

## BRIEFING SERIES ON THE EUROPEAN UNION :

### BRIEFING 1 – EUROPEAN INSTITUTIONS AND DECISION-MAKING PROCESSES

#### Introduction

Policy and legislative developments arising out of the European Union (EU) significantly impact on Northern Ireland (NI).<sup>1</sup> This briefing – Briefing 1 in a three-part series – is intended to facilitate the Members of the Committee of the Office of the First Minister and Deputy First Minister (the Committee) in their scrutiny of such developments. More specifically, the briefing seeks to assist the Committee in deciding how it should handle European matters.

In simple terms, it demystifies the European institutions and decision-making processes. It is divided into the following two sections:

1. an overview of the five main EU institutions that explains the composition, roles and responsibilities of each institution, as well as the inter-relationships between them; and,
2. an outline of key aspects of EU policy and law-making.<sup>2</sup>

Two subsequent briefings will follow this one. They will respectively address the relevance of EU law and policy to NI devolved governance (Briefing 2), and the approaches taken in other Member States' legislatures to strategically consider European matters (Briefing 3).

#### 1.0 EU Institutions

The EU institutions govern the EU and consequently play a role - to a greater or lesser extent – in the policy and law-making processes of the EU. The institutions were set up under the Treaties, which were agreed by the Member States' presidents and prime ministers and ratified by their parliaments, to become the foundation of everything the EU does.

The three main EU institutions are the European Commission, the European Parliament and the Council of the European Union. This section provides an overview of them as well as the two main institutions, namely the European Court of Justice and the Court of Auditors. This section also highlights two EU bodies: (1) the European Council and the European Economic and Social Committee, given their significance in EU decision-making; and, (2) the Committee of the Regions, given its significance in decision-making, particularly from a NI regional perspective. The

<sup>1</sup> It was approximated in Northern Ireland in 2002 that 80 percent of policies in the Office of First Minister and Deputy First Minister's Programme for Government and up to 60 percent of all Northern Ireland legislation concerned the EU.

<sup>2</sup> This paper addresses EU decision-making processes relating to only policy and law: it does not address those relating to the EU Budget.

composition, roles and responsibilities of each of the afore-mentioned is explained, as well as the inter-relationships between them.

(The EU has a number of other bodies that play specialised roles in the EU's decision-making processes, as prescribed by the treaties and elsewhere.<sup>3</sup> These bodies are beyond the scope of this briefing: nonetheless their existence should be noted.)

## 1.1 European Commission<sup>4</sup>

### What is it?

The European Commission was set up in the 1950s under the EU's founding treaties, similar to the Parliament and the Council. It is the politically independent institution that represents and upholds the interests of the EU as a whole. It is the 'driving force' within the EU's institutional system in that it proposes legislation, policies and programmes of action and is responsible for implementing the decisions of the Parliament and the Council.

The term "Commission" is formally used in two senses. First, it refers to the "members of the Commission" (Commissioners). Second, it refers to the institution itself and to its staff.

### Who sits on the Commission?

The Commissioners and the President constitute the Commission. It is based on the principle of collective responsibility.

#### *The Commissioners*

The Commissioners include men and women appointed by the Member States and the Parliament to run the institution and take its decisions. All have held political positions in their countries of origin, and many have been government ministers; but as Commission members, they are committed to acting in the interests of the EU as a whole and not taking instructions from national governments.

#### *The President*

The President of the Commission is appointed by the Governments of the Member States, and then approved by the European Parliament. This dual legitimacy gives the President political authority, which he or she exercises in a variety of ways.

### What is the role of the Commission?

The European Commission has four main roles, namely:

1. to propose legislation to the Parliament and the Council;
2. to manage and implement EU policies and the budget;
3. to enforce European law (jointly with the European Court of Justice);
4. to represent the EU on the international stage, for example, by negotiating agreements between the EU and other countries.

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<sup>3</sup> Other EU bodies that contribute to these processes include; consultative bodies (such as the European Economic and Social Committee); financial bodies (such as the European Central Bank and the European Investment Bank); inter-institutional bodies (such as the Office of Official Publications of the European Communities); and, decentralised agencies (such as the Community agencies, including European Institute for Security Studies, European Union Satellite Centre, Europol, and Eurojust).

<sup>4</sup> [http://ec.europa.eu/atwork/basicfacts/index\\_en.htm](http://ec.europa.eu/atwork/basicfacts/index_en.htm)  
[http://ec.europa.eu/atwork/index\\_en.htm](http://ec.europa.eu/atwork/index_en.htm)

### What is the role of the President?

The President has various roles, including:

1. He or she appoints the other Commissioners in agreement with the member state Governments, and subject to the European Parliament's approval.
2. He or she decides the policy priorities for the Commission's activities.
3. He or she organises the Commission's work, calls and chairs meetings of the Commissioners.
4. He or she can assign and re-assign responsibility for specific activities to them or ask them to resign.
5. He or she can set up working groups.
6. He or she represents the Commission, and in this capacity takes part in meetings of the European Council and of the Group of seven leading industrialised countries and Russia (G8), as well as in the major debates of the European Parliament and the EU's Council of Ministers.

Consequently, although the work of the Commission is based on the principle of collective responsibility, the President is much more than 'a first among equals'.

### How does the Commission categorise its work?

There are four subject headings to the work of the Commission – (1) economy and society, (2) international affairs, (3) institutional affairs and (4) finance.

### Who supports the Commission's work?

A number of groups support the work of the Commission. The President's Private Office (the Cabinet) and the Secretariat General (the 26 directorates-general and nine services<sup>5</sup>) help to facilitate his or her work. They are responsible for the practical organisation of the Commission's work and for its relations with the other institutions, as well as for co-ordination between the various Commission departments.

Other key support is provided by working groups (when appointed).

