

MUNI
LAW

EU Energy Law (2024)

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EU

Energy

Law

Definition:

“The system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties.”

What makes LAW different from other normative systems?

- **Adopted by a state (legislative body)**
- **Legally binding**
- **Law enforcement**



Law

- Concerns the management of energy resources and organisation of the energy sector

Energy
Resources

Energy
Sector

Energy Law

- **Concerns the management of energy resources and organisation of the energy sector**

**Energy
Resources**

**Energy
Sector**

Energy plays a fundamental role in the economy of a country - employment, future economic development, personal health.

Recently, energy security, climate change and energy prices draw people's and government's attention.

Energy Law

Reasons:

- a matter of national security
- energy as a source of wealth
- energy as a driver of national development and economic growth
- negative environmental impact of energy related activities
- energy access and affordability

Governments tend to regulate energy-related activities and the energy sector.

A) Permanent sovereignty over natural resources

“The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.”

(UN General Assembly Resolution resolution 1803 (XVII) on the “Permanent Sovereignty over Natural Resources”)

Governments tend to regulate energy-related activities and the energy sector.

B) Human rights – health/environment

The energy sector is a major contributor to greenhouse gas (GHG) emissions and other types of air pollution that negatively impact human health and the environment.

World Health Organisation (WHO) :

“The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”.

Governments tend to regulate energy-related activities and the energy sector.

C) Are states obliged to provide their own citizens with access to energy?

International Covenant on Economic, Social and Cultural Rights:

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979

Article 14:

*“To enjoy adequate living conditions, particularly in relation to housing, sanitation, **electricity** and water supply, transport and communications.”*

Governments tend to regulate energy-related activities and the energy sector.

INTERNATIONAL LEVEL

“International law, also called public international law or law of nations, the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognised as international actors.”

NATIONAL LEVEL

Constitutional law, Administrative Law, Business Law



Energy Law

There are four main elements having significant impact on national energy law:

- ***The aim of Government***
- ***Availability of Finance***
- ***Availability of Technology***
- ***Societal preferences***



National Law

The aim of Government

Germany: *With the election of Angela Merkel's government in 2005, energy policy in Germany changed. The energy policy promoted by her party and government involved a significant emphasis on renewable energy development and the closure of nuclear energy plants—which did receive an impetus after the Fukushima accident in Japan in 2011.*

United Kingdom: *The indecision of the UK coalition government elected in May 2010 has delayed new investment in the UK energy sector. It took the first few years of the government for both parties (the Conservatives and the Liberal Democrats) to agree a way forward. This indecision has reduced the interest from investors in the UK energy sector, and there has been little interest in developing new energy infrastructure.*

France: *Since the election of Francois Hollande of the French socialist party as president of France in May 2012, French energy policy has changed. The previous dominance of nuclear energy within the French energy policy is being reduced and a new emphasis has been placed on renewable energy development, with a planned limit on the use of nuclear energy to 50 per cent of the country's energy mix by 2025.*



National Law

Availability of Finance

Obtaining finance for a project has become increasingly difficult and investors are looking for a guaranteed return on their investment.

Energy projects are traditionally viewed as risky due to long construction times, long planning processes. In a time of recession, investors look for more secure projects. There have been many cases where investors have pulled out from completing major energy projects.



National Law

Availability of Technology

Advances in the technology for wind turbines and solar energy are having a major impact in many countries. This has resulted in many countries changing their energy law in part to capture these technological benefits from more efficient technology.

EXAMPLE: shale gas, low-carbon technologies



National Law

Societal Preferences

Different countries have different societal structures which contribute in part to different societal preferences. In many countries, this emanates from how the culture developed over time.

EXAMPLE: Ireland has a very anti-nuclear stance. The UK/France population views nuclear energy as part of the UK/France energy mix. In Denmark, there has been cross-party political support for the development of wind energy since 1970s. In the USA, certain states have a culture that has developed around their coal-mining industry.



National Law

ADMINISTRATIVE LAW

The legal framework within which public administration is carried out.

Objectives:

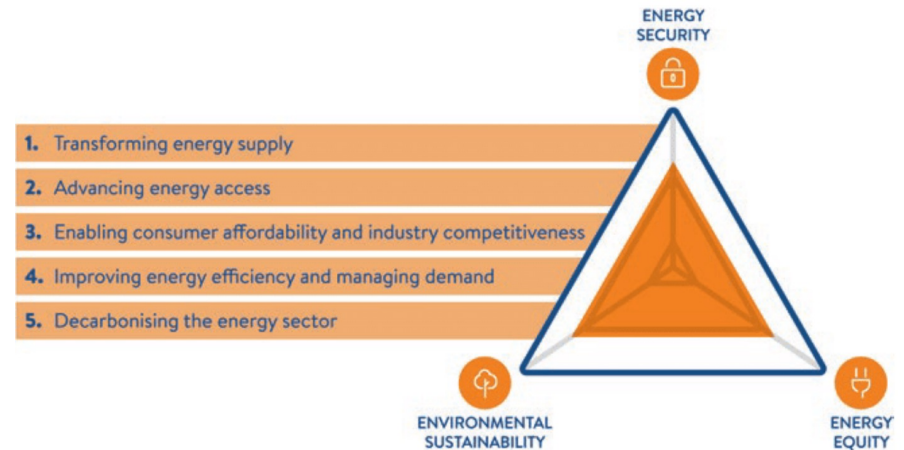
energy security,
functioning energy market (affordability),
environmental protection.

EXAMPLES:

National regulation.
Licences.
Environmental impact assessment.
Price regulation.

Energy is highly regulated sector.

National Law



CONTRACT LAW/BUSINESS LAW

Contractual disputes between energy companies.
(*contract law, business law*)



National Law

- **International treaties and international customary law**
- **International organisations (IEA, OPEC, IRENA)**
- **International treaties heavily influence energy policy adopted at the national level.**

EXAMPLES:

International obligations arising from the **UNFCCC** and its two Protocols - **Kyoto Protocol/Paris Agreement**

WTO (The General Agreement on Tariffs and Trade, The General Agreement on Trade in Services): *Trade in Energy Materials*

Energy Charter Treaty: Trade, Transit, Investment Protection

International Investment Agreements: *Investment Protection*

European Convention on Human Rights: *Human Rights*



International Law

There is no unified approach toward energy regulation at the international level.

