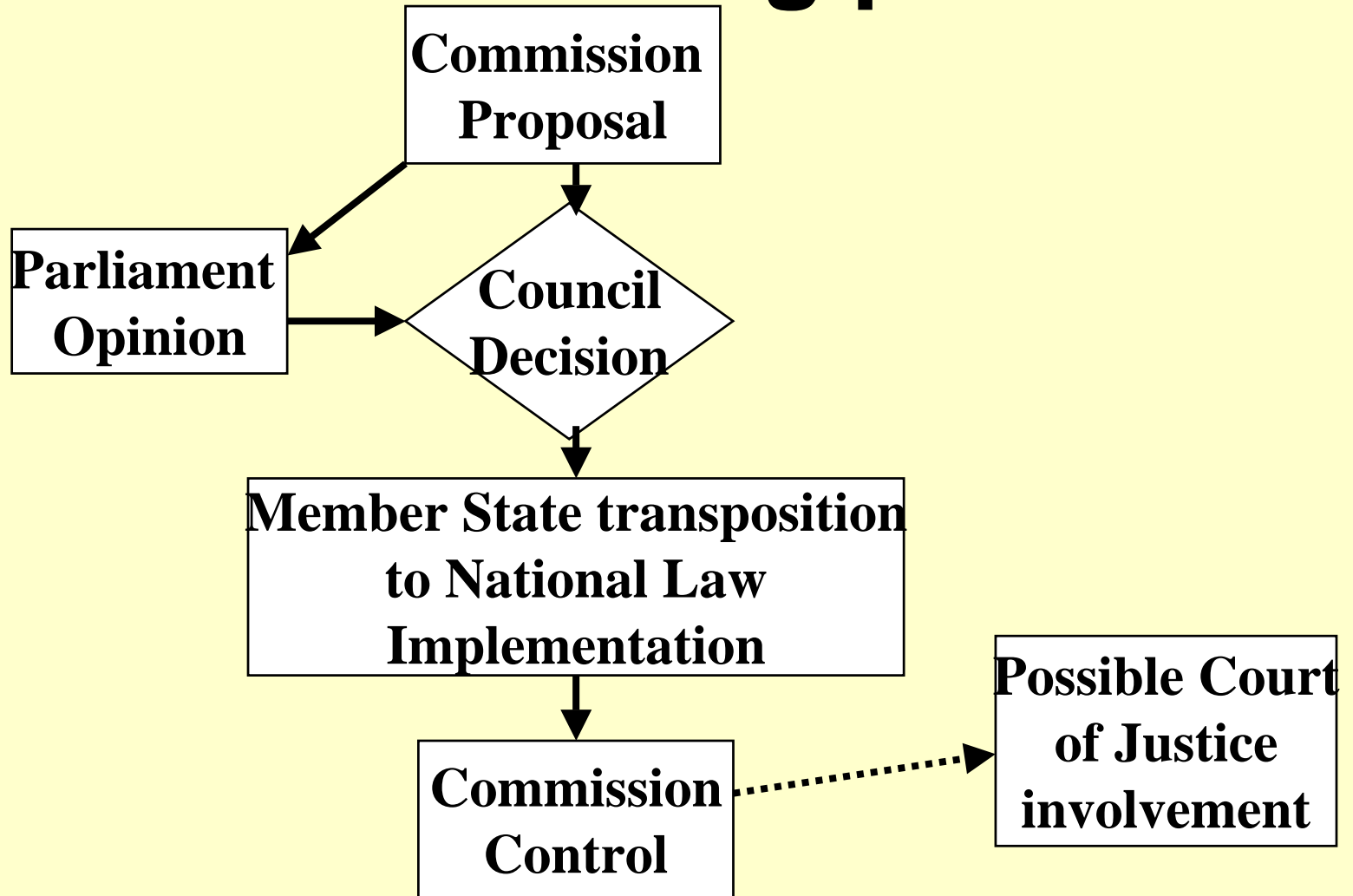


# **Prof. Dr. Reinhard Meyers**

## **Making Policy on a multi-level governance battlefield ?**

**Actors, forces, and decision-making procedures in the uniting of Europe**

# Once upon a time: EU Decision making process



# Nearly fifty years, more than thirty specific and different ways of law-making, and five policy modes later....



# EUROPEAN ACTS

## DIRECTIVES

Binding "*as to the results to be achieved*" (Art. 249 TEC) - Lay down principles (a framework), MS choose the appropriate implementation.

## REGULATIONS

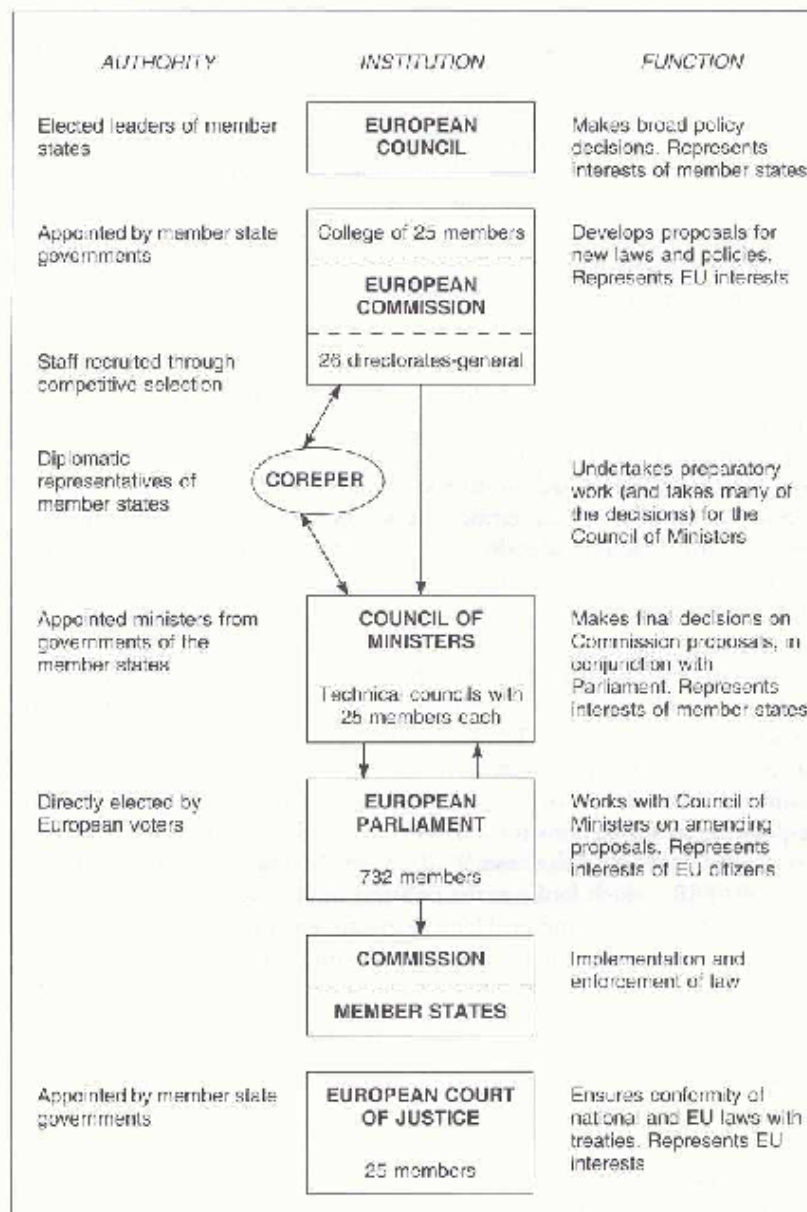
General application – binding - Directly applicable (i.e. no need for transposition) (Most issued by Commission on Common Agricultural Policy)

## DECISIONS

Specific acts, more administrative – binding on those to whom they are addressed (issues to any or all Member States, to companies or individuals)

## Recommendations and opinions..

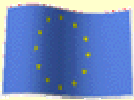
No binding force

Figure 4.1 *The European policy process*



# So why study EU decision-making ??





# **Explaining and Understanding the EU**

- one of the most daunting challenges facing political science
- to be tackled by examining decision-making at different levels of governance and using different conceptual lenses

**Problem:** different types of decisions are governed by different actors and different types of (causal) factors; also, enormous differences exist between individual policy areas (e.g. the CAP, Structural Policy, Competition Policy, Environmental Policy etc.)

**Solution:** to approach EU decision-making as actor-centered, with explanations to be derived from the interests and strategies of the actors in the policy process (or, more precise, the actors in a particular policy field)



# EU Decision-Making Explanations:

## Problem I




The European Union resists meta-theorizing. It is more amenable to a portfolio of theoretical models which help to describe, explain, and perhaps predict the outcomes of decision-making at different governance levels.

