Glossary of Terms and Events Relevant to European Community Environmental Law

COMMISSION

The Commission's primary purpose is to ensure the "proper functioning and development of the common market." In pursuing this goal, it acts as an initiator of Community action and legislation, as a watchdog that enforces compliance of the Member States with Community Law, and as the executive branch of the Community.

The Commission consists of seventeen members "who shall be chosen on the grounds of their general competence and whose independence is beyond doubt." The Commission must include at least one national from each Member State, but no more than two members may have the same nationality. The members are appointed "by common accord of the Governments of the Member States" for a term of four years and act "in the general interest of the Communities," completely independent of the Council or the governments of the Member States.

The Maastricht Treaty will change some of the procedures for electing commissioners. The Member States will nominate a President and then consult with him or her regarding other Commission nominees.

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3. See, e.g., id. (Commission shall ensure that the EEC Treaty and other EC laws are applied); id. art. 169 (Commission shall issue opinions regarding Member State non-compliance with EC law, and bring such matters before the European Court of Justice if Member States remain recalcitrant).


5. Merger Treaty, supra note 4, art. 11.

6. Merger Treaty, supra note 4, art. 10; see also EEC TREATY art. 157 (as amended by Maastricht, 31 I.L.M. at 290).
The nominees will be subject to a Parliamentary vote, and the terms will be lengthened to five years.\(^7\)

(See also Legislation)

**COMMITTEE OF PERMANENT REPRESENTATIVES**

The Committee of Permanent Representatives is a subordinate organ of the Council of Ministers that consists of high level civil servants of the Member States.\(^8\) The Committee prepares all the decisions of the Council. It is in turn assisted by numerous working groups that are composed of senior national civil servants.

(See also Council of Ministers)

**COMMITTEE OF THE REGIONS**

Established by the Maastricht Treaty, the Committee of the Regions will be composed of representatives of regional and local authorities.\(^9\) It will act in a consultative capacity to the Commission and the Council on matters pertaining to the regions.\(^10\) Its members will be appointed by the Council on a four-year basis although their term in office will be renewable.\(^11\)

(See also Structural Funds)

**COMPETENCE**

The EC has limited, specified authority to act, referred to as its competence. The Community is obliged to act in certain areas through its various institutions, but it may act only within the confines of the specific fields listed in the treaties. The treaties lay out the extent of the Community’s powers in each specific field.\(^12\) This principle of specific attribution of competencies and lack of original Community powers exists because all Community powers originate from the voluntary limitation of Mem-

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7. EEC TREATY art. 158 (as amended by Maastricht, 31 I.L.M. at 290-91).
8. Id. art. 151 (as amended by Maastricht, 31 I.L.M. at 289) (incorporating article 4 of the Merger Treaty).
9. Id. art 198A (as amended by Maastricht, 31 I.L.M. at 300).
10. Id. art. 198C (as amended by Maastricht, 31 I.L.M. at 300) (requiring that the Council and the Commission consult with and obtain an opinion from the Committee of the Regions when the EEC Treaty so provides or when either the Council or the Commission considers such consultation appropriate).
11. Id. art. 198A (as amended by Maastricht, 31 I.L.M. at 300).
12. See, e.g., EEC TREATY art. 2 (listing the purposes of the Community in various fields); id. art. 3 (setting out the types of Community activities to be used to fulfill the purposes of the Treaty). The Maastricht Treaty amends these articles. See infra note 15 and accompanying text.
ber States' sovereignty. The Member States have retained all matters to themselves that are not explicitly granted to the Community.

In the pursuit of the Common Market, the EC's activities have touched upon areas for which the EEC Treaty contains no specific provisions, such as energy, infrastructure, consumer protection, and health. This expansion has been justified either as being generally related to the internal market (and therefore allowable under the Single European Act if passed by majority vote) or as falling under article 235 of the EEC Treaty. The Maastricht Treaty will clarify EC competence by providing for action regarding:

- transeuropean networks,
- research & development framework programs,
- development cooperation,
- consumer protection,
- public health,
- education,
- tourism,
- civil protection,
- culture,
- environmental action programs, and
- free movement of non-EC nationals within the territory of the EC.

Passage of legislation in any of these areas will require only a qualified majority of the Member States. In the areas not falling within its exclusive competence, the EC would only take action in accordance with the principle of subsidiarity.

(See also Maastricht Treaty; Subsidiarity; Voting)

CONCILIATION PROCEDURE (See Legislation)

COOPERATION PROCEDURE (See Legislation)

COUNCIL OF MINISTERS

The Council of Ministers (the Council) is the principal governing body of the EC. It has the final power of decision on most legislation. At any time, the Council consists of one representative from each Mem-

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14. Article 235 is a catch-all clause allowing the EEC to do anything—if the action is necessary to attain Community objectives and the Member States unanimously agree. EEC Treaty art. 235.
15. Id. art. 3 (as amended by Maastricht, 31 I.L.M. at 257).
ber State, chosen by that State's government. The individual members of the Council vary depending upon the subject matter to be discussed, and the Council is usually formed by the Member State Ministers that are in charge of the business under discussion.

