

§ 3 The legal system of the European Union

I. The concept of integration through law

1) Integration based on law and the respect for law

- parts of the substantive law of the integration directly regulated in the Treaties
- Union confined to pass legal acts that member states must execute
 - compliance essential - even small irregularities may cause serious distortions in the internal market jeopardizing the integration process
 - no coercive powers of the Union to enforce its law in the member states
- strong *emphasis on the rule of law* which is a common fundamental value (cf. art. 2 EU Treaty)
 - demanding requirements for the implementation and execution of Union law in the member states
 - effectiveness (*effet utile*) the dominant criterium in the dealing with Union law

2) Prominent role of the European Court of Justice

- an institution on equal terms with the others
- a motor for the development of European Union law that has worked out many characteristic features and elements by *judicial further development of law*
- ECJ jurisprudence the most comprehensive and up-to-date collection of elements of the rule of law in the world

II. The sources and characteristics of European Union law

- see detailed presentation in Diagram 3

1) The sources of Union law

- a) Primary law
- b) Secondary law

2) The characteristic features of Union law

- a) Autonomy
- b) Unity
- c) Direct effect within the member states
- d) Primacy over national law

III. The making of European Union law

1) Making and amending of primary law

- a) **The rule: ordinary revision procedure** (art. 48(2-5) EU Treaty)
 - includes a *convention procedure*, an *intergovernmental conference* and *ratification* by all member states
- b) **Exceptions**
 - Treaty adjustments for the admission of new member states (by the accession treaty)
 - simplified amendment of provisions on internal policies (art. 48(6))
 - simplified transition from qualified to simple majority in the Council or to the ordinary legislative procedure (art. 48(7))
 - autonomous treaty revision (without ratification by member states) on the basis of some special provisions

2) Making and amending of secondary law

- extremely long and detailed regulations in the FEU Treaty
- the *legislative initiative* is in general *reserved to the Commission* (art.17(2) EU Treaty)
- a) **Ordinary legislative procedure** (art. 289(1), 294 FEU Treaty)
 - *joint legislation by the European Parliament and the Council*
 - EP can prevent but not carry through the adoption of the legal act
 - complicated procedure regulated in detail (art. 294 FEU Treaty)
 - proposal by the Commission - first reading - second reading - conciliation procedure at a Conciliation Committee - third reading
- b) **Special legislative procedures** (art. 289(2) FEU Treaty and special provisions)
 - aa) Legislation by the Council with consent or after consultation of the EP (frequent)
 - bb) Legislation by the EP with approval/consent of the Council (exceptional)
 - cc) Budgetary procedure (art. 314 FEU Treaty)
 - only here can the EP prevail over the Council (cf. art. 314(7))
- c) **Procedures in the case of non-legislative acts**
 - aa) Making of delegated legal acts by the Commission (art. 290 FEU Treaty)
 - bb) Making of implementing acts by the Commission under *participation of committees* composed of representatives of the member states (art. 291 FEU Treaty, Comitology Regulation no. 182/2011)
- d) **Preparation and conclusion of international treaties by the Union** (art. 218 FEU Treaty)

IV. The execution of European Union law

- see Diagram 3

V. The enforcement of European Union law

1) The most important legal actions at the European Court of Justice

- actions for failure to fulfil obligations (→ against member states) (art. 258 et seq. FEU Treaty)
 - important instrument of the European Commission to enforce compliance with Union law
- actions for annulment (→ of legal acts of the Union) (art. 263 et seq. FEU Treaty)
 - also of citizens if addressed or directly and individually concerned
- actions for failure to act (→ against Union institutions) (art. 265 FEU Treaty)
- references for preliminary rulings (→ by courts of the member states) (art. 267 FEU Treaty)
 - binding preliminary ruling on the interpretation of primary and secondary law and the validity of acts of secondary law if the question is decisive in the proceedings at the referring court
 - most important type of proceedings for the development of legal dogmatics

2) **The ensurance of compliance with the decisions of the European Court of Justice by lump sums or penalty payments** (art. 260(2) FEU Treaty)

- imposed by ECJ on application of the European Commission
- an instrument frequently used in practice