I- EUROPEAN INTEGRATION

The making of Europe

- History of European integration activates after 1945.

- However, the *Idea of Europe* – of a united Europe – can be rooted since the Roman Empire, throughout the times, with political leaders like Charlemagne, the Habsburgs, Napoleon, Hitler, or intellectuals like William Penn, Rousseau, Saint-Simon, Victor Hugo, Mazzini and others.

- The end of the 19th century was signed by the rise of nationalism in Europe and an increase of competition between states that culminated in WWI

- The First War redrawn the political map of Europe, with the dismantlement of the Empires of central and Eastern Europe, and the creation of several new states, based on a national ground.

- Coudenhove-Kalergi with the book *Paneuropa*, 1923: the idea of an European Federation, aiming to maintaining peace between nations.

- Attempts by Aristide Briand, within the League of Nations, 1929.

- Economic depression, the rise of fascisms, and Hitler growing hegemony, cooled the efforts of European integration

- **After WWII** economic rebuilding took precedence over attempts for a unified Europe.

- **The Hague Congress**, 1948. Churchill thesis on the need of reconciliation between France and Germany. Britain did not have to be part on that European unity, just associated with it. The idea of an European Assembly

- Treaty of Brussels, 1948, for collective self-defense (the basis for the future Western European Union)

- Bideau Declaration, 1948: European economic and customs union and a European Assembly

- **Council of Europe**, 1949, signed by 10 states: first European organization. Based on the format of traditional cooperation between states. Cleavage between France, Italy and Benelux nations with the UK and Nordic countries, on the concept of European union.

- UK succeeded in limiting the scope of action of the Council of Europe

- **Schuman Declaration**, 1950, on the establishment of a High Authority for coal and steel:

. fears of France regarding the ability of Germany to produce steel at a cost below what France could manage;

. it allowed Germany to regain sovereignty over the Saar region, which still remained under French control

- **Treaty of Paris**, 1951: the High authority represented the supranational nature of the ECSC

- The ECSC *spillover* to other economic sectors

- Korea war and the rearmament of Germany. The French opposition to it

- The idea of a European army, the Pleven Plan: it followed the Schuman Plan closely.

- **The European Defense Community**, 1952. The German price: Western Allies to end occupation and to give control over foreign policy.

- EDC as a way for France to guarantee itself against eventual German aggression, as much as an anti-Soviet organization

- Need for political control of the EDC: European Political Community, 1953

- Failure on the French ratification of the EDC, 1954. It also meant the fall of the EPC

- The return to the short steps strategy advocated by Monnet

-1955 Messina Conference and the relaunching of European integration. Two opposed perspectives: Benelux countries and the need for a global economic integration, through a common market; France preference for sectorial integration, in the area of nuclear energy

- Spaak report, 1956. The opening of the IGC

- **Treaties of Rome, 1957**: the EEC and the EURATOM

The EEC enlargement

- **The first EC enlargement**: the reversal of UK attitude towards European integration.
- UK first applied for admission into the EEC, 1961.
- French veto by De Gaulle, 1963, doubting on the sincerity of Britain's intentions.
- A new application by the UK, 1967. A new veto by De Gaulle
- De Gaulle resignation, 1969
- Treaty of Accession, 1972, signed by four states.
- 1973, the first enlargement to nine Member States

- the transition to democracy and **the southern enlargement**
- Application for admission of Greece, 1975; Portugal and Spain, 1977
- Treaty of Accession with Greece, 1979
- Treaty of Accession with Portugal and Spain, 1985

- The enlargement to the so-called **European Economic Area** countries
- Treaty of Accession with Austria, Finland, Sweden and Norway, 1994

- The enlargement to the **Eastern European** countries
- The fall of the Berlin Wall and the new European geography
- The Copenhagen criteria
- The European agreements.
- The first phase of the enlargement: negotiations concluded in 2002 with 10 states, which become new member states in May 2004
- Romania and Bulgaria signed the Accession Treaty in 2005, becoming members in 2007

- *Turkey and Croatia* initiated negotiations to join the EU in October 2005.
- Croatia signed the Accession Treaty in December 2011, and joined in 2013.
- Turkey accession remains a political issue for Europe
- Meanwhile, Iceland initiated negotiations in 2010 (and suspended in 2013); Montenegro initiated negotiations in 2012; Serbia initiated negotiations in 2014.

- The EU widening to other Balkan states (Albania; Bosnia-Herzegovina; Kosovo; Macedonia)

The deepening of European integration

- The Hague Summit, 1969
- The Werner Report on the economic and monetary union, 1970
- Development of new EC competences
- European Political Cooperation, 1973
- The European Council, 1974
- Direct elections to the European Parliament, 1979
- The European Monetary System, 1979

- Jacques Delors, President of the Commission. The legislative roadmap for the single market: the White Paper on the completion of the Internal Market, 1985
- The European Council decided to call for an IGC, to make treaty amendments

Single European Act, 1986

- The main goal was to achieve an European single market by the end of 1992
- The widening of qualified majority vote, to pass the internal market program
- The increase of the Europe Parliament's legislative role
- The institutionalization of the Council of Europe
- The setting-up of the Court of First Instance
- New EC competences were added: environment; research and technological development; cohesion policy
- Reference to European Political Cooperation

- The *spillover* of the internal market
- Delors Report on the economic and monetary union, 1989: the EMU as the corollary of the single market
- The fall of the Berlin Wall, November 1989
- The question of German reunification
- The new European political geography
- Franco-German agreement on German unification
- The call for two IGC's, 1990: one the EMU and the other on the European Political Union

The Treaty on the European Union

- The Maastricht agreement that concluded the IGC's, 1991
    - Signed in 1992

- The three pillar structure
    - Unwillingness of some member states to conduct internal security and foreign policy with supranational decision-making
    - Supranational v. intergovernmental principles

- Common Foreign and Security Policy. Scope: foreign policy, security and, eventually, defense

- Cooperation on Justice and Home Affairs. Scope: immigration, asylum and criminal matters

- Treaty on the European Community
    - Economic and monetary union. Single currency and the European Central Bank
    - European Citizenship
    - The principle of subsidiarity
    - The increase of European Parliament's powers: co-decision procedure, applicable to 15 legal bases; right to approve Commission as a whole.
    - New competences conferred to the European Community

- Ratification procedure. The Danish referendum, 1992
    - It came into force by the end of 1993

