

# EU TREATIES -DEEPENING-

# Sources of European Law

- Primary legislation  
(The treaties)
- Secondary legislation:
  - regulations
  - directives
  - decisions
- 'soft law'
  - recommendations
  - opinions

# Regulations

- Regulations are legislative instruments of **general application**.
- They apply to **abstract** rather than individual situations.
- Regulations are **binding** in their entirety. This means that a Member State has no power to apply regulations incompletely or to apply only those provisions of which it approves.
- Regulations are also **directly applicable**. This means that regulations do not need to be transposed into national law by the respective Member States in order to take effect.

# Directives

- Directives are legislative instruments which reconcile the dual objective of both securing the necessary uniformity of Community law and respecting the diversity of national traditions and structures.
- Directives are binding on Member States as to the result to be achieved but leave it to the respective national authorities to decide how the Community objective set out in the directive is to be incorporated into their domestic legal systems before a specified date.
- A directive does not acquire legal force and effect until the date for implementation of the directive has expired.

# Decisions

- A decision is an individual act addressed to a specified person or persons.
- Decisions are binding only on those to whom they are addressed without any need for implementation into national law.

# The Treaties

- Treaties contain basic provisions on the European Union's objectives and organisation.
- They set the framework for the operation of the European Union which is administered by the Union institutions.
- They set up the various organs of the Unions and grant them their powers, delineating the areas of exclusive and shared competence between the Union and member states

# The founding treaties

- The Treaty of Paris establishing the European Coal and Steel Community (ECSC) (18 April 1951; 25 July 1952)

1. **The Treaty of Rome** establishing the European Economic Community (EEC) (25 March 1957; 1 January 1958)

- The Treaty of Rome establishing the European Atomic Energy Community (Euratom) (25 March 1957; 1 January 1958)

- The Treaty establishing a Single Council and a Single Commission of the European Communities – Merger Treaty (8 April 1965; 1 July 1967)

2. **The Single European Act** (18 February 1986; 1 January 1987)

3. **The Treaty on European Union – Treaty of Maastricht** (7 February 1992; 1 November 1993)

4. **The Treaty of Amsterdam** (2 October 1997; 1 May 1999)

5. **The Treaty of Nice** (26 February 2001; 1 February 2003)

6. **The Treaty of Lisbon** (13 December 2007; 1 December 2009).

# Treaties of Rome - EEC and EURATOM treaties

**Signed:** 25 March 1957/**Entered into force:** 1 January 1958

**Purpose:** *to set up the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).*

**Main changes:** extension of European integration to include general economic cooperation.

## **The provisions of the Treaty of Rome**

- **The Treaty of Rome that established the EEC, set the establishment of a common market as the overall aim of the Community;**
- **The main task of the Treaty was to provide the harmonious and balanced development of economic activities... raising of the standard of living... economic and social cohesion and solidarity among Member States... through gradual convergence of economic policy (Article 2 of the Treaty).**
- **The overall aim was to be achieved by following main specific objectives (Article 3): the elimination of customs duties and quantitative restrictions, and of all other measures having equivalent effect; establishment of a customs union and adherence to a common commercial policy against countries outside the Community; free movement not only for goods and services, but also of labour and capital within the Community; a common policy in the areas of agriculture, transport, and competition; approximation of national laws.**

# The provisions of the Treaty of Rome

- The Treaty of Rome that **established EURATOM** set as one of its aims the quick establishment and development of the atomic energy industry, identifying a number of tasks from common research to the effective utilisation of atomic energy + provision of nuclear safety.
- **Institutional system was also set up by the Treaty of Rome.** The *Council of Ministers* as the main decision-making body of the EEC. The *Commission* became the main initiator of decisions, equipped with some decision-making authorisation.
- **The *Assembly*** had the role of consultation, authorisation and limited supervisory competence.
- **The *Court of Justice*.**
- **The European Social Fund**

# The Merger Treaty and its institutional impact

- In the mid-sixties, the institutions of the three integration organisations were united.
- In pursuance of the *Merger Treaty*, adopted in 1965, the parallel institutions of the ECSC, the EEC and Euratom were merged by July 1967.
- It should be noted that, since the *Maastricht Treaty of 1992*, the acronym EC has been used to denote the EEC. The *Maastricht Treaty* renamed the European Economic Community (EEC) as the European Community (EC). Thus, the term EC refers to the former EEC and not the three Communities collectively.

