



## SUPRANATIONAL DECISION-MAKING PROCEDURES

The Member States of the European Union have agreed, as a result of their membership of the EU, to transfer some of their powers to the EU institutions in specified policy areas. Thus, EU institutions make supranational binding decisions in their legislative and executive procedures, budgetary procedures, appointment procedures and quasi-constitutional procedures.

### HISTORY ([1.1.1](#), [1.1.2](#), [1.1.3](#), [1.1.4](#) AND [1.1.5](#))

The Treaty of Rome gave the Commission powers of proposal and negotiation, mainly in the fields of legislation and external economic relations, and allocated powers for decision-making to the Council or, in the case of appointments, representatives of the Member States' governments. It gave Parliament a consultative power. Parliament's role has gradually grown, in the budgetary domain with the reforms of 1970 and 1975, in the legislative domain with the Single European Act and all the following Treaties, in the first place the Treaty of Maastricht introducing codecision with the Council, which also increased Parliament's role in appointments. Furthermore, the Single European Act gave Parliament the power to authorise ratification of accession and association treaties; Maastricht extended that power to other international treaties of certain kinds. The Treaty of Amsterdam made substantial progress down the road to democratising the Community, by simplifying the codecision procedure, extending it to new areas and strengthening Parliament's role in appointing the Commission. Following this approach, the Treaty of Nice considerably increased Parliament's powers. On the one hand, the codecision procedure (in which Parliament has the same powers as the Council) was applied to almost all new areas where the Council was entitled to decide by qualified majority. On the other hand, Parliament acquired the same powers as the Member States in terms of referring matters to the Court of Justice. The Treaty of Lisbon is a further qualitative step towards full equality with the Council in EU legislation and finance.

### LEGISLATIVE PROCEDURES[1]

#### A. Ordinary legislative procedure (Article 289 and 294 TFEU)

##### 1. Scope

The Lisbon Treaty added 40 further legal bases, in particular in the area of justice, freedom and security and in agriculture, under which the Parliament now decides on legislative acts on equal footing with the Council. Hence, the ordinary legislative procedure, formerly called the codecision procedure, applies to 85 legal bases. The



ordinary legislative procedure includes qualified majority voting (QMV) in the Council (Article 294 TFEU). However, it does not apply to several important areas, for example fiscal policy concerning direct taxation or transnational aspects of family law, which require unanimity in the Council.

## **2. Procedure**

The ordinary legislative procedure follows the same steps as the former codecision procedure. However, the wording of the TFEU has changed considerably, notably to underline the equal role of Council and Parliament in this procedure.

### **a. Commission proposal**

### **b. First reading in Parliament**

Parliament adopts its position by a simple majority.

### **c. First reading in the Council**

The Council adopts its position by QMV.

In the fields of social security and police and judicial cooperation in criminal matters, the proposal can be submitted to the European Council at the request of one Member State (Articles 48 and 82 TFEU), and this suspends the ordinary legislative procedure until the European Council reassigns the matter to the Council (at the latest after four months). In the case of Article 82, at least nine Member States may decide to continue deliberations under enhanced cooperation (Article 20 TEU and Article 326-334 TFEU).

If the Council approves Parliament's position, the act is adopted in the wording which corresponds to Parliament's position.

### **d. Second reading in Parliament**

Parliament receives the Council's position and has three months to take a decision. It may thus:

- Approve the proposal as amended by the Council or take no decision; in both cases, the act as amended by the Council is adopted;
- Reject the Council's position by an absolute majority of its Members; the act is not adopted and the procedure ends;
- Adopt, by an absolute majority of its Members, amendments to the Council's position, which are then put to the Commission and the Council for their opinion.

### **e. Second reading in the Council**

- If the Council, voting by a qualified majority on Parliament's amendments, and unanimously on those on which the Commission has delivered a negative opinion, approves all of Parliament's amendments no later than three months after receiving them, the act is adopted.
- Otherwise, the Conciliation Committee is convened within six weeks.

### **f. Conciliation**

- The Conciliation Committee consists of an equal number of Council and Parliament representatives, assisted by the Commission. It considers the positions of



Parliament and the Council and has six weeks to agree on a joint text supported by a QMV of Council representatives and a majority of Parliament's representatives.

- The procedure stops and the act is not adopted if the Committee does not reach agreement on a joint text by the deadline.
- If it does so, the joint text is sent to the Council and Parliament for approval.

**g.** Conclusion of the procedure (third reading)

- The Council and Parliament have six weeks to approve the joint text. The Council acts by a qualified majority and Parliament by a majority of the votes cast.
- The act is adopted if the Council and Parliament approve the joint text.
- If either of the institutions has not approved it by the deadline, the procedure stops and the act is not adopted.

Over the past few years, the number of first reading agreements based on informal negotiations between the Council and Parliament has significantly increased.

Some bridge clauses allow the European Council to extend the application of the ordinary procedure to areas exempted from it (for example social policy: Article 153(2)).

**B.** Consultation procedure

Before taking a decision, the Council must take note of the opinion of Parliament and, if necessary, of the European Economic and Social Committee and the Committee of the Regions. It is required to do so, as the absence of such consultation makes the act illegal and capable of annulment by the Court of Justice (see judgment in Cases 138 and 139/79). When the Council intends to substantially amend the proposal, it is required to consult Parliament again (judgment in Case 65/90).

