



Relate

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The journal of developments in social services, policy and legislation in Ireland

The European Union and its institutions

The European Union (EU) is an economic and political union of 28 member states, including Ireland. At present, the 27 other member states are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Spain, Slovakia, Slovenia, Sweden and the UK.

The UK voted to leave the EU in 2016 and was originally scheduled to leave on 29 March 2019. However, its departure has now been postponed until either a withdrawal agreement is approved or until 31 October 2019.

The EU includes a number of institutions, most notably the Council of the European Union, the Commission and the Parliament. The EU also has its own budget, which comes from contributions from the member states and is spent in many different areas.

As a result of treaties between the member states, the EU has the power to make laws on a wide range of subjects. The member states must implement these laws, which take various forms, including Regulations and Directives.

History of the EU

What is now known as the European Union evolved from the European Coal and Steel Community (ECSC), the European Atomic Energy Community (Euratom) and the European Economic Community (EEC). These communities were formed in the aftermath of the Second World War, partly in an attempt to foster economic co-operation and ensure long-term peace in mainland Europe.

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The three communities had six founding members:

- West Germany
- France
- Italy
- Netherlands
- Belgium
- Luxembourg

The EEC was the most important of these three communities. It was created by the signature of the Treaty of Rome in 1957 and came into existence in 1958. One of the main results of the Treaty was the creation of a customs union between these six countries.

Over time, the institutions for the three communities merged together and ultimately became what we now know as the Council of the European Union, the European Commission and the European Parliament.

After a referendum in 1972, Ireland became a member state of the EEC on 1 January 1973. The UK and Denmark also joined on this date.

The member states signed further treaties to improve the functioning of the EEC and its institutions and to increase its authority in different areas. For instance, the Single European Act was signed in 1986 with the goal of creating a single market.

The Maastricht Treaty (also known as the Treaty of the European Union) was signed in 1992 and led to the re-naming of the EEC as the European Community (the EC) within a wider body known as the European Union. In addition to its economic objectives, the EU now had responsibility in the areas of foreign and security policy, and law enforcement co-operation. The Maastricht Treaty also provided for the creation of the euro.

Further amendments to the underlying constitutional structure of the EU were made by the Amsterdam Treaty (signed in 1997), the Nice Treaty (signed in 2001) and the Lisbon Treaty (signed in 2007).

Goals of the EU

The current goals of the EU are to:

- Promote peace, the values of the EU and the wellbeing of its citizens
- Offer freedom, security and justice without internal borders
- Promote sustainable development based on balanced economic growth and price stability, a highly competitive market economy with full employment and social progress, and environmental protection
- Combat social exclusion and discrimination

- Promote scientific and technological progress
- Enhance economic, social and territorial cohesion and solidarity among EU countries
- Respect the rich cultural and linguistic diversity of the EU
- Establish an economic and monetary union whose currency is the Euro

The EU institutions

The most important institutions of the EU are:

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

The European Parliament

The European Parliament is the only directly elected body within the EU. Elections take place once every five years to elect members of the European Parliament (MEPs).

There are 751 seats in the European Parliament, although if the UK leaves the EU, the number of seats will drop to 705. MEPs generally join the parliamentary group which aligns best with their interests, to ensure that their views are given greater weight. For a group to be recognised, it must have 25 MEPs representing at least one-quarter of the member states.

The Parliament elects its own president, along with 14 vice-presidents, for a term of 2½ years. Collectively, this group is known as the Bureau of Parliament.

The leaders of the various parliamentary groups decide with the president on the Parliament's agenda and set the timetable of work for the Parliament and its committees.

The Parliament sits in Strasbourg, but there is a Secretariat based in Luxembourg and certain sessions and committee meetings take place in Brussels to facilitate contact with the Commission and Council.

Powers of the Parliament

With each new treaty, the powers of the European Parliament have increased. In general, most European laws must now be approved by both the European Parliament and the Council of the European Union. However, there are certain important areas, for example tax legislation, where the Parliament may only give an opinion as to whether a proposed piece of legislation can become law. The EU legislative procedures are explained in more detail on page 6.