The Council should not be confused with the European Council.

(See also Legislation; Voting; European Council)

DECISIONS (See Legislation)

DIRECTIVES (See Legislation)

ECU

ECU stands for European Currency Unit. The ECU is effectively a "basket" composed of specified amounts of the Member States' currencies. The amount of each Member State's currency included in the basket reflects that country's Gross National Product in relation to the EC Gross National Product as well as the country's share in the Community's external trade. There is no paper currency associated with the ECU.

The ECU is used as the denominator of the exchange rate mechanism of the European Monetary System (EMS) and as a means of settlement between monetary authorities of the European Community. It is also commonly used in international monetary transactions of Community and Member State institutions, such as in bond issues.

One ECU is currently equivalent to approximately 1.2 US Dollars.

EEC TREATY (See European Communities)

EUROPEAN COMMUNITIES

The European Communities (EC) consist of the European Coal and Steel Community (ECSC), the European Economic Community (EEC), and the European Atomic Energy Community (Euratom or EAEC). The communities have the same membership and each was created by a founding treaty. The principle goal of the three Community-

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17. Merger Treaty, supra note 4, art. 2.
18. According to the Maastricht Treaty, the representatives will be of ministerial level. EEC TREATY art. 146 (as amended by Maastricht, 31 I.L.M. at 289).
21. See supra note 2.
22. The ECSC was founded in Paris on April 18, 1951. TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY [ECSC TREATY].
23. Both the EEC and Euratom were founded in Rome on March 25, 1957, and entered into force January 1, 1958. EEC TREATY; TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY [EURATOM TREATY].
ties is to create an organized and vital Europe through economic integration. Specifically, the EEC strives to establish a Common Market with free movement of workers, goods, services, and capital in order "to promote . . . harmonious development . . . ; a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the [Member States]."

At the outset, each of these Communities had its own institutions. On April 8, 1965, the Member States signed the so-called "Merger Treaty." The Merger Treaty substituted single institutions for the respective institutions of all three Communities.

The term "EC" thus refers to the entire institutional arrangement that consists of the three Communities, whereas "EEC" technically refers only to the most important community, the European Economic Community, which is governed by the EEC Treaty. However, people increasingly refer simply to the "European Community;" the Maastricht Treaty replaces the term European Economic Community with the term European Community.

(See also Maastricht Treaty, Treaties of Rome)

**European Council**

The European Council consists solely of the heads of government of the Member States and the President of the European Commission. The European Council is a separate entity from the Council of Ministers. It usually meets twice a year and mainly issues general guidelines. It can also meet as the Council of Ministers, however, and make binding decisions in that capacity. The European Council originally developed outside the institutional framework of the EC Treaties, but it was formally recognized by the Single European Act.

(See also Council of Ministers)

**European Court of Justice**

The European Court of Justice (ECJ) was created to "ensure that in the interpretation and application of [the EC Treaties] the law is observed." The ECJ consists of 13 Judges and is assisted by six Advo-

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24. EEC TREATY art. 3.
25. Id. art. 2.
26. The European Court of Justice (ECJ) was the one exception. See infra note 30.
30. EEC TREATY art. 164; EURATOM TREATY art. 136. The European Court of Justice (ECJ) was created by the EEC and Euratom treaties. At the same time, the ECSC Treaty was amended so that the new ECJ would replace the Court of Justice that had been created by the
cates-General,\textsuperscript{32} who provide an impartial comment on each case. The Judges and Advocates-General are appointed by common accord of the governments of the Member States for terms of six years.\textsuperscript{33}

The ECJ has two basic forms of jurisdiction. The Court has original jurisdiction in all cases brought against any of the institutions of the EC involving the lawfulness of actions under EC law. Claims may be brought by the Council,\textsuperscript{34} Commission,\textsuperscript{35} by any Member State,\textsuperscript{36} or by individuals or firms directly affected by the laws or rulings.\textsuperscript{37} The Court also has consultative jurisdiction, which is concerned with the interpretation to be given to the treaties in the context of proceedings before national courts, at the request of such courts.\textsuperscript{38} Under its consultative jurisdiction, the Court also provides advisory opinions to other EC institutions and Member States in certain areas.\textsuperscript{39}

**European Parliament**

The European Parliament is composed of members who are directly elected by their countries’ electoral bodies for terms of five years. Its composition reflects the size of the Member States.\textsuperscript{40}

The Parliament serves advisory and supervisory functions.\textsuperscript{41} In its advisory capacity, the Parliament participates in the legislative process at several points.\textsuperscript{42} Originally the Parliament had very few powers in this area, but it has become more influential—especially with the introduction of the conciliation and the cooperation procedures.\textsuperscript{43}

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\textsuperscript{32} EEC TREATY art. 165.

