Chapter III

European Administration

Direct administration of the EU

The European Administration course (20 teaching hours) is divided to 5 blocks (chapters).

A chapter is designed for **4x45 minutes** of studying!

Advices for your individual work:

1. Read the reading material! You may use the additional slideshow to see a graphical version of your reading! By clicking on the hyperlinks, you can get some additional information, or you can refresh your basic knowledge!

2. Try to test your knowledge with the help of the exercises! They help you to process the material in depth and the terms and significant definitions help you to catch up quickly with the mainstream of the material!

3. Do the test of multiple choices for a final check upon your newly gained knowledge!

4. If you have further plan to deepen your knowledge on the issue, the collected literature helps you to step on that path!

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I. ORGANISATION OF DIRECT ADMINISTRATIVE LEVEL

The tasks of public administration in the EU are multifaceted, polycentric, and joint, to be performed largely within a framework of multidimensional cooperation. Indirect administration by national authorities in accordance with national law is the predominant mode of implementation, however, it does not mean that at direct level only policy formulating takes place.

1.1. The main actor of direct administration: the European Commission

The politically independent executive arm of the EU that **promotes the general interest** of the EU by proposing and enforcing legislation as well as by implementing policies and the EU budget.
Although it has important executive powers in policies such as competition and external trade, the Commission cannot comply with the same role of central administrative organ in State administration. The Commission is not the government of the EU and in general it cannot be called the central administrative organ of European administration under the same content of the notion as it has in State administrative law. Being central organ would suppose general powers related to the hierarchical nature of State administration, although the Commission cannot act as such, it is not placed above State administrative structure in every meaning of the word 'hierarchy'.

The Commission was set up in 1958 and it is a "college" of commissioners who are responsible for one legal field among the EU policies. Each Member State can assign a person, who after a hearing by the European Parliament, the commissioners are formally appointed by the Council. The term of office is matched the European Parliament's five-year term and is renewable.

Beside the Commission, executive powers are also exercised in exceptional cases by the Council, as well as by various bodies created by the Treaties including the European Central Bank, the Court of Auditors and there are many different types of ***agencies***.

1.2. The tasks of direct administration

1.2.1. Draft and initiate EU legislation

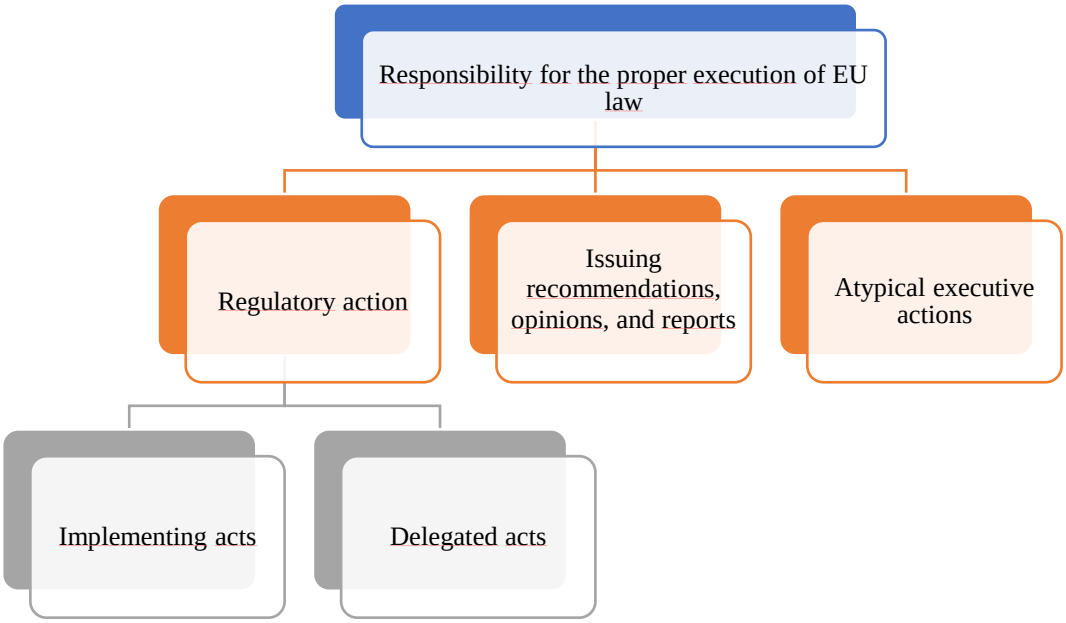
The Commission is the sole EU institution tabling laws for adoption by the Parliament and the Council that protect the interests of the EU and its citizens on issues that cannot be dealt with effectively at national level.

> *Before the Commission proposes new initiatives, it assesses the potential economic, social and environmental consequences that they may have. It does this by preparing 'Impact assessments' which set out the advantages and disadvantages of possible policy options. The Commission also consults interested parties such as non-governmental organisations, local authorities and representatives of industry and civil society. Groups of experts give advice on technical issues. In this way, the Commission ensures that legislative proposals correspond to the needs of those most concerned and avoids unnecessary red tape. Citizens, businesses and organisations can participate in drafting the legislation by sharing their opinion via public consultations. National parliaments can formally express their reservations if they feel that it would be better to deal with an issue at national rather than EU level. The European Parliament and the Council review proposals by the Commission and propose amendments. If the Council and the Parliament cannot agree upon amendments, a second reading takes place. In the second reading, the Parliament and Council can again propose amendments. Parliament has the power to block the proposed legislation if it cannot agree with the Council. If the two institutions agree on amendments, the proposed legislation can be adopted. If they cannot agree, a conciliation committee tries to find a solution. Both the Council and the Parliament can block the legislative proposal at this final reading.*

Besides initiating legislation, the direct level of administration has role in **planning and coordination of joint actions** and preparation of framework plans.

> *Planning and coordination tasks can be illustrated in the context of environmental law and policy in connection with, for example, flora-fauna habitat plans, ozone plans, or (even more complex) the provision and supervision of the legal and administrative framework for the establishment and management of rights and obligations under emissions trading schemes.*

1.2.2. Issue executive norms for uniform implementation of EU legislation



1.2.2.1. *Regulatory action*

Some such rule-making is explicitly of external effect with the intention to help uniform implementation and execution (*detailed specification of conditions for the implementation of, secondary legislative provisions*); other forms may be only explicitly internal, applicable only in the organisation (*exercise of purely self-organizing competences of the administration itself*).
The Commission elaborates its executive action in the form of non-legislative norms: implementing acts and delegated acts.

a) Implementing act

Implementation of EU law is the task of Member States, however, in certain issues, even the execution requires special, commonly defined details for uniform conditions for implementation. In such cases, the Commission (or exceptionally the Council) adopts an **implementing act** (based on Article 291 TFEU). Before the Commission can adopt an implementing act, it usually must be consulted by a committee in which every EU Member State is represented (formerly known as ***comitology procedure***) and can give opinion on the Commission's draft. These 'comitology committees' are set up by the legislator (Council and European Parliament or Council alone), they include 1 representative (expert) from every Member State and are chaired by a Commission official. Citizens and other stakeholders can provide feedback on the draft text of an implementing act for four weeks before the committee votes to accept or reject it.
Comitology committees are

- are *made up of representatives of each EU Member State*
- are *set up by the legislator* (either the Council and the European Parliament, or the Council alone)
- give *formal opinions* on draft acts which the Commission intends to adopt to ensure that EU law is implemented uniformly.

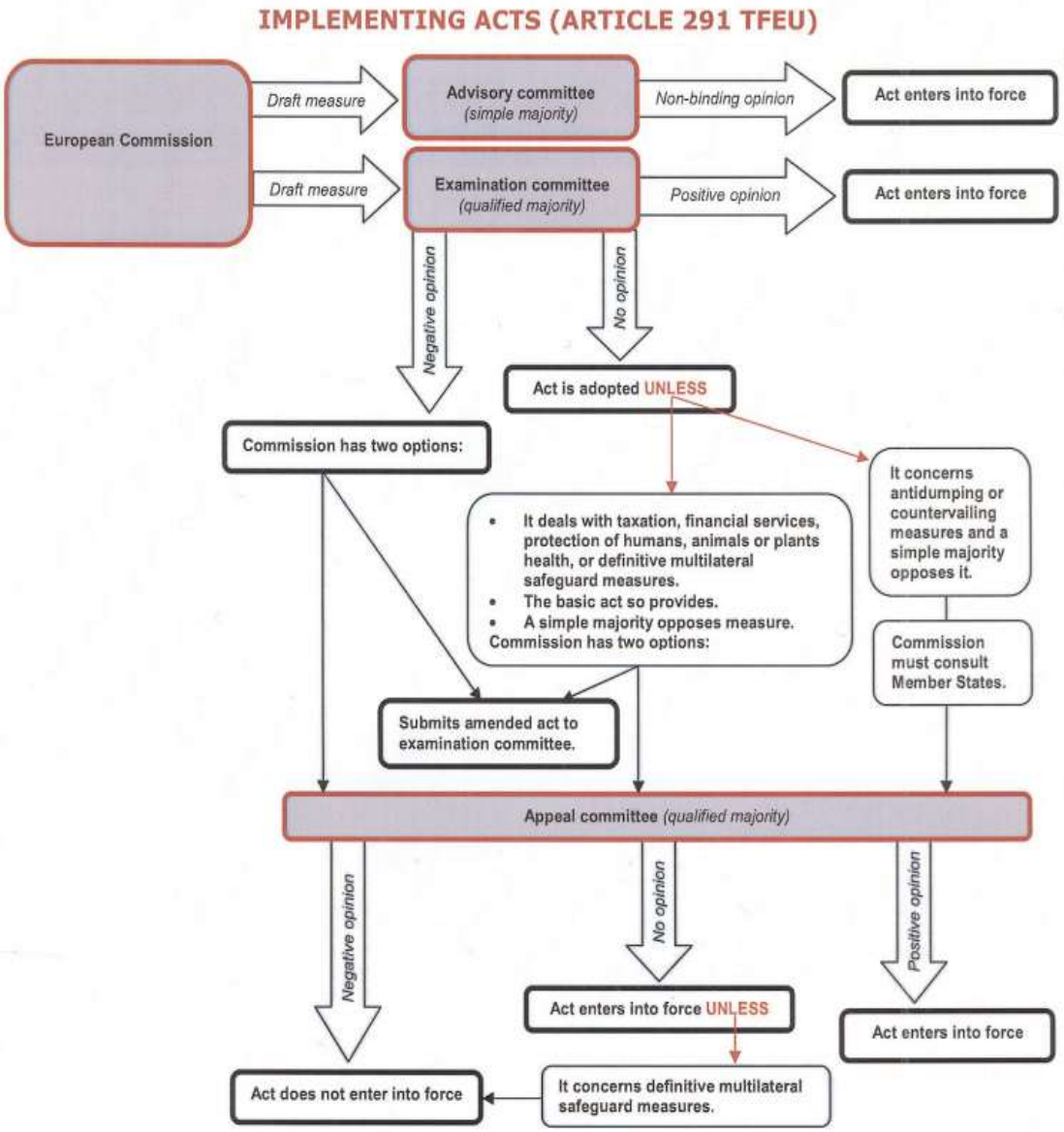
The basic legal act that refers to the substance of law defines the content and scope of the implementing powers of the Commission and determines the type of comitology procedure to be applied in each case.

a) the *examination procedure* is used particularly for
   (i) measures with general scope and
   (ii) measures with a potentially significant impact (in areas such as taxation or agricultural policy)

b) *advisory procedure* is used generally used for all other implementing acts.

