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# EU LAW LECTURE HANDOUTS

# "LEGAL INSTITUTIONS OF THE EUROPEAN UNION"/*INSTITUCIONES JURÍDICAS DE LA UNIÓN EUROPEA*

## [EUROPEAN UNION LAW] ENGLISH SPEAKING GROUP ("AR")

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# PART 1: THE EUROPEAN UNION. GENERAL ASPECTS

## LESSON 1: THE EUROPEAN UNION INTEGRATION PROCESS

1. The historical evolution of the European integration process. 2. The creation of the European Coal and Steel Community, the European Economic Community (EEC), and the European Atomic Energy Community (Euratom). 3. The reforms of deepening of the European Union. 4. The successive enlargements of the European Union. 5. From the Nice Treaty to the Lisbon Treaty.

### 1. (A VERY SHORT) HISTORICAL EVOLUTION OF THE EUROPEAN INTEGRATION PROCESS

**1945-1959: A peaceful and cooperative Europe as the main objective post-WWII**

- The European Union was set up in an attempt to end the wars within the continent that culminated in WWII.
- In 1951 the European Coal and Steel Community began to unite European countries economically and politically in order to secure the much-needed lasting peace.
- The six founding countries were France, Germany Italy and BENELUX (Belgium, Luxembourg and the Netherlands).
- In 1957, the Treaty of Rome created the European Economic Community, enshrining and furthering economic integration.

**1970-1979: The first enlargements**

- Denmark, Ireland and the United Kingdom joined the European Union on 1st January 1973.
- The last right-wing dictatorships in Europe came to an end with the overthrow of the Salazar regime in Portugal in 1974 and the death of General Franco in Spain in 1975.
- The EU regional policy began to transfer huge sums to create jobs and infrastructure in poorer areas.
- The European Parliament (EP) increased its influence in EU affairs and in 1979 all citizens could, for the first time, participate in the political process and elect their representatives directly. Until then, the EP had been a purely advisory chamber (mandatory to do so, but the opinions of the Parliament were not binding on EU member states, which were not obliged to adopt its decisions).

**1980-1989: Ramifications and developments after the fall of the Berlin Wall**

- Greece, Spain and Portugal became Member States (Greece in 1981 and Spain and Portugal in 1986)
- In 1987 the Single European Act (SEA) was signed. This was a treaty that provided the basis for a vast six-year program aimed at solving problems with the free flow of trade across EU borders, ultimately creating the 'Single Market'.
- The SEA also formalized the European Political Cooperation, the precursor of the EU's Common Foreign and Security Policy.
- Major political upheaval after the destruction of the Berlin Wall (1989) led to the reunification of Germany as East and West Germany were reunited in October 1990.

**1990-1999: A Europe without borders**

- In 1993 the Single Market was completed with the 'four freedoms', i.e. the free movement of goods, services, people and capital.
- The 'Maastricht' Treaty (1992/1993), formally creating the 'European Union', and the Treaty of Amsterdam (1997/1999) were adopted. The former laid the foundation for the Eurozone and the latter defined EU citizenship and individuals' rights in terms of justice, freedom and security.
- In 1995 the EU welcomed three new members: Austria, Finland and Sweden.
- The 'Schengen' agreements were adopted (gradually allowing people to travel without having their passports checked at the borders).

**2000s – Present Day: A decade of further expansion & challenges**

- The euro became the new currency for many European Member States.
- After 9/11, EU countries began to cooperate much more closely to fight crime.
- Political divisions between East and West Europe were finally declared healed when 10 Eastern European countries joined the EU (2004): Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.
- 'Nice' Treaty (2001/2003) was adopted, amending the founding treaties with regard to enlargement and institutional reform.
- *Non-nata* European Constitution (2004) due to France and the Netherlands' "NO" was a setback in the integration process (towards a more political and constitutional entity).
- The 'Lisbon Treaty' (2007/2009) was adopted, officially turning EURATOM and the EC treaties into the TFEU and the TEU, abolishing the three-pillar system, founding the EU as an overall legal unit with a legally binding Charter of Fundamental Rights, and reforming governance structures & decision procedures.
- The Eurozone crisis (2008-2013): Policy reactions to the crisis included EU emergency measures (the European Financial Stability Facility (EFSF), the European Financial Stabilisation Mechanism (EFSM), the Troika decision group made up of the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund

(IMF) to bail out Member States in debt, the European Stability Mechanism (ESM), and the European Fiscal Compact, etc.).

- European migration and the refugee crisis (2015 onwards): increasing numbers of people arrived in the European Union (EU), crossing the Mediterranean Sea or travelling overland through Southeast Europe. These people included asylum seekers but also economic migrants as well as hostile agents. In April 2015, the European Commission proposed a 10-point plan to tackle the crisis and a year later began the process of reforming the Common European Asylum system.
- Brexit represents a minor setback to European integration. In a referendum held in 2016, the UK, as a member of the EU, decided to leave the EU (although, in accordance with the procedure provided for by the Treaties, the process of negotiations will take two years).

## 2. THE CREATION OF THE EUROPEAN COAL AND STEEL COMMUNITY, THE EUROPEAN ECONOMIC COMMUNITY AND THE EUROPEAN ATOMIC ENERGY COMMUNITY

The Treaty establishing the European Coal and Steel Community (ECSC) was signed in Paris on 18th April 1951, entered into force on 23rd July 1952, and expired on 23rd July 2002. This first European Community (whose mandate was established for 50 years) is the first expression of the Schuman Declaration: since no peace treaty was signed after WWII (in contrast with the 1919 Treaty of Versailles, signed after WWI), the ECSC Treaty represented a kind of "European Peace Treaty". In terms of human rights, the three founding Treaties included the four fundamental economic freedoms (free movement of people, capital, goods and services) and several provisions on non-discrimination issues (equality between men and women in Labour Law issues).

The Treaty of Rome, which established the European Economic Community (EEC), was signed in Rome on 25th March 1957 and entered into force on 1st January 1958. The Treaty that established the European Atomic Energy Community (Euratom) was signed at the same time and the two treaties are therefore jointly known as the Treaties of Rome.

## 3. THE REFORMS OF DEEPENING OF THE EUROPEAN UNION

The Single European Act (SEA), which was signed in Luxembourg and The Hague and entered into force on 1st July 1987, provided for the changes needed for the creation and success of an Internal Market. In terms of human rights, the Preamble to the Single Act mentioned, for the first time as "Primary Law" of the Economic Community, the two basic instruments of the Council of Europe: the European Convention on Human Rights and the European Social Charter.

The Maastricht Treaty (the Treaty on European Union) was signed in Maastricht on 7th February 1992 and entered into force on 1st November 1993. The Maastricht Treaty changed the name of

the European Economic Community to simply "the European Community". It also introduced new forms of co-operation between Member State governments (for example, on defence and "justice and home affairs"). By adding this inter-governmental co-operation (2nd and 3rd pillars to the existing "Community" system), the Maastricht Treaty created a new structure with three (political and economic) "pillars". The remaining structure of the European Union was completed by certain common provisions (citizenship and subsidiarity pple) and certain final provisions (membership and accession procedures) that required economic (i.e. market economy) and political conditions (respect for democracy and human rights, etc.). With regard to human rights, the Maastricht Treaty included a first "minicatalogue" of civil and political rights related to "citizenship" (the right to vote and to be elected in local and European elections, and the right to make complaints before the European Ombudsman and petitions before the EP, etc.).

The Treaty of Amsterdam, which was signed on 2 October 1997 and entered into force on 1st May 1999, amended and renumbered the EU and EC Treaties. The Treaty of Amsterdam changed the articles of the Treaty on European Union, identified by letters A to S, into numerical form. The so-called "Schengen *acquis*" was incorporated into the dynamics of the European integration process. In the field of human rights, a new general clause of non-discrimination with new grounds (age, disability or sexual orientation) was added.

## 4. THE SUCCESSIVE ENLARGEMENTS OF THE EUROPEAN UNION

**[1951] The founding Member States:** The European Coal and Steel Community (ECSC), which was proposed by Robert Schuman in his declaration on 9th May 1950, involved pooling the coal and steel industries of **France and West Germany**. Half of the proposed states – **Belgium, Luxembourg, and the Netherlands** – had already achieved a high degree of integration among themselves with the creation of BENELUX and earlier bilateral agreements. These five countries were joined by **Italy,** and all signed the Treaty of Paris on 23rd July 1952.

[**1970s**] **The first enlargement**: The **United Kingdom**, which had refused to join as a founding member, changed its policy following the Suez crisis and applied to be a member of the Communities. As on previous occasions, applying together with the UK were **Denmark, Ireland** and Norway. These countries were so economically linked to the UK that they considered they could not stay out of the EEC if the UK went in. However, the Norwegian government lost a national referendum on membership and so did not accede along with the others on 1st January 1973.

**[1980s] The Mediterranean enlargement**: The next enlargement occurred for different reasons. The 1970s saw **Greece, Spain, and Portugal** emerging from dictatorial regimes. These countries wanted to consolidate their new democratic systems by binding themselves into the EEC. Greece joined the EU in 1981 and the two Iberian countries joined in 1986.

**[1990s] Post-Cold War:** On 1st January 1995 **Austria, Finland, and Sweden** acceded to the EU, thus marking its fourth enlargement. The Norwegian government lost a second national referendum on membership. Austria, Finland and Sweden had been neutral during the Cold War, so membership of an organisation with a common foreign and security policy would have been incompatible with that position. When that obstacle was removed, the desire to pursue membership grew stronger. The end of the Cold War also saw, on 3rd October 1990, the reunification of East and West Germany. East Germany therefore became part of the Community in the new reunified Germany (though the number of states did not increase).

**[2000s] The Eastern enlargement**: Fearing expanding NATO too rapidly and thereby frightening Russia, the US pressured the EU to offer membership to the former Communist states as a temporary guarantee. Although the EU tried to limit the number of members, after encouragement from the US, it pursued talks with ten countries. A change of mind by Cyprus and Malta also helped to slightly offset the influx of large poor member states from the east. Eventually, eight Central and Eastern European countries (**the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia**) plus two Mediterranean countries (**Malta and Cyprus**) were able to join the EU on 1st May 2004. Later, **Romania and Bulgaria**, though deemed initially not to be fully ready in 2004, also joined the EU on 1st January 2007. **Croatia**, despite its political history (late independence, dragged into the Balkan war, prior Slovenian and Yugoslavian blockade, etc.), also joined in 2013, making it the latest Member State to join what is now the EU-28.

**Future enlargements**: **Iceland, Turkey, Serbia, the Former Yugoslav Republic of Macedonia, Albania & Montenegro** are all official candidate states, while **Bosnia and Herzegovina & Kosovo** are also applying for membership and are therefore considered to be "potential candidates". Bosnia and Herzegovina officially submitted an application (2016) but still struggles with problems of ineffective administration, weak government and a subsidized economy. Kovoso, on the other hand, suffers from a lack of international recognition as a "State" and has not submitted an official application. The western Balkans have been prioritised for membership since they emerged from civil war during the breakup of Yugoslavia. Turkey has been seeking membership since the 1980s.

## 5. FROM THE NICE TREATY TO THE LISBON TREATY

The Treaty of Nice, signed on 26th February 2001, entered into force on 1st February 2003. This treaty dealt mostly with reforming the institutions so that the Union could function efficiently after its enlargement to 25 Member States. The Treaty of Nice, the former Treaty of the EU and the Treaty of the EC have been merged into one consolidated version.

The Treaty of Lisbon, which was signed on 13th December 2007, entered into force in 2009. Its main objectives are to make the EU more democratic; meet the expectations of European citizens for high standards of accountability, openness, transparency and participation; and make the EU more efficient and better able to tackle today's global challenges, such as climate change, security and sustainable development. The treaty's main novelties include:

1) **A single legal personality.** The European Community was replaced by the European Union, which succeeds it and takes over all its rights and obligations. The Treaty on European Union kept the same name and the Treaty establishing the European Community became the Treaty on the Functioning of the European Union.

2) **A Charter of Fundamental Rights.** The Treaty confers on the Charter the same legal value as the Treaties. It entrenches all the rights found in the case law of the Court of Justice of the EU; the rights and freedoms enshrined in the European Convention on Human Rights; and other rights and principles resulting from the common constitutional traditions of EU countries and other international instruments. All this is contained in a bill of rights classified into six titles: DIGNITY, FREEDOMS, EQUALITY, SOLIDARITY, CITIZENS' RIGHTS, and JUSTICE.

3) **Citizens' right of initiative.** A million citizens may sign a petition inviting the Commission to submit a proposal on any area of EU competence.

4) **A President of the European Council.** A new political figure has appeared: the fixed, full-time President of the European Council. The President's main task is to ensure the preparation and continuity of the work of the European Council – which becomes an institution in its own right – and to facilitate consensus. He/she will, at his/her level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy. The role of President of the European Council is not compatible with other national offices. The European Council elected Mr Donald Tusk to this post in 2014 for a term of two and a half years, which is renewable once.

5) **High Representative of the Union for Foreign Affairs and Security Policy.** The High Representative combines three different functions, being at once the Council's representative for the CFSP (Common Foreign and Security Policy), the President of the Foreign Affairs Council, and a Vice-President of the Commission. He/she is responsible for steering foreign policy and common defence policy and represents the Union on the international stage in the field of CFSP. The post is designed to enhance the consistency and unity of the EU's external action. With the agreement of the President of the Commission, Ms Federica Mogherini has been appointed High Representative by the

European Council. She will receive the consent of the European Parliament (when it votes on the Commission as a body). Her term of office (five years) coincides with that of the Commission. In fulfilling her mandate, the High Representative will be assisted by the European External Action Service and will have authority over roughly 130 delegations of the Union in third countries and international organisations.

6) **A new European External Action Service.** The Treaty of Lisbon has set up a European External Action Service (EEAS). This will work in cooperation with the diplomatic services of the Member States and will comprise officials from relevant departments of both the General Secretariat of the Council and the Commission as well as staff seconded from national diplomatic services. The Treaty stipulates that the organisation and functioning of the EEAS will be established by a decision of the Council. The Council will act on a proposal from the High Representative after consulting the European Parliament and obtaining the consent of the Commission.