Unlike most national parliaments, the European Parliament does not have the ability to initiate legislation. The Parliament can only vote on and amend legislation proposed by the Commission, which has exclusive power to initiate legislation. However, the Parliament can request that the Commission draw up legislation in an area.

The European Parliament also has a critical role in the approval of the annual EU budget. If the Parliament rejects the budget after negotiations with the Council of the European Union, a new budget must be drafted.

The European Parliament is responsible for supervising the other institutions of the EU, most notably the Commission. After each European election, the European Council proposes a president of the Commission. This nominee must be approved by a majority of the Parliament. The commissioners are then nominated and they too must be approved by the Parliament. The Commission must submit reports to the Parliament on its activities and must answer written or oral questions during Question Time. If two-thirds of the Parliament vote in favour of a motion of censure against the Commission, the entire Commission is forced to resign.

If a quarter of the MEPs so vote, a committee of inquiry can be set up to look into alleged contraventions or maladministration of EU law. The consent of the Parliament is also necessary to allow a new member state to join the EU.

The European Commission

The Commission is the executive body of the European Union and its staff are part of the EU civil service. The Commission is based in Brussels.

The Commission is composed of 28 commissioners, one of whom is the president. There is one commissioner for each member state; each member state nominates a person to act as a commissioner. However, that person is not officially there to represent the interests of their own member state.

As noted above, the European Parliament must approve the president of the Commission and then each of the commissioners. Each individual commissioner is subjected to scrutiny by the relevant committee of the European Parliament before the vote takes place. Together, the commissioners are known as the College of Commissioners.

The president of the Commission gives each commissioner responsibility for a particular area. However, the allocation of portfolios is often the subject of much negotiation between the member states and the president. These policy areas are often closely related to the departments within the EU civil service (Directorates-General). Each commissioner has a five-year term.

The Commission meets once a week to adopt proposals, finalise policy papers and make decisions. Decisions are taken by a simple majority vote. Once a decision is taken, it becomes Commission policy and has the full support of all commissioners.

To assist the commissioners in the performance of their duties, the Commission employs a staff of about 32,000 people. Staff members come from all the member states and include language experts, lawyers, administrative staff, and experts in particular fields such as agriculture or industry.

Powers of the European Commission

The Commission has a number of important functions:

- The Commission initiates legislation. It makes draft proposals for European laws, which are sent to the Council and European Parliament for amendment and approval. It also develops the overall legislative plan for any single year.
Other bodies, such as the Council of the European Union and the European Parliament, can send requests to the Commission to draft legislation.
A piece of EU legislation can also confer power on the Commission to enact Regulations which implement the goals in that piece of legislation.
- The Commission acts as a guardian of the EU treaties. It ensures that EU legislation is applied by all member states. It can institute proceedings against member states or businesses that fail to comply with EU law.
- The Commission acts as an executive body: it manages policies and drafts and implements the annual budget.
- The Commission represents the EU on the international stage. It negotiates trade and co-operation agreements with non-EU countries. However, most agreements negotiated by the Commission must be approved by both the Parliament and the Council of the European Union.

The Council of the European Union

The Council of the European Union shares decision-making power with the European Parliament, particularly in the areas of law-making and budget approval. It is not to be confused with the European Council, which is discussed later. The Council of the European Union has a rotating presidency, meaning that a representative from a different member state chairs most of the Council meetings for a six-month period.

The Council of the European Union consists of one government minister from every member state. Different groups of ministers meet depending on what topic is being

discussed at the weekly meeting. For example, if the issue to be discussed at the Council is agriculture, the minister for agriculture from each member state will attend and sit on the Council.

The Council generally meets in Brussels. However, meetings during April, June and October are held in Luxembourg.

