

## CHAPTER IV

### INSTITUTIONAL ISSUES

#### A- PARTICIPATION IN COMMUNITY INSTITUTIONS

Each Member State is involved in the working of the Community as it participates in the decision-making process which includes legislation.

##### (a) The European Council

The European Council consists of the heads of state or government and, since the SEA, the President of the Commission. Some countries are constitutional monarchies, others are republics. It is up to the Constitution of each member state to determine its representation in the Council. As a rule monarchs do not participate since they fulfil a ceremonial rather than political function. Their countries are represented by the elected prime ministers. The presidents with the exception of the president of France, are in the same position. The meetings are chaired by the head of state or government of the country which holds the presidency of the Community.

The Maastricht Treaty underlines the leading role of the European Council as it provides that it "shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof". It also links it with the European Parliament since reports of the meetings of the European Council as well as yearly reports on the progress of the Union shall be submitted to the Parliament.

The Constitution of Turkey will determine whether the prime minister or the president of the republic will represent the country in the European Council.

##### (b) The Council of Ministers

The Council of Ministers consists of the government members or the ministers of state. Its meetings are either routine or of a general nature as a rule attended by the ministers of external affairs. Specialist meetings (e.g. of ministers of agriculture or social security) are attended by the ministers responsible for the relevant portfolio.

In addition to their general duties under the Maastricht Treaty, the Ministers of Foreign Affairs have been charged with the co-ordination of national external and security policy and the implementation of decisions in this field so as "to ensure the unity,

consistency and effectiveness of the Union", Decisions in this field are taken in the context of the European Political Co-operation (institutionalized by the Single European Act) outside the normal Community procedure.

The meetings are chaired by the minister representing the country but it must be a person of ministerial rank because only ministers have the right to vote. Decisions within the Council are taken either by unanimity, by qualified majority or by simple majority. The Treaty determines which method applies in the given circumstances. For the purpose of qualified majority vote each country is allocated a number of votes, the four large countries 10 votes each and the remaining countries each according to the size of its population, the total of all votes being 76. The principle is that the four large countries must not be able, by themselves, to outvote the others. Therefore to reach a decision by qualified majority at least 54 out of the available 76 must be cast by at least eight member states. Under the present system Turkey would be entitled to 10 votes.

At the government level the work of the ministers concerned with European affairs may be co-ordinated as convenient in the given system, but this is often done under the aegis of the minister of external affairs.

#### (c) The Commission

The Commission consists at present of 17 members; the larger countries including Spain send two members and the remaining countries one each. Under the Maastricht Treaty, as from January 1995, members of the Commission shall be appointed for renewable periods of five years. The President of the Commission shall be nominated by common accord of the member states after consulting the Parliament. In consultation with the nominee for President the member states shall nominate members of the Commission. The nominees have to be approved as a body by the Parliament before being appointed by common accord of the member states.

Only nationals of member states may be members of the Commission. Beyond general competence and independence the Treaty provides for no other qualifications. Thus every country adopts its own criteria for the selection of nominees.

The Commission is a truly Community institution. Its members cannot receive or seek instructions from the government of the member states. They have to be independent even of the government which has been instrumental in their appointment.

Under the present system Turkey, as a large country, would be entitled to nominate two members of the Commission.

(d) The European Parliament

The European Parliament consists at present of 518 members who represent the peoples of the Community. But following the unification of Germany it will be enlarged to 567. Originally it consisted of delegates of the national parliaments but since 1979 it has been directly elected. However, apart from direct elections, there are no Community rules either on active or passive rights or the electoral procedures. These matters are governed by national rules.

Each country, depending roughly on the size of its population, is allocated a number of seats. As from 1995 United Germany as the largest EC country will have 99 members. Turkey may, as an interim measure, appoint her representatives from the national parliament.

Reflecting the ascendancy of the Parliament the Maastricht Treaty contrived a complex co-decision procedure giving Parliament the power to veto a proposal in the final stage of the legislative process. However it has no power to initiate legislation.

The Maastricht Treaty also enabled the Parliament to challenge Community acts before the Court of Justice albeit merely "for the purpose of protecting its prerogatives".

