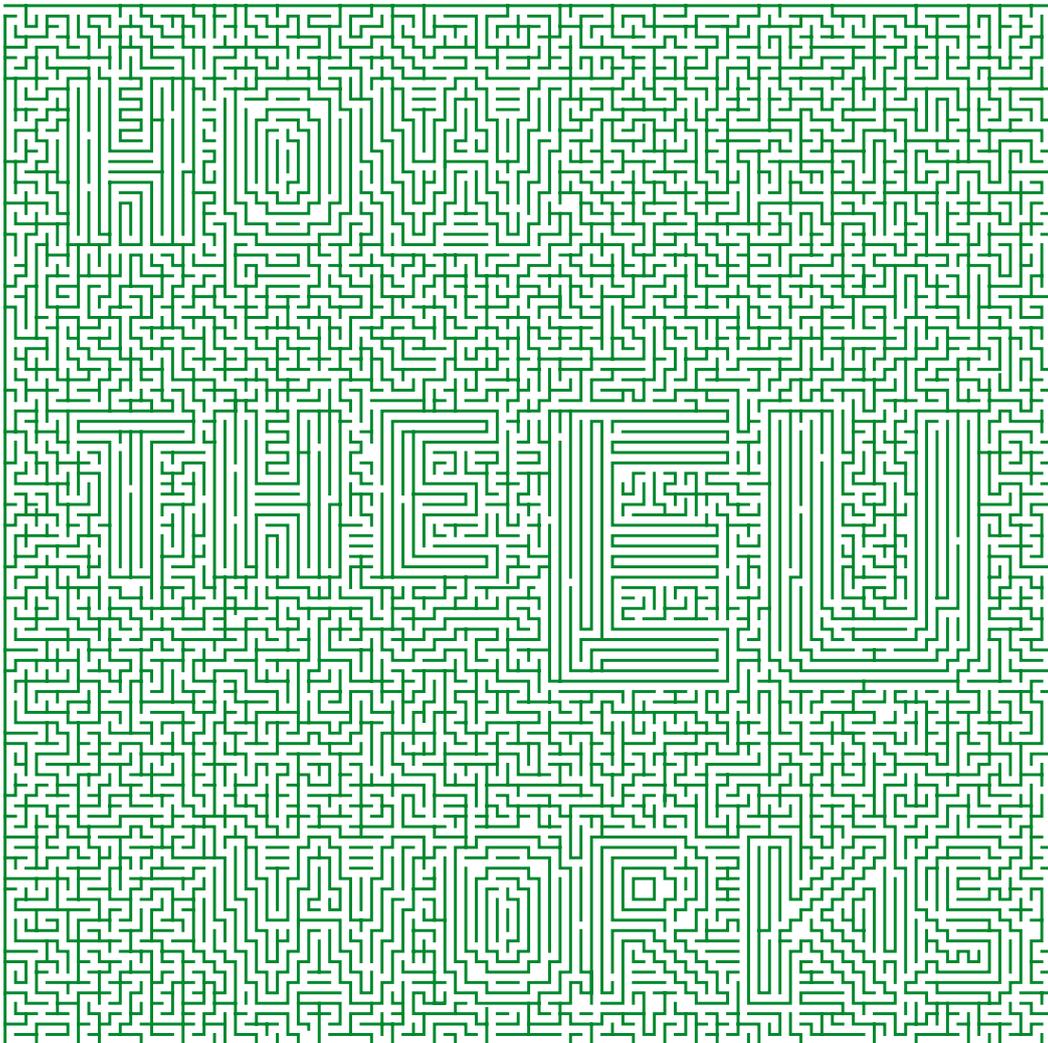


ACTIVIST GUIDE TO THE BRUSSELS MAZE

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EUROPEAN
DIGITAL
RIGHTS

The purpose of this booklet is to provide activists with an insight into where EU legislative and non-legislative Proposals come from, what can be achieved at each stage of the administrative process. As the lifetime of any EU Proposal of any description is very long, it is important to know where to target any activity at any given moment. Every institution is very powerful and influential at certain moments and very much a spectator at other moments. We hope that this guide will help serve as a map of the Brussels maze.

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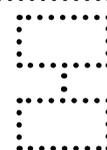
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EUROPEAN COMMISSION AND CONSULTATIVE BODIES

European Commission

The European Commission consists of 27 Commissioners (including the EU High Representative, the President and six further Vice Presidents), nominated by the 27 Member States and approved by the European Parliament.

The Commissioners are individually responsible for 33 departments, called Directorates General (DG). These are divided into Directorates, which are sub-divided into Units.

All Commission positions are adopted collectively (“collegial decision-making”). As a result, once a position has been adopted, no Commissioner has the right to criticise any Commission policy.

Each Commissioner has a “Cabinet” or private office staff. As decisions are taken collectively, each Commissioner’s Cabinet must monitor all Commission activity. In addition, the Cabinet members divide up the policy dossiers of the DG (or DGs) which their Commissioner is responsible for. It is often more productive to discuss the details of a particular dossier with a cabinet member than with the Commissioner him- or herself as they are the day-to-day bridge between the Commission services and the Commissioner.

However, they are exceptionally busy and therefore meetings should only be requested when needed and when you can provide detailed and specific expertise.

“It is often more productive to discuss the details of a particular dossier with a cabinet member...”

The fascinating thing to note about the Commission is that each Directorate General has its own corporate identity (often closely reflecting the personality of the Commissioner responsible). So, few

if any accurate generalisations can be made about the “attitude of the Commission” on any dossier. The Commission is simultaneously open and closed, transparent and secretive.

Consultative bodies of the EU

The Economic and Social Committee represents civil society, employers and employees.

The Committee of the Regions is meant to represent regional and local authorities. It rarely works on digital issues, except on network rollout.

EUROPEAN PARLIAMENT

The European Parliament is the only directly elected European institution. The representation is “weighted” in a way which gives smaller Member States proportionately more votes than the larger ones. As of January 2012, there is a total of 754 Members of the European Parliament (MEPs).