7) **Double majority (qualified majority) in the Council.** Until now, when the Council has voted on the basis of a qualified majority, the number of votes attributed to each Member State was predetermined by the Treaty itself (applying a scale ranging from 29 votes for each of the four largest Member States to three votes for the smallest). That system applied until November 2014. Since then, the definition of the qualified majority by which the Council adopts a large number of its acts (except where the Treaty expressly requires unanimity or a simple majority) has changed: double majority is required so that, in order to be adopted, an act must have the support of at least 55 % of the EU Member States (i.e. 16 Member States in a Union of 28) and at least 65 % of the population of the EU. A blocking minority must include at least four Member States.

8) **Co-decision extended.** The "ordinary legislative procedure" is now a co-decision with Parliament, and with a qualified majority in the Council. This procedure has been extended to some forty fields, the most important of which relate to justice and home affairs. Areas such as tax affairs, social security, foreign policy, defence, operational police cooperation, etc. still require unanimity in the Council.

9) **Setting the number of MEPs.** The number of MEPs cannot exceed 751 and the breakdown of parliamentary seats between Member States is digressively proportional. The Treaty also stipulates that no Member State can have fewer than six or more than 96 seats.

10) **A new role for national parliaments.** National parliaments will have eight weeks to examine draft European legislative acts. If a third of the parliaments (a quarter in the field of Justice and Home Affairs) oppose a draft, the Commission must review it. Moreover, if

over half of all national parliaments oppose an act subject to co-decision, the European legislator (a majority of the European Parliament or 55 % of the votes in the Council) must decide whether to proceed with the legislative process. National parliaments may also take a case to the European Court of Justice if they consider that a legislative act is contrary to the principle of subsidiarity.

The agreement on the Treaty of Lisbon followed discussions on a constitution. A "Treaty establishing a constitution for Europe" was adopted by the Heads of State and Government at the Brussels European Council on 17th and 18th June 2004 and signed in Rome on 29th October 2004. However, it was never ratified. The Lisbon Treaty has involved a kind of "substantial rescue" of several aspects that were included in the "failed" *non-nata* European Constitution (2004).

## LESSON 2. THE EUROPEAN UNION

1. The European Union (EU): concept and legal-political nature. 2. Values, objectives and fundamental principles of the EU. 3. The condition of Member State (membership). 4. The Charter of Fundamental Rights of the EU. 5. European citizenship and participation within the EU. ~~6. The enhanced cooperations.~~

### 1. THE EUROPEAN UNION (EU): CONCEPT AND LEGAL-POLITICAL NATURE

The EU is a *Sui Generis* entity. Therefore unique in nature, it is commonly called a 'supranational organization':

- The EU may be considered international in origin if we look at the language used in its founding treaties: "By this Treaty, the *High Contracting Parties* establish among themselves a *European Union*" (article 1 TEU).
- However, it appears to be more constitutional in structure, given that the Founding Treaties (TEU, TFUE and CFREU):
    - provide similar content to those of State Constitutions (organic and dogmatic parts);
    - organize the decision-making and institutional framework;
    - enshrine/recognize civil, political and socio-economic rights and freedoms;
    - create Legislative, Executive and Judiciary Powers;
    - allow for the adoption of secondary legislation and legal provisions that have direct application to EU Member States and its citizens.

Since the Schuman Declaration of 1950, the EU has had a federal vocation. However, the EU cannot be considered a state entity since it lacks numerous defining elements of a State, including sovereignty. Although the European Union does not have sovereignty, the origin of its limited powers lies in the state sovereignty of States that are already constituted and recognized by International Law. In other words, the EU does not have its own original competences because these depend on the transfer of powers and competences from its Member States (MS, i.e. the EU has powers of attribution only (Article 5.2 TEU); it has no general powers but specific powers specified in the constitutive Treaties. It is based on dispossession or transfer of the sovereign power of Member States (MS) to the EU itself through the constitutive or founding treaties, thereby granting the EU its own powers.

In substance, the EU has a supranational character in that the attribution of powers implies the attribution of sovereign power by the states. It ceases to be an international organization made

up of sovereign states that do not lose their sovereignty. The EU, by superseding Member States (given the fact that they have transferred part of their own sovereign power) to the union, makes it a one of a kind legal creation. Remember also that it is not possible for a MS to be expelled once it has been admitted (as in the case of the UK, a MS has to withdraw voluntarily).

The EU is not only a Union of States but a Union of citizens. Those citizens have the right to demand compliance with European Union Law before national courts and before a supranational court that interprets EU Law, i.e. the Court of Justice of the European Union (CJEU).

The EU is therefore not a state as national states with full sovereignty are understood to be, but it has a field of sovereignty. Nor is it merely an international organization since it has an intermediate legal situation between that of a national state and an International Organization (OI). It also has no legal precedent in history) and is therefore located half-way between International Law and Constitutional Law.

## 2. VALUES, OBJECTIVES AND FUNDAMENTAL PRINCIPLES OF THE EU

In its Preamble, the Treaty on the European Union (according to the Lisbon Treaty) recalls the "inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the **universal values** of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law".

As far as the **objectives** are concerned, this Preamble also recalls "the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe". The main original objective had and still has an economic nature: "to achieve the strengthening and the convergence of their economies and to establish an economic and monetary union including, in accordance with the provisions of this Treaty and of the Treaty on the Functioning of the European Union, a single and stable currency". However, for the first time the model of "market economy" is accompanied by the adjective "social" ("social market economy"): "to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields".

This Preamble also refers to the **fundamental principles** of the EU: "their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law". In addition, the EU is governed by three main **legal** principles:

- The principle of conferred powers: (article 1 TEU): competences are voluntarily conferred to the EU by its Member States (the EU has no competences by right and areas of policy not explicitly agreed in treaties are still the competence of the Member States).
- The principle of primacy*: case-law doctrine Costa ENEL (1964): when there is a conflict between European law and the law of Member States, European law prevails.
- The principle of direct effect (case-law doctrine Van Gend en Loos (1963)): the right of individuals to directly invoke a European provision before a national court of the CJEU.

## 3. THE CONDITION OF MEMBER STATE (MEMBERSHIP)

**(a) Legal requirements**: European integration has always been a political and economic process that is open to all European countries that are prepared to sign up to the founding treaties and take on board the full body of EU law. According to Article 237 of the Treaty of Rome "any European state may apply to become a member of the Community". Article F of the Maastricht Treaty adds that the member states shall have "systems of government […] founded on the principles of democracy".

**(b) The 'Copenhagen criteria'**: In 1993, following requests from the former Communist countries to join the Union, the European Council laid down three criteria they should fulfil in order to become members. By the time they join, new members should have:

- stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;
- the ability to take on the obligations of membership, including support for the aims of the Union. They must have a public administration capable of applying and managing EU laws in practice;
- Progressive and harmonious integration (after the 1995 Madrid European Council).

**(c) The accession process**: Entry negotiations are carried out between each candidate country and the European Commission, which represents the EU. Once these are concluded, the decision to allow a new country to join the EU must be taken unanimously by the existing member states meeting in the Council. The European Parliament must give its assent through a positive vote by an absolute majority of its members. All accession treaties must then be ratified by the member states and the candidate countries in accordance with each country's own constitutional procedures. During the years of negotiation, candidate countries receive EU aid to make it easier for them to catch up economically.

## 4. THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EU

The Charter of Fundamental Rights of the European Union (EU) summarizes the common values of the EU Member States and brings together in a single text traditional civil and political rights as well as economic and social rights. Its purpose is set out in the preamble: "it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter."

A) Background.

In June 1999 the Cologne European Council concluded that the fundamental rights applicable at EU level should be consolidated in a charter in order to provide them with greater visibility. The Heads of State or Government believed that the charter should contain: the general principles set out in the Council of Europe Convention of 1950; those derived from the constitutional traditions common to the Member States; the fundamental rights that apply only to the Union's citizens; and the economic and social rights contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers. The charter would also reflect the principles derived from the case law of the Court of Justice and the European Court of Human Rights. The Charter of Fundamental Rights of the EU was drawn up by a Convention consisting of the representatives of the Heads of State or Government of the Member States, one representative of the President of the European Commission, members of the European Parliament, and members of national parliaments. Formally adopted in Nice in December 2000 by the Presidents of the European Parliament, the Council and the Commission, it constituted a political undertaking with no binding legal effect. In the Lisbon Treaty, which amended the Treaties, the Charter was given binding effect by the insertion of a phrase conferring on it the same legal value as the Treaties. To this end, the Charter was proclaimed for a second time in December 2007.

B) Content

For the first time, a single document brings together all of the rights previously found in various legislative instruments, such as national laws and international conventions from the Council of Europe, the United Nations and the International Labour Organization. By making fundamental rights clearer and more visible, the Charter helps to develop the concept of European Union citizenship and to create an area of freedom, security and justice. It enhances legal certainty as regards the protection of fundamental rights, where

in the past such protection was guaranteed only by the case law of the Court of Justice and Article 6 of the EU Treaty. The Charter contains a preamble and 54 Articles, divided into seven chapters:

- Chapter I: Dignity (human dignity, the right to life, the right to the integrity of the person, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery and forced labour);
- Chapter II: Freedoms (the right to liberty and security, respect for private and family life, the protection of personal data, the right to marry and found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association, freedom of the arts and sciences, the right to education, the freedom to choose an occupation and the right to engage in work, the freedom to conduct a business, the right to property, the right to asylum, and protection in the event of removal, expulsion or extradition);
- Chapter III: Equality (equality before the law, non-discrimination, cultural, religious and linguistic diversity, equality between men and women, the rights of the child, the rights of the elderly, the integration of persons with disabilities);
- Chapter IV: Solidarity (workers' right to information and consultation within the undertaking, the right to collective bargaining and action, right of access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, the prohibition of child labour and the protection of young people at work, family and professional life, social security and social assistance, health care, access to services of general economic interest, environmental protection, and consumer protection);
- Chapter V: Citizens' rights (the right to vote and to stand as a candidate at elections to the European Parliament, the right to vote and stand as a candidate at municipal elections, the right to good administration, right of access to documents and the ombudsman, the right to petition, freedom of movement and residence, diplomatic and consular protection);
- Chapter VI: Justice (the right to an effective remedy and a fair trial, the presumption of innocence and the right of defence, principles of legality and the proportionality of criminal offences and penalties, the right not to be tried or punished twice in criminal proceedings for the same criminal offence);
- Chapter VII: General provisions.

In general, the rights referred to in the Charter apply to everyone. However, the Charter also refers to categories of persons with special needs (children, the elderly, and those with disabilities). Chapter V also examines the specific situation of European citizens, referring to certain rights already mentioned in the treaties (e.g. the freedom of movement and residence, the right to vote, and the right to petition) and introducing the right to good administration. Recognizing the changes that have occurred in society, the Charter

includes not only traditional rights (the right to life, freedom of expression, the right to an effective remedy, etc.), but also rights that were not included in the Council of Europe Convention of 1950 (on data protection, bioethics, etc.). In line with certain national legislation, it also recognizes ways of founding a family other than through marriage and no longer refers to marriage between men and women but simply to marriage.

C) Scope

The general provisions serve to establish links between the Charter and the European Convention on Human Rights and determine the scope of the Charter. The Charter applies to the European institutions, subject to the principle of subsidiarity, and may under no circumstances extend the powers and tasks conferred on them by the Treaties. The principles of the Charter also apply to the Member States (central, regional and local authorities) when they are implementing Community law.

The Charter has been a point of reference for both national and international courts. Even before it became legally binding after the entry into force of the Lisbon Treaty (1st December 2009), the Charter was repeatedly cited in the opinions of the Advocates-General and in the conclusions of the Court of Justice of the EU. There are also multiple references to it in the case-law of the European Court of Human Rights.

## 5. EUROPEAN CITIZENSHIP AND PARTICIPATION WITHIN THE EU

**Premise:** The right of free movement of persons inside the Community was introduced in the constituent Treaty of the EEC, signed in Rome in 1957. This freedom did not appear to be bound to any concept of citizenship but instead to be closely linked to the conduct of an economic activity. The right of residence was therefore awarded to workers and their families and linked to the right to exercise a labour activity in another EEC member State.

**The road towards the recognition of European citizenship:** At a meeting of the European Council held in Paris in 1974, the need was put forward to grant special rights in the EEC to the citizens of member States. However, it was only in 1976 that the Tindemans Report was issued and that, for the first time, the objective to proceed beyond a common market and to create a community of citizens was clearly proposed. Although this Report, edited by the Belgian prime minister on request at the Summit of Paris in 1974, had no success with the governments, it did have an important influence in later steps towards integration. In a chapter entitled *Europe of the Citizens*, **Tindemans** proposed the enactment of numerous measures that, by means of outward signs, made perceptible the rise of a European awareness: the unification of passports, the disappearance of border controls, the common use of Social Security benefits, and the accreditation of academic courses and degrees. In 1976 a second step was taken when elections

to the European Parliament were conducted by universal suffrage. Although the Parliament's competences were weak, for the first time one of the key elements of citizenship – democratic participation – appeared. Later, after the Fontainebleau European Council in 1984, a Committee for a People's Europe, presided by the Italian Euro MP Adonnino, was established. This committee approved a series of ambitious proposals leading to the constitution of a European citizenship. More audacious was the project for a new draft Treaty of the European Union, passed in February of 1984 by the European Parliament and presented by the MEP Alterio Spinelli (**the Spinelli Project**). Despite the restraint of the Project, the **Single European Act (1986)** included hardly any of Spinelli's project proposals, though it did adopt – and this is fundamental – the objective of a political European Union. In the course of establishing the guidelines of the Intergovernmental Conference (IGC), a meeting of the European Council, held in Rome in October 1990, introduced the **notion of European Citizenship** as an essential element of Treaties reform, with some similar characteristics and rights to those that were later included in the Treaty of the European Union, or the Treaty of Maastricht.

European citizenship was institutionalized by the **Maastricht Treaty** and consolidated by the **Lisbon Treaty** (especially via the Charter of Fundamental Rights).

These developments have made it possible for European citizens to:

- Move and live freely within the EU. As an EU citizen, you have the right to live and move within the EU without being discriminated against on the grounds of your nationality. You may set up home in any EU country if you meet certain conditions, depending on whether you are working or studying, etc.

