

EU environmental law

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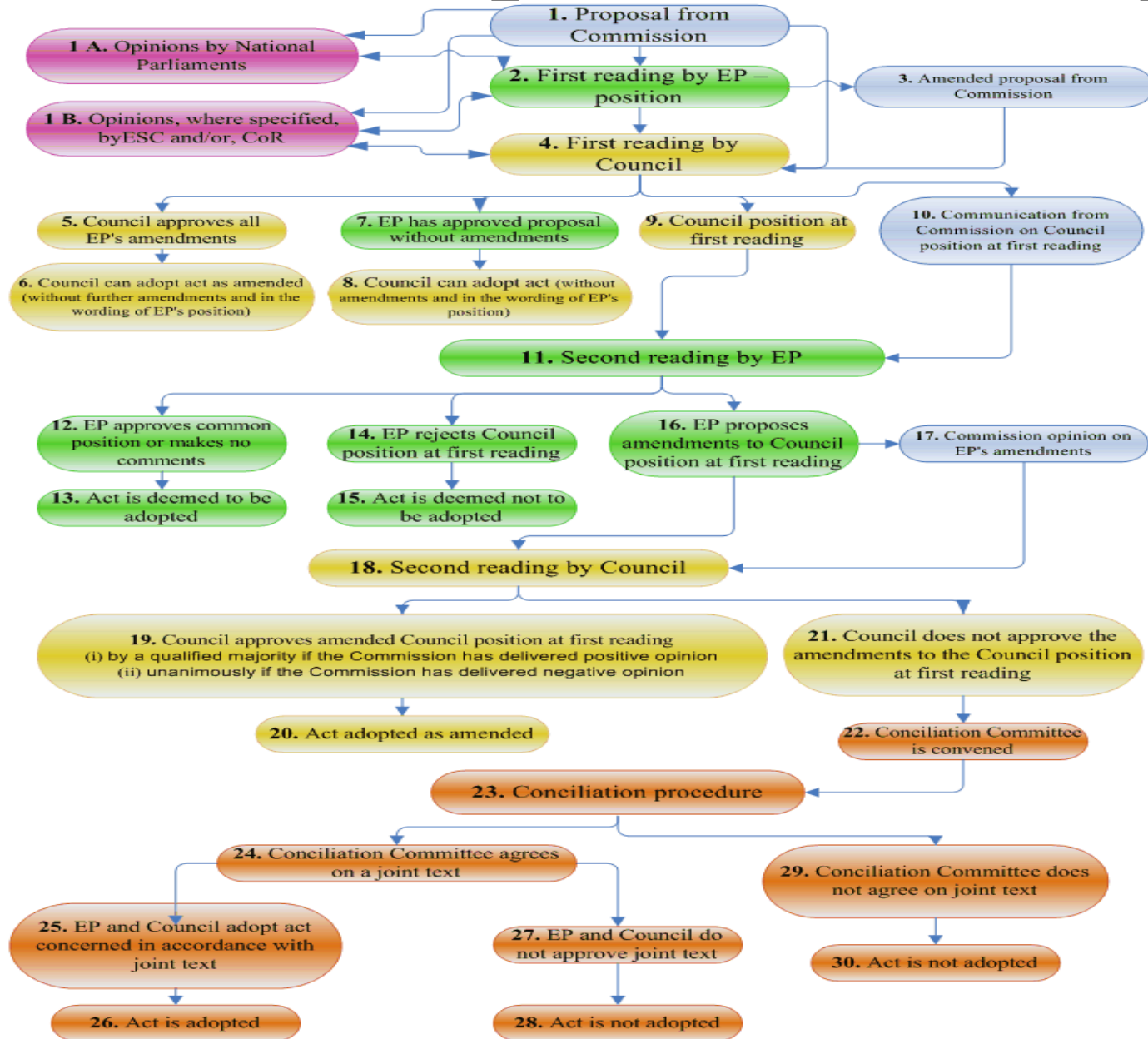
EU**E****U****E****L**  *Jean Monnet Chair
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Environmental Law*



EU Decision-making in environmental policy (art. 192 TFEU)

- Co-decision procedure for the realization of the objectives set out in Art. 191 TFEU
- Special procedure: unanimity in the Council / consultation to the European Parliament, the Economic and Social Committee and the Committee of the Regions:
 - ✓ tax provisions;
 - ✓ measures affecting spatial planning; quantitative management of water or the availability of such resources; land use, with the exception of waste management;
 - ✓ measures significantly affecting the choice of a Member State between different energy sources and the general structure of its energy supply.

EU Decision-making in environmental policy



EU Decision-making in environmental policy (art. 194 TFEU)

- TFEU EU Energy policy (“In the context of the establishment and functioning of the internal market and with regard to the need to preserve and improve the environment”):
 - Ensure the functioning of the energy market;
 - Ensure security of energy supply in the Union;
 - Promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
 - Promote the interconnection of energy networks.
- Decision-making procedure:
 - Ordinary legislative procedure
 - Special legislative procedure and unanimity – measures primarily of a fiscal nature

Decision-making in environmental policy: Role of MS

- Art. 191.2 TFUE: “(…) In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.”
- Art. 191.4 TFUE: “Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.”

Decision-making in environmental policy: Role of MS

- Art. 193 TFUE: “The protective measures adopted pursuant to Article 192 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. They shall be notified to the Commission.”

Decision-making in environmental policy: Role of MS

- Art. 36 TFUE: “The provisions of Articles 34 and 35 shall
- not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States”.

Decision-making in environmental policy: Role of MS

Adoption of national measures :

- EU act: art. 191.2 TFUE
 - Safeguard clause included in EU act
 - Justified by non-economic environmental reasons
 - Subjected to EU Commission control
- No EU act: art. 36 TFUE / EUCJ “mandatory requirements”
 - Reasons art. 36 TFUE
 - Non economic aim
 - Limits: non arbitrary discrimination / disguised restriction

PUBLIC PARTICIPATION IN THE DECISION-MAKING PROCESS

Public consultation:

- Commission
- Legislative proposal
- Stakeholders and public actors (citizens, public and private entities, NGOs)
- Different levels of participation (experts, stakeholders, citizenship)

Deforestation and forest degradation – stepping up EU action

Consultation period: 14 January 2019 - 25 February 2019

<https://ec.europa.eu/info/law/better-regulation/initiatives/>

PUBLIC PARTICIPATION IN THE DECISION-MAKING PROCESS

European citizen initiative:

- Stakeholders and public actors (1 million signatures from at least 7 MS)
- 1 year term
- Commission
- Objective: for the Commission to promote the regulation of an issue that affects or interests citizens
- Regulation (EU) 211/2011 of the Council and the European Parliament, and Implementing Regulation (EU) 1179/2011 of the Commission
- [Eat ORIGINAL! Unmask your food](#) (ECI(2018)000006): Mandatory declaration of origin for all food products; [End the Cage Age](#) (ECI(2018)000004): To end inhumane treatment of farm animals:

<http://ec.europa.eu/citizens-initiative/public/initiatives/open>