

The Development of European Integration

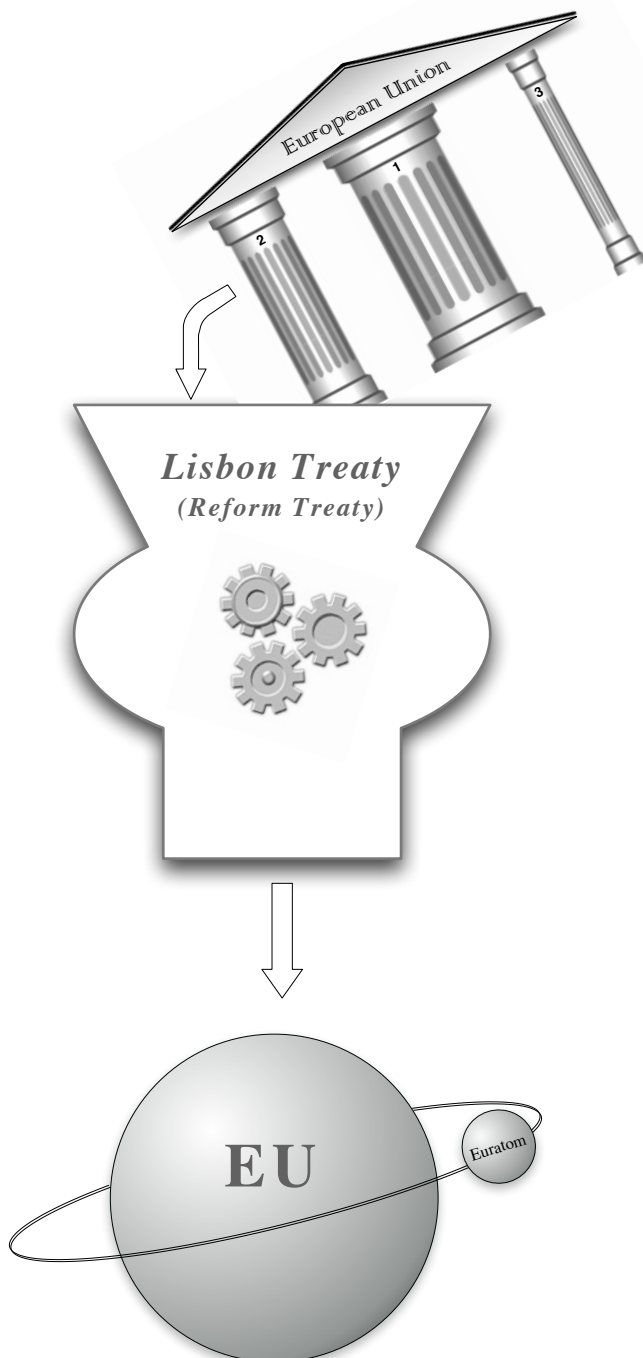
The European Union before and after the Lisbon revision

Chart 2 | 21

Topic:

The Lisbon Treaty does away with the European Union's traditional pillar structure.

The effect of the Lisbon Treaty on the structure of the EU



The EU before the Lisbon Treaty:

Three Treaties (Nice versions):

- The EU Treaty (overall structure);
- The EC Treaty (first pillar);
- The Euratom Treaty (first pillar).

The Lisbon Treaty (Reform Treaty) contains the changes to the present Treaties.

The Lisbon Treaty does away with the EU's traditional pillar structure. The Union is no longer based on the European Communities. The EC is replaced and succeeded by the EU. Euratom exists outside the framework of the EU Treaty.

The EU and Euratom following the Lisbon Treaty:

Three Treaties (Lisbon versions):

- Two Treaties on the EU: the EU Treaty and the Treaty on the Functioning of the European Union (former EC Treaty);
- One Treaty on the Atomic Energy Community: the Euratom Treaty.

See **Chart 2/22**, **Chart 2/23**

The Development of European Integration

Membership

Chart 2 | 25

Topic:

The original number of six EEC Member States has grown to the present 27 EU Member States. Further enlargement rounds are planned though none are scheduled.

Member States of the European Communities and of the EU

Founding members of the European Communities

1951/1957	ECSC, Euratom, EEC	France, Germany, Italy, three Benelux States (Belgium, the Netherlands, Luxembourg)
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Enlargement (in the case of some countries: moving from the EFTA to the E(E)C/EU)

1973	ECSC, Euratom, EEC	UK, Ireland, Denmark (negative popular vote in Norway)
1981	ECSC, Euratom, EEC	Greece
1986	ECSC, Euratom, EEC	Spain, Portugal
1995	EU (incl. ECSC, Euratom, EEC)	Austria, Sweden, Finland (negative popular vote in Norway)
2004	EU (incl. the two remaining Communities: Euratom and EC)	Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia
2007	EU (incl. Euratom and EC)	Bulgaria, Romania

Candidate States and applicants

EU (incl. Euratom and EC)	Candidate States: Turkey, Croatia, Macedonia Applicant States: Albania, Montenegro, Iceland, Serbia (plus: a non-active application for membership by Switzerland)
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Rejected as "non-European"

Morocco (1987)

