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## The EU's Decision Making Process Changes in the Constitutive Treaties

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**Abstract:** Since the beginning of its existence in the form of communities, the European Union's decision making process underwent constant evolution. There were continuous adjustments that transformed a pure intergovernmental process into one having rather federal features. Based on the hypothesis that changes have occurred at the decision level in regards to the actors, procedures, influence and ways of taking decisions in order for the new realities, needs and will at the European level to be properly addressed, this paper aims to present the reforms performed through the adoption of new treaties and the modification of the existing ones. The reality is that in order for the European dream and integration to go on and also for further development of the European Union, finally becoming an entity far beyond the founders expectations, decision makers had to constantly and carefully adapt the decision making process. The purpose of this paper will be achieved by conducting a research based on the qualitative method, analyzing the related researches on this topic and the consolidated versions of the treaties. Thus, we will finally validate our research hypothesis that there was an evolution in what the EU's decision making process and decision procedures are concerned.

**Keywords:** European Union; decisions; procedures; evolution; adjustment

### 1. Introduction

This work presents the EU's decision making process changes which have happened through the enactment of the constitutive treaties and through their modifications in time.

It has been a long, complex and interesting process, a 60 years period of changes and continuous adaptations of the decision making process to the new realities. As a result, we can speak now about an entity, the European Union, completely different than the original communities and having competences and attributions beyond the greatest expectations and projections of the founders.

Unlike the early period, when the main target was the joint management of the coal and steel resources in order to avoid a new war in Europe, we can see now an economic, political and monetary entity and an integration of the member states on all the three levels.

The growth in the member states number, the wish but also the need for a deeper integration, have determined the evolution of the decision making process from intergovernmentalism to one driven by the supranational institutions and seemingly having the features of a federal decision making.

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In order to offer a detailed view on the decision making process changes, we will structure the paper over four parts. The first one will be dedicated to the birth of the European communities, where we'll address the Treaties of Paris, Rome and Brussels. The second part will highlight the first major reforms of the decision making process, reforms performed through the Single European Act and the Treaty of Maastricht. The third part will be dedicated to the European Union's development and the introduction of new reforms, using here the provisions of the Amsterdam and Nice treaties. We'll continue then with the European decision making process consolidation through the Constitutional Treaty and the Treaty of Lisbon.

## **2. The Birth of the European Communities - Treaties of Paris, Rome and Brussels**

The first of the European communities was the European Coal and Steel Community, established in 1951 through the adoption of the Treaty of Paris by six countries: Germany, France, Italy, Netherlands, Luxembourg and Belgium.

The main objectives of this treaty, written down in the Article 3, were the permanent resource supply for the countries, equal access to the production sources, low level of prices, the increase of the production and the improvement of working conditions. The goal was to create a common market, common objectives and common institutions having immediate and effective powers (Bărbulescu, 2008, p. 42).

In order to fulfill all the objectives set in the treaty, a number of four supranational institutions were established.

The High Authority was the institution having the main management and decision powers. It consisted in 9 members appointed by the member states governments through a joint decision. From a decisional making point of view, it was supposed to issue decisions and recommendations with the majority of its members (Article 14 of the Treaty).

As the liability of this institution was also to be addressed, a second institution was created, the Assembly, representing the interests of the member states. It consisted in 78 members appointed by the national parliaments and it did not have any legislative power but only supervision and control powers.

The third institution was an intergovernmental one, the Council of Ministers, whose attribution was to unanimously determine the priorities in what the resource use and allocation are concerned (Zlătescu, 2008, p.40).

Finally, the fourth institution set by the treaty, was the Court of Justice, whose main role was the supervision of the law and treaty provisions abidance.

The European integration continued with the adoption of the Rome Treaties in 1956 through which it was established the European Economic Community (EEC) and the European Community of Atomic Energy (EURATOM).

The main purposes of the EEC Treaty were the establishment of a common market based on four freedoms (free movement of goods, capital, services and people) and a common policy. The other treaty's main purpose (EURATOM) was to increase the standard of living, this time by setting down the necessary conditions for a fast development of the nuclear industry.

For each of the two communities, the decision makers established a Commission similar to the High Authority, and a Council of Ministers. Moreover they decided on a common Parliamentary Assembly and a common Court of Justice for them and the Coal and Steel Community. Each Commission was entrusted with initiative and control powers while each Council of Ministers had a pure legislative role this time.

