



# **CODECISION AND CONCILIATION**

A Guide to how the Parliament co-legislates  
under the

**Treaty of Lisbon**

November 2009

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## FOREWORD

We welcome the *Guide to Codecision and Conciliation under the Treaty of Lisbon*, prepared by the CODE Secretariat for the seventh parliamentary term. The aim of this Guide is to explain the way in which Parliament organises its work in conciliation and codecision by providing practical information on these so important, but sometimes also complex procedures, where the Parliament and the Council act jointly to adopt European legislation, on a proposal from and with the active participation of the Commission.

With the Treaty of Lisbon codecision enters a new era. Not only is it officially called the 'ordinary legislative procedure' but it becomes indeed the rule for passing legislation at Community level. Its scope almost doubles: it extends from forty-four areas of community action under the Treaty of Nice to eighty-five areas under the Treaty of Lisbon. Totally new areas are created and entire areas where Parliament had previously only a right of consultation, assent or even was not involved at all become subject to the 'ordinary legislative procedure' (with a qualified majority voting in the Council). For Parliament and its Members the need to know well how this procedure works and how they can most effectively maximise their input to the adoption of EU legislation becomes of primary importance.

This Guide seeks to reply to these needs by providing practical information and all necessary background material to help Members prepare their participation in codecision procedures and in particular at the conciliation stage where the Parliament meets the Council in trilogue negotiations or in the Conciliation Committee.

We would recommend it to all those who are involved in, or take an interest in, the Parliament's work as a co-legislator.



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[http://www.europarl.europa.eu/code/default\\_en.htm](http://www.europarl.europa.eu/code/default_en.htm)

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## 1. CODECISION UNDER THE TREATY OF LISBON

After more than fifteen years of successful implementation codecision enters into a new era with the Treaty of Lisbon. It is officially called the '*ordinary legislative procedure*' (though the shorter term '*codecision*' will certainly continue to apply) and becomes the rule for passing legislation at EU level.

The ordinary legislative procedure is based on the principle of parity between the directly-elected European Parliament, representing the people of the Union, and the Council, representing the governments of Member States. The two co-legislators adopt legislation jointly, having equal rights and obligations - neither of them can adopt legislation without the agreement of the other.

### **Scope of the ordinary legislative procedure**

With the Treaty of Lisbon the scope of codecision almost doubles to reach 85 activity areas ('legal bases') from previously 44 under the Treaty of Nice (for a full list see Annex E). The areas that will most benefit are agriculture and fisheries, freedom, security and justice and the common commercial policy.

Codecision continues to apply to all previous areas such as, in particular,

environment, transport, the internal market and its four freedoms (free circulation of goods, services, capital and persons), employment and social policies, education and training, public health and consumer protection, certain areas of freedom, security and justice.

On top of that codecision is now extended to a significant number of key activity areas where Parliament had previously only a right of *consultation*. Among them are particularly included:

- Agriculture and fisheries;
- Freedom, security and justice, particularly the areas concerning criminal matters and criminal law, Eurojust and Europol and police cooperation;
- Liberalisation of services in specific sectors;
- Cooperation with third countries;
- Judicial matters;
- Implementing acts (comitology)

Subject to codecision become also certain areas where Parliament was previously not involved at all. The main such area is the common commercial policy - an area of exclusive Community competence - which comprises the complete EU external trade and international trade agreements at bilateral and multilateral levels.

Other such areas are the exclusion of provisions concerning the right of

establishment from certain activities, the extension of the freedom to provide services to third-country nationals, measures concerning the movement of capital to or from third countries, measures to eliminate internal market distortions, and measures relating to the use of the Euro.

Furthermore the Treaty of Lisbon creates a number of *new specific policy areas* subject to codecision, which are either completely new or were based in the past on the general approach of Article 308 EC Treaty. Such areas are, in particular, the citizens' initiative, measures for the inclusion of third-country nationals, measures to support crime prevention, incentive measures for public health, intellectual property, sport, a European research area, a European space policy, energy, tourism, civil protection, humanitarian aid and administrative cooperation.

Last but not least certain legal bases previously subject to the *assent* procedure such as concerning the European Central Bank and the European System of Central Banks, the Structural Funds and the Cohesion Fund are now also part of the ordinary legislative procedure.

A full list of all policy areas subject to the ordinary legislative procedure can be found in Annex E.

## Functioning of the ordinary legislative procedure

The ordinary legislative procedure is laid down in Article 294 of the Treaty on the Functioning of the European Union (TFEU)<sup>1</sup>, which replaces Article 251 of the Treaty establishing the European Community (TEC).

The procedure as such does not change considerably. Its main characteristic remains the adoption of legislation jointly by the European Parliament and the Council of Ministers (with qualified majority voting in the latter) on a proposal from the Commission ('*Commission's right of initiative*').

The ordinary legislative procedure still consists of up to three readings with the possibility of the two co-legislators to conclude at any reading, if they reach an overall agreement in the form of a joint text.

If the Council cannot accept all the amendments adopted by Parliament in second reading, the conciliation procedure - the third and final phase of codecision - has to be opened.

The deadlines in the various stages of the procedure remain the same. Also the necessary majorities for the adoption of a position by the co-legislators remain the same, except that

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<sup>1</sup> The Treaty of Lisbon establishes the 'Treaty on the Functioning of the European Union' (TFEU), which amends and replaces the 'Treaty establishing the European Community' (TEC). The numbers of the Articles used in this Guide refer to the consolidated version of the TFEU.

the Council decides now in all cases by qualified majority; the few cases where the Council previously needed unanimity have also passed to qualified majority voting.

***But there are nevertheless some new distinctive elements in the ordinary legislative procedure:***

- Legislative proposals subject to the ordinary legislative procedure can be submitted not only from the Commission, in line with its 'right of initiative', but in specific cases laid down in the Treaty also on the initiative of a group of Member States, on a recommendation by the European Central Bank, or at the request of the Court of Justice. In these cases certain provisions concerning the role and prerogatives of the Commission do not apply (see Article 294(15) TFEU).
- National parliaments have the right to intervene immediately after the submission of a proposal for a legislative act with a view to undertaking a subsidiarity check within an eight weeks deadline.
- The institutional position of the European Parliament is strengthened further by making it clear that - like the Council - the Parliament is adopting in first and second reading a 'position' and not just an 'opinion' anymore.
- In the specific cases laid down in Articles 48, 82 and 83 TFEU a member of the Council can make use of the 'emergency brake' mechanism by requesting to refer the issue to the European Council. In that case the ordinary legislative procedure is suspended for up to four months. Within this deadline the European Council can decide either to refer the draft back to the Council or take no action or request the Commission to submit a new proposal.
- Basis for the negotiations in conciliation are the respective positions of Parliament and Council in second reading (and not the Council's common position and Parliament's second reading amendments anymore).

## 2. THE ORDINARY LEGISLATIVE PROCEDURE: THE BASICS

### Introduction

The codecision procedure was introduced by the Maastricht Treaty in 1993. At that time, it applied to only 15 areas of Community activity. Its scope was increased considerably under the Amsterdam Treaty (May 1999) and grew further under the Nice Treaty (February 2003) when it reached 44 areas of EU activity.

The growth in the number of areas of Community law-making subject to codecision has brought about a substantial increase in the volume of codecision files: in the 1999 - 2004 parliamentary term, under the provisions of the Amsterdam and Nice Treaty, 403 legislative acts were adopted under codecision. This is two and a half times the total of 165

codecision files concluded under the provisions of the Maastricht Treaty (1993-1999).

In the last legislative term (2004 - 2009) a total of 447 codecision files were concluded (see Figure 1): this however constitutes only a moderate increase in the absolute number of codecision files, if one considers that in 2004 as a result of the Treaty of Nice codecision was extended to a further 5 new legal bases in the area of freedom, security and justice.

With the considerable extension of the scope of the ordinary legislative procedure under the Treaty of Lisbon the number of codecision files is expected to increase further in the future.

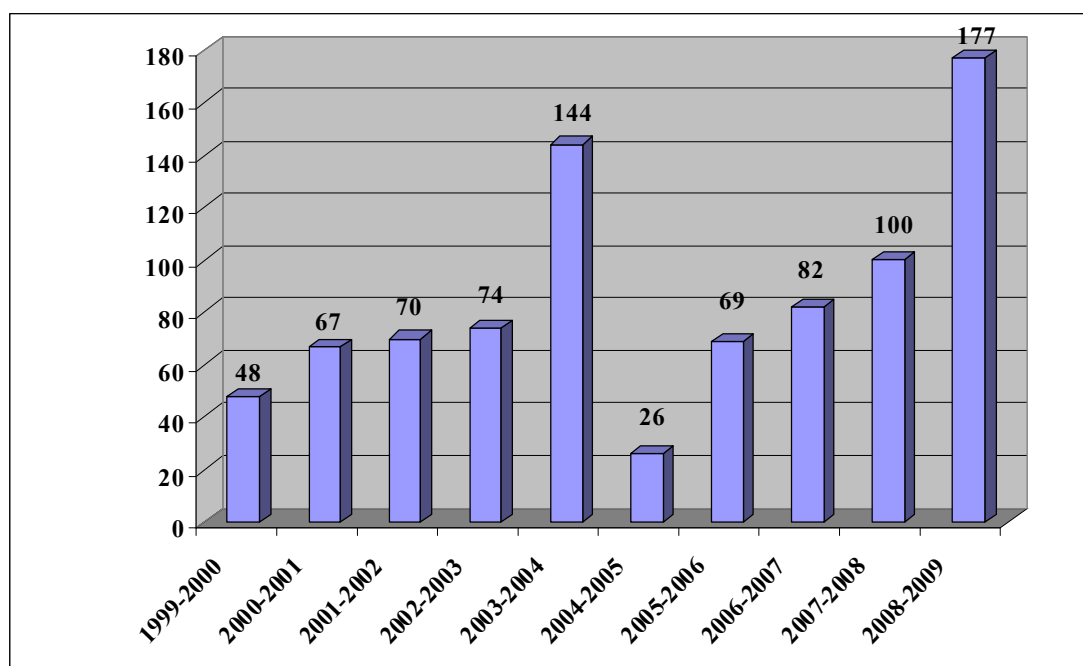


Figure 1: Number of codecision files 1999-2009

The ordinary legislative procedure, as laid down in Article 294 TFEU (see Annex A), provides for up to three readings: first reading, second reading and third reading with conciliation (for a schematic overview of the codecision procedure see Annex F). The procedure can be concluded though at any of these stages, if the two branches of the legislative authority reach an overall agreement. If the Council cannot accept all EP second reading amendments, the conciliation procedure - the third and final phase of the codecision procedure - has to be opened.

### **Submission of a legislative proposal**

The codecision procedure starts with a proposal from the European Commission, in keeping with the Commission's *'right of initiative'*. However, the Parliament and the Council, under Article 225 and Article 241 TFEU respectively, may request the Commission to submit appropriate proposals in order to attain the objectives of the Treaty.

