



Basics of EU Law

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Structure of the Workshop „Basics of EU Law“

- **Session 1: Thursday afternoon**
 - Introduction
 - I. History of the European Integration
 - II. The Institutional System of the EU
- **Session 2: Friday morning**
 - III. Structure and Sources of EU Legal Order
 - IV. The System of Legal Protection
 - V. Working with EU law
- **Session 3: Friday afternoon**
 - VI. The Individual as Political Subject
 - VII. The Individual as Economical Subject
 - Case Study
- **Session 4: Saturday morning**
 - VIII. The EU Legal System and Language(s)
 - Final Discussion

I. History of the European Integration

History of the European Integration

■ The Beginnings

- Pan-European Movement (*Coudenhove-Calergi*)
- 19 September 1946: Zurich speech of *Winston Churchill*
- 9 May 1950: „Discours du Salon de l’Horloge“ of French Foreign Minister *Robert Schuman*
- 9 May: **Europe Day**



History of the European Integration

■ The Plurality of International Organizations in Europe – The Different Channels of Integration

- there is a series of International Organizations active in Europe
- European Union (EU) is only one of them, but probably the best known
- **Working Paper: „European Capitals“**



History of the European Integration

■ The Plurality of International Organizations in Europe – The Different Channels of Integration

- **Council of Europe**
 - Founded in 1949
 - Seated in Strasbourg (France)
 - European Convention on Human Rights of 4 November 1950
 - Main Institutions: Council of Ministers, European Court of Human Rights
 - 47 Member States
 - Accession of Croatia in 1996



History of the European Integration

■ The Plurality of International Organizations in Europe – The Different Channels of Integration

□ Organization for Security and Co-operation in Europe (OSCE)

- Originally: Conference for Security and Cooperation in Europe (CSCE)
- Founded in 1975: *Final Act of Helsinki*
- Seated in Vienna
- Admission of Croatia in 1992



History of the European Integration

■ The Plurality of International Organizations in Europe – The Different Channels of Integration

□ Organization for Economic Co-operation and Development (OECD)

- Originally: Organisation for European Economic Co-operation (OEEC) → founded in 1948
- 1961: reformed and renamed to OECD
- Seated in Paris
- Until now Croatia is not a Member State



History of the European Integration

■ The Plurality of International Organizations in Europe – The Different Channels of Integration

□ North Atlantic Treaty Organization (NATO)

- Founded in 1949
- Seated in Brussels
- 25 May 2000: Croatia became a member of the NATO Partnership for Peace Framework
- Candidate for Membership (probably in 2008)



History of the European Integration

■ The Plurality of International Organizations in Europe – The Different Channels of Integration

□ Global International Organizations represented in Europe

■ United Nations (UN)

- Two of four main UN offices are located in **Geneva** and **Vienna** (next to New York and Nairobi)
- One of the six principal organs: **International Court of Justice (ICJ)** in The Hague
- **International Criminal Tribunal for the former Yugoslavia (ICTY)** in The Hague as a special body (since 1991)
- Croatia is a Member State since 22 May 1992

■ International Criminal Court (ICC) in The Hague (since 2002)

- Croatia is a State Party since 21 May 2001



History of the European Integration

■ The Plurality of International Organizations in Europe – The Different Channels of Integration

□ „European law“

- *in a wide sense*: law created in the framework of all European International Organizations
 - EU, Council of Europe, OSCE, etc
- *in a narrow sense*: **law of the European Union = EU law**
 - this will be the main focus of the workshop
 - EU as a complex, non-monolithic structure
 - has to be understood against its historical background



History of the European Integration

■ Da capo: Schuman Declaration of 9 May 1950

- *idée inspiratrice* of integration process building up the EU
- **Jean Monnet** as *spiritus rector*
 - Influenced by neofunctionalism (*Ernst B. Haas*)
 - Creation of „spill-over effects“
- Main contents:
 - „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.“



History of the European Integration



■ Da capo: Schuman Declaration of 9 May 1950

- „The French Government proposes that action be taken immediately on one limited but decisive point ... 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 ...“
- „In this way, there will be realized simply and speedily that fusion of interest which is indispensable to the establishment of a common economic system; it may be the leaven from which may grow a wider and deeper community between countries long opposed to one another by sanguinary divisions.“
- „This proposal will lead to the realization of the first concrete foundation of a European federation indispensable to the preservation of peace.“

History of the European Integration



■ The First Community

- 1951: **Treaty Establishing the European Coal and Steel Community (ECSC) = *Treaty of Paris***
 - 6 Founding Member States: Belgium, France, Germany, Italy, Luxembourg and the Netherlands („the Six“)
 - Only French is authentic language (Art 100)
 - Limited duration: 50 years (Art 97)
 - ECSC passed away in 2002

History of the European Integration

■ The Second and Third Communities

- 1955: Messina Conference
- 25 March 1957: **Treaty Establishing the European Economic Community (EEC) & Treaty Establishing the European Atomic Energy Community (Euratom)**
= ***Treaties of Rome***
 - 6 original Member States
 - Communities have international legal personality (Art 281 TEC)
 - Dutch, French, German, and Italian are authentic languages (ex-Art 248 TEC)
 - Treaties are concluded for an unlimited period (Art 312 TEC)
 - Still in existence today



History of the European Integration

■ Highlights of the Further Structural Development of the Communities

- 1957: Convention on certain institutions common to the European Communities (single *Court of Justice* and *Assembly [=EP]* for 3 EC)
- 1965: Merger Treaty (single *Council* and *Commission* for the 3 EC)
- 1974: Creation of the *European Council*
- 1979: first elections to *European Parliament* by direct universal suffrage
- 1986: Single European Act (SEA)
 - Project of *European Single Market*
- June 1990: Dublin European Council agrees to convene two Intergovernmental Conferences
 - Economic and Monetary Union (EMU)
 - Political Union



History of the European Integration



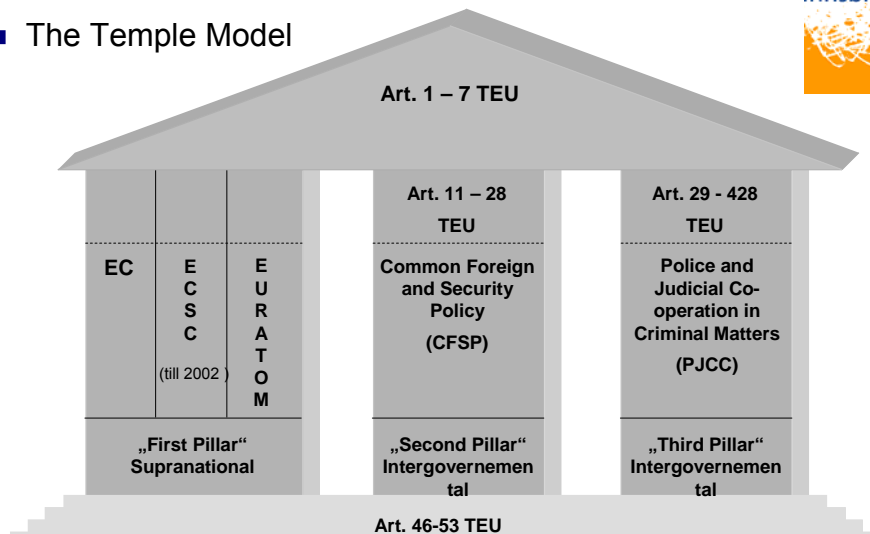
- Treaty of Maastricht of 7 February 1992

- Substantial reform of institutional structure:
 - Creation of the **European Union (EU)** as a super-structure by virtue of *Treaty on European Union (TEU)*
 - Legal personality of EU?
 - Renaming of EEC to **European Community (EC)**
 - *Treaty Establishing the European Community (TEC)*
- New Policy Fields:
 - Economic and Monetary Union (→ *Euro*)
 - Common Foreign and Security Policy (CFSP)
 - Cooperation in Justice and Home Affairs (JHA)
 - Citizenship of the Union (Art 17ff TEC)

History of the European Integration



- The Temple Model



History of the European Integration



■ Treaty of Maastricht: The Temple model

- **Common Provisions (Art 1-7, 46-53 TEU)**
 - Art 1 TEU: „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“
 - Common objectives (Art 2 TEU)
 - Single institutional framework (Art 3 TEU)
 - Common principles (Art 6 TEU)
- **The „Three Pillars“**
 - 1st Pillar: the Communities
 - 2nd Pillar: Common Foreign and Security Policy (CFSP)
 - 3rd Pillar: Police and Judicial Cooperation in Criminal Matters (PJCC)
- **Community (supranational) vs intergovernmental method**

History of the European Integration



■ Treaty of Amsterdam of 2 October 1997

- **Motivated by „left-overs“ from Maastricht**
- **Main features**
 - Strengthening of the role of the European Parliament (co-legislator; codecision procedure as standard procedure)
 - Creation of the *High Representative for CSFP* (= Secretary General of the Council) → 13.9.1999: appointment of *Javier Solana*
 - Differentiated Integration → „closer“ or „enhanced“ cooperation (Title VII = Art 43-45 TEU, Art 11f TEC)
 - Integration of the Schengen Acquis into the framework of the EU
 - Communitarization of „Visa, Asylum, Immigration and other Policies related to the Free Movement of Persons“ (Title IV TEC)
 - Renumeration of the Treaties

History of the European Integration



- **Treaty of Nice of 11 December 2000**
 - **3 major „left-overs“ from Amsterdam in view of future enlargement of the EU**
 - Weighting of votes within the Council
 - Commission reform (composition & appointment)
 - Extension of qualified-majority voting (QMV) within the Council
 - **Additional features**
 - New distribution of seats in the EP (max number of 732 MEPs)
 - Art 7 TEU: sanctions against Members States in breach of Art 6 TEU
- **Charter of Fundamental Rights of the European Union of 7 December 2000**

History of the European Integration



- **Draft Treaty Establishing a Constitution for Europe of 29 October 2004**
 - **Ratification process**
 - as of February 2007, 15 Member States have ratified
 - 2 negative referenda in France and the Netherlands in 2005
 - June 2005: Brussels European Council opts for „period of reflection“
 - Berlin Declaration of 27 March 2007: „renewed common basis“
 - **Main features**
 - Unified treaty & institutional structure
 - Dissolution of the EC → only EU is left
 - Fundamental Rights Charter becomes legally binding

History of the European Integration



■ EU Enlargement

- **6 Founding Member States** (Belgium, France, Germany, Italy, Luxembourg, the Netherlands)
- **Six rounds of enlargement**
 1. 1.1.1973: Denmark, Ireland, United Kingdom
 2. 1.1.1981: Greece
 3. 1.1.1986: Portugal, Spain
 - 1990: East Germany (former *German Democratic Republic*)
 4. 1.1.1995: Austria, Finland, Sweden
 5. 1.4.2004: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, Slovenia
 6. 1.1.2007: Bulgaria, Romania
- **Currently 27 EU Member States**

History of the European Integration



■ EU Enlargement

- **Prerequisites for EU Membership**
 - Art 49 TEU: „Any **European** state which respects the **principles set out in Article 6 (1) may apply** to become a member of the Union.“
 - Art 6 (1) TEU: „The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.“

History of the European Integration



■ EU Enlargement

□ Candidates for Membership

■ Turkey:

- April 1987: application for membership
- December 1999: candidate country status
- 3 October 2005: official opening of accession negotiations
- June 2006: 1st Chapter opened and closed (Science & Research)

■ Croatia:

- 21 February 2003: application for membership
- 17/18 June 2004: candidate country status
- 3 October 2005: official opening of negotiations
- June 2006: 1st Chapter opened and closed (Science & Research)

■ The former Yugoslav Republic of Macedonia (FYROM):

- 22 March 2004: application for membership
- 16 December 2005: candidate country status
- 8 November 2006: First Progress Report

History of the European Integration



■ EU Enlargement

□ Potential Candidate Countries

- Albania,
- Bosnia and Herzegovina,
- Montenegro
- Serbia (including Kosovo)

