
UNIT 4 DECISION-MAKING IN THE EUROPEAN UNION

Structure

- 4.0 Introduction
- 4.1 Objectives
- 4.2 Consultation Procedure
- 4.3 Assent Procedure
- 4.4 Cooperation Procedure
- 4.5 Co-decision Procedure
- 4.6 Qualified Majority Voting in the Council of Ministers
 - 4.6.1 **Double** Majority
 - 4.6.2 **Unanimity**
- 4.7 Summary
- 4.8 Exercises
- 4.9 References and Readings

4.0 INTRODUCTION

The decision-making rules of the European Union are designed to foster collective responsibility for the policies of the Union. In fact, no major decision can be taken without the joint consent of three key institutions, viz. the European Commission, the European Parliament and the Council. The Council is the EU's main policy-making body but a vital role is played by the Commission. With co-decision having become the norm in most policy areas, the European Parliament has been transformed into a politically and legal co-legislator along with the Council in most areas of competence of the European Union. In this unit we discuss the nature of these bodies and process adopted for decision-making.

4.1 OBJECTIVES

After going through this unit, you will be able to understand:

- the procedures prescribed for decision making by EU and its Institutions;
- voting methods adopted in EU institutions; and
- overall working of the EU system.

4.2 CONSULTATION PROCEDURE

The three main decision-making institutions are the European Parliament, the Council of the European Union, and the European Commission. These three institutions formulate the policies and laws (directives, regulations and decisions) that apply throughout the EU.

The various treaties of the European Union, especially the Rome Treaty (1957) and the **Maastricht** Treaty or the Treaty on the European Union, have prescribed decision-making procedures and detailed the circumstances in which they are to be applied.

In principle, it is the Commission that proposes new EU laws but it is the Parliament and Council that have the powers to adopt them.

The **Court of Justice** upholds the rule of European law, and the **Court of Auditors** checks the financing of the Union's activities.

Five other bodies complete the system:

- The **Economic and Social Committee** represents civil society and the industry;
- The **Committee of the Regions** represents regional and local authorities;
- The **European Central Bank** is responsible for formulation of European monetary policy;
- The **European Investment Bank** finances EU investment projects;
- The **European Ombudsman** guards EU citizens and organisations against administrative lapses and shortcomings.

The secondary rules of the European Union can take five forms: (1) **Regulations** can be considered similar to conventional legislation passed by a national legislature; (2) **Directives**, which are binding in terms of goals; (3) **Decisions**, which are binding; (4) **Recommendations** and **Opinions**, which do not have any binding force.

Prior to the Single European Act (1987), the consultative procedure was the only procedure in respect of non-administrative legislation. However, with the introduction of the cooperation procedure by the Single European Act and the co-decision procedure by the Maastricht Treaty as well as the upgradation of **certain** policy areas from the consultation procedure to the cooperation and co-decision procedures by the Single European Act, the Maastricht, Amsterdam and Nice Treaties, the issue areas for which the cooperation procedure applies has been considerably reduced over the years.

Apart from the cases laid down by the Treaties, the Council has also undertaken to consult Parliament on most important questions. The consultation is optional. In addition, this consultation procedure is used for the adoption of non-mandatory instruments, especially recommendations and opinions issued by the Council and the Commission.

Under the consultation procedure, the Council consults Parliament as well as the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR). The Parliament can approve the Commission's proposal, reject it, or ask for amendments. If Parliament opts for amendments, the **Commission will** consider carefully all the changes Parliament suggests. If it accepts any of these suggestions, it will send the Council an amended proposal. Thus, the Council is not bound by the Parliament's position, but only by the obligation to consult it. The Council examines the amended proposal and either adopts it or amends it further. In this procedure, as in all others, if the Council amends a Commission proposal, it has to obtain unanimity. (European Union, *How the European Union Works: Your Guide to the EU Institutions*, 2005, pp. 7-8).

Parliament must be consulted again if the Council deviates too far from the initial **proposal**. The powers of Parliament are fairly limited under this procedure, in so far as it can only hope that the Commission takes its amendments into account in an amended proposal.

4.3 ASSENT PROCEDURE

The assent procedure (Article 192 of the Treaty establishing the European Community) was introduced by the European Single Act (1986). It requires the Council to obtain the European Parliament's assent before certain important decisions are taken. The assent principle is based on a single reading. Parliament may accept or reject a proposal but cannot amend it. If Parliament does not give its assent, the act in question cannot be adopted.

