

# Making laws in the EU – for the teacher

## Factsheet 1: Making laws in the EU

The text about the EU legislative procedure explains the special feature of the EU-cooperation, namely that it - unlike most international forms of cooperation - might result in binding legal acts which are determined in a different way than legislation in democratic states. The factsheet focuses on the effectiveness and democratic legitimacy of the decision-making process and the implementation. The three central institutions (the European Commission, European Parliament and Council of the European Union) are presented and positioned in the legislative process, and that process' main steps are explained (while the opportunity of a second or third round of negotiations in case of disagreements between the Parliament and the Council is only mentioned). The decision-making mechanism with qualified majority and the trilogue process is described. The text contains elaborated definitions of expressions that are either important concepts which are often referred to in an EU context or which will help the students place the EU legislation in a broader context.

We suggest to use Factsheet 1 in the following ways:

Ask the students to read the factsheet before the class.	Let them watch one of the videos from the material bank below, to repeat some of the main points.
	Go through the three institutions in the lawmaking process and how a law goes from draft to a binding act.
	The students can try to describe the histories of specific legal acts using the figure on page 4.
It will be relevant to discuss the following topics in the classroom:	Why the member states accept common legislation in the EU rather than 'usual' bilateral agreements.
	The principle of supremacy, the EU Court and the Commission's means of monitoring member states as important examples of how EU legislation becomes effective.
	What is democratic legitimacy in general, and in the particular EU context?

The most important aspects of directives versus regulations?

If there is time for extra reading, then source 3 below is a good option.

### Material bank:

1. A humorous 5 minute video from the EU Information is available here: <https://vimeo.com/262171206>
2. An older alternative - and a good supplement - from the European Parliament can be found here (with Danish subtitles): [https://multimedia.europarl.europa.eu/da/how-it-works-european-laws\\_V003-0025\\_ev](https://multimedia.europarl.europa.eu/da/how-it-works-european-laws_V003-0025_ev)
3. A thorough presentation of the ordinary legislative procedure in graphics and detailed text is found here: [http://www.europarl.europa.eu/external/html/legislativeprocedure/default\\_da.htm](http://www.europarl.europa.eu/external/html/legislativeprocedure/default_da.htm)
4. The EU Information has made a quiz about the ordinary legislative procedure which can be used to repeat the main points: <https://www.eu.dk/da/fakta-om-eu/ugens-quiz/alm-lovgivningsprocedure>
5. **Books.** Peter Nedergaard: *Hvordan fungerer Den Europæiske Union?* (Columbus 2013).

On the next page you will find the Factsheet you can print out for the students.

# Making laws in the EU

**Cooperation in the European Union is, in many ways, different from international cooperation in the UN or other transnational organisations. A decisive difference is, that EU member states have placed a large part of their legislation into the EU-cooperation.**

That means, that laws may pass in the EU that member states, companies and citizens are obliged to respect. If they don't, they might be sentenced at a court, just as they will if they violate national legislation. That makes cooperation in the EU more obligating than most other international cooperation.

It is, however, not in all areas that the EU-cooperation takes the form of legislation. In many areas, the countries are not ready to commit themselves so much. Legislation is mostly used to ensure the countries' wish to trade on equal terms with each other on the **Single Market**, where EU citizens can buy and sell goods and services more or less like in their home countries.

Experience shows that it is difficult to establish equal terms for trade in countries with different rules, interests and traditions. What do you do if a competitor in another country receives state support? Or is able to sell their goods cheaply by ignoring standards for pollution or consumer safety, or by using child labour? That is the kind of competition that most people find unfair, and that puts pressure on politicians to determine common rules on other areas, such as the environment, product-safety, consumers' rights, competition rights and working conditions.

Exactly because the EU cooperation involves obligating laws that affect important areas of life, it is especially important that they are discussed and determined in a proper manner. There are two concerns in particular that must be balanced in this regard.

First, the laws must be determined in a way that most people believe is fair and are able to live with. Even though they disagree with some of the laws, and even though the political process is different than in their home country. In other words, the law must be perceived to be **democratically legitimate** by the citizens.

