

# ZMENY ROZHODOVACÍCH PROCEDUR EU V REFORMNEJ ZMLUVE

## CHANGES IN THE DECISION-MAKING PROCEDURES OF THE EU IN THE REFORM TREATY

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### **Abstrakt**

V roku 2003 vznikol ambiciózny projekt Ústavnej zmluvy, ktorý mal za cieľ revidovať primárne právo EÚ. Neúspech ratifikačného procesu znamenal pre EÚ začiatok obdobia reflexie, kedy bolo intenzívne hľadané východisko z nastanuvšej krízy. Dohoda o novej Reformnej zmluve bola nakoniec prijatá na zasadaní Európskej rady v Lisabone 18. - 19. októbra 2007. Zmeny, ktoré prináša táto zmluva v oblasti rozhodovacích procesov budú preskúmané v tomto príspevku. Keďže tieto zmeny by mali byť chápané v širšom kontexte, príspevok sa venuje v jeho prvej časti identifikácii najvýznamnejších zmien v inštitucionálnom usporiadaní a práve únie. V druhej časti sú predstavené najdôležitejšie zmeny v legislatívnych postupoch, zahŕňajúce nielen nové delenie na všeobecný a špeciálny legislatívny postup, ale aj redefiníciu aplikačného rámca procedúr. Zmeny spočívajúce v rozšírení aplikácie všeobecného legislatívneho postupu, spolu so zmenami väčšinového hlasovania v Rade ministrov, zmenami v rozpočtovej procedure a kontrolných právomociach Európskeho parlamentu v oblasti komitológie predstavujú významný posun k nadnárodnému modelu prijímania rozhodnutí a predstavujú pre Európsky parlament významný zdroj nových právomocí a významu.

## **Kľúčové slová**

Európska únia - Reformy primárneho práva – Reformná zmluva – Rozhodovacie procesy – Legislatívne postupy – Kvalifikovaná väčšina – Rozpočtová procedúra – Komitológia – Inštitúcie

## **Abstract**

In the 2003 an ambitious project of the European Constitution was started with a view to revise the primary law of the EU. However, failure in ratification process has marked a formal end to this project. The EU had turned into so-called “reflection period”, during which a solution of the crisis was intensely sought. At the meeting of the European Council, on 18-19 October 2007, a deal on new treaty reform was found. In this paper, the changes brought by the so-called Reform to the decision-making processes will be explained. Since these changes shall be understood in the complex context, the paper deals in its first part with the identification of the most important general changes to the institutional design and law of the Union. In the second part, important changes in the legislative procedures the Reform treaty brings are introduced. These include not only introducing a new general distinction to ordinary and special legislative procedure, but also redefining the scopes of the procedures. Widening of the scope of the ordinary legislative procedure, together with extension and redefinition of qualified majority voting in the Council, and with the changes in the budgetary procedure and amendments to the oversight capacities of the European parliament in the comitology procedures can be perceived as a significant shift to supranational decision-making and bestowing the European parliament with new powers and significance.

## **Keywords**

European Union - Reforms of the primary law – Reform treaty – Decision-making procedures – Legislative procedures – Qualified majority - Budgetary procedure – Comitology - Institutions

## **1. Introduction**

In the 2003 an ambitious project of the so-called European Constitution was started. The European Union (EU) would have got a “proper” fundamental treaty, introducing many changes in its institutional design, decision-making processes and policies. However, failure

in ratification process has marked a formal end to this project. The EU turned into so-called “reflection period”, during which a solution of the crisis was intensely sought.

