

the european union legislative process

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ABSTRACT

This report updates Report 95/64 and describes the legislative process in the European Union, as amended by the Amsterdam Treaty of 1997. The legislative process in the EU is illustrated in the form of a flow chart.

KEYWORDS

Cooperation procedure, co-decision procedure, directive, European Commission, European Council, Council of Ministers, European Parliament, European Union, legislation, Regulation

NOTE

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INTRODUCTION/SUMMARY

The report updates the European Union's legislative process, as amended by the Amsterdam Treaty of 1997. This update concentrates on those issues which are of major relevance to CONCAWE, namely addressing the new procedures for adopting legislation in the fields of environment, health and safety. Other amendments to the Treaty dealing with e.g. employment, free movement of persons, fraud, transparency, etc. are not covered here. It should be noted that the report's intention is not to give a comprehensive review of the complexities of the process to enact EU legislation. It is rather meant to give an overview on the principles of the legislative process in the EU for those who are not so familiar with the Brussels scene. A short description of the institutions, legal instruments and legal basis is also included to enhance the understanding.

From CONCAWE's point of view the most important change to the Treaty relates to the modified Co-decision procedure. It has been extended to essentially cover all legislative areas that were previously dealt with by the Cooperation Procedure. This means that the role of the European Parliament has been significantly strengthened: Most of the environmental legislation being proposed for adoption under Article 175 (*Article 130s*)¹ needs to be agreed by the Parliament. The same applies to legislation on the "approximation of laws" to be adopted under Article 95 (*Article 100a*). If either the Conciliation Committee (made up of Parliamentarians and Council members) is unable to agree on a joint legislative text or the plenum of the European Parliament disagrees with any joint text prepared by the Conciliation Committee, legislation fails. Details of the legislative process in the EU are illustrated in the form of a chart (**Figure 2**).

The report also provides a brief summary of other European and international institutions with close links to the European Commission and Member States.

1 All Articles indicated in brackets and italics refer to the former article numbers.

1. THE EUROPEAN INSTITUTIONS

1.1. EUROPEAN UNION (EU)

Six bodies (Union Institutions) are involved in the process of developing European Union law. The responsibility and authority of each body is defined in the Treaty of Rome (1957) as amended by the Single European Act (SEA) in 1986, the Treaty on European Union (TEU) of 1992 and the Amsterdam Treaty of 1997 – entered into force on 1 May 1999.

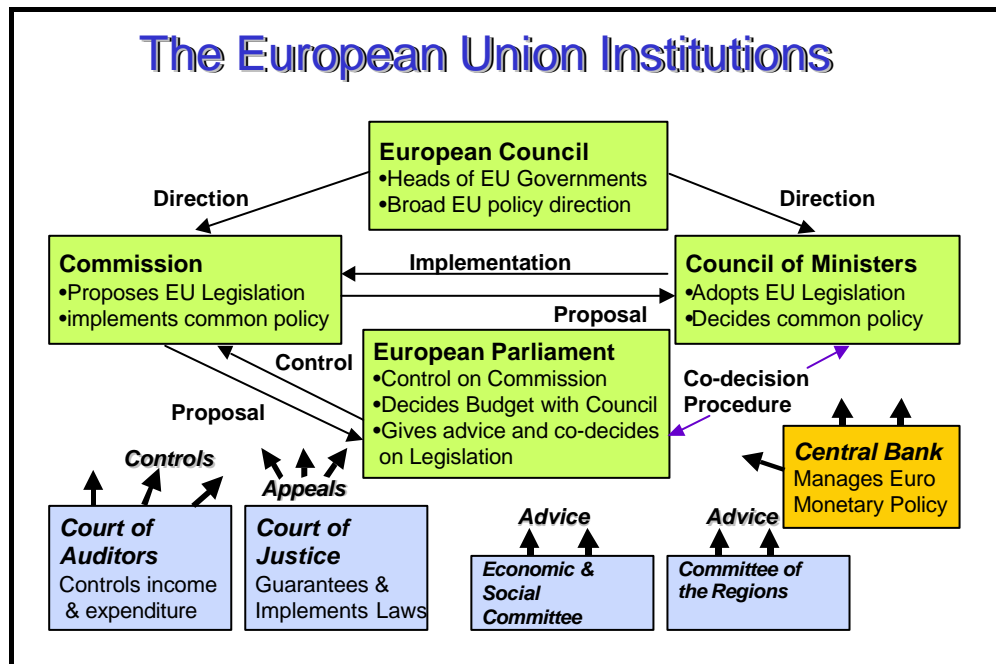
These bodies are:

- The European Commission
- The Council of the European Union (Council of Ministers)
- The European Parliament
- The European Court of Justice
- The Economic and Social Committee
- The Committee of the Regions.

In addition, there is the Court of Auditors which is responsible for controlling income and expenditure and the Central Bank which manages the Euro's monetary policy.

The following chart illustrates these bodies and the relationships between them:

Figure 1 The European Union Institutions



The European Court of Justice located in Luxembourg is not directly involved in the preparation and approval of legislation but is responsible for interpreting EU law and issuing judgements in disputes between the Institutions, Member States and/or third parties. The European Parliament may also enter actions against the Commission and the Council in limited areas.

The Economic and Social Committee is a tri-partite body representing the various categories of economic and social activity appointed to assist the Council and the Commission in an advisory capacity. The members are nominated by the Member States and appointed by the Council after consultation with the Commission. The Committee comprises three groups, employers, workers and general interests, and must be consulted on matters falling under Articles 94/95 (*Articles 100/100a*¹), 137 (118) and 175 (130s) amongst others.

The term "consult" simply means that the Commission must request an opinion from the Committee on measures proposed under the above articles. It is not obliged to do more than take note of (or have regard for) that opinion. The role of the Court, the Economic and Social Committee and the Committee of the Regions will not be discussed further.

In addition to the above institutions, the European Environment Agency has been established in Copenhagen and its roles are, for the time being, mainly monitoring and data collection. Also the Agency for Health and Safety at Work has been established in Spain since 1996. These are both of relevance to CONCAWE's work.

1.2. OTHER EUROPEAN AND INTERNATIONAL INSTITUTIONS

Some, or all Member States and the European Union itself are also members of other international organizations.

The most relevant of these to CONCAWE are:

- Council of Europe: composed of 41 Member States representing some 800 million people. Membership is open to any European state which respects the rule of law and protects the human rights of everyone within its jurisdiction. The current members are: Albania, Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Portugal, Poland, Romania, Russian Federation, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, the "former Yugoslav Republic of Macedonia", Turkey, Ukraine, and the United Kingdom. The main area of activity is with Human Rights.
- Organization for Economic Cooperation and Development (OECD): The OECD has currently 29 members, including the 15 EU Member States, the four EFTA countries (Iceland, Norway, Switzerland and Liechtenstein), plus USA, Japan, Australia, Canada, New Zealand, Korea, the Czech Republic, Turkey, Hungary and Poland. It covers a wide range of topics, many of which are of interest to CONCAWE members. The Business and Industry Advisory Committee (BIAC) provides the OECD with the views of international industry.

¹ All Articles indicated in brackets and italics refer to the *former* article numbers.

- United Nations Economic Commission for Europe (UN-ECE): has 55 members from Western/Eastern Europe plus the USA, Canada and Israel; it covers *inter alia* environmental matters, most notably the Convention on Long Range Trans-boundary Air Pollution (LRTAP) and its various Protocols on Sulphur, NO_x, VOC and (in preparation) the Multi-pollutant/Multi-effects Protocol to cope with acidification, ozone and eutrophication.
- Regional Seas Commissions: Oslo and Paris Commission (OSPARCOM) covering the North Sea and N.E. Atlantic, Helsinki Commission (HELCOM) covering the Baltic and Barcelona Commission (BARCOM) covering the Mediterranean, produce international agreements to limit pollution of the seas from both marine and land-based sources.

