

# The EU Decision Making Process -An Overview

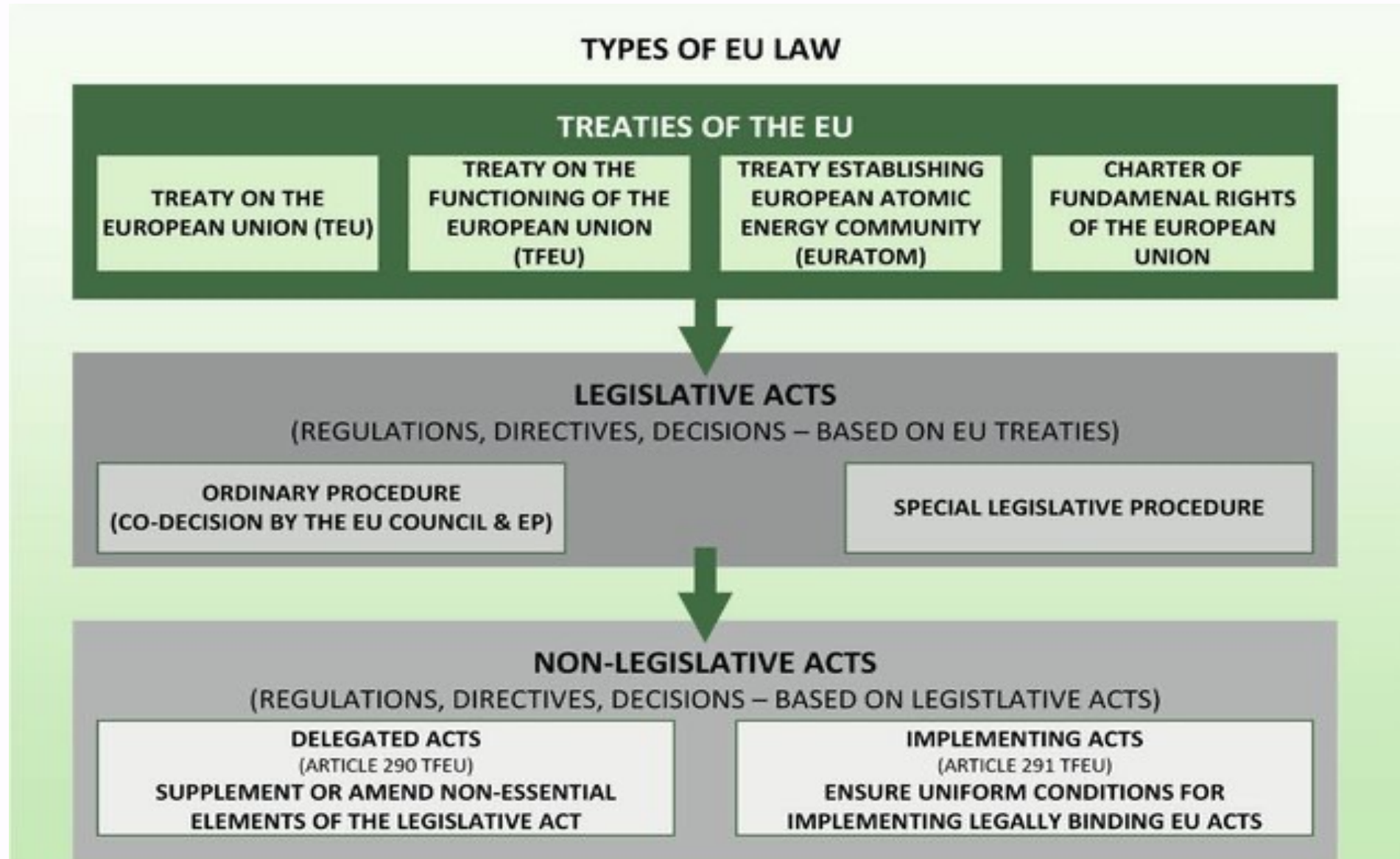
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# The EU Legislative Process



Source: Mampuy, 2021





# Definitions and Background

## Ordinary Legislative Procedure – OLP (Art. 289 (scope) & 294 (procedure) TFEU)

- The primary (standard) legislative decision-making process in the EU since Treaty of Lisbon (2009)
- Formally a complex 3 stage procedure, effectively simplified by practice
  - Trilogues and early agreements (below)

