DECISION MAKING IN THE EU: THE LEGISLATIVE PROCEDURES

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The exercise of the legislative power is subordinated to the prior existence, in most cases, of a COM proposal (Art. 293 TFEU)

Start of the procedure 6 or 8 weeks as of the time when the proposal is made available in all official languages

Autonomous use by the COM of its power to initiate legislation

COM proposal determines the material scope within which the legislative power will be exerted. The other institutions cannot surpass the confines the proposal draws
Procedural consequences (Art. 293 TFEU):

- The Commission may alter its proposal as long as the Council has not acted.
- The Council may adopt it by qualified majority unless the article on which the proposal is based provides for unanimity.
- In all cases, the Council may only overrule the Commission by unanimity.
FRAMING THE LEGISLATIVE PROCEDURE
THE IMPORTANCE OF THE LEGAL BASIS

- No general procedure for the adoption of legislation
- Instead, each Treaty article providing for action by the EU lays down how the action is to be carried out
- Hence, the legal basis:
  - is the article within the Treaty that allows for EU action
  - refers to the legislative procedure to be followed
  - ordinary (QMV, up to three readings, Council and Parliament must agree)
  - special:
    - consultation or consent of Parliament
    - whether the Council will decide by QMV or unanimity
    - whether the Advisory Bodies must be formally consulted
- The choice of a certain legal basis, subordinated to the contents and aim of the act to be adopted. Not an easy choice in some cases!
Three main institutions involved: the so-called “institutional triangle”:
- European Commission
- European Parliament
- Council of the EU

Roles:
- The Commission proposes legislation, after carrying a process of consultation with the relevant interested parties
- The Council and Parliament jointly pass the laws (in some cases, the Council alone)
- Commission implements these EU legislative instruments, under the supervision and control of Council & Parliament or the Member States
Origins of the Commission proposal:
- Self initiative
- Pressure from the European Council or MS
- Petition from Parliament or Council
- Reaction to external events
- Part of the institutions’ work program
- Demand coming from interested parties or relevant stakeholders
DECISION MAKING IN THE COMMISSION
Elaboration of the Legislative Proposal - Overview

- external consultation documents, expert groups, hearings, seminars etc.
- draft + impact assessment
- internal coordination (c. 250 interservice groups)
- Interservice Consultation (ISC)
- College of Commissioners

Chefs de cabinet

Lead DG

DG/ responsible Commissioner

Secretariat-General
Who does the Commission consult?
- Interested parties
- Scientific experts
- Interest groups
- Economic operators
- Citizens
- Other institutions
How does the Commission carry out consultation?

- Consultation with relevant stakeholders
- European Agencies
- Internet consultations
- COM Hearings
- Green Papers / White Papers / Communications
- Joint Research Centre Institutes
- Expert Committees
What does an expert committee do?

- An expert committee:
  - Provides the Commission with independent specialized advice
  - Can assist the Commission all along the policy cycle
- An expert committee:
  - Cannot take political decisions
DECISION MAKING IN THE COMMISSION
Expert Committees

- Three main types of composition:
  - Government experts / national officials
  - Scientists or academics and / or interest group representatives
  - Mixed groups

- Enormous diversity

- Number: circa 1200

http://ec.europa.eu/transparency/regexpert/index.cfm
1. What is the problem?
2. What are the policy objectives?
3. What are the policy options?
4. What are the likely economic, social and environmental impacts?
5. How do the options compare?
6. Arrangements for future monitoring and evaluation
DECISION MAKING IN THE COUNCIL OF THE EU

Council of Ministers

POINTS approved without discussion

COREPER

(Part 2) Permanent Reps.