Key principle: Sovereignty

❖ **Internal sovereignty** refers to the supreme authority within a territory or the ultimate power within that territory.

❖ **External sovereignty** - the principle of sovereign equality (international law governs relations between independent States. **The rules of law binding upon States therefore emanate from their own free will** as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence (sovereignty) of States cannot therefore be presumed.)

❖ **EXCEPTION_JUS COGENS:**

States can be bound through objective legal norms they have not consented to or cannot derogate to imperative norms even if they want to. // peremptory norms accepted by the international community of states as a norm from which no derogation is permitted (prohibition of genocide)

International Law

There is no unified approach toward energy regulation at the international level.

❖ *Origins of the sovereign equality of states in international law can be traced to the Peace of Westphalia (1648)*

❖ *Emerich de Vattel: “a dwarf is as much as man as a giant is; a small republic is no less sovereign state than the most powerful kingdom”.*

❖ *Article 2 of the UN Charter: the organization is based on the principle of the sovereign equality of all its members.*

❖ *States should not intervene in the internal affairs of other states.*



International Law

There is no unified approach toward energy regulation at the international level.

Sources:

- ❖ *international treaties*
- ❖ *customary international law derived from the practice of States*
- ❖ *general principles of law recognised by civilised nations*

International Law

There is no unified approach toward energy regulation at the international level.

- 1) **Sovereign equality (Art. 2 of the UN Charter: “*The Organization is based on the principle of the sovereign equality of all its Members.*”**
- 2) **A state cannot be subject to the jurisdiction of any court without its consent to the jurisdiction. States can accept the jurisdiction of a court before a dispute occurs or after it occurs.**



International Law

There is no unified approach toward energy regulation at the international level.

The UN Charter obliges states to settle their disputes peacefully.

Article 33 of the UN Charter:

Non - legally binding

- **Negotiation** (two parties trying to talk things through)
- **Mediation** (a third party is involved)
- **Inquiry** – a third party is entrusted with a fact-finding task
- **Conciliation** – a third party plays even more intensive role acting almost like a tribunal, hearing evidence, reading memorials and presenting a recommendation based on the evidence. However, such recommendation is not binding.

**Legally
binding**

**Judicial settlement
Arbitration (ad-
hoc/arbitration
centres)**

MODEL ARBITRATION CLAUSES

FOR USE IN CONNECTION WITH THE PERMANENT COURT OF ARBITRATION OPTIONAL RULES FOR ARBITRATING DISPUTES BETWEEN TWO STATES



Future Disputes

Parties to a bilateral treaty or other agreement who wish to have any dispute referred to arbitration under these Rules may insert in the treaty or agreement an arbitration clause in the following form:¹

1. *If any dispute arises between the parties as to the interpretation, application or performance of this [treaty] [agreement], including its existence, validity or termination, either party may submit the dispute to final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States, as in effect on the date of this [treaty] [agreement].*

Parties may wish to consider adding:

2. *The number of arbitrators shall be . . . [insert 'one', 'three', or 'five']*.²
3. *The language(s) to be used in the arbitral proceedings shall be . . . [insert choice of one or more languages]*.³
4. *The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration.*
5. *The place of arbitration shall be . . . [insert city and country]*.

Existing Disputes

If the parties have not already entered into an arbitration agreement, or if they mutually agree to change a previous agreement in order to provide for arbitration under these Rules, they may enter into an agreement in the following form:

The parties agree to submit the following dispute to final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States, as in effect on the date of this agreement: . . . [insert brief description of dispute].

Parties may wish to consider adding paragraphs 2-5 of the arbitration clause for future disputes as set forth above.