- Participate in the political life of the EU. Every EU citizen has the right to vote and stand as a candidate in both local and European elections in the EU country they live in, under the same conditions as nationals of that country.

- Petition and complain. Every EU citizen can petition the European Parliament to address either a personal need or grievance, or on a matter of public interest. The subject must fall within the EU's remit (i.e. it must not be something that is decided at local or national level) and must affect you directly. Complaints to the European Ombudsman about misconduct by an EU institution or body are also included within citizenship rights.

- Contact EU institutions and advisory bodies directly. You are entitled to a reply in any of the EU's 24 official languages.

- Enjoy consular protection when in a non-EU country. EU citizens are entitled to consular protection from the embassy or consulate of any other EU country if own country does not have an embassy or consulate in that non-EU country.

## LESSON 3. THE COMPETENCES OF THE EU

1. The competences of the EU: conceptual clarifications. 2. Basis of the competences of the Union: the principle of conferral. 3. Categories and areas of competences. 4. The principles governing the exercise of competences: subsidiarity, proportionality and sufficient means. 5. The principles of solidarity and loyal cooperation.

### 1. THE COMPETENCES OF THE EU: CONCEPTUAL CLARIFICATIONS

EU legal norms use different terminology for the same policies, competences and areas of competence. All this requires conceptual clarity.

The competences of the EU (the EU's capacity to act) are regulated by the TFEU. A certain terminological ambiguity exists between this section of Title I and the third section, which discusses EU internal policies and actions EU (arts 26-197). To a large extent, these terms are interchangeable, however, one is global competence and the other is a concrete action. In other words. The distinction between competence and areas of competence is as follows:

- **Competence** is the legal capacity to act, to perform administrative acts attributed by the law (treaties), to legislate, regulate and execute.
- **Area of competence** is the specific field in which the competence falls (e.g. agriculture, industry, commerce, education, etc.).

**Policies** are measures (legal or non-legal instruments) within a specific scope, provided to achieve specified objectives. Each policy has specific objectives to be carried out. The policies of the EU are therefore articles 26–197, which are 24 policies (separate titles) or internal Union actions. Though these are global policies, they can be subdivided into at least 54 policies (regarding cooperation in justice, freedom and security, for example, we have border control and judicial cooperation, etc.).

### 2. BASIS OF THE COMPETENCES OF THE UNION: THE PRINCIPLE OF CONFERRAL

Under the principle of conferral, the Union acts within the limits of the competences conferred upon it by Member States in the Treaties to attain the objectives set out in those Treaties. Competences that are not conferred upon the Union in the Treaties remain with the Member States. According to this principle, the EU is a union of member states, and all its competences are voluntarily conferred on it by those member states. The EU has no competences by right, so any areas of policy that are not explicitly agreed in treaties by all member states remain the domain of the member states. This principle implies a delimitation of EU competences; in other words, the limits of Union competences are governed by the principle of conferral. In effect,

competences that are not conferred upon the Union in the Treaties remain with the Member States. From this point of view, the Union respects the equality of Member States before the Treaties as well as their national identities inherent in their fundamental political and constitutional structures, including regional and local self-government. It respects their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

### 3. CATEGORIES AND AREAS OF COMPETENCES.

| EXCLUSIVE | SHARED* | COORDINATION | SUPPORT |
|---|---|---|---|
| •ART. 2 & 3 TFEU<br>•only the EU can act in these areas<br>•E.g: customs union & trade policy | •ART. 4 TFEU<br>•shared between the EU and the Member States<br>•E.g: cohesion policy, energy & environment. | •ART 5 TFEU<br>•EU sets up arrangements within which EU countries must coordinate policy<br>•E.g: economic policy | •ART 6 TFEU<br>•EU can support, coordinate or supplement EU countries' actions<br>•E.g: culture and tourism policy |

*Tricky competence. The principle of subsidiarity specifies that if the Member States can do it, the EU should not, and that the EU may intervene only if Member States cannot do it by themselves. If the EU intervenes and the States do not act, the competence is transferred to the EU (turning the competence into an exclusive one).

### 4. THE PRINCIPLES GOVERNING THE EXERCISE OF COMPETENCES: SUBSIDIARITY, PROPORTIONALITY AND SUFFICIENT MEANS

The use of Union competences is basically governed by the principles of subsidiarity and proportionality.

- Under the **principle of subsidiarity**, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. That is to say, the exercise of competences must be carried out at the closest level to citizens if this level is able to ensure a more effective and efficient (economic cost) action.

- Under the **principle of proportionality**, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

- Under the **principle of sufficient means**, the Union shall provide itself with the means necessary to attain its objectives and carry out its policies. This principle is obviously related to the Union's own resources. From this point of view, without prejudice to other revenue, the budget shall be financed wholly from its own resources. The Council, acting in accordance with a special legislative procedure, shall unanimously –after consulting the European Parliament – adopt a decision laying down the provisions relating to the system of the Union's own resources. In this context, it may establish new categories for its own resources or abolish an existing category. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

## 5. THE PRINCIPLES OF SOLIDARITY AND LOYAL COOPERATION

- Under the **principles of solidarity and loyal or sincere cooperation**, the Union and its Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate general or particular measure to ensure fulfilment of the obligations arising from the Treaties or resulting from the acts of the institutions of the Union. Furthermore, the Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

  Several aspects of this solidarity and loyal cooperation are established in European Union Law:

  - Article 3 of the Treaty on European Union includes the objective of promoting **economic, social and territorial cohesion and solidarity between Member States** (internal solidarity). This same provision includes the idea of external solidarity ("in its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall also contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, the eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter").

  - **Solidarity clause** (Article 222 of the Treaty on the Functioning of the EU): "The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made

disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to: prevent the terrorist threat in the territory of the Member States; protect democratic institutions and the civilian population from any terrorist attack; assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack; assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster".

# PART 2: THE INSTITUTIONAL SYSTEM OF THE EU

## LESSON 4: INSTITUTIONAL SYSTEM (I)

1. The institutional framework of the EU. 2. The European Parliament. 3. The European Council. 4. The Council. 5. The European Commission. 6. The Court of Justice of the European Union: introduction.

### 1. (A SNIPPET OF) THE INSTITUTIONAL FRAMEWORK OF THE EU

- Explaining the institutional system of the EU implies the following premises: the democratic deficit (especially that which affects the European Parliament (EP)) and the bureaucracy and originality of the European institutional framework.
- The EP is not the only "holder" of the Legislative Power within the EU. In fact, the EP does not have the faculty to present legislative initiative (this "monopoly" corresponds to the European Commission). Moreover, the legislative decision-making process is decided by the EP together with the Council of the Union (the current denomination of this classical "co-decision" procedure is "ordinary" legislative procedure).
- However, the EP has had an interesting evolution: whereas at the domestic level National Parliaments have suffered a "crisis" since the Second World War, at the European Union level the EP has progressively increased its powers.
- The issue of bureaucracy: the decisions taken at the European institutions (in Brussels, etc.) are far removed from EU citizens.
- The originality of the European institutional framework involves two aspects: On one hand, the EU is the only international organization with a Parliamentary Assembly that is elected by direct universal suffrage. On the other hand, the EU is the only international organization with its own financial resources, whereas all the other classical organizations depend on State contributions.

### 2. THE EUROPEAN PARLIAMENT

#### *A) Characterization and composition*

The former Common Assembly, shared by all three communities (which had separate executives), was renamed the "European Parliamentary Assembly". The three communities merged in 1967 and in 1962 the body was renamed the "European

Parliament". In 1970 the Parliament was granted power over areas of the Community's budget, which were expanded to the whole budget in 1975.

The EP is the EU's only directly elected parliamentary institution. It comprises 736 MEPs (Members of the European Parliament) and has been directly elected by universal suffrage every five years since 1979. Although the European Parliament has legislative power that bodies such as those above do not have, it does not have the legislative initiative that most national EU parliaments do. However, it does have legislative initiative in a *de facto* capacity.

While the Parliament is the "first institution" of the European Union (it is mentioned first in the treaties and has ceremonial precedence over all other authority at European level), it has fewer powers over legislation than the Council because "ordinary legislative procedure" (former co-decision procedure, i.e. equal rights of amendment and rejection) does not apply.

***B) Election and status of its members***

- The parliamentarians, or Members of the European Parliament (MEPs), are elected every five years by universal adult suffrage and sit according to political allegiance. Before 1979 they were appointed by their national parliaments.

- States are allocated seats according to population. These seats are distributed according to "degressive proportionality", which means the larger the state, the more citizens are represented per MEP.

- To sum up, elections have taken place, directly in every member-state, every five years since 1979. Sometimes a by-election is held to elect a member who joins mid-term. This has happened on four occasions; the last time was in 2007 when Romania and Bulgaria joined. Elections take place across several days according to local customs and, apart from having to be proportional, the electoral system is chosen by the member state. This includes the allocation of sub-national constituencies. While most members have a national list, some, like the UK and France, divide their allocation among regions. Seats are allocated to member states according to their populations. In order to maintain proportionality, no state has more than 99 or fewer than five seats.

- Until 2009, members received the same salary as members of their national parliament. However, in 2009 a new members' statute came into force that gives

all members an equal monthly pay of 7,000 euros each. This salary is subject to a community tax and can also be taxed nationally. MEPs retire at 63 and receive their entire pension from the Parliament. Travelling expenses are now based on actual cost rather than on a flat rate as was the case before.

- In addition to their pay, MEPs are also granted numerous privileges and immunities. To ensure their free movement to and from the Parliament, by their own states they are accorded the same facilities as those accorded to senior officials who travel abroad and by other state governments they are accorded the same facilities as those accorded to visiting foreign representatives. When in their own state, they have all the immunities that are accorded to national parliamentarians, while in other states they enjoy immunity from detention and legal proceedings. However, a member cannot claim immunity if he or she is found to have committed a criminal offence. The Parliament also has the right to strip a member of their immunity.

### *C) Functions*

**LEGISLATIVE POWER:**

- The Parliament and the Council are essentially two chambers in the bicameral legislative branch of the European Union, with legislative power being officially distributed equally between the two (ordinary legislative procedure: "co-decision"). However, certain differences from national legislatures exist: for example, neither the Parliament nor the Council has the power of legislative initiative (although the Council has this power in some intergovernmental matters). In Community matters, this power is uniquely reserved for the European Commission (the executive). This means that while Parliament can amend and reject legislation, to make a proposal for legislation, it needs the Commission to draft a bill before anything can become law.

**BUDGETARY FUNCTION:**

- The legislative branch officially holds the Union's budgetary authority, which it gained through the Budgetary Treaties of the 1970s. The EU's budget is divided into compulsory and non-compulsory spending. Compulsory spending is that which results from EU treaties (including on agriculture) and international agreements. Other spending is non-compulsory. The Council has the last word on compulsory spending and the Parliament has the last word on non-compulsory spending.

- The institutions draw up budget estimates and the Commission consolidates them into a draft budget. Both the Council and the Parliament can amend the budget and the Parliament can adopt or reject the budget at its second reading. The signature of the Parliament's president is required before the budget becomes law.

- Based on the annual report of the European Court of Auditors, the Parliament is also responsible for discharging the implementation of previous budgets. It has refused to approve the budget only twice: in 1984 and 1998. On the latter occasion it led to the resignation of the Santer Commission.

**CONTROL OF THE EXECUTIVE:**

- Unlike most EU states, which usually operate parliamentary systems, there is a separation of powers between the executive and the legislative which makes the European Parliament more akin to the United States Congress than an EU state legislature.

- The President of the European Commission is proposed by the European Council and has to be approved by the Parliament (by a simple majority). This essentially gives the Parliament a veto but not a right to propose the head of the executive. Following approval for the President of the Commission, the members of the Commission are proposed by the President in agreement with the member states.

- The Parliament also has the power to censure the Commission if there is a two-thirds majority and can force the resignation of the entire Commission from office. As with approval, this power has never been used. However, its use was threatened with regard to the Santer Commission, whose members subsequently resigned of their own accord.

- Several other control mechanisms exist, including the requirement that the Commission must submit reports to the Parliament and answer questions from MEPs; the requirement that the President-in-office of the European Council must present their programme at the beginning of their presidency; the right of MEPs to make proposals for legislation and policy to the Commission and Council; and the right to question members of those institutions. For example, "Commission Question Time" takes place every Tuesday. At these sessions, MEPs used to be able to ask a question on any topic. However, in July 2008 they voted to limit questions to those within the EU's mandate and to ban offensive or personal questions.

**POWERS OVER THE APPOINTMENT OF MEMBERS OF OTHER EUROPEAN BODIES:**

- The European Parliament has powers over the appointment of members of the Court of Auditors and the appointment of the president and executive board of the European Central Bank. The ECB president is also obliged to present an annual report to the parliament.
- The European Ombudsman is elected by the Parliament and deals with public complaints against all institutions. Petitions can also be brought by any EU citizen on any matter within the EU's sphere of activities. The Committee on Petitions hears cases, some of which are presented to Parliament by the citizens themselves. While the Parliament acts as a mediator to resolve the dispute, it may also resort to legal proceedings if necessary.

**AUCTORITAS/INFLUENCE:**

- The Parliament also has a great deal of indirect influence, through non-binding resolutions and committee hearings, as a "pan-European soapbox" with the ear of thousands of Brussels-based journalists. It also indirectly affects foreign policy since it must approve all development grants, including overseas grants. For example, support for the post-war reconstruction of Iraq or incentives for the cessation of Iranian nuclear development must be supported by the Parliament. Parliamentary support was also required for the transatlantic passenger data-sharing deal with the United States.

### *D) Functioning and internal structure*

Like the other institutions, the seat of Parliament was not fixed. Provisional arrangements placed the Parliament in Strasbourg, while the Commission and the Council had their seats in Brussels. Wishing to be closer to these institutions, in 1985 the Parliament built a second chamber in Brussels and, despite protests from several states, moved some of its work there. A final agreement was eventually reached by the European Council in 1992. This agreement stated that the Parliament would retain its formal seat in Strasbourg, where twelve sessions a year would be held, but that all other parliamentary activity would be conducted in Brussels. This two-seat arrangement was contested by Parliament

but later enshrined in the Treaty of Amsterdam. To this day, the institution's locations are a source of contention.

