and 10 TFEU);

- in the context of economic and monetary policy[1], if the Council has not provided the mutual assistance recommended by the Commission or if the mutual assistance granted and the measures taken are insufficient, the Commission authorizes the Member State which is the object of a derogation, which is in difficulty, to take the measures safeguards whose conditions and norms define them (art. 143 paragraph 3 TFEU). Also, in the event of an unexpected crisis in the balance of payments, a Member State which is subject to a derogation may provisionally adopt the necessary safeguard measures. At the recommendation of the Commission and after consulting the Economic and Financial Committee, the Council may decide that the Member State concerned is obliged to amend, suspend or eliminate the safeguard measures referred to (article 144, paragraphs 1 and 3 TFEU).

1.c. Run the budget and manage the programs. The Commission implements the budget of the European Union. The draft budget is based on the drawing up, before July 1 of each year, by each institution, with the exception of the ECB, of an estimated statement of its expenditures for the following budgetary year. The Commission groups these situations into a draft budget which may contain divergent forecasts. This project includes estimated revenue and expenditure.

According to art. 314 paragraph 2 TFEU, the Commission proposes by 1 September each year the draft budget, which it submits to the European Parliament and the Council.

The Commission may modify the draft budget during the procedure, until convening a conciliation committee, which has the mission to reach, on the basis of the positions of the European Parliament and of the Council, an agreement on a common project (article 314, paragraphs 3 and 5 TFEU).

The Commission participates in the work of the Conciliation Committee and adopts all the necessary initiatives to promote the approximation of the positions of the European Parliament and the Council.

The budget will be adopted by the Council together with the European Parliament, according to a procedure established by art. 314 paragraph 4-9 TFEU, in which, in case the joint project is rejected, the Commission has the right to present a new draft budget. At the end of the mentioned procedure, the President of the European Parliament notes that the budget has been adopted definitively (article 314 paragraph 9 TFEU). After adoption, the Commission, together with the Member States, shall execute the budget[2], in accordance with the regulations

[1] Title VIII, Chapter 4 TFEU.

[2] The budget is executed according to the provisions of the regulations adopted in application of art. 317 TFEU.

adopted[1], within the limits of the allocated credits and within the limits of the allocated funds, in accordance with the principle of sound financial management [art. 317 paragraph (1) TCE]. In order to use the loans, in accordance with the principle of sound financial management, Member States shall cooperate with the Commission.

Within the budget, the Commission may proceed to transfer credits either from one chapter to another or from one subdivision to another, based on the regularity elaborated according to art. 322 TFEU.

The Commission shall present annually to the European Parliament and to the Council the accounts of the year ended. It also communicates a financial balance sheet describing the assets and liabilities of the Union [art. 318 paragraph (1) TFEU].

The Commission shall also submit to the European Parliament and the Council a report on the evaluation of the Union's finances.

The Commission manages the programs[2]. Although the structural funds are related to the budget of the European Union, the way they are spent is based on a division of responsibilities between the Commission and the governments of the Member States, as follows:

- the Commission negotiates and approves the development programs proposed by the Member States and allocates the credits;

- their states and regions manage the programs, ensure their implementation and select the projects they control and evaluate;

- the Commission participates in the monitoring of the programs, hires and pays the certified payments and verifies the control systems established.

For each operational program, the Member State designates:

- a management authority (public authority or body of public or private national, regional or local law that manages the operational program);

- a certification authority (national, regional or local public authority or body certifying the status of expenses and payment requests before being sent to the Commission);

- an audit authority (national, regional or local public authority or body designated for each operational program and responsible for verifying the proper functioning of the management and control system)[3].

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[1] The regulations are adopted according to art. 322 TFEU.

[2] See europa.eu/regional_policy/policy/manag. Among these programs, we exemplify: Regional Operational Program (ROP), Europe for Citizens Program, National Rural Development Program (PNDR), Sectoral Operational Program Increasing Economic Competitiveness (POSCCE), Sectoral Operational Program Human Resources Development (POSDRU/POCU), Program Operational for Human Capital.

[3] *Idem*. A new rule is intended to simplify the financial management of funds, namely a program = a fund. Due to this principle, the European Regional Development Fund (ERDF) and the European Social Fund (ESF) can each finance, in a complementary and limited way, actions pertaining to the area of intervention of the other fund (within 10% of the allocated credits). of each priority axis, of an operational program). There is one exception to this rule: The European Regional Development

In the case of financial rescue packages, which address the debt crisis in some Member States, the Commission is responsible for managing the funds collected and guaranteed by the EU budget.

It also has the power to change the voting procedure of the Board of Governors of the European Stability Mechanism (MES), from unanimity to the special qualified majority (85%), if it decides, together with the ECB, that the decision to grant financial assistance is not adopted. threatens the economic and financial sustainability of the euro area art. 4 paragraph (4) of the Treaty on the European Stability Mechanism[1].

1.d. It exercises coordination, execution and administration functions, according to the conditions stipulated by the treaties. In order to ensure closer coordination between economic policies, the Commission reports to the Council, which monitors the economic evolution in each of the Member States and in the Union, as well as the conformity of economic policies with the general guidelines (art. 121, paragraph 3 TFEU).

The Commission also encourages cooperation between Member States and facilitates coordination of their action in all areas of social policy. To this end, the Commission acts in close connection with the Member States through studies, opinions and the organization of consultations (art. 156 TFEU).

In most areas covered by the Treaty, the Commission may take any initiative to promote the coordination of Union actions with those of the Member States. These areas are: public health (art. 168 paragraph 2 TFEU), industry (art. 173 paragraph 2 TFEU), research, technological development and space (art. 181 paragraph 2 TFEU), development cooperation (art. 210 paragraph 2 TFEU), humanitarian aid (art. 214 paragraph 6 TFEU).

Regarding the execution function, the TFEU contains a general provision in this regard, in art. 291 paragraph 2 TFEU, according to which "if the unitary conditions for the implementation of the legally binding acts of the Union

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Fund (ERDF) and the Cohesion Fund work together for infrastructure and environmental programs. Budget commitments regarding the operational programs have been established, these are carried out in annual installments, for each fund and for each objective. The Commission commits the first annual installment before adopting the operational program. The Commission then commits the installments no later than 30 April each year. Part of a budget commitment is automatically unlocked by the Commission if it has not been used or no payment request has been received at the end of the second year after the budget commitment (n + 2). Based on the respective operational programs, the deadline is set at the end of the third year (n + 3) for 2007-2010 for the following countries: Bulgaria, Estonia, Greece, Latvia, Lithuania, Malta, Poland, Portugal, Czech Republic, Romania, Slovenia, Slovakia and Hungary. Regarding the financing conditions, the Lisbon Strategy emphasized the following aspect: the objectives of the funds must focus on the priorities of the European Union in terms of promoting competitiveness and job creation (Lisbon Strategy). The Commission and the Member States ensure that 60% of the expenditure of all Member States allocated to the "Convergence" objective and 75% of the expenditure allocated to the "Competitiveness and employment" objective are allocated / allocated to these priorities.

[1] See P. Novac, April 2017, *Fişe tehnice privind Uniunea Europeană, Comisia Europeană*, http://www.europarl.europa.eu/aboutparliament/ro/displayFtu.html?ftuld=FTU_1.3.8.html.

[adopted by Parliament and the Council] are required, these acts confer the Commission with implementing powers".

Also, the Treaty of Lisbon has introduced new rules and general principles regarding "control mechanisms by the Member States of the Commission's exercise of implementing powers" [article 291 (3) TFEU and Regulation (EU) no. 182/2011]. They replace the previous mechanisms for committees with two new instruments, the consultation procedure and the examination procedure. The control right of the Parliament and the Council is officially included and an appeal is provided for in case of conflict. Article 291, paragraph 2 TFEU shall be supplemented by special provisions expressly providing for the concrete cases in which the Commission institution has implementing powers, for example: article 105 TFEU[1], article 154 TFEU[2], etc.

In the process of executing EU legal acts, since the 1960s, comitology[3] and the practice of using committees[4] have been imposed. To oversee how the Commission exercises its executive power, the Council has set up three types of committees composed of national experts: advisory committee, management committee and regulatory committee. They may, in certain cases, by their unfavorable vote, withdraw the Commission's right of decision to return it to the Council. This procedure was considered by the CJCE to be in line with the Institutional Treaties, as long as the institutional balance is not changed. Thus appeared the term "comitology", which designates, in Community language, the practice of using committees in the execution process[5]. The procedural rules regarding the Commission's exercise of the powers conferred by the Council were

[1] The Commission ensures the application of the principles enshrined in the Treaty in the field of free competition.

[2] The Commission promotes consultation of the social partners at Union level and takes any useful measures to facilitate their dialogue, ensuring a balanced support of the parties.

[3] The conditions for the execution by the Commission of the Council's decisions were first introduced by the SEA [art. 145 paragraph (4)], according to which the Council adopted Decision no. 87/373 of July 13, 1987. The second decision, 1999/468, regarding "comitology", was adopted in 1999 (O.J. L 184, 1999, p. 23).

[4] The term "comitology" illustrates how the Commission exercises its implementing powers conferred on it by the EU legislator, made up of representatives of EU Member States. The draft implementing measures are submitted for debate to the comitology committees by the Commission departments. "Comitology committees" assist the Commission in the exercise of implementing powers, expressing their opinion on the implementing measures before they are adopted. Comitology committees are created on the basis of regulations, directives or decisions adopted by the EU legislator (the "basic legal acts") to support the Commission in the exercise of its implementing powers. The "basic legal act" establishes the rules of procedure and defines the content and scope to apply the enforcement powers for each individual case.

[5] The Advisory Committee may make recommendations to the Commission only, without having to take them into account. The Management Committee may suspend the implementing measures taken by the Commission and submit the file to the Council for decision. If the Council does not act within a certain period, the Commission's decision shall apply. Regarding the regulatory committee, it was often criticized because it intervenes in the legislative vacuum, if the Council does not meet either the qualified majority to accept the Commission proposal, but not the unanimity to

established by Council decisions, which set out the modalities of exercise. of the implementing powers conferred on the Commission. Comitology has given rise over the years to political disputes between the Council and Parliament, which have expressed concern about the imbalance of the interinstitutional balance by excluding Parliament from the procedures for implementing the rules adopted by the Commission. Council.

The practice of "comitology" has been replaced, by the Treaty of Lisbon, with the system of "delegated acts", according to which the Commission is delegated the power to adopt non-legislative acts and of general scope, which supplement or modify certain non-essential elements of the act. legislative (art. 290 paragraph 1 TFEU).

With the help of the new procedure, a clear distinction is made between legislative and non-legislative acts. "The consequences of these changes are extremely important for the EP, as it has reached its historical maturity, being on an equal footing with the Council"[1].

The Treaty of Lisbon opens a "new era" for delegated acts and implementing acts. Accordingly, the powers delegated to the Commission will have to be subject to special conditions and limits and control and surveillance mechanisms[2]. The objectives, content and duration of each case delegation must be defined "in an express and meticulous manner" in each act (regulation, directive and decision).

In this regard, we exemplify the Commission's competence to present proposals regarding the elaboration and implementation of the common agricultural policy, including the replacement of national organizations with one of the common organizing funds provided by art. 40 TFEU[3], as well as when implementing the special measures provided for in the Treaty (article 43 paragraph 1 TFEU).

The Commission also has an enforcement function, according to art. 105 paragraph 1 TFEU, by ensuring that the principles governing competition policy are applied, principles established by art. 101 and art. 102 TFEU.

Regarding the management function of the Commission, it is exercised in relation to the European Social Fund established in order to improve the possibilities of employment of workers in the internal market and to contribute to raising their standard of living (art. 162 and art. 163 TFEU). In carrying out this task, the Commission is supported by a Committee chaired by a member of the

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modify it, it can gather a simple majority of votes to oppose it. the measures taken by the Commission.

[1] Said the rapporteur of the EP Committee on Legal Affairs, József Szájer [Group of the European People's Party (Christian Democrats), Hungary]; to be seen www.europarl.europa.eu-sides-getDoc.da?la.

[2] *Idem*.

[3] Depending on the products, this organization takes one of the following forms: competition rules, mandatory coordination of the different national market organizations, the European market organization (article 40 TFEU).

Commission and made up of representatives of governments and trade union organizations (art. 163 paragraph 2 TFEU).

1.e. It ensures the external representation of the Union, except the CFSP. The Commission has the power of representation. In exercising this competence, the Commission represents the interest of the European Union not only within its framework, respectively in its relations with the Member States, with particular persons (natural or legal persons), with institutions or other Community bodies, but also externally, with third countries. or international organizations[1].

The competence of the Commission to represent the Union's interest within it arises from the set of tasks, analyzed above; In this capacity, the Commission presents itself "as a neutral intermediary between the Member States, on the one hand, and between them and the Union, on the other"[2].

The ability to represent the Commission results from art. 335 TFEU, according to which "in each of the Member States, the Union possesses the most extensive legal capacity recognized by legal persons under national law; it may, in particular, acquire and dispose of movable and immovable property and stand trial. To this end, the Union shall be represented by the Commission".

The representation of the Union shall be carried out by the Commission as follows:

- within the framework of the common commercial policy, the Commission opens the necessary negotiations following the authorization given by the Council. The negotiations conducted by the Commission involve consultation with a special committee appointed by the Council. The Commission periodically reports to the Special Committee and to the European Parliament the status of the negotiations (art. 207 TFEU);

- negotiates the conclusion of international agreements, under the conditions of art. 218 TFEU, thus "for the conclusion of agreements between the Union and one or more states or international organizations, the Commission presents recommendations to the Council, which takes a decision authorizing the start of negotiations and designates, depending on the area of the agreement in question, the negotiator or the head the Union negotiating team. These negotiations shall be conducted by the Commission, which shall consult with a special committee appointed by the Council to assist it in this task and within the framework set out in the directives that the Council may address". In the same sense, the provisions of art. 37 TEU provide that, when an agreement with one or more states or international organizations is necessary, the Council (...) may authorize the Presidency, assisted, if necessary, by the Commission, to enter into negotiations for this purpose.

In order to fulfill this task, the Commission must be empowered by the

[1] See C. Lefter, *op. cit.*, p. 177.
[2] *Idem*.

Council through a "negotiation decision". The negotiation decision is subject to the prior approval of the European Parliament, respectively the opinion of the Court of Justice of the European Union. The Council, the Commission or a Member State may request the opinion of the Court of Justice on the compatibility of the respective agreement with the provisions of the Treaties. If the opinion of the Court is negative, the agreement can enter into force only under the conditions of art. 48 TEU[1].

- The Commission is fully associated in negotiations in the case of the Council concluding formal agreements on a system of the exchange rate of the euro in relation to the currencies of third countries (art. 219 paragraphs 1 and 3 last sentence of the TFEU);

- The Union establishes any form of useful cooperation with the organs of the United Nations and its specialized institutions, the Council of Europe, the Organization for Security and Cooperation in Europe and the Organization for Economic Cooperation and Development (art. 220 TFEU).

The Union also ensures timely links with other international organizations.

The implementation of the provisions of this article is the responsibility of the High Representative of the Union for Foreign Affairs and Security Policy and the Commission.

1.f. It adopts the annual and multi-annual programming initiatives of the Union, with a view to concluding interinstitutional agreements. To this end, the Commission is preparing its work program, which represents its contribution to the Union's annual and multiannual programming. The European Parliament is already cooperating with the Commission in the process of developing its work program, and the Commission takes into account the priorities expressed by Parliament at this stage. Following its adoption by the Commission, a trialogue is envisaged between Parliament, the Council and the Commission in order to reach an agreement on Union programming.

Annex XIV to the Rules of Procedure (Framework Agreement on relations between the European Parliament and the European Commission) provides, in this regard, detailed provisions, including a timetable. Parliament adopts a resolution on annual programming. The President asks the Council to give its opinion on the Commission's work program and Parliament's resolution. If an institution is not able to meet the established schedule, it is required to notify the other institution of the reasons for the delay and to propose a new calendar.

We exemplify in this respect the policy on "Research and technological development and space", on which the Commission, at the beginning of each year, presents a report to the European Parliament and the Council, which also concerns the work program for the current year (article 190 TFEU).

2. Proposes for adoption the legislative acts of the Union, unless the

[1] Article 48 TEU regulates the draft amendments to the Treaties underlying the European Union, which are presented by the government of any Member State or by the Commission.

treaties provide otherwise. It proposes for adoption the other acts, if the treaties provide for this (art. 17 par. 2 TEU). Union legislative acts may be adopted only on a proposal from the Commission, unless otherwise provided in the Treaties. The other acts shall be adopted at the proposal of the Commission, if the treaties so provide.

Guaranteeing the Union's interest, the Commission was conceived as a "driving force for European integration"[1]. To this end, it was entrusted with the "general mission (...) of initiative"[2] and, in particular, with the task of proposing legislative projects .

Through the legislative initiative, the Commission contributes to the design, preparation and shaping of the measures taken by the Council and Parliament, which formulate Union policies, presenting them as proposals[3].

Whenever the Council acts on the basis of Commission proposals, it is considered to have a legislative initiative[4] (within the TFEU and TEuratom).

The Commission may propose draft normative acts only in cases where the treaties confer such competence, being held, at the same time, to respect the principle of subsidiarity provided in art. 5 paragraph (3) TEU, according to which the Union, at the initiative of the Commission, "intervenes only if and to the extent that the objectives of the envisaged action cannot be satisfactorily achieved by the Member States neither at central, nor at regional and local level but, because of their size and the effects of the envisaged action can be better achieved at Union level". The cases in which the "Commission proposal" is retained by the TFEU are numerous, in this regard we mention by way of example the following articles: art. 66, art. 70, art. 76, art. 109, art. 112, art. 121 par. (2), art. 125 paragraph (2), art. 126 paragraph (14), art. 138 paragraph (1) and (2), art. 140 paragraph (2), art. 153 paragraph (2) letter b), art. 165 paragraph (4), art. 167 paragraph (5), art. 188, art. 293 paragraph (1), art. 294 paragraph (2), article 257, article 322 (2) and article 215 (1) TFEU.

In most cases, the Commission acts on its own initiative, respectively in cases of adoption of legal acts through ordinary legislative procedure. This procedure is initiated only at the proposal of the Commission [art. 289 para. (1) TFEU].

In some situations, however:

- The Council is the one who asks the Commission to make a recommendation or a proposal, as the case may be, under the conditions of art. 135 TFEU, in others, the Council is obliged to consult the Commission (article 49 TEU) [5];

- The European Parliament, acting by a majority of its component members, may request the Commission to submit any appropriate proposal on matters

[1] See G. Isaac, M. Blanquet, *op. cit*., p. 62.
[2] CJEC, February 26, 1976, SADAM, 88 to 90/75, Rec. 323.
[3] See O. Manolache, *op. cit*., p. 127.
[4] See C. Lefter, *op. cit*., p. 170.
[5] *Idem*.

it considers necessary to draw up a Union act for the implementation of the Treaties (article 225 TFEU).

Thus, based on a report prepared by the competent commission, in accordance with art. 225 TFEU, Parliament, acting by a majority of its component members, may request the Commission to submit any appropriate legislative proposal to it. Parliament may, at the same time, set a deadline for the submission of such a proposal. The competent parliamentary committee must first seek the approval of the Conference of Presidents. The Commission may agree or refuse to prepare a legislative proposal requested by the European Parliament.

A proposal for a Union act, based on the right of initiative conferred on Parliament, pursuant to art. 225 TFEU, may also be made by a member of the European Parliament. This proposal is presented to the President of Parliament, who sends it to the committee responsible for examination. It may decide to present it in plenary.

There are also situations where "the Commission may modify its proposal throughout the procedures leading to the adoption of a Union act", according to article 293 paragraph (2) TFEU, with reference to a Council act which is adopted at the proposal to the Commission, "as long as the Council has not taken a decision" [regarding this].

There are situations in which the Commission is obliged to submit its proposals within a specified period, the non-observance of this date giving the right of the other institutions of the Union and of the Member States to be able to notify the CJEU to find a violation of the treaties (art. 265 TFEU[1]). In other situations, for example in art. 109 TFEU, the Commission is not bound by any deadline.

In all cases, however, the Parliament or the Council, as the case may be, may request the Commission to explain and justify the soundness of its proposals.

The Commission's proposals are published in the Official Journal of the European Union, the "C" series being referred to as "COM documents".

Although the right of legislative initiative, as a rule, belongs to the Commission, the treaties also provide for this right to be exercised by:

- the European Parliament, under the conditions of art. 223 TFEU, draws up a draft in this regard to establish the necessary provisions to allow the election of its members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States;

- at least one million citizens of the Union, nationals of a significant number of Member States, who have the right to invite the Commission to submit, within the limits of its powers, an appropriate proposal in matters in which these citizens consider that a legal act of Union, with a view to applying the Treaties.

[1] See the action in default, according to art. 265 TFEU where the term is two months.

3. The Commission has its own decision-making power. Thus, according to art. 288 TFU, in order to exercise the powers of the Union, the institutions, therefore the Commission, adopts regulations, directives, decisions, recommendations and. opinions.

Therefore, the Commission:

- establishes its rules of procedure to ensure its functioning and its services (article 249 TFEU);

- adopts regulations in the fields of the free movement of workers (art. 45 paragraph 2 TFEU), competition (art. 105 par. 3 TFEU) and state aid (art. 108 paragraph 4 TFEU);

- address the necessary directives and decisions if it is found that the Member States adopt or maintain a measure that is contrary to the provisions of the Treaties in respect of public undertakings or undertakings which grant them special or exclusive rights (according to article 106 TFEU);

- adopts the necessary decisions in the field of transport, according to art. 95 and art. 96 paragraph 2 TFEU

The Commission has the right to make recommendations or opinions[1]. The general provision, according to which the Commission is given the power to make recommendations and opinions, is art. 288 paragraph (1) and the last TFEU.

Without necessarily being preventive, the Commission's competence to adopt recommendations is also maintained by the Treaty of Lisbon, but this is also exercised in the specific cases provided by the Treaties (article 292 last sentence of the TFEU).

For example, the Commission issues opinions[2] and recommendations[3] in the following situations:

- after the Commission opinion, the European Parliament establishes the statute and the general conditions for the exercise of the Ombudsman's functions [art. 228 paragraph (4) TFEU];

- at the recommendation of the Commission, the Council shall assist the Member State in the event of difficulties or in the event of the risk of serious difficulties for the balance of payments of a Member State, arising either from a global imbalance of the balance of payments or from the nature of the currencies from which it disposes (and which may in particular compromise the functioning

[1] This right was also provided in the ECT, the former art. 211, the second indent, replaced by art. 17 TEU.

[2] See, for example, Commission Opinions no. 93/551 of October 5, 1993 regarding the application of art. 4 paragraph 2 of the Directive no. 91/670 of the Council regarding the acceptance of the equivalence of British and Belgian pilot licenses – O.J. L 267/29 of October 28, 1993, no. 93/340 of March 16, 1993, addressed to the Belgian Government regarding a draft royal decision for the approval of the first management contract of the Belgian SNCF – O.J. L 136/45 of 5 June 1993.

[3] See, by way of example, Recommendation no. 95/198 of May 12, 1995, addressed to the Member States, on payment terms in commercial transactions – O.J. L 127/19 of May 10, 1995.

of the common market), by adopting directives or decisions establishing the conditions and rules of assistance [art. 143 paragraph (1) and (2) and 144 paragraph (2) TFEU];

- at the recommendation of the Commission, the Council may decide that the Member State in the above-mentioned difficulties is obliged to modify, suspend or eliminate the safeguard measures provided under the conditions of art. 143 TFEU [art. 144 paragraph (3) TFEU];

- it can send recommendations to the Member States with a view to establishing a reasonable amount of taxes or fees levied by the carrier at the border crossing, independent of the transport tariffs (article 97 TFEU);

Although the recommendations have no binding legal force, they are not without legal effects, as they help other institutions in the decision-making process or in the implementation of Union policies, given that the Commission institution represents the general interest of the Union.

- it makes recommendations to the Member States that endeavor to proceed with the liberalization of services, if their general situation so permits (article 60 TFEU).

It also makes recommendations to the Council for the opening of negotiations with a view to reaching agreements with one or more third countries or international organizations (article 207 paragraph 3 and article 218 paragraph 3 TFEU). It also presents recommendations to the Council for the conclusion of formal agreements on a system of the exchange rate of the euro in relation to the currencies of third countries (article 219 paragraph 1 TFEU);

- acts in close connection with the Member States through opinions on issues concerning international organizations [art. 156 paragraph (2) TFEU].

The Treaty of Lisbon extends the competence of the Commission for legislative initiative and for judicial cooperation in criminal matters by adopting measures, respectively rules, in accordance with the ordinary legislative procedure according to art. 82 paragraph (1) and (2), art. 83 paragraph (1), art. 84 and art. 85 paragraph (1) TFEU.

4. The Commission has the power "to draw the attention of the national parliaments to the proposals mentioned in art. 5 TEU" within the control procedure of the subsidiarity principle. The "mentioned proposals" concern areas not within the exclusive competence of the Union, but that of the Member States, areas in which the Union intervenes only if the objectives of the envisaged action cannot be satisfactorily achieved by the Member States, nor at central level, not at regional and local level, but can be better achieved at Union level.

Before proposing a legislative act, the Commission shall conduct extensive consultations, as appropriate, and these consultations must take into account the regional and local dimension of the actions envisaged (article 2 of Protocol no. 2 on the application of the principles of subsidiarity and proportionality).

5. The powers of the Commission in the external action of the Union

(article 18 TEU). Thus, the High Representative is one of the Vice-Presidents of the Commission. It ensures the coherence of the Union's external action. It is also responsible, within the Commission, for its responsibilities in the field of external relations and for coordinating the other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only in respect of these responsibilities, the High Representative shall be subject to the procedures governing the functioning of the Commission.

Therefore, the High Representative has competences on two levels:

- leads the CFSP and, at the same time, as Vice-President of the Commission,

- is in charge of the external relations and the coordination of other aspects of the Union's external action.

He is responsible for his work in the CFSP before the European Council, and for the one in the Commission before the European Parliament[1].

[1] See A. Popescu, I. Diaconu, *op. cit. (Organizații europene...)*, pp. 238-239.

Chapter 6. The Court of Justice of the European Union

6.1. Regulation of the institution of the Court of Justice

The Court of Justice of the European Union (CJEU) has as its legal basis the following provisions:

- art. 19 TUE;
- art. 251-281 TFEU;
- art. 136 TEuratom;
- Protocol no. 3 annexed to the Treaties on the Statute of the Court of Justice of the European Union.

The Court of Justice created by the Treaty establishing the European Coal and Steel Community (TECSC) in 1951, was vested with the control of the legality of the acts issued by the High Authority and the Special Council of Ministers, which would ensure a balance between them and the Member States and guarantee the mixing of the TECSC authorities in the so-called "field reserved for states"[1]. A few years later, TEEC and TEuratom, as well as the two protocols that supplement them, also provide for the creation of a Court of Justice that corresponds to the same requirement as the Court of Justice of the European Communities (CJEC) established by TECSC.

✓ The Convention on certain institutions common to the European Communities, signed on March 25, 1957, provides that the powers conferred on the Court of Justice by each of the treaties shall be exercised by a single Court of Justice.

✓ At the same time as the successive accessions of states to the European Communities/ European Union, the number of actions before the Court of Justice increased, which determined the necessity of establishing a second degree of jurisdiction through the Single European Act (SEA), which asked the Council to set up to a court of first instance[2]. The diversification of the community jurisdiction has thus resulted in the redistribution of some competences previously held by the Court of Justice to the Court of First Instance (CFI), provided that the supreme control of the Court is protected in the new context of judicial structure.

✓ The establishment of the CFI did not, however, stop the large volume of cases that the two community jurisdictions face. This reason determined the authors of the Treaty of Nice to provide in 2001 the possibility of creating judicial chambers to analyze in the first instance the special disputes (art. 225bis TEC[3]). In the context of the concern to distribute special cases to the judicial chambers,

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[1] See B. Ştefănescu., *op. cit*., p. 34.
[2] Council Decision of 24 October 1988.
[3] Statement no. 16 regarding art. 225 TEC, adopted at the signing of the Treaty of Nice on 26 February 2001.

the transfer of disputes between the Communities and its officials[1] to a new specialized jurisdiction was registered, which led to the creation of a new court.

✓ Thus, in accordance with the provisions of the Treaty of Nice, the Council adopted, in 2004, the decision[2] establishing, together with the CFI, taking the place of the judicial chambers, the Civil Service Tribunal. It thus removed from the jurisdiction of the Court of First Instance, both the disputes between the Communities and its officials (according to art. 236 TEC and art. 152 TEuratom) who returned to the Civil Service Tribunal, as well as the disputes between bodies or agencies and their officials, for whose resolution the Court of Justice of the EU is competent[3].