The Treaty of Rome introduced a new decision procedure, the consultation one, this way having the Parliamentary Assembly involved for the first time in the decision making process through 22 articles

in the TEEC and 11 in the EURATOM Treaty (Matei, 2009, p. 63). Thus, it was mandatory for the Council to ask for the Parliament opinion for those decisions supposed to be regulated this way, but there was no need of also keeping this opinion in the final decision. Within this procedure, the Parliamentary Assembly was supposed to get the absolute majority of the votes cast (Art. 141 of TEEC), while the Council was supposed to meet a qualified majority (Art. 148 of TEEC).

Due to all these new institutions and new decisional realities, the decision making process per se became too complex and complicated. The decisions were taken and enforced separately for each of the communities. Moreover, there were eight institutions at the European level, representing the same member states and having similar attributions.

Things were to be changed after the adoption of the Brussels Treaty in 1967, which set a common institutional system for the 3 communities: one Commission, one Council of Ministers, one Parliamentary Assembly and one Court of Justice.

It's worth mentioning that the European construction faced a very difficult moment that could've represented the end of the story in 1965, when France decided to leave its chairs in the Council, not taking part to decisions anymore and blocking this way the decision making process for 9 months. This moment was called "The empty chair crisis". France was reluctant about the qualified majority system introduced by the Treaty of Rome and wanted to keep also the unanimity, at least for those decisions considered to be very important for the member states.

The decision makers finally agreed on taking the decisions by unanimity (intergovernmental strategy) also in those areas where they were supposed to be taken through a qualified majority, according to the Treaty of Rome. Member states were practically allowed to veto any decision this way.

Due to the so called "Luxembourg Compromise", the unanimity was the decision procedure used for a period of more than 20 years.

### **3. The First Major Reforms of the European Decision Making Process**

After the three enlargements of the communities (1973 - 3 states, 1981 - one state and 1986 - 2 states) which practically doubled the member states number, the decision making process was a bit on the edge if we consider the difficulty in getting the unanimous vote, when deciding in the Council. Therefore, the decision makers reached an agreement so that a new treaty, the Single European Act, was adopted in 1985 and entered into force one year later, in 1986.

This treaty had a significant importance in the EU's history. It was practically the start of a long process of reforms that radically transformed the European communities.

It was the moment when the decision makers introduced the brand new cooperation procedure, which gave the possibility of taking decisions with a qualified majority within the Council and enhanced the European Parliament's influence over this institution. We are pointing here the second reading mechanism and the possibility that the Parliament had to reject with an absolute majority a decision taken by the Council, forcing it to vote with unanimity. As a general rule though, the Council was acting through the qualified majority, having this way the unanimity set by the Luxembourg Compromise replaced.

Moreover, the treaty also introduced the assent procedure (Articles 8, 9, 237 and 238 of the Treaty). This is a one lecture procedure, within which the Parliament consent is needed before any decision in the areas of association agreements or accession, to be enacted by the Council.

The treaty also enhanced the community powers in what the social policy is concerned and introduced new competences such as the technological research and development (Art 130F) or economic and social cohesion. It also introduced the environmental policy among the ones already regulated by the European law. All these new competences enhanced the Parliament's powers, as it was involved in the

decision making process for them either through the consultation procedure or through the cooperation one.

Another important change is that the European Commission was entrusted with the exclusive right of initiative and with enhanced executive powers, under the Council supervision.

The most important reform of all though, is the vote using the qualified majority within the Council for most of the decisions related to the common market.

Short after the moment when the Single European Act entered into force, the decision makers adopted the Treaty of Maastricht. This was a real step forward in what the European construction is concerned. From that point on, the community was not only seen as an economic one but also as a monetary and political community. It was the moment when anyone met a newly born: the European Union.

The treaty modified the European Coal and Steel Treaty, the EEC Treaty, which became the European Community Treaty (TEC) and also the EURATOM.

The most important thing though is the establishment of the European Union, an entity built on three pillars: the European Communities, the European Security and Defense Policy and Justice and Internal Affairs. This structure represents let's say a compromise between those who wanted a deeper integration and the intergovernmentalists.

