

Sources of EU Law

Introduction

The European Union has its origins in Communities set up after World War II that aimed to create lasting peace.

Over the years, the EU has grown to include 27 member states

Member States remain independent sovereign nations, although they pool this sovereignty together in order to gain strength in certain areas and world influence. The Member States delegate some decision-making powers to shared institutions

EU law has supremacy over UK law – where EU law and national law conflict, EU law will take primacy. EU law may also have direct effect if it satisfies relevant criteria. This means it gives rights and obligations to individuals as well as state authorities which may be enforced before national courts.

Institutions of the EU

It is important to be able to distinguish between the different institutions of the EU and to understand their functions.

The institutions have a variety of functions as they act as the day-to-day “government” of Europe, taking decisions relating to legislative, executive and judicial functions.

The Institutions are:

- European Council
- European Parliament
- Court of Justice of the European Union
- European Commission
- Council of the European Union

European Council

The European Council sets the overall guidelines for EU policies. It includes all the Heads of State or Government of all EU countries. It was originally created in 1974 as an informal forum for discussion. This forum gradually evolved and the Lisbon Treaty which came into force on 1st December 2009 formally recognised it as an EU institution.

A summit is held at least four times a year where they discuss relevant issues. Decisions are taken by consensus (by unanimity or majority)

More information is available from **Europa** (<http://www.european-council.europa.eu/>)

European Parliament

The European Parliament is known as the voice of the people. It represents EU citizens and is directly elected by them. Elections are held every 5 years and every EU citizen is entitled to vote and to stand as a candidate.

It decides EU laws and budgets together with the Council of Ministers. The fact that Parliament is directly elected by citizens helps guarantee the democratic legitimacy of EU law. European Parliament must approve most legislation but it can without approval in order to influence legislation. It can also adopt or reject a budget in its entirety, thereby, influencing EU spending.

The European Parliament exercises democratic supervision over other institutions – it has the power to approve or reject the nomination of commissioners to the European Commission and it regularly questions the Council of Ministers and examines reports

The European Parliament is not able to propose law but it can consider new laws and asks the European Commission to put forward proposals

More information is available from **Europa** (<http://www.europarl.europa.eu/>)

European Commission

The European Commission represents the interests of the Community as a whole and seeks to uphold the common interest. There are 27 independent members – one from each EU country.

The Commission proposes legislation and launches new policy initiatives. It can initiate legal proceedings to ensure compliance with EU policy and legislation. It also represents the EU on the international stage.

More information is available from **Europa** (<http://ec.europa.eu/>)

Council of the European Union

The Council of the European Union is also known as the Council of Ministers or just Council. It represents the individual Member States. The exact membership depends on the topic being discussed. There are 10 different configurations for different subjects, with the ministers for that particular subject making up the membership. For example, the Foreign Affairs configuration is made up of the foreign affairs ministers from each EU country.

The Council decides EU laws and budget together with the European Parliament. In some fields - Agriculture, Economic Policy and Visas and Immigration – it legislates alone but with some consultation.

The Council of the European Union should not be confused with the Council of Europe. The Council of Europe is a body set up in 1947 by European states in the aftermath of World War II to protect human rights after the atrocities of war. It is totally separate from the European Union

More information is available from **Europa** (<http://www.consilium.europa.eu/>)

Court of Justice of the European Union

This is made up of three courts:

- Court of Justice
- General Court
- Civil Service Tribunal

The courts aim to uphold the law, to rule on how to interpret EU law and ensure Member States apply EU laws in the same way

The European Court of Human Rights (ECHR) should not be confused with the Court of Justice of the European Union. The ECHR was established by the Council of Europe (not part of the EU) to enforce the rights contained in the European Convention on Human Rights. Following the enactment of the Human Rights Act in the UK, the decisions of this Court now have to be taken into account by our national courts

Court of Justice

The Court of Justice is charged with ensuring that the law of the EU is observed.