□ Commission Communication of 21 May 2003: „The Western Balkans and European Integration“, COM(2003) 285 final

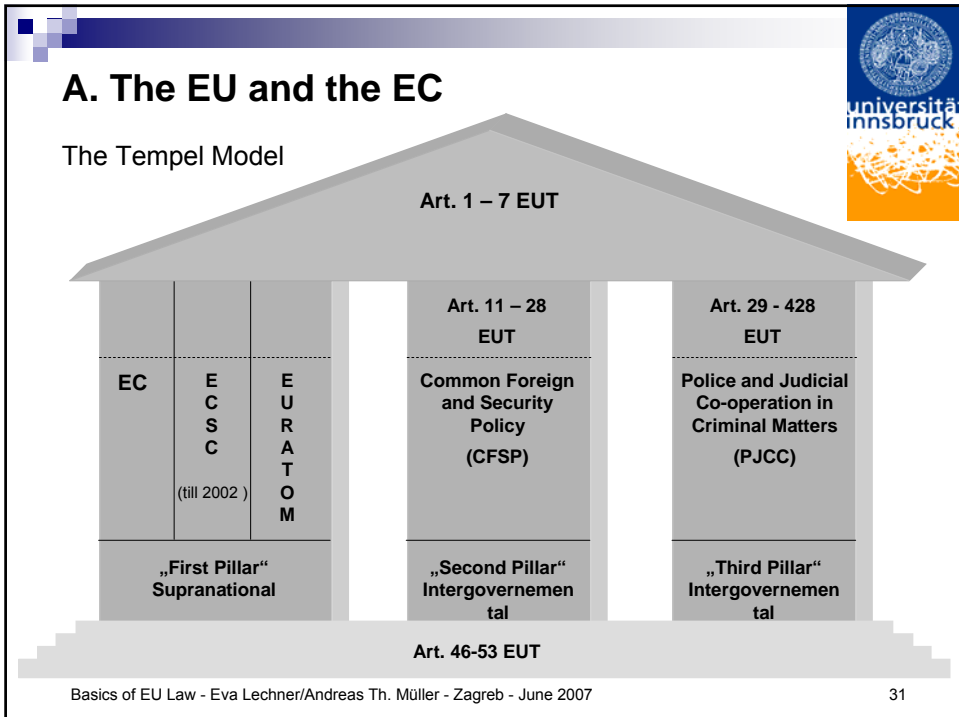
- Ultimate goal of extending membership to Western Balkans countries

□ European Council of Thessaloniki, 19/20 June 2003

- Confirmation of European perspective of Western Balkans countries
- Endorsement of **Stabilization and Association Process (SAP)** as the main political framework
- **Thessaloniki Agenda**: initiation of European Partnerships with Western Balkans countries

II. The Institutional System of the EU

- A. The EU and the EC
- B. The EU Institutions



A. The EU and the EC

■ The „Three Pillars“

- 1st Pillar: The Communities (EC and EURATOM)
- 2nd Pillar: Common Foreign and Security Policy (CFSP)
- 3rd Pillar: Police and Judicial Cooperation in Criminal Matters (PJCC)

■ The EC (together with EURATOM) as just one of three pillars constituting the EU entity

■ Significant differences between 1st Pillar and 2nd / 3rd Pillar concerning their institutional structure and legal nature



A. The EU and the EC

■ **1st Pillar:** The European Community (EC; and EURATOM)

- Supranational Organisation(s)**
- Supranational law = **EC law**
- Key characteristics, distinguishing supranational from international law

■ **2nd / 3rd Pillar**

- Intergovernmental forms of cooperation**
- Traditional forms of International law



A. The EU and the EC



Supranational Organisation

- Transfer of powers
- Independent institutions (Commission, ECJ)
- Unanimity not always required
- New, autonomous legal order
 - Supremacy
 - Direct effect

Intergovernmental form of cooperation

- Common exercise of powers
- Dependent institutions (if at all)
- Unanimity required
- No new legal order; forms of public international law

A. The EU and the EC



ECJ, *Costa v. Enel* (1964)

By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which [...] 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 personality, its own legal capacity [...] and real powers stemming from 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 thus created a body of law which binds both their nationals and themselves [...]** It follows [...] that 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.

B. The EU Institutions

Introduction

- The EU and EC have their **own institutional framework**

- Own, shared institutions (Art. 7 ECT, Art. 3 EUT)
- Own decision-making procedures
- Own decision-making powers

EU/EC no state → no comparison can be drawn to national constitutional principles



B. The EU Institutions

The main institutions: Art. 7(1) ECT

- **Council (of the European Union)**, representing the individual member states;
- **European Commission**, seeking to uphold the interests of the Union as a whole
- **European Parliament (EP)**, representing the EU's citizens and is directly elected by them
- **Court of Justice**, upholding the rule of European law
- **Court of Auditors**, checking the financing of the Union's

- **European Council**



B. The EU Institutions



Additional bodies:

- *European Economic and Social Committee* (represents civil society, employers and employees)
- *Committee of the Regions* (represents regional and local authorities)
- *European Investment Bank* (finances EU investment projects, and helps small businesses via the *European Investment Fund*)
- *European Central Bank* (is responsible for the European monetary policy)
- *European Ombudsman* (investigates complaints about maladministration by EU institutions and bodies)
- *European Data Protection Supervisor* (safeguards the privacy of people's personal data)

B. The EU Institutions



Additional bodies:

- *Office for Official Publications of the European Communities* (publishes information about the EU)
- *European Personnel Selection Office* (recruits staff for the EU institutions and other bodies)
- *European Administrative School* (task is to provide training in specific areas for members of EU staff)
- *Specialised Agencies*

B. The EU Institutions

Protocol on the location of the seats of the institutions and of certain bodies and departments of the European Communities and of Europol (1997)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES -

HAVING REGARD to Article 216 of the Treaty establishing the European Community, Article 77 of the Treaty establishing the European Coal and Steel Community and Article 189 of the Treaty establishing the European Atomic Energy Community,

HAVING REGARD to the Treaty on European Union,

RECALLING AND CONFIRMING the Decision of 8 April 1965, and without prejudice to the decisions concerning the seat of future institutions, bodies and departments,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and the Treaties establishing the European Communities:

B. The EU Institutions

Sole Article

- a) The European Parliament shall have its seat in Strasbourg where the 12 periods of monthly plenary sessions, including the budget session, shall be held. The periods of additional plenary sessions shall be held in Brussels. The committees of the European Parliament shall meet in Brussels. The General Secretariat of the European Parliament and its departments shall remain in Luxembourg.
- b) The Council shall have its seat in Brussels. During the months of April, June and October, the Council shall hold its meetings in Luxembourg.
- c) The Commission shall have its seat in Brussels. The departments listed in Articles 7, 8 and 9 of the Decision of 8 April 1965 shall be established in Luxembourg.
- d) The Court of Justice and the Court of First Instance shall have their seats in Luxembourg.
- e) The Court of Auditors shall have its seat in Luxembourg.
- f) The Economic and Social Committee shall have its seat in Brussels.
- g) The Committee of the Regions shall have its seat in Brussels.
- h) The European Investment Bank shall have its seat in Luxembourg.
- i) The European Monetary Institute and the European Central Bank shall have their seat in Frankfurt.
- j) The European Police Office (Europol) shall have its seat in The Hague.

B. The EU Institutions

The European Commission (Commission)



B. The EU Institutions

The European Commission (Commission)

■ Composition – Art. 213 ECT

- Art. 213 ECT, as amended by the Protocol on Enlargement and the accession act of Bulgaria and Romania
- The Commission should consist of **one commissioner from each Member State**
- **27 members** at present
- Further modifications in future:
 - number of commissioners will be less than number of Member States
 - Adption of a rotation system based on the principle of equality

B. The EU Institutions

The European Commission (Commission)

■ Appointment - Art. 214 ECT

- Member State governments agree on a **new Commission President**; approved by Parliament.
- The Commission President-designate, **in discussion with the Member State governments**, chooses the **other Members** of the Commission.
- **The Council** adopts the **list of nominees** by qualified majority.
- **Parliament** then interviews each nominee and votes its approval on **the whole team**.
- The new Commission is **formally appointed by the Council**, acting by qualified majority.
- Term of office: **5 years**



B. The EU Institutions

The European Commission (Commission)

■ Organisation - Art. 219 ECT

- The Commission **acts collectively** by a majority – as the Collegue of Commissioners
- Internal Organisation:
 - Each Commissioner is responsible for particular policy area
 - http://ec.europa.eu/commission_barroso/index_en.htm
 - Assisted by a staff of about 25,000
 - Organised in „Directorates-General“ and „Scervices“



B. The EU Institutions

The European Commission (Commission)

Administrative Structure: Directorates-General and Services

- **General Services**
 - Communication
 - European Anti-Fraud Office
 - Eurostat
 - Publications Office
 - Secretariat General
- **Policies**
 - Agriculture and Rural Development
 - Competition
 - Economic and Financial Affairs
 - Education and Culture
 - Employment, Social Affairs and Equal Opportunities
 - Enterprise and Industry
 - Environment
 - Fisheries and Maritime Affairs
 - Health and Consumer Protection
 - Information Society and Media
 - Internal Market and Service
 - Joint Research Centre



B. The EU Institutions

The European Commission (Commission)

- Justice, Freedom and Security
- Regional Policy
- Research
- Taxation and Customs Union
- Transport and Energy
- **External Relations**
 - Development
 - Enlargement
 - EuropeAid – Co-operation Office
 - External Relations
 - Humanitarian Aid
 - Trade
- **Internal Services**
 - Budget
 - Bureau of European Policy Advisers
 - Informatics
 - European Commission Data Protection Officer
 - Infrastructures and Logistics
 - Internal Audit Service
 - Interpretation
 - Legal Service
 - Personnel+Administration
 - Translation



B. The EU Institutions

The European Commission (Commission)

- **Tasks and Duties - Art. 221 ECT**
 - Proposing new legislation: **“Right of Legislative Initiative”**
 - Implementing EU policies and the budget
 - Enforcing European law: **“Guardian of the Treaties”**
 - Representing the EU on the international stage

B. The EU Institutions

The Council of the Union (The Council)



B. The EU Institutions

The Council of the Union (The Council)

■ Composition – Art. 203 ECT

- **A representative of each Member State at ministerial level**
- Depending on the subject matter, (nine) **different configurations** of the Council take place:
 - General Affairs and External Relations
 - Ecofin (Economic and Financial Affairs)
 - Cooperation in the fields of Justice and Home Affairs (JHA)
 - Employment, Social Policy, Health and Consumer Affairs
 - Competitiveness
 - Transport, Telecommunications and Energy
 - Agriculture and Fisheries
 - Environment
 - Education, Youth and Culture

B. The EU Institutions

The Council of the Union (The Council)

■ The Presidency – Art. 203 ECT

- Held by each Membe State in turn for six months

COUNCIL DECISION (01/01/2007) determining the order in which the office of President of the Council shall be held

Germany	January-June	2007
Portugal	July-December	2007
Slovenia	January-June	2008
France	July-December	2008
Czech Republic	January-June	2009
Sweden	July-December	2009
Spain	January-June	2010
Belgium	July-December	2010
Hungary	January-June	2011

B. The EU Institutions

Poland	July-December	2011
Denmark	January-June	2012
Cyprus	July-December	2012
Ireland	January-June	2013
Lithuania	July-December	2013
Greece	January-June	2014
Italy	July-December	2014
Latvia	January-June	2015
Luxembourg	July-December	2015
Netherlands	January-June	2016
Slovakia	July-December	2016
Malta	January-June	2017
United Kingdom	July-December	2017
Estonia	January-June	2018
Bulgaria	July-December	2018
Austria	January-June	2019
Romania	July-December	2019
Finland	January-June	2020



B. The EU Institutions

The Council of the European Union (The Council)

