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How the European Union Works - 2017 Guide to EU Decision-Making

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Report Highlights:

This report updates GAIN report E16016 "How the European Union Works - Updated Guide to EU Decision-Making". It explains the role of the different EU institutions in EU law-making, highlights the changes introduced by the Lisbon Treaty and explains in detail how the different legislative procedures to adopt and implement EU laws work.

HOW THE EUROPEAN UNION WORKS

The European Union (EU) is a political and economic partnership between [28 Member States](#). Unlike the U.S., the EU is not a federal state because its Member States remain sovereign independent states. They join forces by taking joint decisions through the shared institutions they created: the European Parliament (EP) which is directly elected by EU citizens, the European Council and the Council of the European Union which both represent the national governments. The Member States delegate some of their decision-making powers to these institutions to take decisions on matters of joint interest at EU-level. They decide on the basis of legislative proposals from the European Commission which represents the interests of the EU as a whole.

The EU is based on the rule of law. This means that every action taken by the EU is founded on Treaties. The Treaties set out the objectives of the EU, the powers of the EU institutions, how decisions must be made and the relationship between the EU and its Member States. Treaties are amended when new Member States join, to reform the EU institutions and to introduce new areas of responsibility. The latest amending treaty is the Lisbon Treaty which entered into force on December 1, 2009.

COMPOSITION

The EU is currently composed of 28 Member States: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom (U.K.). On June 23, 2016, the United Kingdom voted in the so-called “Brexit” referendum to leave the EU. On March 29, 2017, the U.K. officially informed the European Council of its intent to leave. The U.K. will remain a member of the EU for exactly two years from the date of notification, i.e. March 29, 2019.

LISBON TREATY

All actions taken by the EU are based on Treaties approved by all the Member States. The “Lisbon Treaty”, which entered in to force on December 1, 2009, is the latest update of the “Treaty on the European Union” and the “Treaty on the functioning of the European Union”.

The Lisbon Treaty was adopted to reform the EU institutions and their decision-making processes in order to enable an enlarged Union to function more efficiently. The most important changes introduced by the Lisbon Treaty include:

- The introduction of the notorious “Article 50” which sets out a procedure for Member States that wish to withdraw from the EU
- An increased role for the European Parliament to accept, amend or reject legislative initiatives under the “ordinary legislative procedure” (co-decision)
- A new “double majority” voting system to obtain a qualified majority in the Council of the European Union

- A new system of “delegated acts” and “implementing acts” to adopt measures needed to implement the provisions set out in framework legislation (e.g. authorization of GMO’s, updating positive lists of additives)
- The European Parliament’s consent is needed to conclude international trade agreements (including Brexit)
- The election of the European Commission President is directly linked to the outcome of the elections for a new European Parliament

COMPETENCES

The Lisbon Treaty clarifies the distribution of power between the EU and the Member States: EU exclusive competences, shared competences and supporting competences.

EU exclusive competences:

- Customs Union
- Competition rules necessary for the functioning of the internal market
- Monetary policy for the Member States in the Eurozone (currently 19)
- Conservation of marine biological resources under the Common Fisheries Policy
- Common Commercial Policy
- Conclusion of international agreements provided for in legislative acts

For the majority of policies including agriculture, the EU and its Member States share competences. This means that both the EU and the Member States can adopt legally binding acts. Member States exercise their competence in areas where the EU does not exercise, or has decided not to exercise its own competence.

Supporting competences apply to human health care, industry, culture, tourism, education, civil protection and administrative co-operation. Here the EU can only intervene to support, coordinate or complement Member State actions.

For detailed information see the European Commission’s website https://ec.europa.eu/info/about-european-union/about-european-commission/areas-eu-action_en.

International agreements containing provisions that fall within competences shared between the EU and the Member States cannot be concluded by the EU alone but must be concluded by the EU and the Member States jointly (ref. [European Court of Justice Opinion on the conclusion of the EU-Singapore free trade agreement](#)).

KEY EU INSTITUTIONS

Who does what in the EU?

