The Legal Framework for Implementing Financial Participation at the Supranational Level

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The diverse traditional national approaches to both participation in decision making and financial participation are a major impediment to change, as the controversy over European workers’ councils has impressively demonstrated for more than 30 years. The same factors make it very difficult to reach a unanimous supranational compromise either in the Commission or in the Council.

3.1 The legislative process

The law of European Treaties in general permits majority vote decisions in a few cases, recently expanded by the Treaty of Nice. No less than 27 provisions have been changed completely or partly from unanimity to qualified majority voting, among them measures to facilitate freedom of movement for the citizens of the Union (Article 18 ECT) and industrial policy (Article 157 ECT). The so called ‘co-decision procedure’ (see Figure 3.1) has been extended to apply to seven provisions which are changed from unanimity to qualified majority voting (Articles 13, 62, 63, 65, 157, 159 and 191). Accordingly, most of the legislative measures which, after the Treaty of Nice, required a decision from the Council acting by qualified majority will now be decided by the ‘co-decision procedure’.\(^1\) In the field of social policy (Articles 42 and 137 ECT), despite maintaining the status quo, the Council, acting in unanimity, is empowered to make the co-decision procedure applicable to those areas still subject to the rule of unanimity.\(^2\)

However, where taxation is concerned, Articles 93, 94 and 175 ECT, maintain the requirement of unanimity across the board (see Figure 3.2). This means that even though tax incentives are the most common way of leveraging financial participation schemes, a common European legal
Figure 3.1 ‘Co-decision’ procedure according to Article 251 ECT/Nice.