THE COUNCIL OF THE EUROPEAN UNION

Together with Parliament, the Council is the institution that adopts EU legislation through regulations and directives and prepares decisions and non-binding recommendations. In its areas of competence, it takes its decisions by a simple majority, a qualified majority or unanimously, according to the legal basis of the act requiring its approval.

LEGAL BASIS

In the European Union’s single institutional framework, the Council exercises the powers conferred on it under Article 16 of the Treaty on European Union (TEU) and Articles 237 to 243 of the Treaty on the Functioning of the European Union (TFEU).

ROLE

A. Legislation

On the basis of proposals submitted by the Commission, the Council adopts EU legislation in the form of regulations and directives, either jointly with Parliament in accordance with Article 294 of the TFEU (ordinary legislative procedure) or alone, following consultation of Parliament (1.2.3). The Council also adopts individual decisions and non-binding recommendations (Article 288 of the TFEU) and issues resolutions. The Council and Parliament establish the general rules governing the exercise of the implementing powers conferred on the Commission or reserved for the Council itself (Article 291(3) of the TFEU).

B. Budget

The Council is one of the two arms of the budgetary authority, the other being Parliament, which adopts the European Union’s budget (1.2.5). The Council also adopts, pursuant to a special legislative procedure and acting unanimously, decisions laying down the provisions applying to the EU’s own resources system and the multiannual financial framework (Articles 311 and 312 of the TFEU). In the latter case, Parliament must give its consent by a majority of its Members. The most recent multiannual financial framework (2014–2020) was adopted by Parliament in November 2013. The Council shares Section II of the European Union’s budget with the European Council (Article 43(b) of the Financial Regulation), though they are separate institutions.
C. Other powers

1. International agreements

The Council concludes the European Union’s international agreements, which are negotiated by the Commission and in most cases require Parliament’s consent (Article 289 of the TFEU).

2. Appointments

The Council, acting by qualified majority (since the Treaty of Nice), appoints the members of the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions.

3. Economic policy

The Council coordinates the economic policies of the Member States (Article 121 of the TFEU) and, without prejudice to the powers of the European Central Bank, takes political decisions in the monetary field. Special rules apply to the members of the Eurogroup, who elect a president for a two-and-a-half-year term (Articles 136 and 137 of the TFEU). Usually, the finance ministers of the Eurogroup meet one day before the meeting of the Economic and Financial Affairs Council.

The Council also carries out a number of economic governance functions in the context of the European Semester. At the start of the cycle, in autumn, it considers the specific recommendations for the euro area on the basis of the annual growth survey; and then in June and July it adopts the country-specific recommendations after they have been endorsed by the European Council.

Article 136 of the TFEU was amended by European Council Decision 2011/199/EU and entered into force on 1 May 2013, following ratification by all the Member States. It now provides the legal basis for stability mechanisms such as the European Stability Mechanism (2.6.8).

4. Common foreign and security policy (5.1.1) and (5.1.2)

The Treaty of Lisbon gave legal personality to the European Union, which replaced the European Community. The new Treaty also abolished the three-pillar structure. Justice and home affairs became a fully integrated EU policy area, in which the ordinary legislative procedure applies in almost all cases. However, in foreign and security policy the Council still acts under special rules when it adopts common positions and joint actions or draws up conventions.

The former troika arrangement has been replaced by a new system: chaired on a permanent basis by the High Representative of the Union for Foreign Affairs and Security Policy, the Foreign Affairs Council now collaborates closely with the Commission. It is assisted by the Council’s General Secretariat and by the European External Action Service.
ORGANISATION

A. Membership

1. Members

The Council consists of a representative of each Member State at ministerial level, who 'may commit the government of the Member State in question' (Article 16(2) of the TEU).

2. Presidency

With the exception of the Foreign Affairs Council, the Council is chaired by the representative of the Member State that holds the European Union’s presidency: this changes every six months, in the order decided by the Council acting unanimously (Article 16(9) of the TEU). The presidency of all Council formations except foreign affairs is held by pre-established groups of three Member States for periods of 18 months, with each member chairing the Council for six months.

The order of presidencies for the next five years is as follows: Croatia and Germany in 2020, Portugal and Slovenia in 2021, France and Czechia in 2022, Sweden and Spain in 2023 and Belgium and Hungary in 2024. The European Council can change the order (Article 236(b) of the TFEU).

3. Preparatory bodies

A committee consisting of the permanent representatives of the Member States prepares the Council’s work and carries out the tasks which the Council assigns to it (Article 240 of the TFEU). This committee, known as Coreper, is chaired by a representative of the Member State chairing the General Affairs Council, i.e. the rotating presidency. However, the Political and Security Committee, which monitors the international situation in areas covered by the common foreign and security policy, is chaired by a representative of the High Representative of the Union for Foreign Affairs and Security Policy.

Coreper meets every week to prepare the work of the Council and coordinate activities relating to codecision with Parliament. It is divided into two groups: Coreper I, comprising the deputy permanent representatives, prepares work in the more technical areas, including agriculture, employment, education and the environment; Coreper II addresses matters falling more within the field of ‘high politics’, in particular foreign, economic and monetary affairs and justice and home affairs. Coreper is assisted in its preparatory work by some ten committees and around a hundred specialised working parties.