European Council:

The European Council is composed of the Heads of State or Government of the EU's Member States. It defines the general political direction and priorities of the EU but it is not a legislating body. The European Council elects its own President for a term of 2.5 years, renewable once. In December 2014, Donald Tusk was elected President of the European Council. His mandate was renewed in March 2017.

European Commission:

The European Commission is the EU's executive and represents the interests of the EU as a whole. It is composed of "the College of Commissioners", i.e. 28 Commissioners - one from each Member State – including the President and Vice-Presidents. The European Commission President is appointed by the European Council with the approval of the European Parliament. Current European Commission President, Jean-Claude Juncker, took office in November 2014. The full College of Commissioners is also approved by the European Parliament for five-year terms. Each Commissioner is assigned responsibility for specific policy areas by the Commission President.

Following his election in 2014, Jean-Claude Juncker restructured the European Commission, centralizing power with six Vice-Presidents and a High Representative for Foreign Affairs. Vice-Presidents supervise project teams consisting of Commissioners responsible for specific policy areas. All Vice-Presidents have the power to stop any initiative of individual Commissioners on their project teams. Legislative proposals need the approval of the Commissioner and a Vice-President before being presented to the full College of Commissioners.

The Commission has the sole right of legislative initiative in most policy areas and monitors the Member States' application and implementation of EU legislation. In the event of any violation of EU law, it institutes infringement procedures or refers matters to the European Court of Justice. It represents the EU in international organizations and negotiates agreements with trading partners based on a mandate from the Member State governments. The European Commission is divided into departments known as "Directorates-General" (DGs). EU Agencies such as the European Food Safety Authority (EFSA) provide scientific and technical advice to the European Commission but have no formal role in the decision-making process.

GAIN reports on the Commission's annual Work Programs can be downloaded from <http://www.usda-eu.org/reports/>.

Council of the European Union:

The Council of the European Union is a separate entity from the European Council and represents the national governments of the 28 EU Member States. Ministers from each Member State defend their national interests in “sectoral” Council meetings including agriculture. The main priority of the Council is to pass legislation based on proposals presented by the European Commission, in most cases jointly with the European Parliament. The Presidency of the Council rotates among the 28 Member States every six months. FAS/USEU prepares a [GAIN report on the priorities of each new Presidency](#). The Council also concludes agreements with third countries or international organizations.

European Parliament

The European Parliament is the only directly elected EU institution. The EP is a multinational parliamentary assembly representing over 500 million EU citizens from 28 Member States. The Lisbon Treaty limits the number of Members of the European Parliament (MEPs) to 751 including the EP President. MEPs are elected for five-year terms. The next elections will take place in May 2019. Current European Parliament President Antonio Tajani will remain in office until July 2019.

Each Member State has a number of seats allocated on the basis of “digressive proportionality” which means that the allocation of seats is roughly proportional to the size of the Member State’s population but smaller Member States have more seats than strict proportionality would imply. MEPs form “union-wide” political groups according to ideologies rather than nationality. The EP elects the European Commission President and approves the full college of Commissioners. It shares legislative power with the Council to adopt legislative proposals under the “ordinary legislative procedure” (co-decision) and its consent is needed to conclude international trade agreements. It also decides on the allocation of the EU budget jointly with the Council. Major debates on legislative work take place in the monthly “plenary sessions” attended in principle by all MEPs while the preparatory work is done in 20 specialized committees including agriculture.

Other Institutions

Other institutions that play a key role in the EU include the Court of Justice (highest court in matters of EU law), the Court of Auditors (audits EU financial management) and the European Central Bank (manages the EU monetary policy).

Inter-Institutional Agreements

The European Commission and EP have signed a [Framework Agreement](#) in order to facilitate and organize their cooperation. This agreement defines the procedures for their political collaboration and includes provisions for concluding international agreements. Inter-institutional agreements are binding on the institutions that signed them.

In May 2015, the European Commission presented a proposal for a new inter-institutional agreement (IIA) as part of its “Better Regulation Package”. The [final text](#) of the “Inter-Institutional Agreement between the European Parliament, the Council of the European Union and the European Commission on

Better Law-Making” was published on May 12 2016 in Official Journal L123.

EU PROCEDURES

How is EU legislation adopted?