✓ The Lisbon Treaty regulates the organization, competence and functioning of the Court of Justice of the European Union in art. 19 TEU and art. 251-281 TFEU. The court in Luxembourg comprises, according to art. 19 par. 1, the Court of Justice, the General Court (the former CFI) and the specialized courts, among which we distinguish the Civil Service Tribunal.

✓ The Court of Justice "has the mission to ensure the observance of the law in the interpretation and application of the treaties" (art. 19 paragraph 1 TEU) having a prominent role in the system of judicial protection, established by the TEC/TFEU[4]. Member States shall establish the remedies necessary to ensure effective judicial protection in the fields governed by Union law [article 19 (1) TFEU].

The Court of Justice is a completely original jurisdictional court with respect to any other court constituted within any other interstate organization, defining itself concurrently as an interstate international jurisdiction, as a constitutional jurisdiction, as an administrative court, as a supreme court of a federal federation. states, and as an arbitration court[5].

6.2. Composition and organization of the Court of Justice

6.2.1. Court of Justice - representative court

The Court of Justice is composed of one judge for each Member State, therefore 28 judges (article 10, paragraph 2 TEU), and is assisted by 8 Advocates General. At the request of the Court of Justice, the Council, acting unanimously,

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[1] Disputes concerning the European civil service.

[2] Council Decision 2004/752/EC, Euratom, of 2 November 2004, establishing the Civil Service Tribunal of the European Union, O.J. L 333/7 of 9 November 2004.

[3] *Idem*.

[4] See Ph. Lèger, *Commentaire article par article des traités UE et CE*, Dalloz, Paris, 2000.

[5] See B. Ştefănescu, *op. cit., (2003)*, p. 82; see O.-H. Maican, *Court of Justice - part of the community legal system*, „Revista de Management Comparat Intemaţional" no. Special 2/2010, pp. 993-1000.

may increase the number of Advocates General (article 252 TFEU).

Judges and Advocates General are jointly appointed by the governments of the Member States (article 253 TFEU). The appointment intervenes every three years, being partially replaced by a group of 6 or 7 judges[1], so as not to disrupt the functioning of the institution.

Prior to the Treaty of Nice, the question arose whether a non-EU national could be elected judge[2]. In practice, however, an unwritten rule has operated that the Luxembourg Court always has at least one national from each Member State[3]. The Treaty of Nice establishes this practice and explicitly provides that each Member State shall appoint a national of its own as a judge, to enter the composition of the Court, which requires the conclusion that a non-EU national cannot be elected judge.

Legally, this mechanism of joint appointment of the members of the Court prevents us from considering the judges as mere representatives of their states; they are also obliged to act in complete independence. However, joint designation is merely an appearance; each judge is, in fact, proposed by his home state and his choice by each national government is generally not the subject of any discussion[4].

✓ Following the example set out for the International Court of Justice[5] - magistrates must be chosen from persons with high moral qualities, who fulfill the conditions required in their countries to be appointed to the highest judicial functions or are highly competent jurists recognized in law internationally[6] - and the judges and advocates-general of the CJEU are chosen from the personalities that offer all the guarantees of independence and which meet the conditions required for the exercise, in their countries, of the highest judicial functions or which are jurisconsuls whose competences are recognized [art. 253 paragraph (1) TFEU] or "jurisconsults with notorious powers"[7] may be called upon to operate in Luxembourg.

In practice, the composition of the Court has been quite diversified. The

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[1] Under the conditions provided by the Statute of the Court of Justice of the EU.

[2] See M.-C. Bergerès, *Contentieux communautaire*, Presse Universitaires de France, 1989, p. 42.

[3] In the beginning, the big states (Germany, Spain, France, Great Britain, Italy), in addition, in the row, after the list, had an additional member (given the initial number even), so that the Court always had an odd number of judges. See O. Manolache, *op. cit*., p. 99.

[4] See V. Grementieri, *De Statut des juges de la Cour de justice des communautés européennes*, RTDE, 1967, p. 822.

[5] See art. 2 of the Statute of the International Court of Justice (I.C.J.).

[6] See A. Bolintineanu, A. Năstase, B. Aurescu, *Drept internațional contemporan*, Ed. All Beck, Bucharest, 2000, p. 201; R. Miga Beşteliu, *Organizații internaționale interguvernamentale*, Ed. All Beck, Bucharest, 2000, p. 196.

[7] This situation was highlighted by the French economist Jacques Rueff (the first French judge of the CJCE). He served in the Court for 10 years; pointed out that "the application of the law cannot be done without a certain economic intelligence". He was a finance inspector and a famous specialist on economic issues. This appointment could be explained by the fact that the first objective of the treaty was economic integration. See M.-C. Bergères, *op. cit. (1989)*, p. 39.

number of former magistrates or high-ranking officials was considered; many members of the Court had even experienced political experience prior to their appointment to the Court[1].

Also, the university chain occupied a leading position; currently, more than half of the members of the Court are university professors who have had (most) only limited experience in the judicial position before their appointment to the Court.

✓ Also, the overall view of the organization of the Court, respectively of the Court, would not be complete without mentioning an element that contributes to the definition of the institution's originality - the presence of the Advocate General - a new and unknown function in the numerous national legal systems.

Having the role "to present, with full impartiality and independence, reasoned conclusions regarding the causes which, in accordance with the Statute of the CJEU, require its intervention" (art. 252 TFEU), the Advocate General's institution constitutes an obvious transposition of the function of the government commissioners of French State Council[2].

They do not have the role of lawyers in the national court; their role is, rather, similar to the "prosecutor"[3].

Subject to the same conditions of recruitment and appointed by the same procedure as the judges, initially their number was limited to 6, but, given the expansion of the Communities/Union and the increase in the number of cases, it was increased successively[4].

Even if they do not participate in the deliberations of the Court, the Advocates General have a certain autonomy, because they are called to express their opinions on: questions of fact and of law, the applicable texts, preceding, in short, all the elements that can help the Court in pronouncing the judgment.

At the end of the oral procedure, the Advocate General expresses his opinion publicly, where it follows that "his mission no longer consists in representing the general cornunitarian interest, but only in serving the right according to objective criteria and without any connection with any category of interests"[5].

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[1] See Brown, I. Neville, *The Court of Justice of the Europeean Communitires*, 4 ed., Swet and Maxwell, London, 1994, pp. 47-52; R. Hjalte, *On Law and Policy in the European Court of Justice - A Comparative Study in Judicial Policy-Making*, Dordrecht-Boston-Lancaster, Nijhoff, 1986, pp. 50-65.

[2] See A. Barav, *Le commissaire de gouvernement devant le Conseil d'état français et l'avocat général près de la Cour de justice des communautés européennes*, RIDC, 1974, p. 809.

[3] See C. Lefter, *op. cit*., p. 124; O. Manolache, *op. cit*., p. 127, footnote no. 2.

[4] At the constitution, the Court was composed of 7 members assisted by 2 general counsel; at first he had either a judge and a general counsel, or two judges from each big state and one judge from each small state. This practice continued even after the first enlargement of the Communities: a judge and a general counsel were nationals from every 4 major states and a national judge from every other state.

[5] See R. Munteanu, *op. cit*., p. 245.

6.2.2. Statute of the members of the Court of Justice

The statute of judges and attorneys' general allows them to carry out their mission with continuous and complete independence. The term fixed for their functions is 6 years, with the possibility of being renewed[1]. Practice shows that, on average, they remain in court for two terms.

In order to ensure a certain permanence in the composition of the Court, the renewal is made for half of them at 3 years.

Both judges and attorneys' general are jointly appointed by the governments of the Member States for a period of six years, after consulting a committee, according to art. 255 TFEU, established by the Treaty of Lisbon.

The committee is responsible for issuing an opinion on the ability of candidates to perform the duties of judge and advocate general in the Court of Justice and the Court before the governments of the Member States make the nominations.

The committee is made up of seven personalities chosen from the former members of the Court of Justice and of the Court, from the members of the supreme national courts and from the renowned lawyers, one of whom is proposed by the European Parliament. The Council adopts a decision setting out the operating rules of this committee, as well as a decision appointing the members of the committee. The Committee shall act on the initiative of the President of the Court of Justice (article 255 TFEU).

✓ The judges shall appoint the President of the Court of Justice from among them for a period of three years. Their terms of office may be renewed. The judges and general lawyers who conclude their term of office may be reappointed[2] (article 253 TFEU).

The president heads the proceedings of the Court, presides over the meetings and deliberations in the council chamber. Their jurisdictional powers, which they exercise by way of ordinances, are limited.

The president is the one who distributes the cause of a chamber and appoints the judge rapporteur within the chamber; he gives, in special circumstances, priorities for certain causes.

The Court appoints the presidents of the chambers for a period of one year, and if the president of the Court is absent, the function is performed by one of the presidents of the chambers, according to the order established by the procedural regulation of the Court of Justice provided by art. 6, the Rules of Procedure.

The Court appoints one of the Advocates General to the first Advocate General for a period of one year, so that during the six-year term of office almost

[1] Judges and attorneys' general whose term of office ends are eligible for a new appointment.
[2] As an example, French judge Robert Lecourt has thus exercised three successive terms, from 1967 to 1976.

all the Advocates General will be able to perform this function[1]. He will chair their meetings and entrust each case to the Advocates-General as soon as the Judge-Rapporteur has been appointed (by the President).

Before beginning their duties, judges and attorneys' general shall take an oath regarding the performance of their duties and the secrecy of the deliberations of the Court. During the term of office, judges and advocates-general shall enjoy privileges and immunities, in order to ensure their independence, especially with respect to the Member States.

And after the termination of office, he enjoys immunity, both in respect of the acts performed in their official capacity, as well as in the opinions expressed in writing or verbally. Judges and Advocates-General may not be released from office or declared to be deprived of their rights unless they have ceased to meet the conditions required or fail to fulfill the obligations arising from the status of their office. With the exception of regular renewals and death, the judge also ended his resignation[2].

Judges and attorneys' general are obliged to reside in the locality where the Court has its seat, but only during the period they are in these positions. The Court establishes its rules of procedure. This regulation is subject to the approval of the Council (article 253 TFEU).

6.2.3. The registry office of the Court of Justice. Clerk-chief and deputy clerks

In addition to the Court, the registry office served by a clerk and one or more deputy clerks are assigned to assist the clerk and to replace him, within the limits set by the clerk's instructions.

The instructions for the Registrar are set by the Court at the proposal of the President.

Both the Court of Justice and the Court appoint their clerk and establish their status (article 253 TFEU).

The clerk is appointed by the Court for 6 years. It can be called again.

Its functions are of two categories.

The first is of a legal nature and takes into account the fact that the Registrar, under the authority of the President, assists the Court and its members in the acts corresponding to their functions regarding the receipt, transmission, retention of all documents, as well as the communications required by the application of the Rules of Procedure. to the CJEU.

The Registrar shall also assist the Court, the President and the presidents

[1] See O. Manolache, *op. cit*., p. 128.

[2] In the case of the resignation of a judge, the letter of resignation is addressed to the President of the Court for transmission to the President of the Council. The latter notification means that the respective function has become vacant.

of the chambers, as well as the judges in the exercise of their functions.

The clerk keeps the seals, is responsible for the archives and the publications of the Court, respectively the publication in the "Jurisprudence Collection", which reproduces the full text of the judgments and ordinances.

The second is administrative and ensures the administration of the Court, its financial management under the authority of the President.

6.2.4. The services of the Court of Justice

The services of the Court are represented by the officials and the auxiliary staff of the Court, appointed under the conditions of the Staff Regulations[1].

The court also establishes a language service. It is composed of experts with an appropriate legal culture, and a thorough knowledge of several official languages of the Court.

The Court's administration, financial management and accounting are provided, under the authority of the president, by the clerk, assisted by an administrator.

Each judge (including the President) and the Advocate General is assisted by three references, qualified lawyers, usually doctors in law, elected *intuitu personae*.

The referent depends only on the court or the general counsel to which he is attached[2]; it constitutes the cabinet of the judge (or the general counsel) playing a key role in the functioning of the Court (especially those who work alongside the Advocate General).

6.2.5. Presidency of the Court and constitution of the chambers

✓ Originally, the Court functioned in principle in plenary. Due to the large number of cases and for speed, the treaties, however, authorized the establishment within the Court of Chambers[3].

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[1] See art. 20 of the CJEU's Rules of Procedure.

[2] Each judge (including the president) and attorney general has the service of three referents who are highly qualified lawyers, elected *intuitu personae*. Initially, they were assimilated to the staff members of the Communities, having, in this capacity, the right to job stability. They have never been subject to the authority of the clerk of the Court like the other officials and agents of this institution. They were the offices of judges and general counsel. Subsequently, the referent-judge relationship, the referent-attorney general, was individualized, which had the effect of placing the referents under the regime not of a statute, but of a contract related to the mandates of the judges or attorneys' general to whom they are collaborators. See for details, M.-C. Bergerè, *op. cit*., p. 38.

[3] The last consolidated version of the Rules of Procedure of the Court of Justice of 19 June 1991 was published in O.J. EU, 2010/C177/01. The last consolidated version of the Rules of Procedure of the Court of May 2, 1991 was published in O.J. EU, 2010/C177/02. The last consolidated version of the Rules of Procedure of the Civil Service Tribunal of the European Union of July 25, 2007 was published in O.J. EU, 2010/C177/03.

The Court of Justice shall meet in chambers or in the Grand Chamber, in accordance with the Statute of the Court of Justice of the EU (article 251 TFEU).

The Court of Justice may also meet in plenary session, consisting of 28 judges, when the Statute provides for it (article 251 TFEU).

The Court establishes within it chambers consisting of 3 and 5 judges and decides on the distribution of judges in chambers.

✓ The Court designates the chamber or chambers of 5 judges who, for a period of one year, have the task of judging the cases concerning the preliminary references by the courts of the Member States (art. 267 TFEU)[1].

The distribution of judges by chambers and the designation of the chamber or chambers that have the task of judging the preliminary references is published in JOUE.

Immediately after the application is filed in a case, the President of the Court shall appoint the Judge-Rapporteur.

After the election of the president of the court, the judges proceed to elect, for a period of three years, the presidents of the chambers of five judges, and for a period of one year, the presidents of the chambers of three judges.

The Court shall continue to appoint the Advocate General for a period of one year. It distributes the causes of the attorneys' general.

The elections and designation presented above are published in the Official Journal of the European Union.

The distribution of cases between the different structures follows the criteria set by the Court[2].

✓ The chambers are normally entrusted only with investigating the causes, but the treaties have entrusted them with the judgment of cases other than those with which they were notified by a Member State or an institution, under the conditions provided by its internal regulation. The court has decided that, from the beginning, the action of the officials or agents is, to the fullest extent, the competence of a chamber.

Then, in order to cope with the increase in the number of cases, the Court finally opted for the maximum use of the broadened powers by modifying the treaties[3]. Thus, as a result of the amendment of its regulation[4], the Court may in the future send to the chambers all the preliminary cases, as well as all the cases with which it is referred by a private individual, insofar as it is considered that the difficulty or importance of the case does not require to decide in plenary, especially since a Member State or an institution did not oppose it. In any case,

[1] See art. 104b of the CJEU's Rules of Procedure.
[2] In 2000, 37 decisions were given in plenary, 91 in the small plenary, 90 in chambers of 3 judges, 165 in chambers of 5 judges, and 4 ordinances of the President.
[3] Council Decision of 26.11.1974, OJEC no. L318/22 of November 28, 1974.
[4] OJEC no. L328 of September 21, 1979.

the court seised may always, in order to ensure the unity of the case law or because of the importance of the case, to refer the case to the Court - in plenary[1].

The plenary session is made up of all CJUE judges. The Court of Justice has used this possibility in order to simplify the decision-making process, so that, in the case of simpler actions, but within the competence of the plenary, it judges in a plenary session consisting of the minimum number of judges required by law for the quorum meeting.

In addition, the court created, in addition to the formation in plenary or large plenary, the small plenary usually consisting of 7 or 9 judges, depending on the importance and the difficulty of the case. From the meeting of two chambers of 3 and 5 judges, plus the President of the Court, the small plenary is formed.

The Treaty of Lisbon proposes a new organization adapted to the Union's enlargement prospects. The principle is obviously that of the judgment in "room or in the Grand Chamber" (art. 251 TFEU).

With regard to the courts, the Court of Justice may meet as follows:

- Plenary sitting composed of all judges. The plenary will judge limited cases provided by art. 16 of the Statute[2], respectively when the judges reach the conclusion that a particular case is of particular importance.

- The Grand Chamber composed of 15 judges, being presided over by the President of the Court; The Grand Chamber will judge all cases in which Member States or Union institutions are involved, at their request.

- chambers composed of three or five judges.

The chambers deal with the preliminary investigation of all the cases before the Court and decide on the requests for support for legal assistance in case a party does not have the necessary means to deal with the costs of the procedure, as well as when there are differences regarding the recovery of the expenses of the court judgment set[3].

For each case, the Grand Chamber is composed of the President of the Court, the presidents of the chambers of five judges, the rapporteur judge and the number of judges required to be 13[4].

The chambers of 3 and 5 judges are, for each case, composed of the president of the chamber, the rapporteur judge and the number of judges necessary to be a number of five and three judges respectively.

The Court shall meet in the Grand Chamber when a Member State or an institution of the Union which is a party to the dispute so requests. In all other cases, cases are settled in chambers, consisting of 3 or 5 judges.

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[1] In 1988, for example, 115 of the Court's 208 judgments were delivered by the chambers.

[2] Such cases are provided by art. 195 paragraph (2), art. 213 paragraph (2), art. 216 and art. 247 paragraph (7) TEC or in art. 107d paragraph (2), art. 126 paragraph (2), art. 129 and art. 160b paragraph (7) TEAEC.

[3] See O. Manolache, *op. cit.*, pp. 129-130.

[4] See art. 11b of the CJEU Rules of Procedure.

6.3. Functioning of the Court of Justice

✓ The dates and times of the meetings of the Grand Chamber and of the plenary sessions are established by the president.

The dates and times of the sessions of the chambers of 5 and 3 judges are established by the president of each room.

According to the Treaty of Nice, the quorum is 3 judges in chambers, 9 judges in the Grand Chamber and 11 judges for the plenary sitting.

✓ The court can only deliberate in an odd number (art. 15 of the Statute), and the president does not have a preferential vote.

The deliberation of the Court or the chambers takes place in the council chamber. Only the judges who participated in the oral phase of the procedure and, possibly, the deputy rapporteur in charge of studying the case, participate in the deliberations; the attorney general is not present.

Each judge present at the deliberations expresses his opinion and motivates it.

If the deliberations of the Court concern administrative matters, the Advocates-General shall attend them and have the right to vote. The Registrar shall attend such deliberations, unless the Court decides otherwise.

✓ In the absence of consensus, the decisions are taken by a majority vote.

The decisions of the Court of Justice are valid only if the number of judges participating in the deliberations is odd.

The decision is pronounced in public hearing; the parties being cited; it has binding force from the date of its pronouncement.

The ruling does not imply any indication on the voting method used (unanimity or majority of votes). The decisions of the Court are therefore collective and they employ them entirely.

On the contrary, compared to what is happening in international courts or even in certain national courts, separate or competing opinions of minority judges are not made public or included in the Court's ruling. This rule, which has not been adopted without heated discussions, is hardly challenged today. It is, however, regarded as better presenting the independence of judges to governments and especially to public opinion, favoring the authority of the Court's decisions[1].

[1] See, G. Isaac, *L'entrée en vigueur et l'application dans le temps du droit communautaire*, Mélanges Marty, Toulouse, 1978, p. 234.

6.4. Functions of the Court of Justice

6.4.1. Regulation of the functions of the Court of Justice

The European Union has an institutional structure in which each institution has its role and functions specified by treaties. This original institutional architecture corresponds to a specific legal order of the Union, that is to say a system of autonomous rules that themselves represent the provisions of the treaties or the acts adopted by the institutions, which form a whole, and directly incorporate the national legal order[1]. The legal system of the Union guarantees not only its respect, but also the unity of application of Union law, which results in four functions of the Court of Justice[2] corresponding to its competence.

The jurisdiction of the Luxembourg court provided by art. 19 paragraph (3) TEU is carried out through a number of actions that are confined to its four functions: administrative, constitutional, international, preliminary.

Therefore, the Court of Justice of the European Union rules according to the Treaties:

a) regarding the actions brought by a Member State, an institution or by natural or legal persons;

b) as a preliminary, at the request of the national courts, regarding the interpretation of Union law or the validity of the acts adopted by the institutions;

c) in the other cases provided by the Treaties (art. 19 paragraph 3 TEU).

6.4.2. Court of Justice - administrative court

The first mission of the Community justice, now of the Union, was to protect the most diverse subjects of law - Member States, private persons - against the illegal or harmful actions of the Community institutions[3]. Prior to the adoption

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[1] See, in the same sense, R. Munteanu, *op. cit.*, p. 71.

[2] See G. Isaac, *op. cit*., p. 230.

[3] The Court of Justice, in this regard, presents itself as a transposition of the French Council of State, the Community legal system consecrating the approximately complete arsenal of legal actions known to the administrative litigation in France. The powers of each institution are determined by the treaty and by the derived law (art. 13 TEU). This principle consists in the possibility to cancel the normative acts of the institutions (art. 263 TFEU and art. 146 TEuratom), to detect their illegal shortcomings (art. 265 TFEU and art. 148 TEuratom), to examine their validity on the way of exception (art. 277 TFEU, art. 156 TEuratom) or, where appropriate, to decide on the preliminary references by the national courts (art. 267 TFEU and art. 150 TEuratom). See G. Isaac, *op. cit*., p. 231. Concerning the protection of the interested parties - an action in full jurisdiction, this time, is made available to them, in order to obtain the damages caused (art. 268 and art. 340 TFEU, art. 151 and art. 188 TEuratom), or for the change of the sanctions imposed (art. 261 TFEU and art. 144 CEEA). Also, Union agents and officials may request the Court to resolve disputes that are opposed by their institutions (Article 270 TFEU and Article 152 TEuratom).

of the Treaty of Nice, it was considered[1] that the actions or procedures concerning the following actions or procedures could be included in the category of actions:

- the legality of the acts adopted by the European Parliament and the Council, together with the acts of the Council, the Commission and the ECB (European Central Bank), as well as the acts of the Parliament intended to have effects on third parties, the Court being competent to rule in the domain cases art. 263 paragraph (2) and (3) TFEU and art. 146 paragraph (2) and (3) TEuratom (the action for annulment);

- the procedure for the preliminary reference for the examination of validity and interpretation of the acts of the institutions of the Union in order to obtain a preliminary ruling, according to art. 267 TFEU[2] and art. 150 TEuratom, or the procedure in relation to the requests of the Council, the Commission or a Member State to issue decisions on a problem of interpretation of Title IV TEC - visas, asylum, immigration and other policies regarding the free movement of persons (this provision is repealed by TFEU);

- the inaction of the Parliament, the Council, the Commission or the ECB in violation of the treaties in the cases and according to the procedures established in art. 265 TFEU paragraphs (1), (2) and (4) and art. 148 paragraphs (1) and (2) TEuratom (the deficient action).

✓ According to the Treaty of Nice, and currently to the Treaty of Lisbon (art. 225 paragraph 1 TCE, currently 256 TFEU and art. 140 A paragraph 1 TEuratom), they were entrusted for settlement, in the first instance, to the General Court (former Court of First Instance) the actions mentioned in art. 263 (the action for annulment), art. 265 (the action in default), art. 268 (the action for compensation), art. 270 (the action brought by the community officials) and art. 272 (arbitration clause) TFEU and actions in the field of corresponding articles in art. 146, art. 148, art. 151, art. 152 and art. 153 TEuratom, except those assigned to a specialized court (established according to article 257 TFEU) and those reserved by statute of the Court of Justice.

Thus, by way of derogation from art. 256 paragraph 1 TFEU (formerly 225 paragraph 1 TEC) and from art. 140 A paragraph 1 TEuratom, the statute of the Court provides in art. 51 that the Community Court has jurisdiction over the actions brought by the Member States, by the Community institutions and by the ECB, by the domain of the mentioned articles, while retaining the competence regarding these actions in the cases of art. 263 paragraph (2) and (3), art. 265 paragraph (1), (2) and (4) TFEU, art. 146 paragraph (2) and (3) and art. 148 paragraph (1) and (2) TEuratom.

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[1] See O. Manolache, *op. cit*., p. 106.

[2] They corresponded to the administrative function of art. 68 paragraph 1 TEC and art. 35 paragraph 3 TMs, currently repealed by TFEU, respectively TEU.

6.4.3. Court of Justice - constitutional court

If the Luxembourg court is an administrative court with regard to the control of individual acts, especially of the Commission, it also presents itself as a constitutional court, and will ensure the conformity of the Union's legal acts with the treaties. The Court of Justice has the task of controlling the conformity of the acts of the institutions of the Treaty (now the treaties), which it defines as a "Constitutional Charter"[1] of the Community[2]. It presents itself as an arbitrator in the conflicts that dispute the acts of the institutions, as in the litigation. on the distribution of competences between the Community/Union and the Member States[3]. Art. 263 TFEU provides, in this context, that an action for annulment may be brought against acts, "other than recommendations and opinions", that is against all provisions which have an effect legal to third parties, adopted by the European institutions[4]. The initial version of art. 263 TFEU (former article 230 TEC) did not explicitly stipulate which acts adopted by the Council or the Commission were envisaged[5].

The Court may thus annul (by virtue of the action for annulment) the acts of an institution or sanction the refusal or abstention of the Commission or the Council to decide in matters in which these institutions have by treaty the obligation to take a certain measure, not only at the request of a state member, but also at the request of an institution[6]. This refusal (or abstention) can be appealed to the Court, by bringing an action called in Community/Union law an action in default.

The Luxembourg Court may also act as a constitutional court when it issues an opinion at the request of the Council, the EP, the Commission or a Member State, on the compatibility of an expected agreement between the Union and third countries or international organizations with the provisions of the Treaties (article 218 paragraph 11 TFEU)[7]. These institutions or states are not required to request an opinion, because the TFEU text uses the wording, "it may obtain a

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[1] CJEC, 294/83, *Parti ecologiste Les Verts v. Parlement européen*, Rec. 1339; see O.-H. Maican, *The future of European Constitutional Evolution*, „Jurnalul Economic" no. 2/2009, pp. 69-105.

[2] We use in the text the notions of "Treaty" (with reference to the EC Treaty) and of Community/ Communities because it refers to judgments of the Court that were given before the Lisbon Treaty. The solution is valid and present, after the entry into force of the mentioned treaty.

[3] See R. Dehousse, *The European Court of Justice: The Politics of Judicial Integration*, Palgrave Macmillan, Basingstoke, 1995, p. 27.

[4] CJEC, 22/70, *Commission v. Conseil*, AETR, 1971, Rec. 263.

[5] The Court thus considered that in a system based on the respect of the law it was not possible that a coercive act adopted by another institution could not be subject to judicial control. It admitted, for example, the annulment action brought by the Ecological Party against a decision of the European Parliament regarding the financing of the election campaign of political parties (CJEC, 294/83, *Parti Ecologiste*, Rec. 1339).

[6] See R. Dehousse, *op. cit*., p. 27.

[7] See O. Manolache, *op. cit*., p. 135.

prior notice"[1].

The constitutional function is also present when the Court resolves conflicts between the Commission (guardian of the treaties) and the Member State acted in breach of any of its obligations under the treaties (art. 262 TFEU, art. 141 TEuratom).

6.4.4. Court of Justice - international court[2]

By imposing obligations on the Member States, the treaties have a duty to provide them with the means to enforce them. Each state has a full right of action before the Court for resolving the differences that oppose the partners and regarding the application or interpretation of Union law (art. 259 TFEU, art. 142 TEuratom).

Moreover, the Court is also competent to rule on any dispute between the Member States in relation to the subject matter of the Treaties if it is notified of this dispute under a compromise (article 273 TFEU and article 154 TEuratom).

Thus, the TFEU and TEuratom provide that whenever the application and interpretation of the provisions of the treaties in a dispute between states is questioned, the competence of the Court of Justice is mandatory.

It is empowered both to settle disputes between Member States and to consider that it is necessary to impose sanctions against them.

According to the TFEU and TEuratom, the International Jurisdiction of the Court of Justice manifests itself in two situations:

- in the first case, the Court has compulsory jurisdiction and considers the possibility of each Member State to notify the court if it considers that another Member State has breached one of its obligations under the Treaties [art. 258-259 TFEU and art. 142 paragraph (1) TEuratom].

It is noteworthy that the Treaties of Rome have retained before the Court a compulsory and primary international jurisdiction whenever litigation arises between the Member States in relation to the application of the Treaties. In this situation, the Court does not have to investigate whether another way of settling the treaties could have led to the resolution of the dispute.

- regarding the second situation, the TFEU and TEuratom provide for an optional international jurisdiction for the Court of Justice in disputes between the Member States in relation to the subject matter of the Treaties.

This optional competence is conditioned by the existence of a compromise concluded by the states in the dispute (art. 273 TFEU and art. 154 TEuratom).