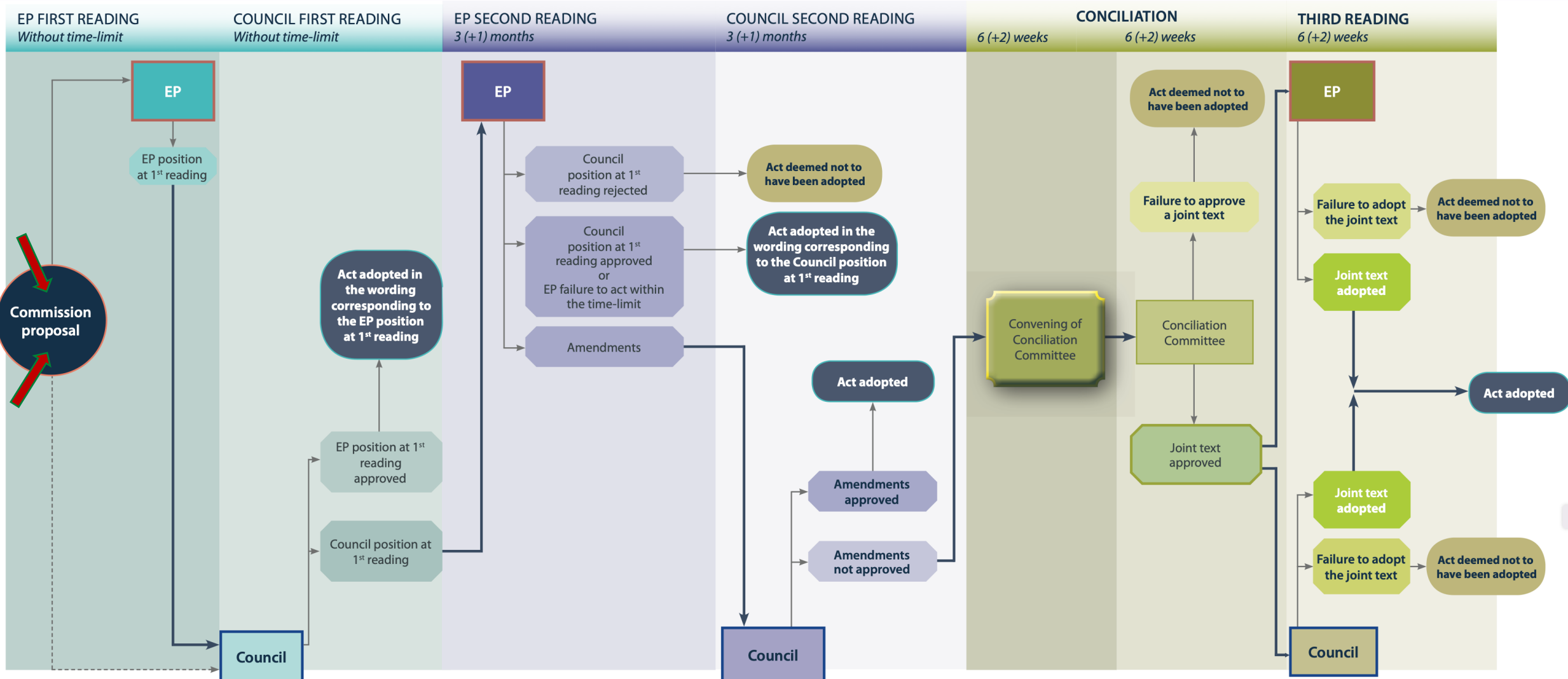
## Delegated Acts (Art. 290 TFEU)

- Non-legislative acts adopted by the Commission that serve to amend or supplement the non-essential elements of the legislation (complex annexes, technical specifications, etc.)
- Delegation included in the legislative act, cannot change “essential elements” of the law
- EP or Council may revoke delegation power (or fail to approve within deadline)

## Implementing Acts (Art. 291 TFEU)

- Used in areas where *uniform conditions for implementation* are needed (taxation, agriculture, internal market, etc.)
- Commission must work with consultative committee (all member states represented)