Outside the EU: EFTA and EEA States

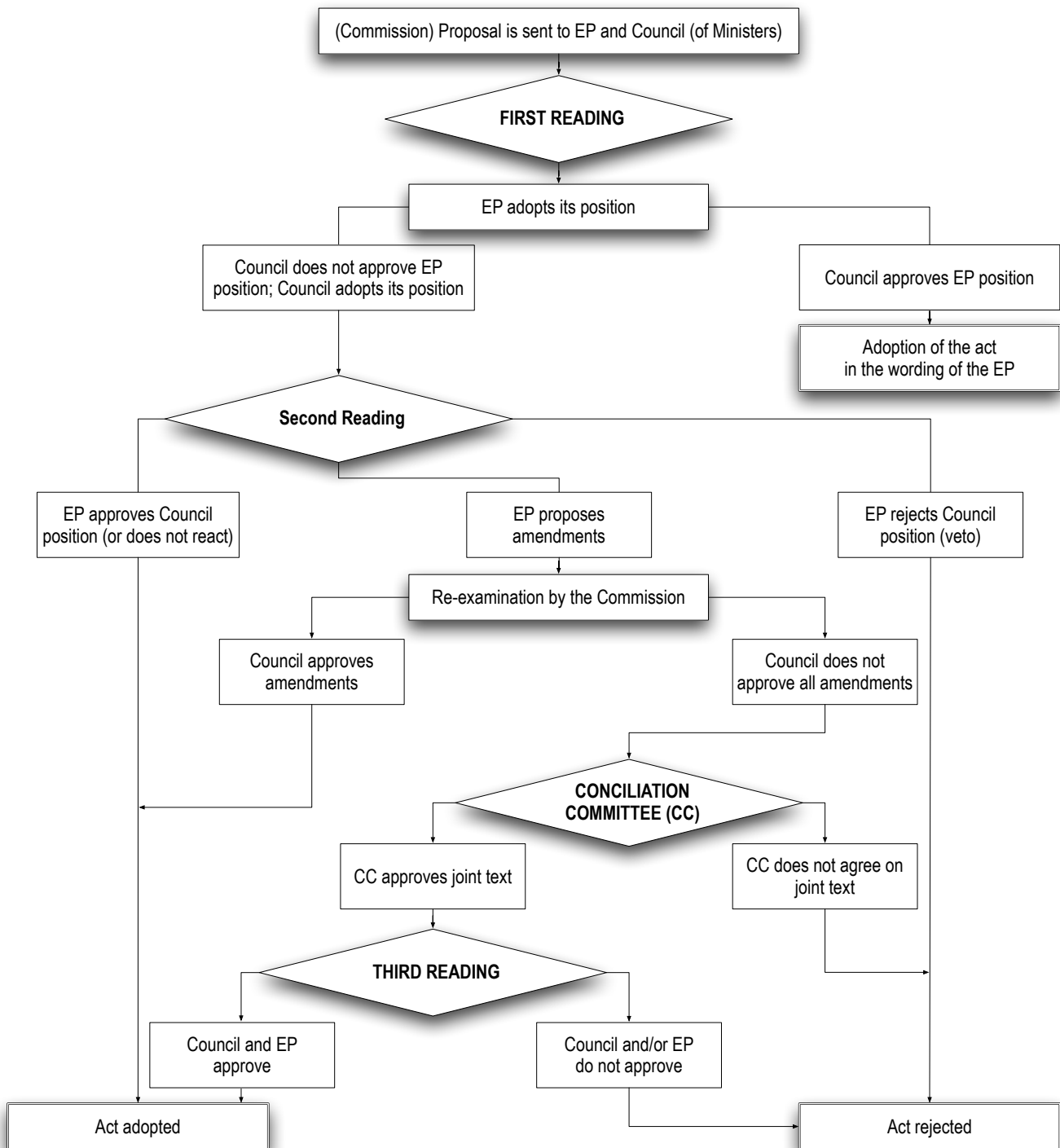
- Remaining EFTA States: Iceland, Liechtenstein, Norway, Switzerland ...
- ... of whom some are also EEA States ("EEA EFTA States"): Iceland, Liechtenstein, Norway.
- Switzerland: negative popular vote on EEA membership in 1992.

The adoption of secondary measures

The ordinary legislative procedure (codecision, Art. 294 TFEU)

Topic:

In the codecision procedure, the European Parliament and the Council (of Ministers) act as co-legislators.



Note:
 The voting modalities in the Council (i.e. qualified majority voting, unanimity) differ depending on the stage of the procedure. Adoption of the act by qualified majority (see **Chart 5/6**, **Chart 5/7**) is possible in certain circumstances.

Introduction to Substantive EU Law

Art. 18 TFEU: the general prohibition of discrimination on grounds of nationality

Chart 7 | 15

Topic:

A generally applicable prohibition of discrimination on grounds of nationality underpins the European Union as a whole. The fundamental provision on this issue is Art. 18 TFEU.

Prohibition of discrimination on grounds of nationality

Renumbering: originally Art. 7 of the EEC Treaty, then Art. 6 of the EC Treaty, then Art. 12 EC, since the Lisbon revision Art. 18 TFEU.

Substantive provision: Art. 18(1) TFEU, prohibition of discrimination on grounds of nationality

Meaning: a prohibition on the worse treatment of foreign EU nationals as compared with a Member State's own nationals; *Vatsouras* (2009).

Scope: the prohibition is general because it applies within the full scope of the Treaties, though without prejudice to special provisions: Art. 18(1) TFEU "applies independently only to situations governed by EU law for which the [Treaties] lay down no specific rules prohibiting discrimination"; *Peralta* (1994), see also e.g. *Lyyski* (2007), *UTECA* (2009).

Legal basis provision: Art. 18(2) TFEU

For secondary law designed to prohibit discrimination on grounds of nationality falling within the scope of Art. 18(1) TFEU

E.g. Directive 93/96/EEC (Students Directive), now replaced by Directive 2004/38/EC

Areas covered by Art. 18(1) TFEU

Various different areas; e.g.:

- Vocational training; *Gravier* (1985);
- Civil procedure; *Hayes and Hayes* (1997);
- Minimum subsistence allowances; *Grzelczyk* (2001);
- Student loans and maintenance grants; *Bidar* (2005), *Förster* (2008);
- Processing of data in the context of fighting crime; *Huber* (2008).

