

# SOME BASIC IDEAS ON DECISION MAKING AND LOBBYING IN THE EUROPEAN UNION

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## **Introduction**

The Jean Monnet Module on 'Legitimate and Illegitimate Lobbying in EC Law' within the law section of the economics faculty at LIUC was designed to examine issues relating to the proper relationship between the private sector and the public administration. This examination is part of an overall effort to avoid the incidence of corruption in public life.

Corruption is illegal influence in the relationship between the private sector and exercise of administrative discretion, or in the creation of new laws by the legislature.

Citizens and business have a legitimate interest in the way in which administrators exercise their discretion and legislators formulate regulations and standards. The legitimate exercise of the right to influence decisions is an essential element in a healthy society and must be encouraged and promoted. The right, or in some societies the obligation, to vote is one fundamental instance of the proper relation between citizens and the regulator, and this right, as well as the conduct of elections, is written into the basic constitutional laws of societies and policed by constitutional courts.

The periodic exercise of the right to vote does not sufficiently discharge the obligation of the citizen to participate in decision making procedures. Citizens should, and often do, exercise their influence in the periods between general elections. This is done in a variety of important ways. In the life of any one legislature many new rules and regulations will be adopted which impinge on the citizen to a greater or lesser degree. Citizens will make their views known to the legislator through opinion polls, through the media, through public interest organisations, through new political parties, through civil disobedience.

In addition to the creation of new laws, the administration will make a myriad of decisions which will regulate the ways in which business operates (and citizens can behave). Examples are the right of companies to be established, the rights of those same companies to carry on certain activities, the right to merge or to co-operate, the right to locate or to build, the rights to import and to export, the right to get support from the state and many more.

Citizen and business have an obligation (and a need) to influence how the rules are made and important decisions are taken. Citizens and business must make their opinions known to the administrators and the politicians otherwise the decisions taken will not reflect their needs or wants.

Society depends on balance between what any one citizen needs and the compromises or constraints that the citizen is prepared to accept for the common good. If the citizen considers that the rules and decisions are too far removed from their personal needs and is not prepared to

accept the compromises made by the body politic, then the social contract breaks down and chaos reigns.

On average good law is best made in an open transparent environment with the participation of all those who wish to partake in the decision having an opportunity of being heard. Openness and transparency is one essential element needed for making good laws. LIUC paper No 46 has examined recent development in relation to openness and transparency in EC decision making.

A second essential element in the making of good laws is that the interests of the citizens, who will be subject to the rules or decisions, are properly conveyed to the decision makers. This is lobbying. It is something we all do everyday. Good and effective lobbying requires an intimate knowledge of the decision making procedures.

This second LIUC paper to emerge from the Jean Monnet Module outlines therefore the EC Decision Making procedures and the idea of legitimate lobbying. The Paper is not a detailed examination of either EC decision making rules or on the ins and outs of lobbying. It is

intended more as an introduction to a difficult area of law and rights for those who wish to know the basic issues rather than the details.

The Paper is also intended to encourage students, as both citizens and future executives of companies, to become familiar with the decision making procedures and with the need, and indeed the obligation, to lobby on the decisions which are being made on a daily basis in "Brussels".

## **Outline of the Legislative Process in the EC**

### **First Steps in Council (and Parliament) Legislation**

The legislative process in the EC is complex and evolving. Essentially, legislation is adopted in the EC by the Council acting alone as the principal legislator or in certain sectors, sharing competence with the European Parliament, or by the Commission, acting on powers delegated to it from the Council.

Most Community legislation adopted by the Council is currently enacted in accordance with three types of legislative procedure depending on the level of participation of the European Parliament:

- the consultation procedure;
- the co-operation; and
- the co-decision procedure.

Legislation adopted under the Co-Decision procedure is referred to as an act of the Council and the Parliament.

Community legislation adopted by the Commission is enacted under the "Committee" procedure. These committees are made up of representatives of the Member States and the Commission can only legislate in co-ordination with them. Certain other Commission decisions, such as the decision to make a proposal for legislation, are taken by the College of Commissioners acting alone and are specific decisions and cannot be considered legislative decisions.

Regulations or Directives (binding legislative forms of the EC) are enacted at the end of a legislative process that begins with a proposal. Proposals must originate in the Commission. The Commission is considered to have the exclusive right to initiate the legislative process by making proposals for legislation. If the Commission does not propose the Council cannot act.

Put very briefly, the Commission proposes and the Council (and now more correctly the Council and the Parliament) disposes. Before a final decision on a legislative proposal can be taken, there are various stages to be completed. The procedures vary depending on the subject-matter of the proposed measure.

### **The Commission Proposal**

The formal role of legislative initiative belongs exclusively to the Commission. However, the Council or the European Parliament may suggest the initiation of action by the Commission, and the Council, acting by majority, can formally request the Commission to initiate a proposal. There is some debate as to whether or not the Commission is obliged to respond. Proposals for legislation are drafted by the Commission services, the first draft of a proposal being known as a "working document". Before such a document is drafted, Commission officials will usually have taken "soundings" from the other Community institutions, trade associations and outside interest groups. The working document will be drawn up by the appropriate Directorate-General of the Commission with responsibility for the sector to be regulated, after consultation with other concerned Directorates-General and the Commission's legal service.

Once these internal and external consultations have been completed, the draft proposal will be sent for scrutiny to the private staff of the different Commissioners for consideration. Each Commissioner has a personal staff known as Cabinets, who advise the Commissioner on both the substance and the politics of Community affairs.

Agreement may be reached on the draft proposal by the Chefs de Cabinet, in which case the proposal will only need the formal approval of the Commissioners themselves sitting as the

“college” of Commissioners. If no agreement is reached by the Chefs, it will be submitted to the college of Commissioners for negotiation and voting. A simple majority vote suffices for the proposal to be adopted. One form of accelerated agreement is the "written procedure" whereby the draft proposal is circulated amongst Commissioners and is deemed to have been accepted if no objections have been raised. Any one Commissioner may block a proposal for a limited time by using the power of veto.

Once a draft proposal has been accepted by the college of Commissioners, it becomes a formal Commission proposal. It is published as a "Commission Document" in the Official Journals of the EC (C series) and is sent to the Council with a detailed explanation as to why the measure is necessary and the choice of legislative form.

### **The Role of the other Institutions**

Depending on the legislative procedure to be followed, the Commission forwards the proposal to the Council and the Parliament. Both separate institutions then begin their own internal decision making processes.

The choice by the Commission of the legal basis of a proposal determines the legislative procedure to be followed. The Commission's choice can only be overturned by the Council acting unanimously. There is an increasing body of case law from the Court of Justice on the appropriate legal basis to be chosen in various circumstances.

The choice of legal basis also has a significant impact on the substance of any proposal. A proposal for example to change the mechanisms for the protection of a common agricultural policy from external imports may be considered either a trade measure or an agricultural measure. The choice between the two will determine whether the matter is considered by trade ministers or agricultural ministers. Both groups can have considerably different attitudes to protecting markets.

### **Consultation of the European Parliament (The Consultation Procedure)**

Once a proposed measure is received by the Parliament it is designated to the appropriate European Parliament committee and a Rapporteur or individual MEP is chosen to draft an opinion on the proposal. Other related European Parliament committees may also be asked to provide an opinion.