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[1] If the opinion is not positive, the agreement can enter into force only under the conditions provided for in a procedure for amending the Treaty (article 48 TEU). The request for an opinion was, however, mandatory in the case provided by art. 95 paragraph CSEC Treaty final (so-called small revision).

[2] See B. Ştefănescu, *op. cit.*, pp. 98-105.

6.4.5. The Court of Justice more than an international court[1]

The principles[2] underlying the community court are fundamentally different from those that inspire international classical law jurisdictions.

✓ Any international jurisdiction is, essentially, voluntary consent. Thus, the International Court of Justice in The Hague (ICJ) is the main judicial body of the United Nations, whose jurisdiction is in principle voluntary, and its compulsory jurisdiction is exceptional (because only a small number of states have used the optional clause of art. 36 of its Statute) [3].

However, a unique situation in international relations is determined by the Court of Justice of the European Union (CJEU), which has compulsory jurisdiction - which means not only that it can be brought unilaterally even against the Member States, according to art. 258 and art. 259 TFEU, for example, but also in the area that has been assigned its competence is exclusive; art. 344 TFEU states in this regard that: "The Member States undertake not to submit a dispute regarding the interpretation or application of the Treaties in a manner other than those provided for in them".

✓ The international judge bears the effects of the imperfections[4] and shortcomings of the applied law, which leads to the distinction between the litigations of the litigants[5] (legal disputes, according to article 36 of the Statute of the International Court of Justice) and of the non-litigants[6].

The community judge, on the contrary, as a national judge, is most often called upon to intervene on the reference made by a national judge, to which the parties oppose and cannot, under the sanction of denigration of justice, refuse the decision[7]. The purpose of its mission is defined as ensuring "respect for the law in the interpretation and application of the treaties" (art. 19 TEU) without referring to the nature of the applicable rules, which leaves the Community judge with

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[1] See R. Mehdi, *L 'avenir de la justice communautaire. Enjeux et perspectives*, La documentation Française, 1999, p. 142.

[2] See J. Boulouis, *A propos de la fonction normative de la jurisprudence. Remarques sur l'oeuvre jurisprudentielle de la Cour de justice des Communautés*, Mélanges Waline, LGDJ, 1974, tome 1, p. 148; Cour de justice des Communautés européennes, *L'avenir de système juridictionnel de l'Union européenne*. Document de réflexion présenté au Conseil de l'Union européenne le 27 mai 1999.

[3] The jurisdiction of the International Court of Justice (ICJ) will operate only if the states are bound by a declaration of acceptance [art. 36 paragraph (2) UN Charter]; see A. Bolintineanu, A. Năstase, B. Aurescu, *op. cit.*, 2000, p. 227.

[4] See G. Isaac, M. Blanquet, *op. cit*., p. 251.

[5] The optional clause, from art. 36 of the Statute of the ICJ, regarding the method of recognition as compulsory by the states of the jurisdiction of the ICJ, not only was used by a small number of states, but each time the declarations of acceptance were accompanied by reservations.

[6] ICJ, Rec. 1966, p. 36; *ibidem*, p. 47.

[7] CJEC, July 12, 1957, *Algera*, aff. 7/56 şi 3-7/57, Rec.118; see M. Lagrange, *La Cour de Justice des Communautés européennes du plan Schuman a l'Union européenne in Melanges Dehousse*, Labor, Bruxelles et Nathan, Paris, 1979, tome 11, p. 127.

total independence in choosing the legal sources on which the interpretation is based. texts.

While the EC Court of Justice judges the differences that arise between individuals (individuals and legal entities) and institutions, the international jurisdiction is in principle competent to settle only disputes between states.

While the access of individuals to the Court of Justice is direct, even if it is limited[1], in the case of international jurisdiction the individual is kept away and does not participate in the procedure before it, because it is not a subject of public international law.

Moreover, individuals can act before the Luxembourg Court even the state of which they are nationals, ultimately losing its sovereignty[2].

✓ If international courts render, in principle, judgments that are binding only for the states concerned[3], the judgments of the Luxembourg Court of Justice on the contrary have not only binding force but also enforceable force in the territory of the Member States[4] (art. 280 TFEU and art. 159 TEuratom) - within the territory of the Union

✓ The Court of Justice is empowered to issue (pecuniary) sanctions against any justice, so against the Member States.

All these make the Court of Justice an internal jurisdiction of a community of states[5], engaged in an integration process, being invested not only with the guarantee of the observance of the Community law, but also with the guarantee of its unity of application[6].

The Court of Justice is an internal jurisdiction of a Union of states, according to the model of state jurisdictions - through the person of the litigants, by the nature of the litigations that are submitted to them and by the procedure after which they rule[7] - which behaves at the same time as a federal supranational

[1] Within the ECSC, it was allowed only to legal entities - enterprises.

[2] See B. Ştefănescu, *op.cit.*, p. 138.

[3] As an example, the decisions of the International Court of Justice always have binding force for the parties (art. 94 paragraph 1 UN Charter). The binding force of the judgments has a relative character, they are not binding only for the parties to the dispute and only regarding the case that has been settled. For details, see A. Bolintineanu, A. Năstase, B. Aurescu, *op. cit*., p. 206.

[4] Thus, the decisions by which it was decided to sanction individuals to pay fines are fully enforceable on the territory of the Member States, without the need for the executor. See R. Munteanu, *op. cit*., p. 241.

[5] See R. Munteanu, *op. cit*., p. 241.

[6] See G. Isaac, *op cit*., pp. 207-212; J.V. Louis, *L'ordre juridique communautaire*, 6 ed., Bruxelles, 1993, pp. 52-56; see also the Decision of the European Commission of Human Rights of 19 January 1989 on the quality of internal jurisdiction of the Luxembourg Court of Justice referred to in art. 26 of the European Convention on Human Rights, in *Annuaire français du droit international*, 1988, p. 383; see R. Munteanu, *op. cit*., p. 241.

[7] See L. Cartou, *L' Union européenne, Traités de Paris-Rome-Maastricht*, Paris, Dalloz, 1996, pp. 164-165.

court[1], through its competence is extremely varied and comprehensive[2].

6.4.6. Preliminary reference - special interpretation function[3]

The Treaties complement the three functions originating from the Court of Justice with a special function of interpretation, the object of which is to ensure the unity of interpretation and application of Union law across the Member States.

From a technical point of view, this function is achieved through the preliminary reference in interpretation and validity examination (art. 267 TFEU and art. 150 TEuratom), which centralizes for the benefit of a single jurisdiction - the Court of Justice - the mission to offer the only authentic interpretation of the Union law[4].

✓ The Court, through the preliminary references, ensures the unity of interpretation of the Union law[5] - and at the same time - and a cooperation with the national domestic courts[6], the Court having the competence to judge the pre-

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[1] See Gyula Fabian, *Curtea de Justiție Europeană, instanță de judecată supranațională*, Ed. Rosetti, Bucharest, 2002.

[2] "It highlights the powers of constitutional control (art. 228 TEC; art. 173 TEC), administrative control (art. 174 TEC) or in full jurisdiction in disputes, opposing Member States, states and community bodies, community bodies and individuals, individuals and Member States or even individuals between them".

[3] See B. Ștefănescu, *op. cit. (2003),* pp. 82-96; J. Pertek, *La pratique du renvoi prejudiciel en droit communautaire*, Ed. Litec, Paris, 2001.

[4] During the paper I used the term "prejudicial" because the Court of Justice interprets or examines, as the case may be, Community law before the national court judges the merits of the case, respectively pre-judgment.

[5] However, this unit, prior to the Lisbon Treaty, was affected by the limits imposed by the TA (in terms of "Visas, asylum, immigration and other policies regarding the free movement of persons" - the new Title IV of Part III of the TEC) on the basis of the former Article 68 TEC (currently repealed) and by extending its (preliminary) prejudicial jurisdiction in the field of police and criminal judicial cooperation See JC Gautron, Droit Europeaen, Dalloz, 1999, p. 174 The amendments of the TMs by the Treaty of Nice concern, inter alia, judicial cooperation in criminal matters, namely, together with Europol (J. Of. C 80/53, 2001), for closer cooperation between judicial authorities and others. competent authorities of the Member States, EUROJUST (European Judicial Cooperation Unit) was set up. One of the objectives of this cooperation is the development of the Union in an "area of freedom, security and justice"; see P. Mathijsen, *op. cit.*, pp. 25-27.

[6] The preliminary question was different in the framework of the new Title IV TEC, "Visas, asylum, immigration and other policies related to the free movement of persons", because: the national court of last degree was the only one able to consider a decision of the Court according to art. 68 ECT (that is, the referral for interpretation is open only to national courts whose decisions were not subject to a domestic legal appeal, the mechanism not being used by the lower courts), so the Court can rule on a question of interpretation at the request of the Council, the Commission or to a Member State without the decision being applicable to judgments already delivered by national courts, thus establishing a "specific action for the interpretation of the ECT", unrelated to any current litigation, open only to the Council, the Commission and the Member States. The Court's decision on the preliminary reference "is not applicable to the judgments of the courts of the Member States, which enjoy the authority of the court case", which means that it is required in the cases pending.

liminary references only in specific fields established by the statute (art. 256 paragraph 3 and art. 267 TFEU).

6.5. Jurisdiction of the Court of Justice

On a material level, the application of Union law is shared between the national courts and the Court of Justice; functionally, the interpretation of Union law is, at least in the last resort, monopolized by the Court.

6.5.1. Material competence

The Court of Justice has a power of attribution, expressly provided for in the Treaty. Thus, the disputes between the Union and states or natural or legal persons are not automatically conferred on the Court, thus not excluding the jurisdiction of the national courts, the latter being consequently elevated to the rank of common law court for the application of the Union law.

✓ Through the effect of the entry into force of the treaties, the competence of the national courts of the Member States has been extended to all disputes that question the application of Union law. This results:

- first, from art. 274 TFEU - "The quality of the Union Party does not remove the competence of the national courts in the respective disputes, except in cases where the Treaties have the competence assigned to the EU Court of Justice"[1];

- secondly, from art. 267 TFEU and art. 150 TEuratom which, regulating the preliminary reference - by notifying the Court of Justice by the national courts necessarily results the jurisdiction of the latter in the Community field, thus "any national judge is also a community judge"[2].

6.5.2. Functional competence

The competence of principle recognized in the national courts implies an obvious risk for the uniform and coherent application of the law of the Union[3].

Within the framework of police and criminal justice cooperation (Pillar II of the EU), the Court's prejudicial jurisdiction over certain acts implies a declaration of acceptance by the respective state, either for all the courts or for the last-degree courts [title VI art. 35 paragraph (2) TMs, the consolidated version of TA].

[1] CJEC, March 22, 1990, *J. M. Le Pen*, aff. 201/89 Rec.1-1183; I. Seidl Hohenveldern, *L'immunité de juridiction des Communautés européennes*, RMC, 1990, p. 475.

[2] Also, the national judge is a community in a certain sense more natural even than the Court whose competence is solely attributable. See R. Lecourt, *L 'Europe des juges*, Bruylant, Bruxelles, 1976, p. 24; R. Lecourt was president of the Court of Justice.

[3] By leaving the control of the application and interpretation of community texts to the national supreme courts, it is obvious that as many interpretations as many Member States would have reached.

These shortcomings were overcome by the preliminary referral procedure organized by art. 267 TFEU and art. 150 TEuratom.

Thus, the realization of the jurisdictional function is currently shared, according to a well-defined conception, between the Union level and the national level. Functional competence concerns two aspects[1]:

- the first aspect refers to the objective interpretation which is reserved for the court in Luxembourg - the CJEC, which is able to interpret the law of the Union and to examine the validity of the judicial acts of the Union (according to article 267 TFEU and article 150 TEuratom);

- the second aspect involves the concrete application, an application that falls within the task of the internal judge. The Court of Justice stated that "in the very special framework of judicial cooperation established by art. 267 TFEU, the national court and the Court of Justice, in the order of their own competences, are called upon to contribute directly and reciprocally to the elaboration of a decision in order to ensure uniform application of Community law across the Member States"[2].

6.6. Actions[3] before the Court of Justice of the European Union according to its competence[4]

✓ **Competence *ratione materiae*.** The Court of Justice was from the beginning[5] a unique institution for the three Communities, exercising the powers provided by the institutional treaties.

Thus, the application of the Community law rests with the national courts, while the CJUE is assigned only certain competences, which are defined in art. 19 paragraph 3 TEU - new.

The provisions of art. 274 TFEU, which stipulates the following: "the quality of the Union's part does not preclude the competence of the national courts in the respective disputes, except in cases where the competence is conferred on the CJEU by the Treaties".

The main competence assigned to the Court is the control of the legality

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[1] See G. Isaac, M. Blanquet, *op. cit.*, pp. 255-256; G. Vandersanden, *La reforme du système juridictionnel communautaire*, Université de Bruxelles, Bruxelles 1994, p. 230.

[2] CJEC, December 1, 1965, *Schwarze*, aff. 16/65, Rec. 1094.

[3] I used the term of action although in the specialized literature we use the term of appeal, for two reasons: on the one hand, because it is an action before the CJEU, as a substantive court (so there is no way to appeal against a and, on the other hand, because, since the establishment of the Court of First Instance, the Court of Justice is competent to examine the appeal on the decisions of this Court - so as not to create confusion between the action before the Court of Justice as the substantive court and the appeal against the decisions of the CFI (currently the General Court, by the Treaty of Lisbon).

[4] See M. Voicu, *Jurisdicții și proceduri judiciare in Uniunea Europeană*, Ed. Universul Juridic, Bucharest, 2010, pp. 103-169.

[5] Convention on certain institutions common to the European Communities, signed at the same time with TEC and TEuratom in 1957, "has agreed" provisions Court of Justice in the three treaties.

of the Union's legal acts, attribution carried out mainly by the action for annulment (art. 263 TFEU and art. 14 TEuratom), the exception of illegality (art. 277 TFEU and art. 156 TEuratom) and the way the action for failure (art. 265 TFEU).

The Court is empowered, at the request of the national courts, to interpret Union law (Union legal acts and treaty provisions) or to examine the validity of Union legal acts (art. 267 TFEU, art. 150 TEuratom) by way of preliminary reference.

The Court is also competent to resolve the actions regarding the compensation of the damages caused by the institutions of the Union or its agents in the exercise of their functions (art. 268 and art. 340 TFEU, art. 151 TEuratom).

The Court is competent to rule on any dispute between the Union and its agents (art. 270 TFEU).

It can become an arbitration court (according to art. 272 TFEU, art. 153 TEuratom), being competent to rule under a compromise clause contained in a contract of public or private law, concluded by the Union or on its behalf.

As a court of last resort, the Court has the power to review, exceptionally, the decisions of the Court, under the conditions and limits provided by the statute, if there is a serious risk to the unity or coherence of Union law (art. 225 TFEU paragraph 2 and article 56 of the Statute of the Court).

Also, the Court has the power to review, exceptionally, the decisions pronounced by the General Court in the preliminary references addressed to it, on the basis of art. 267 TFEU, in specific areas established by the statute, if there is a serious risk to the unity or coherence of Union law (art. 256 paragraph 3 TFEU).

It also regulates between the Commission and the Member States (art. 258 TFEU, art. 141 TEuratom), between the Member States (art. 259 TFEU and art. 143 TEuratom). In these hypotheses, the Court presents itself as an international court.

The Court of Justice also has advisory power that allows it to issue an opinion on the compatibility of an expected agreement between the Union and third countries or international organizations with the provisions of the treaties, according to art. 218 paragraph 11 TFEU[1].

The Court of Justice acts, in principle, as a court of first and last degree, its judgments in litigation matters not being appealable[2]. Exceptionally[3], the Euratom Institutional Treaty grants the Court the power to appeal the decisions given by the Arbitration Committee[4], pursuant to art. 18 TEuratom, in the matter of licenses. According to art. 18 paragraph 2 TEuratom: "Within one month from their notification, the decisions of the Arbitration Committee may be subject to a suspensive appeal by the parties before the Court of Justice".

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[1] The Court of Justice also had advisory power by issuing opinions in the so-called small review according to CSEC Treaty (art. 95).

[2] See O. Manolache, *op. cit*., p. 789.

[3] See B. Ștefănescu, *op. cit. (Curtea de justiție...),* p. 108.

[4] Statute of the Court, art. 22, and its rules of procedure, art. 101.

Regarding the competence *ratione personae*[1], the Court of Justice is empowered to settle disputes between the Member States, between them and the institutions of the Union - Commission, Council, as well as between the mentioned institutions. It also has the power to settle disputes between individuals, natural or legal persons, nationals of the Member States and those Member States or between individuals and the institutions of the Union[2].

✓ According to the Treaty of Lisbon, pursuant to art. 263 paragraph 2 TFEU, the Committee of the Regions has the right to bring an action for annulment at the CJEU (as well as the Court of Auditors and the ECB), thereby safeguarding its prerogatives. According to the same Treaty, the CJEU controls the legality of the acts of the European Council (to the same extent as those of the acts of the Council, the Commission, the ECB and the European Parliament), according to art. 263 paragraph 1 TFEU.

In accordance with the principle of attribution powers[3] that govern the institutions of the Union, the treaties regulate a number of actions[4], on which the legal doctrine has made the most diverse classifications representing a useful attempt, in order to be better understood.

Please note that:

- The General Court is competent to judge in the first instance all the actions mentioned in art. 263 (the action for annulment), art. 265 (the action in default), art. 268 (the action in the repair of prejudices), art. 270 (disputes between the Union and its agents) and art. 272 (the action under contractual liability, under a compromise clause) all TFEU;

- The Court of Justice is referred exclusively to actions brought against

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[1] See B. Ștefănescu, *op. cit. (Curtea de justiție...),* p. 48.

[2] *Idem*. For example, on the occasion of the annulment of the TCECO, the individuals were coal, steel or business associations, and the TFEU and TEuratom are any natural or legal persons [art. 263 paragraph (4) TFEU].

[3] CJEC, April 28, 1971, *Lutticke*, Case 4/69, R. 325.

[4] The systematization of the jurisdictional powers of the Court of Justice differs in the legal doctrine from one author to another. They use different criteria in their classification. Some divide the actions into three broad categories: in full litigation (in full jurisdiction, namely the community's non-contractual liability, pecuniary sanctions); the litigation, namely the annulment action, the exception of illegality, the sending in examining the validity that it carries on the decision documents; contentious in interpretation (preliminary reference in interpretation; see, to that effect, J. Boulouis, RM Chevallier, *Grands arrêts de la Cour de Justice des C.E.,* TI, 2nd ed, Paris, 1978, p. 299. From the same perspective group, the actions and L. Plouvier, *Les decisions de la CJCE et leurs effets juridiques*, Brussels, 1975, p. 197. Other authors distinguish between: a) the direct actions: the action for annulment, deficiency and the exception of illegality, the action in contractual responsibility, the action to ascertain the failure of the states to fulfill the obligations arising from the treaties; b) the cooperation between the Court of Justice and the national courts - corresponding to the preliminary reference in interpretation. There are authors who used criteria according to the types of referral of the Court: contentious attributions, preliminary attributions, consultative attributions and according to the powers of the Court: the ways in full jurisdiction (here in the sense of action), the ways in the annulment, the ways in the declaration; see for details, G. Isaac, M. Blanquet, *op. cit.*, p. 269.

decisions of the Commission imposing penalties (art. 261), as well as with the actions provided in the Statute of the Court of Justice [Statute of the Court of Justice of the European Union, amended by the Regulation (EU, Euratom) no. 741/2012 of August 11, 2012, Regulation (EU, Euratom) no. 2015/2422 of 16 December 2015 and by the Regulation (EU, Euratom) of 6 July 2016 of the European Parliament and of the Council].

- art. 51 of the Statute of the Court of Justice provides that, by way of derogation from the rule provided for in art. 256 paragraph (1) TFEU is within the competence of the Court of Justice the actions mentioned in art. 263 (the action for annulment) and art. 265 (failing action) TFEU when introduced by a Member State.

6.6.1. Action for annulment (art. 263, art. 264 TFUE)

The action for annulment is a direct action against a legislative act adopted by a Union institution. In this way, the validity of the act is challenged and its cancellation is sought.

✓ Affordable acts:

Article 263 paragraph (1) The TFEU specifies, the Court of Justice of the EU, "controls the legality of the legislative acts, the acts of the Council, the Commission and the European Central Bank, other than the recommendations and opinions, of the acts of the European Parliament and of the European Council[1], intended to produce legal effects. vis-à-vis third parties".

The CJEU also controls the legality of acts of the bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

Therefore, we consider that art. 263 paragraph (1) TFEU shall take into account all legislative acts and certain non-legislative acts having legal effects.

The legislative acts are the acts listed in art. 288 TFEU, respectively regulations, directives, decisions, adopted both by the ordinary legislative procedure (adopted by the EP and the Council together) and by the special legislative procedure (adopted by the EP with the participation of the Council or by the Council with the participation of the EP). Regulations, directives, decisions are considered, because through the legislative procedure (ordinary, special) these acts can be adopted.

The non-legislative acts provided by art. 263 TFEU are:

- acts of the Council, the Commission and the ECB, other than recommendations and opinions, which have legal effects on third parties;

- acts of the European Parliament and of the European Council aimed at producing legal effects;

[1] The acts of the Parliament may be subject to the control of legality as a result of the modification of art. 230 paragraph 1 TMs. In the previous regulation no such possibility was foreseen, but it was admitted in the case law of the Court of Justice.

- acts of the bodies, offices or agencies of the Union, intended to produce legal effects vis-à-vis third parties.

Also, the TFEU, in terms of novelty, expressly provides in two articles the acts that can be controlled under art. 263 TFEU (the action for annulment):

- art. 271 CJEU is competent to judge the disputes by which it controls the legality of the following acts:

a) the decisions of the Board of Governors of the European Investment Bank;

b) the decisions of the Board of Directors of the European Investment Bank.

- according to art. 275 TFEU, the CJEU controls the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council under Title V, Chapter 2 TEU.

The Treaty of Lisbon adds to the list of non-legislative acts that are subject to the legality control by the CJEU by the action for annulment, as well as the acts: The European Council, the bodies, offices or agencies of the Union, which are intended to have effects on third parties.

As a matter of principle, from the TFEU economy there are two criteria that must be met by legal acts in order to be able to control their legality through the action for annulment: to come from an EU institution or body (either as legislative or non-legislative acts)[1] and to produce legal effects vis-à-vis third parties[2].

In the same spirit, the CJEU's doctrine and jurisprudence prior to the

[1] This criterion also results from the case law preceding the Lisbon Treaty: CJCE, March 31, 1971, *Comm. v. Council*, aff 22/70, AETR, Rec. 263. Of the acts considered to be unnamed, according to the CJEU, by reference to the criterion "an act coming from an EU institution or body", we exemplify: the acts of the Court of Accounts, when they meet the general conditions of admissibility (CJCE, May 11 1989, *Maurissen and Union synd. C. Cour de Comptes*, aff. Tes 193 and 194/87, Rec. 1045); the decisions of the European Council that have a binding character (for details, see M. Voicu, *op. cit.*, 2010, p. 120); the acts of the European Investment Bank, according to art. 271 point a) of the TFEU, ex art. 237 point a) TEC (CJEC, 3 March 1988, *Comm. V. EIB*, aff. 85/86, Rec. 1281); acts of the Trademark Office; international agreements concluded by the Council, on behalf of the Union, because an agreement concluded by the Council, as regards the Community/Union, is an act issued by one of the institutions of the Community/Union, with its entry into force, its provisions being part of Community legal order (CJEC, April 30, 1974, *Haegeman v. Belgian State*, aff. 181/73, Rec. 449).

[2] According to this criterion, the following acts are specified in the ECJ's case-law: a code of conduct issued by Commission, its text imposing binding obligations on the Member States (CJEC, November 13, 1991, *France v. Comm*., Aff. 303/90, Rec. 1 -5340); a letter from the Commission rejecting an offer to the applicant company and constituting a separate act of a contractual procedure (CJEC, April 22, 1997, *Geotronics SA v. Comm*, aff. C-395/95 P., Rec. I – 2271) a verbal decision of the President of the Court of Auditors (CJEC, February 9, 1984, *Kohler v. Cour de Comptes*, aff. Jtes 316/82 and 40/89, Rec. 641); a communication from the Commission specifying how to apply a directive but creating new obligations for the Member States (CJEC, June 16, 1993, *France v. Comm*., aff. 325/91, Rec. 1-3283); a decision regarding the conclusion of an international agreement (CJEC, August 9, 1994, *France v. Comm*, aff. 327/91, Rec. I -3641).

Treaty of Lisbon, with reference to the TEC/TFEU and TEuratom, saw both the mandatory acts named - those listed in art. 249 TEC, at present art. 288 TFEU: regulations, decisions and directives - as well as the mandatory acts unnamed[1]. Thus, in an action against a deliberation of the Council, the Court formulated a true principle for the action for annulment: "it must be open to all the provisions adopted by the institutions, which seek to produce legal effects[2], whatever their nature and form", therefore, not only the regulations, directives, decisions, but also the acts that have these characteristics can be subject to control[3].

If the act is devoid of legal effects, the action for annulment is declared inadmissible.

It should also be mentioned that, from the analysis of art. 263 TFEU, with reference to the acts whose legality can be controlled, it turns out that the acts of the Court of Accounts do not fall into this category.

✓ The applicants (holders of active procedural legitimation). There are two types of claimants: institutional (privileged) and individual (non-privileged).

Institutional claimants are considered privileged insofar as they do not have to justify any interest in taking action. For them the interest is presumed.

According to art. 263 paragraph (3) The TFEU, the privileged applicants are:

- Member States, the European Parliament[4], the Council and the Commission, which may take action for reasons of incompetence, breach of fundamental procedural rules, breach of the treaties or any rule of law regarding its application or abuse of power;

- The Court of Accounts, the European Central Bank and the Committee of the Regions, which seek to safeguard their prerogatives. Under TEuratom, the ECB is not entitled to bring an action for annulment;

- each Member State, the Commission and the EIB Management Board. They may bring an action against the decisions of the Board of Governors of the EIB [art. 271 lit. b) TFEU];

- Member States or Cornice, only for non-observance of the procedures provided by art. 19 paragraph (2) and (5) - (7) of the Statute of the Bank (ECB).

Individual claimants, considered as non-privileged, are represented by any natural or legal person. It may take action against:

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[1] See G. Isaac, M. Blanquet, *op. cit.*, p. 281; CJEC, March 31, 1971, *Comm. c. Conseil*, aff 22/70, AETR, Rec. 263.

[2] They may be subject to the control of the CJEU, the measures which produce obligatory legal effects, which may affect the interests of the applicant, characteristically modifying the interests of the applicant, see M. Voicu, *op. cit.*, p. 121.

[3] *Idem*.

[4] The Treaty of Maastricht granted the EP the status of institutional complainant, but not privileged (therefore, it was obliged to justify, the interest to act). The statute was also conferred on it by the Treaty of Nice.

- acts the addressee of which is or who has looked directly and individually at it. For example, although the act takes the form of a regulation (without having the characteristics of a regulation)[1] or of a decision addressed to another person, it concerns the applicant directly and individually;

- normative acts that directly concern it and do not imply enforcement measures.

The admissibility conditions formulated by art. 263 TFEU are strict and have been interpreted for two reasons: firstly, individuals are not guardians of legality (in principle, they cannot attack a regulation or a directive[2]) and secondly, they have other means to enforce discussing the validity of a Community act (the exception of illegality, the preliminary reference in examining the validity).

Therefore, they have the capacity to act: persons who are the recipients of an individual act or non-recipients, who must prove that the act directly and individually targets them.

If the action is filed, the Court of Justice shall declare the contested act null and void. The annulment pronounced by the judge is retroactive, the act is considered to have never existed, and its legal effects must be canceled.

However, the Court indicates if it considers it necessary, what are the effects of the annulled act, which should be considered irrevocable (art. 264 TFEU). The institution, body, office or agency issuing the annulled act is obliged to take the measures required by the execution of the judgment of the Court (art. 266 TFEU). The institution in question has its own data for each cancellation of a freedom of variable appreciation, but which is carried out under the control of the Court[3]. The decision of annulment has the authority of working judgment and is opposed to all. The actions for annulment must be filed within two months, as the case may be, from the publication of the document, from the notification thereof to the applicant or, failing that, from the date on which the applicant became aware of the respective act [art. 263 paragraph (5) TFEU].

The TFEU presents a list of the means[4] that can be invoked to support the action for annulment: incompetence[5], violation of fundamental procedural

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[1] The characteristics provided by art. 288 TFEU are: general applicability, mandatory in all its elements and directly applicable in each Member State.

[2] CJEC, December 14, 1962, *Confédération nationale des producteurs de fruits et légumes*, aff. 16 et 17/62, Rec. 135.

[3] CJEC, July 12, 1962, *Hoogovens*, aff. 14/61, Rec. 458.

