

THE LIFE OF AN EU LEGISLATIVE ACT

PRACTICAL LAW EU



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ROLES OF THE EU INSTITUTIONS

The EU decision-making process involves three EU Institutions:

1. **European Commission**: represents the interests of the EU as a whole.
2. **Council of the EU**: represents individual member states.
3. **European Parliament**: represents EU citizens.

EUROPEAN COMMISSION'S RIGHT OF INITIATIVE

European Commission has the **right of initiative** to propose laws for adoption by the European Parliament (EP) and the Council.

Usually, the Commission will make proposals to meet its objectives under the Treaties or because another EU Institution, member state or stakeholder has requested it to do so.

(From April 2012, EU citizens can request that the Commission propose legislation under the *European Citizens' Initiative*.)

WHAT WILL THE COMMISSION CONSIDER WHEN PROPOSING LEGISLATION?

- **Impact assessments**: to evaluate economic, social and environmental impacts of proposed legislation.
- **Consultations**: to garner interested parties' views, as well as those of national governments and parliaments.
- **Proportionality**: Institutions' involvement is limited to what is necessary to achieve Treaty objectives.
- **Subsidiarity**: EU will not take action unless it is more effective than action taken at national, regional or local level.

OPPORTUNITIES FOR LOBBYING

- Start lobbying before there is an official proposal i.e. when the Commission is asking for stakeholders' opinions.
- Do not contact the relevant Directorate-General, instead, start with the desk officers/ policy officers who draft the proposals.
- See, *Article, European lobbying: a complex job.*

LEGISLATIVE PROCEDURES

The **area of law** of the proposed legislation will define which legislative procedure is used.

• **Ordinary legislative procedure:** applies to virtually all EU legislation (co-decision before Lisbon Treaty).

• **Special legislative procedures:**

- Consultation procedure
- Consent procedure

• **Secondary legislation (comitology):**

- Delegated acts (Art. 290 TFEU)
- Implementing acts (Art. 291 TFEU)

• **Enhanced co-operation procedure**

SPECIAL LEGISLATIVE PROCEDURES: CONSULTATION PROCEDURE

- EP asked for opinion on proposed legislation before Council adopts it.
- EP may approve or reject a legislative proposal, or propose amendments to it.
- Council is not legally obliged to take account of EP's opinion but, in line with the case-law of the Court of Justice, it must not take a decision without having received it.

SPECIAL LEGISLATIVE PROCEDURES: CONSULTATION PROCEDURE

- It applies to:
 - Internal Market exemptions
 - Competition law.
 - With non-legislative procedures where international agreements are being adopted under the Common Foreign and Security Policy.

SPECIAL LEGISLATIVE PROCEDURES: CONSENT PROCEDURE

EP is asked to give its consent to the proposal. The consent procedure gives EP the right of veto. EP's role is therefore to approve or reject the legislative proposal without further amendments and the Council cannot overrule EP's opinion.

Applicable to:

- association agreements
- agreements governing EU accession or withdrawal.
- new legislation on combating discrimination.
- as a non-legislative procedure, it applies to ratification of certain agreements negotiated by the EU.
- cases of serious breach of fundamental rights.

ENHANCED CO-OPERATION PROCEDURE

- Allows nine or more member states to move forward with the adoption of a Commission legislative proposal as a last resort if no agreement can be reached between Commission, Council and EP within a reasonable period.
- Participating member states have to make an official request to Commission, asking permission to proceed with the adoption of the proposal, on the basis of the original proposal on which no agreement could be reached.

ENHANCED CO-OPERATION PROCEDURE

- Commission analyses member states' request against conditions set out in the Treaties. If all conditions are met, Commission submits a draft Decision to Council to enable this group of member states to move ahead with the negotiations and adoption of proposal through enhanced co-operation.
- A qualified majority of member states must agree to the Decision to authorise enhanced co-operation after EP has given its consent.
- Has been used for FTT, unitary patent protection and divorce and legal separation.

SECONDARY LEGISLATION (COMITOLOGY)

The Council and the EP can give the Commission the power to adopt non-legislative acts.

- **Delegated acts:** Commission may need to bring non-essential elements of a law up to date with scientific progress or market developments. These acts are scrutinised by the EP and the Council.

- **Implementing acts:** When the Commission adopts measures to ensure EU acts are implemented in a uniform way throughout the EU. These acts are scrutinised by EU governments through the system known as comitology.

ORDINARY LEGISLATIVE PROCEDURE (OLP)

Put simply, the Commission proposes the laws and EP and Council, being co-legislators, need to adopt same final text of proposed legislation.

PROCEDURE:

- Commission presents proposal and sends it to the EP and Council.

OLP: 1st READING (No time limits)

- EP 1st reading: EP examines proposal and may adopt or amend it.
- Council 1st reading: Council may decide to accept EP's position in which case the legislative act is adopted, or it may amend EP's position, and return the proposal to EP for 2nd reading.
- Triologue meetings: popular trend since 2007. Why?

OLP: 2nd READING (Time limit: 3 months with possibility to extend by an extra month)

- EP 2nd reading: examines Council's position and approves it, in which case the act is approved; or rejects it, in which case act will not enter into force and the procedure is ended; or proposes amendments and returns proposal to Council for 2nd reading.
- Council 2nd reading: Council examines EP's 2nd reading position and either approves all of EP's amendments meaning the act is adopted, or does not approve all amendments, leading to the conciliation or 3rd reading.

OLP: 3rd READING/ CONCILIATION

(Time limit: 6 weeks with possibility to extend by an extra 2 weeks)

- Conciliation: The Conciliation Committee, composed of an equal number of MEPs and Council representatives, tries to reach agreement on a joint text. If unsuccessful, the act will not be adopted and the procedure is ended. If a joint text is agreed, it is forwarded to the EP and Council for a 3rd reading.
- EP 3rd reading: The EP examines the joint text and votes in plenary. It cannot change the wording of the joint text. If it rejects it or fails to act on it, act is not adopted and procedure is ended. If it is approved by EP and Council, act is adopted.

OLP: 3rd READING/ CONCILIATION

(Time limit: 6 weeks with possibility to extend by an extra 2 weeks)

- Council 3rd reading: Council examines the joint text. It cannot change the wording. If it either rejects or does not act on it, act will not enter into force and procedure is ended. If it approves text and the EP also approves it, act is adopted.

WHAT HAPPENS WHEN A PROPOSAL IS ADOPTED?

- Final text Directive/ Regulation/ Decision approved.
- Text goes to the lawyer-linguists.
- Jointly signed by the Presidents and Secretaries General of EP and Council.
- Published in Official Journal (OJ). OJ publication will clarify the date of entry into force as well as the date of application.
- Only OJ version of legislation has legal force.

LEGAL EFFECTS OF NEW LEGISLATION

Regulations: directly binding throughout the EU as of the date specified in the OJ.

Directives: lay down end results to be achieved in every member state, but leave it up to national governments to decide how to adapt their laws to achieve these goals. Each Directive specifies the date by which the national laws must be adapted.

Decisions: apply in specific cases, involving particular authorities or individuals and are fully binding.

WHAT HAPPENS IF A PROPOSAL IS NOT ADOPTED?

If a legislative proposal is rejected at any stage of the OLP, or the EP and Council cannot reach a compromise, the proposal is not adopted and the procedure is ended.

Importantly, if the Commission decides that it doesn't agree with the direction a proposal is going in, the Commission can withdraw its proposal at any time.

A new procedure can start only with a new proposal from the Commission.