European law

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I. The creation of a Union legal order I.

- A binding legal system ultimately enforceable by public law enforcement authorities is the basis of the operation of every state.

- Even though the European Union is by no means a state, and has no public powers similar to those of states, the tasks it has been entrusted with are quite similar to tasks that are normally the responsibility of states.

- A legal system was necessary if the EU was to perform these tasks.

- The EU is not an international organisation in the traditional sense of term, where states cooperate for common benefits; the EU is much more that: it is a Community whose Member States have pooled some of their rights – with the task that go with them (such as policy-making and implementation), which are exercised jointly or by Community institution.

- The aims underpinning the creation of European integration, the European Community – which can be considered the core of today's European Union – are laid down in Article 2 of the EC Treaty. According to this article, the Community shall have as its task to promote throughout the Community:

  - a harmonious, balanced and sustainable development of economic activities;
  - a high level of employment and of social protection;
  - equality of men and women;
  - sustainable (and non-inflationary) growth;
  - a high degree of competitiveness and convergence of economic performance;
  - the protection and improvement of the quality of the environment;
  - the raising of the standard of living and quality of life;
  - economic and social cohesion and solidarity among Member States.

I. The creation of a Union legal order II.

- In order to achieve these objectives, the signatories of the EC Treaty defined three task of outstanding importance for the Community: *the establishment of a common market; the creation of an economic and monetary union;* and *the conduct of common policies* and *Community activities.*

- A *common market* entails the *free movement of goods, services, workers* (and later, legal and physical persons) and *capital; economic and monetary union* means *the harmonisation of economic policies* and the *introduction of a single currency*, while the *conduct of common policies* and Community activities implies tasks such as the setting up of *common external tariffs*, *agricultural prices and subsidies*, establishing *common environmental* and *consumer protection rules*, or the *common planning* and financing of *infrastructure developments.*

- As can be seen from the complexity of objectives set for and tasks (traditionally under state responsibility) transferred to the Community, these cannot be achieved and performed without an enforceable (binding) body of law.

- From the creation of the Community, there emerged – by definition – a need for a legal system to define the tasks and competence of both the Community institutions and Member States, regulate the decision-making process and set up an independent judicial body to oversee the uniform interpretation and application of law. These were the reasons for the creation of Community law.

- Community law, however, is simply one element, although a key one, of a working Community; which lays the foundations for the special character that sets the Union apart from other international organisations.

- In addition to Community law, *common policies* and *Community activities* are additional means for meeting the EU's objectives.

I. The creation of a Union legal order III.

- ***Community law*** **can be regarded as the basis of a functioning Community, while** ***common policies*** **and** ***Community activities*** **are more like a set of tools used to achieve Community goals.** ***Community law*** **and** ***Community-level policies*** **are, however, inseparable.**

- **The creation of the European Union in Maastricht added the complexity of the European legal order; second and third-pillar legislation together with Community law now form European Union law.**

- **The goals of the Treaty on the European Union are, however, very similar to the objectives of the EC Treaty. In Article 2 of the EU Treaty the Union sets itself the following objectives:**

  - to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, including a single currency in accordance with the provisions of this Treaty;

  - to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence force;

  - to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;

  - to create an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with the appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating crime;

  - to maintain in full the ***„acquis communautaire”*** **and build on it.**

II. Primary legal sources of the European Union: the Treaties I.

- European Union law is based on various resources.
- The *founding treaties* of the European Union („The Treaties"), *legal acts* adopted by *Community institutions*, *judgments* and *interpretative rulings of the European Court of Justice, international agreements* concluded by *the Communities* and the *Member States* and *general principles of law are sources of European Union and Community law.*
- Among the legal sources, the Treaty on European Union and the three *Treaties* establishing the *Communities,* as well as subsequent amendments, occupy a central role.
- Collectively known as the „Treaties" they established the institutions of European integration and provided basis for the operation of the EU.
- Treaties are always the products of the so-called Intergovernmental Conferences (IGCs) among the governments of the Member States.
- IGCs can be considered as traditional, diplomatic negotiations, where all the Member States are present as sovereign powers.
- As result, all decisions must be reached with the agreement of all parties (consensus).
- Any treaty emerging as a result of an IGC must always be ratified by all signatories, in accordance with their own internal constitutional requirements.
- A treaty will not enter into force until ratified by all parties. Any amendment of the Treaties must also be agreed to an IGC and ratified by the Member States.

