

# Chapter 2

## Facts, law, institutions and the budget



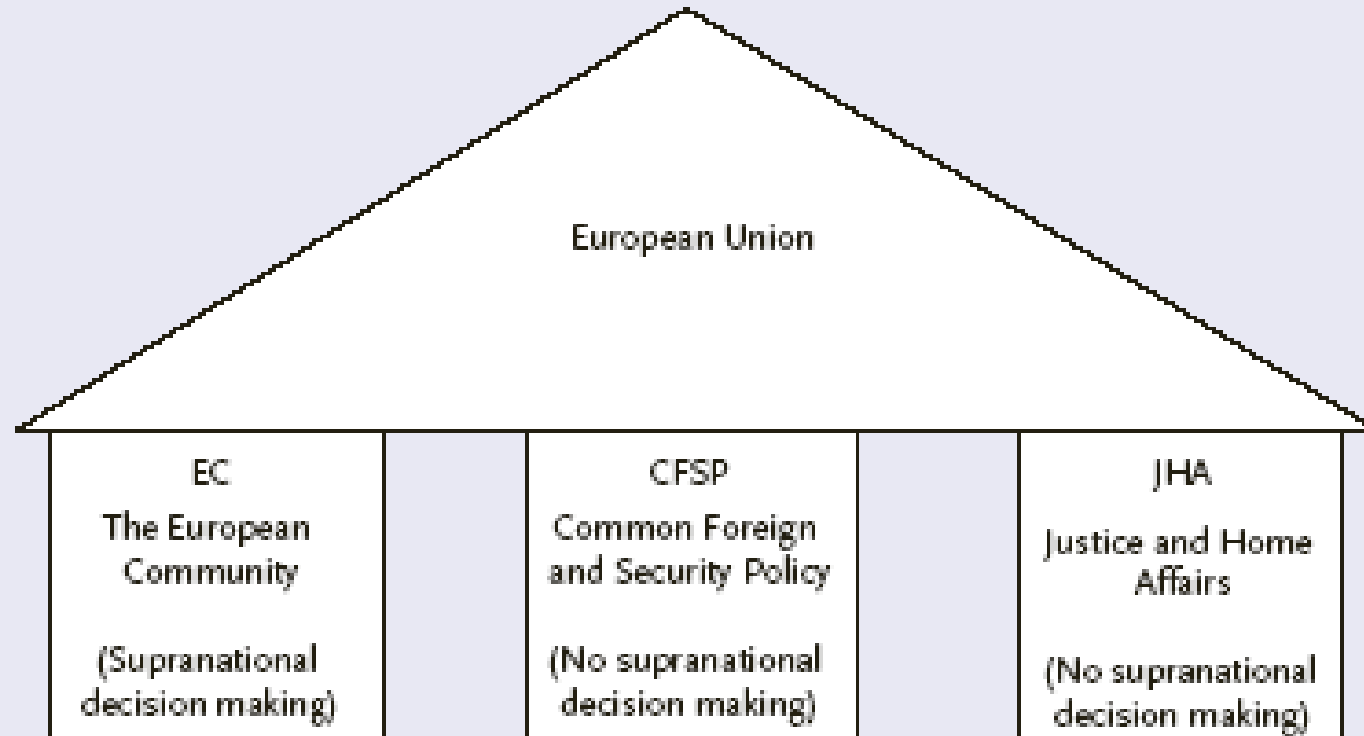
# Law: 'Sources' of EU Law

- The EU Court created by the Treaty of Rome:
  - court then established the Community's legal system
  - two landmark cases in 1963 and 1964.
- EC law was established on the basis of:
  - the EU institutions ensuring that actions by the EC take account of all members' interests, i.e. the Community's interest
  - the transfer of national power to the Community.  
(*Source: Borchardt (1999), p. 24.*)
- Draft Constitutional Treaty may replace this as the source of EU law.

# Law: Key Principles of EC Law

- **Autonomy:**
  - system is independent of members' legal orders.
- **Direct Applicability:**
  - has the force of law in member states so that Community law can be fully and uniformly applicable throughout the EU.
- **Primacy of Community law:**
  - community law has the final say, e.g. highest French court can be overruled on a matters pertaining to intra-EC imports
    - Necessary so Community law cannot be altered by national, regional or local laws in any member state.  
(*Source: Borchardt (1999).*)

# Law: Structure



NOTE: Some find the following cynical phrase to be useful in remembering the numbering: 'In the EU, economics comes first, justice comes last and security is in the middle.'