\textsuperscript{33} Id. art. 166.

\textsuperscript{34} Id. art. 167.

\textsuperscript{35} Id. art. 173.

\textsuperscript{36} Id. arts. 169, 173.

\textsuperscript{37} Id. arts. 170, 173.

\textsuperscript{38} EEC TREATY art. 175. At present, the European Parliament can only bring a claim for failure to act. See id. art. 175. It cannot bring a claim for annulment of actions. See id. art. 173. The Maastricht Treaty changes this and will allow the Parliament and the (to-be-established) European Central Bank to bring claims under the same conditions as the other institutions “for the purpose of protecting their prerogatives.” Id. (as amended by Maastricht, 31 I.L.M. at 293).

\textsuperscript{39} EEC TREATY art. 177.

\textsuperscript{40} Id. art. 228(1).

\textsuperscript{41} See Council Act Concerning the Election of the Representatives of the Assembly by Direct Universal Suffrage, arts. 1-3, 1976 O.J. (L 278) 5, 5. This Act was entered into force pursuant to Council Decision 76/871, 1976 O.J. (L 278) 1.

\textsuperscript{42} See EEC TREATY art. 137. The Maastricht Treaty will strengthen the role of the Parliament. See infra notes 42-47 and accompanying text.

\textsuperscript{43} After the Maastricht Treaty takes effect, the Parliament will also deliver advisory opinions. EEC TREATY art. 138B (added by Maastricht, 31 I.L.M. at 288).

\textsuperscript{44} The Parliament’s role is further strengthened by the Maastricht Treaty, in particular through the recognition and expansion of the conciliation procedure. See EEC TREATY art. 138B (added by Maastricht, 31 I.L.M. at 288). See separate entries for Conciliation Procedure and Cooperation Procedure.
sory capacity, the Parliament exercises some political control over the Commission, insofar as the Commission must respond to its questions. The Parliament also has the power to dismiss the Commission in its entirety, but this authority has never been exercised. More importantly, the Parliament has the power to reject the annual EC budget proposed by the Commission. The Maastricht Treaty adds additional supervisory powers by conferring on the Parliament the power to set up a temporary Committee of Inquiry "to investigate . . . alleged contraventions or mal-administration in the implementation of Community law . . . ."

(See also Legislation)

ENVIRONMENTAL ACTION PROGRAMMES

The Environmental Action Programmes set EC policy regarding environmental protection. When the European Community was created in 1958, the protection of the environment was not regarded as a necessary Community objective. Because of this attitude, the Community treaties made no clear reference to the protection of the environment.

The existence of an EC environmental policy dates from a 1972 Summit Conference in Paris. It was only with the adoption of the First Environmental Action Programme, covering the years 1973-1977, that principles for an EC environmental policy were spelled out. The Programme's legislative measures were adopted under the authority of the Common Agricultural Policy (CAP) as forestry measures.

The Second Environmental Action Programme, 1977-1983, focused on nature protection. It was no longer tied to CAP, but it did not provide for any new rules since the Member States objected to the idea of any Community competence in environmental matters. The Third Environmental Action Programme, 1982-1986, was the first Programme to enunciate the need for environmental evaluations during the adoption of

44. EEC TREATY art. 140.
45. Id. art. 144.
46. Id. art. 203(8).
47. Id. art. 138C (added by Maastricht, 31 I.L.M. at 288).
50. See EEC TREATY arts. 38-42 (outlining the objectives of CAP and the actions to be taken to achieve them).
Community or Member State policies. Its primary objective was the con-
servation of biotopes and endangered species.

In July 1987, the Single European Act introduced a new chapter on
the environment into the EEC Treaty. The new articles set out the fol-
lowing Community objectives:
- to preserve, protect, and improve the quality of the environment;
- to protect human health; and
- to ensure a prudent and rational utilization of natural resources.53

The Single European Act specifically empowers the Community to pro-
tect the environment; and it involves the European Parliament, which
has traditionally been progressive in environmental matters, in the deci-
sion-making process of European environmental legislation.54

The Fourth Environmental Action Programme55 covered the period
1987-1992. A number of specific research and development programs
aimed at environmental concerns were developed in conjunction with the
Programme.56

The Fifth Environmental Action Programme,57 scheduled for 1993-
2000, sets out a wide range of policy targets designed to achieve "sustain-
able development" in the field of environmental protection in the EC.
This Programme represents a radical turning point for EC environmental
policy. Its objective is to define action guidelines for the next decade,
calling for all sectors of society to share responsibility for the environ-
ment and to strengthen dialogue at the early drafting stages of the legisla-
tive process.