Particularly important: the link to Art. 18 TFEU is often made through Art. 21 TFEU; see **Chart 7/19**.

Special provisions that leave no room for the application of Art. 18(1) TFEU

E.g.:

- Arts. 45, 49, 56, 57 and 63 TFEU;
- Arts. 101 TFEU et seq. - according to the GC; *Thermehotel* (2004).

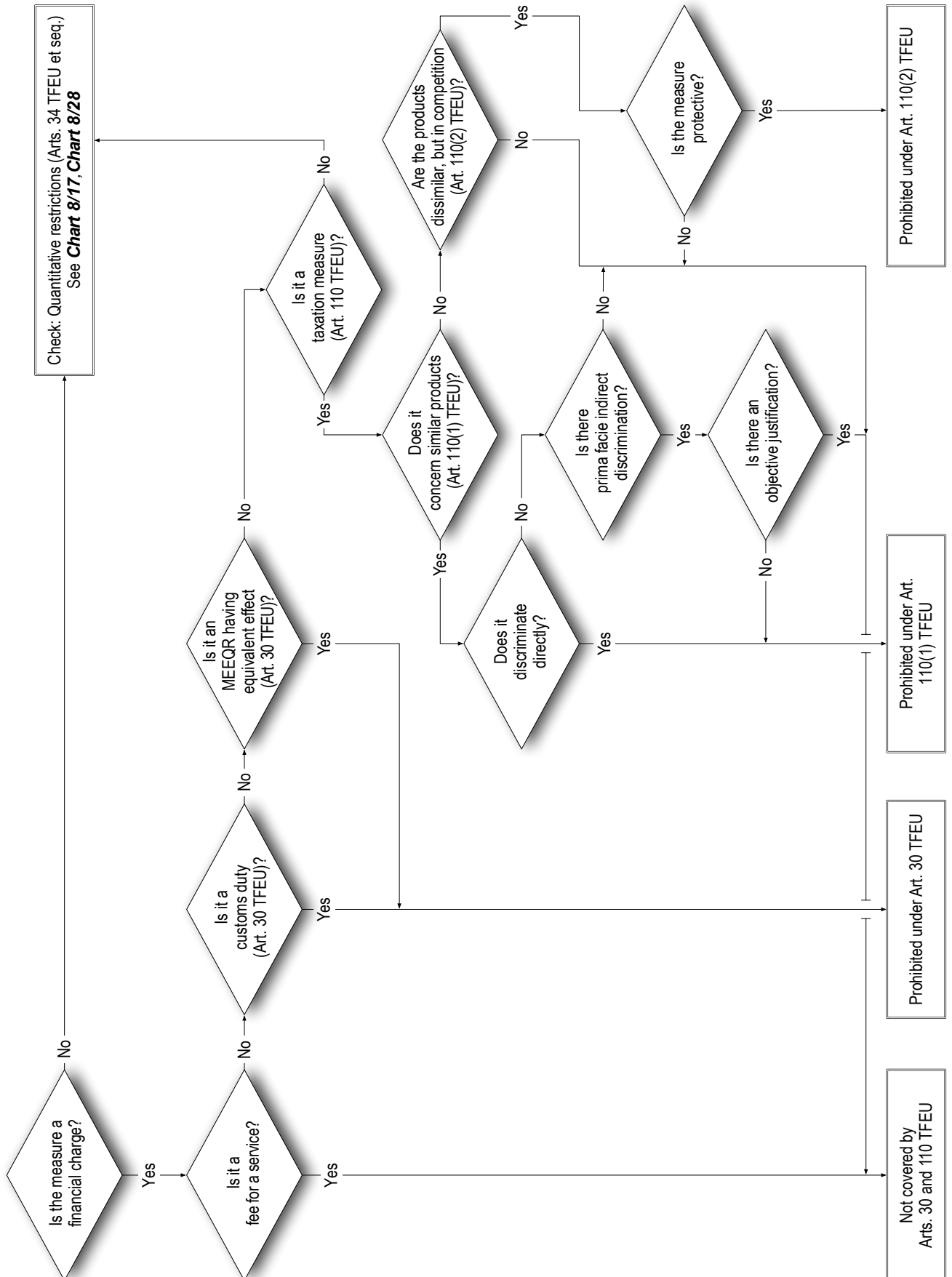
Note:

For other types of discrimination, written prohibitions apply in limited areas only; e.g. discrimination on grounds of sex, sexual orientation, racial or ethnic origin, religion or belief, disability and age, Art. 157 TFEU and secondary law; see **Chart 10/8**.

The Internal Market

Decision tree: fiscal restrictions (Arts. 30 and 110 TFEU)

