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Soós Edit

European Public Policy 2020

Lesson 6

How does the legislative process work in the European Union?

READING TIME:

30 min



SZÉCHENYI 2020



HUNGARIAN
GOVERNMENT

European Union
European Social
Fund



INVESTING IN YOUR FUTURE

How policies are made?

It is the Council and Parliament that pass European laws. Before this stage, it is the European Commission that proposes new legislation and defines the legal basis for the proposal in the EU treaties. The legal basis chosen determines the method of decision-making to be followed.

The institutions in the EU decision-making process are the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors. The ancillary bodies in the institutional system of the EU are the European Investment Bank (EIB), the European Economic and Social Committee and the Committee of the Regions of the European Union.

However, as the process of Union integration has developed and deepened, this division of powers in the EU decision-making process, originally geared towards the defense of national interests by the Member States, has evolved into something much more balanced, with the constant **enhancement of the status of the European Parliament**.

The European Commission, the European Parliament and the Council of the European Union are the three central legislative institutions of the European Union and are often referred to as the EU's 'institutional triangle'. They are not the only institutions that have a role in EU decision-making but they are the three most important.

European Policies are developed in a sharing of responsibilities between the European Commission, the Council, and the European Parliament.

The European Commission

The European Commission has a formal role as **initiator of policy proposals**. The Commission has the task of balancing and mediating national interest as well as interest group opinions in order to come forward with proposals. The Commission is active in taking initiatives and **shaping EU policies**, and in the consultation process, engaging lobbyists and experts.



The Von der Leyen Commission (2019-2024)

The European Commission is designed to be a **politically independent** institution that **represents the interests of the EU as a whole**. The Commissioners are appointed for a five-year period. Not only the individual Commissioners frequently have different views, but the Directorate(s)-General, they oversee have markedly different missions. In the post-Lisbon era the Commission has a new role to play in external relations since its vice-president responsible for external relations is the EU high representative for foreign and security policy.

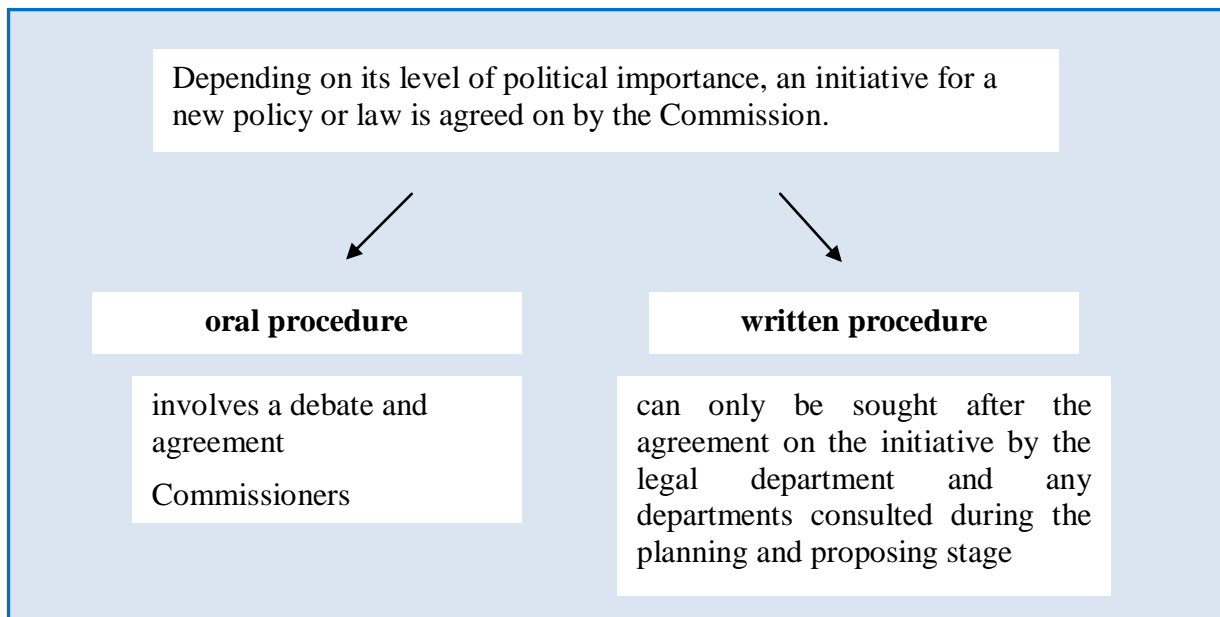
The Commission has the duty to serve the general interest of the EU as a whole. It is a **collegiate body** with a president and vice-presidents. **Each commissioner appoints a cabinet** to assist in carrying out his/her duties as head of one or more **directorate-generals**. It presents its program to the European Parliament.