[4] See B. Ştefănescu, *op. cit. (Curtea de Justiţie...)*, p. 61; O. Manolache, *op. cit*., pp. 613-627.

[5] This means plays a fundamental role in sanctioning the acts intervened in areas not covered by the treaties or reserved to an institution other than the ones that are joint. The Court, in a judgment, emphasized that we are in the presence of a "public order means that is examined ex officio" (CJEC, May 10, 1960, *Germany*, aff. 19/58, Rec 469). Cases of incompetence are found in practice rarely (CJEC, May 10, 1960, *Erzeherban*, aff 3 a 18, 25 et 26/58, Rec. 367). Their scope is confused with that of infringement of substantial forms, and the plaintiffs most often initiate their action for the second reason (CJEC, December 13, 1967, *Neumann*, aff. 17/67, Rec. 571).

rules[1], violation of the treaty or any rule of law regarding its application[2] and abuse of power[3].

It is also worth mentioning that, from the analysis of art. 263 TFEU, with reference to the institutions which can bring actions for annulment, it follows that the European Council does not fall into this category.

Also, the acts establishing the bodies, offices and agencies of the Union may provide for special conditions and procedures regarding the actions taken by the natural or legal persons against the acts of these bodies, offices or agencies which are intended to produce legal effects against them [art. 263 paragraph (6) TFEU].

✓ A special case of action for cancellation is regulated by Protocol no. 2 regarding the application of the principles of subsidiarity and proportionality, in art. 8.

Thus, the CJEU is competent to rule on the actions regarding the violation of the principle of subsidiarity by a legislative act, in accordance with the norms provided in art. 263 TFEU, by a Member State or transmitted by it in accordance with its national law on behalf of its national parliament or a chamber thereof.

In accordance with the rules provided for in the aforementioned article, such actions may also be taken by the Committee of the Regions against the legislative acts for adoption to which the TFEU provides for consultation of the respective committee.

Since 1990, by a judgment given in a case, made by the Parliament in a legislative procedure regarding the adoption of necessary sanitary measures following the Chernobyl nuclear accident, the Court recognized the Parliament the

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[1] This is a "means of public order" (CJEC, December 21, 1954, *France*, aff. 1/54, Rec.9), which, contrary to lack of competence, is experiencing a much greater development than in French law. The fundamental rules of procedure which are usually not respected, they refer to: motivation (initially provided in the three Community treaties: TECSC, TEC, TEuratom), and currently in Article 296 paragraph (2) TFEU and Article 162 Euratom; see G. Isaac, M. Blanquet, *op. cit*., p. 283; voting procedures (in the procedures defined in the internal regulations of the Council - CJCE, February 23, 1988, *United Kingdom v. Conseil*, aff. 68/86, 855).

[2] The violation of the treaties themselves is expressly targeted; the violation concerns annexes, protocols, conventions, as well as the other acts adopted by the institutions of the Union for the execution of the treaties, because their violation constitutes at the same time the violation of the provisions of the treaties that define their legal force (art. 288 TFEU). The concept of "treaties" refers to primary law and derivative law, and the formulation of "any rule of law" takes into account general principles of law (recognized by the Member States) or any other special provisions included in the treaties.

[3] We are in the presence of an abuse of power when the administrative authority has used its powers for a purpose other than that for which these powers were given to it by treaty (B. Ştefănescu, *op. cit*., p. 61). This means is mainly retained in the disputes of community civil servants (CJEC, May 5, 1966, *Gutmann*, aff. 18 et 35/65, Rec.149; 29 September 1976, *Giuffrida*, aff. 105/75, Rec. 1395). The purpose of the act was different from that for which it was issued, in a plastic formulation - "foreign to the service", see G. Isaac, M. Blanquet, *op. cit*., p. 284.

right to notify it with actions for annulment for maintaining its prerogatives in the legislative procedure[1].

6.6.2. The exception of illegality (art. 277 TFEU, art. 156 TEuratom)

Individuals (natural persons and legal persons) cannot attack the legal acts of the Union with normative character - decisions or regulations - through the annulment action. But, when the individual decision is not complied with, they can invoke the illegality of the above-mentioned acts, indirectly, through the exception of illegality of the general act on the basis of which the individual decision was issued.

Thus, individuals may request not to annul the basic general act, but only to pronounce by the Court its non-application with respect to the applicant. As a result, the Court cannot annul the act whose legality is contested, but only declare it inapplicable in respect of the applicant.

The exception of illegality is provided by art. 277 TFEU and art. 156 TEuratom in very general terms: subject to the expiration of the term foreseen for the action for annulment, in the event of a dispute regarding a general act adopted by an institution, body, office or agency of the Union, any party may prevail for the reasons of law provided by art. 263 paragraph (2) TFEU (incompetence, violation of fundamental procedural rules, violation of the treaty or any rule of law regarding its application and abuse of power) to invoke the inapplicability of this act before the EU Court of Justice.

The text of the article makes no distinction as to the parties that can invoke the exception. It may be lifted by any party in the event of a dispute in which a regulation is violated[2]. It can therefore also be invoked by the Member States, although they have at their disposal the action to cancel the legal acts of the Union[3].

Also, only the regulation that has a natural connection with the cause in which the inapplicability is claimed can be challenged[4].

The Court considered that the main function of the exception of illegality is to correct the restrictions that the treaties in the annulment action impose on individuals (to take attitude against the general decisions and regulations). The Court also decided that it should be taken into account "the need to ensure a legality check in favor of the excluded persons in bringing actions for annulment,

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[1] See U. Bux, April 2017, *Fişe tehnice privind Uniunea Europeană*, Court of Justice of the European Union, http://www.europarl.europa.eu/aboutparliament/ro/displayFtu.html?ftuld=FTU_1.3.0.html.

[2] See O. Manolache, *op. cit*., p. 663.

[3] According to art. 241 TEC any party may invoke the causes provided for in art. 230 TEC in order to apply the inapplicability of the regulation.

[4] CJEC, July 13, 1966, *Government of the Italian Republic v. Council and Commission*, aff. 32/65, hot. in ECR, 1966, p. 389.

against individual acts, when they are reached by an application decision which concern them directly and individually"[1] and added that "the provisions of art. 277 TFEU are the expression of a true general principle, the scope of which must be understood more broadly".

In connection with the article in question, the Court also stated that its provisions should be applied to the regulations themselves - acts of the institutions, which, although not in the form of a regulation, nevertheless produce similar effects and for these reasons cannot be challenged by other subjects. law rather than institutions and Member States[2].

The plea of illegality is nothing more than an incidental procedure, which is subject to another action - for annulment[3], which can only be invoked before the Court of Justice, given that the plea does not operate independently of the cause[4].

6.6.3. The action determined by the refusal of the Union institutions to act (deficiency action - art. 265 TFEU, art. 148 TEuratom)

The deficient action allows the sanction of an illegal abstention of the European Parliament, the European Council, the Council, the Commission, the European Central Bank.

According to art. 265 TFEU, if, in breach of the provisions of the Treaties, the European Parliament, the European Council, the Council, the Commission or the European Central Bank refrain from deciding, the Member States and the other institutions of the Union may refer the EU Court of Justice to ascertain this violation. The provisions of the said article shall apply, under the same conditions, to the organs, offices and agencies of the Union which refrain from deciding.

✓ The privileged institutional claimants (holders of active procedural legitimacy) are: The Member States, the other institutions, without any distinction (European Parliament, European Council, Council, Commission, Court of Accounts, ECB and ECJ).

The action is, in principle, possible not only against the failure to formulate decision and binding documents, but also against the failure to formulate recommendations, opinions (even presenting an opinion).

The privileged claimants, to whom no interest requirement is required in order to notify the CJEU, may question the failure to adopt any type of act - regulation, directive, decision, recommendation, opinion, proposal, draft budget[5] -

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[1] CJEC, March 6, 1979, *Simmenthal*, aff. 92/78, Rec. 777.
[2] *Idem*.
[3] See G. Isaac, *op. cit*., p. 276.
[4] See O. Manolache, *op. cit*., p. 663.
[5] CJEC, September 27, 1988, *Parlement v. Conseil*, aff. 302/87, Rec. 5637.

since Union law imposes its adoption.

✓ Individual non-privileged claimants can be any natural or legal person. They may notify the Court, under the conditions laid down for privileged persons, in relation to the omission of an institution, body, office or agency of the Union to send them an act, other than a recommendation or an opinion (art. 265 last paragraph of the TFEU).

This means that the action is excluded against the failure to adopt a regulation or opinion and, in general, an act which does not produce legal effects on the applicant. This right is more restricted than in the case of the annulment action [art. 263 para. (4) TEC, because it makes it possible to challenge a decision that has not been addressed to the applicant, but which concerns him directly and individually. In its case-law, the Court has brought to light a broader interpretation of the phrase "refraining from addressing an act..." [1], the objective being to provide legal protection to one who, without being a formal addressee, is in fact view by this act in a manner analogous to that of an addressee and aligned the admissibility of the action in default with that of the action for annulment; it is sufficient that the act whose omission is reproached directly and individually concerned the applicant, even if he is not the addressee[2].

The passive procedural legitimacy has the European Parliament, the European Council, the Council, the Commission, the European Central Bank, the organs, offices and agencies of the Union, which refrain from deciding on the address of an act, under the conditions under which they were obliged to do so. I cannot be a defendant, the EU Court of Justice and the Court of Auditors.

This action is admissible only if the institution, body, office or agency has been previously requested to act [art. 265 paragraph (2) TFEU]. If, on the expiry of a period of two months from the date of this request, the institution, body, office or agency has not specified its position, the action may be filed.

Therefore, the action can be brought only if there is a legal obligation of the respective institution to act[3].

If the legality of the obligation to act is established, the Court will declare the institutions' inaction to be illegal and require them to act, ie to adopt the Community act expressly required by the legal texts or in their spirit. The judgment in default is compulsory, so the institution must take the measures provided for in the decision of the Court.

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[1] CJCE, February 14, 1989, *Star fruit*, aff. 247/87, Rec. 297; February 16, 1993, *ENU v. Commission*, aff. C 107/91, Rec. I – 599.
[2] *Idem*.
[3] CFI-C, 74/92, *Ladbroke Racing (Deutschland) v. Commission*, 24 January 1995, in ECR, 1995-11, p. 116.

6.6.4. Action in finding a Member State's breach of its obligations under the Treaties[1] (art. 258-260 TFEU, art. 141-143 TEuratom)

The Court of Justice has the exclusive competence to judge the Member States for failure to comply with the obligations imposed by the Treaties and Union law in general.

✓ The claimants (holders of active procedural legitimacy) who can notify the CJEU with an action in finding a state's violation of their obligations under the treaties are:

- The Commission, according to art. 258 TFEU, or
- Member States, based on art. 259 TFEU.

The commission has the task of monitoring the behavior of the states, so that, according to art. 17 TFEU, it guarantees the application of Union law under the control of the CJEU.

The supervision exercised by the Commission materializes by gathering information and checks in order to carry out the tasks entrusted to it.

If the Commission considers, following the checks and information collected, that a Member State has breached any of its obligations under the Treaties, it shall issue a reasoned opinion on this matter, having given it to the State concerned. the possibility to present their observations [art. 258 paragraph (1) TFEU].

If the Member State concerned does not comply with this opinion within the time limit set by the Commission, it may notify the CJEU.

Either Member State may refer the matter to the EU Court of Justice if it considers that another Member State has breached any of its obligations under the Treaties [Art. 259 paragraph (1) TFEU].

However, before a Member State can bring an action against another Member State based on an alleged breach of its obligations under the Treaties, it must notify the Commission [Art. 259 paragraph (2) TFEU].

In this case, the Commission also gives a reasoned opinion, after giving the possibility for the states concerned to submit their written and oral observations to the contrary.

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[1] Actions for failure by Member States to fulfill their obligations under the Treaties (Articles 258 and 259 TFEU), actions against pecuniary sanctions, disputes between the Union and its agents (Article 270 TFEU), actions in non-contractual liability of the Union The Union (Articles 268 and 340 TFEU) can be found in the specialized literature as "actions in full jurisdiction". These give the CJEC/CJEU the opportunity to appreciate all the factual and legal elements of the case brought before it, modifying that decision of the community institution that was called into question, in order to establish another mandatory solution for the parties. For details, see B. Ștefănescu, *op. cit. (Curtea de Justiție...)*, pp. 82-98; R. Joliet, *op. cit*., vol. II, pp. 19-48; *ibidem*, pp. 243-293; J. Boulouis, R.-M. Chevallier, *Grands arrêts de la Cour de Justice des CE*, T I, 2é, éd., Paris, 1978, p. 299.

In the event that the Commission has not issued the opinion within three months of the application being submitted, the absence of the opinion does not prevent the Court from being notified. It should also be noted that the possibility of bringing the Court to the notice of any Member State that considers that another Member State has breached the obligations resulting from the treaties further sheds light on the international jurisdiction of the EU Court of Justice[1].

✓ The passive procedural legitimacy (the defendant) has the Member State which has breached an obligation resulting from treaties or from an act of the Union [art. 259 paragraph (1) TFEU].

✓ As the texts of the Treaties, the Statute of the Court and the Rules of Procedure do not set a time limit for bringing an action for failure to fulfill the obligations of a Member State to the Court of Justice, it is left to the applicant's judgment - Commission or Member State[2].

In practice, it has been found that the potential applicants file the action in question within a period of two months, which begins to run from the expiration of the period in which Coinisia was to issue the confirmatory opinion[3].

✓ After the Court has been referred to either the Commission (art. 258 TFEU) or the Member State (art. 259 TFEU) - and finds that a Member State has breached any of the obligations under the Treaties, this State is obliged to take the measures required by the execution of the judgment of the Court (art. 260 paragraph 1 TFEU).

If the Member State concerned has not taken the measures required to enforce the decision of the Court, the Commission may notify the Court, after giving the State concerned the opportunity to submit its observations.

In the procedure for finding a State's failure to fulfill its obligations under the Treaties, the Commission and the Court of Justice have a decisive role in applying the financial sanction against the Member State concerned:

- The Commission shall indicate the amount of the lump sum or the periodic penalty payment which the Member State concerned must pay and which it considers appropriate to the situation (art. 260 parahraph 2 TFEU);

- The Court, following the finding that the Member State concerned has not complied with its decision, may require the payment of a lump sum or penalty payments (art. 260, paragraph 2 TFEU), without the Treaty stipulating the Court's obligation to takes into account the indications of the Commission.

Also, the TFEU[4] expressly provides for a case of non-fulfillment of the

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[1] See B. Ştefănescu, *op. cit. (Curtea de justiție...),* p. 93.

[2] The legal text does not provide for a deadline for the Court's judgment to be enforced, but the practice has established that it is within the domain of evidence that the process of enforcing the uncles ruling must be initiated as soon as possible and completed as soon as possible. See ECJ, February 6, 1992, 75-91, *Commission v. Holland*, in ECR. 1992, pp. 549-556; CJCE, January 30, 1992, 328-90, *Commission v. Greece*, in ECR, 425.

[3] See B. Ştefănescu, *op. cit. (Curtea de justiție...),* p. 95.

[4] Art. 260 paragraph 3 TFUE.

obligations of a Member State, for example, that State has not fulfilled its obligation to communicate the transposition measures of a directive adopted in accordance with the legislative procedure. If, in such a case, the Commission notifies the CJEU (pursuant to art. 258 TFEU):

- The Commission may indicate, if it deems it necessary, the amount of the lump sums or the periodic penalty payment to be paid by the respective state and which it considers appropriate to the situation;

- The court, following the finding of the breach of the obligation, may impose to the respective Member State the payment of a lump sum or a penalty with a periodic penalty, within the limit indicated by the Commission.

The payment obligation shall enter into force on the date established by the Court by its judgment.

✓ Failures by states are actions or abstentions contrary to Union law[1] (primary/originating, derivative, general principles), namely:

- legal acts or behaviors contrary to Union law are represented by laws, decrees, administrative decisions; the classic example is: inaccurate transposition of a directive, or

- abstentions or inactions are caused by delays or negligence in taking the necessary measures for the application of Community law or the refusal to repeal an internal measure to the contrary; the classic example is: non-transposition or late transposition of a directive.

The decision to find the breach is declarative; it is up to the state to bear the consequences; in case of non-execution, a new procedure may lead to a second judgment on the same non-compliance.

The decision is imposed on the courts of the Member States[2] that have not fulfilled the duties provided by the treaties and implies for them:

- the obligation not to apply a rule recognized as incompatible;

- the obligation to recognize the liability (of the state) as a result of the violation of the Union law.

✓ A special case of action for failure of a Member State to fulfill its obligations under the treaties is provided by art. 114 paragraph 9 TFEU, in the sense of abusive exercise by the State concerned of the powers provided by the TFEU in the field of approximation of laws.

It is a derogatory situation from the procedure provided in art. 258 and art. 259 TFEU, because the Commission and any Member State can directly refer

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[1] CJEC, May 21, 1977, *Commission v. United Kingdom*. Failure to do so may be subject to an indication by the Commission of the provisional measures under the emergency procedure. There are simplified analogous procedures: in the case of State aid, if the Commission gives a decision on aid or the Court can be referred by the Commission or a Member State according to art. 88 paragraph (2) TEC; in the field of harmonization (approximation) of national laws if a state uses derogatory, abusive measures, after harmonization (art. 95, art. 4 and art. 5 TEC), the Commission or any Member State can directly refer the Court of Justice.

[2] CJEC, 14 December 1982, *Waterkeyn*, Rec. 4337.

the EU Court of Justice if they consider that another Member State is guilty of the abuses mentioned above.

It is derogatory because:

- The Commission notifies the Court directly by skipping the procedure by which it issues a reasoned opinion on the alleged violation, after having offered the State concerned the opportunity to submit its observations, according to art. 258 TFEU;

- the Member State which considers that another Member State has breached its obligations under the Treaties shall notify the Court directly, skipping the procedure which first provides for the Commission to be notified of the alleged infringement, followed by the reasoned opinion of the Commissioners, after it has given the State concerned the possibility to present in contradictory written and oral observations, according to art. 259 TFEU.

✓ Other special cases of actions taken as a result of the failure of the Member States to fulfill their obligations, for which the EU Court of Justice is competent are, according to art. 271 points a) and e):

- disputes regarding the fulfillment of the obligations of the Member States resulting from the Statute of the European Investment Bank. The Board of Directors of the Bank has in this respect the attributions recognized to the Commission by art. 258;

- disputes regarding the fulfillment by the national central banks of the obligations resulting from the treaties and the Statute of the ESCB (European System of Central Banks) and of the ECB. In this regard, the Board of Governors of the European Central Bank has, in relation to the national central banks, the powers recognized by the Commission through art. 258 in relation to the Member States. If the Court finds that a national central bank has not fulfilled its obligations under the Treaties, that bank is obliged to take the measures required by the execution of the Court's decision.

In both cases, the Commission, when it considers that a Member State has breached any of its obligations under the Statutes of the EIB, the ESCB and the ECB, issues a reasoned opinion on this matter. If the State does not comply with this opinion within the deadline set by the Commission, after it has had the opportunity to submit its observations, the Commission may refer the matter to the Court of Justice.

6.6.5. Action against pecuniary sanctions (art. 261 TFEU)

The Commission, as "guardian of the treaties", has the authority to ensure the application of treaties, as well as of measures taken by the institutions under them. The Commission oversees the application of Union law, by the Member States, under the control of the EU Court of Justice (art. 17 TFEU).

Thus, a consequence of the non-fulfillment of the obligations by the Member States is the fact that the institution of the Commission in the procedure

of finding (..), established by art. 260 TFEU, indicates financial penalties for the Member State concerned[1].

The right to impose pecuniary sanctions is granted to the Commission by the Council on the basis of the EC Treaty, prior to the Lisbon Treaty, through the regulations adopted in various matters (especially in the field of knowledge)[2].

The Commission is entitled to impose financial penalties for infringement of Union law, taking decisions to that effect, which can be appealed to the CJEU.

The decisions taken by the Commission in matters of financial sanctions can be challenged, according to art. 261 TFEU and the provisions of the subsidiary legislation[3]. Financial penalties may be subject to regulations adopted by the Council or the European Parliament, together with the Council, on a proposal from the Commission. Regulations adopted in accordance with the provisions of the Treaties may confer on the Court of Justice the substantive jurisdiction over the sanctions provided for in these regulations (art. 261 TFEU). In practice, it is treated as an action to annul a decision, although it is an independent action. Its starting point is the Commission's decision, not the alleged violation[4].

The Court of Justice may annul, increase or decrease the sanctions applied; one can speak of its unlimited competence with regard to the actions regarding the sanctions applied.

This highlights the essential difference between the action against sanctions and the action for annulment. The court does not merely investigate whether the facts are correct or how they were appreciated; it may express a different point of view than that of the Commission, which may replace that of the Commission. The decisions of the Commission shall be enforceable immediately. The introduction of a new legal action does not suspend the execution, so that the non-payment of the amounts imposed in such a situation will attract interest. However, insofar as it considers that the circumstances require it, the Court may order the suspension of the execution of the contested act (art. 278 TFEU).

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[1] See the action in the Member States' failure to fulfill the obligations arising from the treaties.

[2] Regulation no. 1983-83 of June 22, 1983 regarding the categories of exclusive distribution agreements; Regulation no. 4087-88 of November 30, 1988 regarding the categories of franchising agreements; Regulation no. 417-85 of December 19, 1984 regarding the categories of specialization agreements; Regulation no. 418-85 of December 19, 1984 on the categories of research and development agreements.

[3] Regulation no. 17/62, art. 17, and Regulation no. 4056/86, art. 21.

[4] According to art. 256 TFEU, the Court will have the power to resolve at first instance the actions against the financial sanctions.

6.6.6. Actions brought by Union agents (art. 270 TFEU and art. 152 TEuratom)

The action is provided in art. 270 TFEU and art. 152 TEuratom[1].

The EU Court of Justice is competent to rule on any dispute between the Union and its agents, within the limits and conditions established by the Staff Regulations of Officials of the Union and the regime applicable to the other agents of the Union (art. 270 TFEU).

The category of agents of the Union comprises the officials of the Union and the other agents.

The first are persons appointed in positions established by the written decision of the competent authority to appoint (according to the Staff Regulations in force).

The other agents are classified as temporary, auxiliary, local, etc. The officials or agents of the Union may bring certain actions within the limits of the Statute of the officials of the Union, before the General Court. They may notify the competent jurisdictional bodies, with the approval of the appointing authority, through the superiors, for the purpose of amicable settlement of disputes.

The action brought by the official concerned has the character of an alternative litigation, which involves:

- an action for annulment when an official or agent of the Union challenges the legality of an individual act, making a complaint in this regard. The official concerned may also take action against any other act which, even if it has been addressed to another person, affects him (for example, the persons who have been appointed or promoted);

The official concerned must act for his own concrete interest[2].

- an action against financial penalties, when the official or agent in question asks for financial compensation.

6.6.7. The action in liability

The European Union, having under the treaties a juridical personality, can produce through its activity, in this capacity, damages, which must be repaired, thus entailing its civil liability[3].

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[1] Art. 270 TFEU confers jurisdiction of the EU Court of Justice in this matter and should be interpreted as meaning that it applies not only to persons who have the status of civil servants or other civil servants, but also to the persons who claim this status; see CFI 30/96, *Jose Gomez de Sa Pereira v. Council*, Order of 11 July 1996, rec. 24 in ECR, 1996/7/8/9 (II) 793; art. 90 and art. 91 of the personnel regulation no. 258/68, O.J. L. 56 of March 4, 1968 (amended several times); O. Manolache, *op. cit*., pp. 740-741.

[2] See P.J. Kapteyn, P. ver Loren van Themaat, *The impact of case-law of the Court of Justice of the European Communities on the economic world order*, in MLR no. 5-6/1984, vol. 82, pp. 245-246.

[3] See B. Ştefănescu, *op. cit. (Curtea de justiţie...),* p. 83.

The provisions of the TFEU govern both the direct and indirect the extra-contractual (non-contractual) liability of the Union and the contractual liability incurred as a result of non-fulfillment of the obligations resulting from a contract.

Under the conditions provided by the TFEU, the persons concerned can obtain the compensation of the damages thus caused by the action in liability, contractual or extra-contractual, as the case may be, before the EU Court of Justice.

A. Action in non-contractual liability of the European Union (art. 340 TFUE)[1]. According to art. 340 TFEU, as a rule "in matters of non-contractual liability, the Union is obliged to repair, in accordance with the general principles common to the legal orders of the Member States, the damage caused by its institutions or its agents in the exercise of their functions".

In this matter, the Union does not represent the institution of the European Central Bank, as, by way of derogation from the above rule, the ECB must repair, in accordance with the general principles common to the Member States, the damage caused by it or its agents in the exercise of their functions.

Resolution of disputes aimed at repairing these damages falls within the competence of the EU Court of Justice (art. 268 TFEU).

However, if the Union is a party to a dispute and is not expressly provided for in the Treaty by the Court of Justice, the power to settle the dispute in question lies with the court of the Member State (art. 274 TFEU).

Which means that, in the matter of action for damages, the EU Court of Justice has exceptional jurisdiction, an aspect explicitly stated by the TFEU - "the quality of the Union party does not remove the competence of the national courts in the respective disputes, except in which by the treaties the competence is assigned to the Court" (art. 274 TFEU).

✓ The claimants, holders of the active procedural legitimacy are, "according to the general general principles of the legal orders of the Member States"[2] in the matter of non-contractual liability, "any natural or legal person, even a non-EU citizen, and theoretically, any state, even a third state, which proves that it has suffered damage caused by the deed of the institution or of the Union agent in the exercise of its functions"[3].

Therefore, it can be specified that the natural or legal persons who have suffered damage caused by the act of the institutions or agents of the Union, exceptionally, are obliged to address the Court, being obliged to bypass, in order to

[1] On the non-contractual liability of the European Union administration see Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, Ed. C.H. Beck, Bucharest, 2016, p. 821-823; Cătălin-Silviu Săraru, *European Administrative Space - recent challenges and evolution prospects*, ADJURIS – International Academic Publisher, Bucharest, 2017, p. 124-127.
[2] According to art. 340 TFEU.
[3] CJEC., 44/1959, *Fiddelaer v. Comisie CEE*., Rev. VI, p. 1093; see B. Ştefănescu, *op. cit*., p. 86; M. Voicu, *op. cit*., p. 142.

use the claims, the national courts from place of the occurrence of the event causing damages - competent courts according to the principles admitted by the private international law[1].

The action for liability must be filed within 5 years, starting from the production of the harmful act or from the date of the occurrence of the damages, if these have subsequently occurred to the harmful fact.

✓ The distinction must be made between direct and indirect criminal liability of the Union.

In the first case, having legal personality, the Union manifests itself in its relations with third parties through its institutions, namely "The Union is represented by each institution, on the basis of their administrative autonomy, for matters relating to their functioning" (art. 335 TFEU). Which means that the damages caused by these institutions, in the exercise of their functions (competences), are caused by the Union and therefore entail direct non-contractual liability.

In the second case, if the harmful act is produced by an agent/official of the Union in the performance of his/her duties, the indirect criminal liability of the Union will be involved in the position of commander for his supervisor - the agent/official.

The Union and its officials are personally responsible (direct liability) to the Union. This liability is governed by the provisions that establish the statute or the regime that applies to them. In this matter, the TEuratom provisions are similar, which expressly stipulate the competence of the CJEU in disputes "between the Community[2] and its agents within the limits and conditions determined by the statute" (art. 152 TEuratom). On the other hand, the statute of EC and Euratom officials also provides , the compulsory competence of the CJEU, as follows "any dispute between one of the Communities against a person covered by this statute (...) is submitted to the CJEC/CJEU, which has full jurisdiction" in the disputes of a pecuniary nature between the parties concerned[3].

✓ On this matter - the direct and indirect criminal liability of the Union art. 188 TEuratom has similar provisions to art. 340 TFEU, namely "The Community [Euratom] must repair, in accordance with the general principles common to the law of the Member States, the damages caused by its institution or its agents in the exercise of their functions (duties)".

The Court, in one of its judgments, gave a restrictive definition[4] to the fault committed by a Community agent in the exercise of his functions[5], thus reducing the scope of the Community's liability[6].

The ECJ case-law does not rule out any liability without a fault, *a priori*,

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[1] *Idem*.
[2] This is the Euratom Community.
[3] See B. Ştefănescu, *op. cit. (Curtea dejustiţie...),* p. 89.
[4] CJEC, September 18, 1995, *Holle*; see J.C. Gautron, *op. cit.*, p. 172.
[5] CJEC, July 10, 1969, *Sayog*, quoted by J.C. Gautron, *op.cit.*, p. 172.
[6] The ECSC Treaty excluded any liability without guilt.

but it has not formally established it until today, although it is present in the legal order of several Member States.

The Court (of First Instance) also considers liability to be guilty[1].

As regards the conditions regarding the assessment of the injury (which must be real and certain), the causal link between the deed (the guilty act of the Community[2]) and the injury (which must be direct), they are identical in the two treaties (TEC/TFEU and TEuratom).