2. COMMUNITY LEGAL INSTRUMENTS

According to Article 249 (*Article 189*) of the Amsterdam Treaty, the Council and the Commission shall make regulations, issue directives, take decisions, make recommendations or deliver opinions. There are also additional instruments (outside of Article 249) in the form of Resolutions and Green and White Papers. All legal instruments are published in the Official Journal.

2.1. REGULATION

A regulation has general application, is binding in its entirety and is directly applicable in all Member States. It is used when there is no overriding need to allow some flexibility at Member State level and certainly where flexibility is unacceptable. Regulations have been used extensively in the areas of customs affairs, market regulation and agriculture. They are also used in cases where the Commission needs to collect data in a standardised format, e.g. energy supply statistics, waste oil collection and disposal, etc.

2.2. DIRECTIVE

A directive is an instruction to the Member States to introduce legislation. It is binding as to the result to be achieved by each Member State to which it is addressed. However, each authority may choose the form and methods to achieve that result within its own constitutional and legislative framework. Most EU legislation of concern to CONCAWE is in the form of directives.

2.3. DECISION

A decision is binding in its entirety upon those to whom it is addressed. The addressees may be one or more Member States, specific commercial enterprises or social-economic groups. Decisions may relate to cases of improper aid/subsidy to national industry, contraventions of the competition laws, e.g. restrictive practices. Decisions must be served directly on the persons concerned as well as published in the Official Journal. They can include fines.

2.4. OPINIONS AND RECOMMENDATIONS

These are not binding and are meant to encourage certain desirable but generally unenforceable ways of behaviour in the EU.

2.5. ADDITIONAL INSTRUMENTS

Resolutions are issued by the Council and/or the Parliament. They are intended to establish the fundamental principles on which Community Action shall be based and to determine the period of action. They are only declarations of intention and are published in COM documents. **Green and White Papers** are issued solely by the Commission. Both are consultative documents. **Green Papers** are orientation papers whereas **White Papers** may lead to proposals for legislation.

3. LEGAL BASIS

Community legislation must be based on one, or more, of the articles in the Treaty defining the objectives and the powers/roles of the various institutions.

The choice of the legal basis determines the decision procedure to be used. These are generally: Consultation or Co-decision with the European Parliament. The previously used Cooperation procedure has been discontinued after the implementation of the Amsterdam Treaty. A new Co-decision procedure has been introduced which will be extended to cover areas previously being handled under the Cooperation procedure (for details please refer to **Section 8** of this report).

The usual articles for environmental legislation are:

- Article 95 (*Article 100a*) - requires Council decision by qualified majority and the co-decision procedure of Article 251 (*Article 189b*)
- Article 175 (*Article 130s*) - in general requires unanimity in Council but Council can define subjects to be decided by qualified majority. The procedure to be adopted depends on the section of Article 175.
 - Section 1 requires the Co-decision procedure in accordance with Article 251 (*Article 189b*)
 - Section 2 requires the Consultation procedure
 - Section 3 requires the Co-decision procedure in accordance with Article 251 (*Article 189b*)
- Article 30 (*Article 36*) allows Member States to deviate from requirements of Article 95 legislation under certain conditions which are subject to EU control and verification.
- Article 174 (*Article 130r*) delineates EU action relating to the environment and the principles to be followed.
- Article 176 (*Article 130t*) allows Member States to be more stringent than measures adopted under Article 175 (*Article 130s*).

The Amsterdam Treaty has extended the principles of subsidiarity and proportionality. The subsidiarity concept requires that action should only be taken at EU level if the objectives cannot be achieved satisfactorily at Member State or regional level. The proportionality principle says that when there is a choice between several appropriate measures, recourse must be had to the least onerous and the disadvantages caused must not be disproportionate to the aims pursued.

