

Law-Making in the European Union: Procedures & Challenges

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DOI: 10.55662/LPR.2024.904

Abstract

The European Union was established by the Maastricht Treaty, which became effective on November 1, 1993. The pact aimed to promote European political and economic integration through the establishment of a single currency (the euro), a cohesive foreign and security policy, and standardised citizenship rights, while also fostering collaboration in immigration, asylum, and judicial matters. The European Union received the Nobel Peace Prize in 2012, acknowledging its endeavours to foster peace and democracy throughout Europe.

The EU exemplifies a continuous endeavour to unify Europe post-World War II. Following the war, numerous Western European nations pursued enhanced economic, social, and political connections to foster economic growth, ensure military security, and facilitate enduring reconciliation between France and Germany.

The EU fosters contacts and collaborations with non-EU nations on both bilateral and regional scales. As a worldwide entity, it contributes to various international issues and initiatives and actively participates in numerous international groups and forums.

In the past 75 years, the European Union has been a united unit for the formulation of international policy; therefore, it is necessary to understand the internal functioning of the same unit. Furthermore, it is also imperative to note that it is the EU that has caused ground-breaking changes in the autonomy of countries as well as their functioning.

In this paper, we will learn how the European Union has created an inclusive and understanding legislative environment to represent all nation states that are a part of it and essentially create laws that can influence the very fabric of international legislation.

Keywords: *European Union; Law-Making; Legislation; Legislative Process; International Law.*

Introduction

European Union law constitutes a framework of regulations functioning inside the member states of the European Union (EU). Since the establishment of the European Coal and Steel Community after World War II, the EU has pursued the objective to "promote peace, its values, and the welfare of its citizens." The EU possesses political institutions and social and economic policies that surpass nation-states to facilitate collaboration and human growth. The EU, as stated by its Court of Justice, is "a new legal order of international law."

The European Union enacts legislation using multiple legislative methods. The approach employed for a certain legislative proposal is contingent upon the relevant policy topic. Most legislation must be proposed by the European Commission and ratified by the Council of the European Union and the European Parliament to attain legal status.

Over the years, the European Parliament's authority in the legislative process has significantly expanded from only providing non-binding opinions or being entirely excluded, to participating equally with the Council in legislative matters.

The rule of law is essential for international peace, security, and political stability; for attaining economic and social advancement; and for safeguarding individuals' rights and fundamental freedoms. It is essential for individuals' access to public services, mitigating corruption, limiting the misuse of authority, and building the social compact between citizens and the state. The rule of law and development are intricately connected, and laws that reinforce a rule of law-based society should be regarded as a consequence of this relationship.

In this paper, we shall explore the methods through which legislations are derived in the European Union. Furthermore, we will also be discussing and analyzing the challenges faced by the European Authorities at time of such formulation of laws.

Formulating European Union Legislation

Prior to proposing new initiatives, the Commission evaluates their possible economic, social, and environmental impacts.

The Commission accomplishes this by drafting a report termed a 'impact assessment' that delineates the benefits and drawbacks of policy alternatives. The impact evaluation incorporates contributions from non-governmental organisations, national agencies, industry stakeholders, and expert groups that provide guidance on technical matters.ⁱ

Individuals, corporations, and organisations may submit input via public consultations (questionnaires) via the Commission's 'Have Your Say' webpage.

National parliaments may formally articulate their objections if they believe that addressing an issue at the national level is preferable to doing so at the EU level.

Review & Adoption

After the Commission submits its proposal, both the Parliament and the Council evaluate it and may suggest revisions. Generally, the Parliament, the Council, and the Commission convene to ascertain whether they can reach consensus on a comprehensive array of amendments.

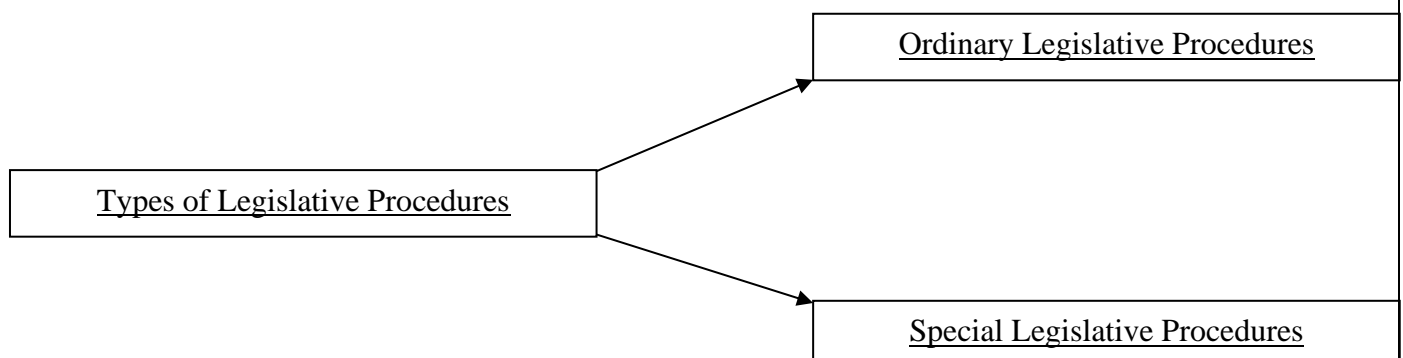
If the Commission opposes any revisions, the Council can only override the objection through a unanimous decision. If the Commission deems the revisions to significantly alter the proposal, it reserves the right to retract its proposal.ⁱⁱ

