



Public Law of the European Union

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NKE, Budapest

2020

Session 1-2

Sources

- Compulsory readings:
- Robert Schütze: An Introduction to EU Law, 2nd ed., Cambridge University Press, 2015, 345 p, ISBN 9781107530324
- Recommended readings:
- Robert Schütze: European Constitutional Law, 2nd ed., Cambridge University Press, 2015, 552 p, ISBN 9781316503942
- Paul Craig - Gráinne de Búrca: EU Law - Text, Cases and Materials, 6th ed., Oxford University Press, 2015, 1380 p, ISBN 9780198714927

Topics

1. Historical overview of EU integration
2. Legal personality, fundamental values, integration objectives, membership
3. Competences of the EU
4. General overview of the institutions; European Council
5. Council of the EU
6. European Parliament
7. European Commission
8. Institutions of the monetary policy; EU budget; Court of Auditors; European Investment Bank
9. Court of Justice of the European Union
10. Advisory bodies and agencies
11. Legislative and non-legislative procedures
12. EU citizenship
13. Protection of fundamental rights in the EU
14. Immunity and liability
15. Officials, functionaries and staff

What is expected?

- Written examination

National legal basis of the EU I.

- ***Fundamental Law of Hungary***

Q) cikk (3) Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by **promulgation** in legal regulations

- **Monist approach:** based on reciprocity (e.g. The French legal system)
- **Dualist approach:** international law becomes part of the national law by promulgation

National legal basis of the EU II.

*Article E) of the Fundamental Law**

- (1) In order to enhance the liberty, well-being and security of the people of Europe, Hungary shall contribute to the creation of European unity.
- (2) With a view to participating in the European Union as a Member State and **on the basis of an international treaty**, Hungary may, to the extent necessary to exercise the rights and fulfil the obligations deriving from the Founding Treaties, **exercise some of its competences set out in the Fundamental Law jointly with other Member States**, through the institutions of the European Union.
- (3) The law of the European Union may, within the framework set out in Paragraph (2), **lay down generally binding rules of conduct**.
- (4) For the authorisation to recognise the binding force of an international treaty referred to in Paragraph (2), **the votes of two-thirds of the Members of the National Assembly shall be required**.

Is EU law international law?

- Article E) is *lex specialis* with respect to Article Q)
- Even though Article E) talks about an 'international treaty', it is still different from the classical international law -> *sui generis* theory!

Historical overview


I. European Integration from Today's Perspective

Process of European integration:

A more and more intensive coordination of more and more activities between more and more European States.

The political character of the EU today?

Between (federal) state and international organization.



Recent discussion on deepening and enlargement of European integration:


Eurosceptics:

- Want to **reduce** European **integration**
- want to **strengthen** the importance of **national governments and parliaments**
- **consider European integration a means of power and exploitation** whereby powerful Eurocrats make their own politics far away from citizens and the unfettered big capital looks for higher and higher profits to the detriment of the consumer, the workers, the small entrepreneurs, and the natural environment (**deficit in democracy**).



Eurofans:

- want to **remove** all remaining **barriers** to trade and to the mobility of the factors of production as soon as possible in order to enable all people to benefit from the enormously increased possibilities for mutually beneficial exchanges.
- want to **coordinate and harmonize** more **policy** issues at the European level



◦ The **basic motive** for initiating the process of European integration was more a political than an economic one. The founding fathers of European integration

- sought to avoid the excess of nationalism and of the nation state system that had been demonstrated by the German Nazi regime
- sought to open up the national economies as a means of avoiding the protectionism that had characterized inter-war Europe.



The very beginning:

September 19, 1946: Speech by **Winston Churchill** at Zürich University:

“We must set up a sort of United States of Europe ... There can be no revival of Europe without a spiritually great France and a spiritually great Germany ... In this undertaking which is so urgently necessary, France and Germany together must take the lead”.

Western Union (1947) -> Western European Union (1954) v. NATO (1949); Warsaw Pact (1955)

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- https://multimedia.europarl.europa.eu/hu/history-fathers-of-europe_V001-0002_ev

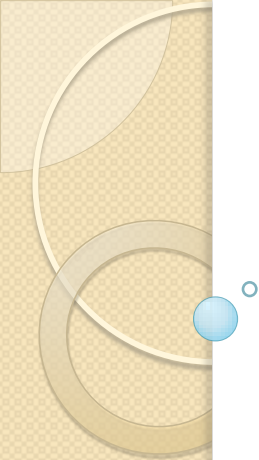


May 9, 1950: Based on a proposal by the French politician and entrepreneur **Jean Monnet** to supervise the German and French coal and steel production by a supranational authority French Foreign Minister **Robert Schuman** announced the so-called “Schuman-Plan” of a “Montan-Union”.