### Who is the Commission answerable to politically?

The Commission remains politically answerable to Parliament, which has the power to dismiss it by adopting a 'motion of censure'. The Commission attends all the sessions of Parliament, where it is required to clarify and justify its policies. It also replies regularly to written and oral questions posed by Members of the European Parliament (MEPs).

### When and how is the Commission appointed?

A new Commission is appointed every five years, within six months of the elections to the European Parliament. The procedure is as follows:

1. The Member State governments agree together on who to designate as the new Commission President.
2. The Commission President-designate, in discussion with the Member State governments, chooses the other Members of the Commission.
3. The new Parliament then interviews all prospective members and gives its opinion on the entire "college". If approved, the new Commission can officially start work the following January.

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<sup>5</sup> [http://ec.europa.eu/dgs\\_en.htm](http://ec.europa.eu/dgs_en.htm)

### Where is the Commission located?

The 'seat' of the Commission is in Brussels (Belgium), but it also has offices in Luxembourg, representations in all EU countries and delegations in many capital cities around the world.

## **1.2 European Parliament<sup>6</sup>**

### What is it and who sits on it?

The European Parliament represents, in the words of the 1957 Treaty of Rome, 'the peoples of the States brought together in the European Community'. It derives its legitimacy from direct universal suffrage across the EU. Its members (785 MEPs from 27 Member States) are elected every five years.

Through a series of treaties, it has steadily acquired greater influence and power. These treaties, particularly the 1992 Maastricht Treaty and the 1997 Amsterdam Treaty, have transformed the European Parliament from a purely consultative assembly into a legislative parliament, exercising powers similar to those of the national parliaments. Today the European Parliament, as an equal partner with the Council of Ministers, passes the majority of European laws.

### What are the Parliament's roles?

The Parliament has three main roles:

1. It shares with the Council the power to legislate. The fact that is a directly-elected body helps guarantee the democratic legitimacy of European law.
2. It exercises democratic supervision over all EU institutions, and in particular the Commission. It has the power to approve or reject the nomination of Commissioners, and it has the right to censure the Commission as a whole.
3. It shares with the Council authority over the EU budget and can therefore influence EU spending. At the end of the procedure, it adopts or rejects the budget in its entirety.

These three roles are described in greater detail below.

### What are the powers of the European Parliament?

Like all parliaments, the European Parliament has three fundamental powers:

1. legislative power;
2. budgetary power; and,
3. supervisory power.

Its political role within the EU is growing.

### How is Parliamentary work categorised?

The Parliament's work is divided into two main categories:

1. *Preparing for the plenary session* - This is done by the MEPs in the various parliamentary committees that specialise in particular areas of EU activity. The issues for debate are also discussed by the political groups.
2. *The plenary sessions* - They are attended by all MEPs, and are normally held in Strasbourg (one week per month) and sometimes in Brussels (two days). At these sessions, the Parliament examines proposed legislation and votes

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<sup>6</sup> <http://www.europarl.europa.eu/parliament/public.do?language=EN>  
<http://www.europarl.europa.eu/parliament/expert/staticDisplay.do?language=EN&id=57>

on amendments before coming to a decision on the text as a whole. Other items on the agenda may include Council or Commission "communications" or questions about what is going on in the EU or the wider world.

#### How is the Parliament organised?

Members of the European Parliament (MEPs) sit in political groups in the Chamber, not in national delegations, as well as 'non-attached' members.

MEPs also sit on parliamentary committees and delegations, as either full or substitute members.

#### *The Political Groupings*<sup>7</sup>

The vast majority of MEPs belong to one or other of the political groups. Members who do not belong to any of the groups are known as 'non-attached Members'.

A political group must include MEPs from more than one member state and have a minimum number of members.

There currently are eight political groups in the European Parliament. The groups draw on more than a hundred national parties. Several of the political groups have links to parties at European level, recognised by the Treaty as 'a factor for integration within the European Union which contributes to forming a European awareness and to expressing the political will of the citizens'.

Each political group has a chairman, a bureau and a secretariat.

#### *The Committees*<sup>8</sup>

The Parliament currently has 20 *standing committees*.<sup>9</sup> These committees do the preparatory work for the Parliament's plenary sessions. The committees draw up and adopt reports on legislative proposals and own-initiative reports. They also prepare opinions for other standing committees. Each committee appoints a chairman, three vice-chairmen and has a secretariat.

In addition to the standing committees, Parliament can set up *temporary committees* and *committees of inquiry*.<sup>10</sup>

Moreover, there are *joint parliamentary committees*,<sup>11</sup> which maintain relations with the applicant country parliaments, the *inter-parliamentary delegations*<sup>12</sup> with parliaments in other non-EU states.

#### *The President*<sup>13</sup>

The President oversees all the activities of Parliament and its constituent bodies. He or she presides over its plenary sittings and chairs the meetings of the Bureau and the Conference of Presidents. He or she represents Parliament in all external relations, particularly international relations.

<sup>7</sup> <http://www.europarl.eu.int/groups/default.htm>

<sup>8</sup> <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=45&pageRank=5&language=EN>

<sup>9</sup> <http://www.europarl.europa.eu/activities/expert/committees.do?language=EN>

<sup>10</sup> <http://www.europarl.europa.eu/activities/expert/committees.do?language=EN>

<sup>11</sup> <http://www.europarl.europa.eu/activities/expert/committees.do?language=EN>

<sup>12</sup> <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=45&pageRank=6&language=EN>

<sup>13</sup> <http://www.europarl.eu.int/president/home/en/default.htm>

*The Bureau*<sup>14</sup>

The Bureau is the regulatory body responsible for Parliament's budget and for administrative, organisational and staff matters. In addition to the President and 14 Vice-Presidents, it includes, in a consultative capacity, the Quaestors,<sup>15</sup> who are responsible for administrative matters relating directly to MEPs. The members of the Bureau are elected for two and a half years.