# Law: Structure

- The EU's Three-Pillar Structure:
  - what is the difference between the European Community and the European Union?
  - Three-Pillar Structure:
    - 1<sup>st</sup>: Economics
    - 2<sup>nd</sup>: Security and Foreign
    - 3<sup>rd</sup>: Justice.
  - EC law only applies to first pillar.
  - EU is 'roof' over the three pillars.

# Law: Types of EU legislation

- Primary legislation:
  - treaties.
- Secondary legislation:
  - collection of decisions made by EU institutions.

# Law: Types of EU legislation

- Five types of secondary law:
  - Regulation
    - Applies to all member states, companies, authorities and citizens. Regulations apply as they are written, i.e. they are not transposed into other laws or provisions. They apply immediately upon coming into force.

# Law: Types of EU legislation

## – Directive:

- May apply to any number of member states, but they only set out the result to be achieved.
- Member states what needs to be done to comply with the conditions set out in the directive (e.g. new legislation, or change in regulatory practice).

## – Decision:

- Is a legislative act that applies to a specific member state, company or citizen.

## – Recommendations and opinions:

- These are not legally binding, but can influence behaviour of, e.g. the European Commission, national regulators.



# Institutions: The 'Big Five'

- There are dozens of EU institutions but only five are really important:
  - European Council
  - Council of Ministers
  - Commission
  - Parliament
  - EU Court.
- Others matter in specific areas or at particular moments.

# Institutions: European Council

- Consists of the leader (prime minister or president) of each EU member plus the President of the European Commission.
- By far the most influential institution:
  - its members are the leaders of their respective nations.
- Provides broad guidelines for EU policy.

# Institutions: European Council

- Thrashes out compromises on sensitive issues:
  - reforms of the major EU policies
  - the EU's multiyear budget plan
  - Treaty changes
  - final terms of enlargements, etc.

# Institutions: European Council

- Meets at least twice a year (June and December):
  - meets more frequently when the EU faces major political problems
  - highest profile meetings at the end of each six-month term of the EU Presidency
  - these meetings are important political and media events
    - determine all of the EU's major moves

# Institutions: European Council

- most important decisions of each Presidency are contained in a document, known as the ‘Conclusions of the Presidency’, or just the ‘Conclusions.
- Strangely, the European Council has no formal role in EU law-making:
  - its political decisions must be translated into action via Treaty changes or secondary legislation.

# Institutions: European Council

- Confusingly, the European Council and the Council of the EU are often both called the Council.
- The 2003 draft Constitution proposes to make the European Council a form part of the EU institutional structure.

# Institutions: Council of Ministers

- Usually called by old name Council of Ministers (formal name is now 'Council of the EU').
- Consists representatives at ministerial level from each Member State, empowered to commit his/her Government:

# Institutions: Council of Ministers

- typically minister for relevant area:
  - e.g finance ministers on budget issues
  - confusingly, Council uses different names according to the issue discussed.
    - Famous ones include EcoFin (for financial and budget issues), the Agriculture Council (for CAP issues), General Affairs Council (foreign policy issues).



# Institutions: Council of Ministers

- Is EU's main decision-making body (almost every EU legislation must be approved by it).
- Main task to adopt new EU laws:
  - measures necessary to implement the Treaties
  - also measures concerning the EU budget and international agreements involving the EU
  - is also supposed to coordinate the general economic policies of the Member States in the context of the Economic and Monetary Union (EMU), e.g. famous 3 per cent deficit rule.

# Institutions: Council of Ministers

- Council also decides on:
  - 2<sup>nd</sup> and 3<sup>rd</sup> pillar issue, i.e. Common Foreign and Security Policies (2<sup>nd</sup>), police and judicial cooperation in criminal matters (3<sup>rd</sup>).
- two main decision-making rules:
  - on the most important issues, unanimity, e.g. Treaty changes, enlargement, multi-year budget plan, Council decisions are by
  - on most issues (about 80 per cent of all Council decisions), majority voting
    - qualified majority voting (QMV).

# Institutions: QMV

- QMV is complex and is changing.
- Three sets of rules:
  - Procedure that applies until mid 2004:
    - basic form unchanged since 1958 Treaty of Rome.
  - Procedure post-2004 (from Nice Treaty) unless Constitutional Treaty supersedes them:
    - political agreement in Nice Treaty; implemented by Accession Treaty for 2004 enlargement.
  - Procedure from Constitutional Treaty
    - draft endorsed by European Council at June 2003 meeting.