International Energy Law

WTO

International Energy Agency

Energy Charter Treaty

OPEC

IRENA

IEF



iea



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EU Law

EU

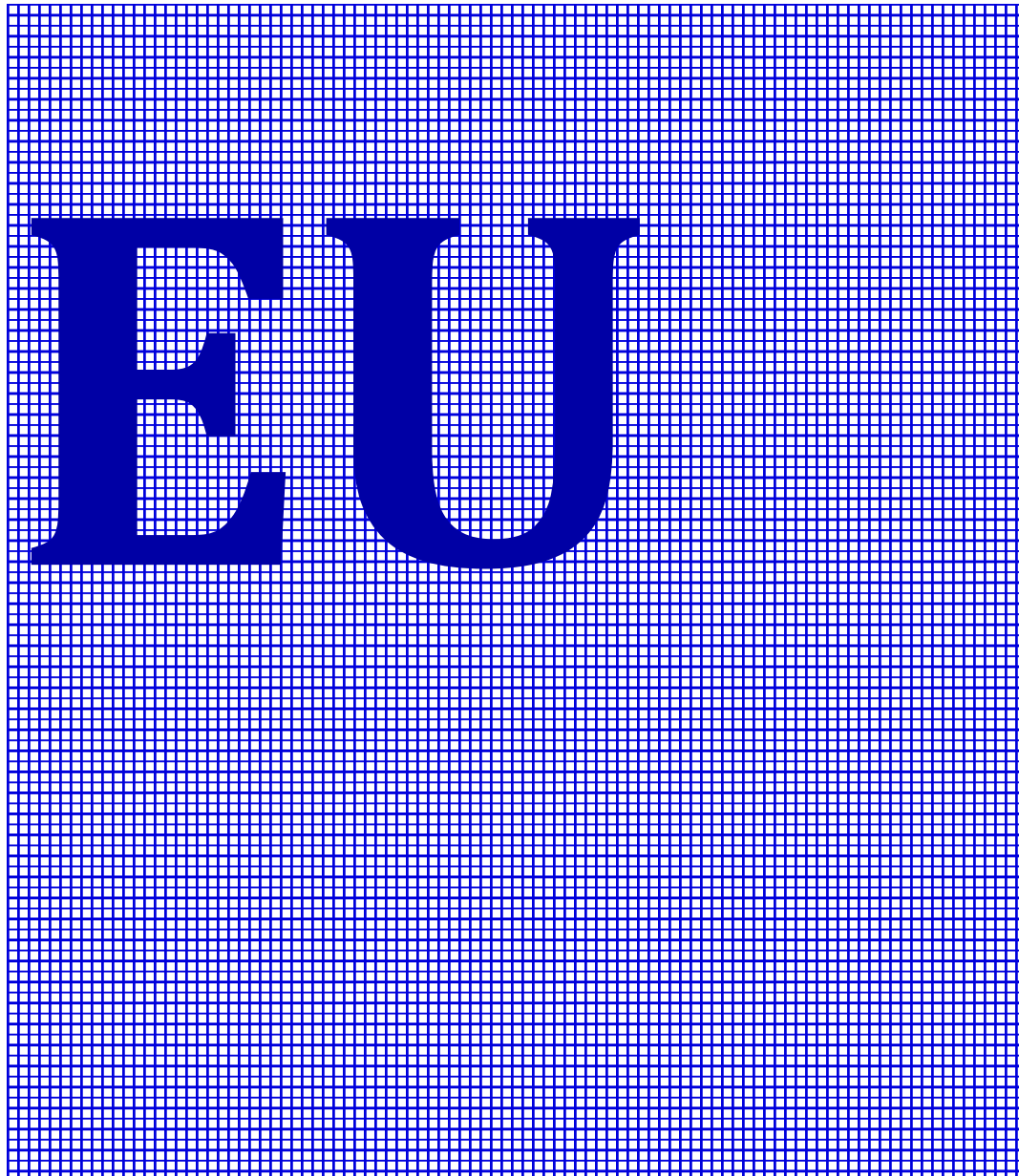
EU Member States

TEU

TFEU

EU

EU Institutions



EU Member States

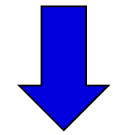
TEU

TFEU



EU

EU Institutions



EU Member States

MUNI
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- **European Parliament**
- **Council of the European Union**
- **European Council**
- **Court of Justice of the European Union**
- **European Commission**
- **European Central Bank**
- **Court of Auditors**




Institutions of the EU

European Council consists of heads of states.

Provides necessary impetus for EU development, **defines the general political directions and priorities.**

It sets the EU's policy agenda, traditionally by adopting 'conclusions' during European Council meetings which identify issues of concern and actions to be taken.

The European Council mostly takes its decisions by consensus.



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Charles Michel, the president of the European Council

European Council



European Council conclusions on energy and economy, 20 October 2022

III. ENERGY AND ECONOMY

16. In the face of Russia's weaponisation of energy, the European Union will remain united to protect its citizens and businesses and take the necessary measures as a matter of urgency.

17. The European Council has agreed that in light of the ongoing crisis, efforts to reduce demand, to ensure security of supply, to avoid rationing, and to lower energy prices for households and businesses across the Union need to be accelerated and intensified, and the integrity of the Single Market has to be preserved.

The European Council calls on the Council and the Commission to urgently submit concrete decisions on the following additional measures, as well as on the Commission proposals, having assessed their impact notably on existing contracts, including the non-affectation of long-term contracts, and taking into account the different energy mixes and national circumstances:

- a) voluntary joint purchasing of gas, except for binding demand aggregation for a volume equivalent to 15% of storage filling needs, according to national needs, and the speeding up of negotiations with reliable partners to seek mutually beneficial partnerships by exploiting the Union's collective market weight and making full use of the EU Energy Platform, which is open also for the Western Balkans and the three associated Eastern Partners;
 - b) a new complementary benchmark by early 2023 that more accurately reflects conditions on the gas market;
 - c) a temporary dynamic price corridor on natural gas transactions to immediately limit episodes of excessive gas prices, taking into account the safeguards set out in Article 23(2) of the draft Council Regulation proposed on 18 October 2022;
 - d) a temporary EU framework to cap the price of gas in electricity generation, including a cost and benefit analysis, without modifying the merit order, while preventing increasing gas consumption, addressing the financing and distributional impacts and its impact on flows beyond the EU's borders;
 - e) improvements to the functioning of energy markets to increase market transparency, alleviate liquidity stress and eliminate factors that amplify the volatility of gas prices, while ensuring the preservation of financial stability;
 - f) fast-tracking of the simplification of permitting procedures in order to accelerate the rollout of renewables and grids including with emergency measures on the basis of Article 122 TFEU;
 - g) energy solidarity measures in case of gas supply disruptions at national, regional or Union level, in the absence of bilateral solidarity agreements;
 - h) increased efforts to save energy;
 - i) mobilising relevant tools at national and EU level. At the same time, the immediate priority is to protect households and businesses, in particular the most vulnerable in our societies. Preserving the Union's global competitiveness is also key. All relevant tools at national and EU level should be mobilised to enhance the resilience of our economies, while preserving Europe's global competitiveness and maintaining the level playing field and the integrity of the Single Market. The European Council is committed to close coordination of policy responses. It stresses the importance of close coordination and of common European level solutions, where appropriate, and is committed to achieving our policy objectives in a united manner. The Council will continue to closely monitor economic developments and is committed to further reinforce our coordination, in order to deliver a determined and agile policy response.
18. The European Council reiterates the need to step up investments in energy efficiency, future-proof energy infrastructure, including interconnections, storage, and innovative renewable technologies.
19. The European Council invites the Commission to speed up work on the structural reform of the electricity market, including an impact assessment, and calls for further progress towards a full Energy Union serving the dual objective of European energy sovereignty and climate neutrality.
20. The European Council remains seized of the matter.

Council of the EU consists of **representatives of the MS, one from each MS at the ministerial level.**

Voting: one state, one vote.