The appropriate Commissioner or his representative appears before the committees to give an account of why the Commission has chosen to regulate on the choice of the regulatory method. The European Parliament also has the power to invite interested parties to attend or speak at

these committees. Under the consultation procedure, European Parliament committees can draw up proposed amendments to draft legislation. However, the Council is

not obliged to take these amendments on board. The only effective Parliament power under this procedure is for the Parliament to fail to give an opinion. In this situation the Council cannot act.

It should be noted that under Rule 40 of its Rules of Procedure, the European Parliament has introduced a procedure whereby it tries to force the Commission to modify proposals which meet with European Parliament disapproval: The European Parliament will not adopt an opinion until the Commission has commented upon its proposed amendments. If the Commission will not accept the European Parliament's amendments, then the proposal will be referred back to committee by the plenary session of Parliament. This "shuttle" process is repeated until the European Parliament is satisfied that the Commission will take note of the Parliament's views.

The European Parliament's part in the consultation procedure for the adoption of legislation ends with the adoption, by the plenary session of Parliament, of a formal written opinion called a "Resolution", which the President of the European Parliament transmits to the Council and the Commission. The resolution may or may not recommend amendments to the Commission proposal.

### **Opinion of the Economic and Social Committee (ECOSOC)**

The legislative procedure within ECOSOC is similar to that of the European Parliament. A draft opinion is drawn up by a Rapporteur and any amendments can be added at the committee stage. This draft opinion is submitted to the plenary session of ECOSOC for final approval and then sent to the Council and Commission.

### **Opinion of the Committee of the Regions.**

The Committee of the Regions (COR) is made up of a Plenary Assembly, an administrative Bureau and specialised commissions of the members.

A commission, designated by the Chairman of the Committee, is responsible for drawing up the COR's opinion. Each commission appoints a Rapporteur. The Rapporteur draws up a draft opinion which is adopted by the commission. Finally, if the Plenary Assembly formally adopts the opinion and sends it to the Council and the Commission.

### **Consideration by Council Working Party and COREPER**

After the European Parliament, ECOSOC and the Committee of the Regions have been consulted, the Commission proposal (possibly amended by the Commission in the light of the opinions of these bodies) is once more put before the Council.

The proposal is first examined by a working party of experts from the relevant government departments of each Member State, together with a representative of the Commission. These working party meetings are chaired by a representative of the Member State currently holding the Presidency of the Council. Discussions at this level are mainly "technical" in nature, with the experts having limited negotiating briefs. Working parties prepare the ground for consideration by the Committee of Permanent Representatives (COREPER). COREPER is a Committee made up of the representatives (or ambassadors) of the Member States to the Community. Its name comes from the French "Comite des Representants Permanante". There are, in fact, three Committees. One specialised on Agricultural matters, the Special Committee on Agriculture and COREPER I and II which divide the other competences as between them. COREPER I is made up of deputy Ambassadors and has primarily an economic brief while COREPER II is made up of Ambassadors and is primarily political.

If agreement is reached at the working party stage, the proposal goes for formal agreement to COREPER and, if adopted unanimously, is submitted to the Council under the "A" list procedure. An item on the Agenda of the Council under the A list is adopted without debate.

If no agreement is reached in the working group, the proposal will be further examined by COREPER and if no agreement is reached, it may be submitted to the Council as a "B" list item. The B list items are those which require full debate. The debate is usually on the basis of a four page report drawn up by the Council Secretariate. This document sets out the technical objectives of the measure as well as the political positions of the different Member States.

### **The Decision of the Council**

As long as the Council has not adopted a proposal, the Commission may amend its original proposal or withdraw it. The Council can also amend a Commission proposal, but only by unanimity. The majority needed to adopt a proposal (e.g., simple majority, qualified majority or unanimity) is dependent on the legal basis of the proposal. The legal basis of a proposal determines the voting required in the Council as well as the legislative procedure applicable to the measure in question.

Adoption of the proposal by the Council is the final stage in the consultation legislative process. The final text, in all eleven official languages of the Community, is adopted by the Council, signed by the President of the Council and published in the Official Journal.

### **The Co-operation Procedure (between the Council and the Parliament)**

The three different legislative procedures which are described in this paper are essentially the different forms of interaction between the Council and the Parliament. As with the consultation procedure above, the Commission produces a proposal which is sent to the Council, European Parliament and ECOSOC. The opinions of Parliament and ECOSOC, adopted in essentially the same manner as above, are communicated to the Commission and the Council.

The Council, acting by a qualified majority, adopts a "common position" on the basis of the Commission proposal, as amended or not by the Commission, the European Parliament's (and, where appropriate ECOSOC's) opinion and the Council's own deliberations. This common position is an outline political agreement between the Member States acting in Council. The Council then communicates its position to the European Parliament along with the reasons for adopting this position. The Commission also informs the European Parliament of its own position on the different amendments proposed by the Council and adopted or not by the Council in its Common Position (see effects of co-operation below).

The "common position" is then the subject of a second reading in the European Parliament, which is given a period of three months during which it may approve, reject, or propose amendments to the common position:

1. If the European Parliament approves the common position or fails to take a decision within three months, the Council will adopt the legislation in accordance with the common position;
2. If the European Parliament rejects the common position by an absolute majority (i.e. 260 MEPs or more) the common position can then only be adopted by the Council on a unanimous vote;
3. The European Parliament may propose amendments to the common position but only by an absolute majority; these amendments are then sent to the Council and to the Commission, which has one month in which to re-examine its proposal:
  - if the Commission accepts the European Parliament's proposed amendments, its amended proposal is sent to the Council, which may adopt it by a qualified majority;
  - if the Council wants to make any further amendments to the proposal, unanimity is required for those further amendments to be adopted;

- however, if the Commission does not endorse the European Parliament's proposed amendments, the Council may only adopt the European Parliament's amendments by unanimity.

If the Council fails to reach a decision within three months, the Commission proposal is deemed not to have been adopted. The periods prescribed for the second reading in both the European Parliament and the Council may, however, be extended by up to one month by common accord.

### **Effects of the Co-operation Procedure**

The co-operation procedure has had the following effects upon the legislative procedure of the Community:

- it has increased the power of the European Parliament which now has the opportunity for a second reading of proposed legislation and the power to reject it;
- as the name implies, it fosters co-operation amongst the EC institutions (i.e. co-operation between the institutions is encouraged before the adoption of the EC Council's common position, in order to facilitate the passage of legislation); and the power of the Commission is enhanced for the following reasons:
  - a) if the EC Commission rejects amendments suggested by the European Parliament, and the EC Council agrees with the Commission, in that it also wishes to reject the suggested amendments, the Council can adopt the unamended text by qualified majority; and
  - b) if, however, the Commission rejects amendments suggested by the European Parliament and the Council is not in agreement with the Commission (i.e. it wishes to incorporate the amendments suggested by Parliament), the Council must act unanimously to adopt the text as amended by the European Parliament.

The co-operation procedure does not provide a framework for actual joint decision-making between the European Parliament and the Council. In order for Parliament's views to prevail they must have the Commission's support. The Council can ignore Parliament's rejection of its common position or can exercise a veto by not taking any decision on Parliament's proposed amendments or on the amended Commission proposal, thereby blocking that particular piece of legislation.

In order to redress this imbalance and to counter the so-called "democratic deficit", the provisions of the Maastricht Treaty on European Union give the European Parliament enhanced powers in the enactment of legislation in a new "co-decision" procedure.