*The Conference of Presidents*<sup>16</sup>

The Conference of Presidents is made up of the President of Parliament and the political group chairmen. It is responsible for Parliament's political organisation, and therefore establishes the size and terms of reference of parliamentary committees and delegations, decides on the distribution of seats in the Chamber and draws up the timetable and agenda for plenary sessions.

It also considers the recommendations of the Conference of Committee Chairmen<sup>17</sup> regarding the work of the committees and plenary session agendas.

When, where and how does the Parliament meet?

The Parliament is *the only Community institution that meets and debates in public*. Its decisions, positions and proceedings are published in the Official Journal of the European Communities.

Its 'seat' is in Strasbourg, but it has three places of work – Strasbourg, Brussels and Luxembourg.

In Strasbourg the Parliament meets in full session, spending one week each month at a plenary session. Additional two-day sittings are held in Brussels.

Two weeks in every month are set aside for meetings of Parliament's committees in Brussels. The remaining week is devoted to meetings of the political groups.

With the assistance of its translators and interpreters, Parliament works in all the EU's official languages (17 at present).

Who supports the Parliament's work?

The Secretary-General (some 3,500 officials, who were recruited by competition from all the countries of the Union), support the work of the European Parliament. (This excludes the political groupings, which have their own staff as well as MEPs with their own assistants.)

The European Parliament has to work within the constraints of multilingualism - which accounts for about one third of its staff - and the fact of having three places of work - Strasbourg, Brussels and Luxembourg. (The General Secretariat of the European Parliament and its departments are located in Luxembourg. For practical reasons, however, a number of officials and the staff of the European Parliament's political groups work in Brussels.)

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<sup>14</sup> [http://www.europarl.eu.int/orgpresi/default\\_en.htm](http://www.europarl.eu.int/orgpresi/default_en.htm)

<sup>15</sup> [http://www.europarl.eu.int/orgpresi/default\\_en.htm](http://www.europarl.eu.int/orgpresi/default_en.htm)

<sup>16</sup> [http://www.europarl.eu.int/orgpresi/default\\_en.htm](http://www.europarl.eu.int/orgpresi/default_en.htm)

<sup>17</sup> [http://www.europarl.eu.int/orgpresi/default\\_en.htm](http://www.europarl.eu.int/orgpresi/default_en.htm)



### 1.3 The Council of the European Union<sup>18</sup>

#### What is it and who sits on it?

Like the European Parliament, the Council of the EU (also known as the Council of Ministers) was set up by the founding treaties in the 1950s to represent the individual Member States. It is the EU's main decision-making body. One minister from each of the EU's national governments attend its meetings.

Each minister in the Council is empowered to commit his or her government. In other words, the minister's signature is the signature of the whole government. Moreover, each minister in the Council is answerable to his or her national parliament and to the citizens that parliament represents. This ensures the democratic legitimacy of the Council's decisions.

Determinations of which ministers attend which meeting depends on the agenda subjects. For example, if the Council is to discuss environmental issues, the Environment Minister from each EU country attends the meeting, and it will be referred to as the 'Environment Council'.

#### How is the Council organised?

The Council consists of: the 27 Member States' ministers (as set out above sub-section) from one of the configurations (see below); the Council Presidency; and, the Permanent Representatives Committee (COREPER).

#### *The Council Configurations<sup>19</sup>*

The present nine configurations include:

1. General Affairs and External Relations
2. Economic and Financial Affairs ("ECOFIN")
3. Cooperation in the fields of Justice and Home Affairs
4. Employment, Social Policy, Health and Consumer Affairs
5. Competitiveness
6. Transport, Telecommunications and Energy
7. Agriculture and Fisheries
8. Environment
9. Education, Youth and Culture

Nevertheless, the Council remains one single institution.

#### *The Council Presidency<sup>20</sup>*

The Presidency of the Council rotates every six months. In other words, each EU country in turn takes charge of the Council agenda and chairs all the meetings for a six-month period, promoting legislative and political decisions and brokering compromises between the Member States.

Foreign Ministers meet once a month in the *General Affairs Council* (GAC). As well as discussing foreign affairs, they have a general co-ordination role over the work of the other ministerial councils and prepare the meetings of Heads of Government known as the European Council.

<sup>18</sup> <http://www.consilium.europa.eu/showPage.asp?id=242&lang=en&mode=g>

<sup>19</sup> <http://www.consilium.europa.eu/showPage.asp?id=426&lang=en&mode=g>

<sup>20</sup> <http://www.eu2007.de/en/index.html>

There are about 90 Council meetings a year. Before reaching Council meetings, issues are usually discussed extensively at a lower level. Each member state has a delegation in Brussels known as its Permanent Representation. These are staffed by diplomats as well as officials from the domestic ministries that are most affected by decisions taken by the Community. They, in turn, are backed up by officials in the home capitals.

Before decisions are finally taken at Ministerial Councils, the Heads of the Permanent Representations will discuss the issues fully at one of its weekly Committee meetings, known as COREPER, or at the Deputies' weekly meeting, known as COREPER II (see below).

(Also note that the Economic and Financial Affairs Council (ECOFIN Council - composed of the economics and finance ministers) co-ordinates the economic policies of Member States, when the Member States decide they want an overall economic policy based on close co-ordination between their national economic policies.)

*Permanent Representatives Committee (COREPER)<sup>21</sup>*

In Brussels, each EU Member State has a permanent team, which represents it, and defends its national interest at EU level. The head of each team is, in effect, his or her country's ambassador to the EU, and are known as 'permanent representatives'. They meet weekly within the Permanent Representatives Committee (COREPER).

COREPER's role is to prepare the work of the Council, with the exception of agricultural issues, which are handled by the Special Committee on Agriculture.

