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# Introduction to Courses delivered in English

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# Plan for the day

- Legal systems (Norway, international law, EU legal order)
- Relationship between legal systems
- Legal method in a national, international and EU perspective



# Using texts

- Texts, analysis and interpretation
- What may “interpretation” mean? Exegesis
- Relationship to public international law, human rights and EU sources of law



# The national legal system as a paradigm

- Making law and enforcing law
- Legislation
- Public administration
- Private parties
- Courts



# Sources of law in the national system

- Constitution
- Statute
- Precedent
- Other practice
  
- Values (reelle hensyn)
- Preparatory texts
- Custom



# National variation in sources of law

- What is a constitution? Written, thick or thin?
- Statute: its relative importance and coverage varies
- Precedent: the same here



# International law

- Monism & Dualism
- Are national law and international law different legal systems?
- What effect does international law have on national legal systems?
- Will national courts apply international law as well as national law?
- Which law takes precedence?



# Statute of the International Court of Justice, Art 38

- International conventions
- International custom (evidence of general practice accepted as law)
- General principles of law recognized by civilized nations
- Judicial decisions and the teachings of the most highly qualified publicists (subsidiary)
- Ex aequo et bono (on the basis of equitable principles)





# Peremptory norms or *jus cogens*

- Peremptory norms or *jus cogens* ("compelling law") accepted by the international community of states as norms from which no derogation is ever permitted.
- prohibition of genocide, maritime piracy, slavery and slave trade, torture, wars of aggression and territorial aggrandizement.



# Treaties, conventions and pacta sunt servanda

- Autonomy of states
- Capacity to enter into treaties
- Difference from national system: no international organs to enforce
- Vienna Convention on the Law of Treaties, 1969



# Customary international law

- Two conditions:
- Generally accepted, consistent and uniform practice of certain duration, and
- *Opinio juris*: viewed as mandatory by States
  
- International custom can be codified in a treaty or in a soft-law instrument (recommendations by international organizations and similar non-binding instruments)



# Judicial decisions

- ICJ Art 59: The decision of the Court has no binding force except as between the parties and in respect of that particular case
- Although ICJ does not create precedents, it tries to be consistent and contributes to the development of international law
- Decisions of other courts / tribunals?



- Supremacy of international law over domestic law?
- Direct effect of international treaties?  
Enforceability in the national courts?
- EU Treaties: supremacy, direct effect and enforceability: Costa Enel, Van gend en Loos



# EU legal system

- What kind of Treaty is the Treaty on the Functioning of the EU? (TFEU)
- What types of laws are adopted in the EU legal order?
- What is the effect of EU law in the national systems of Member States?
- Enforcing EU law: actions by Member States, institutions and individuals (not covered today)



# Expansion – geographic and functional

- Founding Treaties
  - 1951: European Coal and Steel Community
  - 1957: Treaties of Rome:
    - » European Economic Community (EEC)
    - » 1957: EURATOM
- Common market and toll union



- Treaty of Rome subject to various amendments by successive Treaties:
  - Single European Act 1986
  - Treaty of Maastricht 1992 (EU Treaty)
    - » Foreign policy and security
    - » Justice and Home Affairs
  - Treaty of Amsterdam 1997
  - Treaty of Nice 2001 (in force 2003)
  - Treaty of Lisbon (TFEU and TEU) 2009





# EEC, EC or EU?

- EEC: Treaty of Rome 1957
- EC and EU: Maastricht Treaty 1992
- EU: Lisbon Treaty 2009
- All contemporary references should now be to EU
- NB: changes in the numbering of articles in the Treaties



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- **The European Union**
- The Council of the EU (Brussels)
- The European Council ...
- The European Commission (Brussels)
- The European Parliament (Brussels, Luxembourg & Strasbourg!)
- The Court of Justice of the European Union (Luxembourg)



# Not EU

## –The Council of Europe...

- The Court of Human Rights (Strasbourg)
- The European Convention of Human Rights

- *The European Economic Area (EU+EFTA)*



# Objectives of the EU

- Economic development and peace in the post-war Europe
- Economic integration, Internal Market (EEC)
- Political cooperation on foreign policy and security (SEA 1986)
- Justice and home affairs, European Monetary Union, human rights (Maastricht 1992)
- Workers' and citizens' rights, removing remaining barriers to free movement, enlargement (Amsterdam 1997)



# Limits on EU competence

- Attributed competence: EU can only take action where it is empowered by the Treaties (principle of conferral)
  - Exclusive and shared competence, express and implied competence
- Subsidiarity: EU action only when objective cannot be achieved by the Member State
- Proportionality: No action shall go beyond what is necessary to achieve the objectives of the Treaties