In specific cases provided for in the Treaties a proposal for a legislative act may be submitted to the ordinary legislative procedure also on the initiative of a group of Member States, on a recommendation by the European Central Bank, or at the request of the Court of Justice (Article 294(15) TFEU).

The Commission submits its legislative proposal (normally for a Regulation, a Directive or a Decision) to the European Parliament and the Council and forwards it at the same time to national Parliaments.

### **The role of national Parliaments**

According to Protocol No 1 on the role of national Parliaments and Protocol No 2 on the principles of subsidiarity and proportionality each national Parliament may within an eight weeks deadline issue a reasoned opinion stating why it considers that the draft legislative act does not comply with the principle of subsidiarity.

Each national Parliament has two votes. In the case of a bicameral parliamentary system, each of the two chambers has one vote.

If at least 1/3 of national Parliaments are of the opinion that the draft does not comply with the subsidiarity principle, then the draft must be reviewed ('yellow card'). This threshold falls to 1/4 for a draft legislative proposal submitted on the basis of Article 76 TFEU (judicial cooperation in criminal matters and police cooperation). After such review, the authoring institution may decide to maintain, amend or withdraw it.

Furthermore, under the ordinary legislative procedure, if a simple majority of national parliaments consider that the draft legislative

proposal does not comply with the principle of subsidiarity, the draft must be reviewed by the Commission ('orange card').

After such review the Commission may decide to maintain, amend or withdraw the proposal. If the Commission decides to maintain the proposal, then the two branches of the legislator must consider before concluding the first reading whether the proposal is compatible with the principle of subsidiarity. If Parliament by a simple majority of its Members and the Council by a majority of 55% of its members consider that the proposal does not comply with the principle of subsidiarity then the proposal will not be given further consideration.

### **First reading**

Within the Parliament, the proposal is referred by the President (after consultation with the relevant services) to the committee responsible for consideration: the choice of committee depends on the subject-matter covered by the proposal. Other parliamentary committees can challenge this decision: if this is the case the issue can be settled either between the involved committees in the context of the Conference of Committee Chairs or else by a political decision from the Conference of Presidents on the basis of a recommendation from the Conference of Committee Chairs or from its Chair. The means for solving such a dispute can involve the *procedure with associated committees*

or with *joint committee meetings and vote*,

The committee responsible appoints a 'rapporteur' whose main task is to lead the proposal through the various stages of the procedure. The rapporteur advises the committee (during consideration at committee level) and the Parliament in general (at plenary stage) on the general approach to be taken towards the Commission proposal. The rapporteur is also the first Member to propose amendments to the Commission proposal. Other parliamentary committees with an interest in the matter dealt with by the proposal may deliver their 'opinion' to the committee responsible.

Particularly important is the opinion of the associated committees where this procedure applies. In the case of joint committee meetings the rapporteurs shall draw up a single draft report, which shall be examined and voted on by the committees involved at joint meetings.

On controversial or 'technical' dossiers, it is not unusual to organise hearings with experts or to commission studies or impact assessments.

When the committee responsible has adopted the 'report' prepared by the rapporteur, the Parliament, acting by a *simple* majority (i.e. a majority of the Members voting), delivers its *first reading* on the Commission proposal. Parliament has, at this stage, three options: it may reject the proposal as a whole or approve it without

amendments or, most commonly, approve it subject to a number of amendments.

As far as outright rejection at first reading is concerned, it should be noted though, that, while the Treaty does not explicitly prohibit this, neither does it explicitly provide for it<sup>1</sup> (as it does for rejection at second reading; Article 294 (7)(b) TFEU).

Once Parliament has concluded its first reading the Commission may adopt a 'modified proposal' incorporating a number of Parliament's amendments.

If the Council, acting by a qualified majority, approves all the Parliament amendments, or if the EP has approved the proposal without amendment, the Council may adopt the act.

If the Council is unable to accept fully the outcome of the Parliament's first reading, it concludes its first reading by establishing a text which is known as the 'common position'.<sup>2</sup> The Council informs Parliament fully of the reasons which led it to adopt its common

position. The Commission also informs Parliament fully of its position.

During the whole first reading stage, neither the Parliament nor the Council are subject to any time limit by which they must conclude their first reading.

## Second reading

Unlike first reading, the second reading is subject to strict time limits. Within three months (or four, if an extension has been agreed) of the announcement of the Council common position in the plenary, the Parliament must approve, reject or amend it at second reading. If the Parliament takes no decision by the expiry of this deadline, the act is deemed to have been adopted in accordance with the common position.

Approval of the common position without amendment requires the support of a *simple* majority of the Parliament's Members (i.e. a majority of the Members voting).

On the contrary, rejection of the common position requires the support of an *absolute* majority of the Parliament's Members (i.e. at least 369 votes in favour out of a possible total of 736).<sup>3</sup> Rejection of the common position by the Parliament ends the legislative procedure: this can only be re-launched by a new Commission proposal.<sup>4</sup>

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<sup>1</sup> The Parliament, however, has proved reluctant to accept a limitation on its freedom of action: in the last legislative term (2004-09) Parliament rejected various Commission proposals at first reading. In such cases, Rule 56 of the EP Rules of Procedure applies, which seeks to ensure that the Parliament and the Commission have enough time to consider their options fully and find a solution that will respect Parliament's prerogatives and the Commission's right of initiative.

<sup>2</sup> While this is not explicitly laid down in the Treaty, it is widely accepted that acting by a qualified majority the Council may reject the Commission proposal as a whole. On the other hand, the Commission may decide at any time during the first reading either to withdraw or to alter its proposal (Article 293(2) TFEU).

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<sup>3</sup> The numbers refer the new Parliament elected in July 2009. In the course of the current legislative term the number of Parliament's Members will increase to 754.

<sup>4</sup> In July 2005, the Parliament made use of this possibility for the first (and, so far, only) time when it

Finally, the Parliament may adopt amendments to the common position: each such amendment must be again supported by an *absolute* majority of Members.

The rapporteur (normally the same Member who drew up the report for the first reading) draws up a draft 'recommendation', i.e. a second-reading report, for the committee responsible (as a rule the same committee as was responsible at first reading).

The draft recommendation will include the amendments proposed by the rapporteur. Any (but only a) full or substitute Member of the committee responsible may table additional amendments. In second reading there are no opinions from other committees. The committee responsible decides by a majority of the votes cast. After the vote in the committee responsible, the recommendation proceeds to plenary.

Once again, amendments may be tabled at plenary stage, but only by the committee responsible, by a political

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rejected the Council common position for a Directive on the patentability of computer implemented inventions ('software patents'; report *Rocard*). This controversial Commission proposal was rejected by an overwhelming majority of Members (648 to 14 and 18 abstentions). In line with Article 251 (2) (b) TEC, the rejection by Parliament led to the termination of the procedure. In the course of the discussions the question arose whether the Commission could withdraw a proposal that had passed the first reading stage. While the Commission maintains its right to withdraw a proposal at any stage, the Parliament and the Council, based on Article 250(2) TEC, consider that as soon as the Council has adopted a common position the latter - and not the Commission proposal anymore - forms the basis for the further procedure. Consequently the Commission cannot withdraw a text, of which it has not the 'ownership' anymore.

group or by at least 40 individual Members.

However, both at committee and plenary stage certain restrictions apply as to what kind of amendments can be tabled in second reading. In particular, under Rule 66 of the EP Rules of Procedure (see Annex C) amendments are only admissible if they seek:

- to restore wholly or partly Parliament's first reading position, or
- to reach a compromise between the Parliament's and the Council's position, or
- to amend a part of the common position which was not included in or differs in content from the initial proposal, or
- to take account of a new fact or legal situation which has arisen since the first reading.

The chair of the committee responsible at committee stage and the President of the Parliament at plenary stage rule on the admissibility of amendments: their decision is final (Rule 66; Annex C).

Before the vote on the amendments in plenary, the President of the Parliament may ask the Commission to indicate whether or not it would be willing to accept them. The Council may also be invited to comment.

The Treaty sets clear deadlines for the second reading. The EP must adopt its second reading within three months (four, if an extension has been agreed) of communication to it of the common

position. Once the Parliament has concluded its second reading and has referred its position to the Council, the latter has a further three months (or four, if an extension has been agreed) to conclude its second reading.

At second reading, the Council may approve - as a rule, by qualified majority, but by unanimity where the

Commission opposes a Parliament amendment (see Article 294(9) TFEU; Annex A), all of the EP's second-reading amendments. In this case, the act is adopted.

If the Council is unable to approve all EP amendments, the Treaty provides for the convening of the Conciliation Committee.

<b>MAIN DIFFERENCES BETWEEN FIRST AND SECOND READING</b>	
<b>First reading</b>	<ul style="list-style-type: none"> <li>• <b>No time limits</b></li> <li>• <b>Commission proposal considered by committee responsible and opinion giving committees</b></li> <li>• <b>Broad admissibility criteria for amendments</b></li> <li>• <b>Parliament decides (to approve, reject or amend the Commission proposal) by a <i>simple</i> majority (i.e. majority of Members voting)</b></li> </ul>
<b>Second reading</b>	<ul style="list-style-type: none"> <li>• <b>Strict time limits of 3 - 4 months</b></li> <li>• <b>Common position considered only by the committee responsible</b></li> <li>• <b>Strict admissibility criteria for amendments</b></li> <li>• <b>Parliament approves the common position by a <i>simple</i> majority, but rejects or amends it by an <i>absolute</i> majority (i.e. majority of all Members of Parliament)</b></li> </ul>

### **First and second reading agreements**

Since the Amsterdam Treaty it is possible to conclude a codecision procedure at first reading (this was not provided for under the Maastricht Treaty). This possibility is further elaborated in the Joint Declaration on Practical Arrangements for the Codecision Procedure (see Annex B for the full text of the revised Joint Declaration of 13 June 2007), whereby

*'the institutions shall cooperate throughout the procedure with a view to reconciling their positions as far as possible and thereby clearing the way, where appropriate, for the adoption of the act concerned at an early stage of the procedure'.*

In recent years, there has been a growing trend towards agreements at

first reading. In the last parliamentary term (2004 - 2009), 327 codecision procedures (72 % of the total)<sup>1</sup> were concluded at first reading, 104 (23 %) at second reading and 23 (5 %) at third reading after conciliation. By comparison, during the 1999 - 2004 term, 115 codecision procedures (28%) were concluded at first reading, 200 (50%) at second reading and 84 (22%) at third reading after conciliation.

This development demonstrates the flexibility of the procedure itself and, more importantly, a greater degree of trust and willingness to cooperate on the part of the institutions. However, concerns have been expressed, within Parliament and beyond, about the potential lack of transparency inherent in the informal first and second reading negotiations, the lack of democratic legitimacy and clarity concerning the appropriate procedural steps and not least also about the institutional gains for the European Parliament. The time pressure to conclude within the six months of the respective Presidency puts too much focus on fast - track negotiations, at the expense of an open political debate within and between the institutions, with the involvement of the public in its various forms.