You can compare the two procedures by the help of the following chart and can read about them in details in Regulation No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (in force since 1 March 2011).

Implementing acts are often adopted in taxation, agriculture, the internal market, health and food safety policies.



Appendix, "Implementing Lisbon: what's new in comitology?", EPC Policy Brief, April 2011.

b) Delegated act

Sometimes the legislative power of the Commission is delegated by the legislator to create detailed executive norm for a legislative act. The Commission's power to adopt **delegated acts** is established by the legislative act in question and is subject to strict limits:

- ✓ the delegated act cannot change the essential elements of the law and the essential elements of an area may not be subject to a delegation of power;
- ✓ the legislative act must define the objectives, content, scope and duration of the delegation of power;
- ✓ and Parliament and Council may revoke the delegation or express objections to the delegated act.

The Commission prepares and adopts **delegated acts** after consulting *expert groups*, composed of representatives (experts) from each Member States which meet on a regular or occasional basis.

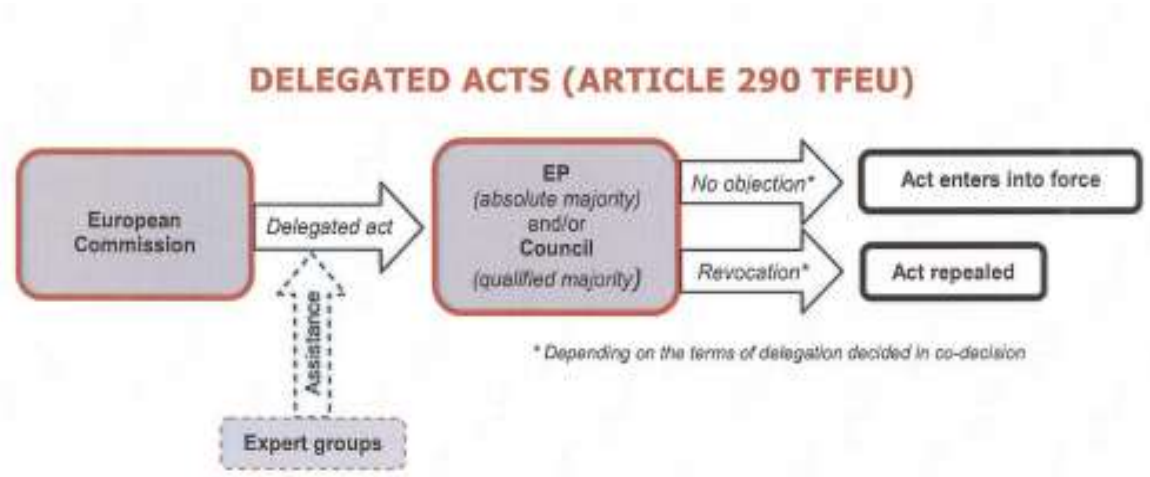
Expert groups are not the same as comitology committees. Expert groups are consultative bodies that gathers expertise from various sources and may include gathering the views of various stakeholders.

- ➢ set up by the Commission or its departments to provide them with advice and expertise
  - *formal*- set up by Commission decision
  - *informal*- set up by an individual Commission department that has obtained the agreement of the Commissioner and Vice-President responsible and of the Secretariat-General
- ➢ composed of public and/or private sector members:
  - Type A - *individuals appointed in a personal capacity*, acting independently and expressing their own personal views.
  - Type B - individuals appointed *to represent a common interest* shared by stakeholder organisations in a particular policy area. They do not represent individual stakeholders, but a particular policy orientation common to different stakeholder organisations. They may be proposed by stakeholder organisations.
  - Type C – o*rganisations* in the broad sense of the word including companies, associations, NGOs, trade unions, universities, research institutes, law firms and consultancies.
  - Type D - *Member States' authorities*- national, regional or local.
  - Type E - *other public entities*, such as authorities from non-EU countries (including candidate countries), EU bodies, offices or agencies, and international organisations.

    Type B and C members may be appointed only if they are registered in the Transparency Register.

    Type C, D and E members nominate their permanent representatives or appoint representatives on an ad hoc basis, depending on the meeting agenda of the group.
- ➢ which meets more than once.

This procedure is widely used in many areas, for example: internal market, agriculture, environment, consumer protection, transport, and the area of freedom, security and justice.



c) Atypical executive actions

c1. The special case of standardisation

The *European standardisation organisations* (ESOs) are *private parties entrusted with the adoption of regulatory tasks in the public interest.*

> *Currently, there are three ESOs under the auspice of the EU: CEN- European Committee for Standardisation; Cenelec - European Committee for Electrotechnical Standardisation, and ETSI- European Telecommunications Standards Institute. ESOs 'must be organised by and for the parties concerned, on a basis of coherence, transparency, openness, consensus, independence of special interests, efficiency and decision-making based on national representation'. The mandates determine the tasks which the Commission assigns to the ESOs and, therefore, provide the expectations which public authorities have vis-a`-vis the ESOs. Mandates have been described as 'part contract—fixing target dates, arranging financial modalities and so forth, and part technical elaboration of the essential requirements'. The acceptance of a mandate is then followed by a contract between the Commission and the ESOs, setting out the details on European financing and the transmission of documents.*

The crucial role in the regulatory approach was to remove barriers to trade in the 1980s. Even though they are not binding on the producers of goods and services, these harmonized European standards are given a presumption of conformity, if published in the Official Journal and transposed into national standards. A large volume of standards produced by European standardization organizations comply with international standards and cooperation is maintained to that end; the European and international standardisation organisations reciprocally influence each other.
Standardisation is a ***voluntary***, consensus driven activity, carried out by and for the interested parties themselves, based on openness and transparency, within independent and recognised standards organisations, leading to the adoption of standards, compliance with which is voluntary. The standards do not produce legal effects; therefore, they are not subject to judicial review.

c2. Self-regulation

Self-regulation is *a tool which can be used to avoid making of binding law on the European level by enticing private actors to comply with certain policy goals even in the absence of binding EU law*. It is in the shadow of EU's legislative competences and it can be described as a ***persuasion*** to unilaterally implement a goal in conformity with the common aims. The voluntary compliance will in reality always depend on a realistic possibility of unilateral action by the institutions, although exogenous factors (for example, consumer or interest group pressure) may also play a role.

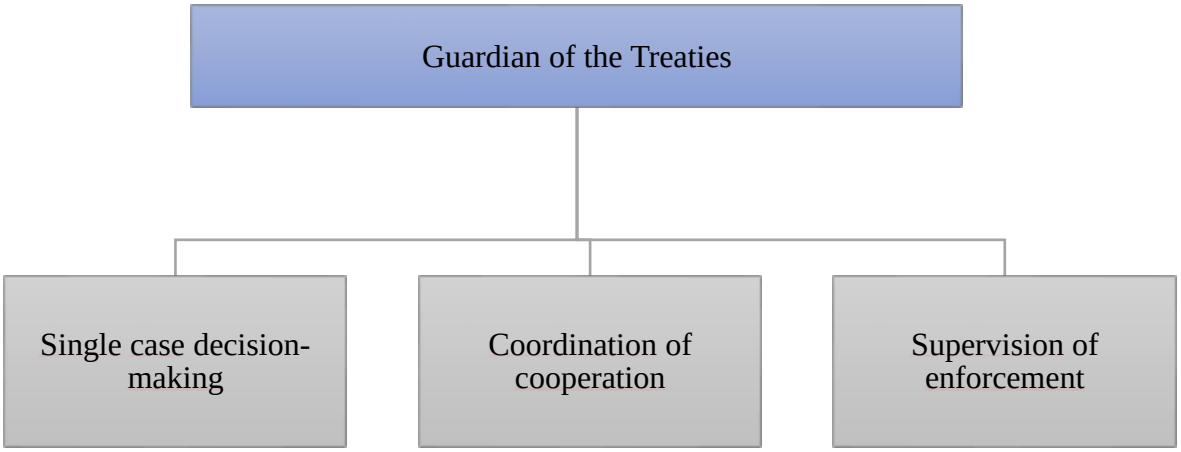
> *Environmental agreements are the best examples for the self-regulating nature like the ones which aims the reduction of CO2 emission.*

1.2.2.2. *Issuing recommendations, opinions, and reports*

The Commission is *often required by legislation to provide recommendations or opinions*; even absent an obligation, it may have a legal basis for doing so. Reporting requirements, for example the making of *annual reports*, or regular reports with regard to particular programmes and schemes, are a standard element of administrative law arrangements, whether on the level of the Commission itself, within the internal working arrangements of Commission services, as part of the obligations of European agencies, or in respect of the Member States and their authorities in the context of the national implementation of European policy and law.

> *Legislative initiations and drafts do not come from day to another. Under Article 17(1) TEU the Commission shall promote the general interest of the Union and take appropriate initiatives to that end. To that end, the Commission initiates annual and multiannual programming: the Commission sets its strategic objectives at the beginning of its five-year period of office. On the basis of these objectives, an Annual Policy Strategy is put forward each year and the annual Commission Legislative and Work Programme is the preparatory measure with detailed planning purposes. it is not yet a specific legislative proposal but provides a guide towards it for interested groups, agencies, and of course, Member States and can be a basic document to start consultations.*

1.2.3. Tasks related to the enforcement of EU law



1.2.3.1. Single case decision-making

The administrative branch of the European Union has, under the Treaties, the competence to make authority decisions in individual cases in a number of sectoral fields. Most of the time the decision-making is practiced by the Commission.