II. Primary legal sources of the European Union: the Treaties II.

- Treaties are amended for two reasons:

  either when the content of the Treaty is amended (extension of competence, the definition of new tasks or actions or the modification of existing ones);

  or when a new Member State is admitted (the most important changes affect the territorial scope of the founding treaties and the composition of Community institutions),

- Both types of amendment are prepared within the framework of Intergovernmental Conferences.

- In the first case, the IGC is attended by the Member States; in the second case is attended by the Member States and the applicant country(-ies).

- IGCs producing amendments are conducted – in a legal sense – outside the framework of the EU, as, on the one hand, they are about how sovereign states should transfer part of their sovereignty to the EU, while, on the other hand, the Member States, in their capacity as subjects of international law, negotiate how the Union – in which they pool part of their sovereignty – should work in the future.

- A treaty will not enter into force until ratified by all parties. Any amendment of the Treaties must also be agreed to an IGC and ratified by the Member States.

III. The concept of the „Treaty" and „the Treaties" I.

- The European Union was founded *on four Treaties.* The *three Community Treaties*, establishing the European Community (EC) (formerly known as the European Economic Community), the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (Euratom), as well as Treaty on European Union.

- It should be noted that the ECSC Treaty expired on 23 July 2002, having only been concluded for 50 years.

- Therefore, only three treaties remain in force, but they were concluded for an indeterminate period. Despite the expiry of the ECSC Treaty, its provisions 'live on' within the EC due to the general common market effect of the EC Treaty. The financial implications of the expiry of the ECSC Treaty were dealt with in a Protocol annexed to the Treaty of Nice.

- The previously four, now three treaties, are collectively known as the *„Treaties"*. *„Treaty"* always refers to one of the three Treaties. If we use the term *„Treaty"*, it can refer to the EU Treaty, the EC Treaty or the Euratom Treaty, depending on the context in which the term is used.

- Without a clear reference, the term *„Treaty"* refers to EC Treaty in the literature on European integration.

- A clear definition of the „founding treaties of the European Union is made even more difficult by the numerous amendments made the four Treaties.

- The *Treaty establishing the ECSC* was signed originally as the Treaty of Paris on 18 April 1951; the *Treaty establishing the EEC* (later renamed EC) was first known as one of the two *Treaties of Rome*, the other being the *Treaty establishing the Euratom*, both signed on 25 March 1957. The *Treaty on European Union* was signed at Maastricht on 7 February 1992.

III. The concept of the „Treaty" and „the Treaties" II.

- Founding treaties were amended by various other treaties.
- Thus these subsequent treaties are not independent instruments; they are only treated as such because of the need to have all Member States sign up.
- The new treaties are merely instruments amending or modifying the first three Treaties (the Treaty of Paris and the two Treaties of Rome) and are not parallel effective instruments.
- New treaties always overwrite old ones. In other words, the Treaty of Nice is not a treaty in its own right, but an instrument containing amendments to the EC, the Euratom and the EU Treaties. The provisions of the Treaty of Nice are consolidated into these Treaties; the Treaty that has legal force is not the Treaty of Nice but the EC, the Euratom and the EU Treaties, as amended by the Treaty of Nice.
- The terms *„Treaty"* and *„Treaties"* always refer to the amended versions of the old treaties, namely the provisions that are in force at that time. These treaties are published in a consolidated form (Consolidated Treaties), and references are also made to the consolidated text.
- The Treaty on European Union provides some kind of framework for the relationship between the Treaties.
- The Treaty on European Union contains provisions concerning the EU as a whole (i.e. all pillars) as well as the second and third pillars. The Treaties establishing the three Communities, together with the amendments, are defined as three separate Titles within the EU Treaty.
- On 1 December 2009, the Treaty of Lisbon entered into force that abolished the three pillar structure introduced by the Treaty of Maastricht.
- It should be noted that the Treaty of Lisbon amends the current EU and EC treaties, without replacing them.

