

European Union law

European Union law is a body of treaties and legislation, such as Regulations and Directives, which have direct effect or indirect effect on the laws of European Union member states. The three sources of European Union law are primary law, secondary law and supplementary law. The main sources of primary law are the Treaties establishing the European Union. Secondary sources include regulations and directives which are based on the Treaties. The legislature of the European Union is principally composed of the European Parliament and the Council of the European Union, which under the Treaties may establish secondary law to pursue the objective set out in the Treaties.

European Union law is applied by the courts of member states and the Court of Justice of the European Union. Where the laws of member states provide for lesser rights European Union law can be enforced by the courts of member states. In case of European Union law which should have been transposed into the laws of member states, such as Directives, the European Commission can take proceedings against the member state under the Treaty on the Functioning of the European Union. The European Court of Justice is the highest court able to interpret European Union law. Supplementary sources of European Union law include case law by the Court of Justice, international law and general principles of European Union law.

Although the European Union does not have a codified constitution, like every political body it has laws which "constitute" its basic governance structure. The EU's primary constitutional sources are the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), which have been agreed or adhered to among the governments of all 28 member states. The Treaties establish the EU's institutions, list their powers and responsibilities, and explain the areas in which the EU can legislate with Directives or Regulations. The European Commission has the initiative to propose legislation. During the ordinary legislative procedure, the Council (which are ministers from member state governments) and the European Parliament (elected by citizens) can make amendments and must give their consent for laws to pass. The Commission oversees departments and various agencies that execute or enforce EU law. The "European Council" (rather than the Council, made up of different government Ministers) is composed of the Prime Ministers or executive Presidents of the member states. It appoints the Commissioners and the board of the European Central Bank. The European Court of Justice is the supreme judicial body which interprets EU law, and develops it through precedent. The Court can review the legality of the EU institutions' actions, in compliance with the Treaties. It can also decide upon claims for breach of EU laws from member states and citizens.

The primary law of the EU consists mainly of the founding treaties, the "core" treaties being the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). The Treaties contain formal and substantive provisions, which frame policies of the European Union institutions and determine the division of competences between the European Union and its member states. The TEU establishes that European Union law applies to the metropolitan territories of the member states, as well as certain islands and overseas territories, including Madeira, the Canary Islands and the French overseas departments. European Union law also applies in territories where a member state is responsible for external relations, for example Gibraltar and the Åland islands. The TEU allows the European Council to make specific provisions for regions, as for example done for customs matters in Gibraltar and Saint-Pierre-et-Miquelon. The TEU specifically excludes certain regions, for example the Faroe Islands, from the jurisdiction of European Union law. Treaties apply as soon as they enter into force, unless stated otherwise, and are generally concluded for an unlimited period. The TEU provides that commitments entered into by the member states between themselves before the treaty was signed no longer apply. [vague] All EU member states are regarded as subject to the general obligation of the principle of cooperation, as stated in the TEU, whereby member states are obliged not to take measure which could jeopardise the attainment of the TEU objectives. The Court of Justice of the European Union can interpret the Treaties, but it cannot rule on their validity, which is subject to international law. Individuals may rely on primary law in the Court of Justice of the European Union if the Treaty provisions have a direct effect and they are sufficiently clear, precise and unconditional.

The principal Treaties that form the European Union began with common rules for coal and steel, and then atomic energy, but more complete and formal institutions were established through the Treaty of Rome 1957 and the Maastricht Treaty 1992 (now: TFEU). Minor amendments were made during the 1960s and 1970s. Major amending treaties were signed to complete the development of a single, internal market in the Single European Act 1986, to further the development of a more social Europe in the Treaty of Amsterdam 1997, and to make minor amendments to the relative power of member states in the EU institutions in the Treaty of Nice 2001 and the Treaty of Lisbon 2007. Since its establishment, more member states have joined through a series of accession treaties, from the UK, Ireland, Denmark and Norway in 1972 (though Norway did not end up joining), Greece in 1979, Spain and Portugal 1985, Austria, Finland, Norway and Sweden in 1994 (though again Norway failed to join, because of lack of support in the referendum), the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia in 2004, Romania and Bulgaria in 2007 and Croatia in 2013. Greenland signed a Treaty in 1985 giving it a special status.

Following the Nice Treaty, there was an attempt to reform the constitutional law of the European Union and make it more transparent; this would have also produced a single constitutional document. However, as a result of the referendum in France and the referendum in the Netherlands, the 2004 Treaty establishing a Constitution for Europe never came into force. Instead, the Lisbon Treaty was enacted. Its substance was very similar to the proposed constitutional treaty, but it was formally an amending treaty, and – though it significantly altered the existing treaties – it did not completely replace them.

The European Commission is the main executive body of the European Union. Article 17(1) of the Treaty on European Union states the Commission should "promote the general interest of the Union" while Article 17(3) adds that Commissioners should be "completely independent" and not "take instructions from any Government". Under article 17(2), "Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise." This means that the Commission has a monopoly on initiating the legislative procedure, although the Council is the "de facto catalyst of many legislative initiatives". The Parliament can also formally request the Commission to submit a legislative proposal but the Commission can reject such a suggestion, giving reasons. The Commission's President (currently an ex-Luxembourg Prime Minister, Jean-Claude Juncker) sets the agenda for the EU's work. Decisions are taken by a simple majority vote, usually through a "written procedure" of circulating the proposals and adopting if there are no objections.[citation needed] Since Ireland refused to consent to changes in the Treaty of Lisbon 2007, there remains one Commissioner for each of the 28 member states, including the President and the High Representative for Foreign and Security Policy (currently Federica Mogherini). The Commissioners (and most importantly, the portfolios they will hold) are bargained over intensively by the member states. The Commissioners, as a block, are then subject to a qualified majority vote of the Council to approve, and majority approval of the Parliament. The proposal to make the Commissioners be drawn from the elected Parliament, was not adopted in the Treaty of Lisbon. This means Commissioners are, through the appointment process, the unelected subordinates of member state governments.

Commissioners have various privileges, such as being exempt from member state taxes (but not EU taxes), and having immunity from prosecution for doing official acts. Commissioners have sometimes been found to have abused their offices, particularly since the Santer Commission was censured by Parliament in 1999, and it eventually resigned due to corruption allegations. This resulted in one main case, *Commission v Edith Cresson* where the European Court of Justice held that a Commissioner giving her dentist a job, for which he was clearly unqualified, did in fact not break any law. By contrast to the ECJ's relaxed approach, a Committee of Independent Experts found that a culture had developed where few Commissioners had 'even the slightest sense of responsibility'. This led to the creation of the European Anti-fraud Office. In 2012 it investigated the Maltese Commissioner for Health, John Dalli, who quickly resigned after allegations that he received a €60m bribe in connection with a Tobacco Products Directive. Beyond the Commission, the European Central Bank has relative executive autonomy in its conduct of monetary policy for the purpose of managing the euro. It has a six-person board appointed by the European Council, on the Council's recommendation. The President of the Council and a Commissioner can sit in on ECB meetings, but do not have voting rights.

The second main legislative body is the Council, which is composed of different ministers of the member states. The heads of government of member states also convene a "European Council" (a distinct body) that the TEU article 15 defines as providing the 'necessary impetus for its development and shall define the general political directions and priorities'. It meets each six months and its President (currently former Poland Prime Minister Donald Tusk) is meant to 'drive forward its work', but it does not itself 'legislative functions'. The Council does this: in effect this is the governments of the member states, but there will be a different minister at each meeting, depending on the topic discussed (e.g. for environmental issues, the member states' environment ministers attend and vote; for foreign affairs, the foreign ministers, etc.). The minister must have the authority to represent and bind the member states in decisions. When voting takes place it is weighted inversely to member state size, so smaller member states are not dominated by larger member states. In total there are 352 votes, but for most acts there must be a qualified majority vote, if not consensus. TEU article 16(4) and TFEU article 238(3) define this to mean at least 55 per cent of the Council members (not votes) representing 65 per cent of the population of the EU: currently this means around 74 per cent, or 260 of the 352 votes. This is critical during the legislative process.

