

Manual of European Environmental Policy

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

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This section is the text of the Manual as published in 2012. It is therefore important to note the following:

- The contents have not been updated since 2012 and no guarantee is given of the accuracy of the contents given potential subsequent developments.
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EU decision-making processes

Introduction

The main European Union (EU) decision-making bodies are the Commission, the Parliament and the Council. The Commission is the only institution that can table a formal legislative proposal. Although the Parliament and Council can try to initiate the process, for example through own-initiative reports or Presidency conclusions, the formal right of initiative remains with the Commission. The Council and the Parliament vote on the Commission's proposals and their powers vary according to the different procedures for Decision making. The [procedure](#) to be used for a certain area of policy is set out in the Treaty. This determines whether the Council of Ministers makes decisions on the basis of unanimity or qualified majority; the extent of the European Parliament's influence; and whether the Economic and Social Committee and the Committee of the Regions have a right to be consulted.

The EU's legislative procedures, which begin with a proposal from the European Commission, can be classified under two headings: the ordinary legislative procedure (previously known as co-decision) and special legislative procedures (which covers the consultation, cooperation and assent procedures as provided for in previous treaties). In addition, detailed Commission implementing decisions are agreed in a network of committees of Member State representatives, chaired by the European Commission. Various committee procedures – known as ‘comitology’ – apply *inter alia* to proposals relating to the Common Agricultural Policy (CAP), Common Fisheries Policy (CFP), water, nature and biodiversity and genetically modified organisms. The comitology process is increasingly being used as a way to address issues that were unresolved during the co-decision procedure, which implies that larger volumes and more fundamental aspects of legislation are now being dealt with in this manner.

Ordinary legislative procedure

The co-decision procedure was introduced by the 1993 Maastricht Treaty, and its application was greatly extended by the 1999 Amsterdam Treaty. The co-decision procedure became known as the ‘ordinary legislative procedure’ with the entry into force of the Lisbon Treaty (Article 294 TFEU), thus implying that what used to be the exception in Decision making has become the norm for most policy areas. The ordinary legislative procedure now applies to 83 areas including the environment (with the exception of provisions of a fiscal nature, town and country planning, management of water resources, land use, supply and diversification of energy resources), energy (excluding measures of a fiscal nature), the Common Agriculture Policy (CAP), the Common Fisheries Policy (CFP), and the Structural and Cohesion Funds¹.

Under the ordinary legislative procedure, the European Parliament and the Council have equal weight in deciding how the final piece of legislation will look. The European Parliament adopts decisions by the majority of its Members, while the Council takes decisions either by unanimity, or by qualified majority vote (QMV), depending on the legal basis of the proposal. A qualified majority is currently 255 votes out of the total 345 (73.9 per cent) cast by a simple majority of Member States (see section on The EU institutions, and in particular Table 3, for further information in this regard). The European Economic and Social Committee and the Committee of the Regions may issue opinions in cases considered by

them to be appropriate. Under the Lisbon Treaty, national parliaments are also invited to send reasoned opinions on the compliance of draft legislative texts with the subsidiarity principle.

The European Parliament and Council take it in turns to issue their formal position on the Commission's proposal. If the proposal is straightforward and there are no major areas of disagreement, the act (Directive, Regulation or Decision) can be adopted after one reading. If – as is normally the case – there are certain points of contention, the European Parliament and Council hold second readings on the proposal. If at the end of these two readings the European Parliament and Council still disagree, a ‘Conciliation Committee’ is convened to negotiate a compromise text. This is a meeting involving representatives from both institutions and the Commission. It is held behind closed doors and discusses those matters which the European Parliament and Council have been unable to agree. If, after this meeting, the two parties are able to reach an agreement, the outcome is a ‘joint text’. The joint text must then pass back to individual meetings of the European Parliament and Council for formal adoption by the Council and the Parliament. Even at this stage, however, it can still be rejected – in which case the whole process is scrapped and it is left to the Commission to bring forward a new proposal. At any stage in the process, the Commission can table an amended proposal. [Figure 1](#) provides an overview of the ordinary legislative procedure. For further details on the ordinary legislative procedure, see the Commission's [step-by-step guide](#).