The main contribution of the jurisprudence is the extension of the responsibility on the legislative activity of the Community/Union. Therefore, damages can be caused by various acts, including normative ones. The Community treaties and their equivalent acts, currently the treaties (TFEU and TEU), which is maintained by the entry into force of the Treaty of Lisbon, were excluded from this sphere.

The legislative act may cause damages by adopting, in this case, it is introduced, together with the action in the granting of damages, and an action for the annulment of the act in question (art. 263 TFEU)[3].

Also, damage can be caused in case of guilty abstention of an institution, in this case a lawsuit is filed against the institution obliged to decide (art. 265 TFEU).

Therefore, actions regarding the validity of these acts can be brought (art. 263 TFEU) and damages can be requested at the same time. However, the Court is going to rule separately on the validity of the act and the damages[4]. Thus, the action in non-contractual liability has autonomy in relation to the action in cancellation or the action in default, because they have a different object. The action in non-contractual liability has autonomy, in fact, compared to all other actions before the Court.

B. The action in contractual responsibility of the European Union under a compromise clause (art. 272 TFEU). The Court of Justice is competent to settle a dispute arising in connection with a contract, if it appears in this contract, a compromise clause.

The compromise clause is the one that states that, in the event of a dispute, the Court of Justice is competent to resolve it. The compromise clause is concluded between the contracting parties.

In this sense, art. 272 paragraph (1) TFEU provides: "The EU Court of Justice shall have jurisdiction to give judgment pursuant to a compromise clause

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[1] It is a wording closer to German law than to French law.

[2] The guilty act may concern: non-performance of obligations by the Community; misinformation; the abuse of power manifestly and gravely going to arbitrary, the illegal termination of the contracts of employment of the staff of the Communities and the insufficient protection of its members; violation of a higher norm of law; see J.C. Gautron, *op. cit*., p. 172.

[3] Where the damage results from a regulation adopted by the Council on a proposal from the Commission, the action may be brought against the two institutions; see M. Voicu, *op. cit*., p. 143.

[4] See O. Manolache, *op.cit*., p. 732.

contained in a contract of public or private law concluded by or on behalf of the Union".

The Court of Justice is competent to rule on any dispute between the Member States in relation to the subject matter of the Treaties, if it is notified of that dispute on the basis of a compromise [art. 273 paragraph (2) TFEU].

The conditions under which the Court is competent under a compromise are:

- the compromise always intervenes between the parties to the dispute, respectively the parties in dispute;
- the parties to the dispute are the Member States;
- the dispute is related to the object of the Union treaties.

6.6.8. Appeal of the Court of Justice against the decisions of the General Court

✓**The Court of Justice is the court of appeal, according to art. 256 par. 1 TFEU**. The decisions given by the General Court in the first instance, in the cases considered by art. 263 (action for annulment), art. 265 (action in default), art. 268 and art. 340 (action in non-contractual liability), art. 270 (disputes between the Union and its agents) and art. 272 (action based on a compromise clause) TFEU, as well as in other categories of actions that are provided for in the Statute of the Court of Justice, may be appealed to the Court of Justice limited to questions of law, under the conditions and limits provided by the the statute of the CJEU. The reason for the appeal is limited to the questions of law[1], so the Court cannot rule on the factual issues. In some cases, however, it is difficult to do so. distinction between legal and factual issues, so that certain events produced (and considered as factual issues) can no longer be discussed or questioned again before the Court of Justice[2].

✓ **The Court of Justice is the court of appeal according to art. 58-61 Statute of the CJEU**. According to art. 56 Statute of the CJEU, the decisions of the General Court may be appealed against:

- through which the trial is finalized;
- by which the substance of a dispute is partially resolved,
- ending a procedural incident regarding an exception of incompetence or inadmissibility (art. 56 Statute of the CJEU). The decision may be appealed within two months of its notification.

✓ **Parties that can appeal to the CJEU.** Usually, the appeal can be filed by any party whose conclusions have been rejected, in whole or in part.

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[1] C.174/97 P, *Féderation Française des Sociétés d'Assurances (FFSA) and others v. Commission*, decision of March 25, 1988, recital 21 in ECR, 1988 3 (2), 1324.

[2] C 53/92 P, *Hilte AG v. Commission*, decision of March 2, 1994, recital 10 in ECR, 1994-3, pp. 667-710.

From this rule the statute provides for two exceptions, namely:

- natural or legal persons can appeal only if the decision of the General Court directly concerns them (Member States and Union institutions do not fall under this provision);

- with the exception of disputes between the Union and its agents, the appeal may also be brought by the Member States and the institutions of the Union which have not intervened in the dispute before the General Court. In this situation, the Member States and the institutions are in a position identical to that of the Member States or the institutions that intervene in the first instance [art. 56 paragraph (2) and (3) Statute of the CJEU].

Also, any person whose request for intervention has been rejected by the General Court may appeal to the CJEU within two weeks of the notification of the rejection request.

The parties to the proceedings may bring before the Court an appeal against the decisions of the General Court - within two months of notification of these decisions - rendered on the basis of the following provisions[1]:

- art. 278 TFEU, according to which the Court, in so far as it considers that the circumstances impose it, may order the execution of the act to be suspended;

- art. 279 TFEU, pursuant to which, in the cases before it, the Court may order the necessary interim measures;

- art. 299 TFEU, pursuant to which the Court may decide to suspend forced execution.

✓ **Grounds for appeal.** The appeal to the Court of Justice is limited to questions of law. Statute of the Court of Justice - in art. 58 - provides the following reasons on which the appeal may be based:

- lack of competence of the General Court;

- failure to comply with the procedure before the court, which harms the applicant's interests;

- violation of Union law by the General Court.

The appeal cannot exclusively concern the taxes and the costs.

If the appeal is well founded, the CJEU shall annul the decision of the General Court. In this case, the Court may either definitively resolve the dispute itself, when it is in a court of law, or refer the case to the General Court to rule on it.

In case of referral, the General Court is bound by the legal issues resolved by the Court's decision. Also, if an appeal brought by a Member State or an institution which has not intervened in the dispute before the court is well founded, the Court may indicate, if deemed necessary, those effects of the annulled deci-

[1] Even based on the provisions of art. 157 and art. 164 TEuratom.

sion of the General Court to be considered as definitive for the parties to the dispute (art. 61 Statute of the CJEU)[1].

6.6.9. Review by the Court of Justice of decisions taken by the General Court on the basis of the TFEU and the Statute of the Court of Justice of the EU

The EU Court of Justice has jurisdiction to review the following decisions:

- the decisions given by the General Court following the judgment of the actions taken against the decisions of the specialized courts, may, exceptionally, be the subject of a review by the Court of Justice of the EU, under the conditions and limits provided by the statute, in case there is a serious risk for the unity or coherence of Union law (art. 256 paragraph 2 TFEU);

- the decisions given by the General Court in the preliminary references may, exceptionally, be the subject of a review by the EU Court of Justice, under the conditions and limits provided for by the statute, if there is a serious risk to the unity or coherence of Union law (art. 256 paragraph 3 TFEU).

In the two situations provided by art. 256 paragraph 2 and 3 TFEU, the first Advocate General may, if he considers that there is a serious risk to the unity or coherence of Union law, to propose to the Court of Justice a review of the decision of the General Court (art. 62 Statute of the CJEU).

The proposal must be made within one month of the decision of the General Court. Within one month of the submission of the proposal by the first Advocate General, the Court shall decide whether or not to review the decision.

The Court of Justice shall decide on the matters which are subject to review by an urgent procedure on the basis of the file transmitted to it by the General Court.

6.6.10. Preliminary reference to the Court of Justice[2]

The originality of the legal system of the European Union is given by the mechanism of the preliminary reference, an expression of the cooperation between the national judge and the EU Court of Justice.

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[1] For the hypothesis in which "the Court itself proceeds to trial", see CJEC 298/93 P. *Ulrich Klinche*, of June 29, 1994, in ECR, 1994 6, 3009-3036; for the second hypothesis in which "it sends the case to the Court ...", see CJEC 2599/96 P, *Lieve de Nil Council and Christiane Impens*, rec. 35-36, pp. 2456; C. 359/95 (related), *Commission and France C Ladbroke Racering Ltd*, in ECR, 1994, 6, 3009-30036.

[2] See B. Ştefănescu, *op. cit. (Trimiterea prejudiciară...)*, pp. 82-96; I. N. Militaru, *op. cit., (2005)*, p. 5 et seq.; C. Toader, *Despre aplicarea dreptului comunitar de către instanţele naţionale*, „Revista de drept comercial" no. 1/2002, p. 21-30; J. Pertek, *op. cit*., p. 4 et seq.; G. Vandersanden, *La procédure préejudicielle: à la recherche d'une identité perdue*, in Mélanges en hommage a Michel Waelbroek, Bruylant, vol. 1, 1999.

✓ In this respect, according to art. 19 TEU, "The EU Court of Justice decides in accordance with the treaties, as a preliminary matter", at the request of the national courts, on the interpretation of Union law or on the validity of acts adopted by the institutions.

The competence of the CJEU in this matter is underlined by art. 267 TFEU, thus, "The EU Court of Justice has jurisdiction to give a preliminary ruling on:

a. interpretation of the treaties;

b. validity and interpretation of acts adopted by the institutions, bodies, offices and agencies of the Union;

If such a matter is invoked before a court of a Member State, that court may, if it considers that a decision in this regard is necessary for it to issue a judgment, request the Court to rule with it on this matter.

If such a matter is invoked in a case pending before a national court whose decisions are not subject to any appeal in national law, this court is bound to refer the matter to the Court of Justice"[1].

The Treaty of Lisbon introduces a new provision concerning the power to give preliminary ruling, namely, "if such a matter is invoked in a case pending before a national court regarding a person subject to a patent measure freedom, the Court decides as soon as possible".

✓ It has competence to judge preliminary references, based on art. 267 TFEU, and the General Court, in specific fields established by the Statute[2].

If it considers that the case in question requires a decision of principle likely to undermine the unity or coherence of Union law, the General Court may refer the case for settlement to the Court of Justice. As I have shown the decisions of the General Court in preliminary rulings may, exceptionally, be the subject of a review by the Court of Justice, under the conditions and within the limits provided by the statute, if there is a serious risk to the unity or coherence of Union law.

✓ The purpose of the preliminary reference is to interpret the Union law (in principle the primary law and the derived law) or to examine the validity of the acts adopted by the institutions.

The Court of Justice has the power to interpret the Treaties, respectively the primary law (prior to the Lisbon Treaty, the Institutional Treaties of the Communities, the treaties for their revision, as well as the annexes and protocols adopted on this occasion[3]).

The Court has the power to interpret and examine the validity of "acts adopted by the institutions of the Union", respectively the derivative law. In this

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[1] Art. 150 TEuratom has a wording similar to art. 267 TFEU.

[2] The power to judge preliminary references was assigned to the Court of First Instance by the Treaty of Nice in art. 225 paragraph 1 TEC.

[3] CJEC, April 17, 1997, *Euronopoulos*, aff. 147/95, Rec. p.1-2057.

respect, the Court considers the interpretation and examination of validity for all categories of acts provided for in article 288 TFEU, including those for which they do not have the name provided for in the said article, namely "a resolution" of the Council[1].

The Court is competent to interpret "the statutes of the bodies created by an act of the Council", because they are also acts of an institution, of the Council (art. 267 TFEU), and "unless there are contrary provisions in that statute" (art. 150 TEuratom).

From the jurisprudence prior to the Lisbon Treaty, the Court has the power to interpret:

- the international agreements concluded by the Council, in application of art. 218 TFEU (formerly article 300 TEC) as well as the association agreements concluded under art. 217 TFEU (ex art. 310 TEC)[2];

- the decisions adopted by the bodies created by such association agreements[3], including joint agreements concluded by the Community/Union and the Member States with third parties[4].

In principle, the Court is not competent to interpret or examine the validity of conventions concluded between Member States, pursuant to art. 267 TFEU (because they are neither acts of the institutions nor can they be included in the law of the Union having a regulatory object that goes beyond the field of Community integration)[5], but the Member States, in many cases, by express provisions inserted in these conventions or in subsequent protocols annexed they gave the jurisdiction of the Court of Justice also the interpretation of these interstate instruments. We exemplify in this regard:

- Brussels Convention of 29 February 1968 on the mutual recognition of companies and legal entities, accompanied by a protocol on its interpretation;

- Brussels Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters, the interpretation of which is given in the Court's jurisdiction, in accordance with the Luxembourg Protocol of 3 June 1971;

- The Rome Convention of 19 June 1980 on the law applicable to contractual obligations, in accordance with two protocols concluded on 19 December 1988[6].

The aforementioned conventions are sent to the Court for interpretation, by the courts whose decisions are compulsory, not susceptible of domestic judicial appeal, courts obliged to notify the Court of Justice, by derogation from the

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[1] CJEC, February 3, 1976, *Manghera*, aff. 59/75, Rec. p. 91

[2] CJEC, April 30, 1974, *Haegeman*, aff. 181/73, Rec. p. 449, CJEC, September 30, 1987, *Demirel*, aff. 12/86, Rec., p. 3719.

[3] CJEC, September 20, 1990, *Sevince*, aff. 192/89, Rec. I-3461.

[4] CJEC, June 16, 1998, *Hérmes*, aff. 35/96, Rec. I-3603 regarding the TRIPS agreement adopted by the WTO.

[5] See B. Ştefănescu, *op. cit. (Trimiterea prejudiciară...),* pp. 82-96.

[6] Published in O.J. of E.C. 1989, L. 48, p. 17.

provisions of art. 267 TFEU (for example, articles 2 and 3 of the Luxembourg Protocol of 3 June 1971).

The treaties of the Union are excluded from the competence of examining the validity of the Court of Justice.

✓ Only the national court - called the national jurisdiction by the treaties prior to the Lisbon Treaty - is the author of the pre-eminence referral.

The notion of national jurisdiction/national court was defined by the Court of Justice according to community criteria[1]: the legal origin and permanence of the jurisdiction body, its compulsory jurisdiction and the contradictory nature of the procedure for the disputes to be resolved, the way of appointing its members and its mission of applying the rules of law[2]. Also, the jurisdiction empowered to refer the EU Court of Justice must be the one who is called upon to settle the dispute on the merits[3]. In this sense, the national jurisdiction can be administrative, civil, criminal.

Only the national judge has the power to invoke and to refer the matter to the Court of Justice for a preliminary question, insofar as he considers that the reference is necessary to give his ruling. The parties to the dispute (substantive) can only raise the preliminary question before the Court, possibly to propose it to the national judge. The formulation of the preliminary question and its submission comes within the competence of the national court, which judges the merits of the case.

Article 267 TFEU distinguishes between the courts that make the reference for a preliminary ruling to the Court, as they decide, in the first or last instance.

The first, the courts whose decisions are susceptible to appeal, have the power to refer the matter to the Court, "if it considers that a decision in this regard is necessary for it to render a judgment" [art. 267 (2) TFEU].

The second category of courts are those whose decisions are not subject to any domestic legal remedy. They are required to refer the matter to the Court of Justice.

The incidental nature of the preliminary reference procedure. The preliminary procedure is an incident to the procedure that takes place before the national court[4].

The initiative to refer the matter to the Court belongs to the national court. The procedure begins with a suspension of the national procedure, followed by a referral of a preliminary matter to the Court, whose object is either the interpretation (...) or the validity examination (...).

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[1] CJEC, June 30, 1966, Vaassen-Gobbles, aff. 61/65, Rec. 377.

[2] See M. Voicu, *op. cit.*, p. 156; I. N. Militaru, *op. cit. (Trimiterea prejudiciară...),* p. 150 et seq.

[3] CJEC, May 17, 1994, *Corsica Ferries Italy*, aff. C-18/93, Rec. I-1783.

[4] See I. N. Militaru, *op. cit. (Trimiterea prejudiciară...),* p. 205: "It is not a contentious procedure to resolve a dispute between the parties, (...), it is a procedure without parties".

The procedure for sending the question in question will be finalized - as a result of the Court's response, given in the form of a judgment[1] - by resuming the national procedure and by resolving the dispute before the national judge, according to the interpretation given by the EU Court of Justice[2].

✓ The Lisbon Treaty and the competences of the Court of Justice within the former pillars of the European Union

- The Court of Justice of the European Union does not have jurisdiction over the provisions on the common foreign and security policy - CFSP, nor on the acts adopted under them. However,

The court is competent to control compliance with the provisions of art. 40 TEU[3] and to decide on the actions taken under the conditions provided for in article 263 par. 4 TFEU (within the actions for annulment), regarding the control of the legality of the decisions which provide for restrictive measures against the natural or legal persons adopted by the Council under Title V, Chapter 2 TEU.

In Part III, Title V, Chapters 4 and 5, regarding the area of freedom, security and justice, the EU Court of Justice is not competent to verify the legality or proportionality of the operations carried out by the police or other enforcement services. the law in a Member State and neither to decide on the exercise of the responsibilities incumbent upon the Member States in order to maintain public order and to defend internal security.

The Treaty of Lisbon brings an increase in the competence regarding the control of the legality of acts and has effects on its territory, thus "the Court of Justice is competent to rule on the legality of an act adopted by the European Council or the Council pursuant to art. 7 TEU only at the request of a Member State which is the subject of a finding of the European Council or of the Council and only in respect of the procedural provisions provided for in that article. This request must be submitted within one month from the date of the respective finding. The court shall decide within one month from the date of the request" (art. 269 TFEU).

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[1] See D. Simon, *L'effet dans le temps des arrêts préjudicielles de la CJCE*, in *Du droit de 1'intégration, Liber amicorum Pierre Pescatore*, Ed. Baden-Baden, Nomos Verlag, 1987.

[2] See A. Barav, *Some aspects of the preliminary rulings procedure in EEC law*, Eur. L. Rev., 1977, p. 3.

[3] The implementation of the common foreign and security policy is without prejudice to the application of the procedures and the corresponding scope of the attributions of the institutions provided for in the treaties in order to exercise the Union's powers provided for in art. 2-6 TEU. Also, the implementation of the policies provided for in those articles shall be without prejudice to the application of the procedures and the scope applicable to the attributions of the institutions provided for in the Treaties in order to exercise the Union's powers under this Chapter (article 40 TEU).

6.7. General Court

6.7.1. Regulation. Necessity of establishing the General Court/Court of First Instance[1]

The legal basis of the General Court is included in the following provisions:

- art. 254-257 TFEU;
- art. 40 TEuratom;
- TITLE IV of the Protocol no. 3, annexed to the Treaties, on the Statute of the Court of Justice of the European Union.

The Court of First Instance (CFI)[2] represents the first step towards diversifying the structure of the Community/Union jurisdiction, by redistributing some competences previously held by the Court of Justice for the benefit of other Community jurisdictions, provided, of course, of protecting the supreme control of the Court[3].

Art. 168A CEE and 32 *quinto* CECO introduced by the the Single European Act (SEA) have fully fulfilled the conditions for diversifying the Cornish jurisdiction. These articles empowered the Council, acting unanimously on the Court's request and, after consulting the Commission and the European Parliament, to establish before the Court of Justice a jurisdiction to examine at first instance certain categories of litigation subject to an appeal before the CJEC, limited to the questions of right, under conditions set by the statute.

The CFI was created by the decision of the Council of October 24, 1988[4], provided that the volume of activity of the Court became incompatible with the requirements of a good administration of justice[5]. However, the establishment of the CFI did not stop the agglomeration of cases with which the Court was confronted[6].

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[1] During the work we used the name of Court of First Instance whenever we referred to the period prior to the Treaty of Lisbon.

[2] See I.N. Militaru, *Tribunalul de Primă Instanță*, „Revista de Drept Comunitar" no. 2/2003, pp. 90-103.

[3] See G. Isaac, Mark Blanquet, *op. cit*., p. 256.

[4] O.J. of E.C. no. L319/1 of November 25, 1988.

[5] From 1957 to 1987 the number of cases brought before the Court of Justice increased from 130 to 395, and the cases pending on December 31 of each year increased from 318 to 527, and the time required for settlement was on average from 9 to 22 months for direct actions, and for preliminary actions from 6 months to 18 months.

[6] The Treaty of Maastricht replaced, by a new wording, art. 168A TEC, as in art. 32quinto (TECSC) and 140A (TEuratom). In the year 2000, despite the transfers of actions to the CFI, the number of cases brought before the Court amounted to 508, the number of cases pending on December 31, 2000 to 873, and the average duration of the cases has increased to 21, 5 months for the preliminary actions and at 24 months for direct actions. We add that, in turn, the CFI has been notified with 387 cases and accumulates on December 31, 2000 a number of 786 pending cases. The average duration

Without a doubt, the solutions have not only consisted in the multiplication of community jurisdictions[1], but it is here that the Treaty of Nice finds its originality.

The agglomeration of cases, characteristic not only of the Court but also of the General Court, determined the authors of the Treaty of Nice to provide for the possibility of creating judicial chambers for first instance analysis of special litigation (art. 225bis TEC).

A declaration annexed to the treaty stipulates from the outset that one of these judicial chambers is competent to settle disputes between the Community and its officials in the first instance; also, the possible actions in the field of intellectual property, certainly, according to some authors, is another area particularly conducive to the creation of these new structures[2].

Through the Treaty of Nice, the CFI acquires a more important position in the Community judicial system, being in the future associated[3] with the Court in the essential mission of "ensuring respect for the law in the interpretation and application of the Treaty"[4], thus ceasing to be an auxiliary of the Court. Articles 224 and 225 TEC are applicable to them, except for the exception provided by the Statute of the Court[5].

By the Treaty of Lisbon, the Court of First Instance will hereinafter be referred to as the General Court.

6.7.2. Composition, organization and functioning of the General Court

✓ The General Court[6] comprises at least one judge from each Member State (art. 19, paragraph 2 TEU) and art. 254 TFEU provides that the number of judges is established in the Statute of the Court of Justice of the European Union. Article 48 of Protocol no. 3 to this statute, as last amended by Council Regulation (EU, Euratom) 2016/1192 of 6 July 2016, provides that, the General Court is composed of 47 judges from 1 September 2016 and from two judges for each

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of the procedure (in the case of the CFI) increased from 23.4 months in 1993 to 27.5 months in 2000. For the excessive duration of one of the processes (5 years and 6 months), the CFI was even criticized by some Court, holding it responsible for violating the "reasonable time principle" (principle arising from Article 6 of the European Convention on Human Rights; see, to that effect, CJEC December 17, 1988, *Baustahlgewebe v. Commission*, aff. C -185/95 P, Rec.I-8485; G. Isaac, M. Blanquet, *op. cit*., p. 258).

[1] CJEC, *L'avenir du système jurisdictionnel de l'Union européenne*, summary document presented to the Council of the European Union on May 27, 1999, in G. Isaac, M. Blanquet, *op. cit*., p. 258.

[2] See G. Isaac, M. Blanquet, *op. cit*., p. 259.

[3] By amending art. 220 TEC, through the Treaty of Nice, both the Court of Justice and the CFI assure each, within its competence, that, in the interpretation and application of the Treaty, the right is respected.

[4] Art. 220 TEC, according to the Treaty of Nice.

[5] See G. Isaac, M. Blanquet, *op. cit.*, p. 275.

[6] Article 48 of the Statute of the CJEU.

Member State starting with September 1, 2019.

The members of the General Court, the judges and the general counsel are chosen from the persons who present all the guarantees of independence and who have the required capacity for the exercise of high judicial functions (conditions stipulated in art. 254 TFEU).

Also, the members of the General Court are chosen from the personalities that fulfill the conditions required for the exercise, in their countries, of the highest jurisdictional functions or who are jurisconsulates whose competences are recognized (art. 253 par. 2 TFEU).

Like the members of the CJEU, the members of the General Court are jointly appointed by the governments of the Member States for a period of six years, after consulting the committee (provided for in art. 255 TFEU). Every three years a partial replacement takes place.

Members who have completed their term of office may be reappointed.

The number of judges of the General Court is established by the Statute of the CJEU. The Statute may provide for the General Court to be assisted by Advocates General (art. 254 TFEU).

Judges may be required to act as Advocate General because, unlike the Court of Justice, the General Court does not have permanent attorneys' general.

The Advocate General has the role to present, in a public hearing, with full impartiality and complete independence, the reasoned conclusions regarding certain cases submitted to the General Court, to assist him in the fulfillment of his mission.

The criteria for the selection of cases, as well as the methods of appointing the Advocates General, were established by the Rules of Procedure of the General Court. A member of the General Court called to exercise the office of Advocate General in a case may not take part in the trial of that case.

✓ The judges shall appoint the President of the General Court from among them for a period of three years. His term of office may be renewed.

The judges, attorneys' general and the clerk reside at the headquarters of the Court of Justice.

Its functional independence - of the General Court - is guaranteed by the existence of a separate Registry, under the leadership of which the General Court appoints the Registrar, to whom it establishes its status.

The President of the Court of Justice and the President of the General Court jointly determine the ways in which officials and other agents attached to the Court provide their services to the Court to ensure its functioning (library, research, translation, interpretation).

✓ The General Court establishes its rules of procedure in agreement with the Court of Justice. This regulation is submitted for approval to the Council, which decides.

✓ The General Court meets in chambers composed of three or five

judges. The judges choose the presidents of the chambers.

The presidents of the chambers of five judges are elected for three years. Their term of office may be renewed once.

The Rules of Procedure establish the composition of the chambers and the distribution of cases to them.

When the Rules of Procedure establish, the General Court may meet in plenary or with a single judge[1].

The General Court may also meet in the Grand Chamber, in the cases and conditions provided by the regulation[2].

The Treaty of Nice brings the organization of the General Court closer to that of the Courtof Justice, especially through the new art. 224 TEC, which admits that the statute provides for the assistance of the CFI by the general counsel and by the conditions of appointment of judges, appointment that refers to the qualification required for the exercise of the high jurisdictional functions[3]. These aspects are also maintained by the Lisbon Treaty art. 19 paragraph 2 TEU and art. 254 TFEU).

The specificity and extension of the General Court's missions lead to a specific solution regarding you the number of its judges, in support of these conclusions the provisions of art. 19 paragraph 2 TFEU, which provides that "the General Court shall comprise at least one judge from each Member State".

It follows that the number of CFI judges in each Member State may be higher than that of the judges of the Court of Justice.

✓ Unless the Statute of the CJEU provides otherwise, the provisions of the TFEU concerning the Court of Justice shall also apply to the General Court.

6.7.3. Jurisdiction of the General Court

✓ In the Preamble of the decision no. 88/24 October 1988, establishing the CFI, in the last paragraph the material competence of the General Court is specified as a power of attribution[4].

According to this decision, the Council, acting unanimously on the request of the Court of Justice and after. after consulting the European Parliament and the Commission, it established the categories of actions at first instance which fall within the jurisdiction of the General Court:

1. Art. 168A, in the version of the SEA, authorized the transfer to the CFI of all the actions formulated by the natural or legal persons. But, by its decision

[1] Article 50 paragraph (2) of the Rules of Procedure (as amended by the Rules of Procedure of 17 May 1999). See R. Munoz, *Le système de juge unique pour le reglèment d'un problème multiple, l'encombrement de la CJCE et du TPI*, R.M.C. no. 444/2001, p. 60.

[2] Article 50 par. 2 of the Rules of Procedure.

[3] See G. Isaac, M. Blanquet, *op. cit*., p. 276.

[4] See O. Manolache, *op. cit.*, p. 139.

of October 24, 1988[1], the Council decided only the transfer of actions that take a long time to resolve[2] and for which complex facts are frequently required to be examined. These actions are as follows:

 With the main title, the Court can resolve:

- disputes between the Communities and their agents[3] and art. 152 TEuratom - referred to as personnel cases, including action for liability;

- the actions for annulment brought against a Community institution by the natural or legal persons[4] and the deficiency action[5] regarding the implementation of the competition rules applicable to the companies.

 By way of accessory and for obvious reasons of simplification, the General Court may also prosecute the actions for liability[6], which seek to repair the damages caused by a community institution by an action or inaction which are the subject of an action for annulment or default introduced by the same applicant (see the main competence of the General Court).

2. By another decision, from June 8, 1993[7], the Council transferred[8] to the jurisdiction of the General Court - which is equivalent to an extension of its competence - the actions for annulment[9], deficiency[10] and liability[11] introduced by natural or legal persons based on the provisions of the three treaties, including on the basis of a compromise clause[12].

3. Based on art. 168A, in the version of the TEU, which has become 225 TEC, the transfer may be extended in the future to all other direct actions, that is to those introduced by the Member States and institutions, because the Treaty only reserves the Court only for preliminary references.

Regarding this aspect, the Treaty of Amsterdam does not make any changes.

The Treaty of Nice not only makes CFI a genuine community law judge at first instance for all direct actions, but extends its competence "to examine preliminary issues in specific matters determined by statute" (according to art.