# The Single European Act

- During the lengthy period following the second oil crisis, it became increasingly apparent that the only recipe for boosting European competitiveness was deregulation. **The elimination of various national-like administrative regulations would have been impossible if the system of unanimous voting had been maintained.**
- Making the markets more flexible + creating a real common market became an urgent issue for the EC of the middle eighties.
- In 1985 the European Commission prepared a **White Paper** under the guidance of Lord Cockfield, which contained a plan for single market, to be implemented by 1992.
- **The White Paper was aimed at removing all restrictions hindering the establishment of a real common market, such as obstacles of a physical nature (border formalities and controls), financial (budgetary and taxation rules) or technical nature (differing Member State legislation, standards and other national – typically technical – regulations).**
- The Single European Act was signed on 18 February 1986 and entered into force on 1 January 1987.

# The Single European Act

- In fact, a single market programme meant a harmonisation of Member State legislation on the basis of about 300 Community directives between 1987 and 1992.
- The purpose of this intensive legislative programme was to remove any barriers that still hindered the free movements of goods, services, capital and labour, whether technical, physical, or financial.
- The programme of creating a single market included the elimination of various protectionist national regulations and standards, the removal of obstacles to the movement of capital, the harmonisation of public procurement rules and the liberalisation of a range of service sectors.

# The Single European Act

- The influence of European Parliament was also extended, the competence of the European Commission was widened.
- Significant changes were made in the voting system of the Council, increasing the importance of qualified majority voting.
- The Single European Act included the rules of the „*European Political Cooperation*” as well. The Single European Act eventually institutionalised the existing de facto cooperation. European Political Cooperation was directed towards the coordination of national foreign policies in order that Member States could develop a common standpoint on given matter, based on intergovernmental consultation, and in this way act together.
- The *European Council* was also institutionalised by *the Single European Act* in foreign policy issues. The *European Council* main task is to forge compromises between the Member States and is a forum for taking key decisions and strategic issues, compromises and guidelines. The task of adopting legislative acts and specific decisions remained with the *ministerial Council*.

# The Single European Act

- The Single European Act not only meant the introduction of an internal action plan but also qualitative changes in the external relationships as well (see: *the Schengen Agreement* and the establishment of the *European Economic Area*).
- **Under the *Agreement signed at Schengen* in Luxembourg on 14 June 1985, the Benelux countries, France and the Federal Republic of Germany agreed that they would gradually remove their internal border controls and introduce freedom of movement for all individuals. The *Agreement* was supplemented by the *Convention implementing the Schengen Agreement (Schengen Implementing Convention)*, which laid down the rules of implementing the Agreement.**

# Treaty on European Union - Maastricht Treaty

**Signed:** 7 February 1992/**Entered into force:** 1 November 1993

**Purpose:** *to prepare for European Monetary Union and introduce elements of a political union (citizenship, common foreign and internal affairs policy).*

**Main changes:** establishment of the European Union and introduction of the co-decision procedure, giving Parliament more say in decision-making. New forms of cooperation between EU governments – for example on defence and justice and home affairs.

# The Maastricht Treaty

- **The political atmosphere of the eighties, that replaced the eurosclerosis of the seventies, promoted the deepening of integration and provided an appropriate background for the further development of European integration toward an economic and political union.**
- EUROSCLEROSIS: A term introduced by German economist Herbert Giersch referring to the economic stagnation that can result from a government's overregulation and overly generous social benefits policies. Eurosclerosis, which stems from the medical term sclerosis, meaning the hardening of tissue, describes countries experiencing high rates of unemployment and lagging job creation during periods of economic growth.