The use of the ordinary legislative procedure has expanded greatly since its introduction under the Maastricht Treaty in 1993, and now applies to most environmental measures (with some exceptions, see above). The increasing use of the procedure has resulted in a substantial increase in the influence of MEPs during the early stages of developing legislation. The ordinary legislative procedure is often a complicated and time-consuming process – lasting around two years from the time a proposal is issued to when it is agreed. The success of the procedure is dependent on the degree of collaboration between the Commission, the responsible committee in the Parliament and the relevant working groups of the Council. In certain instances, informal trilogue discussions have been convened between the Council, the European Parliament and the Commission after first reading in an attempt to reach early agreements on certain dossiers. This is now increasingly the norm, as seen, for example, with the [climate action and renewable energy package](#) and the Marine Strategy Framework Directive [2008/56/EC](#).

Special legislative procedures

Special legislative procedures apply to specific acts of the Council and the Parliament and certain *ad hoc* procedures.

Under the **consultation procedure**, the Council may take a Decision only after it has sought the opinion of the Parliament, but it is under no legal obligation to accept any of the Parliament's proposed amendments. The powers of the Parliament are therefore fairly limited. However by refusing to give its opinion, the European Parliament still has an effective veto under this procedure. The consultation procedure applies to five categories of environmental measures: provisions primarily of a fiscal nature; town and country planning, land use (with the exception of waste management); quantitative management of water resources; and measures which significantly affect a Member State's choice between different energy sources and the general structure of its energy supply (Article 192(2) TFEU). In these areas, the Council takes decisions on the basis of unanimity. This procedure was the norm for the adoption of much of the earlier legislation described in this Manual.

The **consent procedure** (previously referred to as the assent procedure) requires the Council to obtain the Parliament's consent before decisions are made. The European Parliament may accept or reject a proposal but it cannot amend it. The procedure mainly applies to the accession of new Member States, the appointment of the President of the Commission, a range of international agreements signed by the Union and the adoption of the multi-annual financial framework.

The Lisbon Treaty established a **budgetary procedure** which is similar to the ordinary legislative procedure with a single reading plus conciliation to decide the EU's annual budget (Article 314 TFEU). Deadlines and an obligation on the Commission to present a new proposal in the event of any irreconcilable disagreement between the Council and the European Parliament at the end of the procedure have also been introduced. The Lisbon Treaty eliminated the distinction between compulsory expenditure (including CAP expenditure) and non-compulsory expenditure; thus for the first time extending the Parliament's influence to the whole budget.

Comitology

After the formal adoption of an item of environmental legislation, there often remain several practical issues that need to be decided, such as measurement methods, reporting requirements, technical specifications etc. The Commission can sometimes decide these issues (in the form of a Commission Decision) with the help of committees chaired by the Commission and composed of Member State experts. This type of Decision making whereby committees 'assist' the Commission in the exercise of its implementation powers as delegated by the EU legislator (Council and Parliament) is referred to as 'comitology'. Although a highly technical and at times convoluted process, comitology is becoming an increasingly important decision-making process at the EU level. Historically, comitology has been used to agree specific technical aspects of legislation; however, the increasing recourse to framework legislation in EU environment policy, which delegates important implementing powers to the Commission, and the use of comitology to address issues that were unresolved during the co-decision procedure, has meant that the importance of comitology is growing in the environment policy area.

The comitology process is designed to allow Member States (and increasingly the European Parliament) to participate in the exercising of the Commission's implementing powers. Initially, this concept was developed on an *ad hoc* basis by the Council, with no role for the Parliament. The process was later formalized through the adoption of Council Decisions, with concessions gradually being made for engagement by the European Parliament. There are various types of comitology procedures, each with a different role for, and balance of power between, the Commission, the Member States, and ultimately, the Council and the European Parliament. As a result of a long-standing institutional dispute between the Parliament, the Council and the Commission, comitology procedures were substantially reformed in 2006 to increase parliamentary scrutiny, with Decision [1999/468/EC](#) being amended by Decision [2006/512/EC](#). The Lisbon Treaty (Article 290-291 TFEU) also introduced significant modifications to the comitology procedure. A new legal framework is being constructed on the basis of Articles 290 and 291 TFEU to replace the comitology system established under the previous Treaty. However, not all these changes have been implemented (see below), and certain interim arrangements are in place.