3.1. VOTING OPTIONS : UNANIMITY, QUALIFIED / SIMPLE MAJORITY

The votes of Council members are weighted as follows:

- | | |
|----------------------------------------------|---------------|
| • France, Germany, Italy, UK: | 10 votes each |
| • Spain: | 8 votes |
| • Belgium, Greece, Netherlands and Portugal: | 5 votes each |
| • Austria and Sweden: | 4 votes each |

- Denmark, Finland and Ireland: 3 votes each
- Luxembourg: 2 votes.

In voting on decisions, **unanimity** means that no votes are cast against, abstentions do not prevent adoption by Council even when unanimity is required. **Simple majority** is reached with at least 8 Member States voting in favour of a decision. For votes to which the **qualified majority** rules apply, 62 votes (out of 87) constitute a majority. Thus 26 votes are required to block adoption. However, if 23 to 25 are cast against a proposal, the Council will do all within its power to reach within a reasonable time a satisfactory solution that can be adopted by at least 65 votes.

3.2. CHOICE OF LEGAL BASE

Article 175 (*Article 130s*) dealing with the environment was only introduced by the Single Act in 1986. Prior to this it was necessary to base legislation related to the environment on Article 94 (*Article 100*) or Article 308 (*Article 235*), or both. Consequently, the bulk of the EU legislation of concern to CONCAWE, e.g. vehicle emissions, fuel characteristics and dangerous substances and preparations were based on Article 94 (*Article 100*).

The choice between Articles 95 (*Article 100a*) and 175 (*Article 130s*) depended on the Commission's view whether the objective was predominantly to prevent non-tariff trade barriers or to protect the environment. After the Amsterdam Treaty, the Co-decision procedure will apply in both cases.

The Council may change the legal base of a Commission proposal. The Commission has the right to challenge such decisions before the Court.

4. SUBSIDIARY LEGISLATION / ADAPTATION TO PROGRESS

The Treaty provides that the Commission is to exercise powers conferred on it by the Council for the implementation of the rules the Council has laid down in directives and regulations. However, the Council is reluctant to relinquish control in the development of any subsidiary legislation and usually includes a clause in the basic legislation providing for a Management Committee or a Committee on Adaptation to Scientific and Technical Progress.

Management Committees are generally related to Regulations where there may be a need for fairly frequent and rapid changes, e.g. in the agricultural sector.

Directives often provide for a Committee on Adaptation. Their scope usually relates to technical aspects of the directive, e.g. changes to analytical procedures and test protocols, rather than to regulatory matters. Response deadlines for these committees are usually longer.

Although there are detailed procedural differences between Management and Adaptation Committees with respect to deadlines and voting procedures, there is a basic similarity.

The Committees consist of persons nominated by each Member State. They are chaired by representatives of the Commission who have no voting rights.

The Chairman submits a proposal on behalf of the Commission for an opinion by the Committee within a specified time limit. The Committee votes on the basis provided in the Treaty for a Council decision, or as defined in the basic legislation establishing it.

If the Committee supports the proposals, the Commission adopts the measure immediately in the form of a Commission Directive/Regulation amending the relevant Council legislation.

If a Committee on Adaptation does not support the proposal, the Commission must submit it to the Council. If the Council fails to reach a decision within three months, the Commission is free to adopt the measure. In some cases, Council can reject the proposal within the three month period by a simple majority.

There is no provision for consultation with the European Parliament.

5. THE COMMISSION

The Commission is often referred to as the guardian of the Treaty and is the sole body able to propose European Union legislation as defined in the Single European Act.

It consists of 20 members chosen on the grounds of their general competence and who are to act independently. That is, they may not seek or take instructions from any government or other body.

The Commission is normally appointed for a term of five years in line with the mandate of the European Parliament. There must be at least one, and not more than two, nationals of each Member State in the Commission. The number of Commissioners per country is given in **Table 1**. Each Commissioner has a portfolio which may cover a number of areas.

The Commission acts in all areas of its competence by a majority of all members.

