

# The European Union Law and the European Union Sources of Law



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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.

COMPARATIVE LAW, 27-3-2017 PROF. GIAMMARIA MILANI

# Summary

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

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# 1. Historical Development

# State and supranational orders

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- 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

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- 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

# State and supranational orders

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- In democratic pluralistic States, globalisation has changed the idea of sovereignty
- Globalisation describes a process by which national and regional economies, societies, and cultures have become integrated through the global network of trade, communication, immigration and transportation
- As a consequence, States accept the idea of a limitation of sovereignty in a framework of Multi-level Constitutionalism

# International organizations

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- 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: Every State can (eventually) participate in this kind of organization, notwithstanding the geographical collocation
  - International regional organizations: They include states with common goals and belonging to the same geographical area

# The European framework

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- In the European continent there are 2 different organizations!!!!
- The EU and the CoE differ each others for the goals, for the extension and for the kind of organization
  - As for the goals, the main aim of the EU is to promote political and economic integration, while the CoE deals with the protection of human rights
  - As for the extension, the EU includes 28 States, while the CoE includes 47 States
  - As for the kind of organization, the UE is a supranational organization, while the CoE is an international organization



# The European framework

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## 2. Historical Development

# The European Union: historical development

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- The treaties (approval and amendments):
  - 1951: the founding treaty setting up the European Coal and Steel Community (ECSC) is signed in Paris by France, Germany, Italy, Belgium, Netherlands and Luxembourg
  - 1957: the six Countries sign in Rome the treaties creating the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM)
  - 1985: the Schengen Agreement led the way toward the creation of open borders without passport controls between most member states and some non-member states

# The European Union: historical development

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- 1986: the Single European Act is signed, including new matters into the Community jurisdiction
- 1992: the Treaty of Maastricht create the European Union: 3 pillars, European citizenship; Monetary union
- 1997: Treaty of Amsterdam
- 1999: the European Charter of Fundamental Rights
- 2001: Treaty of Nice
- 2004: signing of the Treaty Establishing a Constitution for Europe, the latter will be never entry into force
- 2007: the Treaty of Lisbon is signed, it amends the two existing treaties (TEU and TFEU) and abolishes the 3 pillars; the European Charter of Fundamental Rights becomes binding

# The European Union: historical development

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- The role of the Court of Justice
  - The European Law prevails on the national law, except for the fundamental principles set by the Constitution (so called «Controlimiti»)
  - The European Law has direct effect in the national legal order, not only upon the member states, but also upon the subjects of the national legal order

# The European Union: historical development

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- 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, Romania, Slovakia and Slovenia join the EU
  - 2007: Bulgaria and Romania join the EU
  - 2013: Croatia joins the EU
  - 2016: Brexit

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# 3. Accession and Withdraw

# The European Union: accession (art. 49 TEU)

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- The applicant country must:
  - A) be a state within geographical Europe
  - B) respect and commit to the EU values (art. 2 TEU): respect for human dignity, freedom, democracy, equality and the rule of law; respect for human rights; respect for a pluralistic society and for non-discrimination, tolerance, justice, solidarity and equality between women and men.
  - C) respect the EU eligibility criteria (Copenhagen criteria): stable institutions guaranteeing the EU values; a functioning market economy; the ability to take on and implement effectively the obligations of membership



# The European Union: accession (art. 49 TEU)

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- The procedure:
  - A) Application: formal application to the Council of EU
  - B) Candidate status: country's status as a candidate country is granted by the Council of the EU following a favourable opinion from the Commission and European Council.
  - C) Negotiations: are opened following a unanimous decision of the Council of the EU; the Commission monitors the candidate country's efforts to implement the *acquis* (the body of EU law, divided into 35 chapters)
  - D) Screening process: consists of verifying whether individual items of the *acquis* listed in a given chapter have been transposed into the law of the candidate country. Only when the candidate country shows that it has already implemented a chapter can that chapter be provisionally closed.
  - E) Accession: the accession treaty must be approved unanimously by the Council of the EU, must receive the consent of the European Parliament and must be signed by each of the EU countries and by the acceding country.

# The European Union: withdraw (art. 50)

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- 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.
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- 4...
- 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.

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# 4. Organization

# The European Union: organization

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- 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

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- The Council of the European Union (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

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- 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

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- 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

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- 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



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

# The relationship between national and international law

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- 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

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- 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

# The position of international law in Italy

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- The customary international law is automatically part of the Italian legal system; it includes the norms and the principles of international law that are generally recognized
- Italian Constitution, art. 10: Italian laws conform to the generally recognized norms of international law
- The conventional international law is not automatically part of the national legal system, it needs a ratification
- Italian Constitution, art. 80 and 87, provides the procedure of ratification

# The position of European law in Italy

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- Due to the particular character of the European Union, the European Law has a particular force in the member states of the EU
- Primary Sources of Law: the founding Treaties and their amendments
- Secondary Sources of Law: regulations, directives and decisions (binding); recommendations and opinions (non binding)
- The European Law prevails on the national law and has direct effect in the national legal order
- Conflict between European and Italian law are to be resolved by the non-application (if European source is self executing) or by the declaration of unconstitutionality (if European law is not self executing) of the latter

# The position of European law in Italy

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- 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.