

# European Union Law

European Union law implements the provisions of EU treaties and initiatives. It establishes a series of rights and demands that are recognised by EU member states' national judiciaries. EU law is governed by the European Court of Justice (ECJ), which has a unique role in developing a European identity and influencing national governments.

## History

The ECJ was originally set up under the Treaty of Paris (1951) and its *competences* have gradually expanded under the Treaties of Rome (1957), Maastricht (1992), Amsterdam (1997), Nice (2001) and Lisbon (2007).

Legal *precedents* established by the ECJ have played a large role in shaping the development of EU law. The case of Van Gend en Loos vs. Nederlandse Administratie de Belastingen (1963), in which the Court ruled that the protection of EU law applied to individuals as well as member states, created the principle of *direct effect*. The case of Costa vs. ENEL (1964) ruled that in the case of a clash between EU and national law, EU law is the higher authority, thus establishing the *supremacy* of the ECJ. The British Factortame case (1990) took this further when it was ruled that national courts could actually strike down Acts of Parliament that contravened EU law. The Cassis de Dijon case (1979) laid out the principle of mutual recognition of goods, which underpinned the creation of the single market. In all these cases it was the ECJ interpreting the EU treaties, rather than political arguments, which determined the scope of the EU project.

## How does the European Legal System work?

The current powers of the ECJ are laid down in the Maastricht Treaty. These powers were increased when the Lisbon Treaty came into force in 2009 as it extended the ECJ jurisdiction to Justice and Home Affairs policy for the first time. The ECJ uses three sources for interpreting EU law: the EU treaties, articles of those treaties, and broader principles of law.

The court can act in three ways. First, it can bring about cases called 'infringement proceedings' against member states that fail to comply with EU legislation. Secondly, it can review legislative and executive acts passed by EU institutions to ensure their legality. Finally, many national courts hand cases up to the ECJ in what are known as preliminary rulings.

The principles of direct effect and supremacy of EU law guide the implementation of ECJ rulings and the legal framework within which it acts. These joint principles give the ECJ a large amount of judicial power within member states. Supremacy allows the ECJ to establish *primacy* for European laws while direct effect means that these laws then apply to people as well as to states – making them more like domestic laws than international

acts. There has been some resistance to this development. In the 1993 Brunner judgement, the German Courts decided that they could rule acts of the EU to be beyond the EU's legal authority if the act breached the German Constitution.

## Arguments

### For

- EU law prevents states choosing self-interest over agreed treaty provisions that benefit the entire Community.
- European law allows for greater judicial co-operation between member states in civil and criminal cases, which is important at a time of more cross-border crime.
- It helps to safeguard the agreed economic goals of the EU – like the free movement of goods.

### Against

- The intrusion of European law into national judiciaries undermines national control of lawmaking.
- EU law can make constitutional changes to the EU through legal interpretation and judicial precedent without the need for additional treaties. This is undemocratic because judges are appointed and therefore unaccountable.

## Quotes

*'What is the really essential feature of the European Union? It is that, in the EU, the guiding principle is law – not force.'* Erkki Liikanen, EU Budget Commissioner, 1994-1999

*'By creating a Community...[with] its own institutions, its own personality, its own legal capacity...the member states have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.'* Costa vs. ENEL, 1964

### Technical Terms

**Competences:** areas of law where the EU has been given control by its member states.

**Precedent:** previous judicial decisions in similar cases that shape the direction of later legal rulings.

**Direct Effect:** the principle that EU law creates rights for individuals that must be upheld by national courts.

**Supremacy:** the principle that EU law is superior to national laws when the ECJ has jurisdiction.

**Primacy:** the superiority of one law over another.

### Links

- [http://curia.europa.eu/jcms/jcms/Jo2\\_7024/](http://curia.europa.eu/jcms/jcms/Jo2_7024/)
- [http://ec.europa.eu/community\\_law/index\\_en.htm](http://ec.europa.eu/community_law/index_en.htm)