The Lisbon Treaty has split comitology into two types of delegation of power to the Commission, each having its own legal base in the Treaty on the Functioning of the European Union (TFEU): ‘delegated’ acts and ‘implementing’ acts.

Delegated acts are to address sensitive matters that amend, delete or supplement non-essential elements of a legislative act (e.g. adding a substance to an annex of banned products). The procedure for adopting delegated acts replaces or will replace the current ‘regulatory procedure with scrutiny’. The major change to the process is the abolition of the comitology committees and that the Commission will present its draft delegated acts simultaneously to both the European Parliament and the Council without asking the opinion of a committee. Article 290 TFEU deals with delegated acts and provides for the legislator to control the exercise of the Commission’s powers by means of a right of revocation and/or a right of objection.

However, it should be noted that Article 290 TFEU only defines the basic components of the procedure for delegated acts (see **Figure 2**). Further details of the procedure will have to be defined for each Directive individually. Therefore, this new procedure will not apply immediately. Existing legislative acts will first have to be reviewed and adapted with a view to insert a clause with detailed provisions on the procedure for delegated acts.

As long as Directives and Regulations have not yet been revised with an inserted clause on the new procedure, delegated acts will continue to be adopted under the existing ‘regulatory procedure with scrutiny’. The Commission is committed to finalising an alignment scrutiny exercise by the end of 2012 and to completing the legislative exercise of substituting the ‘regulatory procedure with scrutiny’ with the procedure for delegated acts by the end of the current parliamentary term in 2014.

However, for some legislative acts detailed provisions on a procedure for adopting delegated acts have already been adopted. In these cases, the new procedure for delegated acts can already be put into practice. This is for example the Industrial Emissions Directive 2010/75/EU, which was adopted on 24 November 2010. The text of the Directive states among others that the procedure for delegated acts will apply to the setting of the date from which continuous measurements of emissions into the air of heavy metals and dioxins and furans are to be carried out, and the adaptation of certain parts of Annexes V, VI and VII to scientific and technical progress on the basis of best available techniques.

Implementing acts are the continuation of ‘traditional’ comitology procedures in which the Commission is empowered to implement EU legislation under the supervision of comitology committees. In the case of implementing acts, dealt with in Article 291 TFEU, Member States are naturally responsible for implementing the legally binding acts of the EU. However, where such basic acts require uniform implementing conditions, it is the Commission that must exercise implementing powers. In these cases, it is the Member States that are responsible for controlling the Commission’s exercise of these implementing powers and not the Parliament and the Council. A legal framework was required to establish the mechanisms of control. This framework is now provided by Regulation (EU) [No 182/2011](#), the so-called Implementing Acts Regulation, which was adopted in December 2010 and entered into force on 1 March 2011.

The Regulation provides for two procedures: the ‘advisory procedure’ and the ‘examination procedure’. The advisory procedure is to be used to deal with low sensitivity implementing

measures such as grant and funding approvals. The steps in this process are as follows: the Commission drafts the implementing act; the ‘advisory’ committee (which includes a representative of each Member State and is chaired by the Commission) must adopt an opinion by simple majority vote; the Commission takes the utmost account of this opinion, without being legally obliged to follow it.

The examination procedure, which replaces the previous management and regulatory procedures, will be more prominent in the environment field as opposed to the advisory procedure; it will be used for, amongst other things, implementing measures of general scope, programmes with substantial budgetary implications, and measures related to agriculture policy, environment policy, taxation and commercial policy. Figures 3, 4 and 5 outline the different stages of the examination procedure.

If the examination committee does not issue an opinion, in principle, the procedure illustrated on the left in **Figure 5** generally applies. However, an alternative procedure applies (illustrated on the right in Figure 5) when:

- The draft implementing act concerns taxation, financial services, the protection of the health or safety of humans, animals or plants, or definitive multilateral safeguard measures.
- The basic legislative act provides that the draft implementing act may not be adopted where no opinion is delivered;
- A simple majority of the members of the examination committee opposes it.

