

Issued by the Department  
of Chamber and Committee Services  
July 2008

# European Union Institutions and Legislation



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A short guide for Members of Parliament by the  
staff of the European Scrutiny Committee

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## Introduction

The United Kingdom joined the three European Communities (now two) on 1 January 1973.<sup>1</sup> The European Economic Community (EEC) was re-named the European Community (EC) in 1993.

The Treaty establishing the European Community<sup>2</sup> is given effect in the United Kingdom by the European Communities Act 1972.

The Treaties have from time to time been amended.<sup>3</sup> The most fundamental change has been the establishment of the European Union by the Treaty on European Union (TEU) in 1993. The Union is based on the two European Communities (the first pillar) flanked by two inter-governmental pillars: the Common Foreign and Security Policy (CFSP, or second pillar), and police and judicial co-operation in criminal matters (the third pillar).

The Lisbon Treaty amends the existing Treaties and effectively abolishes the third pillar, but the Treaty requires ratification by every Member State before it can come into force.<sup>4</sup>

There has been a gradual enlargement of the membership, which presently stands at 27.<sup>5</sup> Further enlargement is expected.

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<sup>1</sup> The three were the European Economic Community, the European Atomic Energy Community (Euratom) and the European Coal and Steel Community (ECSC). The latter ceased to exist in 2002.

<sup>2</sup> The Treaty of Rome 1957.

<sup>3</sup> The founding Treaties have been revised four times: in 1987 (the Single European Act), in 1992 (Treaty on European Union), in 1997 (Treaty of Amsterdam), and in 2001 (Treaty of Nice).

<sup>4</sup> See Cm 7294 for the text of the Lisbon Treaty. A consolidated version of the EU Treaties as prospectively amended by the Treaty of Lisbon has been published by the Government as Cm 7310.

<sup>5</sup> The six founder members of the three Communities (Germany, France, Belgium, Italy, Luxembourg and the Netherlands) were joined in 1972 by Denmark, Ireland and the United Kingdom, in 1979 by Greece, in 1985 by Spain and Portugal, in 1995 by Austria, Sweden and Finland, and in 2004 by Cyprus, Malta, Hungary, Poland, Slovakia, Latvia, Estonia, Lithuania, the Czech Republic and Slovenia. Bulgaria and Romania joined on 1 January 2007. Croatia and Turkey are candidate countries.

## **United Kingdom Permanent Representation to the European Union (UKRep)**

UKRep is essentially the Brussels arm of the Government Departments in Whitehall and elsewhere. The main job of its staff is to represent the UK in day-to-day negotiations. They are in close and regular contact with the Commission, the European Parliament and other EU institutions, the Council Secretariat and the Permanent Representatives of the other Member States.

UKRep staff can offer up-to-date advice on current Commission activities and the progress of specific Commission proposals in the Council decision-making process. UKRep also provides information on commercial opportunities for British firms under EC programmes and Community export promotion campaigns.

Staff responsibilities are organised around the composition and subject-matter of the different specialist Councils.

**Members can reach the UKRep operator from telephones in the House by dialling #6 43.**

**[www.ukrep.be](http://www.ukrep.be)**

## Institutions of the Union

The Community and Union share the same institutions. The powers and duties of the institutions are described in the Treaties.

### Websites

Useful websites include:

<a href="http://europa.eu/">http://europa.eu/</a>	The European Union's server (run by the European Commission), which contains information on all the institutions as well as Union news, future events, statistics, publications and databases. A search facility provides text of Community legislation in force.
<a href="http://www.europarl.europa.eu/">http://www.europarl.europa.eu/</a>	This contains detailed information on the structure and work of the European Parliament.
<a href="http://www.consilium.europa.eu">http://www.consilium.europa.eu</a>	This contains detailed information on the structure and work of the Council of the European Union.
<a href="http://www.cec.org.uk/">http://www.cec.org.uk/</a>	Run by the London Office of the European Commission, this site offers information on Commission activities in Britain, including weekly news-sheets and details of EU events.

### The Council of Ministers

The Council is made up of ministerial representatives of the Governments of Member States.<sup>6</sup> It is the principal legislative and decision-making body of the Union.

The composition of the Council varies according to the business under discussion. Business is usually arranged so that matters will be dealt with by a Council attended by Ministers who have a corresponding responsibility in their national Governments, although, in cases of urgency, other business is sometimes dealt with. With some limited exceptions, the Council meets in private.

The Council is assisted in its work by a Committee of Permanent Representatives (COREPER), which consists of the Member States' Permanent Representatives to the European Union. COREPER works in two configurations, COREPER I consisting of the Deputy Permanent Representatives which deals with technical matters and COREPER II (the more senior committee), consisting of the Permanent

<sup>6</sup> The constitution and principal functions of the Council are set out in Articles 202 to 210 of the EC Treaty and Articles 115 to 123 of the Euratom Treaty.