> *Such measures are taken with respect to, for example, merger control, anti-dumping measures, the compatibility with the common market of state aids provided by the Member States, or the legality of certain business arrangements under competition law, i.e. in areas where the EU has exclusive competence or for example, when it is empowered like in the case of authorising medicine: the European Commission takes the binding decisions based on the scientific recommendations delivered by European Medicine Agency (EMA).*
> *Under the centralised authorisation procedure, pharmaceutical companies submit a single marketing-authorisation application to EMA.*
> *This allows the marketing-authorisation holder to market the medicine and make it available to patients and healthcare professionals throughout the EU on the basis of a single marketing authorisation. EMA's Committee for Medicinal products for Human Use (CHMP) or Committee for Medicinal products for Veterinary Use (CVMP) carry out a scientific assessment of the application and give a recommendation on whether the medicine should be marketed or not. However, under EU law EMA has no authority to actually permit marketing in the different EU countries. The European Commission is the authorising body for all centrally authorised product, who takes a legally binding decision based on EMA's recommendation. This decision is issued within 67 days of receipt of EMA's recommendation.*
> *Once granted by the European Commission, the centralised marketing authorisation is valid in all EU Member States as well as in the European Economic Area (EEA) countries Iceland, Liechtenstein and Norway.*

Anyway, it is very rare, that the direct level practices authority power and apply EU law in individual cases, the law application and enforcement is majorly on the indirect administration.

1.2.3.1. Coordination of cooperation

The Commission does not have powers like central administration in a State, however, in case if it needs so, it can establish agencies for the coordination of a certain policy sector. The execution and EU law application is done by the authorities of Member States, although the complexity of the policy, its transboundary nature and the need for constant cooperation and inter-action of the authorities require coordination. ***Coordination*** *is the activity which organise the harmonious functioning of parts for effective results*: the proper execution of EU law. To that end, there are different bodies and organs at direct level. Sometimes, the administrative tasks are also assigned to bodies or private actors, mainly in the fields of standard-setting and the establishment of technical norms. For the unity and transparency of a certain EU policy, coordination of their work is needed under the auspice of the Commission.
The key for effective coordination lies in the ***information management***. Different types of administrative actors are charged with the task of *generating or gathering of information* serving a range of purposes. These or other participants *in the administrative process administer, distribute, share, and publish the information so generated*. Keeping up the information flow among the competent authorities and publication of information if it is for

the public is a significant administrative activity of the EU, along with the management of common data networks or provision of data through mutual assistance arrangements.

1.2.3.2. Supervision of enforcement

The exercise of control functions by the Commission over the Member States and their administrations is one of the major integrating links of the system of European administration.
Administrative, *political* and *judicial* supervision ensures the proper execution of EU law and in all the procedures, the Commission has an essential role. Either by triggering the procedure of another institution or in investigation, the Commission as the **guardian of the treaties** is required to ensure that the Treaties themselves, and any decisions taken to implement them (the obligatory secondary legislation in the form of regulation, directive, decision), are properly enforced. Commission is the guardian of the treaties and the Commission (or special purpose bodies) is responsible for initiating legal actions under public or private law in order to enforce EU law. It will be discussed later.

1.2.4. Organisation management tasks

The institutions and organs of the EU requires a harmonised functioning thus they require internal institutional administration which aims to ensure the financial, operational and personnel background.

> *The EU institutions, especially the Commission, must engage in hiring decisions, personnel management, office accommodation, and vehicle management, and numerous other purely internal measures in order to ensure their continued and effective functioning and the fulfilment of their responsibilities. For the Commission the conduct of such activities will encompass its directorates-general, services, and the offices and agencies under it. The tasks here may involve also administrative measures associated with legal actions before the Public Service Tribunal.*

1.2.5. Budget administration

The usage of economic resources of the EU is based on a special legal act adopted by the legislators of the EU and its application is supervised by the Court of Auditors. However, the Commission has outstanding powers in the administration of the budget which includes, inter alia, the preparation of new (usually annual) budgets, regular budgetary reporting, and implementation of supervisory or enforcement measures connected therewith, including the appointment of certain categories of officials exercising specific responsibilities.
In addition, there are legal areas whose financial background is heavily influenced by the Commission by the disbursement of funds.

> *The Commission distributes, for example, subsidies for agriculture, research and development, emergency aid, or funds aimed at the furtherance of particular action programmes of the Union itself, for example, to combat discrimination. These tasks are often performed in the context of cooperation between EU actors together with both public and private actors in the Member States by administrative agreements.*

1.3. The agencies

Agencies are *specialized bodies, established by secondary legislation, which exercise public authority and are institutionally separate from the EU institutions and are endowed with*

legal personality. They are set up either by Treaty provision or by legislative act. They **do not follow a single organisational model** therefore their categorisation is challenging as they exercise various administrative functions in all areas of EU policies: provision of information, the provision of services as a basis for the adoption of implementing acts, and even the exercise of specific implementing powers.
Agencies are decentralised form of administration that are not autonomous and independent bodies but integrate national administrative bodies into their operations by providing structures for *horizontal* (direct level – competent Member State authorities with each other) and *vertical cooperation* (direct and indirect level), forming networks. The Member State authorities remain the final decision-makers in individual cases, while the constant information flow and the platform for cooperation is ensured by the agency-maintained network. Some agencies support the Commission only by collecting information or processing applications, others do make important decisions outside the decision-making process laid down by the Treaties.

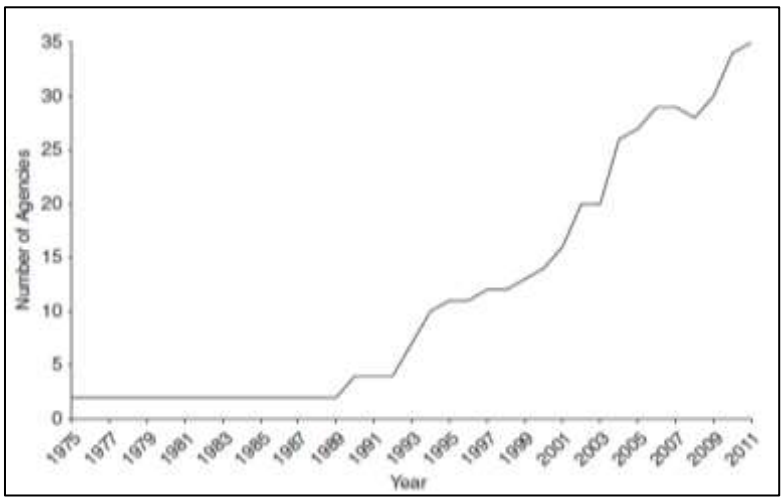
The legal instrument creating an agency must be based on the provision of the Treaty which constitutes the specific legal basis for that policy. The first two ones were established in 1975 [European Centre for the Development of Vocational Training (Cedefop) and the European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)] and their number has been drastically grown after 1990; many of them were established by Council acts.
Delegation of power to the agencies is a delicate issue. According to Meroni doctrine, an institution has the authority to delegate clearly defined powers, the exercise of which is subject to its supervision, to bodies having a distinct personality from itself, even where no express delegation provision exists in the Treaties. A delegation of discretionary powers, on the other hand, can be envisaged only where it is expressly foreseen in the Treaties, such as Articles 290 and 291 TFEU. Otherwise, delegation would alter the balance of powers, which constituted a fundamental guarantee by the Treaty.

Within the European Union's legal system, there are various decentralised organisations which can be grouped together under the general umbrella of *European agencies.*

1.3.1. 'Commission' and 'Council' agencies

Originally, two main categories of European agencies emerged, reflecting pillar divisions at the time of their creation.
'***Commission agencies'*** were initiated by the Commission under the first pillar and were established through the delegation of powers by the Commission, or directly by the Member States, of tasks that had previously not been pooled at the European level.
Office for Harmonisation in the Internal Market (1994); European Agency for Safety and Health at Work (1994); Community Plant Variety Office (1994); Translation Centre for bodies of the European Union (1994); European Monitoring Centre on Racism and Xenophobia (1997); European Food Safety Authority (2002); European Maritime Safety Agency (2002); European Aviation Safety Agency
'***Council agencies'***, on the other hand, were originally set up by the Council (and the member states) with a mandate for operation in the area of the second and third pillar matters. They are more 'intergovernmental', with a prominent role for the member states in their overall governance structure and funding schemes, to the exclusion of the more supranational institutional actors.

For example: Europol, the European Defence Agency (EDA), Eurojust, the European Police College (CEPOL), European Union Institute for Security Studies, European Union Satellite Centre.
European Police Office-Europol is an interesting example as it was originally set up by a member state convention rather than by EU secondary legislation, but later on1 January 2010 with the application of the Europol Council Decision, replacing the Europol Convention, which also brought changes to its financing status and its governance structure.

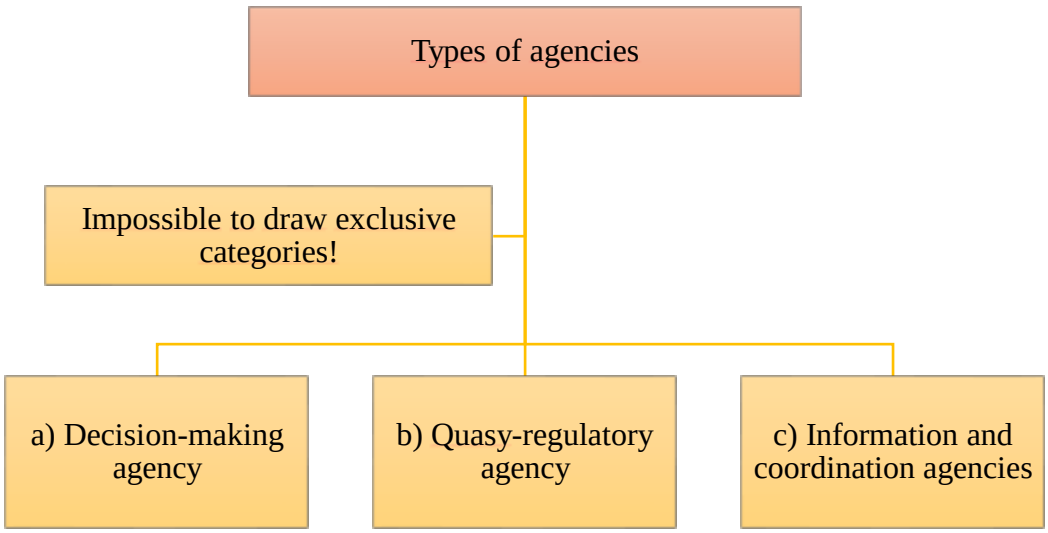


1. The growth of agentification [Busuiuc, 2013, p. 15.]

1.3.2. Academic categorisation of agencies

In 2002, the Commission explained the reason behind the growing number of agencies: they make the executive more effective at European level in highly specialized technical areas requiring ***advanced expertise*** as that their decisions are based on purely technical considerations of very high quality and are ***not influenced by political considerations***. They enable the Commission to focus on its core function of policy formation, with the agencies implementing this policy in specific technical areas.