At the meeting of the European Council on 21-23 June 2007, German presidency presented a new draft treaty that whilst being very different in nature, preserved almost all of the changes previously proposed by the Constitution.<sup>1</sup> After convening the Intergovernmental conference, the text of so-called Reform treaty (Treaty amending the Treaty on European Union and the Treaty establishing the European Community)<sup>2</sup> was approved at the meeting of the European Council on 18-19 October 2007. Although this text is to be formally signed in December 2007 and the ratification process is to be held with the view of treaty's coming into effect in early 2009, it is worth to examine the provisions of the new treaty as early as now. In this paper, the changes brought by the Treaty to the decision-making processes<sup>3</sup> will be explained. Since these changes shall be understood in the complex context, the paper commences in its first part with the identification of the most important general changes to the institutional design and law of the Union.<sup>4</sup>

## **2. The main general changes brought by the Reform treaty**

The new treaty will bring many fundamental changes to the current primary law. It affects each article of the current Treaty on European Union (TEU) and makes 296 amendments to the current Treaty establishing the European Community (TEC). It also affects most of the current protocols to the Treaties as well as many articles of the Treaty establishing the

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<sup>1</sup> The Reform treaty takes up the main institutional changes proposed by the draft EU Constitution. However, the Constitution attempted to replace all earlier EU treaties and to create an entirely new legal order for the EU, sweeping away earlier treaties, whereas the Reform Treaty merely amends them. Reform treaty also drops all reference to the symbols of the EU, constitution's preamble and part of an article on the principles of the union. The text of the Charter of Fundamental Rights is relegated to an annex. In addition, some countries have negotiated new opt-outs. See e.g. House of Commons. *European Scrutiny Committee European Union Intergovernmental Conference*. Available at [online] <http://www.publications.parliament.uk/pa/cm/cmeuleg.htm>.

<sup>2</sup> Full text of Reform treaty is available at [http://www.consilium.europa.eu/cms3\\_fo/showPage.asp?id=1317&lang=en&mode=g](http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=1317&lang=en&mode=g). The name „Reform treaty“ is in the time of writing most used one for this treaty. Consequently, it is used throughout the paper. However, it can be envisaged, that the treaty will be renamed, in the lines of the current practice, to the „Lisbon treaty“.

<sup>3</sup> Under the notion „decision-making processes“ are meant procedures for adoption of legislative and non-legislative acts of the Union, as well as the budgetary procedure.

<sup>4</sup> Terminology of the Reform treaty is used preferably throughout the whole paper. This inter alia means references to the Union, rather than Community law.

European Atomic Energy Community. Finally, it adds a number of new Protocols and Declarations to the Treaties.<sup>5</sup>

To commence with changes, it should be noted that European Community will be renamed to the European Union.<sup>6</sup> Consequently, Treaty establishing the European Community (TEC), to which articles in the Treaty establishing the European Union sometimes refer, will be renamed to the ‘Treaty on the Functioning of the European Union’ (TFEU)<sup>7</sup> by the art. 2 Reform Treaty. Also, the relationship between these two treaties will be substantially altered – it will become much closer (art. 39 TEU and art. 1 TFEU). This will mean another very important change – the current pillar structure will be abolished. Most importantly, the current ‘third pillar’ (policing and criminal law) will be moved to the TEC/TFEU.

The EU will also acquire legal personality (art. 1 and 32 TEU), modified objectives (art. 3 TEU) and values (art. 2 TEU). Basic rules on EU’s competences (art. 5 TEU) have been established, together with amendments to the rules on relations between the EU and its Member States (art. 4 TEU). The Union shall have exclusive competence in the areas of the customs union, establishment of the competition rules necessary for the functioning of the internal market, monetary policy for so-called euro-group, the conservation of marine biological resources under common fisheries policy and common commercial policy. It shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to exercise its internal competence (art. 3 TFEU). Other competences shall be shared or supporting.<sup>8</sup>

Quite significant changes in the area of human rights are introduced - the EU Charter of Rights becomes binding and the EU has an obligation to accede to the European Convention

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<sup>5</sup> For this high number of changes, not all of them will be explicitly mentioned in this paper. The analysis will focus only on the major ones. For the complete list see Peers, S. *Statewatch analysis 3: EU reform treaty. Analysis of the amended text of the draft reform treaty*. Available at [online] <http://www.statewatch.org/news/2007/aug/eu-reform-treaty-texts-analyses.htm>, cit. 18<sup>th</sup> October, 2007.

