



Institut Européen  
d'Administration Publique

European Institute  
of Public Administration

# **National Administrative Procedures for the Preparation and Implementation of Community Decisions**

Edited by  
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# The European Partnership Through National Administrative Procedures for the Preparation and Implementation of Community Decisions<sup>1</sup>

*Spyros A. Pappas*

## 1. Coordination in the Formulation and Uniformity in the Application of Community Decisions

The quality of the European public service<sup>2</sup> depends primarily on its effectiveness. This, being the result of Community activity by sector which inevitably has a certain impact on European citizens, depends on the efficiency of Community action, whether this be within the framework of the formulation or the application of Community policies. In concrete terms, this double objective of coordination and uniformity presumes:

- the existence at national level of appropriate procedures and mechanisms to enable the precise and clear definition of the national interest to be defended in a coordinated manner in Brussels during the negotiation and final formulation of a Community policy expressing the 'Community interest',<sup>3</sup> the consensus or a compromise between the twelve national interests;
- the existence, again at national level, of appropriate procedures and mechanisms to enable the application and enforcement of Community policies in accordance with Community law; the objective is to attain the

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1 Translated from French by the English Section of the Linguistic Services, EIPA.

2 I am employing the term in the following sense: 'The European public service is an activity of Community interest, defined through the policy formulation procedures and the distillation of national interests and carried out by the European public administration which is articulated in the national administrations and the administration of the European Community administration according to the principle of subsidiarity.' See Spyros A. Pappas, 'Towards a European Public Service', in *Administration*, Vol. 41, no. 2 (summer 1993), pp. 120-127. On the other hand, the term 'Community public administration' is employed here in the sense of the twelve national administrations with the strictly Community administration, that is the Commission which, as 13, form the European bureaucracy.

3 See Spyros A. Pappas, 'About Community Public Management', *EIPASCOPE* 1992/2, EIPA, Maastricht, The Netherlands.



- best level possible of conformity to Community law and of effectiveness in its application by means of decentralization;
- the functioning of a true partnership between the Commission and each of the national administrations according to the lines of vertical cooperation in order to guide and control them in their Community tasks with the aim of attaining the best level possible of coordination of Community (administrative) action as a whole;
  - the existence and usage of procedures (lines) of communication and horizontal cooperation between the national administrations in order to achieve a uniform impact without differences of opinion in the application of Community policies.

In fact, European integration, while reflecting some transfer to Community level of 'national sovereignty' (a term which will in any case have to be re-examined and seen from the point of view of Community development in relation to the role and the involvement of the national administrations in the Community decision-making process), is linked not only to the effectiveness of Community action during the formulation and transposition of Community policies at national level, but also and above all to the effectiveness of their uniform application.

This latter aspect, uniformity of application, is the major ingredient of European integration based on the principles of the free market and of competition. If this were not so, the free market rules would be distorted and, consequently, the entire European concept would collapse like a castle built of cards – thus the importance of coordination with the Commission and of horizontal cooperation, independent of the level at which the decision is taken or the level of enforcement according to the Member State. In this framework, it goes without saying that much depends on the Commission whose role is crucial as initiator and *primus inter pares*. Therefore, although its responsibility is very great, it can be concluded from what has already been said that the effectiveness of Community action is to a large extent a reflection of efficiency at national level. Thus it can be concluded that we are concerned here with a shared responsibility which is divided indistinctly between all the national administrations and the administration of the European Community, which form together the European administration. It is therefore necessary to study the national structures and procedures provided for and established for the contribution of each of the national administrations in pursuit of the European cause in order, above all, to understand them better, to know them better and to put them to use. Once knowledge has been gained and they have been compared, their adequacy in the Community decision-making and enforcement processes can be examined. This also applies to the Commission whose current non-transparency of action (where transparency is

compromised in the name technocracy), and the burden of work, and of efficiency prevent the consolidation of a climate of mutual trust which is also just as indispensable to the functioning of the European partnership. In this way, acquiring knowledge and an understanding of the national and Community administrative systems becomes a requirement with a view to their adaptation to the needs of greater efficiency and to create new mechanisms for coordinated management of the European cause.

## **2. Towards Administrative Cooperation for the Implementation of Community Decisions**

This question is not a new one. Even though it has only been in quite recent years that attention has focused essentially on considerations of constitutional order such as the democratic deficit, we are now latterly being confronted with problems of a much more practical and immediate nature such as the management deficit. In fact, in March 1992, the European Commission formed a High Level Group on the Operation of the Internal Market, chaired by Peter Sutherland. This Group was responsible, among other things, for proposing a strategy for guaranteeing that all the benefits of the Internal Market were acquired in practice after 1992. In the introduction to the report compiled by the Group in October 1992,<sup>4</sup> the European Commissioners Martin Bangemann and Karel van Miert stated 'To make the Internal Market work effectively calls for action to ensure that systems and structures<sup>5</sup> adapt to meet new requirements, and to encourage people, whether involved as consumers, in businesses or in administrations,<sup>6</sup> to respond to the opportunities being created.' Having emphasized a clear objective 'to make Community law understood and enforced in the same way as purely national law' and that consequently the rules of the Internal Market must have equivalent effect throughout the Community, the Group proposed for its realization:

- 'A cooperative approach to the enforcement of Internal Market legislation should be extended and intensified urgently as the single most important way of reinforcing mutual confidence between Member States and the Commission.' (Recommendation 31), and
- 'There needs to be a permanent framework for administrative partnership, based on groups of contact points, between the Member

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4 Peter Sutherland, 'The Internal Market after 1992: Meeting the Challenge', High Level Group on the Operation of the Internal Market, 1992.

5 Underlining by the author.

6 Underlining by the author.



States and the Commission to deal with the application of Internal Market rules....' (Recommendation 32).

Following the P. Sutherland Report, the Commission indicated in its communication of 2 December 1992<sup>7</sup> to the Council and to the European Parliament that it is important that transparency be introduced into the operational arrangements of the cooperation and information-exchange mechanisms provided for by many directives (point 22); on the other hand, it also underlined that 'The establishment of a network of contact points between Member States' administrations responsible for implementing the operational rules of the Internal Market and between those administrations and the Commission is necessary if similar procedures are to be introduced.' (point 23)

Moreover, in its communication<sup>8</sup> to the Council entitled "'Making the most of the Internal Market"; Strategic Programme' considering the increased importance of Community law for individuals and for enterprises and the need for the latter to have full confidence in certain and effective enforcement, the European Commission concluded that '...it is essential that the authorities responsible for enforcing Internal Market measures maintain a high degree of cooperation and that they keep one another informed' (point BII.1). To this end, it resolved to communicate to the Council proposals on the guiding principles for the development of administrative cooperation after having undertaken research on the cooperation already existing in various sectors of the Internal Market. In this way, the objectives and the details relating to administrative cooperation could be determined at the stage of applying rules in each area of Community legislation. It would therefore be necessary to proceed to identify precisely the competent authorities for the application of this legislation, to define the objectives, the needs and the means of administrative cooperation, to evaluate the effectiveness of the existing cooperation mechanisms and determine the contribution of the Commission.

In the light of the information obtained on the state of administrative cooperation today, and after evaluating the roles of Member States, and its own role, as well as the needs felt and the current situation in practice, the Commission transmitted the communication<sup>9</sup> to the Council and the European Parliament entitled: 'On the development of administrative cooperation for the implementation and enforcement of Community legislation in the Internal Market', according to which '...a more coherent and transparent approach to administrative cooperation for the implementation

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7 SEC(92)2277 final.

8 COM(93)632.

9 COM(94)29/16.2.1994.

and enforcement of Internal Market legislation is desirable' (point 10). More precisely, according to this communication (point 11), 'The framework for administrative cooperation would comprise the following elements:'

- 'a) One rule: the fundamental requirement of mutual assistance;'  
with the aim of establishing '...the practical tools required to facilitate cooperation between the Member States, in such a way as to reflect both the differing organizational structures within the Member States and the Community perspective' (point 12);
- 'b) One tool: the obligation of transparency, by means of a network of clearly identified correspondents;'  
in order to improve '...the interface between those responsible in the Member States for enforcement, the definition of needs and modes of mutual cooperation, and the identification of priority sectors for Community supportive measures' (point 14)
- 'c) Two principles:
  - \* proportionality
  - \* confidentiality.'

### **3. The *Raison d'être* of the Comparison of National Administrative Procedures or the Understanding of National Administrative Procedures as a Condition *sine qua non* for European Administrative Cooperation**

It is obvious that we are faced with a development in administrative cooperation which will emerge in practice in certain fragmented sectors of the Internal Market. Its vocation is to bring about successfully an institutional partnership between all the national administrations on the horizontal plane (at all levels: national, regional and local), and between these administrations and the Commission on the vertical plane, in so far as the concern is the formulation of Community decisions according to the principle of subsidiarity (Art. 3b of the Treaty on European Union) or their enforcement which furthermore, according to Article 5 of the Treaty of the European Communities, is mainly their own responsibility. In such a partnership framework, as the Commission successfully demonstrated in its communications, transparency between administrations is required. In addition, the exchanges of information taking place should respect the trust/confidentiality expected by the administration-provider of the information as well as the proportionality between the nature of the information requested and the aim of the obligation arising from the Treaty for the administration which needs the information in question. As a result of this,



in this context, knowledge of national administrative procedures is a condition *sine qua non* for administrative cooperation at European level. Thus the initiative to undertake this comparative study.

#### 4. Field and Level of Study

The group of experts, nominated in consultation with each national administration, met on 25 March 1991 and on 20 May 1992, under the chairmanship of Professor G. Timsit, with the aim to coordinate the compilation of twelve reports on national administrative procedures for the preparation and the implementation of Community decisions. According to the approach adopted, the field covered by each national report should in principle cover:

- Community decisions as a whole and not simply individual directives;
- Procedures for the formulation and implementation of Community decisions as a whole and not the study of individual transposition measures. This, on the one hand, implies the study of procedures for the negotiation, formulation, implementation and follow-up of implementation of the decisions and, on the other hand, excludes the study of the contentious and precontentious procedures (Art. 169 EEC), except in the case in which a precontentious procedure leads, as for example in Belgium, to the triggering and implementation of administrative procedures intended to prevent the pursuit or the fulfilment of contentious or precontentious procedures;
- the administrative procedures, this limits the study to simply the repercussions on the administration of procedures relating to political bodies: the increased political control of the Parliament over the administration in the formulation and implementation of Community decisions, role of the ministerial cabinets, participation of regional political authorities or of the *Länder* in international negotiations.

Moreover, the group adopted, as a non-binding framework, a plan based on the analysis of the places and times at which procedures take place with the aim of commencing the study of these procedures from two different perspectives – a structural and institutional perspective (the places) and a dynamic and chronological perspective (the times). At that time the proposed plan was as follows:

##### *Introduction*

- Presentation of the general legal and administrative system of the State;
- Global presentation of the system for non-contentious administrative

procedures (if this system has been consolidated and if it has been subject to modifications as a result of Community decisions).

### 1. The Places

Study of the structures and institutions which play a role in the negotiation, formulation and the follow-up of the implementation of Community decisions:

- a) Nature of administrative procedures:
  - \* Centralized or decentralized procedures
  - \* Interministerial or sectoral decisions
  - \* Presentation of the national administrative structures of a country
- b) Those involved in the procedures:
  - \* State (role of parliament during parliamentary decisions)
  - \* Infra-state authorities (decentralized authorities, local authorities, autonomous provinces, etc.)
  - \* Private institutions (individuals, multinationals, pressure groups)

### 2. The Times

Study of the different phases of the Community process:

- a) Before negotiation
- b) During negotiation
- c) After decision-making

### *Conclusion*

Evaluation of the procedures according to:

- degree of formalization of the national procedures
- degree of cohesion in national and Community procedures.

## **5. General Administrative and Legal Systems of the Member States of the European Union: Organograms of Procedures**

By way of an introduction to the procedural maze of each Member State, a presentation is made first of the legal and administrative frameworks in which the various procedures can be found for the preparation and implementation of Community decisions and with which this publication is concerned.

In addition, each introduction is followed by the organogram of the said procedures as it is structured in each Member State according to the national report which subsequently explains the operating of the system in detail. The organogram is presented as a table and contains several explanations where necessary. The national reports appear in the second part.



## a) BELGIUM

### aa) State and Administrative Organization

Belgium is a federal State composed of three Communities and of three Regions. The federalization process has taken place gradually by means of four revisions to the Constitution (1970, 1980, 1988, 1992).