The European Parliament therefore has two meeting places. These are the Louise Weiss building in Strasbourg, France, which serves for twelve four-day plenary sessions per year and is the official seat, and the Espace Léopold complex in Brussels, Belgium. This is the larger of the two and serves for committee meetings, political groups and complementary plenary sessions. The cost of having all MEPs and their staff move several times a year from one place to another is of concern to some. The Secretariat of the European Parliament, the Parliament's administrative body, is based in Luxembourg.

During sessions, members may speak after being called by the President, with a time limit of one minute. Members of the Council or Commission may also attend and speak in debates. Partly due to the need for translation, and the politics of consensus in the chamber, debates tend to be calmer and more polite than, for example, the Westminster system. Voting is conducted primarily by a show of hands, which may be checked on request by electronic voting. The votes of MEPs are not recorded in either case, however. This only occurs when there is a roll-call ballot, which is when each MEP is called in turn by name and in alphabetical order in order to state their support or opposition. This historical system was used when the Parliament had a much smaller membership but is rarely used. Votes can also be held by secret ballot (for example, when the President is elected). All recorded votes, along with minutes and legislation, are kept in the Official Journal of the European Union and can be accessed online.

Members are arranged in a hemicycle according to their political groups, which are ordered mainly from left to right, though some smaller groups are placed towards the Parliament’s outer ring. All desks are equipped with microphones, headphones for translation, and electronic-voting equipment. The leaders of the groups sit on the front benches in the centre. In the very centre is a podium for guest speakers. The remaining half of the circular chamber is primarily made up of the raised area, where the President and staff sit. Further benches are provided between the sides of this area and the MEPs. These are taken up by the Council on the far left and the Commission on the far right. With a few minor differences, both the Brussels and the Strasbourg hemicycle roughly follow this layout. Access to the chamber is limited. Entrance is controlled by ushers, who also assist MEPs in the chamber (in handing out documents, for example).

**GOVERNING BODIES:**

- The **President of the European Parliament** (i.e. its speaker) presides over a multi-party chamber. The three largest groups are the European People's Party, the European Democrats (EPP-ED), and the Party of European Socialists (PES). The President, currently Antonio Tajani (Italy), is essentially the speaker of the Parliament. He or she presides over the plenary when it is in session and his or her signature is required for all acts adopted by co-decision, including the EU budget. The President is also responsible for representing the Parliament externally, including in legal matters, and for applying the rules of procedure. He or she is elected for two-and-a-half-year terms, which means that two elections are held per parliamentary term.

- Below the President are 14 Vice-Presidents, who chair debates when the President is not in the chamber. Besides these speakers, several other bodies and posts are also responsible for running parliament.

- The two main bodies are the **Bureau**, which is responsible for budgetary and administration issues, and the **Conference of Presidents**, which is a governing body made up of the presidents of each of the parliament's political groups and is responsible for the parliamentary calendar and the agenda for every session.

- Responsible for the financial and administrative interests of the members are six Quaestors.

**WORKING BODIES:**

- **Parliamentary Committees**: These are responsible for preparing the Parliament's plenary work sessions. Their task is to draw up reports on legislative proposals that have been referred to Parliament or on which Parliament has been consulted and to draft reports of their own initiatives. The EP has set up 20 standing committees to prepare work for plenary sittings. These are divided into sectors: foreign affairs, development, international trade, budgets, etc. and each has powers appropriate to its area of expertise. These committees consider and propose amendments to proposals for Community directives and regulations drawn up by the Commission, which are also referred to the Council of the European Union. They also deliver opinions for other committees. Each committee elects a chairperson and four vice-chairpersons for a period of two and a half years. Each committee has its own secretariat. Committees meet in public, once or twice a month, generally during the weeks following plenary sittings in Strasbourg. Meeting documents are available to the public.

- Committees can also set up **sub-committees** (e.g. the Subcommittee on Human Rights) and temporary committees to deal with specific topics (e.g. on extraordinary rendition). The chairs of the Committees co-ordinate their work through the "Conference of Committee Chairmen". When co-decision was introduced, it increased the Parliament's powers in a number of areas, most notably those covered by the Committee on the Environment, Public Health and Food Safety. This committee had been considered a "Cinderella committee" by MEPs. However, as it gained importance it became more rigorous and professional and its work attracted ever more attention.

## 3. THE EUROPEAN COUNCIL

### *A) Characterization and composition:*

- The European Council (referred to as a European Summit until 1974) is the highest political body of the European Union. In effect, the European Council was created in 1974 in order to establish an informal forum for discussion between Heads of State or Government. It rapidly developed into the body that set the goals for the Union, and the course to achieve them, in all fields of EU activity. It acquired a formal status through the 1992 Treaty of Maastricht, which defined its function as providing the impetus and general political guidelines for the Union's development. With the entry into force of the Treaty of Lisbon on 1st December 2009, it became one of the Union's seven institutions.

- The current President of the European Council is Donald Tusk (Poland).

- The European Council consists of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy is involved in its work. When the agenda so requires, the members of the European Council may each decide to be assisted by a minister and, in the case of the President of the Commission, by a member of the Commission.

- The meetings of the European Council are chaired by the member from the member state that currently holds the Presidency of the Council of the European Union (each semester). Although the Council has no formal executive or legislative powers, it deals with major issues and any decisions made are "a major impetus in defining the general political guidelines of the European Union".

### *B) Functions:*

- As stated above, the European Council sets the general political direction and priorities of the European Union.
- Specifically, its main functions can be divided into four areas: constitutional matters (amendment or revision of the Founding Treaties); fundamental economic and monetary issues (the financial rescue of Member States in difficulty due to recession); foreign policy (e.g. intervention in Libya); and internal security (the war on international terrorism, etc.).

*C) Functioning:*

- The Council meets at least twice a year, usually in the Justus Lipsius building, which are the quarters of the Council of the European Union (Consilium) of Brussels. When the situation so requires, the President convenes a special meeting of the European Council.
- Except where the Treaties provide otherwise, decisions of the European Council are taken by consensus. In some cases, it adopts decisions by unanimity or by qualified majority, depending on what is provided for in the Treaty.
- The European Council elects its President by qualified majority. The President's term of office is two and a half years and is renewable once.

**4. THE COUNCIL (of the EU)**

*A) Characterization and composition:*

- The Council is the main decision-making body of the European Union. The Council of the Union is made up of the ministers of the Member States (until 1992 the official name of this body was the "Council of Ministers". The name was changed in the Maastricht Treaty in order to enable governmental representatives from regions belonging to politically decentralized States such as Germany and Austria to participate.

- The Council (of the EU) is one of the Union's main institutions. This body should not be confused with the European Council (of heads of State) or the "Council of Europe" (another international organization that was created in 1949 and has 47 Member States).

- The ministers of Member States meet at the Council of the European Union. Depending on the issue on the agenda, each country is represented by the minister responsible for that area (foreign affairs, finance, social affairs, transport, agriculture, etc.).

*B) Functions:*

- The Council is responsible for decision-making and co-ordination.

- The Council of the European Union passes laws, usually legislating jointly with the European Parliament. When the Council acts as a legislator, in principle it is the European Commission that makes proposals. These are examined within the Council, which can make modifications before adopting them.

- The European Parliament is an active participant in this legislative process. On a broad range of issues, Community legislation is adopted jointly by the Parliament and the Council using a procedure known as "co-decision".

- The Council co-ordinates the broad economic policies of the Member States.

- The Council defines and implements the EU's common foreign and security policy, based on guidelines set by the European Council.

- On behalf of the Community and the Union, the Council concludes international agreements between the EU and one or more states or international organisations.

- The Council co-ordinates the actions of Member States and adopts measures in the area of police and judicial co-operation in criminal matters.

- The Council and the European Parliament constitute the budgetary authority that adopts the Community's budget.

***C) Internal structure and functioning:***

- ***Configurations:*** Legally speaking, the Council is a single entity. In practice, however, it is divided into several different councils. Each council deals with a different functional area, for example agriculture and fisheries. In this formation, the council is made up of ministers from each state government responsible for that area: in this case, the agriculture and fisheries ministers. The chair of this Council is held by the member from the state holding the presidency (see section above). The Economic and Financial Affairs Council, on the other hand, is made up of national finance ministers. There is still one per state and the chair is still held by the member from the country holding the presidency. They meet irregularly throughout the year, except for the three major configurations (top three below), which meet once a month.

- ***Civil Service:*** The **General Secretariat of the Council** provides the continuous infrastructure of the council, carrying out preparation for meetings, drafting reports,

translations, records, documents and agendas, and assisting the presidency. The Secretary General of the Council is the head of the General Secretariat. This is a powerful position within the Union and its incumbent is a notable figure, not just because he or she holds that position but because that person is also the High Representative for the Common Foreign and Security Policy and President of the European Defence Agency (as well as leading the non-EU defence organisation, the Western European Union).

- The **Committee of Permanent Representatives (COREPER)** is made up of representatives from the states (ambassadors, civil servants, etc.) who meet every week to prepare the Council's work and tasks. It monitors and co-ordinates work and deals with the Parliament on co-decision legislation (as well as leading the non-EU defence organisation, the Western European Union). It is divided into two groups of representatives (Coreper II) and their deputies (Coreper I). Agriculture is dealt with separately by the Special Committee on Agriculture (SCA). The numerous working groups submit their reports to the Council through Coreper or SCA.

- The number of votes each Member State can cast is set by the Treaties. The Council votes in one of three ways: by unanimity, simple majority or qualified majority. In most cases, the Council votes on issues by qualified majority voting.

- The **presidency** of the Council is held for six months by each Member State on a rotational basis. The Council does not have a single president in the traditional sense, but the role (known as the "Presidency") is rotated between each member state every six months, with the minister from that state then able to set the agenda. Another powerful position is the Secretary General, who is also the representative of the Union's foreign policy.

- The Council is presided for a period of six months (from January to June, and from July to December) by each Member State in turn, in accordance with a pre-established rota.

  The revised order of the presidencies of the Council runs until 2030 (the previous decision covered only until June 2020) and is set out below:

| | | |
|---|---|---|
| o Malta | January-June | 2017 |
| o Estonia | July-December | 2017 |
| o Bulgaria | January-June | 2018 |
| o Austria | July-December | 2018 |
| o Romania | January-June | 2019 |
| o Finland | July-December | 2019 |
| o Croatia | January-June | 2020 |

| | | |
|---|---|---|
| o Germany | July-December | 2020 |
| o Portugal | January-June | 2021 |
| o Slovenia | July-December | 2021 |
| o France | January-June | 2022 |
| o Czech Republic | July-December | 2022 |
| o Sweden | January-June | 2023 |
| o Spain | July-December | 2023 |
| o Belgium | January-June | 2024 |
| o Hungary | July-December | 2024 |
| o Poland | January-June | 2025 |
| o Denmark | July-December | 2025 |
| o Cyprus | January-June | 2026 |
| o Ireland | July-December | 2026 |
| o Lithuania | January-June | 2027 |
| o Greece | July-December | 2027 |
| o Italy | January-June | 2028 |
| o Latvia | July-December | 2028 |
| o Luxembourg | January-June | 2029 |
| o Netherlands | July-December | 2029 |
| o Slovakia | January-June | 2030 |
| o Malta | July-December | 2030 |

- The Presidency of the Council plays an essential role in organising the work of the institution, particularly in promoting legislative and political decisions. It is responsible for organising and chairing all meetings, including those of the many working groups, and for brokering compromises.

- The Presidency of the Council is not a single post but is held by a member state's government. Every six months the presidency rotates between the states in an order predefined by the Council members, thereby allowing each state to preside over the body.

- The role of the Presidency is both administrative and political. On the administrative side it is responsible for procedures and for organising the work of the Council during its term. This includes summoning the Council for meetings and directing the work of COREPER and other committees and working groups. The political element lies in successfully dealing with issues and mediating in the Council. Specifically, this includes setting the agenda of the council, thus giving the Presidency substantial influence in the work of the Council during its term. The Presidency also plays a major role in representing the

Council within the EU and in representing the EU internationally, for example at the United Nations.

## 5. THE EUROPEAN COMMISSION

### *A) Characterization and composition:*

- The European Commission is the old "High Authority" (Schuman Declaration) as well as the most original body within the EU institutional framework. It represents the common European interest. Originating in 1951 as the High Authority in the European Coal and Steel Community, the Commission has undergone numerous changes in power and composition under various Presidents and three Communities.

- The European Commission (formally the Commission of the European Communities) is the executive branch of the European Union. This body is responsible for proposing legislation, implementing decisions, upholding the Union's treaties and the general day-to-day running of the Union.

- The Commission is both the institution and the 'college' of commissioners. There is currently one commissioner from each EU country.

### *B) Election and status of the members of the Commission:*

- How is the president of the Commission elected? The European Council proposes a candidate to the European Parliament. That person must then be approved by a majority of the Parliament's members. If the candidate does not get a majority of the votes, the Council of Ministers must put forward another name within one month. The current President of the Commission is Jean-Claude Juncker (Luxembourg).

- Who chooses the commissioners? The president elect of the Commission chooses the commissioners from the lists of candidates put forward by the EU countries. The proposed list is then submitted for approval to the Council of Ministers, which must adopt it by a qualified majority. The college is then submitted collectively to the European Parliament for its approval. Once Parliament has given its blessing, the new Commission is officially appointed by the Council, acting again by qualified majority.

- The Commission was set up from the beginning to act as an independent supranational authority separate from governments. It has been described as "the only body paid to think European". The members are proposed by the governments of the member states,

(one member from each state). However, they are bound to act independently (to be neutral) of other influences such as the governments that appointed them. This is in contrast to the Council, which represents governments, to the Parliament, which represents citizens, and to the Economic and Social Committee, which the treaty says represents 'organised civil society'.

***C) Functions:***

- The Commission's job is to represent the common European interest for all EU countries. So that it can play its role as '**guardian of the treaties**' and defender of the general interest, the Commission also has the right of initiative in the law-making process. This means that it proposes legislative acts for the European Parliament and the Council of Ministers to adopt.
- The Commission is also responsible for putting the EU's common policies (such as the common agricultural policy and the growth and jobs strategy) into practice and for managing the EU's budget and programmes.