<sup>6</sup> There are also other changes in the terminology: co-decision procedure will be renamed to the „ordinary legislative procedure“; the common market will be replaced by „internal market“; obsolete references to the ECU will be replaced by „euro“; the Court of Justice will be renamed to the „Court of Justice of the European Union“, the Court of First instance to the „General Court“ and judicial panels to the „specialized courts“. Also references to the qualified majority vote in the Council will be deleted, as this method becomes the ordinary method of decision-taking. See art. 2(3) of the Reform treaty.

<sup>7</sup> All references made to the TEU or TFEU are to the version amended by the Reform treaty; references to the eventual other versions of the primary law will be clearly indicated.

<sup>8</sup> For details, see articles 4-6 TFEU.

on Human Rights (art. 6 TEU). Also, new provisions on the democratic foundations of the EU are enacted (art. 8, 8a and 8b TEU).

A new clause on the role of national parliaments will be introduced. EU institutions will be obliged to notify national parliaments of proposed legislation and national parliaments will be given a chance to challenge legislation (art. 8c TEU).<sup>9</sup>

There are also changes in the institutional design of the Union issues:

- The total maximum number of members which can be elected to the EP (hereinafter: “EP”) is set to 750 + president of the EP, and there are minimum and maximum numbers of MEPs for Member States (art. 9a TEU).<sup>10</sup>
- The European Council becomes an institution, with a full-time President (art. 9c TEU). The president shall be elected by qualified majority vote for the term of two and half years (once renewable). However, its competences are rather limited, not including any executive competences.<sup>11</sup>
- The voting rules for the Council are amended, the Council must meet in public when adopting or discussing legislation, and the Council has a team presidency consisting of three member states (art. 9c TEU).
- The number of Commissioners, and the procedure for appointment, are amended (art. 9d TEU).<sup>12</sup>
- A new post of High representative of the Union for Foreign Affairs and Security Policy is introduced. The representative shall be one of the vice-presidents of the Commission, shall preside over the Foreign affairs council and shall conduct Union’s common foreign and security and also defense policy (art. 9e TEU).

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<sup>9</sup> If a third of them object to a proposal, the Commission has to consider whether to maintain, amend or withdraw it. But if it decides to maintain it, the national parliaments have no comeback. The treaty does, however, also introduce more powerful tool: if a majority of national parliaments object, and the commission still wants to press ahead with its proposal, the EP, and the Council come up with a decision.

<sup>10</sup> Each country shall be represented by minimum of 6 and maximum of 96 MEPs.

<sup>11</sup> See art. 9b TEU

<sup>12</sup> As from November 1st, 2014, the Commission shall consist of a number of members corresponding to the two thirds of the number of Member States. The election procedure has been changed to a more complex one, introducing inclusion of the European Council, the Council and the EP. See art. 9d TEU.

### **3. Changes in decision-making processes**

The Reform treaty brings about detailed new rules on decision making procedures. In this part of the paper, the following four issues will be shortly examined and analyzed:

- Decision-making in the Council;
- Changes in the legislative procedures;
- Changes in the budgetary procedure and
- Changes in the regulation of so-called comitology.

#### ***3.1 Decision-making in the Council***

Qualified majority voting is defined as a default decision-making procedure in the Council. Not only it is extended to new areas,<sup>13</sup> but also, new definition of the qualified majority is provided:

1. A qualified majority shall be defined as (i) at least 55 % of the members of the Council, (ii) comprising at least fifteen of them and (iii) representing Member States comprising at least 65 % of the population of the Union. A blocking minority must include at least four Council members (art. 9c TEU).
2. Where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72 % of the members of the Council, representing Member States comprising at least 65 % of the population of the Union (art. 205 TFEU).
3. In cases where not all the members of the Council participate in voting, a qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States. A blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member. Where the Council does not act on a proposal from the

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<sup>13</sup> The Reform treaty extends majority voting to 50 new areas, most notably concerning cooperation on fighting terrorism, crime and immigration. See Peers, S. *Statewatch analysis 3: EU reform treaty. Analysis of the amended text of the draft reform treaty*. Available at [online] <http://www.statewatch.org/news/2007/aug/eu-reform-treaty-texts-analyses.htm>, cit. 18<sup>th</sup> October, 2007.

Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

These provisions apply as from 1 November 2014. Three-step approach is applied and also the threshold necessary to pass the decisions is lowered, which can be seen as a move towards more democratic and smooth decision-making.

### ***3.2 Legislative procedures***

As for legislative procedures, significant changes have been introduced. Other procedures than co-decision procedure were renamed to the special legislative procedure. Under this procedure, the initiative role of the Commission is not explicitly mentioned in the text of the art. 249a TFEU.

- Assent procedure is renamed to the “consent “, some slight changes apply to its scope – it is applied on the art. 69i(1), 190(4), 193, 270a, 308 TFEU.
- Cooperation procedure has been repealed.
- Consultation procedure is also renamed to the special legislative procedure. It applies to the provisions of art. 17a (1)\*<sup>14</sup>, 18 (3), 19(1), 19(2), 20, 22\*, 57(3), 69(3), 69d(3), 69f(2), 69j(3), 69l, 93, 95, 97a, 104(14), 105(6), 137(1), 166 and 175(2), 176a(3), 187, 195(4), 229a, 266, 269, 280h(2), 299 TFEU.
- Budgetary procedure (art. 270b TFEU) is also referred to as special legislative procedure.

Co-decision procedure is renamed as the ordinary legislative procedure. Its scope was widened significantly, thus giving more power to the EP. Treaty also declares that legal acts adopted by this procedure shall constitute legislative acts.<sup>15</sup> Art. 251 TFEU reformulates the procedure: in the first reading, the EP shall adopt its position on a proposal from the Commission and communicate it to the Council. If the Council approves the EP's position, the act shall be adopted. This is a change to the current procedure, under which the Commission`s

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<sup>14</sup> The articles marked with the star (\*) were transferred from the assent procedure under the consultation procedure.

<sup>15</sup> The Reform treaty introduces clear distinction of legislative and non-legislative acts of the Union. However, it retains the present-day names of the legislative acts and abandons the names proposed in the Constitution. Non-legislative acts supplement or amend certain non-essential elements of the legislative act. See art. 249b TFEU.

opinion was needed. Otherwise, the Council shall adopt its position at first reading and communicate it to the EP. Both the Council and the Commission shall separately inform the EP fully of the reasons which led it to adopt its position at first reading. The wording of the first reading of ordinary legislative procedure is different from current co-decision, with the increased emphasis on the role of the EP. The other two readings, as well as the conciliation phase are identical to the current situation. Only the mention of the Commission's taking part in the Conciliation Committee's proceedings and taking all necessary initiatives with a view to reconciling the positions of the EP and the Council is noteworthy.

New special provisions apply to the cases, where a legislative act is submitted to the ordinary legislative procedure on the initiative of subject different from the Commission,<sup>16</sup> the EP and the Council shall communicate the proposed act to the Commission with their positions at first and second readings. The EP or the Council may request the opinion of the Commission throughout the procedure, which the Commission may also deliver on its own initiative. It may also take part in the Conciliation Committee .

To summarize all the changes to the legislative procedures, the most important ones are the abolishment of the cooperation procedure, renaming co-decision procedure to the ordinary legislative procedure, together with expansion of its scope. Also, introduction of a new notion of special legislative procedure(s), encompassing inter alia the current procedures of assent and consultation is noteworthy.

### ***3.3 Budgetary procedure***

The significant changes are also noted in the area of budgetary procedure. Distinction between compulsory and non-compulsory expenditure is repealed and powers of the EP significantly enhanced. The procedure is laid down in art. 270b TFEU.

After tabling the draft budget by the Commission, the Council shall adopt its position on the draft budget and forward it to the EP not later than 1 October (5 October, under current primary law). The EP then has 42 (instead of 45) days in which it may:

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<sup>16</sup> These subjects can be: (i) a group of Member States, (ii) the European Central Bank by the means of recommendation, or (iii) Court of Justice of the EU by the means of request.