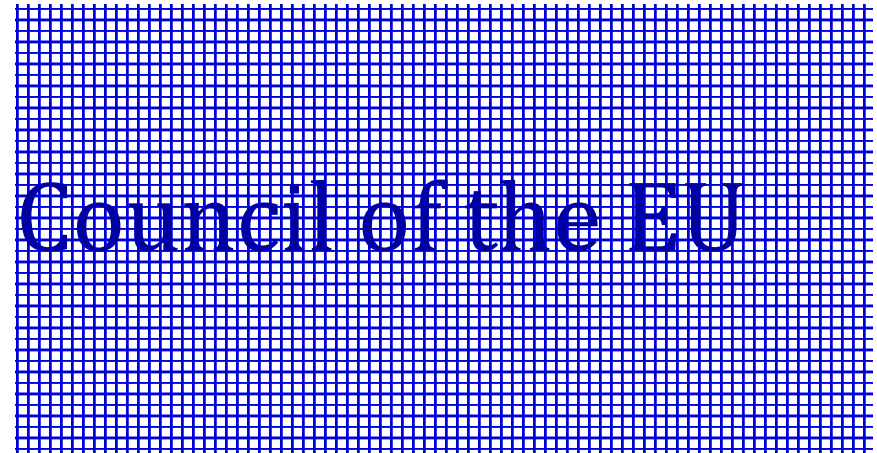
Council of the European Union *shall, jointly with the EP, exercise legislative function.*

Most decisions are taken by **qualified majority (QMV).**

Qualified majority voting – more rapid and more effective decision-making than unanimity.

- At least 55% of the Members of the Council comprising at least 15 states
- States representing at least 65% of the population of the Union

Unanimity – when explicitly required by the Treaty (societal security, fiscal issues)



Transport, Telecommunications and Energy Council configuration (TTE)

The TTE Council works towards fulfilling EU objectives in the areas of transport, telecommunications and energy: to establish **modern, competitive and efficient markets and infrastructure**, and to create **trans-European transport, communications and energy networks.**

27 members, one from each MS (Commissioners)

In the performance of their duties, **Commissioners should remain independent of their respective appointing states.**

Divided into directorates-generals (**DG**) responsible for certain aspects of EU policy (see DG Energy).

European Commissioner for energy: Kadri Simson (Estonia)

DIRECTOR-GENERAL: Ditte Juul Jørgensen

The Executive Vice-President for the European Green Deal: Frans Timmermans.



As created in 1957, the European Parliament was not a democratic body (it consisted of representatives of Member States required to be members of national parliaments). **The introduction of direct elections (in 1979) resulted in increased democracy.**

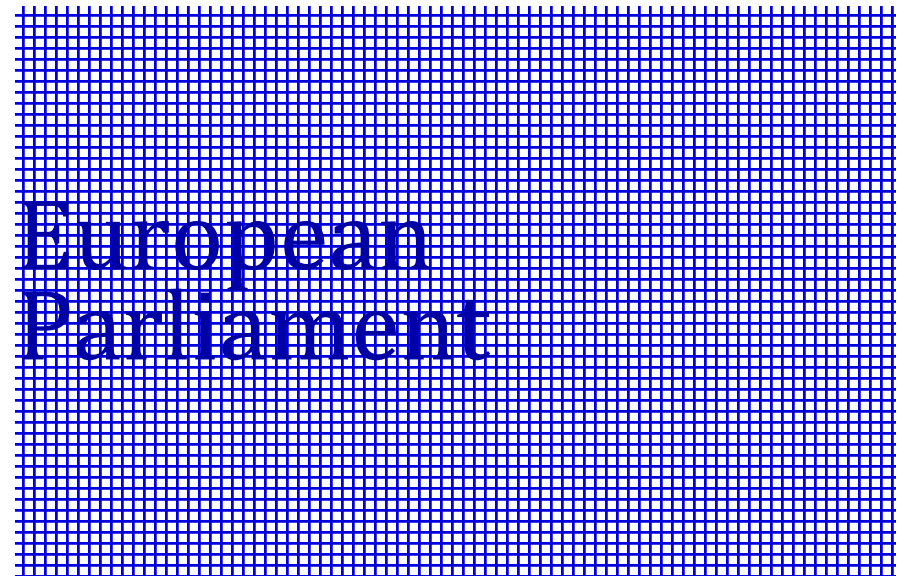
Since 1979, there is a direct link between the national electorates and the Union political institutions.

Number of MEPs is depended on the size of the Member State and its population.

Seat: Brussels and Strasbourg

Functions: Legislative and budgetary functions, political control and consultation, EP elects the President of the Commission.

The European Parliament's Committee on Industry, Research and Energy.



Principles of EU Law

EU PRIMARY LAW

Every action taken by the EU is founded on the treaties. These binding agreements between EU member countries set out **EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its members.**

Treaties are the starting point for EU law and are known in the EU as primary law.

EU Primary Law:

Treaty on the Functioning of the European Union
Treaty on European Union



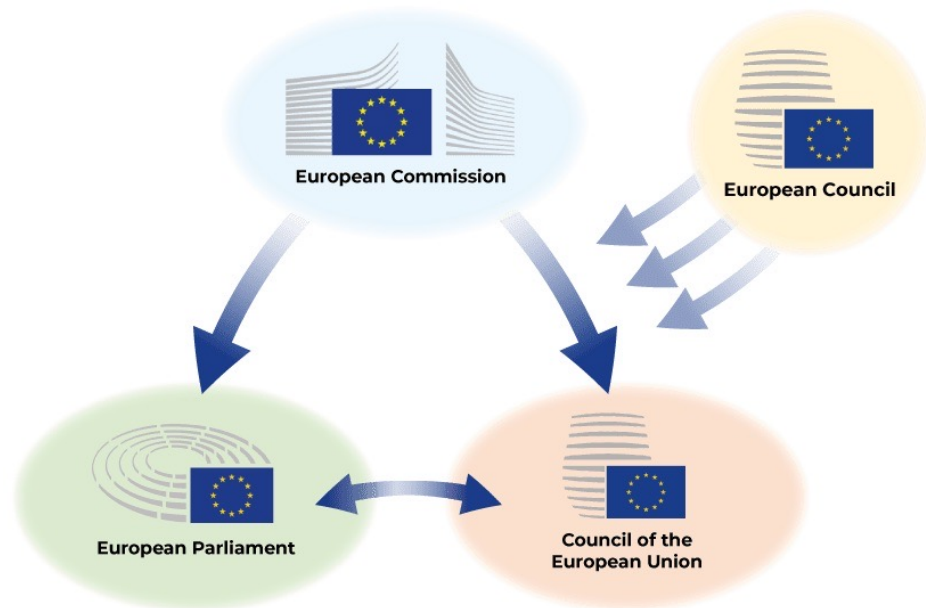
EU SECONDARY LAW

Regulation: A "regulation" is a binding legislative act. It must be applied in its entirety across the EU. For example, when the EU wanted to make sure that there are common safeguards on goods imported from outside the EU, the Council adopted a regulation.

