

FROM GREEN PAPER TO LAW

1 THE EUROPEAN PARLIAMENT CANNOT INITIATE LEGISLATION

Unlike most national parliaments, the European Parliament does not have the “right of initiative”. Only the European Commission can initiate legislation. MEPs who want legislation in a certain area have various ways to push the Commission into action, but they cannot simply start drafting a law themselves. One of the common mechanisms used by the Parliament is drafting a non-legislative report, asking the Commission to consider legislative action in a certain area. Often these “owninitiative” reports are linked to Commission consultations, where the Commission asks for confirmation of planned legislative action (White Papers) or is more generally asking for views on a certain topic (Green Papers).

3 STAKEHOLDERS LOBBY THE COMMISSION TO REFLECT THEIR INTERESTS

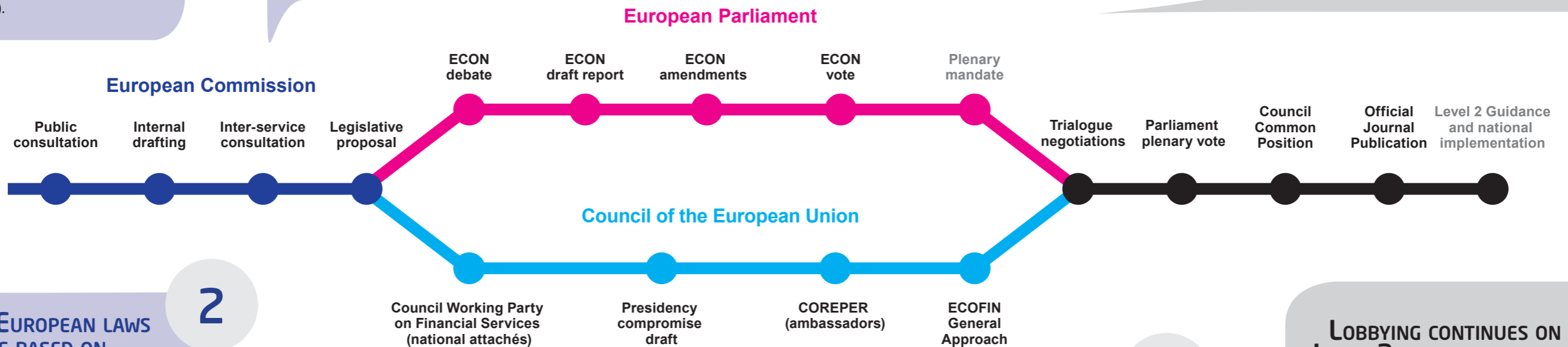
Although a large part of the legislative agenda follows from international commitments, it is still very important to engage with the European Commission ahead of legislative proposals. **When considering legislation, the Commission will hold formal and informal meetings with “stakeholders” in order to better understand the sector it is regulating, and stakeholders can respond to written Commission consultations in an attempt to influence the Commission’s thinking.** Lobbyists will try to make sure that whatever the Commission proposes is in line with their interests and some lobbyists may even try to convince the Commission not to issue a legislative proposal at all. Others will encourage the Commission to work on issues where they see a need for legislation.

5 PARLIAMENT’S RAPPORTEUR TRIES TO FIND A COMPROMISE WITH COLLEAGUES

The Parliament’s Economic and Monetary Affairs Committee (ECON) handles most financial services legislation. ECON appoints a rapporteur to negotiate on behalf of the Parliament, who starts by writing a draft report with amendments to the Commission’s proposal. Some MEPs have a special role as shadow rapporteur for their political group and will try to reach agreement on compromise amendments with the rapporteur. These are voted in Committee to form the Parliament’s starting position for negotiations with the Council and Commission. Lobbyists will meet with key MEPs at any stage in this process to ask them to present favourable amendments or to prioritise certain issues in the compromise negotiations.

7 ‘TRIALOGUES’ HAVE SHORT-CIRCUITED THE FORMAL SYSTEM OF FIRST, SECOND AND THIRD READINGS

In theory, the Council issues its opinion on the Committee report voted by Parliament in plenary. If Ministers reject Parliament’s position, they present their “Common Position” and the proposal makes a second tour of the institutions (second reading). In practice, Parliament, Council and Commission representatives gather in informal trialogues to hammer out an agreement that all can accept. That agreement can then be approved in a single amendment when Parliament votes on its report in plenary, after which the Council will formally endorse the Parliament’s text. Although this system usually speeds up decision-making, it comes at the expense of democratic scrutiny as trialogues are not public.



2 MANY EUROPEAN LAWS ARE BASED ON INTERNATIONAL AGREEMENTS

In textbook law-making, the Commission takes the time to analyze and discuss policy options in a Commission Green Paper, followed by legislative measures in a White Paper, which are then transformed in a draft law (legislative proposal for a Directive or for a Regulation). In the field of finance, much of the legislation proposed by the Commission these days is simply transforming international agreements into legal drafting, adding details and differentiating where needed. Examples of these are the Basel Committee’s package on bank capital requirements implemented in Europe as the CRD IV, or the G20 Pittsburgh Summit declaration which led to the development of the European Markets Infrastructure Regulation (EMIR).

4 THE COMMISSION CONSULTS INTERNALLY ON THE DRAFT

Inside the Commission, financial services legislation is generally prepared by the Internal Market and Services Directorate-General (DG MARKT). Before publishing a legislative proposal, other DG’s which work on different issues such as consumer protection, industrial policy or agriculture, give their opinion on DG MARKT’s draft in a process called “inter-service consultation”. Once this is completed, the full College of Commissioners will formally adopt the legislative proposal, after which it is published and sent to the Parliament and Council so that they can give their opinion.

6 NATIONAL EXPERTS AND ATTACHÉS NEGOTIATE A POSITION ON BEHALF OF THEIR MINISTER

In order to define the position of the European Council, national experts and attachés from all 28 member states gather in Brussels in meetings of the Council Working Party on Financial Services, chaired by the country holding the rotating EU Presidency. **Very controversial political issues are escalated to ambassadors (COREPER II) or Finance Ministers (ECOFIN), who also sign off the final negotiation position (called a General Approach) on behalf of their governments.** Lobbyists will target any of these officials at any stage, in some cases up to the night before the final Finance Ministers meeting if very large interests are at stake.

8 LOBBYING CONTINUES ON LEVEL 2 TECHNICAL STANDARDS

Approval by the Council completes the “Level 1” process, after which the text is translated and published in the Official Journal to apply from a specified date. **Regulations apply directly throughout the EU while Directives must be implemented into national law, generally within 18 to 24 months.**

Lawmakers can delegate the power to adopt legislative acts (delegated and implementing acts) on certain nonpolitical issues to the Commission. **The Level 1 text may also delegate to the Commission the power to adopt “binding technical standards” that have been drafted by the three European Supervisory Authorities (EBA, ESMA and EIOPA).** In this “Level 2” process, the Commission and the authorities consult with stakeholders on their interpretation of the Level 1 agreement, a process closely monitored and influenced by lobbyists.