- Approve the position of the Council, the budget shall be adopted;
- Not take any decision, the budget shall be deemed to have been adopted;
- Adopt amendments, the amended draft shall be forwarded to the Council and to the Commission. The President of the EP, in agreement with the President of the Council, shall immediately convene a meeting of the Conciliation Committee. However, if within ten days of the draft being forwarded the Council informs the EP that it has approved all its amendments, the Conciliation Committee shall not meet. This provision is entirely new.

The Conciliation Committee, which shall be composed of the equal number of members of the Council or their representatives and members representing the EP, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council and by a majority of the representatives of the EP within 21 of its being convened. If, within the 21 days, the Conciliation Committee agrees on a joint text, the EP and the Council shall each have a period of 14 days from the date of that agreement in which to approve the joint text. Otherwise, a new draft budget shall be submitted by the Commission.

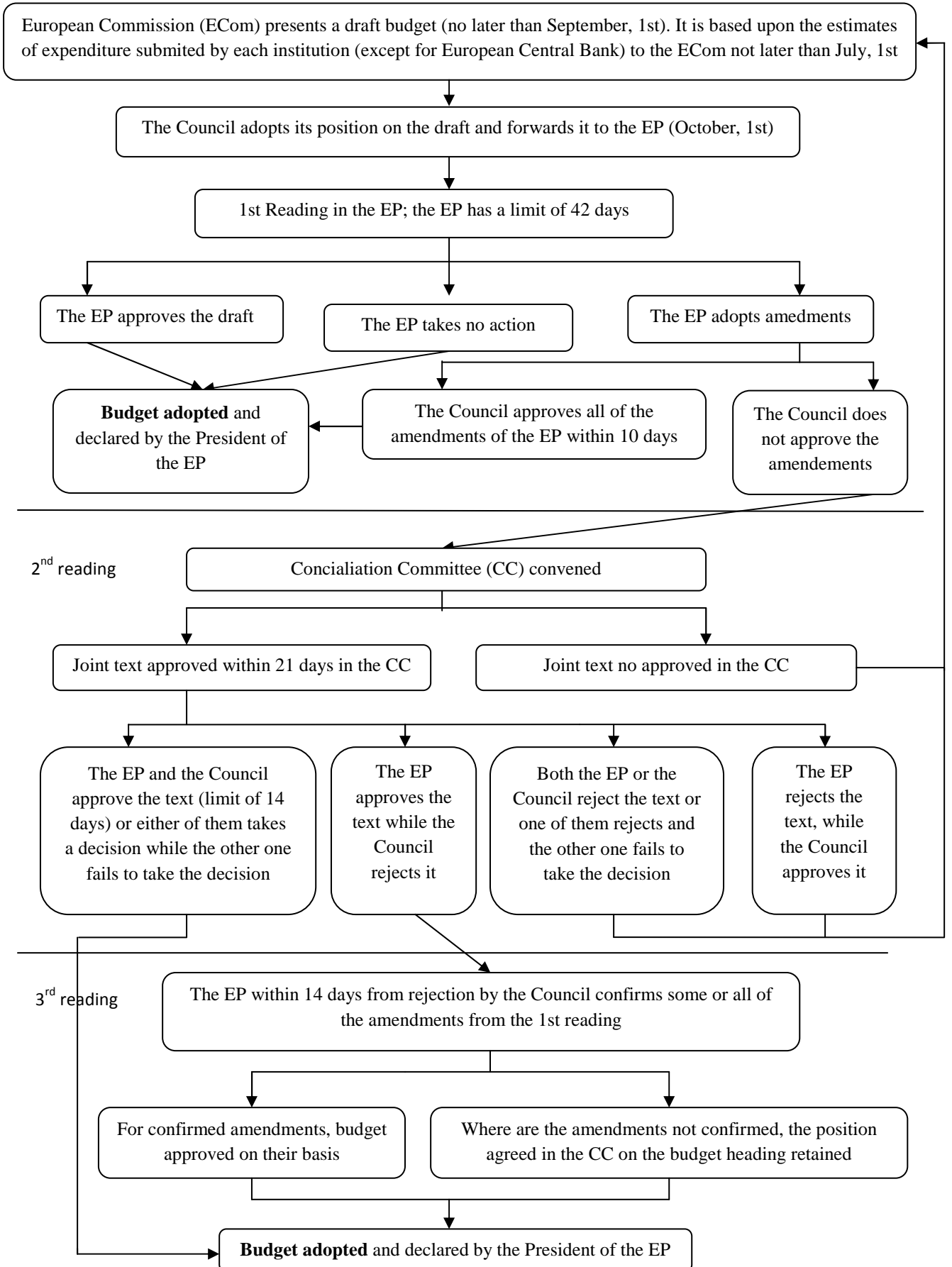
If, within the period of fourteen days:

- The EP and the Council both approve the joint text or fail to take a decision, or if one of these institutions approves the joint text while the other one fails to take a decision, the budget is adopted in accordance with the joint text; or
- The EP, acting by a majority of its component members, and the Council both reject the joint text, or if one of these institutions rejects the joint text while the other one fails to take a decision, a new draft budget shall be submitted; or
- The EP, acting by a majority of its component members, rejects the joint text while the Council approves it, a new draft budget shall be submitted; or
- The EP approves the joint text whilst the Council rejects it, the EP may, within 14 days from the date of the rejection by the Council and acting by a majority of its component members and three-fifths of the votes cast, decide to confirm all or some of the amendments. Where an EP amendment is not confirmed, the position agreed in the Conciliation committee on the budget heading which is the subject of the amendment shall be retained. The budget shall be deemed to be definitively adopted on this basis.

When the procedure provided for in this Article has been completed, the President of the EP shall declare that the budget has been definitively adopted. Graphic presentation of the procedure is shown in the fig. 1.

As we can see, there is a number of quite significant changes to the current procedure. Apart from changes in the periods available to the institutions, most significant changes are abolishing the division into compulsory and non-compulsory expenditure and resulting profound changes to the second reading. The powers of the EP are significantly strengthened, since it is in position to adopt budget even when the Council rejects it. This is a complete overturn in balance in the budgetary procedure. Another change is the explicit mention of possibility for the Commission to amend the draft budget during the procedure until the Conciliation Committee is convened.

Fig. 1: Budgetary procedure in the TFEU



Author's own scheme. Source: art. 270b TFEU.

### ***3.4 Comitology***

There are also revised rules on implementing acts (comitology acts), in particular extending qualified majority voting and co-decision powers for the EP to the adoption of the general rules on comitology (art. 249b TFEU).

Comitology acts are defined as acts adopted by the Commission, under delegation of the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. This delegation is to be provided for in a legislative act, where the objectives, content, scope and duration of the delegation of power shall be explicitly defined. Also, the essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

The EP or the Council may decide to revoke the delegation and the delegated act may enter into force only if no objection has been expressed by the EP or the Council within a period set by the legislative act. In these cases, the EP shall act by a majority of its component members and the Council by a qualified majority.

## **4. Conclusions**

In this paper, the main changes of the primary law of the EU that are to be brought in the case of successful ratification by the Reform treaty were identified. After identifying the most important general changes, detailed focus was turned at substantial changes in decision-making procedures. The Reform treaty brings important changes in the legislative procedures, not only introducing a new general distinction to ordinary and special legislative procedure, but also by redefining the scopes of the procedures. Widening of the scope of the ordinary legislative procedure, together with envisaged extension and redefinition of qualified majority voting in the Council can be perceived as a significant shift to supranational decision-making and bestowing the EP with new powers. Changes in the budgetary procedure that can be with some license marked as revolutionary, together with amendments to the oversight capacities of the EP in the comitology procedures are of the same character. It can be thus concluded that the main consequences of the Reform treaty in the field of decision-making processes are

a significant shift to the so-called communitary method of passing the decisions and further emancipation of the EP.

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