



EURIM GUIDE TO DECISION-MAKING IN THE EUROPEAN UNION AFTER AMSTERDAM

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INTRODUCTION

EURIM is an all-party, parliament-industry group concerned with the politics of the Information Society in a European context. Current EURIM activity through its working parties range from the regulatory structures and associated rights and liabilities issues for the converging Communications media (Telecoms, Internet, Broadcast et al) and for electronic commerce, through the use of the technology by government (including public procurement issues) to data protection, social inclusion, intellectual property rights, working conditions and lifelong learning for multi-career lives.

EURIM has over 100 parliamentary members (MPs, MEPs and Peers), over 45 corporate members (including users as well as suppliers of Informatics and Telematics products, services and content) and over 20 not-for-profit associates (including user groups, professional bodies and trade associations). Regulators, policy advisors, diplomats and other senior officials (from both national governments and the Commission) are invited to participate as "observers".

EURIM commonly looks at issues from a UK perspective but most actions require active co-operation and partnership across international boundaries. EURIM therefore seeks to work in partnership with sister organisations in the other member states of the European Union. In the mean time it welcomes members from outside the UK, especially MEPs and the UK operations of US and other corporations and associations.

One of our objectives is to ensure much greater participation, particularly by those who will be most affected, whether they know it or not, both in policy formation at the European level and in interpretation and implementation at the national level. This entails improving awareness of the roles of the various European Institutions, their decision-making processes and the stages at which there are opportunities to participate in consultation exercises or to exercise influence in other ways.

I am therefore most grateful to Bryan Cassidy MEP, one of my colleagues on the EURIM Council, for revising our short guide to Decision Making in the European Union to take account of the changes agreed in the Treaty of Amsterdam.

The Lord Renwick
Chairman, EURIM
October 1998

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I would like to express my gratitude to Dr Timothy Bainbridge, the author of the *Penguin Companion to the European Union* (2nd edition 1998) for his helpful suggestions in preparing this revised edition of the EURIM Guide. I would also like to thank him for permission to use the Annex on the Treaties (page 15).

Bryan Cassidy

1 THE DIFFERENT KINDS OF EUROPEAN UNION LAW

There are three different kinds of law in the European Union (EU):

- i. Primary legislation, i.e. the Treaties (see Annex 1) and other agreements possessing similar status;
- ii. Secondary legislation, i.e. the regulations, directives, decisions, recommendations and opinions based upon the Treaties (see below);
- iii. Case law, i.e. judgements of the European Court of Justice and of the Court of First Instance.

Collectively they are known as the '*Acquis communautaire*' (see annex 1).

Primary legislation is agreed on the basis of direct negotiations between Member States' governments. Such agreements are drawn up in the form of treaties which are subject to ratification in national parliaments (but not by the European Parliament!). The same is true of any subsequent amendments to them. In some Member States, recourse may be had to a referendum.

Secondary legislation is drawn up using a variety of different procedures, depending upon the Treaty article chosen by the Commission as the legal base for the proposal in question.

Case law results from judgements of the European Court of Justice and of the Court of First Instance meeting Luxembourg, normally in response to referrals from national courts or as a result of actions brought by the Commission in its capacity as the guardian of the Treaties.

The different types of secondary legislation are:

- i. **Regulations:** binding and directly applicable in all Member States without any implementing national legislation. Management of the day to day aspects of the Common Agricultural Policy, for example, is by means of regulations.
- ii. **Directives:** binding on the Member States with respect to the result to be achieved and with respect to the deadline, but with the choice of method left to the Member States. Directives have to be implemented in national legislation in accordance with each Member State's own procedures. There can be a substantial delay between the approval of a directive in the Council of Ministers and its implementation in the national law of the Member States. Enforcement - by no means even - is normally the responsibility of the national authorities.
- iii. **Decisions:** may be issued either by the Council or by the Commission and are binding upon those to whom they are addressed, normally a Member State or a commercial enterprise. No national implementing legislation is required.
- iv. **Recommendations** and **Opinions:** have no binding effect, and may be issued either by the Council or by the Commission.