Reason: EU policies are the outcomes of numerous, sequenced decisions taken at different levels in a multi-level governance system according to procedures which differ depending on the policy area in question

Problem Solution: Theoretical eclecticism

# EU Decisionmaking Explanations II

- Problem II 
- It is an enduring trend in EU decision-making that a major change in policy often seems impossible without a change in process.
- Result: a constant tinkering with the make-up and procedures of decision-making processes
- Symbol: the inverted onion layer
- *Most of our procedures are so complicated because they are revised versions of revised versions of past versions. There's rarely much attempt made to find the optimum, it is more often the case of sticking a new procedure onto the old one, which of course is treated with reverence because so much blood was spilt to agree it.*

# **Decision Making**

**„The process of selecting an option for implementation.“**

**Decisions are formed by:**

- 1. a decision maker (the one who makes the final choice) and**
- 2. a decision unit (all those in a small group, organization, or government who are involved in the process).**

**Decision makers react to:**

- 1. an identified problem or set of problems  
by analysing information , determining objectives, formulating options, evaluating the options, and reaching a conclusion.**

# **Decisions are affected by:**

- **the nature of the problem**
- **the external setting**
- **the internal dynamics of the decision unit**
- **the personality of the decision maker(s)**
- **speed of events and developments in the external setting producing stress and leading to incomplete information**

# Decision Making as a Two-Level Game

## **Assumption:**

Decision making under interdependence; complex patterns of interdependence do not only constrain statesmen, but they also open up new possibilities for creative statecraft

## **Starting Point:**

Statesmen are typically trying to do two things at once: they seek to manipulate domestic and international politics simultaneously.

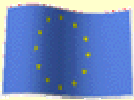
**Diplomatic strategies** are constrained both by what other states will accept and by what domestic constituencies will ratify. Diplomacy is a process of strategic interaction in which actors simultaneously try to take account of and influence the expected reactions of other actors, both at home and abroad.

# Decision Making as a Two-Level-Game II

*The outcome of international negotiations* may depend on the strategy a statesman chooses to influence his own and his counterpart's domestic politics. By exploiting control over information, resources, and agenda-setting in his own polity, the statesman can open up new possibilities and options for international bargaining.

Conversely, international strategies can be employed to change the character of domestic constraints, to create a policy option that was previously beyond domestic control, or to target policies directly at domestic groups in foreign countries („transnational politics“), who could be turned into allies „behind the back“ of the statesman's international negotiation partners.

- Concept of Double-Edged Diplomacy
- Cf. Peter B. Evans et al. (eds.): Double-Edged Diplomacy. International Bargaining and Domestic Politics. Berkeley: U. of California Press 1993



# **Perspectives on Decision Making**

## **The Rational Actor Model**

Decisions are made by a rational actor responding purposively to an external challenge. The actor is assumed to hold clear objectives, to assess carefully the costs and benefits of each option, to pick the best option fulfilling his objectives, and to fully implement that choice.

**Variant:** the decision maker is assumed to select the first satisfactory option rather than to search until the optimal solution is found („strategy of satisficing“).

## **The Organisational Process Model**

Emphasizes the impact of routines on decisions by organizations, shows how organizational structures and routines shape choices by limiting the information available about a problem, the menu of options for responding, and the implementation of whatever is chosen. Pre-planned routines are necessary in order to coordinate the behaviour of larger numbers of people in an organization. Routines influence the style and content of decision making: being interested in continuity, organisations tend to fall for an incremental adaptation strategy rather than for bold individual changes.

# ***The Bureaucratic Politics Model***

- **Decisions result from political struggles in a bureaucracy.**
- **Bargaining among individuals with different interests, status, and power can lead to an eventual compromise originally preferred by none of the parties („suboptimal solution“).**

**Decisions are influenced by**

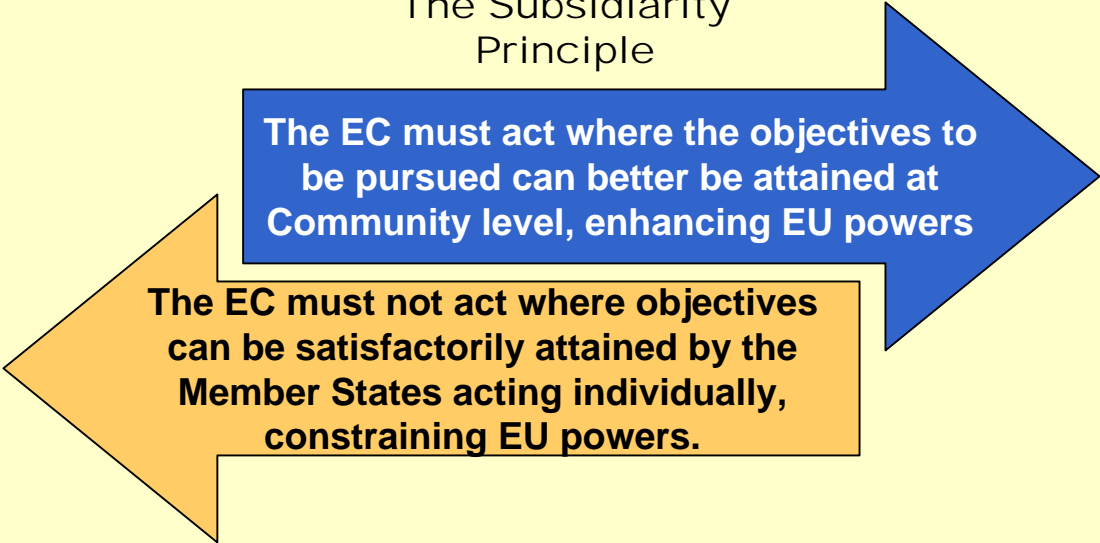
- **the number of actors involved**
- **their prestige, responsibilities, values and expertise**
- **the impact of public opinion, pressure groups, and the media**
- **individual needs for cognitive consistency (cf. theory of cognitive dissonance)**
- **group pressure for conformity**
- **misperception and miscalculation.**

**Decision making on one issue is also influenced by the presence of competing problems that distract attention, increase uncertainty, and make the process both more complex and psychologically more demanding.**



# Power of the EU

## The Subsidiarity Principle



The EC must act where the objectives to be pursued can better be attained at Community level, enhancing EU powers

The diagram features two large, overlapping arrows. A blue arrow points to the right, containing the text 'The EC must act where the objectives to be pursued can better be attained at Community level, enhancing EU powers'. An orange arrow points to the left, containing the text 'The EC must not act where objectives can be satisfactorily attained by the Member States acting individually, constraining EU powers.'.

The EC must not act where objectives can be satisfactorily attained by the Member States acting individually, constraining EU powers.

{ According to the **Subsidiarity Principle**, all Community institutions, but especially the Commission, must always demonstrate that there is a real need for Community rules and common action. }

↓  
If the need for Community rules is demonstrated...

### Principle of Proportionality:

The need for the specific legal instrument must be thoroughly assessed to see whether there is a less constraining means of achieving the same result. Framework legislation, minimum standards and mutual recognition of the Member States' existing standards should always be preferred to excessively detailed Community rules.

The subsidiarity principle was codified in a Protocol annexed to the Treaty of Amsterdam.



# Legislative process

## Three steps

1. Commission proposes
2. Competent institutions adopt
3. Member States implement

# Policy Tools of the European Union

Policy Tool	Policy Process	Binding authority?
<b><i>Regulation</i></b>	<b>Consultation Procedure</b> <b>Cooperation Procedure</b> <b>Co-decision Procedure</b> <b>Approval Procedure</b>	<b>Yes</b> Direct applicability, the legal acts do not have to be transposed into national law but confer rights or impose duties on the community citizen in the same way as national law.
<b><i>Directive</i></b>	<b>Consultation Procedure</b> <b>Cooperation Procedure</b> <b>Co-decision Procedure</b> <b>Approval Procedure</b>	<b>Yes</b> Objective of law is binding on the Member states but implementation is left to national authorities.
<b><i>Decision</i></b>	<b>Simplified procedure</b>	<b>Yes</b> Distinguished from <i>Regulations</i> by being of individual application: the persons to whom it is addressed must be named in it and are the only ones bound by it. Distinguished from <i>Directives</i> in that it is binding in its entirety (whereas the <i>Directive</i> simply sets out objectives to be attained).
<b><i>Recommendation</i></b>	<b>Simplified procedure</b>	<b>No</b> Expresses a view but does not place any legal obligation on the addressees. Political and moral significance.
<b><i>Opinion</i></b>	<b>Simplified procedure</b>	<b>No</b> An assessment; prepares the way for subsequent legally binding acts, or are a prerequisite for the institution of proceedings before the Court of Justice. Political and moral significance.



