



Public Law of the European Union

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I. Fundamental values

Article 2 TEU

- a) respect for human dignity, freedom, democracy, equality and the rule of law;
- b) respect for human rights, including the rights of persons belonging to minorities;
- c) pluralist society and respect for non-discrimination, tolerance, justice, solidarity and equality between women and men.

- Practical effect:
 - a. They are elaborated and referenced in CJEU case law - an interpretative guideline
 - b. Pleas in law in annulment proceedings - *Kadi case**
 - c. Basis for infringement proceedings
 - d. Where the conduct of a Member State is criticized
 - e. The basis of tort liability - the basis of the claim for damages against the Union
- 2 elements received normative content in Lisbon: equality and legal certainty

Equality

- Persons in similar situations should not be treated differently (except based on objective criteria - so-called reasonableness test);
- Open and covert/hidden discrimination;
- If there is an objective criterion + necessary and proportionate
- Prohibited on the basis of particular characteristics (*nationality* * + gender, race, ethnic origin...)
- Special areas of law where it appears: Labor law and employment (= for work = wage); In the case of agriculture and the CAP, between producers and consumers within the Union; as regards the provision of services

Legal certainty

- It means predictability of law
 - Legitimate expectations (in addition to demonstrating lawful conduct, an entity can expect a positive response from a clearly and clearly defined right)
 - Prohibition of retroactive effect (prohibition of application to legal relationships existing before adoption)
- * *independence of the judiciary? Article 19 TEU*

Obligations based on the values

- It is also oriented towards Member States and candidate countries - Article 49 TEU
- Preventive and sanctioning mechanism - European Council unanimous decision on infringements of Article 2 TEU - *Procedure under Article 7 TEU**
- Since 2014, there has been a preventive rule of law mechanism: dialogue

II. Objectives of the integration

- Since the Treaty of Amsterdam: the European Union offers its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is accompanied by appropriate measures concerning the control of external borders, asylum, immigration and crime prevention and law enforcement.
- Treaty of Lisbon: the Lisbon Treaty placed the objectives among the EU's objectives

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1. Area of freedom, security and justice
 2. Internal market
 3. Distortion of competition in the internal market
 4. Sustainable development
 5. Cohesion and solidarity
 6. Cultural and linguistic diversity
 7. Monetary union
 8. External action of the Union

I. Area of freedom, security and justice

The Internal Market and the emergence of an area without internal frontiers has increased risks.

Maastricht Treaty (3-pillar integration):

1. first pillar of the European Communities
2. second pillar foreign and security policy
3. third pillar cooperation in the field of justice and home affairs;

Area of freedom, security and justice 2

Treaty of Amsterdam:

transformation of the third pillar (police and judicial cooperation in criminal matters only, rather than judicial cooperation in justice and home affairs)

most of the justice and home affairs issues (asylum and immigration policy, external and internal border control, judicial cooperation in civil matters) fall within the competence of the Community institutions;

Treaty of Lisbon:

Termination of the pillar structure

unanimous decision-making changed and the jurisdiction of the European Court of Justice extended to former third pillar justice and home affairs

Area of freedom, security and justice 3

- EUROPOL
- EUROJUST

- 1999 Tampere Program
- 2005 The Hague Program
- 2010 Stockholm Program

- So-called *hot pursuit**? (Article 41 Schengen Convention 1990)
- *mutual recognition principle**?

2. Internal market

- Integration is based on the internal market
- 4 freedoms: free movement of goods, persons, services, capital



Levels of development

- Step 1: Free Trade Zone (no customs duties between participating states)
- Step 2: Customs Union, which is Step 1 + Common Customs Policy with 3rd States
- Step 3: Common Market (Step 2 + Free Movement of 4 Factors + Common Policy in Specific Areas (Agricultural Trade Policy))
- Step 4: Internal Market (Free Movement in 4 Areas Without Borders)

Current situation

- 1985: Change in effect, with the Single European Act focusing on positive integration
- 1993: the requirement of subsidiarity and proportionality with the Maastricht Treaty appears as a kind of counter-reaction
- 2002: The emergence of the euro is the most important integration step of the last twenty years
- 2009-II: Lisbon Treaty (enhanced role of national parliaments) + EMU

Fundamental freedoms

- Free movement of goods (Articles 28 to 37) (prohibition of customs duties and charges having equivalent effect, prohibition of market protection duties, prohibition of quantitative restrictions or measures having equivalent effect; *principle of mutual recognition - Cassis de Dijon**)
- Free movement of persons (Articles 45-49) (workers + EU citizens; recognition of diplomas)
- Free movement of services (3 types) + Establishment (Articles 49-62) - *What is the basis for the distinction?**
- Free movement of capital (Articles 63-66) (eg Restrictions on payment transactions)

