

General Notions

A competence is the material field within which an authority is entitled to legislate, that is to say the public power of an entity in a field.

The EU is neither ‘sovereign’ nor a ‘State’. As a result, its competences are not ‘inherent’. Competences are conferred on the EU by Member States in the Treaties.

This is the **principle of conferral**, that applies to all international organisations.

It entails that the EU has only derivative competences (e.g., coming from Member States).

According to Art 5(2) TEU “[u]nder the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States”.

Three legal developments have significantly **undermined the principle of conferral**, leading to accusations that EU competences are actually unlimited:

- a) rise and general use of teleological interpretation → expressed EU competences are often interpreted in such a way that they ‘spill over’ into implicit policy areas that, according to the Treaties, should be outside the EU’s competence sphere.
- b) rise of EU general competences → competences not confined to a specific thematic area but horizontally cut across various policy titles within the Treaties (e.g., approximation of domestic laws through the actions of EU Institutions in different material fields in order to realise the aims of internal market).
- c) doctrine of implied powers → the EU shall exercise any implied power that is necessary to exercise its express competences.

Another legal development that has undermined the principle of conferral is codified in TFEU



Residual Competence – Art 352 TFEU:

“If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures [...]”.

Categories of EU competences pursuant to Art 2 TFEU

- 1. When the Treaties confer on the Union **exclusive competence** in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.
- 2. When the Treaties confer on the Union a **competence shared** with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.
- [...]
- 5. In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to **support, coordinate or supplement** the actions of the Member States, without thereby superseding their competence in these areas. Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of Member States' laws.

Exclusive EU Competences – Art 3(1) TFEU

- a) **customs** union;
- b) the establishing of the **competition** rules necessary for the functioning of the internal market;
- c) monetary policy for the Member States whose currency is the **euro**;
- d) the conservation of **marine biological resources** under the common fisheries policy;
- e) common **commercial policy**.

EU competence to carry out actions to support,
coordinate or supplement the actions of the Member
States – Art 6 TFEU

- a) protection and improvement of human health;
- b) industry;
- c) culture;
- d) tourism;
- e) education, vocational training, youth and sport;
- f) civil protection;
- g) administrative cooperation.

Shared competence between the EU and Member States – Art 4 TFEU

- a) internal market; b) social policy; c) economic, social and territorial cohesion; d) agriculture and fisheries, excluding the conservation of marine biological resources; e) environment; f) consumer protection; g) transport; h) trans-European networks; i) energy; j) area of freedom, security and justice; k) common safety concerns in public health matters.

In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

Subsidiarity – Art 5(3) TEU

Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, **the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level**, *but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.*

The institutions of the Union shall discretionally apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

Proportionality – Art. 5(4) TEU

Under the principle of proportionality, the content and form of **Union action shall not exceed what is necessary to achieve the objectives of the Treaties.**

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

National Parliaments ensure compliance with the principle of proportionality in accordance with the procedure set out in that Protocol.

- Part III of TFEU does not enumerate EU competences in a list. It attributes legislative competence for each activity in the respective title. Each policy area contains a (some) provision(s) on which EU legislation can be based.

Table 7.1 Union Policies and Internal Actions

Part III TFEU – Union Policies and Internal Actions			
Title I	The Internal Market	Title XIII	Culture
Title II	Free Movement of Goods	Title XIV	Public Health
Title III	Agriculture and Fisheries	Title XV	Consumer Protection
Title IV	Free Movement of Persons, Services and Capital	Title XVI	Trans-European Networks
Title V	Area of Freedom, Security and Justice	Title XVII	Industry
Title VI	Transport	Title XVIII	Economic, Social and Territorial Cohesion
Title VII	Common Rules on Competition, Taxation and Approximation of Laws	Title XIX	Research and Technological Development and Space
Title VIII	Economic and Monetary Policy	Title XX	Environment
Title IX	Employment	Title XXI	Energy
Title X	Social Policy	Title XXII	Tourism
Title XI	The European Social Fund	Title XXIII	Civil Protection
Title XII	Education, Vocational Training, Youth and Sport	Title XXIV	Administrative Cooperation

Article 192

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure ... shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.

Title XX – Environment

Article 191 Aims and Objectives

Article 192 Legislative Competence

Article 193 Powers of the Member States

Legislative procedures – Art 289 TFEU

1. The **ordinary legislative procedure** shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission.
2. In specific cases provided for by the Treaties, the adoption of a regulation, directive or decision shall follow a **special legislative procedure**; it entails that the European Parliament passes the act with the participation of the Council, or more often the Council passes the act with the participation of the Parliament (that shall be consulted to give an opinion or its consent).
3. **Legal acts adopted by legislative procedure shall constitute legislative acts.**
4. Legislative acts are proposed by the Commission. However, in specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.