Impact Assessments

The European Commission must prepare “impact assessments” for new any initiative that may have a significant economic, social and environmental impact. Such initiatives include legislative proposals, non-legislative initiatives (e.g. actions plans, negotiating guidelines for international agreements) and delegated and implementing acts. The European Commission publishes “roadmaps” and “inception impact assessments” on its [“Have your say” website](#) to inform stakeholders of planned consultations. Roadmaps describe the issue to be addressed, explain why EU action is needed and outline several policy options. An inception impact assessment replaces a roadmap in case an impact assessment is planned and provides a more detailed description of the problem, the policy objectives and an analysis of the potential impact of each policy option. If no impact assessment is planned, the roadmap should explain why.

Ordinary Legislative Procedure

Since the entry into force of the Lisbon Treaty, the “ordinary legislative procedure” (formerly known as co-decision) is the standard decision-making procedure in the EU. In this procedure, the European Parliament (EP) and Council share legislative power. Commission proposals are forwarded simultaneously to the Council and EP but also to the Member States’ national parliaments. National parliaments have 8 weeks to check Commission proposals for compliance with the subsidiarity principle. The Council and EP have up to three readings to act on a Commission proposal for new or amended framework legislation, with the possibility to conclude at each reading. If no agreement is reached in first reading (without time limits), the proposal goes to second reading (with time limits). If no agreement is reached at the end of the second reading, the proposal is brought before a Conciliation Committee made up of an equal number of representatives of the Council and the EP. If the Conciliation Committee agrees on a “joint text”, the text is sent to the Council and EP for a third reading. The final approval of both legislators is essential for a proposal to become law.

For more information see Annex I – The Ordinary Legislative Procedure in detail.

Special Legislative Procedure

The “special legislative procedure” is a collective name for a number of procedures set out in the Lisbon Treaty. They are exceptions to the “ordinary legislative procedure” and apply to specific cases defined in the Lisbon Treaty. One of the special legislative procedures is the “consent procedure” to

conclude international agreements. Under the consent procedure, the European Commission negotiates international agreements on a mandate from the Council but the Council cannot conclude an agreement without the consent of the European Parliament. The EU's annual budget is also adopted under a special legislative procedure (one reading).

What is Comitology?

Under the ordinary legislative procedure, the EP and Council can decide to delegate legislative power to the European Commission for the adoption of measures needed to implement provisions set out in EU framework legislation. The Lisbon Treaty introduced two types of legislative delegation: “delegated acts” and “implementing acts”. The objective of this delegation of power is to have a faster process than the lengthy ordinary legislative procedure to adopt measures that are often of a technical nature. Before the entry into force of the Lisbon Treaty, there was one set of rules to adopt implementation measures referred to as “comitology”. Comitology is EU jargon for the process where committees composed of national experts from the Member States deliver an “opinion” on draft implementation measures. Implementing acts still qualify as comitology because they require an opinion from a standing committee, delegated acts do not.

What is the difference between “delegated acts” and “implementing acts”?

Before the Lisbon Treaty came into force, there was only one legal basis for the delegation of legislative power to the Commission in the Treaty. Now there are two legal bases: Article 290 for “delegated acts” and Article 291 for “implementing acts”. The procedure to adopt delegated acts is entirely set out in Article 290 of the Treaty while the procedure to adopt implementing acts is set out in comitology regulation ([European Parliament and Council Regulation 182/2011](#)). Delegated acts are used to supplement or amend “non-essential elements” of framework legislation whereas implementing acts are more essential because they implement provisions set out in framework legislation. For the adoption of implementing acts, the Commission has to act in accordance with the opinion of a specific committee of Member State experts and is therefore still referred to as comitology. For the adoption of delegated acts, the formal opinion of a committee of national experts is not required. However, under the “Better Regulation Package”, the Commission committed to consult Member State experts before the adoption of a delegated act (see also “Better Regulation Package”). The EP and/or Council can veto delegated acts but not implementing acts. As the EP has more power in the delegated acts procedure and Member States have more power in the implementing acts procedure, deciding on which procedure should be used in new legislation is often more a political discussion than a strictly legislative one.