### **The Co-Decision Procedure (between the Council and the Parliament)**

The co-decision procedure is identical to the co-operation procedure up to the second reading stage, as outlined above.

If the European Parliament approves the common position or fails to take a decision within three months, the Council will adopt the legislation in accordance with its own common position.

The co-decision procedure differs from the co-operation procedure in that if the European Parliament indicates, by an absolute majority of its Members, that it intends to reject the common position, the Council may convene a Conciliation Committee.

The European Parliament shall thereafter either:

- confirm, by an absolute majority, its rejection of the common position, in which case the proposed legislation shall be deemed not to have been adopted; or
- propose amendments as in the co-operation procedure above.

The next stage in the co-decision procedure is identical to that of the co-operation procedure except that, where the Council does not approve the proposal, the President of the Council, in agreement with the President of the European Parliament, will convene a meeting of the Conciliation Committee.

### **The Conciliation Committee**

This Committee comprises members of the Council or their representatives and an equal number of representatives of the European Parliament, with the task of reaching agreement on a joint text, by a qualified majority of the members of the Council and by a 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.

If a joint text can be agreed by the Committee within six weeks of its being convened, the European Parliament (acting by an absolute majority) and the Council (acting by a qualified majority) have a further period of six weeks from the date of that agreement to adopt the joint text. If one of them fails to approve the text, it is deemed not to be adopted.

Where the Conciliation Committee cannot agree a joint text, the proposal is deemed not to have been adopted unless the Council, on a qualified majority vote within six weeks of expiry of the period granted to the Conciliation Committee, confirms the common position which it adopted prior to the initiation of the conciliation procedure, possibly with amendments proposed by the European Parliament. The proposal will be finally adopted by the Council unless the Parliament, within six weeks of confirmation by the Council of its common position, rejects the text by an absolute majority, in which case the proposed legislation falls.

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 European Parliament to make its decision will be automatically extended by two months where the conciliation procedure is initiated.

## **Legislation Adopted by the Commission**

### **Competence of the Commission**

The Commission has powers delegated to it by the Council, under Articles 145 and 155 of the EC Treaty, to enable the Commission to enact its own legislation in certain circumstances. These measures are not subject to the normal Council legislative procedure which has been outlined above.

Examples of the types of legislative measure which can be taken by the Commission are as follows:

- extensive competence to fix agricultural prices and implement the common organisations of agricultural markets;
- powers to authorise the marketing of chemicals, plant protection products, genetically modified organisms;
- powers to fix certain technical standards;
- power to determine the classification, origin or value of goods.

The Commission's legislation making powers should not be confused with the discretion that the Commission has to decide issues relating to competition, trade protection policies, or in policing the enforcement of Community law through the Article 169 EC procedure. This exercise of administrative or executive discretion is different from legislative competence. The former is administrative in nature and specific while the latter is legislation and applicable erga omnes. The one deals with specific cases while the other deals with norms applicable to everyone.

### **The Supervision of the Commission's Legislative Powers**

The Commission does not have a completely free rein in adopting legislation. In order to ensure that the powers delegated by the Council to the Commission in relation to any one issue are exercised in close consultation with the Member State governments, a number of supervisory committees have been established, which are made up of Member State administrators and chaired by officials of the Commission.

The rules governing the operation of these committees are set out in Council Decision 87/373/EEC on Committee Procedures (OJ L197, 13.7.87) which lays down four different procedures for the exercise of implementing powers conferred on the Commission.

### **Advisory Committees**

In advisory committees, the Commission listens to the opinions of representatives of the Member States. The Commission has undertaken to take the fullest possible account of any views expressed but is in no way bound by them and the committee has no further influence on the procedure. The declarations annexed to the Single European Act recommended the use of the advisory committee procedure for measures relating to completion of the internal market.

### **Management Committees**

Management committees were first set up in 1962 under arrangements for agricultural markets (one committee for each category of products) and have proved to be very valuable and effective.

Under this procedure, the implementing measure which the Commission intends to enact is submitted in draft form to the appropriate management committee, which gives its opinion by qualified majority. Again, the Commission is not bound by this opinion.

However, if the Commission decides to go against the opinion of the committee, the matter is referred to the Council, which may reverse the Commission's decision within one month.

(N.B. in cases where there has been no decision by the committee or where the Commission decision is in line with the committee's opinion, there is no "appeal" to the Council).

The management committee procedure is widely used and works very well. In 1989 there were 359 meetings of various management committees within the framework of the Common Agricultural Policy (CAP) and favourable opinions were given in 1609 out of 1749 cases. Only one adverse opinion was given. The system works well due to the co-operation and mutual confidence which has developed in the committees between representatives of national governments and of the Commission.

### **Regulatory Committees**

Under this procedure, the management committee procedure used under the CAP is applied to other fields. Initially used in the management of the Common Customs Tariff, it was subsequently used for the management and adaptation of common standards, e.g. in the fields of food, veterinary and plant health regulations, environmental legislation, etc. The procedure is

very similar to that for management committees but with greater scope for “appeals” to the Council.

When the committee's opinion is adverse to the measures proposed by the Commission or when there is no opinion, the Commission makes a proposal to the Council on the measures to be taken. The Council then takes a decision by qualified majority vote within a certain time (usually three months). If it does not do so within the specified time, the Commission takes the decision itself, although it cannot do so if the Council expressly rejects the Commission's proposal by a simple majority, in which case the Commission has to present a new proposal.

Finally, a special procedure has been set up for commercial policy measures or action under the safeguard clauses, enabling the Commission to take directly applicable decisions once it has received the opinion of the advisory committee. Such decisions have to be approved by the Council within three months, failing which they become null and void.

### **The Role of the Parliament When the Commission Legislates**

The European Parliament objected to the new rules governing the operation of the committees and brought an action against the Council in the European Court of Justice in what is now

referred to as the "comitology" dispute (Case 302/87, European Parliament v Council of the European Communities [1988] ECR 5615).

The European Parliament sought a declaration, under Article 173 of the EC Treaty, that Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission was void, on the grounds that the Council would still have the last word in the majority of cases, despite the principle of delegation of powers to the European Court; the Parliament considered that the Council had infringed the prerogative of the European Parliament in regard to political control of the Commission, and

that there should have been further consultation with the European Parliament before the Council adopted its Decision. The Court upheld the Council decision, thus denying a role for the Parliament in Commission legislation. The Parliament has in recent times, fought back to get some rights by denying to the Commission, budgetary allocations for the Committees.

## **Lobbying**

### **Introduction**

As the scope and importance of EC legislation grows, so the number of persons wishing to ensure that this legislation reflects their interests increases. This is true both of the legislation adopted by the Council (and the Parliament) and the exercise of legislative and discretionary powers by the Commission.

Lobbying in the EC is different from traditional lobbying in the Member States and in the United States. The Community is not yet a mature political organisation and the democratic checks and balances continue to evolve. The European Parliament's powers are increasing and this body will become more important in the years ahead. But Lobbying the European Parliament cannot produce the same results as lobbying a national parliament. As the Community legislative process involves three institutions, all three must be considered in a lobbying strategy.

There are various classes of lobbyists: the professional and the amateur individual. Both can be equally effective. Professionals can be further subdivided into those working directly for a special interest such as a tobacco company or an environmental or consumer non-governmental organisation (NGO) and those who provide lobbying services to interested parties. Lists of professional lobbyists are available in various directories in Brussels.