# The Ordinary Legislative Procedure – (full process)

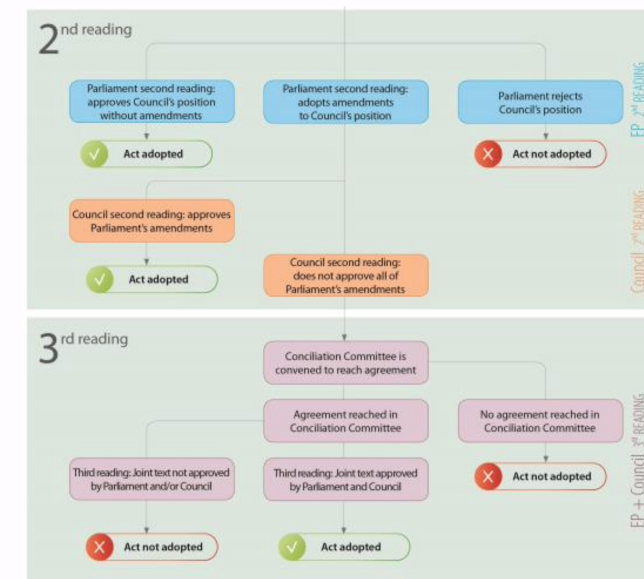


Source: European Council, 2016

# The Ordinary Legislative Procedure – (actual implementation)

## Trilogues

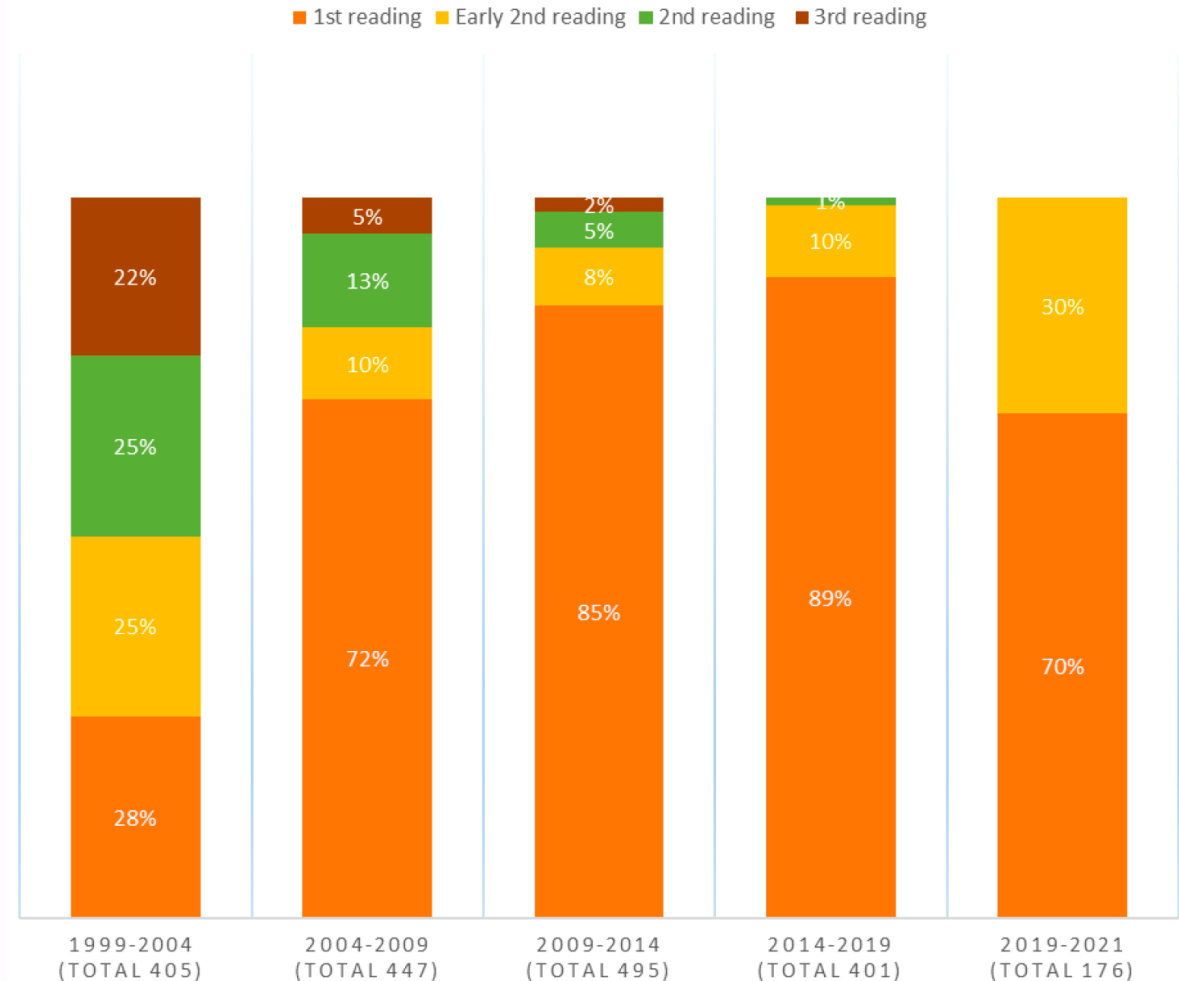
- Informal interinstitutional negotiation between representatives of the EP, the Council and the Commission.
- The goal is to reach a provisional agreement on a legislative proposal that is acceptable to both the Parliament and the Council.
- Officially may be held at any stage of the legislative process with the aim of resolving outstanding issues.
  - Generally held before the end of the 1<sup>st</sup> reading.
- The Commission's role is to mediate between the two legislative actors.
- Trilogues have become the standard method of bicameral negotiation with almost all legislation resulting from an early agreement.