There are 27 judges – one from each Member State and 8 Advocates-General.

The Advocates-General deliver an impartial and independent “opinion” to the Court on cases assigned to them. They suggest a response which they consider should be given to the problem raised.

The court can sit as a full court, a grand Chamber of 13 judges or as 3 or 5 judges. Judges decisions are delivered as a single judgment (separate concurring or dissenting judgments are not permitted). Decisions are binding on National Courts and are made by majority.

There are a variety of proceedings it deals with:

- **References for preliminary rulings**
 - National courts refer to the Court and ask it to clarify a point concerning interpretation of EU law;
 - OR seek the review of a particular EU act
 - Important decisions are made by asking questions in this way
- **Actions for failure to fulfil obligations**
 - The European Commission conducts a preliminary procedure giving the Member State concerned a chance to reply to the complaints addressed to it
 - If the Member State does not remedy the situation a case for infringement can be brought by the commission
 - The Member State can be given a financial penalty over a period of time or a fixed sum
- **Actions for annulment**
 - This refers to measures adopted by EU institutions and the annulment of a particular EU act that was implemented by an institution, body or office of the European Union
- **Actions for failure to act**
 - This refers to an institution of the EU and their failure to act
- **Appeals**
 - The Court accepts appeals on points of law from the General Court

More information is available from **Europa** (<http://curia.europa.eu/>)

General Court

Previously called the Court of First Instance, it was set up in 1989 to alleviate delays in deciding cases by the Court of Justice because of its increased case load.

There are 27 judges – one from each Member State – and no Advocates-General. The judges can sit as a full court, Grand Chamber of 13 judges or 3 or 5 judges.

The decisions of the Court are subject to an appeal on points of law to the Court of Justice.

In general, it has jurisdiction to hear and determine at first instance all direct actions brought by individuals and the Member States.

The types of proceedings the Court deals with include:

- Direct Actions - Brought against the institutions of the EU and their acts or failure to act which directly concerns them
- Actions against the Commission
- Actions against the Council concerning state aid, dumping and implementing powers
- Actions seeking compensation from damage caused by institutions of the EU
- Community trademarks
- Appeals - From the Civil Service Tribunal

More information is available from **Europa** (<http://curia.europa.eu/>)