The COREPER is divided into two parts:

1. COREPER I is made up of the Deputy Permanent Representatives and follows more technical tasks, preparing the meetings of the following Council formations: Employment; Social Policy; Health and Consumers; Competitiveness; Transport, Telecommunications and Energy; Agriculture and Fisheries; Environment; Education, Youth and Culture.
2. COREPER II is made up of the Permanent Representatives and follows the institutional and policy issues of major political value, and prepares the meetings of the General Affairs and External Relations, Economic Affairs and Finance and Justice and Internal Affairs Council.

The COREPER I and II are, in turn, prepared respectively by the 'Antici Group' and the 'Mertens Group', composed of assistants directed by the Permanent Representatives and the Deputy Permanent Representatives.

What is the role of the Council of the EU?

The Council has six key responsibilities, namely:

1. To pass European laws. In many fields it legislates jointly with the European Parliament.
2. To co-ordinate the broad economic policies of the Member States.
3. To conclude international agreements between the EU and one or more states or international organisations.
4. To approve the EU's budget, jointly with the European Parliament.

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<sup>21</sup> <http://www.consilium.europa.eu/showPage.asp?id=427&lang=en&mode=g>



5. To develop the EU's Common Foreign and Security Policy (CFSP: for further details see the section on Common Foreign and Security Policy), based on guidelines set by the European Council.
6. To co-ordinate co-operation between the national courts and police forces in criminal matters (see the section on Justice and Home Affairs).

Most of these responsibilities relate to the "Community" domain – that is, areas of action where the member states have decided to pool their sovereignty and delegate decision-making powers to the EU institutions. (This domain is known as the EU's 'First Pillar'. The 'Three Pillars' form the legal bases of EU and Member States' powers (competences), and they arise from European treaties signed by the Member States. (Appendix 1 contains a table outlining the Three Pillars.)

However, the last two responsibilities largely relate to areas in which the member states have not delegated their powers, but are simply working together. This is called 'inter-governmental co-operation' (and covers the EU's second and third pillars – see appendix 1).

#### Who supports the work of the Council?

As highlighted above, there are a number of parts to the Council that support its work. Another group is the General Secretariat, which prepares and ensures the smooth functioning of the Council's work at all levels.

In 1999, Mr Javier Solana was appointed Secretary-General of the Council. He is also High Representative for the Common Foreign and Security Policy (CFSP), and in this capacity he helps the Council to draft and implement political decisions. He also engages in political dialogue, on the Council's behalf, with non-EU countries.<sup>22</sup>

The Secretary-General is assisted by a Deputy Secretary-General in charge of managing the General Secretariat.

#### How does the Council vote?

Decisions in the Council are taken by vote. The bigger the country's population, the more votes it has. But the number is not strictly proportional: it is adjusted in favour of the less populous countries.

From 1 November 2004, the number of votes each country can cast (including the new member states) is as follows:

#### *"Qualified majority voting"*

The most common voting procedure in Council 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. (The details are given below).

However, in some particularly sensitive areas such as CFSP, taxation, asylum and immigration policy, Council decisions have to be unanimous. In other words, each Member State has the power of veto in these areas.

The Treaty of Nice changed the voting rules, allowing the Council to take decisions by *qualified majority voting* in quite a number of areas that used to require unanimity.

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[http://www.consilium.europa.eu/cms3\\_applications/applications/solana/index.asp?lang=EN&cmsid=246](http://www.consilium.europa.eu/cms3_applications/applications/solana/index.asp?lang=EN&cmsid=246)

Since 1 November 2004, a qualified majority is reached if a majority of Member States (and in some cases a two-thirds majority) approve AND if a minimum of votes is cast in favour.

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.

#### **1.4 European Court of Justice<sup>23</sup>**

##### What is it and what does it do?

The European Court of Justice (ECJ) was set up in 1952 under the Treaty of Paris (establishing the European Coal and Steel Community). It upholds the rule of European law, that is, it ensures the consistent interpretation and application of EU legislation (technically known as "Community law") in each Member State; that such law is always identical for all parties and in all circumstances across the EU.

It is empowered to settle legal disputes between member states, EU institutions, businesses and individuals.

##### What is the composition of the ECJ?

The ECJ is composed of one judge per Member State, so that all the EU's national legal systems are represented. But for the sake of efficiency, the ECJ will be authorised to sit as a 'Grand Chamber' of only 13 judges, instead of always having to meet in a plenary session attended by all the judges.

The judges are either former members of the highest national courts or highly competent lawyers who can be relied on to show impartiality. They are appointed by joint agreement of the governments of the Member States. Each is appointed for a term of six years, after which they may be re-appointed for one or two further periods of three years.

##### Are there any other courts attached to the ECJ?

Attached to the ECJ is the 'Court of First Instance' (CFI) - created in 1989. It is responsible for giving rulings on certain kinds of case, particularly actions brought by private individuals and cases relating to unfair competition between businesses.

The ECJ and the CFI each have a President, chosen by their fellow judges to serve for a term of three years.

##### Who supports the work of the ECJ?

The ECJ is assisted by eight "advocates-general". Their role is to present reasoned opinions on the cases brought before the Court. They must do so publicly and impartially.

Similar to ECJ justices, they are either former members of the highest national courts or highly competent lawyers who can be relied on to show impartiality. They are appointed by joint agreement of the governments of the member states. Each is appointed for a term of six years, after which they may be re-appointed for one or two further periods of three years.

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<sup>23</sup> <http://www.curia.europa.eu/en/plan/index.htm>

## 1.5 Court of Auditors<sup>24</sup>

### What is the role of it?

The Court of Auditors (CA) – established in 1977 - checks the financing of EU activities to ensure that all the Union's revenue has been received and all its expenditure incurred in a lawful and regular manner, and that the EU budget has been properly managed. It is independent of the other EU institutions, but is in regular contact with them.

The CA is authorised to investigate the paperwork of any organisation handling EU income or expenditure. If need be, it carries out on-the-spot checks. Its findings are provided in written reports that draw the attention of the European Commission and the member states to any problems.

