

UNIVERSITY OF LISBON
SCHOOL OF LAW

EUROPEAN UNION LAW

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Additional teacher: Miguel Mota Delgado

2nd Year – Class B

Academic Year: 2019/2020 (2nd Semester)

PROGRAM

INTRODUCTION

1. The historical foundations of the European purpose
 - 1.1. Until World War I
 - 1.2. In the period between the two Great Wars
 - 1.3. After World War II
2. The creation of the three European Communities (ECSC / Euratom / EEC)
3. The stages of the European integration process
 - 3.1. The transition stage (1958-1968)
 - 3.2. The consolidation stage (1969-1992)
 - 3.3. The stage of the future age: the European Union

4. Goals and nature of the Euro-Community construction project, framed in the phases of economic integration (free trade area, customs union, common market and economic and monetary union).
5. The Lisbon Treaty and the attempt to affirm the European Union's identity as a space for political integration.

PART I

THE DECISION STRUCTURE OF THE EUROPEAN UNION

Chapter 1

Institutions, bodies and agencies

6. Common features of institutional architecture
 - 6.1. The single institutional framework
 - 6.2. Institutions, bodies and agencies - three different levels of institutional action
 - 6.3. Institutional structure and sources of legitimacy
 - 6.4. Common operating rules for institutions, bodies, offices and agencies
 - 6.4.1. Institutional autonomy
 - 6.4.2. Public function
 - 6.4.3. Privileges and immunities
 - 6.4.4. Linguistic regime
 - 6.4.5. Headquarters
7. Fundamental principles of institutional binding
 - 7.1. The principle of institutional balance
 - 7.2. The principle of respect for the Euro-Community 'acquis'
 - 7.3. The principle of sincere cooperation
 - 7.4. The principle of transparency

8. Institutions, bodies and agencies - in particular:

- 8.1. The European Parliament
- 8.2. The European Council
- 8.3. The Council (of Ministers) of the European Union
- 8.4. The European Commission
- 8.5. The Court of Justice of the European Union
- 8.6. The European Central Bank
- 8.7. The European Court of Auditors
- 8.8. Complementary bodies - in particular, the High Representative of the Union for Foreign Affairs and Security Policy and the European Ombudsman
- 8.9. Bodies - in particular, committees and independent agencies

Chapter 2

European Union decision-making procedures

9. Decision-making procedures, political function and separation of powers in the European Union - general considerations.

10. The European Union's governance system

11. The procedure for approving legislative acts

- 11.1. The ordinary legislative procedure (e.g., codecision) - v. article 294 TFEU
- 11.2. Special legislative procedures

12. Procedures for approving non-legislative acts

- 12.1. The delegated acts procedure (Article 290 TFEU)
- 12.2. The procedure for adopting implementing acts (see Article 291 (3) TFEU)

13. The European Union's international binding procedure

- 13.1. Legal personality of the European Union (Article 47 TEU)
- 13.2. Conclusion of international agreements (see Article 218 TFEU)

PART II

THE LEGAL ORDER OF THE EUROPEAN UNION

Chapter 3

The sources of Union law

14. Primary Law

- 14.1. Notion
- 14.2. On the nature of institutional treaties: treaty or constitution?
- 14.3. Scope of the Treaties
- 14.4. Revision procedures (see Article 48 EU)
 - 14.4.1. Ordinary revision procedure
 - 14.4.2. Simplified revision procedure

15. Secondary Law

- 15.1. Typical acts (Article 288 TFEU)
 - a) regulation
 - b) directive
 - c) decision

- d) recommendations and opinions
- 15.2. Atypical acts
- 15.3. Legislative acts, delegated acts and implementing acts
- 15.4. Common legal regime for Euro-Community acts

16. Right of conventional source

- 16.1. International agreements concluded by the European Union (Article 216 TFEU)
- 16.2. International agreements concluded by Member States – in particular, the relevance of the “Treaty on Stability, Coordination and Governance”
- 16.3. The so-called “mixed agreements” - brief characterization and its relevance in more recent institutional practice

17. Other sources

- 17.1. The case-law of the EU courts - reasons for the authority of the interpretation of Euro-Community rules (the precedence principle's atypical effect)
- 17.2. The general principles of law - origin and shaping force
- 17.3. The custom

Chapter 4

The articulation between the Euro-Community legal order and the national legal orders - fundamental principles and criteria

18. Ensuring the effectiveness of Euro-Community rules

- 18.1. The autonomy of the EU legal order
- 18.2. The primacy
- 18.3. Direct applicability
- 18.4. The direct effect
- 18.5. The principle of interpretation in conformity with EU law
- 18.6. Uniform interpretation and application - around the article 267 TFUE
- 18.7. The principle of sincere cooperation - in particular, Member States' implementing powers (Article 4 (3) TEU)
- 18.8. The principle of Member State liability for damage caused by breaches of EU Law

19. The Portuguese Constitution and the degree of “openness” to the demands of “necessary cohabitation” between the principle of primacy and the respect for the Member States’ constitutional identity (Article 4, 2, TEU)