The assent procedure applies mainly to the accession of new Member States (Article 49 of the Treaty on European Union), association agreements and other fundamental agreements with third countries. It is also required with regard to citizenship, the specific tasks of the European Central Bank (ECB), amendments to the Statutes of the European System of Central Banks and the ECB, the Structural and Cohesion Funds, and the uniform procedure for elections to the European Parliament (Article 190 of the EC Treaty).

Lastly, the European Parliament gives its assent for the application of sanctions imposed on a Member State for a serious and persistent breach of fundamental rights (Article 7 of the EU Treaty) and for closer cooperation in fields subject to the co-decision procedure.

Parliament's assent is given by a majority of votes cast. However, a majority of Members is also required in two cases, namely the accession of a new Member State and the electoral procedure.

4.4 COOPERATION PROCEDURE

The cooperation procedure (Article 252 of the EC Treaty) was also introduced by the Single European Act (1987). It gave the European Parliament greater influence in the legislative process by allowing it two "readings". Initially, the scope of this procedure was considerably extended by the Treaty of Maastricht. However, the Treaty of Amsterdam subsequently reversed the trend by encouraging the co-decision procedure (Article 251 of the EC Treaty). Since then, the cooperation procedure applies exclusively to the field of Economic and Monetary Union.

The cooperation **procedure** is always initiated by a proposal from the Commission forwarded to the Council and the European Parliament. In the context of a **first** reading, Parliament issues an opinion on the Commission proposal. The Council, acting by a qualified majority, then draws up a common position, which is forwarded to Parliament together **with all** the necessary information and the reasons which led the Council to adopt this common position.

The European Parliament examines this common position at second reading, and within three months may adopt, amend or reject the common position. In the latter two cases, it must do so **by** an absolute majority of its members. If it rejects the proposal, unanimity is required for the **Council** to act on a second reading.

The Commission then re-examines, within one month, the **proposal** upon which the Council based its common position and forwards its proposal to the Council; at its discretion it can include or exclude the amendments proposed by Parliament.

Within three months, the Council may adopt the re-examined proposal by qualified majority, amend it unanimously or adopt the amendments not taken into consideration by the **Commission**, also unanimously.

In the cooperation procedure, the Council may still exercise a veto by refusing to express its opinion on the amendments proposed by the European Parliament or on the amended proposal from the Commission, thereby blocking the legislative procedure. (Source: http://europa.eu/scadplus/glossary/cooperation_procedure_en.htm.)

4.5 CO-DECISION PROCEDURE

Introduced by the Maastricht Treaty, the co-decision procedure is the most frequently used procedure for most areas in which the European Union has competences. The Treaty of Amsterdam has simplified the co-decision procedure, making it quicker and more effective and strengthening the role of Parliament. It also extended it to new areas such as social exclusion, public health and the fight against fraud affecting the European Community's financial interests. The Treaty of Nice **further** extended the scope of the co-decision procedure, in parallel with and as a supplement to the extension of qualified majority voting in the Council.

