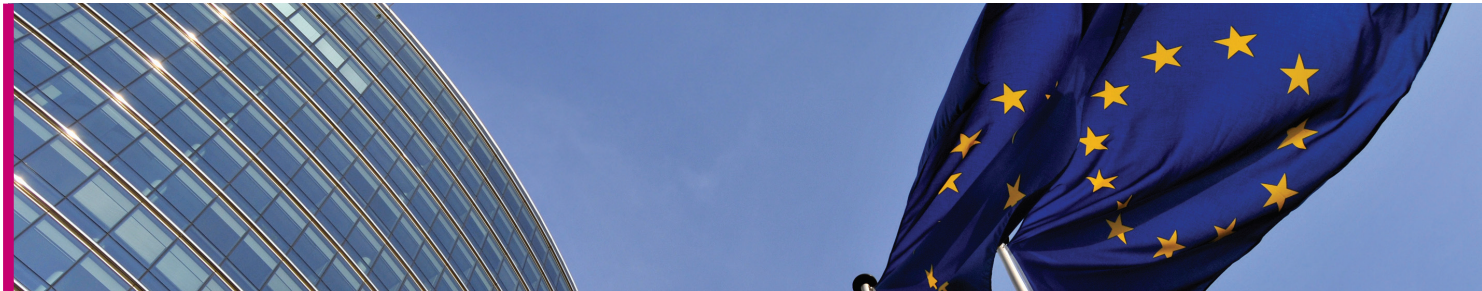


The EU change of guard in 2019



We kick off our series of publications on the EU change of guard with:

Insights from our EU institutional experts on what to expect from this important period of transition and the potential impact of these changes on the regulatory environment for businesses.

Views from lawyers from across the firm on how the regulatory landscape developed under the current legislature.

A sneak preview of agenda items that are expected to keep the EU institutions busy in the next legislative term.

The EU change of guard

Every five years, the EU institutions go through a reshuffle due to the election of the new members of the European Parliament and the change of the European Commission's President and College of Commissioners. The reshuffle impacts the legislative activity of the institutions and ultimately shapes the regulatory environment. Alongside the ending of Jean-Claude Juncker's term as President of the European Commission, Donald Tusk will finish his mandate as President of the European Council.

EU institution	Reshuffle	Why is this relevant?
European Parliament (EP)	Yes	Involved in drafting and approving most EU law. Increased representation for populist and Eurosceptic parties could unbalance established political groups and complicate the legislative process.
European Commission (EC)	Yes	New leadership of the EU's executive arm will mean new policy priorities. Watch out for how these will translate into new legislation.
Council of the EU	No	The institution (made up of varying representatives of each of the Member States) will continue to work as normal. However, inter-institutional negotiations with the EP will only resume towards the end of the year.
European Council	Yes	This body (comprising the heads of state or government of Member States) sets the EU's overall political agenda. New leadership and changes to current composition (upcoming elections in Member States) may affect its policy stance.

Timeline

May – October/November: Legislative break.

23-26 May: EP elections.

2-4 July: First plenary session of newly elected EP legislature.

July: EP elects Commission President.

31 October – 1 November: End of term of current EC and start of new EC.

1 December: New President of the European Council to start mandate.

European Parliament

How and when will the new European Parliament be elected?

EP elections took place between **23-26 May 2019**. The Members of the European Parliament (MEPs) were chosen in direct elections within Member States for a 5 year mandate.

EP top jobs – when and how will the EP leadership be appointed?

- > **President and Vice-Presidents:** to be elected at the very first plenary of the 2019-2024 legislature (2-4 July 2019) for a mandate of 2.5 years. The President, together with chairs of political groups, forms the Conference of Presidents (CoP).
- > **The Chairpersons and Vice-Chairs of Committees:** to be selected amongst Committee Members for a 2.5 years mandate at the Committee's first meeting in July. Individual MEPs are allocated to Parliamentary Committees on a proposal by the CoP, based on the political preferences of each MEP and his/her political group.

What happens with unfinished legislative work?