Representatives, deals with political, commercial, economic and institutional matters. COREPER is responsible for preparing the work of the Council and carrying out tasks assigned to it by the Council. A proposal on which COREPER is able to reach full agreement will normally come before the Council for formal approval only (as a so-called 'A point'). A committee of senior officials, established under Article 36 EC ('the Article 36 Committee') performs similar functions for third pillar matters. The office of the United Kingdom Permanent Representative is usually known as UKRep (see page 4).

There are important differences between the conduct of Community business and second and third pillar business. For example, the activities of the Council under the second pillar are *generally* not subject to judicial review by the European Court of Justice, and the European Parliament has only a limited role in respect of the second and third pillars.

The Presidency of the Council of the European Union is held by each Member State in turn for a period of six months. The order in which Member States hold the office of President is prescribed by the Treaties, and is set out in Table A. The formal responsibilities of the President are set out in the Rules of Procedure of the Council.

General Secretariat of the Council: Rue de la Loi 175, 1048 Brussels, Belgium: tel: 00 32 2 285 61 11; **House of Commons direct dialling code #6 20 (+ extension).**

Table A

#### Order of Presidencies of the Union<sup>7</sup>

Second Half 2008	France
First Half 2009	Czech Republic
Second Half 2009	Sweden
First Half 2010	Spain
Second Half 2010	Belgium
First Half 2011	Hungary
Second Half 2011	Poland

## The European Council

The European Council consists of the Heads of State or Government of the Member States and the President of the Commission, assisted by the Ministers for Foreign Affairs and by a member of the Commission. It meets at least twice a year, under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council.

The EU Treaty requires the European Council to 'provide the Union with the necessary impetus for

<sup>7</sup> For further information see:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:001:0011:0012:EN:PDF>

its development and ... define the general policy guidelines thereof.<sup>8</sup> It submits a report to the European Parliament after each of its meetings and a yearly written report on the progress achieved by the Union.

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<sup>8</sup> Article 4 EU.

## The Commission

The Commission is the executive organ of the European Communities.<sup>9</sup> There are 27 members, known as Commissioners — one from each Member State. The current Commission was nominated in 2004.

The appointment procedure is a four-stage process. First, the intended President of the Commission is nominated by the Council acting by a qualified majority, and the nomination must be approved by the European Parliament; secondly, the Commissioners are nominated by the Council acting by a qualified majority 'by common accord' with the Presidential nominee; thirdly, all those nominated are subject as a body to a vote of approval by the European Parliament; and, finally, if parliamentary approval is forthcoming, the nominees are appointed by the Council, acting by a qualified majority.<sup>10</sup>

Only Member State nationals are eligible to be appointed as Commissioners, and the term of office is a renewable five-year period. Commissioners are required to be completely independent, and can neither seek nor take instructions from governments or other bodies.

The work of the Commission is divided amongst 27 Directorates-General (DGs), each of which is headed by a Director-General (see Table B). Every Commissioner is assigned one or more DG portfolios, as outlined in Table C. The Directors-General are responsible to the relevant Commissioners.

The Commission has the following general functions under the Treaties:

- *Treaty guardianship*  
This includes monitoring compliance with the Treaties, and bringing proceedings in the European Court of Justice against Member States for breach of the Treaty or regulations or directives. In some fields, notably competition, the Commission also has power to initiate proceedings against companies and individuals.
- *Community guidance and policy-making*  
As well as a variety of policy-influencing powers contained in specific Treaty provisions, the Commission has a general discretionary power to suggest areas of policy change, although this has no binding force.
- *Decision-making and legislative functions*  
The Commission has its own power of decision-making and the power, in certain limited areas, to adopt Community legislation on its own initiative. More significant, however, are the Commission's powers of legislative initiative, which complement its functions in relation to the initiation and formulation of policy. In most policy areas the Council normally legislates only upon a Commission proposal.

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<sup>9</sup> The constitution and principal functions of the Commission are set out in Articles 211 to 219 of the EC Treaty and Articles 124 to 135 of the Euratom Treaty.

<sup>10</sup> EC Treaty, Article 214, para 2; Euratom Treaty, Article 127, para 2.

- *Delegated powers*

The Council may delegate legislative and administrative powers to the Commission, and does so frequently.

Under the Council's direction, the Commission represents the EU in trade negotiations and agreements with third countries and international organisations. The Commission also plays an important role in the inter-institutional exchanges required to settle the Community budget.

Commission Headquarters: 1049 Brussels, Belgium; tel: 00 32 2 299 1111; **direct dialling code #6 21 (+ extension)**.

London Office: 8 Storey's Gate, London SW1P 3AT; tel: 020 7973 1992.