In this chapter we will outline some of the basic concepts of lobbying and give some insight into the lobbying of the most important Community institutions. The chapter should be read in (tandem) with the chapter on EC decision-making. Familiarity with the decision-making procedures is essential to effective lobbying.

### **Is Lobbying a Legitimate Activity?**

The word "lobbying" conjures up many ideas in the mind of the public. It is as well to address these ideas as "lobbying" has many negative connotations.

Lobbying is a legitimate activity and one that becomes increasingly important as the management of economic and social issues on a pan-European scale becomes more complex. Good government requires input from interested parties so as to best reflect and balance diffuse interests. Lobbying is thus part of the democratic process.

This is especially the case in the EC. The European Community maintains its democratic legitimacy through the democratic nature of the Member States and their elected parliaments. Some question the remoteness of national parliaments from Community decision-making and thus

question the democratic legitimacy of the Community. The direct election of the members of the European Parliament and the increase in that body's powers goes some way to remedying this democratic deficit. Direct representation to Community institutions by interested parties remains an import guarantee that the Community reflects the domestic needs of its citizens.

Lobbying is not about using corrupt or immoral or unfair means to attempt to influence public officials or elected representatives. It is about fair presentation of an arguable case. Lobbying is a right, and in many cases an obligation, of all citizens in a democracy and all those with a special or general interest should lobby to ensure that the legal and regulatory framework within which we live reflects as much as possible that interest.

Whether one lobbies as an individual or a group will depend on circumstance and resources. Whether one lobbies through a professional lobbyist or a trade or interest association or not again will depend circumstance but the advice of a professional should always be sought.

## **What are the basic elements of lobbying?**

### **Information:**

Information is the basis of any lobbying. The interested party needs to know what is going on, who is doing what, why and when. Information needs to be obtained in good time so as to allow for reflection and response.

### **Analysis:**

Analysis of the information is the second basic element in lobbying. The analysis is in two directions. Firstly, an analysis of the general criteria driving the issue and the likely forces that will shape it. Secondly, the impact of the issue on the person or company or sector must be analysed. The different interest groups seeking to shape Community measures on a daily basis are many and it is best not to be overconfident in the reasonableness of your case. Many reasonable cases have floundered on another group's stronger "reasonableness". The analysis of the different forces interested in a particular issues is therefore essential.

### **Strategy:**

A clear and simple strategy is essential to successful lobbying. In designing the strategy the lobbyist must be mindful of the competencies of the target institution and its role in the decision making procedures. In other words, do not attempt to get more out of the Community or the Community institutions than the Community or institutions are capable of giving. Always be mindful of the other interests that the Community will have to reconcile.

There will often be a number of sub-strategies concerning other Community institutions or different individuals within the institutions. These should never distract the lobbyist from the simply defined goal.

**Presentation:**

Presentation is important. Clarity of reasoning and brevity of arguments are essential to good presentation. The lobbyist should not be concerned that only one point is being made.

**Co-operation and when to seek Assistance:**

Assistance is important in all phases of the lobbying process. On the informational side no one company, group or individual can hope to lobby all the institutions or the individuals within the institutions. On strategy, professional advice can go along way to determining what is achievable and in identifying the outside forces that might have a greater or lessor influence on the issue in question. On presentation various types of assistance may be necessary. A lawyer, familiar with the decision making procedures and the competence of the Community and its institutions, should always be a key element in any team.

Co-operation is a means of better managing the range of issues that will have to be considered in organising an effective lobby. Co-operation is most common in the form of Trade Associations where various interested parties group together to lobby on themes of common interest. In the non profit sector interest groups from different Member States often group together to influence Community policy.

**How to get information on the European Communities**

All official acts of the Communities are published in the Official Journal (OJ) of the Communities and in all working languages of the Community. Currently there are eleven working languages -English, French, German, Spanish, Italian, Dutch, Danish, Portuguese, Greek, Swedish and Finnish. Irish is an official language but not a working language.

There are three main series of the OJ. The "L" series which publishes legislation; the "C" series which publishes proposals for legislation, Commission Communications, Notices and information pertaining to the proper functioning of the Commission, the Parliament, the Economic and Social Committee, the Court of Auditors and the Court of Justice. The "S" series publishes notices on public works and services contracts.

In addition to the OJ series there are various other informative publications from the Community. The monthly EC Bulletin covers the major events of the previous period. There are

various publications covering particular sectors or Community policies. The Agendas of the European Parliament and the Economic and Social Committee as well as the Court of Justice Schedule of hearings, judgements and opinions are also available.

However, most of these publications are reports on the completed activities of the Community institutions. In many cases they do not appear in sufficient time or are not distributed in an efficient manner so as to enable the concerned citizen or lobby group to respond in time.

The availability of timely or open information in the European Community depends on a great variety of factors. The Community retains many of the characteristics of an intergovernmental organisation and many continue to classify the deliberations between governments as confidential. Thus it is not often easy to follow closely the debates in the Council. Regular press briefings are held after all ministerial meetings but this is not the case after equally important COREPER or working party meetings.

Early information on the activities of the Commission services or the European Parliament committees or the activities of the Council can only be obtained in an ad hoc way. It often comes down to individuals and opportunity. The Commission publishes annually a legislative programme which can alert interested parties to decisions that are being taken. However, much work has often been completed on a measure within the Commission services before it appears on the Community legislative programme.

The Commission has established information offices in each EC Member State and has diplomatic missions, which also provide information on the activities of the Community, in many third countries. A list of the information and diplomatic missions is in Annex at the back of this paper.

### **Lobbying the European Commission**

The Commission is, as has been seen, something more than an administration and less than an executive. However, while the debate continues as to the appropriate number of Commissioners (21 at present) in the college of Commissioners there is no disagreement on the fact that the administrative element of the Commission is small, efficient and to a larger degree, transparent.

The Commission, which administers a budget of ECU 60m, has a third level educated administrative staff of less than 5000 persons. Total staff is in the region of 20,000. This is less than many single ministries in the Member States. In many cases the number of staff allocated to an issue is very small. One officer or "fonctionnaire" may be the responsible point man for a whole industry or policy initiative.

The Commission is divided into 23 Directorate Generals some of which have sector specific responsibilities such as agriculture or transport while others, such as the Competition or External Relations Directorates, will have horizontal responsibilities. So that while there may be only one point man in the responsible Directorate General, there will be other officers whose opinions and responsibilities will have a bearing on the issue.

Lobbying the Commission can be divided into three broad categories. Promoting a proposal for legislation; Influencing or blocking a proposal for legislation; Influencing the Commission's exercise of its discretionary powers. The first two categories speak for themselves.

The third category of lobbying is the most common. It can range from highly legal issues such as competition law, state aids, mergers and acquisitions, anti-dumping, trade privileges, market access, rules of origin, customs classification to the highly political issues such as the allocations of funds between regions and between projects within regions or the allocation of R&D funding. Many of these decisions are increasingly a mixture between the legal and the political.

Early presentation of arguments is a particularly effective means of influencing the Commission. The initial draft of a document often determines the course of the subsequent debate on the issue.

In theory Commission rules forbid discussions with outside bodies other than Euro-Federations but in practice officials are willing to hear good argumentation on an informal basis. A good official will wish to hear all sides to get the range of the issue for which he is responsible.

