Introduction to the EU legal order

EU Substantive Law Course
UiO, 2019

Christophe Hillion
Outline

1. Origins and evolution of the European Union

2. Sources of EU law

3. EU institutions and decision-making

4. Effects of EU law
Origins and evolution
Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity. The coming together of the nations of Europe requires the elimination of the age-old opposition of France and Germany. Any action taken must in the first place concern these two countries.

[The French government] proposes that Franco-German production of coal and steel as a whole be placed under a common High Authority, within the framework of an organization open to the participation of the other countries of Europe. The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe (…)

The solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible …
Several (constitutive) treaties

• 1951 Treaty of Paris (ECSC)
• 1957 Treaties of Rome (EEC & EAEC)
• 1986 Single European Act
• 1992 Treaty of Maastricht
• 1997 Treaty of Amsterdam
• 2004 Constitutional Treaty (rejected)
• 2007 Treaty of Lisbon
Several enlargements
And a (likely) withdrawal
Sources of EU law
The legal foundations of the EU

Article 1  TEU

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called ‘the Union’, on which the Member States confer competences to attain objectives they have in common.

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union (hereinafter referred to as ‘the Treaties’). Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.
Multilevel legal order

Primary law

- Founding Treaties (Art 1 TEU)
- Charter of Fundamental Rights and General Principles (Art 6 TEU)
- Accession treaties (Art 49 TEU)

Secondary law

- Article 288 TFEU

External agreements

- e.g. Article 207 TFEU
- Article 218 TFEU

Case law

- Article 19 TEU
- Article 234 TFEU
- ...
EU secondary law

**Article 288 TFEU**

To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

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

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions shall have no binding force.
EU Institutions and decision-making
EU objectives

**Article 3 TEU**

1. The Union's aim is to **promote peace, its values and the well-being of its peoples.**

2. The Union shall **offer its citizens an area of freedom, security and justice** without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

3. The Union shall **establish an internal market.** It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

   It shall **combat social exclusion and discrimination,** and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

   It shall promote **economic, social and territorial cohesion,** and **solidarity** among Member States.

   It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. The Union shall **establish an economic and monetary union whose currency is the euro.**

5. 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 **contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, 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.

6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.
EU (limited) competences

Article 5 TEU

1. The limits of Union competences are governed by the **principle of conferral**. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the **Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties** to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States

(...)


Nature of EU competences

Article 2 TFEU

1. When the Treaties confer on the Union **exclusive competence** in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.

2. When the Treaties confer on the Union a **competence shared with the Member States** in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.

3. The Member States shall coordinate their economic and employment policies within arrangements as determined by this Treaty, which the Union shall have competence to provide.

4. The Union shall have competence, in accordance with the provisions of the Treaty on European Union, to **define and implement a common foreign and security policy**, including the progressive framing of a common defence policy.

5. In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to **carry out actions to support, coordinate or supplement the actions of the Member States**, without thereby superseding their competence in these areas.

Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of Member States' laws or regulations.

6. The **scope of and arrangements for exercising the Union's competences** shall be determined by the provisions of the Treaties relating to each area.
EU institutional framework

Article 13 TEU

The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.

The Union's institutions shall be:
— the European Parliament,
— the European Council,
— the Council,
— the European Commission (hereinafter referred to as ‘the Commission’),
— the Court of Justice of the European Union,
— the European Central Bank,
— the Court of Auditors.

2. Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation.
e.g. internal market measures

Article 114(1) TFEU

(...) The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.
Effects of EU law
Obligations of Member States

Article 4(3) TEU

Pursuant to the principle of sincere cooperation, the Union and the 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 measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

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.
Article 258 TFEU

If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.
Article 260 TFEU

1. If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court.

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.
Direct effect of (some) EU norms

ECJ, judgment of 5 Feb 1963, in Case 26/62 van Gend & Loos [ECLI:EU:C:1963:1]

The objective of the EEC Treaty, which is to establish a common market, the functioning of which is of direct concern to interested parties in the community, implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the preamble to the Treaty which refers not only to governments but to peoples. It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the exercise of which affects member states and also their citizens. Furthermore, it must be noted that the nationals of the States brought together in the Community are called upon to cooperate in the functioning of this Community through the intermediary of the European Parliament and the Economic and Social Committee.

In addition, the task assigned to the Court of Justice under article [234 TFEU], the object of which is to secure uniform interpretation of the Treaty by national courts and tribunals, confirms that the states have acknowledged that Community law has an authority which can be invoked by their nationals before those courts and tribunals. The conclusion to be drawn from this is that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals. Independently of the legislation of member states, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the Community.
Supremacy of EU law (1)

ECJ, judgment of 15.7.1964, 6/64 Costa v. ENEL [ECLI:EU:C:1964:66]

By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the treaty, became an integral part of the legal systems of the member states and which their courts are bound to apply.

By creating a community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the states to the community, the member states have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.

The integration into the laws of each member state of provisions which derive from the community, and more generally the terms and the spirit of the treaty, make it impossible for the states, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity. Such a measure cannot therefore be inconsistent with that legal system. The executive force of community law cannot vary from one state to another in deference to subsequent domestic laws, without jeopardizing the attainment of the objectives of the treaty (...).
ECJ, judgment of 15.7.1964, 6/64 Costa v. ENEL [ECLI:EU:C:1964:66]

The obligations undertaken under the Treaty establishing the Community would not be unconditional, but merely contingent, if they could be called in question by subsequent legislative acts of the signatories. Wherever the Treaty grants the states the right to act unilaterally, it does this by clear and precise provisions (...). Applications, by Member States for authority to derogate from the Treaty are subject to a special authorization procedure (...) which would lose their purpose if the Member States could renounce their obligations by means of an ordinary law.

The precedence of Community law is confirmed by article [288 TFEU], whereby a regulation ‘shall be binding' and 'directly applicable in all member states'. This provision, which is subject to no reservation, would be quite meaningless if a state could unilaterally nullify its effects by means of a legislative measure which could prevail over Community law.

It follows from all these observations that the law stemming from the treaty, an independent source of 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. The transfer by the states from their domestic legal system to the Community legal system of the rights and obligations arising under the treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the community cannot prevail.