



# THE EUROPEAN UNION

Competences & Procedures; Legislative Procedures

*In these slides...*

## COMPETENCES

- The scope of Union competences
- Teleological interpretation
- The Union competences:
  - General competences
  - Categories
  - Five competences of the Union

## PROCEDURES

- Ordinary procedures
  - Ordinary legislative procedure
- Special procedures
- The principle of subsidiarity

# THE SCOPE OF UNION COMPETENCES

## *Legislation*

- Art 289(3) TFEU: “Legal acts adopted by legislative procedure shall constitute legislative acts.”
- The scope of the EU’s legislative competences is **limited** as the EU is not a sovereign state.

## *Scope of Union Competences*

- Under the **principle of conferral** the Union can only act within the limits of the competences conferred upon it by the Member States, see Art 5(2) TEU.
- A **legislative competence** is the material field within which an authority is entitled to legislate.
- Each legal competence for every Union Activity in the respective Treaty title.
- The treaties present a picture of thematically limited competences in distinct policy area



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# TELEOLOGICAL INTERPRETATION

Now we turn to the ‘basics’ of discussing Union competences: the principle of conferral, which can be interpreted in two different ways, namely:

## ***Strict...***

would *deny* the Union the power to interpret its own competences. This comes with the practical problem that each legislative bill would need to gain the *consent of every national parliament*. (*in dubio mitius*; International method of interpretation in line with intention of member states.)

OR

## ***Soft...***

Allows for teleological interpretation of competences. This method asks what is the purpose of a rule. This can allow a small amendment to the original rule.

The EU adopts a ***soft*** teleological interpretation

See Case C-84/94 UK v Council [1996] ECR I-5755

European Court of Justice accepts a teleological interpretation of the Union competences and it also interprets Union legislation in a teleological manner as well.

See Case 9/74 Casagrande v Landeshauptstadt Munchen [1974] ECR 773

Teleological interpretation of the Union legislation allows the EU to apply legislation to areas that are within the Member State competences.

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## THE GENERAL COMPETENCES OF THE UNION

- The Treaties grant *special competences* within each policy area. (For example the Union's competence on environmental protection (*Art 192 TFEU*) is found in the Treaty's title dedicated to the environment. (*Title XX of Part III of the TFEU*)

### The Harmonisation Competence; Article 114

- The EU is entitled to adopt measures for the approximation of national laws that relate to the internal market.
- Case C-350/92 Spain v Council* [1995] ECR I-1985
- Art 114 cannot be used to create new law**, European law should further the creation of a single internal market and it has to be harmonising pre-existing national laws.
- Constitutional limits of the Harmonisation principle confirmed in; *Case C-376/98 Tobacco Advertising* [2000] ECR I-8419; The law must harmonise national laws, a slight difference in law is not enough and the law must contribute to the elimination of obstacles.

### The Residual Competence; Article 352

- If an action is deemed necessary to meet the EU objectives and the necessary powers aren't available the Council acting on a proposal from the Commission after obtaining the permission of Parliament to adopt the action.
- Can be used to develop an existing policy title or to develop a new one.
- Limitations; 1- Measures shall not entail the harmonisation, 2- Cannot be used in relation to Common Foreign & Security Policy.
- Big changes cannot happen through this Article. (Opinion 2/94 look at paragraph 29-30)

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## THE CATEGORIES OF UNION COMPETENCES

- The original Treaties did not specify the relationship between European and national competences. (Louis, 1979)
- Two theories relating to competences;
  - I. Exclusive competences; Member states transferred their powers in relation to competences within the treaties.
  - II. Shared competences; Member states did not have exclusive rights to act within their territory as the Union shares in the exercise of public functions.
- Article 2 TFEU; Established there being 4 competences.



