

EUROPEAN LAW

INTRODUCTION

The European Coal and Steel Community was formally established in 1951 to govern the operation and development of the coal and steel industries in the member states.

In 1957 the Treaty of Rome (the EC Treaty) established the European Community (now the European Union) to achieve "ever closer union" amongst the peoples of Europe, in areas of economic activity. Article 3 identifies a wide range of activities to achieve the economic and social goals of the Community. These include common policies in respect of agriculture and transport, regulation of competition policy, free movement for workers, goods and services, and the elimination of trade barriers.

This period also saw the formation of the European Atomic Energy Community, to encourage co-operation in the peaceful use and development of nuclear energy.

The Treaty on European Union (1992) (the Maastricht Treaty) amended the EC Treaty in order to achieve its aims. These are stated in its Preamble to be a continuation of the process of "ever closer union", economic and monetary union, including the development of a single currency, common citizenship, common foreign and defence policies, and the enhancement of the democratic functions of Community institutions.

Note the terminology of the E.U.:
Member States/Treaty/Article/National law.

THE INSTITUTIONS OF THE EUROPEAN UNION

THE COUNCIL OF MINISTERS

The Council of Ministers is the legislative body of the EC. Under Article 145 it is responsible for the general co-ordination of the economic policies of the member states, and has the power to take decisions and legislate for the Communities.

Its membership is not fixed in terms of personnel: attendance will be by the appropriate Minister or Head of State for the matters under consideration. For continuity a permanent committee of officials conducts much of the routine work of the Council, for later ratification.

THE COMMISSION

The Commission acts as the proposer of EU policy.

The Commission also acts as the implementer of Community policy: by Article 155 it is under a duty to ensure the provisions of the Treaty are applied.

THE EUROPEAN PARLIAMENT

The role of the European Parliament was originally stated in Article 137 to be "advisory and supervisory".

The Parliament advises the Council of Ministers on Commission proposals. Committees of the Parliament present reports on Commission proposals for debate by the full Parliament. Decisions made by Parliament are influential on the Council of Ministers, but are not binding.

The Parliament has the right to question members of the Commission and Council and is therefore able to monitor the work of these institutions.

The Parliament has the power to reject the Council's proposals for the Community budget. The Parliament can veto legislation in certain areas, including environmental protection, health, education, consumer protection and transport.

THE ECONOMIC AND SOCIAL COMMITTEE

This committee advises the Commission, Council and European Parliament on economic and social matters. The members, who are divided into three groups (workers, employers and various interests), draw up opinions on draft EU legislation and the main issues affecting society.

THE EUROPEAN COURT OF JUSTICE

The Court of Justice of the European Communities is the European Union's supreme judicial authority. Under Art. 164, its responsibility is to ensure the application and interpretation of EU law.

There are three ways in which a matter may be raised before the ECJ:

- (1) An action by a member state against another member state alleging a failure to comply with the requirements of European Union law.
- (2) The courts of member states can refer questions of law concerning the interpretation of the treaties to the ECJ, under Article 234 (formerly A177) of the EC Treaty.
- (3) The ECJ may quash any measure introduced by either the Council or Commission which is incompatible with the objectives of the Community treaties. Such an action may be initiated by a Community institution, a member state, or even an individual.

THE EUROPEAN UNION'S LAW-MAKING PROCESS

See Jacqueline Martin, *The English Legal System*, chapter 4, for a diagram of the European Union's Law-making process.

EUROPEAN UNION LAW

It is important to note that EU law affects a only limited number of areas: agriculture & fishing, companies, competition, free movement of workers & goods, education, consumer policy, health, and the environment. Many domestic matters are untouched, eg, criminal law, family law and landlord & tenant.

The primary sources of EU law are the EU Treaties themselves and there are various types of secondary legislation made by the Council and Commission (regulations, directives and decisions).

Direct Applicability and Direct Effect.

- (1) The term direct applicability means that those provisions of EU law which are automatically incorporated into national law may be relied upon in the domestic courts.
- (2) The term direct effect denotes whether a specific provision of EU law creates rights which an individual may rely upon in the courts, either against governments (vertical direct effect) or against other citizens and organisations (horizontal direct effect).

TREATIES

The most important treaty is the Treaty of Rome (1957).

Treaty provisions are directly applicable, and therefore require no further implementation by member states.

A Treaty provision will only have direct effect if certain conditions are satisfied: it must be clear and precise; no further action by the State for implementation must be necessary; and it must be unconditional (*Van Gend en Loos* [1963]).

Many Treaty provisions have been successfully invoked vertically and horizontally. For example, see:

Macarthy Ltd v Smith (1980)

All the basic principles relating to: free movement of goods and persons, competition law, discrimination on the grounds of sex and nationality may now be invoked by individuals before their national courts.

REGULATIONS

Under Article 189 "A Regulation shall have general application. It shall be binding in its entirety and directly applicable in all member states."

Regulations take effect in the UK without the need for further implementation. An example is:

Re Tachographs: Commission v UK (1979)

Since a Regulation is of general application, it will have direct effect (vertically or horizontally) if the criteria for direct effect are satisfied (see *Van Gend en Loos*, above).

DIRECTIVES

Under Article 189 "A Directive shall be binding, as to the result to be achieved, upon each member state to which it is addressed, but shall leave to the national authorities the choice of form and methods."

Directives are not directly applicable because it is left to the individual member state to implement them. In the UK this may be done by Order in Council, statutory instrument, or by Act of Parliament. For example, the Consumer Protection Act 1987 and the Unfair Terms in Consumer Contract Regulations 1999, both implemented EU directives in the UK.

In a number of cases the ECJ has held that a Directive can have direct effect. However there are various limits to the operation of the principle of direct effect:

- (1) The conditions for direct effect must be fulfilled. This requires that the time-limit for implementation must have expired.
- (2) Directives only have vertical direct effect (ie, against the State). Case examples include:

Marshall v Southampton AHA (1986)
Duke v GEC Reliance Ltd (1988)
Paolo Faccini Dori v Recreb Srl (1994)

In some circumstances the failure of the member state to implement a Directive may give rise in EC law to an action for damages. See:

Francovich v Italian Republic (1991)
R v HM Treasury, ex parte British Telecom plc (1996)

Where a Directive has not been implemented, the ECJ has also held that national courts must as far as possible interpret national law in the light of the wording and purpose of the Directive in order to achieve the objectives of the Directive. See:

Marleasing SA v LA Commercial International (1992)

DECISIONS

These may be made by the Council or Commission as a formal method of enunciating policies or initiating actions. They are binding upon those to whom they are addressed (Art. 189). This could be the State, a company or an individual.

An example is Council Decision 89/469 'concerning certain protective measures relating to bovine spongiform encephalopathy in the United Kingdom' which was adopted in the wake of the 'mad cow' disease scare.

Like Directives, they can have direct effect against a "public" body.

Also note that there are decisions of the ECJ. Judgments of the ECJ on matters of EU law are binding on courts within the member states.