Should the three institutions fail to reach consensus on a unified final text, a second reading will occur.

In the course of the second reading, both the Parliament and the Council may suggest additional revisions. The Parliament may obstruct the idea if it fails to reach an agreement with the Council.

Should the Parliament and the Council concur on the revisions, the proposal may be ratified. Should they fail to reach an agreement, a conciliation committee is established to seek a resolution. Both the Parliament and the Council possess the authority to obstruct the motion during this conclusive second reading phase.

A proposal becomes law when the Parliament and Council concur on a unified text, which is subsequently published in the EU's Official Journal.



Ordinary Legislative Powers

Under the Treaty of Lisbon, codecision was formally designated as the 'Ordinary Legislative Procedure' and established as the standard method for enacting legislation at the EU level, including the majority of Union activities.

The primary feature of the usual legislative procedure is the simultaneous and equal adoption of legislation by Parliament and the Council. The process commences with a legislative proposal from the Commission, typically for a regulation, directive, or decision, and involves

up to three readings, allowing co-legislators to reach consensus on a joint language and so finish the procedure at any reading.ⁱⁱⁱ

Initially, Parliament and the Council concurrently review the Commission's proposal. The Parliament initiates action by voting with a simple majority (i.e., a majority of the votes cast), typically based on a report issued by one of its committees, often either revising the Commission's proposal or adopting it without modifications. It may also entirely reject the plan. Following the Parliament's adoption of its position, the Council may either concur with Parliament's stance, resulting in the adoption of the legislative act, or it may establish an alternative position during the first reading and relay it to Parliament for a second reading. Neither the Parliament nor the Council is bound by a time constraint to complete its initial reading.

The second reading under the usual legislative procedure adheres to a comparable logic and structure.

Nonetheless, in comparison to the initial reading, there are significant distinctions, particularly concerning the dates and the parliamentary voting mechanism. Consequently, at the second reading, each co-legislator has three months, which may be extended by one month, to establish its position. Concerning the voting majorities in Parliament at the second reading, Parliament either rejects or alters the Council's first-reading stance by an absolute majority of its Members (currently 353 out of 705 votes), in contrast to the simple majority required in the first reading.

Conciliation constitutes the third and last phase of the standard legislative procedure. The conciliation procedure is initiated if the Council cannot approve all amendments passed by Parliament during the second reading. The process involves negotiations between the two co-legislators within the Conciliation Committee, aiming to achieve a consensus in the form of a 'joint text' that must then be ratified by both Parliament and the Council.

Main Parliament Actors During the Ordinary Legislative Powers

In Parliament, the Commission recommendation is assigned to the relevant committee (lead committee), which designates a 'rapporteur' to prepare Parliament's report and serve as the institution's representative on the matter. Under some circumstances^{iv}, the review of a Commission proposal may engage multiple committees through the mechanisms of opinion-giving committees, related committees, or joint committee meetings and voting.

Rapporteur

Designated by the political group associated with the file subsequent to a resolution by the lead committee's coordinators ratified by the committee, composes the preliminary report of the accountable committee and navigates the file through the multiple phases of the procedure, encompassing interinstitutional negotiations.

Shadow rapporteurs

Designated by each of the remaining political factions to organise modifications that articulate their perspectives and to represent their faction during interinstitutional discussions

Committee chair

Chosen by the committee chairs, and in conjunction with the rapporteur, directs interinstitutional negotiations on behalf of the Parliament unless the responsibility is assigned to a Vice-chair.

Parliament negotiating team

Upon the commencement of interinstitutional negotiations, the Parliament's negotiating team is directed by the rapporteur and overseen by the head of the respective committee^v or a Vice-head. The negotiation team includes a minimum of the shadow rapporteurs from each political group that seeks to engage.

Vice-Presidents responsible for conciliation

Three of the fourteen Vice-Presidents are tasked with conciliation and are appointed for renewable two-and-a-half year terms. They lead interinstitutional negotiations during the

conciliation phase, alongside the rapporteur and the chair of the lead committee, on behalf of the Parliament.