■ The Powers – Art. 202 ECT

- Legislation:** main decision-making body (usually legislating jointly with EP)
- Request the Commission to make use of its initiative power
- Delegation of power to the Commission
- Inter-institutional collaboration
- Co-ordination of the general economic policies of the MS
- Concluding international agreements involving the EU





B. The EU Institutions

The Council of the European Union (The Council)

- **Decisions within the Council – Art. 205 ECT**
 - **Simple majority**, Art. 205(1) ECT (for procedural decisions)
 - **Unanimity**, Art. 205(3) ECT (for foreign policy, defence, judicial and police cooperation, and taxation)
 - **Qualified majority**, Art. 205(2) ECT (regular case, applies to many decisions concerning the internal market, economic affairs and trade)
 - majority of the Member States
 - 255 from 345 votes in favour, i.e. 73.9 % of the total
 - “population-clause”, Art. 205(4) ECT



B. The EU Institutions

The Council of the European Union (The Council)

Distribution of votes for each Member State (from 01/01/2007)

Germany, France, Italy, United Kingdom	29
Spain, Poland	27
Romania	14
Netherlands	13
Belgium, Czech Republic, Greece, Hungary, Portugal	12
Austria, Bulgaria, Sweden	10
Denmark, Ireland, Lithuania, Slovakia, Finland	7
Cyprus, Estonia, Latvia, Luxembourg, Slovenia	4
Malta	3
TOTAL	345

B. The EU Institutions

The Council of the European Union (The Council)

- **The Committee of Permanent Representatives (COREPER)**
 - Art. 207(1) ECT
 - made up of delegates from the MS and some 250 committees
 - an auxiliary to the Council: organization of and preparation for meetings of the Council



B. The EU Institutions

The European Council

- **Art. 4 EUT**
- Consists of the Heads of State or Government of the MS, plus the President of the Commission
- Meets at least twice a year
- Highest **political body of the EU**
- Not yet a formal institution of the EC
- Developing the general political objectives
- Decision-making strictly by unanimity



B. The EU Institutions

The European Parliament (EP)



B. The EU Institutions

The European Parliament (EP)

■ Composition – Art. 189 ECT

- Members are directly-elected by citizens of the MS (Art. 190(1) ECT)
- 785** Members of the European Parliament at present
- Term of office: 5 years

- Democratical problem:
 - No uniform electoral procedure (Art. 190(4) ECT)
 - The number of Members of the European Parliament for each State is far from proportionate to population size (as required by Art. 190(2) ECT)

B. The EU Institutions

Number of representatives elected in each MS at present – Art. 189, 190(2) ECT

	<u>24</u>		<u>6</u>
	<u>18</u>		<u>24</u>
	<u>24</u>		<u>5</u>
	<u>14</u>		<u>27</u>
	<u>99</u>		<u>18</u>
	<u>6</u>		<u>54</u>
	<u>13</u>		<u>24</u>
	<u>24</u>		<u>35</u>
	<u>54</u>		<u>7</u>
	<u>78</u>		<u>14</u>
	<u>78</u>		<u>14</u>
	<u>6</u>		<u>19</u>
	<u>9</u>		<u>78</u>
	<u>13</u>	Total	785

B. The EU Institutions

The European Parliament (EP)

- EP's participation in the law-making process – Art. 192 ECT
 - The Consultation Procedure
 - The Co-operation Procedure, Art. 252 ECT
 - The Co-decision Procedure, Art. 251 ECT

B. The EU Institutions

The European Parliament (EP)

■ Supervisory Role

- Right to set up **Committees of Inquiry**, Art. 193 ECT
- Right of **parliamentary questions** to the Commission, Art. 197(3) ECT
- Appointment of the **Ombudsman**, Art. 195 ECT



B. The EU Institutions

The European Court of Justice (ECJ)



B. The EU Institutions

The European Court of Justice (ECJ)

- **The European Court of Justice** (in a wide sense) is made up of three courts – **Art. 220 ECT**:
 - The European Court of Justice (in a narrow sense) – ECJ
 - The Court of First Instance – CFI
 - Specialized Judicial Panels (e.g. the Civil Service Tribunal)



B. The EU Institutions

The European Court of Justice (ECJ)

■ Functions

General function: **„To ensure that in the interpretation and application of the Treaty the law is observed“** (Art. 220 ECT) - partly EUT (Art. 46 EUT)

- ECJ is a Constitutional Court
- Interpretation and „gap-filling“ of EU law → developing principles of constitutional nature
- Examining the legality of EU measures
- Providing for effective legal protection



B. The EU Institutions

The European Court of Justice (ECJ)

■ Composition of the ECJ

- 27 Judges** (one per MS), Art. 221 ECT
- Assisted by **eight Advocates-General**, Art. 222 ECT
- “Persons whose independence is beyond doubt and who possess the qualifications required for appointment, in their respective countries, to the highest judicial offices, or who are of recognised competence”, Art. 223 ECT*
- Appointed by common accord by the governments of the Member States,
- Term of Office: 6 years



B. The EU Institutions

The European Court of Justice (ECJ)

■ Composition of the CFI

- 27 Judges** (one per MS), Art. 224 ECT
- No Advocates-General (at present)
- Appointment, Term of Office and Qualifications alike those of the judges of the ECJ



III. Structure and Sources of EU Legal Order

- A. Sources of EU Law
- B. EU Competences
- C. Law-making Procedures

A. Sources of EU Law

Overview

- I. Primary Sources of EU Law**
 - 1. Foundation Treaties
 - 2. General Principles of EU Law
- II. Agreements in International Law**
- III. Secondary Sources of EU Law**
 - 1. Regulation
 - 2. Directive
 - 3. Decision
 - 4. Recommendation and Opinion
- IV. Legal Nature and Characteristics of EU Law**

A. Sources of EU Law

I. Primary Sources of EU Law

1. The foundation Treaties + the various Annexes and Protocols attached to them + Amendment Treaties + Treaties of Accession

- the ECSC Treaty of 1951 (Treaty of Paris)
- the EEC Treaty of 1957 (Treaty of Rome)
- the EURATOM Treaty of 1957 (Treaty of Rome)
- the Merger Treaty of 1965
- the Acts of Accession of the United Kingdom, Ireland and Denmark (1972)
- the Budgetary Treaty of 1970
- the Budgetary Treaty of 1975



A. Sources of EU Law

I. Primary Sources of EU Law

- the Act of Accession of Greece (1979)
- the Acts of Accession of Spain and Portugal (1985)
- the Single European Act of 1986
- the Treaty of Maastricht of 1992 (Treaty of European Union)
- the Acts of Accession of Austria, Sweden and Finland (1994)
- the Treaty of Amsterdam of 1997
- the Treaty of Nice of 2001
- the Treaty of Accession 2003
- the Treaty of Accession 2005
- the Treaty of Accession 2007



A. Sources of EU Law

I. Primary Sources of EU Law

2. General Principles of EU Law

- Not explicitly mentioned in the Treaties
- Derived by the ECJ
- In order to fill loopholes within the legal system
- Method: looking at and comparing the legal systems of the member states + public international law
- Examples:
 - *fundamental rights*
 - *the principle of proportionality*
 - *the principle of non-discrimination*
 - *the main procedural rights*



A. Sources of EU Law

II. Agreements in International Law – Art. 300 ECT

- Agreements in International Law **concluded by the EC** with non-member countries and with other International Organisations
- Must not be in conflict with primary law (**Art. 300(5) ECT**)
- Binding MS and EU Institutions, thus secondary law must not conflict with such agreements (**Art. 300(5) ECT**)
- Examples of EC's external competences:
 - **Art. 133 ECT** (Common Commercial Policy)
 - **Art. 310 ECT** (Concluding Association Agreements)
 - **Art. 302-304 ECT** (Cooperation with International Organisations)



A. Sources of EU Law

III. Secondary Sources of EU Law - Overview

- **Legal acts** created on grounds of the ECT
- Created by **EU institutions**
- **Inferior** to primary law and international agreements under Art. 300 ECT
- → **legal hierarchy** (sources of a lower rank must not be inconsistent with sources of a higher rank)
- The most important ones are listed and defined in **Art. 249 ECT**



A. Sources of EU Law

III. Secondary Sources of EU Law - Overview

- **Art. 249(1) ECT** states:
“In order to carry out their task and in accordance with the provisions of the Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall
 - make **regulations** and*
 - issue **directives**,*
 - take **decisions**,*
 - make **recommendations** or deliver **opinions**.”*
- No formal hierarchy between these sources
- This list is not exhaustive
- Binding and not-binding sources



A. Sources of EU Law

III. Secondary Sources of EU Law - Regulation

- **Art. 249(2) ECT** states:

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

- General application:** abstract normative measures
- Adresssee:** no determined (MS and/or individuals)
- Binding in its entirety, all parts
- Directly applicable:** automatically become part of the national legal system
- May have **direct effect** (if clear and unconditional)
 - Rights or/and obligations on individuals
 - Must be applied by national courts and authorities



A. Sources of EU Law

III. Secondary Sources of EU Law - Regulation

- **Example**

- **Regulation (EC) No 1049/2001** of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43)



A. Sources of EU Law

III. Secondary Sources of EU Law - Directive

- **Art. 249(3) ECT** 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.”

- Address:** just MS (addressed to specific or all MS)
- Setting out aims
- These aims must be achieved by the MS
- Leaving to the MS the choice of form and methods
- MS must implement within an implementing period
- Advantage:** harmonization by enshrining particularities of national legal systems



A. Sources of EU Law

III. Secondary Sources of EU Law - Directive

- **Implementation of Directives**

- MS are obliged to implement the directives
- Within a certain period which is set out in the directive
- **Implementation period:** 1 – 5 years or more (usual 2 years)
- **Form and method of implementation:**
 - In principle: up to the MS
 - ECJ: it has to be a law making-method
 - Finally, national law must be in conformity with the requirements of directives



A. Sources of EU Law

III. Secondary Sources of EU Law - Directive

■ Examples

- **Council Directive 76/207/EEC** of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39, 14.2.1976, p. 40)
- **Council Directive 2000/43/EC** of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22)



A. Sources of EU Law

III. Secondary Sources of EU Law - Directive

■ Concept of direct effect

- = the rights contained in EU provisions **may be directly enforceable** by nationals of a MS and national courts must apply them.
- Applies to Treaty Provisions, Provisions of Regulations and Provisions of Decisions under 3 conditions:
 - Clear/precise
 - Unconditional
 - No discretionary power
- In principle **Directives** lack direct effect! Exception: in case of **non-transposing** their provisions **may become directly effective**.



A. Sources of EU Law

III. Secondary Sources of EU Law - Directive

■ Direct effect of Directives

Vertical direct effect

Under 3 conditions Directives do have vertical direct effect:

- Transposition period has expired
- MS has not taken appropriate action
- Other 3 general conditions from above

vs.

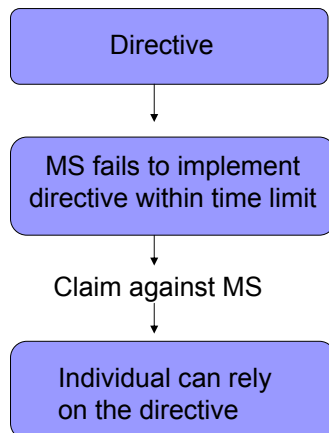
Horizontal direct effect

Directives do not have horizontal direct effect!!!

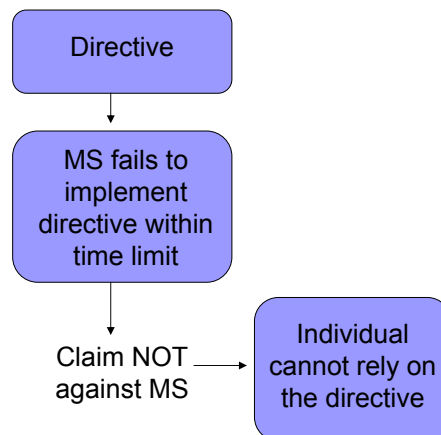
A. Sources of EU Law

III. Secondary Sources of EU Law - Directive

Vertical direct effect



No Horizontal direct effect



A. Sources of EU Law

III. Secondary Sources of EU Law - Decision

- **Art. 249(4) ECT** states:

“A decision shall be binding in its entirety upon those to whom it is addressed.”