Chart 8 | 8



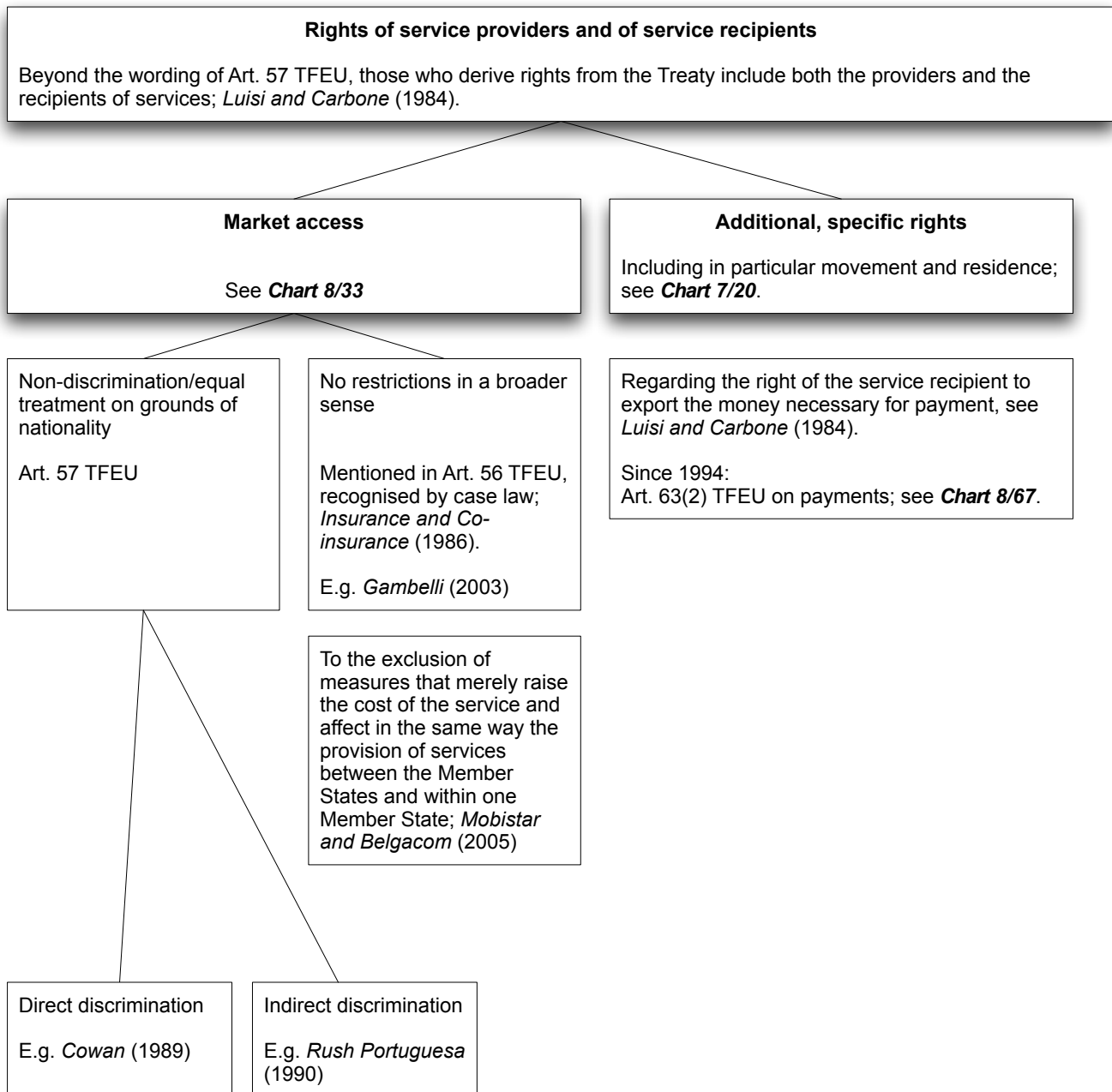
The Internal Market

Services: rights

Chart 8 | 51

Topic:

Service providers and service recipients enjoy the right to access the services market in other Member States as well as a number of other, additional rights (such as movement and residence).



Note:

These rights are subject to derogations under Art. 62 TFEU in conjunction with Art. 52 TFEU: public policy, public security, public health; see **Chart 8/36** (market access), **Chart 7/22** (additional, specific rights).