MEPs organise themselves based on political persuasion (“political groups”) rather than country. These are:

Name	Abbr	No of MEP's	% of MEP's	Member States	Political orientation
European People's Party	EPP	271	35.94	26	Centre-right
Socialists and Democrats	S+D	190	25,19	27	Centrist to left-wing
Alliance of Liberals and Democrats for Europe	ALDE	85	11,27	15	Centrist
Greens/European Free Alliance	Greens/ EFA	58	7.69	15	Diverse, generally left-wing
European Conservatives and Reformers	ECR	53	7.02	9	Centre-right
Confederal Group of the European United Left / Green United	GUE/NGL	34	4.51	13	Strongly left-wing
Europe of Freedom and Democracy	EFD	33	4,37	11	Anti-EU
Non-attached members	NI	30	4,98	9	

Committees

Parliamentary work is undertaken by 20 Committees. Broadly speaking, each Committee's membership corresponds to the size of each political group and to the proportion of MEPs from each Member State.

MEPs are organised by political group in each Committee. Each political group appoints a "coordinator", which is basically a "leader" for the delegation in that particular Committee.

Committee secretariat

Each Committee is supported by a non-political secretariat, whose staff are often impressively expert on the subject matter of the Committee in question providing very high-level support for MEPs. Activists can have very productive cooperation with these staff members, but the non-political nature of their role must be respected and no communication with Committee staff members may either ask for, or be liable to be misunderstood as asking for, political interference or bias.

Political group secretariat

Each political group also has its own staff that support the work of MEPs from that political group in the Committee. These staff are also frequently very expert on the policies covered by their Committee. They are also closely involved in negotiations on individual Proposals and are therefore very significant in the political process. They almost always welcome input from activists, particularly those with expertise and those that have demonstrated trustworthiness and willingness to be involved.

“These staff are also frequently very expert on the policies covered by their Committee”

Assistants

Each MEP has one or more assistants. There are as many MEPs in the Parliament as there are types of assistant – the role depends very much on the personality of the MEP. However, they have become increasingly important in recent years, often playing a role of equal importance to that of their MEP on some legislative dossiers. Only ongoing contact with any MEP will allow insight into the role of any assistant.

Management of Proposals

Unlike a national parliament, ordinary parliamentarians are in charge of each Proposal in the Parliament. The MEP responsible for a particular Proposal is known by the French word “Rapporteur”. All of the other political groups nominate an MEP to follow the dossier for their group and these are known as “Shadow Rapporteurs”.

Information is power.... and hard to find

Unfortunately, each political group organises their own website, so identifying the staff members or coordinators for each political group involves trawling through their website. The political groups also like to fundamentally redesign their websites very often, so providing links to the current locations of this information is of limited value.

There is no detailed directory of Parliament secretariats on any dossier and no directory of which political group staff are working on any given dossier. Activists can rely on organisations, such as EDRi working in Brussels in order to find such information. For example, EDRi maintains a database of priority dossiers including all of the above information, which is available to members.

THE COUNCIL

What’s the Council?

The Council is made up of the Member States. Each Member State has a “Permanent Representation” to the EU in Brussels. The “Perm Reps” (as they are known in Brussels jargon) are staffed with ministry officials that do most of the hard work on negotiations, under instruction from their home ministries.

At the top of the hierarchy of the Perm Reps are the Permanent Representatives, who can negotiate on behalf of Ministers (in a forum known as Coreper II) and their deputies, who oversee mainly technical issues (Coreper I). Obviously, as the range of issues that Coreper covers, the Permanent Representatives must rely heavily on the relevant ministry in their home country, when working on any particular dossier. However, as happened in the Software Patents Directive, political directions and manoeuvres which Coreper takes can be decisive. Coreper is chaired by the representative of the Member State which currently holds the EU presidency.

While the Council itself is still very closed and secretive, the Perm Reps themselves have undergone something of a revolution in

transparency over the past few years. Most Perm Reps staff from most Member States are very interested in receiving input from interest groups. Unfortunately, it often takes a bit of detective work to find out:

- who is responsible for the dossier you are working on and
- time in order to build up enough trust to work effectively with the official in question.

While the Perm Reps are, individually, becoming more transparent, the Council itself has failed miserably to keep pace. There is little public information about which working groups are responsible for which dossiers, what was discussed in working groups, public access to working group meetings, details regarding which Member States take which positions, timetables, negotiating drafts, etc.

Council Presidency

The Presidency of the Council is rotated every six months between the EU Member States. At any given moment, there are three Member States with a role in the Presidency – the incoming Presidency, the outgoing Presidency and the Presidency-in-office.

Presidency politics

Presidencies believe that the whole world is looking at them and that adopted texts are proof of a good presidency. As a result, presidencies frequently vote in favour of whatever will lead to an agreement – even if this is contrary to their own country's best interests. This is particularly, but not only, the case for presidencies from the Smaller Member States. Larger Member States can, although this is comparatively rare, exploit their position as President, as happened under the French Presidency in the telecoms package and the UK Presidency in data retention.

When does the Council do what?

If the dossier is considered urgent, for whatever reason (normally to weaken the Parliament's negotiating position, which the Parliament has an odd and inexplicable habit of consenting to), the Council will work in parallel with the Parliament and negotiate compromises ahead of the Parliament's First Reading vote. As a result, the speed and timing of the Council's activities changes on a case-by-case basis.

Key Online Resources

MEP Directory

<http://www.europarl.europa.eu/members/expert/groupAndCountry.do>

Political Group Directory

<http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=45&pageRank=4&language=en>

European Parliament Work In Progress

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

Parliament Tracker

<http://parltrack.euwiki.org/>

Vote Tracker

<http://www.votewatch.eu/>

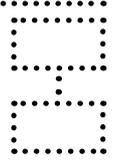
Political Memory

<https://memopol.lqdn.fr/>

European Parliament Video Broadcasts

<http://www.europarl.europa.eu/ep-live/en/schedule/schedule>

THE PROPOSAL



FIND YOUR WAY THROUGH THE MAZE

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Where do Proposals come from?