In each of these three cases, the Commission is not allowed to adopt the implementing act.

In relation to Figures 4 and 5 (procedure for specific cases), it should also be noted that in *exceptional circumstances* the Commission can adopt the draft implementing act without further delay instead of submitting the draft implementing act to the appeal committee for further deliberation (within one month) or to submit an amended version to the (examination) committee (within two months). This is to be done where this is necessary to avoid a significant disruption of agricultural markets or a risk for the financial interests of the EU. In such a case the Commission has to submit the adopted measure immediately to the appeal committee. If the appeal committee delivers a positive opinion, the adopted implementing act remains in force. If the appeal committee delivers a negative opinion, the Commission must repeal the implementing act.

To conclude it should be noted that by way of derogation from the advisory and examination procedure, the Commission can adopt *immediately applicable implementing acts* which shall not remain in force for longer than six months. The Commission must submit the act to the relevant committee within 14 days. The committee must find a qualified majority to repeal the measure (only where the examination procedure applies).

The new procedures for adopting implementing acts apply from 1 March 2011 when the new Implementing Acts Regulation entered into force. This Regulation automatically replaced both the preceding management and regulatory procedures with the examination procedure. The former advisory procedure has been maintained, though with some changes. Unlike delegated acts, no future alignment with existing Directives and Regulations is required in order to put the new procedures for implementing acts into practice.

This implies that from the four main procedures set out under the 2006 Comitology Decision, only the ‘regulatory procedure with scrutiny’ continues to apply as long as EU legislative acts have not been revised with a clause on the new procedure for delegated acts. – The regulatory procedure with scrutiny was introduced in 2006 for those quasi-legislative implementing acts that arise from basic acts agreed through co-decision. The new procedure substantially increased the Parliament's power under comitology by allowing the Parliament (together with the Council) to veto certain implementing measures. The grounds for vetoing measures are limited to instances where: the European Commission has exceeded its implementing powers; where the draft is not compatible with the aim or content of the original instrument; or where the draft does not meet the principles of subsidiarity or proportionality. The committee delivers an opinion on the proposed measures under qualified majority. After consultation with the committee, the Commission refers the draft opinion to the Parliament and the Council. The subsequent procedure depends on the position of the committee:

- *A favourable opinion by the committee* – within three months, the Council or the Parliament may veto measures, thus preventing their adoption by the Commission. If there is no opposition in this time period, the Commission will proceed with implementation.
- *An unfavourable opinion by the committee* – within two months, the Council shall vote either to adopt or oppose the measure. If the Council wishes to adopt the measure, it is referred to the Parliament, which in turn may veto the measure within a further two-month period. If no opposition to the measure is made within the time period, the measure is adopted by the Commission or the Council, as the case may be.

References

1 Treaty on the European Union – Treaty on the Functioning of the European Union (2009)
List of Decision-making Procedures by Article,
http://ec.europa.eu/codecision/docs/Legal_bases.pdf, Accessed 17.12.2009