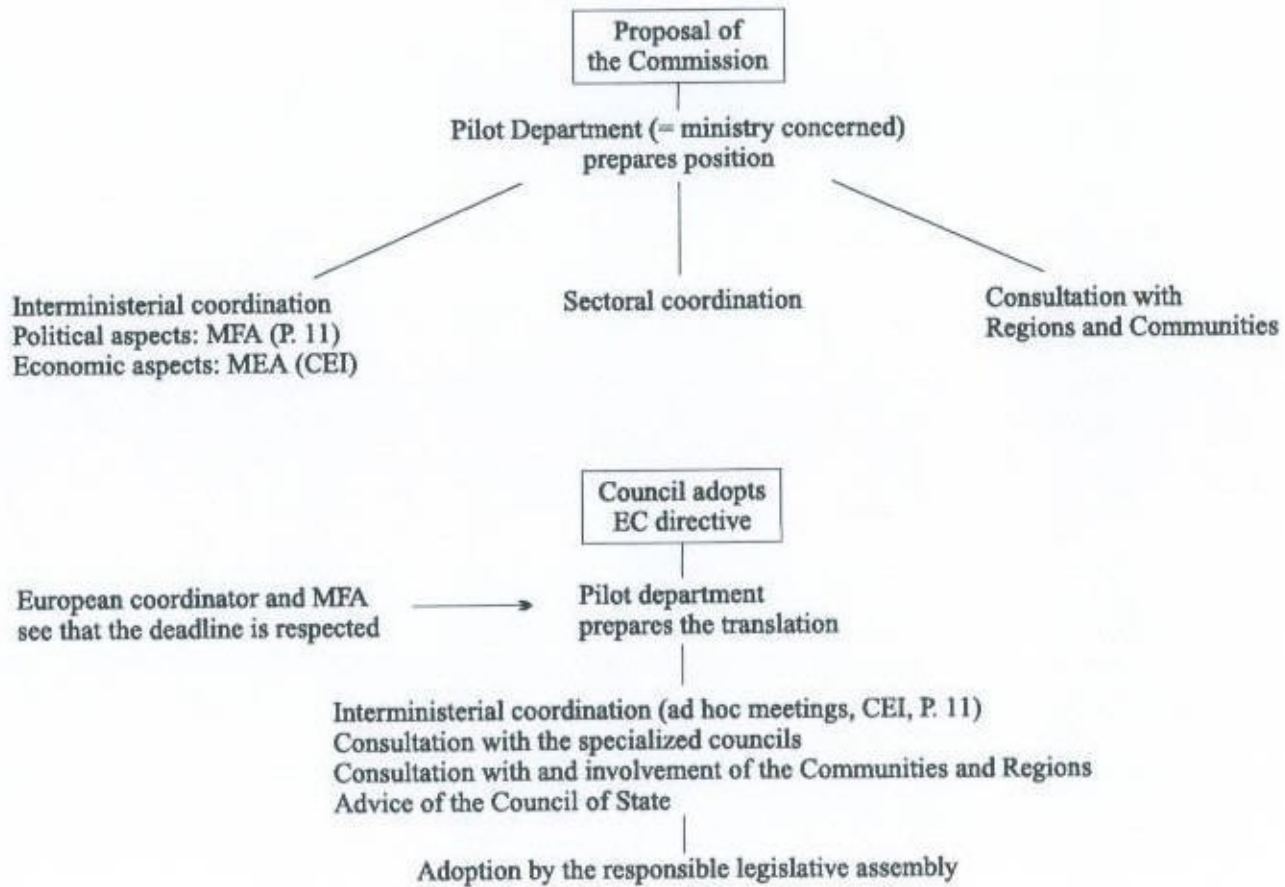
At national level, executive power lies with the King, assisted by the government and the State administration. Legislative power is exercised collectively by the Chamber of Representatives, the Senate and the King. The federal level is responsible for national defence, justice, finance, social security, the conduct of international relations (irrespective of the powers of the Communities and Regions in this regard), and also the Economic Union and the currency of the country.

At federalized level, the Community is the entity created on the basis of the criterion of cultural relationship while the Region is founded on the idea of territory. The Flemish, French and German-speaking Communities are responsible in the fields of culture, training and use of languages as well as in matters with personal impact (health and personal assistance). The Flemish Community is responsible for the inhabitants of Flanders and for the Dutch-speaking inhabitants of the Region of the capital, Brussels; the French Community is responsible for the French-speaking inhabitants of Wallonia and of the Region of the capital, Brussels; and the German-speaking Community covers the linguistic region of the German language (the nine communes of the Eastern cantons).

The Regions are responsible in territorial matters: town and country planning; economic, industrial and agricultural policy; employment; public works and transport; environment; housing; supervision of local authorities. The three Regions are Flanders, Wallonia (including the German-speaking territory) and the Region of the capital, Brussels (comprising the 19 communes of the Brussels conurbation).

The Communities and Regions have their own legislative, executive and administrative bodies. The members of Parliament and of the Council are directly elected by universal suffrage according to the principle of proportional representation. Each Council elects its own Executive. The responsibilities of the Flemish Region and the Flemish Community are exercised by a single assembly and a single executive, the Flemish Council and the Flemish Executive, while the Walloon Region and the French Community each have their own assembly and their own executive.

The Councils adopt the decrees or, in the case of the Brussels Region, orders which have the force of law. When there is a conflict of interests between the federal and federalized bodies, it is up to the Arbitration Court to rule on the constitutionality of the laws, decrees and orders.





- \* When the Commission makes a proposal for a piece of Community legislation COREPER sends it to the pilot department, the ministry concerned with the matter. It is an official from the pilot department that represents Belgium in the working party comprising the representatives of the twelve Member States.

As regards interministerial coordination, the main bodies responsible for the coordination of the Belgian position are the Ministry for Foreign Affairs and the Ministry for Economic Affairs. Within the Ministry for Foreign Affairs, the P. 11 Service of the Directorate for Administration of European Affairs concentrates on the coordination of political and institutional aspects of the dossiers, while coordination at economic level takes place within the Interministerial Economic Commission (CEI). The CEI is an interdepartmental commission gathering together representatives of the various ministries. Representatives of the Regions and Communities are also invited to meetings of these two bodies when the agenda contains items which are their responsibility.

If an item concerns several sectors, the ministries involved try to determine their respective tasks either during ad hoc meetings or by concluding a protocol on the division of responsibilities.

In the framework of the federalization of Belgium, new coordinating bodies have been created between the federal level on the one hand and the Regions and the Communities on the other. These are the Consultation Committee (*Comité de concertation*) (composed of six national ministers and six ministers representing the Flemish Executive, the Executive of the French Community, the Regional Walloon Executive and the Executive of the Brussels Region); the Cooperation Committee between the State and the Brussels Region; and the Interministerial Conferences (composed of members of the national government and the Executives of the Communities and Regions).

As regards the implementation of EC directives in Belgian law, each federal ministry has a European coordinator responsible for seeing that EC directives are transposed into national law. The transposition itself is entrusted to the pilot department. It is responsible for coordination with other ministerial departments, with the specialized councils (composed of scientific specialists, consumers or social or socio-economic partners, and also takes care of consultation with and involvement of the Communities and Regions. Before presenting the draft to the responsible legislative assembly, it has to gain the advice of the Council of State.

The role of the P. 11 Service is limited to seeing that the transposition deadline is respected.

## **b) DENMARK**

### **aa) State and Administrative Organization**

Denmark is a constitutional monarchy. The relationship between the international treaties and Danish national law mirrors a dualist type of approach, while the treaties have to be integrated into municipal law.

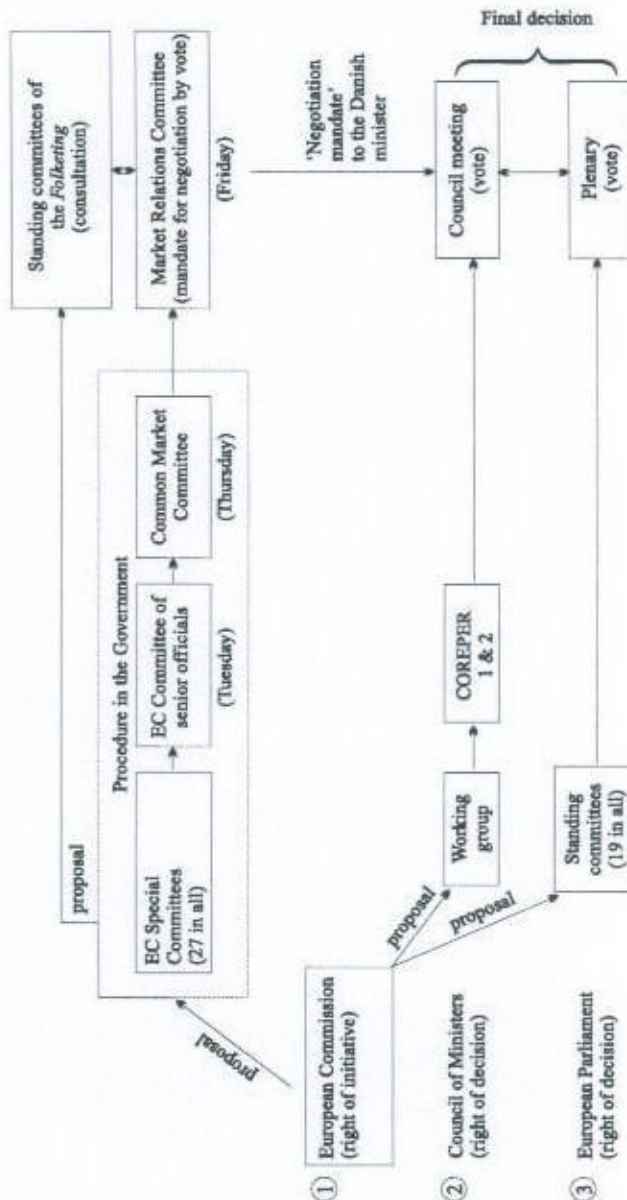
The Danish decision-making process is a centralized procedure in which the Ministry for Foreign Affairs has been attributed major responsibility in the field of the coordination of European policies. However, each ministry is responsible for aspects of Community policies which belong to its own remit. That is why the ministries are not only responsible for the administrative implementation of Community decisions but they also represent Denmark in the negotiations within the various Community institutions.

The Parliament's Market Relations Committee plays a special role in the Danish decision-making process and no other Member State has a similar construction. The rule is that important Community proposals are sent to the Parliament's Market Relations Committee before Danish ministers can accept a proposal at a meeting of the Council of Ministers. If there is a majority against the proposal within the abovementioned Committee, the government is politically obliged to express itself against this proposal to the Council. Minority governments are more of a tradition in Denmark than in other EU Member States. Due to the control which it exerts on the government's Community policy, the Parliament's Market Relations Committee is a kind of formal democratic legitimation of recent legislation in the Danish policy-making process.



bb) Organogram of the Procedures (Denmark)\*

Detailed and presented by Mr Niels Hoffmeyer, Special Adviser on European Affairs to the Parliament (*Folketing*), for the seminar 'The Changing Role of Parliaments in the European Union', organized by EIPA in Maastricht, on 6 and 7 June 1994



- \* If it were necessary to characterize the Community policy-making process in Denmark, it could be said that coordination depends on the one hand on expertise and on the other hand on consensus and specialization. In Denmark this process forms part of the centralized procedures in which the Ministry for Foreign Affairs has been given major responsibility. On the other hand, this has led to an increase in sectorization and, consequently, in decentralization towards the responsible ministries.

The most important institutions in the Danish decision-making process are the Government, its administration, and the Market Relations Committee. In Denmark, the EC decision-making procedures start in the EC Special Committees; then the EC Committee takes over and, finally, the Common Market Committee of the Cabinet makes its decisions before the parliamentary control in the Market Relations Committee intervenes.

The Special Committees discuss the Community proposals from the initial stage, this is from the moment that the Commission submits a proposal. The decisions taken by the Special Committees often serve as the basis for the Danish negotiations at an advanced stage of the process in Brussels. That is why the Special Committees play a determining role in the decision-making process in Denmark.

The EC Committee and the Common Market Committees of the Cabinet are only actively involved when agreement cannot be reached.

The role of the EC Committee can be described as the linkage between the in-depth discussions in the EC Special Committees on the one hand, and the political decisions taken by the Government on the other, before the proposals are sent to the Parliament's Market Relations Committee. It is in the EC Committee that Denmark's Community position is established and this is then presented to the Market Relations Committee. This position is thus the Danish mandate for the negotiations in the Council of Ministers on condition that the Market Relations Committee expresses no objection to them.

The Market Relations Committee became a standing committee in charge of controlling the Government's EC policy.