While virtually all Proposals originate in the Commission, the reason behind any particular Proposal varies a lot. For example:

sometimes the EU sees that the USA is responding to a particular development and feels the need to follow a similar route, for competitive reasons (the E-Commerce Directive is an example of this, reacting to the US DMCA);

sometimes legislation is necessary to implement an international agreement signed by the EU, such as happened with the Copyright in the Information Society Directive, proposed to implement the WIPO Copyright Treaty;

sometimes (although this is only available to larger members) Member States that hold the Presidency of the Council (ab)use their position to push through legislation, as happened with the UK Council Presidency and the Data Retention Directive;

sometimes large industries devote large lobbying resources to “selling” a Directive to the EU, as happened with the Term Extension Directive;

sometimes the Commission becomes aware of divergences in approach between Member States in an area that is under the EU’s competence and proposes legislation to resolve this. The E-Privacy Directive is an example of this.

01

Launch of the Proposal

02

First Reading in the EP

03

First Reading in the Council & Commission

04

Second Reading in the EP

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Second Reading in the Council

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Conciliation

01 LAUNCH OF THE PROPOSAL, THE “ORDINARY LEGISLATIVE PROCEDURE”

step
01

The Commission

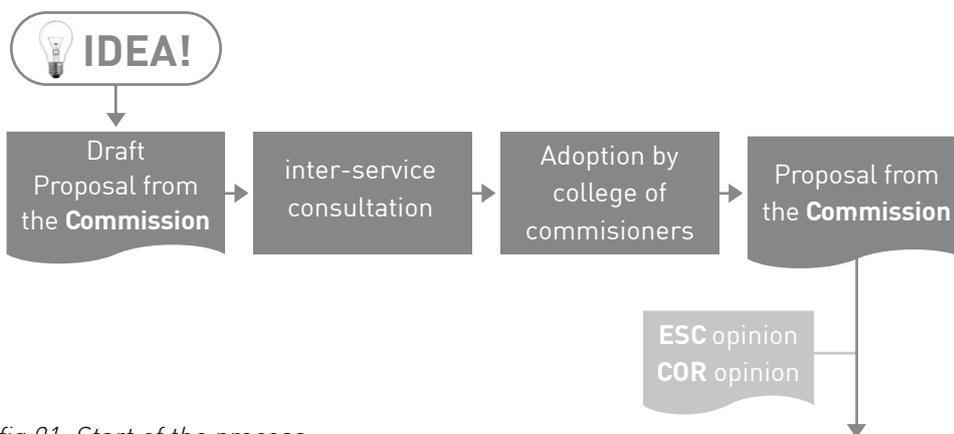


fig 01: Start of the process

The first steps on the journey

Once an issue has been identified as possibly needing legislation, it will be added to the annual work programme. The DG responsible will then publish a document, which will be, depending on the level of advancement of its thinking at that stage, a Green Paper, a White Paper or, most advanced, a Communication.

At this stage in the process, activists and activist groups can respond to the consultation documents. While it is easy to be cynical, it is really valuable to respond to consultations. If the Commission's thinking is positive, it needs support, if it is not positive, it needs to be prevented from being able to say that nobody was opposed to its approach.

Groups that have sufficient resources, individually or through associations such as EDRi, can very valuably maintain personal contact with the relevant officials in the Commission, to provide input from our perspective on an ongoing basis. Again, this can

be more or less effective, depending on the good will of the Commission. The “collegial” nature of the Commission should always be remembered – it is a collection of often competing parts and not a single unit. No Proposal is ever supported by every part of the Commission, so there are always allies to oppose or support a particular measure, it is just a question of finding them.

Commission approval process

When the responsible Directorate General adopts a Proposal, it is then sent to the rest of the Commission, with a deadline of three weeks for a process called “inter-service consultation”. No proposed Commission Proposal can be approved unless it is supported by all parts of the Commission. This is therefore a key moment – although Commissioners must always take care that their opposition to a particular measure will not lead to opposition to any legislation that they have in the pipeline.

Final steps

Finally, a draft Directive or Regulation will be proposed, together with an “Impact Assessment”. The Impact Assessment is meant to be a careful weighing of the different options available, in order to produce better legislation. In reality, by the time the impact assessment is written, a political decision has normally already been taken. Therefore, decisions that are more political than fact-based have impact assessments which use very tortured logic and provide very interesting clues regarding where the Commission sees its own weaknesses. For example, the Impact Assessment on the Child Exploitation Directive basically came to the conclusion that the Commission’s Proposal on blocking was illegal!

step

01

“ While it is easy to
be cynical, it is really
valuable to respond to
consultations ”

02 FIRST READING IN THE EUROPEAN PARLIAMENT

step
02

Receipt of the Proposal by the European Parliament and Council

Once a legislative procedure has been proposed by the European Commission, it is communicated to the European Parliament and the Council.