# The Ordinary Legislative Procedure – Early Agreements

## EU Legislative Activity

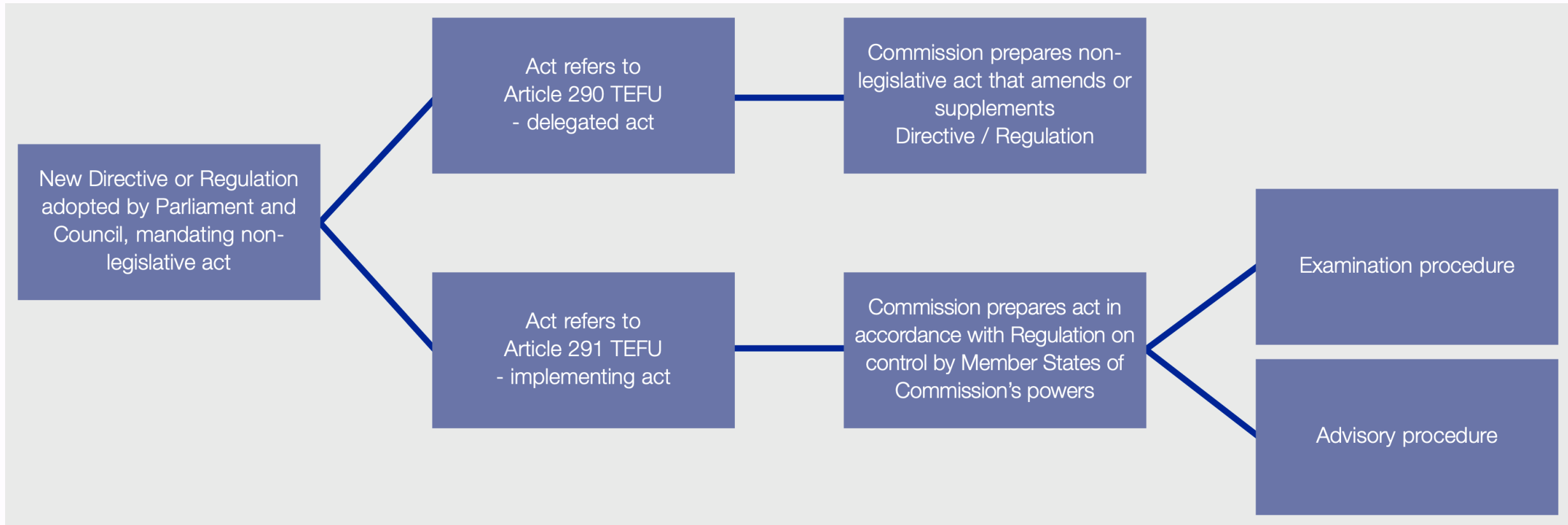
- The overall productivity of the EU in terms of laws adopted is relatively constant (~400-500)
- The stage at which laws are adopted has changed dramatically
- By the end of the 8<sup>th</sup> Legislature (2014-2019) nearly 90% of all legislations was adopted (via trilogues) at the 1<sup>st</sup> reading (early agreement)
- *Trend may be changing with a shift toward more “early 2<sup>nd</sup> reading” agreements in first two years of the current 9<sup>th</sup> Legislature*