The Maastricht Treaty extended the supervisory function of the Parliament by giving it power to investigate alleged contraventions or maladministration in the implementation of Community law except where such complaints are subject to judicial proceedings. The Parliament shall also receive petitions from EC citizens and firms in matters of Community competence affecting the complainants directly and, to that end, shall appoint an Ombudsman and define his functions.

In the field of the emerging foreign and security policy the Parliament shall be regularly informed of the developments; it may be consulted and may also submit questions and recommendations to the European Council.



In accordance with the Maastricht provisions on the Economic and Monetary Union the Parliament has to be informed and consulted on economic and monetary policies.

(e) The Court of Justice

The Judiciary consists of the Court of Justice of the European Communities (ECJ) and the Court of First Instance. The former consists of 13 judges and 6 advocates-general, the latter of 12 judges. In the ECJ 12 judges come from the twelve member states and the thirteenth from one of the larger countries in rotation, four advocates-general from the four larger countries and the remaining two from two of the smaller countries in rotation. There are no advocates-general in the Court of First Instance.

Judges and advocates-general represent the legal systems of the member states. Judges and advocates-general must be chosen "from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial office in their respective countries or are jurisconsults of recognized competence" (EEC Art.167). They hold office for six-year renewable terms. Each country makes the appointment according to its inclination. Therefore judges and advocates-general represent a mixture of professional judges, lawyers in private practice, government legal advisers and professors of law.

Judges and Advocates-General may resign or be removed from office by the decision of the Court which must be communicated to the President of the European Parliament and the President of the Commission and must be notified to the President of the Council.

If Turkey joins the Community, there should be a Turkish judge and advocate-general in the ECJ and also a Turkish judge in the Court of First Instance.

(f) The Court of Auditors

The Court of Auditors (which despite its title does not exercise any judicial function) is responsible for the examination of the legality and regularity of the Community accounts and the revenue and expenditure of all bodies set up by the Community.

It assists the Parliament and the Council in exercising powers of control over the implementation of the budget.

The Community Institutions have the right to seek advice of the Court of Auditors on specific questions.

Its findings and conclusions are published in an annual report. It consists at present of twelve members appointed by the EC Council acting unanimously in consultation with the EC Parliament for renewable terms of six years. In the event of joining the Community Turkey would appoint the thirteenth member of the Court of Auditors.

#### (g) Consultative Bodies

There are two consultative bodies i.e. the Consultative Committee of the ECSC and the Economic Committee of the EEC and EAEC appointed in accordance with the above-mentioned Treaties. The former consists at present of 96 members representing producers, workers, dealers, craftsmen, professional occupations and the general public. Each Member State is allocated a number of places and nominates the representatives of the groups involved for appointment by the Council of Ministers. In the Economic and Social Committee the larger four Member States are represented by 24 members each. Unless the total is changed on accession Turkey would be entitled to 24 places.

Under the Maastricht Treaty the Economic and Social Committee has to be consulted in respect of the harmonization of legislation necessary for the establishment of the common market generally and taxation in particular.

In order to implement the provisions of the Maastricht Treaty on the co-operation in the fields of justice and home affairs a Co-ordinating Committee consisting of senior officials shall be set up. Its function is to give opinions for the attention of the Council and, without interfering with the work of the COREPER, prepare the agenda for discussion of policies concerned with asylum, immigration and nationals of third countries, combatting fraud and drug addiction, judicial co-operation in civil and criminal matters, customs and police co-operation.

#### (h) Technical Committees

The Commission is assisted by a number of Technical Committees (e.g. the Monetary Committee, the Scientific and Technical Committee, etc). The membership of these Committees is commonly drawn from the national administrations of the Member States. They are chaired by a non-voting representative of the Commission.

There are also the so-called Management and Regulatory Committees set up in the same way as the Technical Committees. Management Committees assist the Commission with the administration of the Common Agricultural Policy whereas the Regulatory Committees assist in the implementation of the Common Customs Tariff

and in connection with the control of Community standards. All these Committees work according to a set procedure assisting the Commission in the discharge of powers delegated by the Council of Ministers under Article 155 of the EEC Treaty as modified by Article 10 of the Single European Act.