Table B

**Directorates-General**

<b>Directorate-General</b>	<b>Director-General</b>
Agriculture and Rural Development	Jean-Luc Demarty
Budget	Luis Romero Requena
Communication	Claus Haugaard Sørensen
Competition	Philip Lowe
Development	Stefano Manservigi
Economic and Financial Affairs	Marco Buti (acting)
Education and Culture	Odile Quintin
Employment, Social Affairs and Equal Opportunities	Nikolaus van der Pas
Enlargement	Michael Leigh
Enterprise and Industry	Heinz Zourek
Environment	Mogens Carl
External Relations	Eneko Landáburu
Fisheries and Maritime Affairs	Fokiou Fotiadis
Health and Consumer Protection	Robert Madelin
Humanitarian Aid	Peter Zangl
Information Society and Media	Fabio Colasanti
Informatics	Francisco Garcíá Morán
Internal Market and Services	Jörgen Holmquist
Interpretation	Marco Benedetti
Justice, Freedom and Security	Jonathan Faull
Personnel and Administration	Claude Chêne
Regional Policy	Dirk Ahner
Research	José Manuel Silva Rodriguez
Taxation and Customs Union	Robert Verrue
Trade	David O'Sullivan
Translation	Juhani Lönnroth
Transport and Energy	Matthias Ruete

For an up-to-date list of Directorates-General see [http://www.ec.europa.eu/dgs\\_en.htm](http://www.ec.europa.eu/dgs_en.htm)

Table C

## Commissioners and their portfolios

<b>Name</b>	<b>Nationality</b>	<b>Portfolios</b>
José Manuel Barroso President	Portuguese	
Margot Wallström Vice-President	Swedish	Institutional Relations and Communication Strategy
Günter Verheugen Vice-President	German	Enterprise and Industry
Jacques Barrot Vice-President	French	Justice, Freedom and Security
Siim Kallas Vice-President	Estonian	Administrative Affairs, Audit and Anti- Fraud
Antonio Tajani Vice-President	Italian	Transport
Viviane Reding	Luxembourger	Information Society and Media
Stavros Dimas	Greek	Environment
Joaquín Almunia	Spanish	Economic and Monetary Affairs
Danuta Hübner	Polish	Regional Policy
Joe Borg	Maltese	Fisheries and Maritime Affairs
Dalia Grybauskaitė	Lithuanian	Financial Programming and Budget
Janez Potočnik	Slovenian	Science and Research
Ján Figel'	Slovakian	Education, Training, Culture and Multilingualism
Androulla Vassiliou	Cypriot	Health and Consumer Protection
Olli Rehn	Finnish	Enlargement
Louis Michel	Belgian	Development and Humanitarian Aid
László Kovács	Hungarian	Taxation and Customs Union
Neelie Kroes	Dutch	Competition
Mariann Fischer Boel	Danish	Agriculture and Rural Development
Benita Ferrero-Waldner	Austrian	External Relations and European Neighbourhood Policy
Charlie McCreevy	Irish	Internal Market and Services
Vladimir Spidla	Czech	Employment, Social Affairs and Equal Opportunities
Peter Mandelson	British	Trade
Andris Piebalgs	Latvian	Energy
Meglèna Kuneva	Bulgarian	Consumer Protection
Leonard Orban	Romanian	Multilingualism

## The European Court of Justice (ECJ)

The ECJ is the final arbiter on all legal questions submitted to it under the EU and Community Treaties.<sup>11</sup> It consists of 27 judges, one from each Member State, assisted by eight advocates-general who provide in each case a non-binding written opinion to assist the Court.

The Court's general duty is to ensure that in the interpretation and application of the Treaties the law is observed. Its jurisdiction has two main strands: the first relating to actions initiated directly before the Court, either challenging the legality of the acts of Community institutions or alleging a breach of a Treaty obligation by a Member State; the second involving references from the courts of Member States for preliminary rulings on the interpretation of the Treaties and on the validity and interpretation of acts of the institutions.<sup>12</sup>

Palais de la Cour de Justice, Luxembourg 2925, Luxembourg; tel: 00 352 430 31; **direct dialling code #6 35.**

## The Court of First Instance (CFI)

The CFI was introduced in 1986 to relieve the increasing workload of the ECJ. It consists of 27 judges, one from each Member State. There are no separate advocates-general, although any judge may act as such.

The CFI exercises at first instance the jurisdiction of the Court in relation to actions for review of the legality of acts of the institutions, or for their failure to act, actions for compensation for non-contractual liability, staff cases, and those cases where jurisdiction is conferred under a contract concluded on behalf of the Community. The CFI is now also competent to give preliminary rulings on questions referred from national courts, but only in certain specific areas of the law laid down in its statute. The CFI also has jurisdiction to hear appeals against decisions by the judicial panels<sup>13</sup>, which are a new tier of judicial bodies introduced by the Treaty of Nice to hear, at first instance, actions on specific areas of EU law, notably intellectual property.

There is a right of appeal from the CFI's decisions to the ECJ on matters of law only.

Palais de la Cour de Justice, Luxembourg 2925, Luxembourg; tel: 00 352 430 31; **direct dialling code #6 35.**

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<sup>11</sup> The constitution and principal functions of the Court are set out in Articles 220 to 245 of the EC Treaty and Articles 136 to 160 of the Euratom Treaty.