2 THE INSTITUTIONS

2.1 *The European Council*

At least twice a year, the Heads of State or Government meet as the European Council to provide the Union with overall direction and to reach decisions on the key issues. European Council meetings (sometimes known as Summits) are also attended by Member States' Foreign Ministers and by the President of the Commission and the President of the European Parliament. European Council agreements have no legislative force, but must first be turned into legislation on the basis of a proposal from the Commission in the normal way.

2.2 *The Council of Ministers*

The Council is composed of the Ministerial representatives of the Member States. Ministers of Agriculture attend Council meetings when agriculture is being discussed, Ministers of Transport when transport matters are on the agenda, and so on.

The Council, which has its own secretariat of EU civil servants, is the supreme legislative authority in the Union, although in an increasing number of areas its power is exercised jointly with the European Parliament. The Council takes decisions:

- by unanimity
- by simple majority
- by qualified majority, each Member State's vote being "weighted" in accordance with its population.

Member States take turns to hold the Presidency of the Council for a period of six months. Between 1999 and the beginning of 2003, the Presidency will be held as follows: 1999 Germany and Finland, 2000 Portugal and France, 2001 Sweden and Belgium, 2002 Spain and Denmark, 2003 Greece.

The Council arrives at most of its decisions by qualified majority vote. The number of votes for each Member State is:

10	UK	5	Portugal
10	Germany	4	Austria
10	France	4	Sweden
10	Italy	3	Denmark
8	Spain	3	Finland
5	Belgium	3	Ireland
5	Greece	2	Luxembourg
5	The Netherlands		

Total: 87

To be adopted, a measure needs to obtain 62 votes in favour out of a total of 87. A "blocking minority", therefore, is 26 and requires at least three Member States.

Council meetings are prepared by a Committee of Member States' Permanent Representatives (i.e. Ambassadors) known as COREPER.

2.3 *The European Commission*

Based in Brussels, the Commission consists of 20 Commissioners appointed for a five-year term by Member States' governments and an EU civil service of approximately 14,000 officials. In common with France, Germany, Italy and Spain, the United Kingdom has two Commissioners. Other Member States have one Commissioner each.

Under the Treaty, the Commission has the right of initiative, i.e. to draw up proposals for Union legislation. However, such proposals must have a legal base in the Treaties. The choice of legal base dictates the route which the draft legislation must follow as it is considered and voted upon in the other institutions. The Commission is also responsible for ensuring that the Treaty and the legislation based upon it are respected. The Commission negotiates on behalf of the Member States in multilateral and bilateral trade matters and in the drawing up of association and membership agreements with non-member countries.

Under the Maastricht Treaty, the Commission's term of office was extended to five years to coincide with the European Parliament's term. The appointment of the President and other members of the Commission is subject to the approval of the Parliament.

2.4 The European Parliament

Directly elected since 1979, the European Parliament is composed of 626 Euro-MPs who sit in political, not national, groups. Elections to the Parliament are held every 5 years. The representation of each country is:

87	UK	25	Portugal
99	Germany	22	Sweden
87	France	21	Austria
87	Italy	16	Denmark
64	Spain	16	Finland
31	The Netherlands	15	Ireland
25	Belgium	6	Luxembourg
25	Greece		

Much of the Parliament's work is done in its 20 specialised committees which meet in Brussels. The Edinburgh Summit in December 1992 decided that the official seat of the Parliament would be in Strasbourg, where most plenary sessions are held. This decision has been incorporated as a Protocol in the Amsterdam Treaty. Extra sessions are held in Brussels.