# The Maastricht Treaty

- It was already decided at the time of the adoption of the Single European Act, that the **Member States should investigate the feasibility of a transition to an economic and political union** in the framework of an Intergovernmental Conference (IGC).
- Significant political changes happened in world politics (The communist block was dissolved, political changes in Central and Eastern Europe, the issue of German reunification).

# The Maastricht Treaty

- The Summit meeting of July 1990
- The Maastricht Treaty, which was signed on 7 February 1992, brought fundamental changes to the integration process. The changes were the followings:
  - To deepen economic integration, the Member States decided to join in an Economic and Monetary Union.
  - To promote closer political integration, they created a Common Foreign and Security Policy.
  - Common aims were identified in the area of home affairs and justice.
  - EU citizenship was introduced and the full freedom of people's movement was also decided on.

# The Maastricht Treaty

- Introducing the name European Union (But EU isn't a legal entity, rather it represents a political notion).

- **Three-pillar structure was established**

First pillar: three Communities that were already in operation, including the EMU (Supranational);

Second pillar: Common Foreign and Security Policy ; based on intergovernmental cooperation.

Third pillar: Cooperation on Justice and Home Affairs: based on intergovernmental cooperation.

- The competences of European Parliament was extended + application of qualified majority voting in the Council instead of unanimity decision-making.

# Three Pillars of Foreign Policy

## European Union: Three Pillars

- **Treaty of Rome as revised by single European act**

- **Single market**

- **Democratization of the institutions**

- **European citizenship**

- **Economic and monetary union**

*Single currency European Central Bank single monetary policy coordination of economic policies*

**European Community**

- **Common Foreign Policy**

*Systematic cooperation common positions and joint actions*

- **Eventual common defense policy based on the Western European Union**

**Common Foreign & Security Policy**

- **Closer Cooperation**

*Asylum policy rules on crossing the Member States' external borders immigration policy combating drug addiction combating international fraud customs, police and judicial cooperation*

**Justice and Home Affairs**

# The Maastricht Treaty

- *The second pillar was the Common Foreign and Security Policy.*
- CFSP, however, cannot be understood literally as a common foreign policy, since it doesn't mean that the Member States have a single, joint, foreign policy. Neither can it be seen as Community policy, since it works entirely on an intergovernmental basis.
- The principles of CFSP call for an ongoing exchange of information on foreign policy and security issues between the Member States and for aligning national positions. These objectives are to be attained and put out into action through legal instruments of *general guidelines, common strategies, common positions* and *joint actions*.

# The Maastricht Treaty

*The third pillar was the Cooperation in the fields of Justice and Home Affairs* (areas that belonged to this field were the followings: asylum policy, the control of external borders of Member States, immigration policy and questions relating to nationals of third non-member countries, fighting against drugs and international fraud, judicial cooperation in criminal matters, custom cooperation and police cooperation on preventing and combating terrorism, illicit drug trafficking and other serious forms of international crime).

- One of the purposes of the Maastricht Treaty was to finally settle disputes emerging in connection with coinciding scopes of Community and Member State competence.
- To this aim, the Treaty included the principle of **subsidiarity** in Community decision-making.
- **SUBSIDIARITY**: According to this principle, an issue should be decided on at the Community level if the aim concerned cannot be realised at the national level and the measure proposed can probably be carried out with better success and efficiency at the Community level owing to its extent and effects.

# The Principle of Subsidiarity

- In areas which do not fall within the Union's exclusive competence, the principle of subsidiarity, laid down in the Treaty on European Union, defines the circumstances in which it is preferable for action to be taken by the Union, rather than the Member States.
- **Legal basis:**
- Article 5(3) of the Treaty on European Union (TEU) and Protocol (No 2) on the application of the principles of subsidiarity and proportionality.