- General application:** addressee is defined
- Addressee:** specific MS or individual person
- Binding in its entirety, all parts
- Directly Applicable:** become automatically part of the national legal system
- Direct Effect** (in specific case)
- Example:** in the area of Competition law the granting or refusal of State Aid occurs through decision (see Art. 88(2) ECT)



A. Sources of EU Law

III. Secondary Sources of EU Law – Recommendation, Opinion

- **Art. 249(5) ECT** states:

“Recommendations and opinions shall have no binding force.”

- Addressee:** all or specific MS, other EU Institutions or individuals
- NOT legally binding**
- But: national law has to be interpreted in the light of any relevant recommendation or/and opinion (Case 322/88 *Grimaldi*)
- Example:** Art. 133(3) ECT



A. Sources of EU Law

III. Secondary Sources of EU Law – Procedural requirements: Publication and Notification

Legally binding sources of secondary law

- must **state the reasons** on which they are based, **Art. 253 ECT**
- must be **published** in the **Official Journal**, **Art. 254 ECT**
- **come into force:**
 - regulation or directive: on the twentieth day following the date of their publication or on the date specified in them
 - decisions are notified to whom they are addressed and take effect upon notification



A. Sources of EU Law

IV. Legal Nature and Characteristics of EU Law

- **Principle of Direct Applicability**
 - EU law **automatically** becomes **part of the domestic legal system**
 - No additional national act of incorporation is required as it is under traditional public international law
 - Explicitly mentioned just in context of regulations, Art. 249(2) ECT
 - Even though it applies to all sources of EU law



A. Sources of EU Law

IV. Legal Nature and Characteristics of EU Law

■ Concept of Direct Effect

- Directly effective EU-Provisions grant individuals rights and/or put obligations on them which can be invoked before a national court.
- Case *Van Gend & Loos*
- Conditions:
 - Clear/precise
 - Unconditional
 - No discretionary power
- Applies to **Treaty Provisions**, Provisions of **Regulations** and Provisions of **Decisions**
- In principle **Directives** lack direct effect! Exception in case of non-transposing their provisions may become directly effective under additional conditions.



A. Sources of EU Law

IV. Legal Nature and Characteristics of EU Law

■ Supremacy of EU law

- = EU law has primacy over conflicting national legislation
- Case *Costa v. Enel* (1964):
"[...] 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".
- Legal Consequences:
 - **National court/authority** is required to give immediate effect to directly effective EU law and to ignore any conflicting national law.
 - National judge must do so without awaiting national constitutional procedures for withdrawing the conflicting national provision.



B. EU Competences / Powers

Overview

- I. The principle of “limited singular authorisation, Art. 5(1) ECT
- II. Types of EU Competences
- III. Specifications of EU-Competences



B. EU Competences / Powers

I. The principle of “limited singular authorisation, Art. 5(1) ECT

- EU has **limited competences/powers, transferred** from and by MS
- They are set out in the treaties
- EU institutions can only legislate within these transferred powers/ limited fields in order to achieve the EU-goals
- **Specific authorisation** which has to be found within the ECT is required (e.g. Art. 40 ECT in order to achieve the goal set out in Art. 39 ECT)



B. EU Competences / Powers



II. Types of EU Competences

- **Exclusive competences**
 - That is, only the EU has the power to legislate and no power is left to the MS within these fields.
 - But in a few areas only, e.g. common customs duties.
- **Shared/Concurrent/Non-exclusive competences**
 - That is, as soon as the EU acts under its competence, it assumes exclusive power with the consequence that the MS have lost their competence.
 - If the EU does not act, the MS retain the power to act.
 - i.e. most areas (e.g. the internal market)
- http://europa.eu/scadplus/scad_en.htm

B. EU Competences / Powers



III. Specifications of EU-Competences

- **Where can the EU act?**
specific matters and policy fields e.g. internal market
- **Which specific law-making procedure has to be applied?**
e.g. co-decision procedure
- **Which source of law must be used?**
e.g. regulation, directive,...
- E.g. **Art. 47 ECT** permits the Council to pass directives on the mutual recognition of diploma, exams and other licenses.

C. Law-making Procedures



- I. The Consultation (Anhörungs-) Procedure
- II. The Co-operation (Zusammenarbeits-) Procedure (Art. 252 ECT)
- III. The Co-decision (Mitarbeit-) Procedure (Art. 251 ECT)

C. Law-making Procedures



I. The Consultation Procedure

1. Proposal from **the Commission**
 2. Sent to **the EP** for an opinion
 3. Sent to **the Council** → Council can adopt the act by the majority required
 4. Act is adopted
- The Council is not bound to adopt the Parliament's opinion

C. Law-making Procedures

II. The Co-operation Procedure, Art. 252 ECT

1. Proposal from **the Commission**
2. Sent to **the Council** for a common position
3. Sent to **the EP** for an opinion

4. EP approves:

Council can
adopt by
qualified majority

Act is adopted

EP proposes amendments:

Council can adopt by
qualified majority (or if the
Commission disapproves
by unanimity).

Act is adopted

EP rejects:

Council can adopt
by unanimity

Act is adopted



C. Law-making Procedures

III. The Co-decision Procedure (Art. 251 ECT)

- http://ec.europa.eu/codecision/stepbystep/diagram_en.htm
- **Main law-making procedure**
- **EP shares legislative power equally with the Council**



IV. The System of Legal Protection

The System of Legal Protection

■ Foundations

- **Art 6 para 1 TEU:** „The Union is founded on the principles of ... the **rule of law** ...“
- **Charter of Fundamental Rights of the EU:**
 - Art 20: „Everyone is **equal before the law**.“
 - Art 47 („Right to an **effective remedy** and to a **fair trial**“): „Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal ...“
- **Draft Treaty Establishing a Constitution for Europe:**
 - Preamble: „... **rule of law** ...“
 - Art I-2: „The Union is founded on the vales of ... **rule of law** ...“
 - Art II-80: Equality before the law
 - Art II-107: Right to an **effective remedy** and to a **fair trial**

The System of Legal Protection



■ Foundations

- Art 220 TEC: „The Court of Justice and the Court of First Instance ... shall ensure that in the **interpretation and application of this Treaty the law is observed.**“
- *ECJ, Case 294/83, Parti écologiste „Les Verts“ vs European Parliament, Rec 1986, 1354, nr 23:*
 - „... the European [...] Community is a **Community based on the rule of law**, inasmuch as neither its Members States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the **basic constitutional charter, the Treaty** ... The Treaty established a **complete system of legal remedies and procedures** designed to permit the Court of Justice to review the legality of measures adopted by the institutions.“

The System of Legal Protection



■ Foundations

- Idea of „Community based on the rule of law“ (*Rechtsgemeinschaft*)
- Treaties as „**basic constitutional charter**“
 - *ECtHR 23.3.1995, Case nr 15318/89, Loizidou vs Turkey, nr 75:* ECHR as a „constitutional instrument of European public order (ordre public)“
- **Complete system of legal remedies**
- ECJ is the **guardian of EU constitutional order**

The System of Legal Protection

The Court of Justice



The System of Legal Protection

■ Legal Remedies: Overview

- **Direct Jurisdiction of the Court of Justice**
 - **Actions against Community acts**
 - Action to annul Community acts (Art 230 TEC)
 - Action for failure to act (Art 232 TEC)
 - *Petition to EP (Art 21 (1), 194 TEC)*
 - *Complaint to Ombudsman (Art 21 (2), 195 TEC)*
 - **Actions against Member States**
 - Enforcement Actions (Art 226, 227 TEC)
 - *Complaints to Commission*
- **Preliminary References/Rulings (Art 234 TEC)**

The System of Legal Protection

- **Legal Remedies: Overview**
 - **Damages Actions/Liability**
 - **Non-contractual liability of the Community (Art 235, 288 para. 2 TEC)**
 - **Art 228 (2) TEC**
 - **(Member) State liability**



The System of Legal Protection

- **Action to annul Community acts: Art 230 TEC**
 - **Admissibility**
 - **Institutions whose acts are reviewable (para. 1)**
 - a) EP, b) Council, c) Commission, d) ECB
 - **Reviewable acts (para. 1)**
 - „acts ... other than recommendations and opinions“
→ Art 249 TEC *e contrario*: acts „with binding force“
 - Case-law of the ECJ: all acts with binding legal effects or that change the applicant's legal position
 - **Time limits (para. 5)**
 - 2 months from publication / date of notification



The System of Legal Protection

■ Action to annul Community acts: Art 230 TEC

□ Admissibility: Applicants (para. 2-4)

- Question of **locus standi**: 3 categories of applicants

■ (1) Privileged Applicants (para. 2)

- a) Member States, b) EP, c) Council, d) Commission
- right to attack any act

■ (2) Semi-privileged Applicants (para. 3)

- a) Court of Auditors, b) ECB
- „for the purpose of protecting their prerogatives“ (i.e. where their interests are clearly affected)



The System of Legal Protection

■ Action to annul Community acts: Art 230 TEC

(3) Non-privileged Applicants (para. 4)

- „any natural or legal person“
 - Against the following acts:
 - **decision addressed to that person** or
 - Decisions „in form of a **regulation** or a decision addressed to **another person**“ if of „**direct** and **individual** concern“
 - „direct“: no discretion on the part of Member State
 - „individual“: question whether applicant is affected because he is member of the abstractly defined class addressed by the rule or because of attributes peculiar to him which differentiate him from all other persons
→ **Plaumann formula** (C. 25/62 *Plaumann vs Comm*)
- „being affected alone or as a member of a fixed or closed class“ (C. 106-7/63 *Töpper vs Comm*)



The System of Legal Protection

■ Action to annul Community acts: Art 230 TEC

□ Merits or Ground for Annulment (para. 3)

- Lack of competence or authority: *ultra vires*
 - Internal competence (*Organkompetenz*)
 - External competence (*Verbandskompetenz*)
→ e.g. *Case C-378/98, Germany vs EP/Council* („Tobacco Advertising“)
- Infringement of an essential procedural requirement
→ e.g. duty to state reasons (Art 253 TEC) or to state the Treaty base (*Case C-325/91 France vs Comm*)
- Infringement of the treaty or any rule relating to its application
- Misuse of power by a community institution
 - Cf French legal system: *détournement de pouvoir*



The System of Legal Protection

■ Action to annul Community acts: Art 230 TEC

□ Effect of a successful action (Art 231 TEC)

- para. 1: Court of Justice declares act to be void
- para. 2: in case of a regulation, Court shall, if it considers this necessary, state which of the effects of the regulation shall be considered as definitive
 - certain discretionary power
 - particularly used in the name of **legal certainty**
- Art 233 TEC: Community institutions are obliged to „take the necessary measures“ to comply with the judgment



The System of Legal Protection



■ Action for failure to act: Art 232 TEC

- **Admissibility**
 - **Defendants (para. 1 & 4)**
 - a) EP, b) Council, c) Comm, d) ECB
 - **Applicants (para. 1 & 3)**
 - a) Privileged applicants: i) Member States, ii) Institutions
 - b) Non-privileged applicants: any natural or legal person
→ restriction of *locus standi* like in Art 230 TEC
- **Merits:** Failure to act in violation of a Treaty duty (para. 1)
- **Procedural Requirements:** invitation to act → 2x 2 months (para. 2)
- **Effects:** Institutions must take necessary measures (Art 233 TEC)

The System of Legal Protection



■ Petition to EP: Art 21 (1), 194 TEC

- **Citizens of the Union & all residents**
- Right to address a petition to the EP on a matter
 - which comes within the **Community's field of activity**
 - and which **affects** him, her or it **directly**

■ Complaints to Ombudsman: Art 21 (2), 195 TEC

- **Citizens of the Union & all residents**
- Concerning instances of **maladministration** in the activities of the **Community** institutions or bodies
 - With the exception of Court of Justice in its judicial role