- > **The lapse of unfinished work:** all unfinished business of the current mandate lapsed after the last plenary in April until a decision is made to resume the work on specific proposals at the beginning of the next parliamentary term.
- > **Decision to resume unfinished business:** at the beginning of the new parliamentary term, the CoP decides on whether to resume work on unfinished legislative files. The decision is made based on reasoned requests from Parliamentary Committees and other institutions. At this stage, legislative proposals for which Committees would like to prepare a modified position at first reading are also selected. Additionally, the EP may ask the Commission to withdraw legislative proposals.
Typically, the CoP decides to resume all the unfinished legislative work.
- > **Start of the legislative work during the next mandate:** if the work in Parliamentary Committee was not finalised and if the CoP decides that work may resume, all work done until then remains valid. The Rapporteurs (MEPs responsible for handling a legislative proposal on behalf of the EP) keep their position for the next term (unless not re-elected) and any texts produced within the Committee during the term of office of the previous EP remain valid. If the Rapporteur is not re-elected, the Committee appoints a replacement, who normally comes from the same political group.
The version of the report approved during the last plenary will serve as a basis for informal inter-institutional negotiations ("trilogues") in the new parliamentary term.

What to look out for after the EP elections?

Composition of the EP

The centre-right and centre-left parties are expected to lose seats. Populist and Eurosceptic parties might have a higher representation.

Grand coalition

MEPs are organised by political affiliation not by nationality. Nearly all Members sit in political groups. The groups usually adopt a suggested position on legislative files, which MEPs usually follow, but are not obliged to.

For many years now, the European People's Party (centre-right) and the Socialist & Democrat Party (centre-left) have co-operated to secure the necessary majority for passing legislation (the "grand coalition"). If this centrist coalition loses its majority, the liberals and the Greens in the Parliament are expected to have a key role in securing a working majority.

The impact of Brexit

The UK participated in the EP elections. If and when the UK leaves the EU, the UK's 73 MEPs will leave the EP and 27 additional MEPs will be allocated among some of the other Member States. Depending on the affiliations of the UK's MEPs, this may affect the balance of power among the remaining political groups.

European Commission

How will the Commission work in 2019?

With little time before the end of its mandate (expected on 31 October) and therefore diminished political weight to its decisions, the Commission is currently not putting forward any significant new legislative proposals. However, the administrative and policy staff of Directorates-General continue to work on the implementation of law and technical issues throughout 2019 as usual.

If the new Commission does not take office on 1 November 2019 (e.g. because of delays in appointing the President of the Commission or the other members of the College), the current Commission will continue to work in caretaker mode (day-to-day running, with no major decisions to be taken during this period).

How and when will the new European Commission President be appointed?

The candidate for the Commission President position is nominated by the European Council, taking into account the results of the elections, and elected by the EP.

When it meets on 20-21 June, the European Council is expected to nominate its preferred candidate by a qualified majority vote and propose the candidate to the EP. The successful candidate must then be elected by a majority of MEPs, at the plenary session on 15-18 July 2019. If the MEPs reject the candidate, the Council has one month to put forward another candidate (see flowchart below).

Spitzenkandidat or not?

In 2014, for the first time in the history of the EU, the EP elected the Commission President, instead of merely approving him. As required by the Treaties, the candidate for the Commission presidency was put forward by the European Council after taking into account the results of the EP elections. In practice, this meant that in the 2014 election the European Council nominated the candidate representing the largest political group in the EP (known as the *spitzenkandidat* process). The *spitzenkandidat* process is not compulsory and not universally popular. This time around, it remains to be seen whether the procedural innovation of 2014 will be followed.

How and when will the new College of Commissioners be appointed?

Once elected, the Commission President will choose the Commissioners (and their policy areas) from candidates put forward by the Member States. The draft list of Commissioners will be submitted for approval first to the Council of the EU, then to the EP. If the EP approves the list, the new Commission will be officially appointed by the European Council. In September and October 2019, the EP will organise hearings of the Commissioners-designate. The EP plenary will vote on the entire College of Commissioners from 21-24 October 2019, if the hearings run smoothly. The EP can veto the appointment of the College of Commissioners as a whole, but not of an individual candidate. However, in the past, the EP has used the threat of its veto to force the withdrawal of particular candidates following poor hearings (see flowchart below).