The Fifth Environmental Action Programme also proposes a new
set of instruments to make individuals in the Member States more aware
of their responsibilities, and it establishes long-term objectives for a
number of specific areas. The Programme has been published in three
volumes.58

53. EEC Treaty art. 130R(1) (as amended 1987); see also id. arts. 130R(2)-(4), 130S,
130T (as amended 1987) (setting out actions and procedures to be used by the Commission in
attempting to achieve these objectives). The Maastricht Treaty will expand the scope of the
Community approach to environmental matters. See id. arts. 130R, 130S, 130T (as amended

54. Id. art. 130S (as amended 1987).

55. Joint Resolution of the Council and of the Representatives of the Governments of the
Member States on the Continuation and Implementation of a European Community Policy

56. See, e.g., Council Regulation 563/91, 1991 O.J. (L 63) 1 (instituting Community ac-
tion to protect the environment in the Mediterranean region and to incorporate environmental
concerns into Community development actions in that region (MEDSPA)).

57. The Fifth Environmental Action Programme was adopted by the Commission in
March 1992. Commission Proposal for a Resolution of the Council on a Community Pro-
gramme of Policy and Action in Relation to the Environment and Sustainable Development,
COM (92) 23 final, vols. I-III [hereinafter Fifth Environmental Action Programme]. The
Council reached a political agreement on May 26, 1992.

58. The first volume is a proposal for a Council Regulation on a Community Programme
In December 1992, the Council adopted a Resolution on the Community's Fifth Environment Programme, encouraging the Commission to present proposals to implement the Programme "insofar as they fall within Community competence."

**EUROPEAN UNION**

European Union is the objective sought by the Maastricht Treaty. The general objectives of European Union are:

- to promote balanced and sustainable economic and social progress, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion, and through the establishment of economic and monetary union (ultimately including a single currency);
- to assert the Union's identity on the international scene, in particular through the implementation of a common foreign and security policy;
- to strengthen the protection of the rights and interests of the nationals of the Member States through the introduction of Union citizenship;
- to develop close cooperation on criminal and civil justice matters and domestic affairs; and
- to maintain in full the "acquis communautaire," or "body of Community Law," and build on it with a view to considering an eventual revision of the Treaty that would make the mechanisms and institutions of the Community more effective.\(^{59}\)

(See also Maastricht Treaty)

**FUNDING**

Until 1970, the Community's funding consisted primarily of Member States' contributions. Following the 1969 European Council of the Hague, the Community acquired its own resources: levies on imports of agricultural produce and customs duties collected at Community borders, plus certain other taxes introduced under the Common Agricultural Policy.\(^{60}\) Furthermore, the 1970 reform assigned part of the value-added tax (VAT) collected in the Member States to the Community.\(^{61}\)

The subsequent growth of the Community, and of its commitments, exhausted the full amount of available Community resources, and new means to share the financial burden were required. In 1988, the Council

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61. *Id.* art. 4, at 21-22.
introduced an overall financial reform. The reform guaranteed that the Community would receive the resources necessary to carry out its activities through the end of 1992.

The 1992 budget has total revenues of ECU 61.1 billion (73.5 billion US Dollars). The budget expenditures can be divided into mandatory expenditures (those directly arising from the treaties and the legislation carrying out the treaties' provisions) and non-mandatory expenditures (those which derive from policy decisions, such as regional policy, social policy, research, etc.). The non-mandatory expenditures cannot comprise more than 20% of the budget. The Parliament makes final budgetary decisions.

**Harmonization**

The EEC Treaty provides three methods for reducing disparities between the Member States' legal systems for the development of the common market: coordination, approximation, and harmonization. Coordination operates at the political level, approximation refers to efforts to make Member State systems more similar, and harmonization attempts to prevent contradiction between Member State's legislation.

Until 1985, the Community tried to reduce trade barriers by means of extremely detailed harmonization measures involving technical rules applicable in all the Member States. With the enlargement of the Community, this detailed method revealed its limitations. In 1985, the Commission adopted what it called its "New Approach" to technical harmonization. The New Approach chosen by the Commission to achieve a single market by 1993 rested on the concept that a product marketed in one Member State (and in compliance with that state's regulations) must be permitted to circulate freely in other Member States.

Under the New Approach, three major principles govern the Community:

1. minimum harmonization of individual national rules (the Community should merely set the essential requirements which must be met, particularly those necessary to ensure adequate consumer protection),
2. mutual recognition of national supervisory systems (i.e., each Member State accepts the legitimacy of the others' regulations), and

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63. See European Parliament, Final Adoption of Amending and Supplementary Budget No. 3 of the European Communities for the Financial Year 1992, 1992 O.J. (L 349) 1, 5.

64. See Case 120/78, Rewe-Zentral AG v. Bundes-monopolverwaltung für Branntwein, 1979 E.C.R. 649, 26 C.M.L.R. 494 (1979) (Cassis de Dijon) (regarding which this underlying concept was developed).
3. home-country supervisory control (i.e., each Member State is responsible for regulating the field in question).\(^{65}\)

In 1987, article 100A(1) of the Single European Act amended the EEC Treaty to allow harmonization measures to be taken by qualified majority instead of unanimity.\(^{66}\)

(See also Voting)

**LEGISLATION: FORMS AND PROCEDURE\(^{67}\)**

**Forms, generally**

EC "law" can be enacted in three different forms: as a directive, as a regulation, or as a decision.\(^{68}\) In addition to these primary methods, there are also recommendations and opinions\(^{69}\) and various other forms of non-binding acts not mentioned in the EEC Treaty. Examples of these other actions include programs and declarations, both of which are primarily policy tools.

