Chapter 21: Other constitutional bodies

Introduction

21-1 Apart from the five Institutions already described, there are various bodies with some - but much less - importance in the constitution of the European Union. They may be grouped as follows:

- the two main Advisory Committees, namely,
  - the Economic and Social Committee and
  - the Committee of the Regions,
- the special bodies created for the purposes of
  - the common foreign and security policy,
  - police and judicial cooperation in criminal matters and
  - economic and monetary union, and
- other bodies, particularly,
  - the European Investment Bank and
  - special agencies.

The Economic and Social Committee

21-2 Throughout the Treaty there are references to the advisory role of the Economic and Social Committee, which in a variety of contexts has to be consulted. The context is usually legislative, but sometimes a matter of policy or programming.[1] Sometimes the absence of the requirement is rather conspicuous.[2] However, although it would clearly be an infringement of the Treaty if, say, the Council adopted a legislative measure without carrying out a procedural requirement that the Committee should be consulted[3], the absence of an opinion from the Committee within the given time-limit does not prevent further action from being taken.[4]

21-3 Membership of the Economic and Social Committee is drawn from representatives of the various categories of economic and social activity, in particular, representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations and representatives of the general public.[5] The numbers vary according to the size of the Member State from which they are drawn, as follows:

Austria	12	
Belgium		12
Denmark		9
Finland		9
Germany		24
Greece	12	
Spain		21
France		24
Ireland	9	
Italy		24
Luxembourg		6
Netherlands		12

Portugal	12
Sweden	12
United Kingdom	24

They are appointed by the Council, acting unanimously, for four years.[6] The Council makes its choice on the basis of a list submitted by Member States, containing twice as many candidates as there are seats allotted to their nationals.[7]

21-4 Under the Treaty, provision is made for the Committee to elect its chairman and officers, to adopt its rules of procedure, to be convened as required, to include specialised sections and to appoint sub-committees.[8]

21-5 Where the Treaty so provides, the Committee must be consulted by the Council or by the Commission.[9] The Committee may be consulted by these institutions in all cases in which they consider it appropriate[10]; and it may be consulted by the European Parliament.[11] It may issue an opinion on its own initiative in cases in which it considers such action appropriate.[12] The opinion of the Committee and that of the specialised section, together with a record of the proceedings, is forwarded to the Council and to the Commission.[13]

The Committee of the Regions

21-6 Throughout the Treaty there are references to consultation of the Committee of the Regions. This is a Committee consisting of representatives of regional and local bodies.[14] Similar rules apply to the numbers and appointment of members[15], the internal rules[16] and the general duties, as to the Economic and Social Committee[17]; but no member of the Committee of the Regions may at the same time be a member of the European Parliament.[18] An additional element is that, where the Economic and Social Committee is consulted as required by the Treaty, the Committee of the Regions is to be informed by the Council or the Commission of the request for an opinion; and, where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter.[19]

Special bodies

21-7 Two bodies are created for the purposes of the common foreign and security policy[20] and of police and judicial cooperation in criminal matters respectively (the Political Committee and the Coordinating Committee).[21] These bodies are, however, peculiar to the Treaty on European Union and are not an integral part of the constitutional scheme envisaged under the Treaty establishing the European Community.

21-8 However, the bodies created in connection with Economic and Monetary Union are part of the constitutional scheme envisaged under the Treaty establishing the European Community. These bodies are:

- the European System of Central Banks,
- the European Central Bank[22] and
- the Economic and Financial Committee.

21-9 It is the primary objective of the European System of Central Banks to maintain price stability. Without prejudice to the objective of price stability, it is the duty of the European System of Central Banks to support the general economic policies in the Community with a view to contributing to the achievement of the objectives of the Community; and to act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the thirteenth objective[23] of the Treaty.[24] The basic tasks to be carried out through the Europan System of Central Banks are:

- to define and implement the monetary policy of the Community;
- to conduct foreign exchange operations[25];
- to hold and manage the official foreign reserves of the Member States; and
- to promote the smooth operation of payment systems.[26]

Other provisions of the Treaty define the powers and duties of the Europan System of Central Banks.[27]

21-10 It is the right of the European Central Bank:

- to be consulted on any Community act in its field of competence,
- to be consulted by national authorities regarding any draft legislative provision in its field of competence, within limits set by the Council,
- to submit opinions to the appropriate Community institutions or bodies or to national authorities on matters in its field of competence[28],
- exclusively, to authorise the issue of bank notes within the Community,
- to approve the volume of coins issued by the Member States[29] and
- to carry out the tasks entrusted to the Europan System of Central Banks.[30]

The Europan Central Bank has legal personality[31]; and, as already noted, it has certain legislative powers.[32] Other provisions of the Treaty define the powers and duties of the Europan Central Bank.[33]

21-11 From the start of the third stage in the development of Economic and Monetary Union, an Economic and Financial Committee has been set up[34], with the following tasks:

- to deliver opinions at the request of the Council or of the Commission, or on its own initiative, for submission to those institutions;
- to keep under review the economic and financial situation of the Member States and of the Community and to report regularly thereon to the Council and to the Commission, in particular on financial relations with third countries and international institutions;
- to contribute to the preparation of the work of the Council referred in this field and to carry out other advisory and preparatory tasks assigned to it by the Council;
- to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of this Treaty and of measures adopted by the Council, the examination to cover all measures relating to capital movements and payments and the Committee to report to the Commission and to the Council on the outcome of this examination.

