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## INTERACTION BETWEEN EUROPEAN AND NATIONAL NORMS

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### EU Law making process

Before the Commission proposes new initiatives, it assesses the potential economic, social and environmental consequences that they may have. It does this by preparing 'Impact assessments' which set out the advantages and disadvantages of possible policy options.

The Commission also consults interested parties such as non-governmental organisations, local authorities and representatives of industry and civil society. Groups of experts give advice on technical issues. In this way, the Commission ensures that legislative proposals correspond to the needs of those most concerned and avoids unnecessary red tape. Citizens, businesses and organisations can participate in the consultation procedure via the website Public consultations.

National parliaments can formally express their reservations if they feel that it would be better to deal with an issue at national rather than EU level.

The European Parliament and the Council review proposals by the Commission and propose amendments. If the Council and the Parliament cannot agree upon amendments, a second reading takes place.

In the second reading, the Parliament and Council can again propose amendments. Parliament has the power to block the proposed legislation if it cannot agree with the Council.

If the two institutions agree on amendments, the proposed legislation can be adopted. If they cannot agree, a conciliation committee tries to find a solution. Both the Council and the Parliament can block the legislative proposal at this final reading.

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## National law making process

The national law making process is largely a 'national thing' with very little harmonization. However, respect for democracy is part of the EU legacy and all States usually share common practice, involving a Government and a Parliament, with a independent judicial system.

Most - if not all - EU countries have a Constitution (or a fundamental law, or any other similar name), and each and every law must be compliant with the Constitution.

Another basic principal is the supremacy of EU law (see here after). In case of conflict between a EU regulation and a national one, the EU norm shall prevail.

## EU norms

### TREATIES

The European Union is based on the rule of law. This means that every action taken by the EU is founded on treaties that have been approved voluntarily and democratically by all EU member countries. For example, if a policy area is not cited in a treaty, the Commission cannot propose a law in that area.

A treaty is a binding agreement between EU member countries. It sets out EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its member countries.

Treaties are amended to make the EU more efficient and transparent, to prepare for new member countries and to introduce new areas of cooperation - such as the single currency.

The main treaties are:

- Founding Treaties (25 March 1957)  
They are often called "Treaties of Rome". The purpose was to set up the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).
- Treaty on European Union (7 February 1992)  
Called the Maastricht Treaty, its purpose was to prepare for European Monetary Union and introduce elements of a political union (citizenship, foreign and internal affairs policy). It develops new forms of cooperation between the EU governments.
- Treaty of Nice (26 February 2001) and of Amsterdam (2 October 1997)





Their purpose was to reform the institutions so that the EU could function efficiently with new member countries. It also made the decision-making progress more transparent.

- Treaty of Lisbon (13 December 2007)

It clarifies which powers belong to the EU, to the member states and which are shared.

In 2004, the Treaty establishing a constitution for Europe, with aims similar to the Lisbon Treaty, was signed but never ratified.

## REGULATIONS

A regulation is a binding legislative act that must be applied in its entirety across the EU.

It is very efficient since it does not need any national implementation. The Regulation is indeed directly applicable in all States. In other words, the EU regulation is like a national law.

## DIRECTIVES

A directive is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to decide how.

The directive is an act addressed to Member States and must be transposed by them into their national laws. Contrary to a "regulation", a directive needs a national implementation process.

If a State fails implementing a directive (or if do it too late or badly), it will be sued by the EC Commission before the EU Court of Justice. Unfortunately, this is far from being unusual: some member states are known for being very bad clients in relation with the implementation process. The rulings of the Court of Justice may impose penalties on Member States.

In addition, the direct effect theory is often of great use when a member has failed in its obligation to implement a directive (see here after).

## DECISIONS

A decision is binding on those to whom it is addressed (e.g. an EU country or an individual company) and is directly applicable. For example, when the Commission issued a decision fining software giant Microsoft for abusing its dominant market position, the decision applied to Microsoft only.





