

# Basics of EU law and EU terminology

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# Competences of the European Union

- The division of competences between the Member States and the European Union,
- The principle of attributed powers: Arts. 4-5 EU; Arts. 2-6 TFEU,
- The catalogue: exclusive, shared and supporting powers (+ *sui generis* competences),
- Implied powers: Art. 352 TFEU.

# Exclusive Competences of the EU

- Exclusive competences (Art. 3 TFEU) include:
  - customs union,
  - the establishing of competition rules necessary for the functioning of the internal market,
  - monetary policy for the Member States whose currency is Euro,
  - conservation of marine biological resources under the common fisheries policy,
  - common commercial policy.

# Shared competences of the EU (1)

- Shared competences are listed in Art. 4 TFEU, they include:
  - internal market,
  - social policy,
  - economic, social and territorial cohesion,
  - agriculture, fisheries (excluding the conservation of marine biological resources),
  - environment.

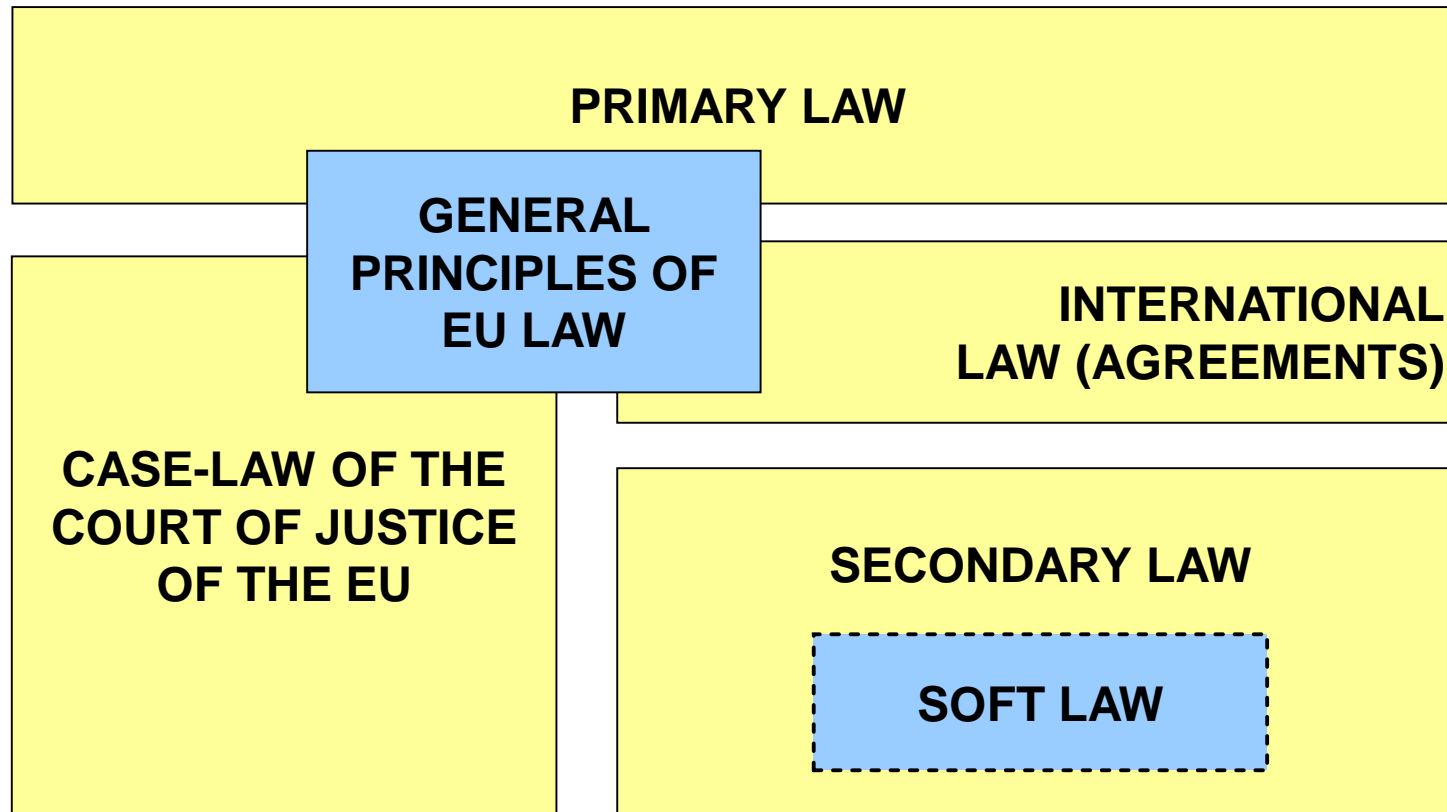
# Shared competences of the EU (2)

- consumer protection,
- transport,
- trans-European networks,
- energy,
- area of freedom, security and justice,
- common safety concerns in public health matters (for the aspects defined in TFEU).

