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**Course: Introduction to the European Union Law**

**[4] Legislative, administrative and judicial procedures in the EC/EU**

**Legislative procedures**

Founding treaties (primary law) are concluded and ratified by member/candidate states (conclusion and ratification procedures prescribed by both international and state (constitutional) laws.

Sole legislation is the creation of various legal documents of secondary law (regulations, directives, decisions, acts of 2nd and 3rd pillar of the EU).

EC/EU legislative institutions: the European Parliament (weaker), the Council (stronger), the Commission (proposals), advisory committees, other institutions and authorities of EC/EU.

Democratic deficit: legislative procedures without involvement of elected European parliament at all or the role of EP is reduced to consultation. The only (or key) legislative body is the Council. Its members-ministers of member states are controlled only slightly by national parliaments.

ECT provides for several basic legislative procedures often modified by special legislative rules established in particular provisions of competences. EUT provides for several law-making procedures for the 2nd and 3rd pillar. There are several dozens different legislative procedures (simplification needed and partially proposed in the Constitutional Treaty).

Key legislative procedures can be *distinguished* by the role of the European parliament: codecision, cooperation and consultation. There are legislative procedures entirely without participation of the European Parliament. Some legislation is made solely by the Commission.

Several pieces of legislation require unanimity in the Council, the rest requires only qualified majority (weighted votes of member states).

**Codecision**: proposal made by the Commission is discussed by both the European parliament and the Council. Advisory committees can be required to give opinion. If consensus after several procedural steps is not reached, mixed conciliation committee will be called to draft compromise. The EP can reject all. Extended heavily in last ten years to cover majority of legislative competences of the EC. Areas: free movement of workers, social security for them, the internal market, the environment etc.

**Cooperation**: the refusal of the EP can be overruled by the Council acting unanimously. Areas: economic and monetary policy.

**Consultation prescribed**: the European Parliament must be consulted. However, its opinion can be ignored. Areas: agriculture, competition.

**Solely the Council** decides on proposal of the Commission (the European Parliament can be requested for opinion): taxation, foreign and security policy, cooperation in criminal matters etc.

**Commission legislative**: if expected by regulations (customs union) or by ECT (agriculture)

**2nd and 3rd pillar**: no monopoly of the Commission to propose, unanimity in the Council

**Administrative procedures (1st pillar, EC law)**

Administrative procedures serve day-to-day application of EC law (usually can be referred as administrative law) by administrative authorities of both EC/EU and member states acting as agents of EC law.

No general rules. Special administrative procedures (regulations) for various agendas of the Commission (competition, state aids, regional policy) or agendas of special agencies (OHIM). The Court of Justice completed and/or replaced these rules with several procedural principles.

Major part of the EC/EU law administered by authorities member states. National procedures usually apply (however non-discrimination, effectivity required generally and special rules to be harmonised or unified (set usually by directives). Only several EC laws prescribe detailed procedural rules (customs union).

### **Judicial procedures (mainly 1st pillar)**

Judiciary contributes to proper application of law. Judiciary is deemed to be independent.

Judiciary of the EC is limited: the Court of Justice as the supreme court and other courts (the Court of First Instance and new Court of ...) for selected less important judicial agenda. The Court of Justice proper performs decides mainly constitutional matters and contributes to uniform application of EC law by national courts.

Major part of EC law is applied by the courts of member states: especially administrative (taxation, social security, environment protection, competition, regulatory affairs, customs, asylum etc.) and civil courts (judicial cooperation, labour, company and consumer protection).

Judicial procedures of general importance:

**Action for infringement.** The Commission investigates (at the beginning informally: diplomatic exchange, later formally opens investigation) member states if they comply with requirements of EC law (all sources). If no satisfactory result reached, the Commission can bring case before the Court of Justice. If the judgement of the Court is not obeyed, the Commission can ask the Court of Justice for penalty payment (fine). The investigation and action for infringement can be also introduced by another member state.

**Action for annulment / action for failure to act** Both procedures provide for judicial review of administrative decisions (the Commission and other EC agencies) and legislation – regulations and directives. Two-month limit for action for annulment, if the piece of legislation or administrative decision found illegal (breach of substantive rules, lack of competence, principal procedural error or misuse of discretionary power) is declared void. Actions for failure to act can succeed if duty to act established by EC law.

**Preliminary ruling** Preliminary ruling serves uniform application of EC law by courts of member states. Every court (state/public judicial authority) can request for preliminary ruling if necessary to clarify the meaning of provision of EC law document – ECT, directive or regulation. The Court of Justice provides authoritative (binding) answer to question presented by national court. The Court of Justice checks the necessity of the answer, it does not decide on factual matters. National courts shall obey case-law of the Court of Justice. National courts of last instance (no remedy available for re-thinking of conclusions in law) are obliged to request for preliminary ruling if unclarity of applicable EC law occurs. Preliminary ruling is surrogate to appellate / complaint procedures open for parties of procedures before national courts.

**Some other judicial procedures:** (1) actions for compensation (non-contractual liability), (2) action concerning civil service, (3) actions based on an arbitration cause. Partly adjudicated by the Court of First instance and the Court of Civil Service, their decisions can be appealed.

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Homework: read judgement CILFIT (283/81), celex nr. 61981J0081