# Institutions: QMV

- Procedure that applies until mid 2004:
  - each member's minister casts a certain number of votes
  - more populous members have more votes:
    - many fewer than population-proportionality suggests
    - e.g. France (60 million citizens) has 10 votes; Denmark (5 million citizens) has 3

# Institutions: QMV

- total number of votes in the EU15 is 87
- the threshold for a winning majority is 62 votes:
  - this is called a ‘qualified majority’, i.e. the majority rule is that about 71 per cent of all votes are required to adopt a proposal.

# Institutions: QMV

- The implications of this system are complex:
  - since bigger members have more votes, 71 per cent of the votes does not mean 71 per cent of members (three large members voting 'no' could block adoption even if the other 12 voted 'yes')

# Institutions: QMV

- since small nations get far more votes than strict population-proportionality would suggest, 71 per cent of the votes does not mean 71 per cent of the EU population:
  - 71 per cent threshold can theoretically be reached, e.g. by a coalition of just eight members representing 58 per cent of the EU population.

# Institutions: QMV

- Even though QMV is the basis of most Council decisions, the Council rarely votes:
  - they usually decide things by ‘consensus’.
- Shadow voting:
  - despite this, QMV and voting weights are important
  - if nations know they would be outvoted, were a vote were to be recorded, they usually join the consensus to be collegial



# Institutions: QMV

- nations go through a mental process of ‘shadow voting’ before deciding to join the consensus:
  - figure out what the outcome would be, if a vote were held
  - majority rule and votes matter to mental calculation.

# QMV: Nice/Accession Treaty Reforms

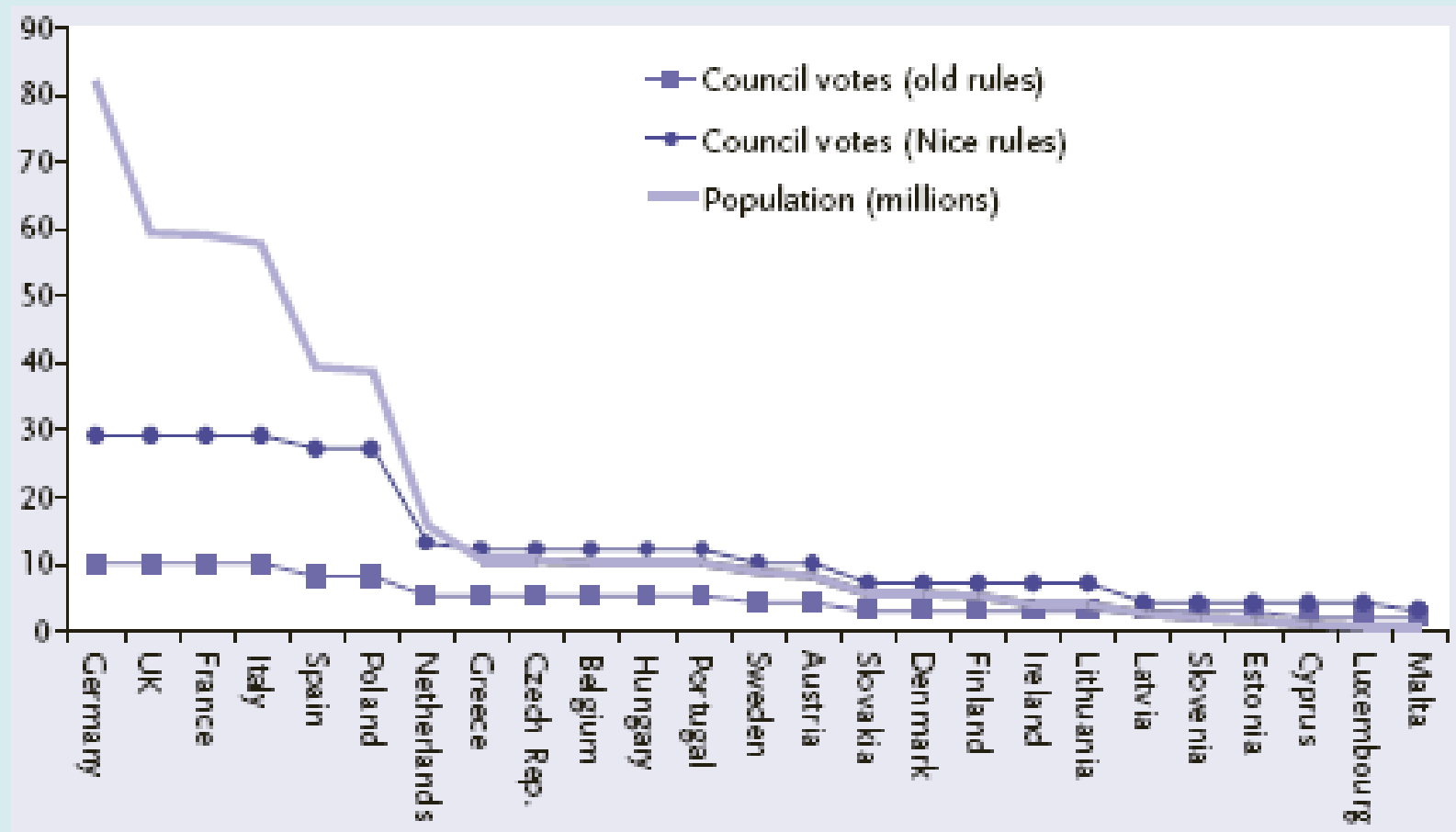
- Reforms change QMV in two main ways (*note*: changes scheduled to take effect in November 2004):
  1. Makes QMV more complex; two new criteria in addition to votes
    - proposition passes the Council when coalition of yes-voters meets three criteria:

