

THE EUROPEAN CONVENTION

THE SECRETARIAT

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Working Group IX

Working document 04

Working Group IX on Simplification

SUBJECT: List of instruments of action available to the Union

Members of the Group will find attached a list of the instruments of action available to the Union prepared by the Secretariat.

NOTE

Subject: Instruments of action available to the Union

A large number of instruments are available to the Union. Although the most important of these are defined in the Treaties, a number of instruments are only referred to in the Treaties without an accompanying definition. Finally, there are instruments which have been added for the practical purposes of the Institutions and are not therefore referred to in the Treaties.

A. LEGAL INSTRUMENTS DEFINED IN THE TREATIES

1. EC TREATY

As a general rule, the TEC leaves it up to the Institutions to select one of the instruments provided for in Article 249 of the TEC. In certain cases, however, the Treaty provides for adoption of a specific type of act, such as a Regulation (e.g. Article 40) or a Directive (e.g. Article 94).

(a) Regulation (Article 249 TEC)

The Treaty defines a Regulation as having "general application. It shall be binding in its entirety and directly applicable in all Member States".

(b) Directive (Article 249 TEC)

A Directive "shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods".

(c) Decision (Article 249 TEC)

The Treaty defines a Decision as "binding in its entirety upon those to whom it is addressed".¹

(d) Recommendation (Article 249 TEC)

A Recommendation has no binding force (e.g. Article 99 TEC)

(e) Opinion (Article 249 TEC)

An Opinion has no binding force.

¹ The second paragraph of Article 14 of the TECSC defines Decisions as "binding in their entirety", but does not specify that they must be specifically addressed.

2. **TITLE V TEU (CFSP)**

1. **Principles and general guidelines** (Article 12, first indent, and Article 13(1))

The European Council defines the principles of and general guidelines for the common foreign and security policy (CFSP), including for matters with defence implications.

2. **Common strategies** (Article 12, second indent, and Article 13(2))

The European Council decides on common strategies to be implemented by the Union in areas where the Member States have important interests in common. Common strategies set out their objectives, duration and the means to be made available by the Union and the Member States.

Common strategies are implemented by the Council, in particular by adopting joint actions and common positions.

3. **Joint actions** (Article 12, third indent, and Article 14)

Joint actions lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation. They commit the Member States in the positions they adopt and in the conduct of their activity.

4. **Common positions** (Article 12, fourth indent, Article 15 and Article 19)

Common positions define the approach of the Union to a particular matter. Member States ensure that their national policies conform to the common positions.²

5. **Decisions** (Article 13(3) and Article 23(3))

Pursuant to the TEU, the Council takes the decisions necessary for defining and implementing the CFSP on the basis of the general guidelines defined by the European Council.

3. **TITLE VI TEU (JHA)**

(a) **Common positions** (Article 37, first paragraph)

Common positions define the approach of the Union to a particular matter. Within international organisations and at international conferences in which they take part, Member States defend the common positions adopted.³

² This type of act bears no relation to the "common position" which the Council adopts as part of the codecision and cooperation procedures.

³ This type of act bears no relation to the "common position" which the Council adopts as part of the codecision and cooperation procedures.

(b) **Framework decisions** (Article 34(2)(b)) ⁴

Framework decisions:

- are adopted for the purpose of approximation of the laws and regulations of the Member States
- are binding upon the Member States as to the result to be achieved but leave to the national authorities the choice of form and methods
- may not entail direct effect.

(c) **Decisions** (Article 34 (2)(c))

Decisions:

- are adopted for any other purpose consistent with the objectives of Title VI, excluding any approximation of the laws and regulations of the Member States
- are binding
- do not entail direct effect. ⁵

(d) **Conventions** (Article 34(2)(d))

Conventions are:

- established by the Council, which recommends them to the Member States for adoption in accordance with their respective constitutional requirements
- enter into force once adopted by at least half of the Member States unless otherwise provided. ⁶

⁴ The definition of JHA framework decisions corresponds to that of Directives in Article 249 TEC, with an additional qualification: may not entail direct effect.