It is free to decide how to schedule its auditing activities, how and when to present its observations, and what publicity to give to its reports and opinions.

If the CA discovers fraud or irregularities, it passes the information as quickly as possible to the EU bodies responsible, so they can take appropriate action. It has no legal powers of its own.

Every year it presents the Parliament and the Council with a report on the previous financial year. The comments contained in the annual report have an important role in informing the Parliament's decision about the Commission's handling of the budget, specifically whether it should be approved. If satisfied, the CA also sends the Parliament and the Council a statement that assures European taxpayers' money has been properly used.

The CA also gives its opinion before the EU's financial regulations can be adopted. It can comment at any time on specific issues, or it can give an opinion at the request of one of the EU institutions.

### What is the composition of the CA?

The CA has one member from each EU country, appointed by the Council for a renewable term of six years. (After the next wave of enlargement in May 2004, there will remain one member per EU country; but for the sake of efficiency, the CA can set up 'chambers' (with only a few members each) to adopt certain types of report or opinion.

In their countries of origin, the CA members of the Court have all worked for an auditing institution or are specifically qualified for that work. They are chosen for their competence and independence, and they work full-time for the Court.

The members elect one of their number as President for a term of three years.

### Who supports the work of the CA?

The CA has approximately 550 qualified staff; approximately 250 of them are auditors. The auditors are divided into 'audit groups' that prepare draft reports on which the CA takes decisions.

The auditors frequently go on inspection tours in the other EU institutions, the Member States and any country that receives aid from the EU.

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<sup>24</sup> [http://www.eca.europa.eu/sitemap\\_en.htm](http://www.eca.europa.eu/sitemap_en.htm)

## 1.6 European Council<sup>25</sup>

### What is the European Council?

The European Council brings together the Heads of State or Government of the Member States of the EU and the President of the European Commission. It should not be confused with the 'Council of Europe' (which is an international organisation) or with the 'Council of the European Union' (which is discussed above).<sup>26</sup>

### What is the purpose of the European Council?

The European Council provides the impetus for the major political issues relating to European integration, such as: amendments to the Treaties and changes to the institutions; and, declarations on external relations in the context of the common foreign and security policy. It also serves as a forum for top-level political discussion in crisis situations and it endeavours to resolve disagreements between Member States.

Following negotiations between the Member States, the European Council, on a consensus basis, can issue:

1. Guidelines setting out the European Council's priorities relating to management of the Union and its common policies by the Council of Ministers and the European Commission. They sometimes take the form of general policy guidelines and determine the timescale and specific objectives; and or,
2. Declarations or resolutions, expressing the views of the Heads of State or Governments on a specific point.

Hence, the European Council's primary function is to give the general impetus and social, economic and political guidance in all areas of EU activities at both European and national levels. *But its guidelines and declarations are not legally binding.* To be put into effect, they must follow the routine procedure for Community legal instruments: proposals from the European Commission voted on by the European Parliament and the Council of the European Union, followed where necessary by implementation at national level.

## 1.7 Committee of the Regions<sup>27</sup>

### What is it?

The Committee of the Regions (COR) was set up in 1994 under the Treaty on European Union (the Maastricht Treaty). It is a consultative body that represents regional and local authorities, to ensure that their views are represented in EU decision-making and that regional and local identities and prerogatives are respected.

### What is the composition of the COR?

The COR has *344 members and 344 alternate members.* The number from each Member State approximately reflects its population size. (The UK has 24 members.)

Members are elected municipal or regional politicians, representing the entire range of local and regional government activities in the EU. They may be regional

<sup>25</sup> [http://europa.eu/european\\_council/index\\_en.htm](http://europa.eu/european_council/index_en.htm)

<sup>26</sup> The role played by the European Council is crucial, but differs from that of the 'Council of the European Union', whose members are Ministers from the Member States. The Council of the European Union exercises the powers conferred on it by the Treaty, subject to review by the European Court of Justice, and it adopts Community legal instruments.

<sup>27</sup> <http://www.cor.europa.eu/en/index.htm>

presidents, regional parliamentarians, town councillors, mayors of large cities, etc. They are nominated by the EU governments, but they work in complete political independence. The Council of the EU appoints them for four years, and they may be re-appointed.

Under the Treaty of Nice, they also must have a mandate from the authorities they represent, or must be politically accountable to them.

COR membership appoints a *President* and a *First Vice-President* for two-year terms of office.

The *Bureau* is responsible for implementing the COR's political programme. It is elected for 2 years from the COR members, and consists of 60 members, including the President and First Vice-President.

There are four *political groupings* in the COR: the Party of European Socialists Group, the European People's Party Group, the European Liberal Democrats and Reform Party Group and the European Alliance Group.

#### What is the role of the COR?

The role of the Committee of the Regions is to put forward the local and regional points of view on EU legislation. It does so by issuing opinions on Commission proposals.

The Commission and the Council must consult the Committee of the Regions on topics of direct relevance to local and regional authorities, but they also can consult the Committee whenever they wish. For its part, the Committee can adopt opinions on its own initiative and present them to the Commission, the Council and the Parliament.

#### How does the COR operate?

The COR holds five plenary sessions every year to discuss and define its general policy and to adopt its opinions.

The members of the Committee are assigned to specialist 'commissions', which prepare for the plenary sessions. There are six commissions, including:

1. Commission for Territorial Cohesion Policy (COTER)
2. Commission for Economic and Social Policy (ECOS)
3. Commission for Sustainable Development (DEVE)
4. Commission for Culture and Education (EDUC)
5. Commission for Constitutional Affairs and European Governance (CONST)
6. Commission for External Relations (RELEX).

### **1.8 European Economic and Social Committee<sup>28</sup>**

#### What is it?

The European Economic and Social Committee (EESC) represents civil society and the two sides of industry. It was established in 1957 under the Treaty of Rome, as a consultative body representing employers, trade unions, farmers, consumers and the other interest groups that collectively make up 'organised civil society'. As an integral part to the EU decision-making processes, it presents their views and defends their interests in policy discussions with the Commission, the Council and the Parliament.

