

EU LAW

SOURCES OF EU LAW

1. Primary legislation

(a) The EC Treaty 1957

- The EC Treaty was signed in Rome in 1957
- It came into effect in January 1958
- It established the European Economic Community (EEC), the Community's aims and activities, its institutions, law-making procedures, enforcement procedures and main substantive policies
- The EC Treaty is a framework piece of legislation and is supplemented by secondary legislation
- It is still the main source of EU law, although it has been amended and updated several times.

(b) The Single European Act 1986

This came into force in 1987. It updated the EC Treaty. It created a Community environmental policy.

(c) The Treaty on European Union 1992 (TEU)

- The TEU was signed in 1992 and came into force in 1993
- It created the European Union and renamed the EEC as the European Community (EC)
- The EC (along with the European Atomic Energy Community, Euratom) is one of the three 'pillars' of the EU. The others are Common foreign and Security Policy (Pillar 2) and Police and judicial co-operation in Criminal Matters (Pillar 3)

- The TEU also amended the EC Treaty

(d) The Treaty of Amsterdam 1997 (TA)

- The TA was signed in 1997 and came into force in 1999
- It amended and renumbered the EC Treaty

(e) The Treaty of Nice 2001 (TN)

- The TN was signed in 2001 and came into force in 2003
- It amended the EC Treaty

(f) The Treaty Establishing a Constitution for Europe 2004

- The Constitution Treaty was signed in 2004
- It is not yet in force, as it requires ratification by all 25 Member States
- France and the Netherlands rejected the Treaty in 2005 although many other States had already ratified and some have done so subsequently
- If fully ratified the Constitution Treaty will replace all pre-existing Treaties and consolidate their principles into one document

2. Secondary legislation

(a) Regulations

- Regulations are the highest form of secondary legislation
- They are generally applicable (they apply to every Member State)
- They are directly applicable (they have their own legal force and do not require implementation into national legislation)
- Regulations are designed to create uniformity across the whole of the EU

(b) Directives

- Directives are the second highest form of secondary legislation
- They are binding on those Member States to which they are addressed
- They are not directly applicable but require implementation via national legislation in each Member State on or before an implementation deadline
- Directives are designed to harmonise the laws of the Member States

(c) Decisions

- Decisions are directly applicable, but only on those to whom they are addressed

(d) Recommendations and Opinions

- These are not legally binding but are persuasive

3. Legislative procedures

- Legislative procedures for secondary legislation are contained in the EC Treaty. The Treaty dictates which procedure is used, depending on the subject matter of the secondary legislation
- The principal procedure is co-decision. There is also co-operation and consultation. All procedures involve the three principal institutions: the European Commission (EC), the Council of the European Union (Council) and the European Parliament (EP). Other institutions including the Committee of the Regions and the Economic and Social Committee may have a consultative role, depending on the subject matter
- The institutions are required to comply with the principle of subsidiarity (Article 5 EC), according to which decisions must be made by the body closest to those affected. This may mean legislative actions are best left to national or regional bodies
- Failure to comply with the legislative procedures and/or subsidiarity can lead to legislation being challenged and declared invalid by the European Court of Justice (ECJ)
- The EC has law-making powers in areas where powers have been so delegated by the Council

(a) Co-decision procedure

- In the co-decision procedure, the EC drafts a proposal and passes it to the Council and the EP, who collectively

have to agree to adopt the proposal

- If the EP vetoes the proposal the Council may not adopt the proposal, even by acting unanimously
- In most cases the Council acts by qualified majority (QMV) except where the EC Treaty specifies unanimity must apply
- QMV refers to the system where each Member State exercises a block vote either in favour of or against a proposal
- The EP can propose amendments and these are often accepted by the EC and the Council

(b) Co-operation procedure

- As above, but if the EP vetoes the proposal, the Council may adopt the proposal but only by acting unanimously
- In most cases the Council acts by qualified majority (QMV) except where the EC Treaty specifies unanimity must apply
- The EP can propose amendments and these are often accepted by the EC and the Council
- Only used in a limited number of areas

(c) Consultation procedure

- As above but the role of EP is reduced. It may only offer opinions which have no legal effect
- However, it is an essential procedural requirement that the EP be consulted and be given a reasonable time period in which to formulate a reply. If not then the legislation may be declared invalid (*Roquette France*)
- Only used in a very limited number of areas

4. Other sources of EU Law

- Other sources include the case law of the ECJ (see below)
- Also the EU Charter of Fundamental Rights, adopted in 2000 but not legally binding. It is highly persuasive and has been referred to in many ECJ cases as a guide to the interpretation of binding EU legislation

SUPREMACY

- Where EU law and national law conflict with each other then EU law takes priority (*Costa v ENEL*)
- This applies to all EU law, including secondary legislation. It also applies to all national law, including provisions contained in national constitutions (*Internationale Handelsgesellschaft*)
- Where such a conflict arises, the national courts must set aside any conflicting national legislation without waiting for the national parliament to act (*Simmenthal, Factortame I*)

Tmac Legal Revision Guide

Rita D'Alton-Harrison

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