According to the Constitution, the Parliament is not guaranteed any influence on the Government's EC policy. As a consequence, there was a political need to create a new institution before the Danish membership of the European Community that could safeguard the Parliament's influence on the Government's EC policy according to the parliamentary principle.

By means of the control which it exercises on the Government's EC policy, the Market Relations Committee is a form of formal democratic legitimization of recent legislation in Denmark's policy-making process.



## c) GERMANY

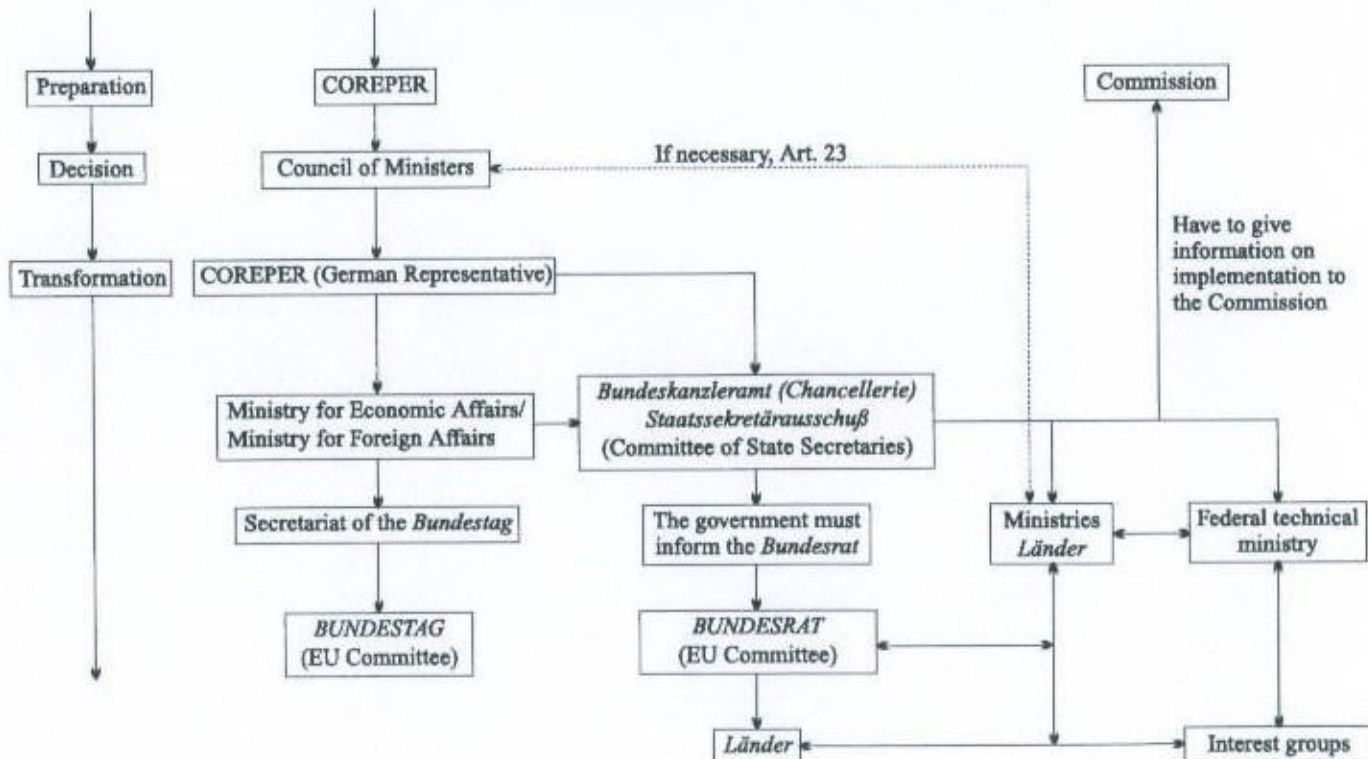
### aa) State and Administrative Organization

By virtue of Article 20 GG (Basic Law), Germany is a federal, democratic and social State; Articles 30 and 83 add that the exercise of public authority and the performance of State tasks are conferred on the *Länder*. The federal nature of the German State is thus guaranteed by the Basic Law (Article 79.3 GG).

As regards the application of Community law, the distribution of competences between the federal State and the *Länder* is very important (Articles 72-75 GG).

Federal legislation is the joint work of the federal members of parliament, the federal governments, the federal administrations as well as the *Länder*. The majority of the competences (with the exception of education and culture) are powers shared by the Federation and the *Länder*. Article 72.2 GG is currently under discussion. However, the share of the *Länder*, and in particular of their administrations, remains significant, even in legislative and regulatory matters. They participate closely in the federal process of drawing up regulations within the *Bundesrat*.

### Coordination and Application of Community Legislation in Germany





- \* In a federal State such as Germany, consideration has to be given to the division of powers between the federal State and the *Länder* because it is a very important factor in implementation.

In so far as the implementation of Community law requires legal action, the question of knowing whether the legal implementation is the constitutional duty of the federal State or the *Länder* depends on this division of legislative powers (principle of subsidiarity).

Moreover, the actual execution is one of the tasks of the *Länder* (Art. 83 of the Basic Law) and they are free to create bodies and to organize the procedures accordingly. They execute federal law, whereas the *Bund* only has a supervisory function.

The position of the *Länder* and in particular that of the *Bundesrat* (federal council) is now confirmed by constitutional law. In this respect Art. 23, para. 2 of the Basic Law (see Annex II) obliges the federal government to inform the *Bundestag* comprehensively and to involve it in matters concerning the European Union as quickly as possible.

**Special features:** In the Federal Republic of Germany, the responsibility of the federal chancellor to determine general policy guidelines also extends to European policy. Below the chancellor, a committee of state secretaries for European questions (*Euro-Staatssekretäre*) was created in 1963 whose role is mainly that of conciliator in disputes arising between the different departments. The decisions of this committee are binding on the departments involved. The committee of state secretaries is under the direction of the Ministry for Foreign Affairs (*AA – Auswärtig Amt*). The other members of this committee come from the federal chancellery, the Ministry for Economic Affairs (*BMWi*), the Ministry for Agriculture. The predominant position of the Ministry for Economic Affairs and the Ministry for Foreign Affairs is justified by the fact that up till now the Permanent Representative of the Federal Republic of Germany (*COREPER*) has come traditionally from the Ministry for Foreign Affairs, while the Deputy Permanent Representative has come from the Ministry for Economic Affairs. At lower level European policy is managed by the different departments. Interministerial coordination is conducted by the Ministry for Economic Affairs (Section E).

The margin for negotiation of the German Permanent Representative in Brussels depends on the instructions from the Ministry for Economic Affairs. These instructions are the fruit of the abovementioned coordination with the ministries concerned. The German Permanent Representative sends simultaneously to the federal Ministry for Economic Affairs and the Ministry for Foreign Affairs all the legal acts on which a decision has to be taken. These ministries then send these draft laws to the ministries concerned. Information on important dossiers is also sent to the *Bundestag* (federal Parliament), the *Bundesrat* (federal government) and to representatives of the *Länder* in Bonn from where they are sent to the *Länder* governments. Depending on the topic of the deliberations, the various parties reach agreement on which department will be responsible and will defend the German point of view in the Council. The special

feature of the German model lies in the fact that a large number of actors are involved in the tasks of coordination both at horizontal level (federal chancellor, state secretary, Ministry for Foreign Affairs, Ministry for Economic Affairs, departments) as well as at vertical level, with sometimes considerable influence (federal government, Länder administration, European affairs minister of the *Länder*).

When there is a variation in the ideas held during the consultations between on the one hand the ministries or the federal State and on the other hand the *Länder*, differences of opinion on the German side can easily appear and thus weaken the German position in the Council of Ministers.

The role of the *Länder* in the preparation nationally of Community law, in participation at Community level as well as in the implementation stage was affirmed after the adoption of the Single European Act on four levels:

- The *Länder* were associated with legislative development – near the Council, the Commission, the European Parliament and the Economic and Social Committee – by the participation procedure provided in Article 2 of the law ratifying the Treaty on European Union (TEU).
- The *Länder* could have more influence on forming the willingness of the national government by means of ministerial conferences at European level.
- The *Länder* strengthened their influence through groups exerting pressure on the *Länder* offices in Brussels.
- Finally, the *Länder* are taking part in influencing the Community will by way of committees such as the Consultative Council of Regional and Local Authorities. Since the Maastricht Treaty, the 16 *Länder* are all represented on the Committee of the Regions (Art. 198 EC Treaty).

In the framework of the reform of the Constitution, the new Article 23 of the Basic Law was introduced on 21 December 1992. This Article, referred to as the 'Europe Article', guarantees the *Länder* rights to additional participation at Community level. In particular, stress should be laid on Article 23, para. 6 of the Basic Law which – in the areas which involve the exclusive powers of the *Länder* – grants the possibility of taking over the direction of the negotiations on behalf of the Federal Republic of Germany to a representative of the *Länder* (ministerial level) designated by the *Bundesrat*.

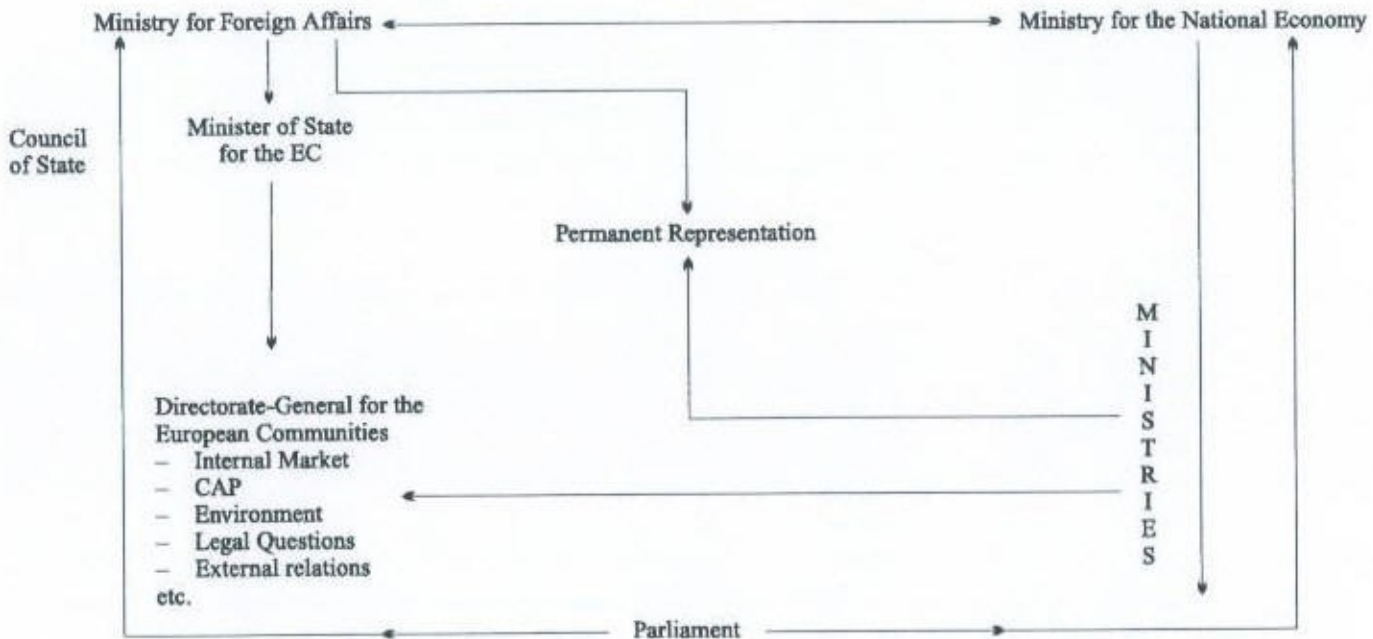


#### **d) GREECE**

##### **aa) State and Administrative Organization**

According to the first Article of the Constitution of 1975/1986, Greece is a parliamentary republic whose president, elected by the Parliament, is the 'regulator' of the regime (Article 30, para. 1). The administration of the State is based on decentralization and is structured around 51 prefectures and 13 regions. The decentralized bodies of the State have general decision-making power with respect to the affairs of their region, whereas the central services, besides special powers, issue general orders, ensure coordination between the decentralized bodies and supervise them as specified by law (Art. 101). Furthermore, the administration of local affairs is exercised by the decentralized bodies (local self-administration) the first level of which comprises municipalities and communities. The second level comprises prefectural self-administrations such as public-law corporations; the members of the Prefectural Council are elected by direct universal and secret suffrage.