IV. The nature of The Treaties: the framework treaty structure

- Even to this day, the Treaties reflect the system laid down in the *Treaty of Paris* and the *two Treaties of Rome*.
- The aim of the most important treaties, the *Treaty of Rome* establishing the EEC, was to ensure the free movement of goods, services, labour and capital and to establish a common market, which basically involved the extension of the sectoral integration brought about by the ECSC Treaty to the whole economy.
- The primary objective of the EEC Treaty was to establish a common market, but not all of its provisions were about the common market. The Treaty of Rome provided for setting up common policies and Community activities and defined economic and social objectives. It did not lay down specific measures but defined tasks and objectives, entrusting the Community institutions and the Member States with their implementation.
- The Treaty of Rome and its various amendments are like a programme, containing no detailed obligations, but instead offering an opportunity for the elaboration of various policies and the deepening of cooperation and of harmonisation.
- The policy content of the programme is rather varied: some objectives are fully worked out, together with deadlines, while others are surprisingly general.
- For this reason, it is not unfair to consider the Treaty of Rome and its amended versions as a framework treaty, in which the contracting parties – the Member States – entrust the institutions of the Community with drawing up the legislation necessary for implementing these principles.
- The Treaties thus provide a legal point of reference for future Community instruments that are adopted to achieve the objectives.
- The Treaties, which are binding for all Member States after ratification, are referred to as primary legislation. *Legislative powers conferred on Community institutions under the Treaties in order to achieve the objectives, perform the tasks and carry out the programmes and policies laid down in the said Treaties are defined secondary as legislation, which yield secondary legal acts*. Secondary legislation is always based on the *Treaties;* its purpose is to implement the provision of the Treaties within the legal framework created by the Treaties.

V. The founding treaties

- The founding treaties, their amendments and other supplementary treaties based thereon are also known as primary legislation under the framework treaty structure.

- Primary sources of law, in other words the founding treaties and subsequent amendments, include (the first date the treaty was signed, the second date is when it came into effect):

  - The Treaty of Paris establishing the European Coal and Steel Community (ECSC) (18 April 1951; 25 July 1952)
  - The Treaty of Rome establishing the European Economic Community (EEC) (25 March 1957; 1 January 1958)
  - The Treaty of Rome establishing the European Atomic Eenergy Community (Euratom) (25 March 1957; 1 January 1958)
  - The Treaty establishing a Single Council and a Single Commission of the European Communities – Merger Treaty (8 April 1965; 1 July 1967)
  - The Single European Act (18 February 1986; 1 January 1987)
  - The Treaty on European Union – Treaty of Maastricht (7 February 1992; 1. November 1993)
  - The Treaty of Amsterdam (2 October 1997; 1 May 1999)
  - The Treaty of Nice (26 February 2001; 1 February 2003)
  - The so-called budgetary Treaties of 1970 and 1975, regulating the budget of the EU and amending the founding treaties,
  - The Treaties of Accession signed whenever a New Member State is admitted (Denmark, the United Kingdom, Ireland – 1972, Greece -1979, Portugal, Spain – 1985, Austria, Finland, Sweden -1994, Cyprus the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia – 2003, Romania and Bulgaria – 2005,
  - The Treaty of Lisbon (13 December 2007; 1 December 2009).

VI. Secondary legal sources

- Legal instruments implementing the principles, objectives and tasks laid down in the Treaties are referred to as *secondary legislation*.
- They are the products of the legislative work of Community institutions.
- The legislative work of Community institutions is regulated in the Treaties.
- The Treaties serve not only as points of reference, by defining what aspects should be taken into account when the Community draws up a new piece of legislation to achieve a Treaty objective in a certain field, but also establish the legislative procedure in all areas and define the role and tasks of the institutions, including which legislative procedure to follow (consultation co-decision, etc.), or what type of vote the Council must take (unanimous or qualified majority).
- The significance of the EU's secondary legislation is highlighted by the fact that the Council on its own, or in conjunction with Parliament (in the co-decision procedure) adopts between 400 and 500 legal acts each year, in addition to the around 1,500 executive-type legal norms issued by the Commission in the framework of the implementing measures delegated to it (an annual figure of 4-5,000 was not unusual in earlier days).
- Due to the differences in nature and operation of the three pillars, the sources of law differ in each of the three pillars as laid down in Article 249 of the EC Treaty for the first, in Article 12 of the EU Treaty for the second and Article 34 of the EU Treaty for the third pillar.