The Council of the European Union has the following essential functions:

- **The power to legislate.** The Council shares this power with the European Parliament. Generally, the Council and the Parliament jointly adopt proposals for legislation that have come from the European Commission. As noted, all initial versions of legislation must be drafted by the Commission.
The Council and the Parliament can make amendments to the legislation before either approving or rejecting it. The Council can also ask the Commission to undertake studies, which can lead to draft legislation.
- **Co-ordination of the economic policies of member states.** Every year, the Council drafts guidelines for the economic policies of member states. These are then made into recommendations and the Council supervises their implementation by member states.
- **Development and co-ordination of the EU's common foreign and security policy.** The Council defines and implements EU foreign and security policy on the basis of guidelines set by the European Council. This policy area includes the EU's development and humanitarian aid, defence and trade.
- **The power to approve the budget of the EU.** This power is shared with the Parliament.

How the Council of the European Union makes decisions

If the Council is considering a proposal that has been made by the Commission (which is the usual way that decisions arise), then it makes the decision using qualified majority voting (QMV). A qualified majority means that the following two conditions must be met:

- 55% of the member states must agree, which is at least 16 member states currently.
- Those supporting the proposal must represent at least 65% of the EU population.

To prevent a decision being made, at least four member states must form a blocking minority. This means that if fewer than four member states oppose a decision, then the Council will judge that a qualified majority has been reached.

Certain sensitive topics, such as foreign policy and taxation, currently require a unanimous vote within the Council.

The European Council

The members of the European Council are the heads of state or heads of government of the EU member states, the president of the European Council and the president of the European Commission. The Taoiseach therefore represents Ireland at these meetings. The EU's high representative for foreign affairs and security policy also takes part when foreign affairs are discussed.

The European Council defines the EU's overall political direction and priorities. It is not one of the EU's legislating institutions, so it does not negotiate or adopt EU laws. The European Council is responsible for defining strategic guidelines on freedom, security and justice.

The European Council has a number of important powers of appointment. It elects its own president for a term of 2½ years, which can be renewed once. It nominates a candidate to become the president of the European Commission. This nominee must be approved by the European Parliament. The European Council also exclusively decides on the president, vice-president and executive members of the European Central Bank.

European Council meetings

European Council meetings are essentially summits where EU leaders meet to decide on broad political priorities and major initiatives. The Council meets at least twice every six months, normally in Brussels. When pressing issues arise, meetings can be scheduled on an *ad hoc* basis. This has been seen recently in the Brexit negotiations.

Meetings are chaired by the European Council president. The president of the European Parliament attends the start of each meeting to outline the European Parliament's views. Other people, such as the president of the European Central Bank, may be invited to attend meetings, depending on the issues being discussed.

The European Council mostly takes its decisions by consensus. However, in certain specific cases outlined in the EU treaties, it decides by unanimity or by qualified majority. If a vote is taken, neither the European Council president nor the Commission president takes part.

The Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) is the judicial wing of the European Union. It is composed of the European Court of Justice (ECJ), the General Court and some specialised courts.

These various courts deal with disputes between parties which involve EU law. They interpret EU law to make sure

it is applied in the same way in all EU countries, and settle legal disputes between national governments and EU institutions. In certain circumstances, individuals, companies or organisations can take action against an EU institution in these courts, if they feel the institution has somehow infringed their rights. The CJEU sits in Luxembourg.

The European Court of Justice

The European Court of Justice (ECJ) is the highest court of the EU. It consists of 28 judges, with one judge coming from each member state. It normally hears cases in panels of three, five or 15 judges (which is known as the Grand Chamber), depending on the importance of the issue in the case or the particular issue of European law in dispute. The ECJ acts as a collegiate body, meaning that there is only one ruling in each case. No dissents or separately concurring judgments are allowed.

In addition to the 28 judges at the ECJ, there are 11 advocate generals who deliver reasoned opinions on cases to assist the ECJ in making its decisions. Each case is assigned one advocate general, although an opinion from the advocate general is not necessary in every case.

Judges and advocate generals of the ECJ must have the qualifications to be appointed to the highest national courts in their member states or they may be *jurisconsults* (academic lawyers). Their independence must be beyond doubt. This means that once they are appointed, they may not hold any other office of an administrative or political nature and they may not engage in any occupation, paid or unpaid. They are appointed by joint agreement of the governments of the member states. They have a renewable term of six years.

