

Course: *Law of the European Union*

**[4] Legislative, administrative
and judicial procedures in the
European Union**

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Creation of primary law

- Founding treaties and treaties amending them, including treaties of accession are concluded at intergovernmental conferences and ratified by member and candidate states according to their constitutional provisions (ratification by the head of the state after approval of parliament and/or people in referenda).
- Conclusion and subsequent ratification is expected in both international (Vienna convention on Law of Treaties) and state constitutions.

Making secondary law

Legislative activity is thus creation of various legal documents of secondary law (regulations, directives, decisions).

- Legislative institutions are the European Parliament (weaker position), the Council (stronger position), the European Commission (monopoly on proposals), the advisory committees.

Legislative procedures in the past (until Lisbon)

- TFEU provides for several legislative procedures. They are modified by special legislative provisions on particular competences.
- Four principal procedures were identified: codecision, cooperation and consultation (involving the European Parliament) and the Council deciding alone
- EC Treaty provided for more than 30 different modifications.
- EU Treaty provided for several law-making procedures for the 2nd and 3rd pillars.

Democratic deficit

- Legislative procedures were (and partly are) without appropriate involvement of the only directly elected body: the European parliament. It played limited, or no role.
- The Council was often the only or the first legislative body. Its members-ministers of member states are controlled only loosely by national parliaments.
- Democratic deficit was criticised. It doubtful, however, whether it can be removed.
- Firstly, Member States do not want to diminish significantly their power. Secondly, the European Parliament can hardly fully act as normal parliament due to poorly integrated politics in the European Union.

Ordinary legislative procedure

- The European Commission – proposal
- Both legislative institutions approve jointly
- The European Parliament – can veto
- The Council – decides with qualified majority.
- Steps are described in TFEU: 1st reading, 2nd reading and 3rd reading are expected if necessary. Compromise can be negotiated with a conciliation committee.

Use of ordinary legislative procedure

- Ordinary legislative procedure has evolved from codecision procedure.
- Amendments of TEC have introduced codecision into new and new agendas.
- Lisbon Treaty repabitized codecision to ordinary legislative procedure and introduced it for most agendas.

Special legislative procedures

- Special legislative procedures cover several sensitive agendas.
- There are several special legislative procedures.
- Role of the European Parliament is limited. Its veto can be overruled, it must be consulted.
- The Council must decide unanimously in most cases.
- Exceptionally, the European Parliament decides and the Council is consulted.

The Council / the Commission alone

- Several pieces of legislation are adopted by the Council alone. The European Parliament is not involved.
- Lisbon Treaty clarifies rules for adoption of delegated non-legislative acts and implementing rules by the Commission or by the Council.

Administrative procedures

- European Union law has the most important impact on administrative law of member states.
- Administrative procedures serve day-to-day application of European Union law by administrative authorities of both European Union and member states while acting as agents of EU law.

Procedures for direct European administration

- There are no general rules for proceedings (no administrative code of the European Union).
- Special administrative procedures are established in for various agendas of the Commission (competition, state aids, regional policy) or special agencies (Office for Harmonization on Internal Market).
- Nevertheless, the Court of Justice completes these rules with procedural principles (audiatur et altera pars etc.)

Administration of European Union law by authorities of member states

- Most European Union laws are applied by member states.
- National procedures apply. Many Member states have their own administrative procedure codes.
- Member states are left to decide on their administration (the principle of procedural autonomy).
- Nevertheless, non-discrimination (equal treatment) and effectivity (effet utile) are required by the European Union.
- Special rules are sometimes harmonised or unified by directives. Few regulations provide comprehensive procedures (customs).

Judicial procedures

- Judiciary contributes to good application of law in all modern states with rule of law and democracy.
- Judiciary is expected to be independent from political pressures and influence.
- In the European Union, the role of judiciary is crucial.
- Case-law of the Court of Justice contributed significantly to development of European Union / European Communities law.
- Courts and tribunals of member states have become an important instrument for application of it in all member states due to their independence.

Distribution of powers in European Union judiciary

- Nevertheless, judiciary of the European Community as such is limited: the Court of Justice as the supreme court.
- Other courts (the General Court and new Civil Service Tribunal) have been established for management of selected less important agenda.
- The Court of Justice decides mainly on constitutional matters and contributes to uniform application of European Union law by national courts and tribunals.

Judicial procedures of member states

- Majority of European Union laws is adjudicated by judiciary of member states.
- Codes of procedure (civil, criminal, administrative, special) are thus applied.
- Organisation of judiciary, available appeals and complaints depend on member states.
- Principles of equality and effectivity shall be, however, observed.
- Connection between adjudication by courts of member states and judiciary of the European Union is preliminary ruling.

Action for Infringement

- The Commission starts with diplomatic communication with particular member state.
- Later, it opens investigation whether legislation and practice of this member state complies with requirements of European Union law.
- If there is no satisfactory result, the Commission can bring case before the Court of Justice.
- The Court of Justice investigates and hears both participants and decides whether the European Community law was infringed or not.

Fines imposed by the Court

- If the judgement declares infringement is not obeyed by the member state,
- the Commission can ask the Court of Justice for penalty payments (fine).
- These fines are rare, nevertheless, they are expected to be used more frequently.
- Such penalization is the instrument of last resort for coercion of member states.

Action for annulment

- The procedure is:
 - judicial review of administrative decisions (the Commission and other agencies)
 - „constitutional review“ of European Union legislation – regulations and directives.
- Two-month limit is prescribed for the action.
- If the piece of legislation or administrative decision is found contrary to law - breach of superior substantive law, lack of competence, principal procedural failure or misuse of discretion - it shall be declared void.

Preliminary ruling - description

- Preliminary ruling is the most important and the most specific judicial procedure in the European Union.
- Preliminary ruling is surrogate to appeals or complaints which are available for parties of proceedings of courts of federations.
- Preliminary ruling contributes to homogenous application of European Union law by the courts of member states.
- Important doctrines and principles of EU/EC law has been established by the Court of Justice in judgements from preliminary ruling.

Preliminary ruling: conditions for request

- Every court (broadly defined: state or public judicial authority) can request the Court of Justice.
- Requests shall be submitted if it is necessary for clarification of applicable European Union law. The Court of Justice checks the necessity of the answer for decision of requesting court or tribunal of member state.
- Provisions of founding treaties, 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 judgement of the Court of Justice (*acte éclairé*).

Result of preliminary ruling

- The Court of Justice provides binding answer to question(s) submitted to it by national court or tribunal. It does not decide on facts.
- Other courts and tribunals of member states are expected to follow case-law of the Court of Justice.
- There is continuous debate about binding force of such case-law. Anglo-american (precedent theory) and continental approaches (lack of precedents) clash.

Duty to request

- National courts of the last instance (when no remedy available for re-thinking of law), i.e. constitutional courts, supreme courts and supreme administrative courts - are required to request for preliminary ruling if described conditions are met.
- Nevertheless, there are only limited sanctions if this requirement is ignored.

Several other judicial procedures:

- (1) actions for compensation (non-contractual liability),
- (2) actions concerning civil service,
- (3) actions based on an arbitration cause.
- Partly adjudicated by the General Court and the Civil Service Tribunal. Their decisions can be appealed.