# First stage

## Commission proposal

- **Commission's right of initiative**
  - delimits scope of possible amendments
  - has to be exercised in a constructive manner
  - proposal may be changed before Council has acted
- **Consultations**
  - principle of subsidiarity
    - ☐ Commission “should consult widely” before proposing (Protocol to Amsterdam Treaty)
    - ☐ in particular: Green and White Papers
  - no strict rules or formats



## Second stage

# Legislative procedures

- **Consultation procedure**
- **Cooperation procedure**
- **Codecision procedure**
  - EP and Council are co-legislators on equal footing
  - more than 50% of all acts based on EC Treaty
  - e.g. Art. 95 and Art. 152 EC
  - 3 phases
- **Assent procedure**



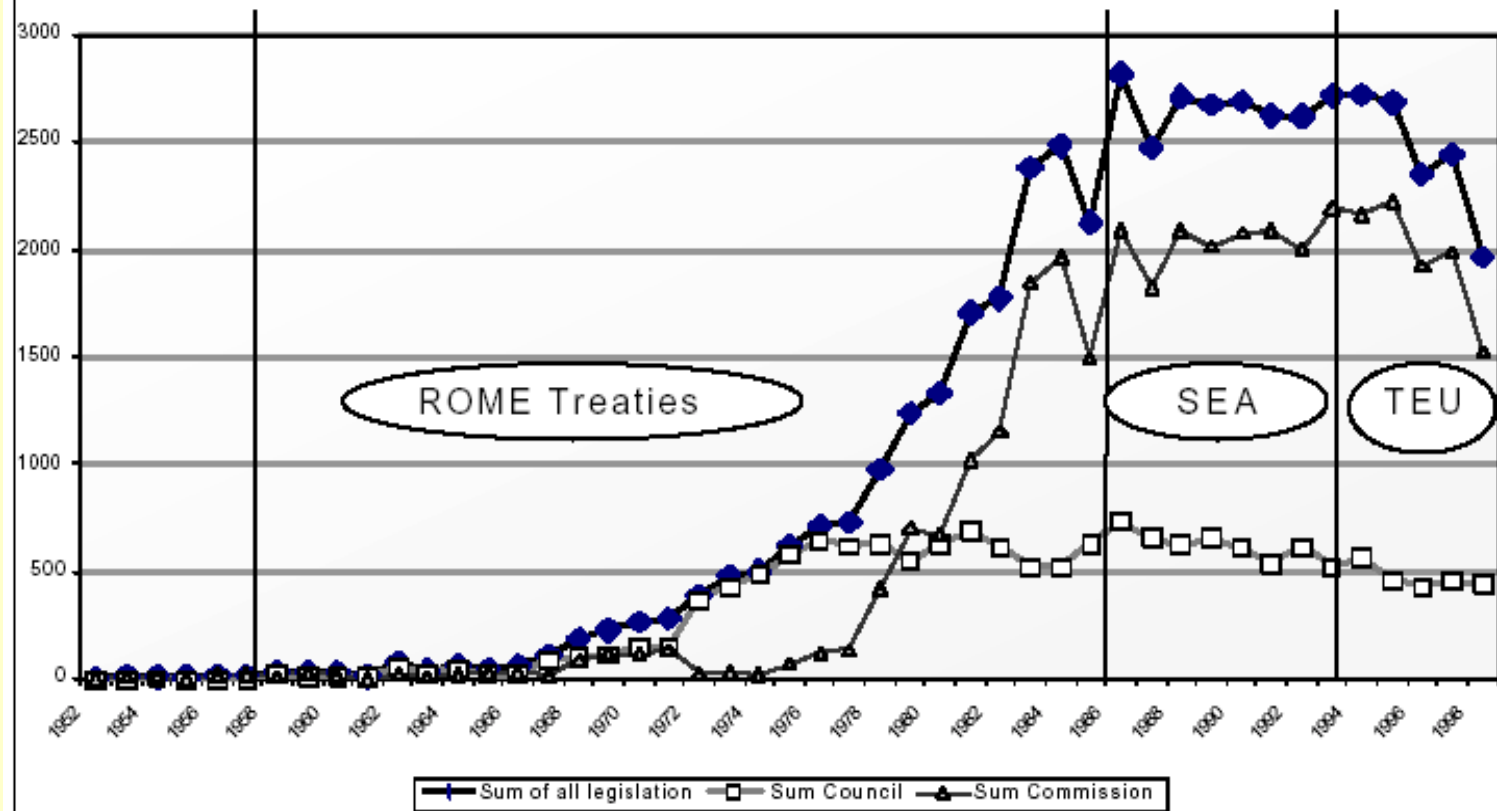
# Third stage Implementation

- **Subsidiarity/Proportionality**
  - as much scope for national measures as possible
  - Directive preferable
- **Ways to implement**
  - separate national provisions
  - reference to EC provisions
- **Time limits and obligations to notify**
- **Infringement procedure**

# **The impact of EU decisions**

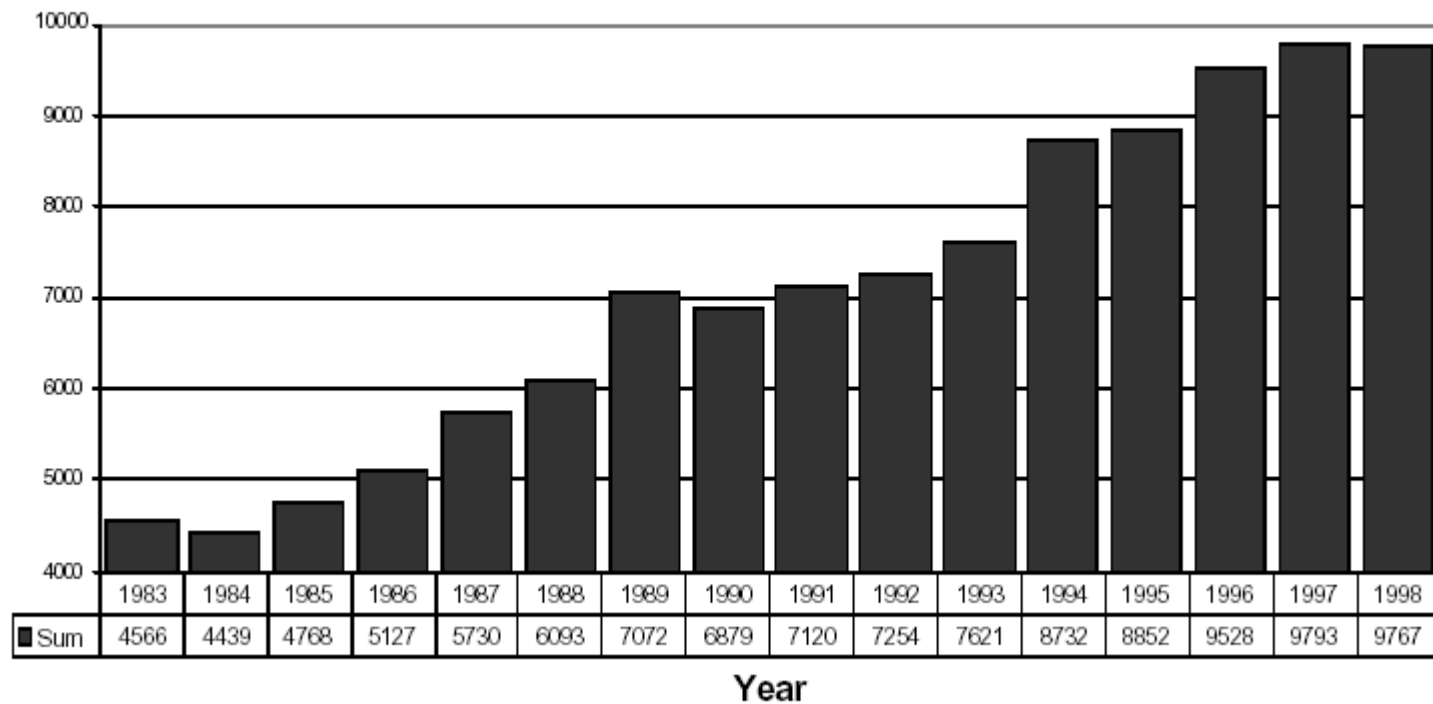
- **All areas of public policy: market regulation, social policy, environment, agriculture, regional policy, research and development, policing and law and order, citizenship, human rights, international trade, foreign policy, defence, consumer affairs, transport, public health, education and culture**
- **EU sets over 80% of rules governing the production, distribution, exchange of goods, services and capital inside the Community**
- **About 300 of pieces of legislation pass through the EU institutions every year, more than in any other single set of policy institutions in the democratic world**
- **Primary and secondary acts of the EU are supreme over national law. Most of the acts have direct effects and create rights for individuals. Powerful indirect effect on the distribution of resources between individuals, groups and nations in Europe**
- **Several Member states receive around 5% of their gross domestic product from the EU budget**

Legal Output of Council and Commission 1952-1998 per year





## European Legislation in Force 1983-1998



# Compare Legislative Processes: Consultation v. Co-decision Procedure

1950

**European Coal  
and Steel  
Community  
(ECSC)**

1997

**Treaty of  
Amsterdam**

## Consultation Procedure:

The earliest legislative process within the Community.