VII. Legal acts in the first pillar I.

- Article 249 of the EC Treaty differentiates between the *binding* and *non-binding legal acts*.
- There are three types of binding legal acts: *regulation, directive* and *decision.*
- There are two types of non-binding legal acts: *recommendation* and *opinion.*
- A *regulation* is a legal act that has general application, is binding and directly applicable in all Member States; in other words, Member States are not required to issue a separate legal act, since the regulation becomes applicable in its entirety (with the same text) in the legal systems of all Member States when it takes effect.
- Regulations are adopted to lay down precise and detailed rules for a policy area.
- Regulations can be adopted by the Council, jointly by the Council and Parliament, the Commission and the European Central Bank.
- A *directive* is a Community legal act that requires each Member State to which it is addressed to achieve certain aims but leaves to the national authorities the choice of form, procedure and instrument of implementation, in other words the way in which they wish to fit it into their legal system.
- Unlike in the case of regulation, Member States are under a legal obligation to adopt national legislation that conforms to the directive by a specified deadline (known as a *„transposition"* deadline).
- Member States are free to chose their method, it being up to them whether they wish to adopt a new legal acts or amend an existing one, and to decide what kind of legal instrument they wish to adopt (law, decree).

VII. Legal acts in the first pillar II.

- What is important that they achieve in their national legal order the aim laid down in the directive by the specified deadline.
- Directives are generally less detailed than regulations; their aim is to define general principles for the regulation of a certain policy area.
- Directives can be adopted by the Council, jointly by the Council and Parliament, and the Commission.
- A *decision* is a legal act addressed to a specified entity concerning a specific issue.
- The addressee can be a state (often all Member States), a legal entity or an individual.
- Decisions can be issued by the Council, jointly by the Council and Parliament, the Commission and the European Central Bank.
- Decisions are usually administrative in nature, can pertain to specific issues (establishing a financial fund, granting permission for disbursement of subsidies from a Community fund, imposing fines and anti-dumping measures, etc.) or can be used in conjunction with the implementation of other Community legal instruments (in this case they usually contain normative rules).

VII. Legal acts in the first pillar III.

- In Community decision-making, it is possible to issue *non-binding legal acts* such as *recommendations* and *opinions*.
- A *recommendation* usually states what kind of action or approach is expected from the addressee, whereas an *opinion* usually sets out the position taken by the issuer, often at the request of a third party.
- Though neither of these instruments is legally binding, when deciding cases under Community law, national courts must take both recommendations and opinions into account, though not as legal norms; this is especially true if the recommendation was issued to help the interpretation of Community law.
- The European Court of Justice also takes them into account before delivering a ruling.
- In addition to the legal instruments defined in the Treaty, mention must be made of *sui generis decisions*, which are usually without a specific addressee.
- These sui generis decisions evolved because Article 249 of the EC Treaty understandably gave a narrow scope of definition for legal acts, including decisions, without providing for separate legal acts for decisions of a certain type (for example, procedural or staff-related).
- Union institutions adopt their internal rules of procedure with the help of such sui generis decisions, and the President of the European Parliament also uses this type of legal instrument to promulgate the annual budget.

X. Other legal sources

- ***International agreements*** **that the Community is part of (e.g. GATT-WTO, Association Agreements, and the Lomé Convention) can also be considered as source of Community law.**

- **Other sources of Community law include *agreements* between the Member States (but not international agreements between a Member State on its own and a third country).**

- ***Since the Communities*** **and now the *European Union have international legal personality,* in a sense the general rules of international law (e.g. those applying to the conclusion of international agreements or immunity arrangements) can also be considered as sources of Community law.**

- **The *sources of Community law* also include *the unwritten rules of law,* the so-called *general principles,* as the Treaties authorise the European Court of Justice to ensure that, in the course of the interpretation and implementation of the Treaties, the general principles of law are observed.**

- **Thus, in its jurisprudence and interpretations, the *European Court of Justice* takes into consideration general principles of law such as *proportionality*, the *prohibition of discrimination* or *the presumption of good faith.***

- **Over the decades, *the case-law of the European Court of Justice* has grown to play an increasingly important role as a *source of Community law.* Although case-law is traditionally not considered a prominent source of national law in the Member States (with the exception of common-law countries), *the practice of the European Court of Justice* in its rulings is of outstanding importance.**

- **Due to the sometimes ambiguous wording of the Treaties, a number of principles of Community law (such as its primacy and direct effect) have been established by the judgements and interpretations of the Court of Justice. Thus, *the judicial practice of the European Court of Justice*, consisting of its *judgements* and *interpretation rulings*, can undoubtedly be considered a *source of Community law.***

XI. The notion of acquis communautaire

- The entire body of Community law and elements derived from it are collectively called the *acquis communautaire* or, in short, the acquis.

- The *acquis communautaire* consists of norms and legal practice, including primary and secondary legislation, as well as other legal acts, principles, agreements, declarations, resolutions, opinions, objectives and practices (including the practice or case-law of the European Court of Justice) applying to the Communities, whether legally binding or not.