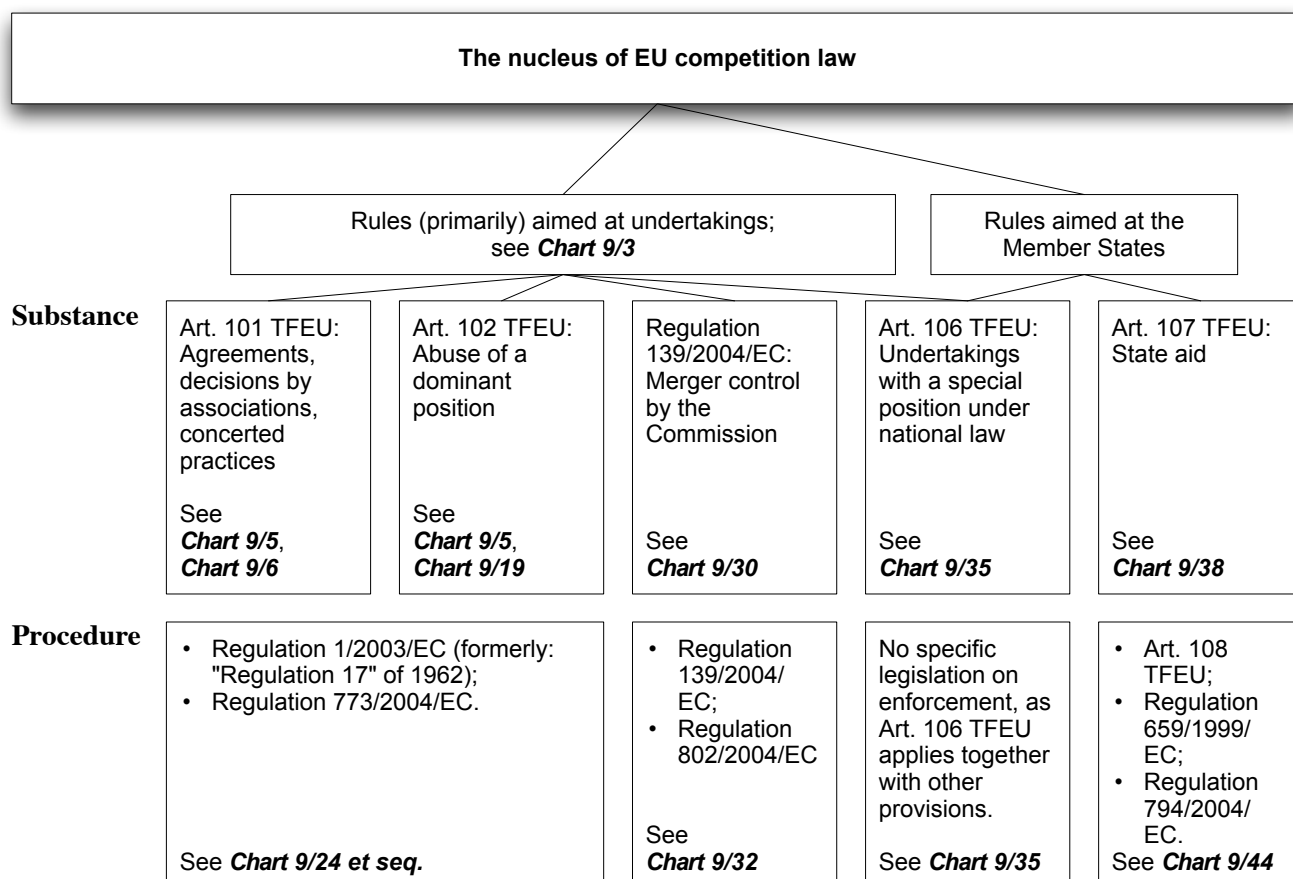
Competition Law

EU competition law: an overview

Chart 9 | 2

Topic:

EU competition law addresses the conduct of undertakings and also of the Member States. Together, Arts. 101(1), 102 and 106 TFEU and the Merger Regulation form a comprehensive system of competition rules for undertakings. Art. 107 TFEU prohibits state aid. Other competition rules exist for specific areas.



Examples of specific areas where secondary law exists

- Agriculture;
- Insurance;
- Professional services;
- Transfer of technology;
- Transport;
- Energy;
- Postal services;
- Telecommunication.

Legal basis provisions for secondary law in the field of competition

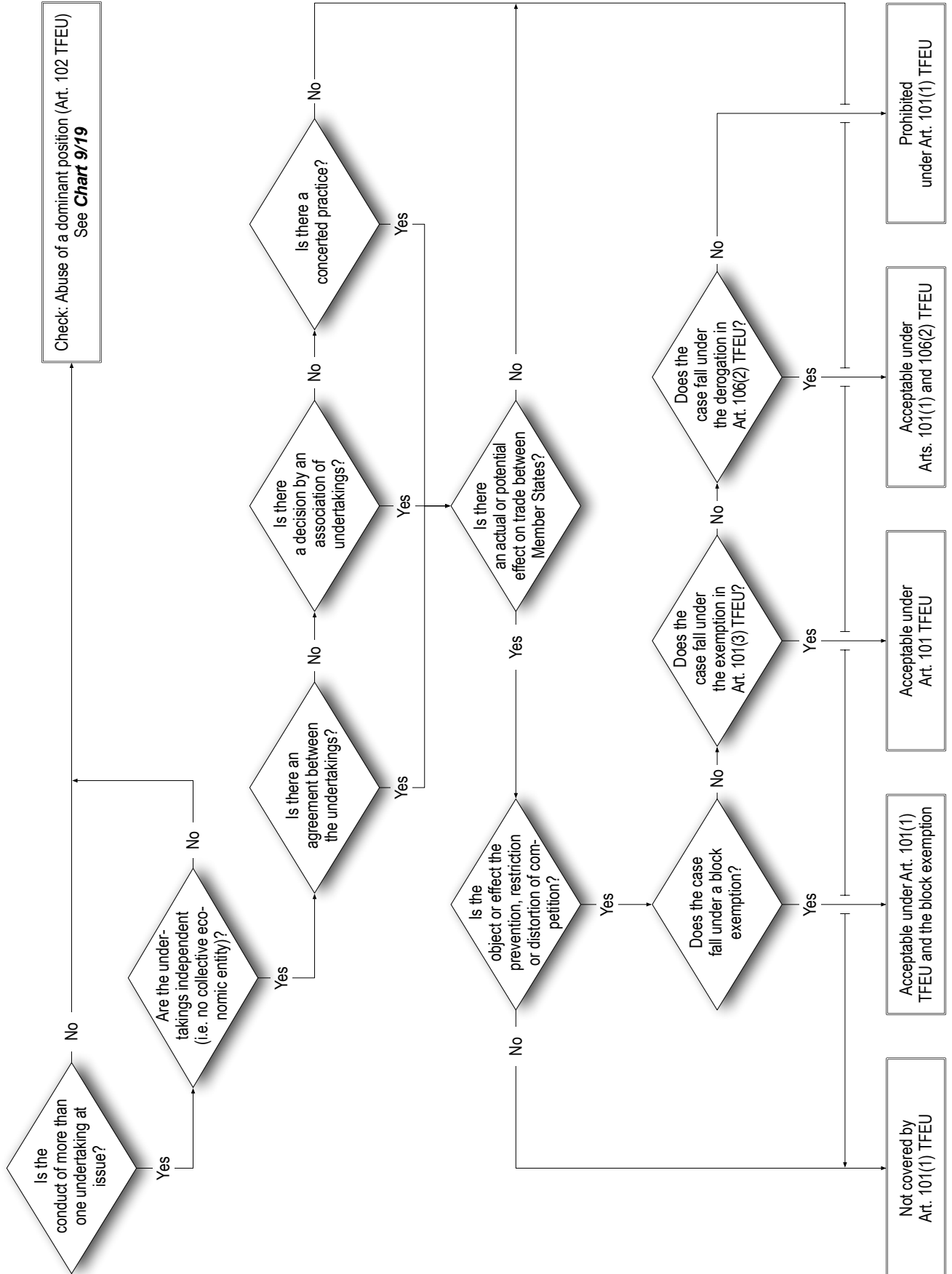
- Art. 103 TFEU, regarding Arts. 101 and 102 TFEU;
- Art. 106(3) TFEU, regarding Art. 106(1) and (2) TFEU;
- Art. 109 TFEU, regarding Arts. 107 and 108 TFEU;
- Legal basis provisions for specific areas; e.g. Arts. 42 and 43 TFEU (agriculture);
- The general legal basis provisions of Arts. 114 and 115 TFEU: for other issues.