The role of the Commission is similar to that of national government. It cooperates with the Council in exercising the legislative powers of the EU. The Commission is responsible for **administering European policies** and **implementing decisions**. The Commission is the **driving force within the EU's institutional system**. Additionally, the Commission ensures the observance of the treaties and EU decisions and, if necessary, brings cases to the attention of the Court of Justice of the European Union for judicial settlement.

The European Commission has the sole power of legislative initiative

In the case of proposed laws, they need to be agreed on by the Commission before they can be adopted by the Council and the European Parliament.

1. Once the draft text is finalised, having taken into consideration all of the input received on the initiative, it is submitted for inter-service consultation. All relevant **departments** are consulted.



2. Once a legislative proposal has been collectively decided on by the College, it passes to the next stage in the law-making process. It is transmitted to the Council and the European Parliament for examination and adoption.

3. The Commission functions on the **principle of collegiality**. Decisions are taken collectively by **the College of Commissioners**. Each of the 27 Commissioners carries the same weight within the decision-making process and they are equally responsible for the decisions made.

Collegiality guarantees:

- the quality of the decisions taken, since each Commissioner must be consulted on every proposal
- institutional independence, because decisions are adopted without partisan pressure
- the sharing of political responsibility across all Commissioners, even when decisions are reached by majority decision

The Council

Under the Union's **ordinary legislative procedure**, proposals need to be approved by directly elected representatives in the Parliament and indirectly elected representatives in the Council. The budget is similarly subject to the approval of both, as are almost all international agreements entered into by the Union.

THE CONFIGURATIONS OF THE COUNCIL

One representative of each Member State government at ministerial level, with the composition varying according to the subject discussed.

Chaired by the High Representative of the Union for Foreign Affairs and Security Policy

Foreign Affairs

Chaired by the Member State holding the presidency of the Council

General Affairs

Economic and Financial Affairs

Justice and Home Affairs

Employment, Social Policy, Health and Consumer Affairs

Competitiveness

Transport, Telecommunications and Energy

Agriculture and Fisheries

Environment

Education, Youth, Culture and Sport

The Council of the European Union – or the Council of ministers as it is widely known – **represents the member states**, and therefore, is composed of one representative of each national government. Each Minister is empowered to commit their Government during meetings and is politically accountable to their own national governments.

Decisions are made by the Council on the basis of a proposal from the Commission. The proposals are often amended, during the deliberations. Since only member states have voting power, the brunt of authority in the exercise of policy-making rests with the Council.

Meetings are limited to specific subject areas (e.g. health, transport, justice, etc.) and attended by the relevant Ministers from each member state. The representatives sitting in the Council meet in **10 different configurations** depending on the subjects under discussion. There is no

hierarchy among the Council configurations, although the **General Affairs Council** has a special coordination role and is responsible for institutional, administrative and horizontal matters.



The Council adopts laws and coordinate policies by the European Parliament. Decisions in the Council are made according to the decision rule that the Treaties prescribe as applicable for the proposal at hand. The standard system of voting in the Council is **qualified majority voting**, which from 2014, is based on the 'double majority' of member states and population. Decisions in the Council need the support of 55% of member states, representing a minimum of 65% of the EU's population, thus facilitating decision-making in the enlarged Union. The presidency of the Council rotates every six months, and Council meetings are convened by the country that holds the presidency. (July-December 2020 Germany; January-June 2021 Portugal; July-December 2021 Slovenia)

The **presidency of the Council** — with the exception of the 'Foreign Affairs Council', which is chaired by the High Representative of the Union for Foreign Affairs and Security Policy — is held by each member state in turn for six months. The **presidency of the Council** has come to play an **important role in decision-making** as the compromise proposals put forward by the council often determine the final outcome of an issue.

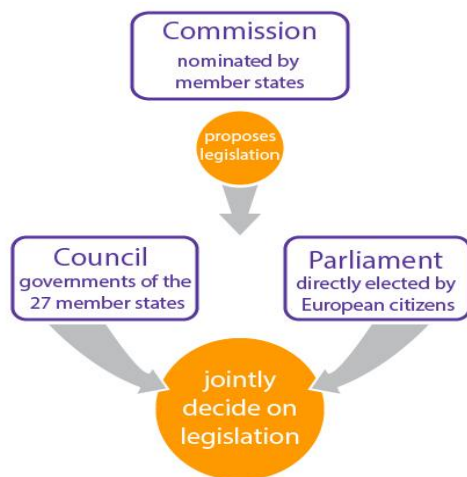
Given the growth of European policies, COREPER in turn, has established **working groups** and other **technical committees** made up of civil servants from all national administrations to discuss the technical merits of the proposals submitted by the commission. These bodies have no independent power, they only assist the council in the discharge of its duties.