- The fact that the *acquis communautaire* includes both binding and non-binding norms is recognition of the fact that, in the evolution of law, certain legal acts first appear as non-binding declarations or recommendations, and only become legally binding later on.

- It must be noted that the term 'acquis' (without the adjective communautaire) is increasingly used to refer the Union as such ('Union achievements').

- The notion of the *acquis communautaire* primarily appears in relation to EU-membership, since it encompasses the set of rights and obligations that Member States have to accept and apply.

- Consequently, the *acquis communautaire* is of key importance to countries aspiring to become members of the European Union, as a fundamental condition of accession to the EU is the recognition, acceptance, adoption and application of the *acquis*.

- Thus, the accession negotiations are always conducted on the basis of the *acquis,* and the entire accession process is mainly about the transposition of the acquis into the national law of the state seeking membership.

XII. The relationship between Community law and International law

- The law of European Communities has created a new legal order different from *both international law* and the *internal legal order* of the Member States.
- Even though, originally, Community legislation was created according to the standards of international law through treaties between states, it differs from international law in a number of ways.
- Unlike *international law,* which primarily regulates *inter-state relations* with the states being the legal subjects, *Community law* comprises a full *set of rights and obligations* applying to the Member States, and private and legal persons within those States.
- *Community law* is binding on both the *Member States* and its *citizens*.
- Another difference between *Community* and *international law* is that, while the latter is usually based on international treaties/agreements, the sources of community law include the Treaties but also the Communities' own legal acts, secondary legal acts created by the Community institutions.
- *Community law* is a unique legal order that has its own institutions, legislative procedures and legal acts.
- An unusual feature in international law lies in the fact that *Community law* has become an *integral part of the legal order of the Member States*, which *national courts* are bound to apply.

XIII. The relationship between Community law and the national law I.

- Community law has primacy (supremacy) over the national legislation of the Member States.
- Although this is not explicitly stipulated in the founding treaties, in its interpretative rulings, the European Court of Justice has clarified the relationship between the Community law and national law, defining the primacy of the former.
- The primacy of Community law means that, in the case of a conflict between Community and national law, the former takes precedence.
- The primacy of Community law was first established by the European Court of Justice in 1964 in Costa v. ENEL, when it made the important observation that, by creating a Community with its own institutions, legal personality and competences, the Member States have transferred sovereign rights to the Community (limiting their own sovereignty in certain areas) and have thereby created a legal order binding on the Member States themselves as well as their legal subjects.
- In 1971, in *Commission v. France*, the Court of Justice pointed out that the competences conferred upon the Community cannot be reserved by means of subsequent unilateral measures.
- In 1978, in *Simmenthal II (Amministrazione delle Firenze v. Simmenthal),* the ECJ confirmed the supremacy of Community law even more clearly by stating that Member State courts shall interpret national legislation in the light of the provisions of the *acquis,* safeguard the rights established therein and disregard provisions of national legislation which are inconsistent with Community law.

XIII. The relationship between Community law and the national law II.

- ***Community law*** **enjoys** ***primacy*** **not only over earlier national law, it also has a limiting effect on laws adopted subsequently; thus, the Member States cannot amend or overwrite Community law by subsequent national legislative acts.**

- ***National legislators cannot unilaterally amend or annul Community law.***

- ***Community law*** **has** ***priority*** **over** ***national law,*** **irrespective of the level of the piece of national legislation in the country's legal order.**

- **The European Court of Justice has consistently upheld this finding and has, in fact, also confirmed the** ***principle of primacy*** **with regard to the relationship between the Community law and national constitutions.**

- **The** ***principle of pre-emption*** **is closely linked to the supremacy of Community law; the principle means that, in certain areas where Community legislation is exhaustive or in which the Communities have exclusive powers, no national legislation shall be adopted.**

- **There are pieces if Community legislation that specifically stipulate that, in the given area, Community law is exhaustive, but there are cases when the exhaustive nature of Community law is established by the European Court of Justice.**

- **Certain pieces of Community legislation are** ***directly applicable*** **in the Member States, i.e. no further national legislative action for transposition is required (just like in the case of directives). Among secondary legal acts, the Treaty provides for the direct applicability of regulations.**