The Member States' input into the work of the Communities represents an important contribution to the administration of Community policies and, in this respect, reflects the co-operation between the Member States' bureaucracy and the Community bureaucracy.

(i) The Committee Permanent Representatives

The Committee of Permanent Representatives (COREPER) was established to assist the Council of Ministers. It fulfils an increasingly important function bearing in mind the expanding load of work and the fact that the Council meets only at intervals. It consists of the representatives of the Member States, i.e. their Ambassadors, resident in Brussels. It is chaired by the Ambassador of the country which holds the Presidency of the Council, i.e. the Presidency of the Community.

The COREPER prepares the meetings of the Council and carries out the Council's instructions. It also co-ordinates the work of the various committees of experts and working parties which advise the Council. It represents an essential link in the decision-making process of the Community. Thus the COREPER serves as a link between the Commission and the Council of Ministers and as a link between the Community process and the Member States since the Ambassadors not only communicate with their governments at home but also articulate the views of their masters.

(j) Conciliation Committee

In order to implement the co-decision procedure the Maastricht Treaty provides for a Conciliation Committee representing the Council and the European Parliament in equal numbers. Its function is to smooth the path of legislation where the two principal Institutions cannot find a common ground. Its object is to produce a joint text and thus save the project from being aborted.



#### (k) Committee of the Regions

The Maastricht Treaty provides for the setting up for a Committee of the Regions to advise the Commission and the Council on the measures to be taken in order to carry out a new regional policy. The Committee will consist of 189 members representing the regional and local authorities. Its structure reflects that of the Economic and Social Committee. Each Member State is allocated a number of members of the Committee who shall be appointed for renewable term of four years by the unanimous vote of the Council on proposals from the respective Member States. The members of the Committee have to act independently. They cannot be bound by any mandatory instructions. The Committee shall elect its chairman and officers and perform its task according to its own rules of procedure which have to be approved by the Council.

#### (l) Institutions to Carry the EC to Economic and Monetary Union

The Treaty of Maastricht has extended the EEC framework of economic policy by consolidating economic integration and projecting a monetary union. Economic policies already in place have been revamped and a tighter control over the national governments is envisaged. Thus with total liberalization of capital movements between the Member States and the Community and third countries a possible restriction regarding the latter may be instituted only by a unanimous decision of the Council of Ministers. In the field of economic policy the Council, acting by a qualified majority on a recommendation from the Commission, shall provide guidelines for the Member States. Overdraft facilities with the European Central Bank or with the national central banks shall be prohibited. Member States must avoid excessive budget deficits and in this context the Commission shall monitor government debt and examine the national budget discipline. Where a State fails to carry out these obligations the Council may resort to certain prophylactic measures and ultimately impose fines upon the State concerned.

#### (m) European System of Central Banks

The new monetary policy is to be centralized and conducted by the European System of Central Banks (ESCB) consisting of the European Central Bank (ECB) and the national central banks. Its primary object is to maintain price stability. Thus the ESCB shall define and implement the monetary policy of the Community; conduct foreign exchange operations; hold and manage the official foreign reserves of the

Member States; and promote the smooth operation of payments systems.

The ECB shall have the exclusive right to authorize the issue of ECU banknotes both by the ECB and the national central banks which alone shall be the legal tender in the Community. However Member States shall be able to mint coins subject to ECB approval. National currencies shall be replaced by a common Community currency.

The exchange rate of the ECU vis-a-vis non-Community currencies shall be determined by the Council of Ministers.

The institutional structure of the European Monetary Union (EMU) is headed by the European Council which, assisted by the Ministers of Finance and Economy, shall be involved in the major EMU decisions.

The Commission is charged with additional duties of proposing policies to the Council of Ministers, assisting in Council's surveillance of economic activities and monitoring implementation of the EMU measures. It participates, in an advisory capacity, in the Monetary Committee and the governing body of the ECB.

The Parliament has to be informed and consulted on economic policy surveillance and aspects of monetary policy.

The Council of Ministers reports to the European Council on major issues and informs the Parliament as required. It takes decisions and together with the Commission enforces the obligations arising under the system. The President of the Council together with a representative of the Commission is a non-voting member of the governing body of the ECB.