B. Operation

Depending on the area concerned, the Council takes its decisions by a simple majority, a qualified majority or unanimously (1.2.3.) and (1.2.4). When the Council acts in a legislative capacity, its meetings are open to the public (Article 16(8) of the TEU). The Secretary-General of the Council is appointed by the Council pursuant to Article 240 of the TFEU. Council meetings are held in Brussels, but also in Luxembourg (sessions in April, June and October). At present there are 10 Council configurations, three of which
meet regularly (General Affairs, Foreign Affairs, and Economic and Financial Affairs (Ecofin)).

1. Simple majority

   This means that a decision is deemed to have been taken when there are more votes for than against. Each member of the Council has one vote. Therefore, simple majority is reached if 14 Council members vote in favour. The simple majority rule is applicable when the treaty does not provide otherwise (Article 238(1) of the TFEU). It is thus the default decision-making process. In practice, however, it applies only to a small number of decisions: internal Council rules, the organisation of the Council's General Secretariat, and rules governing committees provided for in the Treaty.

2. Qualified majority

   a. Mechanism

      The Council’s qualified majority rule can be found in the Treaty of Lisbon, in Article 16 (4, first paragraph) of the TEU. Under this article, a favourable vote is required from at least 55% of the members of the Council representing at least 65% of the EU’s population. In practice, this means at least 15 Member States out of 27. In cases where the proposal does not come from the Commission or the High Representative, the so-called ‘reinforced qualified majority’ rule applies, under which the required percentage of Council members voting in favour is 72% (comprising at least 20 Member States out of 27), again representing at least 65% of the EU’s population.

   b. Scope

      The Treaty of Lisbon again extended the scope of decision-making by qualified majority voting (QMV). For 68 legal bases it either introduced or extended QMV, mostly in conjunction with the introduction of the ordinary legislative procedure (including many former third-pillar areas). QMV also applies to the appointment of the President and Members of the Commission and the members of the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions (1.2.3 and 1.2.4).

3. Unanimity

   Unanimity is only required by the Treaty for decisions in a few areas, such as taxation and social policy. This was maintained by the Treaty of Lisbon. However, Article 48(7) of the TEU provides a general passerelle clause applicable to all EU policies which, under certain conditions, gives the possibility to derogate from the legislative procedures initially provided for by the treaties. Consequently, it enables the Council to adopt decisions on certain issues by a qualified majority instead of unanimity: passerelle clauses allow for switches from the special legislative procedure to the ordinary legislative procedure and from voting by unanimity to QMV. However, a passerelle clause can still only be activated if a decision is adopted unanimously by the Council or the European Council. Consequently, all Member States must be in agreement before such a clause can be activated.

In his 2018 State of the Union speech[1], President Juncker announced a comprehensive review of passerelle clauses. As a result, the Commission has to date

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published four communications, on common foreign and security policy (September 2018)[2], taxation (January 2019)[3], energy and climate (April 2019)[4] and social policy (2019)[5].

In general, the Council tends to seek unanimity even when it is not required to do so. This preference dates back to the 1966 Luxembourg Compromise, which ended a dispute between France and the other Member States in which France had refused to move from unanimity to QMV in certain areas. The text of the compromise read: ‘Where, in the case of decisions which may be taken by a majority vote on a proposal from the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community’.

A similar solution was found in 1994 when the Ioannina Compromise was reached to protect Member States which were close to constituting a blocking minority. Under this arrangement, if the countries in question stated their intention to oppose the taking of a decision by the Council by qualified majority, the Council would do everything in its power to reach a solution acceptable to a large majority of Member States within a reasonable period of time.

More recently, the possibility of postponing the introduction of the new double-majority system, from 2014 to 31 March 2017, was a step in the same direction and made it possible, at the request of a Member State, for the old qualified majority rule set out in the Treaty of Nice to be applied (1.2.3).

According to Article 48 of the TEU, any revision of the founding treaties requires unanimity, which has been considered a major constraint in reforming the Union of 27 Member States. To overcome the unanimity requirement, Member States have concluded international agreements outside the EU legal order. This happened for the first time as a result of the euro crisis, with the adoption, in 2012, of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (the fiscal compact)[6] and the Treaty establishing the European Stability Mechanism (ESM)[7], as well as, in 2014, the Intergovernmental Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund (SRF Agreement)[8]. According to Article 14(3) of the fiscal compact, it will apply as from the date of its entry into force only to those states which have ratified it. Requiring ratification by just 12 euro area

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[5]Communication from the Commission to the European parliament, the European Council, the Council, the European Economic and social committee and the Committee on regions of 16 April 2019 entitled ‘More efficient decision-making in social policy – Identification of areas for an enhanced move to qualified majority voting’ (COM(2019)0186).
countries, it set an approval by a minority of Member States as a condition for its entry into force.

In the context of the Conference on the Future of Europe and the COVID-19 pandemic, Parliament has, in its resolution on EU coordinated action to combat the COVID-19 pandemic and its consequences, proposed ‘greater powers for the Union to act in the case of cross-border health threats’ and called for activating ‘the general passerelle clause to ease decision-making process in all matters which could help to cope with the challenges of the current health crisis’[9].

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