Table 1 Number of Commissioners per Country

Austria	1
Belgium	1
Denmark	1
Finland	1
France	2
Germany	2
Greece	1
Ireland	1
Italy	2
Luxembourg	1
Netherlands	1
Portugal	1
Spain	2
Sweden	1
United Kingdom	2

5.1. ACTION PROGRAMMES

The Commission issues a programme at the beginning of its term of office, broadly outlining the actions and legislation it intends to implement. A more specific programme is issued each year.

In addition, action programmes (not necessarily coinciding with the Commission's term of office) are issued for specific subjects, e.g. environment. The current

environmental action programme is the fifth. Agreed in 1992, it runs from 1993 to the year 2000. It should be noted that Article 6 requires that environment protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development. A similar phrase which featured in the former *Article 130 r* (now: 174) has been deleted.

In addition, legislation promulgated already often includes clauses requiring further **ACTION** by specified dates in pursuit of EU objectives, e.g. the progressive tightening of emission limits.

5.2. COMMISSION SERVICES

The Commission is supported by a number of Directorates General (DG) and Services (36 in total), covering between them all Union activities and responsibilities. In the past, these DGs were known by numbers but now it is understood that only the names are to be used. The following are of most concern to CONCAWE:

- DG Enterprise (previously DGIII), including Industry, Enterprise Policy and Innovation and covering the harmonisation of national regulations concerning emissions and product standards, classification and labelling of dangerous substances, preparations etc.
- DG Employment and Social Affairs (previously DGV), concerned with occupational health and safety, public health with an advisory capacity versus other DGs with respect to human health aspects of products and their use
- DG Environment (previously DGXI), concerned with air, water and soil protection, waste management, industrial and product hazards and risk, etc.
- DG Transport (previously DGVII), covering environmental, safety and social standards for transport etc.
- DG Health and Consumer Protection (previously DG XXIV) covering consumers' health, safety and economic interests as well as public health.
- DG Research (previously DG XII), responsible for research programmes and the operation of the Joint Research Centre (JRC).
- DG Energy (previously DG XVII) covering all sources of energy - fossil or otherwise - energy policy; various energy industries and markets, etc.

6. THE COUNCIL OF THE EUROPEAN UNION

There are, in fact, numerous Councils, each covering a particular sector of interest, e.g. energy, environment, internal market, industry.

The "European Council", composed of Prime Ministers or Heads of State, is required to meet at least twice a year and discusses broad issues and policy. It is not involved in decision making, which is left to the more specific Councils.

The other Councils (each often known as the Council of Ministers) are formed by the responsible ministers from each government. The Commissioner responsible for that subject attends each of these Council of Ministers meetings.

The Presidency of all of these Councils is held successively for six month periods by the same country, currently in the following sequence:

Finland	July – December 1999
Portugal	January - June 2000
France	July – December 2000
Sweden	January - June 2001
Belgium	July – December 2001
Spain	January - June 2002
Denmark	July – December 2002
Greece	January - June 2003

Meetings and deliberations of the Council of Ministers are prepared by the Committee of Permanent Representatives (COREPER), which is composed of diplomatic representatives from the Member States. COREPER works on two levels: COREPER II consists of the Permanent Representatives to the European Union (the ambassadors), and COREPER I is composed of the Deputy Permanent Representatives. COREPER II deals with political and external affairs. COREPER I deals with the technical issues in preparation for all the other Councils e.g. environment. Each item on the Council agenda is prioritised as an A or B item: in practice this means that an A item may be adopted without debate, while a B item must be discussed at ministerial level before it can be adopted. To this end, COREPER may set up working groups and committees of experts to study particular issues (as many as 100 working groups may exist at any one time). In an instance where no agreement is reached during a Council meeting, an issue/dossier may be sent back to COREPER for further examination for the next meeting.

If all the problems between Member States are resolved, the proposal is passed to the Council for formal approval. It should be noted that in these cases, approval can be given by the immediately following Council meeting regardless of the subject, e.g. the Agricultural Council could approve a measure on vehicle emissions or on fuel composition.