<sup>12</sup> A third important jurisdiction empowers the ECJ to give opinions on the compatibility of proposed international agreements with the Treaties, at the request of the Council, the Commission or a Member State (EC Treaty, Article 300 (6)).

<sup>13</sup> The European Union Civil Service Tribunal, established in 2004 is the sole judicial panel to have been set up thus far.

## The European Parliament

The European Parliament has evolved from the relatively powerless Assembly established in 1951 into the considerably more powerful institution it is today. The Assembly began referring to itself as the Parliament as early as 1962, though its title was formally altered only by the Single European Act of 1986.

Since 1979, Members of the Parliament have been elected by direct universal suffrage, for a term of five years. The most recent elections took place in June 2004. Electoral procedure varies from one Member State to another.

The total membership of the European Parliament is 785, of whom 78 represent United Kingdom constituencies (64 in England, 7 in Scotland, 4 in Wales and 3 in Northern Ireland). A list of the UK's MEPs and their constituencies is at Table E.

Members of the European Parliament affiliate themselves with one of the eight official transnational political groupings, or are classified as 'independents'. The present political make-up of the European Parliament is shown in Table D. The President of the Parliament is Josep Borrell Fontelles.

Table D

### Seats by party group following the 2004 election

European People's Party and European Democrats (EPP-ED)	288
Socialist Group in the European Parliament (PES)	217
Alliance of Democrats and Liberals for Europe (ALDE)	100
Union for a Europe of Nations (UEN)	43
Greens/European Free Alliance Group (Greens-EFA)	43
Confederal Group of the European United Left/Nordic Green Left (EUL-NGL)	41
Independence and Democracy Group (ID)	22
Independents (NA)	31
Total	785

The UK's 19 Labour MEPs are members of the PES, while the majority of the 27 Conservative MEPs are affiliated to the EPP-ED, as is the Ulster Unionist Party MEP. The 12 Liberal Democrats belong to the ALDE. The ten UK Independence Party MEPs form part of the ID group. The two Scottish National Party MEPs, the two Green Party MEPs and the Plaid Cymru MEP are members of the Greens-EFA Group. The Sinn Fein MEP is a member of the EUL-NGL, whilst two Conservative MEPs, two ex-members of the UK Independence Party and the Democratic Unionist Party MEP are not affiliated to any party group.

The political groupings exert an influence on every aspect of the European Parliament's business. The Chairmen of the groups, together with the elected President (and Vice-Presidents) of the European Parliament, form the Conference of Presidents, which is responsible, among other things, for organising the Parliament's work and drawing up the draft agenda.

The ratios of political group membership are reflected in the composition of the 20 permanent committees and their sub-committees. These committees review the main areas of Community activity and draw up reports which are debated at plenary sessions. The committees and their Chairmen are listed in Table F.

The European Parliament meets and debates in public. There are meetings both in Brussels and Strasbourg. Plenary sessions take place in Strasbourg for, on average, one week in each month, excluding August, though additional mini-sessions are held in Brussels. Much of the legislative scrutiny is carried out in committee.

The legislative functions of the European Parliament differ significantly from those of national parliaments, reflecting the fact that, as originally conceived, its role in the legislative process was purely consultative. In recent years, its legislative functions have been significantly increased mainly through the co-decision process (see page 20). The Parliament also has the following functions:

- **budget**  
The European Parliament shares responsibility with the Council for settling the Community's annual budget.
- **annual general report**  
The Parliament is required to debate in open session the annual general report submitted to it by the Commission under the Community Treaties.
- **approval of Commission**  
The President and the members of the Commission are subject to a vote of approval as a body by the Parliament. The Parliament's civil liberties committee objected in October 2004 to the appointment of Mr Buttiglione, following which the President of the Commission presented a revised list of Commissioners and obtained approval.
- **oral and written questions to the Commission and Council**  
The Community Treaties require the Commission to reply orally or in writing to questions put to it by the Parliament or its Members. Council members attend the Parliament to speak on behalf of the Council, and this practice has been formalised by the Council's Rules of Procedure.
- **Committees of Inquiry**  
The Community Treaties allow the Parliament, at the request of a quarter of its Members, to set up a temporary Committee of Inquiry to investigate alleged contraventions or maladministrations in the implementation of Community law. This has so far been used for inquiries into BSE and into fraud in the transit procedure.
- **Ombudsman**  
The Parliament is required to appoint a Parliamentary Ombudsman, who investigates complaints from Union citizens and natural or legal persons resident in the EU concerning maladministration in the activities of Community institutions or bodies (except the Court of Justice and the Court of First Instance). The Ombudsman is required to submit an annual report to the Parliament on the outcome of his enquiries. The present Ombudsman is Nikiforos Diamandouros.