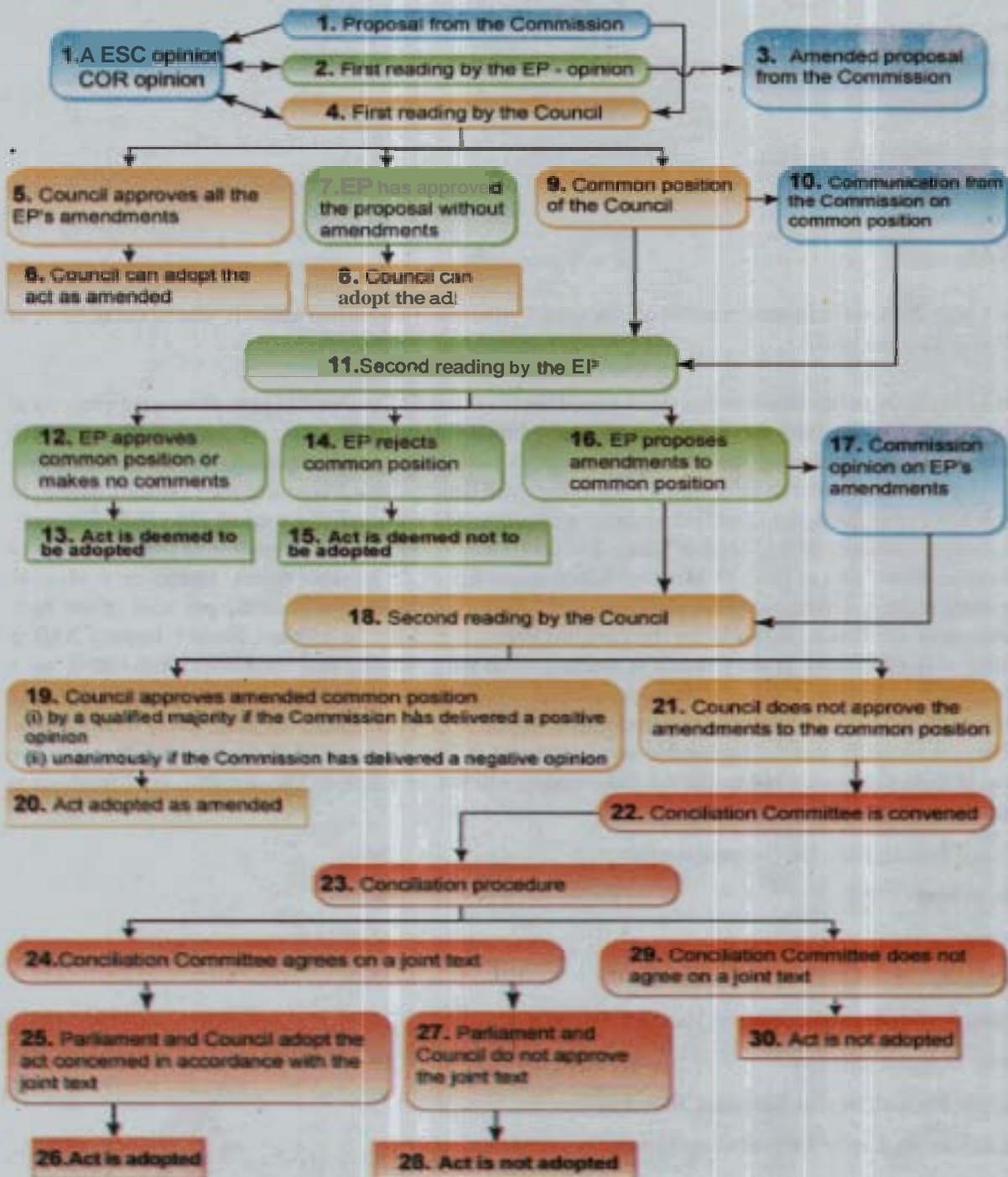
As defined in Article 251 of the EC Treaty, the co-decision procedure is the legislative procedure which is central to the Community's decision-making system. It is based on the principle of parity and means that neither the European Parliament nor the Council may adopt legislation without the other's assent.

In the co-decision procedure, the Council shares legal responsibility for legislation jointly with the European Parliament. The procedure comprises one, two or three readings. It has the effect of increasing contacts between the Parliament and the Council, the co-legislators, and with the European Commission. If Council and the European Parliament cannot agree in the case of a specific item of proposed legislation, negotiations take place in a "conciliation committee", composed of equal numbers of **Council** and Parliament representatives. Once this committee has reached an agreement, the legislative text is sent once again to Parliament and the Council so that they can deliberate over it and finally adopt it as law. (How the European Union Works, 2005 p. 8) If a joint text is not approved by a Conciliation Committee, the act does not **become** law. In other words, co-decision enables the European Parliament to veto any proposal that is within its scope.

Increasing the democratic nature of Community action requires Parliament to participate in exercising legislative power. Thus, any legislative instrument adopted by qualified majority is likely to fall within the scope of the co-decision procedure. In most cases, therefore, co-decision in Parliament goes hand in hand with qualified majority voting in the Council. For some provisions of the Treaty, however, co-decision and unanimity still coexist.

The co-decision procedure has strengthened parliament's legislative powers in the following fields: the free movement of workers, right of establishment, services, the internal market, education (incentive measures), health (incentive measures), consumer policy, trans-European networks (guidelines), environment (general action programme), culture (incentive measures) and research (framework programme).

The flow chart below describes in detail the co-decision procedure:



4.6 QUALIFIED MAJORITY VOTING IN THE COUNCIL OF MINISTERS

The most common voting procedure in Council of Ministers is "qualified majority voting" (QMV). This means that, for a proposal to be adopted, it needs the support of a specified minimum number of votes. However, in some particularly sensitive areas such as taxation, asylum and immigration policy, Council decisions have to be unanimous.