# QMV: Nice/Accession Treaty Reforms

- votes:
  - 72 per cent of the Council votes  
(232 votes of the 321 Council votes in the EU25)
- number of members:
  - 50 per cent of the member states
- population:
  - 62 per cent of the EU population.

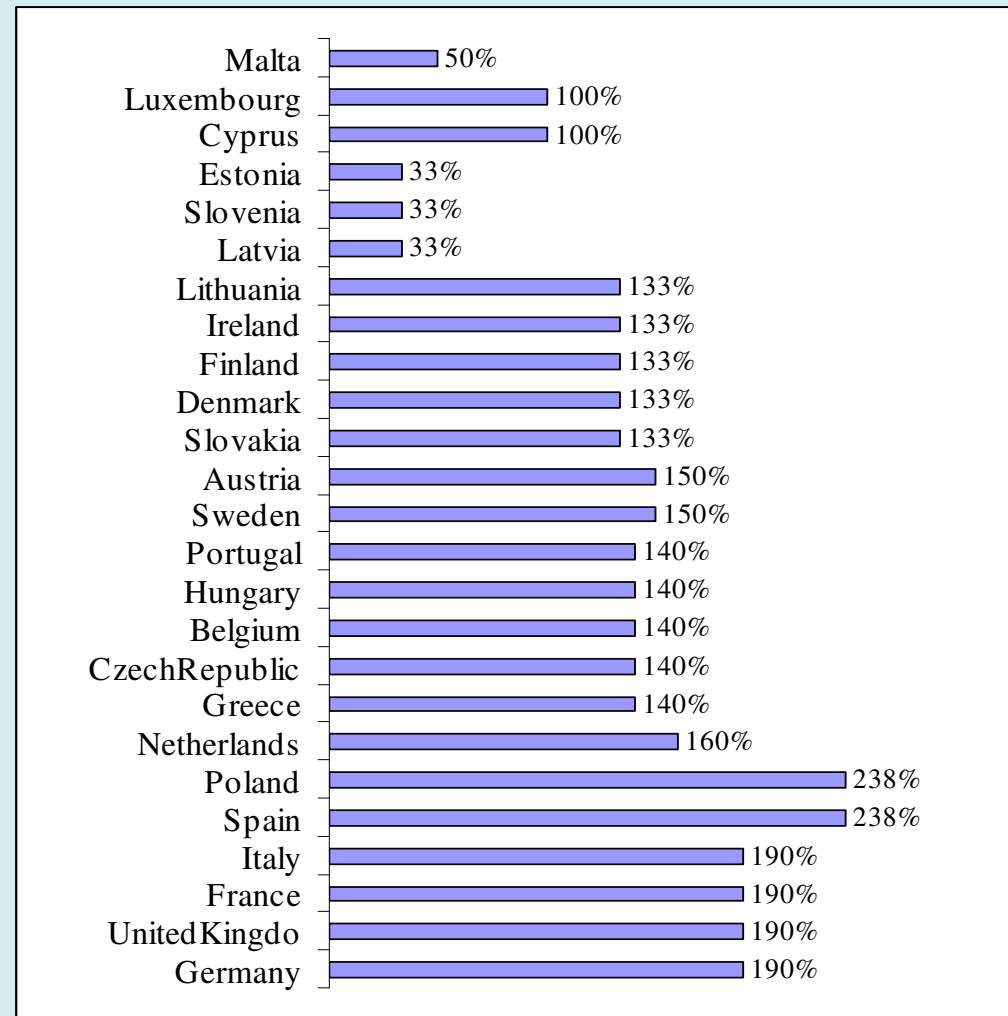
# QMV: Nice/Accession Treaty Reforms

## 2. Votes reallocated to favour big nations



# QMV: Nice/Accession Treaty Reforms

- To see this another way, look at percentage increase by member:
  - members ranked by population.
- Poland, Spain are relative biggest winners.
- Tiny members biggest relative losers.



# QMV: draft Constitutional Treaty

- Voting rules in the Nice and Accession Treaties widely viewed as failing to meet the goal of maintaining the Council's ability to act.