The ESCB consisting of the ECB and of the national central banks reflects the German system where the state banks form part of the Bundesbank. It shall be governed by the decision-making bodies of the ECB which are the Governing Council and the Executive Board. A Protocol attached to the Treaty lays down the statute of the ESCB and of the ECB and defines their respective functions.



The ECB is conceived as an independent institution having its own legal personality and enjoying the most extensive legal capacity accorded to legal persons in Member States.

The Governing Council of the ECB, comprising the members of the Executive Board and the Governors of the national central banks, shall formulate the monetary policy of the Community including decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the ESCB and provide guidelines for their implementation.

The Executive Board, responsible for the day-to-day conduct of the ECB business, shall consist of the President, the Vice-President and four other members who, unlike the members of the Governing Council, shall be full-time employees of the ECB appointed by the European Council for a non-renewable eight years term of office. It shall implement monetary policy in accordance with the decisions and guidelines of the Governing necessary instructions to the national central banks.

The ECB shall have an operational capital of ECU 5,000 million provided by the national central banks which shall be its sole subscribers to and holders of its capital. These subscriptions shall be made in a key which determines the weighting of the voting power according to the size of the population and the share in the Gross Domestic Product. Thus each national central bank shall be assigned a weighting equal to the sum of 50 % of the share of its country in the population of the Community and 50 % of the share of its country in the Gross Domestic Product at market prices of the Community.

The ECB shall be provided by the national central banks with foreign reserve assets other than Member States' currencies, ECU's, IMF reserve positions and SDR's up to an equivalent of ECU 50,000 million. The contributions to be called up shall be determined by the Governing Council whilst those of the national central banks shall be fixed in proportion to their share in the subscribed capital of the ECB.

The Treaty provides for a Monetary Committee consisting of two members from each Member State and the Commission. It shall advise the Commission and the Council of Ministers and keep under review the monetary and financial situation of the Member State and the Community. In the final stage of the EMU it shall be replaced by the Economic and Financial Committee whose membership shall include a representative of the ECB.

The Treaty lays down a time-table for the implementation of the EMU in three stages. At present it is in the first stage under the existing Treaty provisions leading to the completion of the Internal Market, i.e. the European Monetary System (EMS).

The second stage begins when the Maastricht Treaty comes into force and, more specifically, on 1 January 1994 when the European Monetary Institute (EMI) has been established. The EMI shall have legal personality and be directed and managed by a Council consisting of a President, a Vice-President and the Governors of the national central banks. The main task of the EMI is to develop the EMU through the second stage, in particular, by strengthening the co-ordination of monetary policies, preparing for the institution of a single currency, monitoring the EMS and facilitating the use of ECU. It shall be wound up on the establishment of the ECB during the third stage

By the end of 1996 the Commission and the EMI shall report on the progress of the Member States towards the convergence of their economic and monetary policies and by that date the United Kingdom ought to notify the European Council whether it intends to move with the other countries to the final stage..

If the majority of the Member States (i.e. seven or six without the U.K.) have met the four convergence criteria, i.e. price stability (a rate of inflation no more than 1.5 % above the average of the three best performing countries); government deficit not exceeding 3 % of the GDP and public debt not exceeding 60 % of the GDP; stable exchange rates within the EMS; and interest rates no more than 2 % above three best performing countries over the previous twelve months; the Council shall, by a qualified majority decision, move to stage three on 31 December 1996.

If no date has been fixed by the end of 1997 the ESCB must be established by 1 July 1998 and stage three will "irrevocably" begin on 1 January 1999. The Council will decide, by a qualified majority, which Member States are able to participate. Those which are not will be subject to derogation. At that point the participating States will agree the conversion rates at which their currencies will become "irrevocably" the single EC currency.

By the British Protocol the United Kingdom has opted out of stage three. It may join, however, subject to notification by 31 December 1996 or by 1 January 1998 if no de-

cision has been taken by the Council to move to stage three by the previous date. During its absence the weighted vote of the United Kingdom shall be inapplicable when computing the qualified majority for the EMU decisions or for the appointment of the Executive Board of the ECB.