The most important reform in what the decision making process is concerned, was the introduction of the co-decision procedure, which allowed the Parliament to veto Council's decisions. The number of areas where the Parliament had a direct involvement was further increased. Therefore, the co-decision brought a plus of legitimacy for the decision making process, as the Parliament, the only institution whose members are directly elected by the citizens, got the possibility to amend Commission's proposals and to co-decide together with the Council.

The co-decision procedure written down in the Article 189b of the TEC, extended the cooperation procedure from a number of two readings to three. The Parliament got the veto right if after the second reading, the conciliation and the third reading, the two decision makers had not reached an agreement (Matei, 2009, p.92). The two procedures are also very different. Besides the increase in number of readings, within the co-decision procedure, the Council is no longer able to reject the amendments introduced by the Parliament, if they have the European Commission's agreement. It can ask though for a conciliation committee consisting in all its members and an equal number of members appointed by the Parliament, for further discussions on the amendments. Moreover, in case that the conciliation committee is not able to reach an agreement, the Council can reinforce its first common position which is to become law if the Parliament does not reject it with the absolute majority of its members.

Another important thing to be mentioned here is that the co-decision is significantly different than the consultation procedure. Unlike the later, where the Commission is the main pawn along with the Council, the Commission has a weaker position within the co-decision, as its proposal can get amended by both, the Parliament and the Council and moreover the two co-decision makers can reach an agreement on the decision without its consent.

On the other hand, it's also worth mentioning that the Treaty of Maastricht also increased the areas where the cooperation procedure was to be applicable, thus of course also increasing the number of areas where the qualified majority was to be applicable. Moreover, it increased the number of domains where the consultation and the assent procedures were needed.

The four existing procedures at that point, were applicable for the first pillar, the other two being regulated with unanimity within the Council or through the member states agreement.

Although the Treaty of Maastricht performed the most important reform since the creation of the European Economic Community, this was not enough.

#### **4. European Union's Development and the Adoption of New Reforms**

Having 15 additional member states, plus the 5 German lands and knowing that new accessions are going to happen in the near future, the EU was still having issues, so the Treaty of Maastricht was already a bit outdated soon after its adoption. Therefore, the decision makers took the decision of adopting a new treaty to modify it. This was signed on 2<sup>nd</sup> of October 1997 in Amsterdam and entered into force two years later.

The treaty of Amsterdam continued the decision making reform. Very important were the changes over the co-decision procedure, which was simplified and extended and the decrease in the number of procedures from 4 to 3: co-decision, the assent procedure and the consultation one. The cooperation procedure was technically removed, as it was only applied from that moment on to 4 articles related to the Economic and Monetary Union. (Matei, 2009, p. 103)

The treaty doubled the areas where the co-decision was to be applied and simplified it through the new possibility of being ended right after the first reading in case of an agreement reached between the Council and the Parliament, by removing the possibility of an unilateral action for the Council right after the second reading, in case of a disagreement between it and the Parliament and by allowing the direct interrelation between the two co-decision makers (Bărbulescu, 2008, p. 377).

The Treaty of Maastricht allowed the Council to extend the decision making process with the third reading, in case of a disagreement, except for the case where the Parliament rejected the decision with an absolute majority of the vote casts, a thing unlikely to happen. The Treaty of Amsterdam gave the possibility of ending the procedure after the second reading instead, in case of a disagreement between the two institutions. The Parliament got more powers this way, a wise decision if we consider the fact that it had the power of setting the final form of a decision. (Arnall & Wincot, 2002, pp. 36-37)

The conclusion here is that the Parliament is the winner after this round of reforms as well. The decision making procedures were simplified and their number was decreased. The co-decision was applicable in all the areas regulated using the qualified majority within the Council. There were still areas of no action for the Parliament though, such as the agricultural, fisheries and commercial policies or the Economic and Monetary Union. Same for the newly areas of community regulation, belonging to the third pillar such as immigration, asylum, border pass or judicial and administrative cooperation.

The European Security and Defense Policy was still an area of intergovernmental regulation, but starting with that moment, the decision makers also had the possibility of taking decision through a qualified majority in few cases.