European Parliament

Council

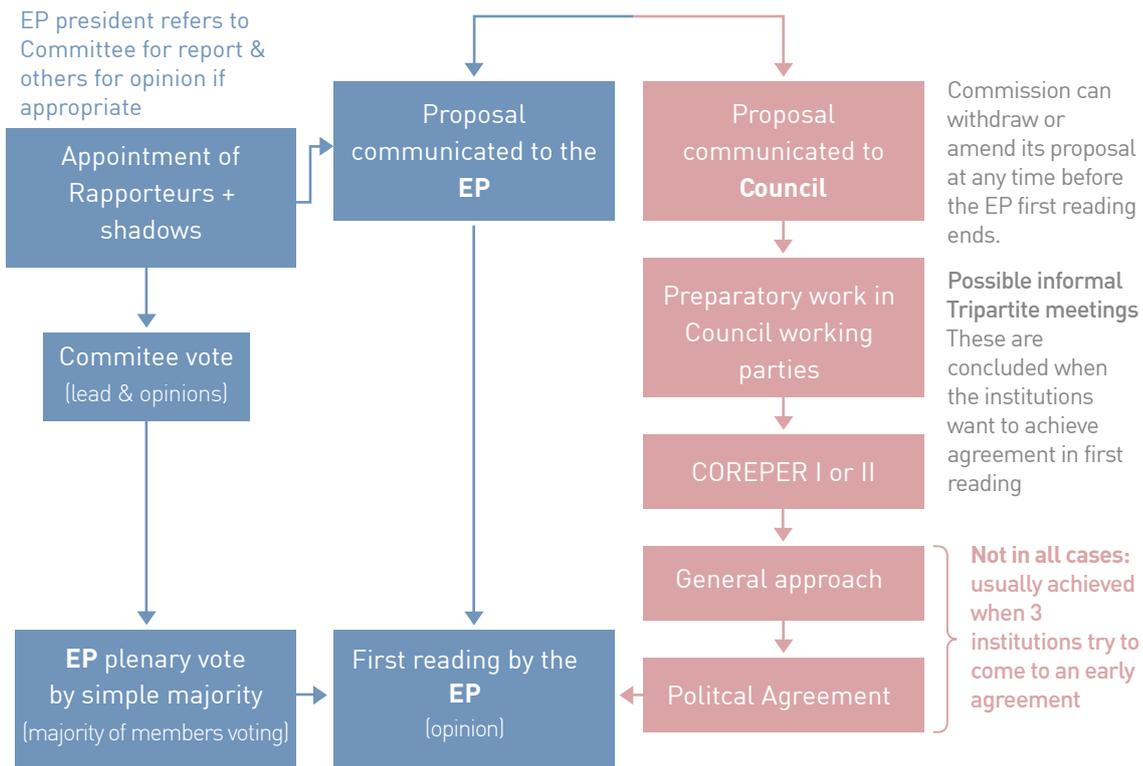


fig 02: Receipt of the Proposal by the European Parliament and Council

As most dossiers touch more than one policy area (a Directive may have an industry element, a cultural element and a civil liberties aspect, for example), it is normal for more than one Committee to work on a Proposal. The first decision to be made, therefore, is which Committee will be in charge (the “lead Committee”) and which Committees will provide “Opinions”, providing expertise related (in theory at least) to their area of expertise.

Procedure in Committee

Appointing the MEP in charge

The next step is for the lead and the Opinion Committees to decide on which MEP will be in charge of the dossier (the “Rapporteur”). If an MEP has worked previously on a subject, they are normally the automatic choice, unless they seriously mismanaged the dossier in the past. The decision is made by the “Coordinators” of the political groups. Once the Rapporteur has been chosen, each of the other political groups need to appoint an MEP (the “Shadow Rapporteur”) that will be in charge of dossier.

Debates

There are then some discussions on the dossier in Committee meetings, where the Commission, and sometimes also the Council, present their views. At this stage the Commission is often very active behind the scenes in the Parliament, seeking to gain support for its approach. This process can take quite a long time, as there is no time limit for the Parliament to reach its First Reading agreement.

Draft Report/Opinion(s) and amendments

The procedure is identical in each Committee regardless of whether it is the lead Committee or an opinion Committee.

The Rapporteur produces a Draft Report, indicating the amendments that s/he would like to propose to the Commission text. A deadline for amendments is then set and MEPs (oddly enough, any MEPs, even those not on the Committee and who have not been following the dossier at all!) have an opportunity to table their own amendments. These can be accompanied by a short “justification” to explain the logic behind the proposed change. A few key points to remember for activists at this stage is:

to think strategically about which MEPs from which political groups would be best to table their particular amendment (obviously the Rapporteur and Shadows are most influential);

step
02

- to think about how to gather support from MEPs from other political groups, the Rapporteur and Shadow Rapporteurs in particular;
- to ensure that MEPs, assistants and advisers fully understand the essence of why the amendment is needed, so that this can be maintained during negotiations.

Compromise amendments

The next stage in the process is the most undemocratic. Based on the very laudable EU approach (in all institutions) to seek compromise and consensus, the various political groups seek to adopt “compromise amendments” on key points. These seek to represent the consensus on any given point, based on the amendments tabled.

However, the process fails for two main reasons – firstly, large lobbies have the capacity to persuade large numbers of MEPs to table “their” amendments, creating a false sense of consensus favouring the corporate lobbyists and, secondly, the discussions happen behind closed doors, with little or no insight into how they were reached. In any event, by the time a compromise is reached, it is too late.

Vote in Committee

A “voting list” is then prepared by the Committee secretariat. Where there are several amendments on one particular article from the Commission’s text, they are voted on in a sequence starting with the least similar to the Commission’s text to the one that is most similar. When an amendment is adopted, the rest of the amendments “fall” and are not voted on, because this would lead to contradictory texts being adopted. Voting is by simple majority.

Vote in Plenary

The lead Committee’s text is then sent to a full sitting of the Parliament (“plenary”), to be voted on by all MEPs. At that stage, it is still possible to table amendments, but this can only be done by political groups or by 10% of MEPs co-signing a proposed text.

In the Plenary (although usually before), the Commission explains what amendments it can accept and which it cannot accept. If it rejects an amendment of the Parliament, unanimity is needed in the Council for that amendment to be adopted. The Commission’s position is therefore very important.

The lead Committee’s report, as amended by the Plenary is the Parliament’s First Reading report.

Following the adoption of the Report in Parliament, the European Commission produces a revised proposal.