The issue was examined in the context of the Working Party on Parliamentary Reform set up by the Conference of Presidents in January 2007 with the task to look in depth at how Parliament

conducts its business and suggest possible reform proposals. On the basis of proposals from the three Vice-Presidents responsible for conciliation the Working Party adopted on 23 April 2008 a '*Code of Conduct for Codecision Negotiations*' (Annex D).

The purpose of this Code is to set out uniform rules for Members and EP staff alike on how to conduct negotiations with the other institutions in the various stages of the codecision procedure. The primary focus of these rules is on transparency, legitimacy, efficiency and accountability, with the committee(s) involved as the key actor(s) for such negotiations.

These rules deal in particular with issues such as:

- the decision by the committees to enter into negotiations with the Council and the Commission, stressing that, as a rule, Parliament should make use of all stages of the codecision procedure and agreements in early stages should be the exception and respect certain criteria;
- the composition and mandate of the negotiating team;
- the organisation of trilogues and the assistance offered to the negotiators;
- the feedback to the committee responsible and the consideration by the latter of any agreement reached.

The Conference of Presidents endorsed

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<sup>1</sup> However it should be noted that around 106 (35%) out of the 327 files concluded in first reading were codifications, comitology files and simple repeals.

the Code of Conduct in its entirety and without any changes on 18 September 2008 and asked for its inclusion in the EP Rules of Procedure with a view to enhancing its status and improving its visibility.

In the context of its inclusion in the EP Rules of Procedure as Annex XX the Plenary adopted a new Rule 70 on Interinstitutional Negotiations in Legislative Procedures (see Annex D). As a consequence the provisions of the Code of Conduct must always be read and applied in connection with this Rule.

### **Conciliation and third reading**

Conciliation consists of direct negotiations between the two co-legislators (Parliament and Council) in the framework of the Conciliation Committee, with a view to reaching agreement in the form of a 'joint text'.

The Conciliation Committee consists of two delegations: the Council delegation, composed of one representative of each Member State (Ministers or their representatives) and the Parliament delegation, composed of an equal number of Members. Thus, the Conciliation Committee consists as from 1 January 2007 of 54 (27+27) members.

The Conciliation Committee must be convened within six weeks (or eight, if an extension has been agreed) of the Council concluding its second reading and officially notifying Parliament that it is not in a position to accept all the

latter's second reading amendments. It is constituted separately for each legislative proposal requiring conciliation and has at its disposal six weeks (or eight weeks, if an extension has been agreed,) to reach an overall agreement in the form of a 'joint text'. The starting points for its considerations are the positions of the Parliament and the Council at second reading<sup>1</sup>. The Commission also takes part in the proceedings with a view to reconciling the positions of the Parliament and the Council.

If the Conciliation Committee does not reach an agreement, or if Parliament or the Council does not approve the 'joint text' at third reading, the act is deemed not to have been adopted. In this case, the codecision procedure can only be restarted with a new legislative proposal from the Commission.

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<sup>1</sup> However, in order to reach agreement and in the interest of good law-making the two co-legislators may need to change provisions of the common position that were not subject to EP second reading amendments. The European Court of Justice confirmed this view in the first case it dealt with conciliation (ECJ judgement of 10.1.2006 in the 'IATA' case), ruling that Article 251 EC Treaty does not impose any restriction on the content of the measures chosen to help reach agreement on a joint text. It reasoned that, in using the term 'conciliation', the authors of the Treaty intended to make the relevant procedure effective and to confer a wide discretion on the Conciliation Committee. The aim is to reconcile the positions of the Parliament and the Council on the basis of examination of all the aspects of disagreement between the two institutions.

**MAIN DIFFERENCES BETWEEN FIRST/SECOND READING AND  
THIRD READING WITH CONCILIATION IN THE PARLIAMENT**

<b>First and second reading</b>	<b>Conciliation and third reading</b>
Primary responsibility lies with the parliamentary committee(s) involved	Primary responsibility lies with the Parliament Delegation to the Conciliation Committee
<u>First reading</u> : no time limits <u>Second reading</u> : max. 4 months for the Parliament and another max. 4 months for the Council	<u>Conciliation and third reading</u> : max. 24 weeks (3 x 8 weeks), of which max. 8 weeks devoted to <u>conciliation</u> as such
Possibility to table amendments at the committee and at the plenary	<u>No amendments allowed</u> : approval or rejection of the joint text as a whole in a single vote
<u>First reading</u> : EP adopts amendments by simple majority <u>Second reading</u> : EP adopts amendments by absolute majority (at least 369 votes out of a possible total of 736)	Parliament approves or rejects the joint text by simple majority in a single vote

### 3. CONCILIATION STEP BY STEP

#### **The preliminary stage (second reading of the Parliament)**

The results of Parliament's second reading vote are transmitted to the Council. From this point, the latter has three months (or four, if an extension has been agreed) to complete its second reading by deciding whether or not it can accept all Parliament's second reading amendments. In practice, the Council informs Parliament unofficially as soon as possible whether it can accept them or not. If the Council objects to any amendment, the Conciliation Committee has to be convened. In such a case, the two institutions start negotiations as soon as possible with a view to preparing the way for an agreement in conciliation.

#### **Composition and appointment of the Parliament delegation**

The Parliament is represented at the conciliation procedure by a delegation consisting of a number of Members equal to the number of Members of the Council. The Parliament delegation is appointed separately for each conciliation procedure, i.e. for each legislative proposal requiring conciliation. Its task is to represent the whole Parliament in its negotiations with the Council during conciliation. The basic provision for the appointment of the delegation is Rule

68 of the EP Rules of Procedure (see Annex C).

Once it becomes clear that the Council cannot approve all Parliament's second reading amendments, the *Conciliations and Codecision Secretariat* ('CODE'), i.e. the Parliament's administrative unit responsible for conciliation, starts preparations for the appointment of the Parliament delegation to the Conciliation Committee. The CODE secretariat assists the Parliament delegation throughout the conciliation procedure and third reading, working in close cooperation with the secretariat(-s) of the parliamentary committee(-s) involved and with Parliament's Legal Service, lawyer-linguists and Press Service (for a detailed mission statement of the CODE secretariat, see p. 28).

At the beginning of each legislature, or if major changes in the overall political composition of the Parliament occur during the legislature, the Conference of Presidents determines the political composition of the delegation in line with the relative strength of the political groups. On the basis of Parliament's political composition after the June 2009 elections the Parliament delegations to the Conciliation Committee are composed as follows:<sup>1</sup>

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<sup>1</sup> Decision of the Conference of Presidents of 10.9.2009.

<i>EPP:</i>	<i>11</i>	<i>Members</i>
<i>S&amp;D:</i>	<i>7</i>	<i>Members</i>
<i>ALDE:</i>	<i>3</i>	<i>Members</i>
<i>Greens:</i>	<i>2</i>	<i>Members</i>
<i>ECR:</i>	<i>2</i>	<i>Members</i>
<i>GUE/NGL:</i>	<i>1</i>	<i>Member</i>
<i>EFD:</i>	<i>1</i>	<i>Member</i>

The three Vice-Presidents with special responsibility for conciliation are members of each delegation: they are included in the quota of Members laid down for their political group. Each delegation is chaired by one of the three Vice-Presidents: they decide among themselves who will be responsible for which conciliation procedure and consequently who will chair which delegation. The rapporteur(s) and the Chair of the parliamentary committee responsible are also *ex officio* members of the delegation, included in the quota of their political group.

The remaining members of the delegation are appointed by each political group for each particular conciliation procedure and their names are communicated in writing to the CODE secretariat. Most of them are from the committee responsible or from the opinion giving committees. Where the procedure with associated committees applies the Parliament Delegation shall include the rapporteur of any associated committee. The political groups must also appoint an equal number of substitute members, who can take an active part in the proceedings of the delegation, i.e. they can be present at all meetings of the delegation and the conciliation

committee, with the possibility to intervene at the discussions, but can vote only if they replace a full Member. The political groups communicate any modification to the membership of the delegation in writing to the CODE secretariat.

### **Constituent meeting of the delegation**

The Parliament delegation usually holds its constituent meeting in Strasbourg during the plenary session following the second reading on the relevant procedure. However, and in order to take account of the wish to limit the number of meetings, the constituent meeting may take place later, when first indications of the Council reaction to Parliament's second reading amendments are known and there is a need for an exchange of views on the substance. Sometimes, if, for example, the chair of the delegation considers that the negotiations with the Council need to start urgently, or if the position of the Council is not yet available, the constituent meeting is replaced by a letter from the chair of the delegation to its Members (*'constitution by written procedure'*).

The main purpose of the constituent meeting of the Parliament delegation is to give a mandate to its negotiating team - normally the Vice-President as Chair of the delegation, the Chair of the committee responsible and the rapporteur(s) - to start negotiations with the Council in 'trilogue' meetings (see below). At constituent meetings,

there is often also a short exchange of views on the substance of the issues at stake, particularly when the initial reaction of the Council to Parliament's second reading amendments is known.

The Commission is present at all meetings of the Parliament delegation. At the constituent meeting, its representatives are expected to present and explain the Commission's opinion on Parliament's second reading amendments and possibly also to inform the Members of the Delegation of any developments in the Council of which they are aware.

At the constituent meeting of the delegation the Members are provided with a 'basic document' for the procedure in question, containing the initial Commission proposal, the EP's first reading position, the Council's common position, the EP's second-reading amendments and, where available, the Commission's opinion on these amendments.

Before each delegation meeting, the secretariat draws up a note for the Members, summarising the aims of the meeting, the situation concerning the amendments, the stage of negotiations with the Council, and procedural aspects. After each delegation meeting, the secretariat draws up a summary record of the meeting.

### **Linguistic regime of the delegation**

The delegation operates in the languages of its full Members.

Interpretation at the meetings as well as translations of the relevant documents (i.e. the 'basic document', notes to Members, 'working documents in four columns' and compromise texts) are available in the languages of the full Members of the delegation. They can become available also in the languages of those substitute Members of the delegation, for whom a request has been submitted by the political groups prior to the opening of the conciliation procedure, i.e. when appointing their Members of the delegation.

### **Trilogues**

When the Council is ready to present its position on the EP amendments, even if it has not yet formally concluded its second reading, a tripartite meeting between the Parliament, the Council and the Commission, known as a 'trilogue', is arranged.

The EP negotiating team mandated by the delegation represents Parliament. The deputy or the permanent representative (Chair of COREPER I or II respectively) of the Member State holding the Presidency represents the Council and the European Commission is represented by high ranking officials of the relevant Directorate-General (for more details see p. 26). Trilogues are meetings of restricted access. In order to maximise their effectiveness, attendance is restricted to the negotiating team plus essential support staff (normally no more than 10 persons from each institution).

All Members of the Parliament delegation receive for their information advance details of each trilogue (timing, participants and venue), even when not invited to attend themselves. The trilogue meetings are also included in the list of daily meetings in the Parliament as well as on the website of the Conciliation Committee.