The Community bureaucracy consists of the Community civil servants and various other auxiliary employees. The two top grades of the civil service are filled by political appointees of the Member States, the remaining grades by persons appointed by the Community Institutions on the basis of competition. It is an implied duty of each Member State to assist the Community by providing personnel of adequate standard to serve the Community.

#### (n) European Investment Bank

The European Investment Bank is an independent institution established under Article 130 of the EEC Treaty. It raises capital on the world capital markets. However the Member States also subscribe capital to the Bank. The amount of the Turkish participation in the Bank's capital would be determined by the Act of Accession. The Member States participate in the management of the Bank which consists of a Board of Governors, a Board of Directors and a Management Committee. The Board of Governors consists of the Ministers of Finance of the Member States which takes decisions by weighted majority in accordance with the voting system of the Council of Ministers. The Board of Directors consists at present of 22 directors and 12 alternates appointed for six-year renewable terms by the Board of Governors. Each of the four large countries nominates three directors and two alternates. Turkey would be entitled to the same representation.

The day-to-day management of the Bank is in the hands of a Management Committee consisting of the officials of the Bank.

The task of the Bank is to contribute to the balanced development of the Common Market through the provision of loans and by underwriting

- a) projects in less-developed regions;
  - b) projects for modernising or converting undertakings or for developing fresh activities called for by the progressive establishment of the Common Market;
- and



c) projects of common interest to several Member States.

Although most loans and guarantees granted by the Bank are concerned with projects within the territories of the member states, it also has authority to assist overseas territories and states associated with the Community.

(o) European Bank for Reconstruction and Development

The Bank was established in 1990 by 41 parties who became its shareholders, i.e. 39 countries, the European Community and the European Investment Bank with the object of fostering the transition towards open market-orientated economics and promoting private and entrepreneurial initiative in Central and Eastern Europe. Its structure and modus operandi resembles that of the European Investment Bank. Though it is not, strictly speaking, a Community institution, the Bank reflects the Community policy towards the former Soviet-controlled countries and the Community participation in its work.

## B- PARTICIPATION IN THE DECISION-MAKING PROCESS

(a) Meaning and Scope.

The decision-making process is institutionalized and formal. It means that decisions of whatever nature have to involve the relevant institution which must act according to the founding Treaties and the procedures laid down in the Treaties and the internal regulations of the institutions. The end product of the decision-making process is the "act" i.e. a measure of either a general or particular nature.

The scope of the "act" is delimited by the Treaties since the Community is the creature of the Treaties and, operating on the principle of delegation of powers, can act only within the parameters of its legal capacity. The "acts" are subject to judicial control and may be annulled by the ECJ on a number of grounds<sup>2</sup> both of a procedural and substantive nature. Thus an "act" may be annulled because it is either ultra vires the Treaty or because the essential procedural requirements have not been observed.

## (b) Legislative Process

A distinction has to be made between the legislative process under the founding Treaties. Thus according to the ECSC Treaty the High Authority (now the Commission) takes the legislative measures with the assent of the Council of Ministers. Under the EEC and the EAEC Treaties the Commission makes proposals whilst the Council decides. The Commission legislates rarely by virtue of its inherent powers or by means of delegation under the authority of the Council. The Commission has a right and duty to initiate action but if it fails to do so the Community process is paralysed unless the ECJ is moved to make a declaration to the effect that the Commission has failed to act where it was in duty bound to act<sup>3</sup>. Under the ECSC Treaty actions against inactivity may be brought against the Commission either by Member States or by the Council or by undertakings or associations of undertakings.

Under the EEC and EAEC Treaties the Member States and the other Community institutions, including the Parliament<sup>4</sup> can challenge the inactivity of either the Commission or the Council, but individuals and corporations may only do so if they can show that one of these institutions has failed to address an act (other than a recommendation or opinion) to him or to it<sup>5</sup>.

Another difference arises under the Single European Act which introduced a new co-operation procedure between the Council and the Parliament which applies only to the EEC and even so only to matters connected with the completion of the internal market. Yet another procedure, i.e. the "co-decision procedure" has been provided under the Maastricht Treaty which will apply to matters governed by that Treaty.