The Amsterdam Treaty

- The 1996 IGC
    - The institutional reform to prepare the Eastern enlargement
    - The legitimacy crisis in the aftermath of the Maastricht Treaty
- The Amsterdam agreement, 1997
    - Simplification and renumbering of the EU and EC Treaties
    - The EU political principles (freedom, democracy, rule of law and human rights)
    - A wider scope for the principle of non-discrimination
    - Closer cooperation, enabling Member States to take advantage of the concept of variable speed integration
    - The EU as an area of freedom, security and justice
        - The incorporation of the Schengen Agreements
    - Common Foreign and Security Policy
        - The High Representative for the CFSP
        - The Peterbserg tasks, allowing the EU to make humanitarian and peace-making missions
    - EC Treaty:
        - The competences on employment policy and social fundamental rights
        - The strength of European Parliament powers: co-decision procedure to be applied to 32 legal bases; right to approve the Commission President
    - The failure of institutional reform. The Protocol on institutional reform

The Treaty of Nice

- During the IGC for The Treaty of Nice, 2001, Member States restricted the agenda in order to find out the conditions for institutional reform in view of EU enlargement, namely:
    - the composition of the Commission (one national for Member State)
    - The number of votes allocated to the Member States within the Council, regarding Qualified Majority vote, had been changed with the five biggest countries of the EU states passing from 55% to 60% of the total number of votes
    - The number of seats in the European Parliament
- The setting of specialized chambers within the Court of Justice
- Final Declaration on the Future of Europe, calling for a wider debate about the EU.
    - The 2004 IGC should be preceded by a wide European debate on the future of Europe
    - This debate should involve the European Parliament, national parliaments, the European Commission and national governments
    - The debate should discuss the following issues:
        - *division of powers* between the EU and the MS;
        - legal status of the EU *Charter of Fundamental Rights*;
        - *simplification* of the EU Treaties;
        - the role of *national parliament*

The European Constitution

- The European Council, December 2001, decided to call an European Convention to debate the future of Europe

- European Convention initiated its work on February 2002, chaired by former French President, Valéry Giscard d'Estaing. Composed by 105 members, representing the EU Member States and the 10 new countries

- Convention had a mandate that ended on June 2003.

- June 2002, *the Convention agreed* that it should prepare a draft text of an European Constitution

- On June 2003, the Convention submitted to the European Council a *draft Treaty establishing a Constitution for Europe*

- The draft European Constitution was a major step in European integration by:

    - simplifying the texts of the founding Treaties, and abolishing the EC
    - ending with the structure of the Union based in 3 different pillars
    - incorporating the Charter of Fundamental Rights into its text
    - clarifying the division of powers between the Union and the Member States
    - enlarging the scope of decisions taken by qualified majority voting
    - simplifying the reach of qualified majority
    - increasing the legislative status of the European Parliament (to 90 legal bases)
    - allowing the national parliaments to control EU legislation on the basis of subsidiarity
    - reforming the legal acts adopted by the EU

  - extending the communitarian method to the whole space of freedom, security and justice,
  - creating the position of Minister of Foreign Affairs and ending with the double EU external representation
  - the EU was given legal personality, which was instrumental for external representation

- Draft Constitution prepared by the European Convention was not binding for the IGC: Member States are the *Masters of the Treaties*
  - However, the European Council considered the draft Constitution submitted by the Convention as a *good working basis* for the IGC.

- Inter-Governmental Conference (IGC), initiated its works in October 2003
  - IGC leaded by the Heads of Government of the Member States. Leaders of the accession States participate on equal basis with the actual Member States.
  - IGC was concluded in June 2004.

- **The Constitutional Treaty**, which was very similar to the draft European Constitution, was signed in October 2004

- As for the legal nature of both the draft European Constitution and the Constitutional Treaty they were the same: a Treaty between the Member States. They were not a Constitution based on the idea of popular sovereignty. Indeed:

  - Right of secession: Member States may decide to withdraw from the Union, at any time
  - Constitutional amendments need to be approved by all Member States

- Then, it went through the Ratification procedure.
  - National *referenda* in France and the Netherlands, June 2005.
  - European Council called for a period of reflection on the Constitutional Treaty

The Treaty of Lisbon

- With the European Constitution the EU was supposed to close the constitutional cycle initiated with the Maastricht Treaty, in 1992.

- Constitutional crisis originated by the 2005 *referenda*, was followed by a reflection period. At the end prevailed the idea of rescuing the so-called *constitutional acquis* through a reform treaty.

- Until the Berlin Declaration on the 50th anniversary of the Treaty of Rome, March 2007, some Member States still believed on the rescuing of the whole European Constitution. However, the content of the Declaration erased such optimism.

- The Reform Treaty was shaped during the German Presidency of the Council, 2007: Mrs. Merkel purpose to find a way out for the constitutional crisis; along with the changing of political leadership in France and UK.

- Letter sent by the German Presidency to the Member States, April 2007, launched the basis for a Reform Treaty: Member States were asked whether they would accept:

  - A *reform to the Treaties* on the EU and EC, but with the suppression of the Union's pillar structure.

  - A change on the terminology used to refer the *Constitutional* treaty, the *legal acts* of the Union, the FA *Minister*, but without any changes regarding its content.

  - The removal of the provisions regarding EU *symbols and primacy* of EU law.

  - The preservation of the so-called *institutional package*, established by the EU Constitution.

  - The incorporation of the *Charter* into the Treaty text should be replaced by a Treaty provision that would give it with full legal force.

- *Member States' answers* allowed for the idea of a Reform Treaty, which main advantage would be to *introduce only partial amendments* to the existing Treaties, with the purpose to *avoid a new series of national referenda*.

- European Council of *June 2007 called for an IGC*, to be concluded until the end of the year, and approved a *detailed mandate* to it. It was for the Portuguese Presidency to lead the IGC and conclude the final agreement.

- **Treaty of Lisbon** aimed to rescue the Constitutional *acquis*, namely, the institutional reform, the role of national parliaments, the democratization of the EU political process, the division of competences between the EU and the Member States, the end of the pillar system and the communitarization of the 3rd pillar.

Formal changes:

- Existing EU and EC Treaties were replaced, but only reformed. Indeed, changes were introduced into the exisiting Treaties, unlike the Constitutional Treaty.

- The European *Community was absorbed* by the Union, with the end of the pillar system.

- However, *Common Foreign and Security Policy* remained an *intergovernmental* policy.