The Member States, the Commission and the European Central Bank each appoint no more than two members of the Committee.[35]

European Investment Bank

21-12 In addition to the European System of Central Banks and the European Central Bank, both created for the specific purpose of implementing Economic and Monetary Union, the Treaty created a European Investment Bank.[36] This has legal personality; and its members are the Member States.[37] The task of the European Investment Bank is to contribute, by having recourse to the capital market and using its own resources, to the balanced and steady development of the common market in the interest of the Community. For this purpose the Bank, operating on a non-profit-making basis, grants loans and gives guarantees which facilitate the financing of the following projects in all sectors of the economy:

- projects for developing less-developed regions;
- projects for modernising or converting undertakings or for developing fresh activities called for by the progressive establishment of the common market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;
- projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

In carrying out its task, the Bank is required to facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds[38] and other Community financial instruments.[39]

Special agencies

21-13 "Special agencies" is a frequently used term to describe a number of disparate organisations with functions derived from or dependent on the European Community. It is not an accurate term, since few of them are agencies properly so-called. One of them, for example, the Office for Veterinary and Plant-health Inspection and Control, is a department of a Commission Directorate-General.[40] Another, the European Environmental Agency, has more independence, but still largely serves the Commission.[41] A third, the European Anti-Fraud Office, originated from a Commission Task Force but now has complete operational independence.[42] Yet another, the misnamed Office for the Harmonisation of the Internal Market, which administers the Community Trade Mark system[43], is independent and largely autonomous[44] and has quasi-judicial[45], but not regulatory[46], powers.

1. One of the principal legislative instruments is Article 95 (formerly 100a), EC Treaty, which requires consultation of the Economic and Social Committee.

2. Article 308 (formerly 235), EC Treaty, for example, does not require consultation of the Economic and Social Committee. Nor do any of the provisions on competition policy in Articles 83 to 89 (formerly 87 to 94), EC Treaty.

3. Article 230 (formerly 173), EC Treaty. See chapter 20.

4. Article 262 (formerly 198), second paragraph, EC Treaty.

5. Article 257 (formerly 193), EC Treaty.

6. Article 258 (formerly 194), first and second paragraphs, EC Treaty.

7. Article 259 (formerly 195), EC Treaty.

8. Articles 260 and 261 (formerly 196 and 197), EC Treaty.

9. Article 262 (formerly 198), first paragraph, EC Treaty.

10. Ibid.

11. Ibid, fourth paragraph.

12. Ibid, first paragraph.

13. Ibid, third paragraph. The whole procedure is subject to the time-tables fixed under ibid, second paragraph.

14. Article 263 (formerly 198a), first paragraph, EC Treaty.

15. Ibid, second and third paragraphs. But members have an equal number of alternates. The number of members per Member State is the same as for the Economic and Social Committee: see paragraph 21-3 above.

16. Ibid, fourth paragraph, and Article 264 (formerly 198b), EC Treaty.

17. Article 265 (formerly 198c), EC Treaty.

18. Article 263 (formerly 198a), third paragraph, EC Treaty.

19. Article 265 (formerly 198c), third paragraph, EC Treaty.

20. See, generally, chapter 7 and in particular paragraph 7-17 on the Political Committee.

21. See, generally, chapter 8 and in particular paragraph 8-5 on the Coordinating Committee.

22. Article 8 (formerly 4a), EC Treaty.

23. See chapter 12 and in particular paragraph 12-14.

24. Article 105(1), EC Treaty. (The Article number is unchanged.)

25. That is, consistent with the provisions of Article 111 (formerly 109), EC Treaty.

26. Article 105(2), EC Treaty.

27. In particular, Articles 107 to 110 (formerly 106 to 108a), EC Treaty, and Protocol 18 to the EC Treaty.

28. Article 105(4), EC Treaty.

29. Article 106(1) (notes) and 106(2) coins) (formerly 105a(1) and (2)), EC Treaty.

30. Article 110 (formerly 108a), EC Treaty.

31. Article 107(2) (formerly 106(2)), EC Treaty.

32. See paragraph 21-3 above.

33. In particular, Articles 107 to 110 (formerly 106 to 108a), EC Treaty, and Protocol 18 to the EC Treaty. For examples of recent Council Regulations in this field, see Council Regulation EC/1009/00 concerning capital increases of the European Central Bank and Council Regulation EC/1010/00 concerning further calls of foreign reserve assets by the European Central Bank.

34. Article 114(2) (formerly 109c(2)), first paragraph, EC Treaty. At the same time, the Monetary Committee, referred to in Article 114(1) (formerly 109c(1)), was dissolved.

35. Article 114(2) (formerly 109c(2)), second and third paragraphs, EC Treaty.

36. Article 9 (formerly 4b), EC Treaty. The Statute of the Bank is in Protocol 10 to the EC Treaty.

37. Article 266 (formerly 198d), first and second paragraphs, EC Treaty.

38. See Article 159 (formerly 130b), first paragraph, EC Treaty.

39. Article 267 (formerly 198e), EC Treaty.

40. Directorate-General for Health and Consumer Protection.

41. Council Regulation EEC/9210/90.

42. See paragraph 15-10 above.

43. Council Regulation EC/40/94. Under Article 111(1) of the Regulation, the Office "is a body of the Community"; it has legal personality.

44. Ibid. The seventeenth recital to the Regulation speaks of the need "to guarantee the full autonomy and independence of the Office"; but there are budgetary and other limits on its autonomy.

45. Ibid. Particularly by way of the Boards of Appeal, under Article 130 of the Regulation.

46. Ibid. See Articles 140 and 141 of the Regulation.