Directive: A "directive" is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals.



Secondary
Law



Secondary Law

Approach taken by the CJEU (Court of Justice of the EU)

(See Cases Kadi, Simmenthal, Costa, Van Gend en Loos)

CJEU ruled that EU law is the highest norm in the hierarchy of Member States, even superior to their constitutions and international agreements.

“EU Law is given preference over any other dealing with regulating internal EU relations.”

In case of any contradiction between EU law and international agreements concluded between EU member states (regardless of whether these treaties were concluded before their accession to the EU or after their accession to the EU), EU law prevails.

This principle has developed gradually over decades.


Primacy of EU law sets aside international law including all its principles.



In areas in which the European Union **does not have exclusive competence**, the principle of subsidiarity, laid down in the Treaty on European Union, defines the circumstances in which it is preferable for action to be taken by the Union, rather than the Member States.

Article 5(3) of the Treaty on European Union (TEU)

The **principle of subsidiarity and the principle of proportionality** govern the exercise of the EU's competences. In areas in which the European Union does not have exclusive competence, **the principle of subsidiarity seeks to safeguard the ability of the Member States to take decisions and action and authorises intervention by the Union when the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level**, 'by reason of the scale and effects of the proposed action'. The purpose of including a reference to the principle in the EU Treaties is also to ensure that powers are exercised as close to the citizen as possible, in accordance with the proximity principle referred to in Article 10(3) of the TEU.

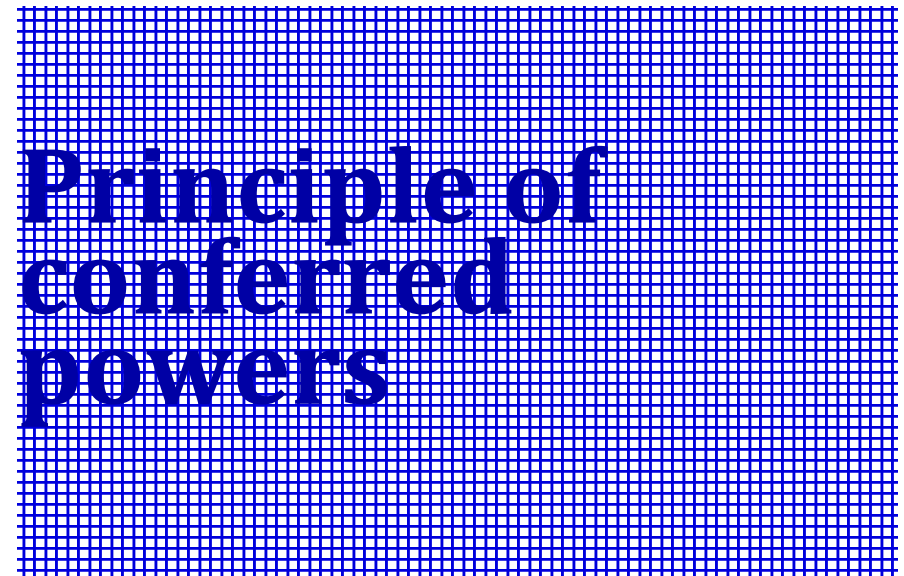


**Principle of
subsidiarity and
proportionality**

Under this fundamental principle of EU law, laid down in Article 5 of the Treaty on European Union, **the EU acts only within the limits of the competences that EU countries have conferred upon it in the Treaties (TFEU or TEU).**

These competences are defined in Articles 2–6 of the Treaty on the Functioning of the EU.

Competences not conferred on the EU by the Treaties thus remain with EU Member States.



Division of competences within the European Union

Exclusive: Only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.

Shared: The Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence.

Supporting competences: The EU can only intervene to support, coordinate or complement the action of EU countries. Legally binding EU acts must not require the harmonisation of EU countries' laws or regulations.

Division of competences within the European Union

Treaty on the Functioning of the EU, Article 2:

1. When the Treaties confer on the **Union exclusive competence** in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if they are empowered by the Union or for the implementation of Union acts.
2. When the Treaties confer on the Union **a competence shared with the Member States** in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.
3. The Member States shall coordinate their economic and employment policies within arrangements as determined by this Treaty, which the Union shall have competence to provide.
4. The Union shall have competence, in accordance with the provisions of the Treaty on European Union, to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.
5. In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions **to support, coordinate or supplement the actions of the Member States**, without thereby superseding their competence in these areas. Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of Member States' laws or regulations.
6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions of the Treaties relating to each area.

Exclusive competence

(Article 3 TFEU)

- customs union;
- the establishing of competition rules necessary for the functioning of the internal market;
- monetary policy for euro area countries;
- conservation of marine biological resources under the common fisheries policy;
- **common commercial policy;**
- conclusion of international agreements under certain conditions.

Shared competence

(Article 4 TFEU):

- internal market;
- social policy, but only for aspects specifically defined in the Treaty;
- economic, social and territorial cohesion (regional policy);
- agriculture and fisheries (except conservation of marine biological resources);
- **environment;**
- consumer protection;
- transport;
- **trans-European networks;**
- **energy;**
- area of freedom, security and justice;
- shared safety concerns in public health matters, limited to the aspects defined in the TFEU;
- research, technological development, space;
- development cooperation and humanitarian aid.

Supporting competence


(Article 6 TFEU):

- protection and improvement of human health;
- industry;
- culture;
- tourism;
- education, vocational training, youth and sport;
- civil protection;
- administrative cooperation.

Application and Interpretation of EU Law

CJEU has jurisdiction over the acts of the EU institutions and MS within the EU sphere of activity.

- **Ensuring consistent interpretation and application of EU law (preliminary rulings).**
- **Enforcing the law** (infringement proceedings initiated against a national government for failing to comply with EU law).
- **Annulling EU legal acts** – if an EU act violates EU treaties or fundamental rights.
- **Action for failure to act** – EP, Council, Commission must make certain decisions under certain circumstances.
- **Sanctioning EU institutions** – actions for damages – any individual or company who has had his or her interest harmed as a result an action or inaction of the EU.