- Removal of all elements that could have a statehood sound: the word *constitution*; the name *Minister* of foreign affairs; the reference to *European laws* and *Framework laws*; the provision on EU *primacy* law; provision on the *symbols* of the Union.

- Regarding the structure of the amended Treaties (parallel with the Constitution):

- **The EU Treaty** structure became closer to the idea of a **basic Treaty**: *General Provisions; Democratic Principles; Institutions; Enhanced Cooperation; Common Foreign and*

Security Policy; Final Provisions. There is just one Title lacking, the one of the *division of competences*, which was relegated to the Treaty on the Functioning of the Union.

- **The Treaty on the Functioning of the Union** includes a Title on the Area of Freedom, Security and Justice and the Title on the External Action of the Union. It is very similar with the *structure of Part III of the EU Constitution.*

- The EU **Charter of Fundamental Rights** (Part II of the Constitution) was formally discarded from the text of the Treaties, despite being recognized to be part of European primary law. Indeed, a TEU provision states that the Charter is fully binding, with the same legal value of the Treaties.

- The most important aspects of the Part IV of the EU Constitution, namely on the **revision of the Treaties**, reappear on the final provisions of the EU Treaty.

Substantive Changes:

- The Lisbon Treaty rescued almost all the content of the EU Constitution.

- it includes the so-called institutional package: the *European Council* became a separated institution, with a *full time President*; the increase of *European Parliament legislative and budget powers;* the changes on the *Council voting system* and the exercise of its *Presidencies*; the role of a foreign affairs minister, named *High Representative for foreign affairs*; the *composition of the Commission.*

- The role of national parliaments on the Union political process, namely on the control of the principle of subsidiarity.

- Institutional changes strengthened the political dimension of the Union, in particular the *democratization of the political process*. The *Parliament* will have more legislative and budgetary *powers* and will *elect the President of the Commission*, according to the results of the European elections. It allows for a competitive choice for the citizens that could chose between different candidates, as it happens in national elections.

- There will be also a new political dimension resulting from the *personification of the institutions*: the European Council President, fully devoted to the Union, and not conditioned by its national facet.

- The European Union received legal personality.

- The recognition of the legal force to the EU Charter of Fundamental Rights, and the accession to the ECHR.

- the rules on the division of competences included in the EU Constitution were fully saved, with a general provision on the EU Treaty and a new Title on the categories and areas of EU competence in the Treaty on the Functioning of the Union.

- Majority voting rule applies to some 50 new areas of EU action, in order to improve the efficiency of the decision-making process.

- Lisbon Treaty kept the distinction between legislative acts and non-legislative acts, foreseen by the Constitution.

- It included the Constitution provisions on the revision procedures, with a distinction being made between *ordinary revision procedure* (that needs a Convention, an IGC and ratification) and the *simplified revision procedures* (without IGC and Convention and soft form of national approval).

- Simplified revision procedures introduced some litheness on Treaty rigidity:

- The European Council can amend provisions from articles 26º to 197º of the TFU (half of the Treaty provisions), by unanimity, with Member State approval.

- The European Council can determine that the Council will decide by majority voting. It needs the approval of the European Parliament and it can be no opposition from any national parliament, in six months. This simplified revision procedure also applies to the replacement of special legislative procedures by the ordinary legislative procedure.

- Therefore, the Lisbon Treaty was the device used to save the Constitutional Treaty, through deconstruction of its content.

- The Lisbon Treaty rescued almost all the Constitution: Part I (with 60 articles) was divided in 30 articles included in the EU Treaty and 27 articles on the TFU; Part II was fully saved, through a different technique; Part III, that reorganized the TEC, emerged in the structure of the TFU; the innovative provisions of Part IV were also rescued, namely those on Treaty revision.

- Regarding the 448 Constitution articles, the Lisbon Treaty did not rescue 5 provisions, only.

- Hence, the Treaty of Lisbon is the Constitutional Treaty with *new clothes*.

II – THE EUROPEAN UNION POLITICAL SYSTEM

European Union Institutions

- The institutional framework, article 13 TEU
  - Seven institutions
- Representative democracy, article 10 TEU

The European Council

- The origins of the European Council: The European Summits
- The recognition of formal status to the European Council, 1992
- The European Council as a separate institution, article 13 TEU
- Composition of the European Council, article 15 (2) TEU
- Meetings of the European Council, article 15 (3) TEU
- Powers of the European Council, article 15 (1) TEU
- President of the European Council, article 15 (5) TEU
- Decisions of the European Council, article 15 (4) TEU; article 235 TFEU
- The Treaty-making power, article 48 TEU

The Council

- Made-up of Ministers of the Member States

- It meets in ten different configurations, depending on the agenda of the discussions
    - EU Treaty only mentions the General Affairs Council and the Foreign Affairs Council, article 16 (6) TEU

    - There are also the following configurations:

        - *Economic and Financial Affairs; Justice and Home Affairs (JHA); Employment, Social Policy; Health and Consumer Affairs; Competitiveness; Transport, Telecommunications and Energy; Agriculture and Fisheries; Environment; Education, Youth and Culture*
        -
- The work of the Council is prepared by a Permanent Representatives Committee (COREPER), article 16 (7) TEU

- Council powers, article 16 (1) TEU:
    - Legislative power
    - Budgetary power
    - Coordination of economic policy of the member states
    - Implements common foreign and security policy
    - Concludes international treaties with third states and international organizations, on behalf of the Union

- Presidency of the Council, article 16 (9) TEU
    - Assured by each member state, in turn
    - Permanent President for Foreign Affairs configuration (High Representative)
    - Decision by the European Council on the Presidency's configurations, article 236 TFEU

- Voting system, article 16 (3) TEU, on qualified majority
    - Transitional system, article 16 (4) TEU
    - Until 2014, weighted voting system: with 28 member states, decisions are to be reached by 262 votes (on a total of 352)
    - After November 2014, double majority of 55% of member states (15 member states), representing at least 65% of the Union population. Blocking minority must include at least 4 member states

- Treaties also define cases where unanimity and simple majority voting (article 238 (1) and 240 (3) TFEU) are applied.