# THE FIVE COMPETENCES

## Article 3

### Exclusive Competences

- Only one governmental level is entitled to act autonomously.
- Exclusive competency areas; Article 5 TFEU-5 exclusive competency areas: 1- The Customs Union, 2- The establishment of the competition rules for the functioning of the internal market, 3- Monetary policy (states with the euro), 4- Conservation of marine biology (common fisheries policy), 5- The Common Commercial Policy,

## Article 4

### Shared Competences

- Ordinary competences of the EU. Within one field either the EU or the Member State can exercise their shared competence.
- In relation to technological development, space, development co-operation and humanitarian aid both Member States and the EU can legislate upon rather than 'either, or;' (parallel competence)
- Minimum standard competences; limits the Union to the adoption of a common minimum. Member states can introduce more stringent protective measures that exceed the minimum.
- See *Fornasar v Sante Chiaracosso* [2000] ECR I-4785 in regards of whether a soft or hard constitutional solution should be found for minimum standard competences.

## Article 5

### Co-ordinating Competences

- Competences in which the EU and member states work together on.
- Economic policy, Employment policy, Social policy.
- Adoption of guidelines and initiatives organised by the EU to co-ordinate member state approaches in relation of the three policy areas.

## Article 6

### Complimentary Competences

- Complementary areas; the protection & improvement of human health, industry, culture, tourism, education, vocational training, youth & sport, civil protection & administrative co-operation.
- Does not entail harmonisation of Member States laws or regulations.

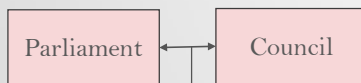
# ORDINARY AND SPECIAL PROCEDURES

## Article 289 TFEU:

1; "The **ordinary legislative procedure** shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission."

2; "In the specific cases provided for by the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council or by the latter with the participation of the European Parliament, shall constitute a **special legislative procedure**."

### Ordinary Legislative Procedure



Co-Legislation

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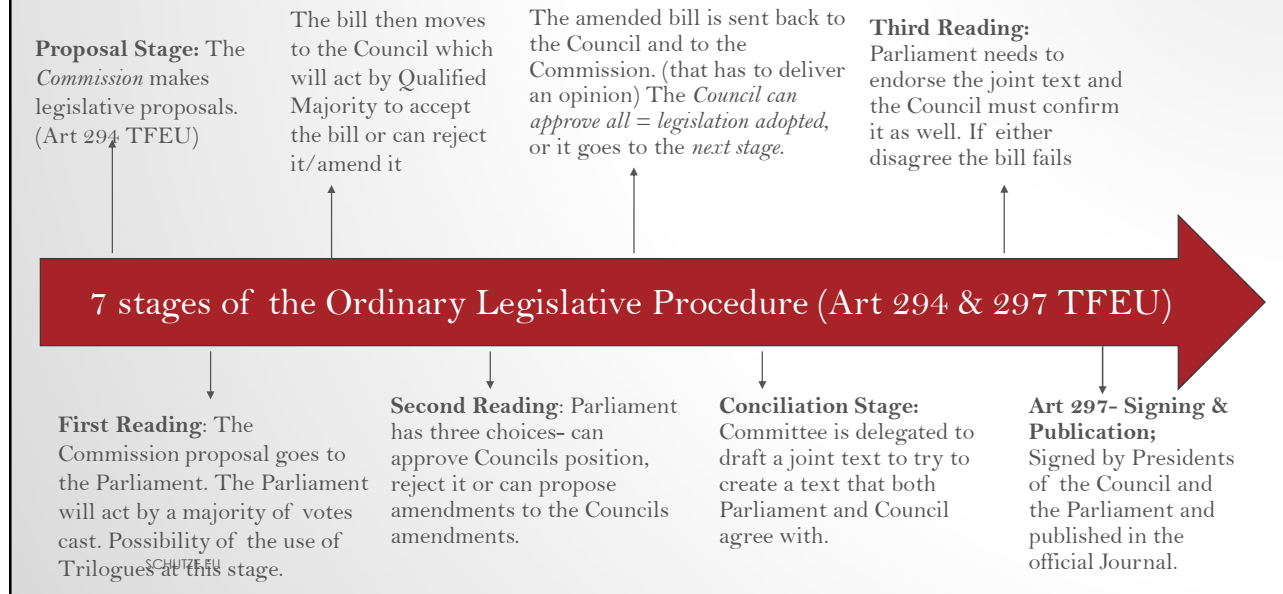
### Special Legislative Procedures