The complexity of the legislative process can best be illustrated graphically by the diagram below which supplements the explanatory notes.

The first diagram shows the original (i.e. consultative) and the co-operative legislative procedure introduced by the Single European Act. Both begin with a project emanating from the Commission which prepares a preliminary draft of the intended measure on the basis of a report or working paper drafted by the Commission officials alone or assisted by independent experts. The draft is sent via the COREPER to the governments of the Member States. Usually a working party consisting of experts from the Member States chaired by a representative of the Commission is set

up. The preliminary draft is also sent to the appropriate professional organizations for their comments. When these have been received the Commission prepares a "final" proposal which is published in the Official Journal of the Communities and submitted formally to the Council of Ministers.

The final proposal is considered by the European Parliament and the Economic and Social Committee which publish their opinions upon the proposal. There is no rigid rule upon the sequence or the timing of this move. Normally the proposal is referred by the Council to the European Parliament and the Economic and Social Committee though the Commission itself may consult the European Parliament in the course of drafting the proposal. Alternatively the Commission may send the proposal simultaneously to the European Parliament and the Council of Ministers. The Economic and Social Committee is consulted when such consultation is obligatory or when it is thought appropriate. However under the EEC Treaty the obligation to consult in appropriate cases is imposed upon the Council.

The proposal may be amended by the Commission in the light of the opinions of the European Parliament and the Economic and Social Committee. With such amendment it is referred to COREPER and thence to the Council of Ministers which either adopts or rejects it according to the voting system appropriate to the measure in question.

The co-operation procedure was adopted by virtue of the Single European Act partly to give effect to the enhanced position of the EC and partly to speed up the enactment of measures necessary for the completion of the internal market. It does not supercede entirely the original procedure; it merely derogates from it in specified cases and applies only where decisions can be taken by qualified majority.

The novelty consists of a second reading. The first reading, following a Commission proposal, the European Parliament opinion and, in some cases, also the opinion of the Economic and Social Committee, does not lead to a Council decision but to a "common position" which the Council takes by a qualified majority when it agrees with the Commission or by a unanimous vote when it amends the Commission proposal.

In adopting a common position in the first stage of the proceedings the Council acts by a qualified majority. This decision is communicated to the European Parliament,



the Council and the Commission explaining their reasons for having done so. If, within three months of receiving the Communication, the European Parliament does nothing or expressly approves the common position the Council definitely adopts the measure in question in accordance with the common position.

However, within three months since receiving the communication the European Parliament may, by an absolute majority of its component members, propose amendments to the common position. Such amendments are passed on to the Council and the Commission. If the European Parliament rejects the common position the Council has to act unanimously on a second reading of the proposal.

The Commission must, within one month, re-examine the proposal which led to the common position taking into account the amendments proposed by the European Parliament and communicate its views to the Council. If it does not agree with the amendments proposed by the EC it must state its reasons for their rejection. However, the Council may adopt the European Parliament amendments by unanimous vote, thus ignoring the Commission's objections.

The Council may, by a qualified majority, adopt the proposals as re-examined by the Commission but unanimity is required if the Council wishes to amend the re-examined version of the proposals.

The Single European Act has also introduced an assent procedure into the decision-making process other than Community legislation. Thus assent of the European Parliament for the admission of new Member States and for association agreements is required. In this respect the European Parliament makes its own decision acting not by a "common position" in co-operation with the other institutions but independently exercising a power of co-decision. It is not clear how a conflict between the Council and the European Parliament would be resolved. The added difficulty arises from the fact that, on admission, a new Member State is required to accede to all the three Communities whilst the assent procedure applies to the EEC only. The Single European Act has not altered the position under the ECSC or the EAEC Treaties. Under the ECSC Treaty a consultation with the European Parliament is sufficient for the conclusion of association agreements but it is not required for accession.