April 18, 1951: France, Germany, Italy, Belgium, the Netherlands and Luxembourg signed the treaty on the “European Coal and Steel Community” (ECSC) – coming into force 1952, terminated after 50 years in 2002.

The institutions of the ECSC:

- The so-called **High Authority** as a supranational authority was created (first president. Jean Monnet).
- **Council of Ministers**, comprising representatives of member states' governments
- **Consultative Committee**, consisting of representatives of the relevant interest groups.
- **Assembly**, consisting of 68 delegates from the six national parliaments
- **European Court of Justice.**



After the attempt to extend European integration by founding a **European Defence Community** had been rejected by the French National Assembly in 1954, the six member states focused more on a deeper integration of the economic sector.

The Treaties of Rome:

On March 25, 1957, the two Treaties of Rome were signed, bringing into effect on January 1, 1958

- The **European Economic Community (EEC)** and
- the **European Atomic Energy Community (Euratom)**

EEC-Treaty = central for further integration

Both communities had one Commission, one Assembly, one Council and one Court;



Elements of the EEC-Treaty:

- Establishment of a **Customs Union** (finished in 1968)
- Development of a **Common Market** (very slowly up to the middle of the eighties; important decisions by ECJ)
- Establishment of **Common Policies** (especially common trade policy, common competition policy and common agricultural policy)
- **Collective Decision-Making** at the supranational level

Further Development:

Merger Treaty (signed on April 8, 1965, came into force in 1967): merged the principal institutions of the three communities into the basic institutions of the European Community, EC (Commission, Council, European Parliament, ECJ).

Enlargement:

Great Britain's application for accession to the EC was two times rejected by France, in 1961 and 1967. Only after **de Gaulle's** resignation the first enlargement of the EC has come into effect (Pompidou, 1969).

January 1, 1973: The former EFTA-states **Denmark, Great Britain** and **Ireland** became new members. (The **Norwegian** parliament voted against accession)

January 1, 1981: **Greece** joins the EC (no military junta anymore)

January 1, 1986: **Spain** and **Portugal** join the EC (no Franco and Salazar anymore)

Enlargement in 1995

After the end of the “cold war” the “neutral” countries and former EFTA states **Austria, Finland and Sweden** became new members

The accession of **Norway** was stopped by a referendum.

Further enlargements

◦ **May 1, 2004:** Poland, Hungary, Czech Republic, Slovakia, Slovenia, Estonia, Latvia, Lithuania, Cyprus and Malta become new members.

January 1, 2007: Bulgaria and Romania become new members

July 1, 2013: Croatia becomes new member

2020: Brexit

*Other possible MS?**

*What are the conditions for becoming a MS?**

After the Merger Treaty: completing the internal market

◦ **February 28, 1986:** Following the White Paper the EC Member States signed the **Single European Act (SEA)**, which came into effect on July 1, 1987.

Two functions of the SEA:

- An agreement between the Member States to **revise the Treaties** concerning the three communities: making the single market program achievable; extending the responsibility of EC by research, technology and environmental protection; increased use of qualified majority voting instead of unanimity in the Council; increased power for the European Parliament; establishment of Court of First Instance).
- An original treaty between the 12 Member States regarding **cooperation in foreign affairs**.

European Economic Area (EEA)

- **May, 1992:** EC Member States and EFTA states sign agreement on the European Economic Area which extends the four basic freedoms also to the EFTA states,

This agreement has come into effect on January 1, 1994 (for Liechtenstein only on May 1, 1995). The accession of Switzerland was rejected by a referendum.

EFTA: European Free Trade Association, 1960, Stockholm - is a regional trade organization and free trade area consisting of four European states: Iceland, Liechtenstein, Norway, and Switzerland