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[1] OJEC no. L 319/1 of November 25, 1988.
[2] See G. Isaac, M. Blanquet, *op. cit*., p. 276.
[3] According to art. 236 TEC, at present art. 270 TFEU, ie the dispute between the Union and its agents.
[4] According to art 230 TEC, at present art. 263 TFEU.
[5] According to art. 232 TEC, at present art. 265 TFEU.
[6] According to art. 235 and art. 288 TEC, at present art. 268 and art. 340 TFEU.
[7] O.J. of E.C. no. L 144/21 of June 16, 1993; Decision no. 93/350 of June 8, 1993.
[8] This transfer was to take effect from 1 August 1993, with the exception of actions against Community trade defense measures (art. 74 TECSC, art. 113 TEC) for which on 15 March 1994 the Council was unanimously retained. This date was fixed by Decision no. 94/149 of March 7, 1994, which amended Decision no. 93/350.
[9] Art 230 TEC, at present art. 263 TEUE.
[10] Art. 232 TEC, at present art. 265 TFEU.
[11] Art. 235 and art. 288 TEC, at present art. 268 and art. 340 TFEU.
[12] Art. 238 TEC, at present art. 272 TFEU.

234 TEC[1] in conjunction with Article 225 TEC[2]).

It can be added that, according to art. 225A paragraph (3) TEC, the decisions of the judicial chambers may be subject to a limited appeal to legal issues or, when the decision to set up the chamber so provides, a right of appeal also to the questions of fact, to the Court of First Instance (CFI).

✓ The new competences of the CFI, according to the Treaty of Nice, also concern the decisions of the Court of First Instance pronounced on the preliminary issues. They may be subject, under the conditions provided for in the statute, to an exceptional review by the Court, "in the event of a serious risk of affecting the unity or coherence of Community law" (art. 225 paragraph 3 TEC).

The appeal will be limited to legal matters only. As a result, only unlawful reasons may be invoked: incompetence of the CFI, failure to comply with the procedure in front of it, prejudicing the appellant's interests and violation of Community law by the CFI. Also, the CFI is a court of appeal regarding the decisions of the judicial chambers (art. 225A TEC).

✓ According to the Treaty of Lisbon, the extended competences of the General Court, as regulated by the Treaty of Nice, are maintained, with the corresponding changes in the judicial structure of the Union.

The General Court has the power to judge in the first instance the actions for annulment (art. 263 TFEU), in default (art. 265 TFEU), in the repair of damages (art. 268 and art. 340 TFEU) those born under a compromise clause (art. 272 TFEU) and disputes between the Union and its agents (art. 270 TFEU), except those assigned to a specialized court, established in accordance with art. 257 TFEU, and those reserved by the Statute of the Court of Justice.

Article 1 of Annex 1 of the Statute of the CJEU assigns to a specialized court, respectively to the Civil Service Tribunal, for settlement in the first instance:

- disputes between the Union and its officials (according to art. 270 TFEU);
- disputes between any organs, offices or agencies and their officials.

According to art. 51 paragraph (1) of the Statute of the CJEU, the actions for annulment (art. 263 TFEU) and in default (art. 265 TFEU) are reserved to the EU Court of Justice when they are brought by a Member State against:

a) an act or an abstention from the decision of the EP or the Council or the two institutions together, except:

- the decisions adopted by the Council according to art. 108 paragraph (2) TFEU;
- the acts of the Council adopted pursuant to a Council regulation on trade defense measures within the meaning of art. 207 TFEU;
- the acts of the Council by which it exercises its powers of execution in

[1] Currently art. 267 TFEU.
[2] Currently art. 256 TFEU.

accordance with art. 291 paragraph (2) TFEU.

b) an act or an abstention to decide on the Commission pursuant to art. 331 paragraph (1) TFEU.

Also, the CJEU is reserved for the same actions mentioned above when they are brought by an institution of the Union against an act or an abstention from the decision of the EP or the Council, the two institutions together or the Commission, or are introduced by an institution of the Union against an act or an abstention from deciding the European Central Bank [art. 51 paragraph (2) of the Statute of the CJEU].

Therefore, the General Court is competent to judge, in the first instance, in the category of actions for annulment and in default, those introduced by the natural and legal persons (the category of privileged complainants).

6.8. The specialized courts

✓ **Establishment of specialized courts.**

The specialized courts are set up by the European Parliament and the Council, which decide in accordance with the ordinary legislative procedure. The European Parliament and the Council shall act by regulations, either on a proposal from the Commission and after consulting the Court of Justice, or at the request of the Court of Justice and after consulting the Commission.

The specialized courts operate in addition to the General Court.

✓ **Composition and competence of specialized courts.**

The rules regarding the composition of this court and the extent of the powers assigned to it are established by the regulation establishing the specialized court.

The members of the specialized court are chosen from persons who offer full guarantees of independence and who have the required capacity for exercising judicial functions. They are appointed by the Council, which decides unanimously.

The specialized courts are competent to judge in the first instance certain categories of actions in special matters (art. 257 TFEU).

The decisions of the specialized courts may be subject to an appeal to the General Court, limited to questions of law or, if the regulation on the establishment of the specialized court so provides, and to matters of fact.

The specialized courts shall establish their rules of procedure in agreement with the Court of Justice. This regulation is approved by the Council. The provisions of the treaties relating to the Court of Justice of the EU and the provisions of the Statute of the CJEU also apply to specialized courts, unless the regulation establishing it provides otherwise.

Also, the provisions of the Treaties on the Court of Justice of the EU and the General Court, regarding the status of judges and advocates general, including

the language regime of the CJEU, also apply to specialized courts (Title I and art. 66 CJEU Statute). A specialized court is the Civil Service Tribunal of the European Union.

✓ The Treaty of Nice envisaged the establishment of independent and specialized judicial chambers in some technical disputes[1].

This line of concern includes the Declaration annexed to the Treaty of Nice regarding the request made by the Conference of the representatives of the governments of the Member States, the Court of Justice or the Commission, to prepare as soon as possible a draft decision for the creation of a competent judicial chamber to resolve in the first instance disputes between the Community and its officials[2].

The decisions of these judicial chambers could be the subject of an appeal limited to the problems of law or, when the decision to establish the chamber so provides, of an appeal concerning the factual issues, to the Court of First Instance [art. 225A paragraph (3) TCE].

6.8.1. Civil Service Tribunal of the European Union (CSTEU)

Following the Declaration - annex to the Treaty of Nice regarding the article that considered the judicial chambers (art. 225A TEC), the Council Decision no. 2004/752CE of November 2, 2004, which regulates the establishment of the Civil Service Tribunal, renouncing the name of court room. It was designed to be organized by the Court of First Instance, now by the General Court.

The Civil Service Tribunal is regulated by the Annex to the Statute of the Court of Justice of the European Union.

✓ Composition of the EU Civil Service Tribunal.

The Tribunal is made up of seven judges whose number can be increased by the Council (which decides by qualified majority) at the request of the Court of Justice. The term of office of the judges is six years with the possibility of being renewed.

Any vacancy is filled by the appointment of a new judge for a period of six years.

The members of the EU Civil Service Tribunal are chosen from the per-

[1] Thus, "The Council, acting unanimously, on the basis of a Commission proposal and after consulting the Parliament and the Court of Justice or on the basis of a request from the Court and after consulting the Parliament and the Commission, may establish judicial chambers responsible for resolving at first instance certain categories of actions introduced in specific fields" (art. 225A TEC).

[2] In the legal literature it has been shown that litigation in the field of intellectual property could be transferred from the ICC within the jurisdiction of a judicial chamber, for example actions relating to Community trade marks, or to be assigned litigation regarding the Community patent. See O. Manolache, *op. cit*., p. 151.

sons who offer full guarantees of independence and who have the requisite capacity for the exercise of judicial functions, after consulting a committee set up under art. 3 paragraph 3 of Annex to the Statute of the CJEU, according to art. 257 paragraph 4 TFEU.

After the above conditions are met, the judges are appointed by the Council.

When appointing judges, the Council ensures the most balanced composition of the EU Civil Service Tribunal on the widest possible geographical criterion between the nationals of the Member States and with regard to the national legal systems represented (Article 3, paragraph 1, Statute of the CJEU).

Any person who is a citizen of the European Union who fulfills the conditions stipulated in art. 257 paragraph 4 TFEU. The Council, acting on the recommendation of the CJEU, determines the conditions and modalities for the submission and processing of these applications (Article 3 paragraph 2 Annex to the Statute of the CJEU).

The committee consulted by the Council for the appointment of the judges of the EU Civil Service Tribunal consists of seven persons selected from among the former members of the Court of Justice and of the General Court and from jurists recognized for their competence. The appointment of the members of the committee and the operating rules are determined by the Council, acting on the recommendation of the President of the CJEU (art. 3 paragraph 3, Annex to the Statute of the CJEU).

The Committee shall give its opinion on the suitability of the candidates to act as judge of the EU Civil Service Tribunal[1].

The judges elect the president of the Civil Service Tribunal for a term of three years. The president can be re-elected.

✓ **Operation of the the EU Civil Service Tribunal (EUCST).** The EUCST judges in chambers of three judges. Its Rules of Procedure provide in certain cases to adjudicate cases in plenary, in a chamber composed of five judges or a single judge.

The Civil Service Tribunal is supported by the services of the Court of Justice and the General Court.

The President of the Court of Justice or, as the case may be, the President of the General Court, shall agree with the President of the EUCST, the conditions under which officials and other servants of the Court of Justice or the General Court contribute to the functioning of the Civil Service Tribunal. Certain officials or other officers are subordinate to the EUCST Registrar, under the authority of its President.

The EUCST appoints the Registrar and establishes its status.

[1] The Committee attaches to its opinion a list of candidates with the most appropriate high level experience. Such a list contains the names of at least twice as many candidates as the number of judges to be appointed by the Council (Article 3, paragraph 4, Statute of the CJEU).

The judges, the Advocates General and the EUCST Registrar reside at the headquarters of the Court of Justice.

✓ **EUCST competence**. The EU Civil Service Tribunal exercises in the first instance:

- disputes between the Union and its officials pursuant to art. 270 TFEU and art. 152 TEuratom, including in:

- disputes between any bodies, offices or agencies and their officials, on which the Court of Justice was competent until the establishment of the Civil Service Tribunal.

Decisions given by the Civil Service Tribunal in the exercise of its jurisdictional powers may be appealed against before the General Court, being limited to questions of law.

According to art. 11 paragraph (1) of the Statute of the CJEU-Annex, the appeal may be founded on the following grounds:

- lack of competence of the Civil Service Tribunal;

- infringement of the procedure before the Court of First Instance which prejudices the interests of the party concerned;

- infringement of Union law by the Civil Service Tribunal.

When the appeal is well founded, the General Court annuls the decision of the EUCST and decides on the dispute itself. It sends the case to the EUCST for re-examination in case the dispute is not in court.

When the case is referred to the EUCST for re-examination, it is held by the disassociation given to the legal issues by the decision of the General Court (art. 13 paragraph 2 Annex to the Statute of the CJEU).

As we have shown, the Civil Service Tribunal of the European Union was created in 2004, with the mission of judging disputes between EU institutions and their staff when they did not fall within the competence of a national court.

In order to increase the total number of judges of the Court of Justice, the Civil Service Tribunal was dissolved on 1 September 2016 and integrated into the General Court, by Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer to the General Court of jurisdiction to decide at first instance in disputes between the European Union and its agents[1] (thus the Council Decision 2004/752/EC, Euratom establishing the Civil Service Tribunal of the European Union was repealed).

The cases pending before the Civil Service Tribunal on August 31, 2016 were transferred to the General Court, with effect from September 1, 2016. The General Court must continue to judge these cases from the stage they are in, and the procedural steps performed by the former Civil Service Tribunal remain in force (they are applicable), which is why the section on the Civil Service Tribunal remains in this paper.

If a case has been transferred to the General Court after the hearing, the

[1] See U. Bux, April 2017, *op. cit*.

oral phase of the proceedings will not be reopened[1].

Therefore, a transitional regime was introduced for appeals under review if jurisdiction was transferred on September 1, 2016 or after that date against decisions of the Civil Service Tribunal[2]. The General Court will continue to have jurisdiction to hear and adjudicate in these appeals. For the reasons shown, art. 9-12 Annex I to the Statute of the Court should remain applicable to the procedure in question.

6.9. The contribution of the Court of Justice of the European Union in the integration process

European integration is a process in which the Court of Justice by its judgments created not only principles with general validity, but also principles applicable in specific fields, which the Treaties did not provide as such in its regulations, these being conceived in practice - with the value of necessity and continuity - on the occasion of the cases with which the Court of Justice was referred. The Court being the only one able to confirm them by its rulings has created precedents. Subsequent to the decisions adopted by it, the subsequent treaties included them in its provisions, in the annexes or in the declarations that accompanied the treaties, having the same legal force with them.

We mention by way of example[3]:

1. decisions of general value:

- the judgment given in the *Costa/Enel* case (on July 15, 1964) mainly created priorities for the Community law of the Union in relation to the national law of the Member States;

- the judgment in *Van Gend & Loos* (5 February 1963) established the principle that Community/Union law is directly applicable in the territory of the Member States, with the obligation to be recognized, as such - directly applicable by the national authorities of the Member States, respectively their national courts;

- the judgment given in the *Nold* case (on May 14, 1974) stated that the fundamental human rights are an integral part of the general principles of law whose respect it ensures.

2. decisions with principle value in specific areas provided by the treaties:

- the judgment given in the *Royer* case (on April 8, 1976), in the field of "Right of establishment" in which it was asserted "the right, for a national of one Member State, to stay in the territory of another Member State, independent of the residence permit issued by the host state";

- the judgment given in *Cassis de Dijon* (on 20 February 1979), in the

[1] *Idem*.
[2] *Idem*.
[3] *Idem*.

field of "Free movement of goods", which stated that "any product manufactured legally and marketed in a Member State must, in principle, be admitted to the market any other Member State";

- *AETR* decision delivered in the *Commission/Council* case (on March 31, 1971), in the field of "External jurisdiction of the Community", by which "the Community is recognized as having the power to conclude international agreements in the fields covered by Community regulations";

- the judgment given in *Bosman* case (1995) in the field "Free movement of persons", which stated that "professional sport is an economic activity whose exercise cannot be hampered by rules of football federations, which regulate the transfer of players or limit the number of nationals of other states".

- the judgment given in *Francovich et al.* case (1991), in which the Court of Justice developed the principle "liability of a Member State to natural persons for the damages caused to them by failing to fulfill their obligations to transpose a directive into national law, or to transpose it within the time limit stipulated in its content". In this decision, the Court has ruled, in principle, the obligation to make a claim for the Member States that have not transposed or delayed the directives in the national legislation;

- the judgment given in the *Defrenne* case (1976) in the field of "Social security", regarding the equal remuneration of men and women;

- the decision given in the *BECTU* case (2001), in the field "Workers' health and safety", etc.

By stating the principle that "treaties should not be interpreted rigidly, but must be viewed in the context of the integration stage and the objectives they set", the Court "opened" the Community the possibility to legislate in areas where the treaties did not provide for provisions specific, for example, that of combating pollution. Thus, by the judgment given in case C-176/05 of 13 September 2005, the Court of Justice authorized the European Union to take legal measures of criminal law when they are considered necessary to achieve the objective pursued with regard to environmental protection.

Chapter 7. The Court of Auditors of the European Union

7.1. Regulation of the institution of the EU Court of Auditors

The legal basis of the institution of the Court of Accounts of the EU is included in the provisions of art. 285-287 TFEU.

The system of integral financing of the Union budget through its own resources - following the Council decision of 1970[1] - and the enlargement of the powers of the European Parliament in matters of budgetary control required the establishment of the Court of Accounts in order to organize an external financial control, more stable than the one organized by the Communities. European. The Court of Accounts replaced the Audit Office of the European Communities, constituted by TCEE and TEuratom and the Financial Audit Office of the ECSC[2].

Along these lines, the budgetary powers of the European Parliament (respectively the responsibility of this institution to grant discharge to the Commission for the implementation of the budget), by the Treaties of Luxembourg and Brussels, of April 22, 1970 and July 22, 1975 (also called the Treaties) budget).

✓ By the budgetary treaty of 1975, which entered into force in 1977, at the proposal of the Parliament, the Court of Accounts is set up, so that, by TMs, in 1993, the Court of Accounts acquires the status of institution of the European Communities. The EC Treaty mentions this in art. 7 par. 1, in presenting the institutional mechanism of the Union with the purpose of accomplishing the tasks entrusted to the Community.

The institution of the Court of Accounts is regulated by art. 285-287 TFEU and its Rules of Procedure - Official Journal of the European Union 103/1 of 23 April 2010, entered into force on 1 June 2010.

7.2. Composition and organization of the Court of Accounts

The Court of Accounts is organized and functions as a collegial body[3], comprising: its members and its president. The members shall form, according to the organizational structure of the Court, chambers and committees, and the Court shall appoint from among its members by secret ballot a Secretary-General, in accordance with the procedure established in the implementing rules[4].

✓ The Court of Accounts is composed of one national from each Member

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[1] Decisions on own resources followed in 1976, 1985, 1988, 1994, 2000.

[2] See D.M. Tilea, *Strategic priorities regarding the higher education financing within European Union*, „Metalurgia Intemational", Special Issue nr. 5/2010, pp. 139-143.

[3] See art. 1 of the Rules of Procedure of the EU Court of Auditors, which refers to the Treaties (TEU and TFEU), the Financial Regulation and the Rules of Procedure of the EU Court of Auditors.

[4] See art. 13 paragraph (1) of the rules of procedure of the EU Court of Auditors.

State, ie 28 members currently, whose term of office is six years with the possibility of being renewed.

According to art. 286 TFEU, "the members of the Court of Auditors are chosen from persons who are part of or have been part of the external control institutions in their countries, or who have a special qualification for this function. They must provide all guarantees of independence".

Each Member State proposes a list of members, which is adopted by the Council, after consulting the EP [art. 286 paragraph (2) TFEU]. The members of the Court of Accounts are appointed for a period of six years. Their term of office may be renewed.

The conditions of employment and, in particular, the remuneration, allowances and pensions of the president and the members of the Court of Accounts are established by the Council, which decides by qualified majority. By the same majority, the Council shall decide on any allowance for remuneration.

As European Commissioners, the members of the Court of Auditors:

- exercises its functions in complete independence, in the general interest of the Union (art. 285 TFEU);

- does not request or accept instructions from any government or another body, in carrying out their duties [art. 286 paragraph (3) TFEU].

They refrain from any act incompatible with their duties.

Like the members of the Court of Justice, the members of the Court of Accounts:

- during their term of office, they may not engage in any other professional activity, whether paid or not;

- when installing in office, solemnly undertakes to respect, during the term of office and after its termination, the obligations resulting from the mandate, and in particular, the obligation to show honesty and prudence in accepting certain functions or benefits after the termination of their position.

Also, the provisions of the Protocol (No. 7) on the privileges and immunities of the European Union applicable to the judges of the Court of Justice are also applicable to the members of the Court of Accounts.

The termination of the function is similar to that of the members of the Commission except the termination of the function by the vote of distrust of the specific Parliament only Committees. Thus the function of the members of the Court of Accounts ceases:

- through regular renewal and death;

- individually, by voluntary resignation;

- individually by dismissal or can be declared forfeited from the right to retirement or other equivalent benefits only if the Court of Justice finds, at the request of the Court of Accounts, that they have ceased to comply with the conditions required or to fulfill the obligations arising from their function [art. 286 paragraph (6) TFEU]. The dismissal or forfeiture of rights is declared by the EU Court of Justice. The person concerned shall be replaced until the end of the term.

Except for dismissal, the members of the Court of Accounts will remain in office until they are replaced.

The conditions for employment and, in particular, the salaries, allowances and pensions of the President and of the members of the Court of Accounts, including any remuneration that takes place in remuneration, are established by the Council.

✓ The members of the Court of Accounts shall appoint the President from among them for a period of three years. His term of office may be renewed. The President of the Court has the following powers[1]:

- convenes and presides over the meetings of the Court and ensures the proper conduct of the debates;
- ensures the application of the decisions of the Court;
- it ensures the good performance of the Court's services, as well as the good management of its different activities;
- designates the agent responsible for representing the Court in any dispute in which it is involved;
- represents the Court in external relations and especially in relations with the discharge authority, the other institutions of the Union and the audit institutions in the Member States.

The President may delegate part of his duties to one or more members.

In order to exercise the competence to adopt certain categories of reports and opinions, in accordance with art. 287 paragraph (4) TFEU, the Court of Accounts establishes internal chambers[2].

The competences of the different chambers are distributed by the Court at the proposal of its president.

The chambers adopt reports and opinions, with the exception of the annual report on the general budget of the Union and the annual report on European development funds[3]. The chambers have the responsibility to carry out the preparation tasks related to the documents that are the subject of adoption by the Court, including the draft observations and opinions, the proposals of activity programs and other audit documents[4].

In accordance with the provisions set out in the implementing rules, committees are set up, which have the responsibility to carry out the tasks of preparing certain documents provided by the rules of procedure[5].

✓ The Court appoints a Secretary-General responsible for the Secretariat of the Court. The Secretary General is responsible for managing the staff and

[1] See art. 9 of the Rules of Procedure of the Court of Accounts.
[2] See art. 11 paragraph (1) and (2) of the Rules of Procedure of the Court of Accounts.
[3] The reports and opinions are adopted in accordance with the provisions provided in the implementing rules [art. 11 paragraph (1) of the Rules of Procedure of the Court of Auditors].
[4] See art. 11 paragraph (3) of the Rules of Procedure of the Court of Accounts.
[5] *Idem*.

administering the Court, as well as any other tasks assigned to it by the Court. Thus, at the proposal of the Secretary-General, the Court allocates the positions listed in the personnel scheme.

7.3. Operation of the EU Court of Auditors

✓ The Court establishes the provisional calendar of its meetings once a year, before the end of the previous year.

At the initiative of the President or at the request of at least a quarter of its members, the Court may hold additional meetings. The President shall draw up the agenda of each meeting.

The decisions of the Court shall be adopted:

- in the meeting;
- in written procedure. The Court shall, depending on the case, determine the decisions to be taken by written procedure[1].

The sittings of the Court shall be presided over by the President. Court hearings are not public, they are closed, except where the court provides otherwise[2].

The quorum required for deliberation shall be established at two thirds of the members of the Court. A report shall be prepared for each sitting of the Court.

✓ The court makes its decisions in the college, after having examined them in a chamber or a committee[3].

The decisions are taken by the Court, as follows:

- with the majority of the votes of the members that compose it, in case of adopting the annual reports, of the special reports or opinions [art. 287 paragraph (4) TFEU[4]] and the statement of assurance regarding the veracity of the accounts [art. 287 paragraph (1) TFEU];
- with the majority of the votes of the members present at the Court's sitting, in the case of other acts[5]. In this situation the vote of the president is decisive in case of equality of votes.

The chambers make decisions with the majority of the votes of the members that compose them. In case of equality of votes, the vote of the dean or of the member assuring his interim is decisive. The decisions of the private chambers adopt the reports and opinions[6], except the annual report on the general

[1] The detailed rules of this procedure are set out in the implementing rules. See, in this regard, art. 25 paragraph (5) of the Rules of Procedure of the Court of Accounts.
[2] See art. 22 of the Rules of Procedure of the Court of Accounts.
[3] Except for the decisions that must be taken as the authority empowered to make appointments or the authority authorized to conclude employment contracts. See, in this regard, art. 25 paragraph (1) of the rules of procedure of the EU Court of Auditors.
[4] See art. 25 paragraph (2) of the Rules of Procedure of the Court of Accounts.
[5] See art. 25 paragraph (3) of the Rules of Procedure of the Court of Accounts.
[6] See art. 11 paragraph (1) of the Rules of Procedure of the Court of Accounts.

budget of the EU and the annual report on the European development funds.

All members of the Court may attend the meetings of a chamber, but may vote only in the chambers of which they are members. The committees make decisions under the same procedure for the adoption of decisions by the chambers, unless otherwise provided in the implementing rules.

✓ Reports, notices, observations, statements of assurance and other documents that are subject to publication are prepared in all the official languages of the EU. The rules regarding their transmission and publication are established by the implementing rules set by the Court.

7.4. Duties of the Court of Auditors of the European Union

7.4.1. Regulation and definition of the tasks of the Court of Auditors of the European Union

The Court of Auditors of the European Union is responsible for the audit of EU finances. As an external auditor of the European Union, it contributes to improving the EU's financial management and plays an independent guardian of the financial interests of the citizens of the Union[1].

"The Court of Auditors ensures the control (audit) of the Union's accounts" (art. 285 TFEU) - it is the provision that essentially expresses the competence of the institution, so that, in the following articles, it details the control it performs.

According to art. 287 TFEU, the control power of the Court of Accounts consists of the following:

1. The Court shall verify all the Union's revenue and expenditure accounts, including any body, office or agency established by it, in so far as the instrument of incorporation does not exclude such control. In this regard, the Court of Accounts presents to the European Parliament and the Council a statement of assurance regarding the veracity of the accounts (known as "DAS", from the French term "declaration of assurance")[2], as well as the legality of the transactions and their registration in accounts, declaration published in the Official Journal of the European Union [art. 287 paragraph (1) TFEU and art. 319 paragraph (1) TFEU]. The statement can be supplemented with specific assessments for each major area of activity[3];

2. The Court examines the legality and the correctness of the incomes and expenses and ensures the sound financial management. In this regard, the

[1] See R. Verdins, June 2017, *Fişe tehnice cu privire la Uniunea Europeană, Curtea de Conturi a Uniunii Europene,* http://www.europarl.europa.eu/aboutparliament/ro/displayFtu.html?ftuld=FTU_1.3.12.html.

[2] About "Statement of assurance and error rate", see, for details, R. Verdins, 06. 2017, *op. cit*..

[3] See D. M. Tilea, *Tendinţe actuale in auditul intern (evolutie, perspectivă, auditul intern pe plan mondial)*, „Monthly magazine of quality management", vol. no. 113/Special-2010, pp. 1263-1276.

Court of Accounts reports any irregularities. Revenue control is carried out both on the basis of the revenues to be achieved and on the basis of those actually achieved by the Union. The control of the expenses is made on the basis of the commitments made, as well as on the basis of the payments made.

In such cases, the control is carried out on the basis of the documents and information that are made available to them, and when necessary, checks can be carried out on the spot, by checks at the premises of any natural and legal person benefiting from payments from the budget. Therefore, these checks can be carried out before the accounts of the budget year in question are concluded.

The control shall be carried out on the supporting documents and, if applicable, on the spot, at the other institutions of the Union, at the premises of any body, office or agency that administers revenue or expenditure made on behalf of the Union and in the Member States, including the premises of any natural person. or legal entities that benefit from payments from the budget [art. 287 paragraph (3) TFEU].

In the Member States, the control is carried out in collaboration with the national control institutions or, if they do not have the necessary competences, with the competent national services [art. 287 paragraph (3) TFEU].

In order to fulfill its mission, the Court of Accounts and the national control institutions of the Member States practice cooperation based on their confidence and respect for their independence. If these institutions or services intend to participate in the control, inform the Court of Accounts.

The Court of Auditors has the right to request to be communicated any document or information necessary for the fulfillment of its mission by the other institutions of the Union, by any body, office or agency that manages income or expenses on behalf of the Union, by natural or legal persons benefiting. of payments from the budget and by the national control institutions or, if they do not have the necessary competences, by the competent national services [art. 287 paragraph (3) TFEU].

The Court has no powers of inquiry. Therefore, it notifies the European Anti-Fraud Office (OLAF) about cases of corruption and misuse of funds by organized crime, and OLAF investigates those cases[1].

With regard to the competence of the Court of Accounts regarding the assurance of a good financial management, considering that the activity of managing the revenues and expenses of the Union is exercised by the European Investment Bank, the Court of Accounts has the right of access to the information held by this bank. The right of access is regulated by an agreement between the Court, the bank and the Commission. Even in the absence of this agreement, the Court has access to the information needed to control the Union's revenues and expenses administered by the bank [art. 287 paragraph (3) TFEU].

3. The Court establishes the detailed rules regarding the conduct of the

[1] See R. Verdins, *op. cit.*

audits that it must carry out under the provisions of the treaties[1].

The Court conducts audits in accordance with the objectives set out in its work program. For each audit task to be performed, the Chamber shall appoint a rapporteur member. And for each task that goes beyond the specific frame of a room, the member is appointed, on a case-by-case basis, by the Court.

4. The Court of Accounts has the power to draw up an annual report after the end of each financial year. This report is transmitted to the other institutions of the Union and is published in JOUE, together with the answers made by these institutions to the Court's observations [art. 287 paragraph (4) TFEU].

5. The Court of Accounts may present its observations at any time, especially in the form of special reports, on specific issues and may issue opinions at the request of one of the other institutions of the Union [art. 287 paragraph (4) TFEU].