Competences to act outside the EU legal space

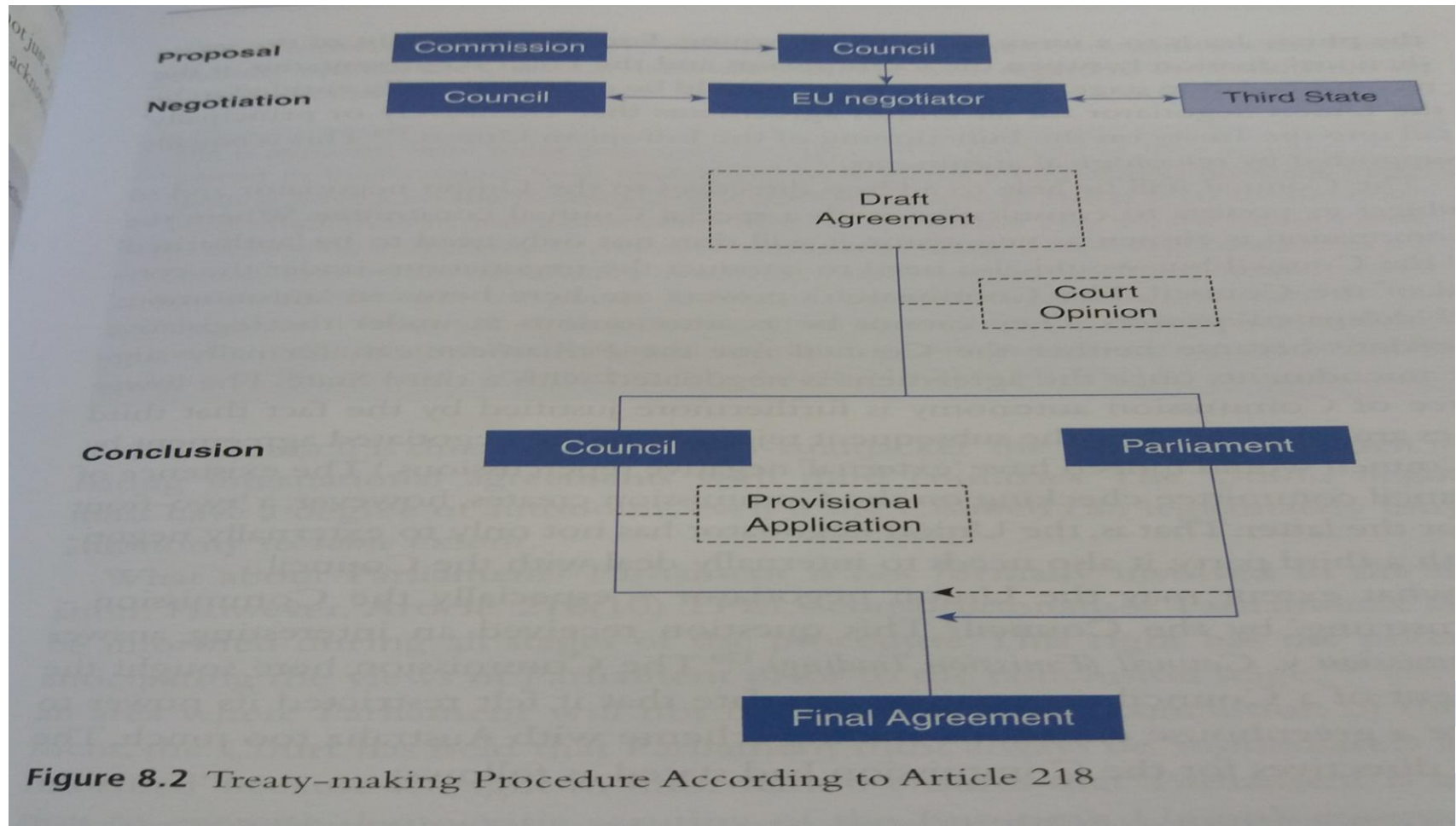
- The EU has also powers and competences concerning its relationship with other international actors and its role as an actor itself of the international arena.
- The EU has a general competence according to its **Common Foreign and Security Policy (CFSP)** within the TEU. The CSFP is characterised by the predominance of the action of the Commission.
- The EU also enjoys various specific powers concerning its **external action** within the TFEU. These powers are exercised according to procedures that are close to the legislative ones but are not properly legislative.
- The EU can also **stipulate international agreements**.