- **motion of censure**

A significant supervisory power of the European Parliament is the motion of censure, which requires the members of the Commission to resign as a body. The motion of censure requires a two-thirds majority of the votes cast, representing a majority of the Members. Although a number of motions of censure have been tabled, none has yet been carried. However, the Santer Commission resigned in 1999 in order to forestall a vote on such a motion, which was expected to be carried.

In Brussels: European Parliament, Rue Wiertz, 1047 Brussels, Belgium; tel: 00 32 2 284 21 11; **direct dialling code #6 24 (+ extension)**.

In Luxembourg: European Parliament, Plateau du Kirchberg, B.P. 1601, 2929 Luxembourg; tel: 00 352 43 001; **direct dialling code #6 22 (+ extension)**.

In Strasbourg: Allée du Printemps, B.P. 1024/F, 67070 Strasbourg Cedex, France; tel: 00 33 3 88 174001; **direct dialling code #6 23 (+ extension)**.

European Parliament UK office, 2 Queen Annes Gate, London SW1H 9AA; tel: 020 7227 4300.

The European Ombudsman, 1 Av du Président Robert Schuman, BP403, 67001 Strasbourg Cedex, France; tel: 00 33 3 88 172313.

Table E

## UK Members of the European Parliament

	Conservative	Labour	Liberal Democrat	UKIP	Other
East Midlands	Roger Helmer Christopher Heaton-Harris	Glenis Willmott	Bill Newton Dunn	Derek Clark	Robert Kilroy-Silk (Ind)
Eastern	Robert Sturdy Christopher Beazley Geoffrey Van Orden	Richard Howitt	Andrew Duff	Jeffrey Titford Tom Wise	
London	Syed Kamall Charles Tannock John Bowis	Claude Moraes Robert Evans Mary Honeyball	Sarah Ludford	Gerard Batten	Jean Lambert (Green)
North East	Martin Callanan	Stephen Hughes	Fiona Hall		
North West	Robert Atkins David Sumberg Den Dover Sajjad Karim	Arlene McCarthy Gary Titley Brian Simpson	Chris Davies	John Whittaker	
South East	Daniel Hannan James Elles Nirj Deva Richard Ashworth	Peter Skinner	Emma Nicholson Sharon Bowles	Nigel Farage	Caroline Lucas (Green) Ashley Mote (Ind)
South West	Neil Parish Caroline Jackson Giles Chichester	Glyn Ford	Graham Watson	Graham Booth Roger Knapman	
West Midlands	Philip Bushill-Mathews Philip Bradbourn Malcolm Harbour	Michael Cashman Neena Gill	Liz Lynne	Mike Nattrass	
Yorkshire and the Humber	Edward McMillan-Scott Timothy Kirkhope	Linda McAvan Richard Corbett	Diana Wallis	Godfrey Bloom	
Wales	Jonathan Evans	Glenys Kinnock Eluned Morgan			Jill Evans (PC)
Scotland	Struan Stevenson John Purvis	David Martin Catherine Stihler	Elsbeth Attwooll		Ian Hudghton (SNP) Alyn Smith (SNP)
Northern Ireland					Jim Nicholson (UUP) Jim Allister (DUP) Bairbre de Brún (Sinn Féin)
Totals	27	19	12	10	10

Table F

**European Parliament Committees**

<b>Committee</b>	<b>Chair</b>
Foreign Affairs	Jacek Saryusz-Wolski (EPP-ED)
Budgets	Reimer Böge (EPP-ED)
Budgetary Control	Herbert Bösch (PES)
Economic and Monetary Affairs	Pervenche Berès (PES)
Employment and Social Affairs	Jan Andersson (PES)
Environment, Public Health and Food Safety	Miroslav Ouzky(EPP-ED)
Industry, Research and Energy	Angelika Niebler (EPP-ED)
Internal Market and Consumer Protection	Arlene McCarthy (PES)
Transport and Tourism	Paolo Costa (ALDE)
Regional Development	Gerardo Galeote Quecedo (EPP-ED)
Agriculture and Rural Development	Neil Parish (EPP-ED)
Fisheries	Philippe Morillon (ALDE)
Culture and Education	Katerina Batzeli (PES)
Legal Affairs	Giuseppe Gargani (EPP-ED)
Civil Liberties, Justice and Home Affairs	Gérard Deprez (ALDE)
Constitutional Affairs	Jo Leinen (PES)
Women's Rights and Gender Equality	Anna Záborská (EPP-ED)
Petitions	Marcin Libicki (UEN)
Development	Josep Borrell Fontelles (PES)
International Trade	Helmuth Markov (EUL-NGL)
<i>Temporary Committees</i>	
Climate Change	Guido Sacconi (PES)

## The Court of Auditors

The Court of Auditors consists of 27 members, one from each Member State, appointed by the Council for renewable terms of six years.<sup>14</sup>

The Court is responsible for examining the Communities' accounts and is required to provide the European Parliament and the Council with a statement of assurance as to reliability. It must examine and report on whether all revenue has been received and all expenditure incurred in a lawful and regular manner, and on whether financial management has been sound. It is also charged with assisting the European Parliament and the Council in their implementation of the budget.

