

Part Two:

Composition and Role of the Institutions and Main Organs of the European Union

It is necessary to make a distinction between the central institutions and the other main organs of the Community. Since the introduction of the Single Institutional Framework, effective in 1993, pursuant to the TEU there are five principal institutions: the Council of the European Union ("the Council"); the Commission; the European Parliament; the European Court of Justice; and the Court of Auditors.

An "institution" is characterised by its ability to "act", that is, to take decisions which are generally binding within the parameters of the institution's authority as established by the EC Treaty. An institution has either members who have been elected at the national level (Council and Parliament) or members appointed by the governments of the Member States or their representatives in the Council.

The other main organs of the Community are primarily the Economic and Social Committee, the Committee of the Regions, and the European Coal and Steel Committee. They operate in particular areas with either a purely advisory mandate, or with non-binding decision-making powers.

The Council of the European Union and the European Council

It is also essential, at the outset, to make a clear distinction between the Council of the European Union and the European Council which, after various changes, have ended up with confusingly similar names.

The Council of the European Union

The Council of the European Union² fills both a political and legislative role within the institutional framework of the EU. It is the institution in which the governments of the Member States have direct representation, and in which Member States seek to bal-

ance their individual interests and to reconcile their individual differences with the Community interest. While the Member State representatives have their respective governments' interests foremost, there is also an inherent obligation to act in the interests and the objectives of the Community in its entirety.

Membership of the Council of the European Union – renamed under the single institutional framework following the TEU – is made up of representatives of each Member State carrying full authority to act on behalf of their respective governments (i.e., Ministers).

The Treaty of Amsterdam includes three qualifications which restrict its room to manoeuvre regarding its rules of procedure:

1. The Council will have to define the cases in which it is to be regarded as acting in its legislative capacity;
2. In these cases the Council is obliged to allow "greater access to documents while, at the same time, preserving the effectiveness of its decision-making process";
3. Since the right balance of the two interests (greater access vs. effectiveness) seems difficult to find, the Treaty of Amsterdam provides that, when acting as a legislator, the following three categories of documents shall be made public 'in any event', i.e. regardless of the publication's possible negative effect on the effectiveness of the Council's procedures: the results of the votes; explanations of votes and the statements in the minutes.

The new provisions on transparency and openness have some merit, especially the fact that the rules enjoy a higher legal value than previously existed and that the Council will not have the possibility to prevent the publication of certain types of documents when acting in its legislative capacity. However, the Treaty of Amsterdam also raises some tricky questions about the practice of decision making in the Council (the rarity of formal votes; and the legal status of statements in the minutes).

The Foreign Ministers of the Member States are the main representatives in the Council, but attendance at Council meetings will range from Heads of Government to Ministerial representatives (depending on the issues on the agenda). Ministers attending Council meetings on specialised areas generally have a responsibility for the relevant subject portfolios in their respective national governments. For example, meetings of the Council where matters of External Affairs and overall Community interest are to be discussed are normally attended by the Foreign Minister of each Member State; meetings of the Ecofin Council are generally attended by the Member States' Economic or

² Also known as "the Council of Ministers" or simply "the Council". For the purposes of this guide reference will be to "the Council of the European Union" or "the Council".