Member States' in the Council played the decisive role in expressing the will of the EC.

The Commission submits proposals and the Council makes the decisions.

Used now only in limited instances

## Co-decision Procedure:

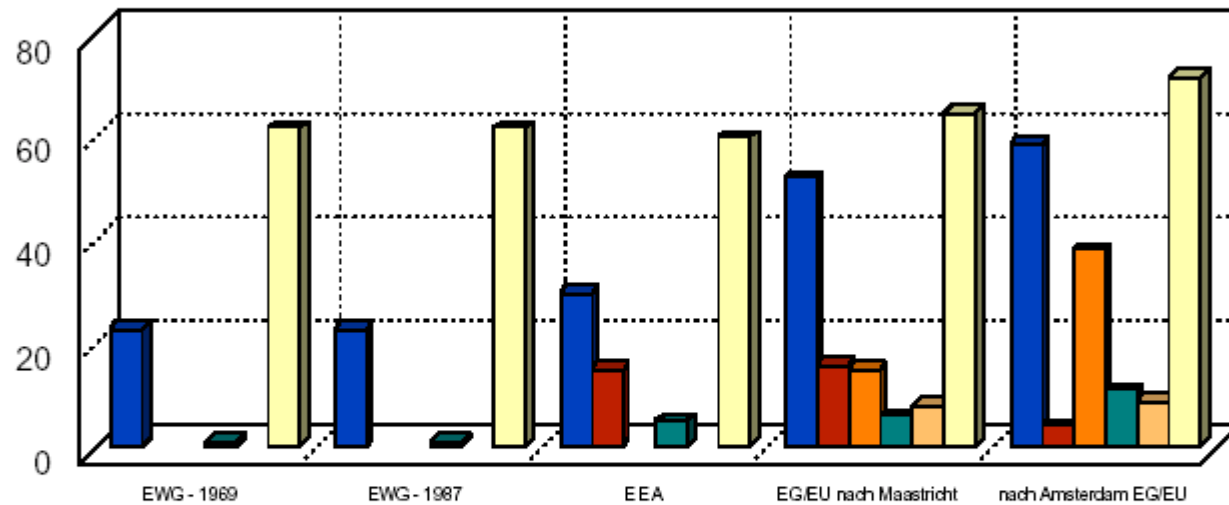
Treaty of Amsterdam created 'equality of arms' between the Council and Parliament.

Denies the Council the right to adopt its common position if efforts to reach agreement with Parliament fail.

Used for most of the important legislation.

# Entwicklung der Entscheidungsmodi Rat/EP

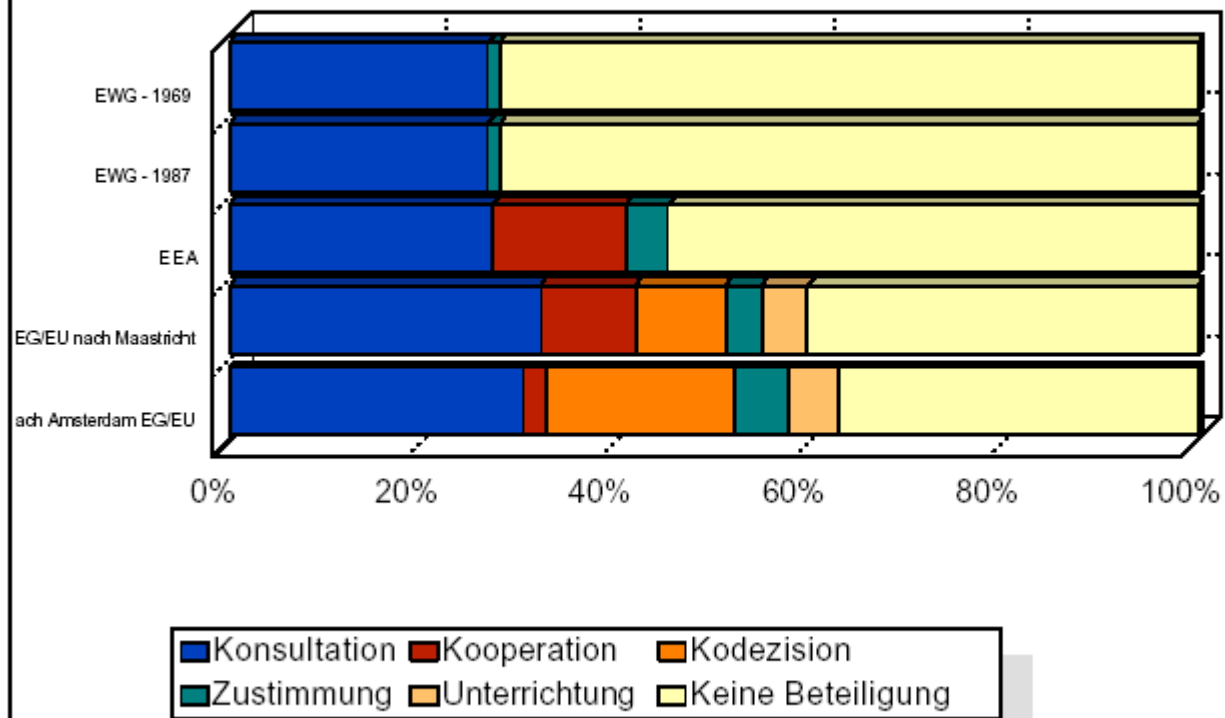
- Absolute Angaben -



■ Konsultation 
 ■ Kooperation 
 ■ Kodezision  
■ Zustimmung 
 ■ Unterrichtung 
 ■ Keine Beteiligung

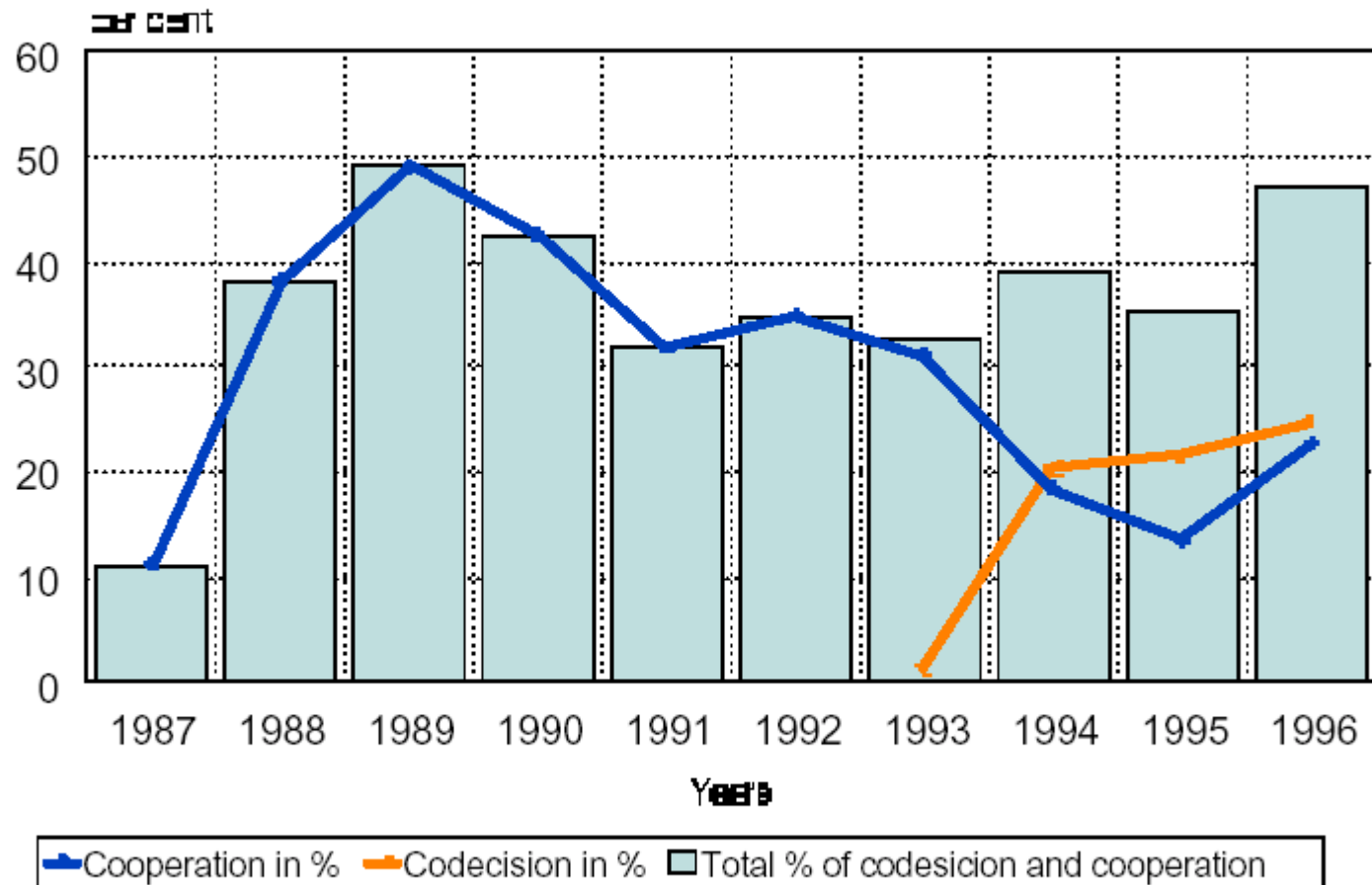
## Entwicklung der Entscheidungsmodi Rat/EP