Maybe the most important reform from a simplification point of view is that, starting with the Treaty of Amsterdam a group of member states had the possibility to issue laws, applicable only for them. This was written down in the Title VIa, Articles 43, 44 and 45 of the Treaty. Any state had the possibility of using the so called "emergency brake" to block the initiative, in this case the Council being the one who could decide through a qualified majority if the European Council was to decide on that specific matter, unanimously. Moreover, it is important to mention that the so called "consolidated cooperation" was not applicable within the second EU's pillar (Article 23, TEU).

Just as the Treaty of Maastricht did, this one also left a lot of areas to still be addressed. Two examples here are the structure of the European institutions, which could not have properly acted in case of a bigger number of member states and the high number of areas which were still to be regulated using the unanimity.

These issues were partially addressed in the Treaty of Nice that entered into force in 2003.

Its purpose was to include those provisions that could guarantee a proper framework for the European Union in case of a number of 30 member states.

The Parliament's powers were further enhanced by the increase in areas where the co-decision was to be applicable. Moreover the structure was to be changed in the coming term of office: 732 members with a maximum of 99 members for Germany and a minimum of 5 members for Malta.

In what the Council is concerned, the changes were mainly related to the qualified majority. The number of areas of applicability was increased and it was modified in the sense that from that moment on, a triple majority was needed in order to pass a decision: one for the states - 55%, one for the population - 62% and one for the number of the votes cast - 255 from a total of 345.

In regards to the European Commission, starting with 1<sup>st</sup> of January 2005, each member state was entitled to one member (Article 4 (1) of the Protocol on the extension). Same for the Court of Justice. Each member state had the right of appointing one judge (Article 221 of TEC).

Finally, the Economic and Social Council and the Committee of the Regions were to include 350 members each (Articles 258 and 263 of TEC).

Another important reform was the one related to the consolidated cooperation. The veto power was removed and a minimum number of 8 member states was set in order to proceed. Moreover, the decision makers were allowed to establish a cooperation also within the second EU pillar (written down in the Article 27b of TEU), except for the defense area (Zlătescu & Demetrescu, 2005, p. 196).

## **5. The European Decision Making Process Consolidation**

In 2001, the decision makers initiated an extensive public debate aiming to revise all the treaties and to finally come up with a constitution for the future of Europe (European Council from Laecken). The aim was to simplify the complex political and legislative system.

Therefore, on 29<sup>th</sup> of October 2004, the heads of states and governments and the ministers of foreign affairs of the 25 member states, signed the Treaty establishing a Constitution for Europe, in Rome.

If it had entered into force, it would have introduced important changes related to the decision making process and not only. Unfortunately for this act though, Netherlands and France rejected it.

Due to the new enlargements in 2004 and 2007 with 12 new member states, it was clear that many of the previous treaties' provisions were to be changed. Therefore, on 13<sup>th</sup> of December 2007, the Treaty of Lisbon was adopted. It entered into force two years later, on 1<sup>st</sup> of December 2009.

This treaty can be seen as a compromise solution. It is based on the Constitutional Treaty provisions meaning that it respects the will of those countries which ratified it but also removed few provisions due to the Netherlands and France's requests. It basically included 95% of the reforms and new instruments set in the constitution. In this process, the decision makers used the "veil strategy", hiding under a veil (the one of the classic treaties) the fundamental elements of a constitution so that the reform to be perceived as new and so the new treaty to be ratified by the national parliaments, avoiding the referendums this way. (Luzarraga, & Llorente, 2011, pp. 29-30)

We must assert that this treaty significantly changed the decision making process.

Its provisions increased the number of areas for the co-decision procedure (so called the ordinary procedure now) to 85, from 44 in the Treaty of Nice. Moreover, the Parliament practically got equal powers with the Council, most of the decisions being now adopted using the ordinary procedure.

There were only 2 legislative procedures left: the ordinary one, which consists in a joint decision of the Parliament and Council and the special procedure, which consists in the adoption of a regulation by the Parliament, having the Council's assistance or by the Council having the Parliament's assistance. Within the first one, the Council decides with a qualified majority, while within the later, it decides in unanimity, after the Parliament consultation or consent. Having all this said, we can assert that the whole three decisional procedures were kept, but in a different form.

There were also important changes in what the institutional structure is concerned.

The seats in the Parliament were set to 751, including the president, with a minimum number of 6 members for Cyprus, Luxembourg, Malta and Estonia and a maximum number of 96 members for Germany.