POINTS approved without discussion

Working Parties (c. 160)

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Committee Responsible

Chair
Rapporteur
Shadow Rapporteur(s)

Associated and Opinion-Giving Committees
Rapporteur (for opinion)

Coordinators of the Political Groups in each Committee

Committee Secretariat
**DECISION MAKING IN THE EUROPEAN PARLIAMENT**

Examination of Proposals

- **Work at committee level:**
  - Commission representation
  - Draft Report by Rapporteur; proposed draft amendments by other members of Committee
  - Vote on Report (draft amendments to the Commission proposal)

- **Plenary:**
  - Commissioner opens debate, giving the Commission’s response
  - Debate
  - Vote on amendments
  - Vote on amended proposal
  - Vote on legislative resolution (end of first reading)
DECISION MAKING IN THE EUROPEAN PARLIAMENT
Examination of Proposals

**PARLIAMENT**

**Committee**

*Draft amendments* to Commission Proposal (Draft Legislative Resolution)

**Plenary**

*Vote on amendments*

**DG(s) coordinators / Secretariat-General**

**GRI**
(Inter-Institutional Relations Group)

**HEBDO**
(Chefs de Cabinet)

**COMMISSION**

Commissioner gives response

**College**

authorisation

*If less than 10% of Committee are against, the item may be submitted for approval without amendment by a single vote (Rule 138)*
# Procedure

| Title | Amendment of Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community |
| Date submitted to Parliament | 20.12.2006 |
| Committee responsible | ENVI 1.2.2007 |
| Committee(s) asked for opinion(s) | ECON 1.2.2007, ITRE 1.2.2007, IMCO 1.2.2007, TRAN 1.2.2007 |
| Not delivering opinions | IMCO 1.3.2007 |
| Enhanced cooperation | TRAN 24.5.2007 |
| Rapporteur(s) | Peter Liese 14.3.2007 |
| Discussed in committee | 2.5.2007, 25.6.2007 |
| Date adopted | 2.10.2007 |
| Result of final vote | +: 54, -: 1, 0: 0 |
REPORT


Committee on the Environment, Public Health and Food Safety

Rapporteur: Peter Liese

Draftsman (*): Georg Jarzembowski, Committee on Transport and Tourism

(*): Procedure with associated committees - Rule 47 of the Rules of Procedure
Amendment 32
ARTICLE 1, POINT (3)
Article 3d, paragraph 5 (Directive 2003/87/EC)

5. By 28 February 2011 and by 28 February in each subsequent year, the competent authority of the administering Member State shall issue to each aircraft operator the number of allowances allocated to that aircraft operator for that year.

Justification

A two-stage approach entails the risk that competition might be distorted by the distinction between flights within and outside the EU; and in terms of CO₂ reduction it is not particularly effective. A realistic and hence appropriate option for the starting date would be 2010.
Debate – 12 November 2007, Strasbourg

Stavros Dimas, Member of the Commission. – (EL)
Mr President, ladies and gentlemen, it gives me particular satisfaction to open today’s discussion on the proposal to include aviation activities in the scheme for greenhouse gas emission allowance trading, known as the ETS, within the Community.

I should like to thank the rapporteur, Mr Liese, and the Committee on the Environment, Public Health and Food Safety for their efforts to date. I should also like to thank the other three committees for their participation and their contribution to the discussion.

It has already become widely accepted that climate change is taking place and is being caused by human activity.[...]

[closing] In summary, the Commission can support 27 of the 100 proposed amendments fully, in part or in principle. I will give Parliament’s secretariat a list detailing the Commission’s position on the amendments [...]

DECISION MAKING IN THE EUROPEAN PARLIAMENT
Examination of Proposals
Possibility of amendments by Plenary Assembly

Voting time

Impossibility to delegate the vote

Voting modalities
  - Simple majority = Majority of the votes cast
  - Absolute majority = Majority of the members composing the Parliament
THE VARIOUS LEGISLATIVE PROCEDURES

- Diverse procedures awarding various degrees of power to the EP
- Historical overview
  - Original procedure: Consultation procedure
  - 1971, "Isoglucose" judgment → the implication of the EP, an essential formality
  - 1987, Single European Act → Cooperation and assent
  - 1993, Maastricht Treaty → Co-decision
  - 1999, Amsterdam Treaty → extension and simplification of co-decision & limitation of cooperation to EMU issues
  - 2003, Nice Treaty → new extension of co-decision
  - European Constitution & Reform Treaty:
    - Co-decision becomes the standard procedure (ordinary legislative procedure)
    - Elimination of cooperation
Article 289

1. The *ordinary legislative procedure* shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission.

*This procedure is defined in Article 294.*
2. In the specific cases provided for by the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, shall constitute a special legislative procedure.