6. The Court of Accounts adopts annual reports, special reports or opinions with the majority of its members [art. 287 paragraph (4) TFEU].

As we have shown, in order to adopt certain categories of reports or opinions, the Court may establish internal chambers, in accordance with the rules of procedure[2].

7. The Court of Accounts supports the European Parliament and the Council in exercising their function of controlling the budgetary execution, issuing at their request advisory opinions and specialized opinions on issues related to the collection of revenues and the execution of payments [art. 287 paragraph (4) TFEU].

Therefore, the Court has advisory power, according to art. 287 paragraph (4), art. 322 and art. 325 TFEU, based on which a request for an opinion is addressed[3]. In this regard, the Court:

- adopts opinions with the majority of its members [art. 287 paragraph (4) TFEU];

- it is consulted by the EP and the Council with a view to adopting by regulation the financial norms for establishing and executing the Union budget [art. 322 paragraph (1) TFEU];

- is consulted by the EP and the Council in order to take the necessary measures in the field of fraud prevention and combating this fraud[4].

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[1] See art. 30 of the Rules of Procedure of the Court of Accounts.

[2] See art. 10 of the Rules of Procedure of the Court of Accounts.

[3] See art. 31 of the Rules of Procedure of the Court of Accounts.

[4] The European Anti-Fraud Office - OLAF - was set up by a decision of the European Commission and replaced the Anti-Fraud Coordination Unit (UNCLAF), created in 1988. OLAF investigates the management and financing of all EU institutions, bodies, agencies, acting completely independent. Since 1 June 1999, OLAF is the body responsible for combating fraud in the EU budget. OLAF's mission includes, among its competences, the fight against corruption and the improper conduct of European institutions. See I. Niţă, *Dicţionar explicativ al Uniunii Europene*, Ed. Irecson, Bucharest, 2009, pp. 149-150.

8. The TA widens the role of the Court of Accounts by the competence to notify the EU Court of Justice with an action to annul the acts adopted with the violation of its prerogatives, according to art. 263 paragraph (3) TFEU. This competence is also maintained by the Treaty of Lisbon.

9. The court also has the power to establish its rules of procedure, according to art. 287 paragraph (4) TFEU.

✓ In accordance with the principles of transparency, any citizen of the Union and any natural and legal person having his residence or registered office in a Member State has the right of access to the documents of the Court under the conditions established by the decision establishing the internal norms regarding the treatment of access requests. to the documents held by the EU Court of Auditors[1].

7.4.2. Exercise of the powers of the EU Court of Auditors

✓ Provided that the principle of collective responsibility is respected, the Court may empower one or more members:

- taking clearly defined management or administration measures, on behalf and under the control of the Court;
- carrying out the activities in order to elaborate a decision to be adopted at a later date by the college of the Court.

The respective members report to the college on the measures they have taken.

✓ In accordance with the internal rules for the execution of the budget, the members of the Court of Accounts exercise the powers of authorizing officer of credits, and the Secretary General exercises the powers of authorizing officer of delegated credits[2].

The rules and practices regarding the procedures for controlling the way of exercising the powers of authorizing officer and delegating authorizing officer are established by the Court through decisions regarding the internal budget execution rules[3].

[1] See art. 35 of the Rules of Procedure of the Court of Accounts.
[2] See art. 15 paragraph (1) of the Rules of Procedure of the Court of Accounts.
[3] *Idem*.

Chapter 8. European Central Bank

8.1. Regulation of the European Central Bank

The legal basis of the European Central Bank includes the following provisions - art. 3 and art. 13 TEU;

- art. 3 paragraph (1) letter c) and at art. 119, art. 123, art. 127-134, art. 138-144, art. 219 and art. 282-284 TFEU - Protocol (No. 4) on the Statute of the European System of Central Banks (ESCB) and of the European Central Bank (ECB)[1], Protocol (No. 15) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland and Protocol (No. 16) on certain provisions concerning Denmark annexed to the TEU and the TFEU;

- Regulation (EU) no. 1024/2013 of the Council of October 15, 2013 conferring specific attributions to the European Central Bank regarding the policies related to the prudential supervision of credit institutions (Regulation on the unique supervision mechanism - MUS);

- Regulation (EU) no. 806/2014 of the European Parliament and of the Council of July 15, 2014 establishing uniform rules and a uniform procedure for resolving credit institutions and certain investment firms (Regulation on the Single Resolution Mechanism - MUR).

- ECB Rules of Procedure, adopted by ECB Decision of 19 February 2004 (ECB/2004/2)[2], decision amended by Decision ECB/2009/5 of 19 March 2009[3].

✓ The European Central Bank (ECB) was established on 1 June 1998, following the model of the German Federal Bank - Deutsche Bundesbank. It is based in Frankfurt (Germany).

The ECB replaced the European Monetary Institute established in 1994[4].

The establishment of the European Central Bank was determined by the creation of a single currency and by the establishment of the economic and monetary union, having a decisive role for the implementation of the European monetary policy (articles 127-133 TFEU). The ECB is the main institution of the Economic and Monetary Union (EMU) responsible for the monetary policy of the euro area from 1 January 1999 (date when the zone was created[5]).

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[1] O.J. of E.U. no. C-191 of July 29, 1992, p. 68.

[2] O.J. of E.U. no. L-80 of March 18, 2004, p. 33,

[3] O.J. of E.U. no. L 100-10 of April 18, 2009.

[4] The European Monetary Institute, shortened to the EMI, had the role of preparing the definitive Economic and Monetary Union - EMU - following the fact that, upon entering the third stage of the implementation of EMU, he would relinquish the place of the European System of Central Banks - ESCB - and subsequently, The European Central Bank

[5] The area was created in 1999 by eleven countries: Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, which were joined by Greece in 2001, Slovenia in 2007, Cyprus and Malta in 2008, Slovakia in 2009, Estonia in 2011, Latvia in 2014 and

From November 4, 2014, it has tasks related to the policies regarding the prudential supervision of credit institutions under the unique supervision mechanism (MUR). In its capacity as the supervisory authority of the banking sector, the ECB also has a consultative role regarding the resolution plans of the credit institutions.

✓ The European Central Bank can only be analyzed in the context of the links with the national central banks of the Member States, together forming a system.

The European Central Bank and the national central banks constitute the European System of Central Banks (ESCB).

The European Central Bank and the national central banks of the Member States whose currency is the euro[1], which constitutes the Eurosystem (euro area), conduct the monetary policy of the Union [art. 282 paragraph (1) TFEU].

8.2. Objects and missions of the European System of Central Banks - ESCB[2]

The main objective of the ESCB is to maintain price stability [art. 127 paragraph (1) and art. 282 paragraph (2) TFEU].

In line with this objective, the ESCB supports the general economic policies of the Union in order to contribute to the achievement of the Union's objectives[3].

The fundamental missions of the ESCB are provided in art. 127 paragraph (2) TFEU[4], as follows:

- defines and implements the monetary policy of the Union;
- performs foreign exchange operations (according to art. 219 TFEU);
- holds and manages the official currency reserves of the Member States;
- promotes the smooth functioning of payment systems. The ESCB also contributes to the smooth implementation of the policies promoted by the competent authorities regarding prudential supervision of credit institutions and the

Lithuania in 2015. Currently, there are 19 states in the euro area. Through the monetary agreements with their neighbors, they are attached to the euro area: Andorra, Monaco, San Marino and the Vatican. Two other states, Kosovo and Montenegro, use the European currency without the EU's agreement.

[1] The name "euro" was officially adopted on December 16, 1995, and the currency itself entered international markets on January 1, 1999, replacing the so-called European monetary unit ECU. On January 1, 2002, it was introduced into circulation, replacing the national currencies in the euro area in the auction. One euro is divided into 100 cents, also called cents, in Romance-speaking countries, or *leptó* in Greece.

[2] See the Statute of the ESCB and of the ECB, Chapter II.

[3] These are defined in art. 3 TEU.

[4] See also art. 3 Statute of the ESCB and of the ECB. The holding and administration of the official currency reserves of the Member States, as a fundamental mission of the ESCB, shall apply without prejudice to the holding and administration, by the governments of the Member States, of working capital funds in foreign currency (Article 125 paragraph 3 TFEU).

stability of the financial system.

The ESCB is headed by the decision-making bodies of the ECB. These are: the Governing Council and the Executive Committee (art. 129 paragraph 1 TFEU[1]).

The President of the ECB is invited to attend Council meetings if he deliberates on matters relating to the objectives and missions of the ESCB (art. 284, paragraph 2 TFEU).

8.3. Composition, organization and competences of the European Central Bank

✓ The ECB has legal personality (art. 282 paragraph 3 TFEU). In this capacity, each Member State enjoys the largest legal capacity, recognized by legal persons through national law; the ECB may in particular acquire movable and immovable property and stand trial[2].

✓ The ECB ensures that the tasks conferred on the ESCB are carried out through its own activities or through the national central banks[3].

The decision-making bodies of the ECB, which also run the ESCB, are: The Governing Council and the Executive Committee.

✓ The Governing Council of the ECB, according to art. 283 paragraph 1 TFEU, is made up of the members of the ECB's Executive Committee and the governors of the national central banks of the Member States whose currency is the euro.

The Governing Council meets at least 10 times a year, which has the following powers[4]:

- adopt the guidelines and take the necessary decisions for carrying out the tasks entrusted to the ESCB by treaties and the Statute of the ESCB and the ECB;

- defines the monetary policy of the Union, and, where appropriate, the decisions regarding the intermediate monetary objectives, the reference interest rates and the establishment of reserves within the ESCB;

- establishes the guidelines necessary for the application of the aforementioned decisions;

- adopts an internal regulation establishing the internal organization of the ECB and its decision-making bodies[5].

The President of the Council and a member of the Commission may attend the meetings of the Governing Council of the ECB without voting rights.

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[1] See also art. 8 Statute of the ESCB and of the ECB.
[2] See art. 9 par. 1 Statute of the ESCB and of the ECB.
[3] See art. 9 par. 3 of the Statute of the ESCB and of the ECB.
[4] See art. 12.1 of the State of the ESCB and of the ECB.
[5] See art. 12.3 of the Statute of the ESCB and of the ECB.

The President of the Council may also propose a motion for deliberation to the Board of Governors of the ECB.

Lithuania's accession to the euro area since January 1, 2015 has led to the creation of a system according to which the ECB governors hold voting rights in the Governing Council. Governors in the first five countries (depending on the size of their economies and their financial sectors) have four voting rights in common. All the others (currently 14) share 11 voting rights in common. Governors use voting rights one at a time, one month. The members of the Executive Board of the ECB have permanent voting rights.

✓ The executive committee consists of the president, a vice-president and four other members (art. 283 paragraph 3 TFEU)[1].

The President, the Vice-President and the four members of the Executive Committee are appointed by the European Council, acting by a qualified majority, at the recommendation of the Council and after consulting the European Parliament and the Council of Governors of the ECB, from persons whose authority and professional experience in the monetary or banking field are recognized. (art. 283 paragraph 2 TFEU).

Their term of office is eight years and cannot be renewed. Only the citizens of the Member States can be members of the Executive Committee.

The Executive Committee has the following responsibilities:

- implements the monetary policy in accordance with the guidelines and decisions adopted by the Governing Council;

- gives the necessary instructions to the national central banks, in the implementation of the monetary policy.

The Executive Committee is also responsible for:

- the current administration of the ECB[2], namely:

- preparation of meetings of the Governing Council[3].

The Executive Committee may be delegated certain powers by decision of the Board of Governors.

✓ The President or, in his absence, the Vice-President presides over the Governing Council and the Executive Board of the ECB.

✓ The ECB's competences

The European Central Bank has the following powers:

1. It is the only power, through the Board of Governors, to authorize the issue of euro banknotes in the Union. The ECB and national central banks may issue such notes. Banknotes issued by the ECB and national central banks are the only ones that have the status of legal means of payment within the Union (art. 128 paragraph 1 TFEU and art. 16 Statute of the ESCB and the ECB).

[1] See also art. 11 Statute of the ESCB and of the ECB.
[2] See art. 11.6 of the Statute of the ESCB and of the ECB.
[3] See art. 12.2 of the Statute of the ESCB and of the ECB.

The ECB shall, as far as possible, comply with existing practices regarding the issuance and graphics of banknotes.

The measures necessary for the use of the euro as the single currency are established, without prejudice to the ECB's powers, by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure (article 133 TFEU). These measures shall be adopted after consulting the ECB.

2. To perform the tasks entrusted to the ESCB, in accordance with the treaties and under the conditions established by the Statute of the ESCB and of the ECB, according to art. 132, paragraph 1 TFEU, the ECB has the following decision-making powers:

- adopt regulations, to the extent necessary to fulfill the missions defined in the Statute of the ESCB and of the ECB to which art. 132 TFEU;
- adopts decisions necessary for carrying out the tasks entrusted to the ESCB, in accordance with the treaties and the Statute of the ESCB and the ECB;
- adopts recommendations and opinions. The ECB may decide to publish decisions, recommendations and opinions.

3. In the same vein as the ESCB mission concerns, the ECB, supported by the national central banks, collects the necessary statistical information, either from the competent national authorities or directly from the economic agents (article 5 of the Statute of the ESCB and of the ECB).

To this end, the ECB shall cooperate with the institutions, bodies, offices and agencies of the Union, with the competent authorities of the Member States or third countries, and with international organizations.

4. Performs advisory functions, which are exercised through the Board of Governors[1], according to art. 127, paragraph 4 TFEU[2]. In this regard:

a) The ECB is consulted:

- with regard to any proposed Union act in the fields within its competence;
- by the national authorities regarding any regulatory project in the fields that fall within its competence, but within the limits and under the conditions established by the Council.

b) The ECB may present opinions, in the fields within its competence, to the institutions, bodies, offices and agencies of the Union or national authorities.

5. In the field of international cooperation on missions entrusted to the ESCB, the ECB shall decide, through the Board of Governors, on how to represent the ESCB (article 6 of the Statute of the ESCB and of the ECB). The ECB and, subject to its agreement, the national central banks may participate in international monetary institutions.

[1] See art. 12.4 of the Statute of the ESCB and of the ECB.
[2] See art. 4 of the Statute of the ESCB and of the ECB.

6. The ECB has specific missions regarding policies in the field of prudential supervision of credit institutions and other financial institutions[1], with the exception of insurance undertakings. These tasks may be entrusted to the ECB by the Council, acting unanimously through regulations, in accordance with a special legislative procedure, after consulting the European Parliament and the ECB (article 127, paragraph 6, TFEU).

Among the main responsibilities of the ECB are the euro area monetary policy which, according to the Regulation on the single supervisory mechanism, gives the ECB certain supervisory functions of credit institutions as from 4 November 2014. From this date, the ECB is responsible for overseeing all credit institutions (either directly, for the largest banks or indirectly, for other credit institutions) in the Member States participating in the Single Supervisory Mechanism (SSM) and cooperating closely with the other entities in this function The European System of Financial Supervisors (ESFS).

The ECB and the competent national authorities of the euro area Member States together form the single supervisory mechanism (SSM). The competent authorities of the Member States outside the euro area can also participate in the SSM.

The ECB directly supervises the largest banks and the national supervisory authorities continue to monitor the other banks.

The main tasks of the ECB and national supervisory authorities are to verify that banks comply with EU rules on the banking sector and to deal with problems at an early stage.

7. It is authorized to impose fines and penalties on a periodic basis in case of non-fulfillment of the obligations resulting from its regulations and decisions, within the limits established by the Council (in accordance with art. 229 paragraph 4 TFEU).

8. Other functions of the ECB[2].

The ECB also has powers conferred by legal grounds other than treaties.

a. The Treaty on European Stability Mechanism (ESM) provides that the ESM is an international financial institution and grants the ECB, among others, in particular evaluation and analysis tasks related to the provision of financial assistance.

b. For the macro-prudential supervision of the financial system in order to prevent or reduce systemic risks at European Union level, the European Systemic Risk Committee (ESRC) was established[3]. According to the regulation establishing the ESRC, the ECB provides the ESRC with a secretariat that provides

[1] See D. Paternoster, *Fişe tehnice cu privire la Uniunea Europeană, Banca Centrală Europeană*, http://www.europarl.europa.eu/atyourservice/ro/displayftu.html?ftuid=ftu_1.3.11.html.
[2] *Idem*.
[3] The European Systemic Risk Committee (ESRC) is an independent body of the European Union based in Frankfurt. Temciut Juridie of the ESRB is included in: Regulation (EU) no. 1092/2010 of

analytical, statistical, logistical and administrative support. The President of the ECB is also the Chair of the ESRC. The ECB has an advisory role with regard to the assessment of the resolution plans of the credit institutions elaborated under the Directive on the recovery and resolution of banking institutions (DRRB, 2014)[1] and of the Regulation on the Single Resolution Mechanism (SRM).

The ECB under the Single Resolution Mechanism (SRM) has the role of determining whether a credit institution faces or is likely to face major difficulties and accordingly informs the European Commission and the Single Resolution Committee.

The authorities responsible for resolution decide on the appropriate resolution measures. The single resolution committee is the main body that makes decisions within the single resolution mechanism. Its mission is to ensure that credit institutions and other entities in its area of competence, which are facing major difficulties, are subject to an efficient resolution, which involves minimal expenses for taxpayers and the real economy. The single resolution committee is fully operational as of January 1, 2016.

✓ The European Central Bank has reporting obligations.

Thus, the ECB prepares and publishes reports on the ESCB's activity at least once a semester. A consolidated financial statement of the ESCB is published each week.

In this regard, the ECB submits to the European Parliament, the Council and the Commission, as well as the European Council, an annual report on the ESCB's activity and the monetary policy of the previous year and the current year. The President of the ECB shall present this report to the Council and the European Parliament and may hold a general debate on the subject. The President of the ECB and the other members of the Executive Committee may, at the request of the European Parliament or on its own initiative, be heard by the competent committees of the European Parliament (art. 284, paragraph 3, TFEU).

✓ The European Central Bank is independent in exercising its powers and managing its finances. The institutions, bodies, offices and agencies of the Union, as well as the governments of the Member States, respect this independence (art. 282, paragraph 3, TFEU).

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the European Parliament and of the Council of 24 November 2010 on the macro-prudential supervision at European Union level of the financial system and setting up of a European Committee for Systemic Risk and in Regulation (EU) no. 1096/2010 of the Council of November 17, 2010 regarding the granting of specific competences to the European Central Bank regarding the functioning of the European Committee for Systemic Risk.

[1] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms was transposed by Law no. 312/2015 regarding the recovery and resolution of credit institutions and investment firms, in force since December 14, 2015.

8.4. National central banks of the Member States

Each Member State shall ensure the compatibility of its internal legislation, including the statute of its national central bank, with the treaties and the Statute of the ESCB and the ECB.

The statutes of the national central banks provide for the term of office of the governor of the national central bank, which may not be less than 5 years. A governor may be released from office only if he no longer fulfills the conditions necessary for the performance of his duties or if he has committed a serious misconduct[1].

National central banks act in accordance with the ECB guidelines and instructions. Ensuring compliance with these guidelines and instructions is made by the Board of Governors, which requests, in this regard, from them all the necessary information.

National central banks may also perform other functions than those mentioned in the Statute of the ESCB and of the ECB, these are exercised at their own risk and at their own risk[2].

✓ The European Central Bank, the national central banks or the members of their decision-making bodies exercise their powers and fulfill their missions, respectively the duties that were conferred on them by treaties and the Statute of the ESCB, with complete independence.

This independence implies that they cannot request or accept instructions from the institutions, bodies, offices and agencies of the Union, from the governments of the Member States or from any other body.

Also, the institutions, bodies, offices and agencies of the Union, as well as the governments of the Member States, undertake to respect this principle and not to try to influence the members of the decision-making bodies of the ECB or of the national central banks in carrying out their tasks (art. 130 TFEU and art. 7 Statute of the ESCB and of the ECB). Member States may issue the euro coin, subject to the ECB's approval of the issue volume. The Council, on a proposal from the Commission and after consulting the European Parliament and the ECB, may adopt measures to harmonize the unit values and technical specifications of all metal coins intended for circulation, to the extent necessary to ensure their proper circulation within the Union. (art. 128 paragraph 2 TFEU).

As regards Member States whose currency is not the euro[3], as well as their central banks, they retain their powers in the monetary field, in accordance with the provisions of the TFEU[4] and the Statute of the ESCB and the ECB.

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[1] Against the decision taken in this regard, the respective governor or the Board of Governors may bring to the Court of Justice an action based on a violation of the treaties or any rule of law applying to them [art. 14.2 paragraph (2) Statute of the ESCB and of the ECB].

[2] See art. 14.4 paragraph (2) Statute of the ESCB and of the ECB.

[3] These states are referred to as "derogating Member States" (article 139 paragraph 2 TFEU).

[4] See art. 282 TFEU, which refers to the following provisions: art 127-133 TFEU and art. 138 TFEU.

Chapter 9. The advisory bodies of the European Union

9.1. European Economic and Social Committee

9.1.1. Regulation of the European Economic and Social Committee

The EESC's legal basis is set out in the following provisions:
- art. 13 paragraph (4) TEU;
- art. 301-304 TFEU;
- Council Decision (EU, Euratom) 2015/1790 of 1 October 2015 appointing members to the European Economic and Social Committee for the period 21 September 2015-20 September 2020.

The Economic and Social Committee was established by the Treaty of Rome (TCEE) of 1957[1]. With each subsequent treaty - the Single European Act (1986), the Treaty of Maastricht (1992), the Treaty of Amsterdam (1997) and the Treaty of Nice (2001) strengthened its advisory role, today representing "the voice of organized civil society", bringing together, besides the representatives of the different segments of the economic-social life, employers' organizations, trade unions, but also non-governmental organizations[2].

The Economic and Social Committee ensures the connection between the Union and the different socio-professional categories of the economic-social life in order to involve them in the decision of the Union in the form of a consultation, in the event that it is intended to make decisions with economic and social implications, related to especially for living conditions[3]. The EESC's headquarters are in Brussels.

9.1.2. Organization of the EESC

The committee consists of the following bodies: the Assembly, the Bureau, the chairman and the specialized sections[4].

The assembly is composed of all the members of the Economic and Social Committee.

The office consists of[5]:
- president and two vice-presidents;
- three group presidents;
- presidents of specialized section;

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[1] See art. 193-198 TCEE and art. 165-170 TEuratom.
[2] See A. Popescu, I. Diaconu, *op. cit*., p. 247.
[3] See F. Cotea, *op. cit*., p. 393.
[4] See art. 2 of the Rules of Procedure.
[5] See art. 3 of the Rules of Procedure.

- a variable number of members, which does not exceed that of the Member States.

The Committee constitutes specialized sections during the constituent meeting, after each renewal every five years, for the main areas covered by the TFEU.

Currently, six sections are organized: Single market, production and consultants - INT; Transport, energy, infrastructure and the information society - TEN; Agriculture, rural development and environmental protection - NAT; Economic and monetary union, economic and social cohesion - ECO; Employment, social affairs and citizenship - SOC; external relations - REX.

The specialized sections have the task of adopting opinions or information reports on the issues with which they are referred.

The specialized sections may constitute a working or drafting group within them or may appoint a single rapporteur.

The committee is made up of three working groups by areas of activity[1]:

- group I - employers, which brings together entrepreneurs from industry, commerce, services and agriculture (112 members);

- Group II - employees, which includes representatives of national trade union organizations at the level of confederations and federations (120 members);

- group III - socio-professional groups, of economic and social character, which include representatives of farmers, artisans, liberal professions, cooperators, consumer protection associations, associations of persons with disabilities, scientific communities and teachers, etc. (109 members)[2].

The expertise, the dialogue and the search for convergences that result from them can increase the quality and credibility of the political decision at European Union level, improving its understanding and acceptance by the European citizens, as well as the transparency indispensable to democracy[3].

Within the Committee, advisory committees[4] may be set up, consisting of members and delegates from different fields of organized civil society, and sub-committees to elaborate draft opinions on certain issues or in certain areas, to be submitted to the Committee's deliberation.

The Bureau establishes the order of priority for examining the opinions, dividing them into categories. The rules of procedure provide for three categories of notices/requests for opinions defined according to the following criteria[5]:

 Category A (referrals on topics recognized as priority). This includes:

[1] See art. 27 paragraph (1) of the Rules of Procedure.
[2] *Idem*.
[3] See Rules of Procedure - Preamble. The codified version was adopted on July 14, 2010.
[4] An Advisory Commission on Industrial Change (CCMI) may be set up, consisting of members of the Committee and of delegates from organizations representing the various economic and social sectors. See art. 24 paragraph (3) of the Rules of Procedure.
[5] See art. 30 of the Rules of Procedure.

- all requests for exploratory opinion (Commission, European Parliament, future Council Presidencies);
- all proposed own-initiative opinions adopted;
- certain mandatory or optional notifications.

 Category B (mandatory or optional notifications, which refer to topics of secondary interest or are of an urgent nature);

 Category C (notifications, obligatory or optional, of purely technical character).

9.1.3. Composition of the Economic and Social Committee. The status of members[1]

✓ The EESC currently has 350 members divided between the Member States as follows:

- 24 for Germany, France, Italy and the United Kingdom;
- 21 for Spain and Poland;
- 15 for Romania;
- 12 each for Austria, Belgium, Bulgaria, the Czech Republic, Greece, Portugal, Sweden, the Netherlands and Hungary;
- 9 for Croatia, Denmark, Finland, Ireland, Lithuania and Slovakia;
- 7 for Latvia and Slovenia;
- 6 for Estonia;
- 5 for Cyprus, Malta and Luxembourg.

The maximum number of EESC members permitted by the Lisbon Treaty is 350, according to art. 301 TFEU. This number was briefly exceeded between July 2013 and September 2015 as a result of Croatia's accession to the EU on July 1, 2013. As nine new seats for the new member state were added, the total number of members increased to 353 (from 344).

Council Decision 2015/1600 of September 18, 2015 appointing members to the European Economic and Social Committee for the period September 21, 2015 to September 2020, has therefore decreased from six to five, in both cases, the number of members in Luxembourg and from Cyprus, and from seven to six members in Estonia, according to the allocation of seats in the Committee of the Regions, which also has 350 members.

✓ The ETUC is a consultative institutional body[2], made up of representatives of employers' organizations, salaries and other representatives of civil society, especially in the socio-economic, civic, professional and cultural fields (art. 300, paragraph 2 TFEU).

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[1] See U. Bux, April 2017, *Fişe tehnice cu privire la Uniunea Europeană, Comitetul Economic şi Social European*, http://www.europarl.europa.eu/atyourservice/ro/displayFtu.html?ftuld=FTU_1.3.13.11html.

[2] See the Rules of Procedure - Preamble, the codified version was adopted on July 14, 2010.

Therefore, it is composed of representatives of different categories of economic and social life, especially of producers, farmers, carriers, workers, traders and craftsmen, liberal professions and representatives of the general interest.

✓ The number of EESC members may not exceed three hundred and fifty. The Council has a decisive role in the procedure by which the EESC members are appointed (articles 301-303 TFEU).

Thus, the composition of the Committee is adopted by the Council, by decision, acting unanimously on a proposal from the Commission.

The Council adopts the list of members established according to the proposals of each member state. On this list, the Council shall act on a proposal from the Commission. The Council can obtain the opinion of the representative European organizations for the different economic and social sectors and of the civil society, which the activity of the Union concerns.

The Council shall also determine the allowances of the members of the Committee.

The members of the Committee are appointed for a term of five years[1]. Their term of office may be renewed. The members of the Committee exercise their functions in complete independence, representing the interest of the Union (as well as the members of the Commission and the Court of Auditors).

EESC members have the title of advisor. EESC members benefit from the usual privileges, immunities or facilities during the exercise of their duties[2]. The Committee shall appoint from among its members, the President and the Bureau, for a term of two and a half years[3].

The Committee shall adopt its rules of procedure.

With regard to the organization and conduct of its activities, the EESC uses the services of its Permanent Secretariat in Brussels in conjunction with the Secretariat of the Committee of the Regions[4].

Also, the Parliament's Office concluded an agreement with the EESC, in the framework of the 2014 budgetary procedure, on achieving efficiency gains in the field of translations. The EESC has an annual administrative budget, in section VI of the Union budget, amounting to EUR 131 million (2014) [5].

9.1.4. Competence of the European Economic and Social Committee

According to art. 300 paragraph 1 TFEU, the Economic and Social Com-

[1] Prior to the Treaty of Lisbon, their term of office was 4 years.
[2] See art. 10 of Chapter IV of Protocol no. 7 on the privileges and immunities of the EU, annexed to the Treaties.
[3] Prior to the Treaty of Lisbon, their term of office was 2 years.
[4] For its headquarters in Brussels, see Protocol no. 6 to the Treaty of Lisbon on the location of the headquarters of the institutions.
[5] See U. Bux, April 2017, *op. cit.*

mittee is consultative. Its mission is to assist the European Parliament, the Council and the Commission.