Finally, a good lobbyist should be familiar with the rules and procedures of the Common Agricultural Policy. Many Commission procedural practices have been developed in Directorate General VI which has responsibility for agriculture. In the early years of the Community when the agricultural budget made up 85% of total Community spending many of the checks and balances between different interests were forged in the agricultural decision making. In addition, the balance between national and Community responsibility in this area will be a guide and a driving force in the subsidiarity debate.

### **Lobbying the European Parliament**

The role of the European Parliament in the EC legislative process is increasing. As the one democratic body within the Community it is only appropriate that this should be the case. The Parliament is also beginning to use its limited powers to greater effect.

As will have been seen from the previous section the Parliament has the right to introduce amendments into Commission proposals for legislation and does so with increasing effect. Parliamentary amendments can effectively change the tenor of a particular measure. In addition,

co-operation between the Commission and the Parliament can limit or confine the powers of the Council to act as the legislator.

The European Parliament is in general open to the public but the public requires the invitation of a Member before access to the Plenary sessions is granted. Access to some of the Committees is open but some like the influential Foreign Relations Committee "sit in camera".

The Parliament has its own rules and procedures and sits in Strasbourg, Luxembourg and Brussels. The secretariat is divided between Luxembourg and Brussels. Committees, however, sit nearly exclusively in Brussels. This allows for the attendance Commission officials and Commissioners at Committee meetings to explain proposals.

The powers of the Parliament depend on the nature of the measure at hand and the decision-making procedure chosen. A more detailed look at these powers and how the Parliament has used and extended them is contained in Chapter I. A feature of future Parliamentary activity is likely to be American or English style hearings where the Parliament will call expert witnesses before it to give evidence on a particular issue.

The key Member of Parliament on any one issue is the Rapporteur. The Rapporteur is a member of the Parliamentary Committee which has prime responsibility for examining a new measure and reporting on it. The choice of Rapporteur can be a very important decision and for the internal market measures the Rapporteur has often been nominated prior to the formal adoption of the Commission proposal.

The Rapporteur draws up a draft report with amendments and submits it to debate before the relevant Committee. The Committee members will debate the amendments, suggest others, and draw up a final report which is adopted by the Committee.

The Committee report is then forwarded to the Parliamentary Plenary session where it is formally adopted by the Parliament. It is rare that a report will be rejected or amended at Plenary. The members of the different political groups vote to whip and the group's position will have been debated and determined prior to the Plenary.

Thus, the Committee opinion and report are central to the Parliamentary decision-making and lobbying should target on the Committee and Rapporteur. Another important target in Parliamentary lobbying is the political groups.

The political groups are key to the operation of the Parliament. The composition of all committees and bodies and the chairmen thereof are determined according to the number of members in the different groups. Deals are made between the different groups and voting patterns are most often determined between the group whips.

The competencies of the European Parliament in the adoption of the Community budget is an increasingly important means of influencing Community policies. The budgetary debates provide an annual opportunity to raise any Community policy for which funding is provided and to debate the merits of that policy.

### **Lobbying the European Council**

The Council is ultimately the Community legislature and subject to Court of Justice review, has final competence in all Community matters. The Council retains many of the features of an intergovernmental organisation and its meetings are not always open to the public, nor are its debates published.

Influencing Council decision-making is more complex than any of the other Community institutions and requires greater resources. In simple terms if a lobbyist wishes to influence a Member State's vote in the Council the best place to do this is in the national capital where national policy is determined.

Commission officials are often present in Council meetings and the Commission retains a role especially in the adoption or rejection of amendments. As we have seen the Commission's opinion on amendments determines the voting procedure in the Council. In general, if the Commission is against an amendment unanimity will be required. If the Commission is in favour then qualified majority will be required.

COREPER has a central role to the functioning of the Council and the Member State officials which make up this body are influential in shaping the final measure. The officials are usually national civil servants located in Brussels in what is known as a Permanent Representation. The Permanent Representation can have a more or less important impact on a Member State position depending on the subject matter. Decisions making with the Council is complex. Member States will take a variety of positions on legislative drafts and defend these positions strongly only to abandon some of them at the end when a compromise is reached. Understanding which positions are being maintained so as to be abandoned as a compromise exercise and which positions are of vital national interest can sometimes be difficult to determine.

Compromises are being forged all the time. The compromises need not necessarily be within the confines of one subject matter. A Member State may bargain one subject matter as against another. For example, a Member State may agree to a new standard in food law on condition that it receives funding for transport. There are only a few masters at the game of compromise and they tend to be the Ambassadors (or their staff) of the Member States to the Community.

## **The European Courts of Justice**

The Community and its institutions are subject to law and all decisions must be taken in compliance with the Community Constitution (The Treaties) and the rules of good administration. The arbiter of what is proper conduct is the Court of Justice. There is an evolving body of law on the EC decision making processes and it will continue to grow in importance.

In the day-to-day administration of policies the Commission and its officials must also act in accordance with the rules of good administration and Commission actions are challenged regularly in the Court of Justice. The highest profile cases are challenges to Commission fines for breach of the Competition rules. More mundane are the improper allocation of a beef import licence or the management of milk quotas.

The clear message to lobbyists is that the legislative process is becoming more and more "legalised" as the impact of the measures adopted have a more biting effect on people and companies in the EC.

## **Other Bodies**

The actions of institutions are constrained by the competencies vested in the institute and the influences of other bodies. The Community is an international organisation and is subject to international rules such as the international trade rules of the General Agreement on Tariffs and Trade (GATT), the Human Rights Convention of the Council of Europe, International Agreements on Trade in Endangered Species and many more.

In addition the Community participates in many international organisations either as a full party or as an observer. The opinions and decisions of these bodies may determine what actions the Community may or may not take.

On trade matters the most important body is the GATT. The General Agreement on Tariffs and Trade establishes rules as to how contracting parties may regulate trade. The Community is bound by these rules and all Community external trade relations must comply with them.

On environmental questions there are a range of international conventions negotiated under the auspices of the United Nations and its subsidiary agencies. Increasingly the Community is a party to these conventions.