# Supporting competences of the EU

- Supporting competences are regulated in Art. 6 TFEU, they include:
  - protection and improvement of human health,
  - industry,
  - culture,
  - tourism,
  - education, vocational training, youth and sport,
  - civil protection,
  - administrative co-operation.

# CATALOGUE OF THE EU LAW SOURCES



# PRIMARY LAW = TREATIES

## FOUNDING TREATIES:

- Treaty on European Union,
- Treaty on the Functioning of the European Union,
- Euratom Treaty,

## REVISION TREATIES:

- Single European Act,
- Treaty of Maastricht,
- Treaty of Amsterdam,
- Treaty of Nice,
- The Treaty of Lisbon.

## ACCESSION TREATIES

## CHARTER OF FUNDAMENTAL RIGHTS



# International law

- Public international law
  - the EU is a party to hundreds of international agreements with third countries and other international organisations
  - International customary law
- EU exclusive agreements
- EU and Member States (on the one side) agreements = so called mixed agreements:
  - Euro-Med Agreements, Stabilisation and Association Agreements, Deep and Comprehensive Free Trade Agreements (Association Agreements with Ukraine, Georgia and Moldova), Partnership and Co-operation Agreements.



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## SECONDARY LAW = ACTS BASED ON TREATIES:

- DIRECTIVES
- REGULATIONS
- DECISIONS

### LEGISLATIVE ACTS

- (- EU COUNCIL, OR
- EU COUNCIL + THE EUROPEAN PARLIAMENT)

### NON-LEGISLATIVE ACTS

DELEGATED ACTS  
(COMMISSION)

IMPLEMENTING ACTS  
(COMMISSION)

UNDEFINED ACTS  
(COUNCIL, COMMISSION, ECB)

# Regulations

- The European Parliament + Council, Council, Commission and European Central Bank,
- Directly applicable = automatically part of the legal systems of Member States,
- Their aim is to provide uniform law for all Member States
- Implementation measures by Member States are forbidden (in principle)

# Directives

- European Parliament + Council, Council or Commission,
- Binding as to the aim, which shall be achieved and require from Member States:
  - further implementation measures in the domestic legal systems
  - on time (transposition deadline)
  - efficient
- Their function is to harmonise domestic laws of the Member States.

# Decisions

- Council, Commission
- Acts of an individual character, addressed to:
  - Member States
  - individuals (natural or legal persons),
- Important tool in competition policy and state aid policy

Specific type of decisions: internal acts of EU institutions  
(nominations, budget, rules of procedure, etc.)

## Common practical „formats” of EU legal acts

- Consolidated versions
- Codified versions
- Recasts

## Consolidated act (consolidation)

- Provisions of a basic instrument and all subsequent amendments combined in a single text
- No amendments of the content
- Purely declaratory, unofficial simplification of the legislation (reader-friendly law)

Directory of EU consolidated acts:  
<http://eur-lex.europa.eu/browse/directories/consleg.html>



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## Codified act (codification)

- A legislative act and all its amendments brought together in a single new act
- The new act passes through the full legislative process (accelerated procedure) and replaces the acts being codified.
- No substantive changes





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## Recast

- A legislative act and all the amendments made to it brought together in a single new act
- The new act passes through the full legislative process and repeals all the acts being recast.
- Unlike codification, recasting involves new substantive changes, as amendments are made to the original act during preparation of the recast text.

# General principles of law

- The concept established by the EU Court of Justice
- frequently incorporated into primary law revisions treaties
- The most important:
  - the principle of loyal co-operation (Art. 4(3) TEU),
  - fundamental rights,
  - state liability for breaches of EU law.

# Soft law

- Non binding acts (i.a.):
  - recommendations,
  - opinions,
  - notices,
  - communications,
  - information notices.
- Usually adopted by the European Commission
- Formally NOT binding, but (C-322/88 Grimaldi):
  - *“it must be stressed that the measures in question cannot therefore be regarded as having no legal effect”* .
  - *“national courts are bound to take those recommendations into consideration in order to decide disputes submitted to them, in particular where they are capable of casting light on the interpretation of other provisions of national or Community law”*.

# Case-law of the EU Court of Justice

- Judgements are binding for parties,
- In theory, judgements are not a source of law as in the common law systems,
- In practice, case-law of the Union courts is of highest relevance.

# EU legal acts and accompanying documents



## Interpretation of EU legal acts

- literal interpretation not crucial (multi-lingual character of EU law)
- purposive & contextual interpretation
  - the purpose,
  - values,
  - legal, social and economical goals provisions aim to achieve
  - objectives set by the Treaties,
- Until...
  - CJEU case-law exists = formal and binding interpretation
  - Soft-law of the European Commission interpreting relevant acts

## Understanding of an EU legal act



## Understanding of an EU legal act – example: directive on energy performance of buildings (2010/31)