The General Court

The General Court was set up as the Court of First Instance in 1989. It includes at least one judge per member state. Currently, there are 46 judges. Later this year, its number will increase and there will be two judges per member state.

Unlike the ECJ, the General Court does not have permanent advocates general. However, that task may, in exceptional circumstances, be carried out by a judge.

Cases before the General Court are heard by panels of five or three judges or, in some cases, by a single judge. The General Court may also sit as a Grand Chamber (of 15 judges) when this is justified by the legal complexity or importance of the case.

Matters which are initially reserved to the General Court include cases relating to breach of competition law, breach of commercial policy or social policy, and disputes concerning EU staff regulations. Decisions made by the General Court can be appealed to the ECJ on a point of law.

Types of action before the CJEU

The CJEU upholds EU treaties and ensures that European law is interpreted and applied in the same way across the EU. It can take various forms of legal action. These include:

- **Preliminary rulings.** To avoid differences in the interpretation of EU law by national courts, the preliminary ruling procedure allows co-operation between national courts and the ECJ. If a case comes before a national court that involves an interpretation of an EU law and there is a doubt as to how it should be interpreted, the national court will refer the question to the ECJ. The ECJ will decide how the law should be interpreted or applied. The national court must then apply that decision to the case before it.
- **Proceedings for failure to fulfil an obligation.** The Commission or a member state may commence proceedings at the ECJ to force a member state to comply with EU law. If the CJEU decides that the member state in question is at fault, the member state must rectify the situation without delay.
- **Proceedings for annulment.** This is where an applicant seeks the annulment of a measure (in particular a Regulation, Directive or Decision) adopted by an institution, body, office or agency of the EU. This type of action enables the court to review the legality of acts adopted by European institutions, bodies, offices or organisations. The ECJ can annul the act concerned if it is judged to be contrary to EU law.

The ECJ has exclusive jurisdiction over actions brought by a member state against the European Parliament or against the Council of the European Union (apart from Council measures in respect of State aid, dumping and implementing powers) or brought by one EU institution against another. The General Court has initial jurisdiction in all other actions of this type and particularly in actions brought by individuals.

Private individuals may only bring proceedings for annulment of an EU law if they can demonstrate that the disputed law affects them directly and individually. To bring proceedings for annulment, you should obtain legal advice and representation. You do not need to go through the national courts first in order to bring proceedings for annulment in the ECJ. If you lose the case at the ECJ, you may be liable to pay the costs of both sides. If you succeed, your costs will be paid by the EU and the law will be declared null and void throughout the EU.

The Court of Auditors

The Court of Auditors audits the accounts and oversees the implementation of the budgets of EU institutions.

It aims to improve the financial management of EU money and to report to EU citizens on how EU money is used. It draws up an annual report at the end of each financial year. This is forwarded to the other institutions and must be published in the Official Journal of the European Union so that anyone can study the budget and spending of any particular EU institution. Members of the Court of Auditors are independent and have experience in auditing public finances.

The Court of Auditors has its headquarters in Luxembourg and is composed of 28 members, one from each member state. Each member state suggests a candidate who is then appointed by the Council of the European Union in consultation with the European Parliament for a renewable term of six years.

The EU budget

Every year, the European Commission prepares a draft budget. The European Council and the European Parliament must agree on the budget and approve it in advance of the next financial year.

If the Council and the Parliament do not agree on the budget, the Commission must prepare a new draft.

The EU's main sources of income are:

- Contributions from all member states, including a percentage of VAT collected
- Import duties on products entering the EU
- Fines imposed on businesses and member states for failure to comply with EU rules

In addition to the expenses of running the EU, the EU budget is spent on a wide range of policy areas, including:

- Agricultural grants to farmers under the Common Agricultural Policy (CAP) – over 80% of the EU monies received by Ireland in 2017 were agriculture related
- Regional development funds to the less well-off member states and regions in the form of cohesion and structural funds
- Monies for the creation of growth and jobs within member states
- Environmental measures
- Cultural expenditure
- Border control

A broader multi-annual financial framework spanning seven years is also agreed to allow for greater certainty in planning for income expenditure.