**Decisions**

Decisions are made regarding specific cases (as opposed to the generally-applicable regulations) and are binding in their entirety upon those to whom they are addressed.\(^{70}\) Decisions are not truly "legislation" since they only decide on a single case, but they do directly affect rights.

**Directives**

Directives are the principal legislative form provided for by the treaties. They are "binding, as to the result to be achieved, upon each Member State . . . ."\(^{71}\) A directive orders the Member States to

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66. EEC TREATY art. 100A(1) (as amended 1987). Since December 31, 1992, the Council has had the choice of applying either article 100A or 100B. Article 100B directs the Commission to inventory Member State law that falls under article 100A but has not yet been harmonized and allows the Council to declare one Member State's law equivalent to the law of other Member States. Id. art. 100B (as amended 1987).

67. Legislative terminology varies to some extent amongst the Communities. Recommendations in the ECSC, for example, are the equivalent of directives in the EEC. **Compare EEC TREATY** art. 189 and **EURATOM TREATY** art. 161 with **ECSC TREATY** art. 14. For ease of discussion and because the EEC is the dominant community, this glossary uses the terminology of the EEC Treaty.

68. EEC TREATY art. 189. While Maastricht will make some changes to Article 189, types of legislative actions will remain the same, as will their binding force. **EEC TREATY** art. 189 (as amended by Maastricht, 31 I.L.M. at 296).

69. EEC TREATY art. 189.

70. Id.

71. Id.
enact laws putting the directive's goals into effect, but it leaves "the choice of form and methods" up to the Member States. According to the European Court of Justice, however, if a Member State has not implemented a directive within a prescribed time, the directive can have direct effect to the extent to which it is self-executing.

Opinions and Recommendations

Opinions and recommendations have no binding force. They have political influence, however, and they can also have legal relevance as prerequisites for some Community actions.

Regulations

Regulations have general application, are binding in their entirety, and are directly applicable in all Member States. They are mainly used in areas that are directly governed by EC policy, such as the Common Agricultural Policy and competition law.

Procedure, Generally

The EEC Treaty governs the process to be followed in enacting EC legislation. The exact procedure depends on the Treaty provision that provides the basis for the particular legislation at issue. There is, however, a basic pattern that describes the interplay of the Commission, the Council, and the Parliament.

General Legislative Process

Generally, the process is initiated by the Commission, which drafts a proposal for legislation either on its own behalf or at the request of the Council. This proposal is transmitted to the Parliament and to the Council. The Council makes the final decision on

72. Id.
73. See, e.g., Case 9/70, Grad v. Finanzamt Traunstein, 1970 E.C.R. 825, 839, 10 C.M.L.R. 1, 23 (1971) (applying this principle in a case involving the application of a series of Community directives on value-added taxes to the Federal Republic of Germany's institution of a transport tax); Case 6/90, Francovitch v. Italy, Nov. 19, 1991 (not yet reported); Case 9/90, Francovitch v. Italy, Nov. 19, 1991 (not yet reported).
74. EEC Treaty art. 189. Note that the ECSC uses the term "Recommendation" for what the other Communities call "Directives." See supra note 67.
75. See, e.g., EEC Treaty arts. 89, 169, 170 (providing that the Commission deliver "reasoned opinions" in cases where Member States are suspected of undermining EC law, and further providing that such opinions be influential with both Member States and the European Court of Justice in resolving the matter).
76. Id. art. 189.
77. Depending upon the particular issue, the participation of the Parliament is either required by the EEC Treaty (as it is for all important decisions) or requested as a political courtesy. The Parliament may issue an opinion or propose amendments, but its input has no binding authority.
all legislation. If it wishes to adopt a Commission proposal, the voting requirement will depend on the governing EEC Treaty provision, but it is usually a qualified majority. However, if the Council wishes to amend the proposal (for example, by adopting an amendment proposed by the Parliament), it can do so only by a unanimous vote.

Consultation of other actors may also enter into the legislative procedure. For example, the Council may consult the Economic and Social Committee.

(See also Voting)

**Conciliation Procedure**

The Conciliation Procedure was established in 1975 by a joint declaration of the Parliament, the Council, and the Commission to address disagreements among the various EC institutions.

The Conciliation Procedure may be applied to "acts of general application with appreciable financial implications." The Commission decides when the Conciliation Procedure may be invoked, then if the Council intends to depart from the Parliament's opinion, either the Council or the Parliament can initiate the procedure. When the Conciliation Procedure is applied, a committee composed of the Council and representatives of the Parliament (with participation from the Commission) is formed. The Committee attempts to resolve the dispute between the Council and the Parliament within three months. The Parliament then issues a second opinion, and the Council makes its final decision—without being formally bound by the Committee’s opinion or the second Parliamentary opinion.