Delegated Acts

Delegated acts are used to supplement or amend **non-essential elements** of framework legislation or in other words, issues of **general** scope. On a case-by-case basis, the EP and Council set the conditions for the delegation of power: objectives, content, scope and duration of the delegation are defined in each basic legal act. The Council and/or the EP may revoke this delegation and a delegated act adopted by

the European Commission can only enter into force if no objection has been raised by one of the legislators within a time period set by the basic act.

Example: In the EU's Food for Specific Groups regulation 609/2013, the council and EP delegate to the Commission, for a period of 5 years, the power to adopt specific compositional and information requirements for infant formula and follow-on formula, processed cereal-based food and baby food, food for special medical purposes and total diet replacement for weight control. In January 2016, the EP vetoed the Commission's delegated act on compositional requirements for baby food because the Commission did not substantially lower the allowed maximum sugar levels.

Regulatory Procedure with Scrutiny

Basic legal acts, adopted before the entry into force of the Lisbon Treaty, still need to be aligned to the new distinction between delegated and implementing acts. Although the "regulatory procedure with scrutiny" covers the same type of measures as delegated acts, there was no automatic alignment. The Commission presented an alignment proposal in 2013 but later withdrew it due to lack of progress.

As agreed in the new Inter-Institutional Agreement, the Commission presented a [new alignment proposal](#) in December 2016. The proposal must be adopted by the EP and Council under the ordinary legislative procedure. Until the adoption of the alignment procedure, the regulatory procedure with scrutiny continues to apply.

Example: The regulatory procedure with scrutiny applies to setting out scientific criteria for the determination of endocrine disrupting properties of plant protection products.

A flow chart explaining the regulatory procedure with scrutiny is available on our website at <http://www.usda-eu.org/wp-content/uploads/2012/10/Regulatory-Procedure-with-Scrutiny-HB-Chart.pdf>.

Implementing Acts

Implementing acts are used for routine implementation of framework legislation and cover issues of **general OR individual** scope. [Comitology Regulation 182/2011](#) sets out two comitology procedures: the "advisory procedure" and the "examination procedure". The Council and European Parliament have no formal role in these procedures.

Example: The authorization of GMOs is done on a case-by-case basis and is therefore an issue of **individual** scope. Each new authorization is adopted as an implementing act. Fixing the standard import values to calculate the entry price for imports of fruits and vegetables from third countries is an issue of **general** scope. The standard import values are published as implementing acts.

Examination Procedure

Under the examination procedure, the Commission may only adopt a draft implementing measure if the relevant committee such as for example the Standing Committee on Plants, Animals, Food and Feed

(PAFF) delivers a positive opinion. If a negative opinion and in certain cases if no opinion is delivered, the European Commission may either propose an amended version of the draft measure or refer the matter to an “Appeal Committee”. An Appeal Committee is composed of high-level Member State officials with a political mandate. Where the Appeal Committee delivers a positive opinion, the Commission SHALL adopt the draft measure; where the Appeal Committee delivers a negative opinion, the Commission SHALL NOT adopt the draft measure; where the Appeal Committee does not deliver an opinion, the Commission MAY adopt the draft measure.

Example: The preamble (point 13) of [Commission Implementing Decision 2015/689 renewing the authorization for existing genetically modified cotton MON 531](#) describes how the Commission adopted this decision after the Standing Committee and subsequently the Appeal Committee did not deliver an opinion within a set deadline.

A flow chart explaining the examination procedure in detail is available on our website at <http://www.usda-eu.org/wp-content/uploads/2012/10/Flow-Chart-Examination-Procedure-HB-2012-08-14.pdf>.

European Commission Proposal to Change Comitology Rules

In February 2017, the Commission presented a legislative proposal to “modernize” the comitology rules in a stated effort to increase transparency and accountability in the examination procedure. The reform proposal followed up on Commission President Juncker’s statement (State of the Union 2016) that it is “not right” that the Commission has to decide on sensitive issues such as the authorization of GMO’s when Member States cannot decide amongst themselves. The proposal follows the ordinary legislative procedure and must be adopted by the EP and Council. For more details see GAIN report [“European Commission Proposes Changes in Comitology Rules”](#).