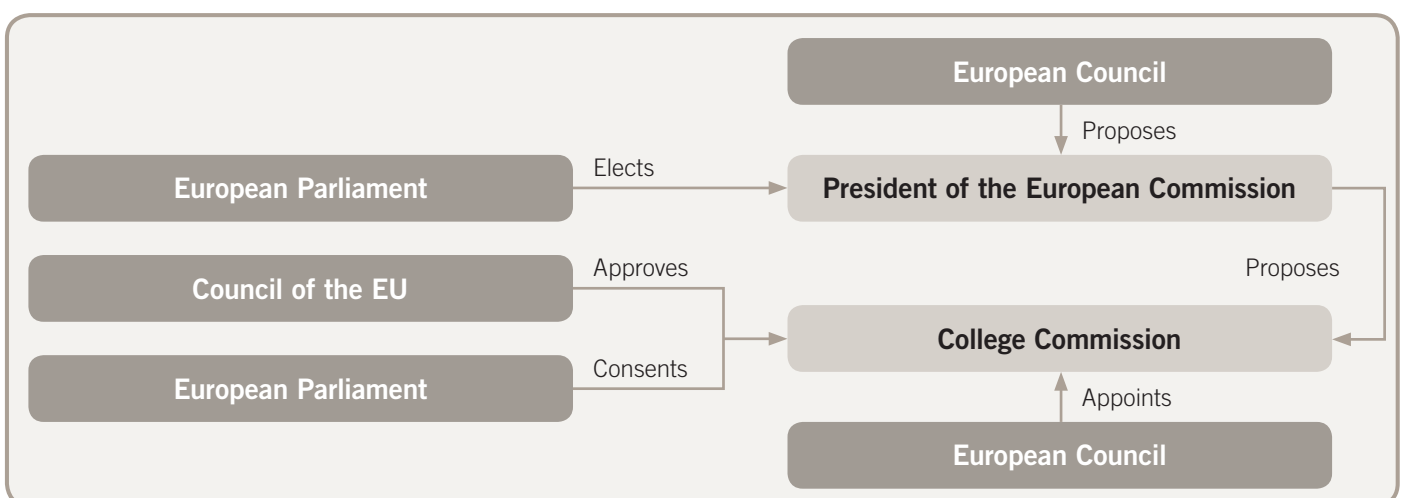
Council of the EU

The Council will continue its legislative work and is expected to concentrate on the files where agreement between Member States has not yet been found. Trilogues with the EP are on hold due to the elections and will resume once the newly-elected EP is ready to continue the legislative work, in September/October 2019.

European Council

The European Council does not exercise legislative functions. Its day-to-day work will be unaffected by the EP elections.

The term of the current European Council President, Donald Tusk, will end on 30 November 2019. The new President will take office on 1 December 2019 for a 2.5 years mandate.



EU regulatory milestones since 2014

Over the last 5 years, EU institutions focused on the 10 priorities set by Commission President Juncker at the end of 2014, including the Capital Markets Union, Banking Union, Energy Union and the Digital Single Market. Linklaters' experts take stock of progress made and also provide insight into other regulatory developments over the last 5 years. They also highlight some of the challenges that lie ahead during the next mandate of the EU institutions.

Banking Union

"The last five years have seen significant steps forward in constructing the EU's **Banking Union**. The first two pillars – the Single Supervisory Mechanism and the Single Resolution Mechanism – are now firmly established. Progress on the third (a European Deposit Insurance Scheme) has been slower while attention has been focused on finalising the "risk reduction" package of changes to bank capital and resolution rules. However, with the recent adoption of CRR2 and BRRD2, the question of risk-sharing in the Banking Union and common euro area deposit insurance could move up the political agenda. Further harmonisation of ordinary corporate insolvency proceedings for banks could also be a focus." – **Sven Schelo**

Capital Markets Union

"Although some limited progress has been made on the Capital Markets Union (notably, Securitisation Regulation and Prospectus Regulation) most of the work in relation to **financial services** over the last five years has been to complete files where framework legislation was already adopted before the Juncker Commission (MiFID II/MiFIR, PRIIPS and UCITS V), or files where work had already commenced – Benchmarks and the SFTR.

There has been a trend towards greater EU-wide harmonisation, and greater supervision being carried out by the ESAs, but also resistance by Member States over relinquishing too much national competence. The European Parliament has been very engaged not just in proposing changes to legislation but in bringing forward "own initiative" proposals, where the Parliament wants to see greater transparency and objectivity in relation to equivalence decisions." – **Pauline Ashall**

"On **fintech**, PSD2 brought more payment services into scope of regulation, MiFID II introduced new rules on algo trading and crypto assets continue to be under the regulatory spotlight. Looking ahead, we expect policy work to prioritise cyber resilience and AI." – **Harry Eddis**

"Political agreement on **Sustainable Finance** legislation on disclosure and low-carbon benchmarks has been reached and legislation on taxonomy will follow. These initiatives chime with increased interest from investors and national regulators on the role that ESG factors should play in the footing of the global economy. These changes will impact the way in which corporates need to position themselves in the market and the way in which investors assess new opportunities." – **Vanessa Havard – Williams**