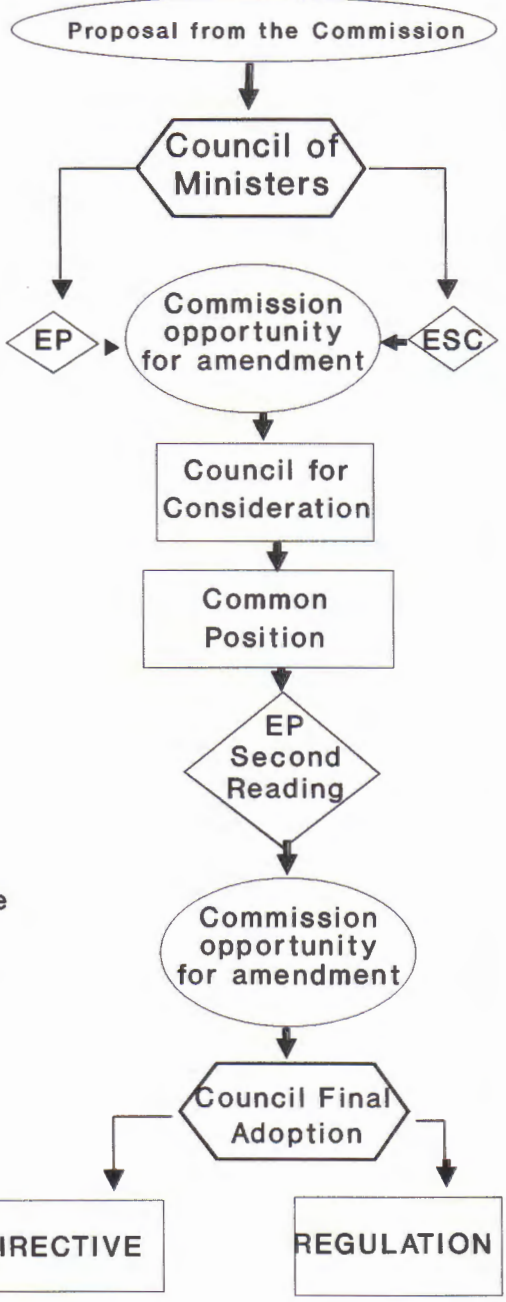
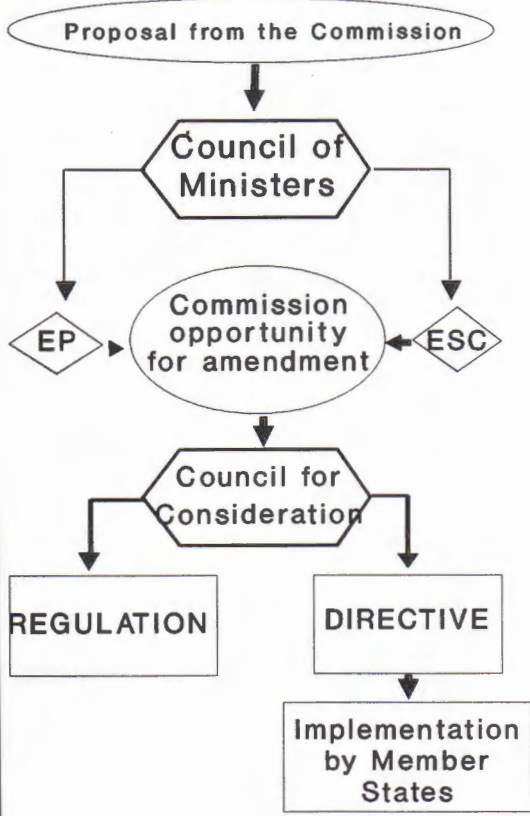
The co-decision procedure proposed under the Treaty of Maastricht is shown on the second diagram. It differs from the other two procedures in so far as the European Parliament is to be more involved and shall be able to block a proposal.

A country aspiring to the membership of the Communities has to appreciate the problems and the nuances in the decision-making procedures of the Community in order to prepare itself for playing a meaningful part in the Community process.