Prozentuale Angaben

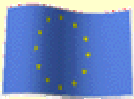


Graph 3:

## Parliamentary Involvement in binding EC Legislation (in %)



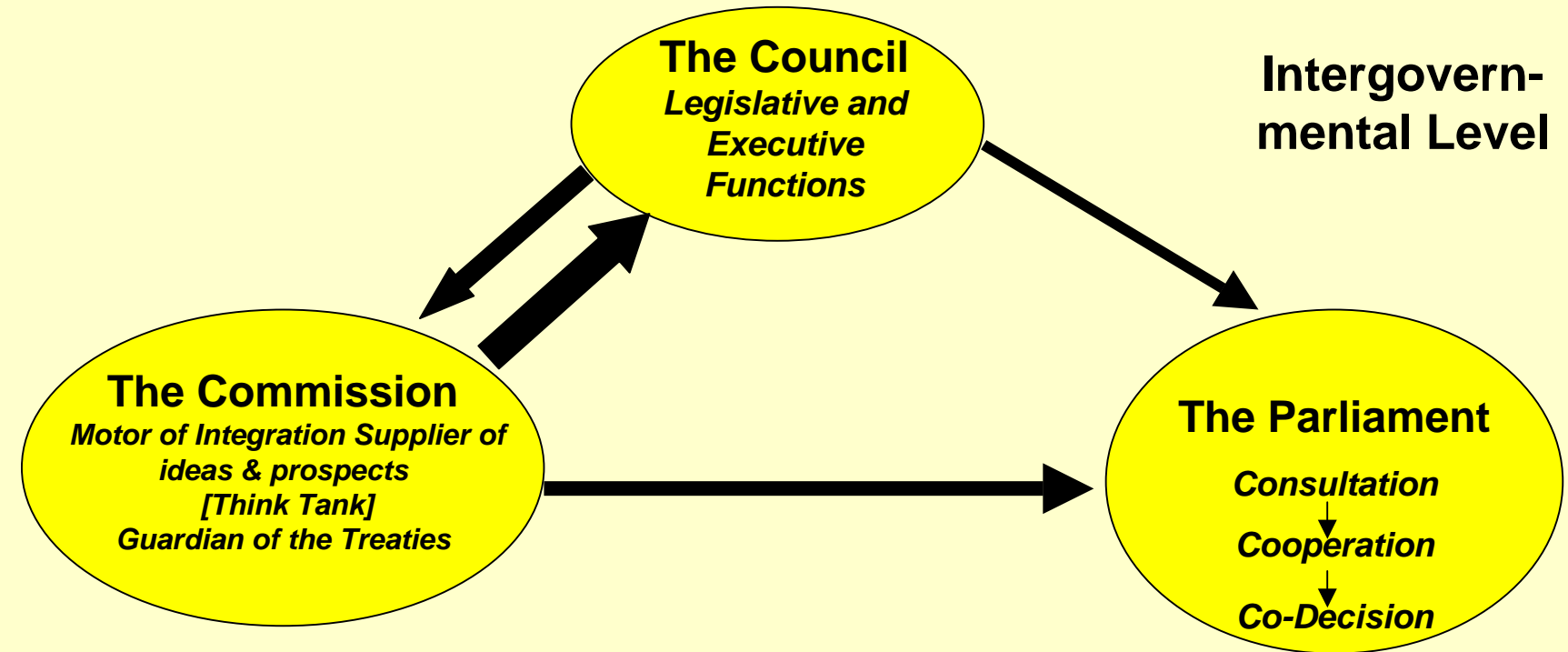
Data: Authors own calculation based on Annual Reports of Commission and OEIL-Databa



# Jockeying for position in European Politics: the relationship between The Commission, The Council, and The Parliament

**Question:** Who exercises power in the European Union ?

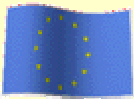
Europe, as we knew it: the power triangle



**Supranational  
Level**

**Main successes:**

Single European Market  
Monetary Union

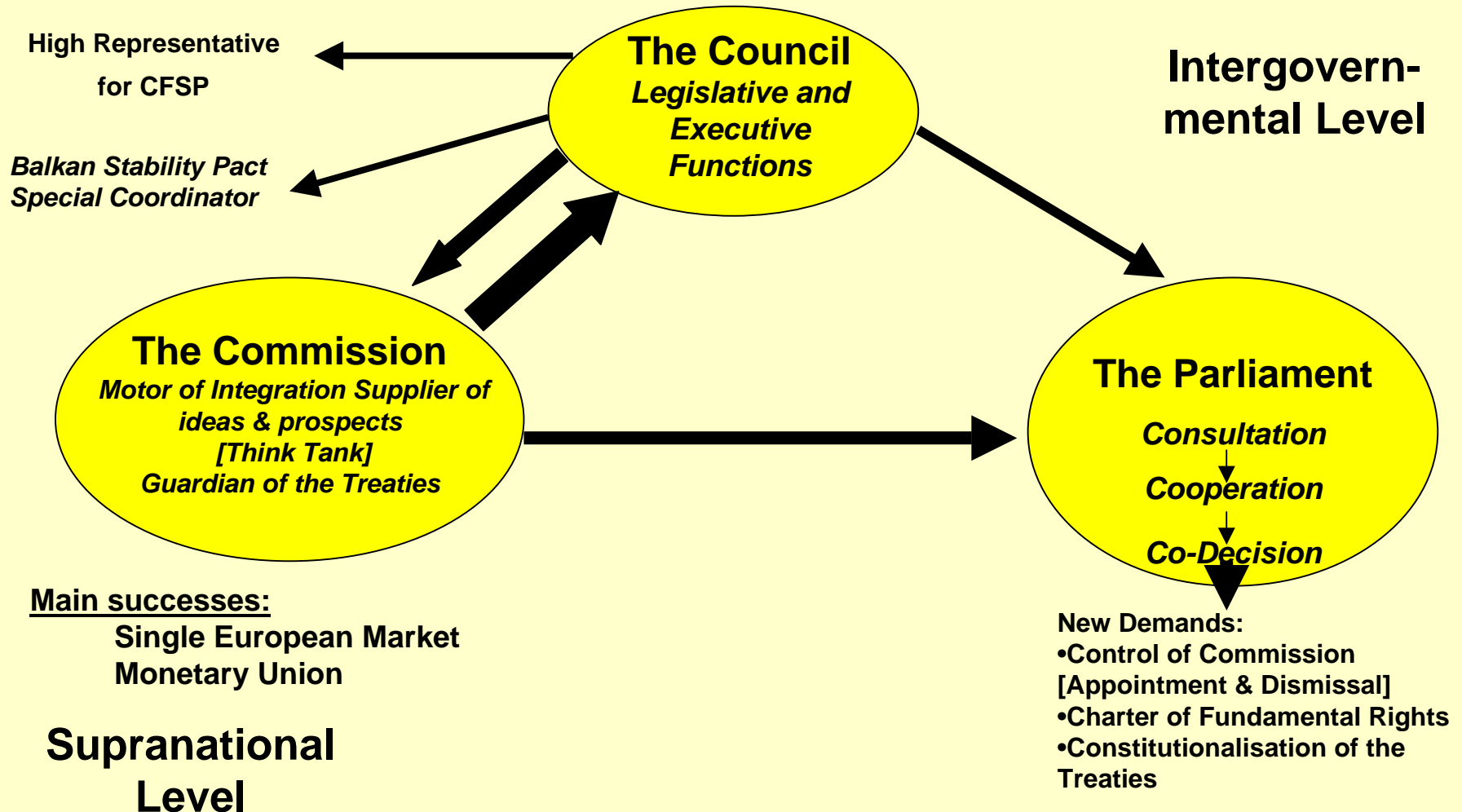


# Jockeying for position in European Politics: the relationship between The Commission, The Council, and The Parliament (II)