At the first trilogue, the Presidency representative outlines the Council's position on the Parliament's second-reading amendments: usually the Council accepts some of these amendments, proposes compromises on others and rejects the rest. The Parliament negotiating team then reacts to what it has heard. Each side explains its position and a debate develops: new compromise proposals may be suggested, subject to the approval of the respective delegations.

Negotiations in trilogues are based on a 'four-column working document' setting out the positions of Parliament and Council. The first column shows the Council's common position and the second, the Parliament's second-reading amendment to this. The third column indicates the Council's reaction to the relevant Parliament amendment - acceptance, rejection, or possible compromise text. The updated position of the Parliament's delegation is shown in the fourth column. So, while the two first columns remain unchanged throughout the conciliation procedure, the last two columns may be modified several times, in line with progress in the negotiations.

Trilogues sometimes conclude by asking that detailed drafting work be carried out by a small working party at '*political*' level (for example, the EP rapporteur may meet with the chair of the Council working group and a Commission representative) or at '*technical*' level by civil servants from the three institutions. Due to the growing number of meetings required, and the strict time limits set by the Treaty, such trilogue meetings are becoming more common. The Commission is often invited to draw-up possible compromise texts for consideration by the respective delegations or at the next trilogue meeting.

The results of each trilogue are presented by the respective negotiators for the approval of the Parliament and Council delegations: where necessary, further trilogues or informal meetings are arranged.

Trilogue meetings take place throughout the conciliation procedure with the aim of resolving outstanding issues and preparing the way for an overall agreement in the Conciliation Committee.

### **Subsequent meetings of the EP delegation**

After the first trilogue or other informal contacts, the Vice-President in chair convenes the Parliament delegation to discuss the results of the negotiations. According to Rule 68(7) of the EP's

Rules of Procedure, the deliberations of the Parliament delegation are not open to the public. The political groups, the relevant services of the Parliament and the European Commission are formally invited to attend the meetings. The Council does not attend these meetings.

At such meetings the negotiating team informs the other Members of the Parliament delegation of the results of the trilogue(s) and the delegation normally receives the updated position of the Council in the form of the four-column working document. The EP delegation also considers compromise texts discussed at or drafted after the trilogue(s).

The Commission representatives who are present at the meeting can explain the Commission position or respond to requests for more detailed or 'technical' information. They may also be able to give some details about the meeting of COREPER where the Council has discussed the results of the trilogue.

The main aim of the delegation meetings is to update the mandate of the negotiating team and to discuss any compromise texts. Agreement to certain amendments or compromise proposals is given, subject to overall agreement. If outstanding questions remain, the delegation gives instructions to the negotiating team on how to pursue negotiations with the Council. The Parliament delegation also considers procedural issues, for instance, whether another trilogue meeting should be arranged, or whether

the Conciliation Committee can be convened and, if so, when.

Delegation meetings are usually organised shortly after the trilogue meetings or whenever the development of the negotiations so requires. Like trilogues, a delegation meeting always precedes the meeting of the Conciliation Committee and is also organised if the Conciliation Committee meeting is interrupted for negotiations in a trilogue. At the end of the procedure, the delegation formally approves or rejects the agreement reached in conciliation. The delegation aims to act by consensus. However, if a vote is needed, approval of an agreement requires the support of an absolute majority of Members of the delegation (at least 14 votes in favour out of a possible 27).

### **The Conciliation Committee**

The Conciliation Committee, consisting of the representatives of the 27 Member States and an equal number of Members of Parliament, is convened by the President of the Council with the agreement of the President of the Parliament. The Committee is often convened when the positions of the Parliament and the Council are close enough that it can be anticipated that the outstanding questions can be solved. In any case, the Committee must be convened no later than six weeks (or eight, if an extension has been agreed) after the conclusion of the Council's second reading in order to formally open the conciliation

procedure. The Committee has then another six weeks (or eight, if an extension has been agreed) to reach an overall agreement in the form of a joint text.

Conciliation Committee meetings are normally held in Brussels. Parliament and Council take turns to act as host. In the official Parliament calendar, certain dates - marked with a circle - are earmarked for such conciliation meetings, but meetings can take place also on other dates if Parliament and Council agree.

Normally, a short trilogue meeting is held just before the meeting of the Conciliation Committee and sometimes the Conciliation Committee meeting itself is interrupted for negotiations in trilogue to clarify the situation, to find mutually acceptable compromises, and to avoid misunderstandings between the delegations.

The Vice-President chairing the EP delegation and the Minister holding the Presidency-in-Office of the Council co-chair the Conciliation Committee meeting. The meeting is opened by the Co-chair from the host institution. The relevant Commissioner represents the European Commission.

At a single meeting of the Conciliation Committee, several dossiers may be on the agenda:

- 'A' points are not discussed. They are on the agenda so that the meeting can formally open the conciliation procedure or formally

note that agreement has been reached through trilogues and delegation meetings.

- It is the 'B' point dossier which is the main item of business. The Parliament delegation taking part in the meeting is the one responsible for this particular dossier.

The main working tool is the joint four-column working document prepared by the Parliament and Council conciliation secretariats and translated into all official languages. It is divided in two parts: "*Part A: Amendments on which agreement has been reached (subject to overall agreement)*", and "*Part B: Amendments on which agreement has still to be found*". The discussion is normally limited to the outstanding issues included in Part B. Interpretation is provided into and from all official languages.

The Commission may be invited to propose compromise texts in order to facilitate agreement. Sometimes declarations by one or more of the institutions or studies by the Commission are used as a tool to reach an agreement.

If agreement seems to be within reach, the Conciliation Committee is convened. Its meetings are normally scheduled to start in the late afternoon or early evening and may continue until midnight.

If it is unlikely that agreement will be reached at the first meeting, any number of further meetings can be

convened within the 6 - 8 weeks time limits set by the Treaty for reaching an agreement.

If the two institutions fail to reach an agreement in the Conciliation Committee, the whole proposal falls. Since 1999, however, there has been only a single example where the delegations of Parliament and Council did not succeed in reaching an agreement on a joint text in the Conciliation Committee ('Working Time Directive').

After a successful conciliation, the Parliament, the Council and the Commission usually hold a joint press conference; if convenient, immediately after the meeting, or otherwise the next day, to mark the agreement reached and to present the results to the media. If, for some reason a joint press conference is not possible, the Parliament negotiating team may hold a press conference on its own.

The joint text agreed in conciliation is posted in a provisional version in one language (subject to legal - linguistic verification) on the Parliament's website as soon as possible after the end of negotiations, thus enabling the general public as well as the representatives of the institutions to assess the outcome.

The relevant link is:

[http://www.europarl.europa.eu/code/default\\_en.htm](http://www.europarl.europa.eu/code/default_en.htm)

After each meeting of the Conciliation Committee, the Members of the EP delegation receive a note summarising the results of the meeting.

### **After the Conciliation Committee**

The agreement reached in the Conciliation Committee has to be confirmed by both the full Parliament and the Council of Ministers. The two institutions vote separately on the joint text as it stands, without any possibility of further amending it.

Following the successful conclusion of the conciliation procedure a draft joint text, known as 'PE-CONS', is prepared on the basis of the joint working document and any modifications agreed in conciliation. It is first established in one language and subsequently translated into the other official languages. The draft joint text in the original language is sent to the Members of the delegation.

Once the conciliation secretariats and the lawyer-linguists of the Parliament and the Council have finalised the joint text, the co-chairs of the Conciliation Committee send it, together with a covering letter, to the President of the Parliament and the President-in-office of the Council. Any declarations by the institutions are annexed to this letter.

From the signature of the covering letter approving the joint text, the two institutions have six weeks (or eight, if an extension has been agreed) to adopt the act, without any possibility to

further amend it (Rule 69 of the EP's Rules of Procedure; see Annex C).

During this period, the Members of the Parliament delegation receive in their respective languages the final joint text for information, along with a report, which outlines the various stages and results of the conciliation procedure. The report includes the record of the vote by the delegation on the conclusion of the conciliation procedure. The final joint text, the report drawn-up by the rapporteur and the Chair of the delegation, the covering letter, and any declarations by the Institutions are all sent to the Parliament's plenary services (DG Presidency). At this point, the different language versions of the text of the agreement are published on the website of the European Parliament.

The vote on the joint text is preceded by a debate in the plenary on the outcome of the negotiations and the agreement reached (or not reached) with the Council. This debate normally begins with a statement by the Vice-President chairing the delegation and by the rapporteur. The plenary then votes on the joint text. A *simple* majority of the votes cast is required for approval; otherwise the joint text is rejected. Since 1999 only two agreements out of 109 reached in conciliation (situation as at July 2009) failed to find a majority in the plenary in third reading (see footnote).

Should the Conciliation Committee have failed to reach an agreement, the Rules of Procedure provide for the

Vice President chairing the delegation to make a statement in the plenary, followed by a debate.

The joint text has also to be approved by the Council, which generally prefers to vote after Parliament's third reading. The Council decides by qualified majority. So far, the Council has never rejected an agreement reached in conciliation.

Thus, the joint text must be approved by both Parliament and Council before it can become law. If either institution fails to approve the joint text, the legislative procedure comes to an end: it can only be re-started by a new proposal from the Commission.<sup>1</sup>

### **Signing of the adopted act ('Lex')**

After the successful completion of the third reading in both institutions, the Presidents of Parliament and the Council have to sign the approved joint text known as LEX. This denomination also applies to codecision texts approved in first and second reading.

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<sup>1</sup> This was for instance the case with the proposal for a Directive on 'Take-over Bids' (report *Lehne*). After the rejection by the plenary in July 2001 of the agreement reached in conciliation (and indeed with a tied vote: 273 in favour and 273 against!) the Commission tabled a new proposal in February 2003, which led to an agreement between Parliament and Council in March 2004 and the subsequent adoption of the proposal in first reading. On the other hand, the rejection by Parliament in November 2003 of the agreement reached in conciliation on a Directive on market access to port services (report *Jarzembowski*) was followed in December 2005 by a further rejection by Parliament in first reading of the new proposal tabled by the Commission in 2004. The Commission eventually withdrew its proposal.

Since February 2004, the Presidents of the two institutions sign the LEX texts jointly at the Strasbourg plenary sessions. And since October 2006 the two institutions sign selected LEX texts in the presence of the media.

Such signatures serve to highlight the relevance of Community legislation for

citizens' everyday lives; and underline the role of Parliament and Council as co-legislators, making law on an equal footing. After their signature, LEX texts are published in the Official Journal, along with any relevant declarations.

#### 4. OUR COUNTERPARTS: WHO IS THE EP DELEGATION DEALING WITH?

##### **The Council delegation**

The delegation of the Council is composed of the representatives of the Member States, who are normally the Deputy Permanent Representatives (Chairs of COREPER I) of each Member State. Depending on the file the Council delegation may be made up of the Permanent Representatives of the Member States (COREPER II). At the meetings of the Conciliation Committee, a Minister or a Secretary of State represents the Member State holding the Presidency. That person co-chairs the committee, together with the Vice-President of the Parliament chairing that particular delegation.

