

The European Union Law and the European Union Sources of Law



UNIVERSITY OF SIENA, SCHOOL OF ECONOMICS AND MANAGEMENT

JEAN MONNET MODULE "EUCOLAW" THE EUROPEANIZATION OF CONSTITUTIONAL LAW. THE IMPACT OF EU LAW ON NATIONAL SOURCES OF LAW, FORM OF GOVERNMENT, RIGHTS AND FREEDOMS.

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Summary

- 1. Introduction
- 2. Historical Development
- 3. Accession and Withdraw
- 4. Organization
- 5. European Union Sources of Law and National Sources of Law

1. Historical Development

State and supranational orders

- The State is a concentrated legal system, necessary, territorial in nature, focused on general aims, independent and sovereign.
- The constitutive elements of the State are: territory, people and sovereignty
- The State is not the only legal system!!! It is simply one of them
- Other legal systems include the supranational legal systems, i.e. international organizations which can be global or regional

State and supranational orders

- Sovereignty is one of the elements of the State
- It represents the full right and power of a governing body to govern itself without any interference from others sources or bodies
 - Internal sovereignty describes the relationship between a sovereign power and its own subjects
 - External sovereignty refers to the relationship between a sovereign power and other states

International organizations

- International organisations are entities established by formal political agreements between their members that have the status of international treaties
- Their existence is recognised by law in their member countries
 - International global organizations
 - International regional organizations

The European framework

- In the European continent there are 2 different organizations!!!!
- The EU and the CoE differ each others
 - As for the goals
 - As for the extension
 - As for the kind of organization, the UE is a supranational organization, while the CoE is an international organization

The European framework



2. Historical Development

The European Union: historical development

- The treaties (approval and amendments):
 - 1951: European Coal and Steel Community (ECSC)
 - 1957: European Economic Community (EEC) and European Atomic Energy Community (EURATOM)
 - 1965: Merger Treaty
 - 1985: Schengen Agreement
 - 1987: Single European Act

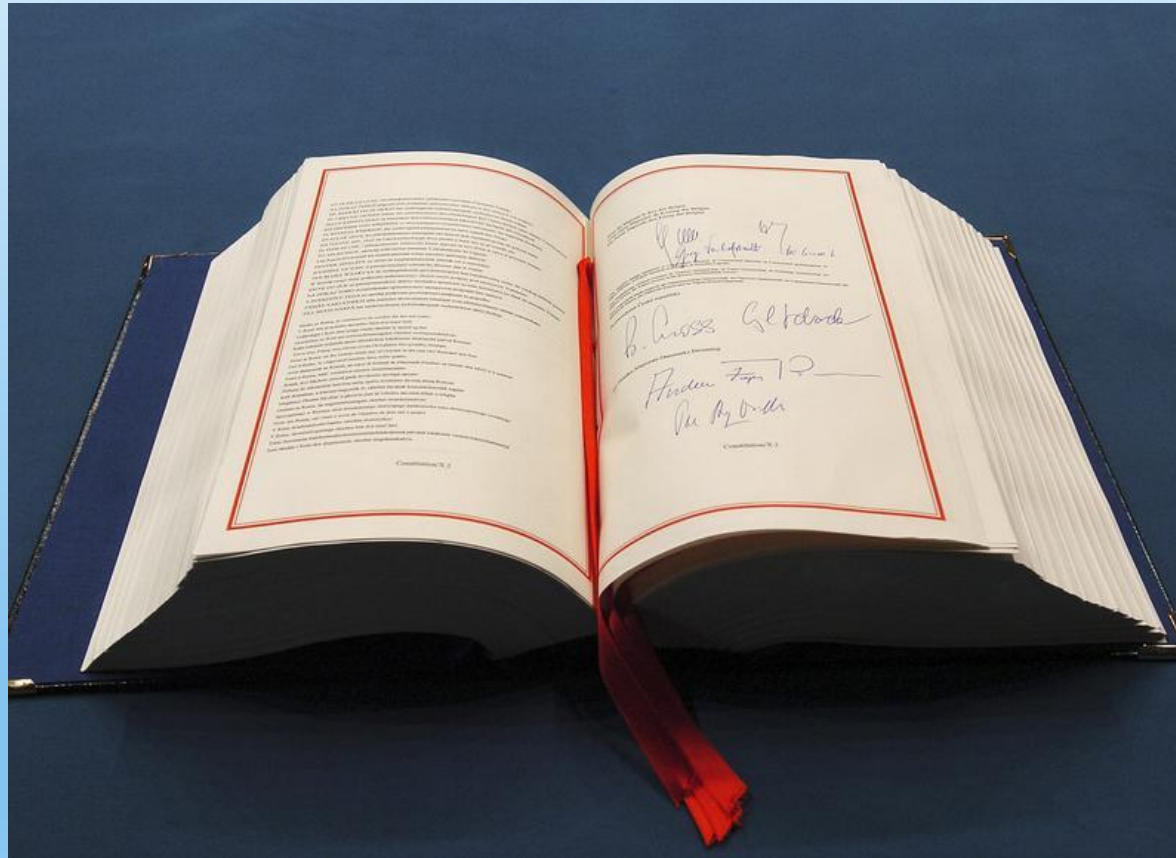
The European Union: historical development