To make new legislation, TFEU article 294 defines the "ordinary legislative procedure" that applies for most EU acts. The essence is there are three readings, starting with a Commission proposal, where the Parliament must vote by a majority of all MEPs (not just those present) to block or suggest changes, and the Council must vote by qualified majority to approve changes, but by unanimity to block Commission amendment. Where the different institutions cannot agree at any stage, a "Conciliation Committee" is convened, representing MEPs, ministers and the Commission to try and get agreement on a joint text: if this works, it will be sent back to the Parliament and Council to approve by absolute and qualified majority. This means, legislation can be blocked by a majority in Parliament, a minority in the Council, and a majority in the Commission: it is harder to change EU law than stay the same. A different procedure exists for budgets. For "enhanced cooperation" among a sub-set of at least member states, authorisation must be given by the Council. Member state governments should be informed by the Commission at the outset before any proposals start the legislative procedure. The EU as a whole can only act within its power set out in the Treaties. TEU articles 4 and 5 state that powers remain with the member states unless they have been conferred, although there is a debate about the Kompetenz-Kompetenz question: who ultimately has the "competence" to define the EU's "competence". Many member state courts believe they decide, other member state Parliaments believe they decide, while within the EU, the Court of Justice believes it has the final say.

The judicial branch of the EU has played an important role in the development of EU law, by assuming the task of interpreting the treaties, and accelerating economic and political integration. Today the Court of Justice of the European Union (CJEU) is the main judicial body, within which there is a higher European Court of Justice (commonly abbreviated as ECJ) that deals with cases that contain more public importance, and a General Court that deals with issues of detail but without general importance. There is also a Civil Service Tribunal to deal with EU staff issues, and then a separate Court of Auditors. Under the Treaty on European Union article 19(2) there is one judge from each member state, 28 at present, who are supposed to "possess the qualifications required for appointment to the highest judicial offices" (or for the General Court, the "ability required for appointment to high judicial office"). A president is elected by the judges for three years. Under TEU article 19(3) is to be the ultimate court to interpret questions of EU law. In fact, most EU law is applied by member state courts (the English Court of Appeal, the German Bundesgerichtshof, the Belgian Cour du travail, etc.) but they can refer questions to the EU court for a preliminary ruling. The CJEU's duty is to "ensure that in the interpretation and application of the Treaties the law is observed", although realistically it has the ability to expand and develop the law according to the principles it deems to be appropriate. Arguably this has been done through both seminal and controversial judgments, including *Van Gend en Loos*, *Mangold v Helm*, and *Kadi v Commission*.

Since its founding, the EU has operated among an increasing plurality of national and globalising legal systems. This has meant both the European Court of Justice and the highest national courts have had to develop principles to resolve conflicts of laws between different systems. Within the EU itself, the Court of Justice's view is that if EU law conflicts with a provision of national law, then EU law has primacy. In the first major case in 1964, *Costa v ENEL*, a Milanese lawyer, and former shareholder of an energy

company, named Mr Costa refused to pay his electricity bill to Enel, as a protest against the nationalisation of the Italian energy corporations. He claimed the Italian nationalisation law conflicted with the Treaty of Rome, and requested a reference be made to both the Italian Constitutional Court and the Court of Justice under TFEU article 267. The Italian Constitutional Court gave an opinion that because the nationalisation law was from 1962, and the treaty was in force from 1958, Costa had no claim. By contrast, the Court of Justice held that ultimately the Treaty of Rome in no way prevented energy nationalisation, and in any case under the Treaty provisions only the Commission could have brought a claim, not Mr Costa. However, in principle, Mr Costa was entitled to plead that the Treaty conflicted with national law, and the court would have a duty to consider his claim to make a reference if there would be no appeal against its decision. The Court of Justice, repeating its view in *Van Gend en Loos*, said member states "albeit within limited spheres, have restricted their sovereign rights and created a body of law applicable both to their nationals and to themselves" on the "basis of reciprocity". EU law would not "be overridden by domestic legal provisions, however framed... without the legal basis of the community itself being called into question." This meant any "subsequent unilateral act" of the member state inapplicable. Similarly, in *Amministrazione delle Finanze v Simmenthal SpA*, a company, Simmenthal SpA, claimed that a public health inspection fee under an Italian law of 1970 for importing beef from France to Italy was contrary to two Regulations from 1964 and 1968. In "accordance with the principle of the precedence of Community law," said the Court of Justice, the "directly applicable measures of the institutions" (such as the Regulations in the case) "render automatically inapplicable any conflicting provision of current national law". This was necessary to prevent a "corresponding denial" of Treaty "obligations undertaken unconditionally and irrevocably by member states", that could "imperil the very foundations of the" EU. But despite the views of the Court of Justice, the national courts of member states have not accepted the same analysis.

Generally speaking, while all member states recognise that EU law takes primacy over national law where this agreed in the Treaties, they do not accept that the Court of Justice has the final say on foundational constitutional questions affecting democracy and human rights. In the United Kingdom, the basic principle is that Parliament, as the sovereign expression of democratic legitimacy, can decide whether it wishes to expressly legislate against EU law. This, however, would only happen in the case of an express wish of the people to withdraw from the EU. It was held in *R (Factortame Ltd) v Secretary of State for Transport* that "whatever limitation of its sovereignty Parliament accepted when it enacted the European Communities Act 1972 was entirely voluntary" and so "it has always been clear" that UK courts have a duty "to override any rule of national law found to be in conflict with any directly enforceable rule of Community law." More recently the UK Supreme Court noted that in *R (HS2 Action Alliance Ltd) v Secretary of State for Transport*, although the UK constitution is uncodified, there could be "fundamental principles" of common law, and Parliament "did not either contemplate or authorise the abrogation" of those principles when it enacted the European Communities Act 1972. The view of the German Constitutional Court from the *Solange I* and *Solange II* decisions is that if the EU does not comply with its basic constitutional rights and principles (particularly democracy, the rule of law and the social state principles) then it cannot override German law. However, as the nicknames of the judgments go, "so long as" the EU works towards the democratisation of its institutions, and has a framework that protects fundamental human rights, it would not review EU legislation for compatibility with German constitutional principles. Most other member states have expressed similar reservations. This suggests the EU's legitimacy rests on the ultimate authority of member states, its factual commitment to human rights, and the democratic will of the people.

While constitutional law concerns the European Union's governance structure, administrative law binds EU institutions and member states to follow the law. Both member states and the Commission have a general legal right or "standing" (*locus standi*) to bring claims against EU institutions and other member states for breach of the treaties. From the EU's foundation, the Court of Justice also held that the Treaties allowed citizens or corporations to bring claims against EU and member state institutions for violation of the Treaties and Regulations, if they were properly interpreted as creating rights and obligations. However, under Directives, citizens or corporations were said in 1986 to not be allowed to bring claims against other non-state parties. This meant courts of member states were not bound to apply an EU law where a national rule conflicted, even though the member state government could be sued, if it would

impose an obligation on another citizen or corporation. These rules on "direct effect" limit the extent to which member state courts are bound to administer EU law. All actions by EU institutions can be subject to judicial review, and judged by standards of proportionality, particularly where general principles of law, or fundamental rights are engaged. The remedy for a claimant where there has been a breach of the law is often monetary damages, but courts can also require specific performance or will grant an injunction, in order to ensure the law is effective as possible.

Although it is generally accepted that EU law has primacy, not all EU laws give citizens standing to bring claims: that is, not all EU laws have "direct effect". In *Van Gend en Loos v Nederlandse Administratie der Belastingen* it was held that the provisions of the Treaties (and EU Regulations) are directly effective, if they are (1) clear and unambiguous (2) unconditional, and (3) did not require EU or national authorities to take further action to implement them. *Van Gend en Loos*, a postal company, claimed that what is now TFEU article 30 prevented the Dutch Customs Authorities charging tariffs, when it imported urea-formaldehyde plastics from Germany to the Netherlands. After a Dutch court made a reference, the Court of Justice held that even though the Treaties did not "expressly" confer a right on citizens or companies to bring claims, they could do so. Historically, international treaties had only allowed states to have legal claims for their enforcement, but the Court of Justice proclaimed "the Community constitutes a new legal order of international law". Because article 30 clearly, unconditionally and immediately stated that no quantitative restrictions could be placed on trade, without a good justification, *Van Gend en Loos* could recover the money it paid for the tariff. EU Regulations are the same as Treaty provisions in this sense, because as TFEU article 288 states, they are 'directly applicable in all Member States'. Moreover, member states come under a duty not to replicate Regulations in their own law, in order to prevent confusion. For instance, in *Commission v Italy* the Court of Justice held that Italy had breached a duty under the Treaties, both by failing to operate a scheme to pay farmers a premium to slaughter cows (to reduce dairy overproduction), and by reproducing the rules in a decree with various additions. "Regulations," held the Court of Justice, "come into force solely by virtue of their publication" and implementation could have the effect of "jeopardizing their simultaneous and uniform application in the whole of the Union." On the other hand, some Regulations may themselves expressly require implementing measures, in which case those specific rules should be followed.