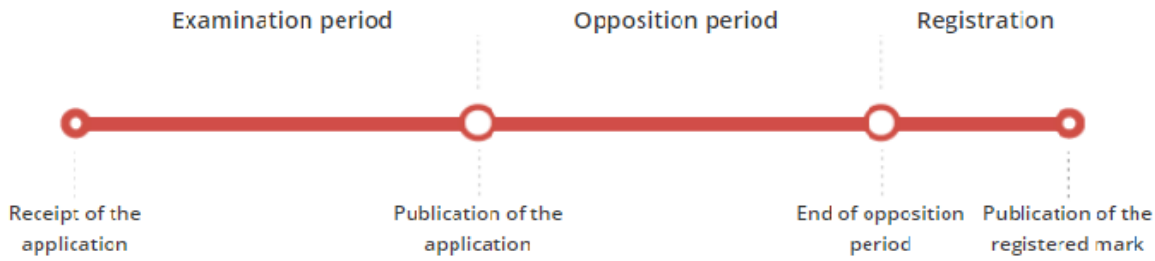
*The Commission often refers to European agencies as **European regulatory agencies**. In fact, some agencies help in the regulation of specific fields, but no European agencies created so far have been endowed with direct rule-making powers. The term regulatory agency is normally used to refer to bodies that have decision- making powers, which can be exercised either through individualized adjudication or through the promulgation of rules of a legislative. Many States have this kind of agency int their domestic system; the EU regulatory agencies do not cover this type of organ, so the name is misleading.*



1.3.2.1. Decision-making agency

EU decision-making agencies that have the **power to make individualized decisions** that are binding on third parties, but they cannot adopt legislative measures of general application.
The *European Union Intellectual Property Office* (EUIPO), the *European Union Aviation Safety Agency* (EASA) or the *Plant Variety Rights* (CPVO) are of this kind of agencies.

The European Union Intellectual Property Office (EUIPO), which was known as Office for Harmonization in the Internal Market (OHIM) until 23 March 2016, was created to offer IP rights protection to businesses and innovators across the EU and beyond. It is based in Alicante, Spain since 1994. If you are in business, you have a trade mark. Trade marks are signs used in trade to identify products. Your trade mark differentiates your products from everyone else's and encapsulates your values. It may be your most valuable asset. Your trade mark is part of your intellectual property and is crucial to your success as a business. If *you just want protection in one EU Member State; perhaps where your business is based at the moment, or where you want to trade. You can make a trade mark application directly at the relevant national IP office. This is the national route. Check the full list of national offices. If you want protection in Belgium, the Netherlands and/or Luxembourg, you can make an application to the Benelux Office of Intellectual Property (BOIP), the only regional-level IP office in the EU, for trade mark protection in those three Member States. This is the regional route. If you want protection in more Member States of the EU, you can apply for an EU trade mark from EUIPO – this is the European route. An online application at EUIPO costs €850 and is filed in just one language. When the Office receive your application check it and process it, and once registered, your trade mark can be renewed indefinitely every 10 years. The EUIPO's decision grants you exclusive rights in all current and future Member States of the European Union through a single registration, filed online. It is valid for 10 years and can be renewed indefinitely, 10 years at a time for each renewal. If your application is not successful, you have a forum to appeal. The Boards of Appeal are responsible for deciding on appeals against first instance decisions taken by EUIPO concerning European Union trade marks and registered Community designs. The decisions of the Boards are, in turn, liable to actions before the General Court, whose judgments are subject to a right to appeal to the CJEU on points of law. The Boards of Appeal are independent and, in deciding a case, are not bound by any instructions.*



The European Union Intellectual Property Network (EUIPN) exists as a powerful, user-focused community of practice extending across the EU.

1.3.2.2. Quasy-regulatory agency

Despite lacking formal decisional powers, there are agencies which have strong recommendatory power. The Commission is not bound by the recommendations thus made, but the views proffered by the relevant agency will nonetheless carry considerable weight, more particularly because they will commonly be concerned with technical and scientific matters. The importance of such agencies in the decision-making process has been recognized by the CJEU in the ***Artegodan case,*** notably: the European Union judicial power extends on the review of, first, the formal legality of the agency's scientific opinion and, second, the Commission's exercise of its discretion', in deciding whether to accept that opinion.
As categories of agencies are overlapping, there are many of them which falls in other categories and have other functions than making recommendations to the Commission. The EASA has actual decisional power in individual cases concerning airworthiness and environmental certification but also have important role in helping the Commission in rulemaking.

> *The European Union Aviation Safety Agency (EASA) seats in Brussels and has headquarters in Cologne, aims to draft implementing rules in all fields pertinent to the EASA mission, certify and approve products and organisations, in fields where EASA has exclusive competence (e.g. airworthiness) and provide oversight and support to Member States in fields where EASA has shared competence (e.g. Air Operations , Air Traffic Management)*
> *It also cooperates with international actors in order to achieve the highest safety level for EU citizens globally (e.g. EU safety list, Third Country Operators authorisations) and promotes the use of European and worldwide standards.*

The term quasi-regulatory agency is also apt for bodies such as the *European Medicines Agency* (EMA), *European Food Safety Authority* (EFSA), and European Maritime Safety Agency (EMSA).

> *The mission of the European Medicines Agency (EMA) was set up in 1995 in Amsterdam is to foster scientific excellence in the evaluation and supervision of medicines, for the benefit of public and animal health in the European Union. The Agency's remit has expanded over time, in line with new EU legislation. On top of its remit to evaluate human and veterinary medicines, EMA is also responsible for*

products developed in the specialised areas of medicines for rare diseases (since 2000), herbal medicines (since 2004), medicines for children (since 2006) and advanced-therapy medicines (since 2007). EMA is a scientific body with the expertise required to assess the benefits and risks of medicines. However, under EU law it has no authority to actually permit marketing in the different EU countries. The role of EMA is to make a recommendation to the European Commission which then takes a final legally binding decision on whether the medicine can be marketed in the EU. This decision is issued within 67 days of receipt of EMA's recommendation. The Commission is thus the authorising body for all centrally authorised products. Commission decisions are published in the Community Register of medicinal products for human use. EMA's success is based on cooperation within the European medicines regulatory network – a unique partnership between the European Commission, the medicines regulatory authorities in the European Economic Area countries, and EMA. Working together has encouraged the exchange of knowledge, ideas and best practices, in order to ensure the highest standards in medicines regulation.
While the majority of new, innovative medicines are evaluated by EMA and authorised by the European Commission in order to be marketed in the EU, most generic medicines and medicines available without a prescription are assessed and authorised at national level in the EU. In addition, many older medicines available today were authorised at national level because they were marketed before EMA was created. Most Member States have registers of nationally authorised medicines. The medicine's road from the laboratory to the patient can be followed here.
Once a medicine has received an EU-wide marketing authorisation, decisions about pricing and reimbursement take place at national and regional level. EMA has no role in decisions on pricing and reimbursement. Once a medicine has been authorised for use in the EU, EMA and the EU Member States constantly monitor its safety and take action if new information indicates that the medicine is no longer as safe and effective as previously thought EMA can also carry out a review of a medicine or a class of medicines upon request of a Member State or the European Commission. These are called EU referral procedures; they are usually triggered by concerns in relation to a medicine's safety, the effectiveness of risk minimisation measures or the benefit-risk balance of the medicine. EMA has a dedicated committee responsible for assessing and monitoring the safety of medicines, the Pharmacovigilance Risk Assessment Committee (PRAC). This ensures that EMA and the EU Member States can move very quickly once an issue is detected and take any necessary action.

1.3.2.3. Information and coordination agencies

Most EU agencies perform coordination and information management along other administrative functions, but a significant number of agencies furnish information and analysis thereof in the relevant area to the Commission, Member States, and related actors whether at the public or private level as their **principal function.** They assist the Commission where necessary in the formulation of policy and legislation at the Community level; and to coordinate and interact within a network formulated by an agency and the designated authorities of Member States.

Europol and Eurojust are the most important agencies established by the Council acting under the former Pillar 3. Headquartered in The Hague, Europol supports the Member States in their fight against terrorism, cybercrime and other serious and organised forms of crime. It also works with many non-EU partner states and

international organisations. It serves as a support centre for law enforcement operations; hub for information on criminal activities; and centre for law enforcement expertise. Each Member State designates a national unit that is to be the sole liaison point between Europol and that country, and information flows are channelled in both directions through this unit.

Among these information gathering agencies there are those named as ***executive agencies*** by the Commission and set up for a **limited period of time** and seated where the Commission is seated to help it. They are not meant to be independent and they operate **under the authority of the Commission**. These executive agencies are responsible for purely **managerial tasks**, i.e. assisting the Commission in implementing the financial support programmes and are subject to strict supervision by it and never have independent power of decision in relation to third parties, They gather, analyse and transmit to the Commission all the information needed to guide the implementation of a Community programme. They fulfil their tasks using the powers delegated to them by the Commission.

The Consumers, Health, Agriculture and Food Executive Agency (CHAFEA), for example, is an executive agency set up by the European Commission to manage four EU programmes on its behalf: Health Programme, Consumer Programme, Better Training for Safer Food initiative (BTSF) Promotion of Agricultural Products Programme. It is a successor to the Executive Agency for Health and Consumers (EAHC), set up by the European Commission in 2006. CHAFEA started work on 1 January 2014. Its mandate extends until 2024. Its mission is to provide high quality support to our beneficiaries and stakeholders, and to ensure that the actions funded by the four programmes deliver results and provide the Commission with valuable input for its policy tasks. The National Focal Points (NFP) assists CHAFEA with national experts for the Health Programme in member states and participating countries appointed by their national health minister.

II. CIVIL SERVICE OF DIRECT ADMINISTRATION

Working for the EU overwhelm many posts in the cities of Brussels and Luxembourg and even Strasbourg, in agencies based all over Europe and in EU delegations worldwide. The European Personnel Selection Office (EPSO) is responsible for selecting staff (meaning others than the political positions which are filled according to special procedural rules) to work for the institutions and agencies of the European Union including the European Parliament, the European Council, the European Commission, the European Court of Justice, the Court of Auditors, the European External Action Service, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman. Each institution is then able to recruit staff from among the pool of candidates selected by EPSO. On average, EPSO receives around 60,000-70,000 applications a year with around 1,500-2,000 candidates recruited by the European Union institutions.

There is no special EU-degree requirement for those who wish to apply for a job in any of the insitutions or offices. However, once employed, the ***European School of Administration*** was set up in 2005 in order to extend the range of learning and development opportunities available to EU staff. It works in close cooperation with the institutions' own training departments who complement the offer of trainings by meeting their institution's specific training needs.

The labour law of the EU staff is the oldest administrative law related regulation of the integration: regulation *No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community*. It entered into force on 1st January 1962 but gone through more than 140 modifications.