It prepares an annual report, covering each financial year, which is published together with the replies of the institutions. It also publishes Special Reports on particular expenditure programmes.

The Court of Auditors may also, at any time, submit observations on specific questions and deliver opinions at the request of one of the Community institutions.

Court of Auditors, 12 rue Alcide de Gasperi, Luxembourg 1615, Luxembourg; tel: 00 352 4398 45410.

## Other bodies

### The Economic and Social Committee

The Economic and Social Committee consists of 344 members — 24 from the United Kingdom — drawn from employers' organisations, trade unions, consumer associations and other interests. It is appointed by the Council on the basis of lists provided by Member States. Once appointed, members are bound to act in a personal capacity and cannot accept outside instruction. The Committee operates in plenary session and through a series of specialised sections.

The Treaties require the Committee to be consulted on proposals by the Commission for legislation in many fields, including the internal market. It may also be consulted in other cases.

The Economic and Social Committee, 99 Rue Belliard, Brussels 1040, Belgium; tel: 00 32 2 546 9011.

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<sup>14</sup> The constitution and principal functions of the Court of Auditors are set out in Articles 246 to 248 of the EC Treaty and Articles 160a to 160c of the Euratom Treaty.

### **Committee of the Regions**

The Committee of the Regions was set up by the TEU to provide a forum in which representatives of regional and local government could be consulted on EC policies such as those on education, culture, public health and trans-European networks. It has a membership of 344 — 24 from the United Kingdom. The members of the Committee, together with an equal number of alternates, are appointed for four years by the Council on proposals from Member States.

Committee of the Regions, 101 Rue Belliard, Brussels 1040, Belgium; tel: 00 32 2 282 22 11.

## **Travel entitlements to European Union institutions etc.**

In any year beginning with 1 April, Members are entitled to make three return journeys on Parliamentary duties between the United Kingdom and any EU Institution or agency; the National Parliament of any EU or EFTA member states or of an EU candidate country or applicant country; or the National Parliament of a full member country of the Council of Europe.

The scheme is based on reimbursement of actual travel expenses incurred and an entitlement to the relevant subsistence allowance, subject to the following maxima:

- (a) the cost of a business class return air fare from a London airport to one of the designated destinations;
- (b) two nights subsistence at the Civil Service Class A standard rate in force at the time of the journey.

Claim forms, together with details of how to make claims and how subsistence rates are calculated, are available from the Department of Resources (DR), and are set out in the DR's website. Authorisation must be sought from the DR before the visit. If Members travel without prior authorisation, DR may not be able to meet the costs incurred. Expenses reimbursed under these arrangements are specifically excluded from taxation.

**Contact** 1340.

# EC and EU Legislation

## Community legislation

Community legislation is usually made by the Council, or by the Council and the Parliament, on a proposal by the Commission. The Commission also has limited powers to legislate, either under the Treaties or under delegated authority from the Council.<sup>15</sup>

The EC Treaty provides for three forms of legislation – regulation, directive and decision – and defines their legal effect.

A **regulation** is directly applicable in all Member States from the date of its coming into force without any action on the part of Member States. Member States may, however, need to supplement a regulation by providing enforcement machinery and prescribing sanctions for breach of its requirements.

A **directive** is binding on each Member State as to the result to be achieved, but it leaves to national authorities the choice of form and method. Member States are required under the terms of each directive to make the necessary changes in their laws and administrative arrangements to comply with the requirements of the directive by the date specified in it.

A **decision** is binding on those to whom it is addressed. Decisions may be addressed to Member States, but are often addressed to particular undertakings or individuals as, for example, in the case of decisions taken by the Commission under the Community's competition rules. The Council also acts by decision when exercising its powers on procedural and institutional matters.

Regulations and directives addressed to Member States must be published in the Official Journal of the Communities; they appear in the Official Journal (OJ) 'L' series, together with all other legislative instruments of general importance.

## Community legislative procedures

The Treaty article providing for the making of legislation will also lay down the legislative procedure to be followed. A wide variety of legislative procedures are possible. In nearly all cases the Commission has the exclusive right of initiative and starts the procedure by presenting a draft of the proposed measure.<sup>16</sup> The Economic and Social Committee, Committee of the Regions and European Central Bank must be consulted on proposals within their remit.

The Council sometimes acts by qualified majority and sometimes by unanimity. The Treaties of Amsterdam and Nice increased the number of areas where decisions can be taken by qualified

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<sup>15</sup> The European Central Bank (ECB) also has limited powers to legislate on such matters as the implementation of the monetary policy of the Community and the establishment of minimum reserves.