While the Treaties and Regulations will have direct effect (if clear, unconditional and immediate), Directives do not generally give citizens (as opposed to the member state) standing to sue other citizens. In theory, this is because TFEU article 288 says Directives are addressed to the member states and usually "leave to the national authorities the choice of form and methods" to implement. In part this reflects that directives often create minimum standards, leaving member states to apply higher standards. For example, the Working Time Directive requires that every worker has at least 4 weeks paid holidays each year, but most member states require more than 28 days in national law. However, on the current position adopted by the Court of Justice, citizens have standing to make claims based on national laws that implement Directives, but not from Directives themselves. Directives do not have so called "horizontal" direct effect (i.e. between non-state parties). This view was instantly controversial, and in the early 1990s three Advocate Generals persuasively argued that Directives should create rights and duties for all citizens. The Court of Justice refused, but there are five large exceptions.

First, if a Directive's deadline for implementation is not met, the member state cannot enforce conflicting laws, and a citizen may rely on the Directive in such an action (so called "vertical" direct effect). So, in *Pubblico Ministero v Ratti* because the Italian government had failed to implement a Directive 73/173/EEC on packaging and labelling solvents by the deadline, it was estopped from enforcing a conflicting national law from 1963 against Mr Ratti's solvent and varnish business. A member state could "not rely, as against individuals, on its own failure to perform the obligations which the Directive entails." Second, a citizen or company can invoke a Directive, not just in a dispute with a public authority, but in a dispute with another citizen or company. So, in *CIA Security v Signalson and Securitel* the Court of Justice held that a business called CIA Security could defend itself from allegations by competitors that it had not complied with a Belgian decree from 1991 about alarm systems, on the basis that it had not been notified to the Commission as a Directive required. Third, if a Directive gives expression to a "general principle" of EU law, it can be invoked between private non-state parties before its deadline for

implementation. This follows from *Kücükdeveci v Swedex GmbH & Co KG* where the German Civil Code §622 stated that the years people worked under the age of 25 would not count towards the increasing statutory notice before dismissal. Ms Kücükdeveci worked for 10 years, from age 18 to 28, for Swedex GmbH & Co KG before her dismissal. She claimed that the law not counting her years under age 25 was unlawful age discrimination under the Employment Equality Framework Directive. The Court of Justice held that the Directive could be relied on by her because equality was also a general principle of EU law. Third, if the defendant is an emanation of the state, even if not central government, it can still be bound by Directives. In *Foster v British Gas plc* the Court of Justice held that Mrs Foster was entitled to bring a sex discrimination claim against her employer, British Gas plc, which made women retire at age 60 and men at 65, if (1) pursuant to a state measure, (2) it provided a public service, and (3) had special powers. This could also be true if the enterprise is privatised, as it was held with a water company that was responsible for basic water provision.

Fourth, national courts have a duty to interpret domestic law "as far as possible in the light of the wording and purpose of the directive". Textbooks (though not the Court itself) often called this "indirect effect". In *Marleasing SA v La Comercial SA* the Court of Justice held that a Spanish Court had to interpret its general Civil Code provisions, on contracts lacking cause or defrauding creditors, to conform with the First Company Law Directive article 11, that required incorporations would only be nullified for a fixed list of reasons. The Court of Justice quickly acknowledged that the duty of interpretation cannot contradict plain words in a national statute. But, fifth, if a member state has failed to implement a Directive, a citizen may not be able to bring claims against other non-state parties, but can sue the member state itself for failure to implement the law. So, in *Francovich v Italy*, the Italian government had failed to set up an insurance fund for employees to claim unpaid wages if their employers had gone insolvent, as the Insolvency Protection Directive required. *Francovich*, the former employee of a bankrupt Venetian firm, was therefore allowed to claim 6 million Lira from the Italian government in damages for his loss. The Court of Justice held that if a Directive would confer identifiable rights on individuals, and there is a causal link between a member state's violation of EU and a claimant's loss, damages must be paid. The fact that the incompatible law is an Act of Parliament is no defence.

The principles of European Union law are rules of law which have been developed by the European Court of Justice that constitute unwritten rules which are not expressly provided for in the treaties but which affect how European Union law is interpreted and applies. In formulating these principles, the courts have drawn on a variety of sources, including: public international law and legal doctrines and principles present in the legal systems of European Union member states and in the jurisprudence of the European Court of Human Rights. Accepted general principles of European Union Law include fundamental rights (see human rights), proportionality, legal certainty, equality before the law and subsidiarity.

Proportionality is recognised one of the general principles of European Union law by the European Court of Justice since the 1950s. According to the general principle of proportionality the lawfulness of an action depends on whether it was appropriate and necessary to achieve the objectives legitimately pursued. When there is a choice between several appropriate measures the least onerous must be adopted, and any disadvantage caused must not be disproportionate to the aims pursued. The principle of proportionality is also recognised in Article 5 of the EC Treaty, stating that "any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty".

The concept of legal certainty is recognised one of the general principles of European Union law by the European Court of Justice since the 1960s. It is an important general principle of international law and public law, which predates European Union law. As a general principle in European Union law it means that the law must be certain, in that it is clear and precise, and its legal implications foreseeable, specially when applied to financial obligations. The adoption of laws which will have legal effect in the European Union must have a proper legal basis. Legislation in member states which implements European Union law must be worded so that it is clearly understandable by those who are subject to the law. In European Union law the general principle of legal certainty prohibits *Ex post facto* laws, i.e. laws should not take effect before they are published. The doctrine of legitimate expectation, which has its roots in the principles of legal certainty and good faith, is also a central element of the general principle of legal

certainty in European Union law. The legitimate expectation doctrine holds that and that "those who act in good faith on the basis of law as it is or seems to be should not be frustrated in their expectations".

Fundamental rights, as in human rights, were first recognised by the European Court of Justice in the late 60s and fundamental rights are now regarded as integral part of the general principles of European Union law. As such the European Court of Justice is bound to draw inspiration from the constitutional traditions common to the member states. Therefore, the European Court of Justice cannot uphold measures which are incompatible with fundamental rights recognised and protected in the constitutions of member states. The European Court of Justice also found that "international treaties for the protection of human rights on which the member states have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law."

None of the original treaties establishing the European Union mention protection for fundamental rights. It was not envisaged for European Union measures, that is legislative and administrative actions by European Union institutions, to be subject to human rights. At the time the only concern was that member states should be prevented from violating human rights, hence the establishment of the European Convention on Human Rights in 1950 and the establishment of the European Court of Human Rights. The European Court of Justice recognised fundamental rights as general principle of European Union law as the need to ensure that European Union measures are compatible with the human rights enshrined in member states' constitution became ever more apparent. In 1999 the European Council set up a body tasked with drafting a European Charter of Human Rights, which could form the constitutional basis for the European Union and as such tailored specifically to apply to the European Union and its institutions. The Charter of Fundamental Rights of the European Union draws a list of fundamental rights from the European Convention on Human Rights and Fundamental Freedoms, the Declaration on Fundamental Rights produced by the European Parliament in 1989 and European Union Treaties.

The 2007 Lisbon Treaty explicitly recognised fundamental rights by providing in Article 6(1) that "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adopted at Strasbourg on 12 December 2007, which shall have the same legal value as the Treaties." Therefore, the Charter of Fundamental Rights of the European Union has become an integral part of European Union law, codifying the fundamental rights which were previously considered general principles of European Union law. In effect, after the Lisbon Treaty, the Charter and the Convention now co-exist under European Union law, though the former is enforced by the European Court of Justice in relation to European Union measures, and the latter by the European Court of Human Rights in relation to measures by member states.

The Social Chapter is a chapter of the 1997 Treaty of Amsterdam covering social policy issues in European Union law. The basis for the Social Chapter was developed in 1989 by the "social partners" representatives, namely UNICE, the employers' confederation, the European Trade Union Confederation (ETUC) and CEEP, the European Centre of Public Enterprises. A toned down version was adopted as the Social Charter at the 1989 Strasbourg European Council. The Social Charter declares 30 general principles, including on fair remuneration of employment, health and safety at work, rights of disabled and elderly, the rights of workers, on vocational training and improvements of living conditions. The Social Charter became the basis for European Community legislation on these issues in 40 pieces of legislation.

