

Working Group IX

Working document 09

Working Group IX on Simplification

SUBJECT: **“Legislative procedures in the European Union”**
 - **paper by Lord MacLennan of Rogart**

Members of the Group will find attached a paper prepared by Lord Robert MacLennan of Rogart, alternate member of the Convention.

Legislative Procedures in the European Union

The first table provides a basic overview of the differing legislative procedures, from the stage of the legislative initiative to the adoption of the act. This outline could help the Working Group when assessing the merits of each procedure and deciding which procedures should be altered or abolished.

The second table illustrates the different and sometimes overlapping policy areas each legislative procedure is applicable to. In cases where one policy area is covered by several procedures, the Working Group could decide to simplify the system by making only one legislative procedure applicable to the policy area in question. For example, social policy, currently covered by four procedures, could be brought entirely within the sphere of the Co-decision Procedure.

A. List of Procedures

This is a simplified classification of procedures, which takes into account the voting system and the Council and Parliament's involvement, but not the consultation of institutions or other bodies.¹

1. The Co-decision Procedure, with QMV
2. The Co-decision Procedure, with unanimity
3. The Cooperation Procedure, with QMV
4. The Cooperation Procedure, with unanimity
5. The Assent Procedure, with QMV
6. The Assent Procedure, with unanimity
7. The Consultation Procedure, with QMV
8. The Consultation Procedure, with unanimity
9. No Parliament participation, with QMV
10. No Parliament participation, with unanimity

¹ For a comprehensive list of the procedures, not including certain other procedures e.g. adoption of the budget, discharge and some appointments, please refer to Annex 1.

B. List of Policy Areas

The list of policy areas is not comprehensive: it does not include financial and budgetary provisions. Similarly, the list omits any reference to institutions. Nor does it include the area of external relations, a pre-dominantly Executive prerogative and an area that lies primarily within the remit of the Working Group on External Affairs.

1. Free movement of Goods
2. Agriculture
3. Free movement of persons, services and capital

B. List of Policy Areas

4. Visas, asylum, immigration and other policies related to free movement of persons
5. Transport
6. Common Rules on competition, taxation and approximation of laws
7. Economic and Monetary policy
8. Employment
9. Common Commercial policy
10. Social policy, education, vocational training and youth
11. Culture
12. Public health
13. Trans-European networks
14. Industry
15. Economic and Social Cohesion
16. Research and technological development
17. Environment
18. Development Cooperation
19. Citizens' rights

TABLE 1
THE STEPS INVOLVED IN THE DIFFERENT LEGISLATIVE PROCEDURES

	1	2	3	4	5	6	7	8	9	10
Commission initiative	X	X	X	X	X	X	X	X	X	X
Council scrutiny and debate	X	X	X	X	X	X	X	X	X	X
Parliamentary scrutiny and debate	X	X	X	X	X	X	X	X		
Amendment by Council	X	X	X/2 ¹	X/2	X	X	X	X	X	X
Amendment by Parliament	X	X	X/2 ²	X/2						
2nd stage Council scrutiny	X	X	X	X			X	X		
2nd stage Parliament scrutiny	X	X	X	X			X	X		
Conciliation	X	X								
1st stage dead-lines			X	X	X	X	X	X		
2nd stage dead-lines	X	X	X	X						
3rd stage dead-lines	X	X								
Council Veto	X	X	X	X	X	X	X	X	X	X
Parliament Veto	X	X	X/2 ³	X/2	X	X				
Adoption by QMV	X		X		X		X		X	
Adoption by Unanimity	x ⁴	X		X		X		X		X

- ¹ Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission
- ² The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.
- ³ If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading
- ⁴ After the second reading, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

TABLE 2**POLICY AREAS COVERED BY THE DIFFERENT LEGISLATIVE PROCEDURES**

	1	2	3	4	5	6	7	8	9	10
Free movement of goods									X	
Agriculture							X			
Free movement of persons, services and capital	X	X					X		X	X
Visas, asylum, Immigration	X ¹							X	X	
Transport policy	X							X	X	
Competition and Taxation policy	X						X	X	X	X
Economic & Monetary policy			X		X	X	X	X	X	X
Employment Policy	X						X		X	
Commercial policy								X	X	
Customs cooperation	X									
Social policy	X							X	X	X
Culture policy		X								X
Public Health Policy	X								X	
Consumer protection policy	X									
Trans-European networks	X									
Industry	X							X		
Economic and Social Cohesion	X				X					
Research	X									
Environment	X							X		
Development cooperation	X						X			

¹ Article 67 (2). The Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this Title to be governed by the procedure referred to in Article 251 and adapting the provisions relating to the powers of the Court of Justice.