Renumbering of the most relevant articles through Treaty revisions; see **Chart 2/14**, **Chart 2/24**:

Post Maastricht:	Art. 85 of the EC Treaty	Art. 86 of the EC Treaty	Art. 90 of the EC Treaty	Art. 92 of the EC Treaty
Post Amsterdam:	Art. 81 EC	Art. 82 EC	Art. 86 EC	Art. 87 EC
Post Lisbon:	Art. 101 TFEU	Art. 102 TFEU	Art. 106 TFEU	Art. 107 TFEU

Competition Law

Decision tree: collusive conduct of undertakings (Art. 101 TFEU)



Competition Law

The *de minimis* rule regarding effect on competition

Chart 9 | 12

Topic:

Art. 101(1) TFEU does not cover conduct which has an insignificant effect on competition.

De minimis: appreciable effect on competition

Art. 101(1) TFEU applies only where conduct has (or is intended to have) an appreciable effect on competition.

Guidance from the Commission through the Notice on agreements of minor importance (2001): Art. 101(1) TFEU does not apply where certain market share thresholds are not exceeded and where there are no hardcore restrictions.

Thresholds:

Horizontal agreements: $\leq 10\%$

I.e. agreements between competitors; see **Chart 9/8**

Threshold of 10% aggregate market share in any of the relevant markets.

Vertical agreements: $\leq 15\%$

I.e. agreements between non-competitors; see **Chart 9/8**

Threshold of 15% aggregate market share in any of the relevant markets.

In the case of unclear definition: $\leq 10\%$

In the case of a cumulative foreclosure effect of parallel networks of similar agreements having similar effects on the market: $\leq 5\%$.

In all cases:

Threshold may be exceeded by 2% within two successive calendar years.

Practical consequence

In the case of undertakings with market shares below the relevant thresholds, the Commission will not institute proceedings, unless the agreement contains a hardcore restriction; see **Chart 9/13**.

Competition Law

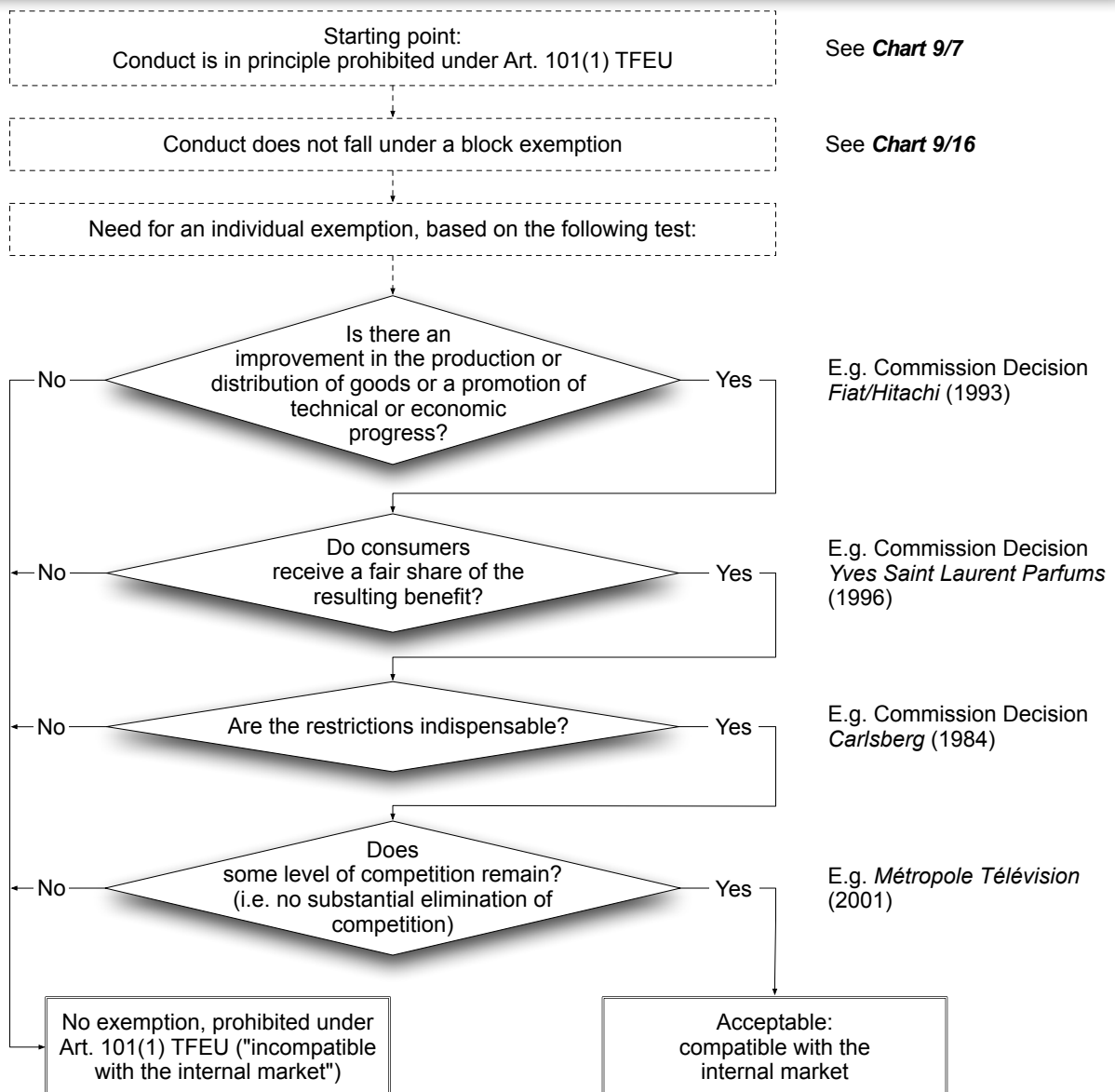
Individual exemption under Art. 101(3) TFEU