The Social Charter was subsequently adopted in 1989 by 11 of the then 12 member states. The UK refused to sign the Social Charter and was exempt from the legislation covering Social Charter issues unless it agreed to be bound by the legislation. The UK subsequently was the only member state to veto the Social Charter being included as the "Social Chapter" of the 1992 Maastricht Treaty - instead, an Agreement on Social Policy was added as a protocol. Again, the UK was exempt from legislation arising from the protocol, unless it agreed to be bound by it. The protocol was to become known as "Social Chapter", despite not actually being a chapter of the Maastricht Treaty. To achieve aims of the Agreement on Social Policy the European Union was to "support and complement" the policies of member states. The aims of the Agreement on Social Policy are:

Following the election of the UK Labour Party to government in 1997, the UK formally subscribed to the Agreement on Social Policy, which allowed it to be included with minor amendments as the Social Chapter of the 1997 Treaty of Amsterdam. The UK subsequently adopted the main legislation previously agreed under the Agreement on Social Policy, the 1994 Works Council Directive, which required workforce consultation in businesses, and the 1996 Parental Leave Directive. In the 10 years following the 1997 Treaty of Amsterdam and adoption of the Social Chapter the European Union has undertaken policy initiatives in various social policy areas, including labour and industry relations, equal opportunity, health and safety, public health, protection of children, the disabled and elderly, poverty, migrant workers, education, training and youth.

EU Competition law has its origins in the European Coal and Steel Community (ECSC) agreement between France, Italy, Belgium, the Netherlands, Luxembourg and Germany in 1951 following the second World War. The agreement aimed to prevent Germany from re-establishing dominance in the production of coal and steel as members felt that its dominance had contributed to the outbreak of the war. Article 65 of the agreement banned cartels and article 66 made provisions for concentrations, or mergers, and the abuse of a dominant position by companies. This was the first time that competition law principles were included in a plurilateral regional agreement and established the trans-European model of competition law. In 1957 competition rules were included in the Treaty of Rome, also known as the EC Treaty, which established the European Economic Community (EEC). The Treaty of Rome established the enactment of competition law as one of the main aims of the EEC through the "institution of a system ensuring that competition in the common market is not distorted". The two central provisions on EU competition law on companies were established in article 85, which prohibited anti-competitive agreements, subject to some exemptions, and article 86 prohibiting the abuse of dominant position. The treaty also established principles on competition law for member states, with article 90 covering public undertakings, and article 92 making provisions on state aid. Regulations on mergers were not included as member states could not establish consensus on the issue at the time.

Today, the Treaty of Lisbon prohibits anti-competitive agreements in Article 101(1), including price fixing. According to Article 101(2) any such agreements are automatically void. Article 101(3) establishes exemptions, if the collusion is for distributional or technological innovation, gives consumers a "fair share" of the benefit and does not include unreasonable restraints that risk eliminating competition anywhere (or compliant with the general principle of European Union law of proportionality). Article 102 prohibits the abuse of dominant position, such as price discrimination and exclusive dealing. Article 102 allows the European Council to regulations to govern mergers between firms (the current regulation is the Regulation 139/2004/EC). The general test is whether a concentration (i.e. merger or acquisition) with a community dimension (i.e. affects a number of EU member states) might significantly impede effective competition. Articles 106 and 107 provide that member state's right to deliver public services may not be obstructed, but that otherwise public enterprises must adhere to the same competition principles as companies. Article 107 lays down a general rule that the state may not aid or subsidise private parties in distortion of free competition and provides exemptions for charities, regional development objectives and in the event of a natural disaster.

While the concept of a "social market economy" was only introduced into EU law in 2007, free movement and trade were central to European development since the Treaty of Rome 1957. According to the standard theory of comparative advantage, two countries can both benefit from trade even if one of them has a less productive economy in all respects. Like in other regional organisations such as the North American Free Trade Association, or the World Trade Organisation, breaking down barriers to trade, and enhancing free movement of goods, services, labour and capital, is meant to reduce consumer prices. It was originally theorised that a free trade area had a tendency to give way to a customs union, which led to a common market, then monetary union, then union of monetary and fiscal policy, political and eventually a full union characteristic of a federal state. In Europe, however, those stages were considerably mixed, and it remains unclear whether the "endgame" should be the same as a state, traditionally understood. In practice free trade, without standards to ensure fair trade, can benefit some people and groups within countries (particularly big business) much more than others, but will burden people who lack bargaining power in an expanding market, particularly workers, consumers, small business, developing industries,

and communities. The Treaty on the Functioning of the European Union articles 28 to 37 establish the principle of free movement of goods in the EU, while articles 45 to 66 require free movement of persons, services and capital. These so-called "four freedoms" were thought to be inhibited by physical barriers (e.g. customs), technical barriers (e.g. differing laws on safety, consumer or environmental standards) and fiscal barriers (e.g. different Value Added Tax rates). The tension in the law is that the free movement and trade is not supposed to spill over into a licence for unrestricted commercial profit. The Treaties limit free trade, to prioritise other values such as public health, consumer protection, labour rights, fair competition, and environmental improvement. Increasingly the Court of Justice has taken the view that the specific goals of free trade are underpinned by the general aims of the treaty for improvement of people's well being.

Free movement of goods within the European Union is achieved by a customs union, and the principle of non-discrimination. The EU manages imports from non-member states, duties between member states are prohibited, and imports circulate freely. In addition under the Treaty on the Functioning of the European Union article 34, 'Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States'. In *Procureur du Roi v Dassonville* the Court of Justice held that this rule meant all "trading rules" that are "enacted by Member States" which could hinder trade "directly or indirectly, actually or potentially" would be caught by article 34. This meant that a Belgian law requiring Scotch whisky imports to have a certificate of origin was unlikely to be lawful. It discriminated against parallel importers like Mr Dassonville, who could not get certificates from authorities in France, where they bought the Scotch. This "wide test", to determine what could potentially be an unlawful restriction on trade, applies equally to actions by quasi-government bodies, such as the former "Buy Irish" company that had government appointees. It also means states can be responsible for private actors. For instance, in *Commission v France* French farmer vigilantes were continually sabotaging shipments of Spanish strawberries, and even Belgian tomato imports. France was liable for these hindrances to trade because the authorities 'manifestly and persistently abstained' from preventing the sabotage. Generally speaking, if a member state has laws or practices that directly discriminate against imports (or exports under TFEU article 35) then it must be justified under article 36. The justifications include public morality, policy or security, "protection of health and life of humans, animals or plants", "national treasures" of "artistic, historic or archaeological value" and "industrial and commercial property." In addition, although not clearly listed, environmental protection can justify restrictions on trade as an overriding requirement derived from TFEU article 11. More generally, it has been increasingly acknowledged that fundamental human rights should take priority over all trade rules. So, in *Schmidberger v Austria* the Court of Justice held that Austria did not infringe article 34 by failing to ban a protest that blocked heavy traffic passing over the A13, Brenner Autobahn, en route to Italy. Although many companies, including Mr Schmidberger's German undertaking, were prevented from trading, the Court of Justice reasoned that freedom of association is one of the 'fundamental pillars of a democratic society', against which the free movement of goods had to be balanced, and was probably subordinate. If a member state does appeal to the article 36 justification, the measures it takes have to be applied proportionately. This means the rule must be pursue a legitimate aim and (1) be suitable to achieve the aim, (2) be necessary, so that a less restrictive measure could not achieve the same result, and (3) be reasonable in balancing the interests of free trade with interests in article 36.

Often rules apply to all goods neutrally, but may have a greater practical effect on imports than domestic products. For such "indirect" discriminatory (or "indistinctly applicable") measures the Court of Justice has developed more justifications: either those in article 36, or additional "mandatory" or "overriding" requirements such as consumer protection, improving labour standards, protecting the environment, press diversity, fairness in commerce, and more: the categories are not closed. In the most famous case *Rewe-Zentral AG v Bundesmonopol für Branntwein*, the Court of Justice found that a German law requiring all spirits and liqueurs (not just imported ones) to have a minimum alcohol content of 25 per cent was contrary to TFEU article 34, because it had a greater negative effect on imports. German liqueurs were over 25 per cent alcohol, but *Cassis de Dijon*, which Rewe-Zentrale AG wished to import from France, only had 15 to 20 per cent alcohol. The Court of Justice rejected the German government's arguments that the measure proportionately protected public health under TFEU article 36, because stronger beverages were available and adequate labelling would be enough for consumers to understand what they bought.