Citizens' rights	X							X		
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ANNEX 1

DECISION-MAKING PROCEDURES INVOLVING THE CONSULTATION OF INSTITUTIONS OR OTHER BODIES¹

1. Co-decision procedure, with QMV
2. Co-decision procedure and consultation of the Court of Auditors, with QMV
3. Co-decision procedure and consultation of the Economic and Social Committee, with QM
4. Co-decision procedure and consultation of the Economic and Social Committee and the Committee of the Regions, with QMV
5. Co-decision procedure, with unanimity
6. Co-decision procedure and consultation of the Committee of the Regions, with unanimity
7. Co-decision procedure and consultation of the Economic and Social Committee and the Committee of the Regions, with unanimity
8. Cooperation procedure, with QMV
9. Cooperation procedure and consultation of the European Central Bank, with QMV
10. Assent procedure, with QMV
11. Assent procedure, sole ECB power of initiative, with QMV
12. Assent procedure, with unanimity
13. Assent procedure, on a proposal from the Parliament, with unanimity
14. Assent procedure and consultation of the ECB, with unanimity
15. Consultation procedure, with QMV
16. Consultation procedure and consultation of the Economic and Social Committee, with QMV
17. Consultation procedure and consultation of the Economic and Social Committee and the Committee of the Regions and the Employment Committee, with QMV
18. Consultation procedure, with unanimity
19. Consultation procedure and consultation of the Court of Auditors, with unanimity
20. Consultation procedure and consultation of the Economic and Social Committee, with unanimity
21. The Consultation procedure and consultation of the Economic and Social Committee and the Committee of the Regions, with unanimity
22. No Parliament participation, with QMV
23. No Parliament participation and consultation of the European Central Bank, with QMV
24. No Parliament participation and consultation of the European Central Bank and the Economic and Financial Committee, with QMV
25. No Parliament participation and consultation of the Economic and Social Committee, with QMV
26. No Parliament participation, with unanimity
27. No Parliament participation and consultation with the European Central Bank, with unanimity
28. No Parliament participation and consultation of the Economic and Social Committee, with unanimity

¹ The list incorporates the amendments to procedures made in the Treaty of Nice.

ANNEX 2

DECISION-MAKING PROCEDURES ACCORDING TO THE LEGAL BASIS¹

1. The Co-decision procedure, with QMV

- Rules prohibiting any discrimination on grounds of nationality. **Article 12**
- Adoption of appropriate measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. **Article 13**
- Provisions with a view to facilitating the exercise of the rights of citizens to move and reside freely within the territory of the Member States. **Article 18(2)**
- Freedom of movement for workers. **Article 40**
- Right of establishment. **Article 44**
- Co-ordination of provisions laid down by law, regulation or administrative action providing for special treatment of nationals of other Member States in exercising the right of establishment. **Article 46(2)**
- Issue of directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications. **Article 47(1)**
- Right of establishment for activities as self-employed persons. **Article 47(2)**
- Services. **Article 55**
- Measures to establish an area of freedom, security and justice (*except family law*) **Article 67(1)**
- Common Transport policy. **Article 71(1)**
- Extension of the rules of procedure laid down in Article 71(1) to include sea and air transport. **Article 80(2)**
- Harmonisation measures relating to the internal market. **Article 95(1)**
- Employment incentive measures. **Article 129**
- Customs co-operation. **Article 135**
- Working environment and conditions; workers' health and safety, information and consultation of workers; integration of excluded persons; equal opportunities and treatment; measure designed to encourage co-operation in order to combat social exclusion. **Article 137(1) and (2)**
- Equal opportunities, treatment and pay. **Article 141**
- Implementation of decisions relating to the European Social Fund. **Article 148**
- Education. **Article 149(4)**
- Vocational training. **Article 150(4)**
- Public health. Article **152(4)(a) and (b)**
- Incentive measures designed to protect and improve human health. **Article 152(4)(c)**
- Consumer protection. **Article 153(4)**
- Trans-European networks. **Article 156**
- Deciding on specific measures in support of action taken in the Member States to ensure that the conditions necessary for the competitiveness of the Community's industry exist. **Article 157(3)**