# Example: Torfean Borough Council v B&Q plc Case

- UK decision and ...
- The European Court of Justice, on a reference for a preliminary ruling under article 177 of the EEC Treaty by the House of Lords, stated that article 30 of the Treaty is to be interpreted as meaning that the prohibition which it lays down does not apply to national legislation prohibiting retailers from opening their premises on Sundays.
- National rules prohibiting shops from opening on Sundays do not have restrictive effects on Community trade which exceed the effects intrinsic to such rules in relation to the socio-cultural aims pursued. Therefore article 30 of the EEC Treaty, which prohibits measures which have an effect equivalent to a quantitative restriction on imports from other member states, does not apply to national legislation which prohibits retailers from selling certain goods on Sunday.
- **IMPORTANT: National rules restricting the opening of shops on Sundays reflected certain choices relating to particular national or regional socio-cultural characteristics.**

# Treaty of Amsterdam

**Signed:** 2 October 1997/**Entered into force:** 1 May 1999

**Purpose:** *To reform the EU institutions in preparation for the arrival of future member countries.*

**Main changes:** amendment, renumbering and consolidation of EU and EEC treaties. More transparent decision-making

# The Amsterdam Treaty

- According to the articles of the Maastricht Treaty, it was essential held another Intergovernmental Conference in 1996 to review and amend the Treaty.
- Main targets: to assist a comprehensive reform of the operation of the Union + revision of the Maastricht Treaty.
- On 2 October 1997: Amsterdam Treaty was signed and entered into force following the required ratification by the Member States on 1 May 1997.

# The Amsterdam Treaty

- The main elements of the Amsterdam Treaty were the followings:
  1. Significant widening of the decision-making competence of the European Parliament (European Parliament received co-decision making procedure in many fields except financial and economic issues and had right to nominate the President of the European Commission).
  2. Changes were made in the area of Common Foreign and Security Policy (High Representative for CFSP was nominated by governments that represented the Common Foreign and Security Policy of the EU).
  3. Progress was made in intensifying cooperation on justice and home affairs (integration of the areas of external and internal border controls, immigration, asylum and judicial cooperation on civil matters into the first pillar).
  4. Employment policy was set on Community level. Member States were required to coordinate the orientation and purposes of their respective national employment policies along guidelines adopted mutually each year.
- Criticism: postponing institutional reforms (extension of Council decisions requiring qualified majority voting; re-weighting of votes in the Council; determination of the composition and size of the Commission).

# The Amsterdam Treaty

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# THE EUROPEAN UNION

1st PILLAR:  
the European  
Communities

2nd PILLAR:  
Common Foreign and  
Security Policy

3rd PILLAR:  
Cooperation in  
Justice & Home Affairs

SUPRANATIONAL  
COOPERATION

INTERGOVERNMENTAL  
COOPERATION

European Communities  
(EC):

- Customs Union and single market
- Common Agricultural and Fisheries Policy
- Competition law
- Structural Policy
- Trade Policy
- EU citizenship
- Education and culture
- Trans-European networks
- Consumer protection
- Health
- Research
- Environment
- Social Policy
- Asylum Policy
- External borders - Schengen Treaty
- Immigration Policy

Euratom & ECSC

Foreign Policy:

- Cooperation, common positions and measures
- Human rights
- Democracy
- Aid to non-member countries

Security Policy:

- European Security and Defence Policy
- EU battle groups
- Peacekeeping and Disarmament

- Cooperation between judicial authorities in civil and criminal law
- Police cooperation
- Combating racism and xenophobia
- Fighting the drugs and arms trades
- Fighting organised crime
- Criminal acts against children and trafficking in human beings
- Fighting terrorism

THE TREATIES

# Treaty of Nice

**Signed:** 26 February 2001/**Entered into force:** 1 February 2003

**Purpose:** *to reform the institutions so that the EU could function efficiently after reaching 25 member countries.*

**Main changes:** methods for changing the composition of the Commission and redefining the voting system in the Council.

# The crisis of European Commission and the Treaty of Nice

- In 1999 Romano Prodi was nominated as President of the European Commission.
- The Cologne Summit held on 3 and 4 June 1999 decided to convene another Intergovernmental Conference in the first half of 2000 that would close by end of 2000.
- **Main targets of the Intergovernmental Conference were the followings: to promote the institutional reform + process of decision-making.**
- The Treaty of Nice was signed on 26 February 2001 and entered into force on 1 February 2003.

