

# Sources of EU Law I



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# Outline

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3. Primary law
4. TFEU/TEU secondary law
5. TFEU secondary law
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  2. Directive
  3. Decision
  4. Recommendation and opinion
  5. Legislative acts/non-legislative acts
6. TEU secondary law
7. Case law
- 8.

# Material and formal sources of EU law

- Material sources – economic and political conditions, motives , occasio legis,
- the will to preserve peace and create a better Europe through closer economic ties, two cornerstones of the EC
- Formal sources – where the rules and norms of EU law can be found
- EU law
  - Establishment of union, common, shared policies, powers of the Union
  - Powers and organization of institutions, rules of performance of those duties
  - Rights and duties of institutions, member states, natural and legal persons within the sphere of EU policies
  - Rules of enforcement rights and duties covered by EU policies

# Sources of EU law – overview

- 1. PRIMARY LEGISLATION
  - Union Treaties — General principles of law
- 2. THE EU'S INTERNATIONAL AGREEMENTS
- 3. SECONDARY LEGISLATION
  - Legislative acts : Regulations — Directives — Decisions
  - Non-legislative acts: Delegated acts — Implementing acts
  - Other acts
  - Recommendations and opinions — Interinstitutional agreements — Resolutions, declarations and action programmes
- 4. GENERAL PRINCIPLES OF LAW
- 5. CONVENTIONS BETWEEN THE MEMBER STATES
  - Coreper decisions — International agreements

# Where can you find sources of EU law

- Material sources – minutes, newspaper, recitals or preambles, preparatory works
- Formal sources – Official journal of the European Union
- online version: [www.eur-lex.eu](http://www.eur-lex.eu)

# Primary/secondary law

- Who is the legislator:
- Primary law – member states
- Secondary law – EU institutions

# Primary law

- Founding agreements: TECSC, TEEC (TEC ->TFEU), TEURATOM, TEU
- All its amendments, accession agreements (esp. transitional provisions)
- International treaty – Vienna Convention
- Charter of Fundamental Rights of the European Union – has the same legal value as the Treaties (originally inter-institutional agreement, afterwards attached to the Treaties)
- Legal character of the primary law
  - Binding in its entirety
  - Primacy
  - Direct application
- Establish and set powers and organization of institutions
- List of powers of the Union

- ‘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 ... 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.**’



# Costa v ENEL

- ‘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.’

# Competence of the EU

- Explicit list introduced by Lisbon Treaty
- Competence
  - Exclusive
  - Shared
  - To support coordinate or supplement the actions of the Member States

# Exclusive competence

- Binding acts – the Union only
- MS – implementation, if empowered by an act of the EU
- TFEU, Art. 3
  - (a) customs union;
  - (b) the establishing of the competition rules necessary for the functioning of the internal market;
  - (c) monetary policy for the Member States whose currency is the euro;
  - (d) the conservation of marine biological resources under the common fisheries policy;
  - (e) common commercial policy.

# Shared competence

- Legal binding acts – both, MS, EU
- MS exercise competence to the extent that the Union has not exercised its competence. The MS shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.
- Art. 4 TFEU
  - (a) internal market;
  - (b) social policy, for the aspects defined in this Treaty;
  - (c) economic, social and territorial cohesion;
  - (d) agriculture and fisheries, excluding the conservation of marine biological resources;
  - (e) environment;
  - (f) consumer protection;
  - (g) transport;
  - (h) trans-European networks;
  - (i) energy;

# Actions to support, coordinate or supplement the actions of the Member States

- EU Actions do not suspend competence of MS state
- Art. 6 TFEU
  - (a) protection and improvement of human health;
  - (b) industry;
  - (c) culture;
  - (d) tourism;
  - (e) education, vocational training, youth and sport;
  - (f) civil protection;
  - (g) administrative cooperation.

# International agreements

- Union can be party to international agreements alone or together with MS
- International agreements with third countries form a part of EU legal system
- Association agreements, trade agreements, cooperation agreements, FTAs, EEA Agreement
- Primary/secondary law, specific instruments

# Secondary law

- Legal acts of the Union
- Art. 288 et seq. TFEU: regulation, directive, decision, recommendation, opinion
- Acts adopted within ordinary legislative procedure – legislative acts
- Acts adopted within special legislative procedure, acts adopted by institution other than EP&Council – legislative acts
- Does not cover common foreign and security policy
- CFSP – Art. 25 et seq. TEU – general guidelines and decisions adopted by European Council and the Council
- Legislators: EP&Council, Council, Commission ECB

# Regulation

- “European law”
- Binding in its entirety
- “shall have general application”
- Binding for MS, institutions, natural and legal persons
- Direct application in all member states from the date of entering into force
- Same effect in all MS
- MS can merely implement it, if they are empowered to do so
- Tool of unification
- MS can neither include their text into national legislation nor amend it



# Directive

- Tool of harmonization
- binding, as to the result to be achieved
- Binding for member states
- MS are obliged to transpose directive into national legal order
- Methods of directive
  - Exact text to be transposed
  - Options
  - Goal or framework only

# Decision

- Binding in its entirety
- Binding only for its addressees
- Addressees: MS, institutions, bodies and agencies, MS, natural and legal persons
- Various types of decisions - “legislative” type (e.g. establishing organization, rules), “administrative” type (e.g. imposing fines), “nomination” type, sui generis type (others)
- Notification to addressees
- For others that addressees – soft law

# Recommendation, opinions, other soft law

- Non-binding
- Non-binding?
- Legal certainty – legitimate expectations
- Different types of soft law of various types – recommendations, opinions, avis, guidelines, notices, etc.

# Delegated/implementing acts

- Regulation/directive
- Delegated act
  - act of general application to supplement or amend certain non-essential elements of the legislative act
  - Delegation made by legislative act: objectives, content, scope and duration of the delegation of power shall be explicitly defined
  - Adopted by the Commission
  - Delegation can be revoked by the EP or the Council
  - Act is adopted only if the EP or the Council has expressed any objections
- Implementing act
  - In general, MS are responsible for implementation
  - Necessity of uniform implementation
  - Adopted by the Commission or the Council (CFSP)

# Principles of proportionality and subsidiarity

- Art. 269 TFEU
- Where the Treaties do not specify the type of act to be adopted, the institutions shall select it on a case-by-case basis, in compliance with the applicable procedures and with the principle of proportionality.

# Case law

- Judgments binding only inter partes
- Interpretative function of case law
- Court of Justice of the EU is not a “law maker” in Anglo-american style
- CJEU shall “find law” in texts of primary or secondary law

# Common legal principles

- It is not necessary to establish them separately – Union is based on democracy and rule of law
- Decision-making body (usually CJEU) shall identify common principles in legal systems of all MS and use them as source of law
- Before Lisbon treaty – human rights another type of source of law or a part of common legal principles; currently – primary law

# Conventions between MS

- International agreements that influence implementation of EU policies
- Treaty establishing the European stability mechanism
- Treaty on stability, coordination and the governance in the Economic and Monetary Union
- Other – esp. private international law



# Thank you for attention