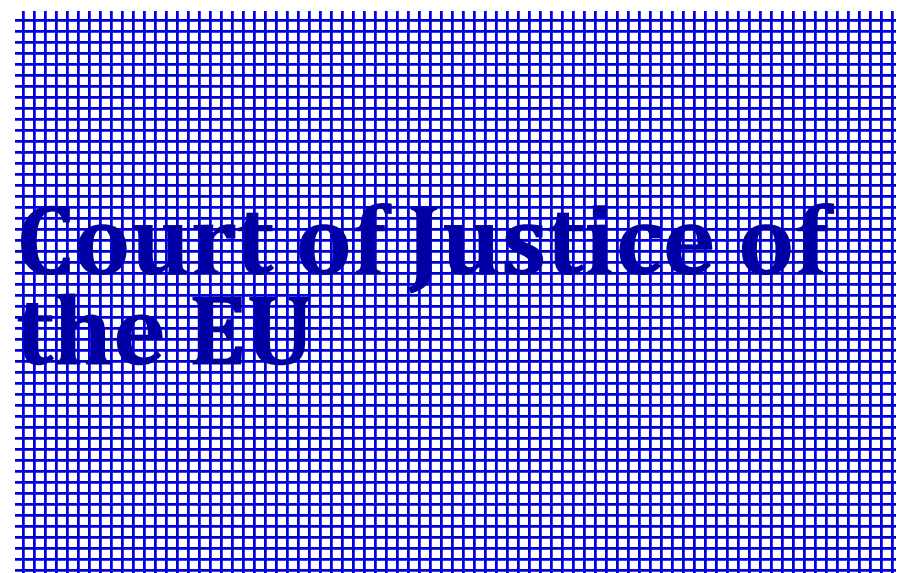


**Court of Justice of
the EU**

CJEU consists of 2 courts:

- a) Court of Justice deals with requests for preliminary rulings, actions for annulment and appeals;**
- b) General court deals with actions for annulment brought by individuals and companies, actions brought by the Member States against the Commission, actions brought by the Member States against the Council relating to acts adopted in the field of State aid, trade protection measures (dumping) and acts by which it exercises implementing powers, actions seeking compensation for damage caused by the institutions or the bodies, offices or agencies of the European Union or their staff; etc.**

GC's decisions can be subject to an appeal before the Court of Justice



**Court of Justice of
the EU**

CJEU serves to ensure uniform interpretation and application of EU law.

EU law is most often interpreted and applied by national courts. **National courts** can (under certain circumstances must), once the meaning of EU law provision is **unclear**, **ask the CJEU for its view on the interpretation of that provision.**

Reference to the CJEU to obtain a preliminary ruling on any point of EU law relevant to the proceedings (Article 267 of the TFEU: **Preliminary ruling**).



If a national court is in doubt about the interpretation or validity of an EU law, it can ask the Court for clarification.

Article 267 TFEU:

The Court of Justice of the European Union shall have jurisdiction to give preliminary ruling concerning:

- (a) the interpretation of the Treaties;**
- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;**

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.



Compliance with EU Law

A) Mechanisms available to the European Union to enforce fundamental principles of the EU pursuant to Article 2 TEU.

Situations of concern which fall outside the scope of EU law and therefore cannot be considered as a breach of obligations under the Treaties but still pose a systemic threat to the rule of law. For these situations, the preventive and sanctioning mechanisms provided for in Article 7 TEU may apply.

B) Infringement procedure (legal action taken by the European Commission against an EU country that fails to implement EU law).

C) A Member State which considers that another Member State has failed to fulfil an obligation under the Treaties



Compliance with EU Law

A) Mechanisms available to the European Union to enforce fundamental principles of the EU pursuant to Article 2 TEU.

Article 2 TEU: The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 7 TEU:

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2.

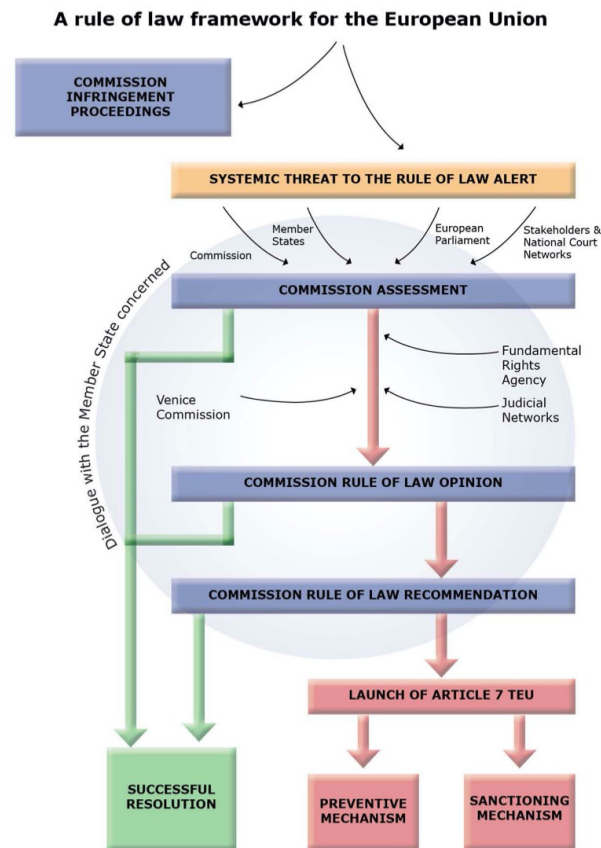
Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure. The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons. The obligations of the Member State in question under the Treaties shall in any case continue to be binding on that State.

Compliance with EU Law

A) Mechanisms available to the European Union to enforce fundamental principles of the EU pursuant to Article 2 TEU.

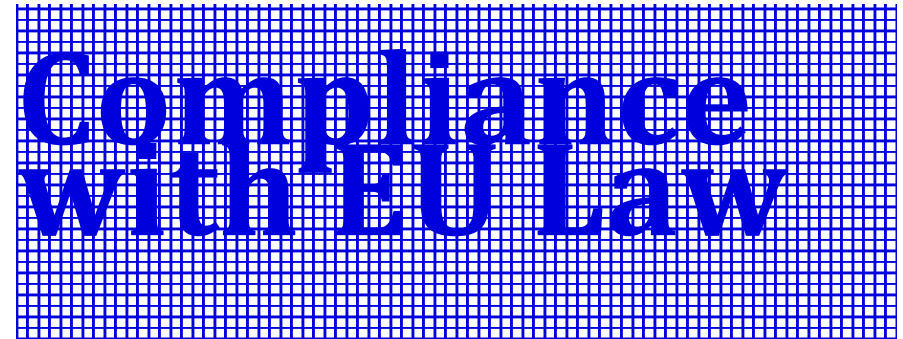


B) **Infringement procedure** (legal action taken by the European Commission against an EU country that fails to implement EU law).