**Question:** Who exercises power in the European Union ?

**Problem:** Changing balance of forces due to enlargement and institutional reform

Europe, as it develops: the power triangle



# Compare Legislative Processes: Consultation v. Co-decision Procedure

1950

European Coal  
and Steel  
Community  
(ECSC)

1997

Treaty of  
Amsterdam

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The Commission submits proposals and the Council makes the decisions.

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## Co-decision Procedure:

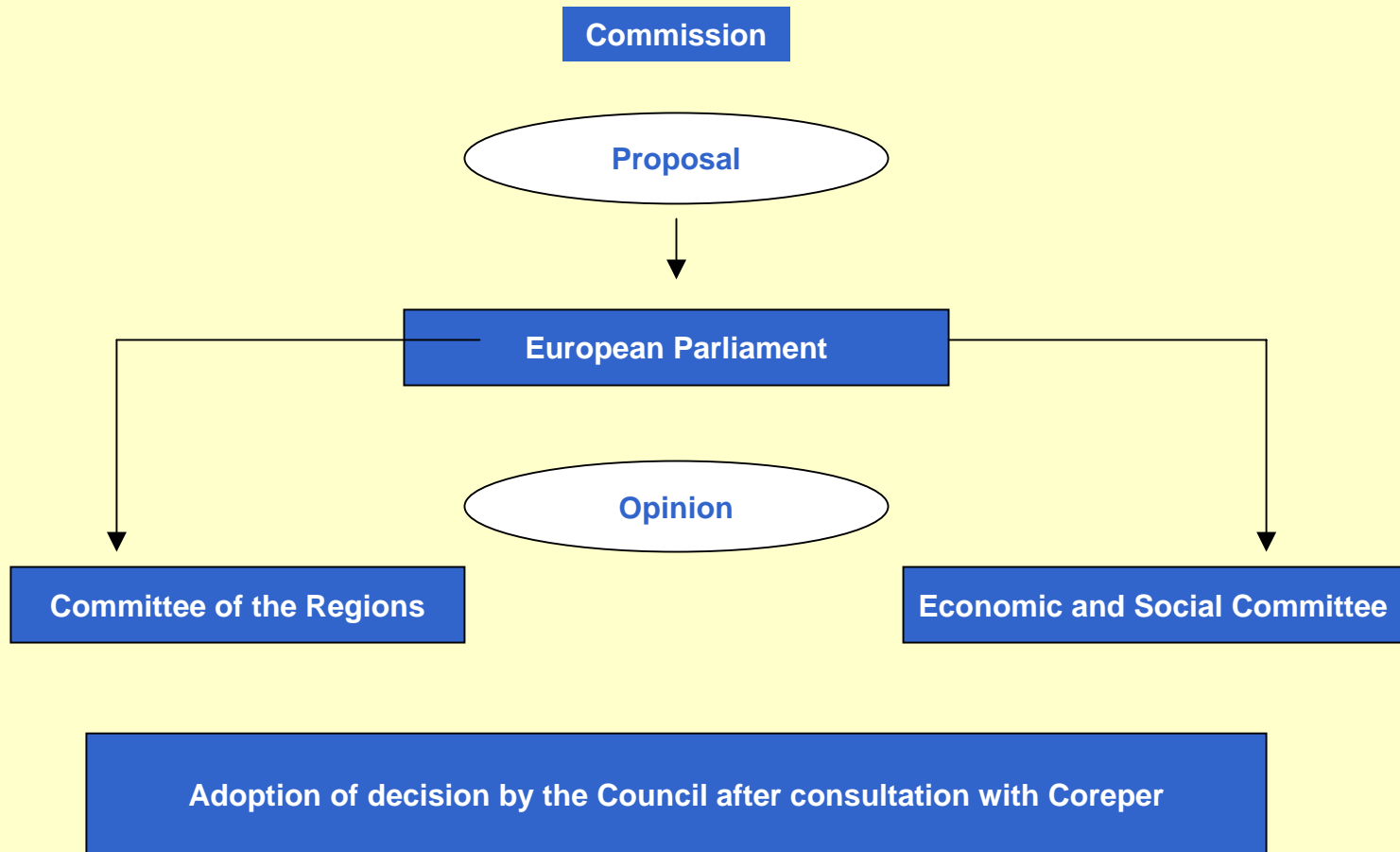
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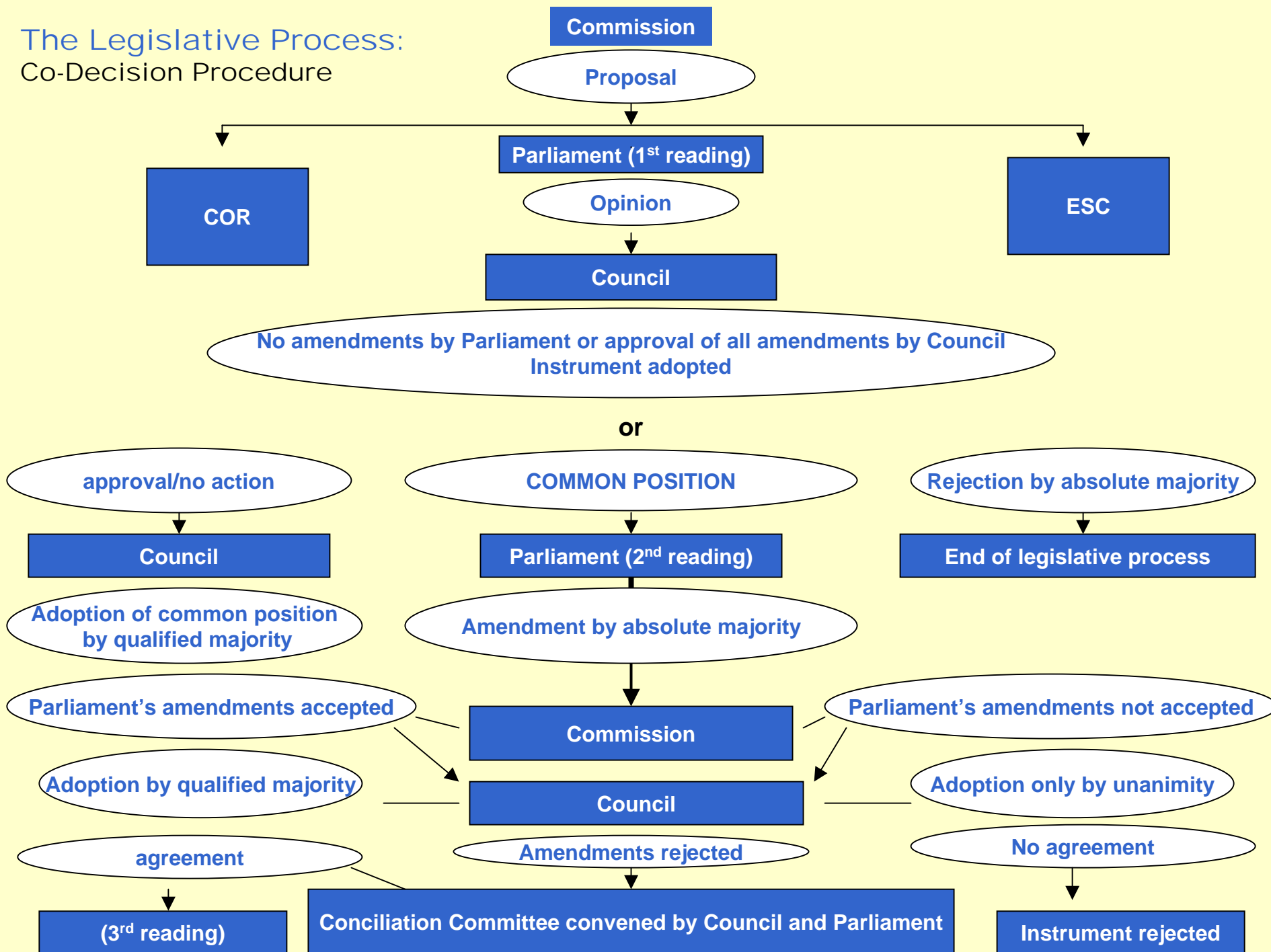
Used for most of the important legislation.



