

# The adoption procedure for european legislation. Brief considerations

**Lecturer Ramona DUMINICĂ, PhD.**

Faculty of Law and Administrative Sciences, University of Pitesti; Pitesti  
(Romania);  
*duminica.ramona@gmail.com*

## **Abstract:**

*In principle, in the European Union, the legislative function is exercised equally by the European Parliament and the Council. These two institutions adopt legislative acts through two procedures: the ordinary legislative procedure and the special legislative procedure. Besides these two main proceedings, in the goal of making procedural rigidity more flexible by implementing several steps, the Lisbon Treaty introduces a number of institutional clauses (passerelle clauses brake clause, and accelerator clauses). These clauses propose different institutional mechanisms, but pursue a common objective, namely, facilitating European integration in "sensitive" areas. Based on these aspects, this article discusses features of the adoption procedure for European legislative acts in terms of the Lisbon Treaty.*

**Keywords:** *Lisbon Treaty, the ordinary legislative procedure, the special legislative procedure, European Union legislation.*

## **Introduction**

The signing of the Lisbon Treaty on 13 December 2007 is considered in the literature [1] to be the last step in the process of relaunching the Union's institutional and rendering the European project more credible again.

Also dubbed the Reforming Treaty, the Lisbon Treaty was drawn up as a result of the need to address the challenges of a deepening European integration and ensuring the functioning of its institutions in the conditions of an enlargement with new members states [2].

One of the novelties of this treaty consists in establishing seven legislative procedures that reflect the changes occurring in the Union. Specifically, the ordinary legislative procedure replaces the co-decision procedure established by the Maastricht Treaty in 1992. It is regulated in Articles 289 and 294 of the Treaty on the Functioning of the European Union (TFEU) and was characterized as "an

original combination that includes: technocratic proposals coming from the Commission, working with technical advice from experts from all Member States; involving the European Parliament that represents the citizens of the Union; involving the Council that represents governments of member states, reaching decisions by qualified majority” [3].

### **1. The ordinary legislative procedure under the Lisbon Treaty**

According to Article 289 paragraph 1 of the TFEU, ordinary legislative procedure consists in the joint adoption by the European Parliament and the Council of a regulation, directive or decision based on a Commission proposal. Accordingly, the ordinary legislative procedure is initiated by the Commission, then, is mainly between Council and Parliament on the basis of their legislative prerogatives as joint authorities and involves several steps defined by Article 294 of the TFEU.

Thus, the Commission is considered to be the starting point for each union action, enjoying legislative initiative. By virtue of this law, it prepares and submits drafts of law proposals before the Council and the European Parliament, both on its own initiative and at their request [4], being the body that best knows areas where there are deficiencies that require action on the part of the Union.

Once the proposal is presented by the Commission to the European Parliament and the Council, the draft legislation has to go through three sequential steps designated as the “readings”.

In the first reading, the European Parliament adopts its position and communicates it to the Council.

If the European Parliament's position is endorsed by the Council, the legislative act is adopted in the form that corresponds to the European Parliament's position, thus putting an end to the legislative process.

If the European Parliament's position is not approved by the Council, it shall adopt its position and forwards it. In the latter case, the Council fully informs the Parliament of the reasons which led it to adopt this position on the first

reading. In its turn, The Commission fully informs the European Parliament of its position.

According to Article 294 paragraph 7 of the TFEU, at the stage of the second reading [5], within three months from the submission by the Commission of its position, Parliament can:

- a. approve the Council's first reading or not rule on the matter. In this case, the act is deemed passed in the wording which corresponds to the Council's first reading. Respectively, the act is submitted directly for the signature of the Presidents and Secretaries-General of the European Parliament and of the Council, and afterwards published in the Official Journal of the European Union.
- b. reject the Council's first reading with the majority of the Members of Parliament, the proposed act is deemed as not having been adopted and the legislative process ends. Examining the case may be resumed only on the basis of a new proposal from the Commission.
- c. to propose amendments to the Council's first reading, with the aid of a majority of its members. The text thus amended is submitted to the Council and the Commission, which issue an opinion on these changes.

As provided in Article 294 paragraph 8 of the TFEU, if within three months of receiving the European Parliament's amendments, the Council, acting through a qualified majority, approves all those amendments, the act is considered approved. Assuming that it does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament shall convene the Conciliation Committee within six weeks. The Council will make the decision unanimously on the amendments which were the subject of a negative opinion from the Commission.

The Conciliation Committee is composed of members of the Council or their representatives and an equal number of members representing the European Parliament. It has the task of reaching an agreement on a joint project, by a qualified majority of Council members or their representatives and by a majority of members representing the European Parliament. Decision must be

made within six weeks of its being convened, taking into account the positions of Parliament and the Council on the second reading. The Commission takes part in the conciliation proceedings and is actively involved in all necessary initiatives with the goal of reconciling the positions of the European Parliament and the Council.