**EEC Legislation from Start to Finish(Directives and Regulations)**

**The Consultation Procedure**

**The Cooperation Procedure**



ESC : Economic and Social Committee  
 EP : European Parliament

**Figure : 1**



The Co-decision Procedure(Maastricht)

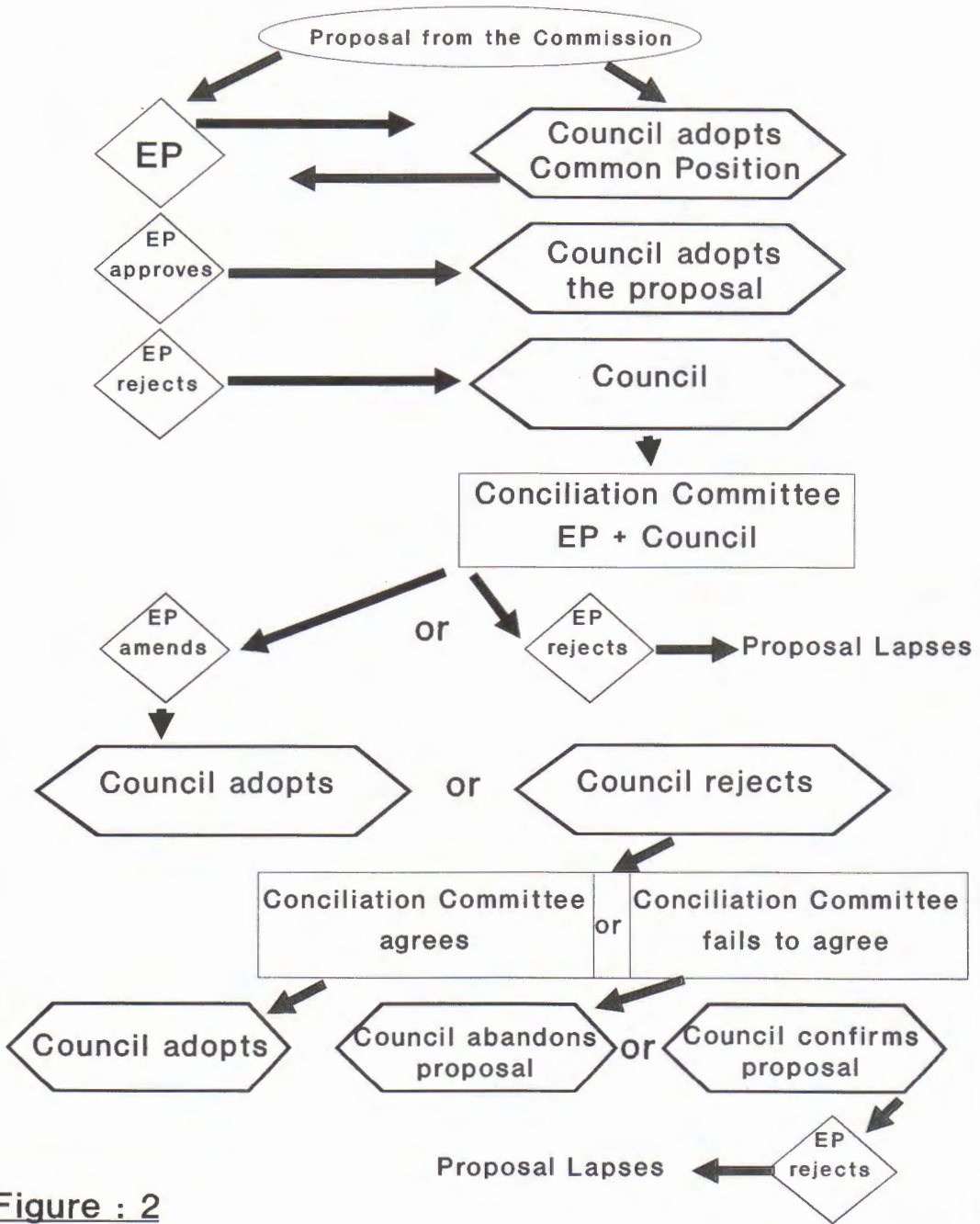


Figure : 2

NOTES:

1 See XXIII General Report on the Activities of the European Communities (1990)

pp. 354-360

2 EEC Art.173

3 EEC Art.175-ECSC Art.35; EAEC Art.148

4 See Case 13/83: EC Parliament v EC Council (1985) ECR 1513

5 Case 6/70: Borromeo Arese v EC Commission (1970) ECR 815