Depending on the area concerned and on the provision setting up the special procedure, ´participation´ of the Parliament can mean prior consultation (e.g. Art. 87,3 TFEU) or consent (e.g. Arts. 82,2, 218,6 TFEU).
Parliament and Council must agree

4 possible moments to reach agreement:
- first reading (80% + of files)
- early (EP) second reading
- (Council) second reading
- Conciliation and third reading

the results of informal tripartite negotiations (“trialogues”) are formalised in different ways at each of these moments

NB Council always acts by QMV
First Reading (no time limits)

Commission Proposal

Parliament

Council

Round One
Option 1 (rare)

Parliament rejects the Proposal

e.g. port services (exceptional lobbying...!)
First Reading (no time limits)

Round One

Option 2 (over 60% of all codecision files)

compromise text is adopted by Parliament (NB simple majority) and then approved by Council

Act of EP & Council
THE ORDINARY LEGISLATIVE PROCEDURE
First reading agreements

Commission Proposal

Council (general approach?)

informal trialogues compromise package

Presidency letter of assurance

Council adopts text as “A “item

Legislative Act signed by the two Presidents

EP Committee debate; mandate (draft amendments?)

EP Plenary adopts compromise amendments
First Reading
(no time limits)

Round One
Option 3
No agreement
On to round two....

No Act
Round Two

Option 1

pre-negotiated compromise

text is adopted by Council and
then approved by EP

Act of EP & Council

No Act
Round Two
Option 2 (rare)

Parliament rejects the Council Position
e.g. software patents

No Act
Round Two
Option 3
compromise text
is adopted by Parliament
(absolute majority), supported by Commission and then approved by Council.
Round Two
Option 4
No agreement
On to round three ....

6(8) weeks

Conciliation Committee

No Act

Second Reading

Third Reading

Act of EP & Council
THE ORDINARY LEGISLATIVE PROCEDURE
EP delegation to conciliation

Parliament Delegation
Chair: 1 of 3 Vice-Presidents
Members: Chair of Committee responsible, Rapporteur, 22 others + substitutes

Council Delegation
Chair: Minister from Presidency
Members: Coreper

European Commission
- to help in “reconciling positions”
OLP: CONCILIATION TRIALOGUES

**Council**
Chairman of Coreper
+ Chair of Working Party

**Commission**

**Parliament**
Chair of Delegation
+ Committee Chair
+ Rapporteur
THE ORDINARY LEGISLATIVE PROCEDURE
Modifications introduced by the Lisbon Treaty

- **Extension of codecision to new policy areas**
  - incl. agriculture, most of Police and Judicial Cooperation in Criminal Matters, trade...

- **EP “opinion” becomes “position”**

- **Council “common position” becomes “position”**

- **may also be on**
  - the initiative of ¼ Member States
    - administrative cooperation in AFSJ
    - Police and Judicial Cooperation in Criminal Matters
  - a recommendation by the European Central Bank
    - amendment of part of statutes
  - a request of the European Court of Justice
    - amendment of part of statutes
  - establishment of specialized courts
May be suspended 4 months & referred to European Council
- Judicial Cooperation in Criminal Matters / definition of criminal offences
  - at request of any one MS
  - 9 MS may proceed as enhanced cooperation
- operational cooperation between police etc.
  - if no unanimity in Council, group of 9 may refer
  - 9 MS may proceed as enhanced cooperation
- social security for migrant workers
  - at request of any one MS
THE CONSULTATION PROCEDURE
The procedure in a nutshell

- The consultation procedure allows the EP to give its opinion on the COM proposal
- In those cases stipulated by the Treaty, the Council is obliged to officially consult the EP and obtain its opinion before it can take any decision.
The consultation procedure