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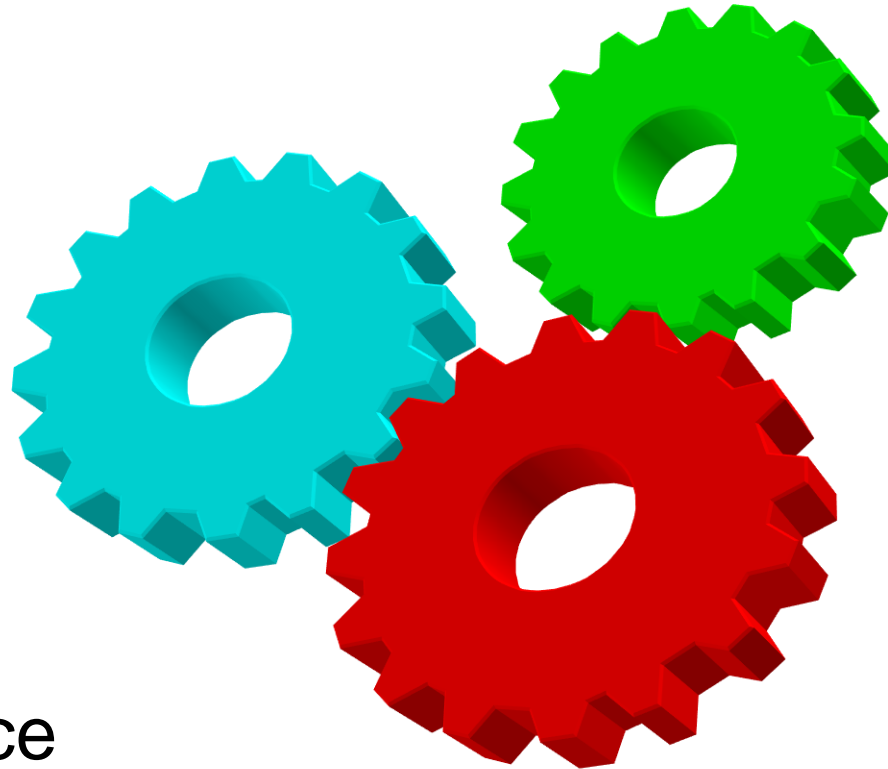
# Institutions in the EU Decision making process

## Commission

Initiates  
(legislates)  
Executes

## Court of Justice

Interprets  
Adjudicates



## Parliament

Legislates  
Controls

## Council

(Initiates)  
Legislates  
Coordinates



# Sources of EU law

- Treaties (TFEU and TEU) – primary source of EU law
- General principles of EU law
- Regulations, Directives, Decisions, recommendations and opinions (Art 288 TFEU) – secondary legislation
- Case law of the EU Court of Justice
- International treaties



- **Primary legislation: the Treaties and the Charter of Rights**
  - Lisbon Treaty, in force as of 1 December 2009
    - » Treaty on the European Union (TEU)
    - » Treaty on the Functioning of the European Union (TFEU, former EC Treaty)
- NB: Old-new numbering of articles





# Lisbon Treaty

- 7 articles + protocols and declarations
- Art 1 amends TEU and contains some principles governing the EU
- Art 2 amends EC Treaty and renames it TFEU
- EU succeeds and replaces EC
- «Pillar» structure is abandoned
- TEU and TFEU have the same legal value



- What provisions do TEU and TFEU contain?
- TEU contains mainly constitutional principles, some provisions on external action and foreign&security policy
- TFEU:
  - Principles and EU competences
  - EU citizenship
  - Internal market and free movement, competition (and other former EC)
  - Freedom, security and justice
  - EMU
  - External action



# Human rights in the EU

- General principles of EU law as developed by ECJ
- Human rights are integrated in many EU policies
- The EU Charter of Fundamental Rights (based on ECHR provisions)
- European Convention on Human Rights:
  - Article 6 TEU
  - a «special source of inspiration» for ECJ
  - EU «shall accede» to ECHR



# Legislative acts, Art 288 TFEU

- Adopted by correct legislative procedure (ordinary or special, as the case may be)
- Must be given reasons for
- Published in Official Journal (OJ)



- What is Green Paper?
  - A document published by the Commission to stimulate discussion on given topics, inviting the relevant parties (bodies or individuals) to participate in a consultation process and debate on the basis of the proposals they put forward. Green Papers may give rise to legislative developments.
- What is White Paper?
  - Commission's documents containing proposals for EU action in a specific area, sometimes following Green Papers



# Regulations

- No formal hierarchy between instruments listed in Article 288 TFEU
- A regulation has general application, is binding in its entirety and directly applicable to all Member States (Art 288.2 TFEU)



# Directives

- Binding as to the result to be achieved
- May be addressed to some, not all, Member States
- Leaves to the national authority the choice of form and method (Art 288.3 TFEU)
  - Minimum harmonization directives
  - Full harmonization directives
- Direct effect of Directives?
  - Vertical direct effect
  - Horizontal direct effect?