The application process for a position in one of the EU institutions or bodies varies according to the contract type. There are several categories (excluding freelance work) of work contracts: and there are also traineeships. Recruitment is organised by the EPSO.

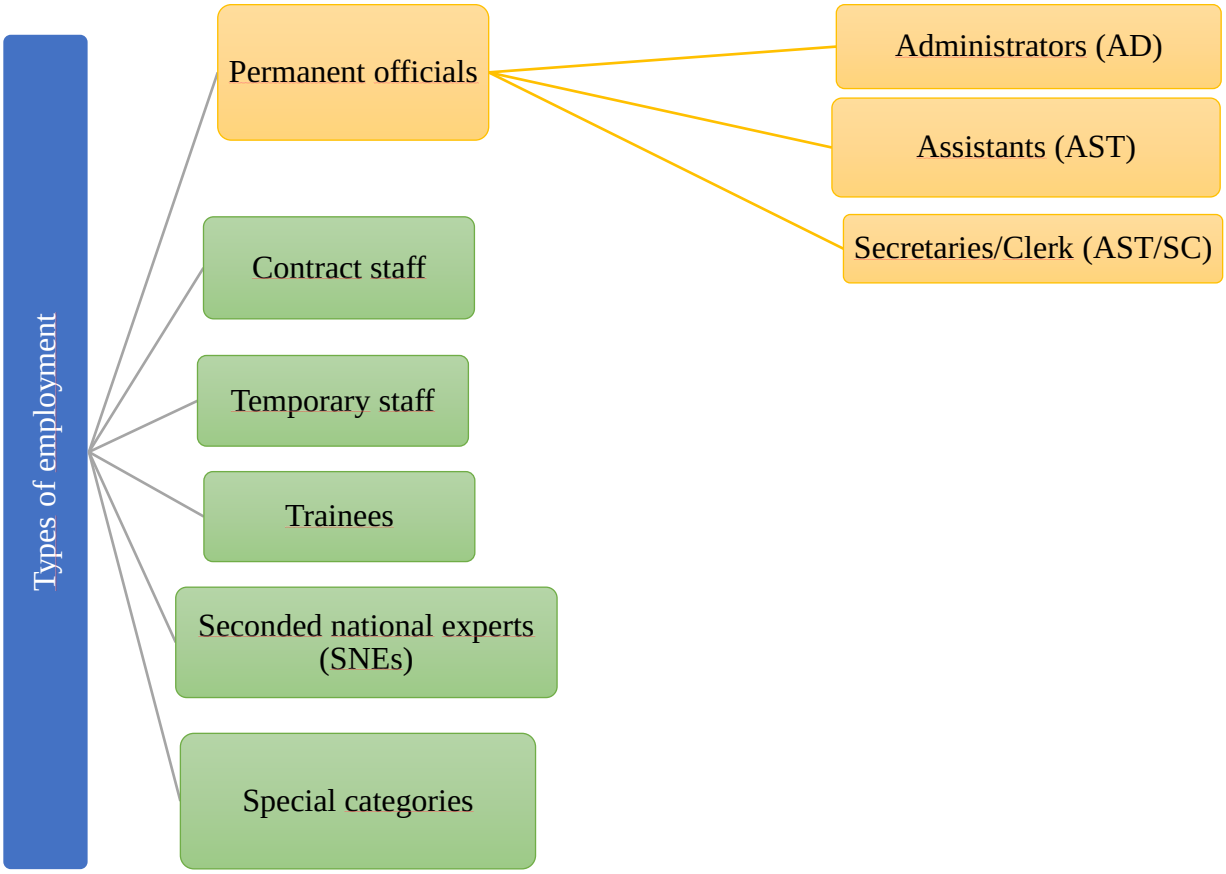
2.1. Basic recruitment of officials

The selection of staff is based on a system of open competitions. They are organised by EPSO for permanent positions as career civil servants.

The EU institutions select candidates for ***permanent contracts*** through ***open competitions*** published on the EPSO website. (1) The first round of tests you will be called on to complete will be ***computer-based*** and will comprise ***aptitude and ability psychometric exercises***. If you are successful in these tests, (2) you will then be called to an ***assessment centre*** where you will be expected to complete a number of ***work-related exercises*** in a group environment and before at least two assessors. The skills you will be assessed on broadly cover the following core competencies required by the EU institutions: analysis and problem-solving, communicating, delivering quality and results, learning and development, prioritising and organising, resilience, working with others and in the case of graduates, leadership. Applicants who pass a competition are placed on a (3) ***reserve list*** from which the institutions draw recruits as and when they need them. The aim of a competition, then, is not to fill a specific post, but to constitute a reserve pool for recruitment needs as they arise. Reserve lists for generalist competitions are usually valid for 1 year. The format of these competitions varies depending on the profile being sought. Each competition is announced by a ***competition notice***, giving full details of the profile, the eligibility criteria and the selection procedure. Generally, it takes 5-9 months to complete the selection procedure, starting from the date of publication of the competition notice. The highest-scoring applicants in the

assessment phase will be placed on the reserve list. They will be selected for a (4) ***job interview*** at one of the EU institutions.

2.2. Type of positions



2.2.1. Permanent Officials

Within the EU civil service there are three types of permanent contract that can be awarded.

There are 16 grades for permanent officials

2.2.1.1. Administrators (AD)

An administrator is generally be involved in *drafting policies, implementing EU law, analysis or advisory work*. The policy sectors covered include administration, law, finance, economics, communications and science. Translators and interpreters are also recruited as administrators.

An administrator career ranges from *grades AD 5 to AD 16*, with AD 5 being the entry level grade for university graduates. Selection and recruitment may also be offered at higher grades AD 6 or AD 7 in more specialist roles, where the applicant will have to demonstrate several years' relevant experience. AD 9-AD 12 is middle management level. Selection/recruitment at these grades requires previous management experience.

2.2.1.1. Assistants (AST)
An assistant is typically engaged in an *executive or technical role* in administration, finance, communication, research, or policy development and implementation.

An assistant career ranges from grades *AST 1 to AST 11*, with staff typically entering at grades AST 1-AST 3. As a minimum, an AST 1 candidate must have completed secondary education and have previous relevant experience or have a relevant vocational qualification.

2.2.1.3. Secretaries/Clerks (may change depending on competition) (AST/SC).
A secretary/clerk is generally involved in *office management or providing administrative support* at the EU institutions.

A secretary/clerk career ranges from grade *AST/SC1 to AST/SC6*. New staff usually enter at grades AST/SC 1. As a minimum, an AST/SC1 candidate must have post-secondary education of at least 1 year attested by a diploma directly related to the nature of the duties, or secondary education attested by a diploma giving access to post-secondary education followed by at least 3 years' professional experience directly related to the nature of the duties, or professional training of at least 1 year, followed by a minimum of 3 years' professional experience. Both the training and experience must be directly related to the nature of the duties.

Type	Activity	Salary grade	Minimum qualification
AD	engaged in drafting policies and implementing EU law, analysing and advising	AD 5-AD 16 (12 grades)	University degree
AST	employed in an executive and technical role	AST 1 to AST 11 (11 grades)	Completed secondary education
AST/SC	office management and administrative support role	AST/SC1 to AST/SC6 (6 grades)	completed secondary education

2.2.1.4. Benefits and salary of permanent officials
Basic monthly permanent official salaries range from around

- €2 300 per month for a newly recruited Assistant-Secretary (AST/SC 1) official,
- €4 500 for an entry level graduate administrator grade (AD 5)
- and up to €16,000 per month for a limited number of top-level Administrators (AD 16) at Director-General level.

Each grade is broken up into *five seniority steps* with corresponding salary increases. Basic salaries are adjusted annually in line with inflation and purchasing power in the EU countries.

In addition, if you have left your home country to come and work for an EU institution, you are entitled to an **expatriation allowance** equivalent to 16% of your basic salary. Some **family-related allowances** are available to permanent officials according to their family situation. These include a household allowance, a dependent child allowance, an educational allowance and a pre-school allowance.

As a European civil servant, your salary is **not subject to national income tax**. Instead, salaries are directly subject to **a Community tax** which is paid directly back into the EU's budget. This tax is levied progressively at a rate of between 8% and 45% of the taxable portion of your salary.

The old age pension is also regulated by the EU and

Officials with 20 or more years' service on 1 May 2004 shall become entitled to a **retirement pension** when they reach the age of 60.

- *Officials aged 35 years or more on 1 May 2014 and who entered the service before 1 January 2014 shall become entitled to a retirement pension at the age between 62 years 6 months and 64 years 8 months, depending on their age on 1 May 2014.*
- *Officials aged less than 35 years on 1 May 2014 shall become entitled to a retirement pension at the age of* ***65 years.***
- *Officials aged 45 years or more on 1 May 2014 who entered the service between 1 May 2004 and 31 December 2013, the pensionable age shall remain 63 years.*

2.2.2. Other types of employment

2.2.2.1. Contract staff

It is possible to work for the EU institutions on a **fixed-term contract basis**. Contract agents (known as CAST) are recruited to *manual or administrative support-service tasks* or to provide *additional capacity in specialised fields* where *insufficient officials* with the required skills are available. Contract staff is employed for a fixed minimum period, often with a shorter initial contract of **6-12 months** depending on the type of job. In some EU bodies, your contract could be extended for an indefinite duration.

Contract staff positions are available for a wide range of jobs, requiring different levels of qualifications: manual and administrative work; clerical, secretarial or office management tasks; executive tasks, drafting, accountancy or equivalent technical tasks; administrative, advisory, linguistic and equivalent technical tasks.

Contract staff are **recruited from a pool of applicants** (kept in a database) following a selection procedure usually organised by EPSO. The s**election procedure** may include CV sifting, reasoning tests, and/or competency tests, that may be written, oral or other practical tests in the field. Their renumeration may vary from €1 847,76 to 6 599,06.

2.2.2.2. Temporary staff

You can be employed at the EU institutions on a temporary basis. Temporary posts are usually available in **highly specialised fields** such as **scientific research**. Selection and recruitment of temporary staff is generally run by individual EU institutions and agencies.

2.2.2.3. Trainees

Traineeships (or internships) are available in a wide range of fields and offer a great insight into the work of the EU. The content of the job largely depends on the service you are assigned to. The majority of traineeships are paid, usually in the region of 1000€/month and are based in Brussels or Luxembourg.

Selection procedures for traineeships are run by the individual EU institutions and agencies. Applications are usually online, but paper copies of the application form are sometimes required. In general, applications are accepted about 4-9 months before the beginning of the traineeship and applications should be submitted in good time.

2.2.2.4. Seconded national experts (SNEs)

Seconded national experts are **national or international civil servants** or persons employed in the public sector who are working temporarily for an EU Institution.