Finally, according to Article 105 of the Constitution, the peninsula of Mount Athos is a part of Greece which is self-governed in accordance with its ancient regime by its 20 holy monasteries on the basis of its statutory Charter drawn up by the latter in consultation with the State representative and ratified by the Oecumenic Patriarchate and the Parliament of the Hellenes.





- \* The Ministry for Foreign Affairs and the Ministry for National Economy play the most important roles as regards Community affairs. The Ministry for Foreign Affairs has jurisdiction as regards external matters, while the Ministry for the National Economy is responsible for domestic issues. The latter is also responsible for interministerial coordination.

The State Secretariat for the EC (SECE) has the task of assisting the Minister for Foreign Affairs or Minister of State in the light of their participation in the work of the Community bodies. The State Secretariat is composed of special directorates and divisions (whose field of action corresponds to those of the Commission's DGs: Internal Market, CAP, Environment, External Relations, Legal Issues, etc.).

It is equipped with a special legal department for Community law. The SECE prepares and gives instructions to the Permanent Representation.

The Permanent Representation falls under the Ministry for Foreign Affairs. All contacts with the Permanent Representation have to take place by way of the Ministry for Foreign Affairs.

The responsible ministerial services are in constant contact with the Permanent Representation.

## e) SPAIN

### aa) State and Administrative Organization

The Spanish Constitution of 27 December 1978 establishes the parliamentary monarchy as political form of the Spanish State and lays down the division of powers as the traditional principle of the separation of powers. So, the *Cortes Generales* (Parliament) exercise the legislative power, the Government performs the executive function and is in charge of the administration, while justice is administered by judges and magistrates who form the judicial power.

The Constitution also provides for the territorial division of the State into autonomous communities; this is a system which decentralizes political power.

The Constitution defines the powers of the autonomous communities and refers to the Statutes of Autonomy of each of the 17 Communities which lay down their legislative and executive powers and their institutional structures.

The central State has to exercise the higher and sovereign powers by way of expression of the State's unity.

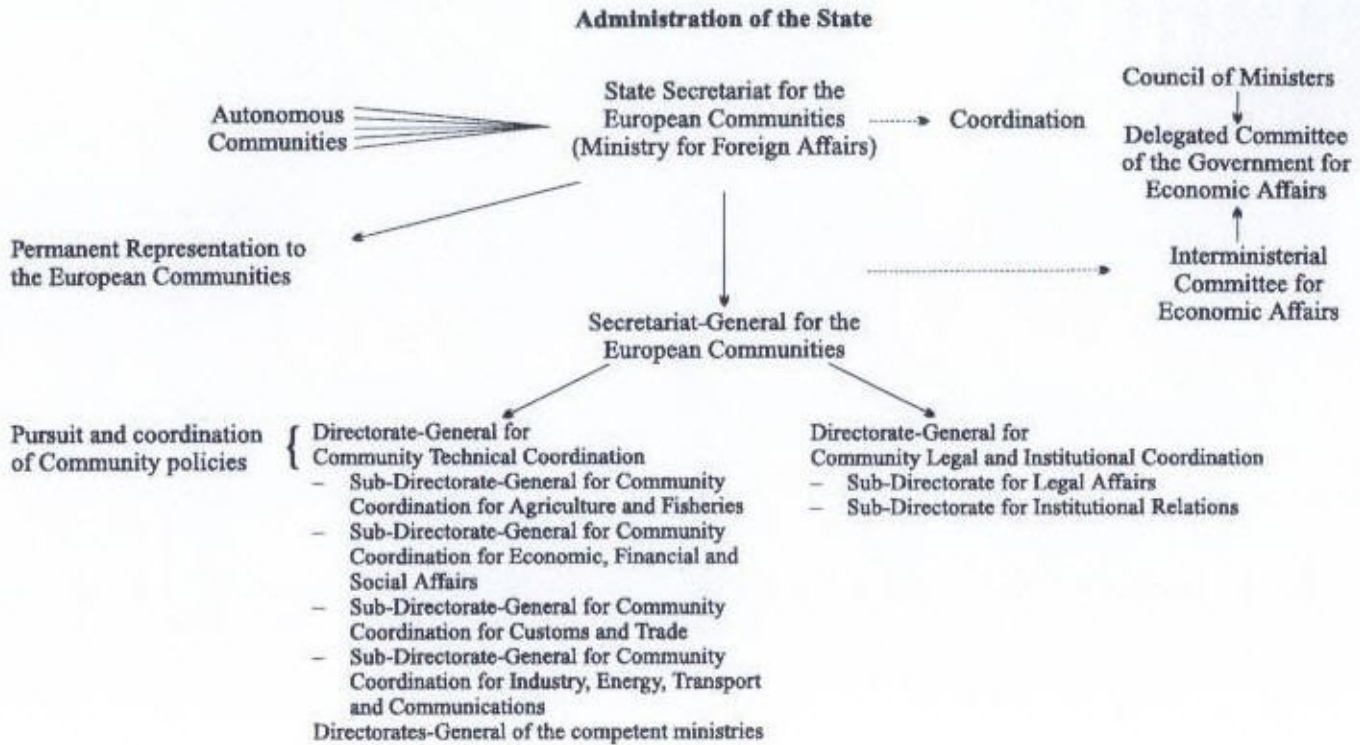
Concerning the administrative organization, four levels can be distinguished: the central administration and the autonomous communities; the provincial administration; the municipal administration; and the institutional administration (agencies and undertakings belonging to the State).

The powers at each level are defined according to the territory in which each of the public administrations act.

In the framework of the European Union, in view of the fact that the principle of the State's liability *vis-à-vis* the European institutions still remains in force, whatever the internal distribution of powers – particularly in countries with a federal or regional structure – it is necessary to combine this principle with respect for the powers of the autonomous communities. This leads us to the right to participate in forming government positions to be defended in the Community bodies and to different forms of collaboration and coordination which have been developed by the case law of the Spanish Constitutional Court.



**bb) Organogram of the State Administration (Spain)\***



- \* The State Secretariat for the EC (responsible to the Ministry for Foreign Affairs) is the 'central point' in the administrative organization related to the EC.

It has the task of internal coordination and is the only official way of communicating with the Community institutions.

It is assisted by the Secretariat-General for the EC which controls two Directorates-General:

- The Directorate-General for Technical Coordination which is for the tasks of pursuing and coordinating Community sectoral policies (four Sub-Directorates-General fall under this DG), and
- The Directorate-General for Legal and Institutional Coordination which is responsible for coordinating Community policy with the bodies and units of the Spanish administration in matters related to legal affairs and institutional relations (two Sub-Directorates-General fall under this DG).

The Spanish Permanent Representation is dependent on the Ministry for Foreign Affairs (via the State Secretariat). All the contacts which the Permanent Representation undertakes with the Spanish administration take place through the Ministry for Foreign Affairs.

The State Secretariat also chairs the Interministerial Committee for Economic Affairs. This body is responsible for dealing with the most important matters related to the daily business of the EC; it defines the basic position of Spain on each of these matters.

The Delegated Committee of the Government for Economic Affairs acts as a body providing stimulus and interministerial coordination in all Community affairs, often on the initiative of the State Secretariat.

Discussions on important European issues take place within the Council of Ministers.



## f) FRANCE

### aa) State and Administrative Organization

Today's France is a parliamentary semi-presidential regime which has a long tradition of centralization and concentration. Its last Constitution dating from 1958 affirms the unitarian nature of the country by stating that 'France is an indivisible Republic' and that the regional and local authorities are subject to administrative control by government representatives. It was only in 1982 that legislative provisions introduced some decentralization elements and a modest form of devolution in France. Nowadays, the French State has a hierarchical subordination of Regions, Departments and, finally, Communes.

At national level the President of the Republic is elected every seven years by universal suffrage in a uninominal double vote, a system which is also used every five years in the general elections. The difference between the presidential and legislative elections permits, in the case of conflicting majorities, the '*cohabitation*' of the President and the Government that has resulted from the general elections. The President of the Republic now has *de facto* power which goes further than his role basically of arbiter as laid down in the Constitution. In this respect it is revealing that all decisions taken by the Council of Ministers require his approval. The Government, on its part, has powerful means with respect to the Parliament. In fact, in some cases the Government may legislate by decree and can assume responsibility for not going to the Parliament. The Government can also obtain the Parliament's authorization to legislate by order in fields listed in an enabling act.

Since 1982 the Decentralization Act organizes the powers of the regional authorities (the Regions). Although the Regions have powers of their own, mainly where their economic development is concerned, they actually only implement the policies which are decided at national level, while the State retains the power to legislate and regulate. The Councils and Assemblies of the Regions are elected by proportional suffrage.

Since 1982 concentration in France has remained high in so far as the prefects still exercise administrative control, on behalf of the State, at the level of the Departments which are regional constituencies of the State administration. However, in 1982 an important improvement was made in the form of the decision no longer to grant the executive power of the 100 Departments to the prefects but to give it to the President of a General Council that has resulted from cantonal elections.





- \* Within the processes of decision-making and application of Community legislation, France is still clearly characterized by advanced centralization. Although the required adaptations of coordination, decentralization and deconcentration have been decided, their implementation is only gradual and currently prevents France from having better resources for the preparation, anticipation, and observance of the '*norme européenne*'. The future success of these changes is affected by detailed conditions.

Vertical centralization which has beleaguered the field of working out the French proposal for a European rule has to be improved. In fact, the 'European question' to be treated is often posed in the competent technical directorate of each ministry with the result that the other directorates or ministries can also raise the question of whether the European dimension concerns them. As a result, the French position in Brussels frequently lacks coherence, particularly when the French Permanent Representatives in Brussels also have had their own position. The solution is twofold and can be found both in the options made by some ministries and in the strengthening of the established coordination structures. In fact it is desirable that more ministries adopt a horizontal coordination structure in the form, for instance, already implemented of a '*cellule Europe*'. The trend to invest the ministries with an autonomous European service should be confirmed. Then, it is desirable that the interministerial structures created could establish their role in a hierarchy respected fundamentally by the horizontal structures. In this hierarchy the General Secretariat of the Interministerial Committee is the interface between, on the one hand, the lower technical horizontal structures and, on the other, the Permanent Representation, the Ministry of European Affairs and the Ministry for Foreign Affairs, which negotiate the French position in Brussels.

Improvement in centralization at the preparatory stage has also to attack the democratic deficit or the weak involvement of the French Parliament. New ways have been opened up and should be confirmed. In the first place the Parliament has strengthened the staff of its delegations responsible for European affairs and has managed to get the government to submit to the Assemblies the proposals for Community acts containing provisions of a legal nature at the time they are sent to the Council of Ministers of the EU. The Parliament has thus already adopted several resolutions which can be expected to be of growing importance even though they are not binding.

Improvement in centralization should also allow better implementation and more efficient application of European legislation because, in truth, France is often censured for ineffective transcription and non-observance of Community rules.

In France the lack of coordination makes transposition delicate and legal constraints lengthen the delays. The formalization for uniform transposition launched in 1990 has to be absolutely assured, as does the predominant role acknowledged for the SGCI this time in the application of the legislation and the systematic recourse to the '*correspondant européen*' in the ministries and prefectures. In France, the observance of Community law takes place primarily by a procedure improved in this way, but also by decentralization and deconcentration the positive effects of which also benefits the elaboration of the

European rule.

Although the central administration is at the basis of the negotiations and transposition of the Community texts, it is not the only one concerned with the rules. In France decentralization towards the territorial authorities can improve the preparation and implementation of the Community decisions. This decentralization mainly depends on the will of the authorities to overcome a variety of handicaps. At times hesitant, badly organized, with a lack of information, these authorities are very often absent from all the negotiation phases in Brussels. Recent improvements should progressively ease these deficiencies; the creation of the Committee of the Regions, interregional cooperation, the EURIDICT network gathering together the representatives of the elected local associations, improvement in information streams for the central administration, the organization of pressure groups.

Deconcentration, plays for its part an essential role in the spread of Community information and, consequently, the application of Community decisions. Apart from the regularity of clear information from the central administration, the services of the deconcentrated administration have need for adequate computerization and for adapted training. The law of 1992 related to the territorial organization of the State needs to be made effective in this respect. It lays down the essential role of the deconcentrated services in the building of Europe.