Second, it is important that the **lawmaking process has effects in practice**. The purpose of the law is to prevent conflicts between different points of view and interests and to avoid chaos and uncertainty, when the rules are unclear in an area.

## Democratic legitimacy

**There are a number of principles and procedures that make EU laws acceptable or legitimate for those who are affected by them.**

In a democratic *state*, democratic legitimacy is very much achieved in that the laws are **determined by representatives of the voters**, who are able to replace them with new representatives on election day. That is only partly the case in the EU, where the democratically elected members of the

European Parliament have to share the right to legislate with the governments of the member states in the Council of the European Union. The ministers are indirectly elected and they can only be replaced by their own country.

EU legislation is built on the principles that also apply in a democratic state. That means, among other things, that everyone is equal before the law. Big, strong and rich country can also be overruled when laws are processed, and they are convicted, if they don't comply with the laws. This is a countermeasure to 'the rule of the strongest' which otherwise dominates international cooperation, and it helps to make the laws legitimate.

Another important aspect is, that decisions can only be made in the EU on the areas where the member states have transferred their competence to the EU (*principle of legality*). This is determined in the **treaties of the EU** where the basic form of the cooperation is defined. The treaties are a result of long and difficult negotiations between the governments. When they have reached a compromise, the treaty must be approved in every single country. Usually it is the national parliaments that decide if a member state can accept a new treaty.

When the member state parliaments have accepted a new treaty, they have also accepted that a certain part of their legislative work will now be transferred to the EU cooperation. Lawmaking in the EU are in other words built on the **competence that the EU has been handed over** by representatives of the voters in the member states.

At the same time, there are a number of fundamental considerations that must always be respected in the EU. They contribute to the perception of balance and fair play.

First, the treaty determines that laws cannot be accepted that are in conflict with the **European Convention of Human Rights**. There is also a principle that **prohibits discrimination** of any kind. A third principle states that the EU must make laws in solidarity with consumers, workers and peripheral areas. Finally, there is a principle that determines that the EU should only make laws when the member states cannot do it just as well, which is to **counteract centralisation** (principle of subsidiarity).

The treaty describes how cooperation is to work in practice so that everyone gets the influence they are entitled to through the procedures of the EU. For example, the treaties determine tasks and competences for the special EU organs such as the European Commission, the Council of the European Union and the European Parliament. The treaty also defines the decision-making process. That is designed so that **broad compromises are always necessary**. That ensures, that a majority of states and people will support new EU legislation.

## Laws that work

International cooperation often works very slowly when it is requirement that everyone agrees. The negotiations in the UN about reducing CO2 emissions are a good example. The EU-countries prioritise that their lawmaking process has to lead to results in practice.

The most important instrument in this regard is probably the opportunity to vote about a law if consensus cannot be reached within a deadline. The threat of being isolated and overruled usually encourages the parties to stretch quite far to reach a compromise. Usually that negotiators work on behalf of a hinterland that would rather see small results than none at all. The member states also have an interest in helping each other and making concessions - otherwise they might not find a majority for good legislation. And it's always good to have friends that will help out another time.

The effective lawmaking-machine has a price. It is no longer the national government that alone decides which problems it

wants to address. It has to deal with what others perceive as problems. Necessary compromises forces them to give up points of view that others cannot support. Sometimes they are overruled in matters that are important to them.

At the same time, EU laws are hard to change once they have been accepted with broad majorities. Also, the member states cannot accept laws that run counter to EU laws (*principle of supremacy*). If the member states were able to change their minds once a compromise had been reached, the negotiation process would run in circles.

## Institutions in EU legislation

It is three EU institutions in particular that play a role in the legislative process: the European Commission, the Council of the European Union and the European Parliament. The Commission is a special invention in the EU which doesn't exist anywhere else in international cooperation or in the member states. The Council is the forum where ministers from the member states make common decisions. The Parliament controls the first two and participates in legislation and the acceptance of the EU budget.