In an effort to strengthen the Parliament's role in legislation, the Maastricht Treaty adds the Conciliation Procedure to the EEC Treaty. Under Maastricht, the Conciliation Procedure applies in

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78. The situation is actually somewhat more complex. In some areas, the Commission is authorized by the EEC Treaty to act directly. In other areas, the Council may provide, through legislation, for direct Commission action. See P.S.R.F. Mathiesen, A GUIDE TO EUROPEAN COMMUNITY LAW 58-60 (5th ed. 1990) (describing these legislative procedures in detail).

79. EEC TREATY art. 149 (as amended 1987). The Maastricht Treaty will repeal this provision. Maastricht Treaty, supra note 4, tit. II, art. G, para. 45, 31 I.L.M. at 289. After Maastricht, the EEC Treaty will retain the requirement of unanimity for amendments; however, when the Conciliation Committee is invoked, the Council will be able to adopt by a qualified majority any joint text approved by the Committee. EEC TREATY art. 189B(5) (added by Maastricht, 31 I.L.M. at 297). See separate entry for Conciliation Procedure.

80. See EEC TREATY arts. 193, 198.


82. Id. para. 2, at 1.

83. EEC TREATY art. 189B (added by Maastricht, 31 I.L.M. at 296-97).
certain circumstances, which are listed in the amended EEC Treaty, and then only when the Parliament plans to reject a "common position" arrived at through the Cooperation Procedure.\(^{84}\)

(See also Cooperation Procedure).

**Cooperation Procedure**

The general legislative process substantially alters in the case of the Cooperation Procedure. The Cooperation Procedure was introduced by the Single European Act in order to strengthen the role of the Parliament in several fields.\(^{85}\)

Under the Cooperation Procedure, after consultation with the Parliament on a Commission proposal, the Council adopts a "common position" (instead of the decision that is normally taken at this point) and communicates it to the Parliament. If the Parliament approves the common position or does not act, the Council enacts the common position. The Parliament may also reject or amend the position. If the Parliament rejects the position, the Council can overrule by making a unanimous decision within three months.\(^{86}\) If the Parliament proposes amendments, the Commission re-examines its original proposal and transmits a new proposal along with any unadopted Parliamentary amendments to the Council. The Council can either adopt the Commission's new proposal (usually by qualified majority)\(^{87}\) or enact the proposal with the Parliament's or its own amendments (by a unanimous vote).\(^{88}\)

**LIFE**

The Financial Instrument for the Environment (LIFE) is a structural fund that was established in 1992.\(^{89}\) LIFE's purpose is to promote the development and implementation of Community environmental pol-

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84. *Id.* arts. 189B, 189C (added by Maastricht, 31 I.L.M. at 296-97).
86. EEC TREATY art. 149(2)(f) (as amended 1987). The three month limitation will be removed by the Maastricht Treaty, which requires the use of the Conciliation Procedure under certain circumstances. EEC TREATY art. 189C (added by Maastricht, 31 I.L.M. at 298).
87. EEC TREATY art. 149(2)(e) (as amended 1987). A qualified majority will be required under the Maastricht Treaty. EEC TREATY art. 189C(d) (added by Maastricht, 31 I.L.M. at 298).
88. EEC TREATY art. 149(2)(b), (e) (as amended 1987). Although article 149 will be repealed by Maastricht, the Cooperation Procedure will be incorporated into a new article 189C. EEC TREATY art. 189C(d), (e) (added by Maastricht, 31 I.L.M. at 298)
icy. It will run for five years (from 1992 to 1997) and can be extended by a qualified majority vote in the Council. LIFE replaces ACE (Action by the Community on the Environment) which expired on July 31, 1991.

(See also Structural Funds)

**MAASTRICHT TREATY**

The Treaty on European Union (the Maastricht Treaty) adds to and amends the community treaties in order to establish a European Union. It pursues this objective by reforming and reinforcing the EC institutions, promoting common foreign and security policies, providing for greater co-operation in internal and judicial affairs, strengthening economic and social cohesion, and formally establishing the concept of EC citizenship. The Maastricht Treaty also provides for an Economic and Monetary Union. The Heads of State and Governments of the Member States signed the Maastricht Treaty in February 1992, and it has been ratified by all of the Member States except the United Kingdom.

(See also European Union)

**MEMBER STATES**

Twelve Member States now constitute the Community. Six of these, Belgium, France, the Federal Republic of Germany, Italy, Luxembourg, and the Netherlands, are the original parties to the treaties establishing the European Communities. On January 1, 1973, Denmark, Ireland, and the United Kingdom acceded to the Community. Greece became a member on January 1, 1981. Portugal and Spain joined the Community on January 1, 1986.