## g) IRELAND

### aa) State and Administrative Organization

Ireland is a parliamentary democracy with a written Constitution. Public administration in Ireland takes place by means of institutions of the central and local authorities. With regard to the public service, this is divided into 15 departments, namely:

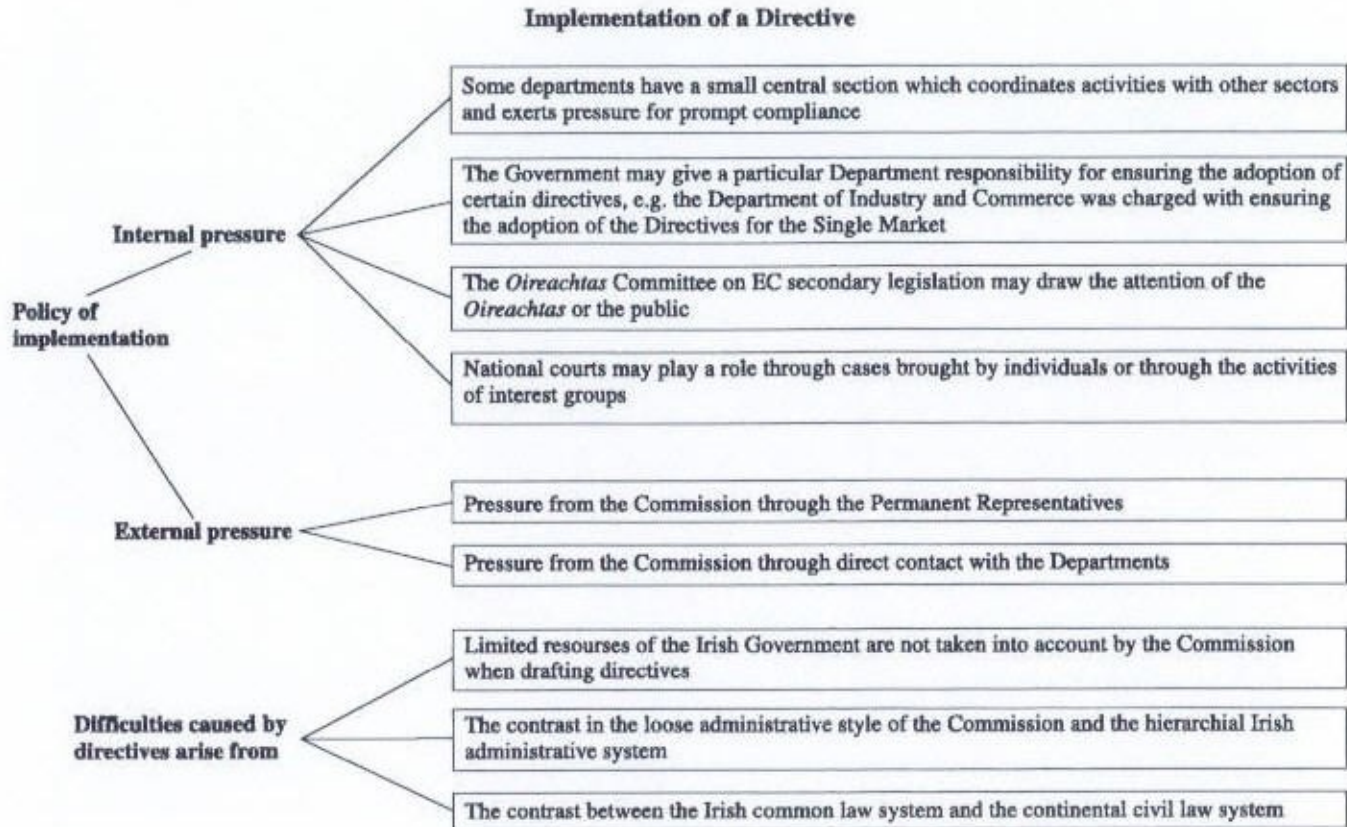
*Taoiseach* (the department of the Prime Minister); *Tánaiste* (department of the Vice-Prime Minister) and Foreign Affairs; Finance; Social Affairs; Justice; Employment and Enterprise; Environment; Defence and Shipping; Agriculture and Foodstuffs; Tourism and Commerce; Transport, Energy and Communications; Equality and Legal Reform; Arts, Culture and *Gaeltacht* (Gaelic-speaking regions); Health; Education.

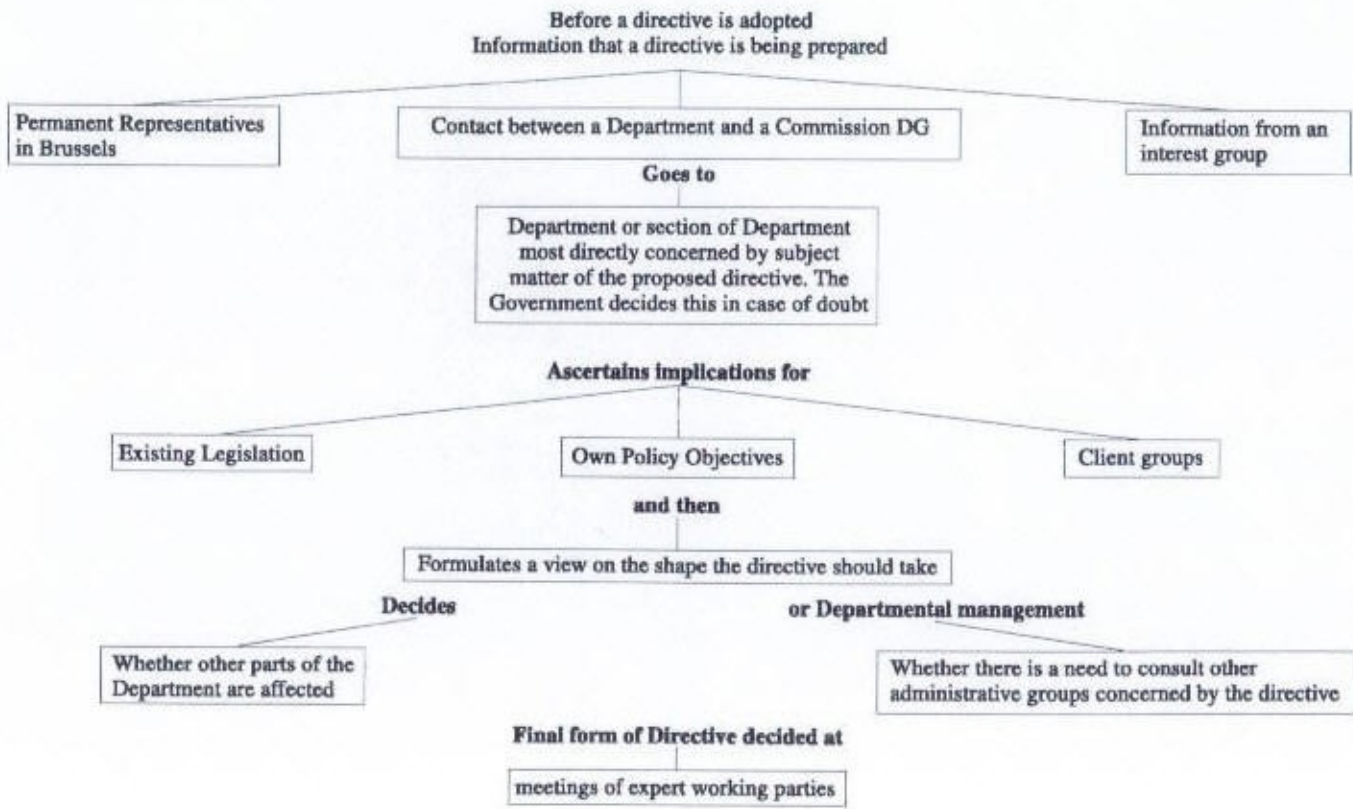
Some departments can also rely on the support of offices established within them but which enjoy considerable autonomy in relation to their patron department. These offices include, for example, the *Valuation Office* and the *Civil Service Commission*.

In addition to the central administration, there is a system of local administration exercised by a series of local bodies with limited competence at local level. These are: (1) local authorities, (2) health commissions, (3) regional organizations for tourism, (4) commissions for vocational training, (5) county development teams, (6) regional fisheries commissions, (7) port authorities. The common characteristic of all these bodies is the fact that their authority is limited geographically. The system of local government in the strict sense of bodies governed by the *Local Governments Acts*, only includes the first category. They are responsible to the Ministry for the Environment. The principle services provided by the local authorities cover housing and building, road transport and security, water supply and drains, development systems and control, environmental protection, recreational and leisure facilities, agriculture, education, health and social security as well as a whole range of other services.

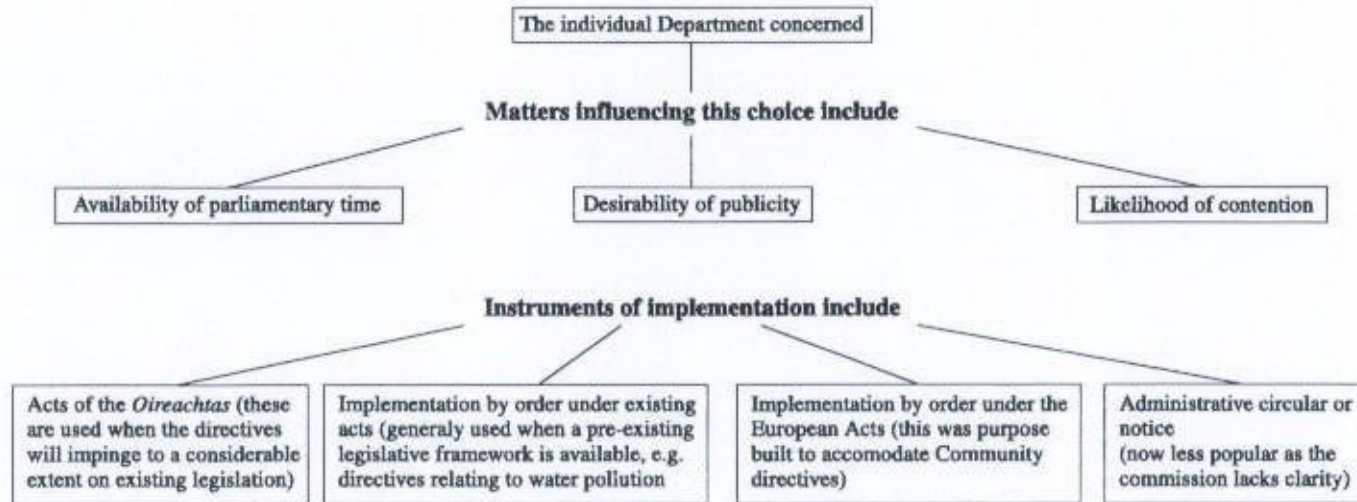
As a result of the proposals formulated by a special subcommission of the Cabinet established in April 1990, the government has decided to establish 8 regional authorities with the aim of promoting the coordination of public services at both the local and national level within the respective areas.







After the Directive is adopted  
The decision on how the Directive should be adopted is taken by





- \* Within the Irish system, the executive power of the State is vested in a Government of 15 ministries each of which, except for in exceptional circumstances, has charge of one or more departments of State.

When Ireland joined the Community, it was decided not to set up a separate department specializing in Community affairs, but to integrate Community work with other activities of existing departments so that staff in any area should be automatically aware of the EC dimension of their work.

This explains the important role allocated to the Department for Foreign Affairs.

A committee chaired by a junior minister in the *Taoiseach* department was established to ensure a coordinated approach to major issues.

Until the functions of the *Dail* were subsumed by a new parliamentary committee on foreign affairs, the *Oireachtas* Committee on EC Secondary Legislation was likely to be informed of prospective developments of a directive. Its subcommittees were briefed by the officials involved and their evaluation was matched against that of interest groups. This process could lead to suggestions from the abovementioned committee as to the stance to be taken. While such suggestions had no binding force, they could cause a department to review its position or, more probably, influence the briefing and strategy of the public servants involved in working parties.

The *Oireachtas* Committee on EC Secondary Legislation regularly receives reports on the implementation of Community legislation and can draw the attention of the *Oireachtas* or of the public to any deficiencies observed in this area.

## h) ITALY

### aa) State and Administrative Organization

The Constitution of the Republic of Italy, approved on 22 December 1947 by the constituent Assembly, proclaimed the Italian Democratic Republic, founded on labour (Art. 1)

In accordance with the Constitution, the Italian Republic is a unitarian State (Italy is one and indivisible) but recognizes and favours local autonomies by realizing the greatest administrative decentralization possible and by adapting the principles and methods of its legislation to the demands of the autonomy and the decentralization (Art. 5).