The Commission

- Supranational nature of the Commission: principles of solidarity and the idea of integration

- It represents the general interest of the Union, article 17 TEU

- Independence of the Commission, article 17 (3) TEU

- Composition, 28 commissioners, article 17 (4) e (5) TEU

- Appointment of the Commission, article 17 (7) TEU
    - Election of the President by the EP
    - List of Commissioners, voted by the EP, after parliamentary committee hearings
    - Nomination by the European Council

- Five years mandate, article 17 (3) TEU

- President of the Commission leadership, article 17 (6) TEU

- College of Commissioners, portfolios

- Bureaucracy of the Commission (around 24000 people), organized in some 20 Directorate-Generals

- DG's support the work of Commissioners portfolios

- Powers of the Commission, article 17 (1) TEU:
    - To propose draft legislation
    - *Guardian* of the Treaties, i.e., to enforce EU Treaties and EU legislation
    - To represent the EU in trade negotiations, and external representation in general (with the exception of common foreign and security policy)
    - To make rules and regulations, for instance in competition policy
    - To implement the EU budget and to manage EU policies

European Parliament

- Initially (named, the Assembly), it was established as an institution of political control

- It represents the citizens of the Union

- It is the only directed elected EU institution (direct elections since 1979).

- Composed by 751 members (MEPs), elected for a 5 years term.

- The EP seats are fixed according to a criteria of digressively proportional, the maximum being 96 MEPs and the minimum 6 MEPs by each member state, article 14 (2) TEU

- MEPs are organized by political parties, not by nationality

- EP functioning, and headquarters:
    - 12 plenary sittings, in Strasbourg
    - Parliamentary committees and political groups, are based in Brussels (as well as additional plenary sittings)
    - EP Secretariat located in Luxembourg

- EP powers:
    - Law-making powers, under the co-decision procedure.
        - The Lisbon Treaty placed the EP on equal basis with the Council concerning the vast majority of EU laws, article 14 (1) TEU (90 legal basis)

    - It decides on the EU budget, together with the Council, article 14 (1) TEU

    - It gives its assent to the signing of international agreements by the Union, in areas such as international trade

    - It exercises political control:
        - Elects the President of the Commission, on the basis of the EP elections results, articles 14 (1), and 17(6) TEU
        - It approves the College of Commissioners, article 17 (6) TEU
        - It can pass a vote of censure to the Commission, which implies its dismissal, article 17 (8) TUE, and article 234 TFEU

EU Decision-making power

- Commission has the exclusive right of initiative, concerning legislative acts, article 17 (2) TEU

- Co-decision, with the Lisbon Treaty became the ordinary legislative procedure

- The phases of the ordinary legislative procedure, article 294 TFUE
    - First reading, by EP and Council
    - Second reading, by EP and Council
    - Conciliation committee, common draft to the EP and Council
    - Third reading, by EP and Council

III – The European Union legal system

Sources of European law

- **Primary law** of the Union: founding Treaties, amending Treaties, accession Treaties
- **Secondary law** of the EU: legal acts adopted by the EU, article 288 TFEU

Article 288 TFEU

To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

***A regulation** shall have general application. It shall be binding in its entirety and directly applicable in all Member States.*

***A directive** shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.*

***A decision** shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.*

***Recommendations and opinions** shall have no binding force.*

Regulations: it doesn't have specific addressees; it lays down general rules

- Binding in its entirety, both at the Union level and at the national level
- Directly applicable in all Member States
- Regulations are a method to achieve uniform EU law

Directives: are addressed to the Member States

- Not binding in its entirety. Member States are obliged only to the result to be achieved; they leave the national authorities the choice of form and methods
- They are not directly applicable in the Member States: they need to be transposed to national law
- Directives are a method to harmonize EU law

Decisions specify to whom they are addressed.

- They are only binding on them
- They are binding in its entirety
- Normally used to deal with particular cases.
- Closer to administrative or executive acts

- Treaty of Lisbon introduced the concept of **legislative acts**: article 289 (3) TFEU: Legal acts adopted by legislative procedure shall constitute legislative acts.
    - Ordinary legislative procedure (article 294) and
    - special legislative procedures
    - legal acts that do not fall within the definition of a legislative act constitute a **non-legislative act**. They may binding, and have the form of a regulation, directive or a decision, but not entitled to the designation of legislative act

- **Delegation of Power:** Treaty of Lisbon introduced the **delegated acts**, article 290 TFEU: A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application *to supplement or amend certain non-essential elements* of the legislative act.

- **Implementing Power:** Treaty of Lisbon introduced also the concept of **implementing acts,** article 291 TFEU: Where *uniform conditions for implementing* legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

The Court of Justice of the European Union

As for its structure, with the Treaty of Lisbon there is a new terminology:

- Court of Justice, articles 251-253 TFEU
- General Court (former Court of First Instance, established in 1989), article 256 TFEU
- Specialized courts (until now, only the Civil Service Tribunal), article 257 TFEU

Article 19 TEU

- *The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.*
-

The Court of Justice

- Composed by 28 judges
- The Court sits normally in Chambers, article 251 TFEU.
    - There are Chambers of 3 and 5 judges.
    - There is a Grand Chamber of 13 judges.
    - Exceptionally, and according, to its Statute it can sit in a full Court, the plenary formation.
- The Court has also 8 Advocates General, article 252 TFEU.
    - Advocates General make reasoned submissions on the cases presented to the Court.
    - In a way, its opinion could be regarded as a first judgment, although with no binding force for the Court decision.

Court of Justice jurisdiction:

- Treaties give the Court of Justice limited jurisdiction
- The basic distinction on its jurisdiction is between *judgments* and *opinions* (the latter being much rarer, and related to the conclusion of international agreements by the Union)

Article 218 (11) TFEU: A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the

agreement envisaged may not enter into force unless it is amended or the Treaties are revised.

- As for judgments, basic distinction is between actions that begun in the Court of Justice – *direct actions* – and actions that begun (and end) in a national court, indirect actions or *preliminary rulings*.
- Decisions of the Court of Justice are not subject to appeal

a) Direct actions

Enforcement actions, article 258 TFEU

- Actions against Member States, for violation of its obligations under EU law
- Procedure is initiated by the Commission
- The proceedings in enforcement actions consists of two stages: and administrative stage, and a judicial stage
- The administrative stage, article 258 (1):
    - The Commission first sends a *letter of formal notice*, for the Member State to submit its observations
    - When becomes clear that the MS do not want to accept its position, the Commission issue the *reasoned opinion*, which formally states the alleged violation

Article 258 TFEU

If the Commission considers that a Member State has failed to fulfill an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.
If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

- The reasoned opinion marks the end of the administrative stage.
- Then it comes the judicial stage, where the action is put before the Court of Justice, article 258 (2)

- The Commission has a discretionary power to open the proceedings and has no time limit for the initiation of the proceedings, or for the delivery of the reasoned opinion.
- The scope of the proceedings is limited to the infringements specified in the reasoned opinion, i.e., the Commission cannot raise new obligations before the Court
- If the Court of Justice finds the allegation proved, it will give judgment against the Member State, declaring the MS has failed to fulfill an obligation under the Treaty.
- Court decision is declaratory in nature. The Court has no power to order the MS to do, or not to do, something; nor can it declare national legislation to be invalid. Although, the decision is binding for the Member State
- Indeed, the Member State is obliged to comply with the judgment, article 260, being required to take the necessary measures to comply with the judgment of the Court

Article 260 TFEU

1. *If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court.*
2. *If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.*
   If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.
   This procedure shall be without prejudice to Article 259.
3. *When the Commission brings a case before the Court pursuant to Article 258 on the grounds that the Member State concerned has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.*
   If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment.