The European Parliament is consulted on major EU legislation while it is still in draft and can in many cases insist upon amendments to the Commission's draft. About half of these amendments are accepted by the Commission and Council on first reading (see Co-operation Procedure below) and of those amendments which are re-tabled at second reading, about a quarter are accepted. The Parliament exercises democratic control over the Commission (which it has the power to dismiss) and over expenditure by the institutions of the Union.

The Parliament and the Council constitute the Union's joint budgetary authority. The Parliament has to give its assent to any trade, co-operation, association or membership agreement concluded between the Union and a non-member country.

Under the Maastricht Treaty, the Parliament was given the right to set up committees of enquiry and to appoint an **Ombudsman** to investigate allegations of maladministration by the institutions of the Union.

2.5 The European Court of Justice

The European Court of Justice, consisting of 15 judges and 9 Advocates-General, is based in Luxembourg. It is responsible for arbitrating in disputes relating to the interpretation and application of the Treaties and of legislation based upon them. Its judgements are binding upon those to whom they are addressed and it has the power to levy fines on firms found to be in breach of Union law. Under the Maastricht Treaty, the Court also has the power to impose fines on Member States which fail to carry out their Treaty obligations.

2.6 The Court of First Instance

This Court was established by Article 11 of the 1987 Single European Act and first became operational in 1989.

It consists of 15 judges, one from each Member State. There are no Advocates-General. It has jurisdiction over a number of fields but of particular importance to business are its powers in competition and intellectual property law and over the Commission's anti-dumping procedures.

2.7 The Court of Auditors

The Court of Auditors, composed of one Member from each Member State, is also based in Luxembourg. It is responsible for overseeing all expenditure from the Budget of the Union. Its findings are contained in an annual report submitted to the Council and the European Parliament. The Court, which has no power of sanction, may also undertake special investigations into particular sectors of the Budget.

2.8 The Economic and Social Committee (ECOSOC)

Set up in 1957 by the Treaty of Rome, ECOSOC has 222 members:

24	UK	12	Portugal
24	Germany	12	Austria
24	France	12	Sweden
24	Italy	9	Denmark
21	Spain	9	Finland
12	Belgium	9	Ireland
12	Greece	6	Luxembourg
12	Netherlands		

Members are appointed by the Council on the recommendation of Member States' governments and have a four-year term of office. ECOSOC consists of representatives of employers (Group 1), workers (Group 2) and various interest groups (Group 3). It covers areas such as agriculture and fisheries, industry and commerce, financial and monetary questions, social and cultural affairs, transport and communications, trade and development policy, nuclear questions and research, regional development, environment and consumer affairs. On its own initiative it can offer opinions on other subjects covered by the Treaties. The Treaty of Amsterdam allows the European Parliament to consult ECOSOC.

2.9 The Committee of the Regions

The Maastricht Treaty established a new European Union body, the Committee of the Regions, which is based in Brussels. Composed of 222 "representatives of regional and local bodies" and appointed by the Council for a four-year term on a proposal from the Members States, the Committee has advisory status along the same lines and across broadly the same range of issues as the Economic and Social Committee. Its nationality composition is identical with that of the Economic and Social Committee

3 THE LEGISLATIVE PROCESS

Legislation may be adopted under the Consultation Procedure, the Co-operation Procedure or the Co-Decision Procedure. The choice of procedure depends upon the Treaty article which the Commission has chosen as the legal base for its proposal (see section 2.3).

Until the entry into force of the Single European Act in July 1987, all legislation was adopted under the simplest of these procedures, known as the **Consultation Procedure**. This procedure requires the Council to obtain the opinion of the European Parliament (and sometimes also the opinions of ECOSOC and the Committee of the Regions) before adopting legislation. However, neither the Council nor the Commission is obliged to accept the amendments contained in the Parliament's opinions and it is only by refusing to give an opinion that the Parliament can exert pressure. Once the Parliament has given its opinion, the Council can adopt the proposal unamended, adopt it in an amended form, or be unable to agree. In the last case the proposal remains "on the table".