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90. Council Regulation 2242/92, 1987 (L 207) 8; see also Council Regulation 1872/84, 1984 O.J. (L 176) 1 (original ACE regulation covering the years 1985 to 1987).
91. See supra note 4.
92. The Maastricht Treaty, like the Single European Act before it, contains both “Common Provisions,” which neither directly amend specific articles of the Community treaties nor add new articles, and other provisions which do make such direct amendments and additions. In this glossary, “Common Provisions” of the Maastricht Treaty are cited to Maastricht directly, while provisions directly amending or introducing new articles are cited to the Community treaties with parenthetical notation that the article has been amended or added by Maastricht.
93. See, e.g., Protocol on the Statute of the European System of Central Banks and of the European Central Bank, appended to Maastricht Treaty, supra note 4 (laying down the statute provided for in Article 4A of the EEC Treaty (added by Maastricht)); Protocol on the Statute of the European Monetary Institute [EMI], appended to Maastricht Treaty, supra note 4 (laying down the statute for the European Monetary Institute as provided for in Article 4B of the EEC Treaty (added by Maastricht)).
MERGER TREATY (See European Communities)

POLLUTER-PAYS PRINCIPLE

The polluter-pays principle is a means of forcing producers of goods to internalize costs otherwise borne by other members of society or by society at large. In the EC, the principle that the polluter should pay for environmental damage was made explicit by the Single European Act. The principle is also called civil liability for environmental damage.

In September 1989, the Commission moved to apply the polluter-pays principle in a strict fashion and submitted a proposal to hold producers legally liable for all damage caused to people or the environment by the waste they produce. By making producers bear the costs, the proposal aims to promote the development of clean technologies and other waste minimization techniques. The establishment of a uniform system of liability will also ensure that victims of damage caused by waste receive fair compensation and that the costs of environmental damage resulting from waste are reflected in the price of the product or service giving rise to the waste.

PREEMPTION

As the European Community is not truly a federalist system, the treaties do not provide any supremacy clause for the Community nor any power of preemption over Member State legislation. The EEC Treaty's rules concerning the free movement of goods and other factors of production between the Member States have, however, created conflicts in the Member States' relations. These conflicts have been resolved through the jurisprudence of the European Court of Justice, which has substantially limited the ability of the Member States to adopt protectionist measures against other Members.


97. The Member States must abstain, however, from any measure that could interfere with the achievement of the Treaty's objectives. EEC Treaty art. 5.

98. See, e.g., Case 76/86, Commission v. Germany, 1989 E.C.R. 1021, 60 C.M.L.R. 741 (1991) (Member States may not prohibit the marketing of food product substitutes on the grounds of consumer protection and fair trading since those objectives can be achieved using measures which do not so severely restrict the free movement of goods).
movement of goods, such measures “preempt” any subsequently enacted Member State legislation that frustrates the design of the existing Community measures.99

(See also Harmonization)

**SINGLE EUROPEAN ACT**100

The Single European Act (SEA) was signed in order to facilitate the creation of a single market in the EC by December 31, 1992.101 The SEA amended the EEC Treaty in order to accelerate and complete the transfer of powers to the Community in and beyond the areas referred to in the Treaties of Rome. Rather than attempting to impose detailed centralized regulation, the SEA’s emphasis is directed towards the opening up of markets and the removal of all non-tariff barriers.

The three main modifications to the EEC Treaty effected by the adoption of the Single European Act are:

1) Reinstatement of the principle of majority, instead of unanimous, voting in the Council of Ministers—notably with respect to most decisions designed to attain the single market;102

2) Introduction of the Cooperation Procedure; and

3) Explicit extension of EC competencies to the policy areas of environment and research & technological development.

The SEA also emphasizes the objective of economic and social cohesion, in order to reduce disparities between the various regions.

(See also Competence; Legislation; Voting)

**STANDSTILL OBLIGATIONS**

Standstill obligations are fundamental clauses designed to protect Community measures from Member State actions. They arise in specific provisions of the treaties and concern the compatibility of Member States’ regulatory means with Community requirements on harmoniza-

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99. *Id.* at 1041-42, 60 C.M.L.R. at 753. It should be noted that the ECJ cannot strike down national legislation. It can simply rule that the state measures are contradictory to the Community scheme and leave the state to take appropriate actions.

100. See *supra* note 13. The Single European Act was signed in February 1986; it came into force on July 1, 1987.

101. This glossary cites provisions of the SEA in the same manner as it does those of the Maastricht Treaty. For a description of this citation method, see *supra* note 92.

102. The EEC Treaty provides for unanimity in only a few cases; most Council decisions required a majority or qualified majority. See *infra* notes 115-118 and accompanying text. Majority decision making was seldom used, however, since France adopted an “empty chair” policy in 1965, whereby a State could block Council action by refusing to participate in votes affecting it. See *Luxembourg Agreement, Jan. 29, 1966 reprinted in* W. Nicoll, *The Luxembourg Compromise*, J. COMMON MKT. STUD. 35, 36 (1984) (agreeing that when Member State policy interests are at stake, the Council would only act by unanimous decision).
tion. In their simplest form, standstill obligations prohibit the Member States from introducing any new restrictions that alter the situation present at the date the EEC Treaty entered into force.  