The European Union: historical development

- 1992: Treaty of Maastricht (TEU and TEC)
- 1997: Treaty of Amsterdam
- 1999: European Charter of Fundamental Rights
- 2001: Treaty of Nice
- 2004: Treaty Establishing a Constitution for Europe
- 2007: Treaty of Lisbon (TEU and TFEU)

The European Union: historical development



The European Union: historical development

- The role of the Court of Justice
 - The European Law prevails on the national law
 - The European Law has direct effect in the national legal order

The European Union: historical development

■ Geographical evolution

- 1951 France, Germany, Italy, Belgium, Netherlands and Luxembourg signed the founding treaty
- 1973: the Communities enlarged to include Denmark, Ireland, and the United Kingdom
- 1981: Greece joins
- 1986: Portugal and Spain join
- 1995: Austria, Finland and Sweden join
- 2004: with the biggest enlargement, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia join the EU
- 2007: Bulgaria and Romania join the EU
- 2013: Croatia joins the EU
- 2016: Brexit

1951

*Founding
Members*

Belgium

France

Germany

Italy

Luxembourg

Netherlands



1973

**Denmark
Ireland
UK**



1981

Greece



1986

Portugal
Spain



1995

Austria
Finland
Sweden



2004

Cyprus
Czech Republic
Estonia
Hungary
Latvia
Lithuania
Malta
Poland
Slovakia
Slovenia



2007

Bulgaria
Romania



2013

Croatia

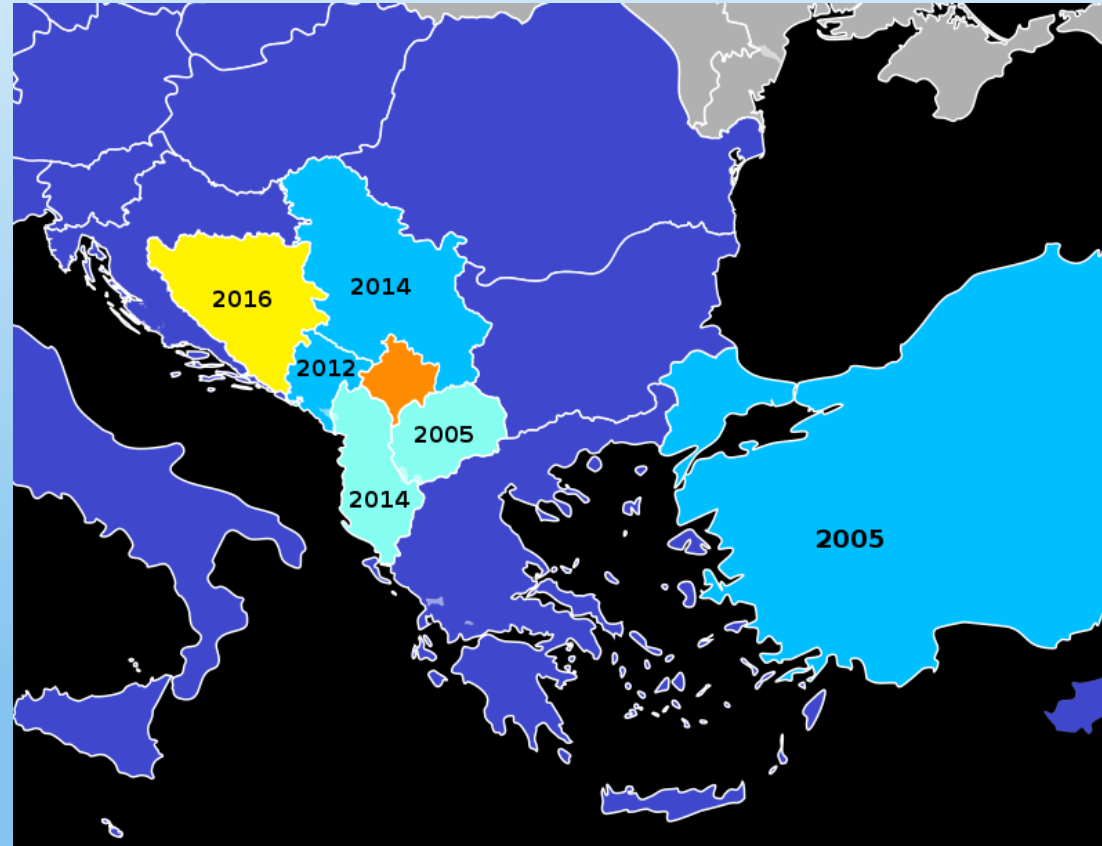


3. Accession and Withdraw

The European Union: accession (art. 49 TEU)