The System of Legal Protection

■ Enforcement Actions by Commission: Art 226 TEC

- Commission as the „guardian of the Treaties“ (Art 211 TEC)
- **Breach of duty**: failure to fulfil a Treaty obligation
 - not only act of Member State, but also failure to act
 - in particular: failure to implement community legislation (mainly directives) or incorrect implementation
 - Duties can arise from **primary legislation** (e.g. Art 10 TEC), but also from **secondary legislation** or ECJ decisions
 - Actions of the **legislature**, the **executive**, **local** and **regional authorities** are included
 - even failure to act against individuals → *Case C-265/95 Commission vs France („Spanish Strawberries“)*



The System of Legal Protection

■ Enforcement Actions by Commission: Art 226 TEC

- **Procedural Requirements**
 - **Informal/Administrative Stage:**
 - „package meetings“
 - **Letters of Formal Notice** (with time limit, reg. 2 months):
 - absolutely necessary as prerequisite for formal process
 - **Reasoned Opinion:**
 - gives reasons for the alleged failure of Member State
→ further time limit
 - **Judicial Stage**



The System of Legal Protection



- **Enforcement Actions by Commission: Art 226 TEC**
 - **Effects of Judgments**
 - **only declaratory judgment** → no specific sanctions
 - Art 228 para. 1 TEC: obligation of Member States to take the necessary measures to comply with the judgment
 - **further Art 226 action** based on Art 228 is possible
 - Commission must issue further reasoned opinion
 - possibility for Court of Justice to **fine** Member States → lump sums and/or penalty payments
 - Comm has established a **penalty calculation system** (gravity/duration of non-compliance, financial situation)

The System of Legal Protection



- **Enforcement Actions by Member States: Art 227 TEC**
 - minimal practical relevance → Member States prefer to ask the Commission to bring actions under Art 226 TEC
- **Complaints to Commission (by individuals)**
 - not explicitly provided for in the Treaty
 - Commission has **discretionary power** (e.g. *Case 48/65 Lütticke vs Comm*, *Case 246/81, Bethell vs Comm*)
 - Individual is unable to force the Commission to do anything → neither under an obligation to act on the complaint or even to inform the complaining individual of what was being done

The System of Legal Protection

■ Preliminary Ruling Procedure: Art 234 TEC

- most important mechanism of legal review:
 - by this vehicle the leading principles and remedies in EU law were developed by ECJ → *Van Gend en Loos*, *Costa/ENEL*, *Simmenthal*, *Francovich*, etc
- Structure *sui generis*: „non-direct action“
 - **judicial cooperation** between Court of Justice and national courts as „Community courts of general jurisdiction“ (Case *T-51/89, Tetra Pak, Rec 1990 II-309, 42*)
 - System of „**dual vigilance**“ → interests of individuals
- Function:
 - Control of validity of Community law
 - Interpretation of Community law
 - **Control of Member States behaviour**

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119



The System of Legal Protection

■ Preliminary Ruling Procedure: Art 234 TEC

- **Mode of functioning:** „*division of labour*“
 - In a pending case **involving Community law**, the national courts can refer questions to the ECJ
 - ECJ has **monopoly** on adjudicating on
 - **Interpretation** of all forms of Community law or
 - **Validity** of secondary legislation (Case *315/85, Foto Frost*)
 - **uniform interpretation & application of EU law**
 - Principally, the ECJ does not pronounce itself on domestic law
 - **Interim measures** to be granted by national courts (Case *C-213/89, Factortame*; even when validity of EU law norm at stake: *Cases C-143/88 and 92/89, Zuckerfabrik Süderdithmarschen*)
 - **Application** of the ruling to the case is not task of the Court of Justice, but by the competent national court

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120



The System of Legal Protection



■ Preliminary Ruling Procedure: Art 234 TEC

- **Who can refer?** → „court or tribunal of a Member State“
 - autonomous concept of EU law: not only judicial, but also administrative tribunals and wide range of other bodies
 - Strong indicator is level of involvement of national authorities

- **Question referred**
 - must be **necessary** to enable court to give its judgment
 - basically, this is a question of national court alone to judge
 - but still, ECJ reserves for itself the right to decline references
 - Facts and issues must be sufficiently clear
 - No „real question“: no genuine dispute/abuse of procedure
 - Question not relevant to the substance of the dispute

The System of Legal Protection



■ Preliminary Ruling Procedure: Art 234 TEC

- **Discretion or obligation to refer?**
 - para. 2: **lower courts can** ask for a preliminary ruling
 - in the discretion of the competent court → independently of any national rules of precedent or referral
 - they can refer at any stage of the proceedings and in any sort of proceedings

 - para. 3: **courts of last instance are obliged** to ask for a preliminary ruling
 - highest court for the case rather than the highest court in the Member State

The System of Legal Protection

■ Preliminary Ruling Procedure: Art 234 TEC

□ Avoiding the obligation to refer

- Previous ruling on the point (**precedent**)
 - *Case 28-32/62, Da Costa* in relation to *Van Gend en Loos*
- Answer is obvious („**acte clair**“)
 - Court might not refer if the correct application, but not interpretation, may be so obvious as to leave **no scope for any reasonable doubt** that question raised will be solved (*Case 283/81, CILFIT*)
 - Hard test: must also be obvious to courts of other Member States, independently of language differences etc



The System of Legal Protection

■ Preliminary Ruling Procedure: Art 234 TEC

□ Effects of the ruling

- Ruling is not an advisory opinion, but a **mandatory judgment** fully binding on the national court
- However, binding character is limited to the case itself
 - No system of binding precedent in EU legal order
 - But strong tendency to follow previous decisions
- By analogy to Art 231 TEC: limitation of **temporal effects**
 - Judgments held not to be retroactive because of previously unforeseen extensive and probably harmful economic consequences (*Case 43/75, Defrenne; C-262/88, Barber*)



The System of Legal Protection



■ Non-contractual liability of the Community (Art 235, 288 para. 2 TEC)

- Community must make good damage caused by its institutions or servants in the performance of their duties „in accordance with the general principles common to the laws of the Member States“
- **Requirements of liability**
 - a) wrongful act or omission
 - b) attributable to the Community
 - c) applicant must have suffered (certain/specific/proven) damage
 - d) causal link between act/omission and damage
- **Standard of liability and fault**
 - Administrative acts: negligence
 - Legislative acts: (i) **sufficiently serious** (ii) violation of a **superior rule of law** (iii) for the **protection of natural/legal persons**

The System of Legal Protection



■ State liability

- Alternative to both:
 - Commission actions against Member States
 - Difficulties generated by the lack of horizontal direct effects of directives or the entire absence of direct effects (when norm fails to satisfy the *Van Gend en Loos* criteria)
- *Cases C-6 & 9/90, Francovich:*
 - Francovich and others were made redundant when company employing them became insolvent; because of Italy's failure to implement Directive 80/987, the company had made no payments for guaranteed redundancy payment granted by directive
 - ECJ held directive was not capable of direct effects → but stated that EU law allowed an action by an individual against a Member State when it has failed to comply with EU law obligations resulting in damage to individual

The System of Legal Protection

■ State liability

- not explicitly provided for in the Treaties
- but:
 - fundamental doctrines of supremacy and direct effect
 - Obligations arising from Art 10 and 249 TEC
 - **Effet utile**: protection of individuals would be weakened if they could not claim damages for loss caused by a Member State's failure to comply with its obligations under EU law
- ergo: principle **inherent** to the Treaty that Member States should make good any damage caused to individuals which was the consequence of a breach of Community law



The System of Legal Protection

■ State liability

- **Prerequisites**
 - a) breach of an obligation under Community law (directive: *Francovich*; Treaty article: *Factortame*)
 - b) attributable to a Member State, irrespective of which branch is affected (*Case C-224/10, Köbler*; also courts of last resort)
 - c) causal link between the breach and the damage caused
 - d) manifest and sufficiently serious character of the breach
 - **Schöppenstedt formula** (*C 5/71 Zuckerfabrik Schöppenstedt*): if state was facing choices comparable to institutions when law-making (involving balancing act of many interests), seriousness of breach must be analogous to that applied to EC institutions for legislative acts under Art 288 (2) TEC



The System of Legal Protection

■ State liability

- not explicitly provided for in the Treaties
- but:
 - fundamental doctrines of supremacy and direct effect
 - Obligations arising from Art 10 and 249 TEC
 - **Effet utile**: protection of individuals would be weakened if they could not claim damages for loss caused by a Member State's failure to comply with its obligations under EU law
- ergo: principle **inherent** to the Treaty that Member States should make good any damage caused to individuals which was the consequence of a breach of Community law

V. Working with EU Law

Working with EU Law



■ Citation of EU Legal Acts

□ Founding Treaties

- „Art 6 EU Treaty“, „Art 6 TEU“, „Art 6 EUT“, „Art 6 EU“
- „Art 10 EC Treaty“, „Art 10 TEC“, „Art 6 ECT“, „Art 10 EC“

→ **Art 12 of Amsterdam Treaty**: renumeration of Treaties

- „Art F TEU“ → „**Art 6 TEU (ex Art F TEU)**“
- „Art 5 TEC“ → „**Art 10 TEC (ex Art 5 TEC)**“

■ nomenclature used by Court of Justice

- „Article 6 EU“
- „Article 10 EC“ (*new*) vs „Article 10 of the EC Treaty“ (*old*)

Working with EU Law



■ Citation of EU Legal Acts

→ Website of the Office for Official Publications of the EC:

- <http://publications.europa.eu/code/en/en-000500.htm>

- **Regulations** → since 1.1.1999: „Regulation (EC) No 232/1999“
- **Directives** → since 1.11.1993: „Directive 2004/107/EC of the European Parliament and of the Council“, „Council Directive 97/43/Euratom“
- **Decisions**: „Decision 2005/252/EC, Euratom“
- **Second & Third Pillars**
 - „Common Position 2005/340/CFSP“
 - „Framework Decision 2005/214/JHA“

Working with EU Law

■ Citation of EU Legal Acts

□ Judgments of the Court of Justice

- *before 1989*: Case 6/64, *Costa/ENEL*, Rec. 1964, p. 813
- Case C-105/03, *Pupino*, Rec. 2005, p. I-5285
- Case C-143/95 P, *Commission/Socurte et al.*, Rec. 1997, p. I-1
- Case T-177/01, *Jégo-Quééré/Commission*, Rec. 2002, p. II-2365
- *since 2005*: European Union Civil Service Tribunal
Case F-30/05, Judgment of 1.3.2007, *Sundholm/Commission*
Case T-413/06 P, *Gualtieri/Commission*



Working with EU Law

■ Citation of EU Legal Acts

□ Official Journal of the European Union (since 1.2.2003)

- **L Series**: Legislation
 - L I: Acts whose publication is obligatory (a) regulations, b) acts of EP and Council adopted under Art 251 TEC, c) directives addressed to all Member States)
 - L II: Acts whose publication is not obligatory
- **C Series**: Information and Notices (preparatory acts)
- **S Series**: Supplement
 - OJ L 32, 6.2.1968, p. 6
 - OJ C 76, 1.8.1968, p. 1.