**The European Parliament** consists of



elected politicians from all member states who hold their seat for five

years. It is a big parliament with 705 members after the exit of Great Britain. The size of the Parliament ensures that it can hold all the many viewpoints of the member states, and not only the biggest parties. Politicians are joined in groups in the Parliament according to their observations so they can share the work and make agreements on behalf of more parliamentarians. The groups all have members in the Parliament committees which process laws in different areas, e.g. research, foreign policy or the labour market. Often it is in the committees a compromise is found that is supported by a majority of the European Parliament. The committee also elects a spokesperson - a rapporteur - who will negotiate with the Council and the Commission.

**The Council of the European Union**



represents the governments of the member states and consists of the ministers of the

area under treatment (e.g. agriculture or economy). The Council must accept all legislation just like the Parliament. The laws are prepared by officials, so the ministers only negotiate on the points they disagree. The ministers must make sure they have a mandate from their national governments so they know what's most important and what they can agree to. The voting system in the Council ensures broad support from a majority of countries and a majority of citizens. This form of qualified majority is also known as the 'double majority'. It implies that a majority of the member states must support legislation *and* that these countries together must represent 65 % of the EU population. The requirement that more than half of the states must support a law means that the biggest countries cannot decide everything themselves. The 15 smallest countries can always block a decision. That is also the case for the 3 biggest countries with more than 35 % of the EU population.

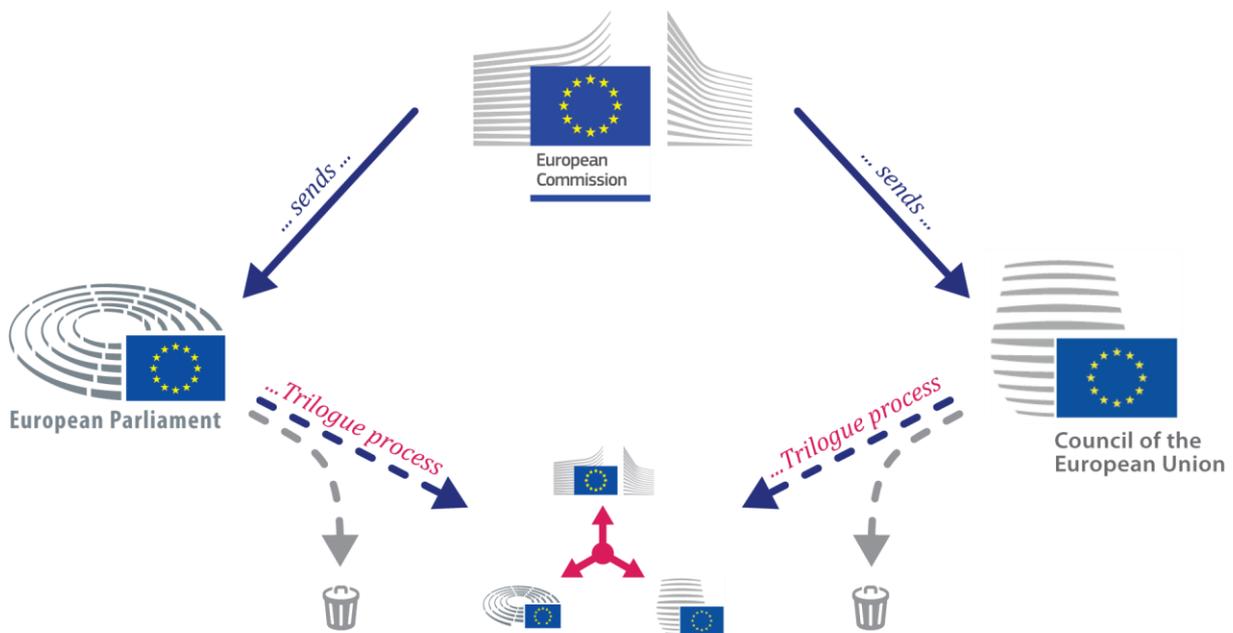
**The European Commission.** While



the Council represents the states and the Parliament represents

political views in the population, the Commission must represent the **overall objectives** of the EU, including the goal of a still closer **integration** between the countries. The role of the Commission in the legislative process is to draft laws that further these objectives and which can be implemented. The laws are often drafted on the initiative of others, e.g. state leaders, but the Commission decides what the law should look like and ensures that it meets the standards of good EU-legislation. The Commission often helps the Council and Parliament agree on the final shape of the law. When a law has passed, the Commission needs to make sure that the member states implement it as promised. The Commission consists of sectors which handle their own policy area, e.g. climate, budget or research. There is one commissioner per member state, but they are independent of their home country.