COMMISSION SUBMITS SIMULTANEOUSLY ITS PROPOSAL TO THE COUNCIL AND THE EP

THE COUNCIL OFFICIALY CONSULTS THE EP

EP'S POSITIVE OPINION, APPROVING THE COM PROPOSAL

COMMISSION EXAMINES AMENDMENTS, EITHER ACCEPTING OR REJECTING THEM. ELABORATION OF A MODIFIED PROPOSAL

COUNCIL ADOPTS THE ACT:
+ QM TO ACCEPT THE COM PROPOSAL
+ UNANIMITY TO AMEND IT AND TO INTRODUCE CHANGES / AMENDMENTS

EP GIVES ITS OPINION, INCORPORATING AMENDMENTS

COUNCIL ADOPTS THE ACT:
+ QM TO ACCEPT THE COM MODIFIED PROPOSAL
+ UNANIMITY TO AMEND IT AND TO INTRODUCE CHANGES
THE CONSULTATION PROCEDURE
Modifications introduced by the Lisbon Treaty

- **QMV and EP consultation (\(=\) specific R & D programmes)**

- **Unanimity and EP consultation**
  
  e.g. - detailed rules on electoral rights
  - tax harmonization, approximation of laws, measures in energy having a fiscal character, sensitive areas of social policy
  - family law with cross-border implications, operational police cooperation
  - system of own resources
The Council has to obtain the European Parliament's consent before certain very important decisions are taken.

The Parliament cannot amend a proposal: it must either accept or reject it. In case of rejection, the act is not adopted.
The consent procedure (2)

COMMISSION PROPOSAL
(or of the EP or of the ECB or of applicant State)

COUNCIL ADOPTS POSITION (unanimity)

ACCEPTANCE BY THE EP (majority of the votes cast OR majority of members of EP)

THE ACT IS ADOPTED

REJECT BY THE EP (majority of the votes cast OR majority of members of EP)

THE ACT IS NOT ADOPTED
THE CONSENT PROCEDURE
 Modifications introduced by the Lisbon Treaty

- **Unanimity and EP consent**
  - action to combat discrimination
  - strengthening citizens' rights
  - uniform procedure for EP elections
  - establishment of European Public Prosecutor's Office
  - implementing measures for system of own resources

- **EP Regulations on its own initiative**
  - regulations governing MEPs
  - regulations for Ombudsman
  - right of inquiry (with consent of Council and Commission)
THE CONSENT PROCEDURE
Modifications introduced by the Lisbon Treaty

- **Council unanimity, Commission proposal, EP consent**
  - decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure
  - Any national parliament may block this

- **Council unanimously on Commission proposal**
  - measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities
  - implementing measures to freeze assets etc. in anti-terrorism

- **Council unanimously with EP consent**
  - new areas of crime to come under common rules
“Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.” (Art. 11,4 TEU)
THE EUROPEAN CITIZENS’ INITIATIVE

- **Commission proposal for a Regulation, 31 March 2010**
  - citizens’ committee (7 persons from 7 countries)
  - registration with the Commission
  - 12 months to obtain 1 million signatures in 7 countries
  - if successful, right to public hearing with EP / Commission
  - Commission has 3 months to decide whether to proceed: must give legal and political reasons if decision is negative
THE INVOLVEMENT OF NATIONAL PARLIAMENTS

- New Art. 12 TEU & Protocol 1
- National Parliaments contribute actively to the good functioning of the Union:
  a. through being informed by the institutions....
  b. by seeing to it that the principle of subsidiarity is respected....
  c. by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms....
  d. by taking part in the revision procedures of the Treaties....
  e. by being notified of applications for accession to the Union
  f. by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament....
‘Draft legislative acts’ must be sent to national parliaments

8 weeks for reasoned opinions on subsidiarity

Member States have 2 votes each (may be 1 per chamber)

If 1/3 oppose a draft (1/4 for Police Coop. / Judicial Coop. in Criminal Matters), the draft must be reviewed,

if a simple majority is opposed, draft must be reviewed; if Commission maintains proposal, Council and Parliament take account of position of national parliaments and either may halt procedure (55% of Council or majority of votes in EP)
ELECTRONIC INSTRUMENTS FOR THE FOLLOW-UP OF LEGISLATIVE PROCEDURES

- Oeil (hosted by the European Parliament):
  
  http://www.europarl.europa.eu/oeil/

- Pre-Lex (hosted by the European Commission):
  
  http://ec.europa.eu/prelex/apcnet.cfm?CL=en
Do You Have Any Questions?

We would be happy to help.

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