¹ These bases reflect the changes made in the Treaty of Nice and assume that the transitional period, for the change in measures to take place, has elapsed.

- Measures to achieve economic and social cohesion. **Article 159**
- Implementing decisions relating to the ERDF. **Article 162**
- Research framework programme. **Article 166**
- Adoption of the measures referred to in Articles 167, 168 and 169 – research. **Article 172**
- Environment. **Article 175(1)**
- Action programme in other areas of the environment. **Article 175(3)**
- Development co-operation. **Article 179**

2. The Co-decision Procedure, with unanimity

- Social security measures for Community migrant workers. **Article 42**
- Co-ordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. Co-ordination of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. **Article 47**
- Culture. **Article 151**

3. The Co-operation Procedure, with QMV

- Multilateral surveillance. **Article 99(5)**
- Application of the prohibition on privileged access. **Article 102(2)**
- Application of the prohibition on assuming commitments or granting overdraft facilities. **Article 103(2)**
- Measures to harmonise the denominations and technical specifications of coins. **Article 106(2)**

4. The Co-operation Procedure, with unanimity

5. The Assent Procedure, with QMV

- Amendment of the Protocol on the Statute of the ESCB and of the ECB on a recommendation from the ECB. **Article 107(5)**
- Structural Funds and Cohesion Fund. **Article 161**

6. The Assent Procedure, with Unanimity

- Specific tasks of the ECB. **Article 105(6)**
- Amendment of the Statute of the ESCB and of the ECB. **Article 107(5)**
- Elections in accordance with a uniform procedure. **Article 190(4)**

7. THE CONSULTATION PROCEDURE, WITH QMV

- Common agricultural policy. **Article 37(3)**
- Liberalisation of services. **Article 52(1)**
- Establishing the list of third countries required to issue a visa, and those which are exempt from that requirement, and the establishment of a uniform format for visas. **Article 67(3)**
- Adoption of regulations on competition. **Article 83**
- Adoption of regulations on State aid. **Article 89**
- Provisions for the implementation of the Protocol on the excessive deficit procedure. **Article 104(14)**
- Amendment of certain provisions of the Protocol on the Statute of the ESCB and the ECB. **Article 107(6)**
- Limits and the conditions under which the ECB may impose fines. **Article 110(3)**
- Decision on the entry of a State outside the single currency. **Article 122(2)**
- Drawing up guidelines which the Member States shall take into account in their employment policies, on the basis of the conclusions of the European Council. **Article 128(2)**
- Specific research programmes. **Article 166(4)**
- Research, setting up of joint undertakings. **Article 172(1)**
- Economic, financial and technical co-operation with third countries. **Article 181a**
- Adoption of provisions on the Statute of the ESCB. **Article 42** of the Protocol on the Statute of the ESCB and of the ECB.

8. The Consultation Procedure, with unanimity

- Adoption of appropriate measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. **Article 13(1)**
- Citizenship: right to vote and to stand as a candidate in European Parliament elections. **Article 19(1)**
- Extension of rights linked to citizenship, ratification by Member States. **Article 22**
- Measures to establish an area of freedom, security and justice (family law) **Article 64(1)**
- Provisions concerning the principles of the regulatory system for transport application of which would be liable to have a serious effect on the standard of living and on employment. **Article 71(2)**
- Harmonisation of indirect taxation. **Article 93**
- Harmonisation of laws. **Article 94**
- Exchange-rate system for the ECU in relation to non-Community currencies. **Article 111(1)**
- Measures in the field of social security, of social protection of workers where their employment contract is terminated, representation and collective defence of the interests of workers and employers, conditions of employment for third-country nationals in possession of a residence permit and financial contributions for promotion of employment and job-creation. **Article 137(3)**