This rule primarily applies to requirements about a product's content or packaging. In *Walter Rau Lebensmittelwerke v De Smedt PVBA* the Court of Justice found that a Belgian law requiring all margarine to be in cube shaped packages infringed article 34, and was not justified by the pursuit of consumer protection. The argument that Belgians would believe it was butter if it was not cube shaped was disproportionate: it would "considerably exceed the requirements of the object in view" and labelling would protect consumers "just as effectively". In a 2003 case, *Commission v Italy* Italian law required that cocoa products that included other vegetable fats could not be labelled as "chocolate". It had to be "chocolate substitute". All Italian chocolate was made from cocoa butter alone, but British, Danish and Irish manufacturers used other vegetable fats. They claimed the law infringed article 34. The Court of Justice held that a low content of vegetable fat did not justify a "chocolate substitute" label. This was derogatory in the consumers' eyes. A 'neutral and objective statement' was enough to protect consumers. If member states place considerable obstacles on the use of a product, this can also infringe article 34. So, in a 2009 case, *Commission v Italy*, the Court of Justice held that an Italian law prohibiting motorcycles or mopeds pulling trailers infringed article 34. Again, the law applied neutrally to everyone, but disproportionately affected importers, because Italian companies did not make trailers. This was not a product requirement, but the Court reasoned that the prohibition would deter people from buying it: it would have "a considerable influence on the behaviour of consumers" that "affects the access of that product to the market". It would require justification under article 36, or as a mandatory requirement.

In contrast to product requirements or other laws that hinder market access, the Court of Justice developed a presumption that "selling arrangements" would be presumed to not fall into TFEU article 34, if they applied equally to all sellers, and affected them in the same manner in fact. In *Keck and Mithouard* two importers claimed that their prosecution under a French competition law, which prevented them selling Picon beer under wholesale price, was unlawful. The aim of the law was to prevent cut throat competition, not to hinder trade. The Court of Justice held, as "in law and in fact" it was an equally applicable "selling arrangement" (not something that alters a product's content) it was outside the scope of article 34, and so did not need to be justified. Selling arrangements can be held to have an unequal effect "in fact" particularly where traders from another member state are seeking to break into the market, but there are restrictions on advertising and marketing. In *Konsumentombudsmannen v De Agostini* the Court of Justice reviewed Swedish bans on advertising to children under age 12, and misleading commercials for skin care products. While the bans have remained (justifiable under article 36 or as a mandatory requirement) the Court emphasised that complete marketing bans could be disproportionate if advertising were "the only effective form of promotion enabling [a trader] to penetrate" the market. In *Konsumentombudsmannen v Gourmet AB* the Court suggested that a total ban for advertising alcohol on the radio, TV and in magazines could fall within article 34 where advertising was the only way for sellers to overcome consumers' 'traditional social practices and to local habits and customs' to buy their products, but again the national courts would decide whether it was justified under article 36 to protect public health. Under the Unfair Commercial Practices Directive, the EU harmonised restrictions on restrictions on marketing and advertising, to forbid conduct that distorts average consumer behaviour, is misleading or aggressive, and sets out a list of examples that count as unfair. Increasingly, states have to give mutual recognition to each other's standards of regulation, while the EU has attempted to harmonise minimum ideals of best practice. The attempt to raise standards is hoped to avoid a regulatory "race to the bottom", while allowing consumers access to goods from around the continent.

Since its foundation, the Treaties sought to enable people to pursue their life goals in any country through free movement. Reflecting the economic nature of the project, the European Community originally focused upon free movement of workers: as a "factor of production". However, from the 1970s, this focus shifted towards developing a more "social" Europe. Free movement was increasingly based on "citizenship", so that people had rights to empower them to become economically and socially active, rather than economic activity being a precondition for rights. This means the basic "worker" rights in TFEU article 45 function as a specific expression of the general rights of citizens in TFEU articles 18 to 21. According to the Court of Justice, a "worker" is anybody who is economically active, which includes everyone in an employment relationship, "under the direction of another person" for "remuneration". A job, however, need not be paid in money for someone to be protected as a worker. For example, in *Steymann v Staatssecretaris van Justitie*, a German man claimed the right to residence in the Netherlands,

while he volunteered plumbing and household duties in the Bhagwan community, which provided for everyone's material needs irrespective of their contributions. The Court of Justice held that Mr Steymann was entitled to stay, so long as there was at least an "indirect quid pro quo" for the work he did. Having "worker" status means protection against all forms of discrimination by governments, and employers, in access to employment, tax, and social security rights. By contrast a citizen, who is "any person having the nationality of a Member State" (TFEU article 20(1)), has rights to seek work, vote in local and European elections, but more restricted rights to claim social security. In practice, free movement has become politically contentious as nationalist political parties have manipulated fears about immigrants taking away people's jobs and benefits (paradoxically at the same time). Nevertheless, practically "all available research finds little impact" of "labour mobility on wages and employment of local workers".

The Free Movement of Workers Regulation articles 1 to 7 set out the main provisions on equal treatment of workers. First, articles 1 to 4 generally require that workers can take up employment, conclude contracts, and not suffer discrimination compared to nationals of the member state. In a famous case, the *Belgian Football Association v Bosman*, a Belgian footballer named Jean-Marc Bosman claimed that he should be able to transfer from R.F.C. de Liège to USL Dunkerque when his contract finished, regardless of whether Dunkerque could afford to pay Liège the habitual transfer fees. The Court of Justice held "the transfer rules constitute[d] an obstacle to free movement" and were unlawful unless they could be justified in the public interest, but this was unlikely. In *Groener v Minister for Education* the Court of Justice accepted that a requirement to speak Gaelic to teach in a Dublin design college could be justified as part of the public policy of promoting the Irish language, but only if the measure was not disproportionate. By contrast in *Angonese v Cassa di Risparmio di Bolzano SpA* a bank in Bolzano, Italy, was not allowed to require Mr Angonese to have a bilingual certificate that could only be obtained in Bolzano. The Court of Justice, giving "horizontal" direct effect to TFEU article 45, reasoned that people from other countries would have little chance of acquiring the certificate, and because it was "impossible to submit proof of the required linguistic knowledge by any other means", the measure was disproportionate. Second, article 7(2) requires equal treatment in respect of tax. In *Finanzamt Köln Altstadt v Schumacker* the Court of Justice held that it contravened TFEU art 45 to deny tax benefits (e.g. for married couples, and social insurance expense deductions) to a man who worked in Germany, but was resident in Belgium when other German residents got the benefits. By contrast in *Weigel v Finanzlandesdirektion für Vorarlberg* the Court of Justice rejected Mr Weigel's claim that a re-registration charge upon bringing his car to Austria violated his right to free movement. Although the tax was "likely to have a negative bearing on the decision of migrant workers to exercise their right to freedom of movement", because the charge applied equally to Austrians, in absence of EU legislation on the matter it had to be regarded as justified. Third, people must receive equal treatment regarding "social advantages", although the Court has approved residential qualifying periods. In *Hendrix v Employee Insurance Institute* the Court of Justice held that a Dutch national was not entitled to continue receiving incapacity benefits when he moved to Belgium, because the benefit was "closely linked to the socio-economic situation" of the Netherlands. Conversely, in *Geven v Land Nordrhein-Westfalen* the Court of Justice held that a Dutch woman living in the Netherlands, but working between 3 and 14 hours a week in Germany, did not have a right to receive German child benefits, even though the wife of a man who worked full-time in Germany but was resident in Austria could. The general justifications for limiting free movement in TFEU article 45(3) are "public policy, public security or public health", and there is also a general exception in article 45(4) for "employment in the public service".

Citizenship of the EU has increasingly been seen as a "fundamental" status of member state nationals by the Court of Justice, and has accordingly increased the number of social services that people can access wherever they move. The Court has required that higher education, along with other forms of vocational training, should be more access, albeit with qualifying periods. In *Commission v Austria* the Court held that Austria was not entitled to restrict places in Austrian universities to Austrian students to avoid "structural, staffing and financial problems" if (mainly German) foreign students applied for places because there was little evidence of an actual problem.