Figure 2. Procedure for adopting delegated acts as defined by Article 290 TFEU

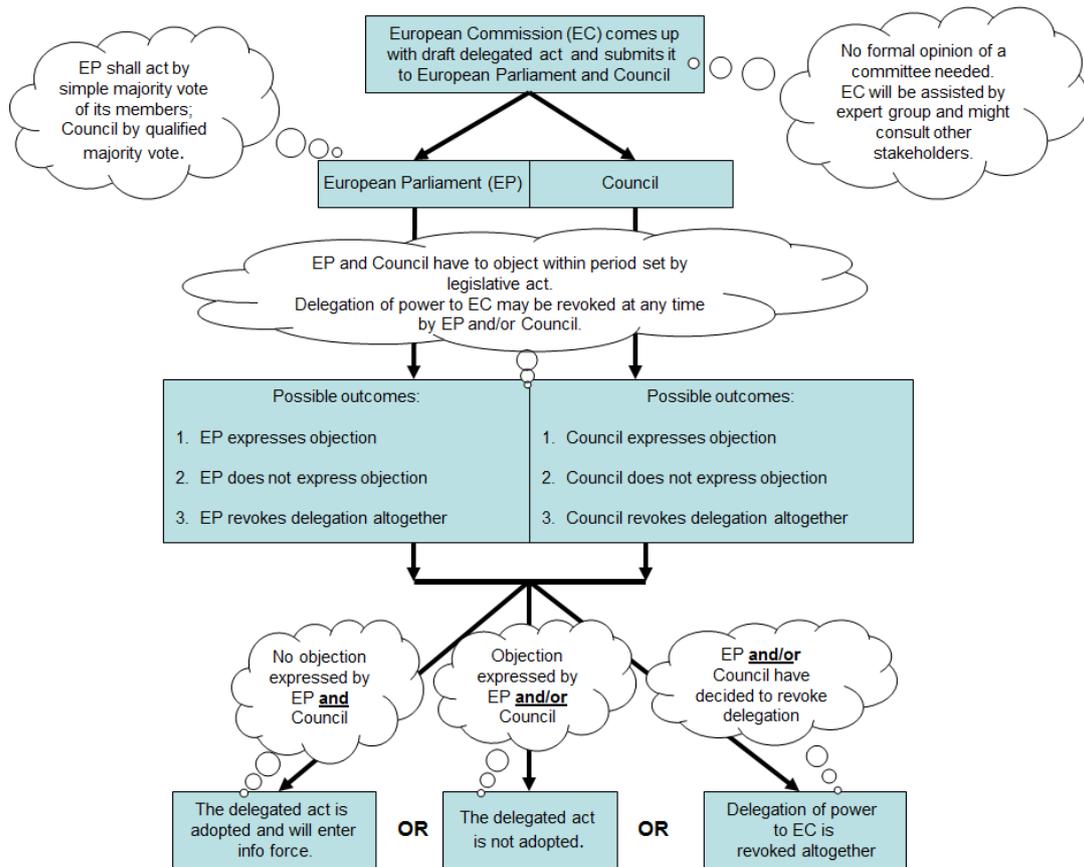


Figure 3. First stage of the examination procedure as laid down in the new Implementing Acts Regulation

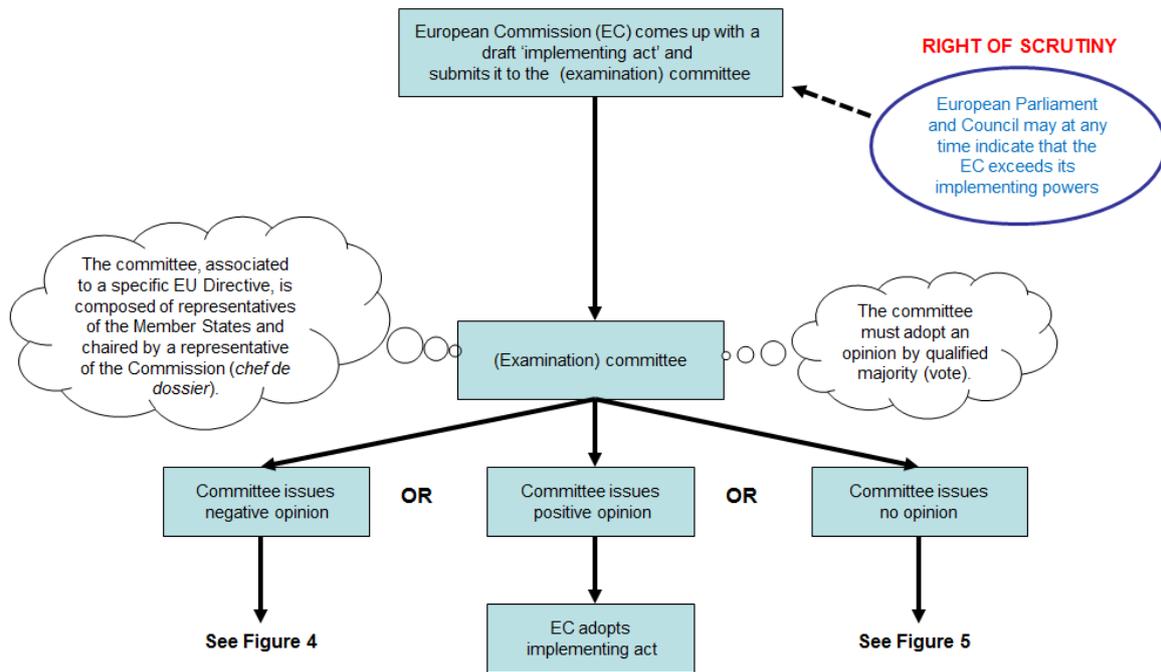


Figure 4. The examination procedure when the appeal committee issues a negative opinion