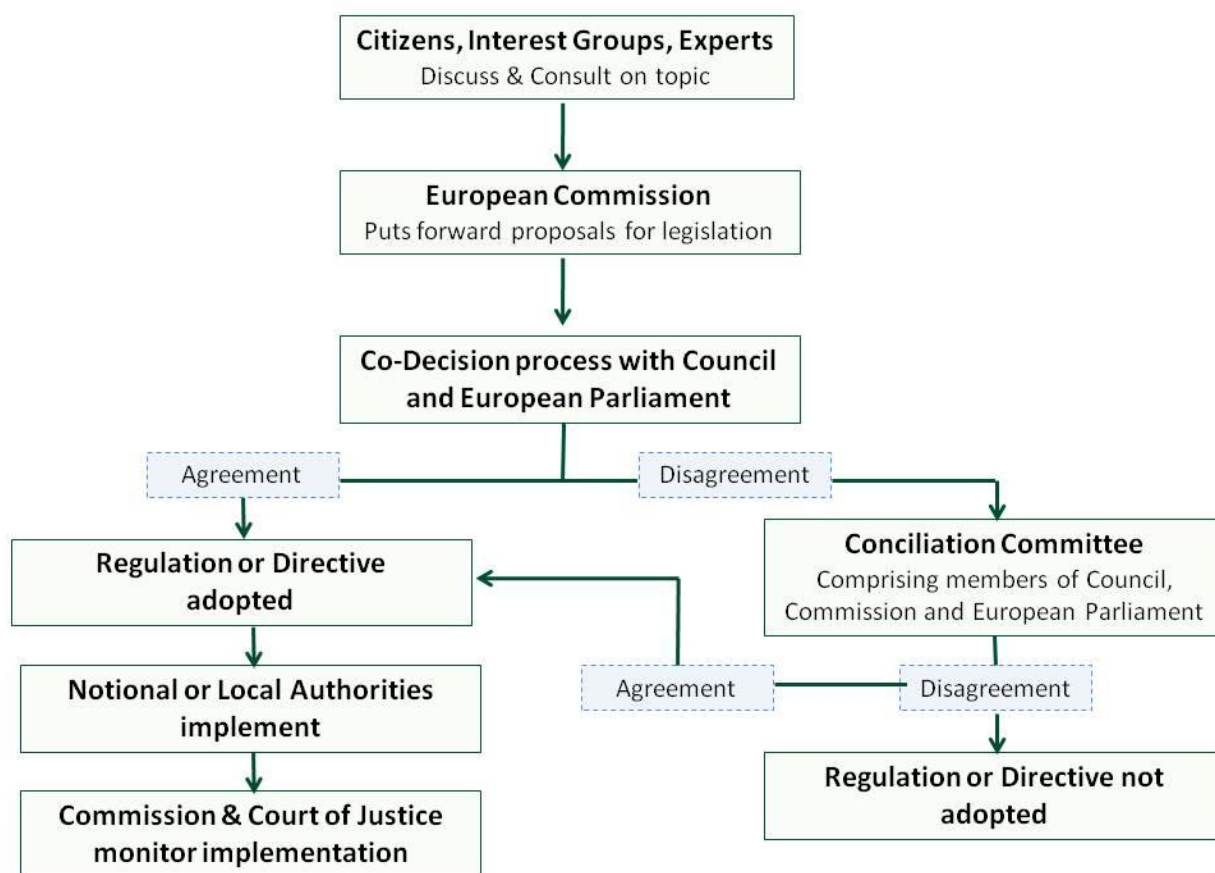
Civil Service Tribunal

The Civil Service Tribunal is made up of 7 judges chosen from the Court of Justice and General Court. It does not include Advocates-General. It usually sits in chambers of three. It generally deals with matters concerning EU staff – such as working relations (pay etc.) and social security issues (sickness, old age etc.)

The decisions of the Court are subject to an appeal to the General Court

Law-Making Process

It is important to understand the basic steps in the European law-making process:



Legislation: Preparatory Documents

Proposals for new legislation or amendments are issued by the Commission of the EU as COM documents. These also include communications and reports such as white papers, green papers and reports on the implementation of policy.

They are numbered sequentially each year and given a unique number. They are cited by (Year) Number. e.g. COM (2005) 577 Amended proposal

Primary Legislation: Treaties

The EU has been developed through the adoption and ratification of Treaties. They provide the basic principles on which European law is founded, Treaties set out a broad framework and establish fundamental legal concepts.

Treaties create, give authority to and impose restrictions on the power of the institutions. All treaties are generally held to be directly applicable - it automatically becomes part of UK law without the need to enact further legislation.

The main Treaties are:

- Treaty of Lisbon
- Treaty of Amsterdam
- Single European Act (SEA)
- Treaty of Rome
- Treaty of Nice
- Treaty on European Union
- Merger Treaty
- Treaty establishing the European Coal and Steel Community

Secondary Legislation

Secondary legislation (directions, regulations and decisions) supplements the primary legislation (treaty articles).

Directives

Directives often state general goals and leave the precise implementation to the individual Member States.

They must be implemented by all member states within a given timescale, using their own legislative systems. In the UK this is usually in the form of a Statutory Instrument or occasionally a new Act.

References to Directives are written with the year first followed by a unique number.

For example: Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004.....

