

Laws and decisions in the EU

The institutions of the EU determine the laws and rules which will apply throughout the EU. They make decisions in different ways on different issues. In most cases the Commission submits the proposals for new legislation. The proposals are discussed in the European Parliament and the Council of Ministers. In many cases the Council of Ministers has to reach agreement with the European Parliament to enable a decision to be taken. New laws and rules are then interpreted by the Court of Justice.



THE TREATIES DETERMINE WHAT THE EU CAN DO

The treaties state what the EU should do and how the EU institutions should take decisions on various issues. The member states have negotiated and adopted the treaties jointly. The most important treaties are the Treaty establishing the EC and the Treaty on European Union. In order to amend the treaties or adopt a new treaty, the member states are required to reach agreement at an Intergovernmental Conference. The amendment must then be approved in all member states in accordance with national regulations in order to come into force.

The activities of the EU are usually divided into three pillars following the structure of the treaties. The first pillar consists of the Treaty establishing the EC and includes most issues. It includes, for example, the single market, agricultural policy, competition policy, environmental policy and economic and monetary union. The second and third pillars were added in connection with the Treaty on European Union. The second pillar includes the Common Foreign and Security Policy, while the third pillar covers police cooperation and criminal law.

ISSUES FOR THE INSTITUTIONS AND ISSUES FOR MEMBER STATES

The reason why the cooperation of the EU is divided into three pillars is that the forms of cooperation differ between the pillars, particularly between the first pillar and the other two. Issues belonging to the first pillar are transferred from the member states to the EU institutions for decision. As far as the second and third pillars are concerned, decision-making authority remains to a greater extent with the member states themselves.

Another way to describe the difference in decision-making authority is to say that the first pillar is largely supranational, while the second and third pillars are mainly intergovernmental. Supranationality and intergovernmentalism can mean different things in different contexts. The table below illustrates these concepts with examples.

	Supranational	Intergovernmental
National parliament	Transference of decision-making authority to the EU	Decisions made at EU level must be approved by the national parliament in order to apply in the member state
The Council of Ministers	Decisions can be taken by a qualified majority	Unanimity is required to adopt decisions
The European Parliament	Can block a decision	Can only advise
The Court of Justice	Can rule against a country for contravening regulations	Can only interpret regulations
The Commission	Has exclusive right of initiative	Shares its right of initiative with the member states
Regulatory framework	Can be invoked by individuals in national courts (direct effect)	Can only be invoked by member states and EU institutions

DIFFERENT DECISION-MAKING PROCEDURES GIVE PARLIAMENT DIFFERENT LEVELS OF INFLUENCE

Not only do the forms of cooperation within the EU differ between the different pillars, but they also differ inside them. It is mainly the influence of the European Parliament that varies between different issues. The most common decision-making procedures are described below.

Codecision is the process that gives the European Parliament the greatest power to influence the content of decisions. It means that if the European Parliament wishes to change any part of a proposal from the Commission, the European Parliament and the Council of Ministers must be in complete agreement for a decision to be taken. *Codecision* applies for example when decisions are to be made on the single market, the environment, transport policy, issues relating to food and consumer policy.

Consultation is the process in which the European Parliament has the least power to influence decisions. In this case the European Parliament functions only as a consultative body to the Council of Ministers. *Consultation* is used mainly when decisions are to be taken on agricultural policy, trade with countries outside the EU, and issues relating to police cooperation and criminal law.

Assent is a special process which is used when adopting certain international agreements. The process requires the European Parliament to give its assent to approving new member states in the EU and to the Council of Ministers for concluding association agreements with countries outside the EU.



DIFFERENT LAWS FOR DIFFERENT AREAS

The institutions of the EU use different types of legal instruments and other regulations. Some of these are binding for all or some member states, while other legal instruments are merely recommendations to the member states. There are five types of legal instruments:

Regulations are binding and apply simultaneously and in the same way in all member states. They are common in the areas of agricultural policy and customs duties.

Directives are binding on the objective to be achieved in the directive and aims to harmonise the legislation of the member states. However, it is up to each member state to determine how the directive is to be implemented in national legislation or other national regulations. Directives are common in environmental policy and consumer policy, for example.

Decisions are binding only for the person or persons to whom the decision applies. Decisions can for example concern one particular member state or a company, and are common in the field of competition policy.

Recommendations and *opinions* are not binding. These are common when EU institutions can only recommend how the member states should react, for example within the areas of employment and economic policy.

Legal instruments in the third pillar

The legal instruments that are adopted in the third pillar differ from those in the first pillar. *Framework decisions* are intended, in the same way as directives, to harmonise the legislation of member states, whereas *decisions* are other measures designed to implement policy within the third pillar. However, the EU is not able to sanction a country that has not incorporated a framework decision or a decision into its national legislation. A *convention* is an intergovernmental agreement that must be approved by the national parliaments in order to come into force. *Common positions* state the position of the Union on a particular issue.

