



Competence of EU and Member States

What can the European Union do or not do?

The European Union is more than a geographical area. It's an institutional space. Europe is founded and functions on the basis of Treaties.

The EU has its own legal system but also legislative, executive and judicial apparatuses, just as an EU member country has them on its national territory.

But in certain areas, the European Union has competences that will impose themselves or exceed the competences of the member states. We can even talk about a certain abandonment of the independence of the member state!

The division of competences between the EU and the member states, i.e. the line between what Europe can do alone and what the member states can do alone or together with Europe, is strongly framed in the so-called Treaty on the Functioning of the European Union.

The Treaty on the Functioning of the EU organises - as the name says! - the functioning of the Union and determines the areas, delimitation and modalities for the exercise of its competences.

How are relations between the EU and the Member States organised?

There are three principles to be retained which guarantee a balance in the relationship between the parties:

1. **The principle of attribution:** Where the Treaties confer exclusive competence on the Union in a given area, only the Union can legislate and adopt legally binding acts.
2. **The principle of proportionality:** EU action may not go beyond what is necessary to achieve the objectives of the Treaties;
3. **The principle of subsidiarity:** where Member States can act, the EU can only intervene if its action is more effective.

There are different types of competence with specific consequences:

1. **Exclusive competence:** in this case, the role of the Member States is, in principle, limited to implementing legislation.
2. **Shared competence with the Member States:** both the EU and the Member States can adopt legislative acts. However, EU countries can only legislate if the EU has decided not to do so or has not yet proposed legislation.
3. **A supporting or supporting competence of the Member States,** without replacing their competence: in certain areas, the EU can only support, coordinate or complement the action of the Member States.



In addition, there shall exist systems for coordinating economic and employment policies in the Member States in accordance with the arrangements laid down in this Treaty, for the definition of which the Union shall have competence.

The Union also has competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.

What is the Commission's practice in the context of its power of initiative, i.e. where it can act on its own?

When the Commission is considering new policy or legislation, it describes it in a working document published on the Better Regulation website and therefore open for consultation (https://ec.europa.eu/smart-regulation/roadmaps/index_fr.htm).

The Commission also examines the potential economic, social and environmental consequences in an impact assessment. (<https://ec.europa.eu/info/consultations>)

It seeks the views of citizens and stakeholders, for example through public consultations that each of us can go to and collaborate on. (<https://ec.europa.eu/info/law/better-regulation/have-your-say>)

IMPORTANT: Remember that citizens can propose new policies or legislation through the "European Citizens' Initiative". This gives citizens the opportunity to participate effectively in the construction of the EU by asking the European Commission to propose new legislation. Even if the initiative needs, among other things, to reach one million signatures, it is a tool of citizenship and transparency that should certainly be used. Indeed, if the conditions are met, the Commission must decide what action to take in response to the citizens' initiative!

Concrete examples:

- A European Citizens' Initiative for a ban on glyphosate, to reform the pesticide approval procedure and to set mandatory EU-wide targets for reducing pesticide use (supported by 1070865 citizens).
- A citizens' initiative to protect bees and the health of citizens, by phasing out synthetic pesticides by 2035, and to restore biodiversity and help farmers during this transition phase (running until September 2020 with support of 291 492 in March 2020).

Illustration of the types of skills mentioned (page 2).

1. **Exclusive EU competences** include those relating to the Customs Union, competition rules for the single market, monetary policy for the countries of the euro zone, i.e. areas which are linked to the foundations of the European economic and monetary project.
But: it is also exclusively competent for marine plants and animals.
Thus, in 2008 the EU adopted a Marine Strategy Framework Directive and subsequently in 2013, measures to establish a common European framework for maritime spatial planning and integrated coastal zone management in the EU Member States, with a view to ensuring



sustainable growth of maritime and coastal activities and sustainable use of resources at sea and on the coasts.

Member States are obliged to comply with this directive and produce a regular assessment of the state of their seas.

2. **Shared competences** include employment and social affairs, economic, social and territorial cohesion, agriculture, environment, consumer protection, etc.
The EU has done a lot in terms of consumer protection: it could do it alone, it decided to do it! This is in contrast to an initiative by the Member States in this area which would go below what the EU has decided to promote as minimum protection.
If, on the other hand, we take the issue of employment and social affairs, the situation is very different: it is the Member States that are primarily responsible for employment and social policies. The EU supports and supplements their efforts in this area.
The Commission coordinates and monitors national policies and the implementation of European legislation. It encourages the sharing of good practice in areas such as rights at work, coordination of social security systems, training, skills and entrepreneurship.
-> This approach shows us a **mix of two types of competences: shared and specific**, i.e. where the EU plays a coordinating, non-binding role ...
3. **Supporting competences**, in which the EU has no competence to legislate and cannot hinder the capacity of countries to do so, are e.g. public health, culture, tourism, education, training ...
EU support action is well known in the field of education through the famous Erasmus and Erasmus + programmes, and also through the PISA or VET mobility programmes ...
Let us also take a tragic recent example from the field of public health.
In the fight against COVID 19, the EU cannot legislate, only the Member States can do so ...But the Commission can coordinate the [common European response to the](#) coronavirus pandemic. It can take measures to strengthen public health sectors and mitigate the socio-economic effects of the health crisis. It can mobilise the means available to help Member States coordinate their national responses by providing objective information on the virus.