

## LESSON 4 –DECISION-MAKING IN THE EUROPEAN FRAMEWORK

### 1. Introduction.

One of the main issues for citizens when understanding the functioning of the European Union is its decision-making process, since it does not find parallelism with national spheres, nor is it called in the same way the results of those processes. All this contributes to a certain distancing and incomprehension towards European decision-making processes and towards their results.

In this lesson we will study both aspects following this scheme:

- Introduction.
- Decision-making process under the wing of the EU.
  - Decision-making procedures in the EU.
  - General phases of the Legislative procedure.
- European legislative acts.
  - EU Treaties.
  - Regulations.
  - Directives.
  - Decisions.
  - Opinions and Recommendations.

### 2. Decision-making process under the wing of the EU.

At the European framework, decisions are made through a complex set of mechanisms, through which the institutions (Commission, Parliament and Council) exercise the functions attributed in the founding Treaties, in accordance with the competences and purposes of the European Union.

The decision-making process in the EU has been reformed during its history, progressively becoming more important citizen representation. The current system for the creation and modification of rules with the participation of Institutions was established after the Treaty of Lisbon and the Treaty of Functioning of the European Union.

#### 2.1. Decision-making procedures in the EU.

To the difficulty of the participation of the three fundamental Institutions of the EU, each one with its own competences and intervention periods, joins that does not exist a unique mechanism to conform the European will, but diverse routes:

- Ordinary legislative procedure<sup>1</sup>, by means of which the rules are adopted by codecision of the European Parliament and the Council.
- Special legislative procedures, in which, in an extraordinary way, only the Parliament or the Council legislate, although with the consent of the other institution.
- Delegation procedure, through which the Commission prepares and adopts the acts delegated to it by the rules, after consulting with expert groups composed of representatives of each EU country.
- Implementation procedure or comitology, which is carried out by the Commission, normally after consulting a committee in which all EU countries are represented.
- Procedure for concluding International agreements, which are negotiated by the Commission, following a mandate from the Council - and from governments in the case of shared competences - and are adopted by the Council of the EU and third countries or international organizations.

## 2.2. General phases of the Legislative procedure.

Each of the existing procedures has its own procedures and all of them are usually quite complex, so that its detailed examination would be excessive. So, in this course we are only going to refer to the Ordinary legislative procedures, distinguishing in them three phases: initiative; processing and decision.

The initiative corresponds, almost exclusively, to the European Commission and only on certain occasions, the Council can start the legislative procedure without initiative of the Commission. In the area of monetary policy, the European Commission shares the initiative with the European Central Bank.

What the Council, the Parliament and the States can do is to urge the European Commission to launch the legislative procedure. However, this request does not entail the obligation for the Commission to do so.

Processing is the part of the procedure in which the European Parliament and the Council intervene, according to a complicated referral system established in the Treaties, in which each institution can carry out up to three readings, as modifications are incorporated into the text. On some occasions, also fixed in the Treaties, it is necessary to carry out non-binding consultations with advisory bodies such as the European Committee of the Regions or the Economic and Social Committee.

The decision is the act of conclusion of the legislative procedure of the Union. The adoption of the act can be carried out by the Parliament or the

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<sup>1</sup> [By clicking here](#) you can see how this procedure is done.



Council, accepting the modifications proposed by the other Institution, or both jointly after conciliation if they could not agree on the first two readings.

### 3. European legislative acts.

In the National scope, and despite the differences that may exist between the legislations of the different European States, it is normal to speak of three kinds of rules: the Constitution, which is the supreme rule that establishes both the structure and functioning of the State itself and the basic rights of its citizens, the laws, which emanate from the Parliaments, and the regulations, which come from administrative areas and specify or develop the provisions of laws.

Well, in the European scope these names do not exist -or they respond to a very different content-, nor is it possible to make equations between National and European ordinances, because the European Union, as an international integration organization, generates its own legal system and integrated into the legal system of each State.

Instead of a Constitution, which was not ratified, we have the Treaties, which constitute the primary law; and instead of laws and regulations, there are Regulations, Directives and Decisions that make up derivative law. In addition, there are many other peculiar normative sources that make up the complementary law, among which the Opinions and Recommendations stand out. And the general principles of law and, above all, the jurisprudence of the Court of Justice of the European Union are also of fundamental importance.