## **Conclusion**

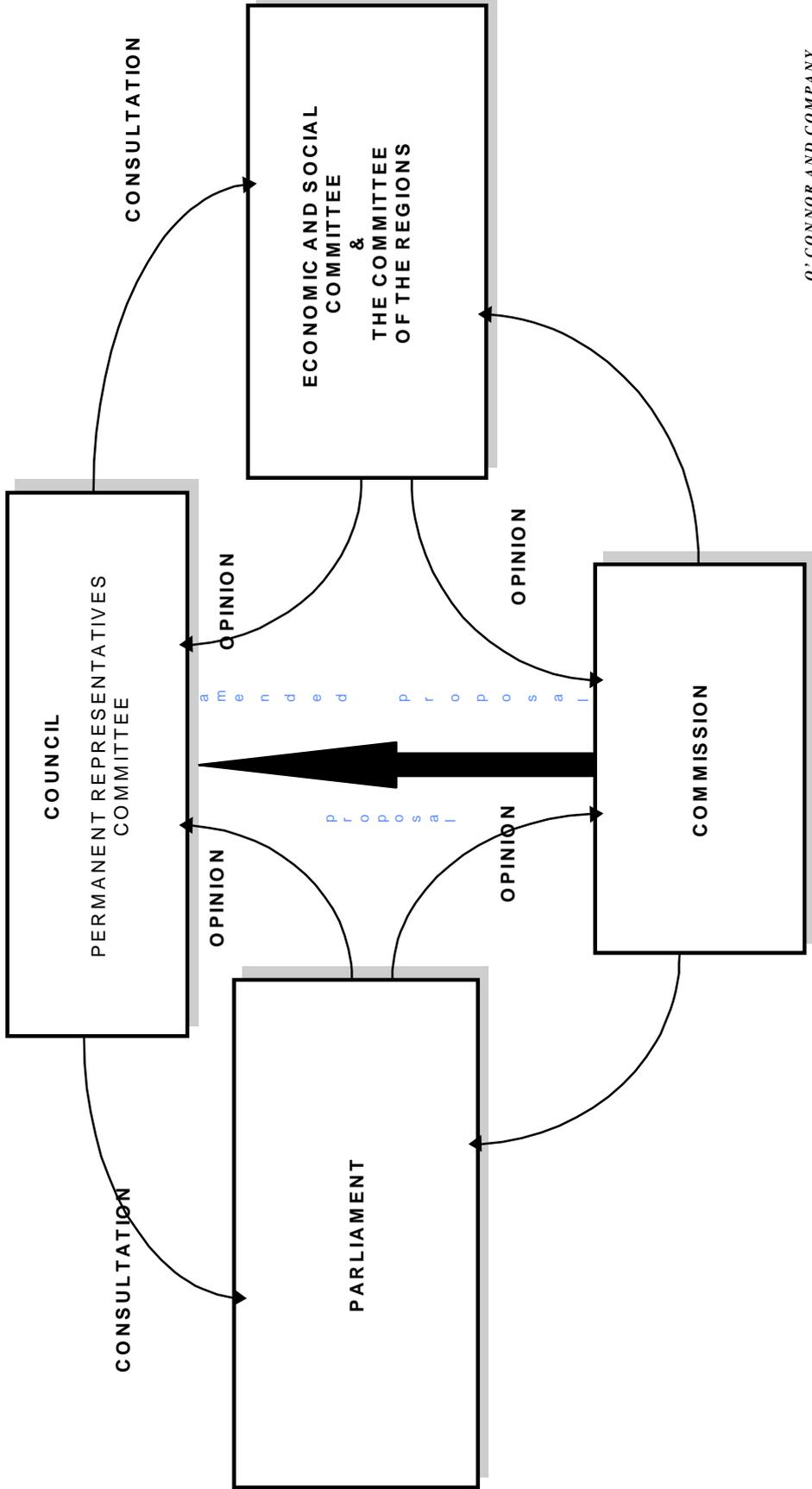
Legitimate lobbying is essential in an open society and should be undertaken by all citizens in a variety of ways. We all have special interests and common interests. For special interests we may need to lobby alone or with some similar minded people in our home Member State or in other EC Member States. For issues of more general interest we should group together in wider organisations either in the form of political parties or in the form of non-governmental organisations.

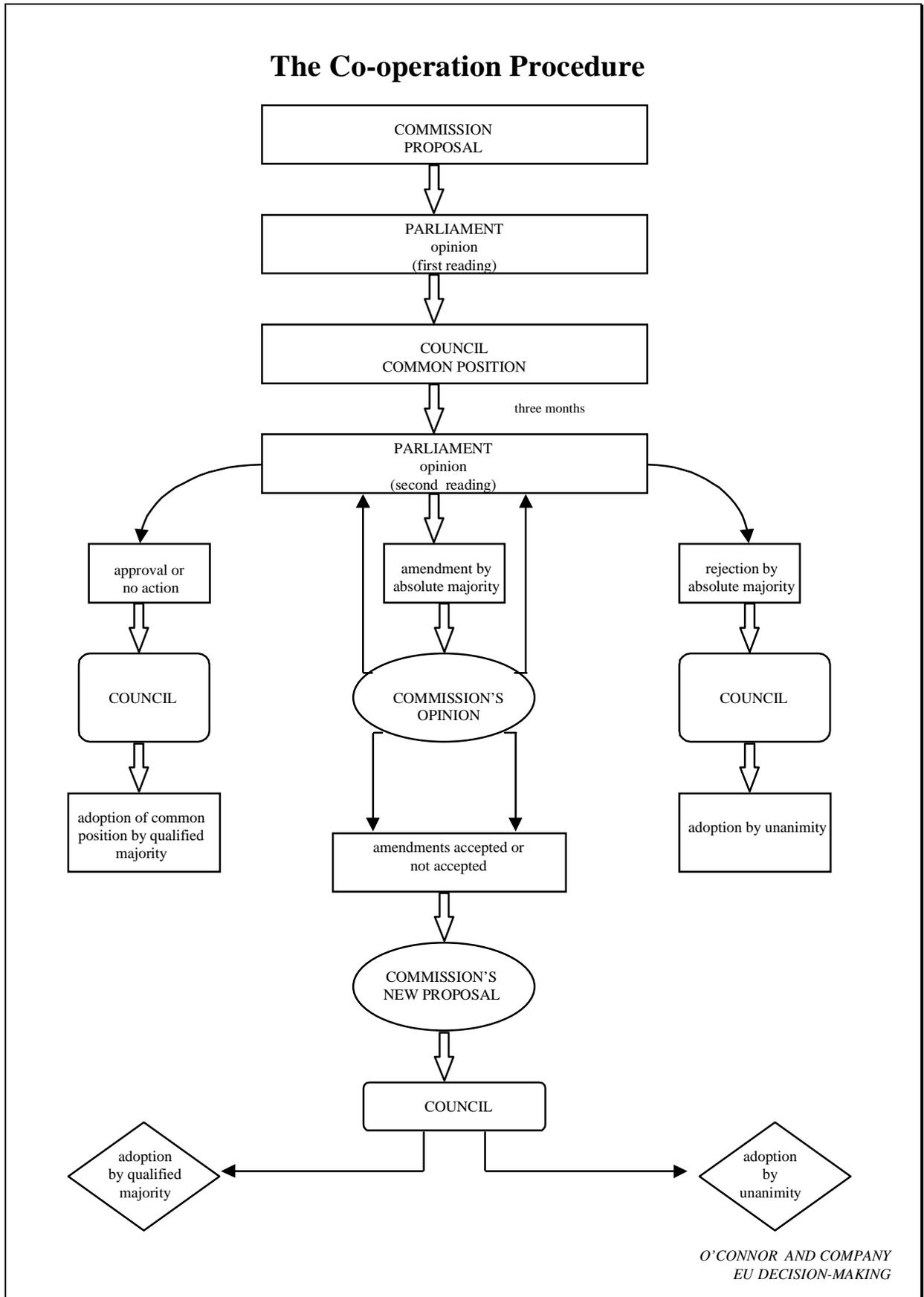
The selfish efforts made to ensure that society reflects our needs, if done in a transparent manner and in a decision making process with which we are familiar and to which others have equal access, will give rise in the main to decisions and laws of good quality.