<sup>16</sup> There are a few exceptions. No Commission proposal is required to enable the Council to lay down European Parliament election procedures (EC Treaty, Article 190(3)), to adopt its own rules of procedure (Article 207(3)), or to lay down rules governing the collection of information by the Commission (Article 284). The European Central Bank shares the right of initiative with the Commission in relation to proposals to amend the statute of the European System of Central Banks (Article 107(5) and (6)), and provisions relating to the Court of First Instance and amendments to the Statute of the Court of Justice are made by the Council at the request of the Court of Justice (Articles 224(2) and 245).

majority. Unanimity remains the rule in respect of constitutional matters and a hard core of highly sensitive areas like taxation.

The main distinction between the different legislative procedures is the extent and nature of the involvement of the European Parliament. There are, in this respect, five types of procedure:

- The Council is empowered to act with no European Parliament involvement. This is the case, for example, in relation to measures adopted by the Council implementing the common commercial policy.<sup>17</sup>
- The European Parliament has the right to be consulted on Commission proposals. This procedure applies, for example, to Council measures implementing the common agricultural policy and common fisheries policy<sup>18</sup> and in respect of the Council's power to adopt measures to achieve a Treaty objective for which no specific power has been provided.<sup>19</sup> Under this procedure, the European Parliament must also be consulted on the adoption of any significant amendment to the Commission's proposal.
- The co-operation procedure.<sup>20</sup> This procedure provides that, in addition to being consulted on the Commission's proposal, the Parliament is also consulted on the common position adopted by the Council on the basis of that proposal (the second reading), and can propose amendments at that stage. This procedure now applies only in respect of Economic and Monetary Union.
- The co-decision procedure.<sup>21</sup> This procedure was introduced by the TEU. It provides that the Council and the Parliament must agree on a proposal before it can come into effect. If, on the second reading, the Parliament proposes amendments to the common position adopted by the Council which the Council does not accept, a Conciliation Committee, on which both institutions are represented, is convened to agree a joint text.

A joint text agreed by the Conciliation Committee has to be approved by both institutions and, if one fails to do so, the proposed legislation falls. If the Committee cannot agree on a joint text the proposed legislation falls.

The co-decision procedure is more or less the general rule.

- The assent procedure. On some matters of major importance, the Council can take action only with the assent of the European Parliament. For example, the Parliament's assent must be given for almost all international agreements, especially those with budgetary consequences. The Parliament's assent is also required before the Council can agree to an application by a European State to join the European Union, lay down electoral procedures for the Parliament, conclude association agreements with third countries or adopt certain legislative measures concerning the free movement of persons.

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<sup>17</sup> EC Treaty, Article 133.

<sup>18</sup> *ibid.*, Article 37(2).

<sup>19</sup> *ibid.*, Article 308.

<sup>20</sup> *ibid.*, Article 252.

<sup>21</sup> *ibid.* Article 251.

## Union legislative procedures

Outside the sphere of the Community the European Union is subject to different legislative procedures. The legislative instruments which apply in the area of police and judicial co-operation in criminal matters<sup>22</sup> and Common Foreign and Security Policy (CFSP)<sup>23</sup> are essentially inter-governmental in character. Voting in these inter-governmental pillars is *generally*<sup>24</sup> based on unanimity.

The Commission is less influential and has no exclusive right of initiative, although the Council may require the Commission to submit proposals for joint actions. Provisions exist for the Parliament to be kept informed. The European Court of Justice has no jurisdiction over the CFSP, and only a limited jurisdiction in the third pillar. Article 35 EU provides for review of the legality of third pillar decisions and Framework Decisions, and for an interpretive jurisdiction where the Member State has made the necessary declaration under Article 35(2) EU. (The UK has not made such a declaration.)

The instruments of the CFSP are common positions, joint actions, declarations, common strategies and international agreements.

Within the field of the CFSP, Member States agree on common strategies for joint action, usually based on unanimity. There is a system of 'constructive abstention', which allows Member States which do not want to participate in a project (but do not oppose it in principle) to let the others proceed. In such a case, a Member State can declare that its national interests are at stake. Some limited decisions are based on qualified majority voting.<sup>25</sup>

## Voting in the Council

The EC Treaty states that 'save as otherwise provided in this Treaty, the Council shall act by a majority of its members'.<sup>26</sup> On procedural matters the Council generally acts by simple majority, but, on matters of substance, the Treaty almost invariably provides for unanimity or qualified majority voting.<sup>27</sup>

Where the Council is required to act by qualified majority the votes allocated to each Member State are as follows:

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<sup>22</sup> This area includes mutual legal assistance in criminal cases, terrorism, organised crime, drug and arms trafficking, international fraud and corruption and crimes against persons and against children.

<sup>23</sup> Articles 11 to 28 EU.

<sup>24</sup> Exceptions include Article 24 EU, relating to certain agreements with States or international organisations.

<sup>25</sup> Where the Council implements common strategies decided on by the European Council and decisions on the implementation of joint actions and common decisions.

<sup>26</sup> EC Treaty, Article 205.