***D) Powers:***

- ***Executive power***

  The executive power of the Union is held by the Council, which confers on the Commission such powers for it to exercise. However, the Council may withdraw these powers, exercise them directly, or impose conditions on their use. The European Commission's powers, which are outlined in Articles 211–219 of the EC treaty, are more restricted than those of most national executives, especially in areas such as foreign policy, power for which is held by the European Council, which has been described as another executive.

- ***Legislative initiative***

  The Commission differs from the other institutions in that it is the only one with legislative initiative in the 'pillars' of the European Union, i.e. only the Commission can make formal proposals for legislation (bills cannot formally originate in the legislative branch). It shares this right with the Council over the CFSP pillar but has no right over Police and Judicial Co-operation in Criminal Matters. In the Union, however, the Council and the Parliament are able to request legislation. In most cases, the Commission initiates the basis for these proposals. This monopoly is designed to ensure coordinated and coherent drafting of Union law but has been challenged by some who claim that the Parliament should also have this right. Most national parliaments also hold this right in some respects. Under the

Lisbon Treaty, EU citizens can also ask the Commission to legislate in a certain area via a petition with one million signatures, though such a request would not be binding.

- ***Enforcement***
  Once legislation is passed by the Council and Parliament, it is the Commission's responsibility to ensure it is implemented. It does this through the member states or through its agencies. In adopting the necessary technical measures, the Commission is assisted by committees made up of representatives of member states (a process known in the jargon as "comitology"). The Commission is also responsible for implementing the EU budget and, along with the Court of Auditors, for ensuring that EU funds are correctly spent.

- ***Power of undertaking administrative and judicial actions in order to ensure the implementation of EU Law***
  The Commission has a duty to ensure that the treaties and the law are upheld, potentially by taking member states or other institutions to the Court of Justice if there is a dispute. In this role it is known informally as the "guardian of the treaties".

- ***Power of external representation***
  Alongside the member states and the Common Foreign and Security Policy, the Commission provides external representation for the Union, representing it on bodies such as the World Trade Organisation. The President of the Commission also usually attends meetings of the G8.

***E) Internal structure and functioning:***

- How is the Commission structured?
  The Commission is divided into roughly 40 directorates-general (DGs) and services, which in turn are subdivided into directorates, which are subdivided into units. The Commission also administers numerous executive agencies. One can contact the Commission's departments and staff by consulting the contact pages. Additional structures can also be created at need. In order to ensure that the Commission acts effectively and as a college, the DGs are required to collaborate closely with each other and coordinate the preparation and implementation of the commissioners' decisions.

- When and where does the Commission meet?

The Commission's rules of procedure generally require the commissioners to meet once a week. In practice, this happens on Wednesdays in Brussels, except in the weeks when the European Parliament holds its plenary sessions, in which case the commissioners usually meet in Strasbourg. The agenda for each meeting is based on the Commission's work programme. Meetings are held behind closed doors and debates are confidential. However, the agendas and minutes are available on the Secretariat-General's website. Alongside its weekly meetings the Commission may hold emergency meetings or special meetings when necessary (to deal with a particular dossier, for example, or ahead of or on the fringes of an important meeting of the Council of Ministers).

- How does the Commission take decisions?
  The Commission decides collectively, on the basis of proposals put forward by one or more of its members. It has four ways of deciding:
  - during its **regular weekly meetings** – any member of the Commission can call for a vote. The Commission decides by **simple majority**, and the president has a casting vote.
  - by **written procedure** – the proposal is circulated in writing to all members of the Commission, who then notify their reservations or amendments within the time allowed. Any member can call for a debate, in which case the dossier will be included in the agenda of a Commission meeting. If there are no reservations or amendments, the proposal is tacitly adopted.
  - by **empowerment** – the Commission can empower one or more of its members to decide in its name, provided that the principle of collegiality (that the Commissioners act as a college, not as individuals) is respected. Under certain conditions, the same procedures can be used to delegate decision-making powers further to directors-general and heads of service.
  - by **delegation** – the Commission can delegate some decisions to directors-general and heads of service, who then act in its name.

- The Commission operates in the method of cabinet government, with 28 Commissioners. There is one Commissioner per member state, though the Commissioners are bound to represent the interests of the EU as a whole rather than their home state. One of the 28 is the Commission President (currently Juncker), who is appointed by the European Council with the approval of the European Parliament. The present Juncker Commission took office in 2014 and should serve a five-year term.

## 6. THE COURT OF JUSTICE OF THE EUROPEAN UNION: INTRODUCTION

### A) Characterization and composition

For the purpose of European construction, the Member States (of which there are now 28) concluded treaties creating first the European Communities and then a European Union, with institutions which adopt laws in specific areas.

The Court of Justice of the European Union, which has its seat in Luxembourg, is the judicial institution of the EU. It consists of three courts: the Court of Justice, the General Court (created in 1988 as the Court of First Instance) and the Civil Service Tribunal (created in 2004 but discontinued in 2016). Its main task is to examine the legality of EU measures and ensure the uniform interpretation and application of Community law. In fact, since the establishment of the Court of Justice of the European Union in 1952, its mission has been to ensure that "the law is observed" "in the interpretation and application" of the Treaties. As part of that mission, the Court of Justice of the European Union:

- reviews the legality of the acts of the institutions of the European Union
- ensures that the Member States comply with their obligations under the Treaties
- interprets European Union law at the request of the national courts and tribunals.

The Court thus constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of the Member States, ensures the uniform application and interpretation of European Union law.

The members of the Court of Justice of the European Union are:

- The Court of Justice: 1 judge from each EU country (currently 28), plus 11 advocates general
- The General Court: 47 judges. In 2019 this will be increased to 56 (2 judges from each EU country).

Through its case-law, the Court of Justice has identified an obligation on administrations and national courts to apply Community law in full within their sphere of competence, to protect the rights conferred on citizens by that law (direct application of Community law), and to disapply any conflicting national provision, whether prior or subsequent to the Community provision (primacy of Community law over national law).

### B) Election and status of its members

The Judges and Advocates General are appointed by common accord by the governments of the Member States for a renewable term of six years.

They are chosen from among lawyers whose independence is beyond doubt and who possess the qualifications required for appointment, in their respective countries, to the highest judicial offices, or who are of recognised competence. In Spain, for example, 15 years of recognized experience– like the candidates to become judges of the Spanish Constitutional Court).

## LESSON 5: INSTITUTIONAL SYSTEM (II)

~~7. The European Central Bank. 8. The Court of Auditors.~~ 9. Consultative/advisory bodies: the Economic and Social Committee; the Committee of the Regions. 10. Other bodies, offices and agencies.

### 9. CONSULTATIVE/ADVISORY BODIES:

### A) THE ECONOMIC AND SOCIAL COMMITTEE

***Characterization***: The European Economic and Social Committee (EESC) is a consultative body that gives representatives of Europe's socio-occupational interest groups, and others, a formal platform to express their points of view on EU issues. Its opinions are forwarded to the larger institutions: the Council, the Commission and the European Parliament. It therefore has a key role to play in the Union's decision-making process.

***Origins and evolution:*** The EESC was set up by the 1957 Rome Treaties in order to involve economic and social interest groups in the establishment of the common market and to provide institutional machinery for briefing the European Commission and the Council of Ministers on European Union issues.

***Composition/Membership:*** The 344 members of the EESC are drawn from economic and social interest groups in Europe. Members are nominated by national governments and appointed by the Council of the European Union for a renewable four-year term of office. The next renewal will occur in October 2010. The members belong to one of three groups: employers, employees, and other relevant stakeholders.

***The Members' mandate:*** The task of members is to issue opinions on matters of European interest to the Council, the Commission and the European Parliament.

***Advisory role:*** Consultation of the EESC by the Commission or the Council is mandatory in certain cases but optional in others. However, the EESC may also adopt opinions on its own initiative. The Single European Act (17th February 1986) and the Maastricht Treaty (7th February 1992) extended the range of issues that must be referred to the Committee, especially those related to new policies (regional and environment policy). The Amsterdam Treaty further broadened the areas for referral to the Committee and allowed it to be consulted by the European Parliament. On average the EESC delivers 170 advisory documents and opinions a year (roughly 15% of which are issued on its own initiative). All opinions are forwarded to the Community's decision-making bodies and then published in the EU's Official Journal.

***Information and integration role:*** Over the last few years the EESC has stepped up its role in the European Union and transcended the straightforward duties flowing from the Treaties. It acts as a forum for the single market and, with the support of other EU bodies, has hosted a series of events aimed at bringing the EU closer to the people.

*Internal organization:*

- **Presidency and bureau:** Every two years the EESC elects a bureau made up of 37 members, and a president and two vice-presidents chosen from each of the three groups in rotation. The president is responsible for the orderly conduct of the Committee's business. He is assisted by the vice-presidents, who deputize for him in the event of his absence. The president represents the EESC in relations with outside bodies. Joint briefs (relations with EFTA, CEEC, AMU, ACP countries, Latin American and other third countries, and the Citizens' Europe) fall within the remit of the EESC bureau and the president. The bureau's main task is to organize and coordinate the work of the EESC's various bodies and to lay down policy guidelines for this work.

- **Sections:** The Committee has six sections:
    - Agriculture, Rural Development and the Environment
    - Economic and Monetary Union and Economic and Social Cohesion
    - Employment, Social Affairs and Citizenship
    - External Relations
    - The Single Market, Production and Consumption
    - Transport, Energy, Infrastructure and the Information Society

  A new Consultative Committee on Industrial Change has been incorporated into the EESC structure following the expiry of the ECSC Treaty in July 2002.

- **Study groups:** Section opinions are drafted by study groups. These usually have 12 members, including a rapporteur. Study group members may be assisted by experts (normally four).

- **Sub-committees:** The EESC has the right to set up temporary sub-committees, for specific issues. These sub-committees operate on the same lines as the sections.

- **Plenary session:** As a rule, the full Committee meets in plenary session nine times a year. At the plenary sessions, opinions are adopted on the basis of section opinions by a simple majority. They are forwarded to the institutions and published in the Official Journal of the European Communities.

***Relations with economic and social councils:*** The EESC maintains regular links with regional and national economic and social councils throughout the European Union. These links mainly involve exchanges of information and joint discussions every year on specific issues. The EESC also liaises world-wide with other economic and social councils and similar organizations at the "International Meetings" held every two years.

***Relations with economic and social interest groups in third countries:*** The EESC has links with economic and social interest groups in a number of non-member countries and groups of countries, including Mediterranean countries, the ACP countries, Eastern European countries, candidate countries, Latin American countries, India and China. For this purpose the EESC sets up, within its External Relations Section, follow-up committees and joint consultative committees, which meet regularly with their partners to debate issues of common interest and submit joint proposals to the political authorities.

***Secretariat-General:*** The Committee is led by a secretary-general, who reports to the president, who represents the bureau. Some 135 staff work exclusively for the European Economic and Social Committee. Since 1st January 1995, the European Economic and Social Committee and the Committee of the Regions have shared a common core of departments (some 520 staff), most of whom are members of the EESC secretariat.

**B) THE COMMITTEE OF THE REGIONS**

***Characterization, origins and evolution:***

- The Committee of the Regions (CoR) was established in 1994. It represents the sub-national regions of the EU in the EU legislative process, but only in a consultative manner similar to the Economic and Social Committee.

- The CoR is the political assembly that provides local and regional authorities with a voice at the heart of the European Union. Its aim is to increase the participation of European regions in community life. The CoR, whose seat is in Brussels, is made up of 344 representatives of regional and local governments.

- Cohesion with the regions of the EU was enshrined in the Single European Act in 1986, and in 1992 the Delors Commission proposed the establishment of the CoR. The CoR, which was included in the Maastricht Treaty, was established when the Treaty came into force in 1994.

- The body was set up to address two main issues. Firstly, about three quarters of EU legislation is implemented at local or regional level, so it makes sense for local and regional representatives to have a say in the development of new EU laws. Secondly, there were concerns that the public was being left behind as the EU steamed ahead. Involving the elected level of government closest to the citizens was one way of closing the gap.

***Main functions:***

- The Treaties oblige the European Commission and the Council to consult the Committee of the Regions whenever new proposals are made in areas that have repercussions at regional or local level.

- Outside these areas, the Commission, the Council and the European Parliament have the option to consult the CoR on issues if they see important regional or local implications to a proposal. The CoR can also draw up an opinion on its own initiative.

- With the entry into force of the Treaty of Lisbon, the CoR has gained the right to approach the European Court of Justice.

***Composition:***

- The CoR comprises 350 regional and locally elected representatives, including mayors, regional presidents and councilors, from the 28 EU countries.
- It is made up of six commissions covering competences in the following policy areas based on the EU Treaties:
    - Employment, vocational training, economic and social cohesion, social policy, and health.
    - Education and culture.
    - Environment, climate change, and energy.
    - Transport and trans-European networks.
    - Civil protection and services of general interests (mainly dependent upon the size of the population).

- The system for electing members depends on the country concerned (and mainly on its population). Spain, for example, has 21 full members and their alternates, whereas Malta has five.

## 10. OTHER BODIES, OFFICES AND AGENCIES: ALTERNATIVE/INDIRECT MECHANISMS OF FUNDAMENTAL RIGHTS PROTECTION

Numerous other bodies and structures protect the human rights of EU citizens, with the main aim of guaranteeing the effective protection of their rights and liberties, especially those enshrined in the Charter of Fundamental Rights. These 'alternative' or specialized mechanisms are essential though less-known instruments of fundamental rights protection. Over 30 specialized bodies, offices and agencies exist, among which we can highlight the European Ombudsman (which investigates complaints of maladministration) and the Fundamental Rights Agency (which provides expert advice to the institutions of the EU, the Member States and civil society on fundamental rights protection).

- **The European Ombudsman**
    - The current European Ombudsman (since 2014) is Emily O'Reilly of Ireland. The first Ombudsman (1995-2003) was Jacob Söderman of Finland.
    - The Office was created by the Maastricht treaty: "The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or *any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the EU institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. The deadline to lodge the complaint with the European Ombudsman is two years."*
    - In accordance with his or her duties, the Ombudsman shall conduct inquiries for which he or she finds grounds, either on his/her own initiative or on the basis of complaints submitted to him/her direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he/she shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him/her of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned.
    - The person lodging the complaint shall be informed of the outcome of such inquiries.
    - The Ombudsman shall submit an annual report to the European Parliament on the outcome of his/her inquiries.
    - The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment. The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he/she no longer fulfils the conditions

required for the performance of his/her duties or if he/she is found guilty of serious misconduct.