The Presidency-in-Office of the Council represents the Council in all contacts with Parliament. In practice, the main actors are the President-in-Office of COREPER I or II and the chair of the relevant Council working group.

The Codecision Unit in the Council Secretariat General assists the Council delegation. It is responsible for coordination of Council's relations with the Parliament regarding codecision files and for conciliation procedures in particular.

##### **The Commission**

The representatives of the Commission are invited to take part in all meetings of the Parliament delegation as well as the meetings of COREPER. They also participate in the trilogues and are present at the meetings of the Conciliation Committee.

The Commissioner responsible takes part in the formal sittings of the Conciliation Committee and in the trilogue and delegation meetings, which are held just before or on the fringe of the Conciliation Committee meetings.

At the other trilogue meetings and meetings of the Parliament delegation, the Commission is represented by the responsible Director General or his/her representative, assisted by its Secretariat General, including its Codecision Unit and its Legal Service.

The presence of the Commission at all formal and informal conciliation meetings is necessary in order to fulfil the role attributed to it by Article 294(11) TFEU, i.e. *'to take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council'*. Thus, even if formally the Commission does not have a binding say at the conciliation stage, its role as a facilitator of the negotiations between the two co-legislators is very important.

## 5. PUBLIC ACCESS TO DOCUMENTATION

The public can find most of the documents and other information related to conciliation files through the Conciliation website:

[http://www.europarl.europa.eu/code/default\\_en.htm](http://www.europarl.europa.eu/code/default_en.htm).

These include regular reports on conciliation procedures ("Codecision Newsletter"), joint texts approved by the Conciliation Committee and reports for third reading as well as information on conciliation and trilogue meetings.

The only documents that remain confidential during the conciliation procedure are the joint four-column

working documents, where each institution indicates its response to the position of the other as the conciliation procedure evolves. These documents become available in the Register of the Parliament once the conciliation procedure has come to an end. The documents may also be made available earlier on request, during the conciliation procedure, provided both institutions agree.

The EP website of the Conciliation Committee, available in English and French, contains relevant information on conciliation procedures and all published codecision legislation documents in all official languages.



**CONCILIATION COMMITTEE**  
**Conciliation is the third and final phase of the Codecision procedure**

## 6. CONCILIATIONS AND CODECISION SECRETARIAT

### MISSION STATEMENT

Throughout the conciliation procedure Members are assisted by the Conciliations and Codecision Secretariat. Its mission statement is as follows:

- to provide assistance and advice to the three Vice-Presidents responsible for conciliation;
- to prepare, organise and follow up all conciliation-related meetings (Parliament delegations, trilogues and Conciliation Committees);
- to assist rapporteurs and committee chairs throughout the conciliation procedure, notably by drafting compromise texts and reports for the plenary;
- to liaise with Parliament's jurist linguists to ensure the legal-linguistic verification of texts arising from the conciliation procedure;
- to respond to requests for procedural and strategic advice on "horizontal" issues arising throughout the codecision procedure;
- to follow the development of codecision dossiers, including through participation at committee meetings and tripartite meetings with Council and Commission;
- to maintain and develop contacts with the service's counterparts in the Council and the Commission;
- to coordinate the procedure for the signature of codecision texts by the President of the Parliament and their publication in the Official Journal;
- to provide up-to-date information on conciliation dossiers and the co-decision procedure in general, for example by publishing a monthly newsletter and by maintaining an Internet site;
- to contribute to training activities within and outside the institution;
- to organise a regular codecision workshop, providing an informal forum for a broad exchange of views on general issues of relevance to the codecision procedure.

## CONCILIATIONS AND CODECISION SECRETARIAT

The Conciliations and Codecision Secretariat (CODE) forms a part of Directorate E of the Directorate General for Internal Policies, for which Mrs Els VANDENBOSCH is the Director. The CODE secretariat is made up as follows:

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<b>Head of Unit</b>				
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<b>Administrators / Secretaries</b>				
Nikos TZIORKAS	42341	ATR 08K052	74357	SDM G04031
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Jolanta RUNĖVICA	40634	ATR 08K016	72545	SDM G04028
Marika SULANKO	42594	ATR 08K058	64457	SDM G04026
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## Annexes

### **Annex A: Article 294 of the Treaty on the Functioning of the European Union**

1. Where reference is made in the Treaties to the ordinary legislative procedure for the adoption of an act, the following procedure shall apply.
2. The Commission shall submit a proposal to the European Parliament and the Council.

#### ***First reading***

3. The European Parliament shall adopt its position at first reading and communicate it to the Council.
4. If the Council approves the European Parliament's position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament.
5. If the Council does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.
6. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

#### ***Second reading***

7. If, within three months of such communication, the European Parliament:
  - (a) approves the Council's position at first reading or has not taken a decision, the act concerned shall be deemed to have been adopted in the wording which corresponds to the position of the Council;
  - (b) rejects, by a majority of its component members, the Council's position at first reading, the proposed act shall be deemed not to have been adopted;
  - (c) proposes, by a majority of its component members, amendments to the Council's position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.
8. If, within three months of receiving the European Parliament's amendments, the Council, acting by a qualified majority:

- (a) approves all those amendments, the act in question shall be deemed to have been adopted;
  - (b) does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.
9. The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

### ***Conciliation***

10. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament within six weeks of its being convened, on the basis of the positions of the European Parliament and the Council at second reading.
11. The Commission shall take part in the Conciliation Committee's proceedings and shall take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.
12. If, within six weeks of its being convened, the Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.

### ***Third reading***

13. If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If they fail to do so, the proposed act shall be deemed not to have been adopted.
14. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

### ***Special provisions***

15. Where, in the cases provided for in the Treaties, a legislative act is submitted to the ordinary legislative procedure on the initiative of a group of Member States, on a recommendation by the European Central Bank, or at the request of the Court

of Justice, paragraph 2, the second sentence of paragraph 6, and paragraph 9 shall not apply.

In such cases, the European Parliament and the Council shall communicate the proposed act to the Commission with their positions at first and second readings. The European Parliament or the Council may request the opinion of the Commission throughout the procedure, which the Commission may also deliver on its own initiative. It may also, if it deems it necessary, take part in the Conciliation Committee in accordance with paragraph 11.

## Annex B

### EUROPEAN PARLIAMENT

### COUNCIL

### COMMISSION

## **Joint declaration on practical arrangements for the codecision procedure of 13 June 2007 (Article 251 of the EC Treaty)**

### **GENERAL PRINCIPLES**

1. The European Parliament, the Council and the Commission, hereinafter referred to collectively as 'the institutions', note that current practice involving talks between the Council Presidency, the Commission and the chairs of the relevant committees and/or rapporteurs of the European Parliament and between the co-chairs of the Conciliation Committee has proved its worth.

2. The institutions confirm that this practice, which has developed at all stages of the codecision procedure, must continue to be encouraged. The institutions undertake to examine their working methods with a view to making even more effective use of the full scope of the codecision procedure as established by the EC Treaty.

3. This Joint Declaration clarifies these working methods, and the practical arrangements for pursuing them. It complements the Interinstitutional Agreement on Better Lawmaking<sup>1</sup> and notably its provisions relating to the co-decision procedure. The institutions undertake fully to respect such commitments in line with the principles of transparency, accountability and efficiency. In this respect, the institutions should pay particular attention to making

progress on simplification proposals while respecting the *acquis communautaire*.

4. The institutions shall cooperate in good faith throughout the procedure with a view to reconciling their positions as far as possible and thereby clearing the way, where appropriate, for the adoption of the act concerned at an early stage of the procedure.

5. With that aim in view, they shall cooperate through appropriate interinstitutional contacts to monitor the progress of the work and analyse the degree of convergence at all stages of the codecision procedure.

6. The institutions, in accordance with their internal rules of procedure, undertake to exchange information regularly on the progress of codecision files. They shall ensure that their respective calendars of work are coordinated as far as possible in order to enable proceedings to be conducted in a coherent and convergent fashion. They will therefore seek to establish an indicative timetable for the various stages leading to the final adoption of different legislative proposals, while fully respecting the political nature of the decision-making process.

7. Cooperation between the institutions in the context of codecision often takes the form of tripartite meetings ("trilogues"). This trilogue system has demonstrated its vitality and

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<sup>1</sup> OJ C 321, 31.12.2003, p. 1.

flexibility in increasing significantly the possibilities for agreement at first and second reading stages, as well as contributing to the preparation of the work of the Conciliation Committee.

8. Such trilogues are usually conducted in an informal framework. They may be held at all stages of the procedure and at different levels of representation, depending on the nature of the expected discussion. Each institution, in accordance with its own rules of procedure, will designate its participants for each meeting, define its mandate for the negotiations and inform the other institutions of arrangements for the meetings in good time.

9. As far as possible, any draft compromise texts submitted for discussion at a forthcoming meeting shall be circulated in advance to all participants. In order to enhance transparency, trilogues taking place within the European Parliament and Council shall be announced, where practicable.

10. The Council Presidency will endeavour to attend the meetings of the parliamentary committees. It will carefully consider any request it receives to provide information related to the Council position, as appropriate.

## **FIRST READING**

11. The institutions shall cooperate in good faith with a view to reconciling their positions as far as possible so that, wherever possible, acts can be adopted at first reading.

### **Agreement at the stage of first reading in the European Parliament**

12. Appropriate contacts shall be established to facilitate the conduct of proceedings at first reading.

13. The Commission shall facilitate such contacts and shall exercise its right of initiative in a constructive manner with a view to reconciling the positions of the European Parliament and the Council, with

due regard for the balance between the institutions and the role conferred on it by the Treaty.

14. Where an agreement is reached through informal negotiations in trilogues, the chair of Coreper shall forward, in a letter to the chair of the relevant parliamentary committee, details of the substance of the agreement, in the form of amendments to the Commission proposal. That letter shall indicate the Council's willingness to accept that outcome, subject to legal-linguistic verification, should it be confirmed by the vote in plenary. A copy of that letter shall be forwarded to the Commission.

15. In this context, where conclusion of a dossier at first reading is imminent, information on the intention to conclude an agreement should be made readily available as early as possible.

### **Agreement at the stage of Council common position**

16. Where no agreement is reached at the European Parliament's first reading, contacts may be continued with a view to concluding an agreement at the common position stage.

17. The Commission shall facilitate such contacts and shall exercise its right of initiative in a constructive manner with a view to reconciling the positions of the European Parliament and the Council, with due regard for the balance between the institutions and the role conferred on it by the Treaty.

18. Where an agreement is reached at this stage, the chair of the relevant parliamentary committee shall indicate, in a letter to the chair of Coreper, his recommendation to the plenary to accept the Council common position without amendment, subject to confirmation of the common position by the Council and to legal-linguistic verification. A copy of the letter shall be forwarded to the Commission.