- When the Member State fail to obey the judgment, **sanctions** can be applied, article 260
- It follows a similar procedure of the enforcement action, with the Commission bringing the case before the Court, for the Member State to be fined.
- The Commission should specify the amount of the lump-sum fine or penalty payment that it considers appropriate.
- Periodic penalty payment is a payment of a specified amount for day that elapses until compliance take place. It applies in the future (after the second judgment). The lump-

sum fine penalizes the infringement between the date of the first judgment and that of the second.

- With the Treaty of Lisbon, special case in case of failure of transposition of a directive. Article 260 (3), with a possibility of the sanction being fixed in the original judgment. That is to say that the Court can set the level of the fine in advance, and it will be automatically applied to the Member State in case it does not comply with the judgment (transposition)

Annulment actions, article 263 TFEU

- Actions aimed to review the legality of the institutions of the Union legal acts
- Acts that can be subject to review: legally binding acts (*other than recommendations and opinions*).

- Institutions that can see their acts subjected to legal review by the Court of Justice:
    - Council, European Parliament, Commission, European Council;
    - as well as the acts of other bodies, offices or agencies of the Union intended to produce legal effects *vis-à-vis* third parties

- Who can bring the proceeding to the Court of Justice? (*locus standi*)
    - Privileged applicants: Member States, European Parliament, Council and Commission.
        - They can always challenge any Union reviewable act. They benefit from a privileged status

    - Non-privileged applicants, article 263 (4), any natural or legal persons
        - They can bring proceedings against an *act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.*
        - With the Treaty of Lisbon any act can be challenged by a non-privileged applicant, provided that he is individually and directly concerned by it. The act doesn't need any more to be a decision.

    - Special situation of semi-privileged status: Court of Auditors, European Central Bank and the Committee of Regions

- may bring proceedings to protect their prerogatives.

- Grounds for review, article 263 (2): *lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers*.

- If the action is successful the Court will declare the act void, article 264.

Article 263 TFEU

The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers.

The Court shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.

Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

b) Indirect actions

Preliminary rulings, article 267 TFEU

- The only judicial action that does not begun, and end, at the Court of Justice
- National courts are the common enforcers of European law. There is a system of decentralized application of EU law
- Need for a uniform interpretation of EU law: there is a system of centralized interpretation of EU law.
- The action begun in a national court. Whenever that court has a doubt on an aspect of EU law, that if considers relevant for its final decision, it refers the case to the European Union Court of Justice.
- The national court asks preliminary questions to the Court of Justice
- The European Union Court of Justice does not decide the case as such. It just gives a ruling on the preliminary questions formulated by the national court.
- After the European Court's ruling the case is then sent back to the national court, which will take a decision.
- The issues referred to the Court of Justice may be about:
    - Interpretation of the EU Treaties
    - Validity and interpretation of any provision of EU law. The validity of the Treaties cannot be raised.
- Any national court may make a preliminary request to the Court of Justice
- A national court from which decision there is no appeal must make a reference to the Court of Justice, whenever there is a relevant question of EU law to its decision.
- The national court is bound by the Court of Justice's ruling.

Article 267 TFEU

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:
(a) the interpretation of the Treaties;
(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

FUNDAMENTAL PRINCIPLES OF EU LAW

I- Primacy of European Law

- Relationship between European law and national law
- Conflict of norms' resolution
- In the *Costa v. ENEL (1964)* case, the Court of Justice stated the principle of primacy, or supremacy, of European law over domestic law of the Member States:

> *"It follows from all these observations that the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.*
> *The transfer by the States from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail. Consequently Article 177 is to be applied regardless of any domestic law, whenever questions relating to the interpretation of the Treaty arise."*

- Any provision of European law always prevails over any provision of national law, for the Court of Justice.
  - Supremacy of European law applies irrespective of the nature of the Union provision (primary law, secondary law) or that of the national provision (constitution, ordinary law, lower rules);
  - And it also applies irrespective of whether the Union provision came before, or after, the national provision.
- Legal effects of supremacy: national provision is *inapplicable* (not void)
- European law prevails over national law because of its own legal nature
- There was no reference in the founding Treaties regarding the principle of supremacy
- Constitutional Treaty, article I-6º, stated the primacy of European law
- This provision was not rescued by the Treaty of Lisbon

- However, Declaration nº17, annexed to the Final Act of the IGC:

Declaration 17

Declaration concerning primacy

The Conference recalls that, in accordance with well settled case law of the Court of Justice of the European Union, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case law.

The Conference has also decided to attach as an Annex to this Final Act the Opinion of the Council Legal Service on the primacy of EC law as set out in 11197/07 (JUR 260):

'Opinion of the Council Legal Service of 22 June 2007

It results from the case-law of the Court of Justice that primacy of EC law is a cornerstone principle of Community law. According to the Court, this principle is inherent to the specific nature of the European Community. At the time of the first judgment of this established case law (Costa/ENEL, 15 July 1964, Case 6/641 (1) there was no mention of primacy in the treaty. It is still the case today. The fact that the principle of primacy will not be included in the future treaty shall not in any way change the existence of the principle and the existing case-law of the Court of Justice.

II- Direct effect of European Union law

- A provision of European law produces direct effect when it can be invoked by individuals before national courts

- If a provision of European law is given direct effect, that provision is applied by a national court as part of the law of the land.

- The principle of direct effect was first introduced by the *Van Gend en Loos* case, 1963:

"The objective of the EEC Treaty, which is to establish a common market, the functioning of which is of direct concern to interested parties in the Community, implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the preamble to the Treaty which refers not only to governments but to peoples. It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the exercise of which affects Member States and also their citizens. Furthermore, it must be noted that the nationals of the States brought together in the Community are called upon to cooperate in the functioning of this Community through the intermediary of the European Parliament and the Economic and Social Committee.