<sup>28</sup> [http://www.eesc.europa.eu/index\\_en.asp](http://www.eesc.europa.eu/index_en.asp)

It does so upon its own initiative or in response to requests from the Commission, the Council or the Parliament. In effect, it is a bridge between the EU and its citizens to promote participation in EU decision-making to help make it more democratic.

It is an integral part of the EU's decision-making process: it must be consulted before decisions are taken on economic and social policy. On its own initiative it may also give opinions on other matters it considers important.

#### What is the composition of the EESC?

The EESC has *344 members*. Membership from each EU country roughly reflects the size of its population. (The UK has 24 members.)

EU governments nominate EESC members, but the members work with complete political independence. They are appointed for four years, and may be re-appointed.

The EESC membership elects its *President* and two *Vice-Presidents* for a two-year term.

The *Bureau* is responsible for organising and coordinating the work of EESC's various bodies and for laying down policy guidelines for this work.

#### What is the role of the EESC?

The EESC has three main roles:

1. to advise the Council, Commission and Parliament, either at their request or on the Committee's own initiative;
2. to encourage civil society to become more involved in EU policy-making; and,
3. to bolster the role of civil society in non-EU countries and to help set up advisory structures.

#### How does the EESC operate?

The EESC meets in Plenary Assembly to discuss items prepared by six sub-committees, which are known as '*sections*' that deal with particular policy areas, namely:

1. Agriculture, Rural Development and the Environment (NAT)
2. Economic and Monetary Union and Economic and Social Cohesion (ECO)
3. Employment, Social Affairs and Citizenship (SOC)
4. External Relations (REX)
5. The Single Market, Production and Consumption (INT)
6. Transport, Energy, Infrastructure and the Information Society (TEN)

A new Consultative Committee on Industrial Change has been incorporated into the EESC structure following the expiry of the ECSC Treaty in July 2002.

Section opinions are drafted by *study groups*, which usually have 12 members, including a rapporteur, and may be assisted by a maximum of 4 experts.

The EESC also has the right to set up *sub-committees* for specific issues; and they operate on the same lines as the sections.

Working mostly in their countries of origin, the members of the Committee form three groups that represent employers, workers and various economic and social interests, including:



1. The Employers' Group has members from private and public sectors of industry, small and medium-sized businesses, chambers of commerce, wholesale and retail trade, banking and insurance, transport and agriculture.
2. The Workers' Group represents all categories of employees, from manual to executive. Its members come from national trade union organisations.
3. The third group represents a wide range of interests: NGOs, farmers' organisations, small businesses, crafts and professions, cooperatives and non-profit associations, consumer and environmental organisations, the scientific and academic communities and associations that represent the family, women, persons with disabilities, etc.

## 2.0 Decision Making Processes

The multi-faceted nature of EU policy and law and the related decision-making processes makes it difficult to generalise about how the EU functions. Nonetheless this section seeks to provide an overview of the EU decision-making processes relating to EU policy and law, highlighting the roles and responsibilities of Member States and the EU institutions within these processes.<sup>29</sup>

### 2.1 EU Policy

The EU's policy-making responsibilities arise under the Three Pillar System (see above discussion and the table in appendix 1). These responsibilities are enormously varied, ranging from extensive, considerable, shared, limited and virtually no involvement, across a range of policy interests.

EU policy is not normally made *via* a procedure in which problems are identified, objectives are set, all possible alternatives for achieving the objectives are carefully evaluated, and the best alternatives then are adopted and proceeded with. Rather, policy tends to evolve in a somewhat messy way, which arises from "...the sheer range and complexity of [EU] processes: a host of actors, operating within the context of numerous EU and national institutions, interact with one another on the basis of an array of different decision-making rules and procedures".<sup>30</sup>

Key factors determining EU policy processes include:<sup>31</sup>

- The treaties, wherein EU policy and decision-making processes are set out. For example: the four standard procedures for legislation (co-decision, consultation, assent and co-operation – discussed below) under the Treaty of the European Union (TEU, also known as the Maastricht Treaty) and the Treaty of the European Communities (TEC); external trade agreements negotiated under Article 133 of the TEC; the annual budget (discussed below); 'closer co-operation' amongst member states under the 'flexibility' provisions added to the TEU and the TEC under the Amsterdam Treaty and the Nice Treaty; pillars two and three of the EU (respectively dealing with foreign and security policy and police and judicial co-operation in criminal matters).
- The proposed status of the matter under consideration, meaning if it concerns law, procedures tend to be more fixed (see below). Where policy-making

<sup>29</sup> <http://www.europarl.europa.eu/parliament/expert/staticDisplay.do?language=EN&id=55>

<sup>30</sup> Nugent, Neill. *The Government and Politics of the European Union*. (Fifth Edition). Palgrave Macmillan. New York: 2003, p. 332.

<sup>31</sup> *Ibid*, pp. 332-337.

does not involve law-making, considerable discretion is available to decision-makers, especially governments, as to which policy processes will be used and who will be permitted to participate, for example, Council resolutions, declarations or agreements are as vague or precise as the Council wishes them to be, and still have a useful policy impact, even if it is just to maintain dialogue amongst member states.