The Passerelle Clause

The Passerelle Clause permits modifications to voting procedures without necessitating amendments to the EU treaties. Under this provision, the European Council may, upon obtaining the European Parliament's consent, vote unanimously to:

- Permit the Council of Ministers to operate on a qualified majority basis in domains formerly requiring unanimity, except decisions with defence or military ramifications.
- Facilitate the adoption of legislation through the standard legislative procedure instead of the previously required special legislative procedure.

The European Council's decision to implement either clause can only take effect if, six months after all national parliaments have been notified, there are no objections.^{vi}

Special Legislative Powers

Consent

The Council may adopt legislative proposals following the European Parliament's assent under the consent procedure. The Parliament possesses the authority to approve or disapprove a legislative proposal through an absolute majority vote, but lacks the capacity to alter it. The Council lacks the authority to supersede the Parliament's opinion.^{vii}

Consent, as a legislative procedure, is employed during the adoption of new legislation aimed at fighting discrimination and grants Parliament a veto when the subsidiary general legal foundation is invoked in accordance with Article 352 of the Treaty on the Functioning of the EU.

The Parliament's approval is also necessary as a non-legislative procedure when: the Council adopts certain international agreements negotiated by the EU

- in cases of a serious breach of fundamental rights (Article 7 of the Treaty on European Union)

- for the accession of new EU members
- arrangements for withdrawal from the EU

Proposal

Under the consultation procedure, the Council enacts a legislative proposal following the Parliament's submission of its view.

The Parliament may adopt, disapprove, or suggest revisions to a legislative proposal via this method. The Council is not legally required to consider the Parliament's opinion; nonetheless, according to the jurisprudence of the Court of Justice, it cannot make a decision without first receiving it.^{viii}

The procedure is relevant in various domains, including internal market exemptions and competition law.

The Parliament's consultation is necessary as a non-legislative procedure when international agreements are established under the shared foreign and security policy.

Implementing Acts

Implementing acts are submitted to committees of specialists from EU member states, but the Parliament is kept apprised throughout the process and maintains its right to oversight.

Parliament may object to the draft implementing measure based on a proposal from the relevant parliamentary committee, asserting that it exceeds the authorities established in the pertinent legislative act or is inconsistent with EU legislation in other aspects.^{ix}

The Parliament may request the Commission to retract or modify the proposals or to present a fresh proposal in accordance with the relevant legislative procedure.

Delegating Acts

Delegated acts are generally employed when certain aspects of the legislative act require frequent adaptation to accommodate technical or scientific advancements. In practice, Parliament and the Council assign certain powers as co-legislators to facilitate prompt and efficient decision-making.

According to the legislative act, Parliament or the Council may object to a delegated act within a specified timeframe (often two months) following notification. If it occurs, the delegated act cannot take effect.

The European Parliament or the Council may also choose to rescind the delegation of authority to the Commission.

There are 3 main institutions involved in EU decision-making:

1. the European Parliament, representing EU citizens

The Commission possesses a virtual monopoly on initiating legislation inside the legislative process, a power that endows the Commission with significant influence as an agenda setter for the entire EU. The Commission often presents legislation at the request of the Council or upon Parliament's advice, but the format of any legislative proposals is determined by the Commission.

The 705 members of the European Parliament are elected directly every five years through universal suffrage. It functions as a conventional multi-party parliament, mostly executing its activities inside committees and convening in political groupings rather than national delegations. Nonetheless, their political factions are significantly weakened by their nature as expansive ideological coalitions of established national parties.^x

2. the Council of the European Union, representing EU governments

The Council of the EU, referred to as "the council of ministers" or simply "the council," represents the national governments of member states. Its composition corresponds to the 27 member states, although votes are weighted based on each state's population (refer to the procedures below for clarification).^{xi} Consequently, it does not align with political factions, and instead of performing the majority of its functions within committees, a significant portion of its activities is executed by its preparatory entities (the Working Parties and COREPER).

3. the European Commission, representing the EU's overall interests

The national parliaments of EU member states possess a "early warning mechanism" wherein if one third express an objection—a "yellow card"—on the grounds of a violation of the principle of subsidiarity, the proposal must undergo review. If a majority supports it – a

"orange card" – the Council or Parliament can promptly reject it. Should the logistical challenges of implementation be surmounted, the authority of national parliaments may be characterised as an additional legislative body, lacking a unified discourse or physical venue, referred to the EU Observer as a "virtual third chamber."

EU policies are typically decided through the ordinary legislative procedure (formerly known as the 'co-decision' procedure). This is a process where the three main institutions come to agreement on legislation.

Tracking of the Laws

All individuals can monitor the progression of proposed EU legislation throughout the legislative process, encompassing planning, adoption, implementation, and amendment.^{xii} The tracking steps are as follows:

1. Setting Law-Making Priorities

Each autumn, the Commission establishes its policy goals for the forthcoming year in the Commission work programme. Consequently, it aligns with the Council and the European Parliament on primary legislative priorities outlined in an annual joint declaration.