The Council shares executive power with the Commission. It covers such areas as *economic policy*, the *conclusion of international agreements*.

The Council is an institution through which the member states exert their control over the executive and legislative powers of governance in the EU.

The European Parliament

The [European Parliament](#) is the European institution that directly represents the people of the member states. It is a directly elected supranational parliamentary body which expresses the democratic will of the Unions' citizens and represents their interests in discussions with other EU institutions. It formally became the European Parliament in 1962, and the first direct elections were held in 1979 and now held every five years. It consists of 705 members (MEPs) from all 27 member states, with each country having a formally agreed number of deputies based on the size of its population. The European Parliament has three fundamental powers: **legislative power, budgetary power, and supervisory power.**



According to the Article 289 of the Treaty on the Functioning of the European Union the **ordinary legislative procedure** is the general rule for adopting legislation at European Union level. It puts the European Parliament and the Council of the European Union on equal footing and applies in 85 defined policy areas covering the majority of the EU's areas of competence.

The procedure starts with a legislative proposal from the Commission and consists of up to three readings. The two co-legislators adopt legislation jointly, having equal rights and obligations. Neither of them can adopt legislation without the agreement of the other, and both co-legislators have to approve an identical text.

Interinstitutional negotiations

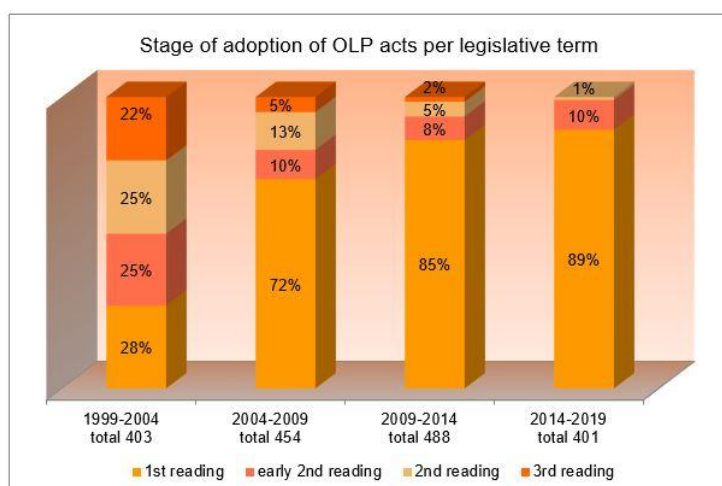
The co-legislators have the possibility to agree on a compromise text – and then to conclude the procedure – at any reading. These agreements are reached through interinstitutional negotiations which generally take the form of tripartite meetings ('trilogues') between Parliament, the Council and the Commission.

Conciliation

Conciliation is the third and final stage of the ordinary legislative procedure. The conciliation procedure is opened if the Council cannot accept all the amendments adopted by Parliament at second reading. It consists of negotiations between the two co-legislators in the framework of the Conciliation Committee, with the objective of reaching an agreement.

In practice, a very large proportion of codecision files are now agreed at the first and second reading. The third and final stage of the procedure, known as 'conciliation', has become the exception and is limited to very difficult files.

The Ordinary Legislative Procedure in Figures



Percentage of Codecision/Ordinary Legislative Procedure files adopted at 1st, 2nd or 3rd reading.

The role of the European Parliament in the EU's legislative process has increased considerably. The raising of the co-decision procedure to the level of ordinary legislative procedure has, in effect, turned the European Parliament into a 'co-legislator' alongside the Council. In the **ordinary legislative procedure**, the Parliament can not only put forward amendments to legislation at various readings but also, within certain limits, get them accepted by the Council. Union legislation cannot be passed without agreement between the Council and the European Parliament.

Traditionally, the Parliament has also played a major role in the **budgetary procedure**. The Treaty of Lisbon (2009) further extended the budgetary powers of the European Parliament, stipulating that the Parliament must approve the multiannual financial plan and giving it co-decision powers on all expenditure.