Most SNEs are nationals from a European or European Economic Area country, but in exceptional cases non-EU/EEA nationals can also be **seconded** to the Commission. An SNE must have at least 3 years work experience at an appropriate level and must have worked for an eligible employer for at least 12 months before the secondment and must have thorough knowledge of one of the EU languages and a satisfactory knowledge of another EU language. The secondment can be for a **minimum of 6 months and up to a maximum of 4 years** in principle. The SNE can return for a second period of secondment once an interval of at least 6 years has passed.

It is the country's permanent representation to the EU which does the recruitment for SNEs.

2.2.2.5. Special categories of employment

a) Interim staff

Interim staff are often needed in secretarial roles. Posts are rarely longer than **6 months** in duration. The Commission employs staff on a temporary basis, mainly for secretarial work, on short term contracts through temping agencies.

b) Interim consultants

Some EU departments employ consultants directly through tendering procedures.

> *TED eTendering is an EU institutions' eProcurement platform based on EU Directives on public procurement.*

c) Parliamentary Assistants

The parliamentary assistant is assigned **to a Member of the European Parliament** (based in Luxembourg, Brussels or Strasbourg). The EP and the Political Groups have their own recruitment procedures.

d) Freelance linguists

A freelance career at the EU institutions is available to **translators and interpreters.** The Commission, the Court of Justice and the EP have their own calls for freelance translators.

e) Junior Professionals in Delegation

The EU has Delegation offices around the world. Traineeships of **up to 18 months** are offered in the EU Delegations to give talented and promising university post-graduates the opportunity to gain first-hand experience in the work of the Delegations, and a deeper insight into their role in the **implementation of EU external relations policies**.

f) EU experts

Experts of an EU policy field can **register their credentials** with an experts' database maintained by an EU institution or agency. The expert is invited to create a password-protected profile containing your details (contact details, specialisation, credentials, etc.), and he/she can then be called on for specific tasks as needed.

h) Maintenance and canteen staff

Certain categories of staff such as maintenance workers and canteen staff are recruited via external contracting companies. These contracts are awarded **through open tender** procedures.

III. PROCEDURE OF DIRECT ADMINISTRATION

3.1. Definition of administrative procedure and administrative procedural law

An ***administrative procedure*** is the formal path, established in legislation, which an administrative action should follow. Usually, an administrative action has to be carried out through a number of steps, which should be known in advance. A pre-established decision-making procedure is essential to any complex organisations if their activities have to be controlled internally and externally, which is particularly crucial if the organisation deals with public interests. At the same time, the procedure has to guarantee the rights of those dealing with the administration. The **double guarantee**, of the public interest and of the private interest of the citizens, is the crucible of the public administration of any democratic State ruled by law.

To that end, administrative procedures shall contain 3 basic elements which shall be reflected in the **administrative procedural law**, the legal norm that governs the administrative procedure.

a) **Guarantee of individual rights**

Administrative law is the specific law for doing administrative actions and decisions where the administration has the prerogative of imposing its will to individuals. However, the

individuals, or citizens, personal rights and interests, which in a democracy are legitimate. Public authorities while imposing their will upon individuals have to respect those rights and interests.

b) **Efficiency and order in the protection of the public interest (transparency)**

It is crucial that administrative procedures are designed in a way that protects at the same time the public interest or public needs (as interpreted by the public authorities) and the personal or private rights and interest of individuals. To that end, decision-making shall be predictable and transparent, so the procedure and can also be the subject of review along with the content of the decision.

Good administrative procedures are necessary for preventing arbitrariness in administrative decision-making and to keep administrative discretion under control, i.e. making it controllable by other administrative bodies and by the courts.

3.2. Administrative procedural law of direct level of the EU

3.2.1. Legal framework

The direct administration of the EU has no code of administrative procedural law, therefore the existing legal provisions in force can be summarised as follows.

3.2.1.1. Treaty based provisions

The TFEU contains no direct rule for administrative procedures of direct administration except for the general requirement of an open, efficient and independent European administration.

> *TFEU emphasizes that "(t)he institutions, bodies, offices and agencies of the EU shall have the support of an open, efficient and independent European administration" [TFEU 298 (1)]*

The TFEU empowers the European Parliament, the Council and the Commission shall consult each other and by common agreement make ***arrangements for their cooperation***. To that end, they may, in compliance with the Treaties, conclude ***interinstitutional agreements*** which may be of a binding nature.

3.2.1.2. Case-law of the CJEU

The ***case-law of the CJEU*** has contributed to shape EU administrative law by developing over the year's general principles of administrative law and procedure, especially those related to the rights of defence. In this respect, landmark decisions acknowledged the right to be heard, the duty for the administration to give reasons and to adopt decisions within a responsible time, the privilege against self-incrimination. They are echoed in the Charter of Fundamental Rights which gained legal force by the Lisbon Treaty.

3.2.1.3. Right to good administration

Article 41 is based on the existence of the Union as subject to the *rule of law* whose characteristics were developed in the case-law which enshrined inter alia good

administration as a general principle of law and the wording regarding the obligation to give reasons comes from Article 296 of TFEU.

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States. **[Also guaranteed by Article 340 TFEU]**

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language. **[Also guaranteed by Article 20(2)(d) and Article 25 TFEU]**

In case of the European administrative procedures, the access to documents ensures openness and verifiability for the procedure, therefore, the Charter includes it as a right under Article 42.

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium. **[Also guaranteed by 15 TFEU]**

> *Access to files was recognised by the Court of Justice early in the competition law cases as an essential element of a proper defence. In parallel to the development of the right of access to documents as a procedural right within the right of defence or, specifically, as an inherent part of the right to be heard, concerns regarding the democratic deficit of the institutions prompted the development of a constitutional style right, adopting measures to improve public access to the information available to the institutions. Since the 90s, the openness of the action of public authorities has been considered closely and linked with the democratic nature of the institutions. The fact that citizens are aware of what the administration is doing is considered a guarantee that it will operate properly. The introduction of openness and transparency as principles of the decision-making process, with the aim of increasing the democratic nature of the Community and bringing it closer to citizens*

Regulation of 2001 of the EP and the Council on the access to documents introduced some innovations that, on the one hand, highlight the constitutional perspective of the right to access to documents related to the democratic nature of the European public administration and, on the other, reflect the current state of the case-law on access to documents with a long list of exceptions to the general principle of ensuring the **widest access possible**. All

agencies of the Union should also apply these principles. It provides for the ***obligation to balance the interests*** by the Institution concerned; the obligation to give **partial access to** those parts of the documents not covered by an exception and the addition of some exceptions, such as defence and military matters and legal opinions. In order to establish rules ensuring the easiest possible exercise of the right of access to documents and, therefore, promoting the constitutional nature of this right, the Regulation obliges each institution to **keep a register of documents open to the public** and **to give direct access to it in electronic form**. Furthermore, the institutions shall provide information and assistance to the citizens on how and where applications for access to documents can be made. This rule is connected to the development of good practices to facilitate the exercise of this right by the EU administration, such as to inform the public of the rights they enjoy under this Regulation and to establish an inter-institutional committee to examine best practice, to analyse possible conflicts and discuss future developments to this right. Substantive rules to ensure the easiest possible exercise of this right are accompanied by detailed procedural rules on how to get access to documents, promoting good administrative practice. For instance, there is a shorter **time-limit to give an answer** (fifteen days and not a month as before) and, another fifteen for the processing of a successful application. Failure by the institution to reply within that period of time is considered a negative reply which entitles the applicant to institute court proceedings against the institution and/or make a **complaint to the European Ombudsman**.

The Regulation guarantees access to documents for **citizens and residents of the European Union and to all legal persons whose registered offices were located in a Member State**. The Council, Commission and Parliament's implementing decisions extended this right to all natural and legal persons **even when not citizens** of the European Union or not having registered offices in a Member State. However, this does not mean that those persons have the right to access documents which is, according to the Charter of Fundamental Right of the European Union, **a right of citizenship.**

> *An Irish citizen asked the European Medicines Agency (EMA) for access to documents containing details of all suspected serious adverse reactions relating to an anti-acne drug. His son had committed suicide after taking the drug. The EMA refused his request, arguing that the EU rules on access to documents did not apply to reports concerning suspected serious adverse reactions to drugs. After investigating the complaint, the Ombudsman concluded that the EU rules on access to documents apply to all documents held by the EMA. He recommended that the EMA review its refusal to grant access to the adverse reaction reports. The Ombudsman also suggested that, as part of its information policy, the EMA could provide additional clarifications to make it easier for the public to understand such data and their significance. The EMA accepted the Ombudsman's recommendation by announcing the release of the reports. It also adopted a new, proactive policy designed to enhance transparency in matters concerning access to documents that are in its possession.*

A paradigmatic example of case-law adopted from a constitutional perspective is the *Hautala case (C-353/99)*, in which the main idea is that although the right of access to documents is not absolute and its exercise may imply some restrictions, these should correspond to

objectives of general interest of the European Union and respect the principle of proportionality.

> *Ms Heidi Hautala was refused access by the Council to a report on conventional arms exports in 1997, on the ground that it contained sensitive information, disclosure of which would harm the European Union's relations with non-member countries (referring to Decision 93/731/EC).*
> *On 19 July 1999, the Court of First Instance annulled the Council's decision, on the ground that the Council should have considered the possibility of partial access to documents. The Council, supported by Spain, appealed against the judgment, but the Court of Justice dismissed its appeal. Ms Hautala is supported by Denmark, Finland and the UK.*
> *The Court of Justice decided to uphold the judgment of the Court of First Instance annulling the Council's decision to refuse Ms Heidi Hautala, a Member of the EP, access to a report on arms exports. The Court of Justice pointed out that the public must have the widest possible access to documents and agreed with the judgement of the Court of First Instance, which said that the Council should consider partial access to a document containing items of information whose disclosure would endanger EU interests.*

The right to an ***effective remedy***, which is an important aspect of this question, is guaranteed in Article 47 of EU Charter.

The provisions of the EU Charter **are addressed to** the (a) *institutions, bodies, offices and agencies* of the EU with due regard for the principle of subsidiarity and to (b) the *Member States* only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

3.2.1.4. Secondary sources: sector-specificity

Due to the differences among EU policies, the legislative competences of the EU and the Europeanisation of a certain legal field, there is a variety of EU acquis which regulates administrative procedural issues at direct and indirect level of European administration. Therefore, a selection of sector-specific EU administrative procedures is in force. These arrangements foresee a strong role for the Commission, even though its powers differ across the various procedures. Typical for procedures within direct administration is that it is the Commission which adopts the final decision at the conclusion of the procedure.

Apart from the implementation of the budget in the direct administrative mode, instances where the Commission administers a procedure from beginning to end are rare.