- The Ombudsman shall be completely independent in the performance of his/her duties. In the performance of those duties he/she shall neither seek nor take instructions from anybody. The Ombudsman may not, during his/her term of office, engage in any other occupation, whether gainful or not.
- The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties.

- **Fundamental Rights Agency (FRA)**
  - On 1st March 2007, the EU officially recognized the FRA, its first agency specialized in fundamental rights. According to its internal regulation, the main objective of the FRA is to provide assistance and experience to EU institutions and Member States in the application of EU Law.
  - The FRA has a consulting and supervising mission and is a promoter and guardian of the common values and human rights enshrined in the European project.
  - The FRA mainly focuses on certain EU-centred themes such as access to justice, asylum, migration, gender issues, hate crimes, persons with disabilities, racism, children and Roma rights, and data protection.
  - The FRA's tasks include: (1) collecting and analysing statistical and qualitative data, (2) drafting opinions and conclusions for EU and Member State institutions, (3) publishing reports and raising awareness, and (4) engaging with NGOs and other relevant stakeholders and specialized bodies concerned with the protection of certain fundamental rights.
  - The FRA issues publications, opinions, data and maps, case-law databases, infographics, and country studies, etc. In relation to the opinions and conclusions issued, the European Parliament, the Council of the European Union or the European Commission can ask the agency to deliver opinions on EU legislative proposals "as far as their compatibility with fundamental rights are concerned". This specific task contributes to the agency's overall objective to support EU institutions and Member States to fully respect fundamental rights.

# PART 3: EUROPEAN UNION LEGAL ORDER

## LESSON 6: EUROPEAN UNION LAW SOURCES

1. EU law sources: general aspects. 2. The founding Treaties. 3. The legal acts adopted by the institutions of the Union. ~~4. The legal instruments of the Common Foreign and Security Policy (CFSP). 5. The international Treaties. 6. The general principles of EU Law and the constitutional traditions common to Member States.~~

### 1. EU LAW SOURCES: GENERAL ASPECTS

- Following the entry into force of the Treaty of Lisbon (2009), the European Union gained legal personality and acquired the competences that were previously conferred on the European Community. Community law has therefore become European Union law, which includes all provisions previously adopted.

- There are various types of law sources (even in the internal order; i.e. law, custom, general principles of law, case-law, etc.).

- The EU has its own system of law sources, which is complex, unique and different, mainly because of the EU's distinctive international origin (it has no written constitution but a set of treaties between European States) and its institutional (constitutional-like) legal system (the existence of a jurisdictional body interpreting EU Law, constitutive (primary) norms and derivative (secondary) norms).

- The founding Treaties are considered to be the "constitution" of the European Union. These Treaties created, gave authority to and imposed restrictions on the power of the institutions. They imposed binding obligations on the signatory states, particularly with regard to the supremacy of the Treaties, and enacted European Union legislation over national laws. The Treaties form part of the national law of each member state.

- EU law sources are basically made up of two elements: Primary Law and Secondary Law.

- The EU system of law sources has its own principles (e.g. hierarchy between Primary and Secondary Law, whereby the former prevails over the latter).

- The Law of the European Union is the unique legal system which operates alongside the laws of EU Member States. EU law has **direct effect** within the legal systems of its Member States and overrides national law in many areas (**primacy**), especially in those covered by the Single Market (former first pillar). In effect, through its case-law, the Court of Justice has identified an obligation on administrations and national courts to apply EU law in full within their sphere of competence, to protect the rights conferred on citizens by that law (direct application of EU law), and to disapply any conflicting national provision, whether prior or subsequent to the EU provision (primacy of European Union law over national law).

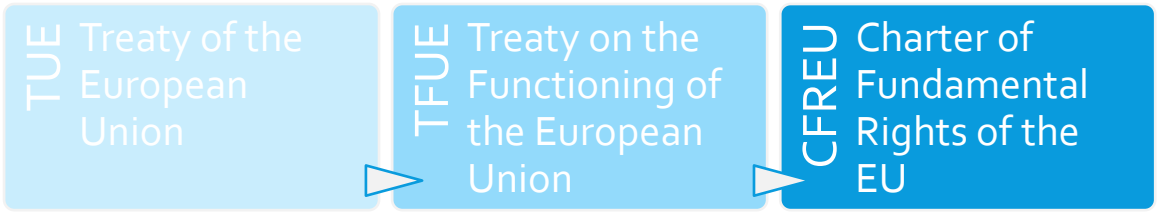
## 2. THE FOUNDING TREATIES

- The "founding" or "constitutive" treaties, as well as their Protocols (after the *Kadi* judgment) and the CFREU (after the Lisbon Treaty) are the Primary Law of the EU.

- In historical chronological order, these are:
  <u>The original founding treaties of the three Communities:</u>
  - The European Coal and Steel Community (Paris 1951)
  - The European Economic Community (Rome 1957)
  - The European Atomic Energy Community (Rome 1957)

  <u>Latter modifications (through amendment procedures stipulated in the original treaties):</u>
  - The Single European Act (Luxembourg 1986)
  - The Maastricht Treaty on European Union 1992
  - The Amsterdam Treaty 1997
  - The Nice Treaty 2001
  - The Constitutional Treaty/European Constitution/Treaty establishing a Constitution for Europe 2004
  - The Lisbon Treaty 2007

  <u>Acts of Accession (when a Member State joins the EU):</u>
  - 1973 Denmark, Ireland, United Kingdom; 1981 Greece; 1986 Portugal, Spain; 1995 Austria, Finland, Sweden; 2004 Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Czech Republic, Slovakia, Slovenia; 2007 Bulgaria and Romania; and 2013 Croatia




## 3. LEGAL ACTS ADOPTED BY THE INSTITUTIONS OF THE UNION

- These are commonly known as "secondary" or "derivative" law of the EU.
- The legal acts adopted by the institutions of the EU are mentioned and defined in Article 288 of the Treaty on the Functioning of the EU:

| | SCOPE | LEGALLY BINDING FORCE | APPLICATION | PURPOSE/AIM |
|---|---|---|---|---|
| **REGULATIONS** | General application | Binding in their entirety | Directly applicable (from the moment of publication in the Official Journal of the EU) | Total harmonization (to have uniform application in all MS) |
| **DIRECTIVES** | *de minimis* application | Solely as to the result to be achieved (the choice of form and methods is left to the MS) | Transposition is required (the MS have to adopt norms to achieve Directive objectives) | Partial harmonization (certain margin of appreciation is left for the MS to legislate according to their national and legal particularities) |
| **DECISIONS** | No general application | Binding in their entirety only to those they are specifically addressed to | Directly applicable | Create specific obligations, create rights, impose sanctions, etc. |
| **RECOMMENDATIONS AND OPINIONS** | *Soft law* | Not legally binding (but can have legal effects) | | Orientation on policy and legislation, to express opinions, invite adoption of rules of conduct, etc. |

## LESSON 7: THE PRINCIPLES GOVERNING THE RELATIONSHIP BETWEEN EUROPEAN UNION LAW AND THE LEGAL ORDER OF THE MEMBER STATES

1. Autonomy and primacy of EU Law. 2. Direct application and effect of EU Law. 3. The application of EU Law by Member States.~~4. The national judge as judge of European Law.~~

### 1. AUTONOMY AND PRIMACY OF EU LAW

**Autonomy**

- Autonomy and primacy were recognized for the first time by the *Van Gend Loos* (1956) judgment. This referred to the fact that the then-Community (European) legal order was different, i.e. autonomous both with respect to International Law and with respect to the internal law of the MS. The Court of Justice of the European Union (CJEU) points out that it is a new legal order, based on different principles since the principle of reciprocity does not apply. It is autonomous also with respect to the rights of the MS. This was especially highlighted in the *Costa versus ENEL* (1964) judgment, which pointed out that community law is integrated into domestic legal systems but is not confused with them. This important practical consequence should be emphasized: if the EU constitutes an autonomous legal order, the concepts, categories and institutions of EU Law can and indeed have their own legal meaning which is different from that of the norms, concepts and categories at the national level. Therefore, EU norms are interpreted in light of the European legal order.

- It follows from all these observations that the law stemming from the treaties an independent source of law (Autonomy of the EU Law) – could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as community law and without the legal basis of the community itself being called into question.

**Primacy**

- It has been ruled many times by the European Court of Justice that EU law is superior to national laws. Where a conflict arises (where there is a contradiction) between EU law and

the law of a Member State, EU law takes precedence and the law of a Member State must be disapplied (**Primacy**).

- Primacy does not mean hierarchy. Primacy consists of priority or precedence of EU law in a particular conflict *(inter partes* effect) with national legislation, which implies that national legislation is disapplied but not repealed. Hierarchy, on the other hand, implies that one superior provision repeals one inferior provision in the case of conflict (*erga omnes* effect), i.e. the inferior provision is expelled from the legal order.

- If the validity and obligatory nature of EU norms were conditioned to compatibility with the rights of each and every MS, chaos would ensue and the principle of uniformity would fail.

- Jurisprudential creation (not envisioned in the treaties but extracted from their aims): in the constituent treaties the mandatory character is recognized for the rules of secondary law (mandatory scope, article 278 TFEU), the purpose of which would be destroyed if EU law did not take precedence over MS law. If this applies to secondary legislation, it should apply even more to primary legislation.

- Some national and (especially) constitutional courts have sometimes been reluctant to accept the categorical primacy of EU law over national law. A historical example is that of the German Federal Constitutional Court, which, in several judgments, expressed such reluctance (*Solange 1* and *Solange 2* judgments). Recently, other national courts have also expressed reluctance and even defiance (e.g. *Taricco* judgment, *Ajos* judgment).

## 2. DIRECT APPLICATION AND EFFECT OF EU LAW

Like the legal systems of the Member States themselves. EU law covers a wide range of issues. Both the provisions of the Treaties and the EU regulations are said to have "direct effect" horizontally. This means that private citizens can rely on the rights granted to them (and the duties created for them) against one another. For example, an air hostess could sue her airline employer for sexual discrimination. The other main legal instrument of the EU, the "directive", has direct effect, but only "vertically". Private citizens cannot sue one another on the basis of an EU directive, since these are addressed to the Member States.

In its case-law (starting with *Van Gend & Loos* in 1963), the Court introduced the principle of the direct effect of Community law on the Member States, which now enables European citizens to rely directly on the rules of European Union law before their national courts.

- The transport company Van Gend & Loos imported goods from Germany to the Netherlands and had to pay customs duties that it considered incompatible with the EEC Treaty rule that prohibits increases in customs duties in trade between Member States. The action raised the question of conflict between national legislation and the provisions of the EEC Treaty. The Court decided the question referred by a Netherlands court by stating the doctrine of direct effect, thus conferring on the transport company a direct guarantee of its rights under Community law before the national court.

## 3. THE APPLICATION OF EU LAW BY MEMBER STATES

According to the principle of autonomy, each Member State is able to decide which national instrument is most suitable for achieving EU objectives. In Spain, for example, EU Law on agriculture is implemented by a regional provision since agriculture is a competence that falls under the jurisdiction of the Autonomous Communities (Article 148 of the Spanish Constitution). EU Law on asylum, on the other hand, is implemented by a State provision since that competence falls under the jurisdiction of the State (Article 149 of the Spanish Constitution).

However, when a conflict arises, although EU law is accepted as taking precedence over the law of Member States, not all Member States share the analysis used by the European institutions to explain why EC law overrides national law.

The highest courts of many countries have stated that EU law takes precedence provided that it continues to respect the fundamental constitutional principles of the Member State, the ultimate judge of which is the Member State (more precisely, the court of that Member State) rather than the European Union institutions themselves. This reflects the idea that Member States remain the "Masters of the Treaties" and the basis for the effect of EU law. Other countries have written the precedence of Community law into their constitutions. For example, the Constitution of Ireland contains a clause stating that *"No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the European Union or of the Communities..."*.

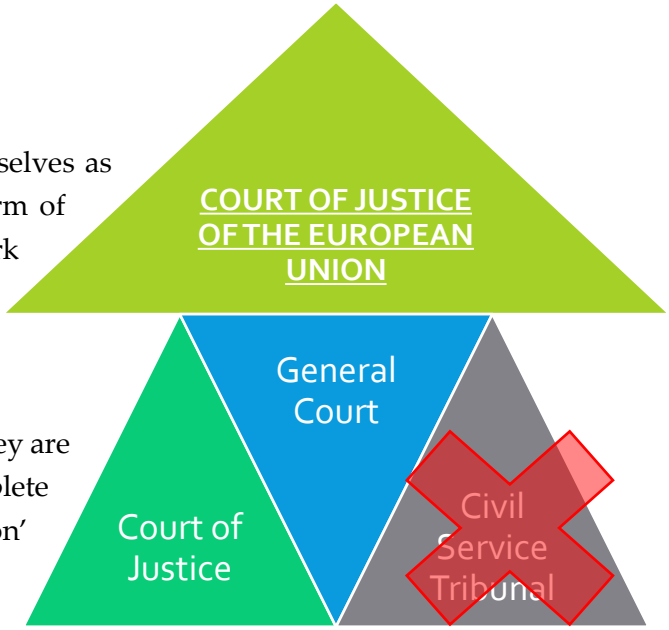
This difference in positions is merely of academic importance. No court of any Member State has ever challenged the validity of any legal act of the European Union by any other means than referring the question to the European Court of Justice. Even the German legislature accepted the judgment of the European Court of Justice in the case of *Tanja Kreil*, which rendered void a provision in the German constitution barring women from voluntary service in the armed forces, subsequently amended the constitution, and accepted women for any position in the forces.

# PART 4: THE JUDICIAL SYSTEM OF THE EUROPEAN UNION

## LESSON 8: THE JUDICIAL SYSTEM OF THE EU

1. The Court of Justice of the European Union (the Court of Justice, the General Court and specialized courts). ~~2. The contentious jurisdiction of the Court of Justice of the European Union: actions for failure to fulfil obligations; actions for annulment; actions for failure to act; exception of illegality; action tort.~~ 3. Preliminary rulings: the collaboration of judicial bodies of Member States. ~~4. Appeals on points of law and re-examination. 5. The judicial supervision of the Common Foreign and Security Policy.~~ 6. The consultative jurisdiction of the Court of Justice of the European Union.