European legislation

The fundamental laws or rules of the EU are set out in the treaties. All treaties must be agreed and ratified by the member states. A treaty is ratified when it becomes part of the law of the member states. Ratification procedures differ in member states. Ireland has ratified all treaties by referendum.

The two core treaties of the EU are the Treaty of the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). These treaties distribute authority to make legislation to a number of bodies. As noted above, most laws are initially drafted by the Commission before being agreed by the Council of the European Union and the European Parliament. This legislation takes various forms.

Forms of legislation

Regulations. These are laws that apply directly to everyone, including all member states. Regulations are binding in their entirety. Regulations become part of national law and are enforceable in national courts as soon as they come into force. They do not need to be transposed into national law.

Directives. A Directive is a form of order to member states to implement national legislation to achieve a specific result. It is up to the national governments to decide on the form and method of the legislation necessary to achieve that result. This allows member states some flexibility in implementing Directives and makes it easier to do so in a way which is satisfactory to each member state. Usually, a Directive will specify a deadline for the implementation of legislation.

Decisions. A Decision is addressed to a limited and defined group of people, for example one member state or a corporation. Decisions are binding upon the group that they address.

Recommendations and opinions. These are not binding; they are simply recommendations. However, they may be persuasive.

Legislative procedure

Ordinary legislative procedure

The majority of EU legislation is adopted using the ordinary legislative procedure (previously known as the co-decision procedure). It operates as follows:

1. The European Commission submits a draft legislative proposal to the Council of the European Union and the European Parliament.

2. The Council of the European Union and the Parliament independently discuss and debate the legislation. Normally, the Parliament decides its position first and submits any proposed amendments to the Council.
3. If the Council agrees with the Parliament's position and/or amendments, the legislation is adopted.
4. If the Council disagrees with the Parliament's position, it sends its own amendments back to the Parliament for a second reading.
5. The Parliament may then accept the Council's amendments, in which case the legislation is adopted, or send its own further amendments back to the Council.
6. If the Council accepts the Parliament's amendments, it will adopt the legislation.
7. If the two institutions do not reach an agreement after this second reading, a Conciliation Committee is convened. This has an equal number of representatives from the Parliament and the Council. It attempts to agree a joint text.
8. This joint text is voted on by both the Council and the Parliament. If the text agreed by the Conciliation Committee is acceptable to both institutions at the third reading, the legislative act is adopted. Otherwise, it is rejected.
9. If a legislative proposal is rejected at any stage of the procedure, or the Parliament and Council cannot reach a compromise, the proposal is not adopted and the procedure ends.

To facilitate agreement between the Council and the Parliament at the various stages, informal negotiations known as 'trilogues' often occur, involving representatives of both institutions. The Commission acts as a mediator for this trilogue process. The meeting of the Conciliation Committee between the second and third reading is often referred to as a 'formal trilogue'.

Consent procedure

The consent procedure is similar to the ordinary legislative procedure, except that the European Parliament cannot propose any changes to the legislation. It simply has the option of accepting or rejecting the version approved by the Council of the European Union.

Areas where the consent procedure can be used include:

- Discrimination law
- Approval of withdrawal agreements

Consultation

In certain policy areas, the Council of the European Union can adopt legislation based on a proposal by the Commission after consulting the European Parliament. It is not bound by any advice or amendments proposed by the Parliament. Depending on the area, the proposal will need to be either unanimously approved or approved in accordance with the qualified majority procedure.