Source: European Parliament, 2021 Midterm Report



# Delegating & Implementing Acts



# Use of Delegating & Implementing Acts

## Lisbon Treaty Reforms

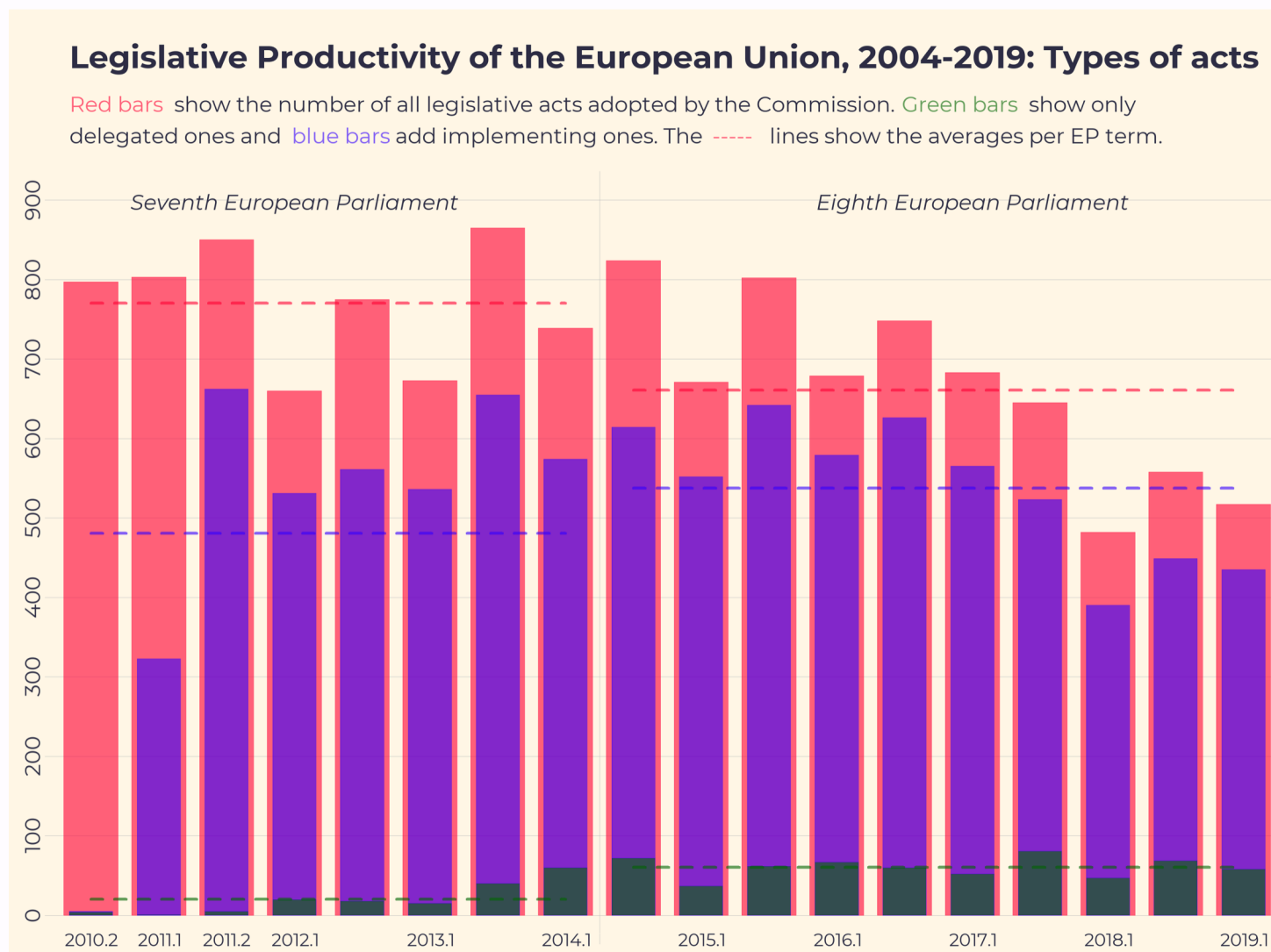
- Treaty reforms formalized and rationalized the two non-legislative procedures
- Clear differentiation between two types of non-legislative acts
- They are mutually exclusive (*an act is either a delegated act or an implementing act*)

## Delegated Acts

- Significantly less common than implementing acts
- Do *not* require formal comitology process, though there is generally broad consultation

## Implementing Acts

- More common (than delegating acts)
- Require formal comitology consultation



Source: Dimiter Toshkov, [http://www.dimiter.eu/Visualizations\\_files/Eurlex2019.html](http://www.dimiter.eu/Visualizations_files/Eurlex2019.html)