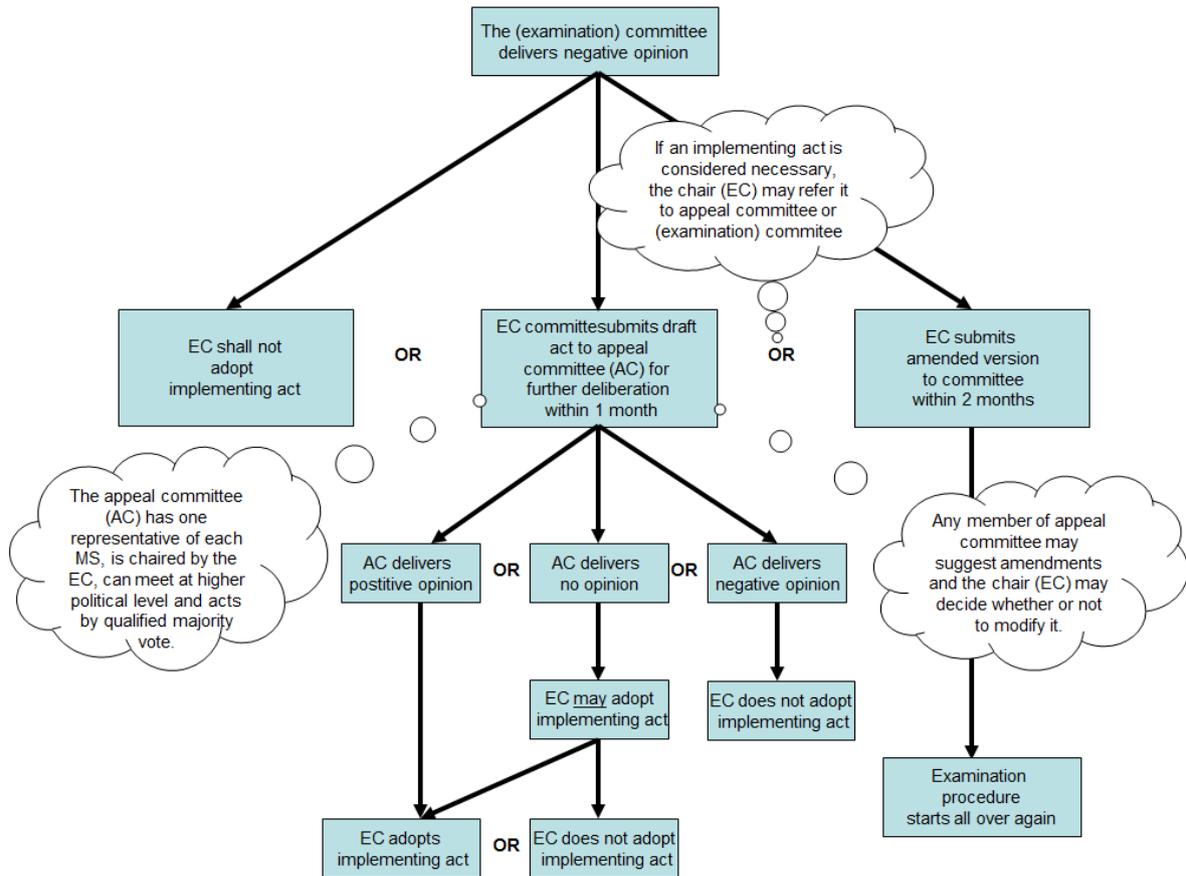


Figure 5. The examination procedure when the appeal committee does not issue an opinion