20. The legal foundations of a “*Union of Law*”

- 20.1. The principle of effective judicial protection
 - 20.1.1. The competent courts
 - 20.1.2. Adequate jurisdictional remedies
 - a) Before national courts
 - b) Before the Courts of the Union
- 20.2. The protection of fundamental rights
 - 20.2.1. Sources - the European Union's “fundamentality bloc”
 - 20.2.2. Protection methods
 - 20.2.3. The Charter of Fundamental Rights of the European Union
 - 20.2.4. European Union and access to the European Convention of Human Rights (Article 6 (2) TEU)

20.3. On the “necessary cohabitation” relationship between the Euro-Community legal order and the national Constitutions - in particular, the demand for the highest level of protection of fundamental rights

20.4. Union citizenship status

20.4.1. Legal nature of the Union citizenship bond

20.4.2. Concept and list of fundamental rights

20.4.3. In particular, political rights

21. “Union of Law”: specific instruments for the defense of the Rule of Law against serious violations attributable to Member States

21.1. The so-called rule of law safeguard mechanism, its preventive function and the role of the Commission

21.2. Article 7 EU and the feasibility of political sanctions

21.2.1. Political sanctions and unanimous vote

21.2.2. Political sanctions immune to judicial control (the European Union paradox)

21.3. The subsidiary function of the action for infringement (Articles 258 and 259 TFEU)

Chapter 5

Scope and nature of the powers of the

European Union

22. Demarcation of powers between the EU and the Member States: fundamental principles

22.1. The principle of conferral

22.2. The principles of subsidiarity and proportionality

23. On the expansive vocation of EU powers

- 23.1. Teleological interpretation and theory of implicit powers
- 23.2. The flexibility clause in Article 352 TFEU
- 23.3. The Lisbon Treaty and the desire to clarify the limits of the European Union's legal action
- 23.4. The role recognized to national parliaments

24. The competence rules of the Treaties and the material scope of action of the European Union

- 24.1. Classification of competences by the Treaties (Articles 2 to 6 of the TFEU)
- 24.2. The definition of the legal basis

PART III

EUROPEAN UNION AND THE CURRENT PROCESS OF POLITICAL CONSTRUCTION - ON THE FUTURE OF EUROPE

25. On the legal nature of the European Union (will it really be “an unidentified political object”?)

- 25.1. Main doctrinal conceptions - in particular, the issue of federalism
- 25.2. Our understanding (Union of sovereign states)
- 25.3. Explanatory relevance of the contractual principle and Article 48 TEU
- 25.4. Article 50 TEU and the assumptions for its activation

26. Eurocommunity governance at the crossroads: directorial intergovernmentalism v. federalism

27. Europe's crises

27.1. At the political level

27.2. At the economic and social level

27.3. The phenomenology of crises

27.3.1. Brexit

27.3.2. Cold winds from the East

27.3.3. The wave of populism

28. The Conference on the future of Europe: a decade of the Lisbon Treaty and the space open to civic debate

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II. Other

A. Portuguese bibliography

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MARTÍN, Araceli Mangas / NOGUERAS, Diego J. Liñán – *Instituciones y Derecho de la Unión Europea*, 5.^a ed., Madrid, Tecnos, 2010.

III. Other work elements

- Treaty on European Union and Treaty on the Functioning of the European Union
- Charter of Fundamental Rights of the European Union
- EU case-law (available at: <http://www.curia.eu>)
- Annex (see list of case-law)

Lisboa, 27 January 2020

ANNEX

List of relevant Court of Justice of the European Union's Case-Law

- 1) Judgment of the Court of 15 July 1964, **Costa c. Enel**, Proc. 6/64, Rec. 1964, p. 585 (primacy of EU Law)
- 2) Judgment of the Court of 9 March 1978, **Simmenthal**, Proc. 106/77, Rec. 1978, p. 243 (direct applicability and EU Law primacy)
- 3) Judgment of the Court of 4 December 1974, **Van Duyn**, Proc. 41/74, Rec. 1974, p. 567 (directive's direct effect)
- 4) Judgment of the Court of 26 February 1986, **Marshall**, Proc. 152/84, Col. 1986, p. 723 (directive's direct effect)
- 5) Judgment of the Court of 19 November 1991, **Francovich**, Proc. C-6/90 e C-9/90, Col. 1991, p. I-5357 (Member States' liability)
- 6) Judgment of the Court of 31st March 1971, **AETR**, Proc. 22/70, Rec. 1971, p. 69 (implicit powers' theory)
- 7) Judgment of the Court of 14 October 2004, **Omega**, Proc. C-36/02, Col. 2004, p. I-9609 (national constitutions and fundamental rights)
- 8) Judgment of the Court of 16 December 2008, **Michainiki**, Proc. C-213/07 (primacy and Member States' constitutions)
- 9) Judgment of the Court of 27 June 1991, **Mecanarte**, Proc. C-348/89 (preliminary ruling and judicial review of Portuguese law)

- 10) Judgment of the Court of 19 January 2010, **Seda**, Proc. C-555/07 (direct effect; primacy; national judge mission)
- 11) Judgment of the Court of 26 February 2013, **Melloni**, Proc. C-399/11 (article 53 CFRUE, highest level of protection and Member State Constitution)
- 12) Judgment of the Court of 9 September 2015, **Silva e Brito**, Proc. C-160/14 (Member State liability for damage caused by breaches of EU Law)
- 13) Judgment of the Court of 27 February 2018, **Associação Sindical dos Juízes Portugueses**, Proc. C-64/16 (CFRUE; effective judicial protection; article 2 TUE and the scope of fundamental rights)