Working with EU Law



■ Structure of EU Legal Acts

- *Annex V „Provisions concerning the forms of acts“ to Council Decision 2004/338/EC, Euratom of 22.3.2004 adopting the Council's Rules of Procedure (OJ L 106, 15.4.2004, p. 22)*
 - A. Form of regulations
 - B. Forms of directives, recommendations and opinions (EC Treaty)
 - C. Forms of common strategies of the European Council, joint actions and common positions referred to in Art 12 TEU
 - D. Forms of common positions, framework decisions, decisions and conventions referred to in Art 34 para. 2 TEU

Working with EU Law



■ Major EU Law Databases

- Case-law of the Court of Justice
 - <http://curia.europa.eu/en/content/juris/index.htm>
- EUR-Lex – The access to European Union law
 - <http://eur-lex.europa.eu/en/index.htm>
- PreLex – Monitoring of the decision-making process between the institutions
 - <http://ec.europa.eu/prelex/apcnet.cfm?CL=en>
- European Parliament – The Legislative Observatory
 - <http://www.europarl.europa.eu/oeil/index.jsp?language=en>

VI. The Individual as Political Subject

The Individual as Political Subject

■ The Individual in the EU Legal Order

- **Traditional public international law**
 - principle of „mediatization“ of the individual
 - only exceptionally: *self-executing* provisions
- **Community Law**
 - *Case 26/62, Van Gend en Loos*: „The objective of the EEC Treaty ... is more than an agreement which merely creates mutual obligations between the contracting States ... 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 ... 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.“

The Individual as Political Subject



■ Fundamental Rights

- original Treaties themselves did not contain a „Bill of Rights“
 - very much focused on economic aims & objectives
 - functionally limited economic organization non expected to encroach on traditionally protected fundamental rights
 - certain exception: „fundamental freedoms“
- pressure from European constitutional courts (in particular German *Bundesverfassungsgericht* and Italian *Corte costituzionale*)
 - challenge to supremacy of EU law because it jeopardized important rights protected under national (constitutional) law
- after initial resistance, lacuna was filled by ECJ
 - line of cases starting in **1969**
 - after *direct effect* in 1963 and *supremacy* in 1964

The Individual as Political Subject



■ Fundamental Rights

→ Successive development of **unwritten Bill of Rights**

1. *Case 29/69, Stauder, Rec 1969, 419*: „Interpreted in this way the provision at issue contains nothing capable of prejudicing the **fundamental human rights** enshrined in the **general principles of Community law** and protected by the Court“
 - Advocate General *Roemer* (p. 428): Commission decision was not being reviewed for compatibility with **national** constitutional rights, but general principles were informed by a „**comparative evolution**“ of national constitutional concepts and basic rights

The Individual as Political Subject



■ Fundamental Rights

2. *Case 11/70, Internationale Handelsgesellschaft, Rec 1970, 1125:*
 - nr. 3: „Recourse to the legal rules or concepts of **national law** ... would have an adverse effect on the **uniformity and efficacy** of Community law. The validity of such measure can only be judged in the light of Community law ...“
 - nr. 4: „However, an examination should be made as to whether or not any analogous guarantee inherent in Community law has been disregarded. In fact, **respect for fundamental rights** forms an **integral part of the general principles of Community law** protected by the Court of Justice. The protection of such rights, whilst **inspired** by the **constitutional traditions common to the Member states**, must be ensured within the framework of the structures and the objectives of the Community.“

The Individual as Political Subject



■ Fundamental Rights

3. *Case 4/73, Nold vs Commission, Rec 1974, 491:*
 - nr. 13: „As the Court has already stated, **fundamental rights** form an **integral part of the general principles of law** ...

In safeguarding these rights, the Court is bound to **draw inspiration** from **constitutional traditions common to the Member States** ...

Similarly, **international treaties for the protection of human rights** on which the Member States have collaborated or of which they are signatories, can supply guidelines ...“

The Individual as Political Subject



■ Fundamental Rights

□ Main features

■ autonomous character

- general principles of EU law as unwritten part of primary law
- neither national constitutional nor international law as such

■ but: sources of inspiration

- „constitutional traditions common to the Member States“
- „international treaties for the protection of human rights“ of which Member States are signatories
 - above all: *European Convention on Human Rights 1950*
 - other: *European Social Charter, UN Covenant II (ICCPR)*

■ methodology:

- „comparative evaluation“ (*wertender Rechtsvergleich*)

The Individual as Political Subject



■ Fundamental Rights

□ Political approval of the ECJ's developments

■ *Joint Declaration by the EP, Council and the Commission concerning the protection of fundamental rights and the ECHR of 5 April 1977*

- „... stress the prime importance they attach to the protection of fundamental rights, as derived ... from the constitutions of the Members States and [the ECHR]“

■ Art 6 TEU:

- para. 1: „The Union is founded on the principles of ... respect for human rights and fundamental freedoms ...“
- para. 2: „The Union shall respect fundamental rights, as guaranteed [by the ECHR] and as they result from the constitutional traditions common to the Member States, as general principles of Community law.“

The Individual as Political Subject

■ Fundamental Rights

- **Charter of Fundamental Rights of the European Union of 7 December 2000**
 - „... the rights as they result, in particular, from the **constitutional traditions** and **international obligations common to the Member States** ... [the ECHR], the Social Charters adopted by the Community and by the Council of Europe and the **case-law of the [ECJ] and the [ECtHR].“**
- **Art 7 TEU**: sanctions mechanism in case of a „clear risk of a serious breach“ of principles mentioned in Art 6 para. 1 TEU (introduced by Treaty of Nice)



The Individual as Political Subject

■ Fundamental Rights

- **Draft Treaty Establishing a Constitution for Europe**
 - Art I-2: „The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.“
 - Art I-9 para 3: „Fundamental rights, as guaranteed by the [ECHR] and as they result from the **constitutional traditions common to the Member States**, shall constitute **general principles of the Union’s law.**“
 - Art I-9 para. 1 & Part II (Art II-61 – II-114): **Charter of Fundamental Rights** → would be legally binding !



The Individual as Political Subject

■ Fundamental Rights

□ The ECHR and EU law: The EU perspective

- major source of inspiration for EU Fundamental Rights
- but not as such part of EU law
- *Opinion 2/94 on Accession by the EC to the ECHR, Rec 1996, I-1759:*
 - EC cannot join the ECHR because of lack of competence (*principle of enumerated powers*)
 - Only by way of Treaty amendment
- Art I-9 para. 2: „The Union shall accede to the [ECHR].“



The Individual as Political Subject

■ Fundamental Rights

□ The ECHR and EU law: The ECtHR perspective

- EC/EU are not parties to the ECHR
- but all of their Member States are State parties to the Convention and some of its Protocols
- line of case developing the ECtHR's stance towards the relevance of the ECHR for the EU legal order
- ECtHR, Judgment of 15.11.1996, *Cantoni/France*
- ECtHR, Judgment of 18.2.1999, *Matthews/UK*
- ECtHR, Judgment of 30.6.2005, *Bosphorus Airways/Ireland*



The Individual as Political Subject



■ EU Citizenship

- Introduction by Treaty of Maastricht of Part II TEC (Art 17-22 TEC): **Citizenship of the Union**
 - Art 17 para. 1 TEC: „... Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall **complement** and **not replace** national citizenship.“
 - **derivative** and **complementary** character
 - **Art I-10 Draft Treaty Establishing a Constitution for Europe:** „Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.“

The Individual as Political Subject



■ EU Citizenship

- **Derivative character**
 - Acquisition and loss of nationality according to national law
 - Duty to recognize the decision of other Member States
 - *ICJ, Nottebohm Case (Liechtenstein/Guatemala), Judgment of 6.4.1955, ICJ Reports 1955, p. 4 :*
 - real and effective character of citizenship
 - „real link“ between naturalized person and naturalizing State
 - *ECJ, Case C-369/90, Micheletti, Rec 1992, I-4239*

The Individual as Political Subject

■ EU Citizenship

- Rights of movement & residence (Art 18 TEC)
 - „right to **move and reside freely** within the territory of the Member States“ → general and with no direct reference to economic activity
 - „**subject to the limitations and conditions** laid down in this Treaty and by the measures adopted to give it effect“
 - e.g. on Treaty level: Art 39ff TEC
 - e.g. on level of secondary legislation
 - *Directive 2004/38/EC (OJ L 31, 30.4. 2004, p. 18)* on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States



The Individual as Political Subject

■ EU Citizenship

- **Case-law** (*Case C-184/99, Grzelczyk, Rec. 2001, I-6193*):
 - French student in Belgium: Belgian decision to stop payment of „minimex“ (minimum subsistence allowance)
 - combination of Art 18 and Art 12 TEC (non-discrimination)
 - transformation to right to participation and benefits
 - nr. 31: „Union citizenship is destined to be the **fundamental status of nationals of the Member States**, enabling those who find themselves in the same situation to **enjoy the same treatment in law irrespective of their nationality ...**“
 - nr. 32: „... a citizen of the EU, lawfully resident in the territory of a host Member State, can rely on [Art 12 TEC] in all situations which fall within the scope *ratione materiae* of Community law “



The Individual as Political Subject

■ EU Citizenship

- **Political Rights** (Art 19-21 TEC)
 - right to **vote** and **stand as a candidate** at **municipal elections** and **EP elections** in country of residence (Art 19)
 - Right to **diplomatic and consular protection** when not represented by one's own state (Art 20)
 - right to **petition the EP** (Art 21 para. 1)
 - right to **apply to the Ombudsman** (Art 21 para. 2)
 - right to **write to EU institutions and bodies** in **all official languages** (Art 314 TEC) and to **have an answer in the same language** (Art 21 para. 3)



The Individual as Political Subject

■ Further political rights

- Art 255 TEC:
 - „Any **citizen of the Union**, and any **natural or legal person** residing ... in a Member State, shall have a **right of access to EP, Council and Commission documents**, subject to the principles and conditions defined ...“



The Individual as Political Subject

■ Further political rights

- Art 12 TEC: „... **any discrimination on grounds of nationality shall be prohibited**“ → ***direct effect!***
- Art 13 TEC: „Council may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation“ → ***no direct effect !***
 - *Council Directive 2000/78/EC (OJ L 303, 2.12.2000, p. 16)* establishing a general framework for equal treatment in employment and occupation
 - *Council Directive 2000/43/EC (OJ L 180, 19.7.2000, p. 22)* implementing the the principle of equal treatment between persons irrespective of racial or ethnic origin
 - *Framework Decision on Racism and Xenophobia* (common criminal provisions) → political agreement on 19 April 2007



The Individual as Political Subject

■ Legal Protection

- **Direct access to Community institutions**
 - ***Legal Remedies in the strict sense***
 - Action to annul Community acts (Art 230 para. 4 TEC)
 - Action for failure to act (Art 232 para. 3 TEC)
 - ***Other remedies***
 - Petition to EP (Art 194 TEC)
 - Complaint to Ombudsman (Art 195 TEC)
 - Complaint to Commission
- **Legal Remedies within the national legal order:**
 - Preliminary References (Art 234 TEC)
 - State liability



VII. The Individual as Economical Subject

- A. Single Market
- B. Free Movement of Goods
- C. Free Movement of Workers
- D. Free Movement of Establishment/Services
- E. Free Movement of Capital

A. Single Market

- **Main objective**
 - Establishing a Single Market, Art. 3(a) to (c), Art. 4 ECT
- **Terminology**
 - “Single Market”, “Internal Market”, “Common Market”
- **Stages of Integration**
 - Free Trade Area
 - Customs Union
 - Common Market
 - Economic and Monetary Union
 - Complete Economic Integration

A. Single Market



- **Definition, Art. 14(2) ECT states:**

“The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.”

- **Essential elements which are of central importance in realizing the goals of the EU: the “Four Freedoms”**

- The Free Movement of Goods
- The Free Movement of Workers
- The Free Movement of Services and Freedom of Establishment
- The Free Movement of Capital

B. The Free Movement of Goods



I. Main Provisions

- **Treaty Articles**
 - Art. 23 to 31 ECT
- **Secondary Legislation**
 - Based on Art. 95 ECT
- Plenty of **case law**

→ cover only trade in **“goods”**

“goods” are defined by the ECJ as **“products which can be valued in money and which are capable, as such, of forming the subject of commercial transaction”**

B. The Free Movement of Goods

II. Intermediate goals in view of the elimination of all obstacles to free movement of goods

- Common External Tariffs (opposed to non-member states), **Art. 26 ECT**
- Abolishing Customs Duties between the member states, **Art. 25 ECT**
- Abolishing Charges Having an Equivalent Effect to a customs duty, **Art. 25 ECT**
- Abolishment of Import Restrictions (i.e. Quantitative Restrictions and Measures Having an Equivalent Effect), **Art. 28 ECT**
- Abolishment of Export Restrictions, **Art. 29 ECT**

Financial
Obstacles

Non-
Financial
Obstacles



B. The Free Movement of Goods

III. Financial Obstacles – Art. 25 to 27 ECT

- No Import and Export “**Customs Duties**” between the MS
 - = measures, named Customs Duties
- No “**Charges Having Equivalent Effect**”
 - = *ECJ, Case 24/68, Commission v. Italy: „[...] any peculiar charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in a strict sense”.*
 - Designed to catch protectionist measures creating a similar barrier to trade as customs duties *stricto sensu*. E.g. statistic charges

→ All charges levied as a result of crossing a border are prohibited!!!