- The degree of generality or specificity of the policy issue, meaning policy – making may consist of little more than exchanges of ideas between interested parties to see whether there is common ground for policy co-ordination, the setting of priorities, or possible legislation. Those most likely to be followed up are those which involve *les grands messieurs* of the Commission and the member states.
- The newness, importance, controversiality, or political sensitivity of the issue in question may result in delay and many alterations to a proposal that eventually may or may not be adopted.
- The balance of policy responsibilities between the EU and national levels, where greater transfer to the EU – for example, agriculture, commercial and competition policies – EU level processes are important and play a greater role, such as monitoring developments, making adjustments, ensuring existing policies and programmes are replaced when necessary and so on, and vice versa, e.g. education policy and health policy.
- Circumstances and the perceptions of circumstances, meaning prevailing political and economic circumstances, the perceptions of key actors, especially states, of their needs in the circumstances, and to perceptions of the potential of the EU to act as a problem-solving organisation in regard to the circumstances – do the advantages of acting at EU level, as opposed to national level, and of acting in the EU in a particular way as opposed to another way, outweigh the disadvantages?

Where **policy concerns legislative proposals**, the *European Commission* has the "right of initiative" under the Treaties, meaning it alone is responsible for drawing up new legislative proposals. Such proposals must aim to defend the interests of the Union and its citizens, not those of specific countries or industries.

Before making any proposals, the Commission must be aware of new situations and problems developing in Europe, and it must consider whether EU legislation is the best way to deal with them. The Commission relies on a wide range of interest groups and with two advisory bodies - the Economic and Social Committee (made up of employers' and trade unions' representatives) and the Committee of the Regions (made up of representatives of local and regional authorities) – to make these assessments. It also seeks the opinions of national parliaments and governments.

The Commission proposes action at EU level only if it considers that a problem cannot be solved more efficiently by national, regional or local action. This principle of dealing with things at the lowest possible level is called the 'subsidiarity principle'. If, however, the Commission concludes that EU legislation is needed, then it drafts a proposal that it believes will deal with the problem effectively and satisfy the widest possible range of interests. In doing this, the Commission consults the experts who make up its various committees and working groups, on technical matters.

Subsequent to the Amsterdam Treaty, the *European Parliament* also plays a role in EU policy-making. It frequently adopts reports prepared by one or other of its committees that are designed to steer EU policy in a particular direction.

The Parliament also provides impetus for new legislation by examining the Commission's annual work programme, considering what new laws would be appropriate and asking the Commission to put forward relevant proposals.

In addition, the *Council of the European Union* may suggest that the EU should act in a certain matter, which may result in a Commission proposal.

## 2.2 EU Legislation

Every European Community law is based on a specific treaty article: this is the "legal basis" of the legislation. In European Community law, there are several different types of legal instrument:

- *Regulations*, which are binding and directly applicable in all Member States;
- *Directives*, which are binding as to the result to be achieved but leaves the member state to decide on the method of achieving that result;
- *Decisions*, which are binding upon whom they are addressed; and
- *Opinions and Recommendations*, which have no binding force.

There are four decision-making processes: (1) co-decision; (2) consultation, (3) assent; and (4) co-operation.<sup>32</sup> (Appendix 2 details each process.) The applicable process depends on the policy area under consideration. But in general terms, the European Commission proposes new legislation, and depending on the policy area, the Parliament must give its assent to the proposed legislation or to act jointly with the Council in order to pass the legislation, or it is not involved at all. Other institutions and bodies may also play a role in the legislative process.

The key difference between the legislative procedures is the way the Parliament interacts with the Council. In basic terms, the Parliament genuinely shares power with the Council under the co-decision procedure. Under the consultation procedure, the Parliament merely gives its opinion. When proposing a new law, the European Commission must choose the procedure that will be followed. Its choice will, in principle, depend on the 'legal basis' of the proposal.

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<sup>32</sup> <http://www.europarl.europa.eu/parliament/expert/staticDisplay.do?language=EN&id=55>

APPENDIX 1

**COMPETENCES OF THE EU AND MEMBER STATES:  
THE 'THREE PILLARS' SYSTEM**

<p><b>FIRST PILLAR:</b></p> <p><b>THE EUROPEAN COMMUNITIES</b></p>	<p><b>SECOND PILLAR:</b></p> <p><b>COMMON FOREIGN AND SECURITY POLICY</b></p>	<p><b>THIRD PILLAR:</b></p> <p><b>COOPERATION IN JUSTICE AND HOME AFFAIRS</b></p>
<p><b>EC</b></p> <p>Customs union and single market</p> <p>Agricultural policy</p> <p>Structural policy</p> <p>Trade policy</p> <p><b>New or amended provisions on:</b></p> <p>EU citizenship</p> <p>Education and culture</p> <p>Trans-European networks</p> <p>Consumer protection</p> <p>Health</p> <p>Research and environment</p> <p>Social policy</p> <p>Asylum policy</p> <p>External borders</p> <p>Immigration policy</p> <p><b>Euratom</b></p> <p><b>ECSC</b></p>	<p><b>Foreign policy</b></p> <p>Cooperation, common positions And measures</p> <p>Peacekeeping</p> <p>Human rights</p> <p>Democracy</p> <p>Aid to non-member countries</p> <p><b>Security policy</b></p> <p>Drawing on the WEU: questions concerning security of the EU</p> <p>Disarmament</p> <p>Financial aspects of defence</p> <p>Long-term: Europe's Security framework</p>	<p>Cooperation between judicial authorities in civil and criminal law</p> <p>Police cooperation</p> <p>Combating racism and xenophobia</p> <p>Fighting drugs and the arms trade</p> <p>Fighting organised crime</p> <p>Fighting terrorism</p> <p>Criminal acts against children, trafficking in human beings</p>

## APPENDIX 2 -

### LEGISLATIVE PROCEDURES OF THE EU

This appendix outlines the legislative procedures of the European Union (EU). They include: (1) co-decision; (2) consultation; (3) assent; and (4) co-operation.<sup>33</sup>

#### 1. Co-decision

##### What is it?

The co-decision procedure involves the European Commission making legislative proposals and the Parliament and the Council sharing legislative power. Its effect has been to greatly increase the number of contacts between the European Parliament and the Council (the co-legislators), and with the European Commission.

##### What are the stages of the co-decision procedure?

The co-decision procedure involves one, two or three readings.