In addition the task assigned to the Court of Justice under Article 177, the object of which is to secure uniform interpretation of the Treaty by national courts and tribunals, confirms that the states have acknowledged that Community law has an authority which can be invoked by their nationals before those courts and tribunals.

The conclusion to be drawn from this is that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community.

….

The wording of Article 12 contains a clear and unconditional prohibition which is not a positive but a negative obligation. This obligation, moreover, is not qualified by any reservation on the part of states which would make its implementation conditional upon a positive legislative measure enacted under national law. The very nature of this prohibition makes it ideally adapted to produce direct effects in the legal relationship between Member States and their subjects."

- For a provision of European law to be directly effective:
  - It must be *clear and unambiguous*
  - It must be *unconditional*

- With the statement of the direct effect principle, the Court of Justice '*democratized*' European law, allowing individuals to invoke these provisions before national courts

- Provisions of the Treaties may produce direct effect, provided they are clear, precise and unconditional

- Vertical and horizontal direct effect of EU law

- Direct effect of regulations and decisions

- Direct effect of directives:
  - Special situation when the deadline for transposition expired and the Member State did not incorporated it in its national law
  - Court of Justice wanted to prevent the Member States to take advantage of its wrongdoing
  - By admitting that directives could be directly effective in those special cases, the Court of Justice wanted to sanction Member States for the lack of implementation and to strength the effectiveness of European law
  - Hence, directives can just produce the so-called vertical direct effect

EUROPEAN UNION PROTECTION OF HUMAN RIGHTS

European Community was created with an economic approach. By historical reasons, Treaties were just concerned with the establishment of a European common market. They did not contain any reference on human rights protection within the EC.

EC law had a legal gap concerning the protection of human rights. It was for the European Court of Justice (ECJ) to face this question.

In the *Stauder* case, the ECJ stated that human rights were part of the general principles of law that were ensured by the Court.

In the *Internationale Handelgesellschaft* case, the Court said that the protection of human rights in EC law was inspired in the common constitutional traditions of the Member States and that it would not allow any application of EC measures that breached fundamental rights guaranteed by national constitutions.

In the *Nold* case, the ECJ mentioned the international acts concerning human rights, where the MS took part, as another source of inspiration for its protection in EC law

In the beginning the scope of ECJ human rights protection was limited to the acts of Community institutions.

Later, the ECJ extended its jurisdiction to the national measures that implemented EC law (*Wachauf* case)

Hence, in EC legal order the ECJ created a **jurisdictional method for protection** of human rights.

Notwithstanding, the nature of jurisdictional protection of human rights – based on non-written general principles - did not provide a sustainable guarantee for human rights in EC law, considering the wide scope of its competences. Specially, it created uncertainty for private persons to know the content of human rights ensured within the EC legal order.

Need for a sounder approach on human rights protection within the European Community.

There were two main solutions traditionally referred to overcome the situation:

- the EC accession to the 1950 European Convention on Human Rights
- the adoption of a European Union catalogue of human rights

Those solutions were not considered as alternative remedies for the EC human rights debate, but rather complementary roads.

Moreover, the approach on rights by the ECJ basically consisted in a negative protection. However, fundamental rights also require a positive action by public authorities.

Indeed, the protection of rights by the ECJ was initially focused on first generation rights. This did not prevent the Court to state that social rights were also included in the scope of protection of fundamental rights.

Principle of indivisibility of fundamental rights, as a general trend in modern legal orders, tend also to be accepted in EC law

Treaty of Maastricht, **1992**, incorporated the case law of ECJ on the protection of human rights in EC law

Treaty of Amsterdam, 1997

- Statement of the EU political principles, with a reference to human rights.
- New article 7 TEU, system of sanctions for countries that seriously violate human rights.
- New paragraph on the Preamble of EU Treaty concerning social rights, with a reference to the 1961 European Social Charter and the 1989 Community Charter of Social Rights. Followed by a new chapter on social measures (article 151 TFEU), but with no direct effect

The European Community accession to 1950 European Convention of Human Rights (ECHR)

- interest to join the ECHR and its system of supervision
- ECHR as a true European public order for the protection oh human beings
- all EU member states are members of the ECHR
- 1979 European Commission memorandum on the accession. Council never give an answer (internal debate in 1986)
- new Commission proposal in 1990.

Legal problems concerning EC accession:

- question of EC competence for joining ECHR
- compatibility with the EC Treaty, namely, the articles concerning the ECJ exclusive jurisdiction.
- Council asked the ECJ to give an opinion on the compatibility of the accession to ECHR with article 300 (6) of the EC Treaty.

Court of Justice delivered **Opinion 2/94**, 1996, in a context signed by a strong division between the member States concerning the accession to the ECHR

ECJ declared that the accession would imply a substantial change of the EC system of human rights, leading to the entry in a different international institutional system. This change could not be done on the basis of the article 235 ECT, but rather from a Treaty amendment.

[Article 5 (2) of the Constitutional Treaty stated that "The Union may accede to the ECHR. The accession to the ECHR do not change the competences of the Union"; this provision retaken by the Lisbon Trearty, now Article 6 (5) TEU.]

European Union Catalogue of Rights

- *Opinion 2/94* favored the adoption of a EU catalogue of fundamental rights
- Not a new idea: the 1989 Declaration of Rights and Fundamental Freedoms passed by a European Parliament resolution.
- In the 1990's, increased need for a strong basis on EU human rights action:
  - enlargement to Eastern countries
  - EU powers on justice and internal affairs, which could affect human rights
  - International agreements with third countries
- 50th anniversary of the Universal Declaration of Human Rights in 1998. European Commission call for alternatives on EU fundamental rights protection.
- German European Council Presidency, 1999. The idea of a catalogue was in the coalition agreement
- European Council of Cologne, June 1999, adopted the German proposal of a European Union Charter of Fundamental Rights

European Council of Cologne, Conclusions. *The mandate*:

- The goals: Protection of fundamental rights as a prerequisite for Union *legitimacy*
- make human rights *more visible to the citizens*
- The content: *a droit constant*. Charter should contain rights and freedoms guaranteed by the ECHR and those from the constitutional traditions of the MS; should also include Union's rights of citizenship; and economic and social rights contained in the European Social Charter and the Community Charter

- The method: Draft of such Charter should be elaborated by a body composed of representatives of the 15 Heads of government, Commission (1), members of European Parliament (16) and the national parliaments (30) and observers from ECJ and the Council of Europe.
- The term: Draft should be presented for December 2000 to the European Council, in order to be proclaimed solemnly
- The legal nature: Then, it will have to be considered whether it should be integrated into the treaties

The Convention (the body named itself *Convention)* finished its work by September 2000. The European Council agreed the draft submitted during the Biarritz summit of October.