B. The Free Movement of Goods

IV. Non- Financial Obstacles – Art. 28 ECT

- No “**Quantitative Restrictions**”
 - = “any measure which amounts to a total or partial restraint on imports, exports or goods in transits”.
 - Import, Art. 28 ECT
 - Export, Art. 29 ECT
- No “**Measures Having an Equivalent Effect**”
 - = “all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions“ ECJ Case 8/74, **Dassonville**



B. The Free Movement of Goods

IV. Non- Financial Obstacles – Art. 28 ECT

- Basic concept of “**Measures Having an Equivalent Effect**”
 - all national rules which **directly or indirectly discriminate** between domestic goods and imported goods. E.g.:
 - National rules limiting publicity in respect of imported goods as compared with domestic goods.
 - Minimum or maximum prices specified for imported products.
 - Payment conditions for imported products which differ from those for domestic products.
 - **Non-discriminatory measures** if there is still a restrictive effect of such measures on the free movement of goods
 - Rules concerning shape, size, weight, composition, presentation and so one of a product without making any difference between domestic and imported products.



B. The Free Movement of Goods

IV. Non- Financial Obstacles – Art. 28 ECT

- **Keck (ECJ, Case C-267 and 268/91): Selling Arrangements**

Distinction between rules concerning “**product requirements**” & “**selling arrangements**”

“**Product requirement**” are caught by Art. 28 ECT,

because they cause additional costs and therefore hinder access to the market for imported goods

“**Selling arrangements**”: exceptions to Art. 28 ECT,

if they do not discriminate imported products in law or in fact



B. The Free Movement of Goods

V. Exceptions to the prohibition of Art. 28 ECT

Two different concepts

- **Art. 30 ECT**

- **Cassis de Dijon-Case: “Rule of Reason”**



B. The Free Movement of Goods

V. Exceptions to the prohibition of Art. 28 ECT

■ Art. 30 ECT

- Can justify measures which are qualified as measures in the sense of Art. 28 ECT
- Only on the **grounds of the Article** (Public Morality, Public Security, The Protection of the Health of Life of Humans or Animals, . . .)
- **Requirement of proportionality:** the national measure must be the least restrictive possible to attain the end in view.
- ECJ interprets Art. 30 ECT **very strictly**



B. The Free Movement of Goods

V. Exceptions to the prohibition of Art. 28 ECT

■ *Cassis de Dijon* (ECJ, Case 120/78): “Rule of Reason”

- When there is **no EU law in force MS** can regulate all matters relating to the production & marketing of goods in their own territory.
- Measure must be necessary to fulfill **mandatory requirements** (in pursuit of a reasonable special interest).
- E.g.:
 - Environmental protection and conservation of the resources of the sea, cultural interests
 - Protection of fundamental rights freedom of speech and protesting
 - Protection of consumer
- **requirement of proportionality**



B. The Free Movement of Goods

V. Exceptions to the prohibition of Art. 28 ECT

- **Cassis de Dijon (ECJ, Case 120/78): “Rule of Reason”**
- **Example:** ECJ, Case 178/84 *Commission v. Germany*
- Concerning the German Beer Purity requirement which provided that only malted barley, hops, yeast, and water would be used in manufacture of beer, and further that only drinks which were composed of that ingredients could be marketed under the designation beer within Germany.
- ECJ: **consumer protection** could be done by compulsory affixing of labels informing consumers about the nature of the product sold.
- The prohibition went beyond what was necessary for the consumer protection, it was disproportionate, the criteria of the rule of reason were not satisfied → breach of Art. 28 ECT



C. The Free Movement of Workers

I. Provisions

- **Treaty Article**
 - Art. 39 to 42 ECT
- **Secondary Legislation**
 - E.g. Directive 2004/38

→ right to take up an activity as a “worker”

“**Worker**” is a person who “performs services for another during a certain period of time under the direction of another in return for remuneration”. ECJ Case 66/85 *Lawrie-Blume v. Land Baden-Württemberg*



C. The Free Movement of Workers

II. Essential characteristics of a worker in the sense of Art. 39 ECT

Concept of “worker”, term has EU-law meaning; interpreted widely:

- Performing services (for some economic value)
- For another under his direction (employed)
- During a certain period of time (which means a certain duration in required)
- In return of remuneration (which means it must be a paid job)
- Includes part-time work
- Includes job seekers
- If self employed, the freedom of establishment (Art. 43 or 49 ECT) would apply



C. The Free Movement of Workers

III. Objectives of the free movement of workers

- Increasing the Community's workers' chances of finding work
- Encouraging the mobility of workers
- Developing contacts between workers throughout the Member States, creating a Community social fabric and hence "an ever closer union among the peoples of Europe"



C. The Free Movement of Workers

IV. Rights provided for under Art. 39 ECT

- Rights concerning the Work immediately
 - **Free access of workers** from one MS to employment market in another MS – **direct and indirect discriminatory and non-discriminatory obstacles are prohibit**
 - **Equal treatment at work** as to nationals and non-nationals – **Basic Right of No Discrimination on the grounds of nationality (direct and indirect discrimination)**
- Workers' rights of movement and residence
- Right to remain in the host country after working there
- Rights of family members



C. The Free Movement of Workers

V. Exceptions to the Free Movement of Workers

- **Art. 39(3) ECT**
 - public policy, public security or public health
 - **requirement of proportionality**
- **Art. 39 (4) ECT**
 - Employment in **public service** (= if the state is exercising discretion or a higher interest of the state is involved)
 - E.g. the armed forces, the police and the other forces of order, the judiciary, the tax authorities and the diplomatic service
- **“Rule of Reason” doctrine**
 - Measures in pursuit of a reasonable special interest
 - **requirement of proportionality**



D. The Freedom of Establishment and The Freedom of Services



I. Provisions

■ Treaty Articles

- Freedom of Establishment: Art. 43 to 48 ECT
- Freedom of Services: Art. 49 to 55 ECT

■ Secondary Legislation

- E.g. Directive 2004/38

→ cover only **the self-employed**
in contrast to employed workers under Art. 39 ECT

D. The Freedom of Establishment and The Freedom of Services



II. Dinstinction

- **Freedom of Establishment:** Right to participate, on a stable and continuous basis, in the economic life of any MS other than his state of origin.

Crucial features as determined by the ECJ:

- “**stable and continuous basis**” on which the professional activity is carried on

- **Freedom of Services:** Right to moves to another MS to pursue his activity there on a **temporary basis**.

Crucial features as determined by the ECJ:

- “**periodicity, continuity and regularity**“ of the activity in the hoste MS

D. The Freedom of Establishment and The Freedom of Services



III. Objectives

- To ensure that **the self-employed are free to exercise their profession throughout the EU.**
- To ensure the possibility to EU citizens to provide and receive **services without any obstacles throughout the EU.**

D. The Freedom of Establishment and The Freedom of Services



IV. Rights recognized under Art. 43 to 48 ECT (Establishment)

- Right of individuals and companies **to maintain a permanent business** in a MS.
- Right of EU nationals **to set up business** in a MS other than their own.
- Workers' rights of movement and residence
- Rights of family members
- Right to remain in the host country

D. The Freedom of Establishment and The Freedom of Services

IV. Rights provided under Art. 49 to 55 ECT (Services)

- Right of persons or companies to offer their services across frontiers in other Member States while remaining in their country of origin.
- Extended by ECJ to embrace the freedom to receive services.
- Workers' rights of movement and residence
- Rights of family members
- Right to remain in the host country



D. The Freedom of Establishment and The Freedom of Services

V. Basic Principles

Right of No Discrimination

- There shall be no discrimination on the grounds of nationality.
- Direct discrimination as well as covert/indirect discriminations are covered.

Right of Free Market Access

- All rules (not just those involving discrimination) which hinder market access are forbidden.



D. The Freedom of Establishment and The Freedom of Services

VI. Exceptions to the Freedom of Establishment and Services

- **Art. 46 (and 55) ECT**
 - public policy, public security or public health
 - requirement of proportionality**

- **Art. 45 (and 55) ECT**
 - activities connected with the exercise of official authority

- **“Rule of Reason” doctrine**
 - Measures in pursuit of a reasonable special interest
 - requirement of proportionality**



E. The Free Movement of Capital

I. Provisions

- **Treaty Articles**
 - Art. 56 to 60 ECT

- **Growing body of case law testing the scope of these provisions.**
 - applies to the non-exhausting list in Directive 88/361 containing various economic proceedings which are defined to be covered by the movement of capital



E. The Free Movement of Capital



II. Objectives

- Removing all restrictions on capital movements between Member States, then between Member States and third countries
- Liberalisation should help to establish the single market by encouraging other freedoms
- It should also encourage economic progress by enabling capital to be invested efficiently.

E. The Free Movement of Capital



III. The basic Principle

- Prohibition of all restrictions on the movement of **capital** and **payments**
 - between the MS and
 - between MS and third countries

E. The Free Movement of Capital



IV. Exceptions

- **Restrictions concerning the free movement of capital between MS and non-member countries**
 - **Art. 57 ECT** allows lawful restrictions which existed on 31 December 1993 to remain in being + Council also may take new restrictive measures
 - **Art. 59 ECT** allows the Council to take safeguard measures in exceptional circumstances

E. The Free Movement of Capital




IV. Exceptions

- **Restrictions concerning the free movement of capital in general (including movements within the Union)**
 - National measures to prevent infringements of national law are allowed.
 - Restrictive measures are justifiable on grounds of public policy or public security.
 - Procedures within national legal system for the declaration of capital movements for administrative or statistical purposes are allowed.