To start, the Commission proposes a legislative text.

The European Parliament instructs the relevant standing committee, the 'committee responsible', to draw up a report, and appoints a rapporteur, that is, a committee member who is responsible for drafting the Committee's report. One or more other committees may be asked to deliver opinions. Each adopts its opinion and forwards it to the committee responsible. The committee responsible may make some changes to the report in light of these opinions.

The Parliament's political groupings also examine the report from their own political standpoint.

Finally, the report is discussed in the Parliament's plenary session. There may be tabled amendments by the committee responsible, the political groups or a number of MEPs. After debate, the Parliament votes on the report, thereby adopting its position on the Commission's original proposal. This marks the end of the first reading. The Parliament's position usually suggests changes to the Commission proposal in the form of amendments.

The Council of Ministers either approves the Parliament's amendments - in which case the legislative proposal is adopted - or modifies them by adopting a common position.

At second reading the Parliament delivers an opinion based on a recommendation by the relevant standing committee, which approves, rejects or amends the Council position by an absolute majority of its Members (314 votes).

Thereafter the Commission takes account of Parliament's amendments, and forwards an amended proposal to the Council. The Council can adopt the Parliament's amendments that have been accepted by the Commission by a qualified majority, or modify Parliament's amendments, but only by a unanimous vote.

In the event of a disagreement between the Parliament and the Council, a 'conciliation committee' made up of the members of the Council and a delegation from Parliament meets for a maximum of six weeks. The Parliament's delegation

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<sup>33</sup> <http://www.europarl.europa.eu/parliament/expert/staticDisplay.do?language=EN&id=55>

consists of 15 members, which reflect the composition of Parliament, and is chaired by one of its Vice-Presidents. It always includes the Parliament's rapporteur.

Moreover, representatives from the Commission also attend the conciliation committee meetings and contribute to discussion.

In the vast majority of cases the two parties reach an agreement, in the form of a joint text.

Finally, at the third reading, the Parliament is invited to confirm the agreement. If no agreement is reached, the proposal for a Community 'law' is deemed not to have been adopted - it lapses.

#### What areas are covered by the co-decision procedure?

The areas covered by the co-decision procedure are:

- non-discrimination on the basis of nationality;
- the right to move and reside;
- the free movement of workers;
- social security for migrant workers;
- the right of establishment;
- transport;
- the internal market;
- employment;
- customs co-operation;
- the fight against social exclusion;
- equal opportunities and equal treatment;
- implementing decisions regarding the European Social Fund;
- education;
- vocational training;
- culture;
- health;
- consumer protection;
- trans-European networks;
- implementing decisions regarding the European Regional Development Fund;
- research;
- the environment;
- transparency;
- preventing and combating fraud;
- statistics; and,
- setting up a data protection advisory body.

## **2. Consultation**

### What is it?

The consultation procedure involves the Commission making a legislative proposal, and the Council officially consulting with the Parliament and other bodies on it. Sometimes such consultation is mandatory pursuant to its legal basis, other times it is optional.

### What are the stages of the consultation procedure?

Under the consultation procedure, the Commission sends its proposal to both the Council and Parliament, but it is the Council that officially consults the Parliament and other bodies such as the European Economic and Social Committee (EESC) and the



Committee of the Regions (COR), whose opinions are an integral part of the EU's decision-making process.

In some cases, consultation is compulsory because the legal basis requires it and the proposal cannot become law, unless the Parliament has given its opinion. In other cases, consultation is optional and the Commission will simply suggest that the Council consult Parliament.

Once consulted the Parliament can:

- approve the Commission proposal;
- reject it; or,
- ask for amendments.

If Parliament asks for amendments, the Commission will consider all the changes suggested by the Parliament. If it accepts any of these suggestions, it will send the Council an amended proposal.

The Council examines the amended proposal and either adopts it as it is (in some areas, such as taxation, the Council's decision must be unanimous) or amends it further or takes no decision at all. Under this procedure, as in all others, if the Council amends a Commission proposal, it must do so unanimously.

The Treaty specifies that decisions may be taken by a simple majority, by a qualified majority (QMV) or by unanimity. Simple majority decisions are restricted to minor matters. Decisions on the single market, environment, transport, research, employment, social exclusion, equal opportunity and public health matters are taken on the basis of QMV.

#### What areas are covered by the consultation procedure?

The areas covered by the consultation procedure are:

- Police and judicial cooperation in criminal matters;
- Revision of the Treaties;
- Discrimination on grounds of sex, race or ethnic origin, religion or political conviction, disability, age or sexual orientation;
- EU citizenship;
- Agriculture;
- Visas, asylum, immigration and other policies associated with the free movement of persons;
- Transport (where it is likely to have a significant impact on certain regions);
- Competition rules;
- Tax arrangements;
- Economic policy; and,
- 'Enhanced co-operation' – this arrangement allows a group of member states to work together in a particular field even if the others do not wish to join in yet.

### **3. Assent**

#### What is it?

The assent procedure means that the Council has to obtain the European Parliament's assent before certain very important decisions are taken.

The procedure is the same as in the case of consultation, except that Parliament cannot amend a proposal: it must either accept or reject it. Acceptance ("assent") requires an absolute majority of the vote cast.

What are the stages of the assent procedure?

It is a single stage procedure in which the proposed measure has to be approved by both the Council and the Parliament. It is more complex than it initially appears, primarily due to voting requirements in the Council and the Parliament.

What areas are covered by the assent procedure?

The areas covered by the assent procedure are:

- specific tasks of the European Central Bank;
- amending the statutes of the European System of Central Banks/ European Central Bank;
- the Structural Funds and Cohesion Funds;
- the uniform electoral procedure for the European Parliament;
- certain international agreements; and,
- the accession of new member states.

**4. Co-operation**

The co-operation procedure was virtually abolished by the Amsterdam Treaty. It is rarely used and is not explained here.

31 May 2007