## RECOMMENDATIONS

A recommendation is not binding. When the Commission issued a recommendation of structures for financial-sector employees to not encourage excessive risk taking, this did not have any legal consequences. A recommendation allows the institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed.

## OPINIONS

An opinion is an instrument that allows the institutions to make a statement in a non-binding fashion, in other words without imposing any legal obligation on those to whom it is addressed. An opinion is not binding. It can be issued by the main EU institutions (Commission, Council, Parliament), the Committee of the Regions and the European Economic and Social Committee. While laws are being made, the committees give opinions from their specific regional or economic and social viewpoint.

## Direct effect

The direct effect of European law is, along with the principle of precedence, a fundamental principle of European law. It was enshrined by the Court of Justice in the judgement of Van Gend en Loos of 5 February 1963. In this judgement, the Court states that European law not only engenders obligations for Member States, but also rights for individuals. Individuals may therefore take advantage of these rights and directly invoke European acts before national and European courts. However, it is not necessary for the Member State to adopt the European act concerned into its internal legal system.

There are two aspects to direct effect: a vertical aspect and a horizontal aspect.

- Vertical direct effect is of consequence in relations between individuals and the State. This means that individuals can invoke a European provision in relation to the State.
- Horizontal direct effect is consequential in relations between individuals. This means that an individual can invoke a European provision in relation to another individual.

According to the type of act concerned, the Court of Justice has accepted either a full direct effect (i.e. a horizontal direct effect and a vertical direct effect) or a partial direct effect (confined to the vertical direct effect).

As far as primary legislation is concerned (Treaties to make a long story short) the Court of Justice established the principle of the direct effect in the





Van Gend & Loos judgment, but the obligations at stake must be precise, clear and unconditional and that they do not call for additional measures, either national or European. (see also the Becker case, 19 January 1982, and the Kaefer case, 12 December 1990).

The principle of direct effect also relates to acts from secondary legislation. However, the application of direct effect depends on the type of act:

- the regulation: regulations always have direct effect (see the Politi case, 14 December 1971);
- the directive: the directive is an act addressed to Member States and must be transposed by them into their national laws. However, in certain cases the Court of Justice recognises the direct effect of directives in order to protect the rights of individuals. Therefore, the Court laid down in its case-law that a directive has direct effect when its provisions are unconditional and sufficiently clear and precise (Judgement of 4 December 1974, Van Duyn). However, it can only have direct vertical effect and it is only valid if the Member States have not transposed the directive by the deadline (Judgement of 5 April 1979, Ratti);

## Precedence of European law

According to the precedence principle, European law is superior to the national laws of Member States. The precedence principle applies to all European acts with a binding force. Therefore, Member States may not apply a national rule which contradicts to European law.

The precedence principle guarantees the superiority of European law over national laws. It is a fundamental principle of European law.

As with the direct effect principle, it is not inscribed in the Treaties, but has been enshrined by the Court of Justice of the European Union in the Costa versus Enel case of 15 July 1964. The Court later clarified that the precedence of European law is to be applied to all national acts, whether they were adopted before or after the European act in question.

The precedence of European law over national laws is absolute. Therefore, it applies to all European acts with a binding force, whether emanating from primary or secondary legislation.

In addition, all national acts are subject to this principle, irrespective of their nature: acts, regulations, decisions, ordinances, circulars, etc), irrespective of whether they are issued by the executive or legislative powers of a Member State. The judiciary is also subject to the precedence principle. Member State case-law should also respect EU case-law.

The Court of Justice has ruled that national constitutions should also be subject to the precedence principle. It is therefore a matter for national





judges not to apply the provisions of a constitution which contradict European law.

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In its judgment of 19 June 1990 (Factortame), the Court of Justice indicated that national courts, as part of a preliminary ruling on the validity of a national law, must immediately suspend the application of this law until such time as the Court of Justice gives its recommended solution and the national court gives its ruling on the substance of the issue.