As well as creating rights for "workers" who generally lack bargaining power in the market, the Treaty on the Functioning of the European Union also protects the "freedom of establishment" in article 49, and

"freedom to provide services" in article 56. In *Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano* the Court of Justice held that to be "established" means to participate in economic life "on a stable and continuous basis", while providing "services" meant pursuing activity more "on a temporary basis". This meant that a lawyer from Stuttgart, who had set up chambers in Milan and was censured by the Milan Bar Council for not having registered, was entitled to bring a claim under for establishment freedom, rather than service freedom. However, the requirements to be registered in Milan before being able to practice would be allowed if they were non-discriminatory, "justified by imperative requirements in the general interest" and proportionately applied. All people or entities that engage in economic activity, particularly the self-employed, or "undertakings" such as companies or firms, have a right to set up an enterprise without unjustified restrictions. The Court of Justice has held that both a member state government and a private party can hinder freedom of establishment, so article 49 has both "vertical" and "horizontal" direct effect. In *Reyners v Belgium* the Court of Justice held that a refusal to admit a lawyer to the Belgian bar because he lacked Belgian nationality was unjustified. TFEU article 49 says states are exempt from infringing others' freedom of establishment when they exercise "official authority", but this did an advocate's work (as opposed to a court's) was not official. By contrast in *Commission v Italy* the Court of Justice held that a requirement for lawyers in Italy to comply with maximum tariffs unless there was an agreement with a client was not a restriction. The Grand Chamber of the Court of Justice held the Commission had not proven that this had any object or effect of limiting practitioners from entering the market. Therefore, there was no *prima facie* infringement freedom of establishment that needed to be justified.

In 2006, a toxic waste spill off the coast of Côte d'Ivoire, from a European ship, prompted the Commission to look into legislation against toxic waste. Environment Commissioner Stavros Dimas stated that "Such highly toxic waste should never have left the European Union". With countries such as Spain not even having a crime against shipping toxic waste, Franco Frattini, the Justice, Freedom and Security Commissioner, proposed with Dimas to create criminal sentences for "ecological crimes". The competence for the Union to do this was contested in 2005 at the Court of Justice resulting in a victory for the Commission. That ruling set a precedent that the Commission, on a supranational basis, may legislate in criminal law – something never done before. So far, the only other proposal has been the draft intellectual property rights directive. Motions were tabled in the European Parliament against that legislation on the basis that criminal law should not be an EU competence, but was rejected at vote. However, in October 2007, the Court of Justice ruled that the Commission could not propose what the criminal sanctions could be, only that there must be some.

The "freedom to provide services" under TFEU article 56 applies to people who give services "for remuneration", especially commercial or professional activity. For example, in *Van Binsbergen v Bestuur van de Bedrijfvereniging voor de Metaalnijverheid* a Dutch lawyer moved to Belgium while advising a client in a social security case, and was told he could not continue because Dutch law said only people established in the Netherlands could give legal advice. The Court of Justice held that the freedom to provide services applied, it was directly effective, and the rule was probably unjustified: having an address in the member state would be enough to pursue the legitimate aim of good administration of justice. The Court of Justice has held that secondary education falls outside the scope of article 56, because usually the state funds it, though higher education does not. Health care generally counts as a service. In *Geraets-Smits v Stichting Ziekenfonds* Mrs Geraets-Smits claimed she should be reimbursed by Dutch social insurance for costs of receiving treatment in Germany. The Dutch health authorities regarded the treatment unnecessary, so she argued this restricted the freedom (of the German health clinic) to provide services. Several governments submitted that hospital services should not be regarded as economic, and should not fall within article 56. But the Court of Justice held health was a "service" even though the government (rather than the service recipient) paid for the service. National authorities could be justified in refusing to reimburse patients for medical services abroad if the health care received at home was without undue delay, and it followed "international medical science" on which treatments counted as normal and necessary. The Court requires that the individual circumstances of a patient justify waiting lists, and this is also true in the context of the UK's National Health Service. Aside from public services, another sensitive field of services are those classified as illegal. *Josemans v Burgemeester van Maastricht* held that the Netherlands' regulation of cannabis consumption, including the prohibitions by

some municipalities on tourists (but not Dutch nationals) going to coffee shops, fell outside article 56 altogether. The Court of Justice reasoned that narcotic drugs were controlled in all member states, and so this differed from other cases where prostitution or other quasi-legal activity was subject to restriction. If an activity does fall within article 56, a restriction can be justified under article 52 or overriding requirements developed by the Court of Justice. In *Alpine Investments BV v Minister van Financiën* a business that sold commodities futures (with Merrill Lynch and another banking firms) attempted to challenge a Dutch law that prohibiting cold calling customers. The Court of Justice held the Dutch prohibition pursued a legitimate aim to prevent "undesirable developments in securities trading" including protecting the consumer from aggressive sales tactics, thus maintaining confidence in the Dutch markets. In *Omega Spielhallen GmbH v Bonn* a "laserdrome" business was banned by the Bonn council. It bought fake laser gun services from a UK firm called Pulsar Ltd, but residents had protested against "playing at killing" entertainment. The Court of Justice held that the German constitutional value of human dignity, which underpinned the ban, did count as a justified restriction on freedom to provide services. In *Liga Portuguesa de Futebol v Santa Casa da Misericórdia de Lisboa* the Court of Justice also held that the state monopoly on gambling, and a penalty for a Gibraltar firm that had sold internet gambling services, was justified to prevent fraud and gambling where people's views were highly divergent. The ban was proportionate as this was an appropriate and necessary way to tackle the serious problems of fraud that arise over the internet. In the Services Directive a group of justifications were codified in article 16 that the case law has developed.

In regard to companies, the Court of Justice held in *R (Daily Mail and General Trust plc) v HM Treasury* that member states could restrict a company moving its seat of business, without infringing TFEU article 49. This meant the Daily Mail newspaper's parent company could not evade tax by shifting its residence to the Netherlands without first settling its tax bills in the UK. The UK did not need to justify its action, as rules on company seats were not yet harmonised. By contrast, in *Centros Ltd v Erhvervs-og Selkabssyrelsen* the Court of Justice found that a UK limited company operating in Denmark could not be required to comply with Denmark's minimum share capital rules. UK law only required £1 of capital to start a company, while Denmark's legislature took the view companies should only be started up if they had 200,000 Danish krone (around €27,000) to protect creditors if the company failed and went insolvent. The Court of Justice held that Denmark's minimum capital law infringed *Centros Ltd's* freedom of establishment and could not be justified, because a company in the UK could admittedly provide services in Denmark without being established there, and there were less restrictive means of achieving the aim of creditor protection. This approach was criticised as potentially opening the EU to unjustified regulatory competition, and a race to the bottom in standards, like in the US where the state Delaware attracts most companies and is often argued to have the worst standards of accountability of boards, and low corporate taxes as a result. Similarly in *Überseering BV v Nordic Construction GmbH* the Court of Justice held that a German court could not deny a Dutch building company the right to enforce a contract in Germany on the basis that it was not validly incorporated in Germany. Although restrictions on freedom of establishment could be justified by creditor protection, labour rights to participate in work, or the public interest in collecting taxes, denial of capacity went too far: it was an "outright negation" of the right of establishment. However, in *Cartesio Oktató és Szolgáltató bt* the Court of Justice affirmed again that because corporations are created by law, they are in principle subject to any rules for formation that a state of incorporation wishes to impose. This meant that the Hungarian authorities could prevent a company from shifting its central administration to Italy while it still operated and was incorporated in Hungary. Thus, the court draws a distinction between the right of establishment for foreign companies (where restrictions must be justified), and the right of the state to determine conditions for companies incorporated in its territory, although it is not entirely clear why.

What is European Union Law

a body of treaties and legislation

What are the main sources of primary law

Treaties establishing the European Union

What are the secondary sources of primary law

regulations and directives

What are the two bodies that make up the European Union's legislature

European Parliament and the Council of the European Union

What is European Union law

a body of treaties and legislation

What effect does European Union law have on laws of member states

direct effect or indirect effect

What are the three sources of European Union law

primary law, secondary law and supplementary law

What are the main legislative bodies of the European Union

European Parliament and the Council of the European Union

What are the three main sources of European Union law

primary law, secondary law and supplementary law

What are the main sources of primary law

the Treaties establishing the European Union

What is the legislature of the European Union comprised of

the European Parliament and the Council of the European Union

How many sources of European Union law are there

three

Who applies European Union law

courts of member states and the Court of Justice of the European Union

Who can enforce the European Union law when member states provide lesser rights

courts of member states

What is the highest court in the European Union

The European Court of Justice

What is one of the supplementary sources of European Union law

international law

Which two courts apply European Union law

courts of member states and the Court of Justice of the European Union

Under what treaty can the European Commission take action against member states

the Treaty on the Functioning of the European Union

Which court is the highest court in the European Union

The European Court of Justice

What is one supplementary source of European Union law

international law

By whom is European Law applied by

the courts of member states and the Court of Justice of the European Union

Who can enforce European Union law

the courts of member states

What is the highest court in European Union law

The European Court of Justice

What are some supplementary sources of European Union law

case law by the Court of Justice, international law and general principles of European Union law

What are the two primary constitutional sources of the European Union

Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU)

Who has the power to initiate legislation within the European Union

The European Commission

Who elects the members of the European Parliament

citizens

What court is able to interpret European Union law

The European Court of Justice

What governing body appoints commissioners and the board of European Central Bank

The "European Council"

Which treaty provides that the European Union law be applied to metropolitan territories of member states

Treaty on European Union (TEU)

Are there any regions where the Treaty of European Union excludes from jurisdiction

the Faroe Islands

What powers does the Court of Justice of the European Union have in regards to treaties

can interpret the Treaties, but it cannot rule on their validity

Under what instances can individuals rely on primary law in the Court of Justice of European Union

if the Treaty provisions have a direct effect and they are sufficiently clear, precise and unconditional.