In December 2000, during the European Council of Nice, the Council, the European Parliament and the Commission solemnly proclaimed the EU Charter of Fundamental Rights.

THE EU CHARTER OF FUNDAMENTAL RIGHTS

The Charter breaks with the duality of fundamental rights that marked any catalogue of rights: political and civic rights on the one hand, economic and social rights, on the other hand.

Charter brings a new systematization of rights presented in the form of major principles: *Dignity; Liberties; Equality; Solidarity; Citizenship; Justice* (heads of its 6 chapters). Last chapter deals with the so-called horizontal questions, which concern all Charter rights

Legal nature:

- the convention worked *as if* the charter would be binding (President Herzog)
- no immediate incorporation in the Treaties was the price to pay to some MS for integrating social rights in its text (UK)
- Charter was Part II of the Constitutional Treaty
- *Treaty of Lisbon did not formally incorporate it into the Treaties, but recognized primary law legal status to the Charter, Article 6(1) TEU*

Addressees of the Charter

- article 51(1), the EU institutions and bodies, and the MS whenever they apply Union law
- The Charter does not apply in all the cases that belong to the domestic jurisdiction of the MS

Beneficiaries of the Charter

- They were not subject of a general clause; there is a case by case solution. Depends on the terms of each article. Kind of variable geometry of Charter rights
- most of the articles are formulated with respect of the universality of rights principle
- Restrictions to EU citizens are concentrated on citizenship rights. Although, there are some universal rights: Articles 41, 43, 44

Competences

- Charter rights do not allow for an extension of EU competences: Article 51 (2) and §5 of the Preamble, i.e., respect for the existing division of competences
- this was already in the Cologne mandate: to draft a Charter a *droit constant*
- Distinction to be made: if the EU must respect fundamental rights absolutely, any EU action taken in this field needs to be supported by express competence

Relationship with ECHR

- article 52 nº3: in case of conflict between the Charter and the ECHR, this provision states the later as the minimum standard of human rights guarantee
- Charter keeps the actual relationship between EU law and the ECHR system: autonomy of EU law and e risk of a different interpretation of the ECHR by the ECJ

Civic and political rights

- ECHR was the basic source of inspiration
- Charter did some update in the writting of its provisions
- Charter include some new rights compared to the ECHR: article 2; article 8, article 41
- In a rule of law system, access to justice as a fundamental right
- One of the negative aspects in EU legal order is the access to the ECJ by private people: strict legal standing of articles 263 and 265 of the TFEU.
- Article 47 §1, refers access to a court. National courts are also considered as jurisdictional bodies in the application of EU law. They are covered by this provision

Citizenship rights

- Listed on a separated part (chapter V)
- They are basically political rights
- article 45 do not confer full residence right in the EU. Must be read in closed link with general clause of article 52(2)

Social rights

- One of the most difficult issues during the Convention draft work
- Its inclusion represents by itself the value added of the Charter when compared with the ECHR
- Special legal nature of social rights. They are not subjective rights. Normally, they consist on rights to receive a State allowance
- Mandate from Cologne excluded social rights that merely established objectives for Union action
- Convention made a basic distinction between rights, principles and objectives. It excluded social objectives.
  - *Principles* are those social rights that need to be implemented by public powers (like environment rights or consumer rights)
  - The lack of implementation of these principles can be subject to judicial review
  - Hence, rights are judicially guaranteed; principles need to be implemented
  - norms that state very wide goals are to be considered *objectives*. The large discretion they confer to public powers do not allow any form of judicial review (ex. full employment rule)
  - Distinction between rights and principles was added to the Charter by the Lisbon Treaty, article 52(5).
- Most of the Charter social rights were inspired by the European Social Charter and the Community Charter of Social Rights; e others came from national law and even from EC Treaty provisions (non-discrimination rules)

Since 2007 there is a **European Union Agency for Human Rights** (FRA), based in Vienna, to provide advice to EU institutions and Member States on human rights listed in the Charter, to collect and analyzing information and data on the scope of application of the Charter and also to raising rights awareness.

INTERNAL MARKET

- Common Market: four fundamental freedoms; common policies
- Internal Market: Single European Act; removal of internal frontiers; ideological dimension
- Negative integration; positive integration:
  - Suppression of physical, technical and tax frontiers
  - Approximation of laws; approximation of indirect taxation
  - Principle of mutual recognition

FREE MOVEMENT OF GOODS:

- Significance of free movement of goods (FMG) in the Treaty of Rome
- Legal foundations of free movement of goods: removal of tariff and of non-tariff barriers to intra-Community trade
  - Customs union
  - Prohibition of quantitative restrictions and measures of equivalent effect
- Concept of goods by the ECJ in *Italian Art Treasures* case, 1968

  "*…products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions*"
- Addressees of Treaty provisions on FMG: direct effect

The Customs Union:

- Concept
- Internal dimension: Prohibition of customs duties and charges of equivalent effect
- External dimension: Common Customs Tariff
- Origin of goods: products coming from third countries and *free circulation*, article 29 TFEU
- Charges having equivalent effect: definition by the ECJ, *Commission v. Italy*, 1969

  "*Any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect… even if it is not imposed for the benefit*

of the state, is not discriminatory or protective in effect and if the product on which the charge is imposed is not in competition with any domestic product."