Article 258 TFEU

If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.



The Commission may take legal action – an infringement procedure – against an EU country that fails to implement EU law.

(amicable solution first)

The Commission sends a letter of formal notice requesting further information to the country concerned, which must send a detailed reply within a specified period, usually 2 months. If the Commission concludes that the country is failing to fulfil its obligations under EU law, it may send a **reasoned opinion: a formal request to comply with EU law.**

If the country still doesn't comply, the Commission may decide to refer the matter to the Court of Justice. Most cases are settled before being referred to the court.

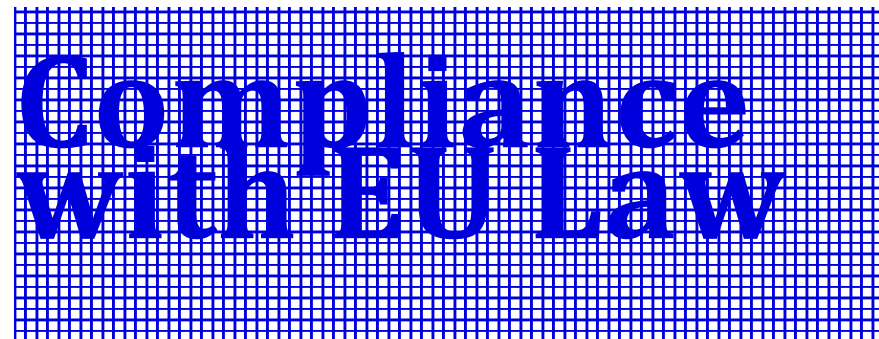
B) Infringement procedure (legal action taken by the European Commission against an EU country that fails to implement EU law).

Article 260 (2 steps)

1. step: If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court.

2. step: If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, **it may bring the case before the Court** after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.



C) A Member State considers that another Member State has failed to fulfil an obligation under the Treaties

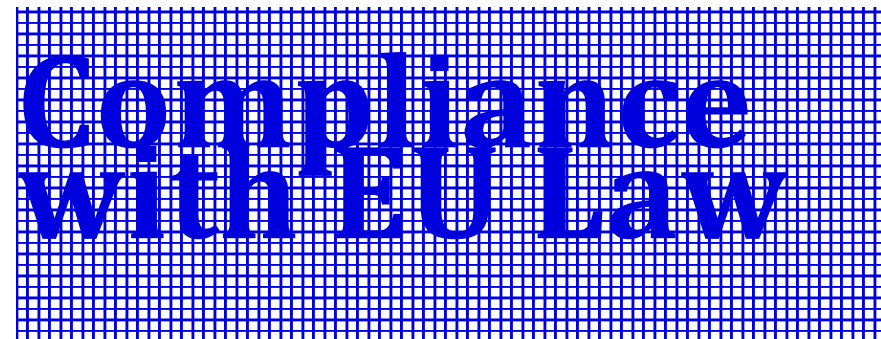
Article 259 TFEU

A Member State which considers that another **Member State has failed to fulfil an obligation under the Treaties** may bring the matter before the Court of Justice of the European Union.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under the Treaties, **it shall bring the matter before the Commission.**

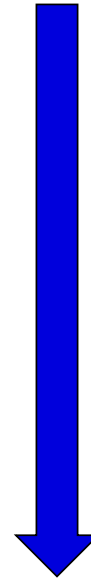
The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court.



EU Energy Law

European Coal and Steel Community
European Atomic Energy Community
(EURATOM)
European Economic Community
European Union



**European
integration**

CONSIDERING that world peace can be safeguarded only by creative efforts commensurate with the dangers that threaten it,

CONVINCED that the contribution which an organised and vital Europe can make to civilisation is indispensable to the maintenance of peaceful relations,

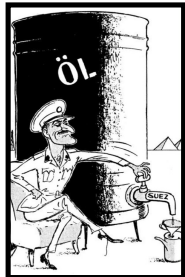
RECOGNISING that Europe can be built only through practical achievements which will first of all create real solidarity, and through the establishment of common bases for economic development,

ANXIOUS to help, by expanding their basic production, to raise the standard of living and further the works of peace,

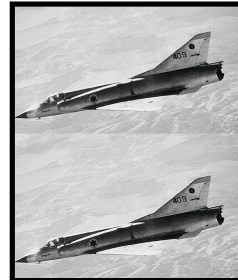
RESOLVED to substitute for age-old rivalries the merging of their essential interests; to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a destiny henceforward shared,