When do treaties apply

as soon as they enter into force, unless stated otherwise

What are the core treaties that the primary law of the EU consists of

Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU)

What are some examples of territories where a member state is responsible for external relations

Gibraltar and the Åland islands

When do the stated Treaties apply

Treaties apply as soon as they enter into force, unless stated otherwise

Who is suited to interpret the Treaties

The Court of Justice of the European Union can interpret the Treaties

How did the principle treaties that form the European Union begin

with common rules for coal and steel, and then atomic energy

Which two treaties provided more formal institutions of the European Union

Treaty of Rome 1957 and the Maastricht Treaty 1992

In what years did Spain and Portugal join the European Union

1985

In 1972, did Norway end up joining the European Union

in 1972 (though Norway did not end up joining)

Which country in 1985 signed a treaty to give it special status

Greenland

What caused the need for principal Treaties that ended up forming the EU

common rules for coal and steel, and then atomic energy

When year was the Maastrich Treaty signed

1992

When was the Single European Act made

1986

When did Denmark join the EU

1972

When did Greenland sign a Treaty granting them special status

1985

When was there an attempt to reform the law of the EU

Following the Nice Treaty

What two country's referendums curtailed a constitution for Europe

referendum in France and the referendum in the Netherlands

How similar was the Lisbon Treaty to the constitutional treaty

very similar

What type of treaty was the Lisbon Treaty

an amending treaty

Is the Lisbon Treaty one that would alter existing treaties or replace them

altered the existing treaties

What reform was attempted following the Nice Treaty

there was an attempt to reform the constitutional law of the European Union and make it more transparent

What was an additional projected effect of the attempted reform

this would have also produced a single constitutional document

Which caused the reform to never come into force

the referendum in France and the referendum in the Netherlands

What treaty took the place of constitutional treaty

the Lisbon Treaty

What is the main executive body of the EU

The European Commission

Who is the sole governing authority capable of initiating legislative proposals

the Commission

Which authority figure is designated to schedule and set the work of the EU

The Commission's President

For each of the 28 member states, how many Commissioner's are represented for each one

one Commissioner for each of the 28 member states

Who is the current President and the High Representative for Foreign and Security Policy

Federica Mogherini

Which article of the Treaty on European Union states that Commissioners should be completely independent and not take instructions from any Government

Article 17(3)

Who sets the agenda for the EU's work

The Commission's President

How are decisions made on behave of the EU made

simple majority vote

Which country refused to content to changes in the Treaty of Lisbon 2007

Ireland

Who are the un-elected subordinates of member state governments

Commissioners

What commission was censured in 1999, and paved the way for Commissioners to abuse their power

the Santer Commission

Did the European Court of Justice rule the defendant in the case of Commission v. Edith Cresson broke any laws

did in fact not break any law

Who found that there was a developed culture of Commissioner's who lacked responsibility

Committee of Independent Experts

Who appoints the board of the European Central Bank

European Council

Can the President of the Council vote on important matters related to the European Central Bank

do not have voting rights

When was the Santer Commission censured by Parliament

1999

The censuring of the Santer Commission resulted in which main case

Commission v Edith Cresson

Who found that a culture had developed where few Commissioners had any sense of responsibility

a Committee of Independent Experts

The corruption found by the Committee of Independent Experts resulted to the creation of what office

the European Anti-fraud Office

When did the European Anti-Fraud Office investigate John Dalli

2012

The legislative body, the Council, are made up of what type of individuals

different ministers of the member states

Who is currently the President of the Council

Donald Tusk

How are the votes weighted to ensure that smaller states aren't dominated by larger ones

inversely

What are the total number of votes to be counted during the voting process

352

Currently, how many votes out of the 352 total votes are needed for a majority

260

Which entity is the secondary legislative body

the Council

How often does the European Council meet

each six months

How many votes in total does the Council have

352

What is defined as the majority vote

at least 55 per cent of the Council members (not votes) representing 65 per cent of the population of the EU

What type of vote must the Parliament have to either block or suggest changes to the Commission's proposals

a majority

What type of vote must the Council pass in order to approve of any changes recommended by Parliament

qualified majority

Is it easier or harder to change EU law than stay the same

harder

What articles state that unless conferred, powers remain with member states

TEU articles 4 and 5

Within the EU, which court believes they have the final word deciding on EU's competence

Court of Justice

Which TFEU article defines the ordinary legislative procedure that applies for majority of EU acts

TFEU article 294

What can block a legislation

legislation can be blocked by a majority in Parliament, a minority in the Council, and a majority in the Commission

Which articles state that powers stay with member states unless they've been conferred

TEU articles 4 and 5

What entity is created if the three different institutions cannot come to a consensus at any stage

Conciliation Committee

Which branch of the EU has had the most influence on the development of EU law

judicial branch

What is the main judicial body of the EU

Court of Justice of the European Union (CJEU)

How many total judges are there in the EU

28

Under which courts is most EU law applied

member state courts

What is the CJEU's duty

ensure that in the interpretation and application of the Treaties the law is observed

How is the judicial branch of the EU an important factor in the development of EU law

by assuming the task of interpreting the treaties, and accelerating economic and political integration

What is the current main judicial body of the EU

the Court of Justice of the European Union

What entity deals with EU staff issues

Civil Service Tribunal

How long is one term for an elected president of the CJEU

three years

What is the CJEU's duty

to "ensure that in the interpretation and application of the Treaties the law is observed"

If there is a conflict between EU law and national law, which law take precedence

EU law

What was the reason the Italian Constitutional court gave that resulted in Mr. Costa losing his his claim against ENEL

nationalisation law was from 1962, and the treaty was in force from 1958

What were the years two Regulations that conflicted with an Italian law originate in the Simmenthal SpA case

1964 and 1968

Which entities have had to develop principles dedicated to conflict resolution between laws of different systems

the European Court of Justice and the highest national courts

When did Costa v ENEL take place

1964

Which court argued that the Treaty of Rome did not prevent energy nationalism

the Court of Justice

What do all member states agree takes precedence over national law

EU law

What issues do member states say the Court of Justice does not have the final say on

foundational constitutional questions affecting democracy and human rights

When was the European Communities Act created

1972

In what cases can the EU not override German law

if the EU does not comply with its basic constitutional rights and principles

What does the EU's legitimacy rest on

the ultimate authority of member states, its factual commitment to human rights, and the democratic will of the people.