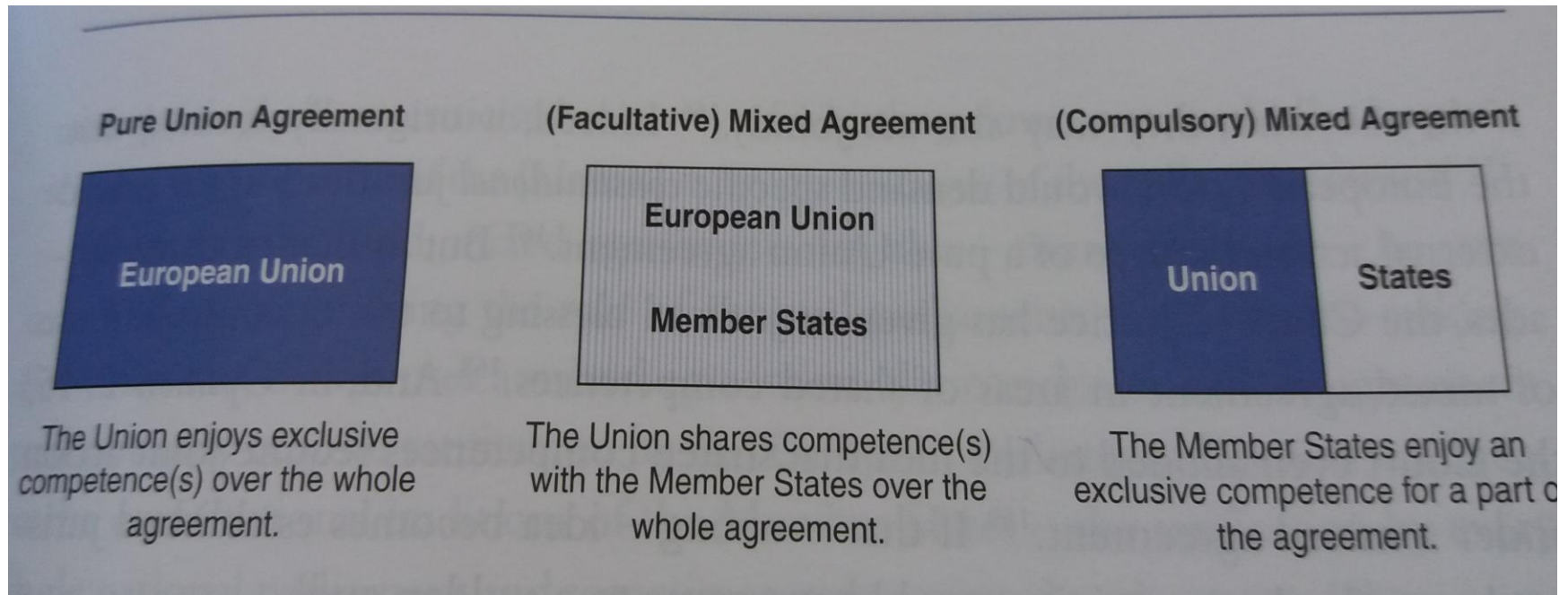
Table 8.1 Union External Policies

EU Treaty – Title V: CFSP		FEU Treaty – Part V: External Action	
Chapter 1	General Provisions	Title I	General Provisions
Chapter 2	Specific Provisions on the CFSP	Title II	Common Commercial Policy
Section 1	<i>Common Provisions</i>	Title III	Cooperation with Third Countries and Humanitarian Aid
Section 2	<i>Common Security and Defence Policy</i>	Title IV	Restrictive Measures
		Title V	International Agreements
		Title VI	Relations with International Organisations and Third Countries and Union Delegations
		Title VII	Solidarity Clause

Procedure governing the stipulation of EU international agreements.



Different categories of EU international agreements.



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The EU as an international actor – Art. 21(1) TEU

The Union's action on the international scene shall be guided by the **principles which have inspired its own creation**, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the Charter of the United Nations and international law → conditionality clauses in international agreements.

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph.

It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.



Judicial Competences and Procedures (Articles 258–81 TFEU)

Article 258	Enforcement Action Brought by the Commission	Article 268	Jurisdiction in Damages Actions under Article 340
Article 259	Enforcement Action Brought by Another Member State	Article 269	Jurisdiction for Article 7 TEU
Article 260	Action for a Failure to Comply with a Court Judgment	Article 270	Jurisdiction in Staff Cases
Article 261	Jurisdiction for Penalties in Regulations	Article 271	Jurisdiction for Cases Involving the European Investment Bank and the European Central Bank
Article 262	(Potential) Jurisdiction for Disputes Relating to European Intellectual Property Rights	Article 272	Jurisdiction Granted by Arbitration Clauses
Article 263	Action for Judicial Review	Article 273	Jurisdiction Granted by Special Agreement between the Member States
Article 264	Consequences of an Annulment Ruling	Article 274	Jurisdiction of National Courts Involving the Union
Article 265	(Enforcement) Action for the Union's Failure to Act	Article 275	Non-jurisdiction for the Union's CFSP
Article 266	Consequences of a Failure to Act Ruling	Article 276	Jurisdictional Limits within the Area of Freedom, Security and Justice
Article 267	Preliminary Rulings	Article 277	Collateral (Judicial) Review for Acts of General Application...