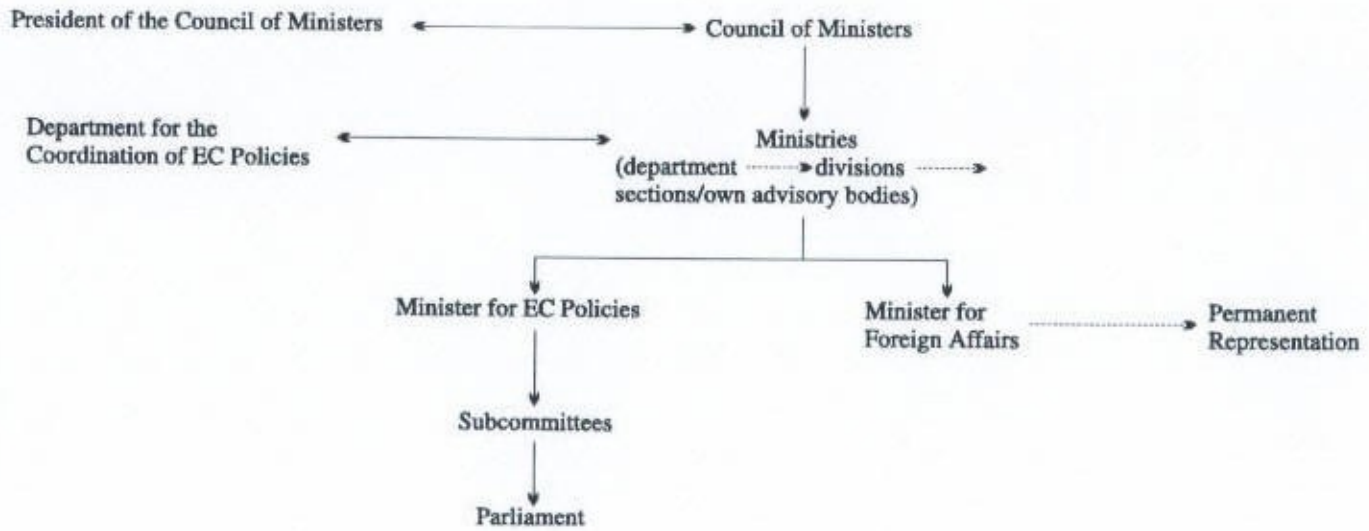
Italy is divided into 20 Regions. Five (Sicily, Sardinia, Trentino-Alto Adige, Friuli-Venezia-Giulia and Val d'Aosta) have 'special status'. Every five years each Region elects by universal suffrage a Regional Council which exercises the legislative and regulatory powers granted to the Region. The *Giunta* is the executive body of the Region.

At State level legislative power is exercised by the bicameral Parliament, which is elected by universal suffrage every five years (but subject to dissolution) on the basis of a uninominal system with a small proportional correction for the Chamber of Deputies. The two Houses have equivalent powers.

The President of the Republic (Constitutional Head of State) is elected for seven years by an electoral college formed by the two Houses of Parliament and the 58 regional representatives.

Executive power is exercised by the Council of Ministers. The Prime Minister is appointed by the President. The Council is responsible to the Parliament.

bb) Organogram of Procedures (Italy)\*





- \* The Council of Ministers and the President of the Council can promote initiatives.

The President has an *ad hoc* department of the Presidency, the Department for Community Policies, which is intended to implement and coordinate Community policies and to assist with the definition and legislative expression of such policies.

The Ministry for Foreign Affairs harmonizes national requirements with international policy and the Department for Community Policies takes into account the national requirements of the administrations. The Minister for Community Policies has also to check on the conformity of domestic legislation with Community legislation. It can rely on subcommittees for specific problems and for periodic reports to be sent to the Parliament.

Contacts with the Permanent Representation in Brussels take place by way of the Ministry for Foreign Affairs.

The Government sends half-yearly reports to the Parliament on the participation of Italy in the Community legislative process. Ministers are responsible to Parliament.

## i) LUXEMBOURG

### aa) State and Administrative Organization

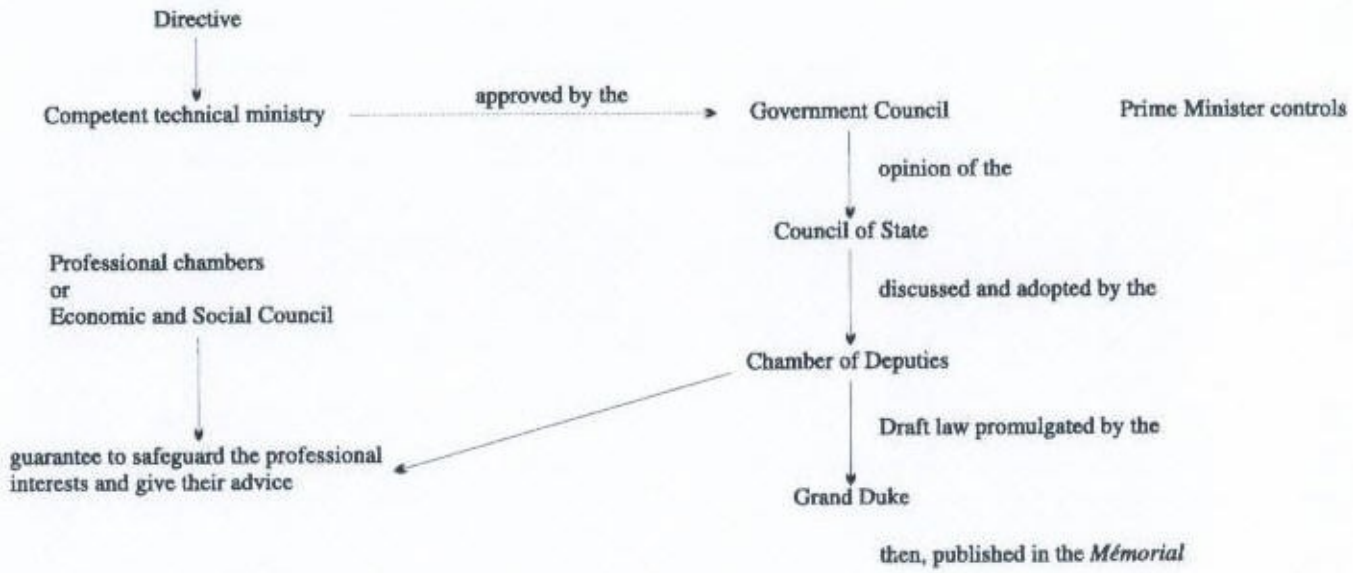
Luxembourg is a unicameral parliamentary democracy.

The Grand Duke observes the laws and the Constitution of the Grand Duchy of Luxembourg. The Constitution governs the political, administrative and legal life of the country.

Luxembourg is an hereditary constitutional monarchy with a democratic regime and a unicameral system, offset by the presence of a *Conseil d'Etat* whose opinion must always be obtained but which can only ask for a second reading and cannot block the legislative system.

Together with the Chamber of Deputies, the Grand Duke adopts laws as well as international treaties.

The Grand Duke may be empowered by law to act in certain fields and for a specific period of time for the purpose of taking measures (e.g., the Act enabling the transposition of Community acts, economic laws, etc.). The Grand Duke may not act without countersignature.





- \* In the Grand Duchy of Luxembourg the work on implementing Community legislation is characterized by the flexibility with which it is carried out. This approach is reason for the relatively modest size of the institutions concerned and the low staffing levels.

In Luxembourg, transposition takes place either by legislative procedure or by way of regulations. The Ministry for Foreign Affairs is responsible for coordination between ministerial departments in the sphere of relations with the European Economic Community. The Ministry of State has instructed its Central Legislation Department, through which all legislation or regulations have to go, to draw up a special inventory of draft laws and Grand-Ducal regulations transposing Community directives. The Central Legislation Department specifies which directive is transposed by law or by Grand-Ducal regulation.

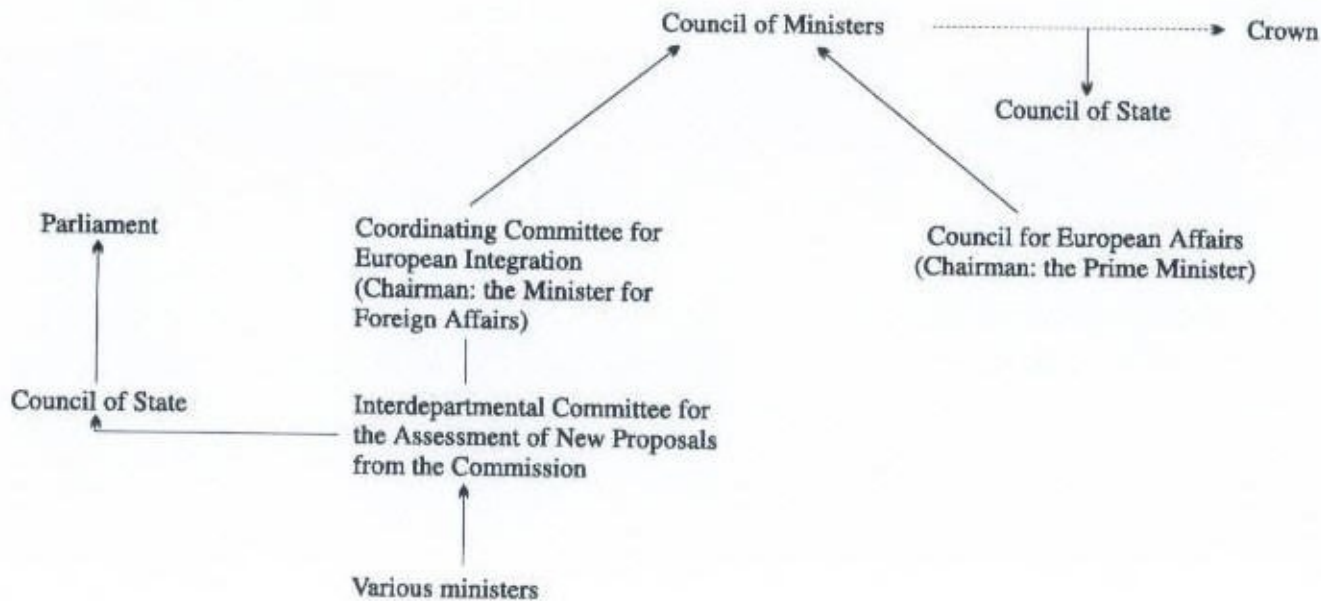
However, recourse to regulations is often possible in order to transpose a Community directive, in cases in which the directive relates to a matter which is already covered by a previous Luxembourg law in so far as transposition does not affect its essential provisions.

## **j) THE NETHERLANDS**

### **aa) State-controlled and Administrative Organization**

The Netherlands is a constitutional monarchy and subject to the principle of a parliamentary democracy. The structure of the administration is determined by the principle of the decentralized unitary state. The public authorities express themselves at three distinct levels: the State administration, the provincial administration and local administration. The administration of the State is governed by the Government, which is composed of the ministers and the King. All ministers are members of the Council of Ministers over which the Prime Minister presides. Each minister assumes responsibility for his/her own portfolio of activities. The provincial and local administrations are subject to the control of the State, but possess discretionary power: the Government introduces the framework legislation to be subsequently formulated further by the local administrations. In this way these local administrations contribute to a large extent to the development of administrative law.

bb) Organogram of Procedures (The Netherlands)\*





- \* In the Netherlands, the important decisions are taken by the Council of Ministers. However, there are various steps which precede this stage of the discussion.

During the formulation of The Netherlands' position on a Community proposal, the following procedure should be followed:

Firstly, the formulation of this position is prepared by (inter)departmental coordination committees. For Community issues, preparation is entrusted to the Committee for European Integration and Association Problems (CoCo). Among the Cabinet subcommittees, the most important in this context is the Council for European Affairs which is responsible for the preparation of Community policies. The conclusions of the subcommittee(s) and (inter)departmental coordination committees are discussed within the Council of Ministers.

The adoption of a law requires the following procedure:

The preparatory phase is carried out within the ministries. The officials in the various ministerial departments consult the interest groups and consultative councils in order to obtain their opinion. At the end of these consultations the draft law is discussed in the 'departmental porches', such as the interdepartmental Committee on the assessment of new proposals by the EC Commission and the Committee for European Integration and Association Problems (CoCo). Subsequently, new consultation takes place given that the Constitution stipulates that the Council of State must be heard before the draft laws are presented to the Parliament.