- Type of the Act (*Directive*)
- The year of enactment (*2004*)
- A unique number to identify it (*22*)
- Institutional treaty under which the Act was made (*EC*)
- Institution that is responsible for the Act (*European Parliament & Council of the EU*)
- Date on which the Act was passed (*31st March 2004*)

Regulations

All Regulations are generally held to be directly applicable - it automatically becomes part of UK law without the need to enact further legislation.

References to Regulations are written with the unique number first followed by the year

For example: Commission Regulation (EC) No. 1965/2004 of 14 January 2004 establishing....

- Institution that is responsible for the Act (*European Commission*)
- Type of the Act (*Regulation*)
- Institutional treaty under which the Act was made (*EC*)
- A unique number to identify it (*1965*)
- The year of enactment (*2004*)
- Date on which the Act was passed (*14th January 2004*)

Decisions

These are addressed to individuals or member states and are binding to those addressed. They do not normally create generally applicable EU law.

References to Decisions are written with the year first followed by a unique number.

For example: 85/648/EEC, Council Decision of 19 December 1985...

- The year of enactment (*1985*)
- A unique number to identify it (*648*)
- Institutional treaty under which the Act was made (*EEC*)
- Institution that is responsible for the Act (*Council of the EU*)
- Type of the Act (*Decision*)
- Date on which the Act was passed (*19th December 1985*)

Finding Legislation

**Use the *SOAS Library Catalogue* (<http://lib.soas.ac.uk>) to find collections in print

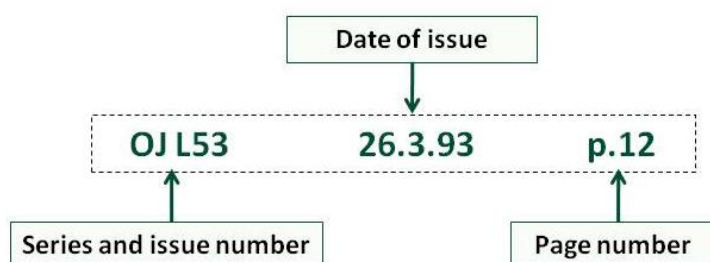
**Use the *A-Z Electronic Databases* (<http://www.soas.ac.uk/library/resources/a-z/>) to access the SOAS Databases listed

Official Journal of the European Union

This is the only official source of European law. It is published almost daily (6 times a week) and comprises of several parts:

- **L Series (Legislation)**
 - Section 1 includes full text of Acts whose publication is mandatory
 - Section 2 includes the full text of all other legislation
- **C Series (Communication)**
 - Part 1 contains information from the Commission, Court of Justice of the European Union, European Parliament and the Economic and Social Committee
 - Part 2 contains text of proposed legislation
 - Part 3 contains notices of invitation to tender for contracts and staff vacancies

Example of citations:



Other Sources

- **Europa** (<http://europa.eu/>)
 - Provides access to the full text of Primary Legislation (Treaties)
 - Includes summaries of legislation site (http://europa.eu/scadplus/scad_en.htm) containing:
 - Summaries and publication references for the measures adopted by the EU in each of its activities with links to the full text
 - Preparatory work and related reports
 - Updated summaries of ongoing legislative procedures
 - Documents available in official languages
- **EUR-Lex** (<http://eur-lex.europa.eu/>)
 - Provides full text of
 - Official Journal of the European Union L and C Series from 1998 onwards
 - International Agreements
 - Primary Legislation & Secondary Legislation
 - Preparatory Documents (COM Documents from 1999 onwards)
 - Details of implementing legislation in Member States
 - Parliamentary questions
 - Documents are available in all 23 EU official languages
- **Pre-Lex** (<http://ec.europa.eu/prelex/apcnet.cfm?CL=en>)
 - Tracks proposals through the legislative process in detail
 - Provides information on:
 - Stage of the procedure
 - Decisions of the institutions
 - Document references

- **Westlaw UK (SOAS Database)**
 - Contains the Official Journal of the European Union:
 - L Series from 1952 onwards
 - C series from 1954 onwards
- **LexisLibrary (SOAS Database)**
 - Contains the Official Journal of the European Union:
 - L Series from 1952 onwards
 - C series from 1954 onwards
 - Contains the full text of COM documents from mid 1990s onwards

Case Law

See the section on Institutions above for more information on the three courts.