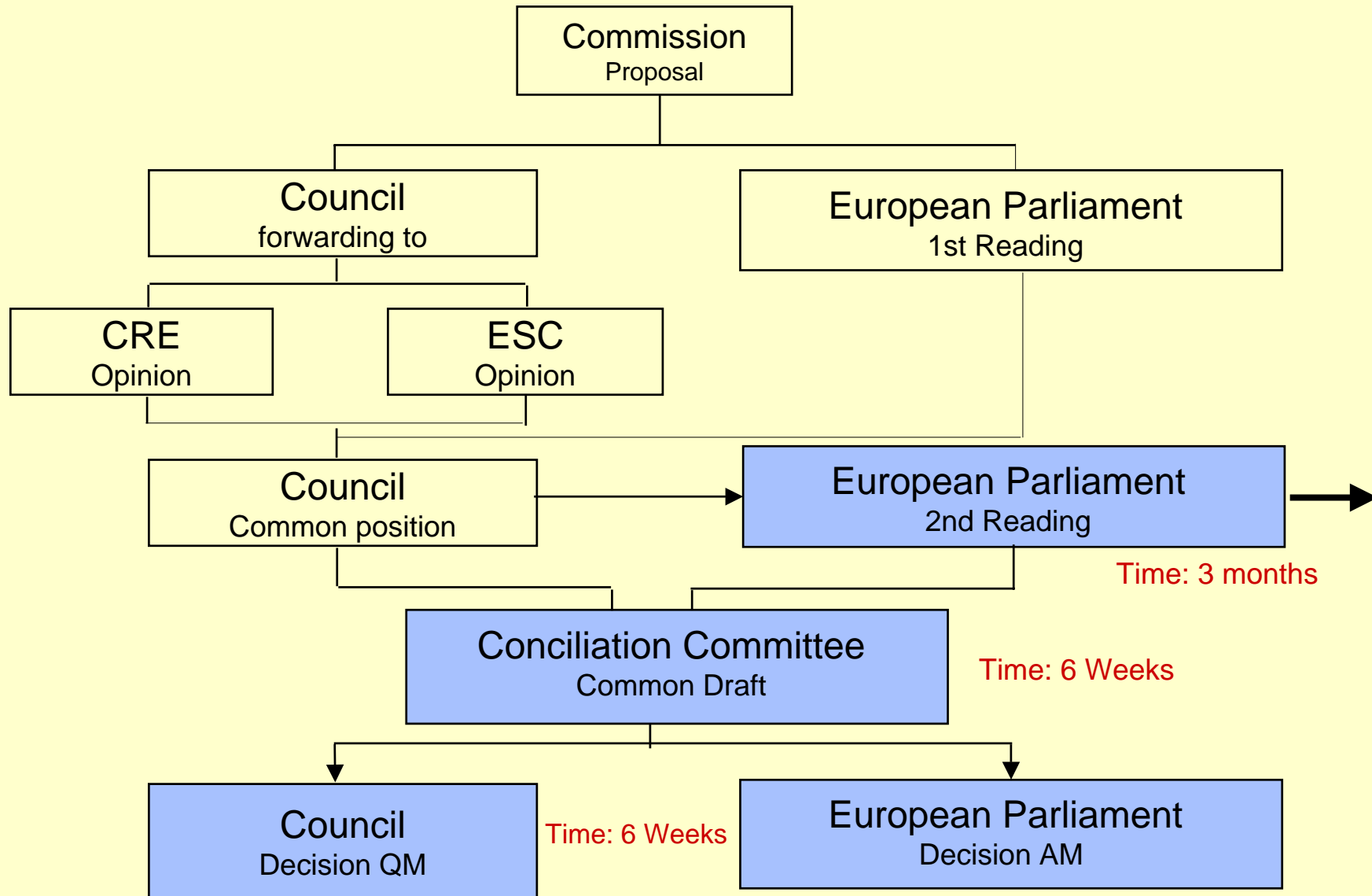
# The Legislative Process: Consultation Procedure



## The Legislative Process: Co-Decision Procedure



# The Co-decision procedure



# THE CO-DECISION PROCESS(1)

## DRAFTING OF THE PROPOSAL

Initiative of a proposal rests on Commission – but action may be requested by Council and Parliament

Organisation of consultations by the Directorate General (DG) in charge of the Proposal

National administrations, industries, NGOs, national experts...

Within the Commission: constant dialogue among services

➤ **Objective for the Commission:** tailor the proposal to what is acceptable.

Once the draft is considered ready, the Director general gives the green light

Proposal is considered at political level by the Cabinet

Inter-service consultation with other DGs is launched in order to get input

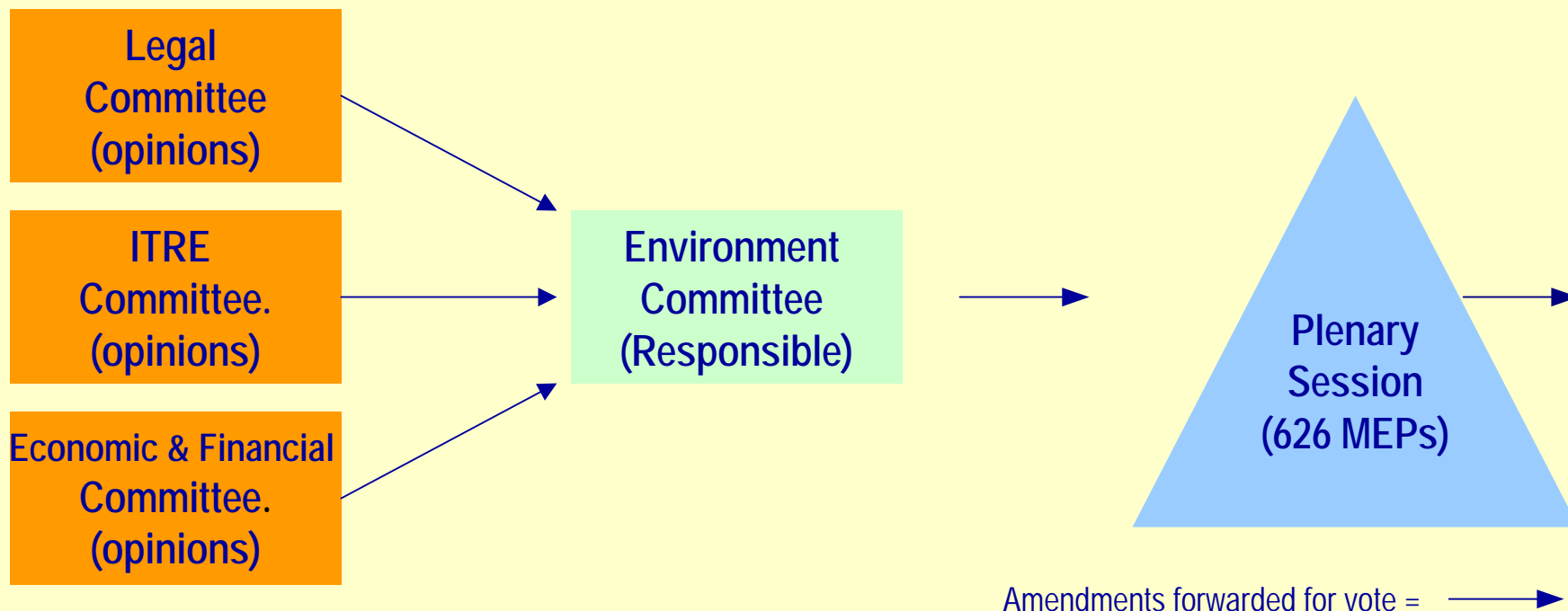
Approval by the College of Commissioners and transmission to the European Parliament

# THE CO-DECISION PROCESS (2)

## 2. PARLIAMENT FIRST READING

### ➤ KEY ROLE OF THE RAPPORTEUR !!

Example: Vote on Emissions Trading = ~500 amendments in Environment Committee



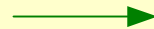
# THE CO-DECISION PROCESS (3)

## 3. EP POSITION FORWARDED TO COUNCIL

In the Council, experts in a WG elaborate a position approved by Council of Ministers

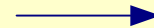
### 2 POSSIBILITIES:

Council adopts the text with EP amendments



END OF FIRST READING - ACT ADOPTED

Council rejects the Parliament's position; the text goes back to the Parliament for a second reading.



