



## Decision-making and Legislation

The European Union's political system has been constantly evolving over the past 50 years. The ground rules of the European Union (EU) are set out in a series of treaties: the Treaty of Paris, which set up the European Coal and Steel Community (ECSC) in 1951 and the Treaties of Rome, which set up the European Economic Community (EEC) in 1957; and the subsequent revisions by the Single European Act (1986), and the Maastricht, Amsterdam and Nice treaties agreed in the 1990s. Under these treaties, the member states of the EU delegate some of their national sovereignty to the European institutions. An ongoing debate exists regarding how much national sovereignty should be surrendered to the European level.

### European Union Law

The European Union is comprised of three different kinds of law: primary legislation (treaties), secondary legislation and case law. Collectively they are known as the *acquis communautaire*.

Primary legislation is agreed on the basis of direct negotiations between member states' governments. Such agreements are drawn up in the form of treaties which are subject to ratification in national parliaments and, in some countries, in national referendums. Currently the EU's member states are in the process of ratifying the latest EU treaty, the Treaty establishing a Constitution for Europe. Ten of the 25 member states are seeking ratification through national referendums, and the outcome of this ratification process is still uncertain.

Secondary legislation is drawn up using a variety of different legislative procedures, depending upon the Treaty article chosen as the legal basis for the proposal, and covers the following types:

- Regulations: binding and directly applicable in all member states without any implementing national legislation.
- Directives: binding on the member states with respect to the outcome, but with the choice of implementation method left to each member state's own procedures.
- Decisions: may be issued either by the Council or by the Commission and are binding upon those to whom they are addressed (a member state or an enterprise).
- Recommendations and Opinions: have no binding effect, and may be issued either by the Council or by the Commission.

Case law results from judgments of the European Court of Justice and of the Court of First Instance meeting in Luxembourg, normally in response to referrals from national courts or as a result of actions brought by the Commission.

## **The Institutions of the European Union**

These laws are the result of decisions taken by three main institutions: the Council of the European Union (representing the member states), the European Parliament (representing the citizens) and the European Commission (representing collective European interest). Compared with the clear separation of powers found in the American political system, the EU system is rather more complex. The Union can be said to have a dual executive, consisting of the Council and the Commission, and a dual legislature composed of the Council and the European Parliament. The EU's judiciary consists of the Court of Justice that upholds the rule of Community law together with the Court of First Instance, and the Court of Auditors that checks the financing of the Union's activities.

### **A. The Council**

The Council of Ministers is the EU's main decision-making body and it represents the interests of individual member states (similar to the US Senate). It is composed of the Ministerial representatives of the member states (e.g. Ministers of Agriculture attend Council meetings when agriculture is being discussed). While the Council can be described as the main legislative authority in the Union, it increasingly shares legislative powers with the European Parliament.

Council meetings are prepared by a Committee of member states' Permanent Representatives known as COREPER, based in Brussels. Member states take turns to hold the Presidency of the Council for a period of six months. Luxembourg and the United Kingdom hold the presidency in 2005, followed by Austria and Finland in 2006. The most common voting procedure in Council is "qualified majority voting" (QMV). This means that, for a proposal to be adopted, it needs the support of a specified minimum number of votes. However, in some particularly sensitive areas such as foreign policy and taxation, Council decisions have to be unanimous. Each treaty revision has expanded the number of policy areas where decisions are taken by QMV to avoid gridlock in the decision-making process. Qualified majority will be reached if a majority of member states (in some cases a two-thirds majority) approve and if a minimum of votes is cast in favor (72.3% of the total).

At least twice a year, the Heads of State or Government meet, as a body known as the European Council, to provide the Union with overall direction and to reach decisions on the key issues, but these agreements have no formal legislative force.

### **B. The European Commission**

The Commission is a politically independent institution that represents and upholds the interests of the EU as a whole. It is often described as the "motor of European integration" since it is responsible for initiating legislation, policies and programs of

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action. As the primary “executive” of the Union, the Commission’s main roles consist of proposing legislation to the Council and the Parliament, managing and implementing EU policies, and enforcing European law (together with the Court of Justice). The Commission also negotiates on behalf of the member states in multilateral and bilateral trade matters and in the drawing up of membership agreements.

Based in Brussels, the Commission consists of 24 Commissioners and a Commission President appointed for a five-year term by member states' governments, and an EU civil service (segmented into Directorates-General) of approximately 24,000 officials. The appointment of the Commission President and other members of the Commission is subject to the approval of the European Parliament. Yet unlike the executive in parliamentary democracies, the Commission is not elected by the Parliament, nor is it directly accountable to the electorate, as the American president. This lack of direct democratic accountability makes the Commission the most unusual and controversial institution in the EU’s political system.

### **C. The European Parliament**

Directly elected since 1979, the European Parliament is composed of 732 members (MEPs) who sit in political, not national, groups. Elections to the Parliament are held every 5 years. With each successive treaty revision, the Parliament has increased its influence in the Union’s legislative process in an effort to enhance the democratic legitimacy of the Union. The European Parliament is consulted on major EU legislation while it is still in draft and can in many cases insist upon amendments to the Commission's draft. Moreover, it exercises democratic control over the Commission, which it has the power to dismiss. The Parliament and the Council constitute the Union's joint budgetary authority. Much of the Parliament's work is done in specialized committees which meet in Brussels, but the official seat of the Parliament is in Strasbourg (France), where most plenary sessions are held.