The **Co-operation Procedure**, introduced in 1987, allows the Parliament two opportunities to scrutinise and possibly amend the Commission's proposal. At the first stage, the Parliament, ECOSOC and the Committee of the Regions give their opinions in the same way as under the Consultation Procedure. Only the Parliament can propose amendments. The Commission indicates which amendments it accepts before the proposal is forwarded to the Council, which then draws up its "common position". Studies have shown that about 40 per cent of the Parliament's amendments are accepted at this stage. The Council's common position is sent back to the Parliament which may within three months approve it, reject it, or adopt amendments to it. The Council may then adopt the proposal in question, although it can do so only by unanimous agreement :

- v. when it wishes to amend a proposal on its own initiative;
- vi. when it decides to take up amendments which have been proposed by the Parliament but rejected by the Commission;
- vii. when it decides to adopt a common position which the Parliament has rejected;
- viii. when it wishes to override amendments which the Parliament has adopted by an absolute majority (314 votes) at second reading and which are supported by the Commission.

The Maastricht Treaty (effective from November 1993) introduced the **Co-Decision Procedure** in order to strengthen the Parliament's influence over legislation. Once the Treaty of Amsterdam comes into effect, the Co-Decision Procedure will replace the Co-operation Procedure in all but a very few areas and become the normal mode of Council-Parliament involvement in legislation. The essential difference between the two procedures is that the Co-Decision Procedure :

- allows for the convening of a 'Conciliation Committee' in which at the final stage differences between the Council and the Parliament may be resolved;
- allows the Parliament, as a last resort, the right to reject the proposal outright by an absolute majority.

Under the Co-Decision Procedure, the Council and the Parliament are jointly responsible for the final adoption of legislation. It has been estimated that some 60 per cent of the Parliament's amendments are incorporated into the legislation.

4 THE EUROPEAN COMMISSION'S IMPLEMENTING POWERS

Once approved by the European Parliament and the Council, the detailed procedures for implementing directives are worked out by special committees of representatives of Member States, normally civil servants. This committee process is known as 'comitology'. The role of these committees, meeting behind closed doors and without publishing minutes, has long been a bone of contention between the European Parliament, the Commission and the Council. Though most committees deal with complex technical matters, some of their decisions have a profound effect on interested parties. In theory, the Commission consults interested parties who are listed in its Directory of Interest Groups. Member State governments are supposed, through their own machinery, to consult interested parties within their own countries.

This unsatisfactory procedure was set up by a decision of the Council of Ministers in 1987. As a result of the Amsterdam Treaty, it has to be clarified. 'Comitology' is the main cause of the so-called democratic deficit since it is subject to the democratic scrutiny of neither the European Parliament nor national parliaments.

5 THE BUDGETARY PROCEDURE

A different procedure is used for the Budget of the Union. The Commission draws up a Preliminary Draft Budget covering all expenditure, operational and administrative, by the institutions of the Union. This must be done by 15 June of the year preceding the budgetary year in question. On this basis, the Council adopts, before 31 July, a Draft Budget which is forwarded to the European Parliament. At its first reading of the Budget in October, the Parliament may amend any of the proposals for expenditure contained in the Budget, which is then returned to the Council. The Council may make further changes before the Budget is returned to the Parliament for a second reading in December.

At this point, the Parliament may reject the whole Budget as it did for the first time in 1979 and require a new draft to be submitted. Broadly speaking, the Council has the last word on what is called "compulsory expenditure" (about half the Budget) defined as "expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith". By far the biggest element in this category is price support under the Common Agricultural Policy.

The Parliament has the last word on "non-compulsory expenditure" within a maximum rate of increase fixed annually in agreement with the Council. If the Parliament is satisfied with the Budget as a whole, the President of the Parliament will declare the Budget adopted.