(See also Harmonization)

STRUCTURAL FUNDS

Structural Funds, or Structural Instruments, comprise a system of financial mechanisms developed to carry out the Community goals of harmonious development and the strengthening of the EC's economic and social cohesion. The Community uses Structural Funds in order to reduce the economic and social disparities between rich and poor regions.

The European Regional Development Fund (ERDF) was established in 1975 and is the main instrument for eliminating regional imbalances. The European Social Fund (ESF) was created by the EEC Treaty and established during the 1960's. It contributes to vocational training and the promotion of consistent employment policies.

As part of the "Delors II" package, an advisory committee to the Commission proposed a budgetary reform that included reform of the structural funds and the creation of a "Cohesion Fund."  

103. See, e.g., EEC TREATY arts. 62, 95, 106(3) (prohibiting Member States from introducing new restrictions on freedom to provide services, from levying protectionist taxes on goods of other Member States, and from implementing new restrictions on certain monetary transfers). The Maastricht Treaty eliminates the monetary transfer prohibition of Article 106(3) from the EEC Treaty and provides for a comprehensive monetary policy. See EEC Treaty arts. 105-109 (as amended by Maastricht, 31 I.L.M. at 267-70).


107. See COMMITTEE FOR THE STUDY OF ECONOMIC AND MONETARY UNION, EUROPEAN ECONOMIC COMMUNITY, REPORT ON ECONOMIC AND MONETARY UNION IN THE EUROPEAN COMMUNITY (1989). Many of these reforms, including the "Cohesion Fund" are incorporated into EC law by the Maastricht Treaty. See, e.g., EEC TREATY art. 130D (as amended by Maastricht, 31 I.L.M. at 283) (requiring the Council to set up a Cohesion Fund to "provide a financial contribution" to environmental and trans-European network projects).
GLOSSARY

SUBSIDIARITY

The principle of subsidiarity is a limit on EC powers.108 According to the subsidiarity principle, in areas outside the EC's exclusive competence, the EC should only act in a given area if national or regional action would be inadequate.109

(See also Competence)

TAXATION

The European Community does not have any power to impose taxes. Its power over taxation is limited to the harmonization of Member State taxes and to the collection of its "own resources."110

(See also Harmonization; Funding)

TREATIES OF ROME

The "Treaty of Rome" is an informal term for the Treaty Establishing the European Economic Community (the EEC Treaty).111 The Treaties of Rome more accurately refers to the two treaties signed in 1957 that created the European Economic Community (EEC)112 and the European Atomic Energy Community (Euratom).113 The first step towards the creation of a European Community was the Treaty of the European Coal and Steel Community (ECSC), which was signed in 1951.114

(See also European Communities)

108. Subsidiarity is explicitly recognized by the Maastricht Treaty. See EEC TREATY art. 3B (added by Maastricht, 31 I.L.M. at 257-58) (specifically authorizing and limiting the use of the subsidiarity principle).

109. Id.

110. See supra note 60 and accompanying text.


112. Id. See also supra note 23.


114. ECSC TREATY (signed Apr. 18, 1951; entered into force July 23, 1952). See also supra note 22.
VOTING

The required voting method in a particular situation depends on the Treaty provision that provides the basis for the action. There are three basic voting procedures for final actions taken by the Council:

**Majority of its Members**

Majority decision making is the default rule under the EEC Treaty. Since most Treaty provisions provide otherwise, however, majority voting is in fact the exception.

**Qualified Majority**

Under qualified majority voting, the Member States' votes are weighted ranging from a factor of 2 (for Luxembourg) to 10 (for France, Germany, Italy, and the United Kingdom). For an act to pass under qualified voting, it must receive 54 out of a possible 76 weighted votes in its favor. Due to its prevalence in the provisions of the EEC Treaty, qualified voting has become the general rule.

**Unanimous vote**

Since the passage of the Single European Act, there remain only a few measures that still require unanimous decisions.

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115. EEC Treaty art. 148(1).
116. Id. art. 148(2). The other weighting factors are 8 (for Spain), 5 (for Belgium, Greece, Netherlands, and Portugal), and 3 (Denmark and Ireland). Id.
117. Id.
118. See, e.g., EEC Treaty art. 189C(d) (added by Maastricht, 31 I.L.M. at 298) (Council adoption of European Parliament's amendments of Commission proposals requires unanimous vote); id. art. 189C(e) (added Maastricht, 31 I.L.M. at 298) (unanimity requirement for Council amendment of Commission's reexamined proposals). See also supra note 102 (regarding the 1966 Luxembourg Agreement's imposition of a unanimity requirement).