Parliamentary  
Legislation

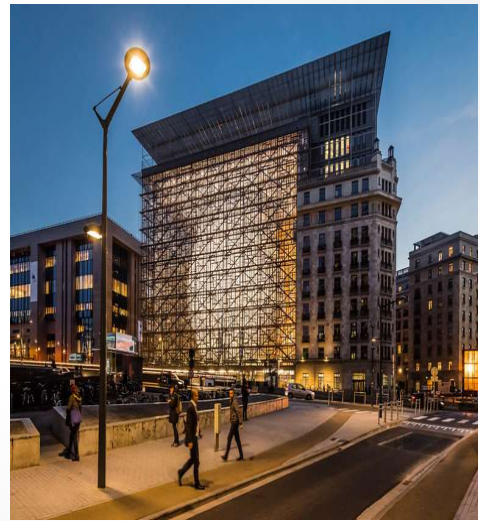
Council  
Legislation

## ORDINARY LEGISLATIVE PROCEDURE



## SPECIAL LEGISLATIVE PROCEDURE

- Parliamentary legislation & Council legislation both require consent of the other generally. (Art 289(2) TFEU)
- Sometimes consultation of the other institution will be required.
- Consent is less than co-decision; one institution is required to consent to the other's legislation. Veto power is stronger than consultation power.
- Consultation is considered a formality and opinion does not need to be taken into consideration. If consent is not required the opinion of the other institution can be ignored.



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## PRINCIPLE OF SUBSIDIARITY

### Yellow card mechanism:

Union legislator capable of amending or withdrawing draft legislation if national parliaments vote that it is incompatible with the principle.



### Orange Card Mechanism:

If the Commission justifies the proposal after the national parliament vote; the union legislator will have to consider its compatibility- if incompatible it will reject it.



### Red Card Mechanism?

Hard legislative solution has been rejected by the Protocol. National parliaments should not have a veto.



- The principle of subsidiarity concerns the idea that a central authority should have a subsidiary function, performing tasks which cannot be performed effectively at a local level.
- It became a general principle of the EU Constitution via *Article 5 of the TEU*.
- **National insufficiency test;** The Union can only act where the objectives could not be sufficiently be achieved by the Member States.
- **Comparative efficiency test;** The Union should not act unless it can better achieve the objectives of the proposed action.
- Safeguard of federalism
- *Protocol no 2 On the Application of the Principles of Subsidiarity & Proportionality* monitors the application of the Principle in relation to draft legislation.
- This monitoring is completed by national parliaments and the European Court.

## SUBSIDIARITY AS A JUDICIAL SAFEGUARD?

### *Case C-84/94 UK v Council (Working Time) [1996] ECR I-5755*

The argument was that the principle of subsidiarity would “not allow the adoption of a directive in such a wide and prescriptive terms as the contested directive, given that the extent and the nature of legislative regulation of working time varied widely between states.” The court assumed that where the Union decides to harmonise national laws that objective presupposed Union legislation. The Court chose to examine the Principle of subsidiarity in relation to the principle of proportionality. In doing so it ruled; “The Council must be allowed a wide discretion in an area [that] involves the legislature in making social policy choices.” Judicial review is limited to examining whether the institution concerned, has manifestly exceeded the limits of its discretion. (para 47, 58)

### *Germany v Parliament & Council (Deposit Guarantee Scheme)[1997] ECR I-2405*

The German Government claimed that the Union act violated the procedural obligation to states reasons. The Directive did not indicate how the actions could not be achieved at a Member State level. The Court indicated that all was required is a *low explanatory threshold* and as the Legislator had found it indispensable to ensure a harmonised minimum level. Focus on *national insufficiency test* rather than the comparative efficiency test.

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## COMPETENCES

- The Union is not a sovereign state. Its legislative competences are “conferred” by the treaties.
- The Union legislator has a wide use of powers by interpreting them teleologically.
- Competences are separated into categories; exclusive, shared, coordinating and complementary.
- These categories however do not make it clear what the EU’s federal order of competences are.
- Ordinary Legislative Procedure/Special Legislative Procedure
- How does this square with the Principle of Subsidiarity?



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