2. Planning & Proposing Law

In alignment with the better regulation objective, people, businesses, and stakeholder groups can monitor Commission activities throughout all phases of the process.

3. Adopting the Law

Stakeholders can monitor the advancement of Commission initiatives via the EU and national legislative frameworks. This encompasses their initial launch, subsequent negotiations in the European Parliament and Council, and concludes with their final acceptance and integration into national legislation.^{xiii}

Non-essential modifications to EU initiatives, which do not require the complete

legislative procedure and are referred to as delegated and implementing acts, can also be monitored throughout their developmental phases.

4. Applying EU Law

One can ascertain the actions adopted by countries to integrate EU legislation into national law and monitor infringement procedures initiated by the European Commission against EU member states.

5. Evaluating & Improving Existing Laws

The European Commission consistently assesses the effectiveness of EU legislation in fulfilling the requirements of individuals and businesses at minimal expense. Assessments, fitness evaluations, and the REFIT initiative streamline and alleviate the application of current EU legislation.^{xiv}

The REFIT Platform convenes senior experts from business, social partners, civil society, and EU member states to counsel the Commission on enhancing the efficiency and effectiveness of EU legislation, while alleviating burdens and advancing policy objectives.

Challenges with EU Law

The European Union (EU) encounters numerous problems in the legislative process, which can affect efficiency, consensus, and the overall efficacy of legislation. Several key challenges encompass:

1. Diversity of Member nations: The EU has 27 member nations, each possessing distinct legal systems^{xv}, cultures, and political agendas. This diversity can complicate the attainment of consensus on legislation.
2. Intricate Decision-Making Process: The legislative procedure encompasses various institutions (European Commission, European Parliament, and Council of the EU)^{xvi}, potentially resulting in protracted talks and delays in legislation enactment.

3. Political Fragmentation: Ascendant nationalism and divergent political philosophies among member states can engender divisions and impede collaboration on shared issues^{xvii}, complicating the attainment of cohesive legislation.
4. Public Opinion and Populism: Increasing scepticism about the EU among the populace and the emergence of populist movements may undermine support for specific legislation^{xviii}, so complicating the legislative process.
5. Balancing Interests: The necessity to reconcile diverse interests—such as economic development, social programs^{xix}, environmental conservation, and others—can complicate negotiations and result in compromises that may not fulfil all stakeholders.
6. Implementation and Enforcement: Following the adoption of laws, the problem persists in guaranteeing that member states effectively implement and enforce them, resulting in significant variability and leading to inconsistent application of EU law.
7. Global Challenges: Tackling global concerns like climate change, migration, and security necessitates coordinated efforts^{xx}, which can be challenging due to divergent national objectives and interests.
8. Crisis Management: The EU has encountered numerous crises (e.g., financial crises, refugee crises, COVID-19)^{xxi} necessitating prompt legislative action; nevertheless, the intricate procedure may impede speedy response.
9. Legal Fragmentation: The interplay between EU legislation and national statutes may result in legal discrepancies, causing uncertainty and even conflicts that require resolution.^{xxii}
10. Technological Advances: Swift progress in technology presents issues regarding regulation and legal frameworks, as current laws may insufficiently meet emerging advances.

Confronting these difficulties necessitates continuous discourse among member states^{xxiii}, adaptability in negotiations, and a dedication to achieving consensus to guarantee efficient governance and legislation inside the EU.

Conclusion

The legal underpinnings of the EU consist of the Treaty on European Union and the Treaty on the Functioning of the European Union, which have been unanimously ratified by the

governments of 27 member states. New members may join upon agreeing to adhere to the union's regulations, while current states may withdraw in accordance with their own constitutional stipulations. Citizens possess the right to engage in the legislative process of the EU via Parliament and their respective state governments through the Council. The Commission possesses the authority to propose new legislation (the right of initiative), the Council of the European Union represents the elected governments of member states, the Parliament is elected by European citizens, and the Court of Justice is tasked with upholding the rule of law and human rights.

Enhancing the rule of law necessitates adherence to international legal standards, particularly on the use of force, and acknowledgement of the principal obligation of States to safeguard their populations against genocide, crimes against humanity, ethnic cleansing, and war crimes. The rule of law is fundamental to humanitarian and human rights initiatives, essential for comprehending and tackling the causes of displacement and statelessness, and serves as the cornerstone of the humanitarian protection framework.

Through this paper, we have formulated understanding of the law-making process of the European Union as well as the challenges faced in such ways. It is important to take into account the socio-cultural contexts of legal frameworks and the constantly evolving demographic situations at the time of creation of such laws.

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