- European Convention (2002–3) proposed a radical reform:
  - embodied in 2003 draft Constitutional Treaty (CT). *Note:* Endorsed by European Council at June Summit.

# QMV: draft Constitutional Treaty

- Under CT rules, qualified majority needs yes votes from:
  - member states with at least 60 per cent EU population
  - at least half members.

# QMV: draft Constitutional Treaty

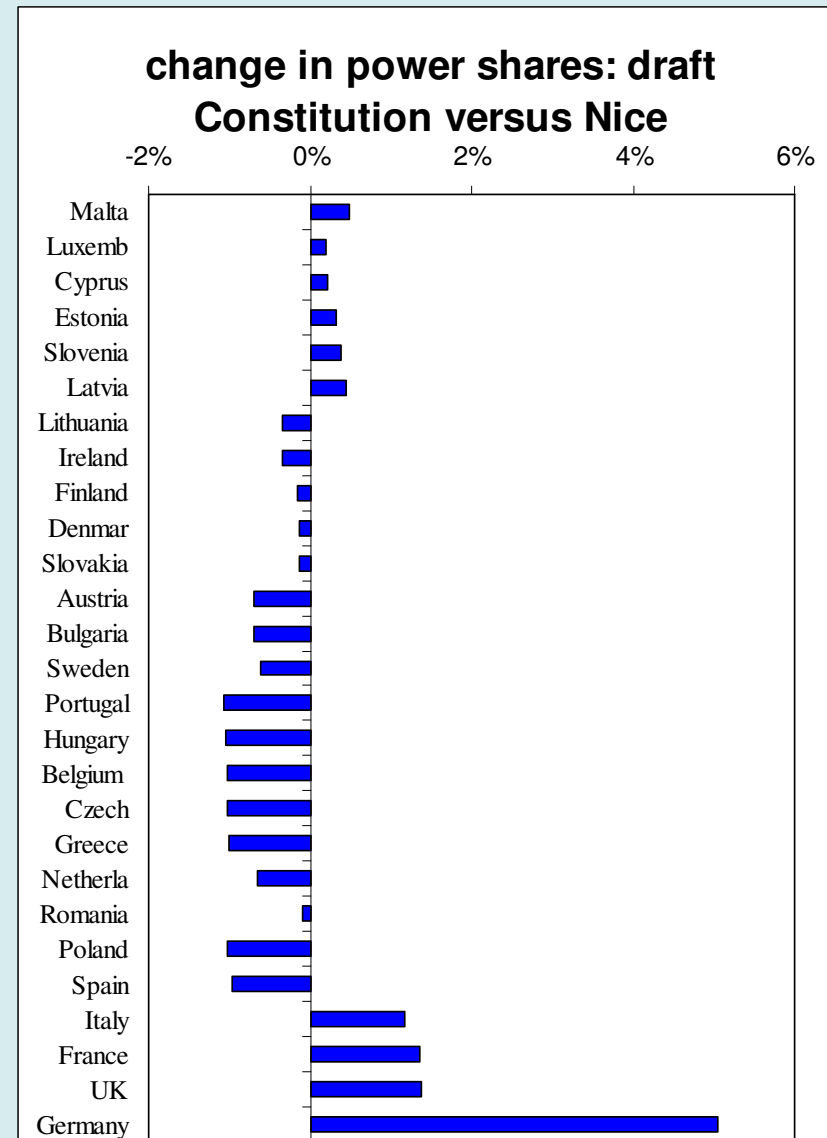
- Draft CT says the new rules take effect in 2009:
  - Nice rules could be in place for several years.
- Voting rules among the most controversial changes in the CT:
  - the 2003 IGC may change them.