Energy Union

"On **energy and climate**, the Juncker Commission is leaving a strong legacy. The Clean Energy Package's adoption is the latest milestone and is the widest in scope so far: its proposals go well beyond the three previous legislative packages and contains ambitious projects on decarbonisation and Europeanisation. While extensive progress has been made towards completing the Energy Union, the big question is now how far national governments will be prepared to go on policies that have been met with increased resistance. The elephant in the room is whether energy transition can be accomplished in time, and at an acceptable economic and social price for Member States. The next Commission will also have to consider further steps, such as an overhaul of energy taxation. Additional progress may be difficult unless certain issues are decided by qualified majority instead of unanimity at Council level." – **Arnaud Coibion**

Digital Single Market

"In April 2016, following a lengthy adoption process, GDPR was the biggest shake up to European privacy laws in two decades.

Another important initiative is the strengthening of the European Network and Information Security Agency (ENISA) the EU cybersecurity's agency – and the adoption of the Directive on security of network and information systems (the "NIS Directive").

Another remarkable achievement is the lowering of prices for electronic communications and, in particular, the end of roaming charges within the EU since 14 June 2017.

Other initiatives in the framework of the **digital agenda** include the roll-out of the 5G network and the development of FinTech and artificial intelligence."

– **Tanguy Van Overstraeten**

"The **EU Company Law Package** will modernise existing rules on cross-border mergers, establish a new regime for cross-border conversions and division, and accelerate the introduction of digital tools in corporate law. It builds on the general approval of cross-border conversions by the ECJ and adds a clear procedural framework. New digital procedures are intended to simplify formation of companies and communication with company registers." – **Cornelius Wilk**

"The **Digital Single Market** initiative has brought with it a whole host of legislative changes relating to the online environment. These impact everything from tax to cyber security to online copyright. While these changes may impact all EU internet users, there's a clearly emerging trend towards greater liability for internet intermediaries – including search engines and social media platforms." – **Kathy Berry**

Competition

"Under Commissioner Vestager, competition law enforcement has been more vigilant than ever. The sector inquiry into e-commerce concluded in 2017, and a resurgence in vertical restraints enforcement ensued: the first seven cases since 2003. **Abuse of dominance** enforcement against for instance tech giants Google and Qualcomm attracted fines totalling €8.2bn and €997m respectively, and anti-cartel enforcement in the financial sector alone drew fines of around €3bn. With the EU's Antitrust Damages Directive now implemented, competition litigation in national courts also increased.

The application of the **state aid** rules to tax arrangements cemented Vestager's legacy in tackling large corporates. DG COMP ordered Ireland to claw back €13bn from Apple. Other companies, such as Starbucks, Fiat, Amazon and McDonald's have been affected by similar decisions.

On **merger control**, Vestager has overseen numerous decisions, including five prohibitions. One of which was the Siemens/Alstom transaction proposing the creation of a European rail transport champion. Enforcement also tightened around transgressions of procedural rules, with notable cases involving Altice, Facebook and General Electric. Importantly, a new Regulation for screening of foreign direct investment into the EU came into force in April." – **Jonas Koponen**

Taxation

"While the adoption of EU legislation in the field of **taxation** used to involve lengthy and complex negotiations, the fight against aggressive tax avoidance has prompted the EU to adopt a great deal of legislation over the last five years, including two Anti-Tax Avoidance Directives and four amendments to the Directive on Administrative Cooperation.

Also, the Commission has been much more willing to use state aid rules as means to attack the granting of favourable tax regimes and rulings to multinational companies." – **Henk Vanhulle**

What is on the EU regulatory horizon?

The following key legislative proposals were not adopted during the current term. On most of these proposals, discussions with a view to adoption are likely to continue during the next term of the EP.

Digital

- > E-privacy Regulation
- > E-evidence Directive and Regulation
















Financial services

- > Sustainable finance taxonomy Regulation
- > Regulation on recovery and resolution of CCPs
- > Decision amending Article 22 of the Statute of the European System of Central Banks and of the European Central Bank
- > Directive on credit servicers and credit purchasers
- > Directive on recovery of collateral
- > Regulation on a framework on crowd and peer to peer finance
- > European Deposit Insurance Scheme Regulation

Tax

- > Directive on disclosure of income tax information by certain undertakings and branches ("CBCR proposal")
- > Directive on a Common Corporate Tax Base ("CCTB")
- > Directive on a Common Consolidated Corporate Tax Base ("CCCTB")
- > Directive on enhanced co-operation in the area of financial transaction tax
- > Directive on digital services tax

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