Protocol No. 3 on the Statute of the Court of Justice of the European Union

Rules of Procedure of the Court of Justice

Rules of Procedure of the General Court

Infringement Procedure*

The procedure starts with a **‘notice of default’** sent by the Commission to Member States suspected to infringe EU law.

Then a **‘dialogue’** between the Commission and the State follows.

If the ‘dialogue’ fails and the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned **opinion** on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter **before the Court of Justice** of the European Union.

* Also known as enforcement action.



Infringement Procedure

Also a Member State which considers that another Member State has failed to fulfil an obligation under the Treaties may bring the matter before the Court of Justice of the European Union.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under the Treaties, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion taking into account the positions of the States concerned, that must have the opportunity to submit their own observations both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court.

Infringement Procedure

If the CJEU finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with that obligation.

If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring again the case before the Court after giving that State the opportunity to submit its observations.

The Commission shall suggest to the Court the amount of **the lump sum and/or penalty payment** to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum and/or penalty payment on it.

Annulment Action

The CJEU shall review the legality of:

- a) legislative acts;
- b) acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions;
- c) acts of the European Parliament and of the European Council intended to produce legal effects;
- d) acts of bodies, offices or agencies of the Union intended to produce legal effects.

Annulment Action

The CJEU shall have jurisdiction in annulment actions:

i. brought by **privileged applicants**

(i) a Member States, (ii) the European Parliament, (iii) the Council, or (iv) the Commission;

i. on grounds of

(i) lack of competence, (ii) infringement of an essential procedural requirement, (iii) infringement of the Treaties or of any rule of law relating to their application, or (iv) misuse of powers.

Annulment Action

Also any natural or legal person (**non-privileged applicants**) may institute proceedings against an act addressed to him/her/it or which is of direct and individual concern to him/her/it.

Such annulment action shall be instituted before the General Court, not before the Court of Justice.

Annulment Action

The proceedings relating to an annulment action before the CJEU shall be instituted within two months of the publication of the act, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter.

If the action is well founded, the CJEU shall declare the act concerned to be void.

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Action for Failure to Act

Should one among the EU Institutions did not operate in a case when it had an obligation to operate pursuant to the Treaties, the Member States and the other EU Institutions may bring an action before the CJEU to have the infringement of the EU Institution established.

The action shall be admissible only if the EU Institution concerned has first been called upon to react.

If, within two months of being so called upon, the EU Institution concerned has not defined its position, the action may be brought within a further period of two months.

Also any natural or legal person may complain with the CJEU that an EU Institution has failed to address to that person any binding act.

The EU Institution whose failure to act has been declared contrary to the Treaties shall be required to take the necessary measures to comply with the judgment of the CJEU and thus to properly act.

Preliminary Rulings

The CJEU shall have jurisdiction to give preliminary rulings concerning:

- a) the interpretation of the Treaties;
- b) the validity and interpretation of acts delivered by EU Institutions.

The CJEU gives preliminary rulings upon request of a national judge who is working on a domestic case where EU law is somehow at stake.

But who is a national judge?

Preliminary Rulings

Where a question concerning the interpretation of the Treaties or the interpretation or validity of a EU act is raised before any court or tribunal of a Member State, that court or tribunal **may**, if it considers that a decision on that question is necessary to enable it to give a judgment, request the CJEU to give a preliminary ruling.

Where a question concerning the interpretation of the Treaties or the interpretation or validity of a EU act is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal **shall** bring the matter before the CJEU for a preliminary ruling.

Preliminary Rulings

The domestic judge who made a request for a preliminary ruling concerning the interpretation of the Treaties or of a EU act is bound by the following CJEU judgment. It means that the domestic judge has to interpret the norm at stake according to the CJEU judgment. Moreover, that judgment has *erga omnes* effects in the EU legal space: it means that all domestic judges should take it into account.

As regards the preliminary ruling concerning the validity of a EU act, it has effects for the case concerned and for the reasons that were at the basis of the request. It means that, regardless of the validity or invalidity finally ascertained, the *requesting* national judge has to abide by the CJEU judgment. Only if the CJEU states that an act is not valid, any other national judge has also to consider that act as not valid anymore.

Damages Actions

Art. 268 TFEU: “[t]he Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage provided for in the second and third paragraphs of Article 340”.

Art. 340(2) TFEU: “[i]n the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties”.

Art. 340(3) TFEU: “[n]otwithstanding the second paragraph, the European Central Bank shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties”..