SECOND READING

# THE CO-DECISION PROCESS (4)

## 4. SECOND READING – PARLIAMENT (3 months)

Intense dialogue between the institutions: **the trialogue** between rapporteur, Council + the Commission

Parliament approves common position

—→ ACT ADOPTED

Reject the common position – absolute majority. —→ ACT REJECTED

Re-table amendments – absolute majority.



## 5. SECOND READING - COUNCIL (3 months)

Council accepts the EP amendments  
ADOPTED

—→ END OF SECOND READING – ACT

Council does not accept the EP amendments —→

COMMITTEE (or THIRD READING)

Six weeks to convene the CONCILIATION

# THE CO-DECISION PROCESS (5)

## 6. CONCILIATION (6 weeks)

Equal numbers of Council and Parliament representatives

15 MEPs + 15 Council officials + Representatives of the Commission attend (Total with staff ~ 100)

Most of the work done in a trialogue and then forwarded for approval to the conciliation committee

At absolute majority of the Parliament's members and by a qualified majority for the Council.

If failure to reach an agreement  ACT REJECTED

IF AGREEMENT REACHED

## 7. FINAL APPROVAL (6 weeks)

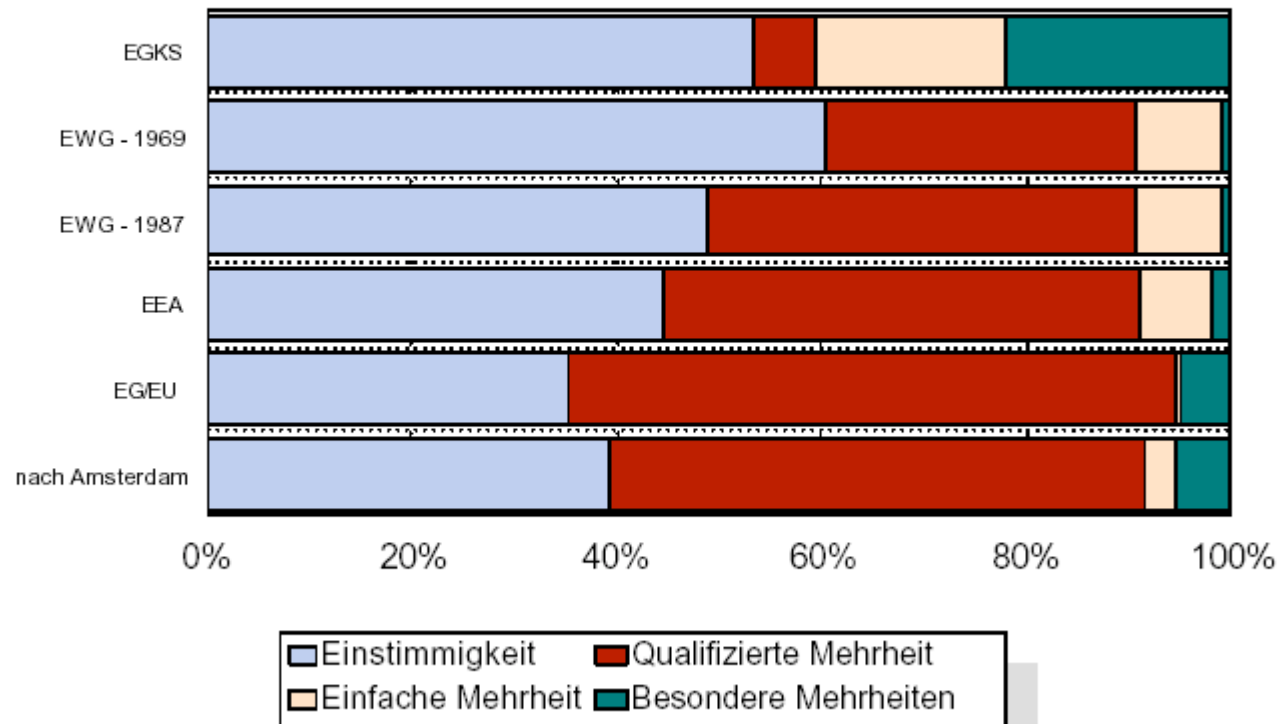
Back to the EP and the Council for vote at respectively absolute majority and qualified majority voting.

If approved by both institutions  ACT ADOPTED



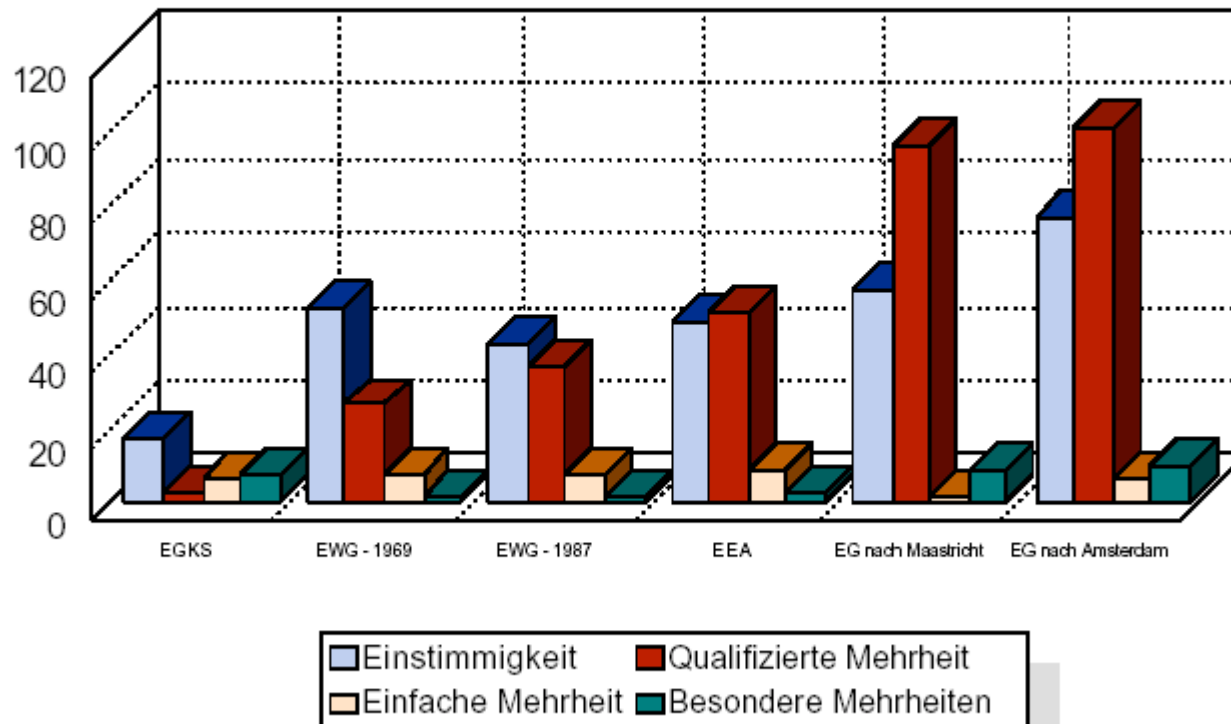
## Entwicklung der Entscheidungsmodi im Rat

- Prozentuale Angaben -



## Entwicklung der Entscheidungsmodi im Rat

- Absolute Angaben -



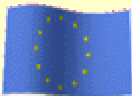
# THE CO-DECISION PROCESS (6)

WHEN ACT ADOPTED, IT BECOMES LAW FOR 25 COUNTRIES

- FOLLOW UP BY MEMBER STATES – TRANSPOSITION OF THE NEW DIRECTIVE INTO NATIONAL LEGISLATIONS
- AND BY THE COMMISSION

# Conclusion

- On the process by which environmental laws and policies are proposed and developed: - the most influential actors in this process are:
- 1) the technical units of the Directorates-General of the Commission where proposals are drafted and their core content is determined, and
- 2) the national and industrial sector experts with whom the Commission works on the development of these proposals
- The weakest influences are the European Parliament, the environmental lobby, and national enforcement agencies...
- McCormick 2001, 95



# Agenda setting and decision-making: A procedural basis for EU law-making or a case of the blind leading the lame ?