XIII. The relationship between Community law and the national law III.

- A significant part of Community law has direct effect in the Member States, which means that natural and legal persons can refer to Community law in national courts and request the court to base its decision on Community law.
- Similarly to the principle of primacy, the notion of direct effect was developed by the interpretative rulings of the ECJ.
- The principle of direct effect was first identified in 1963, in the *Van Gend & Loos* case.
- The action prompting this case was brought by the Dutch transport company *Van Gend & Loos* against the Dutch fiscal authorities for having imposed a customs duty on imports from Germany.
- This practice infringed the principle of the free movement of goods, or more precisely Article 12 of the EEC Treaty (currently Article 25 of the EC Treaty).
- Uncertain as to whether a legal person could refer to an Article of the Treaty, the Dutch Court referred the case to the ECJ for a preliminary ruling.
- The Court of Justice ruled that Community law can have direct effect and that Article 12 is one of the provisions that has direct effect in the Member States.

XIII. The relationship between Community law and the national law IV.

- Treaty provisions usually have direct effect, regulations practically always, while directives and decisions often have direct effect.
- However, direct effect is not automatic; it depends on the content (unambiguous and unconditional wording), nature and structure of the relevant provision of Community law.
- Pieces of Community law can have direct effect in two ways: 1*) a natural or legal person can rely on Community law before a national court against the state („vertical direct effect"); 2) in cases between natural or legal persons, the parties may request the national court to base its ruling on Community law („horizontal direct effect").*
- A provision having vertical direct effect may or may not have horizontal direct effect, depending on its content.
- The uniform application of Community law was aided by the ECJ's ruling in the *Marleasing* case of 1990, which established the *principle of indirect effect*.
- The issue of indirect effect emerged in relation to the failure to implement a directive.
- The case was brought against the Spanish company, La Comercial Internacional de Alimentacion SA, by one of its creditors (Marleasing SA), who alleged that the company in question was null and void.
- The main argument was that the memorandum and articles of association on the basis of which the company had been formed were not valid.

XIII. The relationship between Community law and the national law V.

- This argument was justified according to Spanish Civil law; however, Company Law Directive 68/151/EEC did not mention this ground as a reason for annulling a company.
- At the time when the main action was brought, Spain had not as yet implemented the directive.
- The European Court of Justice – introducing the principle of indirect effect – ruled that national courts had an obligation to interpret national legislation in the light of directives, which had primacy over conflicting national law, regardless of whether the national transposing legislation has been adopted or not.
- The Court of Justice based this obligation on the duty imposed by the EC Treaty on the Member States to take all appropriate measures to ensure the achievement of the result envisaged by the directive.
- The 1991 ECJ ruling in the *Francovich* case can also been considered a milestone in the relationship between Community and national law, because it showed that natural and legal persons may refer to Community law even when it has no direct effect.
- Andrea Francovich and his fellow plaintiffs brought proceedings against the Italian state for its failure to transpose into national legislation Directive 80/987/EEC, which stipulates the obligation to set up a guarantee fund to provide compensation for employees following the insolvency of their employer. In the absence of such a guarantee fund, the applicants could not obtain compensation following the bankruptcy of their employer.
- The ECJ ruled that Member States were liable for damage caused by their failure to implement Community law (by no transposing a directive). The Court of Justice held that, if natural or legal persons had no justified claim for compensation in such cases, the full effectiveness of Community law would be impaired.

XIV. Approximation of legislation in the EU I.

- The need to align the legal systems of the Member States emerged as early as the foundation of the Community itself.
- The Treaty of Rome institutionalised the approximation of legislation as the main form of legal alignment of the Member States' laws and, under the EC Treaty the Member States have focused on the harmonisation of their national law by removing major inconsistencies, rather than on creating a completely uniform legal system.
- The EU requires the alignment of national legislation to the extent necessary for the proper functioning of the common (now single market).
- Thus, the need for the approximation of legislation stems from the single market embodied by the four freedoms.
- The underlying objective of the approximation of legislation is to ensure equal competition and the unobstructed functioning of the single market by guaranteeing the same market conditions for the free movement of goods, services, capital and persons (prior to the Maastricht Treaty, 'persons' only extended to workers and legal entities).
- The main instrument of legal harmonisation is secondary legislation, particularly directives, which can reconcile without major conflicts the dual objectives both of securing the necessary uniformity of Community law and of respecting national traditions and structures.
- A directive is binding on the Member States as regards the objective and deadline by which it has to be achieved, but leaves it to the national authorities to decide on how the agreed Community objective is to be incorporated into their domestic legal system.

