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Course: Introduction to the European Union Law

[4] Legislative, administrative and judicial procedures

Founding treaties (primary law) are concluded and ratified by the member or the candidate states.

Conclusion and ratification procedures prescribed by both international (Vienna convention on Treaties) and state (constitutional) laws.

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

EC/EU legislative institutions are the European Parliament (weaker), the Council (stronger), the Commission (monopoly on proposals), advisory committees (the Economic and Social Committee, the Committee of Regions) or – in several cases – the European Central Bank.

Legislative procedures

EC Treaty provides for several basic legislative procedures often modified by special legislative rules established in particular provisions of competences (aproximatelly 30 types of legislative procedures can be identified)

EU Treaty 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).

Democratic deficit

Legislative procedures in the European Union are often without appropriate involvement of elected body: the European parliament. Sometimes, its role is reduced to consultation. The only or key legislative body in many cases the Council. Its members-ministers of member states are controlled only slightly by national parliaments. Democratic deficit is often criticised. However, the Member States do not want to diminish significantly their power embodied in the Council.

Key legislative procedures can be *distinguished* by the role of the European parliament: (1) codecision, (2) cooperation and (3) 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 (votes of different of the Member States).

Codecision procedure

Proposal is made by the Commission. It is discussed by both the European parliament and the Council. Advisory committees can be required to give opinion by the EC Treaty. If no consensus after several procedural steps (the first, the

second, the third reading) is achieved, mixed conciliation committee will be called to prepare compromise solution. The European Parliament can, however, reject all. The codecision Extended heavily in last ten years to cover majority of legislative competences of the EC. Legislation for free movement of workers, social security for them, the internal market or environment protection is enacted in codecision procedure. The procedure was introduced by the Maastricht Treaty.

Cooperation procedure

Cooperation procedure was introduced by the Single European Act as an partial step to limit democratic deficit. Many steps resemble codecision procedure. Nevertheless, the refusal of the European Parliament can be overruled by the Council acting unanimously. Use of the procedure is limited now for economic and monetary policy.

Consultation

The European Parliament must be consulted. However, its opinion can be ignored. Legislation for agriculture or competition is enacted in the procedure.

The Council only

The Council (id est ministers of the Member States) decides on proposal of the Commission (the European Parliament can be requested for opinion): taxation, foreign and security policy, cooperation in criminal matters etc. The Parliament is not involved at all.

Commission legislative activity

If expected by regulations (customs union) or by EC Treaty (agriculture), the Commission enacts detailed regulations

2nd and 3rd pillar legislation

There is no monopoly of the Commission to propose joint positions, joint actions, framework decisions or 3rd pillar decisions. Unanimity in the Council is usually required. The European Parliament is not involved.

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 European Community and the Member States while acting as agents of EC law.

There are no general rules (EC or EU administrative code).

Special administrative procedures (regulations) for various agendas of the Commission (competition, state aids, regional policy) or special agencies (OHIM).

Nevertheless, the Court of Justice completed or replaced these rules with several procedural principles (audiatur et altera pars,

Major part of the EC/EU law administered by authorities of the Member States. National procedures usually apply. Many Member states have their own administrative procedure codes or special rules.

Nevertheless, non-discrimination (equal treatment) and effectivity (effet utile) are required generally. Special rules are sometimes harmonised or unified (set usually by directives).

Only few EC regulation provide for detailed procedural rules (the Customs Code).

Judicial procedures (mainly 1st pillar)

Judiciary contributes to proper application of law in modern states. Judiciary is deemed to be independent. In the European Community, the role of EC judiciary is crucial. Case-law of the Court of Justice contributed significantly to development of EC law

Nevertheless, judiciary of the EC proper is limited: the Court of Justice as the supreme court. Other courts (the Court of First Instance and new The Civil Service Tribunal) are established for management of selected less important judicial agenda.

The Court of Justice proper decides mainly on constitutional matters and contributes to uniform application of EC law by national courts.

Major part of EC law is applied by the courts of the 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 are:

Action for Infringement

The Commission starts with diplomatic communication. It opens later investigation particular Member states whether it complies with requirements of EC law (EC Treaty, regulations and directive).

If no satisfactory result is reached, the Commission can bring case before the Court of Justice. The Court of Justice investigates and hears both participants and decides whether the EC law was infringed or not.

If the judgement (declaring the existence of an infringement) is not obeyed, the Commission can ask the Court of Justice for penalty payments (fine). Nevertheless, fines are quite rare.

The investigation and action for infringement can be also introduced by another Member State.

Action for annulment

The procedure covers judicial review of administrative decisions (the Commission and other EC agencies) and „constitutional review“ of EC legislation – regulations and directives. Two-month limit is set for action for annulment. If the piece of legislation or administrative decision is found illegal (breach of superior substantive rules, lack of competence, principal procedural failure or misuse of discretionary power), it shall be declared void.

Action for failure to act

Actions for failure to act can succeed if duty to act established by EC law is ignored by relevant EC institution.

Preliminary ruling

Preliminary ruling contributes to homogenous application of EC law by the courts of the Member States. Every court (id est state or public judicial authority) can request for preliminary ruling. Requests for preliminary rulings shall be submitted if it is necessary for clarification of the meaning of applicable EC law. Provisions of the EC Treaty, provisions of directives and regulations are to be interpreted by the Court of Justice. The request for preliminary ruling shall not be submitted if the provision can reasonably be interpreted in one way only (*acte clair*) or has already been interpreted by previous judgements of the Court of Justice (*acte éclairé*).

The Court of Justice provides authoritative (binding) answer to question(s) presented by national court. The Court of Justice checks the necessity of the answer, it does not decide on facts. Nevertheless, courts of the Member States shall obey case-law of the Court of Justice in general. 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 appeals or complaints which are available for parties of proceedings of courts of the Member States.

Almost all important doctrines and principles of EC law is established by the Court of Justice in judgements based on requests for preliminary ruling.

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.