Court of Justice

As mentioned, cases from this court have two stages:

- The Advocate-General's opinion
- The judgment (usually a few months later)

All of the case law is published in full in all official languages. Other texts are available in the language of the case and the language of deliberation.

Decisions are binding on all UK courts.

Every case filed is given a registration number. Cases before the European Court of Justice are prefixed C then cited by Number / Year. e.g. C378/01 Commission v Italy

General Court

Cases at the General Court only have one stage – the judgment.

All of the case law is published in full in the language of the case, but only a summary is provided in other languages. Decisions are not binding although must be taken account of in English and Welsh courts.

Cases before the Court of First Instance are prefixed T then cited by Number / Year. e.g. T-11/03 Elizabeth Afari v European Central Bank

Civil Service Tribunal

Cases at the Civil Service Tribunal only have one stage – the judgment.

Every case filed is given a registration number. Cases are prefixed F then cited by Number / Year. e.g. F-11/09 Brown v Commission

Finding Cases

**Use the *SOAS Library Catalogue* (<http://lib.soas.ac.uk>) to find collections in print

** Use the *A-Z Electronic Databases* (<http://www.soas.ac.uk/library/resources/a-z/>) to access the SOAS Databases listed.

European Court Reports

These are the Official series of EU law reports. They contain judgments from the Court of Justice and General Court as well as the opinions of the Advocates-General. They can also be known as *Reports of Cases before the Court of Justice and the Court of the First Instance* or *Reports of Cases before the Court*.

Until mid-2004 every case was published. Since then, less important cases have been omitted. Cases are published in all the languages of the EU. There is usually a delay of 2 to 3 years between a judgment and publication in the English edition.

- **Volume 1**
 - Covers cases heard in the Court of Justice (Judgments & Opinions of the Advocates-General)
 - Cited as [1991] ECR I-469
- **Volume 2**
 - Covers cases heard in the General Court
 - Cited as [1991] ECR II-469
- **Volume 3**
 - Covers staff cases heard in the Civil Service Tribunal
 - Cited as [1991] ECR III-469

Other Sources

**Use the *SOAS Library Catalogue* (<http://lib.soas.ac.uk>) to find collections in print

** Use the *A-Z Electronic Databases* (<http://www.soas.ac.uk/library/resources/a-z/>) to access the SOAS Databases listed.

- **Official Journal of the European Union**
 - Case summaries are published in the *Official Journal C series* a few months after the judgment.
- **Various Law Reports**
 - Selected EU cases appear in other series of law reports, often before they are available in the *European Court Reports*.
 - These series include:
 - Common Market Law Reports (CMLR)
 - European Commercial Cases (ECC)
 - European Community Cases (CEC)
 - All England Law Reports: European Cases (All ER (EC))
- **EUR-Lex** (<http://europa.eu.int/eur-lex/en/>)
 - Provides full text of Official Journal of the European Union C Series from 1998 onwards
 - Includes judgments of the Court of Justice and General Court,
 - Includes the opinions of the Advocates-General, as published in the *European Court Reports*
 - Documents are available in all 23 EU official languages
- **Curia** (<http://curia.europa.eu/>)
 - Provides access to recent case law for the all courts within the Court of Justice of the European Union
 - Coverage from 1997 onwards
- **Westlaw UK (SOAS Database)**
 - Contains:
 - Official Journal of the European Union: C series from 1954 onwards
 - Common Market Law Reports & European Commercial Cases
- **LexisLibrary (SOAS Database)**
 - Contains:
 - Official Journal of the European Union: C series from 1954 onwards
 - All England Law Reports: European Cases