BETTER REGULATION PACKAGE

In May 2015, the European Commission presented its “Better Regulation Package” consisting of five major initiatives: a proposal for a new Interinstitutional agreement, a Communication on “Better Regulation for Better Results – EU Agenda”, the establishment of a Regulatory Scrutiny Board, the establishment of a “REFIT” platform and Better Regulation guidelines.

The Better Regulation Package introduced a feedback mechanism for stakeholders. In March 2017, the Commission launched a [single web portal](#) where citizens and stakeholders can provide feedback on all initiatives throughout the law-making process. For evaluations of existing legislation (see “REFIT”) and inception impact assessments there is a 4-week consultation period, 8 weeks for legislative proposals

adopted by the College of Commissioners and 4 weeks for draft delegated and implementing acts. Draft measures based on a scientific opinion from EU agencies such as EFSA are not open for consultation.

A new “Regulatory Scrutiny Board”, chaired by a Director-General and consisting of three high-level Commission officials and three independent experts from outside the Commission, has been appointed to check the quality of impact assessments. The Board is independent of the policy-making departments. See also “How is EU Legislation Adopted - Impact Assessments”.

The Regulatory Fitness and Performance Program (REFIT) is the Commission’s program for checking whether existing legislation is still fit for purpose and delivers the results intended. REFIT initiatives are listed in the Commission’s annual work program. The Better Regulation Package established a [REFIT Platform](#), an expert group of Member State representatives, the Economic and Social Committee, the Committee of the Regions and stakeholders to advise the Commission on more effective and efficient law-making.

The Better Regulation Package also included a proposal for a new inter-institutional agreement on better law-making. The new agreement was adopted in April 2016 and published in the Official Journal on May 12, 2016.

VOTING SYSTEMS

Council Voting

The Lisbon Treaty introduced new rules for qualified majority voting in the Council of the European Union. Since November 1, 2014, decisions requiring a qualified majority vote in the Council of Ministers are adopted by “double majority”. The double majority system requires the approval of 55% of Member States (16), representing at least 65% of the EU’s population. The percentages of each Member State’s population are published in Annex III to the Council’s Rules of Procedures (last update published on December 8, 2016). A blocking coalition must include at least four Member States representing at least 35% of the EU’s population.

European Parliament Voting

The European Parliament either votes by “simple majority” (majority of the votes cast) or by “absolute majority (majority of the component members, in plenary this is currently 376 out of 751 votes).

ANNEX I: THE ORDINARY LEGISLATIVE PROCEDURE IN DETAIL

The ordinary legislative procedure (OLP), still commonly referred to as co-decision, starts with a proposal from the European Commission. The Commission submits the proposal simultaneously to the European Parliament (EP) and Council but the EP always acts first.

Flow charts explaining the OLP step-by-step and applicable time limits can be found on our website at <http://www.usda-eu.org/eu-basics-questions/how-is-eu-legislation-adopted/>.

First Reading

The Treaty does not set time limits for the EP and Council to conclude their first reading of a Commission proposal.

European Parliament

Within the EP, the President refers the proposal to a committee that will be responsible for examining the proposal. The choice of committee depends on the subject-matter dealt with in the proposal but may be challenged by other parliamentary committees. When the competence of a committee is challenged, a “joint committee” or “associated committees” may be appointed. Within the committee responsible, the coordinators of the political groups appoint a “rapporteur” whose task it is to lead the proposal through the different stages of the OLP. Other political groups may appoint a “shadow rapporteur” to monitor the work of the rapporteur and to ensure that their views are being considered. Other relevant parliamentary committees are invited to deliver an “opinion” to the committee responsible. The rapporteur and any other member of the relevant committees may propose amendments to the Commission proposal. These amendments together with those of the opinion-giving committees are voted on, by simple majority, in the committee responsible. When the committee responsible has adopted the report prepared by the rapporteur, it is put on the agenda of the plenary session. In plenary, additional amendments may be tabled by the committee responsible, a political group or by at least 40 Members of the EP. The EP, voting by simple majority, then delivers its first reading position on the Commission proposal.

European Commission

The Treaty allows the European Commission to submit an amended proposal incorporating the EP’s amendments in order to facilitate an agreement between the legislators.