### **Decision-making in the European Union**

The EU is built under a single institutional roof standing on three pillars, established by the Maastricht Treaty (1992). The decision-making procedure described here concerns the decisions taken under the first pillar, the Community pillar. The Community pillar governs the operations of the Commission, the Parliament, the Council and the Court of Justice. It covers a wide range of policies, such as internal market, agriculture, environment, research and development and the Economic and Monetary Union. The two other pillars cover sensitive issues of national sovereignty, where intergovernmental cooperation and national veto power are regarded as desirable: the second pillar concerns cooperation on common foreign and security policy (CFSP) and the third pillar concerns cooperation in the fields of justice and home affairs (the Treaty of Amsterdam has transferred some of the fields covered by the old third pillar to the first pillar).

Under the Community pillar, this "institutional triangle" described above produces the policies and laws that apply throughout the EU. In principle, the Commission proposes

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new EU laws, whereas the Parliament and Council adopt them. Every European law is based on a specific treaty article, referred to as the “legal basis” of the legislation. There are three main procedures for enacting new EU laws: co-decision, consultation and assent. The main difference between them is the way Parliament interacts with the Council. Under the consultation procedure, Parliament merely gives its opinion; under the co-decision procedure, Parliament genuinely shares power with the Council, and under assent the Parliament has veto power. The European Commission, when proposing a new law, must choose which procedure to follow, depending on its ‘legal basis’. Although the Council may amend the Commission proposal, including its legal basis, the initial choice made by the Commission in most cases determines the procedure to be followed.

The most common procedure is the co-decision procedure, where the Parliament and the Council share legislative power. The Commission sends its proposal to both institutions. They each read and discuss it twice in succession. If they cannot agree on it, it is put before a "Conciliation Committee", composed of equal numbers of Council and Parliament representatives. Once the committee has reached an agreement, the agreed text is then sent to Parliament and the Council for a third reading, so that they can finally adopt it as law. The procedure is thus as follows:

- Commission proposes,
- first reading in the Parliament, and Commission advises,
- Commission can amend the proposal,
- first reading in the Council and votes,
- second reading in the Parliament up to a 3rd reading until the proposal is adopted or cancelled.

### **Proposed changes to decision-making in the new European Constitution**

The member states are currently ratifying a draft “Treaty establishing a Constitution for Europe” (European Constitution). This Constitution was drawn up by a European Convention, and agreed by member states in October 2004, and if it is ratified by all member states it will enter into force on 1 November 2006. This new Constitution builds on and simplifies past treaties, but it also makes significant changes to the decision-making procedure of the Union. Some of the main points of change include: a new president of the Council to replace the rotating Presidency; a reform of the QMV system used in the Council (with a new system of “double qualified majority”); and the creation of the post of a European Foreign Minister.

The new Constitution also proposes a major simplification in the organization of the Union's decision-making system. It abandons the three pillar arrangement and proposes

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that all decision-making should be brought within the Community pillar (except in some areas of foreign policy). It also creates a single legal personality for the EU.

A second substantial simplification lies in the future approval of European laws. At present only about half of all legislation requires the approval of both the European Parliament and the Council (co-decision). Under the terms of the new Constitution practically all decisions (approximately 95 per cent) will be decided under co-decision procedure, renamed the “ordinary legislative procedure”.

### **Lobbying in the European Union**

The decision-making process in the EU is both more open and more complex than the American process and this impacts the role of lobbyists in the process. During recent decades there has been a steady increase in the number of professional lobbyists, making Brussels the second largest city for lobbyists after Washington.

Understanding the legislative process and the interplay between the EU institutions is crucial for groups trying to influence political outcomes. Normally, interest groups cannot directly approach the European Council or the Council of Ministers. Those are usually lobbied only through national governments and bureaucracies. The main target for most lobbyists is the Commission. The Commission is very open and accessible and actively encourages lobbying, since interest groups often have access to specialized information that is useful to the Commission. Interest groups tend to target the Directorate-General (DG) and the “Cabinet” of individual Commissioners that deal with their specific policy area. Details on individual DGs and Commissioners can be found on the Commission’s website ([http://europa.eu.int/comm/index\\_en.htm](http://europa.eu.int/comm/index_en.htm)), which also gives specific information about open and closed consultations. In addition to the Commission, the Parliament ([http://www.europarl.eu.int/home/default\\_en.htm](http://www.europarl.eu.int/home/default_en.htm)) also receives increasing attention from lobbyists as its influence has grown. Lobbyists target the Parliament by using MEPs to request legislative initiatives from the Commission; encouraging MEPs to build their own initiative reports and persuading MEPs to vote in a particular way on a specific issue. Legislation can be tracked using the Parliament’s “Legislative Observatory”, online at: <http://www.europarl.eu.int/oeil/>.

The most successful interest groups tend to have control of key information and expertise, adequate resources, economic and political weight and genuine representational claims and cohesive interests. One of the most challenging issues facing interests groups is the shifting balance of power among European institutions, such as the extension of QMV in the Council that removed the veto power from member states and the co-decision procedure gave the Parliament a greater role in decision-making.

### **Summary: Decision-making procedures in flux**

The political system of the European Union is constantly changing. Currently the 25 member states are ratifying a new European Constitution that will, if accepted, alter the

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relationship both between member states and the Union and among the EU institutions. The Council, the Commission and the Parliament will remain the main decision-making institutions, but the operational procedures will change. Although this Treaty sets out to establish a Constitution for Europe, it is unlikely that its provisions will prevail for a long time.