1. The Committee shall be consulted by the European Parliament, the Council or the Commission in the cases provided for in the Treaties or may be consulted by these institutions in any case they consider appropriate (article 304 TFEU).

The Committee is consulted by the institutions in numerous cases provided by the TFEU, corresponding to the following areas:

- art. 46, the realization of the free movement of workers;
- art. 50, achieving the freedom of establishment;
- art. 59, the liberalization of a certain service;
- art. 100, maritime and air transport;
- art. 113, the harmonization of the laws regarding the turnover tax, excise duties and other indirect taxes;
- art. 114 paragraph 1 and art. 115, the approximation of the laws, regulations and administrative provisions of the Member States whose purpose is the functioning of the internal market;
- art. 148 paragraph 2, employment;
- art. 157, the field of social policy;
- art. 166 paragraph 4, education, vocational training, youth and sports;
- art. 168 paragraph 4, public health;
- art. 173 paragraph 3, industry;
- art. 175, paragraph last, art. 177 and art. 178, economic, social and territorial cohesion;
- art. 182 paragraph 4 and art. 188, research, technological development and space;
- art. 192, medium;
- art. 194, energy.

2. The Committee has the right of initiative in issuing opinions in all cases it considers appropriate. If it deems it necessary, the European Parliament, the Council or the Commission shall give the Committee a period within which it may deliver its opinion, which may not be less than one month. This term shall begin to run from the date the President receives the communication addressed to him for this purpose. After the deadline has expired, the lack of an opinion does not prevent the proceedings from unfolding. The opinion of the Committee as well as the minutes of its debates shall be forwarded to the European Parliament, the Council and the Commission.

The opinions of the Committee shall be published in JOUE in accordance with the procedure established by the Council and the Commission after consulting the Committee's Bureau[1].

Therefore, the EESC is a privileged intermediary between organized civil

[1] See art. 63 of the Rules of Procedure.

society and the Union institutions[1].

Moreover, as a forum and a framework for the preparation of opinions, the EESC responds to the need for democratic legitimation of the construction of the European Union, including in its relations with the economic and social environments of third countries[2].

3. The EESC may discuss information reports to examine an issue related to EU policies and possible developments[3], for example:

- every three years, the Commission submits to the European Parliament, the Economic and Social Committee and the Committee of the Regions a report on the progress made in achieving economic, social and territorial cohesion and how they have contributed to this progress. This report shall be accompanied, if appropriate, by appropriate proposals [art. 175 paragraph (2) TFEU];

- The Commission draws up annually a report on the evolution of the objectives, in the field of social policy, including on the demographic situation in the Union. It sends the report to the European Parliament, the Council and the Economic and Social Committee (article 159 TFEU).

Also, the specialized sections of the EESC have the task of adopting opinions and information reports on the issues with which they are referred under art. 32 of the Rules of Procedure[4].

4. The EESC may, on a proposal from a specialized section, one of its groups or one third of its members, adopt resolutions on current issues for the Union[5].

5. The Committee establishes its Internal Regulations, which, in turn, establishes the composition and rules of competence of the specialized sections and sub-committees.

✓ The Lisbon Treaty specifies that the TFEU provisions on the nature of the EESC's composition will be reviewed periodically by the Council, in order to take into account, the economic, social and demographic evolution of the Union. For this purpose, the Council adopts decisions, at the proposal of the Commission [article 300 paragraph (5) TFEU].

9.2. Euratom Scientific and Technical Committee (art. 134 TEuratom)

The Euratom Scientific and Technical Committee is active in the specific field of atomic energy. The Scientific and Technical Committee is set up next to the Commission and is consultative.

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[1] See the Rules of Procedure - Preamble, the codified version was adopted on July 14, 2010.
[2] See Chapter VIII of the Rules of Procedure on "Dialogue I Economic and social organizations of the EU and third countries".
[3] See A. Popescu, I. Diaconu, *op. cit*., p. 247.
[4] See art. 17 of the Rules of Procedure.
[5] See A. Popescu, I. Diaconu, *op. cit*., p. 247.

Like the EESC, the Scientific and Technical Committee is obliged to consult in the cases provided by the Treaty (TEuratom). It may be consulted in all cases deemed appropriate by the Commission.

The Committee shall consist of twenty members, appointed by the Council after consulting the Commission.

The members of the Committee are appointed on a personal basis for a period of five years, with the possibility of renewing their mandate. They cannot be bound by any mandatory mandate.

The Committee appoints its chairman and chairperson from among its members annually.

✓ The Euratom Scientific and Technical Committee has the following tasks:

- promote research and ensure the dissemination of technical information. To this end, the Commission is asking the Member States to inform them about nuclear research programs. The Commission publishes, at regular intervals, the list of nuclear research sectors that have not been sufficiently exploited;

- to establish universal safety standards in order to protect the health of the population - each Member State defines its appropriate provisions - legislative or administrative acts. The legislation was also adopted for the medical sector, research, health protection under radiological emergencies, minimum levels of radioactive contamination in food, etc.;

- to facilitate investments and ensure the establishment of the basic installations necessary for the development of nuclear energy in the European Union. To this end, the Commission regularly publishes illustrative nuclear programs, indicating, in particular, the objectives of producing nuclear energy and the investments necessary to achieve them;

- to ensure that all users in the Union receive a constant and equitable supply of minerals and nuclear fuels, based on the principle of equal access to common sources of supply;

- to ensure that civilian nuclear materials are not redirected to other (especially military) purposes. TEuratom introduces an extremely comprehensive and strict system of guarantees that ensures that civilian nuclear materials are not diverted by the Member States. The Union has exclusive powers in this area, which it exercises with the help of a team of 300 inspectors, who have imposed Euratom rules throughout the European Union.

For the purposes mentioned above, the Commission has established, after consulting the Scientific and Technical Committee, a Joint Nuclear Research Center. The Center ensures the conduct of research programs and other tasks entrusted by the Commission.

The Center also ensures the establishment of a uniform nuclear terminology and a unique calibration system. The center establishes a central office for nuclear measurements. For geographical or functional reasons, the activities of the Center can be carried out in separate offices (art. 8 TEuratom).

9.3. Committee of the Regions (CoR)

The legal basis of the Committee of the Regions is included in the following provisions:

- art. 13 paragraph (4) TEU;
- art. 300 and art. 305-307 TFEU;
- Council Decision (EU) 2015/116 of 26 January 2015 appointing members and alternates to the Committee of the Regions for the period from 26 January 2015 to 25 January 2020.

The need to liaise with the natural persons of the Member States, as European citizens, through local or regional representatives, given that approximately three quarters of EU law is implemented at local or regional level, has required the creation of a regions.

The European Parliament, the Council and the Commission are assisted by a Committee of the Regions, which exercises advisory functions (article 300 paragraph 1 TFEU).

The members of the Committee of the Regions, as well as the alternate members, represent the regional and local authorities. According to its own statement of misitme, the CoR is a political assembly[1], the members of this body are either the holders of an electoral mandate within a regional or local authority, or they are politically responsible in front of a chosen assembly. In exercising their function, they cannot be bound by any imperative mandate[2].

Like the members of the EESC, the members of the Committee of the Regions, they exercise their functions, in complete independence, in the general interest of the Union.

The seat of the Committee of the Regions is in Brussels.

9.3.1. Organization of the Committee of the Regions (CoR)

The organs of the Committee are the Plenary Assembly, the President, the Bureau and the committees.

The plenary assembly is composed of all the members of the Committee; it meets in quarterly meetings. The plenary assembly has the following tasks[3]:

- adopts opinions, reports and resolutions;
- adopts the project for estimating the income and expenses of the Committee;
- adopts the political program of the committee at the beginning of each term;

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[1] See U. Bux, April 2017, *Fişe tehnice privind Uniunea Europeană, Comitetul Regiunilor (CoR),* http://www.europarl.europa.eu/aboutparliament/ro/displayFtu.html?ftuld=FTU_1.3.14.html

[2] See art. 2 of the Rules of Procedure.

[3] See art. 13 of the Rules of Procedure.

- elect the president, the first vice-president and the other members of the bureau;

- set up committees within the Committee;

- adopts and revises the Rules of Procedure of the Committee.

The Committee of the Regions shall appoint its President and the Bureau from among its members for a period of two and a half years[1]. The chairman, the bureau, the plenary assembly and the committees, ensure the leadership of the Committee of the Regions.

The Committee's Bureau is composed of the president, first vice-president, 28 vice-presidents, 28 members and chairmen of the political groups within the Committee[2].

The Bureau normally meets in seven ordinary meetings, before each plenary meeting of the Committee, as well as in extraordinary meetings[3].

With the exception of the functions of president and first vice-president and of the seats reserved for the presidents of political groups, the other seats in the Bureau are divided among the national delegations, as follows:

- the Bureau has the following tasks[4]: elaborates and presents to the Plenary Assembly its draft political program at the beginning of each term, so that at the end of the term it presents a report on the implementation of its political program; controls the implementation of the work program; organizes and coordinates the work of the Plenary Assembly as well as the committees; has general competences in financial matters, administrative organization regarding the alternate members; adopts the decision to bring an action before the EU Court of Justice.

The Committee shall be convened by the President, at the request of the European Parliament, the Council or the Commission (article 306 TFEU). It can also meet on its own initiative. The Chairman shall direct the work of the Committee. The committee is represented by the chairman. He may delegate this attribution.

- The committees of the Committee are constituted at the beginning of each mandate by the Plenary Assembly, which establishes its composition and powers. The commissions are chaired by a president, a vice president and at most two vice presidents. The commissions have as main attributions, the analysis of the draft normative acts, the elaboration of draft opinions, the drafting of reports and resolutions, which are submitted for approval in plenary sessions[5].

✓ There are three working structures at the Committee level: national delegations, political groups and interregional groups.

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[1] Prior to the Treaty of Lisbon, their term of office was two years.

[2] See art. 29 of the Rules of Procedure.

[3] See F. Cotea, *op. cit*., p. 400.

[4] See art. 36 of the Rules of Procedure.

[5] The bureau shall establish, in accordance with art. 36, an advisory commission for financial and administrative affairs, chaired by a member of the Bureau (article 71 of the Rules of Procedure).

National delegations and political groups contribute in a balanced way to organizing the Committee's work[1].

A national delegation consists of the members and alternates of a Member State. Each national delegation establishes its own internal organization and elects its chairman, whose name is officially communicated to the chairman of the Committee[2].

Political groups may consist of members and alternates who reflect their political affinities. In order to form, a political group must have at least 18 members or alternates[3].

Interregional groups are made up of members or alternate members, provided that the interregional group is declared to the chairman of the Committee.

9.3.2. Composition of the Committee of the Regions. The status of members

The Committee of the Regions consists of 350 members representing the regional and local authorities in the 28 Member States of the European Union.

The Committee of the Regions is composed of a number of members and all the alternates, distributed among the Member States as follows[4]:

- 24 for Germany, France, Italy and the United Kingdom;
- 21 for Spain and Poland;
- 15 for Romania;
- 12 each for Austria, Belgium, Bulgaria, the Czech Republic, Greece, Hungary, the Netherlands, Portugal and Sweden;
- 9 for Croatia, Denmark, Finland, Ireland, Lithuania and Slovakia;
- 7 for Latvia and Slovenia;
- 6 for Estonia;
- 5 each for Cyprus, Luxembourg and Malta.

As can be seen, each Member State has a certain number of places, their distribution being similar to that of the EESC.

As in the EESC, the Council plays a decisive role in appointing members to the Committee of the Regions (article 305 TFEU).

Thus, the Council, acting unanimously, on a proposal from the Commission, adopts a decision establishing the composition of the Committee. The members of the Committee, as alternate members, are appointed for a term of five years. Their term of office may be renewed. The Council shall adopt the list of members and alternates established in accordance with the proposals of each Member State.

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[1] See art. 7 of the Rules of Procedure.
[2] See art. 8 of the Rules of Procedure.
[3] Prior to the Lisbon Treaty, a political group had at least 16 members or alternates.
[4] In accordance with the provisions of Council Directive 2014/930/EU of 16 December 2014.

Thus, for the period from 26 January 2015 to 25 January 2020, the Council adopted Decision (EU) 2015/116 of 26 January 2015 appointing members and alternates to the Committee of the Regions for the period from 26 January 2015 to 25 January 2020.

The term of office of a member or of an alternate member shall begin on the date of its appointment by the Council[1].

The term of office of a member or of an alternate member shall end by resignation, at the end of the term of office under which he was appointed or by death[2].

At the end of the mandate stipulated in art. 300 paragraph 3 TFEU, which refers to the electoral mandate of the members of the Committee of the Regions within a regional or local authority, pursuant to which they have been proposed, the mandate of the members of the Committee ceases ex officio and they are replaced for the rest of the respective mandate in accordance with the same appointment procedure (article 305 TFEU).

Their term of office may be renewed. As regards the members of the CoR TFEU imposes a ban, they cannot be members of the European Parliament at the same time. The members and alternates with appropriate mandates benefit from the privileges and immunities provided by the Protocol (no. 7) regarding the privileges and immunities of the European Union.

9.3.3. Competence of the Committee of the Regions

1. According to art. 307 TFEU, the Committee adopts opinions[3]:

a) when consulted by the European Parliament, the Council or the Commission in the cases provided for in the Treaties and in all other cases where these institutions consider the consultation advisable, in particular where cross-border cooperation is concerned[4].

If it deems it necessary, the European Parliament, the Council or the Commission shall give the Committee a period within which to deliver its opinion, which shall not be less than one month from the date on which the communication is addressed to the President for this purpose. After the deadline has expired, the lack of an opinion does not prevent the proceedings from unfolding.

In addition, the European Parliament's Rules of Procedure (Annex V, point XII) gives the Commission for Regional Development (REGI) the responsibility to maintain relations with the Committee of the Regions, interregional cooperation organizations and local and regional authorities.

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[1] See art. 3 paragraph l of the Rules of Procedure.
[2] See art. 3 paragraph 2 of the Rules of Procedure
[3] See also art. 39 of the Rules of Procedure.
[4] For example, art. 100, in the field of maritime and air transport.

According to the Cooperation Agreement between the European Parliament and the CoR, concluded on 5 February 2014[1]:

- The CoR prepares assessments of the impact of the proposed EU legislative acts, which it sends to the Parliament in good time, before the start of the modification procedure. These impact assessments contain detailed information from the national, regional and local levels, on how the legislation in force works, as well as opinions on the improvements that can be made to the proposals of legislative acts;

- a member of the CoR is invited to all relevant meetings of the committees of Parliament. This rapporteur or spokesperson presents CoR opinions. The rapporteurs of the Parliament may attend, in their turn, the meetings of the CoR committees;

- the general legislative cooperation and the work plan are discussed twice a year by the President of the Conference of Committee Chairs in Parliament and his counterpart from the Committee of the Regions;

- since 2008, the REGI and COTER Commission (CoR Commission on Territorial Cohesion Policy and the EU Budget) organized an annual joint meeting within the "Open Doors: European Week of Regions and Cities" event;

b) on its own initiative, if it considers it useful;

c) when, in case of consultation of the EESC in accordance with art. 304 TFEU, the Committee of the Regions is informed by the European Parliament, the Council or the Commission of the request for an opinion. If it considers that specific regional interests are at stake, the Committee of the Regions may issue an opinion to that effect.

In all cases, the opinion of the Committee, as well as the minutes of its debates, shall be transmitted to the European Parliament, the Council and the Commission (art. 307, last paragraph, TFEU).

The Committee of the Regions is consulted by the institutions, in order to adopt an opinion, in many cases provided for by the TFEU, corresponding to the following areas[2]:

- art. 100, maritime and air transport;
- art. 148 paragraph 2, employment;
- art. 166 paragraph 4, education, vocational training, youth and sports;
- art. 167, in the field of culture;
- art. 168 paragraph 4, public health;
- art. 175, paragraph last, art. 177 and art. 178, economic, social and territorial cohesion;
- art. 192, medium;
- art. 194, energy.

[1] See U. Bux, April 201 7, *op. cit.*

[2] In these cases, it is also requested to consult the ETUC, and in some of them and the European Parliament.

2. The Committee shall adopt opinions, reports and resolutions[1] to be promoted by the Bureau, as follows:

a) when the Committee receives requests for opinions from the Commission or the European Parliament on certain documents, the chairman shall distribute them to the competent committees[2];

b) requests for the elaboration of opinions or reports on its own initiative may be submitted to the Bureau by its three members, by a commission, through its chairman, or by thirty-two members of the Committee. The Bureau shall be able to decide on the requests for the preparation of an own-initiative opinion or report[3];

c) the resolutions are included in the agenda only when they refer to issues related to the fields of activity of the European Union, to important concerns of the regional and local communities and if they are current. Proposals for resolutions or requests for drafting a resolution may be submitted to the Committee by at least thirty-two members or by a political group[4].

3. Within the powers of the Committee, the Bureau may, at the proposal of the Secretary-General (assisting the Committee), conclude agreements with other institutions or bodies[5].

4. The Committee shall establish its rules of procedure (article 306 TFEU).

5. Its mission is to involve regional and local authorities in the European decision-making process and thus to encourage greater citizen involvement[6]. In order to achieve this objective, the CoR sought to acquire the right to refer the matter to the Court of Justice in case of violation of the subsidiarity principle. This right was obtained following the entry into force of the Treaty of Lisbon, pursuant to the provisions of art. 8 of Protocol no. 2 regarding the application of the principles of subsidiarity and proportionality.

6. In the field of cohesion policy, through its Commission on Territorial Cohesion Policy and the EU Budget (COTER), the Committee of the Regions focuses on evaluating the results of negotiations on partnership agreements and operational programs, on applying the partnership principle in the context of programming of structural funds and of European investments for the period 2014-2020, as well as on the cohesion reports prepared by the Commission[7]. The results of the negotiations focused, in particular, on[8]:

[1] See also Article 44 of the Rules of Procedure.
[2] See also art. 40 of the Rules of Procedure.
[3] See also art. 42 of the Rules of Procedure.
[4] See also Article 43 of the Rules of Procedure.
[5] See also art. 73 of the Rules of Procedure.
[6] See U. Bux, April 2017, *op. cit.*
[7] *Idem*.
[8] *Idem*.

- mobility in disadvantaged regions from a geographical and demographic point of view;
- the two macro-regional strategies regarding the Adriatic and Ionian Sea (EUSAIR) regions;
- Strategy for the Alpine Region (EUSALP).

9.4. European Investment Bank

9.4.1. Regulation of the European Investment Bank

The legal basis of the European Investment Bank (EIB) is included in the following provisions:
- art. 308 and art. 309 TFEU;
- additional provisions regarding the EIB are included in art. 15, art. 126, art. 175, art. 209, art. 271, art. 287, art. 289 and art. 343 TFEU;
- Protocol (no. 5) on the Statute of the European Investment Bank;
- Protocol (no. 28) on economic, social and territorial cohesion, annexed TEU and TFEU.

✓ The European Investment Bank (EIB) was established on 1 January 1959 in Luxembourg. The European investment bank is a self-financing financial body[1], being independent of the budget of the European Union.

The bank is also financed by loans from the capital markets, which are then reoriented, without profit, towards the priority investments of the Union[2].

The EIB provides long-term financing for projects, guarantees and advice to promote the Union's objectives, supporting projects both within and outside the EU[3]. By default, its financing is mostly oriented in the poorest regions (of the Union), with the EIB granting loans to Mediterranean countries: from Africa, the Caribbean, the Pacific and the Eastern States. Thus, in 2004, the total amount of the loans approved by the EIB amounted to over 45.8 billion euros, intended mainly for priority investments in the disadvantaged regions of the Union[4]. The investments are placed in the respective countries, especially in industry, services, education, health, environment and infrastructure.

To create additional funding sources for large-scale infrastructure projects in the EU, particularly in the key sectors of energy, transport and information technology, the "Europe 2020" bond issuance initiative has been created[5]. The

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[1] In another opinion, it is an institution of the European Union; to be seen J. Rideau, *Droit institutionnel de l'Union et des Conununautés Européennes*, 3 éd., Librairie Générale de Droit et de Jurisprudence, 1999, p. 22.
[2] See J. Echkenazi, *op. cit.*, p. 30.
[3] See D. Paternoster, March 2017, *Fişe tehnice privind Uniunea Europeană*, *Banca Europeană de Investiţii*, http://www.europarl.europa.eu/atyourservice/ro/displayFtu.html?ftuld=FTU_1.3.15.html
[4] See J. Echkenazi, *op. cit*, p. 30.
[5] See D. Paternoster, March 2017, *op. cit.*

EIB supports the implementation of the objectives of the "Europe 2020" Strategy. The pilot phase for the implementation of the concept started in the summer of 2012.

The EIB has legal personality, acts within the limits conferred on it by the TFEU and by the statute provided for in the Protocol (no. 5) annexed to the Treaties (article 308 TFEU).

9.4.2. Resources of the European Investment Bank[1]

According to art. 309 TFEU, is financed from own resources and from the international capital market.

✓ The own resources are provided by the Member States, according to art. 308 TFEU. Each Member State contributes to the EIB's capital, according to art. 4 EIB status, the contribution being calculated according to the economic power of the Member States. In order to strengthen the role of the EIB in financing the economy and in supporting the economic downturn in the Union, the European Council of June 2012 recommended a EUR 10 billion increase in subscribed and paid up capital. The EIB Board of Governors unanimously made a decision [art. 4 paragraph (3) of the Statute] regarding the increase of the capital, which entered into force on December 31, 2012. The subscribed capital increased to EUR 242.4 billion, and the subscribed and paid up capital increased by EUR 10 billion to EUR 21.6 billion. From the international capital market, the EIB obtains funds by issuing bonds, this being the main source of EIB financing. The European investment money is one of the most important supranational bond issuers in the world. In order to obtain cost-effective financing, it is important that the institution in question has a high credit rating. The most important credit rating agencies currently assign the highest ratings to the European Investment Bank, which reflects the quality of its credit portfolio. The EIB generally finances one third of each project, but financial assistance can reach 50%.

✓ The main financing instruments used by the EIB are loans and guarantees. However, other tools with a high risk profile have been unveiled. EIB financing can be combined with financing from other EU sources (eg the EU budget), a process known as a combination.

Loans are mainly granted in the form of direct or intermediate loans.

Direct loans for projects are granted subject to conditions, for example, the total cost of the investment should not exceed EUR 25 million, and the credit can only cover up to 50% of the project costs.

Intermediate loans consist of granting loans to local banks or other intermediaries, which, in turn, support the final beneficiary. Most loans are granted in the Member States.

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[1] *Idem*.

✓ The additional sources of funding represented, among others, an EIB initiative to materialize large-scale infrastructure projects in the EU, in particular in the key sectors of energy, transport and information technology.

To this end, the "Europe 2020" bond issuance initiative was created. The pilot phase for exploring the feasibility of the concept, as we have shown, began in the summer of 2012. In view of its experience and knowledge, the EIB It plays an important role in this initiative, and it implements this pilot stage, ensuring "optimization of credit conditions" in the form of subordinated debt instruments.

In addition to long-term financing, the EIB also offers consultancy in the field of infrastructure projects. For example, the "Joint Assistance tool for project support in European regions" (JASPERS). For new and future Member States, the EIB offers technical, economic and financial advice for the entire life cycle of the project in order to optimize the use of financing from the Structural Funds and the Cohesion Fund.

9.4.3. The EIB Group[1]. Structure

✓ EIB shareholders are EU Member States. The EIB, for their part, is the majority shareholder of the European Investment Fund (EIF), together with it constitutes the EIB Group. As part of the Commission's Europe Investment Plan, the EIB Group is part of a broader strategy that aims to cover the investment gap, protecting investors from some of the risks inherent in projects.

The EIB Group was established in 2000 and consists of the EIB and the European Investment Fund (EIF). The European Investment Fund (EIF) was established in 1994 and was created as a public-private partnership made up of three main groups of shareholders: the EIB, as a majority shareholder with 62.2%, the Commission (30%) and others public and private financial institutions (7.8%). The EIF offers various forms of instruments, for example, venture capital. The loans granted by the EIF are mainly focused on small and medium-sized enterprises (SMEs) and use a wide range of innovative tools in order to improve the access of SMEs to financing.

9.4.4. Composition and competence of the European Investment Bank

The members of the Bank are the Member States. The shareholders of the bank - the Member States of the European Union - collectively subscribe to the bank's capital, and each country's contribution reflects its economic power in the Union.

The EIB is organized as follows[2]:

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[1] See D. Paternoster, March 2017, *op. cit.*

[2] See O. Ținca, *Drept comunitar general*, Ed. Didactică și Pedagogică RA, Bucharest, 1999, p. 98.

a. The Governing Council ensures the management of the EIB; it is composed of finance ministers of the Member States, establishes the general guidelines in the credit policy, approves the annual balance sheet and report, decides to increase the capital and appoints the members of the Management Board of the Steering Committee and of the Audit Committee;

b. The Management Board has 24 members proposed by the Member States and one proposed by the European Commission. The members are appointed for five years. The Board of Directors decides on the granting of loans, on guarantees, etc., with the majority of votes;

c. The Steering Committee is composed of the President and Vice-Presidents of the Bank appointed for a period of six years on the basis of the proposals of the Board of Directors and by the Board of Governors. The Steering Committee has the task of running the current affairs, and its chairman is the chairman of the Board of Directors;

d. The verification committee, appointed by the Board of Governors, is responsible for checking the regularity of banking operations.

The EIB cooperates with the EU institutions, its representatives participate in the committees of the European Parliament, and the President of the EIB participates in Council meetings when the ministers of economy and finance in the Member States meet.

Using the capital markets and its own resources, the EIB has the mission to contribute to the balanced and uninterrupted development of the common market in the interest of the Community (article 309 TFEU). For this purpose, the Bank facilitates, by granting loans and guarantees and without pursuing a lucrative purpose, the financing in all the sectors of activity of the following projects:

a. projects aimed at developing less developed regions;

b. projects aimed at the modernization or conversion of enterprises or the creation of new activities as a result of the progressive establishment of the common market, which, by their size or nature, cannot be financed entirely by the different means existing in each of the Member States;

c. projects of common interest for several Member States which, by their size or nature, cannot be fully financed by the different means existing in each of the Member States (article 309 TFEU).

The EIB also facilitates the financing of investment programs, combined with the assistance provided by the Community's structural funds and other financial instruments.

The European Investment Bank should not be confused with the European Bank for Reconstruction and Development (EBRD). The EBRD was created in 1991 with the contribution of the EIB - 3%, for the purpose of granting loans to the Central and Eastern European States, in order to achieve the transition to a

functioning market economy[1]. More than 40 countries participated in setting up the EBRD, however, more than half of the share capital is constituted with the participation of the European Union[2].

9.4.5. The European Investment Bank and the new investment program for the European Union[3]

In recent years, the European Union has faced low levels of investment due to the global financial and economic crisis, which is why the EU institutions have provided an adequate legislative framework for this period, which has materialized in the following legislative initiatives:

- the communication from the Commission, entitled "An investment plan for Europe", comes with solutions regarding the ways of reinvigorating investments in the EU[4], creating jobs and stimulating economic growth and long-term competitiveness;

- the proposal for a regulation of the European Parliament and of the Council on the European Fund for Strategic Investments (EFSI)[5];

- Legislative resolution adopted by the European Parliament (June 24, 2015) on the proposal for a regulation of the European Parliament and of the Council on the European Strategic Investment Fund[6]. The EFSI aims to generate private investments by mobilizing public funds and creating an environment conducive to investments. An initial guarantee of EUR 16 billion, granted by the EU to the European Investment Bank (EIB), together with a commitment of EUR 5 billion from the EIB, will mobilize private funds resulting in EUR 315 billion in additional investment funds.

The plan is not intended to replace existing EU and EIB programs, but to complement them.

✓ To this end, a parliamentary committee evaluates the activities of the EIB and presents a report at the plenary session, at which the EIB president is invited. On April 28, 2016, Parliament adopted a resolution on the EIB's 2014 Annual Report. The Resolution of the Betting proposed that the new investment program should aim to support EU policy objectives by giving priority to investments to accelerate economic recovery and increase productivity through:

- promoting employment among young people, innovation and SMEs;

- enhancing environmental sustainability and measures to combat climate change;

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[1] See C.D. Dacian, *Uniunea Europeană. Instituții. Mecanisme*, 3rd ed., Ed. C.H. Beck, Bucharest, 2007, pp. 80-81.
[2] *Idem*.
[3] See D. Paternoster, March 2017, *op. cit.*
[4] COM (2014) 0903.
[5] COM (2015) 0010.
[6] Adopted texts, P8_TA(2015) 0236.

- promoting economic and social cohesion and convergence.

By its resolution, Parliament made clear the need for the EFSI to operate efficiently, in a fully transparent and equitable manner, and recalled that the guarantee for the EFSI is meant to allow the EIB to take on more risks; Parliament also proposed that the EIB seriously assess the financial, social and environmental impact of the project bond initiative, update the external dimension of EIB interventions and enhance the EIB's governance, transparency and control framework.

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