<sup>27</sup> There are exceptions, for example, where the Council lays down conditions under Article 284 for the collection of information and the carrying out of checks by the Commission or where the Council decides to call an Intern-Governmental Conference to amend the Treaty under Article 48.

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

A qualified majority is reached

- if a majority of member states (in some cases a two-thirds majority) approve; and
- if a minimum of 255 votes is cast in favour of the proposal, out of a total of 345 votes.

In addition, a member state may ask for confirmation that the votes in favour represent at least 62% of the total population of the Union. If this is found not to be the case, the decision will not be adopted.

Unanimity is required for the adoption of a measure which involves amendment of the Commission's proposal.<sup>28</sup> Where the Council is acting by unanimity, abstention by one or more Members will not prevent the adoption of the act, provided that all others vote in favour.<sup>29</sup>

## Procedure in the Council

Following the formal submission of a proposal to the Council by the Commission, the proposed measure goes via the Council and COREPER to one of the Council Working Groups, where expert examination takes place. Most of the detailed negotiation on proposals is carried out at this level, though important and controversial issues are left to COREPER and the Council to decide.

The Commission may alter its proposal at any time before the Council has acted on it.<sup>30</sup> In practice, the Commission frequently submits an amended proposal when the European Parliament, in its opinion on the Commission's original proposal, has suggested amendments. The Commission may also submit an amended proposal to facilitate agreement in the Council, or to take account of developments since the original proposal was submitted. In addition, successive drafts of a proposal are often worked out in the course of discussions at official level under the authority of the Presidency. The text of a measure when finally adopted thus frequently differs, sometimes considerably, from the text originally proposed by the Commission.

The Amsterdam Treaty includes a protocol imposing a six-week interval between the tabling of any legislative proposal and placing it on a Council agenda for decision. This is intended to give national parliaments adequate time to examine the proposal and the position their Government intends to

<sup>28</sup> Except when agreeing or adopting a joint text under the co-decision procedure (Article 251).

<sup>29</sup> EC Treaty, Article 205.

<sup>30</sup> EC Treaty, Article 250.

adopt towards it.

## Legislation by the Commission under implementing powers

The EC Treaty provides that the Council may give the Commission powers to implement rules which the Council lays down. The so called 'Comitology Decision'<sup>31</sup> sets out procedural models which the Council can adopt to govern the exercise of implementing powers by the Commission. Each requires the Commission to submit a draft of its proposals to a Committee consisting of representatives of Member States and chaired by a representative of the Commission. In the case of the *Advisory Committee* the Commission is required only to take the 'utmost account' of the opinion (commonly called the *avis*), but in the case of the *Management Committee* and *Regulatory Committee* the Committee has power to delay the adoption of the measure so as to enable the Council to intervene if it does not agree with what is proposed by the Commission.

## Implementation of Community law in the United Kingdom

The European Communities Act 1972<sup>32</sup> provides for the implementation of the Community Treaties. The Treaties are defined in section 1 (as amended), while section 2 provides for the rights and obligations arising from the Treaties to be given legal effect in the United Kingdom.

Under section 2(1), any right or obligation under those parts of Community law which are directly applicable is to be recognised, available in law and enforceable as an 'enforceable Community right'.

Section 2(2) of the 1972 Act makes provision for subordinate legislation to implement Community obligations which are not directly applicable, such as obligations arising under a directive, and to make supplementary provision to secure the effective operation and enforcement of those which are directly applicable. Subordinate legislation under section 2(2) may make any provision that might be made by Act of Parliament,<sup>33</sup> except that there is no power to impose or increase taxes, to legislate retrospectively or to confer new powers to make subordinate legislation.<sup>34</sup>

It is a fundamental characteristic of the Community legal system that Community law has primacy over the laws of the Member States<sup>35</sup> and provision is made in section 2(4) of the 1972 Act for any enactment passed or to be passed to be construed and have effect subject to directly applicable Community law.<sup>36</sup>

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<sup>31</sup> Council Decision 25 June 1999, on laying down the procedure for the exercise of implementing powers conferred on the Commission. OJ L 184, 17.7.99 p. 23.

<sup>32</sup> c. 68.

<sup>33</sup> *ibid.*, section 2(4).

<sup>34</sup> *ibid.*, schedule 2, paragraph 1, which also limits the power to create new criminal offences.

<sup>35</sup> See the Opinion of the European Court of Justice on the Agreement establishing the European Economic Area. (Opinion 1/91 *EEA Agreement* [1991] ECR I-6079).

<sup>36</sup> As to the effect of this provision in respect of Acts passed after the European Communities Act, see Official Report, 13 June 1972, cols 1320-22, and *Macarthy's Limited v Smith* [1981] 1 ALL E.R. 111 per Lord Denning., *Garland v British Rail* ([1983] 2 A.C. 751) per Lord Diplock and *R v Secretary of State for Transport ex parte Factortame* (No. 2) (Case C-213/89, [1991] A.C. 603) per Lord Bridge.

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