

# Transposition, implementation and enforcement of Union law

This note provides a simplified and brief explanation of the terminology linked with the transposition, implementation and enforcement of EU law. It also describes the main roles of the EU institutions and Member States during the legislative procedures leading to adoption of European legislation and possible infringement procedures.

## General terminology

Regulation	an EU legal act automatically binding throughout the EU on the date it takes effect. It does not need to be incorporated into the national law of Member States. It is directly applicable and binding in its entirety.
Directive	an EU legal act that needs to be incorporated into national law by EU Member States before a given deadline, with notification to the Commission. It sets out goals that all Member States must achieve, while giving them discretion as to how to reach them. It is not directly applicable.
Decision	an EU legal act automatically binding throughout the EU on the date it enters into force on those to whom it is addressed (e.g. a Member State, a company or an individual). It is directly applicable.
Transposition of EU law	the procedure by which EU Member States incorporate EU directives into their national law in order to make their objectives, requirements and deadlines directly applicable. Member States transposing directives into national law can choose the form and methods for doing so, but are bound by the terms of the directive as to the result to be achieved and the deadline by which transposition should take place.
Implementation of EU law	the procedure by which EU law is applied at national and/or subnational (regional) levels
Gold-plating	interpretation by national authorities exceeding the requirements of a directive by adding extra requirements and (potentially) additional red tape beyond that which derives directly from EU-level provisions.
Enforcement of EU law	the procedure by which compliance with EU law is monitored and secured while non-compliance is systematically sanctioned by national and supranational judiciaries.
Codification of EU law	the procedure bringing together a legislative act and all amendments to it within a single new act. The new act passes through the full legislative process and replaces the acts being codified.
Consolidation of EU law	a formal procedure combining within a single legislative text the provisions of a basic legislative act and all subsequent amendments. No amendments are made to the content or form of the existing legislative document.

## The European Commission's oversight function

According to Article 17(1) of the Treaty on European Union (TEU), the European Commission 'oversees the application of Union law under the control of the Court of Justice of the European Union'. It has an oversight (supervisory) role regarding the implementation and application of EU law by Member States. This role

includes ensuring the correct transposition and implementation of EU law and is linked with discretion, pursuant to Article 258 of the Treaty on the Functioning of the European Union (TFEU), to launch infringement proceedings against Member States that have breached EU law. As part of this role, the Commission [monitors implementation of EU directives](#), adopts [annual reports monitoring the application of EU law](#) and can commence [infringement procedures](#). The Commission is also the only EU institution to be able to submit proposals for new EU legislation (Article 17(2) TEU), although Parliament (Article 225 TFEU) and the Council (Article 241 TFEU) can ask the Commission to submit any appropriate proposals. In 2016, the Commission explained its role in the application, implementation and enforcement of EU law in a communication – [EU law: Better results through better application](#).

### The legislative function of the European Parliament and the Council

Parliament and Council, as co-legislators, adopt the EU's legislative acts in accordance with [ordinary](#) or [special](#) legislative procedures (Article 289 TFEU). Whereas under the ordinary legislative procedure Council and Parliament are generally on an equal footing, under the special legislative procedures Council is, in practice, the sole legislator and Parliament is required to give consent or be consulted.

### The role of the Member States

With regard to EU legislation and legislative procedures, Member States are obliged to transpose directives into their legislation within the prescribed deadline and to apply EU law correctly and effectively. They are also obliged to report to the Commission on the transposition of directives into their national legislation, and on the performance of the legislation. Last, but not least, Member States are responsible for the enforcement of EU law (whether transposed or directly applicable) in their national legal systems.

### The Court's function

The Court of Justice ensures that EU law is interpreted and applied in the same way in every Member State. The Court focuses on: providing interpretations of EU law in preliminary rulings (Article 267 TFEU); enforcing EU law in infringement proceedings (Articles 258-260 TFEU); annulling EU legal acts when dealing with actions for annulment (Article 263 TFEU); ensuring that the EU takes action when dealing with actions for failure to act (Article 265 TFEU); and issuing sanctions for EU institutions when dealing with actions for damages (Article 268 TFEU).

### The infringement procedure and its stages

When the Commission uncovers a potential infringement of EU law, it launches a formal [infringement procedure](#) (Articles 258-260 TFEU). The procedure begins when, for example, a Member State fails to communicate the measures transposing a directive's provisions, transposes a directive after the deadline, fails to transpose a directive at all, or applies EU law incorrectly. Infringement proceedings can also be started by a Member State (Article 259 TFEU).

The main steps in an infringement procedure started by the Commission (potentially) include:

- (1) the Commission's letter of formal notice to a Member State requesting an explanation within a time limit;
- (2) the Commission's reasoned opinion to a Member State asking it to comply within a time limit;
- (3) referral of the case to the Court of Justice, potentially asking the Court to impose financial penalties;
- (4) a Court order to a Member State to take the action necessary to comply with its ruling while the Commission oversees compliance with the Court's decision; and
- (5) if the Member State does not comply with the Court's decision, referral of the case by the Commission back to the Court. In this case the Commission can ask the Court to impose financial penalties in the form of a lump sum or/and daily payment (Article 260(2) TFEU). All infringement decisions are [published](#).

This document has been prepared for the interparliamentary committee meeting of 27 November 2018: Empowering parliaments and enforcing citizens' rights in the implementation and application of Union law.