## SECOND READING

19. In its statement of reasons, the Council shall explain as clearly as possible the reasons that led it to adopt its common position. During its second reading, the European Parliament shall take the greatest possible account of those reasons and of the Commission's position.

20. Before transmitting the common position, the Council shall endeavour to consider in consultation with the European Parliament and the Commission the date for its transmission in order to ensure the maximum efficiency of the legislative procedure at second reading.

### **Agreement at the stage of second reading in the European Parliament**

21. Appropriate contacts will continue as soon as the Council common position is forwarded to the European Parliament, with a view to achieving a better understanding of the respective positions and thus to bringing the legislative procedure to a conclusion as quickly as possible.

22. The Commission shall facilitate such contacts and give its opinion with a view to reconciling the positions of the European Parliament and the Council, with due regard for the balance between the institutions and the role conferred on it by the Treaty.

23. Where an agreement is reached through informal negotiations in trilogues, the chair of Coreper shall forward, in a letter to the chair of the relevant parliamentary committee, details of the substance of the agreement, in the form of amendments to the Council common position. That letter shall indicate the Council's willingness to accept that outcome, subject to legal-linguistic verification, should it be confirmed by the vote in plenary. A copy of that letter shall be forwarded to the Commission.

## CONCILIATION

24. If it becomes clear that the Council will not be in a position to accept all the amendments of the European Parliament at second reading and when the Council is ready to present its position, a first trilogue will be organised. Each institution, in accordance with its own rules of procedure, will designate its participants for each meeting and define its mandate for the negotiations. The Commission will indicate to both delegations at the earliest possible stage its intentions with regard to its opinion on the European Parliament's second reading amendments.

25. Trilogues shall take place throughout the conciliation procedure with the aim of resolving outstanding issues and preparing the ground for an agreement to be reached in the Conciliation Committee. The results of the trilogues shall be discussed and possibly approved at the meetings of the respective institutions.

26. The Conciliation Committee shall be convened by the President of the Council, with the agreement of the President of the European Parliament and with due regard to the provisions of the Treaty.

27. The Commission shall take part in the conciliation proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. Such initiatives may include, draft compromise texts having regard to the positions of the European Parliament and of the Council and with due regard for the role conferred upon the Commission by the Treaty.

28. The Conciliation Committee shall be chaired jointly by the President of the European Parliament and the President of the Council. Committee meetings shall be chaired alternately by each co-chair.

29. The dates and the agendas for the Conciliation Committee's meetings shall be set jointly by the co-chairs with a view to the

effective functioning of the Conciliation Committee throughout the conciliation procedure. The Commission shall be consulted on the dates envisaged. The European Parliament and the Council shall set aside, for guidance, appropriate dates for conciliation proceedings and shall notify the Commission thereof.

30. The co-chairs may put several dossiers on the agenda of any one meeting of the Conciliation Committee. As well as the principal topic ("B-item"), where agreement has not yet been reached, conciliation procedures on other topics may be opened and/or closed without discussion on these items ("A-item").

31. While respecting the Treaty provisions regarding time-limits, the European Parliament and the Council shall, as far as possible, take account of scheduling requirements, in particular those resulting from breaks in the institutions' activities and from the European Parliament's elections. At all events, the break in activities shall be as short as possible.

32. The Conciliation Committee shall meet alternately at the premises of the European Parliament and the Council, with a view to an equal sharing of facilities, including interpretation facilities.

33. The Conciliation Committee shall have available to it the Commission proposal, the Council common position and the Commission's opinion thereon, the amendments proposed by the European Parliament and the Commission's opinion thereon, and a joint working document by the European Parliament and Council delegations. This working document should enable users to identify the issues at stake easily and to refer to them efficiently. The Commission shall, as a general rule, submit its opinion within three weeks of official receipt of the outcome of the European Parliament's vote and at the latest by the commencement of conciliation proceedings.

34. The co-chairs may submit texts for the Conciliation Committee's approval.

35. Agreement on a joint text shall be established at a meeting of the Conciliation Committee or, subsequently, by an exchange of letters between the co-chairs. Copies of such letters shall be forwarded to the Commission.

36. If the Conciliation Committee reaches agreement on a joint text, the text shall, after legal-linguistic finalisation, be submitted to the co-chairs for formal approval. However, in exceptional cases in order to respect the deadlines, a draft joint text may be submitted to the co-chairs for approval.

37. The co-chairs shall forward the approved joint text to the Presidents of the European Parliament and of the Council by means of a jointly signed letter. Where the Conciliation Committee is unable to agree on a joint text, the co-chairs shall notify the Presidents of the European Parliament and of the Council thereof in a jointly signed letter. Such letters shall serve as an official record. Copies of such letters shall be forwarded to the Commission for information. The working documents used during the conciliation procedure will be accessible in the Register of each institution once the procedure has been concluded.

38. The Secretariat of the European Parliament and the General-Secretariat of the Council shall act jointly as the Conciliation Committee's secretariat, in association with the Secretariat-General of the Commission.

## **GENERAL PROVISIONS**

39. Should the European Parliament or the Council deem it essential to extend the time-limits referred to in Article 251 of the Treaty, they shall notify the President of the other institution and the Commission accordingly.

40. Where an agreement is reached at first or second reading, or during conciliation, the agreed text shall be finalised by the legal-

linguistic services of the European Parliament and of the Council acting in close cooperation and by mutual agreement.

41. No changes shall be made to any agreed texts without the explicit agreement, at the appropriate level, of both the European Parliament and the Council.

42. Finalisation shall be carried out with due regard to the different procedures of the European Parliament and the Council, in particular with respect to deadlines for conclusion of internal procedures. The institutions undertake not to use the time-limits laid down for the legal-linguistic finalisation of acts to reopen discussions on substantive issues.

43. The European Parliament and the Council shall agree on a common presentation of the texts prepared jointly by those institutions.

44. As far as possible, the institutions undertake to use mutually acceptable standard clauses to be incorporated in the acts adopted under codecision in particular as regards provisions concerning the exercise of implementing powers (in accordance with the 'comitology' decision<sup>1</sup>), entry into force, transposition and the application of acts and respect for the Commission's right of initiative.

45. The institutions will endeavour to hold a joint press conference to announce the successful outcome of the legislative process at first or second reading or during conciliation. They will also endeavour to issue joint press releases.

46. Following adoption of a legislative act under the codecision procedure by the European Parliament and the Council, the text shall be submitted, for signature, to the President of the European Parliament and the President of the Council and to the Secretaries-General of those institutions.

47. The Presidents of the European Parliament and the Council shall receive the text for signature in their respective languages and shall, as far as possible, sign the text together at a joint ceremony to be organised on a monthly basis with a view to signing important acts in the presence of the media.

48. The jointly signed text shall be forwarded for publication in the Official Journal of the European Union. Publication shall normally follow within two months of the adoption of the legislative act by the European Parliament and the Council.

49. If one of the institutions identifies a clerical or obvious error in a text (or in one of the language versions thereof), it shall immediately notify the other institutions. If the error concerns an act that has not yet been adopted by either the European Parliament or the Council, the legal-linguistic services of the European Parliament and the Council shall prepare the necessary corrigendum in close cooperation. Where this error concerns an act that has already been adopted by one or both of those institutions, whether published or not, the European Parliament and the Council shall adopt, by common agreement, a corrigendum drawn up under their respective procedures.

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<sup>1</sup> Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23). Decision as amended by Decision 2006/512/EC (OJ L 200, 27.7.2006, p. 11).

## **Annex C: Rules of Procedure of the European Parliament - Rules 64-69**

### *Plenary stage*

#### **Rule 64: Conclusion of second reading**

1. The Council's common position and, where available, the recommendation for second reading of the committee responsible shall automatically be placed on the draft agenda for the part-session whose Wednesday falls before and closest to the day of expiry of the period of three months or, if extended in accordance with Rule 58, of four months, unless the matter has been dealt with at an earlier part-session.

*The recommendations for second readings submitted by parliamentary committees are equivalent to an explanatory statement in which the committee justifies its position in relation to the Council's common position. There is no vote on these texts.*

2. The second reading shall be concluded when Parliament approves, rejects or amends the common position within the time limits and in accordance with the conditions laid down by Articles 251 and 252 of the EC Treaty.

#### **Rule 65: Rejection of the Council's common position**

1. The committee responsible, a political group or at least forty Members may, in writing and before a deadline set by the President, table a proposal to reject the common position of the Council. Such a proposal shall require for adoption the votes of a majority of the component Members of Parliament. A proposal to reject the common position shall be voted on before voting on any amendments.
2. Notwithstanding a vote by Parliament against the initial proposal to reject the common position, Parliament may, on the recommendation of the rapporteur, consider a further proposal for rejection after voting on the amendments and hearing a statement from the Commission pursuant to Rule 62(5).
3. If the common position of the Council is rejected, the President shall announce in Parliament that the legislative procedure is closed.
4. By way of derogation from paragraph 3, if a rejection by Parliament falls under the provisions of Article 252 of the EC Treaty, the President shall request the Commission to withdraw its proposal. If the Commission does so, the President shall announce in Parliament that the legislative procedure is closed.

## **Rule 66: Amendments to the Council's common position**

1. The committee responsible, a political group or at least forty Members may table amendments to the Council's common position for consideration in Parliament.
2. An amendment to the common position shall be admissible only if it conforms to the provisions of Rules 150 and 151 and seeks:
  - (a) to restore wholly or partly the position adopted by Parliament in its first reading; or
  - (b) to reach a compromise between the Council and Parliament; or
  - (c) to amend a part of the text of a common position which was not included in - or differs in content from - the proposal submitted in first reading and which does not amount to a substantial change within the meaning of Rule 55; or
  - (d) to take account of a new fact or legal situation which has arisen since the first reading.

The President's discretion to declare an amendment admissible or inadmissible cannot be questioned.

3. If new elections have taken place since the first reading, but Rule 55 has not been invoked, the President may decide to waive the restrictions on admissibility laid down in paragraph 2.
4. An amendment shall be adopted only if it secures the votes of a majority of the component Members of Parliament.
5. Before voting on the amendments, the President may ask the Commission to state its position and the Council to comment.

### ***Third reading - conciliation***

## **Rule 67: Convening of Conciliation Committee**

Where the Council informs the Parliament that it is unable to approve all Parliament's amendments to the common position, the President shall, together with the Council, agree to a time and place for a first meeting of the Conciliation Committee. The six-

week or, if extended, eight-week deadline provided for in Article 251(5) of the EC Treaty shall run from the time at which the Committee first meets.

**Rule 68: Delegation to Conciliation Committee**

1. Parliament's delegation to the Conciliation Committee shall consist of a number of members equal to the number of members of the Council delegation.
2. The political composition of the delegation shall correspond to the composition of Parliament by political groups. The Conference of Presidents shall fix the exact number of Members from each political group.
3. The members of the delegation shall be appointed by the political groups for each particular conciliation case, preferably from among the members of the committees concerned, except for three members who shall be appointed as permanent members of successive delegations for a period of twelve months. The three permanent members shall be appointed by the political groups from among the Vice-Presidents and shall represent at least two different political groups. The chair and the rapporteur of the committee responsible in each particular case shall be members of the delegation.
4. The political groups represented on the delegation shall appoint substitutes.
5. Political groups and Non-attached Members not represented on the delegation may each send one representative to any internal preparatory meeting of the delegation.
6. The delegation shall be led by the President or by one of the three permanent members.
7. The delegation shall decide by a majority of its members. Its deliberations shall not be public.