03 FIRST READING IN THE COUNCIL & COMMISSION

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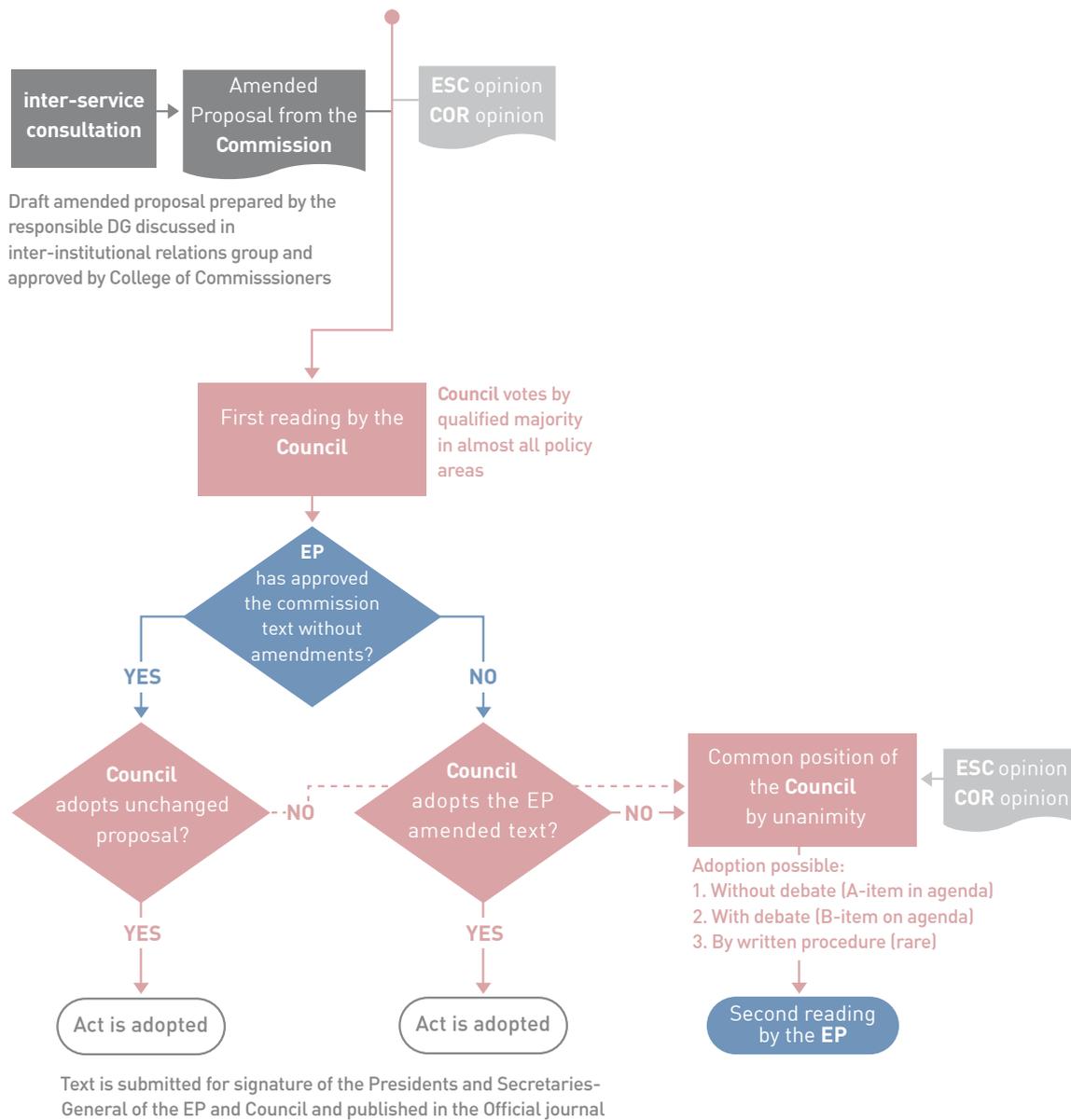


fig 03: First Reading in the Council & Commission

Commission revised Proposal

After the Parliament adopts its First Reading text and, ideally, before the Council adopts its First Reading, the Commission produces a revised Proposal, taking the changes in the political context created by the Parliament's First Reading into account.

Steps to reach an agreement

In any event, the relevant Council Working Groups work together to reach an agreement on all of the elements of the Commission text, with one eye on the developments in the Parliament. Depending on various factors, a "General Approach" (basically an informal agreement on the whole text) may be produced before the Parliament's First Reading. More difficult/contentious issues are pushed higher up the hierarchies of the ministries for decisions to be made (with correspondingly higher ranked officials participating in meetings in the Council – up to Coreper).

If the Council decides to adopt all of the Parliament's amendments, then the Commission Proposal, as amended by the Parliament, will be adopted and the legislative process is finished.

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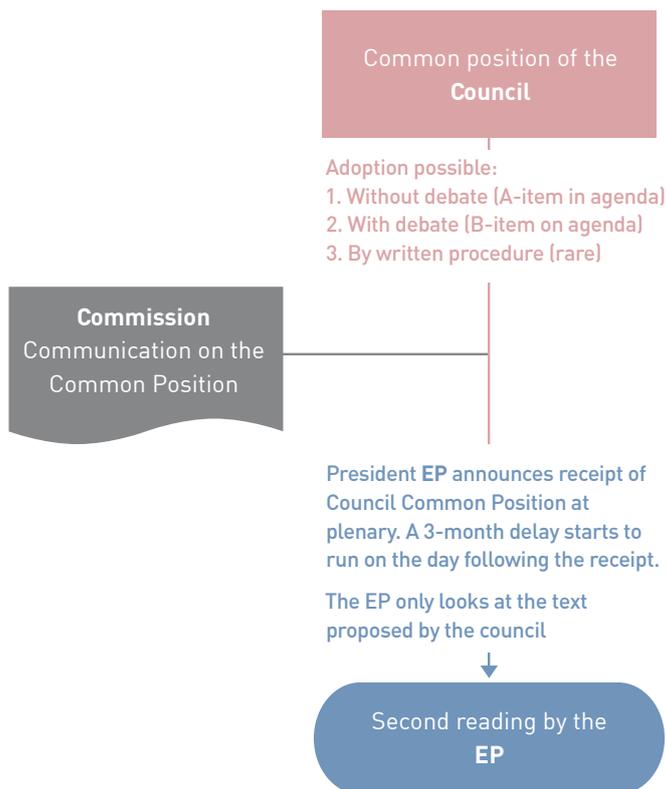


fig 04: End of the First Reading and beginning of the Second Reading

..... 04 *SECOND READING IN THE EUROPEAN PARLIAMENT*

The Second Reading in the European Parliament is a simplified version of the First Reading.

Only the lead Committee prepares a Report, normally with the same Rapporteur and Shadow Rapporteurs.

No amendments which would introduce new elements to the Proposal are allowed.

No amendments which contradict the Council common position are permitted, where the Parliament had not taken a position in the First Reading.

Amendments are adopted in the Committee on the basis of simple majority.

The Parliament has a three month deadline during which it must respond. This can be extended to four months if, for example, the summer holidays happen during the three month period.