XIV. Approximation of legislation in the EU II.

- It is the task of the European Commission and ultimately of the European Court of Justice to monitor the harmonisation of legislation, determining whether the form and methods used to transpose Community obligations into domestic law are adequate.
- The Treaty of Rome did not stipulate the form of legal act that the Member States should adopt in transposing a Directive.
- Nevertheless, the Court of Justice has defined a set of criteria which such transposing legal sources must meet. They have to be general, binding and effective.
- Recently, the harmonisation of legislation has been mostly achieved through Acts.
- In the last four decades, there have been two generations of directives.
- In the early years, directives included rather precisely worded rules aimed at total harmonisation. However, the adoption of such directives was a lengthy and cumbersome procedure, and was sometimes even impossible, due to the clash of national interests.
- From the 80's, a new generation of more optional directives became prevalent. These 'softer' directives gave the Member States more room to manoeuvre, making their adoption much simpler.
- The second-generation directives proved to be particularly productive and efficient in the accelerated legislative process following the adoption of the Single European Act.

XIV. Approximation of legislation in the EU III.

- Even though they do not result in the unification of legislation, the significance of softer directives lies in the fact that they have enabled the Community to approximate the different national legislations in areas where harmonisation had been inconceivable before.
- By amending the Treaty of Rome, the Single European Act introduced new rules that intensified the process of harmonisation of legislation.
- According to certain interpretations, the Single European Act added recommendations to directives as a means of legal alignment.
- It has to be acknowledged that, although recommendations have no binding effect and thus cannot be fully considered part of Community law, they do play a role in the harmonisation of legislation in areas where the use of binding pieces if Community legislation would be too premature.
- Although not considered as legal harmonisation in the true sense, the Community legislative process achieved through regulations should also be mentioned.
- The significance of regulations is that, instead of trying to align the national laws of the Member States, they create directly applicable and directly effective uniform Community law.
- Although the approximation of legislation of the Member States is one of the EU's main instruments, harmonisation has certain limits, also acknowledged by the EC Treaty.

XIV. Approximation of legislation in the EU IV.

- Since national legislation may be stricter or regulate a given area better than Community law, in certain cases (particularly in areas of a non-economic nature), there may be a need to safeguard the integrity of domestic law vis-à-vis the *acquis*.

- Article 92 of the EC Treaty stipulates that, if harmonisation measures contradict higher level legislation of a Member State, in certain areas the Member State may impose restrictions on the transposition of the Community act in question, with the approval of the European Commission.

- The areas covered relate to the followings:

  - public morality;
  - public policy or public security;
  - the protection of health and life of humans, animals or plants;
  - the protection of national treasures possessing artistic, historic or archaeological value or
  - the protection of industrial and commercial property or
  - environmental protection.

- The Commission investigates whether the national provisions are a means of arbitrary discrimination or a disguised restriction on trade between Member States.

- If this is not the case, the Commission approves the Member State's request for maintaining its higher level protective national provisions and proposes new Community measures to adopt to this higher-level legislation at Community level.

XVI. The legal order of the EU and the Charter of Fundamental Rights according to the Treaty of Lisbon

- The *Treaty of Lisbon* makes distinction between *legislative* and *non-legislative acts* as well as their hierarchy.
- Accordingly, after Article 249 of the current EC Treaty three new Articles were inserted covering, respectively, acts, which were adopted in accordance with a legislative procedure, delegated acts and implementing acts.
- The article on legislative acts (regulation, directives or decisions) adopted under a legislative procedure (ordinary or special) are legislative acts.
- In addition, the *Treaty of Lisbon* guarantees the enforcement of the *Charter of Fundamental Rights.*
- The EU therefore acquires for itself a catalogue of civil, political, economic and social rights, which are legally binding not only on the Union and its institutions, but also on the Member States as regards the implementation of Union law.
- The Charter lists all the fundamental rights under *six major headings*: *Dignity, Freedom, Equality, Solidarity, Citizenship and Justice*.
- It also proclaims additional rights not contained in the European Human Rights Convention, such as data protection, bioethics and the right to good administration.
- It reaffirms important steps to outlaw discrimination on the grounds of gender, race and colour. It also mentions social rights applied within companies, e.g. workers' rights to be informed, to negotiate and take collective action – in other words, the right to strike.

The EU-Russia Relations
General Information

The Russian Federation is one of the most important partners for the European Union.

The EU-Russia Relations
General Information

A key priority of the European Union is to build strong strategic partnership with Russia based on a solid foundation of mutual respect.

