

Law Making

Other bodies involved

COREPER – Committee of permanent representatives

- Represents to Council in conciliation committee with the EP, as well as being involved in negotiations with the EP at early stage of the Ordinary Legislative Procedure.
- Supported by around 150 specialist committees made up by experts in MSs in specific areas which scrutinise proposals.

Delegated law making by the Commission

Comitology – Committee structure, comprising of MS representatives, to oversee the exercise of delegated law making which excluded the involvement of the EP

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Supremacy of EU Law Revision Sheet

Application of supremacy

Case Simmenthal II – in this case there was a conflict between Article 34 TFEU and a provision of national law passed subsequent to Italy's accession to the EU. The issue was whether the national law should be set aside immediately, or could the lower national court wait for the National Constitutional Court to declare the measure unconstitutional? It was held that

- Every national court, including the lower courts, must apply Community law. This is a broad principle of supremacy – it applies to all national law where EU law is applied over national law.
- If the applicant had to wait for the case to be appealed to the Constitutional court it would limit the effectiveness of EU Law Supremacy.

Case Factortame I – applicants requested that the English court to suspend the application of a national provision which they contended were contrary to the Treaty, while they awaited a decision from the CJEU on the compatibility of the national measure with community law. The issue was that national courts did not have this power i.e. no power to suspend parliamentary acts, but also there is the assumption that any act of parliament is compatible with EU law up until the point where the CJEU deems it incompatible.

Held: 'the full effectiveness of community law would be impaired if a rule of national law could prevent the national court from granting interim relief in order to ensure the full effectiveness of the judgement to be given on the existence of rights claimed under community law'

The effectiveness of EU law thus requires national courts to:

- Disapply the offending national law, and;
- Supply remedies which may not be available under national law
- This applies to all national laws in the case **Internationale Handelsgesellschaft**:

Concerned a challenge to the validity of an EU Regulation before the German Courts, on the basis that it breached German Constitutional law, in particular, fundamental rights

Supremacy and Lisbon

Declaration 17 on primacy:

'in accordance with well settled case law of the CJEU, the Treaties have primacy over the law of member states'.

Supremacy is ultimately concerned with hierarchy and superiority – assuming that one law is supreme and outranks the other.

Primacy is about rules of application – when there is a conflict between national law and EU law, you simply ignore the national law and apply EU law. It never says that national law is invalid or is outranked by EU law.

Primacy is only considered **in Declaration 17**.

National Court's Narrative

Acceptance of EU legal authority and thus supremacy arises from national constitutional ratification of the treaties and not from the case law of the CJEU. The result is that it is national law that determines the legal effects of EU law in the national systems.

In the UK, the basis of the acceptance of supremacy comes from the **European community act 1972** – the UK is a duellist state and thus an act had to be created to determine the nature and effect of EU Law in our constitution.

“Under the terms of the 1972 Act it has always been clear that it was the duty of the United Kingdom Court, when delivering final judgment, to override any rules of national law found to be in conflict with any directly enforceable rule of Community law.” Per Lord Bridge, **Factortame (No.2)** [1991] 1 AC 603

Limits to supremacy

“In the event, which no doubt would never happen in the real world, that a European measure was seen to be repugnant to a fundamental or constitutional right guaranteed by the law of England, a question would arise whether the general words of the ECA were sufficient to incorporate the measure and give it overriding effect in domestic law.”

i.e. primacy may not be given to such a provision.

Thoburn v Sunderland CC [2003] 2 All ER 545

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