The Conference of Presidents shall lay down further procedural guidelines for the work of the delegation to the Conciliation Committee.

8. The results of the conciliation shall be reported by the delegation to Parliament.

### *Third reading - plenary stage*

#### **Rule 69: Joint text**

1. Where agreement on a joint text is reached within the Conciliation Committee, the matter shall be placed on the agenda of a sitting of Parliament to be held within six or, if extended, eight weeks of the date of approval of the joint text by the Conciliation Committee.
2. The chair or another designated member of Parliament's delegation to the Conciliation Committee shall make a statement on the joint text, which shall be accompanied by a report.
3. No amendments may be tabled to the joint text.
4. The joint text as a whole shall be the subject of a single vote. The joint text shall be approved if it secures a majority of the votes cast.
5. Where no agreement is reached on a joint text within the Conciliation Committee, the chair or another designated member of Parliament's delegation to the Conciliation Committee shall make a statement. This statement shall be followed by a debate.

## Annex D

### **Code of Conduct on Interinstitutional Negotiations in the context of the Codecision Procedure and Rule 70 EP Rules of Procedure**

#### **Rule 70: Interinstitutional negotiations in legislative procedures**

1. Negotiations with the other institutions aimed at reaching an agreement in the course of a legislative procedure shall be conducted having regard to the Code of Conduct for negotiating in the context of codecision procedures<sup>(1)</sup>.
2. Before entering into such negotiations, the committee responsible should, in principle, take a decision by a majority of its members and adopt a mandate, orientations or priorities.
3. If the negotiations lead to a compromise with the Council following the adoption of the report by the committee, the committee shall in any case be reconsulted before the vote in plenary

### **EP CODE OF CONDUCT FOR NEGOTIATING CODECISION FILES<sup>(\*)</sup>**

#### 1. Introduction

This code of conduct sets out general principles within Parliament, on how to conduct negotiations during all stages of the codecision procedure with the aim of increasing their transparency and accountability, especially at an early stage of the procedure<sup>1</sup>. It is complementary to the "Joint Declaration on practical arrangements for the codecision procedure" agreed between Parliament, Council and the Commission which focuses more on the relationship between these institutions.

Within Parliament, the lead parliamentary committee shall be the main responsible body during negotiations both at first and second reading.

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<sup>(1)</sup> See Annex XX of the Parliament's Rules of Procedure

<sup>(\*)</sup> As adopted by the Conference of Presidents at its meeting on 18 September 2008.

<sup>1</sup> Special attention needs to be given to negotiations taking place at those stages of the procedure, where the visibility within Parliament is very limited. This is the case for negotiations:

- before the committee vote at first reading with the aim of reaching a first reading agreement;
- after Parliament's first reading with the aim of reaching an early second reading agreement.

## 2. Decision to enter into negotiations

As a general rule, Parliament shall make use of all possibilities offered at all stages of the codecision procedure. The decision to seek to achieve an agreement early in the legislative process shall be a *case-by-case* decision, taking account of the distinctive characteristics of each individual file. It shall be politically justified in terms of, for example, political priorities; the uncontroversial or 'technical' nature of the proposal; an urgent situation and/or the attitude of a given Presidency to a specific file.

The possibility of entering into negotiations with the Council shall be presented by the rapporteur to the full committee and the decision to pursue such a course of action shall be taken either by broad consensus or, if necessary, by a vote.

## 3. Composition of negotiating team

The decision by the committee to enter into negotiations with the Council and the Commission in view of an agreement shall also include a decision on the composition of the EP negotiating team. As a general principle, political balance shall be respected and all political groups shall be represented at least at staff level in these negotiations.

The relevant service of the EP General Secretariat shall be responsible for the practical organisation of the negotiations.

## 4. Mandate of the negotiating team

As a general rule, the amendments adopted in committee or in plenary shall form the basis for the mandate of the EP negotiating team. The committee may also determine priorities and a time-limit for negotiations.

In the exceptional case of negotiations on a first reading agreement before the vote in committee, the committee shall provide guidance to the EP negotiating team.

## 5. Organisation of trilogues

As a matter of principle and in order to enhance transparency, trilogues taking place within the European Parliament and Council shall be announced.

Negotiations in trilogues shall be based on one joint document, indicating the position of the respective institution with regard to each individual amendment, and also including any compromise texts distributed at trilogue meetings (e.g. established practice of a four-column document). As far as possible, compromise texts submitted for discussion at a forthcoming meeting shall be circulated in advance to all participants.

If necessary, interpretation facilities should be provided to the EP negotiating team.<sup>1</sup>

## 6. Feedback and decision on agreement reached

After each trilogue, the negotiating team shall report back to the committee on the outcome of the negotiations and make all texts distributed available to the committee. If this is not possible for timing reasons, the negotiating team shall meet the shadow rapporteurs, if necessary together with the coordinators, for a full update.

The committee shall consider any agreement reached or update the mandate of the negotiating team in the case that further negotiations are required. If this is not possible for timing reasons, notably at second reading stage, the decision on the agreement shall be taken by the rapporteur and the shadow rapporteurs, if necessary together with the committee chair and the coordinators. There shall be sufficient time between the end of the negotiations and the vote in plenary to allow political groups to prepare their final position.

## 7. Assistance

The negotiating team shall be provided with all the resources necessary for it to conduct its work properly. This should include an 'administrative support team' made up of the committee secretariat, political advisor of the rapporteur, the codecision secretariat and the legal service. Depending on the individual file and on the stage of the negotiations, this team could be enlarged.

## 8. Finalisation

The agreement between Parliament and Council shall be confirmed in writing by an official letter. No changes shall be made to any agreed texts without the explicit agreement, at the appropriate level, of both the European Parliament and the Council.

## 9. Conciliation

The principles laid down in this code of conduct shall also be applicable for the conciliation procedure, with the EP delegation as the main responsible body within Parliament.

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<sup>1</sup> In line with the decision taken by the Bureau of 10 December 2007.

## Annex E

### **List of legal bases providing for the ordinary legislative procedure in the Treaty of Lisbon**

*(Reproduced from A6-0013/2008 Report on the Treaty of Lisbon 2007/2286 (INI))*

This Annex lists the legal bases to which the 'ordinary legislative procedure' under the Treaty of Lisbon applies

The subject areas underlined are those for which the legal basis is completely new, or where there has been a change in procedure so that the relevant measures are now subject to the codecision/ordinary legislative procedure.

The numbers of the articles in the TEU and TFEU refer to those given in the Treaty of Lisbon; the numbers in [...] are those the articles will have in a future consolidated version of the Treaties (in accordance with the table annexed to the Treaty of Lisbon). The corresponding articles of the former Treaty (TEC) are indicated in italics and, in cases where the Treaty of Lisbon modifies the procedure, an indication is also given of the procedure previously applied.

1. Services of general economic interest (Article 16 [14] TFEU) (*Article 16 TEC*)
2. Procedures for the right of access to documents (Article 16 A [15], paragraph 3, TFEU) (*Article 255, paragraph 2*)
3. Data protection (Article 16 B [16], paragraph 2, TFEU) (*Article 286, paragraph 2*)
4. Measures to combat discrimination on grounds of nationality (Article 16 D [18] TFEU) (*Article 12 TEC*)
5. Basic principles for anti-discrimination incentive measures (Article 16 E [19], paragraph 2, TFEU) (*Article 13.2 TEC*)
6. Measures to facilitate the exercise of the right of every citizen of the Union to move and reside freely in the territory of Member States (Article 18 [21], paragraph 2, TFEU) (*Article 18, paragraph 2, TEC*)
7. Citizens' initiative (Article 21 [24] TFEU)
8. Customs cooperation (Article 27a [33] TFEU) (*Article 135 TEC*)

9. Application of competition rules to the common agricultural policy (Art. 36 [42], which refers to Article 43, paragraph 2, TFEU) (*Article 36 TEC: qualified majority in Council and simple consultation of EP*)
10. Legislation concerning the common agricultural policy (Article 37 [43], paragraph 2, TFEU) (*Article 37, paragraph 2: qualified majority in Council and simple consultation of EP*)
11. Free movement of workers (Article 40 [46] TFEU) (*Article 40 TEC*)
12. Internal market – social security measures for Community migrant workers<sup>1</sup> (Article 42 [48] TFEU) (*Article 42 TEC: codecision – the Council acts unanimously*)
13. Right of establishment (Article 44 [50], paragraph 1, TFEU) (*Article 44 TEC*)
14. Exclusion in a Member State of certain activities from the application of provisions on the right of establishment (Article 45 [51], second paragraph, TFEU) (*Article 45, second paragraph, TEC: qualified majority in the Council without participation of EP*)
15. Coordination of the provisions laid down by law, regulation or administrative action in Member States providing for special treatment for foreign nationals with regard to the right of establishment (Article 46 [52], paragraph 2, TFEU) (*Article 46, paragraph 2, TEC*)
16. Coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons and the mutual recognition of qualifications (Article 47 [53], paragraph 1, TFEU) (*Article 47 TEC: codecision – Council acts unanimously when this involves a change in Member State legislation*)
17. Extending provisions on freedom to provide services to service providers who are nationals of a third State and who are established within the Union. (Article 49 [56], second paragraph, TFEU) (*Article 49, second paragraph, TEC: qualified majority in the Council without participation of EP*)
18. Liberalisation of services in specific sectors (Article 52 [59], paragraph 1, TFEU) (*Article 52, paragraph 1, TEC: qualified majority in Council and simple consultation of EP*)
19. Services (Article 55 [62] TFEU) (*Article 55 TEC*)

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<sup>1</sup> With an 'emergency brake' mechanism: where a Member State considers that the measures concerned 'would affect fundamental aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system', it may request that the matter be referred to the European Council (thus automatically suspending the legislative procedure). The European Council must then within a period of four months either refer the matter back to the Council, thus enabling the procedure to continue, or ask the Commission to submit a new proposal.