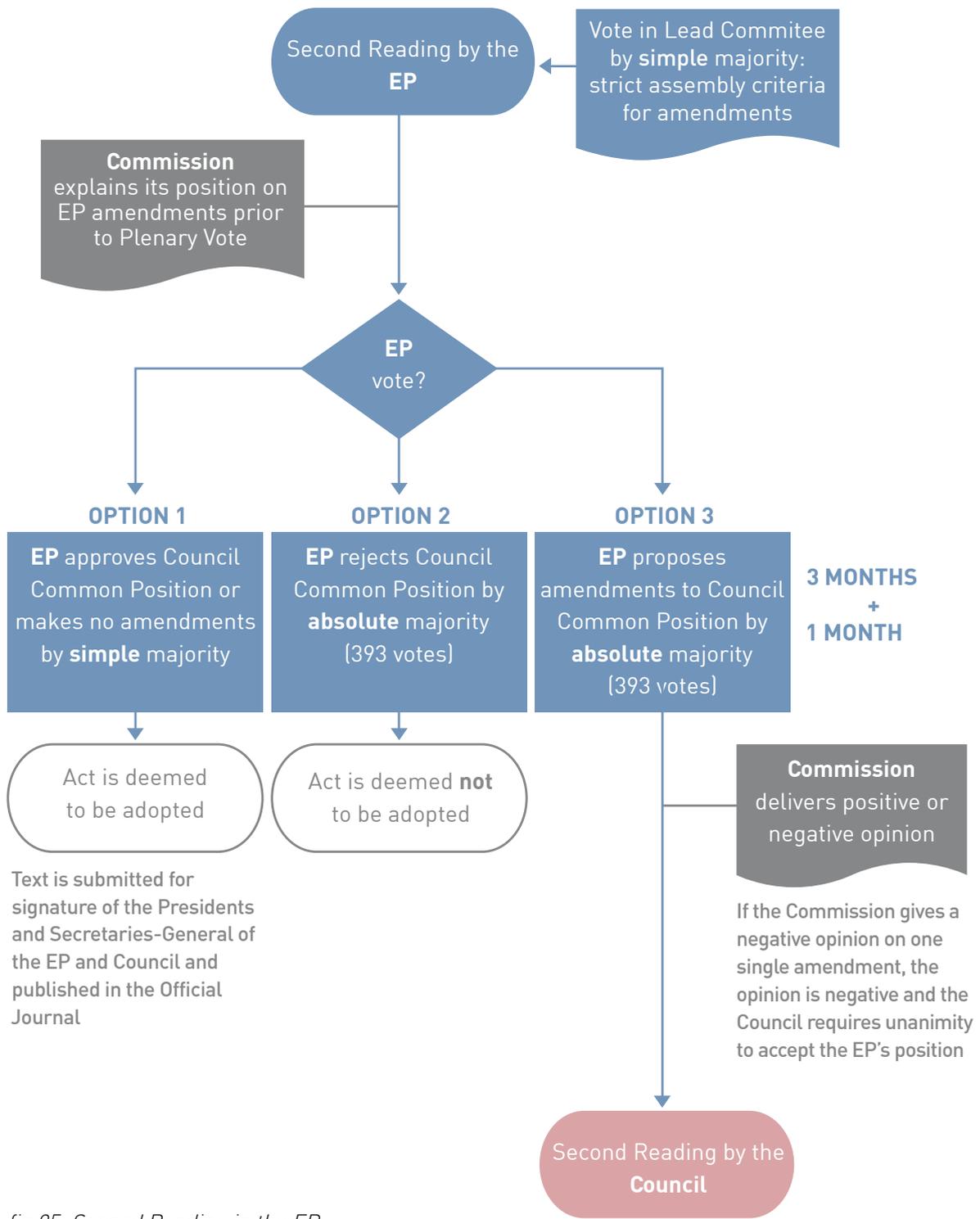
After the Committee has finished its work and has sent its report to be adopted by the Plenary, there are three possibilities:

The Parliament approves the Council Common Position by simple majority and the legislation is adopted.

The Parliament rejects the Council Common Position by absolute majority and the legislation is definitively rejected.

The Parliament adopts amendments (by absolute majority) to the Council Common Position and the revised text is referred back to the Council.

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step
04

fig 05: Second Reading in the EP

05 SECOND READING IN THE COUNCIL

step
05

When the text is referred back to the Council, it must take the Commission's view of the Parliament's text into account. If the Commission has adopted a negative Opinion on any part of the Parliament's text, unanimity is needed by the Council to adopt the text.