Topic:

In order to benefit from an individual exemption under Art. 101(3) TFEU, the conduct of undertakings needs to fulfil the conditions laid down in Art. 101(3) TFEU.

Individual exemption under Art. 101(3) TFEU: a test with four cumulative elements

Commission Guidelines on the application of Art. 81(3) of the Treaty (2004)



Application in practice

Under Regulation 1/2003/EC, individual exemptions are based on self-assessment, which is, however, subject to control by the NCAs, the national courts and arbitrators, and is subject to control by the Commission, the General Court and the Court of Justice.

Legal Integration

The Cassis de Dijon principle and the need for harmonisation

Chart 11 | 2

Topic:

At a time when positive integration was difficult to achieve due to political difficulties (including the requirement for unanimity voting in the Council of Ministers), the ECJ's *Cassis de Dijon* ruling drastically reduced the need for harmonisation.

The Cassis de Dijon principle ...

Cassis de Dijon (1979) on the meaning of Art. 34 TFEU (then Art. 30 of the EEC Treaty): goods lawfully produced in one Member State must, in principle, be accepted in other Member States.

Home state control

The quality of a good is controlled by the state of origin, i.e. only the home state may legislate on this issue.

Mutual recognition

In principle, Member States must accept goods originating from other Member States.

"In principle":

- In the case of indistinctly applicable measures: subject to mandatory requirements; see **Chart 8/20**;
- In all cases: subject to Art. 36 TFEU; see **Chart 8/24**.



... drastically reduced the need for harmonisation

Cassis de Dijon Communication by the Commission (1979)

After *Cassis de Dijon* (1979), harmonisation in respect of those areas covered under Art. 34 TFEU is only necessary in the context of:

- Mandatory requirements;
- Art. 36 TFEU justifications.

Notes:

- After *Cassis de Dijon* (1979) and through the development of the definition of restrictions as a legal concept by the ECJ, the Cassis de Dijon principle also applies in other fields of EU Treaty law; see **Chart 8/35**, **Chart 8/63**.
- The Cassis de Dijon principle also applies in the framework of certain secondary legislation; e.g. Art. 3 of Directive 2000/31/EC (e-commerce Directive); Arts. 2 and 2a of Directive 89/552/EEC (Audiovisual Media Services Directive).

Enforcement

Jurisdiction of the different levels of the ECJ

Chart 12 | 4

Topic:

The Civil Service Tribunal, the General Court and the Court of Justice have different tasks in relation to the various judicial procedures mentioned in the TFEU.

Court of Justice of the European Union ("European Court of Justice", ECJ)

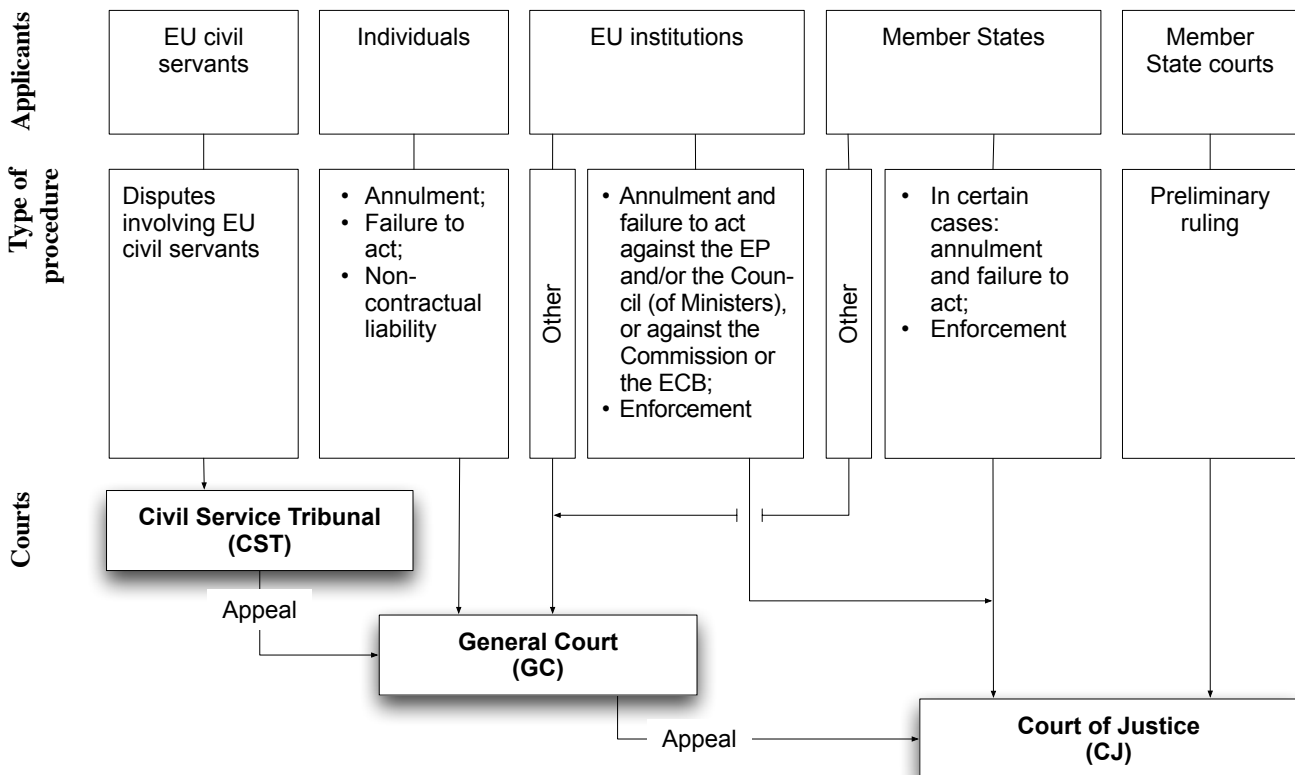
Art. 19 TEU, Arts. 251 TFEU et seq, Statute for the Court of Justice, Rules of Procedure; see **Chart 3/10**