## The provisions of the Treaty of Nice

- The provisions of the Treaty of Nice were the followings:
  1. The Treaty of Nice extended the role of majority voting in EU decision-making against unanimity-based decisions and modified Member State participation in decision-making so that population weights were better reflected in the decision-making bodies of the EU.
  2. The Treaty extended decisions made through qualified majority voting to a number of areas such as industry policy, economic and social cohesion and economic and financial cooperation with third countries. The Treaty restricted the option to set a Member State veto, and further increased the influence of the European Parliament in passing decisions.

## **The provisions of the Treaty of Nice**

3. As regards Community institutions, the Treaty of Nice specified the weights to be assigned to each country in the 27-member Union (comprising the then 15 Member States and the 12 candidate countries still engaged in negotiations).

## **The provisions of the Treaty of Nice**

- **The undoubted importance of the Treaty of Nice was that its entry into force opened the way to the historical eastward enlargement . The Member States decided to convene another Intergovernmental Conference in 2004. (to profound institutional restructuring of the Union with the inclusion of the new members and candidate countries)**

# The Constitutional Treaty

- At the end of a period of almost 18 months, the Convention completed its work on 10 July 2003 by adopting the draft Constitutional Treaty.
- Intergovernmental Conference was called on by the European Council on 4 October 2003. The IGC set itself the new treaty framework to guarantee that EU could function smoothly with 25, 27 or possibly even more Member States and the same time make Union's institutions and decision-making simpler, more democratic and more transparent for citizens.
- The Constitutional Treaty was adopted at the Brussels Summit on 17-18 June 2004. As a tribute to the Treaty of Rome of 1957, the 25 Member States signed the new Treaty on 29 October 2004 in Rome.

# Internal crisis of the European Union

- The Constitutional Treaty was refused by France (54, 8 No votes) and Netherlands (61, 7% No votes) on referenda held on 29 May and 1 June 2005.
- Reasons behind the negative outcome of the French and Dutch referenda were the followings:
  - the electorate's dissatisfaction with the work of the domestic political elite, poor economic prospects; increasing unemployment; social insecurity and the problems of immigration.
- In the first half of 2007. Germany assumed the Council Presidency. The German Presidency strived on reconciling the position of the few Member States mentioned that wished to amend the text with the position of the majority, who preferred maintaining the provisions of the Constitutional Treaty.

# Treaty of Lisbon

**Signed:** 13 December 2007/**Entered into force:** 1 December 2009

**Purpose:** *to make the EU more democratic, more efficient and better able to address global problems, such as climate change, with one voice.*

**Main changes:** more power for the European Parliament, change of voting procedures in the Council, [citizens' initiative](#), a permanent president of the European Council, a new High Representative for Foreign Affairs, a new EU diplomatic service.

The Lisbon treaty clarifies which powers:

belong to the EU

belong to EU member countries

are shared.

The [Treaty establishing a constitution for Europe](#) (2004) – with aims similar to the Lisbon Treaty – was signed but never ratified.

# The path to the Treaty of Lisbon

- Contrary to the Constitutional Treaty, The Reform Treaty doesn't state explicitly the supremacy of Community law.
- The Reform Treaty doesn't include references to the Union's symbols – the flag, the anthem and the motto – either.
- The Reform Treaty doesn't incorporate the Charter of Fundamental Rights into the Treaties, but it does include a reference to the rights enshrined in the Charter.
- The Union Minister for Foreign Affairs proposed by the Constitutional Treaty will be replaced by the name „High Representative of the Union for Foreign Affairs and Security Policy”.