Until 1 May 2004, the number of votes each country can cast was as follows:

Germany, France, Italy, the UK	10
Spain	8
Belgium, Greece, the Netherlands, Portugal:	5
Austria, Sweden	4
Denmark, Ireland, Finland	3
Luxembourg	2
TOTAL	<u>87</u>

Until 1 May 2004, the minimum number of votes required to reach a qualified majority was 62 out of the total of 87 (i.e. 71.3 per cent).

From 1 May 2004 (when new member states joined the EU) until 31 October that year, there were transitional arrangements for changing the weighting of votes. From 1 November 2004, the number of votes each country could cast (including the new member states) were re-weighted, especially for those states with larger populations in order to safeguard the legitimacy and demographic fairness of the Council's decisions. After 1 November 2004, the Qualified Majority went up to 232 votes out of a total of 321 (72.27 per cent), representing a majority of the Member States. The decision also requires a favourable vote from the majority of Member States (i.e. at least 13 Member States) in an EU of 25 Member States. Moreover, a Member State may request verification that the Qualified Majority represents at least 62 per cent of the total population of the Union. If this is not the case, the decision will not be adopted. From 1 January 2007, a qualified majority voting in the Council is reached when the following two conditions are fulfilled: (a) a majority of the Member states give their approval (in certain cases a two thirds majority is required); (b) a minimum of 255 votes in favour of the proposition; which is 73.9 per cent of the total. Every member state can also ask to verify that the favourable votes represent at least 62 per cent of the total population in the Union. If these criteria are not respected, the decision will not be adopted. The distribution of votes since 1 January 2007 is as follows:

Germany, France, Italy, the United Kingdom	29
Spain, Poland	27
Romania	14
Netherlands	13
Belgium, Czech Republic, Greece, Hungary, Portugal	12
Austria, Bulgaria, Sweden	10
Denmark, Finland, Ireland, Lithuania, Slovakia	7
Cyprus, Estonia, Latvia, Luxembourg, Slovenia	4
Malta	3
Total votes	345

As the various institutional reforms have taken effect, Qualified Majority voting (QMV) has replaced unanimous voting, which is less effective for developing an operational Community policy (veto risk). (Source: http://europa.eu/scadplus/glossary/qualified_majority_en.htm)

4.6.1 Double Majority

In the light of enlargement, solutions have been put forward for maintaining the current balance between "large" and "small" countries in decision-making in the Council of Ministers. Maintaining the present system of weighting of votes in the Council after enlargement could produce a qualified majority representing only a minority of the population of the European Union. For this reason, the Member States with the highest populations wanted to see a reweighting or double majority system which would ensure that a majority in the Council represented a majority not only of Member States but also of the **population** of the Union.

The Treaty of Nice 2001, which set out to reform the operation of the Community institutions in the run-up to enlargement, redefines the qualified majority in terms of a double or even triple majority. While the reweighting of votes works in favour of the large Member States, the qualified majority must also be a majority of the Member States. This is combined with a system known as the "demographic safety net" which means that each Member State can request verification of whether the qualified majority represents at least 62% of the population of the Union. If this condition is not fulfilled, the decision cannot be adopted. These new rules entered into force on 1 November 2004.

4.6.2 Unanimity

The term "unanimity" means the requirement for all the Member States meeting within the Council to be in agreement before a proposal can be adopted. Since the Single European Act, it has applied to fewer and fewer areas. In the context of the first pillar, voting by qualified majority is now the rule. The second and third pillars, however, still operate largely according to the intergovernmental method and the unanimity requirement, although the Treaty of Nice introduced qualified majority voting in certain areas. Under the co-decision procedure, the Treaty makes provision for unanimity in three cases, viz. social security for migrant workers, recognition of diplomas if amendment of national legislation is required, and incentive measures in the field of culture.

4.7 SUMMARY

In this unit, we discussed the various procedures for decision-making in the European Union, viz. the consultation procedure, the assent procedure, the cooperation procedure, and the co-decision procedure. Over time, as pressures increased to overcome the democratic deficit in the decision-making mechanisms of the EU and partly to make decisions more flexible in view of an expanded and more heterogeneous regional economic grouping, the various treaties gradually extended the powers of the European Parliament – the only directly elected institution in the Union's institutional architecture. As a result, the codecision procedure now applies to the majority of areas in which the European Union has competence.

4.8 EXERCISES

- 1) Write a short note on the consultation procedure.
- 2) Briefly discuss the assent procedure.
- 3) Examine the cooperation procedure.
- 4) Critically examine the co-decision procedure.

4.9 REFERENCES AND READINGS

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