THE COURT OF JUSTICE INTERPRETS LAWS AND SETTLES DISPUTES

The Court of Justice has two main tasks. These are to interpret legislation common to the EU and to settle disputes between member states and institutions. The court is sometimes called the EC Court of Justice because its principal authority is within the first pillar, the EC.

The common regulatory framework of the EU is called European Community Law, or EC Law. It is EC Law that

the Court of Justice is required to interpret and develop so that the regulatory system can be followed in the same way throughout the EU.

The four parts of EC Law

The common framework known as EC Law has four main parts:

The Treaties are the fundamental rules for EU cooperation that the member states adopt jointly.

Legislation is adopted by the institutions of the EU and must be based on the treaties. The binding legislation consists of regulations, directives and decisions.

Case law refers to the rulings handed down by the Court and the interpretation made by the Court of treaties and legislation.

International agreements are all the agreements that the EU has entered into with other countries and organisations requiring the EU to react in a given way on various issues.

It is the European Commission's task to ensure that member states comply with EC Law. If the Commission considers that a member state is violating the regulatory framework, they will contact the government of the country concerned. The government of this country will then be given the opportunity to respond to the views expressed by the Commission and suggest how the situation can be remedied. If the Commission and the member state cannot agree, the Commission may bring the member state before the Court of Justice for violation of a treaty. If the member state is found guilty, it can be required to pay fines.

A member state can also have a legal instrument of the EU examined by the Court of Justice if it considers that the instrument has no basis in the treaties or is wrongly constituted. The member state's opposite party in the Court of Justice in this case is the Council of Ministers or the Council of Ministers and the European Parliament. Apart from settling disputes between institutions and member states, the Court of Justice may also settle disputes between institutions of the EU or between member states themselves.

THE COURT OF FIRST INSTANCE FOR PRIVATE CITIZENS

Private citizens or companies and organisations may only in exceptional circumstances bring cases before the Court of Justice. A private citizen has the right to do this if any of the institutions of the EU has made a decision that affects him or her directly. This may apply to someone who has been refused access, for example, to a document from an EU institution or to a company that has been refused

by the Commission to merge with another company. In cases like this the person or company that is affected by the decision may approach a special court called the Court of First Instance. It is possible to appeal against rulings made by the Court of First Instance to the Court of Justice.

The fundamental principles of EC Law

There are a number of principles in EC Law that the institutions and member states of the EU are obliged to respect. These principles are examined by the Court of Justice. Here are some of them:

- Non-discrimination on the grounds of nationality**
 Laws and regulations often differ between the different member states of the EU. The principle of non-discrimination on the grounds of nationality states that regulations may differ from one state to another provided that in any one member state citizens from other member states are treated in the same way as citizens of the state itself. The member states are obliged to follow this principle in all the areas covered by EC Law.
- Subsidiarity**
 The EU's decision-making powers vary according to the matter concerned. The subsidiarity principle is to be applied to matters for which decision-making authority is shared between the institutions of the EU and the member states. The subsidiarity principle implies that decisions must be made at the level at which they are most effective. The institutions of the EU have to explain why it is necessary to make a particular decision at the EU level rather than at member state level.
- Proportionality**
 In order to prevent a regulation from being too far-reaching, the Court of Justice has developed the so called principle of proportionality. This means that the obligations imposed by a regulation must stand in reasonable proportion to the objective that the regulation is intended to achieve.

EU LEGISLATION IN NATIONAL COURTS

In order to ensure that EU legislation applies in the same way in all member states, the Court of Justice has, in its rulings and judgments, established some common principles. One such principle is that EU legislation is to have *precedence* over national legislation. This means that a national law or regulation that contravenes EU legislation may not be applied.

Another principle is that EU legislation can in some cases have *direct effect*. This means that a private citizen can refer to these rules in national courts. However, not all rules of the EC Law have direct effect. The direct effect that they may have depends on the type of rule invoked and how it is formulated.

If a national court, for example a Swedish district court (*tingsrätt*), is uncertain as to how provisions of EC Law should be interpreted or whether a national law contravenes EC Law, the Swedish district court can ask the Court of Justice for advice. The national court then requests a *preliminary ruling* from the Court of Justice. The task of the Court of Justice is not to try a case that should be settled by a national court, but to provide information about the interpretation of a rule in EC Law. The national court is then obliged to follow the interpretation provided by the Court of Justice. The court within a national legal system whose decisions are not subject to appeal is obliged to request a preliminary ruling from the Court of Justice if there is any doubt as to the interpretation of EC Law. However, the Court of Justice does not reconsider rulings made by national courts.