> *The best-known examples are found in the fields of antitrust, mergers, state monopolies, and state aid, all involving procedures for implementing policies and rules designed to ensure that competition in the EU is not distorted. Therefore, the Commission has been entrusted with considerable powers of preventing or rectifying infringements of the Union's competition rules. Given the scope of such powers, the rights of defence for individual undertakings or Member States under investigation are of considerable importance in the context of the procedures pertaining to them. The administrative responsibility for the enforcement of EU competition rules, with the exception of mergers, is laid down in the Treaties. Article 101 TFEU anti-competitive*

collusion between undertakings, whereas Article 102 TFEU prohibits the abuse of a dominant position. In both cases, Regulation 17/62 governs the procedural rules to be followed.

3.2.2. The European Ombudsman's opinion on procedural rights

The European Ombudsman is responsible for the investigation of maladministration at direct level of European administration and to report the experience to the European Parliament. Soon after the entry into force of the Lisbon Treaty, the Ombudsman issued two codified version on how the principle and right to good administration shall be interpreted by public service. As a source, it both are soft law meaning that they do not take the form of legally binding sources, therefore they are not legal obligations.

3.2.2.1. The European Code of Good Administrative Behaviour in 2011

The European Code of Good Administrative Behaviour was approved by the Parliament (the EP adopted the resolution on 6 September 2001 on the proposal of the Ombudsman) and has become a vital instrument for putting the principle of good administration into practice. It helps individual citizens to understand and obtain their rights, and promotes the public interest in an open, efficient, and independent European administration. The Code helps citizens to know what administrative standards they are entitled to expect from the EU institutions. It also serves as a useful guide for civil servants in their relations with the public.

The explanations that accompany the EU Charter make clear, the right to good administration is **based on the case law of the CJEU** concerning good administration as a general principle of EU law. Such general principles also bind the Member States when they are acting within the scope of EU law.

The following obligations are enlisted for civil servants of the EU.

- ✓ Lawfulness
- ✓ Absence of discrimination
- ✓ Proportionality
- ✓ Absence of abuse of power
- ✓ Impartiality and independence
- ✓ Objectivity
- ✓ Legitimate expectations, consistency, and advice
- ✓ Fairness
- ✓ Courtesy
- ✓ Reply to letters in the language of the citizen
- ✓ Acknowledgement of receipt and indication of the competent official
- ✓ Obligation to transfer to the competent service of the institution
- ✓ Right to be heard and to make statements
- ✓ Reasonable time-limit for taking decisions
- ✓ Duty to state the grounds of decisions
- ✓ Indication of appeal possibilities
- ✓ Data protection
- ✓ Requests for information
- ✓ Requests for public access to documents
- ✓ Right to complain to the European Ombudsman

3.2.2.2. Public service principles for the EU civil service

In June 2012, following a public consultation, the Ombudsman published a high-level distillation of the **ethical standards** to which the EU public administration adheres. Bearing the principles in mind can help civil servants to understand and apply rules and principles correctly and guide them towards the right decision in situations where they should exercise their powers.

a) Commitment to the European Union and its citizens

Civil servants should be conscious that the Union's institutions exist in order to serve the interests of the EU and of its citizens in fulfilling the objectives of the Treaties. Civil servants should carry out their functions to the best of their abilities and strive to meet the highest professional standards at all times. They should be mindful of their position of public trust and set a good example to others.

b) Integrity

Civil servants should be guided by a sense of propriety and conduct themselves at all times in a manner that would bear the closest *public scrutiny*. Civil servants should not place themselves under any financial or other obligation that might influence them in the performance of their functions, including by the receipt of gifts. They should promptly declare any private interests relating to their functions. Civil servants should take steps to *avoid conflicts of interest* and the appearance of such conflicts. They should take swift action to resolve any conflict that arises. This obligation continues after leaving office**.**

c) Objectivity

Civil servants should be im*partial, open minded, guided by evidence, and willing to hear different viewpoints*. They should be ready to acknowledge and correct mistakes. In procedures involving comparative evaluations, civil servants should base recommendations and decisions only on merit and any other factors expressly prescribed by law. Civil servants should not discriminate or allow the fact that they like, or dislike, a particular person to influence their professional conduct.

d) Respect for others

Civil servants should act respectfully *to each other and to citizens*. They should be *polite, helpful, timely, and co-operative*. They should make genuine efforts to understand what others are saying and express themselves clearly, using plain language.

e) Transparency

Civil servants should be willing to *explain their activities and to give reasons* for their actions. They should keep proper records and welcome public scrutiny of their conduct, including their compliance with these public service principles.

3.2.3. The EP's requirements and its constant efforts for a code

The European Parliament is keen on urging the necessity of a general administrative procedural code for the EU, but the Commission constantly rejects its efforts.[1]

[1] https://www.europarl.europa.eu/legislative-train/theme-union-of-democratic-change/file-eu-administrative-procedure

First, after the entry into force of the Treaty of Lisbon, under the new legal basis of Article 298 of the TFEU, on 15 January 2013 the European Parliament adopted a resolution based on a legislative initiative report prepared by its Legal Affairs Committee (rapporteur: Luigi Berlinguer). With the aim of guaranteeing the right to good administration and ensuring an open, efficient and independent EU civil service, the EP called for a regulation establishing an EU administrative law applicable to all the Union's institutions, bodies and agencies in their relations with the public. The proposed regulation should codify the fundamental principles of good administration and regulate the procedure to be followed by the Union's administration when handling individual cases to which a natural or legal person is a party. It should also lay down a procedure applicable as a de minimis rule where there is no specific law. Th Berlinguer resolution was followed another resolution of 9th June 2016 with a draft regulation for an open, efficient and independent European Union administration which was also ignored by the Commission.
To emphasize the need for a procedural code, the EP launched a public consultation on general rules for an open independent and efficient European administration in December 2017. The consultation was open from 15.12.2017 to 09.03.2018 aiming to obtain a better understanding of the interactions of businesses and citizens with the EU institutions; provide a basis to evaluate the implementation of existing EU rules; identify possible shortcomings. Most responders supported additional measures at EU level to simplify EU administrative rules. Operational incoherence and the administrative burden costs were identified as the most problematic issues.

The resolution based on the Berlinguer Report includes a universal set of principles and recommendations that should lay down a procedure applicable as a ***de minimis rule*** where no *lex specialis* exists. So far, the Commission refused to initiate the legislation in this issue.

a) Principles of administrative procedures

The regulation should codify the following principles:

- ***Principle of lawfulness:*** the Union's administration shall act in accordance with the law and apply the rules and procedures laid down in the Union's legislation. Administrative powers shall be based on, and their content shall comply with, the law. Decisions taken or measures adopted shall never be arbitrary or driven by purposes which are not based on the law or motivated by the public interest.
- ***Principle of non-discrimination and equal treatment***: the Union's administration shall avoid any *unjustified discrimination* between persons based on nationality, gender, race, colour, ethnic or social origin, language, religion or beliefs, political or any other opinion, disability, age, or sexual orientation. *Persons who are in a similar situation shall be treated in the same manner.* Differences in treatment shall only be justified by objective characteristics of the matter in question.
- ***Principle of proportionality***: the Union's administration shall take decisions affecting the rights and interests of persons only when necessary and to the extent required to achieve the aim pursued. A *fair balance shall be ensured between the interests of private persons and the general interest*.
- ***Principle of impartiality***: the Union's administration shall be impartial and independent. It shall abstain from any arbitrary action adversely affecting persons, and from any preferential treatment on any grounds. The Union's administration shall always act in the *Union's interest and for the public good*. No action shall be guided by any personal (including financial), family or national interest or by political

pressure. The Union's administration shall guarantee a fair balance between different types of citizens' interests (business, consumers and other).

- ***Principle of consistency and legitimate expectations***: the Union's administration shall be consistent in its own behaviour and shall follow its normal administrative practice, which shall be made *public*. In the event that there are legitimate grounds for departing from such normal administrative practice in individual cases, a valid statement of reasons should be given for such departure.
- ***Principle of respect for privacy***: the Union's administration shall respect the privacy of persons, it shall refrain from processing personal data for non-legitimate purposes or transmitting such data to unauthorised third parties.
- ***Principle of fairness:*** this must be respected as a basic legal principle indispensable in creating a climate of confidence and predictability in relations between individuals and the administration;
- ***Principle of transparency:*** the Union's administration shall be open. It shall *document the administrative procedures* and keep adequate records of incoming and outgoing mail, documents received, and the decisions and measures taken. *All contributions from advisory bodies and interested parties should be made available* in the public domain.
- ***Principle of efficiency and service***: Members of the staff shall advise the public on the way in which a matter which comes within their remit is to be pursued. Upon receiving a request in a matter for which they are not responsible, they *shall direct the person making the request to the competent service*.

For the evaluation of the principles, the following recommendations are taken.

b) Recommendation on the rules governing administrative decisions

- ✓ Administrative decisions can be taken by the Union's administration on its ***own initiative*** or ***at the request of an interested party***.
- ✓ Requests for individual decisions shall be ***acknowledged in writing***, with an indication of the time-limit for the adoption of the decision in question. The consequences of any failure to adopt the decision within that time-limit (administrative silence) shall be indicated.
- ✓ In the event of a ***defective request***, the acknowledgment shall indicate a deadline for ***remedying the defect*** or producing any missing document.
- ✓ No member of staff shall take part in an administrative decision in which he or she has a ***financial interest***.
- ✓ ***Any conflict of interest*** shall be communicated by the member of staff concerned to his or her immediate superior, who may take the decision to exclude the member of staff concerned from the procedure, having regard to the particular circumstances of the case. An interested member of the public may request that an official *be excluded* from taking part in any decision which will affect that person's individual interests. The official's *immediate superior* shall take a decision after hearing the official concerned.
- ✓ The ***rights of the defence must be respected at every stage*** of the procedure. If the Union's administration takes a decision that will directly affect the rights or interests of persons, the persons concerned shall be given the *opportunity to express their views in writing or orally* before that decision is taken, if necessary, or if they so choose, with the assistance of a person of their choice.

- ✓ An interested party shall be granted ***full access to his or her file***. It should be up to the interested party to determine which non-confidential documents are relevant.
- ✓ Administrative ***decisions shall be taken within a reasonable time-limit*** and without delay. Time-limits shall be fixed in the corresponding rule governing each specific procedure. Where no time-limit is established, it *should not exceed three months* from the date of the decision to initiate a proceeding if it was initiated ex officio or from the date of the request of the interested party.
- ✓ Administrative decisions shall be ***in writing and shall be worded in a clear, simple and understandable manner***. They shall be drafted in the language chosen by the addressee, provided that it is one of the official languages of the Union.
- ✓ Administrative decisions must ***clearly state the reasons*** on which they are based. They shall indicate the relevant facts and their legal basis.
- ✓ Administrative decisions which affect the rights and interests of individuals shall be ***notified in writing*** to the person or persons concerned as soon as they are adopted.
- ✓ Administrative decisions shall clearly state – where Union law so provides – that an ***appeal*** is possible, and shall describe the procedure to be followed for the submission of such appeal, as well as the name and office address of the person or department with whom the appeal must be lodged and the deadline for lodging it. The regulation should include the ***possibility*** for the Union's administration **to *correct*** a clerical, arithmetic or similar error at any time on its own initiative or following a request by the person concerned.
- ✓ The regulation should be drafted in a **clear and concise manner** and should be **easily understandable** by the public. It should be adequately **publicised** in the web pages of each Union institution, body, office and agency.