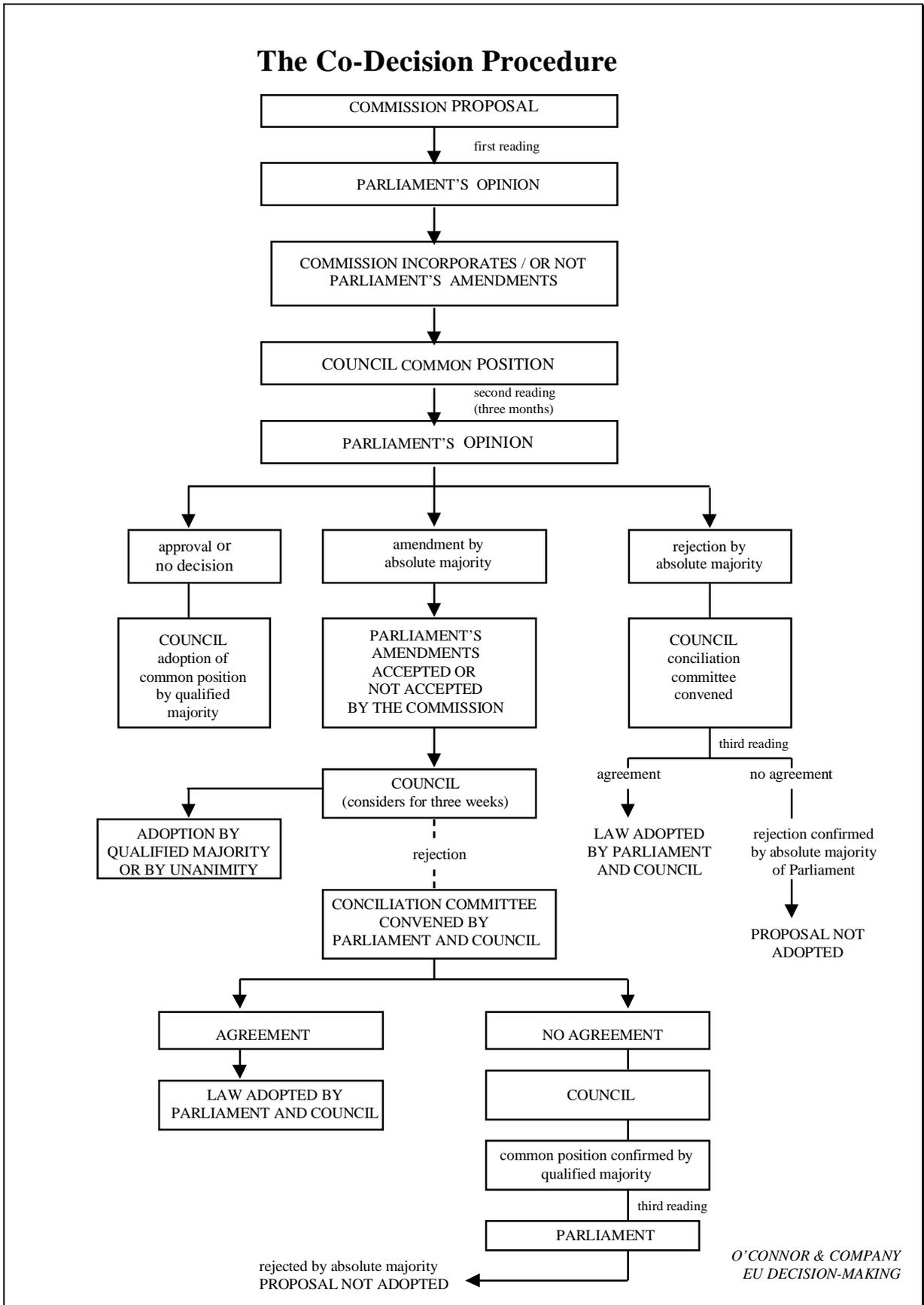
If these laws and decisions are then administered by administrators in whom we can trust then we will have collective confidence in the society in which we live and with our neighbours in that society. The best way to ensure that the administrators are trustworthy is to ensure that the greatest number of their activities are open to public scrutiny.

# The Consultation Procedure

decisions







## **The EU legislative procedures**

### **Sectors requiring consultation**

<b>Sector</b>	<b>EC article</b>
Citizenship of the Union. Right to vote and to stand as a candidate at municipal elections	8b(1)
Citizenship of the Union. Right to vote and to stand as a candidate in elections to the European Parliament	8b(2)
Decisions relating to agriculture matters	43
Provisions concerning system for transport that have serious effect on the standard of living and on employment	75(3)
Fair competitiveness	87
Adoption of regulations relating to public aids	94
Provisions for the harmonization of legislation concerning turnover taxes, excise duties and other forms of indirect taxation	99
Approximation of laws, regulations or administrative provisions of Member States as directly affect the establishment or functioning of the common market	100
Determination of the third countries whose nationals must be in possession of a visa	100c(1)
Adoption of measures relating to a uniform format for visas	100c(3)
Industry	130
Economic and social cohesion	130b
Specific programmes of research and technological development	130i(4)
Specific programmes of research and technological development	130o
Environment	130s
Financial provisions	201
International agreements	228(3) first paragraph
Measures to adopt new competencies	235

## The EU legislative procedures

### Sectors requiring co-decision

Sector	EC article
Free movement of workers	49
Freedom of establishment	54(2), 56(2) second sentence, 57(1) & 57(2), third sentence
Freedom to provide services	66
Internal market	100a & 100b
Education (encouragement measures)	126(4)
Culture (except recommendations <sup>1</sup> )	128 (co-decision and unanimity)
Public health (encouragement measures)	129
Consumer protection	129a
Trans-European networks (guidelines)	129d
Research and technological development (framework programme)	130I(1)(co-decision and unanimity)
Environment: general action programme	130s(3)

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<sup>1</sup> Unanimity but not co-decision

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## The EU legislative procedures

### Sectors requiring co-operation

<b>Sector</b>	<b>EC article</b>
Non-discrimination on grounds of nationality	6
Transport	75(1) & 84
Economic & monetary policy. Rules for the multilateral surveillance procedure	103(5)
Economic & monetary policy. Arrangements for applying article 104a.1	104a(2)
Economic & monetary policy. Arrangements for applying article 104	104b(2)
Monetary policy. Harmonization measures on the circulation of coins	105a
Social policy	118a
The European Social Fund	125
Vocational training	127(4)
Trans-European networks (except guidelines)	129d
Economic and social cohesion	130e
Research and technological development	130o(1) & 130o(3)
Environment	130s
Development co-operation	130w
	<b>Other provisions</b>
Gradual implementation of social objectives	2(2) Protocol (No. 14) on social policy

## Qualified majority voting

### In the Council

According to Articles 148(2) EC Treaty and 118(2) Euratom Treaty, qualified majority is the normal procedure that the Council follows in adopting Community acts.

Where the Council acts on the basis of a Commission proposal, the qualified majority required amounts to 62 votes (Article 148(2) EC) which at the minimum would require the agreement of eight Member States. This is the qualified majority found in the co-operation and codecision procedures. The total number of votes are 87.

Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as follows: Belgium 5; Denmark 3; Germany 10; Greece 5; Spain 8; France 10; Ireland 3; Italy 10; Luxembourg 2; Netherlands 5; Austria 4; Portugal 5; Finland 3; Sweden 4; United Kingdom 10.