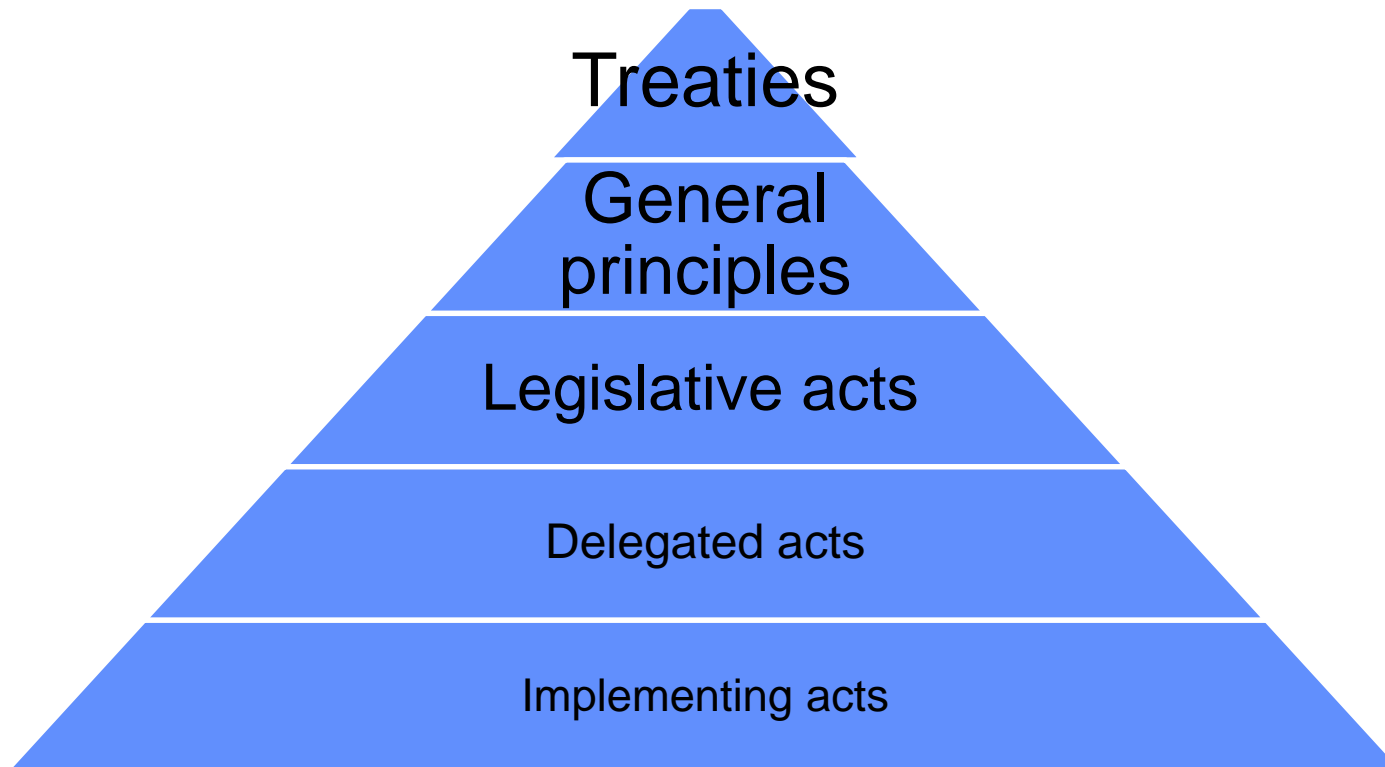
# Other secondary legislation

- Decisions is binding in its entirety
  - Addressed to some or to one Member State (often to specific addressees)
- Recommendations and opinions have no binding force ('soft law')





# Hierarchy of norms





# Court of Justice of EU

- Previously European Court of Justice (ECJ)
  - Now consists of the Court of Justice and General Court (ex-Court of First Instance, CFI)
- Competence:
  - Actions brought by Member States, institutions and persons
  - Preliminary rulings requested by national courts
  - Rulings in other cases provided by the Treaties (Arts 251-281 TFEU)



# Case law of the EU Court

- “shall ensure that in the interpretation and application of the Treaties the law is observed» (Art 19.1 TEU).
- Major role in developing EU law and promoting EU objectives



# General principles of EU Law

- Developed in EU Courts' practice
- Proportionality
- Fundamental rights
- Legal certainty & legitimate expectations
- Equality and non-discrimination
- Precautionary principle
- Procedural justice



# EEA, EFTA and Norway

- Four freedoms
  - EFTA: free trade and free competition
  - EU: economic integration and toll union
- General questions of interpretation
  - Uniform EEA law application
  - Non-discrimination
  - EU-conformity (limitations?)
  - EU-court practice is relevant



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