**C.** Consent procedure

**1.** Scope

As a result of the entry into force of the Lisbon Treaty, the consent procedure applies in particular to the horizontal budgetary flexibility clause, as specified in Article 352 TFEU (former Article 308 TEC). Other examples are action to combat discrimination (Article 19(1) TFEU) and membership of the Union (Articles 49 and 50 TEU). In addition, Parliament's consent is required for association agreements (Article 217 TFEU), accession of the Union to the ECHR (Article 6(2) TEU), and agreements establishing a specific institutional framework entailing major budgetary implications or concerning areas where the ordinary legislative procedure applies (Article 218(6) TFEU).

**2.** Procedure

Parliament considers a draft act forwarded by the Council; it decides whether to approve the draft (it cannot amend it) by an absolute majority of the votes cast. The Treaty does not give Parliament any formal role in the preceding stages of the procedure to consider the Commission proposal, but as a result of interinstitutional arrangements it has become the practice to involve Parliament informally (see Parliament's Rules of Procedure).



## **BUDGETARY PROCEDURE (1.2.5)**

### **APPOINTMENT PROCEDURES**

- A.** Parliament elects the President of the Commission (Article 14(1) TEU) (1.3.8).
- B.** The European Council, acting by qualified majority, appoints the High Representative for Foreign Affairs and Security Policy (Article 18(1) TEU).
- C.** The Council, acting by qualified majority, adopts:
  - The list of the other persons whom it proposes for appointment as Members of the Commission, by common accord with the President-elect (Article 17(7) TEU).
- D.** The Council adopts the list of:
  - The members of the Court of Auditors (Article 286 TFEU), after consulting Parliament and in accordance with the proposals put forward by the Member States;
  - Members and alternate members of the Committee of the Regions and the European Economic and Social Committee, drawn up in accordance with the proposals made by each Member State (Articles 301, 302 and 305 TFEU).
- E.** Parliament elects the European Ombudsman (Article 228 TFEU).

### **CONCLUSION OF INTERNATIONAL AGREEMENTS**

Having gained legal personality, the Union can now conclude international agreements (Article 218 TFEU). The Lisbon Treaty requires the consent of the European Parliament in any agreements concluded in the field of the Common Commercial Policy as well as in all fields whose policies would fall under the ordinary legislative procedure within the EU. The Council decides by QMV, with the exception of association and accession agreements, agreements risking to prejudice the Union's cultural and linguistic diversity, and agreements in fields where unanimity would be required for the adoption of internal acts.

- Procedure: The Commission or the High Representative of the Union for Foreign Affairs and Security Policy (HR) presents recommendations to the Council, the Council defines the mandate for the negotiations and nominates the Union negotiator (from the Commission or the HR) to conduct negotiations. The European Parliament must be immediately and fully informed at all stages of the procedure (Article 218(10)).
- Decision: Council, by QMV, except in the fields mentioned above.
- Parliament's role: consent for most agreements (see above), consultation for agreements falling exclusively in the field of foreign and security policy.



## QUASI-CONSTITUTIONAL PROCEDURES

### A. System of own resources (Article 311 TFEU)

- Proposal: Commission;
- Parliament's role: consultation;
- Decision: Council, unanimously, subject to adoption by the Member States in accordance with their respective constitutional requirements.

### B. Provisions for election of Parliament by direct universal suffrage (Article 223 TFEU)

- Proposal: Parliament;
- Decision: Council, unanimously after obtaining Parliament's consent and recommending the proposal to the Member States for adoption according to their constitutional requirements.

### C. Adoption of the Statute for Members of the European Parliament (Article 223(2) TFEU) and the Statute for the Ombudsman (Article 228(4) TFEU)

- Proposal: Parliament;
- Commission's role: opinion;
- Council's role: consent (by qualified majority except in relation to rules or conditions governing the tax arrangements for Members or former Members, in which case unanimity applies);
- Decision: Parliament.

### D. Amendment of the protocol on the Statute of the Court of Justice (Article 281 TFEU)

- Proposal: Court of Justice (with consultation of the Commission) or Commission (with consultation of the Court of Justice);
- Decision: Council and Parliament (ordinary legislative procedure).

## ROLE OF THE EUROPEAN PARLIAMENT

At the 2000 Intergovernmental Conference (IGC), Parliament made several proposals to extend the areas to which the ordinary legislative (formerly 'codecision') procedure would apply. Parliament also repeatedly voiced its opinion that, if there was a change from unanimity to qualified majority, co-decision should apply automatically. The Treaty of Nice endorsed this position but did not fully align qualified majority and codecision. As a result, the issue of simplifying procedures was one of the key elements addressed at the Convention on the Future of Europe. It was proposed that the cooperation and consultation procedures be abolished, that the codecision procedure be simplified and extended to cover the entire legislative field, and that the assent procedure be limited to the ratification of international agreements. Many of these improvements were implemented by the Lisbon Treaty (1.1.5).



With regard to appointments, the Treaty of Lisbon failed to put an end to the wide range of different procedures, although some streamlining was achieved. Unanimity is still applied in some cases, and tends to cause political disputes and reduces the influence of Parliament. Progress was achieved in particular after the entry into force of the Treaty of Nice, with the move from unanimity to qualified majority for the appointment of the Commission President. The Lisbon Treaty provides, in addition, for the election of the Commission President by Parliament. The appointment of the President-elect, after appropriate consultations of Parliament, must take due account of the results of the European elections. This highlights the political legitimacy and accountability of the European Commission. After the elections to the European Parliament in 2014, these provisions were implemented for the first time. The European Council agreed to designate Jean-Claude Juncker as President of the European Commission because the European People's Party (EPP) was the largest group in the European Parliament following the elections.

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