Council

The Council's position is prepared within working parties composed of Member State experts and chaired by the Member State holding the six-monthly presidency of the Council. The preparatory work in the Council runs in parallel with the EP's scrutiny of the proposal but the Council's position can only be adopted after the EP has acted. The Council's position is based on the Commission's proposal and, if applicable, on the EP's first reading amendments.

The Council can act in the following ways:

- It accepts the Commission proposal, which the EP has not amended, and the proposal can be adopted.
- It fully accepts the EP's amendments and the proposal can be adopted.
- It does not accept the outcome of the EP's first reading and adopts its own first reading position.

In the above described scenarios, the Council acts by qualified majority. If the Council wants to amend the Commission proposal it has to act unanimously.

Trilogues

Trilogues are informal meetings between representatives of the EP, the Council and the Commission and can take place at any stage of the OLP, often before first reading. The objective of trilogue meetings is to find compromise on a package of amendments, acceptable to both the EP and Council. The Commission's opinion on these amendments is important because it determines how the Council has to vote. If the Commission opposes amendments that the EP wants to adopt, the Council will have to act unanimously if it wants to accept the EP amendments. Agreements reached in informal trilogues still need to be approved under the three institutions' formal procedures.

Second Reading (with time limits)

In the second reading stage of the OLP, a three-month time limit - which may be extended by one month - applies. The three-month deadline starts to run on the day following formal receipt of the Council's first reading position.

European Parliament

In second reading, the EP can either, accept, reject or amend the Council's first reading position. If the EP does not act within the set deadline, the proposal is deemed to be adopted in accordance with the Council's first reading position. The "recommendation for second reading" is normally prepared by the same rapporteur in the committee responsible. Opinion-giving committees are not consulted in second reading except in specific cases. Amendments may be tabled but should include amendments adopted at first reading but not accepted by the Council or amendments to the Council's first reading position. After the committee responsible adopts its recommendation for second reading by simple majority, it is put on the agenda of the EP plenary. Again, additional amendments may be tabled in plenary by the committee responsible, a political group or by at least 40 individual Members of the EP.

Approving the Council's first reading position without amendments only requires a simple majority vote and ends the OLP. Rejecting the Council's first reading position requires an absolute majority vote and also ends the OLP. Amendments to the Council's first reading position must be adopted by absolute majority.

European Commission

The Treaty requires the Commission to deliver an opinion on the outcome of the EP's second reading vote. If the Commission gives a negative opinion on an amendment adopted by the EP, the Council has to adopt that amendment by unanimity.

Council

Once the EP has concluded and referred its second reading position to the Council, the Council has three months – may be extended by one month – to conclude its second reading. The Council may adopt the EP's second reading amendments by qualified majority or by unanimity where the Commission delivered a negative opinion. If the Council cannot accept all amendments, a "Conciliation Committee" is convened.

Trilogues

In second reading, trilogue meetings (see "First Reading") are held in order to seek compromise between the three institutions and avoid a third reading possibly resulting in failure.

Conciliation and Third Reading

Convening the "Conciliation Committee"

A "Conciliation Committee" must be convened within six weeks – may be extended by two weeks – of the Council formally concluding its second reading. The purpose of the Conciliation Committee is to reach agreement in the form of a "joint text". The Conciliation Committee is composed of one representative of each Member State (relevant Ministers or their representatives) and an equal number of representatives of the EP delegation, as well as the Commissioner responsible. Three Vice-Presidents of the EP are permanent member of the Conciliation Committee. The Commission plays an advisory role proposing compromises in order to reconcile the positions of the EP and Council. The first meeting of the Conciliation Committee triggers the six-week, or if extended the eight-week deadline, to reach agreement on a joint text.

Third Reading

If the Conciliation Committee reaches agreement on a joint text, the EP and Council have six weeks – may be extended by two weeks – for a third reading. No amendments may be tabled to the joint text. The EP votes by simple majority and the Council by qualified majority to adopt the joint text. If either

of the two legislators fails to adopt the joint text within the set deadline, the proposal cannot become law. If the Conciliation Committee does not find agreement on a joint text, the proposal be adopted and only the Commission can restart the process with a new legislative proposal.