## **k) PORTUGAL**

### **aa) State and Administrative Organization**

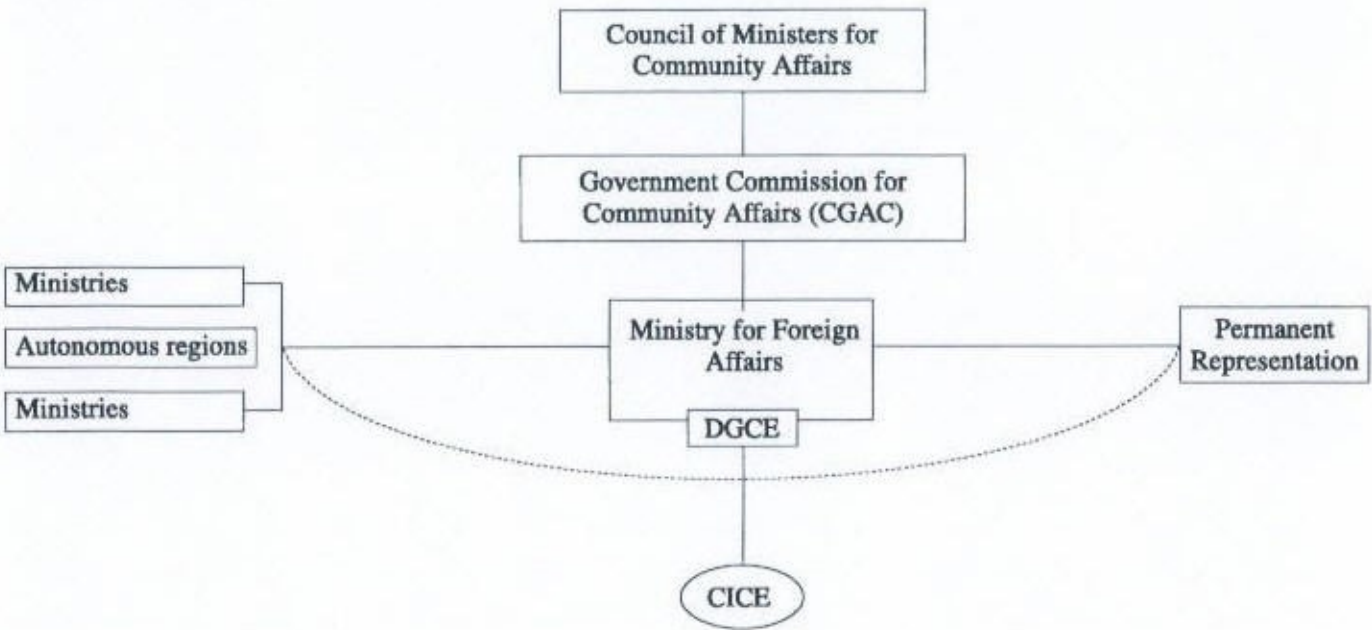
Portugal is a semi-presidential democracy based on a decentralized administrative system.

As a result, the public administration is structured on two levels: central and local. Between them are two autonomous regions.

Currently the local administration comprises municipalities (305) and parishes (4135). The Constitution provides for the institution of administrative regions, but this has not taken place yet. A law along these lines does exist but still has to be approved. These local authorities have a certain amount of financial autonomy and are responsible for the public services and the activities relating to their own development.

The two autonomous regions of the Azores and Madeira have political, legislative and administrative powers, and they have their own governmental bodies.

Nevertheless, the degree of decentralization not among the highest: the powers and responsibilities of the regional authorities are not very extensive, except for the two autonomous regions, and as long as the administrative regions have not been created.





- \* As regards the preparation of Community decisions in Portugal, it is the Government which has the most important role. The Parliament's participation is small, despite the existence of provisions with a view to securing mutual information and institutional cooperation between the Government and the Parliament (principle recently inscribed in the Constitution). The infra-State authorities play a minor role with the exception of the autonomous regions. The participation of individuals (organizations representing economic and social groups) is frequent but has not been institutionalized.

The decision-making procedures are centralized. The minister involved takes the initiative, at least when the matter does not involve various sectors of the administration, in which case interministerial structures are used.

Technical coordination is the responsibility of the Intergovernment Commission for the European Communities (CICE) which defines the policy guidelines to be followed when it appears necessary to coordinate the negotiation positions while taking into account the positions of the economic and social partners. This body is chaired by the State-Secretary for European Integration and its membership includes, not only the Director-General for the EC and the Permanent Representative, but also representatives of the ministries (of the cabinets for European integration of their ministries) and the autonomous regions. It meets weekly.

At higher level there is a Government Commission for Community Affairs (CGAC). This is a body for political coordination responsible for the preparation of dossiers to be submitted to the Council of Ministers for Community Affairs. It meets, under the chairmanship of the Minister for Foreign Affairs, and gathers together the State-Secretaries representing the ministries and a member of the Prime Minister's Private Office. It meets every two weeks.

Decision-making at highest level belongs to the Council of Ministers for Community Affairs. This Council has to lay down the broad policy guidelines and ensure overall political coordination. It is chaired by the Prime Minister and gathers together all the Ministers, the Ministers of the autonomous regions and the State Secretary for European Integration. It meets monthly.

The Directorate-General for the European Communities (DGCE) (service of the Minister for Foreign Affairs) with the functions of secretariat. This is the administrative support structure of the CICE. It is responsible for the circulation of information and instructions for the Permanent Representation.

The Permanent Representation is responsible for promoting and defending the national position within the Community institutions. It relies on the Ministry for Foreign Affairs.

When an essential interest of the State is at stake, there is – and this is normal – anticipation of the Portuguese administration in relation to the piece of Community legislation. In addition, one observes a reactive attitude on the part of the Portuguese administration.

Moreover, as regards the implementation of Community decisions, while the implementation always appears to be simply executive in nature, it can require action of the State at legislative level. In this case, it poses the question of knowing whether the competence for approving the implementation measures will resort to

the government or to the Assembly.

If it does not contain an item of legislative nature, it is the responsibility of the Government, that is to say to the sectoral ministries, to take the necessary measures, however under the coordination of the CICE. The Legal Service of the DGCE must follow up the implementation of Community decisions.

Organogram:

M = Ministries

RA = Autonomous regions

DGCE = Directorate-General of the European Communities

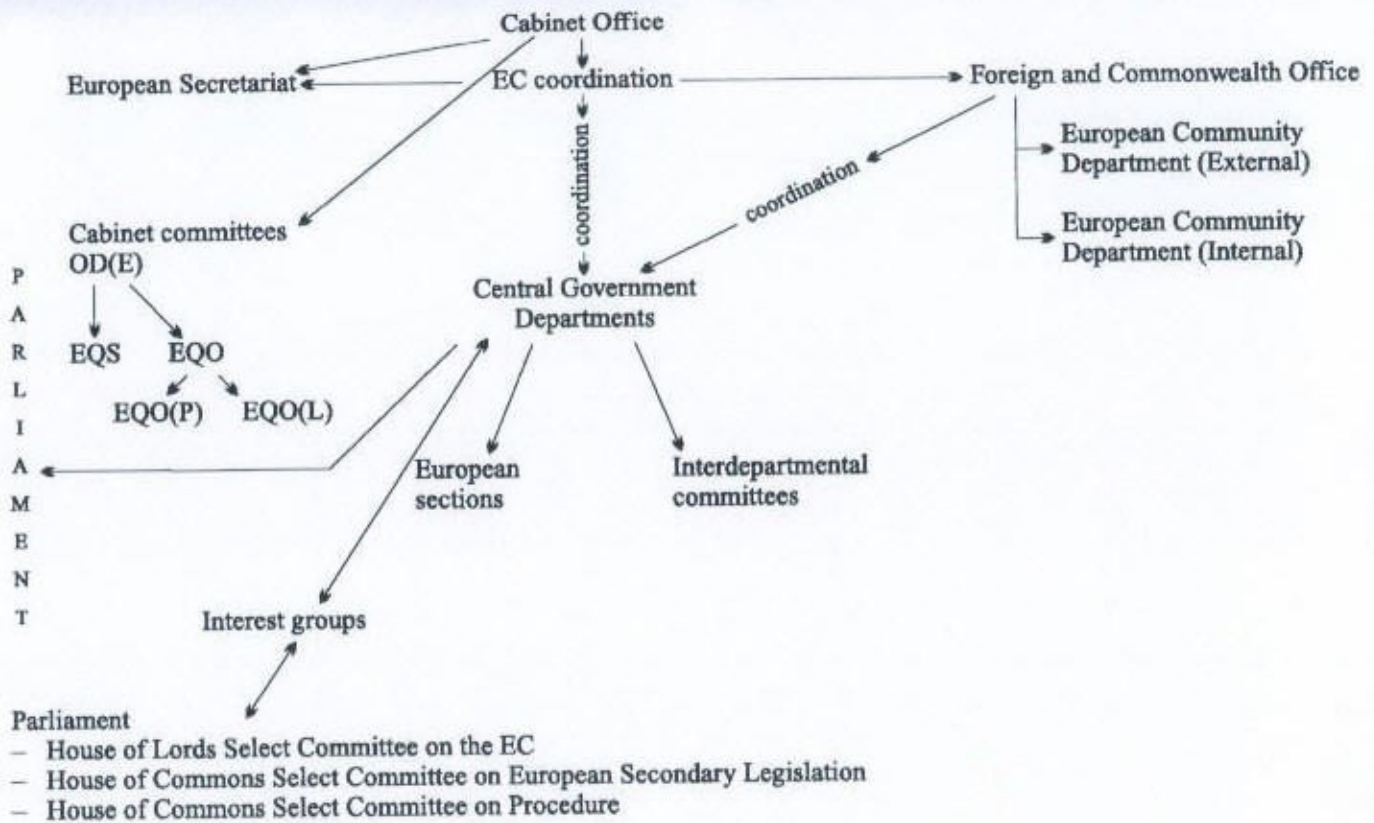
CICE = Intergovernment Commission for the European Communities

## **1) THE UNITED KINGDOM**

### **aa) State and Administrative Organization**

The United Kingdom is a constitutional monarchy. The British Constitution is unitary in the sense that it is applicable to a Union consisting of England, Wales, Scotland and Northern Ireland, as opposed to a federal system, and it is centralized. The local authorities only possess legislative powers which have been conferred upon them by the Parliament and are subject to central-government control as well as to judiciary control. Contrary to the Constitutions of the other Member States, the British Constitution is not written and is flexible. It relies on a tradition of common law as well as the legislative precedence (or sovereignty) of Parliament; essentially, the doctrine followed – called into question by the accession to the EC – is that there is no superior law which can be binding upon Parliament and that no Parliament can be binding upon its successors. The Treaties must be integrated into municipal law. The EC Treaties and the provisions of Community law which are directly effective or applicable have therefore been brought into force in the United Kingdom by an Act of Parliament. The control of the executive and the coordination of the different departments are the responsibility of the Cabinet whose members are both individually and collectively responsible before the Crown and the Parliament, supported by the Cabinet Office which plays a key role in the coordination of policies in the United Kingdom.





\* Coordination of general policies by the Cabinet Office and the Foreign and Commonwealth Office

The principle organizational units in the decision-making process of the British Government are the central departments which are headed by politically appointed ministers and staffed by permanent officials. They are coordinated by the Cabinet Office and the Foreign and Commonwealth Office. Many departments have set up European Sections dealing with Community affairs. Moreover, interdepartmental committees have also been established for the purpose of discussing issues involving more than one department.

Coordination of EC policies by the European Secretariat of the Cabinet Office and the Foreign and Commonwealth Office.

The Cabinet Office has set up a European Secretariat (composed of civil servants from other departments). This Secretariat, together with the Foreign and Commonwealth Office, coordinates the UK's Community-related policy.

The Cabinet Office presides over a large network of Cabinet committees which are responsible for decision-making, policy coordination and legislation on important issues. Routine EC policy coordination is entrusted to a high-powered Cabinet Committee, OD(E), chaired by the Foreign Secretary and including about half of all Cabinet ministers. This Committee comprises two other official committees, the EQS and EQO (themselves divided into the EQO(P) and EQO(L)) which deal with European issues.

The Foreign and Commonwealth Office has two European Community Departments; one EC Department is responsible for external policies and another EC Department is responsible for internal EC policies.

The Government transmits information relating to Community affairs to Parliament. It should be noted that the Government is, in principle, accountable to Parliament for its actions in Community matters.