*Is the internal market totally unlimited? **

3. Distortion of competition in the internal market

- The EU has shared competence with the Member States in the area of the internal market (Article 4), except for the competition rules necessary for the functioning of the internal market, where it has exclusive competence (Article 3);
- Objective: To maintain fair competition in the market
- Organizationally: close cooperation between the Commission and the NCAs + judicial enforcement (national courts and CJEU)

- There are two major areas of EU competition law:
- Sub-areas of classic antitrust law:
 - (a) the prohibition of agreements restricting competition (Article 101 TFEU),
 - (b) the prohibition of abuse of a dominant position (Article 102 TFEU); and
 - (c) control of concentrations (merger control) (Regulation (EC) No 139/2004)
- The rules applicable to the Member States cover the following areas:
 - (a) rules on state monopolies of a commercial character (Article 37 TFEU),
 - (b) the rules on public undertakings, special exclusive rights companies (Article 106 TFEU); and
 - (c) the prohibition of State aid (Articles 107 to 109 TFEU).

4. Sustainable development

- Article 3 (3) TEU: the EU is based on balanced economic growth, price stability and a highly competitive social market economy, aiming at full employment and social progress, together with a high level of protection and improvement of the quality of the environment.
- The Union shall also promote scientific and technical progress
- employment and social policy are merely complementary EU regulatory competences
- Emphasized in strategies (Lisbon Strategy, today: EU2020) - the fight against poverty and social exclusion;

5. Cohesion

- Article 3 (3) TEU: does the EU aim to promote economic, social and territorial cohesion and solidarity between Member States - *Convergence**?
- European Regional Development Fund (for innovation and research, digitalisation, support for small and medium-sized enterprises (SMEs)),
- European Social Fund (for improving employment and education opportunities in the European Union),
- Cohesion Fund (support for trans-European transport networks, infrastructure projects),
- European Union Solidarity Fund (provide assistance in the event of natural disasters, expressing European solidarity)

6. Cultural and linguistic diversity

- Art 3 para (3) TEU
- *What's the motto of the EU? **
- European Capital of Culture Program; Erasmus+
- It also includes programs to promote linguistic diversity
 - *EU website*?*

7. Monetary Union

- Article 3 (4) TEU: The Union shall establish an economic and monetary union whose currency is the euro. exclusive and co-ordination powers (€ zone)
- *Headquarters of the European Central Bank?**
- After Maastricht: EMU - use of the single currency and then the 2008 crisis (adoption of the Stability and Growth Pact - coordination of fiscal policies, correction of excessive deficits and reduction of excessive government debt burden)
- Further reform ideas: independent budget council plan

8. Foreign Affairs

- The role of the European Council and the Council (intergovernmental characteristics) has to be emphasized
- The European Union is represented at international level by the High Representative of the Union for Foreign Affairs and Security Policy
- European External Action Service
- Created by the Treaty of Lisbon for the management of the Common Foreign and Security Policy and to ensure the consistency of the EU's external action:
- establishment of a common security and defense policy work program, chairing Council working parties on Common Security and Defense Policy,
- Cooperation with diplomatic services (composed of officials from the relevant departments of the Council and of the Commission and staff seconded from national diplomatic services)

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- Josep Borrell Fontelles
 - Federica Mogherini
 - Catherine Ashton
 - Javier Solana

III. Membership

- Geographically part of Europe (relative)
- Value Commitment (see Article 2 TEU and the Copenhagen / Madrid criteria):
 - a) respect for human dignity, freedom, democracy, equality and the rule of law;
 - b) respect for human rights, including the rights of persons belonging to minorities;
 - c) pluralist society and respect for non-discrimination, tolerance, justice, solidarity and equality between women and men.

- Copenhagen criteria:

(a) stable institutions guaranteeing democracy, the rule of law, human rights and the respect and protection of minority rights;

(b) a functioning market economy and the ability to cope with competitive pressure and market forces within the Union;

(c) ability to assume and effectively implement the obligations of membership, including the aims of political, economic and monetary union.

(d) the candidate country must be able to apply Union law and ensure effective transposition of Union law into national law through appropriate administrative and judicial structures.

How to join the EU?

- Request to Council (Commission, EP, national Parliaments informed and continuous consultation)
- then candidate status by decision of the European Council,
- opening of accession negotiations (separated by policy area - so-called negotiation chapters)
- Priority monitoring role of the Commission and annual reports
- *acquis communautaires** + *derogations** ?
- Accession Treaty: EP agreement and unanimous approval by Council required (including ratification by Member States and amending treaty)

Suspension and Termination of Membership

- Suspension is not subject to specific provisions in the Treaties (maximum sanction for certain licenses - see Article 7 procedure)
- Withdrawal/Exit (Article 50 TEU) - novelty of Lisbon as may be required in accordance with the constitutional requirements of the Member States
- Announcement to the European Council, role of the Council in appointing the negotiator and concluding the agreement, but involving the Commission and EP
- 2 years from the date of notification (after which the Treaties shall not apply to the State)
- *Can a MS withdraw the exit notification? **
- Exclusion and dissolution of the EU - rules of international law prevail