The **supervisory powers** of the European Parliament have also grown significantly over time. They are exercised mainly through the fact that the Commission must answer to the Parliament, defend its proposals before it and present it with an annual report on the activities of the EU for debate. The Parliament can, by a two-thirds majority of its Members, pass a **motion of censure** and thereby compel the Commission to resign as a body (Article 234 TFEU).

The legislative process in the European Parliament

1. Parliamentary committees

A Member of the European Parliament, working in one of the parliamentary committees, draws up a report on a proposal for a 'legislative text' presented by the European Commission.

2. Political groups

Most of the 705 MEPs belong to a political group, of which there are currently 7, representing all ideological tendencies in the EP. It is the political groups that decide which issues will be discussed in plenary. They can also table amendments to the committee reports to be put to the vote. However, no Member can be obliged by his group to vote in a particular way.

Parliament meets in plenary session every month (except August) in Strasbourg.

3. Plenary session

The plenary session represents the culmination of the legislative work done in committee and in the political groups. The plenary session is generally the subject of a debate in which the Commission, the representatives of the political groups and individual MEPs express their views.

Only the texts adopted in plenary and written declarations signed by a majority of Parliament's component Members formally constitute acts of the European Parliament.

The members usually speak in their own language, and what they say is interpreted simultaneously by the **interpreters** into the other official EU languages.

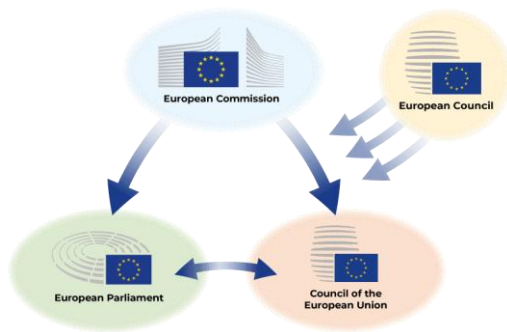


In **the adoption of legislative acts**, a distinction is made between the ordinary legislative procedure (co-decision), which puts Parliament on an equal footing with the Council, and the special legislative procedures, which apply only in specific cases where Parliament has only a consultative role.

On certain questions (e.g. taxation) the European Parliament gives only an advisory opinion (the 'consultation procedure'). In some cases the Treaty provides that consultation is obligatory, being required by the legal base, and the proposal cannot acquire the force of law unless Parliament has delivered an opinion. In this case the Council is not empowered to take a decision alone.

The European Council

The European Council grew out of the summit conferences of the leaders of the Member States. It is now composed of the Heads of State or Government and the Presidents of the member states.



The European Council does not exercise legislative functions.

Its function is to establish the general policy guidelines for EU action. These take the form of ‘conclusions’, which are adopted by consensus and contain basic policy decisions or instructions and guidelines to the Council or the European Commission. The European Council has

in this way directed work on economic and monetary union, the European monetary system, direct elections to the Parliament and a number of accession issues.

The European Council is an overtly political body, and does not interfere with the regular decision-making processes of the Union.

The European Council acts as the strategic guide for European policies. The meetings, often termed ‘EU summits’, give the EU as a whole general political direction and priorities at least twice every half a year in Brussels.

The Treaty of Lisbon created the office of President of the European Council. The President of the European Council, unlike the presidency up to now, has a European mandate, not a national one, running for 2.5 years on a full-time basis. The *President’s tasks* comprise the preparation and follow-up of European Council meetings and representing the EU at international summits in the area of foreign and security policy.

COMPOSITION OF THE EUROPEAN COUNCIL

Heads of State or Government of the Member States

President of the European Council

President of the European Commission

High Representative of the Union for Foreign Affairs and Security Policy

Further Reading

Borchardt, Klaus-Dieter: The ABC of EU law. Directorate-General for Communication, European Commission Publications Office of the EU. Available at: <https://op.europa.eu/en/publication-detail/-/publication/5d4f8cde-de25-11e7-a506-01aa75ed71a1>

European Commission website: https://ec.europa.eu/commission/commissioners/2019-2024_en

European Parliament website: <https://www.europarl.europa.eu/about-parliament/en/powers-and-procedures/legislative-powers>

The Council of the European Union website: <https://www.consilium.europa.eu/en/council-eu/>

European Council website: <https://www.consilium.europa.eu/hu/european-council/>



QUESTIONS

What is the role of the European Commission in the EU legislative process?

What is the ordinary legislative procedure?

What are the main institutions of the EU and their basic functions?

Explain the roles of different institutions in the decision-making process of the EU!

Why is the European Council important in the EU legislative process?