Task common to all levels

Art. 19 TEU: "Ensuring that in the interpretation and application of the Treaties the law is observed."

Distribution of work

Arts. 256 and 271 TFEU, plus the Protocol on the Statute of the Court of Justice (as amended in particular through Decisions 2004/752/EC, Euratom, Decision 2004/407/EC, Euratom, Decision 2005/696/EC, Euratom, and Decision 2008/79/EC, Euratom).



Note:

- The Treaty provisions on the different procedures do not specify which level of the ECJ has jurisdiction of a given procedure. Instead, the TFEU simply speaks about "the Court". The jurisdiction in a concrete case has to be determined according to the above rules.
- Under Art. 256(3) TFEU, the General Court has jurisdiction to deal with requests for preliminary rulings in specific areas laid down by the Statute; these areas are as yet undefined in the Statute.

Enforcement

Specifically: the protection of individuals' rights

Chart 12 | 33

Topic:

EU law provides for different means for the protection of rights which individuals derive from EU law.

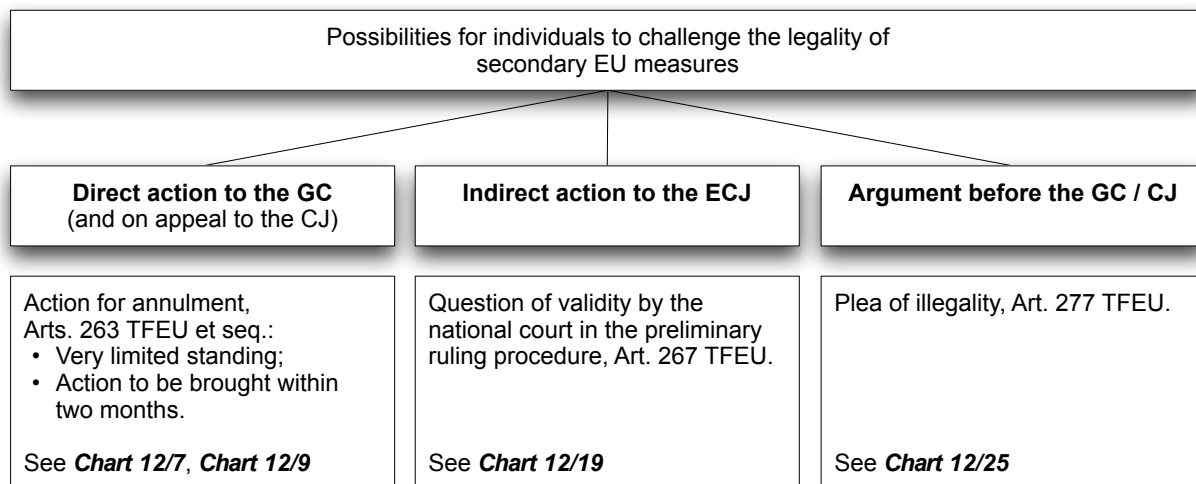
The protection of individuals' rights

Important starting point:

The ECJ is **not a last instance Court** for individuals. The possibilities for individuals to use the enforcement procedures and arguments provided by EU law are limited.

Specifically:

- The enforcement procedure is not for individuals; at most they may informally complain to the Commission.
- Individuals have access to the preliminary ruling procedure only indirectly, by requesting the national court to ask for such a ruling.
- Individuals have only limited possibilities to challenge the legality of secondary EU measures.



Relationship between these different possibilities: precedence of the annulment action

No circumvention of the requirements under Art. 263 TFEU, in particular in relation to the time-limits.

Therefore: only where natural or legal persons cannot directly challenge EU measures of general application, they are able, depending on the case, to either:

- Indirectly plead the invalidity of such acts before the ECJ (Art. 277 TFEU); or
- Go before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid, to make a reference to the ECJ for a preliminary ruling on validity (Art. 267 TFEU).

E.g. *Simmenthal* (1979), *TWD* (1994), *Nachi* (2001), *BAT* (2002)