⁵ A JHA Decision does not differ legally to any great extent from a CFSP joint action. Unlike the Decision referred to in Article 249 TEC, a JHA decision is not "binding in its entirety" but simply "binding".

⁶ e.g. Convention of 26 July 1995 on protection of the European Communities' financial interests, ratified by 12 Member States (OJ C 316, 27.11.1995, p. 49), replaced by the Directive on the criminal-law protection of the Community's financial interests (OJ C 240, 28.8.2001, p. 125); Convention of 26 July 1995 on the establishment of a European Police Office (EUROPOL) (OJ C 316, 27.11.1995, p. 2). Since the entry into force of the Treaty of Amsterdam, there has been less use of conventions.

B. INSTRUMENTS REFERRED TO BUT NOT DEFINED IN THE TREATIES

I. EC TREATY

The TEC refers to:

- defining or adopting "**guidelines**" (Article 156, first paragraph; trans-European networks)
- formulating "**general guidelines**" (Article 111(2); Exchange-rate policy)
- adopting or discussing "**conclusions**" (Article 99(2); Broad guidelines of economic policies)
- drawing up "**guidelines**" (Article 128(2); Employment)
- adopting "**incentive measures**" (Article 129, first paragraph (Employment); Article 149(4), first indent (Education);
- adopting "**specific actions**" (Article 159, third paragraph; Economic and social cohesion)
- deciding on "**action**" (Article 175(1); Environment)
- adopting a "**multiannual framework programme**" (Article 166(1); Research and development)
- adopting "**general action programmes**" (Article 175(3); Environment)
- adopting "**multiannual programmes**" (Article 179(1); Development cooperation)
- adopting "**specific programmes**" (Article 166(3) and (4); Research and development)
- deciding on "**supplementary programmes**" (Article 168; Research and development)

These instruments are referred to above all in fields where the Union does not have a very high profile, e.g. where the Union simply supports or supplements action by the Member States.

In practice, when the Institutions take such forms of action, they more often than not choose an act in "decision" form. This is not the Decision defined in Article 249 TEC, but a decision "sui generis", an act which is not provided for by the Treaties (see below).

The EC Treaty also refers to **Conventions** concluded between Member States (Article 293 TEC), which require a national ratification procedure before entering into force.⁷

⁷ e.g. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ L 299, 31.12.1972, p. 32). Following entry into force of the Treaty of Amsterdam, this Convention was replaced by the Council Regulation of 22 December 2000 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1); Convention of 19 June 1980 on the Law applicable to Contractual Obligations (OJ L 266, 9.10.1980, p. 1).

C. INSTRUMENTS NOT PROVIDED FOR IN THE TREATIES

These are acts which are mostly not binding, except in the case of decisions "sui generis" or "Beschlüsse".

The following are select examples:

(a) Decisions "sui generis" or "Beschlüsse"

Decisions "sui generis" may be defined as legal acts of Community law which are not specifically addressed and only have binding effects within the institutional structure of the Community. Some of them, however, may have certain legal effects for third parties.⁸

(b) Resolutions

Resolutions are used in particular to guide action by the Community, the Union or the Member States, or to establish a framework or deadlines for carrying out an action. Resolutions are frequently misunderstood since they are non-binding acts and the contents often give the impression that the Community is in the process of legislating when this is not in fact the case.

(c) Conclusions

Conclusions are used by the Council:

- in the CFSP field, to express the Union's position on a particular matter
- in the field covered by Title VI of the TEU (JHA) and the TEC, in a wide range of situations: expressing the Council's position on a particular matter, submitting a request to the Commission, establishing certain rules of conduct of a procedural nature, formulating the progress of endorsed legislative work, etc.

(d) Declarations

Instruments used essentially in the CFSP as a more formal means than conclusions for expressing the position of the Union or the Presidency of the Council on the situation in a region or a third country.

(e) Interinstitutional agreements

Reflect the principle of sincere cooperation between the Institutions.

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⁸ e.g. Decision on guidelines for Member States' employment policies for the year 2001 (OJ L 22, 24.1.2001, p. 18), based on Article 128(2); various decisions on Community programmes for health, education, research, etc.