

RULE OF LAW AND PROTECTION OF FUNDAMENTAL RIGHTS  
IN THE EUROPEAN UNION

concerning § 3 II/III of the course

**Diagram 3**  
**The law of the European Union**

**A. The sources of Union law**

*I. Primary law*

- enjoys primacy of validity vis-à-vis secondary law
- 1) Founding treaties (EU Treaty, FEU Treaty, EURATOM Treaty + protocols)
- 2) Charter of Fundamental Rights of the European Union (cf. art. 6(1) EU Treaty)
- 3) General principles of law
  - unwritten parts of Union law, "discovered" by the European Court of Justice in the way of judicial further development of law
  - in particular aspects of the rule of law (principle of legality, principle of proportionality, legal certainty and protection of legitimate expectations, state liability etc.) and fundamental rights (cf. art. 6(3) EU Treaty)
- 4) Complementing customary law (rare) and general rules of international law (DISPUTED.)

*II. Secondary law*

- created by the institutions of the Union, based on the primary law
- distinction between *legislative acts* (art. 289(3) FEU Treaty) and *non-legislative acts*
- 1) Regulation (art. 288 sub-sect. 2 FEU Treaty)
  - general rules with *direct effect* in the member states
  - corresponds to an act of parliament in national law
- 2) Directive (art. 288 sub-sect. 3 FEU Treaty)
  - general rules that need to be *implemented in the legal order of the member states*; binding, as to the result to be achieved, but leaves choice of form and methods to the national authorities
  - *precautions in Union law to assure effective compliance*:
    - obligation to implement by law, not by admin. practice or admin. provisions (ECJ, case C-361/88, TA-Luft)
    - obligation to refrain during the implementation period from taking measures liable to compromise the result prescribed (ECJ, case C-129/96, Inter-Environnement Wallonie)
    - obligation of all national institutions and authorities to interpret the national law in conformity with the directives (ECJ, case 79/83, Harz)
    - direct application in favour of the citizen in case of late or inadequate implementation, if the directive is unconditional and sufficiently precise (ECJ, case 148/78, Ratti)
    - possible state liability in case of late or inadequate implementation (ECJ, joint cases C-6/90 and 9/90, Francovich)
- 3) Decision (art. 288 sub-sect. 4 FEU Treaty)
  - binding regulation in an individual case
  - corresponds mainly to an administrative act/decision in national law
- 4) Recommendation and opinion (art. 288 sub-sect. 5 FEU Treaty)
  - not legally binding
- 5) International treaties concluded by the European Union
  - enjoy primacy over other secondary law (cf. art. 216(2) FEU Treaty)
  - also mixed agreements concluded by the Union and its member states with a third party
- 6) Other legal acts (under special provisions)

**B. The characteristic features of Union law**

*I. Autonomy*

- a separated legal order, apart from the law of the member states and from public international law (DISPUTED) (→ leading case ECJ, case 26/62, *van Gend & Loos*)
- autonomous vis-à-vis the law of the member states but dependent on the will of the community of all member states as a whole as the "masters of the treaties"

*II. Unity*

- uniform validity and application in all member states without regard to the specific features of the national law

III. *Direct effect within the member states*

- in particular direct application of primary law (→ leading case ECJ, case 26/62, *van Gend & Loos*)

IV. *Primacy over national law*

- elementary "rule of the game" elaborated by the ECJ (→ leading cases 6/64, *Costa/ENEL*, and 11/70, *Intern. Handelsgesellschaft*) and confirmed by the member states in all reform treaties and accession treaties
- in case of conflict, institutions and authorities of the member states are not allowed to apply the conflicting national law
- primacy in application, no (hierarchical) primacy in validity: the conflicting national law must not be applied but is not void
- also primacy over national constitutional law (ECJ, case 11/70, *Internationale Handelsgesellschaft*)
- conflicts may be avoided by interpreting national law in conformity with Union law
- in case of a possible conflict, the ECJ may decide about the validity and interpretation of Union law in a preliminary ruling (art. 267 FEU Treaty)

## C. The execution of Union law

I. *In general: by the member states*

- according to national law which is influenced by European standards (→ *Europeanisation of administrative law*)
- 1) **Indirect execution** (→ directives)
    - first implementation in the national legal order, then execution of the relevant national law
  - 2) **Direct execution** (→ regulations, and decisions)<sup>1</sup>
    - without intermediate national law

II. *Exceptionally: by the Union*

- e.g. in the field of competition law, when monitoring state aids and when managing European funds
- mostly by the European Commission
- note the *right of the citizen to good administration* (art. 41 ChFR)

(Date: Diagram 3 (EULawKAZGU))

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<sup>1</sup> In case of overdue or insufficient execution, the Commission or another member state may take an action for failure to fulfil obligations under art. 258 et seq. FEU Treaty, which will initiate *infringement proceedings*. If the ECJ has stated an infringement and the member state does not comply with the judgement, the Court, on application of the Commission, may impose a *lump sum* or penalty payment on the state (art. 260(2) FEU Treaty).