Which type of law makes EU institutions and its

member states follow the law

administrative law

During what year were citizens or corporations said to not be able to bring claims against other non state parties

1986

Which actions by EU institutions can be subject to judicial review

All actions

Which type of law concerns the EU's governance structure

constitutional law

In which case was it held that the provisions of the treaties are directly effective if they are clear, unconditional, and don't require further action by EU or national authorities

Van Gend en Loos v Nederlandse Administratie der Belastingen

Which TEFU article states that no quantitative restrictions can be placed on trade

article 30

What type of company is Van Gend en Loos

a postal company

What are EU Regulations essentially the same as in the case mentioned

Treaty provisions

What generally does not allow citizens to sue

other citizens

Directives

How many paid holiday days does the Working Time directive require workers to have each year

4 weeks

How many paid holiday days do most member states require

28 days

When did the three Advocate Generals argue that Directives should create rights and duties for all citizens

early 1990s

What happens first if a Directive's deadline for implementation is not met

the member state cannot enforce conflicting laws, and a citizen may rely on the Directive in such an action

What happens secondly if a Directive's deadline is not met

a citizen or company can invoke a Directive, not just in a dispute with a public authority, but in a dispute with another citizen or company

How long did Ms Kucukdeveci work for Swedex Gmbh & Co KG before she was dismissed

10 years

Which company did Mrs Foster work for

British Gas plc

At what age did British Gas plc force their workers to retire

women retire at age 60 and men at 65

Which courts have a duty to interpret domestic law as far as possible

national courts

What does the First Company Law Directive article 11 require

incorporations would only be nullified for a fixed list of reasons

What did the Italian government fail to do in Francovich v Italy

failed to set up an insurance fund for employees to claim unpaid wages if their employers had gone insolvent

How much money was Francovich allowed to claim from the Italian government in damages

6 million Lira

Which entity developed the principles of European Union Law

the European Court of Justice

What are some of the accepted general principles of European Union law

fundamental rights (see human rights), proportionality, legal certainty, equality before the law and subsidiarity

How long has Proportionality been recognized as one of the general principles of EU law

since the 1950s

Where is the principle of proportionality recognized in the EC treaty

in Article 5

Which measure must be adopted when there is a choice between several

the least onerous

How long has the concept of legal certainty been recognized as one of the general principles by the EU law

since the 1960s

Which laws mentioned predate EU law

international law and public law

What must the adoption of laws which will have legal effect in the EU have

a proper legal basis

In what does the doctrine of legitimate expectations have roots

the principles of legal certainty and good faith

Where is the European Court of justice likely to get inspiration from

from the constitutional traditions common to the member states

The European Court of Justice cannot uphold measures that are incompatible with what

fundamental rights recognised and protected in the constitutions of member states

How many original treaties establishing the EU protected fundamental rights

None

Which entities were originally concerned with preventing violation

of human rights

member states

When was the European Convention on Human Rights established

1950

What other entity was established at the same time as the European Convention on Human Rights

European Court of Human Rights.

When did the European Council task an entity with drafting a European Charter of Human Rights

1999

When was the Lisbon Treaty established

2007

What charter has become an important aspect of EU law

the Charter of Fundamental Rights of the European Union

After the Lisbon treaty, the Charter and the Convention now co-exist under what

European Union law

What entity enforces the Charter of Fundamental Rights of the European Union

European Court of Justice

The Social Chapter is a chapter of what treaty

1997 Treaty of Amsterdam

What year was the Treaty of Amsterdam created

1997

When was the basis for the Social Chapter developed

1989

How many general principles does the Social Charter declare

30

How many pieces of legislation has the Social Charter become the basis for

40

How many member states adopted the Social Charter in 1989

11 of the then 12 member states

Which member state declined to sign the Social Charter

The UK

What title was the Social Charter set to be included into the Maastricht treaty under

the "Social Chapter"

What year was the Maastricht treaty signed

1992

What lead to the UK to subscribe to the agreement on Social Policy

the election of the UK Labour Party to government

When did the UK formally subscribe to the Agreement on Social Policy

1997

Which directive mentioned was created in 1994

Works Council Directive

When was the Parental Leave directive created

1996

What did the Works Council Directive require

workforce consultation in businesses

Which countries were the European Coal and Steel Community agreement between

France, Italy, Belgium, the Netherlands, Luxembourg and Germany

What year was the ECSC agreement established

1951

What did article 65 of the ECSC ban

cartels

Which article made provisions for concentrations or mergers and the abuse of a dominant position by companies

article 66

When were competition rules included in the Treaty of Rome

1957

In which article does the Treaty of Lisbon prohibit anti-competitive agreements

Article 101(1)

What does Article 102 of the Treaty of Lisbon prohibit

the abuse of dominant position

Which articles state that the member states' rights to deliver public services may not be obstructed

Articles 106 and 107

Which article allows the European Council to govern mergers between firms

Article 102

When was the concept of a social market economy introduced into EU law

2007

How long has free movement and trade been central to European development

1957

Breaking down barriers to trade and enhancing the free movement of goods is meant to reduce what

consumer prices

What do the Treaties generally limit

free trade

What entity has taken the view that the goals of free trade are underpinned by the aims to improve people's well being

the Court of Justice

What helps the process of free movement of goods

a customs union, and the principle of non-discrimination

What did did article 34 discriminate against in Procureur du Roi v Dassonville

parallel importers like Mr Dassonville

Article 34 meant states could be responsible for what

private actors

In which case were French vigilantes sabotaging shipments of Spanish Strawberries

Commission v France

In Schmidberger v Austria, the Court of Justice came to the conclusion that Austria didn't infringe upon article 34 by failing to ban a what

a protest that blocked heavy traffic

What is the minimum percent of alcohol content a German law requires all spirits and liqueurs to have

25

Which country did Rewe-Zentrale AG wish to import from

France

Which year was the case Commission v Italy that dealt with cocoa products

2003

All Italian chocolate is made from what alone

cocoa butter

In the 2009 Commission v Italy, case, the Court of Justice held that an Italian law prohibiting what infringed article 34

motorcycles or mopeds pulling trailers

Which two importers claimed that under a French competition law, they were prevented from selling Picon beer under wholesale price

Keck and Mithouard

The aim of the French competition law was to do what

cut throat competition

In which case did the Court of Justice review Swedish bans on advertising to young children under 12

Konsumentombudsmannen v De Agostini

Under which Directive did the EU harmonize restrictions on restrictions on marketing and advertising

the Unfair Commercial Practices Directive

What have the Treaties sought to enable since its foundation

to enable people to pursue their life goals in any country through free movement

Which entity focused upon the free movement of workers

the European Community

What was free movement increasingly based on

citizenship

In which case did a German man claim the right to live in Netherlands where he was a volunteer plumber

Steymann v Staatssecretaris van Justitie

What did the Court of Justice say Steymann was entitled to

to stay, so long as there was at least an "indirect quid pro quo" for the work he did

Which articles of the Free Movement of Workers Regulation set out the primary provisions on equal treatment of workers

articles 1 to 7

Which Belgian footballer claimed that he should be allowed to transfer from one football club to another when his contract was fulfilled

Jean-Marc Bosman

What language did the Court of Justice accept to be required to teach in a Dublin college in Groner v Minister for Education

Gaelic

In which case was a Dutch national not entitled to continue receiving benefits when he moved to Belgium

Hendrix v Employee

In the case Geven v Land Nordrhein-Westfalen, how many hours was the Dutch woman in question working in Germany

between 3 and 14 hours a week

What has lately been being viewed as a fundamental status of member state nationals by the Court of Justice

Citizenship of the EU

What has having an EU Citizenship increased

the number of social services that people can access wherever they move

In which case did the Court state that Austria was not allowed to hold places in Austrian schools exclusively for Austrian students

Commission v Austria

What has the Court required to be more accessible

higher education

Which Treaty protects the freedom of establishment and the freedom to provide services

the Treaty on the Functioning of the European Union

In Gebhard v Consiglio...Milano, the requirements to be registered in Milan before being able to practice law would be allowed under what conditions

if they were non-discriminatory

In which case did the Court of Justice state that refusal to admit a lawyer to the Belgian bar because he did not have Belgian heritage wasn't able to be justified

Reyners v Belgium

Which TFEU article states that states are exempt from infringing on rights of establishment when they exercise official authority

article 49

In which case did the Court of Justice hold that requiring Italian lawyers to comply with maximum tariffs unless there was an agreement with a client was not a restriction

Commission v Italy

In which year did a toxic waste spill from a European ship prompt the Commission to look into legislation against waste

2006

At the time, countries such as Spain didn't have a crime against what

shipping toxic waste

When did the Court of Justice rule that the Commission could only propose that there must be some criminal sanctions

October 2007

When was the competence for the Union to create criminal sentences for ecological crimes contested

2005

The freedom to provide services under TFEU article 56 applies to who

to people who give services "for remuneration"

Why was the Dutch lawyer who moved to Belgium while advising a client in a social society case told he couldn't continue

because Dutch law said only people established in the Netherlands could give legal advice

What did the Court of Justice reason were controlled in all member states in Josemans v Burgemeester van Maastricht

narcotic drugs

What did the Dutch health authorities regard as unnecessary in Geraets-Smits v Stichting Ziekenfonds

the treatment

Which newspaper's parent company could not evade tax by shifting its residence to the Netherlands

the Daily Mail

How much capital did UK law require to start a company

£1

How much capital did Danish law require to start a company

200,000 Danish krone

What could justify restrictions on freedom of establishment

creditor protection, labour rights to participate in work, or the public interest in collecting taxes

In which case did the Court of Justice hold that a German court couldn't deny a Dutch building company the right to enforce a contract based in Germany

Überseering BV v Nordic Construction GmbH