# The USA

*(a brief/simplified comparison)*

## The US Legislative Process →

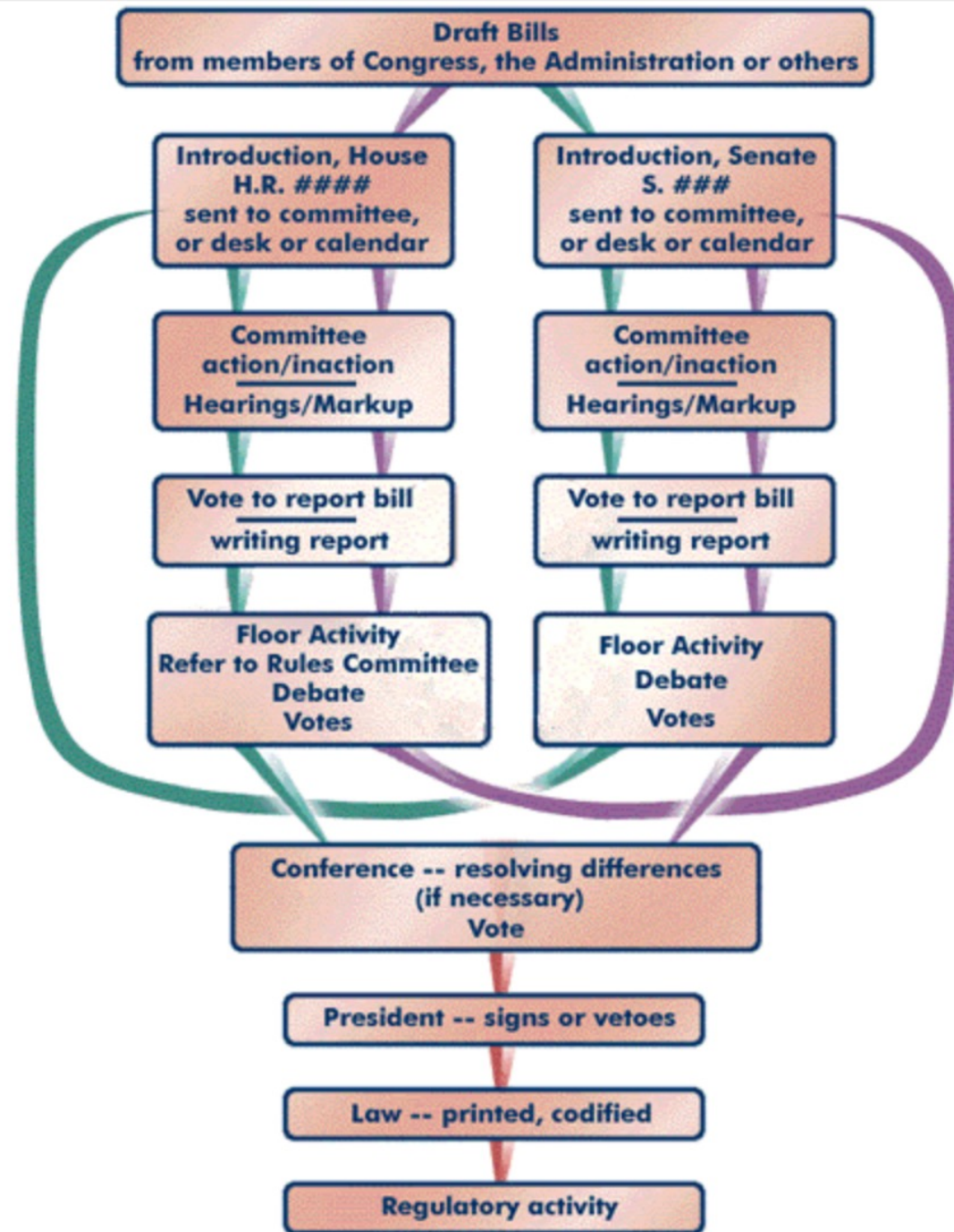
- Also involves bicameral cooperation.
- Also looks complicated (even simplified).
- No formal structure for a 2<sup>nd</sup> reading.
- De facto use of simplified procedure (minimal use of conference committee).

## Secondary Acts (by another name)

- Also allows for “authorizing statutes” or “delegation of rule making authority.”
- Allows executive agencies to adopt rules or “regulations” that have “the force of law.”
- Provides executive agencies with tools to oversee and ensure implementation of federal law at the state level.

## Final Thoughts

- Making legislation is complicated.
- There is always a way to delegate authority to the bureaucratic executive .
- Delegation is imperative for highly technical laws and aspects of implementation.



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Thank you for your  
attention

Questions?