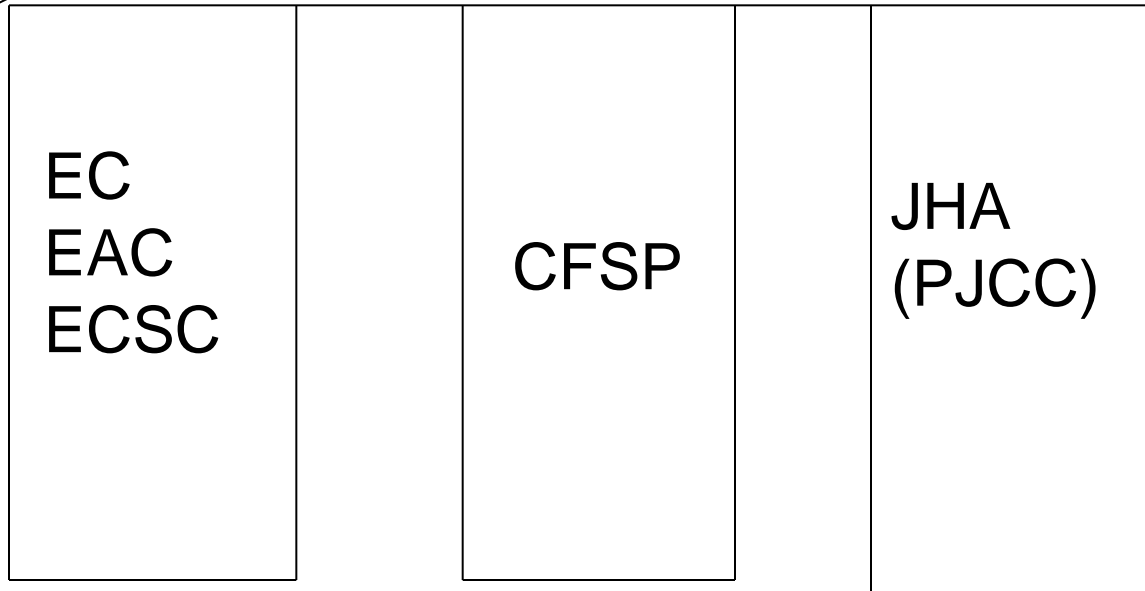
The Treaty on European Union (TEU)

A very important stimulus for completing the European internal market has been given by the TEU, the so-called “**Maastricht Treaty**”, which was signed on February 7, 1992, and came into effect on November 1, 1993.

The structure of the treaty is usually described as **resembling a temple**:



European Union



supranational
community

Intergovernmental
cooperation

First pillar:

- ° Consists of the (supranational) EC activities: Systematic revisions to and extensions of the existing treaties. Most prominent: Conditions and timetable for achieving the European Monetary Union at the end of the 1990s.

Second pillar:

Common Foreign and Security Policy (CFSP)

Third pillar:

Justice and Home Affairs (JHA), i. e. police cooperation, combating drug-trafficking and fraud, immigration from third countries and similar matters.

The Treaty of Amsterdam

This treaty which was signed on October 2, 1997, and came into force on May 1, 1999, has maintained the “temple-structure” of the Maastricht Treaty and introduced a renumbering of the old and new articles.

First pillar:

Extended responsibility of the EC for employment and social policy; strengthening of citizens' rights with respect to European institutions; **parts of the (intergovernmental) third pillar (e.g. visa policy, immigration, asylum procedures) have been shifted to the (supranational) first pillar.**



° **Second pillar:**

The figure of a “High Representative of Common Foreign and Security Policy” has been introduced (Javier Solana).

Third pillar:

Because parts of “Justice and Home Affairs” have been shifted to the first pillar, the new third pillar focuses on cooperation between police and courts with respect to criminal matters. **New name:**

“Police and Judicial Cooperation in Criminal Matters” (PJCC)

The Treaty of Nice

- This treaty, which was signed on February 26, 2001, and came into force in February 2003, provides especially for some institutional reforms in order to prepare the EU for Eastern enlargement (*left-overs* from Amsterdam).

In addition: Proclamation of a “Charter of Fundamental Rights” (not part of the treaty).

A Constitution for Europe?

At its meeting in Laeken in December 2001, the European Council established the “Convention on the Future of Europe” to debate options and make proposals for a reform of the treaty.

This “European Convention” comprised representatives of national governments, members of the European Parliament and of national parliaments, as well as representatives from the Commission, and was chaired by the former French president Valéry Giscard d’Estaing.

A Constitution for Europe? (ctd)

October 29, 2004: *Treaty establishing a Constitution for Europe* is signed.

May and June 2005: French and Dutch electorate reject the Constitutional Treaty in a referendum.

June 2005: European Council announces a 'pause' in ratification.

13 December 2007: *Treaty of Lisbon* is signed

This Treaty was prepared by an intergovernmental conference, including the Commission and the Parliament

This Treaty replaces Draft Constitution by three treaties with equal legal value:

- Treaty on European Union
- Treaty on the Functioning of the European Union
- Charter of Fundamental Rights

Target date for ratification: 1 January 2009

Come into force: December 1, 2009

Instruments of integration

◦ **Law**, not money, represents the most important instrument of integration.

We have to distinguish between

- **primary law**
 - i. e. the articles of the EC Treaty
(Member States as “Masters of the Treaty”?)
- **secondary law**
 - i. e. regulations, directives and decisions



TEU, TFEU:

<https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=celex%3AC2012%2F326%2F01>