#### 3.1. EU Treaties<sup>2</sup>.

The Treaties are binding agreements between the Member States, which establish the objectives of the EU, its relationship with the countries that comprise it, the rules applicable to its institutions and the manner in which decisions are made.

The acts of the Institutions will only be valid within the areas of action agreed in the Treaties. Therefore, if they want to expand, it is necessary to reform the Treaties. This is also done to incorporate new countries or to increase the efficiency and transparency of the EU. For this reason, there are already several basic Treaties that start from the first three Foundational ones:

- Treaty establishing the European Coal and Steel Community (1951). Established the first Economic Community on two strategic elements of the war, in order to prevent further mobilizations.
- Treaty of Rome (EEC and EURATOM treaties) (1957). Two new Economic Communities were created, the European Economic

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<sup>2</sup> [By clicking here](#) you can find more basic information about the EU Treaties.

Community and the European Atomic Energy Community, which initiated the process of European integration.

- Merger Treaty – Treaty of Brussels (1965). Rationalized and unified the Institutions of the three existent Communities.
- Single European Act (1986). Reformed the Institutions, streamlining the decision-making and giving more weight to Parliament.
- Treaty about the European Union Unión – Treaty of Maastricht (1992). Established the European Union, introducing new elements of political union. It also established the codecision process and new forms of cooperation between the Member States, as well as five convergence criteria that must be respected by each Member State for the realization of the Economic and Monetary Union.
- Treaty of Amsterdam (1997). It recast and consolidated the existing Treaties and expanded the scope of the ordinary legislative procedure.
- Treaty of Nice (2001). Reformed the institutions to achieve an efficient operation after adding 25 Member States.
- Treaty of Lisbon (2007). It replaced the name of the old founding treaty with that of the "Treaty on the Functioning of the European Union" (TFEU), organizing and clarifying its competences.

### 3.2. Regulations<sup>3</sup>.

The Regulations can be adopted by the three institutions. They constitute the most complete normative act of the EU and the one that most resembles the law in the field of Domestic law. They are binding legislative acts that have a general scope (they are addressed to all the Member States) and are directly applicable in each one of them, in all its elements.

### 3.3. Directives<sup>4</sup>.

Directives are mandatory acts that can be addressed to all or some of the Member States.

They are not directly applicable, since they only impose an obligation of result, leaving to their addressees the election of the form and means to obtain it, within the term that has been fixed. The State must carry out a "transposition" of the Directive, determining the appropriate ways and means to ensure the full effectiveness of the

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<sup>3</sup> [By clicking here](#) you can find more basic information about the EU Regulations.

<sup>4</sup> [By clicking here](#) you can find more basic information about the EU Directives.

purposes of the Directive and approving the necessary rules for it. In principle, the State has a wide margin of appreciation, although if the Directive is sufficiently precise and unconditioned, citizens could demand its direct application.

### 3.4. Decisions<sup>5</sup>.

Decisions are compulsory acts in all their elements, although normally only for their specific addressees. Therefore, it is essential that these be notified of their adoption, taking effect as of notification. They can be addressed to the Member States, but also to individuals, be they natural or legal persons.

There are also Decisions that do not have a specific addressee and that are usually used as instruments to define EU policy, particularly in the field of common foreign and security policy.

### 3.5. Opinions and Recommendations.

Both are acts of a non-compulsory nature, which do not legally bind the addressee.

- Recommendations involve urging the recipients to a certain behaviour. Through them, the Institutions disclose their position in a specific matter, suggesting lines of action that are not mandatory.

- Opinions are just statements, often of an advisory nature, through which institutions assess certain situations and express their opinions.

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<sup>5</sup> [By clicking here](#) you can find more basic information about EU Decisions.



## ADDITIONAL DOCUMENTS

### Websites:

- [Legislative Process in the EU..](#)
- [Law in the EU..](#)

### Videos:

- [Codecision](#) (press START for see it working).
- [From A to Z: The Institutional Triangle..](#)
- [At home with the EU Institutions..](#)
- [Ordinary legislative procedure..](#)



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