# QMV: draft Constitutional Treaty

- Power implications:
  - big nations gain a lot (except Spain and Portugal who lose a lot)
  - intermediate-sized nations lose
  - tiny nations gain slightly.

(Source: Baldwin and Widgren (2003) 'Decision Making and the Constitutional Treaty: Will the IGC discard Giscard?' [www.cepr.org](http://www.cepr.org).)



# Institutions: The Commission

- European Commission is at the heart of the EU's institutional structure.
- Driving force behind deeper and wider European integration.

# Institutions: The Commission

- Has three main roles:
  - propose legislation to the Council and Parliament
  - to administer and implement EU policies
  - to provide surveillance and enforcement of EU law ('guardian of the Treaties')
  - it also represents the EU at some international negotiations.

# Commissioners, Commission's Composition

- Before the 2004 enlargement:
  - one Commissioner from each member:
    - extra Commissioner from the Big-Five (Germany, UK, France, Italy and Spain in the EU15)
    - this includes the President (Romano Prodi up to 2005), two Vice-Presidents and 17 other Commissioners.

# Commissioners, Commission's Composition

- Under Nice Treaty each member in EU25 has one Commissioner.
- Draft Constitution, only 15 Commissioners:
  - rotating evenly among all members
  - would have non-voting Commissioners from other nations (IGC likely to change this).

# Commissioners, Commission's Composition

- Commissioners are chosen by their own national governments:
  - subject to political agreement by other members
  - Commission, the Commission President individually, approved by Parliament.

# Commissioners, Commission's Composition

- Commissioners are not national representatives:
  - should not accept or seek instruction from their country.
- Appointed together, serve for five years
  - current Commission's term ends in January 2005.

# Commissioners, Commission's Composition

- Each Commissioner in charge of a specific area of EU policy:
  - Directorate-Generals (DGs).
- Executive powers
  - Commission executive in all of the EU's endeavours
  - power most obvious in competition policy and trade policy.



# Commissioners, Commission's Composition

- Manage the EU budget, subject to EU Court of Auditors.
- Decision making:
  - decides on basis of a simple majority, if vote taken
  - almost all decisions on consensus basis.

# Institutions: European Parliament

- Two main tasks:
  - oversees EU institutions, especially Commission
  - it shares legislative powers, including budgetary power, with the Council and the Commission.

# Institutions: European Parliament

- Organisation:
  - up till the 2004 enlargement, 626 members (MEPs)
  - after 732
  - directly elected in special elections organised by member nation
  - number per nation varies with population but rises less than proportionally.

# Institutions: European Parliament

- MEPs supposed represent local constituencies, but generally organised along classic European political lines, not national lines as in Council:
  - centre left and centre right two main party groupings (together about two-thirds of seats)
  - MEPs seat, physical, left-to-right.

# Institutions: European Parliament

- Location:
  - parliament is in Strasbourg, in Luxembourg, and in Brussels
  - nationalistic struggles to keep an EU institution local resulted in this.
- Democratic control.

# Institutions: European Parliament

- The Parliament and the Council are the primary democratic controls over the EU's activities. The MEPs are directly elected by EU citizens, so European Parliamentary elections are, in principle, a way for Europeans to have their voices heard on European issues.

# Institutions: European Parliament

- In practice, however, European Parliamentary elections are often dominated by standard left-versus-right issues rather than by purely EU issues. Indeed, European Parliamentary elections are sometimes influenced by pure national concerns with the voters using the elections as a way of expressing disapproval or approval of the ruling national government's performance.

# Institutions: European Parliament

- Moreover in many member states, participation in European Parliamentary elections tends to be fairly modest, and MEP absenteeism is a problem. By contrast, the elections by which national governments are chosen have very high levels of popular participation. The national elections, however, involve many issues, so voters may find it difficult to influence their nation's stance on EU issues via national elections.