The European Council became an institution per se, having a president appointed for 2.5 years.

In regards to the Council of the European Union, the most important was the reform of the qualified majority. The triple one, established by the Treaty of Nice, was replaced with a double one, starting with 2014: the majority of the states – 55% and the majority of the population - 65%. Moreover, in case that the Council is not deciding on a proposal coming from the Commission or from the High Representative, the double majority means 72 % of the member states, totalizing 65% of the EU's population.

In regards to the European Commission, the Article 17 of the treaty, states that starting with 1<sup>st</sup> of November 2014, the number of commissioners will represent 2/3 of the member states number, including the president and the High Representative.

Now, speaking about the decision making process stated in the Treaty of Lisbon, we can assert that it is a complicated and a complex one, a process where the decision makers need to sometimes make compromises.

The European Commission's proposal, is the result of extensive consultations of the national experts, international organizations and non-governmental organizations.

Once it is adopted and sent to the Parliament and Council, the process is different, depending on the procedure that is to be followed.

The ordinary procedure is the most complex and can last for many years due to the fact that no deadlines are set for the first reading. The procedure can have, one, two or three readings, having specific and strict rules. They can be avoided though and I am pointing here the informal trilogues between the Commission, Parliament and Council before the conciliation procedure. These are actually the meetings where the decisions are agreed upon. They can also exist during the first and second reading between the Parliament and Council members or between members belonging to all the three institution so they can agree on the amendments to be introduced and that can be accepted by both decision makers.

Another key point here is the role that the Commission has in the sense that it can change the vote rules within the Council. If it doesn't amend the proposal in accordance with the Parliament's position in the first and second reading, the Council can only adopt the proposal in the form that the Parliament wants, using the unanimity. Therefore there are also exceptions from the qualified majority.

In regards to the special procedure, we must say that it is a shorter and easier one. In this case, the institution that adopts the act, either the Council or the Parliament, only waits for the other's assent or opinion. The Council acts here unanimously, with the possibility of a "pasarela clause", which means that the European Council can authorize it to use the qualified majority instead of the unanimity or the ordinary procedure instead of the special one.

There are also some other ways of taking decisions at the European level.

The External Affairs and Defense policy is still an intergovernmental area, where the two decision makers are the European Council and the Council of the European Union, acting unanimously at the proposal of the member states and the High Representative this time, instead of the European Commission. The "pasarela clause" is also applicable here.

Another thing that worth mentioning is the fact that 9 member states can establish a consolidated cooperation, being able to enact decisions applicable only for them and without the other member states participation. The same decisional procedures explained above are applicable here, but only between the participants.

We will not end before mentioning the fact that there are three member states, United Kingdom, Ireland and Denmark that have some derogations from the Treaty of Lisbon's provisions in the sense that they are not part of the decision making process related to asylum, immigration, cross border checks, judicial civil and criminal cooperation and police cooperation. Therefore, such decisions are not applicable to them, unless they want.

## **6. Conclusion**

The European communities and then the European Union went through a continuous process of adapting the decision making process to new realities. There were gradual reforms determined by the need of conciliating the member states interests and the need of avoiding some blocks that could've been the end of the European construction.

We saw how the qualified majority gained more and more importance against the unanimity and how the decision making process became more and more federal rather than intergovernmental.

We also saw how the Parliament gained more and more powers against the Council, moving from an institution without any legislative attributions at the beginning, to one, I dare say, being the most important decision maker, according to the Lisbon provisions. These can easily be seen in the difference between the way of taking decisions in the past and now, for the same matter. To have an example here, in 2000 for a decision regulating the sexual abuse and sexual exploitation of kids, the decision makers used the consultation procedure, where the Council was the main pawn, having the privilege of enacting the law just in the form it wished and not considering the Parliament opinion. After the Treaty of Lisbon entered into force, for the same matter, the ordinary legislative procedure was used, wherein the Parliament is equal to the Council or has even more powers than it, in certain circumstances. In all cases, if the law is not adopted in the form the Parliament wishes, it is adopted in the form set following the negotiations and the compromises between the two co-decision makers.

This legitimates the whole decisional process, considering the fact that the Parliament is the only institution whose members are directly elected by the EU's citizens.

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