### 1. THE COURT OF JUSTICE OF THE EUROPEAN UNION (COURT OF JUSTICE, GENERAL COURT AND SPECIALIZED COURTS)




**The Court of Justice:**

- The Judges of the Court elect one of themselves as President of the Court for a renewable term of three years. The President directs the work and staff of the Court and presides at hearings and deliberations of the full Court or the Grand Chamber.
- The Advocates General assist the Court. They are responsible for presenting, with complete impartiality and independence, an 'opinion' in the cases assigned to them.
- The Registrar is the institution's secretary general. He or she manages its departments under the authority of the President of the Court.
- The Court may sit as a full court, in a Grand Chamber of 14 judges or in Chambers of three or five judges. The Court sits as a full court in particular cases prescribed by the Statute of the Court (proceedings to dismiss the European Ombudsman or a Member of the European Commission who has failed to fulfil his or her obligations, etc.) and when the Court considers that a case is of exceptional importance. It sits in a Grand Chamber when a Member State or an institution which is a party to the proceedings so requests, and in particularly complex or important cases. Other cases are heard by Chambers of three or five judges.

- The linguistic regime is as follows. In all direct actions, the language used in the application (which may be one of the 23 official languages of the European Union) will be the 'language of the case', i.e. the language in which the proceedings will be conducted. With references for preliminary rulings, the language of the case is that of the national court which made the reference to the Court of Justice. Oral proceedings at hearings are interpreted simultaneously, as required, into various official languages of the European Union. The judges deliberate, without interpreters, in a common language, which, traditionally, is French.
- The Court of Justice deals with requests for preliminary rulings from national courts, certain actions for annulment, and appeals.

**The General Court**

- The General Court is a branch of the Court of Justice of the European Union. From its inception on 1st January 1989 to 30th November 2009, it was known as the *Court of First Instance*.
- The General Court rules on actions for annulment brought by individuals, companies and, sometimes, EU governments. In practice, this means that this court deals mainly with competition law, State aid, trade, agriculture, and trademarks.
- The creation of the General Court instituted a judicial system based on two levels of jurisdiction: all cases heard at first instance by the General Court may be subject to a right of appeal to the Court of Justice on points of law only.

**The European Union Civil Service Tribunal**

- This was a specialised court within the Court of Justice of the European Union. It was established on 2nd December 2005 and was called upon to adjudicate in disputes between the European Union and its civil service (those working in the institutions). It ceased to exist on 1st September 2016.

## 3. PRELIMINARY RULINGS: THE COLLABORATION OF JUDICIAL BODIES OF MEMBER STATES

- Article 267 of the TFEU establishes that the CJEU *"shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of the Treaties; (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union (…)".*
- Article 19 of the TEU sets out the possible procedure for a "reference for a preliminary ruling".

An admissible reference for a preliminary ruling must satisfy certain requirements. For example, (a) the national court must demonstrate that a question of European Union Law exists, i.e. it must concern a dispute to which EU Law is applicable; and (b) a genuine dispute must exist, since the function of the Court of Justice in this type of procedure is to correctly interpret the law to be applied rather than to give an advisory opinion.

Taking this into account, a national court that refers to the CJEU must then apply the law to the facts established by EU Law as interpreted by this court. The procedure for the reference for a preliminary ruling is intended to coordinate the decisions of the national courts in the sphere of the European Union, assisting the administration of justice in the Member State and not delivering advisory opinions on general or hypothetical questions. It is mainly a way of guaranteeing the uniformity of EU Law. In addition, it has grown into an important guarantee of individual and fundamental rights in the European Union.

Unlike other jurisdictional procedures, the reference for a preliminary ruling is not considered an "appeal" issued against a European or National legal situation but rather a preliminary question on the application of European Union Law in the legal order of a Member State. The procedure for a reference for a preliminary ruling therefore enables not only active cooperation between the respective national courts and the CJEU but also, and most importantly, the uniform application of European Law throughout the European Union.

Any national court for which a dispute has been brought forward and the application of a rule of European law raises questions can decide to refer to the Court of Justice for it to resolve those questions. In fact, there are two types of reference for a preliminary ruling. The first is a reference for a preliminary ruling on the interpretation of a European instrument (for which the national judge requests the CJEU to clarify a point of interpretation of European law so that it can apply it correctly). The second is a reference for a preliminary ruling on the validity of a European act (when the national judge requests the CJEU to check the validity of an act of European Union Law).

This procedure can therefore arise if there is a question of interpretation of European law and if there is a question on the validity of secondary European legislation. Any court or tribunal may refer a question to the CJEU for the interpretation of European law if it deems this is necessary to resolve a national legal dispute. As a general rule, for decisions for which there is no judicial remedy under national law, courts have the obligation to refer such questions to the CJEU. However, there is an important exception to this last rule: if the CJEU has already ruled on that legal issue (the so-called *acte éclairé*), or if the correct interpretation of European Law norm is considered obvious and would have the same interpretation in any court of the EU (also known as *acte clair*), this obligation ceases to exist.

A reference for a preliminary ruling is principally a request from a national court or tribunal of a Member State to the CJEU so that the latter can give an authoritative interpretation on a European Union norm or decide on the validity of such an act. This procedure is traditionally known as the "Article 234" procedure, though since the coming into force of the Lisbon Treaty in 2009, it is really the "Article 267" procedure. The effect of the national court making a reference is that the national proceedings are suspended while the CJEU's preliminary ruling is awaited.

The reference for a preliminary ruling is therefore a procedure exercised before the Court of Justice of the European Union that enables national courts to question the Court of Justice on the interpretation or validity of European law. It is open to the national judges of all Member States to determine the correct application of European Law, thus encouraging active cooperation between the national courts and the Court of Justice of the European Union and, especially and most importantly, promoting the uniform application of European law throughout the EU.

Article 267 expressly distinguishes between two types of questions that may be referred to the Court:

- questions of validity (the existence of European Union Law)
- questions of interpretation (the context of European Union Law)

The latter relates to the Treaty, the acts of the institutions of the European Union, and the statutes of bodies established by an act of the Council. The former can only refer to the acts of European Union institutions.

However, both types of questions have the same aim: to provide national courts with the means to apply European Union Law correctly in a pending procedure. Although such a reference can be made only by a national court, all parties to the proceedings before that court, the Member States, and the European institutions may take part in the proceedings before the Court of Justice.

The preliminary ruling therefore takes the form of a judgment, which reveals the non-adversarial nature of this type of procedure. We must remember that the question is brought to the CJEU by a national court of a Member State. The preliminary ruling merely describes the facts of the case, poses the question of the interpretation and application of EU Law, lets the Court make an abstract statement of the law by means of a judgment that answers the questions referred, and provides a statement regarding the validity or interpretation of the rule of EU Law in question. At the end of the procedure, the judgement of the CJEU provides an answer to the questions posed by the national judge of the Member State regarding the correct interpretation of EU Law.

Effects of the preliminary ruling (the "judgment"):

- As part of the main or original procedure. preliminary ruling is binding in its effect on the proceedings that drove the national court to bring forth the reference for a preliminary

ruling. It is not only binding on the court that made the reference but also on any other court in that Member State that is asked to make a decision in the same case. It is therefore binding on the court of appeal when the reference for a preliminary ruling is made by a lower court in the exercise of its right but it is also potentially binding on the lower court if the case is "remitted" by the appellate court for a new judgment. The fact that the preliminary ruling is binding in the main proceedings essentially means that the national courts that have jurisdiction in a case must make a decision to solve the conflict – for which the CJEU was asked to give a judgment – based on the interpretation given by the CJEU. This means that the national courts will not be able to deviate from the Court's ruling and will have to apply the European Union Law rule in question as interpreted by the Court.

- As part of EU case-law doctrine. The judgment on a reference for a preliminary ruling can also have legal effects as a legal precedent. The commonly accepted view has been that a preliminary ruling is directly binding only in relation to the proceedings in which the reference was made. However, this does not necessarily mean that it is not possible for a preliminary ruling to serve as a model for another legal dispute of a different case, for its eventual solution, when similar questions about the interpretation of European Union Law are brought forward. The value of preliminary rulings as precedents may therefore be compared with the effect of decisions of the highest courts in the respective national laws.

The same applies to preliminary rulings made in proceedings to determine the validity of European Union legal measures. As a general rule, preliminary rulings by the CJEU on questions of the correct interpretation of EU Law are only effective *inter partes*. This is clear from the wording of the articles that a preliminary ruling has no directly binding effect *erga omnes*. However, it is also true that they can have a "prejudicial" effect, making courts that do not have a judicial remedy able to refer the matter to the CJEU. Nevertheless, the CJEU´s decision on the questions posed to it, otherwise known as the preliminary ruling, has the force of *res judicata.*

## 6. THE CONSULTATIVE JURISDICTION OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

In comparison with the advisory or consultative competence of other European bodies (the European Economic and Social Committee or the Committee of Regions, which adopt non-legally binding reports or views), the consultative jurisdiction exercised by the Court of Justice is expressed by means of legally binding "opinions" on the interpretation of EU Law.

# PART 5: EXTERNAL ACTION OF THE EUROPEAN UNION [NOT FOR THE EXAM]

## LESSON 9: EXTERNAL ACTION OF THE EUROPEAN UNION (I)

1. The EU as a subject of International Law. 2. The external competence of the Union: extent, scope and nature. 3. The Common Foreign and Security Policy (CFSP): material scope, structure and functioning. 4. The Common Security and Defence Policy.

For more information, read *The European Union's external relations a year after Lisbon*, PANOS KOUTRAKOS (ed.), Centre for the Law of EU External Relations (CLEER) WORKING PAPERS 2011/3. Available at: http://www.asser.nl/upload/documents/772011_51358CLEER%20WP%202011-3%20-%20KOUTRAKOS.pdf

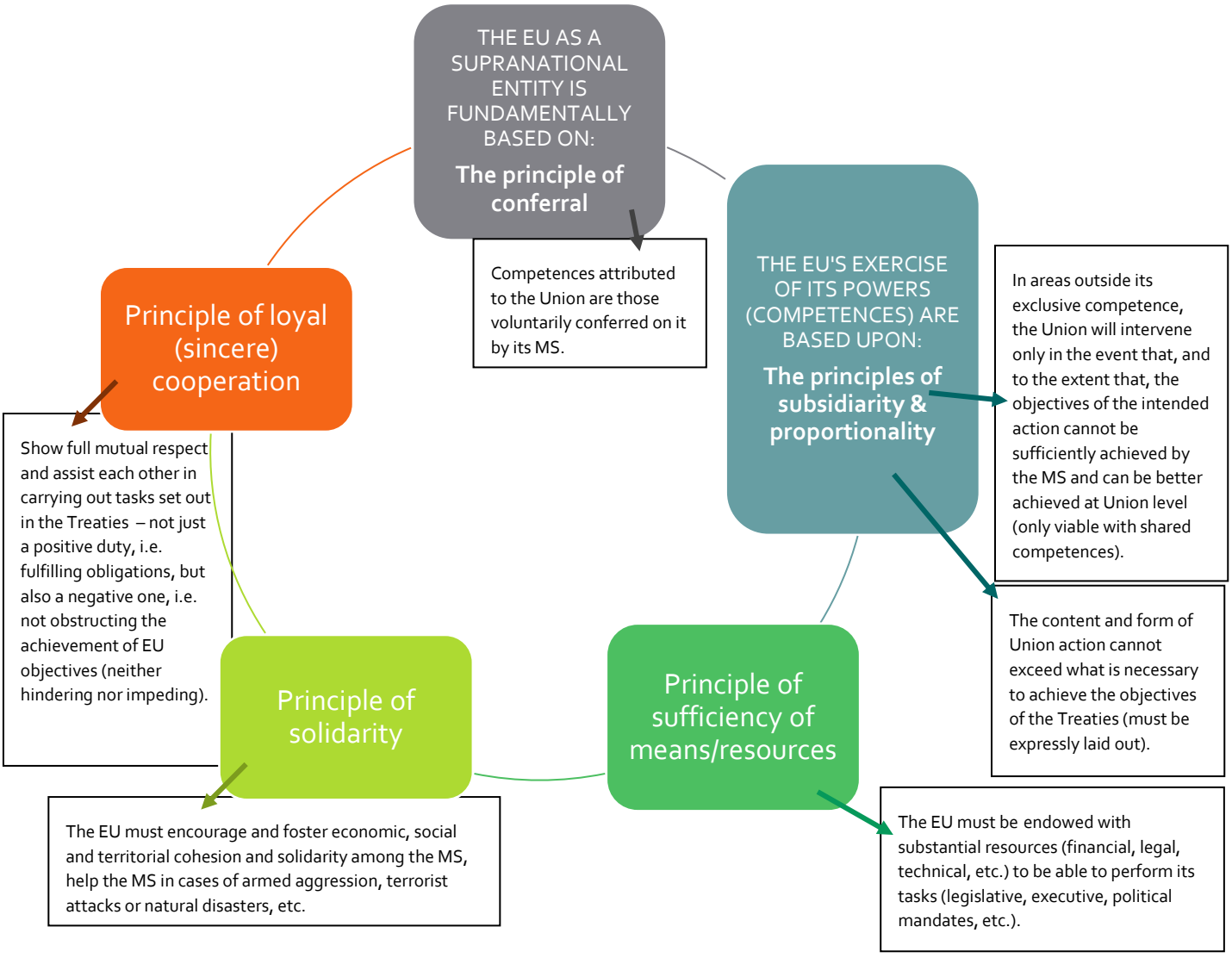
## LESSON 10: EXTERNAL ACTION OF THE EUROPEAN UNION (II)

1. The EU's relations with international organizations and third countries. 2. Cooperation policy and humanitarian aid. 3. The European External Action Service.