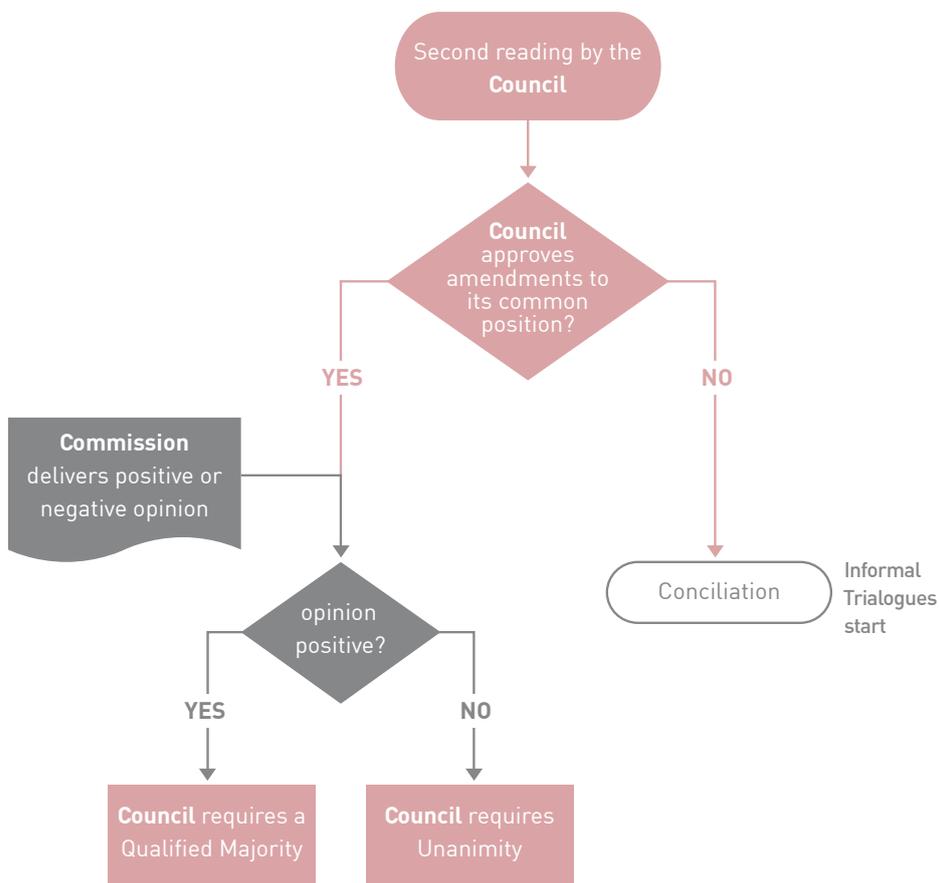


fig 06: Second Reading in the Council

06 CONCILIATION

step
06

If the Council does not approve the Parliament's text, negotiations are organised between the Parliament (Rapporteur and Shadows), Commission (DG responsible) and Council (Presidency, on behalf of the Member States). These meetings set the scene for "Conciliation" meetings between the institutions.

Within strictly defined time limits, a "Conciliation Committee" made up of 27 Member States, 27 MEPs (reflecting the strengths of the different political groups) and the Commission is convened. This either produces a compromise text... or it does not. If it does not, the legislative procedure finishes without any legislation being adopted.

If a text is agreed, then it is sent to the Council and Parliament for adoption. As both institutions were involved in the negotiations, this is almost always a formality. If both do accept the compromise, then the legislation is adopted. If either institution does not accept the text, the legislative Proposal is abandoned.

“Conciliation involves negotiations between the institutions”

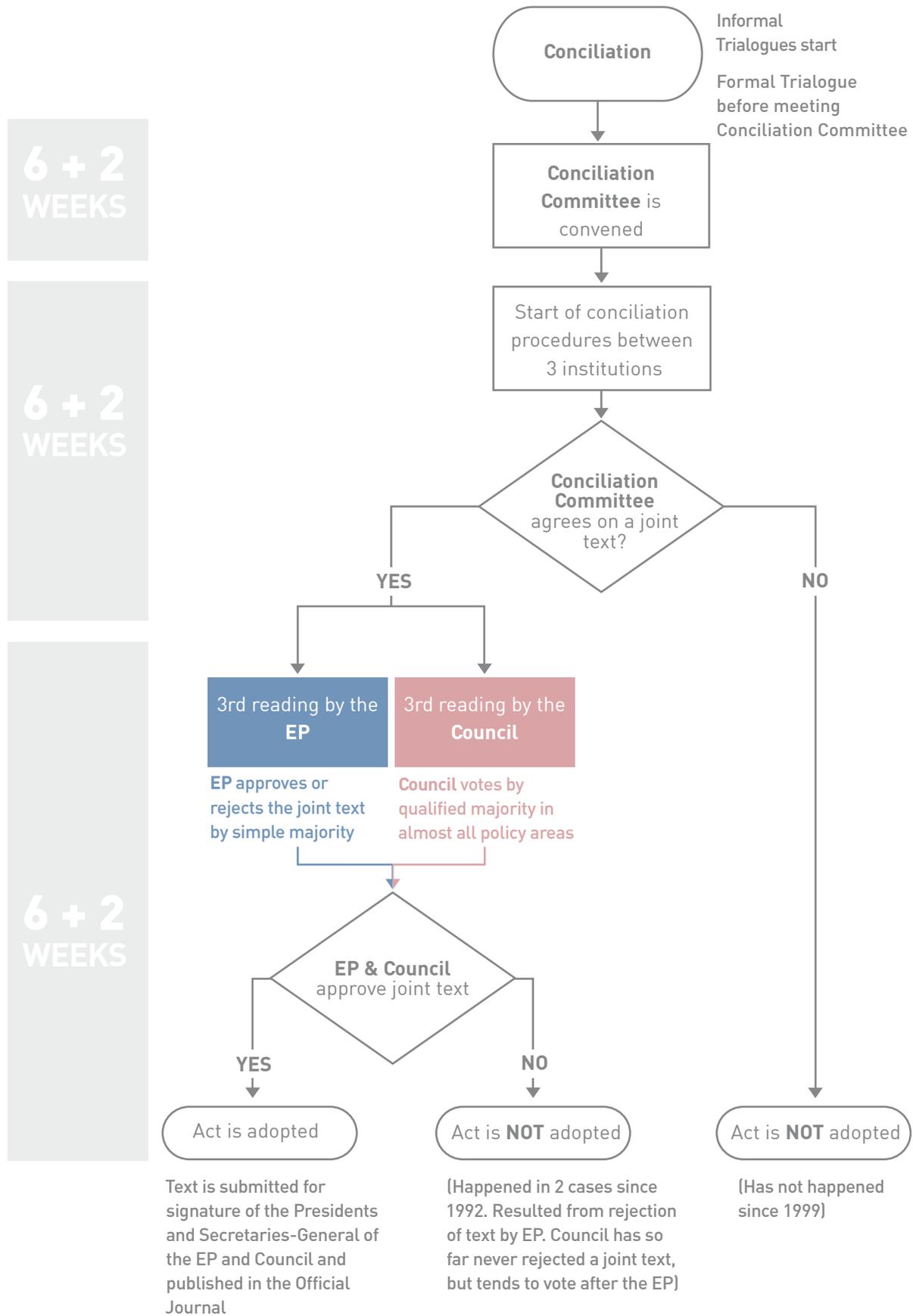


fig 07: Conciliation

PARLIAMENT NON-LEGISLATIVE DOSSIERS

The European Parliament very frequently decides to prepare non-legislative Resolutions, often in reaction to non-legislative instruments which have been published by the European Commission. Sometimes they are also a reaction to current events or issues where the Parliament has limited or no competence, such as Internet governance.