VIII. The EU Legal System and Language(s)



Legal System and Language(s)

- **Law & Language**
 - law as a cultural product
 - intrinsically language-based phenomenon
 - legal system not even thinkable without human language

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197

Legal System and Language(s)



□ Law & Language

- remarkable semantic field in many languages:
 - „the letter of the law“
 - „Recht sprechen“ – „speak the law“
 - judge as „bouche de la loi“

 - Latin „lex“ etymologically dependent from „legere“ (reading)

Legal System and Language(s)



□ Law & Language

- → need for **interpretation**
- standard methods of legal interpretation
 - **literal interpretation**: ascertain the words in their natural and ordinary meaning
 - **historical interpretation**: trying to reveal the intention of a text's authors (*travaux préparatoires*)
 - **systematic/contextual interpretation**: identifying the overall context of legal provision in which the words appear
 - **purposive/teleological interpretation**: seeking the objectives stated in a provision

Legal System and Language(s)



- Law & Languages
 - phenomenon of plurality of languages
 - specific challenge for a series of legal orders
 - national: e.g. Belgium, Spain, Switzerland, Bosnia & Herzegovina
 - international: International Organizations (UN, Council of Europe, African Union, etc)
 - also EU
 - need for **translation & interpretation**
 - risk of mistranslation or misinterpretation

EU Law & Languages



- The Language Regime of the EU
 - ECSC: only French as **authentic** Treaty language (Art 100)
 - EEC/Euratom: already four **authentic** Treaty languages
→ Dutch, French, German and Italian (ex Art 248 EEC Treaty)
 - Ex Art 217 EEC Treaty (now Art 290 TEC): „The rules governing the **languages of the institutions** of the Community shall ... be determined by the Council, acting **unanimously**.“
 - Regulation No 1 of the EEC Council determining the languages to be used by the EEC (OJ 17, 6.10.1958, p. 385):
 - the four **authentic** languages shall also be the **official** and **working** languages of the institutions

EU Law & Languages



■ The Language Regime of the EU

- **Situation today:**
 - 23 **authentic** languages of Treaties (Art 53 TEU, Art 314 TEC)
 - 23 **official** and (official) **working** languages of the institutions of the Union (Art 290 TEC & consolidated version of Regulation No 1)
 - **internal working** languages:
 - **European Parliament:** all 23 official languages, but limited exceptions possible (Rule 138 EP Rules of Procedure)
 - **Council/Commission:** English, French and German
 - **ECJ:** generally **French** → language of deliberations (see also *infra*)

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202

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■ The Language Regime of the EU

- **The 27 EU Member States** (in their official order):
 1. Belgique/België - Kingdom of Belgium - BE
 2. България (Bulgaria) - Republic of Bulgaria - BG
 3. Česká republika - Czech Republic - CZ
 4. Danmark - Kingdom of Denmark - DK
 5. Deutschland - Federal Republic of Germany - DE
 6. Eesti - Republic of Estonia - EE
 7. Éire/Ireland - Ireland - IE
 8. Ελλάδα (Elláda) - Hellenic Republic - EL
 9. España - Kingdom of Spain - ES
 10. France - French Republic - FR
 11. Italia - Italian Republic - IT

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203

EU Law & Languages

12. Κύπρος/Kıbrıs (Kýpros) - Republic of Cyprus - CY
13. Latvija - Republic of Latvia - LV
14. Lietuva - Republic of Lithuania - LT
15. Luxembourg - Grand Duchy of Luxembourg - LU
16. Magyarország - Republic of Hungary - HU
17. Malta - Republic of Malta - MT
18. Nederland - Kingdom of the Netherlands - NL
19. Österreich - Republic of Austria - AT
20. Polska - Republic of Poland - PL
21. Portugal - Portuguese Republic - PT
22. România – Romania - RO
23. Slovenija - Republic of Slovenia - SI
24. Slovensko - Slovak Republic - SK
25. Suomi/Finland - Republic of Finland - FI
26. Sverige - Kingdom of Sweden - SE
27. United Kingdom - United Kingdom of Great Britain and Northern Ireland - UK



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■ The Language Regime of the EU

□ The Candidate countries (in their official order):

1. Hrvatska - Republic of Croatia - HR
2. поранешна југословенска Република Македонија (poranešna jugoslovenska Republika Makedonija) - former Yugoslav Republic of Macedonia, the - MK
3. Türkiye - Republic of Turkey - TR



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■ The Language Regime of the EU

- **The EU languages** (in their official order and with their official abbreviations):
 1. български (bǎlgarski) - BG - Bulgarian
 2. Español - ES - Spanish
 3. Čeština - CS - Czech
 4. Dansk - DA - Danish
 5. Deutsch - DE - German
 6. Eesti - ET - Estonian
 7. ελληνικά (elinika) - EL - Greek
 8. English - EN
 9. Français - FR - French

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10. Gaeilge - GA - Irish
11. Italiano - IT - Italian
12. Latviesu valoda - LV - Latvian
13. Lietuviu kalba - LT - Lithuanian
14. Magyar - HU - Hungarian
15. Malti - MT - Maltese
16. Nederlands - NL - Dutch
17. Polski - PL - Polish
18. Português - PT - Portuguese
19. Română - RO - Romanian
20. Slovenčina - SK - Slovak
21. Lovenščina - SL - Slovene
22. Suomi - FI - Finnish
23. Svenska - SV - Swedish

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■ The Language Regime of the EU

- **The languages of the Candidate countries** (in their official order and with their official abbreviations):

1. Hrvatski - HR - Croatian
2. Македонски (makedonski) - MK - Macedonian
3. Türkçe - TR - Turkish

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■ The Language Regime of the EU

- **Maltese**
 - since accession (1.5.2004): **official & working language**
 - but: *Council Regulation (EC) No 930/2004 (OJ L 169, 1.5.2004, p. 1)* → **temporary derogation** from obligation to draft acts in Maltese and to publish them in OJ
 - derogation was stopped after first three years (30.4.2007)
- **Irish**
 - up to 31.12.2006: Irish was **not** a **working** language of the EU institutions → by special agreement of 1971: was considered an **official** language (but *in praxi* only for primary legislation)
 - Since 1.1.2007: **full official language** → but *Council Regulation (EC) No 920/2005 (OJ L 156, 18.6.2005, p. 3)*: **temporary derogation** for a renewable period of 5 years → no obligation to draft all acts in Irish and publish them in OJ

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■ The Language Regime of the EU

□ Status of regional and minority languages

- Catalan, Galician and Basque:
 - 3.7.2006: Bureau of EP approved a proposal by Spanish State to allow citizens to address the EP in those languages
 - 30.11.2006: Ombudsman Nikiforos Diamandouros and Spanish ambassador to EU sign agreement to allow Spanish citizens to address complaints to Ombudsman in Basque, Catalan/Valencian and Galician
- Welsh, Scottish Gaelic and Scots: as far as now, no comparable plans of UK government

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■ The Language Regime of the EU

□ Status of regional and minority languages

- Rule 138 EP Rules of Procedure: „into any other language the Bureau may consider necessary“
- Art IV-448 para. 2 Draft Constitution Treaty:
 - „This Treaty may also be translated into **any other languages** [apart from the authentic languages mentioned in para. 1] as determined by Member States among those which, in accordance with their constitutional order, **enjoy official status in all or part of their territory**. A certified copy of such translations shall be provided by the Members States concerned to be deposited in the archives of the Council.“

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■ Special case: The European Court of Justice

- Art 290 TEC: „The rules governing the languages of the institutions of the Community shall, **without prejudice to the provisions contained in the Statute of the Court of Justice** be determined by the Council, acting unanimously.“

- Art 7 Regulation No 1: „The languages to be used in the proceedings of the Court of Justice shall be laid down in its **rules of procedure**.“

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■ Special case: The European Court of Justice

- **Rules of Procedure of the Court of Justice (Art 29-31)**
 - all official languages can be „**language of a case**“
 - language of a case is principally **chosen by the applicant**
 - except if the defendant is a Member State or a natural or legal person having the nationality of a Member State → in this case language of the case is **official language of that State**
 - except if at **joint request** of parties another language is authorised
 - in case of **preliminary rulings**: language of the referring court
 - the text of documents drawn up in the language of the case shall be **authentic**

 - **publications** of the Court shall be issued in **all official** languages

- the **internal working language** (language of deliberations) is **French**

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■ Language related values of the EU

- Preamble TEU: „desiring to deepen the solidarity between their peoples while **respecting their history, their culture and their traditions**“
- Art 6 para. 3 TEU: „The Union shall respect the **national identities** of its Member States.“
- Preamble Fundamental Rights Charter: „The Union contributes to the preservation and to the development of these common values while respecting the **diversity of the cultures and traditions** of the peoples of Europe as well as the **national identities** of the Member States ...“
- Art 21 para. 1 Fundamental Rights Charter: „Any discrimination based on any ground such as ... language ... shall be prohibited.“
- Art 22 Fundamental Rights Charter: „The Union shall respect cultural, religious and **linguistic diversity**.“

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■ Language related values of the EU

- Draft Treaty Establishing a Constitution for Europe:
 - Preamble: „... remaining proud of their own **national identities and history** ...“
 - Art I-2: „in a society in which **pluralism** ... prevail[s]“
 - Art I-3 para. 3: „[The Union] shall respect its **rich cultural and linguistic diversity** ...“
 - Art I-8 para. 2: „The motto of the Union shall be: ‚United in diversity‘.“
 - Art II-81 para. 1: „Any discrimination based on any ground such as ... language ... shall be prohibited.“
 - Art II-82: „The Union shall respect cultural, religious and **linguistic diversity**.“

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■ Language-related rights in the EU legal order

- Art 21 para. 3 TEC (≈ Art 41 para. 4 Fundamental Rights Charter): „Every citizen of the Union [person] may write to the institutions of the Union in one of the languages mentioned in Article 314 [in one of the languages of the Treaties] and have an answer in the same language.“
- *Regulation No 1 determining the languages to be used by EEC:*
 - Art 2: right to send documents to institutions in all official languages and to have reply in the same language
 - Art 4: regulations and other documents of general applications shall be drafted in all official languages
 - Art 5: OJ shall be published in all official languages

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■ EU Language Policy

- **Leonard Orban** (Romania): Member of the Commission, responsible for multilingualism
 - http://ec.europa.eu/commission_barroso/orban/index_en.htm
- **EU multilingualism policy:**
 - http://ec.europa.eu/education/policies/lang/languages_en.html
 - „Promoting Language Learning and Linguistic Diversity: an Action Plan 2004-2006“, COM(2003) 449 final
 - extending the benefits of language learning to all citizens as a lifelong activity;
 - improving the quality of language teaching at all levels;
 - building in Europe an environment which is really favourable to languages.
 - Long-term objective for all EU citizens to speak **2 languages in addition to their mother tongue**

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■ EU Language Policy

- Special Eurobarometer No 243: „Europeans and their Languages“ (November-December 2005) → http://ec.europa.eu/education/policies/lang/languages/eurobarometer06_en.html
- Results:
 - Mother tongue: 1. German (18 %), 2. English (13 %), 3. Italian (13 %), 4. French (12 %), 5. Spanish (9 %), 6. Polish (9 %)
 - Can speak the language: 1. English (51 %), 2. German (32 %), 3. French (26 %), 4. Italian (16 %), 5. Spanish (15 %), 6. Polish (10 %)
 - What language should be learnt apart from mother tongue: 1. English (77 %), 2. French (33 %), 3. German (28 %), 4. Spanish (19 %), 5. Russian (3 %)
 - results for Croatia: 1. English (82 %), 2. German (69 %), 3. Italian (14 %), 4. French (5 %) ... Russian (0 %)

EU Law & Languages



■ Characteristic features of interpretation of EU law

- The ECJ and the standard methods of legal interpretation
 - **literal interpretation:** often problems with translation so that there is no clear result
 - **historical interpretation:** often preparatory work does not exist at all or it not generally accessible → ECJ does usually not work with this interpretation method
 - **systematic/contextual interpretation:** much more interesting for Court of Justice
 - **purposive/teleological interpretation:** very important for Court of Justice → taking into account the goals and objectives of the Community/Union
 - see also Art 33 para. 4 Vienna Convention on the Law of Treaties: „having regard to the object and purpose“

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■ Characteristic features of interpretation of EU law

- **autonomous interpretation**
 - meaning of legal terms not from national legal orders, but to be drawn from system of the Treaties (EU law system) itself
- Be aware of **homonyms** when working with EU law and national law
 - „court“/„tribunal“ (Art 234 TEC)
 - „regulation“ (Art 249 TEC)
 - „workers“ (Art 39 TEC)
 - „services“ (Art 49 TEC)
 - „fundamental rights“ (Fundamental Rights Charter)
 - etc.

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■ Characteristic features of interpretation of EU law

- **functional approach („effet utile“)**
 - fundamental presumption that legal norms have a „useful effect“ → Treaty provisions must be interpreted and used in a way that the objectives of the Treaty are promoted effectively
 - already Case 8/55, *Fédération charbonnière de Belgique/High Authority*, Rec. 1955, p 292: „treaty or law would have no meaning or could not reasonably or usefully be applied“ & Case 6/64, *Costa/ENEL*, Rec. 1964, p 585: „spirit of the Treaty“ resp. „would lose their purpose“
 - for the first time explicitly: Case 9/70, *Grad/Finanzamt Traunstein*, Rec. 1970, p 825, nr 5: „the effectiveness (,l'effet utile') of such a measure would be weakened“
 - e.g. Case 41/74, *Van Duyn*, Rec. 1974, p 1337, nr 12: „the useful effect of such an act would be weakened if individuals were prevented from relying on it before their national courts“ → direct effect of directives