Russia is the largest neighbour of the EU that was brought even closer by the union's 2004 and 2007 enlargements.

The 2003 EU Security Strategy highlights Russia as a key player in geo-political and security terms at both the global and regional level.

The EU-Russia Relations
General Information

Russia and the EU Member States are all members of the United Nations, the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe

The EU and Russia have an extensive dialogue on political issues around the world, including the resolution of conflicts

The EU-Russia Relations
PCA

1989 - Agreement on Trade and Commercial and Economic Cooperation

1994 - Partnership and Cooperation Agreement (the PCA) (came into force on 1 December 1997)

The PCA, concluded for an initial duration of 10 years, was extended automatically after 2007.

The EU-Russia Relations

PCA

The PCA is based upon the following principles and objectives:

promotion of international peace and security

support for democratic norms as well as for political and economic freedoms

It is based on the idea of mutual partnership aimed at strengthening political, commercial, economic, and cultural ties.

The EU-Russia Relations
PCA

Institutional framework for regular consultations between the European Union and the Russian Federation:

Summits of Heads of State/Heads of Government

Permanent Partnership Council (PPC) at Ministerial level

Meetings at senior officials and expert level

the EU-Russia Parliamentary Cooperation Committee

The EU-Russia Relations

PCA

The EU is currently working with Russia on a new agreement for post-2007 to replace the existing PCA.

The aim of the new agreement will be to provide a durable and comprehensive framework for the EU-Russia relations based on respect for common values and will provide the basis for the relationship in the coming years.

The EU-Russia Relations
Common Spaces

May 2003 - the EU and Russia agreed to reinforce their cooperation by creating in the long term four 'common spaces' within the framework of the Partnership and Cooperation Agreement and on the basis of common values and shared interests.

The EU-Russia Relations
Common Spaces

1. The Common Economic Space

It aims to make the EU and Russia's economies more compatible to help boost investment and trade.

The ultimate objective is an integrated market between the EU and Russia.

The EU-Russia Relations
Common Spaces

2. The Common Space on Freedom, Security and Justice

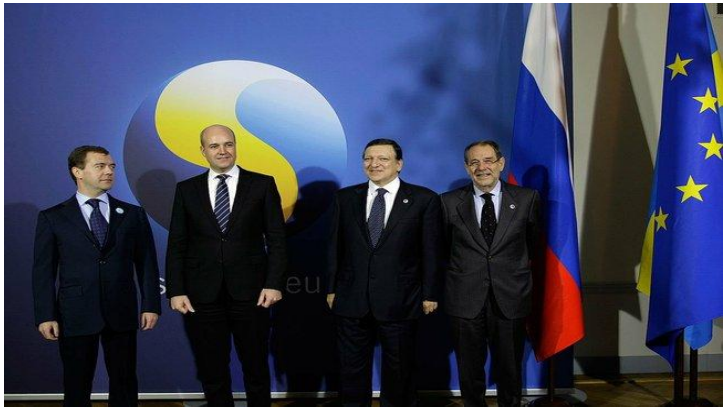
It covers the area also known as Justice and Home Affairs

This is a growing area of cooperation between the EU and Russia, based on respect for human rights, as both face pressing of common challenges - namely terrorism, illegal migration, cross-border crime, including trafficking in human beings and drugs.

The EU-Russia Relations
Common Spaces

3. The Common Space on External Security

It aims to enhance cooperation on foreign policy and security issues, while underlining the importance of international organisations such as the UN, OSCE and Council of Europe.



The EU-Russia Relations
Common Spaces

4. The Common Space on Research, Education and Culture

It aims to promote scientific, educational and cultural cooperation, particularly through exchange programmes.

The EU-Russia Relations
The Northern Dimension

The Northern Dimension (ND) covers a broad geographic area from the European Arctic and Sub-Artic areas to the southern shores of the Baltic Sea, including the countries in its vicinity and from North-West Russia in the east, to Iceland and Greenland in the west.

The EU-Russia Relations
The Northern Dimension

Key priority themes for dialogue and cooperation:

economy, business and infrastructure

human resources, education, culture, scientific research and health

the environment, nuclear safety, and natural resources

cross-border cooperation and regional development

justice and home affairs

The EU-Russia Relations
Sanctions

2017

13 March 2017

Extension of EU sanctions over actions against Ukraine's territorial integrityfor a further six months, until 15 September 2017

http://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/history-ukraine-crisis/