Purely unintentionally, one can only assume, such non-legislative instruments fit the interests of well-funded industry lobbies far better than those of civil society. Where civil society succeeds in minimising perceived risks in such a dossier – or even

when we succeed in including a positive text in a non-legislative dossier, a huge amount of effort is needed in order to ensure that the Parliament takes its own position into account when any subsequent legislation is tabled. On the other hand, where the Parliament adopts Proposals which are contrary to our interests, the well funded lobbies that inserted these Proposals will usually have the manpower and funding to ensure that the Parliament is not allowed to forget.

The procedure in Parliament is the same as for the First Reading under the ordinary legislative procedure.

INTERNATIONAL AGREEMENTS

The European Commission is often given responsibility to negotiate international agreements. In recent years, these have generally been in the security field, but they can also be in the areas of international trade and intellectual property.

It is normal for the European Parliament adopt a non-legislative Resolution in order to provide input into the negotiations – as was done with the EU-Australia Passenger Name Record (PNR) and Anti-Counterfeiting Trade Agreement

(ACTA) dossiers. However, the Council and Commission have repeatedly found that ignoring the Parliament's wishes has no particular negative consequences. The Parliament adopted the EU-Australia PNR Agreement, which rejected many of the Parliament's demands, for example.

TOP TEN ADVOCACY TIPS FOR ACTIVISTS

A MIGHTY SHORTLIST

01 Be early. Being involved in a dossier early shows knowledge of the dossier and willingness to be engaged. Policy-makers appreciate this greatly.

BE EARLY 01

02 Be reliable. Policy-makers have limited time and need to be credible vis-à-vis their colleagues. Understandably, they listen to people more who have been more reliable – and tend not to forget mistakes.

BE RELIABLE 02

03 Be honest. Policy-makers eventually forgive (but not forget) mistakes, they neither forgive nor forget being misled.

BE HONEST 03

04 Be understanding. Know and make allowances for the practical and political options available to a policy-maker. Politics is the art of the possible. Being asked for what you can't deliver is unsurprisingly not flattering for a policy-maker.

BE UNDERSTANDING 04

05 Be nice! However important a particular dossier is, being aggressive will never be productive and will limit your options the next time you need to communicate with that policy-maker.

BE NICE 05

06 Be thorough. Policy-makers appreciate expert and complete analysis.

BE THOUROUGH 06

07 Be brief.

BE BRIEF 07

08 Be consistent. You need to ensure that your analysis and policy are clear and consistent. It is also important to liaise with other, similar, civil society groups to ensure that the message is not diluted by confusion.

BE CONSISTENT 08

09 Be personal. Policy-makers get zillions of communications from interest groups. Non-personalised messages have less impact.

BE PERSONAL 09

10 Be a bridge builder. Alliances are crucial, even with individuals, groups and industries that compete with on other issues.

BE A BRIDGE BUILDER 10

GLOSSARY

TERMINOLOGY IS EVERYTHING

A

A-Point Dossier on a Council agenda which will be adopted without discussion.

Assent procedure In certain very limited cases (amendments to structural funds, for example), the Parliament can be asked to either approve or reject a Proposal but not amend it.

B C

B-Point Dossier on a Council agenda which will be debated.

Citizen's initiative Starting in April 2012, new procedure created by the Lisbon Treaty which allow 1 million citizens from at least one quarter of the EU Member States to invite the European Commission to bring forward Proposals for legal acts in areas where the Commission has the power to do so.

Codecision The former name for the "ordinary legislative procedure".

Committee of the Regions Advisory body that represents sub-national (and non-state national) administrative structures at an EU level.

CONCILIATION The stage after the Second Reading in the ordinary legislative procedure where the three institutions meet to find a final compromise.

Coreper Committee of Permanent Representatives – the highest level of authority under ministerial level in the Council.

Court of Justice of the European Union The Court consists of one judge per member state and eight to eleven advocates general. Its task is to interpret Union law. The court can give ruling as to whether instruments of the EU institutions and governments are in line with the treaties and give rulings on the interpretation or the validity of provisions contained in Community law.

D

Decision Directly applicable ruling of the European Commission or Council on a narrow point of regulation, such as an anti-dumping measure or a competition ruling.

Directive The most common form of EU legislation. A Directive establishes (normally) detailed policy that must be transposed into national law.

Double majority The new Council voting system under the Lisbon Treaty. Under this system, a majority is at least 55% of the members of the Council, comprising at least 15 of them and representing at least 65% of the European population. A blocking minority may be formed comprising at least four members of the Council. Unofficially, Presidencies do not put Proposals to the vote if two large Member States (FR, DE, IT, UK) are opposed.

E

Economic and Social Committee Advisory body that is meant to represent the interests of employers and civil society on an EU level.

European Convention on Human Rights International convention on human rights, with its own court and parliamentary assembly. It currently has 47 parties and the European Union, thanks to the new legal basis established by the Lisbon Treaty is currently negotiating accession.

G

Green Paper The most basic form of communication from the European Commission, often published as a first step in policy-making.

I

INI Parliament abbreviation for an "own initiative" (non-legislative, non-binding) report.

Interservice consultation The consultation process that takes place inside the European Commission as the last editing stage before a document is finalised.

M

MEP Member of the European Parliament.

Opinion The advice given by a European Parliament Committee to the Committee in charge.

Ordinary legislative procedure The most common decision-making procedure, which theoretically gives Parliament, Council and Commission equality.

Own-initiative report Non-legislative, non-binding position of the European Parliament.

P

Proportionality A measure must be necessary to achieve its treatybased objective.

Q

Qualified majority The voting procedure in the Council up to 2014, where 255 votes out of 345 votes are needed (smaller member states have proportionately more votes) (see "double majority").

R

Rapporteur MEP in charge of a particular dossier.

S

Shadow rapporteur MEP in charge of a particular dossier for their own political group.

Subsidiarity The rule whereby only those decisions that are best taken at an EU level should be taken at an EU level.

T

Transposition The process of implementing an EU Directive into national law.

W

White Paper A Proposal from the Commission for action in a particular policy area. It is not as developed as a Communication but more specific than a Green Paper.



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