If agreement cannot be reached at the COREPER level, the proposal is submitted to the appropriate Council for further discussion.

There are no official relationships between COREPER and the European Parliament.

7. THE EUROPEAN PARLIAMENT

This consists of 626 members elected by universal suffrage in each Member State for a five year period.

The Commission is answerable to the Parliament and if a motion of censure is carried by a two-thirds majority of Parliament, the entire Commission must resign.

Until the passage of the Single Act in 1986, the Parliament had virtually no legislative power. The Council was required only to consult Parliament on proposed measures and obtain an opinion which it could, in effect, ignore.

The Single Act obliged the Council to follow a "cooperation procedure" with Parliament for legislation in certain subjects.

This gave Parliament greater authority to influence legislation than under the former "consultation procedure", which still remains in force for other subjects and, in fact, represented the first stage of the "cooperation and co-decision procedures".

The Maastricht Treaty gave further powers to Parliament including the right to formally approve the new Commission and to have greater influence in many areas of legislative decision making.

Under the Amsterdam Treaty the political role of the European Parliament has been further strengthened by **extending the co-decision procedure** to practically all of the environmental legislation of relevance to the oil industry. The significance of these changes may be more clearly seen from the following section and **Figure 2**.

In Parliament, a **simple majority** means a majority of those voting. An **absolute majority** means that more than half of the total number of elected members are in favour.

There are 17 Standing Committees in the European Parliament including a Committee on Environment, Public Health and Consumer Policy. In addition, the Parliament can set up temporary committees dealing with specific issues. These committees draw up reports on draft legislation which are drafted by a rapporteur, and which, if approved by the committee, are then presented to the plenary session of the Parliament. These reports frequently contain proposed amendments to the legislation. Amendments can also be proposed by other members of the Parliament, but these are unlikely to carry the same weight as those emanating from the committees

8. LEGISLATIVE PROCESS

8.1. CONSULTATION PROCEDURE

Following agreement within the Commission by a simple majority, a proposal is transmitted to the Secretariat of the Council and to Parliament and the Economic and Social Committee for their opinions. At this stage, the proposal is published in the "C" series of the Official Journal.

The Commission may amend this proposal, or withdraw it, at any moment up to eventual Council approval.

Following receipt of these opinions, the Commission may amend its proposal and Council may take a final decision. It should be noted that the Amsterdam Treaty has not changed the previous Consultation procedure.

8.2. CO-DECISION PROCEDURE

A flow-chart illustrating the new (post-Amsterdam) Co-decision procedure in the European Union is given below (**Figure 2**).

Where the Co-decision procedure is involved, the procedure is the same as the Consultation procedure provided the Parliament approves or takes no action on the Council's Common Position.

If the Parliament rejects the Common Position by an absolute majority vote, the legislation fails.

If the EP indicates, by an absolute majority, that it intends to amend the Common Position, the Council has two ways to react:

- It approves all amendments. If the Commission also agrees to all amendments, the legislation is adopted. If the Commission disagrees, the legislation is only adopted if the Council approves the legislation unanimously.
- If the Council does not approve all amendments, the proposal is debated in the Conciliation Committee.

This Committee is comprised of members of the Council or their representatives and an equal number of representatives of the EP. It is charged with the task of reaching agreement on a joint text, which may subsequently be approved by a qualified majority of the members of the Council **and** by an absolute majority of the representatives of Parliament. The Commission takes part in the Committee's proceedings and endeavours to reconcile the positions of the other two institutions.

Where either the Conciliation Committee cannot agree a joint text or the joint text is not approved by both the Council and the European Parliament by the necessary majority voting, the legislation fails.

The periods of three months and six weeks may be extended by up to one month and two weeks respectively by common accord. The period of three months given to the EP to make its decision will be extended automatically by two months where the conciliation procedure is initiated.

Figure 2 Co-decision procedure in the European Union