6 THE ASSENT PROCEDURE

One further procedure should be noted, known as the Assent Procedure. This allows the Parliament to give its assent to any agreement concluded between the Union and a non-member country or group of countries. An absolute majority of the Parliament's total membership is required for new accessions to the Union. If assent is withheld, the agreement cannot come into effect.

Since the Union is a major trading power, the range of agreements is very wide and the Assent Procedure is an important addition to the Parliament's powers.

7 THE INTER-GOVERNMENTAL PILLARS

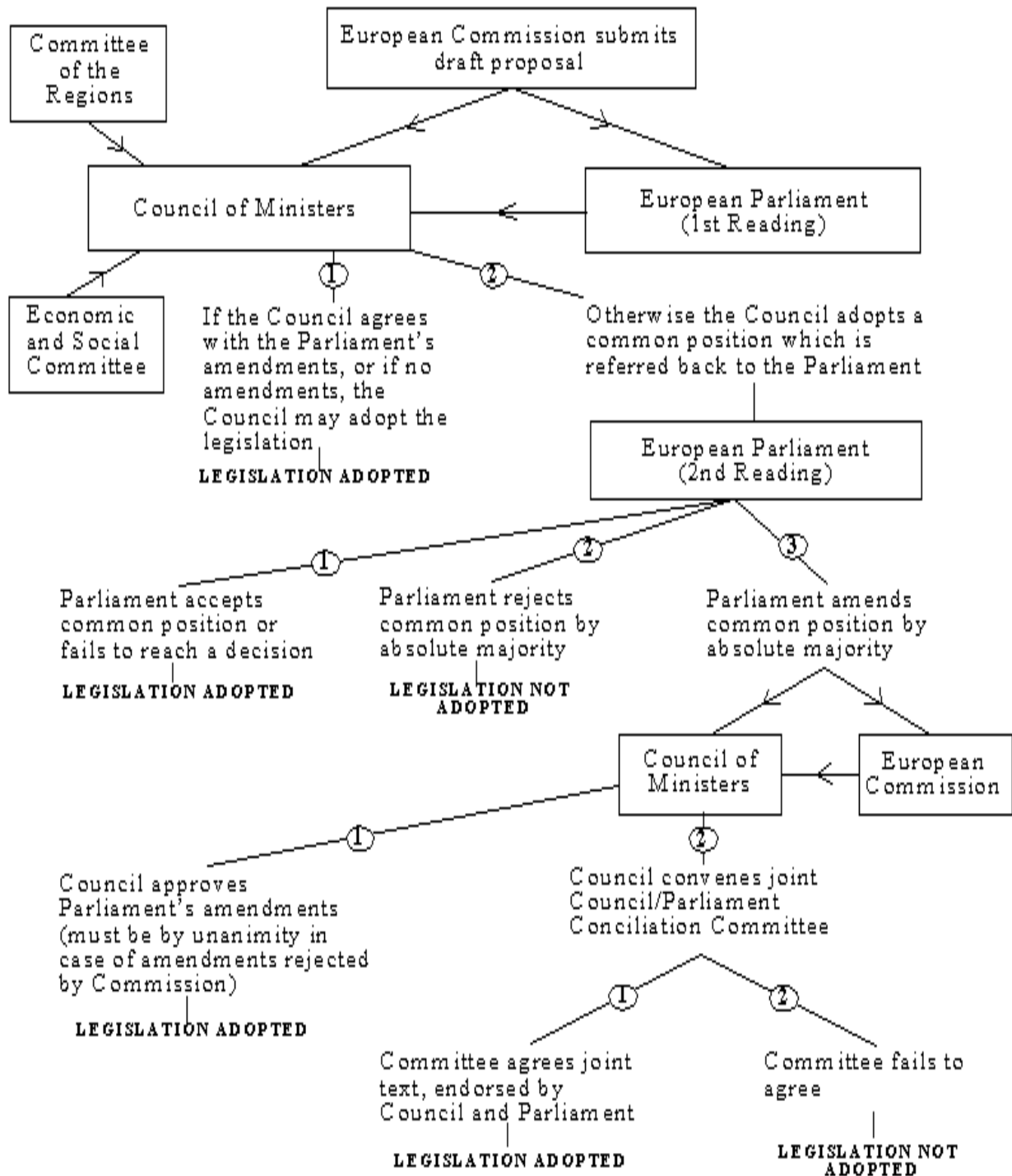
The Maastricht Treaty created a European Union which rests upon three "pillars". The central pillar is the European Community (EC) itself and the decision-making procedures described in this publication are those which apply to action within the EC pillar, normally known as the "first pillar".