20. Adoption of other measures on the movement of capital to and from third countries (Article 57 [64], paragraph 2, TFEU) (*Article 57, paragraph 2, first sentence, TEC: qualified majority in the Council without participation of EP*)
21. Administrative measures relating to capital movements in connection with preventing and combating crime and terrorism (Article 61 H [75] TFEU) (*Article 60 TEC*)
22. Visas, border checks, free movement of nationals of non-member countries, management of external frontiers, absence of controls at internal frontiers (Article 62 [77], paragraph 2, TFEU) (*Article 62 TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP*)
23. Asylum, temporary protection or subsidiary protection for nationals of third countries (Article 63 [78], paragraph 2, TFEU) (*Article 63, paragraphs 1 and 2, and Article 64, paragraph 2, TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP*)
24. Immigration and combating trafficking in persons (Article 63a [79], paragraph 2, TFEU) (*Article 63, paragraphs 3 and 4, TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP*)
25. Incentive measures for the integration of nationals of third countries (Article 63a [79], paragraph 4, TFEU)
26. Judicial cooperation in civil matters (excluding family law)<sup>1</sup> (Article 65 [81], paragraph 2, TFEU) (*Article 65 TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP*)
27. Judicial cooperation in criminal matters – procedures, cooperation, training, settlement of conflicts, minimum rules for recognition of judgments (Article 69 A [82], paragraphs 1 and 2, TFEU)<sup>2</sup> (*Article 31 TEU: unanimity in Council and simple consultation of EP*)

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<sup>1</sup> Points (e), (g) and (h) of paragraph 2 of this article contain new legal bases; the other points were already covered by Article 65 TEC. Paragraph 3 of the same Article 81 TFEU also allows the Council to adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure.

<sup>2</sup> An 'emergency brake' mechanism is provided for in paragraphs 3 and 4 of these articles whereby if a Member State considers that the measures concerned would affect fundamental aspects of its criminal justice system, it may request that the matter be referred to the European Council and the procedure suspended. The European Council must, within four months, either refer the matter back to the Council so that the procedure continues, or request the Commission or the group of Member States from which the initiative originates to submit a new proposal. If, within the four months, either no action has been taken by the European Council or if, within 12 months the new legislative

28. Minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension (Article 69 B [83], paragraphs 1 and, possibly, 2, TFEU)<sup>1</sup> (*Article 31 TEU: procedure laid down in Articles 34, paragraph 2, and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP*)<sup>2</sup>
29. Measures to support crime prevention (Article 69 C [84] TFEU)
30. Eurojust (Article 69 D [85], paragraph 1, second subparagraph, TFEU) (*Article 31 TEU: procedure laid down in Articles 34, paragraph 2, and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP*)
31. Arrangements for involving the European Parliament and national parliaments in the evaluation of Eurojust's activities (Article 69 D [85], paragraph 1, third subparagraph, TFEU)
32. Police cooperation (certain aspects) (Article 69 F [87], paragraph 2 TFEU) (*Article 30 TEU: procedure laid down in articles 34, paragraph 2 and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP*)
33. Europol (Article 69 G [88], paragraph 2, first subparagraph, TFEU) (*Article 30 TEU: procedure laid down in articles 34, paragraph 2 and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP*)
34. Procedures for scrutiny of Europol's activities by EP and national parliaments (Article 69 G [88] paragraph 2, second subparagraph, TFEU)
35. Implementation of the common transport policy (Article 71 [91], paragraph 1, TFEU) (*Article 71 TEC*)
36. Sea and air transport (Article 80 [100], paragraph 2, TFEU) (*Article 80, paragraph 2, TEC*)
37. Measures for the approximation of national provisions which have as their object the establishment and functioning of the internal market to promote the objectives of Article 22a [26] (Article 94 [114], paragraph 1, TFEU) (*Article 95, paragraph 1, TEC*)
38. Measures to eliminate distortions in the internal market (Article 96 [116] TFEU) (*Article 96 TEC: qualified majority in the Council without participation of EP*)
39. Intellectual property except language arrangements for the European intellectual property rights (Article 97a [118], first paragraph, TFEU)<sup>1</sup>
40. Multilateral surveillance (Article 99 [121], paragraph 6, TFEU) (*Article 99, paragraph 5, TEC: cooperation procedure*)

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procedure has not been completed, enhanced cooperation in the relevant area will automatically go ahead if at least nine Member States are in favour.

<sup>1</sup> In the absence of a specific legal basis, the Union has hitherto taken action in this area on the basis of Article 308 TEC: *Unanimity in the Council and simple consultation of EP.*

41. Modification of the Protocol on the Statutes of the ESCB and ECB (Article 107 [129] paragraph 3, TFEU) (*Article 107, paragraph 5, TEC: unanimity in the Council or, depending on the case, qualified majority after assent of EP*)
42. Measures necessary for the use of the euro (Article 111a [133], TFEU) (*Article 123, paragraph 4, TEC*)
43. Incentive measures for employment (Article 129 [149] TFEU) (*Article 129 TEC*)
44. Social policy (Article 137 [153], paragraphs 1, except points (c), (d), (f) and (g), and 2<sup>1</sup>, first, second and last subparagraphs, TFEU) (*Article 137, paragraphs 1 and 2 TEC*)
45. Social policy (equal opportunities, equal treatment and equal pay) (Article 141 [157], paragraph 3, TFEU) (*Article 141, paragraph 3, TEC*)
46. European Social Fund (Article 148 [164] TFEU) (*Article 148 TEC*)
47. Education (excluding recommendations) (Article 149 [165], paragraph 4, point (a), TFEU) (*Article 149, paragraph 4, TEC*)
48. Sport (Article 149 [165], paragraphs 2, point (g), and 4, TFEU)
49. Professional training (Article 150 [166], paragraph 4, TFEU) (*Article 150, paragraph 4, TCE*)
50. Culture (excluding recommendations) (Article 151 [167], paragraph 5, first indent, TFEU) (*Article 151 TEC: codecision – Council acts unanimously*)
51. Public health – measures to tackle common safety concerns in the health sphere<sup>2</sup> (Article 152 [168], paragraph 4, TFEU) (*Article 152, paragraph 4, TEC*)
52. Public health – incentive measures to protect human health and in particular to combat the major cross-border health scourges, and measures to tackle tobacco and alcohol abuse (Article 152 [168], paragraph 5, TFEU<sup>3</sup>)
53. Consumer protection (Article 153 [169], paragraph 3, TFEU) (*Article 153, paragraph 4, TEC*)
54. Trans-European networks (Article 156 [172] TFEU) (*Article 156 TEC*)
55. Industry (Article 157 [173], paragraph 3, TFEU) (*Article 157, paragraph 3, TEC*)
56. Measures in the area of economic and social cohesion (Article 159 [175], third paragraph, TFEU) (*Article 159 TEC*)

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<sup>1</sup> In the areas covered by these points, the legislation is adopted by the Council unanimously, after consulting the EP. However, the second subparagraph of paragraph 2 contains a bridging clause whereby the Council may decide, unanimously, that the ordinary legislative procedure will be applied to points (d), (f) and (g) of paragraph 1.

<sup>2</sup> The measures provided for in points (a) and (b) of paragraph 4 of this article were already provided for in Article 152 TEC. The measures provided for in points (c) and (d) are new.

<sup>3</sup> All the legal bases provided for in this paragraph are new, with the exception of that for incentive measures for the protection of human health, which was already covered by Article 152 TEC.

57. Structural Funds (Article 161 [177], first paragraph, TFEU) (*Article 161 TEC: Currently: unanimity in the Council and assent of EP*)
58. Cohesion Fund (Article 161 [177], second paragraph TFEU) (*Article 161 TEC: currently: unanimity in the Council and assent of EP; as from 2007: qualified majority in the Council and assent of EP*)
59. European Regional Development Fund (Article 162 [178] TFEU) (*Article 162 TEC*)
60. Framework Programme for Research (Article 166 [182], paragraph 1, TFEU) (*Article 166, paragraph 1, TEC*).
61. Implementation of European research area (Article 166 [182], paragraph 5, TFEU)
62. Implementation of the Framework Programme for Research: rules for the participation of undertakings and dissemination of research results (Articles 167 [183] and 172 [188], second paragraph, TFEU) (*Article 167 TEC*)
63. Supplementary research programmes for some Member States (Articles 168 [184] and 172 [188], second paragraph, TFEU) (*Article 168 TEC*)
64. Participation in research programmes undertaken by several Member States (Articles 169 [185] and 172 [188], second paragraph, TFEU) (*Article 169 TEC*)
65. Space policy (Article 172a [189] TFEU)
66. Environment (Community measures to achieve environmental objectives except measures of a fiscal nature) (Article 175 [192], paragraph 1, TFEU) (*Article 175, paragraph 1, TEC*)
67. Environment Action Programme (Article 175 [192], paragraph 3, TFEU) (*Article 175, paragraph 3, TEC*)
68. Energy, excluding measures of a fiscal nature (Article 176 A [194], second paragraph, TFEU)<sup>1</sup>
69. Tourism - measures to complement the action of the Member States in the tourism sector (Article 176 B [195], second paragraph, TFEU)
70. Civil protection against natural and man-made disasters<sup>1</sup> (Article 176 C [196], second paragraph, TFEU)
71. Administrative cooperation in implementing Union law by Member States (Article 176 D [197], second paragraph, TFEU)
72. Commercial policy - implementing measures (Article 188 C [207], second paragraph, TFEU) (*Article 133 TEC: qualified majority in the Council without consultation of EP*)

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<sup>1</sup> In the absence of a specific legal basis, the Union has hitherto taken action in this area on the basis of Article 308 TEC: *unanimity in the Council and simple consultation of EP*.

73. Development cooperation (Article 188 E [209], paragraph 1, TFEU) (*Article 179 TEC*)
74. Economic, financial and technical cooperation with third countries (Article 188 H [212], second paragraph, TFEU) (*Article 181 A TEC: qualified majority in the Council and simple consultation of EP*)
75. General framework for humanitarian operations (Article 188 J [214], paragraph 3, TFEU)
76. European Voluntary Humanitarian Aid Corps (Article 188 J [214], paragraph 5, TFEU)
77. Regulations governing political parties and their funding (Article 191 [224] TFEU) (*Article 191 TEC*)
78. Creation of specialised courts (Article 225 A [257] TFEU) (*Article 225A TEC: unanimity in the Council and simple consultation of EP*)
79. Modification of Statute of Court of Justice, except Title I and Article 64 (Article 245 [281] TFEU) (*Article 245 TEC: unanimity in the Council and simple consultation of EP*)
80. Procedures for monitoring the exercise of implementing powers (Article 249 C [291], paragraph 3, TFEU) (*Article 202 TEC: unanimity in the Council and simple consultation of EP*)
81. European Administration (Article 254a [298], second paragraph, TFEU)
82. Adoption of financial rules (Article 279 [322], paragraph 1, TFEU) (*Article 279, paragraph 1, TEC: unanimity in the Council after consultation of EP, then, as from 2007, qualified majority in the Council*)
83. Fight against fraud affecting the Union's financial interests (Article 280 [325], paragraph 4, TFEU) (*Article 280, paragraph 4, TEC*)
84. Staff Regulations of officials and Conditions of Employment of Other Servants of the Union (Article 283 [336] TFEU) (*Article 283 TEC: qualified majority in the Council and simple consultation of EP*)
85. Statistic (Article 285 [338], paragraph 1, TFEU) (*Article 285, paragraph 1, TEC*)

## Annex F: Presentation of the ordinary legislative procedure (Article 294 TFEU)