If within the six-week period, the Conciliation Committee does not approve the joint text, the proposed act is deemed adopted. However, assuming that within that period, the Conciliation Committee approves a joint text, the European Parliament and the Council shall each have a period of six weeks from receiving the approval, in which to adopt the act in accordance with this project, and thus have the so-called third reading. Parliament must act by a majority of votes cast, and the Council by qualified majority. Otherwise, the proposed act is deemed to have been adopted [6].

According to Article 294 paragraph 14 of the TFEU, the three months and six weeks periods of may be extended by one month and two weeks respectively at the initiative of the European Parliament or the Council.

Last but not least, the TFEU provides that if in the cases stipulated in the Treaties, a legislative act constitutes the object of an ordinary legislative procedure by a group of Member States, or on the recommendation of the European Central Bank, or at the request of the Court of Justice, then paragraphs (2) (6) and (9) of Article 294 TFEU will no longer apply. In these cases, the European Parliament and the Council shall communicate to the Commission the draft proposal, with their positions from the first and second reading. They may request the opinion of the Commission at any time during the procedure, opinion which the Commission may issue on its own initiative [7].

Also, the Commission may, if it considers it necessary, take part in the Conciliation Committee as stipulated in Article 294 paragraph (11) of the TFEU.

## 2. About the special legislative procedure

As to the special legislative procedure, Article 289 of the TFEU states that such a procedure consists in adopting a regulation, directive or decision by the European Parliament with the Council or by the Council with the participation of Parliament in specific cases, as mentioned in treaties or provided for the adoption of legislation by a group of Member States, by the European Parliament, on a recommendation from the European Central Bank, or at the request of the Court of Justice or the European Investment Bank.

The literature [8] has highlighted the following differences between ordinary and special legislative procedure:

- if special procedures, Parliament and the Council do not act together, but each individually;
- for special procedures, legislative initiative comes not from the Commission but from another institution or from a group of Member States;
- special legislative procedures are not covered by general rules in the treaties, as it does on the ordinary procedure, but by separate rules for each of the cases stipulated in the treaties. Thus, in many cases, the special legislative procedure involves unanimity in Council and consultation of the European Parliament (e.g. Article 21 paragraph 3, Article 33, Article 64 of the TFEU etc.), in other cases, the legislative procedure requires unanimity in the Council and the consent of the European Parliament (e.g. Articles 19, 25, 82 paragraph 2, Article 86 paragraph 1 from the TFEU and so on), and yet in other cases, voting in the Council by a qualified majority while the European Parliament is only consulted, or the European Parliament has the main role and the Council need only approve the measures (e.g. Article 223 paragraph 2, etc. Article 226 of the TFEU).

Legislative acts adopted under the ordinary legislative procedure shall be signed by the President of the European Parliament and President of the Council and those adopted under a special legislative procedure shall be signed by the President of the institution which adopted them. Subsequently, legislative acts shall be published in the EU Official Journal and enter into force on the date

stipulated in them or, in the absence thereof, on the twentieth day following its publication [9].

Legislative acts are considered “intangible” in the sense that no admissible changes that are made after adoption and go beyond the tolerance limit of spelling or grammatical corrections. The principle of intangibility is absolute, since it constitutes, according to the Court of Justice the essential element of a European legal security [10].

### **Conclusion**

Even if significant improvements to legislative process have made through the Lisbon Treaty, as detailed above, the objective of a better legislation in the European Union remains a priority and a constant challenge.

Proof of this concern is that the European Commission's work program for 2015 foresaw the objective of better regulation aimed primarily at reducing bureaucracy and eliminating regulatory burden. Also, please note that Article 39 of the Framework Agreement between the European Parliament and the Commission establishes that a new Commission may review at the beginning of its mandate, all legislative proposals that are still pending, in order to confirm them politically or withdraw them, based on the Parliament's point of view. Given this basis, the 2014 Commission reviewed 450 proposals carried over from previous Commissions, which were still waiting for a decision in the co-decision procedure.

Also, the European Commission Program on proper and functional regulation (REFIT) proposes measures aimed at simplifying European Union legislation and reducing regulatory costs. It contributes to creating a stable and predictable regulatory framework, which can support economic growth and create jobs. It is considered [11] that the implementation of this program for better regulation will cause a systemic simplification that will benefit everyone from jurists and economic actors to simple European citizens. To achieve this goal, REFIT requires support from the European Parliament, European Council,

European Commission, Member States and interested parties [12]. Moreover, the decision from 19 May 2015, the Commission established the REFIT platform in order to carry out a dialogue with Member States and interested parties in order to improve European Union legislation.

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