EU Energy Policy -> EU Energy Law



Suez
Crisis
1956



Six
Day
War
1967

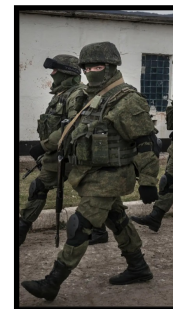
Liberalisation
of energy
markets
90s



Fall of
the
Soviet
Union
1991



Gas
crisis
2006/2009



Crimean
crisis
2014

Energy crisis
2022



Energy: Relevant Competences

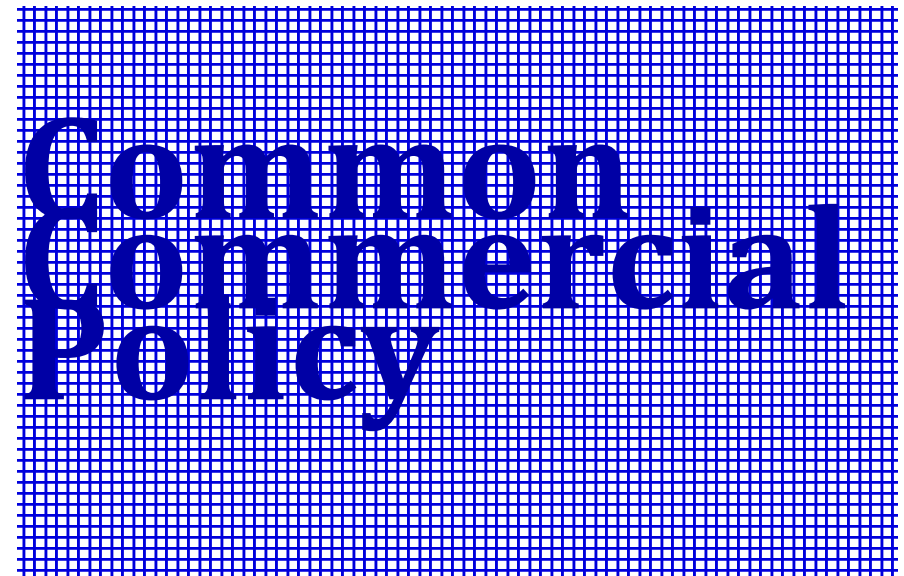
CCP: exclusive and external competence.

The CCP covers **trade tariffs and trade agreements** relating to trade in goods and services, commercial aspects of intellectual property and **foreign direct investments**.

EU external action can considerably contribute to the **removal of trade barriers**.

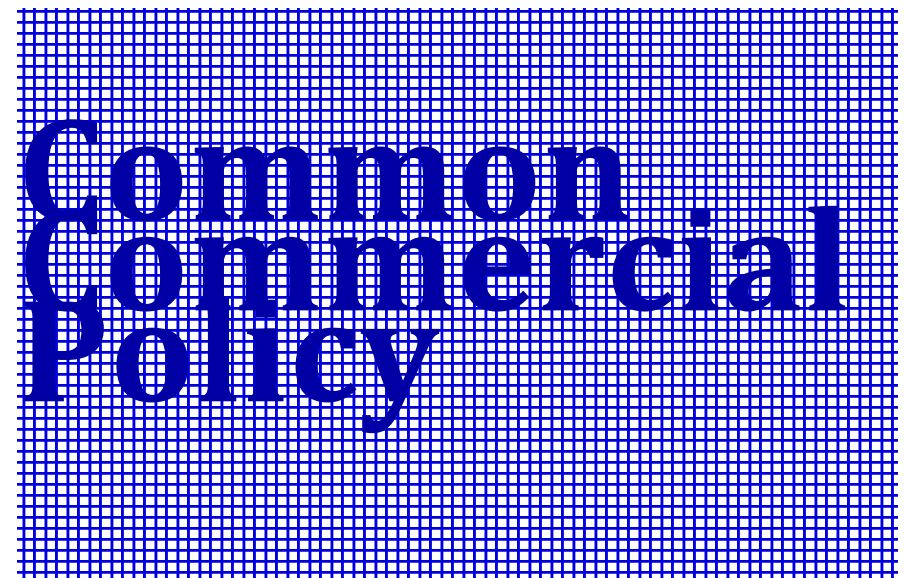
Trade in energy-related materials and products.

Examples: Conclusion of the Energy Charter Treaty, the Energy Community.



Article 207 TFEU:

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, **the conclusion of tariff and trade agreements relating to trade in goods and services**, and the commercial aspects of intellectual property, **foreign direct investment**, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.



Articles: 191-193 TFEU

Shared competence. Internal and External.

Article 191 includes objective “the promotion of measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change”.

Key principles:

A high level of protection.

The precautionary principle: The precautionary principle enables decision-makers to adopt precautionary measures when scientific evidence about an environmental or human health hazard is uncertain and the stakes are high.

The prevention principle: This principle allows action to be taken to protect the environment at an early stage. It is now not only a question of repairing damages after they have occurred, but to prevent those damages occurring at all. This principle is not as far-reaching as the precautionary principle. It means in short terms: it is better to prevent than repair.

The principle that environmental damage should as a priority be rectified at source: The rectification at source principle means that environmental damage should, as a priority, be addressed by targeting its original cause and taking preventive action at the origin of the problem. This principle places the responsibility for managing environmental damage on the polluter or the source of environmental harm. It reinforces the responsibility for managing environmental damage at the source of that damage - therefore linking it to the polluter. The principle also encourages processes that are inherently clean rather than approaches which treat the problem as or after it occurs.

The 'polluter pays' principle: The commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment. For instance, a factory that produces a potentially poisonous substance as a by-product of its activities is usually held responsible for its safe disposal.



Article 191 TFEU

1. Union policy on the **environment** shall contribute to pursuit of the following **objectives**:

- **preserving, protecting and improving the quality of the environment,**
- protecting human health,
- **prudent and rational utilisation of natural resources,**
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular **combating climate change.**

2. Union policy on the environment shall aim at **a high level of protection taking into account the diversity of situations in the various regions of the Union.** It shall be based on **the precautionary principle** and on **the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.**

3. In preparing its policy on the environment, the Union shall take account of:

- available scientific and technical data,
- environmental conditions in the various regions of the Union,
- the potential benefits and costs of action or lack of action,
- the economic and social development of the Union as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.



Article 194 TFEU

1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

- (a) ensure the functioning of the energy market;
- (b) ensure security of energy supply in the Union;
- (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- (d) promote the interconnection of energy networks.

2. Without prejudice to the application of other provisions of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to achieve the objectives in paragraph 1. Such measures shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions.

Such measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 192(2)(c).

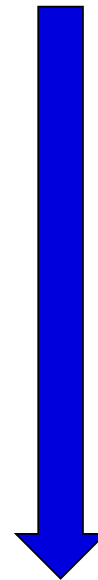


Shared competence.

Limitation of Article 194(2) TFEU: Treaty shall not affect Member State's sovereignty over the choice of its energy sources and the general structure of its energy supply in the electricity sector.



1. A proposal from the **European Commission**.
Compliance with Article 194 (2) TFEU.
Subsidiarity + Proportionality.
2. The opinion of **the European Economic and Social Committee**.
3. The opinion of **the Committee of the Regions**.
4. **Ordinary legislative procedure:**
The main characteristic of the ordinary legislative procedure is the adoption of legislation jointly and on an equal footing by Parliament and the Council.



**EU secondary
legislation:
Energy**