# The content of the Treaty of Lisbon

- *It's important to emphasize that the Treaty of Lisbon doesn't replace the Treaty on European Union (EU Treaty) and the Treaty establishing the European Community (EC Treaty); it only amends them and renames the latter the Treaty on the functioning of the European Union. The Treaty of Lisbon is an amending Treaty in classical sense: it amends but doesn't replace the Treaties in force.*
- Human dignity, freedom, democracy, equality, the rule of law and the respect for human rights: these are the core values of the EU which are set out at the beginning of the Treaty of Lisbon. They are common to all Member States, and any European country wishing to become a member of the Union must respect them.
- Promoting these values, as well as peace and the well-being of the Union's peoples are now the main objectives of the Union. These general objectives are supplemented by a list of more detailed ones, including the promotion of social justice and protection, and the fight against social exclusion and discrimination.

# The content of the Treaty of Lisbon

- The Treaty of Lisbon makes significant advances regarding the protection of fundamental rights.
- It opens the way for the Union to seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- The EU therefore acquires for itself a catalogue of civil, political, economic and social rights, which are legally binding not only on the Union and its institutions, but also on the Member States as regards the implementation of Union law.
- The Charter lists all the fundamental rights under six major headings: Dignity, Freedom, Equality, Solidarity, Citizenship and Justice.

# The content of the Treaty of Lisbon

- *INSTITUTIONAL CHANGES:*
- Parliament's powers have been gradually extended in law-making (ordinary legislative procedure has been extended to several new fields such as legal immigration, penal judicial cooperation, crime prevention, police cooperation and some aspects of trade policy and agriculture).
- The new Treaty confirms the established practice of working with a multiannual financial frameworks, which Parliament must approve.

# The content of the Treaty of Lisbon

- The Treaty of Lisbon gives the *national parliaments* greater scope to participate alongside the European institutions in the work of the Union. The clause of the Treaty deals with their right to information, the way they monitor subsidiarity, mechanism for evaluating policy in the field of freedom, security and justice, procedures for reforming the treaties.
- The Treaty of Lisbon enforces the *principle of subsidiarity*. Any national parliament may flag a proposal for EU action which it believes doesn't respect this principle.

# The content of the Treaty of Lisbon

- *Citizens' initiative*: whereby one million citizens, from any number of member countries, will be able to ask the Commission to present a proposal in any of the EU's areas of responsibility.

- One of the new elements of The Treaty of Lisbon that it clarifies the scope of competences.

The Treaty makes distinctions between *exclusive powers* (for example in fields like the customs union, the common trade policy and competition); *supporting, coordinating or complementary action* (for example in areas like culture, education and industry, the Union may only support action by the member states); *shared powers* (for example in other fields, like environment, transport and consumer protection, the Union and the member states share lawmaking power, not forgetting subsidiarity).

# The content of the Treaty of Lisbon

- According to the Treaty of Lisbon the European Council becomes a full EU institution. Although it doesn't gain any new powers, it is headed by a newly created *position of President*.
- The *President is elected by the European Council for 2½ years*, the main job of the president is to prepare the Council's work, ensure its continuity and work to secure consensus among member countries. The President cannot simultaneously hold any elected position or office nationally.
- *The main changes in the decision-making process within the Council of the European Union:*
- The qualified majority voting will be extended to many new policy areas (e. g. immigration and culture).

# The content of the Treaty of Lisbon

- In 2014, a new method will be introduced – double majority voting. To be passed by the Council, proposed EU laws will then require a majority not only of the EU's member countries (55 %) but also of the EU population (65%). This will make EU lawmaking both more transparent and more effective. It will be accompanied by a new mechanism enabling a small number of governments (close blocking minority) to demonstrate their opposition to a decision. Where this mechanism is used, the Council will be required to do everything in its power to reach a satisfactory solution between the two parties, within a reasonable time period.
- *European Commission*
- The Treaty offers the perspective that a Commissioner from each Member State becomes Member of the Commission, while under the former Treaties that number would have to be reduced to a number inferior to that of Member States.
- *Another major change*, there is a direct link between the results of the European elections and the choice of candidate for president of the Commission. The President has the power to dismiss fellow Commissioners.

# Pre-Lisbon Pillar Structure

# Post-Lisbon Structure