For more information, see https://www.youtube.com/user/EUExternalAction

# ANNEX

## I. PRINCIPLES OF EUROPEAN UNION LAW



## II. PRINCIPLES GOVERNING THE RELATIONSHIP BETWEEN THE EU AND THE MEMBER STATES


EUR-Lex Access to European Union law

Source: http://eur-lex.europa.eu Summaries

*"THE DIRECT EFFECT OF EUROPEAN LAW*

*The principle of direct effect enables individuals to immediately invoke a European provision before a national or European court. This principle only relates to certain European acts. Furthermore, it is subject to several conditions.*

*The direct effect of European law is, along with the principle of precedence, a fundamental principle of European law. It was enshrined by the Court of Justice of the European Union (CJEU). It enables individuals to immediately invoke European law before courts, independent of whether national law test exist.*

*The direct effect principle therefore ensures the **application** and **effectiveness** of European law in EU countries. However, the CJEU defined several conditions in order for a European legal act to be immediately applicable. In addition, the direct effect may only relate to relations between an individual and an EU country or be extended to relations between individuals.*

***Definition***

*The direct effect of European law has been enshrined by the Court of Justice in the judgement of **Van Gend en Loos** of 5 February 1963. In this judgement, the Court states that European law not only engenders obligations for EU countries, but also rights for individuals. Individuals may therefore take advantage of these rights and **directly invoke European acts** before national and European courts. However, it is not necessary for the EU country to adopt the European act concerned into its internal legal system.*

***Horizontal and vertical direct effect***

*There are two aspects to direct effect: a vertical aspect and a horizontal aspect.*

***Vertical direct effect** is of consequence in relations between individuals and the country. This means that individuals can invoke a European provision in relation to the country.*

***Horizontal direct effect*** *is consequential in relations between individuals. This means that an individual can invoke a European provision in relation to another individual.*

*According to the type of act concerned, the Court of Justice has accepted either a* ***full direct effect*** *(i.e. a horizontal direct effect and a vertical direct effect) or a* ***partial direct effect*** *(confined to the vertical direct effect).*

***Direct effect and primary legislation***

*As far as primary legislation is concerned, i.e. the texts at the top of the European legal order, the Court of Justice established the principle of the direct effect in the Van Gend & Loos judgment. However, it laid down the condition that the obligations must be* ***precise****,* ***clear*** *and* ***unconditional*** *and* ***that they do not call for additional measures****, either national or European.*

*In the Becker judgment (Judgment of 19 January 1982), the Court of Justice rejected the direct effect where the countries have a margin of discretion, however minimal, regarding the implementation of the provision in question (Judgment of 12 December 1990, Kaefer & Procacci).*

***Direct effect and secondary legislation***

*The principle of direct effect also relates to acts from secondary legislation, that is those adopted by institutions on the basis of the founding Treaties. However, the application of direct effect depends on the type of act:*

- *the regulation: regulations always have direct effect. In effect, Article 288 of the Treaty on the Functioning of the EU specifies that regulations are directly applicable in EU countries. The Court of Justice clarifies in the judgement of Politi of 14 December 1971 that this is a complete direct effect;*

- *the directive: the directive is an act addressed to EU countries and must be transposed by them into their national laws. However, in certain cases the Court of Justice recognises the direct effect of directives in order to protect the rights of individuals. Therefore, the Court laid down in its case-law that a directive has direct effect when its provisions are unconditional and sufficiently clear and precise and when the EU country has not transposed the directive by the deadline (Judgement of 4 December 1974, Van Duyn). However, it can only have direct vertical effect; EU countries are obliged to implement directives but directives may not be cited by an EU country against an individual (Judgement of 5 April 1979, Ratti);*

- *the decision: decisions may have direct effect when they refer to an EU country as the addressee. The Court of Justice therefore recognises only a direct vertical effect (Judgement 10 November 1992, Hansa Fleisch);*

- *international agreements: in the Demirel Judgement of 30 September 1987, the Court of Justice recognised the direct effect of certain agreements in accordance with the same criteria identified in the Judgement Van Gend en Loos;*

- *opinions and recommendations: opinions and recommendations do not have legal binding force. Consequently, they are not provided with direct effect.*

## *PRECEDENCE OF EUROPEAN LAW*

*According to the precedence principle, European law is superior to the national laws of Member States. The precedence principle applies to all European acts with a binding force. Therefore, Member States may not apply a national rule which contradicts to European law.*
*The precedence principle guarantees the superiority of European law over national laws. It is a fundamental principle of European law. As with the direct effect principle, it is not inscribed in the Treaties, but has been enshrined by the Court of Justice of the European Union (CJEU).*

### *Definition*

*The CJEU enshrined the precedence principle in the **Costa versus Enel case** of 15 July 1964. In this case, the Court declared that the laws issued by European institutions are to be integrated into the legal systems of Member States, who are obliged to comply with them. European law therefore has precedence over national laws. Therefore, if a national rule is contrary to a European provision, Member States' authorities must apply the European provision. National law is neither rescinded nor repealed, but its binding force is suspended.*

*The Court later clarified that the precedence of European law is to be applied to all national acts, whether they were adopted before or after the European act in question.*

*With European law becoming superior to national law, the principle of precedence therefore ensures that citizens are uniformly protected by a European law assured across all EU territories.*

### *Scope of the principle*

*The precedence of European law over national laws is **absolute**. Therefore, it applies to all European acts with a binding force, whether emanating from primary or secondary legislation.*

*In addition, all national acts are subject to this principle, irrespective of their nature (acts, regulations, decisions, ordinances, circulars, etc.), irrespective of whether they are issued by the executive or legislative powers of a Member State. The judiciary is also subject to the precedence principle. Member State case-law should also respect EU case-law.*

*The Court of Justice has ruled that national constitutions should also be subject to the precedence principle. It is therefore a matter for national judges not to apply the provisions of a constitution which contradict European law.*

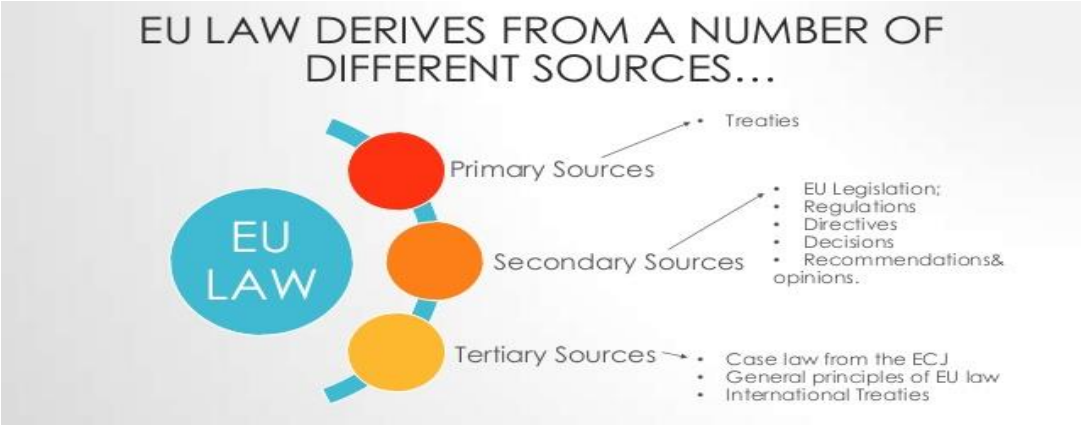
***Responsibility for ensuring compliance with the principle***

*As for the direct effect principle, the Court of Justice is responsible for ensuring the precedence principle is adhered to. Its rulings impose penalties on Member States who infringe it, on the basis of the various remedies provided for by the founding Treaties, notably proceedings for failure to fulfil an obligation.*

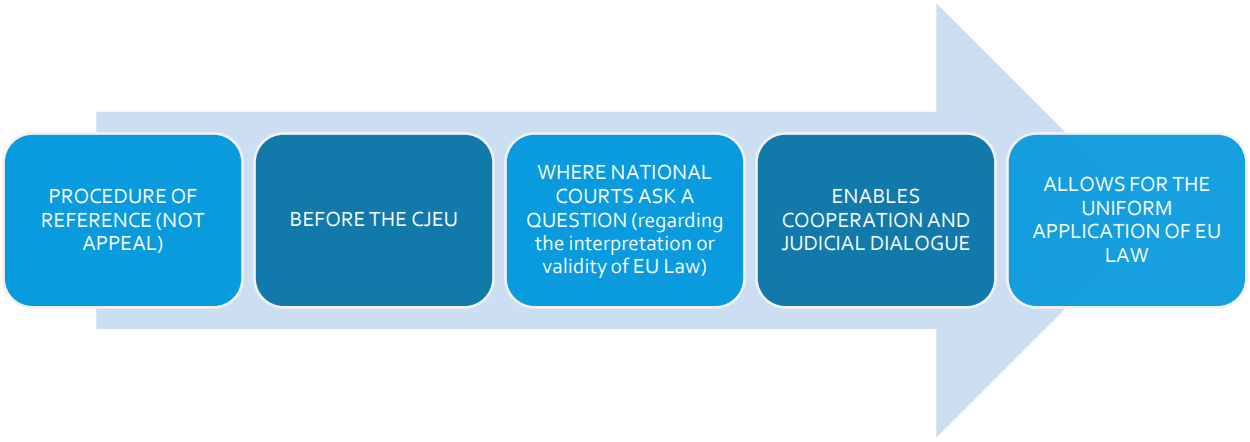
*It is also the task of national judges to ensure the precedence principle is adhered to. Should there be any doubt regarding the implementation of this principle, judges may make use of the reference for a preliminary ruling procedure. In its judgment of 19 June 1990 (Factortame), the Court of Justice indicated that national courts, as part of a preliminary ruling on the validity of a national law, must immediately suspend the application of this law until such time as the Court of Justice gives its recommended solution and the national court gives its ruling on the substance of the issue."*

## III. HIERARCHY OF EU LAW SOURCES

Traditionally, it has been said that European Union Law is based on primary legislation and secondary legislation. **Primary Law** is made up of the Treaties, general principles established by the Court of Justice of the European Union (CJEU) and international agreements. **Secondary Law** is made up of all the acts which enable the EU to exercise its powers (acts covered by Article 288 of the TFEU: regulations, directives, decisions, recommendations and opinions). In most cases, the Treaties detail the type of act which should be used. In cases where it does not, Article 296 of the TFEU permits the institutions to choose the type of act to be adopted on a case-by-case basis. The TFEU also introduces a hierarchy of norms within the secondary legislation. It establishes a distinction between legislative acts (Article 289 of the TFEU) adopted by an ordinary or special legislative procedure, delegated (non-legislative) acts (Article 290 of the TFEU) of general application which supplement or amend certain non-essential elements of the legislative act, and implementing acts (Article 291of the TFEU). However, it may be argued that, given their legal importance, other sources of EU Law exist: with a direct effect on the EU legal system is the **case-law of the CJEU**; and with an indirect effect on the guiding policies and EU legislative and political action is EU ***Soft Law*****,** or non-legally binding legislation (i.e. communications, notices, strategies, pillars, and guidelines, etc.).



## IV. PRELIMINARY RULINGS AND THE CONTRIBUTION OF THE CJEU TO THE EUROPEAN INTEGRATION PROCESS




The reference for a preliminary ruling has been a vital foundation for the construction of the European Union as we conceive it today, providing European case-law with the basis and scope for the basic principles enshrined in the Union's legal order and making it its main instrument of judicial protection. We can say that the reference for a preliminary ruling is a mechanism of judicial protection that gives national courts a tool for ensuring uniform interpretation and the application of EU Law through a non-contentious and incidental procedure. The Court's ruling is preliminary not only because it precedes the judgment of the national court that referred the question but also because it is instrumental in the legal grounds of the national judgment for resolving the national issue. Through its preliminary rulings, the CJEU holds jurisdiction to both interpret EU Law and confirm the validity of certain acts adopted by the institutions, bodies, offices and entities of the EU.

Therefore, the reference for a preliminary ruling follows a concrete set of objectives: (1) it ensures the correct and uniform interpretation of EU Law through the cooperation between the CJEU and the national courts of the Member States of the EU, (2) it guarantees uniformity in the application of EU Law, (3) it contributes by affirming the legitimacy of EU legal norms, and (4) it ensures, albeit indirectly, that the compatibility of domestic acts with EU Law is maintained.

The jurisdictional bodies of the Member States that have the legitimacy to refer questions to the CJEU have been interpreted by said court as having to comply with being a "court" that has a statutory origin, whose jurisdiction is permanent and obligatory, is responsible for applying rules of law, and is independent.

The effects of the preliminary rulings issued by the CJEU depend on the issue for what it was referred. If the reference for a preliminary ruling concerned the interpretation of EU Law, the ruling is binding on the court that presented it. However, there are also effects beyond the particular case, since it could be binding on other courts and national administrations. If the

reference for a preliminary ruling concerned the validity of an EU legal act, the ruling has an *erga omnes* effect, thus obliging the institution to adopt the provisions needed to remedy the illegalities.

In Spain the number of references for a preliminary ruling that Spanish courts have brought before the CJEU in Luxembourg is astonishing. These references have been extensive and varied both in terms of the subject matter (e.g. Administrative, Civil, Commercial, Tax, Criminal, Labour, Constitutional and Procedural Law) and the competent jurisdictional bodies that have presented them (from regional economic and administrative tribunals to the Constitutional Court).

The nature, legal effects and necessity of the references for preliminary rulings have led to the development of a uniform interpretation of EU Law, the "reorientation" of national laws to make them comply with the basic principles of the European Union and, most importantly, the establishment of a model and baseline for a process of European integration.

Through its case law in general, promoting and supporting the achievement of the EU's objectives, the contribution made by the CJEU to the European integration process has undoubtedly been significant and outstanding from both an institutional (formal) and material (substantial) perspective.

- From the institutional perspective, the repercussions that the jurisprudential creation of the principle of direct effect and primacy of EU law has had on the EU are clear: an autonomous and supranational legal system.
- From the material perspective (common and social objectives), the CJEU has contributed to the development of the Single Internal Market, fundamental rights and freedoms, non-discrimination, and the principle of mutual recognition, etc.

## V. USEFUL EU ONLINE RESOURCES

Institutions:

- https://curia.europa.eu
- https://ec.europa.eu
- https://www.ombudsman.europa.eu/start.faces

Practical information

- For children: http://europa.eu/kids-corner/index_en.htm
- For teenagers and young adults: http://europa.eu/teachers-corner/age-ranks/ages-15-and-over_en#term-199
- For internship opportunities: https://eurobrussels.com
- Complementary to studies: http://summerschoolsineurope.eu