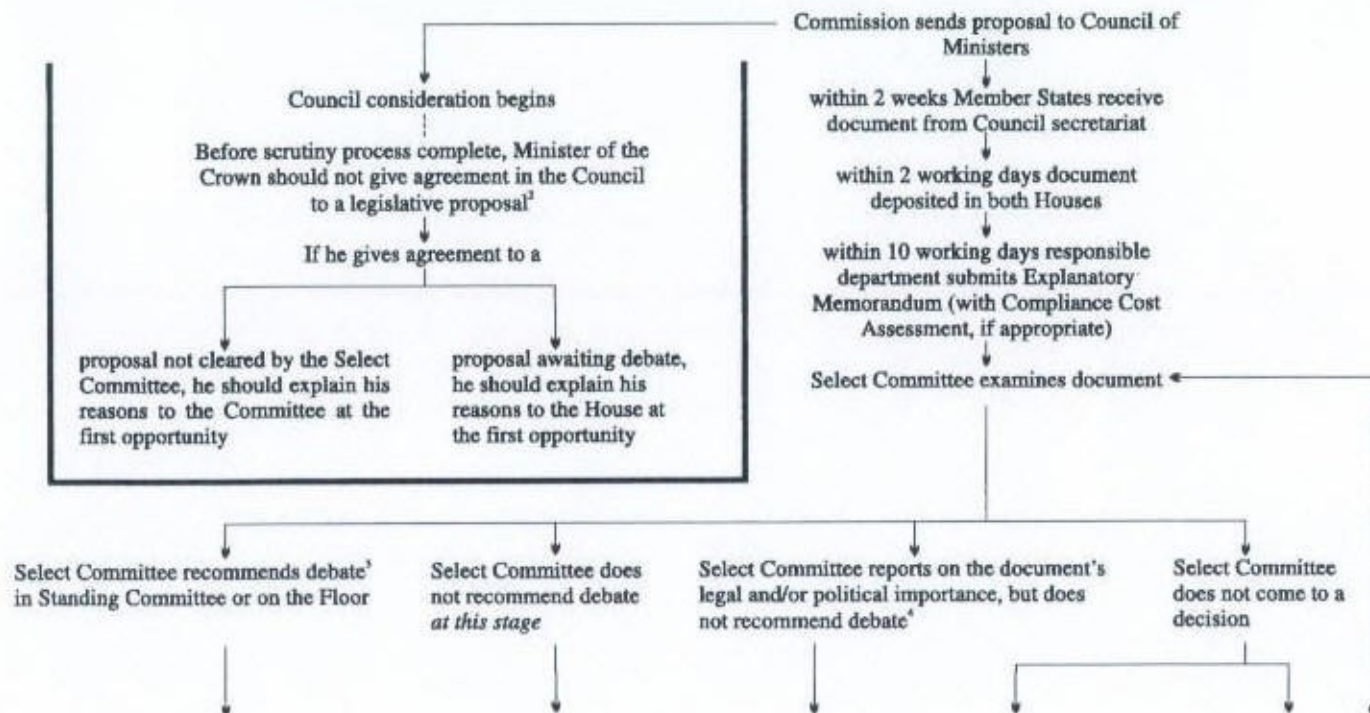
The Parliament's European Committees examine the Community proposals.

The central departments maintain working relations ('policy networks') with the interest groups. These groups also provide the Parliament's Committees with evidence.

Given the particular interest produced by the system of parliamentary control in Great Britain, we have included a table on 'The Houses' Consideration of the Community Legislation Documents', designed and presented by Mr Robert Roberts, Clerk at the House of Commons Select Committee on European Legislation, on the occasion of the seminar 'The Changing Role of Parliaments in the European Union', organized by EIPA, Maastricht, on 6-7 June 1994.

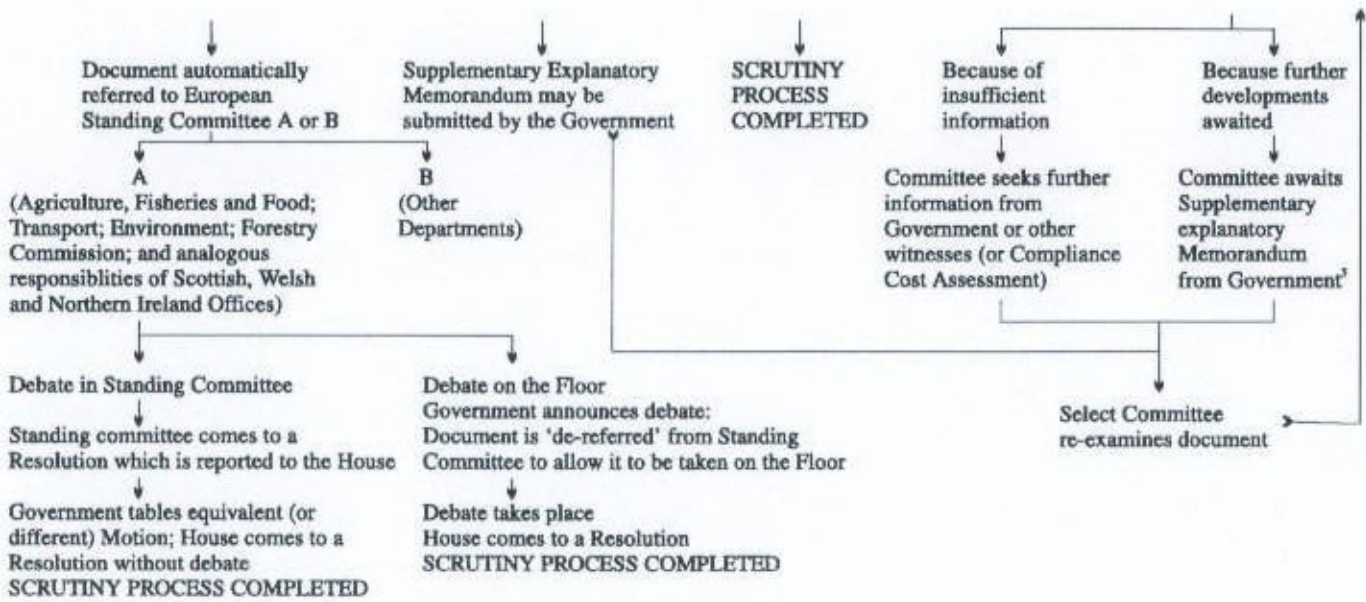
## The Houses' Consideration of Community Legislative Documents<sup>1</sup>

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- 1 And other 'European Community documents' as defined in Standing Order No. 127
- 2 Unless he considers that it is confidential, routine or trivial or substantially the same as a proposal on which Scrutiny has been completed
- 3 The Select Committee may indicate that agreement need not be withheld pending consideration
- 4 The Select Committee may decide that a document should be 'tagged' as relevant to a particular debate. This does not affect the Scrutiny process, but gives the House a further opportunity for consideration of a subject
- 5 If a (further) Supplementary Explanatory Memorandum is submitted by the Government before the debate, the Select Committee will normally examine and report on it before the debate

## 6. Towards a Europe of Administrations

On reading the preceding section, it can be observed that the constitutional-administrative map of the Member States varies from one extreme to the other: federal systems, centralized unitary systems, constitutional monarchies and parliamentary republics. This observation also applies to the administrative procedures for the preparation and implementation of Community decisions as well as to the departments responsible for them. Sometimes these are foreign ministries or sometimes economic ministries or the council of the government or sometimes ministries or committees for Community affairs. On the one hand, one encounters more coordinated systems at the highest level and, on the other hand, decentralized systems at ministerial level. In addition, although the democratic values are the common denominator, it should be noted that there is a complete absence (with the exception of Denmark and to a certain extent the United Kingdom) of national parliaments. It can be concluded from this that there is a lack of reciprocal knowledge of the homologous actors, ignorance of the procedural channels and, hence, a lack of communication, while the Community cause is increasingly dependent on the national and Community administrations. Thus, the all important question: how can one manage Community policies in a heterogeneity as chaotic as the 12 administrations (structures – procedures) of the Member States? No mention has been made of the non-transparency of Community activity, an additional barrier which we are currently trying to break down by way of action aimed at 'administrative simplification'.<sup>10</sup>

Moreover, the possibility of each organization participating in this process, that is to say the development of sufficient capacities in each State, is an element of the interorganizational coordination which is a prerequisite for stable relations. If confidence in the system rests with the capacities of the Member States to participate in formulating policies and implementing regulations, how can one guarantee Community coordination, given the significant disparities observed between the Member States in this regard.

Is the system viable if the quality of certain components of the administrative system is insufficient? If the partnership model for integration is accompanied by an increase in multilateral relations, how can one guarantee coherence between the various networks? How can the transparency of this multitude of relationships still be preserved? What will be the position of the Commission in the development of these relations? What are the conditions which dictate the choice of one form of network rather than another? All these questions show the need for better understanding of the process of development, stabilization and management of the networks between the

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<sup>10</sup> See, among others, SEC(92) 1867 final, 27.10.1992 and COM (92) 448 final, 4.11.1992.



Member States. An initial answer to this question can only be attempted in relation to the Internal Market; it is now that the real management has begun. So of the 282 measures listed in the White Paper, the Council adopted 265 before the end of 1993 (95%), 263 of which are currently in force (93%). However, of the 222 requiring transposition measures at national level, only half have been transposed throughout the Community. The analysis of the situation has shown that national performances vary from one Member State to the other. Denmark, followed by the United Kingdom, head the list; Portugal has maintained a steady pace of transposition, but Germany, Spain and Ireland have not been able to keep to the necessary pace; as to Greece and The Netherlands they are in keeping with the Community average.<sup>11</sup> Such was the transposition order at the end of 1993. Therefore, while the adoption and transposition of directives is proving to be a difficult but manageable task, the uniform and correct application of relevant legislation will no doubt come up against the mosaic of the national organograms. Strictly speaking, each Community policy requires in principle *ad hoc* management, guaranteed by special mechanisms. Consequently, the creation of a European administrative area, of which the Commission would be the central link, seems as desirable as it is inevitable.<sup>12</sup> It is in a similar context that in 1990 the Commission set up a group of high officials of the national administrations, referred to as 'national coordinators' for the Internal Market, and these have been institutionalized in the meantime under the name 'Advisory Committee for coordination in the Internal Market field'.<sup>13</sup> The same applies to the Enterprise Consultation Committee established in February 1993, composed of representatives of all levels of the business sector, under the chairmanship of the European Commissioner responsible for indirect taxation, with the aim to bring about direct dialogue on questions linked to the functioning of the transitory VAT system and on excise duties,<sup>14</sup> as well as to the Advisory Committee on Customs and Indirect Taxation with 19 members representing the professional bodies.<sup>15</sup> In fact, it is not only necessary to reinforce the relations between the administrative systems (the administrations of the Member States as well as that of the Commission), but also the components of these systems. The Member States and the Commission must be capable of managing the growth in external relations. If these capacities are not developed in parallel with integration, there is a risk that this will lead to a

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11 The Internal Market of the Community, Annual Report 1993, European Commission, Office of Official Publications of the EU, 1994, p. XIII, 17.

12 See S. Pappas, 'La bureaucratie bruxelloise, mosaïque composite', in: François Feron and Armelle Thoraval (eds), *L'Etat de l'Europe*, Paris, édition La Découverte, 1992, p. 457.

13 Decision 93/72/EEC of 23.12.92.

14 See above 'The Internal Market of the Community, Annual Report', op. cit., 23.

15 Decision 91/453/EEC of 30.07.1991.



situation of fragmentation, slow decision-making processes, internal conflicts and imperfect implementation. Moreover, the national administrations must establish close links with their 'clients' in order to represent national interests. This is why it is just as important to develop and reinforce the internal management of the Member States and of the Commission as it is to develop and reinforce relations between the administrations and their 'clients'. Administrative development should not exclude any of these areas. It is unlikely that the development of relations between Member States will lead to a more effective European administrative system if the internal management of the Member States is not consequently adapted.<sup>16</sup>

Thus the necessity to widen and deepen the abovementioned considerations in order to allow the national and Community administrations to orient themselves according to a model which corresponds to both their national characteristics and to the needs of Community management. In fact, it is not incompatible to wish to bring together the administrations of the Member States and, at the same time, preserve their national identities (Art. F(1) of the Treaty on the European Union). Is it not in fact time to examine the guarantees required to preserve them? It is precisely here that we find another springboard for reflection in relation to the national parliaments. Is it not necessary to involve them actively in the Community decision-making process, whether this is a minimalist approach according to the British model (control activity *ex posteriori*) or whether this is a maximalist approach according to the Danish model (mandatory activity *ex ante*). In this case, all the literature on the democratic deficit would be reduced considerably, while we would in this way avoid the European Parliament having ascendancy over the national parliaments. From the point of view of the principle of subsidiarity, all these questions could lead to the holistic solutions of a global interstate and interinstitutional partnership. Article N(2) of the Treaty on the European Union, which provides for a conference of representatives of the governments of the Member States in 1996 in accordance with the objectives stated in Articles A and B of the Community Provisions (where, under B, the maintenance and the building of the *acquis communautaire* 'with a view to considering, through the procedure referred to in Article N(2), to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and institutions of the Community'), is the major challenge for the adaptation of the system to the realities of its implementation.

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16 See the contribution of EIPA to the considerations on the reinforcement of Internal Market effectiveness (COM (93)256) of 13 September 1993.