3.2.4. Academics on procedural rules: ReNEUAL Model Rules

The ***Research Network on EU Administrative Law*** (ReNEUAL) working groups have developed a set of model rules from 2009 until 2014. The ReNEUAL Model Rules 2014 are designed as a ***draft proposal for binding legislation*** identifying - on the basis of comparative research - best practices in different specific policies of the EU, in order to reinforce general principles of EU law. Therefore, it can be treated as a codification of the administrative procedural rules of European administration with recommendations to fill the legal gaps.

> *The ReNEUAL Model Rules of administrative procedure are organised in six 'books'. These books are designed to reinforce general principles of EU law and identify - on the basis of comparative research - best practices in different specific policies of the EU. Book I addresses the general scope of application of the model rules, their relation to sector-specific rules and Member State's law and the definitions of wordings applied in all the books. The Preamble of Book I contains a summary of principles, which guide administrative behaviour, and the interpretation of all subsequent norms in Books II to VI. The latter books cover more in-depth administrative procedures in the EU that have the potential to directly affect the interests and rights of individuals. The Books address nonlegislative implementation of EU law and policies by means of: rulemaking (Book II), single case decision-making (Book III), contracts (Book IV) and, very important for the composite nature of EU administration, procedures of mutual assistance (Book V) and information management (Book VI).*
> *ReNEUAL's Model Rules on Administrative* ***Procedures do not follow the same definition of their scope of applicability in all books****. The procedures covered by Books II, III and IV are those conducted by EU institutions, bodies, offices and agencies. The procedures covered by Books V and VI address issues which cannot be*

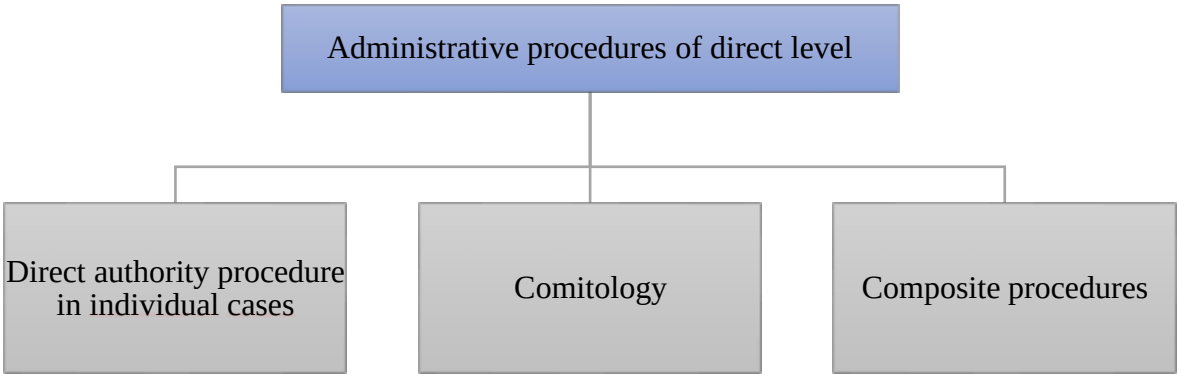
solved without taking into account the relationship between EU institutions, bodies, offices and agencies, on the one hand, and Member States' authorities, on the other hand. Given the reality of Member States being more often than not involved in the implementation of EU law and policies, the Model Rules of Books V and VI are designed to be applicable also to implementation activity by Member States.

Structure of ReNEUAL Model Rules		
Book I	General Provisions	
Book II	Administrative Rule-Making	procedures are those conducted by EU institutions, bodies, offices and agencies
Book III	Single Case Decision-Making	
Book IV	Contracts	
Book V	Mutual Assistance	designed to be applicable also to implementation activity by Member States
Book VI	Administrative Information Management	

The Model Rules go beyond direct administration and also codifies and improves with recommendations the phase of cooperation of the competent authorities. The ReNEUAL Model Rules were also drafted in order to be useful to Member States' authorities who might choose to apply them for their activities when implementing EU law and policies.

3.3. Administrative procedures of direct level

Administrative procedure at direct level of European administration there are three basic areas.



3.3.1. Direct authority procedure in individual cases

Direct authority procedure means that a European body or authority practices the execution of EU law by issuing individual decision in a case. It is relatively rare. Procedures within the framework of direct administration can be initiated in a number of ways. Complaints by third parties, notifications by those affected, and initiation by the Commission itself are the usual means provided. Which of these will be used in practice depends on the nature of the proceedings.

Antitrust and state monopolies proceedings are designed to prohibit certain behaviour. The emphasis there is, therefore, less on notification, and more on detecting and pursuing unlawful action. Complaints and the Commission's own initiative are, therefore, the predominant modes of initiation of such proceedings. On the other hand, state aid and merger control proceedings are predicated on the idea that the activities concerned are prohibited unless an authorization is granted. While the grant of state

> *aid carries with it a presumption of illegality, mergers with a Union dimension are not per se unlawful, but constitute a potential threat to undistorted competition, thus often demanding a complex analysis of economic and legal factors necessitating a regime of prior authorization.*

3.3.2. Comitology

Comitology is basically a phase in an executive law-making procedure attached to the establishment of implementing acts for the direct execution of European law. It is basically a procedure of direct administration with the involvement of national authorities in the adoption of implementing measures.

3.3.3. Composite procedures

Composite procedures suppose the allocation of responsibility to national and supranational authorities for distinct elements within a procedural framework. procedures of individual decision-making that involve contributions by the supranational and the national authorities, co-regulation provides a possibility for interaction between the supranational authorities and private actors

- In their ***bottom-up*** version, they entrust a national authority with the initiation of a procedure with the final decision being made on Union level;
- In their ***top-down*** variant, they start on the EU level but terminate on the national level.

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SIGNIFICANT DEFINITIONS

agency	specialized body established by secondary legislation, which exercises public authority and is institutionally separate from the EU institutions and are endowed with legal personality.
comitology	a phase in an executive law-making procedure attached to the establishment of implementing acts for the direct execution of European law
composite procedure	procedures of individual decision-making that involve contributions by the supranational and the national authorities, co-regulation provides a possibility for interaction between the supranational authorities and private actors
delegated act	non-legislative acts adopted by the Commission on the basis of a legislative act issued according to Article 290 TFEU
direct authority procedure	a European body or authority practices the execution of EU law by issuing individual decision in a case
implementing act	non-legislative acts adopted on the basis of Article 291 TFEU by the Commission (or exceptionally by the Council)
ReNEUAL	Research Network on EU Administrative Law

EXERCISES TO TEST YOUR KNOWLEDGE

1. Chose the distinctive feature to the right executive decision-making procedure

Implementing act	Delegated act

a) based on Article 290 TFEU
b) based on Article 291 TFEU
c) involves expert groups
d) the Council may issue it
e) the Commission may issue it
f) includes comitology
g) the competence is original
h) the competence is transferred from the legislator who originally is empowered to legislate

2. Choose an agency you like and analyse it! Do you find examples for the following features?

decision-making in an individual case	
regulatory power	

information exchange nature	
coordination nature	

3. Find concrete examples for the administrative procedural law of direct level of the EU!

case-law	
general principle	
treaty provision	
fundamental right	
soft law	

TEST OF MULTIPLE CHOICES/QUIZ

1. The notion of direct administration of the EU stands for…
a) the work of the Commission.
b) the administration done at national level by administrative organs of the Member States.
c) the administration done at EU level by the competent institutions and organs of the EU which perform administrative activity.

2. The agencies of the European Union…
a) are organs of the EU in Member States to verify execution of EU law.
b) are decentralised organs to contribute to the implementation of EU policies in each member States.
c) are distinct bodies from the EU institutions, separate legal entities set up to perform specific tasks under EU law.

3. Executive norms related to EU law…
a) are exclusively elaborated by the Member States as execution is a domestic competence.
b) are elaborated by the EU legislators in form of legal act and, in the absence of it, by the Member States.
c) can be elaborated by the legislators of the EU (mainly the Commission) and by Member State to ensure the proper execution of EU norms.

4. The eurocrats working in the Commission…
a) are under the labour law of their sending State.
b) are under the labour law of the EU.
c) are under the labour law of the EU although in specific cases they stay under the labour law of their sending States.

5. The right to good administration under Article 41 of the EU Charter of Fundamental Rights …

a) can be enjoyed by EU citizens.
b) can be enjoyed by natural persons.
c) can be enjoyed by every person.

6. The right to good administration under Article 41 of the EU Charter of Fundamental Rights…
a) can be enjoyed in administrative procedures of EU institutions and organs.
b) can be enjoyed in administrative procedures of EU institutions and organs and also before Member States' administrative authorities.
c) can be enjoyed in administrative procedures before EU institutions and organs and also before Member States' administrative authorities when they execute EU law.

7. The Commission as the guardian of the Treaties…
a) is responsible to execute EU law.
b) is the top authority in hierarchy above Member States' public administration.
c) is responsible for monitoring the execution of EU law by Member States and to adopt executive non-legislative norms if it is needed to ensure proper implementation of EU law.

8. The European Code of Good Administrative Behaviour…
a) is the executive legal act for the right to good administration thus its provisions are binding for all.
b) is not a legal document, it is a summary report of the European Ombudsman on its recent practice but has not further consequences for the legal practice.
c) has become a vital instrument for putting the principle of good administration into practice since its approval by the European Parliament in 2001.

9. The EU direct level of administration has no administrative procedural law.
a) Yes, it is true, the EU acquis has not reached to that level to establish any sort of normativity on it.
b) No, it is not true, we have a codified norm which is an obligatory and binding legal act.
c) Yes, it is true if the lack of coherent administrative procedural code is concerned. However, there are different sources of EU law that settle different aspects of direct level of European administration.

10. At direct level of EU administration individual authority decisions are not issued.
a) It is true as the ultimate execution of EU law is the task of Member States and individual cases are solely dealt by them.
b) It is not true, certain agencies practice authority power and issue individual decisions.
c) It is true, direct administration of the EU is coordinating and supervises Member State administration but never takes its competences.

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