The procedures in the other two pillars (the Common Foreign and Security Policy and Co-operation in the fields of Justice and Home Affairs) are different, for although the Council of Ministers plays much the same role, the legislative instruments are not the same. The Commission is less influential and recourse cannot be had to the Court of Justice. Action in these fields is essentially intergovernmental in character.

Under both pillars, provision exists for the European Parliament to be kept informed and consulted. Members of the European Parliament are also entitled in the normal way to put questions to the Council of Ministers. In so far as action is taken under either heading which involves a charge to the Budget of the Union, the Parliament's powers with respect to the Budget (see above) may be brought into play.

8 THE CO-DECISION PROCEDURE

8. CO-DECISION PROCEDURE (Article 251)



9 SOURCES OF INFORMATION

9.1 LEGISLATION

Official Journal of the European Communities The L Series contains all the legislative acts and regulations whose publication is obligatory under the EC Treaties. The C Series covers all Community information other than legislation, including the texts of proposals. *Available from:* The Stationery Office.

The S Series, which is available on-line and in CD-ROM format, contains details of all contracts open to tender under the various Public Purchasing Directives. The on-line version of the S Series Supplement to the Official Journal is TED (Tenders Electronic Daily).

CELEX is a comprehensive and authoritative information source on European Community Law. It offers full text coverage of a wide range of legal acts including the founding Treaties (see Annex), binding and non-binding legislation, opinions and resolutions issued by the European Union institutions and consultative bodies and the case law of the European Court of Justice and the Court of First Instance. Access on-line, against payment through Eurobases and the EUR-OP official gateway agents.

9.2 EUROPEAN PARLIAMENT

EUROPARL is the European Parliament multilingual web server designed to disseminate information on the Parliament's work, not only to MEPs, officials of the EU institutions and journalists but also to information professionals, researchers and the general public. It takes over many of the functions previously covered by OVIDE and EPISTEL.

Access free of charge via the internet address: <http://www.europarl.eu.int>

EPOQUE is a documentary database on the European Parliament's work and session documents including parliamentary questions.

Access free of charge. For further information : European Parliament Email: hdepoque@europarl.eu.int

9.3 EUROPEAN COMMISSION

EUROPA Provides up-to-date information on all aspects of European activity.

Access free of charge via website : <http://www.europa.eu.int>

9.4 EUROPEAN COURT OF JUSTICE

Reports of Cases before the Court of Justice and the Court of First Instance. A printed publication with the full text of judgements of the European Court of Justice. The full text also appears in the CELEX database. *Available from:* The Stationery Office.

Proceedings of the Court of Justice and the Court of First Instance of the European Communities. In summary form, printed and published weekly. *Available from:* European Court of Justice.