### Weighting of Votes by Member States

France	10
Germany	10
Italy	10
United Kingdom	10
Spain	8
Belgium	5
Greece	5
Netherlands	5
Portugal	5
Austria	4
Sweden	4
Denmark	3
Finland	3
Ireland	3
Luxembourg	2

## Council decisions requiring:

### Qualified majority

Sector	EC article
Balanced progress internal market	7b
Alteration or suspension of duties in the Common Customs Tariff	28
Agriculture	43-44
Freedom of movement for workers	48
Freedom of establishment	54-57
Freedom to provide services	59-66
Movement of capital	69, 73c, 73f & 73g
Transport	75, 79 & 84
Competition	87
Compatible aids granted by States	92(3) & 94
Tax provisions	98
Internal market	100a & 100b
Approximation of laws	100c(2)
Approximation of laws	100c(3)
Approximation of laws	101
Economic & monetary policy	103-109 m <sup>2</sup>
Common commercial policy	113
Social policy	118a
The European social fund	125
Education, vocational training and youth	126-127
Public health	129
Consumer protection	129a
Trans-European networks	129b-d
Economic and social cohesion. Structural funds	130e
Research and technological development	130i(4)
Research and technological development	130o
Research and technological development	130j-l
Environment	130s(1)
Development co-operation	130u-y
Approval of regulations and general conditions of the Ombudsman's duties	138e
Financial provisions	203-204
International agreements	228
Common foreign and security policy	228a
	<b>Other provisions</b>
Gradual implementation of social objectives	2.2 Protocol (No. 14) on social policy

<sup>2</sup> Except articles 103a, 104c(14), 105(6), 106(5), 109(1) & 109l(4)

**Council decisions requiring:****Unanimity**

<b>Sector</b>	<b>EC Article</b>
Citizenship of the Union	8a, 8b(1), 8b(2), 8e
Agriculture: only where no C.O.M. exists	45(3)
Social security	51
Amendment of the existing principles laid down by law governing the professions	57(2)
Measures on the movement of capital which constitute a step back	73c
Provisions concerning system for transport that have serious effect on the standard of living and on employment	75(3)
Aids granted by States	93
Provisions for the harmonization of legislation concerning turnover taxes, excise duties and other forms of indirect taxation	99
Approximation of laws, regulations or administrative provisions of Member States as directly affect the establishment or functioning of the common market	100
Community financial assistance	103a
Excessive deficit procedure	104c(14)
Specific tasks of the ECB <sup>3</sup>	105(6)
Amendments of the ESCB <sup>4</sup> Statute	106(5)
Formal agreements on an exchange-rate system	109(1) & 109(4)
EMI <sup>5</sup>	109f(7)
Provisions related to the monetary union	109k(5) & l(4)
Commission tasks on social security	121
Culture	128
Industry	130
Economic and social cohesion	130b & 130d
Research and technological development	130i
Environment	130s(2)
Association of the overseas countries and territories	136
Uniform procedure for elections by direct universal suffrage	138(3)
Provisions related to the exercise of powers	145

<sup>3</sup> European Central Bank

<sup>4</sup> European System of Central Banks

<sup>5</sup> European Monetary Institute

## **Council decisions requiring:**

### **Unanimity**

<b>Sector</b>	<b>EC article</b>
Appointment of the Secretary-General	151(2)
Alteration of the number of members of the Commission	157(1)& 159
Increase of the number of judges and advocates-general and adjustments to articles 165 and 167	165 & 166
Classes of action or proceeding before the Court of First Instance (CFI), composition of the CFI and adjustments and additional provisions to the Statute of the Court of Justice	168a(2)
Establishment of the Rules of Procedure of the CFI	168a(4)
Amendments to the provisions of Title III of the Statute of the Court of Justice	188
Appointment of the Members of the Court of Auditors	188b
Amendments to any proposal of the Commission	189a
Amendments on which the Commission has delivered a negative opinion and Amendments proposed by the European Parliament after the expression of the Commission's opinion	189b(3) & c(d)
Appointment of the Members of the Economic and Social Committee	194
Appointment of the Members of the Committee of the Regions and adoption of the rules of procedure of that Committee	198a & b
Provisions relating to the system of own resources	201
Financial regulations, methods and procedures about the budget and rules concerning the responsibility of financial controllers	209
Rules governing languages	217
National security	223
Overseas territories	227
Adoption of internal rules as a consequence of International agreements	228(2)
Measures to adopt new competencies	235

## Council decisions requiring:

### Unanimity

<b>Sector</b>	<b>EC Article</b>
Agreements establishing an association with one or more States or International organizations	238
Common foreign and security policy	J(3), J(2)(2), J(8), J(11)
Co-operation in the fields of justice and home affairs	K(3), K(8), K(9)
New Member States	O
<b>Other provisions</b>	
Social security, protection of workers	2(3) Protocol (No. 14) on social policy
Simplified amendments	41 Protocol on the Statute of the ESCB and of the ECB
Appropriate provisions to lay down the details of the convergence criteria	6 Protocol on the convergence criteria referred to in Article 109j of the Treaty establishing the European Community

## **The Economic And Social Committee (ECOSOC)**

The ECOSOC is an advisory body which represents various economic and social sectors of the Union. Its composition and organization are regulated by the Treaties.

ECOSOC must be consulted by the Council or by the Commission where the European Community Treaties provide. The Committee may also issue an opinion on its own initiative in cases which it considers appropriate.

The purpose of ECOSOC is to participate in the decision-making process representing different social and economic interests. The number of members of ECOSOC are: Belgium 12, Denmark 9, Germany 24, Greece 12, Spain 21, France 24, Ireland 9, Italy 24, Luxembourg 6, Netherlands 12, Portugal 12 and the United Kingdom 24.

ECOSOC has specialized sections covering the principal fields of Community activity such as agriculture and transport.

As ECOSOC can issue opinions in any Community matter, its influence in the consultation procedure is of increasing importance.

### **Sectors where ECOSOC must be consulted**

<b>Sectors</b>	<b>EC article</b>
Agriculture	43(2) & 47
Free movement of workers	49
Freedom of establishment	54(1) & 54(2)
Free movement of services	63(1) & 63(2)
Transport	75(1) & 75(3)
Harmonization of tax legislation	99
Approximation of laws	100 & 100a
Social policy	118, 118a & 121
The European Social Fund	125
Education	126(4)
Vocational training	127(4)
Public health	129
Consumer protection	129a
Trans-European networks	129d
Industry	130
Economic and social cohesion	130b, 130d & 130e
Research and technological development	130i
	<b>Other provisions</b>
Social security, protection of workers	2.3 Protocol (No. 14) on social policy

## **The Committee of the Regions**

The Committee of the Regions (COR) was established in July 1993, as a result of the demands of the regional and local representatives in the Member States to have more influence in the decision-making process.

It is an advisory body consisting of representatives of regional and local bodies. Its composition and organization are regulated by the EC Treaty.

COR must be consulted by the Council or by the Commission where the EC Treaty so provides and in all cases in which these institutions consider such consultation to be appropriate.

COR represents regional and local interests when it participates in the decision-making process. According to the EC Treaty, the number of members of COR shall be: Belgium 12, Denmark 9, Germany 24, Greece 12, Spain 21, France 24, Ireland 9, Italy 24, Luxembourg 6, Netherlands 12, Portugal 12 and the United Kingdom 24.

COR may issue own initiative opinions in cases in which it considers appropriate. COR must be informed by the Council or the Commission of any case in which the ECOSOC is consulted and, if it considers that a regional interest is involved, it may also issue an opinion.

### **Sectors where Committee of the Regions must be consulted**

<b>Sectors</b>	<b>EC article</b>
Education	126(4)
Culture	128
Public health	129
Trans-European networks	129a
Economic and social cohesion	130b, 130d & 130e

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