- The conditions
 - A) be a state within geographical Europe
 - B) respect and commit to the EU values (art. 2 TEU):
 - C) respect the EU eligibility criteria (Copenhagen criteria)
- The procedure:
 - A) Application
 - B) Candidate status
 - C) Negotiations
 - D) Screening process
 - E) Accession

The European Union: accession (art. 49 TEU)



The European Union: accession (art. 49 TEU)

- Candidates:

- Albania
- Macedonia
- Montenegro
- Serbia
- Turkey

- Potential Candidates:

- Bosnia-Herzegovina
- Kosovo

The European Union: withdraw (art. 50)

- 1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
- 2. A Member State which decides to withdraw shall notify the European Council of its intention. The Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded by the Council of the EU, acting by a qualified majority, after obtaining the consent of the European Parliament.
- 3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in para. 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
- 4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.
- 5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

The European Union: withdraw (art. 50)



The European Union: withdraw (art. 50)

- 23 June 2016: UK holds referendum
- 3 November 2016: High Court judgment
- 24 January 2017: Supreme Court judgement
- 16 March 2017: European Union (Notification of Withdrawal) Act received Royal Assent.
- 29 March 2017: Prime Minister triggers Article 50 of the Treaty on European Union.
- 19 June 2017: First round of UK-EU exit negotiations begin.
- 26 June 2018: The European Union (Withdrawal) Bill receives Royal Assent
- 14 November 2018: The Withdrawal Agreement is agreed and published.
- 25 November 2018: European Council endorses the Withdrawal Agreement and approve the political declaration on future EU-UK relations.
- 10 December 2018: CJEU issues its judgment on the Wightman case
- 15 January 2019: The agreement is rejected by the UK Parliament

4. Organization

The European Union: organization

- The European Council includes the President of the European Council (appointed by the council for a 30 months term), the President of the European Commission and one representative per member state (head of state or head of government)
- It defines the EU political direction and orientation
- It convenes at least four times a year and decides with consensus system
- It is a formal institution from 1993 and an European institution from 2009

The European Union: organization

- The Council (also called the Council of Ministers) consists of a government minister from each member; it has different compositions depending on the matter discussed
- It shares with the European Parliament some functions, such as the approval of the legislation and of the budget
- Its decisions are made by qualified weighted majority voting or by unanimity voting

The European Union: organization

- The European Parliament is composed by 751 Members (MEPs) directly elected by EU citizens every five years on the basis of proportional representation
- Each country has a different number of seats and a different electoral system
- The Parliament shares some functions with the Council of the European Union and its approval is necessary for the European Commission to take office

The European Union: organization

- The European Commission has 28 Commissioners, one for each member state, which manage different areas of policy and represent the interests of the EU as a whole rather than their home state
- The Commission is the executive body of the EU, it is responsible for initiating legislation and the administration of the EU
- The Commission President and the High Representative of the Union for Foreign Affairs and Security Policy (who is *ex-officio* Vice-President of the Commission) are appointed by the European Council. The other 26 Commissioners are appointed by the Council of the European Union in agreement with the nominated President. The entire Commission is subject to a vote of approval by the European Parliament.

The European Union: organization

- Other bodies
- The European Court of Justice oversees the uniform application and interpretation of European Union law and resolves legal disputes between national governments and EU institutions
- The European Court of auditors checks if the budget of the European Union has been implemented correctly
- The European Central Bank is the central bank for the Eurozone: it administers the monetary policy in order to maintain the price stability

5. European Union Sources of Law and National Sources of Law

The relationship between national and international law

- The dualistic approach
- More ancient
- Only partial limitation to the sovereignty
- The national legal system, by accepting some form of limitation of its sovereignty, provides concurrent recognition of the international norms
- Distinction between internal and external norms
- The State recognizes the existence of two separate legal orders

The relationship between national and international law

- The monistic approach
- More recent
- Unconditional limitation to the sovereignty
- The national legal system automatically accepts the entry of the international norms into the system
- Source of law produced by international organizations automatically migrate into the national one
- The State recognizes a single legal order

European Sources of Law

- Primary sources of law
 - Founding treaties (Treaty on the European Union; Treaty on the Functioning of the European Union)
 - Charter of Fundamental Rights of the European Union.
 - Amending EU Treaties
 - Protocols annexed to the founding treaties and to the amending treaties
 - Treaties on the accession of new countries to the EU.

European Sources of Law

- Secondary sources of law
 - Regulations establish general and abstract rules, which are directly binding for all European Union citizens. They are directly applicable within the national legal system. They do not have to be implemented by national law to become effective, but are immediately binding for all citizens
 - Directives are binding as to the result to be achieved, but leave their implementation to the discretion of the Member States. It is up to the Member States to put the directives into effect and to choose the most suitable legislative instrument for attaining the results.