The Council of the European Union, the European Parliament, state leaders, 1 million citizens or 4 member states request the Commission to propose a law. If the Commission doesn't propose one on its own initiative. The Commission analyses the matter with relevant parties and drafts a law proposal which it....



The parliamentarians discuss the matter in the relevant Committees and with other members of their groups, parties etc. If there is a majority, they accept the proposal, typically with amendments which the Council can accept with the proposal.

In Trilogue between the European Parliament, the Council of the European Union and the Commission a compromise is often found. Otherwise, the proposal has to be reprocessed in the Parliament and in the Council within a set timeframe.

The ministers discuss the Commission's proposal and the Parliament's amendments and consult with their *hinterlands*. Either the whole package is accepted, or the Council accepts a *common position*. In that case, a Trilogue process with the Parliament and the Commission is initiated.

## Institutions in EU legislation

**Democratic legitimacy.** A political decision such as a law is democratically legitimate when it is recognised by those, who are affected by the decision, because it has been reached following principles about distribution of power that are generally agreed upon.

**Directives and regulations.** There are different types of laws in the EU. The most common are the so-called **regulations**, which apply immediately for all citizens of the member states and the so-called **directives** which commit the member states to implement the decisions, but leave them room to decide how.

**The overall objectives of the EU:** The treaty defines several overall objectives for the EU: long-term economic development with low inflation and high employment, social development, sustainable development, balanced social security, high social standards, respect for citizens' human rights, respect for national identity of Member States, and respect for democratic governance of member states.

**Integration** is a process, where national boundaries is a still smaller obstacle for trade, relocation, investments and cooperation. In the newest treaty of the EU, the Lisbon Treaty, it is determined that the member states must always work together from a principle of stronger integration and a still closer union (*principle of stronger integration*).

**A qualified majority** usually means that it is not enough to make a decision based on just one vote. In the Council, it has a special meaning: a law must be supported by a majority of countries (at least 16 out of 27 (28)) and these countries must represent at least  $\frac{2}{3}$  of the EU population. This means that French votes 'count more' than Estonian because there are more French nationals - but the big countries cannot just make decisions over the heads of the smaller ones.

**Legality** means legal or according to the law. In the EU it means that the EU institutions must be transferred competence to act and make decisions about law. This competence is transferred in the treaties.

**The principle of subsidiarity** states that all political and societal questions must be handled by the authority that is best equipped to do so. The EU can only make decisions when it cannot be done as well by governments or by regional or local authorities. The national parliaments can object if this principle is not respected.

**Treaties** are agreements between states. The current treaty is called the Lisbon Treaty. It was accepted in 2007 and came into effect in 2009. The treaty is sometimes called the constitution of the EU, and it defines the areas of work and procedures of the Union. In other words, EU decisions and legislation has its basis in this treaty.

**Trilogue negotiations** are a forum where the Council of the European Union, the European Parliament and the Commission meet to negotiate and settle compromises.

## Learn more

En kort og humoristisk video om emnet fra Folketingets EU findes her: <https://vimeo.com/262171206>

Et alternativ fra Europa-Parlamentets findes her: [https://europa.eu/european-union/eu-law/decision-making/procedures\\_da](https://europa.eu/european-union/eu-law/decision-making/procedures_da)

Grundig retsinformation findes her: [http://www.europarl.europa.eu/external/html/legislative-procedure/default\\_da.htm](http://www.europarl.europa.eu/external/html/legislative-procedure/default_da.htm)

### Bøger

Peter Nedergard: Hvordan fungerer Den Europæiske Union? (Columbus 2013).

Hans Branner: Det politiske Europa. (Columbus 2012).