Internal taxation on goods:

- MS Tax sovereignty
- Complementarity between articles 30 and 110 TFEU
- Principle of a neutral tax system, article 110 TFEU
  - Scope of application: indirect taxation
  - Similar products: article 110 (1)
  - Concurrent goods: article 110 (2)
  - Legal consequences of indirect taxes with a discriminatory effect

Prohibition of Quantitative Restrictions and Measures of Equivalent Effect:

- Article 34 TFEU
- Suppression of quotas
- Concept of measures of equivalent effect: ECJ in *Dassonville* case, 1974 (para. 5):

"*All trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be regarded as measures having an effect equivalent to quantitative restrictions.*"

- Technical rules issued by the Member States regarding the making and trading of goods: composition; packaging; labelling; size, form; designation of origin

- In the absence of European rules of technical harmonization, the ECJ in the *Cassis de Dijon* case, 1979 stated the principle of mutual recognition

"This French blackcurrant-based drink was at the heart of one of the European Court of Justice's (ECJ) most celebrated decisions. In 1979, Rewe-Zentral AG, one of Germany's biggest food and drinks retailers, complained to the ECJ that the German authorities were making it difficult for the company to import and sell Cassis de Dijon. The Court ruled in the firm's favour and declared that under European law, if a company is allowed to make a product freely available for sale in one European Community country, then it must be allowed to do so in all member states. As Cassis de Dijon was obviously already freely available in France, the Court argued that all other European citizens also had the right to buy and drink it. The ruling allowed the Community to develop the all-important **principle of mutual recognition** - which in turn

paved the way for the launch of the single market in 1993." In http://esharp.eu/jargon/cassis-de-dijon/

"It is established by the case-law beginning with **Cassis de Dijon** that, in the absence of harmonization of legislation, obstacles to free movement of goods which are the consequence of applying, to goods coming from other Member States where they are lawfully manufactured and marketed, rules that lay down requirements to be met by such goods (such as those relating to designation, form, size, weight, composition, presentation, labelling, packaging) constitute measures of equivalent effect prohibited by Article 34 (30 EC). This is so even if those rules apply without distinction to all products unless their application can be justified by a public-interest objective taking precedence over the free movement of goods.

The Cassis-judgment also says that:
In the absence of harmonisation, measures which are applied without distinction to domestic products and products imported from other Member States are capable of constituting a restriction on the free movement of goods (para. 8)." In http://lepo.it.da.ut.ee/~yana/kaubad/case_cassis_de_dijon.html

- Following the dispute concerning shopping on Sundays raised by powerful trade operators, national rules on trade, the so-called selling arrangements, which do not directly regulate products but other issues such as *who, how, where and when* to sell goods were excluded from the prohibition of article 34 by the ECJ in *Keck and Mithouard* case, 1993.

"*By contrast, contrary to what has previously been decided, […] national provisions restricting or prohibiting certain selling arrangements are not such as to hinder directly or indirectly, actually or potentially, trade between Member States within the meaning of the Dassonville judgment […], so long as those provisions apply to* ***all relevant traders*** *operating within the national territory and so long as they affect in the same manner, in law and in fact, the* ***marketing*** *of domestic products and of those from other Member States. (para. 16) – Thus, since Keck, the application of national provisions restricting or prohibiting "****certain selling arrangements'*** *to products from other Member States falls outside the scope of the prohibition laid down by Article 34 TFEU (28 EC), so long as those provisions apply to all relevant traders operating within the national territory and so long as they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States.*
National legislation imposing a general prohibition on resale at a loss is not designed to regulate trade in goods between Member States. (para. 12)

Such legislation may, admittedly, restrict the volume of sales, and hence the volume of sales of products from other Member States, in so far as it deprives traders of a method of sales promotion. But the question remains whether such a possibility is sufficient to characterize the legislation in question as a measure having equivalent effect to a quantitative restriction on imports. (para 13)". In http://lepo.it.da.ut.ee/~yana/kaubad/case_keck.html

- Hence, selling arrangements that do not directly refer to products can be regulated by the Member States without infringing article 34 TFEU.

- Derogations to the prohibition of measures of equivalent effect, article 36 TFEU
  - Close list on the grounds for derogation
  - Restrictive interpretation of those reasons
  - Effects of EU approximation on these derogation
  - Need for proportionality of national measures
  -

FREE MOVEMENT OF PERSONS

- Free movement in the Treaty of Rome: free movement of economic production factors
- Unlike free movement of goods, free movement of persons was confined to Community persons
- Who is in charge to decide on national citizenship, Case *Micheletti*
- Material scope of free movement of persons (FMP): the exercise of economic activities
- Territorial scope of free movement of persons: pure domestic situations are excluded from the benefit of FMP; need for a transnational link
- FMP *strictu sensu*; FMP *lato sensu*
- FMP in the Treaty of Rome:

Free movement of workers, article 45 TFEU

- Concept of worker
  - The exercise of a subordinated activity, under the direction of the employer
- Sports' activities

Right of establishment, article 49 TFEU

- The exercise of an independent activity on a permanent basis
- Establishment of individuals and establishment of legal persons
- Primarily establishment and secondary establishment: agencies; branches and subsidiaries offices

Freedom to provide services, article 56 TFEU

- The exercise of an independent activity on a temporary or occasional basis
- Free movement of providers
- Free movement of recipients: recipients of healthcare services; students and tourists in the case law of the ECJ
- Remit to the legal regime of the right of establishment, article 62 TFEU

Main principles concerning free movement of persons:

Non-discrimination on grounds of nationality:

- Articles 45(2); 49 and 56 TFEU.
- Direct Effect of non-discrimination
- General provision of article 18 TFEU.
- Legal derogation to non-discrimination on *employment in the public service*, article 45(4); as well as to activities connected with the *exercise of official authority*, article 51 TFEU
  - Concept of employment in the public service delivered by the ECJ: functional interpretation of Treaty derogation to free movement.

Right of residence

- Right of residence as the corollary of free movement of persons. Right of exiting the country and to enter in another member state and then establish legal residence.
- It includes family members (spouse or registered partner, descendants until 21 and dependent relatives in the ascending line)
- Initial understanding of the beneficiaries of the right of residence. Broad interpretation delivered by the ECJ.
- Right of residence as part of European Citizenship rights, article 21 TFEU
- Directive 2004/38, (*OJ L 158, 30.4.2004*, p. 77)
  - Right of residence up to 3 months, to be applied to all EU citizens, without conditions (article 6)
  - Periods longer than 3 months, there is a distinction between those that exercise an economic activity, and economically non-active people;
  - *Economically non-active people* should prove to have sufficient economic resources to live in another EU member state, not to become a burden for social assistance system of the host country, and have a comprehensive sickness insurance cover in the host member state (article 7)
- Limitations to the right of residence, article 45(3) TFEU, on grounds of public policy, public security or public health

- Free movement and the EU area of freedom, security and justice, article 67 TFEU. The Schengen agreements

- Measures aimed to facilitate the exercise of free movement of persons: directives on mutual recognition of diplomas:
  - Vertical harmonization: health sector professions, architects.
  - Horizontal approach launched by directive 89/48