

Legislative power in the EU

Triangle: Commission-Parliament-Council

Decision-making in the European Union was initially restricted to cooperation between the Commission, which drafted proposals, and the decision-making Council. However, the Parliament – through decades of hard effort – managed to attain more and more rights in the area of direct participation in decision-making and in influencing decision-making.

Decision-making at European Union level involves various European institutions, in particular

- the European Commission,
- the European Parliament (EP),
- the Council of the European Union.

In general it is the European Commission that proposes new legislation, but it is the Council and Parliament that pass the laws. Other institutions and bodies also have roles to play.

The rules and procedures for EU decision-making are laid down in the treaties. Every proposal for a new European law is based on a specific treaty article, referred to as the 'legal basis' of the proposal. This determines which legislative procedure must be followed.

The EU's **decision-making process** in general and involve three main institutions:

- the European Parliament (EP), which represents the EU's citizens and is directly elected by them;
- the Council of the European Union, which represents the individual member states;
- the European Commission and European Council which seeks to uphold the interests of the Union as a whole.

Decision-making procedures

- 1/ in ex-1st pillar – so-called legislative procedures
- 2/ in ex-second pillar – cooperative procedure (role of national states)
- 3/ in ex-third pillar – cooperation of the governments and EU representative authorities

Legislative procedures (after LT)

LEGISLATIVE ACTS

- 1/ the ordinary legislative procedure
Art. 289, para 1 (ToFEU)
- 2/ the special legislative procedure
Art. 289, para 2 (ToFEU)

NON-LEGISLATIVE ACTS

Legislative acts

- joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission.

- may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.

Non-legislative acts

- a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

- the objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

Legislative acts shall explicitly lay down the **conditions to** which the **delegation** is subject; these conditions may be as follows:

- (a) the European Parliament or the Council may decide to revoke the delegation;
 - (b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.
- = the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

The ordinary legislative procedure

Art. 294 ToFEU

= joint adoption by the European Parliament and the Council of a **regulation, directive or decision** on a proposal from the Commission.

1 / The Commission shall submit a proposal to the European Parliament and the Council

First reading:

The European Parliament shall adopt its position at first reading and communicate it to the Council.

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.

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.

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:

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.

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.

The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

Conciliation:

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.

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.

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:

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.

The periods of three months and six weeks shall be **extended** by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

The European Parliament, the Council and the Commission shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the Treaties, conclude **interinstitutional agreements** which may be of a binding nature.

Where the Treaties do not specify the type of act to be adopted, the institutions shall select it on a **case-by-case basis**, in compliance with the applicable procedures and with the principle of proportionality.

Legislative acts adopted under the ordinary legislative procedure shall be **signed** by the President of the European Parliament and by the President of the Council.

Legislative acts adopted under a special legislative procedure shall be **signed** by the President of the institution which adopted them.

Legislative acts shall be published in the **Official Journal of the European Union**. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

Non-legislative acts adopted in the form of regulations, directives or decisions, when the latter do not specify to whom they are addressed, shall be signed by the President of the institution which adopted them.

Regulations and directives which are addressed to all Member States, as well as decisions which do not specify to whom they are addressed, shall be published in the *Official Journal of the European Union*. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

Other directives, and decisions which specify to whom they are addressed, shall be notified to those to whom they are addressed and shall take effect upon such notification.

The special legislative procedure

In the specific cases provided for by the Treaties, the adoption of a **regulation, directive or decision** by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament

Position of Member States

Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

- = implementation duty
- = supervision of the Commission
- = „euroconform interpretation“ duty

The role of national parliaments

PROTOCOL (No 1) ON THE ROLE OF NATIONAL
PARLIAMENTS IN THE
EUROPEAN UNION

Executive power in the EU

The role of the Council of ministers in:

1/ Foreign and Security Policy

2/ Police and Judicial Cooperation in Criminal matters