- Industry. **Article 157(3)**
- Provisions of a fiscal nature, measures concerning town and country planning and land use, measures affecting energy supplies and bio-diversification. **Article 175(2)**
- Adoption of measures necessary to attain the Community's objectives. **Article 308**

9. No Parliament participation, with QMV

- Fixing of Common Customs Tariff duties. **Article 26**
- Exclusion in a Member State of certain activities from the scope of the provisions on the right of establishment. **Article 45**
- Extension of the provisions on the supplying of services to include nationals of a third country established in the Community. **Article 49**
- Adoption of other measures on the movement of capital to or from third countries. **Article 57(2)**
- Adoption of strictly necessary safeguard measures where, in exceptional circumstances, movements of capital to or from third countries cause serious difficulties for the EMU. **Article 59**
- Adoption of urgent measures on the movement of capital and on payments. **Article 60(1)**
- Decision on the amendment or abolition of unilateral measures taken by a Member State against a third country with regard to capital movements and payments. **Article 60(2)**
- Adoption of provisional measures with regard to law and order and internal security for the benefit of certain States. **Article 64(2)**
- Abolition of discrimination in the transport sector. **Article 75(3)**
- Appropriate provisions concerning sea and air transport. **Article 80(2)**
- Approval of measures concerning charges other than turnover taxes, excise duties and other forms of indirect taxation. **Article 92**
- Adoption of directives to eliminate distortion within the common market. **Article 96**
- Council recommendation regarding broad economic policy guidelines. **Article 99(2)**
- Measures appropriate to the economic situation. **Article 100(1)**
- Grant of Community financial assistance to a State in severe difficulties. **Article 100(2)**
- Decision on whether an excessive deficit exists. **Article 104(6)**
- Decision concerning the adjustment or abandonment of the ECU central rates. **Article 111(1)**
- Exchange rate policy. **Article 111(2)**
- Arrangements for the negotiation and the conclusion of international agreements on the monetary or foreign exchange regime. **Article 111(3)**
- Composition of the Economic and Financial Committee. **Article 114(3)**
- Grant and revocation of mutual assistance where a Member State is in difficulties or is seriously threatened with difficulties as regards its balance of payments. **Article 119(2) and (3)**
- Adjustment, suspension or abolition of protective measures. **Article 120(3)**
- Decision on whether a Member State shall have a derogation for the purpose of excluding it from rights and obligations within the ESCB. **Article 122(1)**

- Recommendations on employment. **Article 128(4)**
- Common Commercial Policy. **Article 132**
- Application of other agreements between management and labour. **Article 139(2)**
- Recommendations in the field of education. **Article 149(4)**
- Recommendations in the field of public health. **Article 152(4)**

10. No Parliament participation, with unanimity

- Adoption of measures on the movement of capital to or from third countries which constitute a step back in Community law as regards liberalisation. **Article 57(2)**
- Decisions on the compatibility with the common market of State aid having regard to competition. **Article 88(2)**
- Abrogation of a derogation granted to a State outside the single currency and other measures necessary to that end. **Article 123(5)**
- Application of agreements concluded between the social partners in the fields covered by Article 137(3). **Article 139(2)**
- Assigning to the Commission tasks in connection with the implementation of common measures, particularly as regards social security for the migrant workers. **Article 144**
- Recommendations in the field of culture. **Article 151(5)**
- Amendments to the list of products covered by the provisions connected to the production of or trade in arms, munitions and war material. **Article 296(2)**
- Measures necessary for the implementation of the Schengen *acquis*. **Article 2(1), second subparagraph of the Protocol integrating the Schengen acquis.**
- Determination of the legal basis for each of the provisions or decisions which constitute the Schengen *acquis*. **Article 2(1), end of second subparagraph, of the Protocol integrating the Schengen acquis.**

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