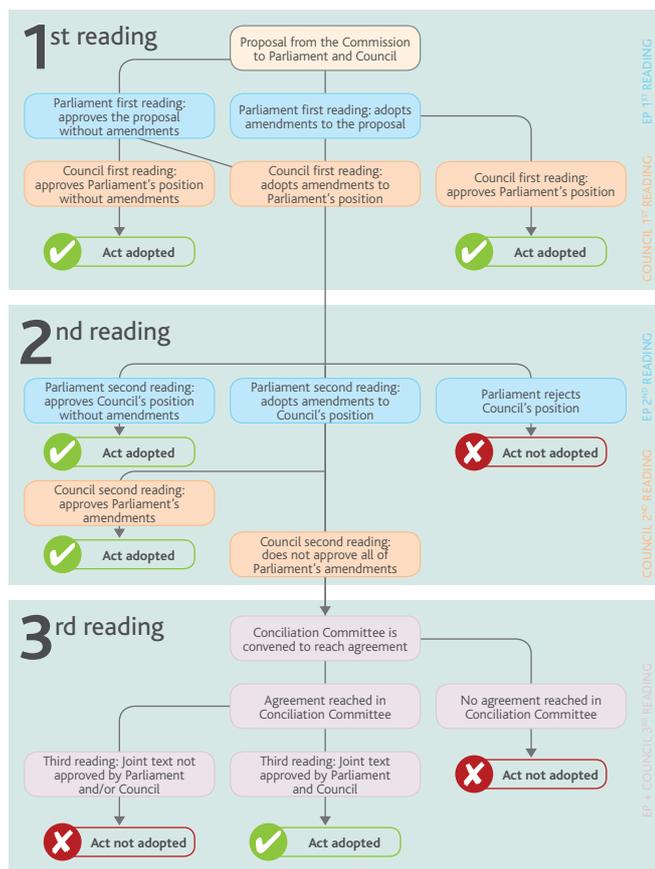
Areas where consultation can be used include:

- Family law
- Emergency asylum situations
- State aid
- Tax harmonisation

Publication

EU legislation is published in the Official Journal of the European Union, along with the date that it will come into effect. The Official Journal is published every working day and its sections include legislation, information and notices, and public tenders. You can search for EU legal texts on the EUR-Lex website, eur-lex.europa.eu.

One of the most important aspects of the EU is that its legislation is superior to all national legislation. This means that European law is supreme. Nothing in the national laws of a member state can override or take precedence over an EU law.



The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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Recent EU legislative developments

General Data Protection Regulation

A new EU-wide framework known as the General Data Protection Regulation (GDPR) came into force across the EU on 25 May 2018.

An accompanying Directive establishes data protection standards in the area of criminal offences and penalties. This is known as the Law Enforcement Directive.

The GDPR and the Law Enforcement Directive provide for significant reforms to current data protection rules. They provide for higher standards of data protection for individuals and increase obligations on organisations that process personal data. They also increase the range of possible sanctions for infringements of these rules.

Geo-blocking Regulation

The Geo-blocking Regulation (EU Regulation 2018/302) has been applied across the EU since 3 December 2018. Its main aim is to ensure equal access to the digital market for consumers throughout the EU, regardless of country. Therefore, it aims to stop the practices of geo-blocking and geo-discrimination.

As a result of the Geo-blocking Regulation businesses within the EU can no longer do the following:

- Restrict access to a website that was intended for consumers within a particular geographic area
- Force a person to buy from a particular website intended for that country or group of countries alone
- Limit consumers to a particular website, even if they initially consent to being redirected to that website
- Automatically redirect consumers to another website set up for that location
- Treat payment methods differently based on the consumer's location

Roaming charges on mobile phones

Regulation (EU) 2017/920 eventually led to the abolition of all charges for temporary roaming within the EU (from 15 June 2017).

Consumer Rights Directive

The European Directive on Consumer Rights (Directive 2011/83/EU, known as the Consumer Rights Directive) aims to ensure that consumers can expect the same minimum level of protection no matter where a trader is based in the EU. The Directive was incorporated into Irish law with effect from 13 June 2014.

As a result of the Directive, consumers now:

- Are entitled to extensive information in advance of purchase
- Have a 14-day cooling-off period after making online purchases, during which they can change their mind
- Are entitled to refunds within 14 days of cancellation
- Cannot be charged surcharges for particular payment types, for example credit cards

Single-Use Plastics Directive

The Single-Use Plastics Directive will ban the use of single-use plastics in the EU by 2021 where alternative materials are available.

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