# Institutions: European Parliament

- The 2003 draft Constitutional Treaty proposes few changes for the Parliament, although it does expand its power somewhat by giving the Parliament a voice in almost all legislative activities.

# Institutions: European Parliament

- Democratic control:
  - Parliament and Council are the primary democratic controls over the EU's activities
  - MEPs directly elected so in principle a way for Europeans to have a voices
  - in practice, however, European Parliamentary elections dominated by standard left-versus-right, and purely local issues rather than by EU issues.

# Institutions: European Parliament

- The 2003 draft Constitutional Treaty proposes few changes for the Parliament:
  - does expand its power, giving it equal standing with the Council on almost legislation.

# Institutions: European Court of Justice

- EU laws and decisions open to interpretation that lead to disputes that cannot be settled by negotiation:
  - Court settles these disputes, especially disputes between Member States, between the EU and Member States, between EU institutions, and between individuals and the EU.

# Institutions: European Court of Justice

- EU Court's supranational power highly unusual in international organisations.
- Influence.
- As a result of this power, the Court has had a major impact on European integration. As mentioned above, a 1964 judgment established EC law as an independent legal system that takes precedence over national laws in EC matters, and a 1963 ruling established the principle that EC law was directly applicable in the courts of the members.

# Institutions: European Court of Justice

- Its ruling in the 1970s on non-tariff barriers triggered a sequence of events that eventually led to the Single European Act (see Chapter 4 for details). The Court has also been important in defining the relations between the Member States and the EU, and in the legal protection of individuals (EU citizens can take cases directly to the EU Court without going through their governments).
- Organisation.

# Institutions: European Court of Justice

- The Court of Justice, which is located in Luxembourg, consists of one judge from each member state. They are appointed by common accord of the member states' governments and serve for six years. The Court also has eight 'advocates-general' whose job is to help the judges by constructing 'reasoned submissions' that suggest what conclusions the judges might take. The Court reaches its decisions by majority voting. The Court of First Instance was set up in the late 1980s to help the Court with its ever growing workload.

# Institutions: European Court of Justice

- Influence:
  - court has had a major impact on European integration via case-law.
- Organisation:
  - located in Luxembourg
  - one judge from each member
  - appointed by common for six years



# Institutions: European Court of Justice

- also eight ‘advocates-general’ to help judges
- the Court reaches its decisions by majority voting
- Court of First Instance set up 1980s to help with ever growing workload.

# Legislative Processes

- Main procedure, co-decision procedure, gives the Parliament equal standing with the Council after a proposal is made by Commission (used for about 80 per cent of EU legislation).

# Legislative Processes

- The co-decision procedure requires:
  - Commission's proposal to be adopted by the Parliament (deciding by simple majority) and Council (deciding by qualified majority) before it becomes law
  - if the Parliament and/or the Council disagree, proposal only adopted if a Council-Parliament compromise can be reached.

# Legislative Processes

- The consultation procedure is used for a few issues, e.g. the Common Agricultural Policy's periodic price fixing agreements – where the member states wished to keep tight control over politically sensitive decisions. Under this procedure, the Parliament must give its opinion before the Council adopts a Commission proposal. Such opinions, when they have any influence, are intended to influence the Council, or the shape of the Commission's proposal.

# Legislative Processes

- Another procedure in which the Parliament plays a subsidiary role is the assent procedure. For example, on decisions concerning enlargement, international agreements, sanctioning member nations and the coordination of the Structural Funds, the Parliament can veto, but cannot amend a proposal made by the Commission and adopted by the Council.

# Legislative Processes

- The final procedure, the cooperation procedure, is a historical hang over from the Parliament's gradual increase in power. Specifically, before the co-decision procedure was introduced in the Maastricht Treaty, the cooperation procedure was the one that granted the most power to the Parliament. The best way to think of it is as the co-decision procedure where the Parliament's power to amend the proposal is less explicit. Also, the Council can overrule an EP rejection by voting unanimously.

# Legislative Processes

- Other procedures:
  - consultation procedure:
    - used for few issues, Parliament only gives opinion.
  - Assent procedure:
    - e.g. decisions concerning enlargement
    - Parliament can veto, but cannot amend proposal.

# Legislative Processes

- Cooperation procedure:
  - historical hang over
  - Quite similar to co-decision procedure
  - Like co-decision procedure but Parliament's power to amend is less explicit.
- Draft Constitutional Treaty to make Co-decision apply to almost all decisions.