9.5 INTERNET

The European Commission Web server, Europa, provides a gateway for access to information on matters relating to legislation and decision making within the Community. The address is <http://www.europa.eu.int>

The European Parliament Web Server also includes material on the forward timetable and programme of the Parliament. The address is <http://www.europarl.eu.int/>

9.5. ADDRESSES

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Fax: 0171 973 1900
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European Commission Northern Ireland Office

Windsor House, 9/15 Bedford Street
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Tel: 01232 24 07 08
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European Commission Wales Office

4 Cathedral Road
Cardiff CF1 9SG

Tel: 01222 37 16 31
Fax: 01222 39 54 89

European Commission Scotland Office

9 Alva Street
Edinburgh EH2 4PH

Tel: 0131 225 20 58
Fax: 0131 226 41 05

European Parliament UK Office

2 Queen Anne's Gate
London SW1H 9AA

Tel: 0171 227 4300
Fax: 0171 227 4301 (Library)
Fax: 0171 227 4302

European Court of Justice

Information Service
Boulevard Konrad Adenauer
L-2525 Luxembourg

Tel: (00 352) 43031
Fax: (00 352) 4303 2600
Website: <http://www.curia.eu.int>

10 ANNEX I : THE TREATIES

The European Union is based upon and governed in accordance with a number of Treaties between the Member States. These Treaties are the most fundamental part of the *acquis communautaire* (see footnote) and in every case have been the subject of (sometimes prolonged) negotiations leading to unanimous agreement amongst governments and ratification by national parliaments and, in some cases, by referendum too. The Treaties not only serve as the Union's constitution but are also prescriptive in that several of them set objectives for the future, usually accompanied by a deadline and sometimes by a precise timetable. Most of the Treaties contain provision for their own amendment and, with one exception, were concluded for an unlimited period. In common with the rest of the *acquis communautaire*, the Treaties must be accepted in their entirety by states wishing to join the Union.

The table below lists the main Treaties and Acts in chronological order, together with the date of entry into force and a brief summary, where relevant, of how each relates to the others. The first three Treaties, establishing three legally distinct Communities are sometimes referred to as the 'founding Treaties'.

Treaty	In force	Summary
European Coal and Steel Community(ECSC) Treaty (Treaty of Paris, 1951)	1952	Concluded for 50 years amongst the Six on the basis of the Schuman Plan
European Economic Community (EEC) Treaty (Treaty of Rome, 1957)	1958	Concluded on the model of the ECSC Treaty but with a much broader range of objectives; the most important of the Treaties
European Atomic Energy Community (EAEC or Euratom) Treaty (also signed in Rome, 1957)	1958	A sector-specific Treaty of limited application
Treaty establishing a Single Council and a Single Commission of the European Communities (Merger Treaty, 1965)	July 1967	Amended the ECSC, EEC and Euratom Treaties to create a Council and a Commission serving all three Communities
Treaty amending certain Budgetary Provision of the Treaties establishing the European Communities (and of the Merger Treaty) (Treaty of Luxembourg, 1970)	1971	Laid down a new procedure for settling the Budget and introduced the system of 'own resources'
Treaty amending certain Financial Provisions of the Treaties establishing the European Communities (and of the Merger Treaty) (1975)	1978	Refined the budgetary procedure to give the European Parliament more power and set up the Court of Auditors
Act concerning the election of the representatives of the European Parliament by direct universal suffrage (European Elections Act, 1976) elections	1978	The basis for the first (1979) and subsequent European elections
Single European Act (1986)	July 1987	Amended and expanded the EEC Treaty (most importantly by extending the scope of qualified majority voting) and laid down new procedures for foreign policy co-operation
Treaty on European Union (Maastricht	November	Established the European Union; amended and expanded the EEC Treaty; created the co- decision

Treaty, 1992)	1993	procedure; created 'pillars' of Common Foreign and Security Policy (CFSP) and Co-operation in the Fields of Justice and Home Affairs (JHA)
Treaty of Amsterdam (1997, not yet in force)		Amended the Maastricht Treaty and the EEC Treaty; extended co-decision; added new provisions on social policy; incorporated the Schengen <i>acquis</i> into EEC Treaty; created 'constructive abstention'; strengthened transparency

Footnote: *Acquis communautaire*: a phrase used to cover all legislation in force including the Treaties in their entirety, all Directives, Regulations, Decisions, Trade and Association Agreements as well as the case law of the European Court of Justice and of the Court of First Instance.