ECL2000 INTRODUCTION TO EU LAW

The European Law Students' Association

MALTA

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The Development of European Integration

The concept of a 'European Union' was born after the **1992 Maastricht Treaty** – which stipulated the inherent characteristics of **European Integration**. It thus introduced the notions of **European citizenship**, c**ommon foreign and security policy**, and **cooperation on justice.**

In 2009, the European Union was consummated in a *legal* sense – exactly after the **2009 Lisbon Treaty** was formulated. And that is why, technically speaking, Malta did not join the European Union in 2004, but rather, joined the European Communities.

NB: EU law is enacted by the European Union, and is not related to other organisations such as the Council of Europe.

Fundamentally, the Maastricht Treaty introduced an **internal market** between signatory states – laying the red carpet for a single market by which the free movement of **goods**, **services**, **capital** and **persons** is assured to all those signatory to it; wherein citizens are free to live, work, study and do business. This Treaty thus also abolished any customs duties between signatory Member States – further facilitating the free movement of goods.

Prior to the Maastricht Treaty however, one might find the **1957 Treaty of Rome** (more commonly known as **The Treaty on the Functioning of the European Union**) – which brought about the creation of the **European Communities**, and thus, introduced one of the first forms of a '**common market**'. The main intention behind this was to eliminate any lingering trade barriers between member states, thus increasing economic prosperity and contributing to an ever-closer union between EU member states.

Trade improves economic affluence and builds a strong degree of trust between states (thus also mitigating the risk of war). The European Coal and Steel Community (which was founded after World War II) is a perfect example of this notion.

The single market erected after the Maastricht Treaty delivered prosperity and growth; and economic integration opened the prospect of creating a monetary union with a shared currency – the Euro.

Nationalism

The notion of European unity can be traced well back to the seventeenth century, wherein Englishman **William Penn** propounded the idea of a European Parliament. However, it is important to note that at that time (and for quite a long time after), many now-modern states were still scattered disorganisations of different city states (such as the historic states of Germany and Italy). Therefore, **Nationalism** was the key ingredient needed to be acquired first before any ideas appertaining to some sort of European cooperation could ever take off.

Nationalism is the idea that a nation should be congruent with the state. Nationalism tends to promote the interests of a particular nation, aiming at maintaining the nation's sovereignty over its territory to thus erect a nation-state.

Nationalism strives for the attainment of unified states free from the concept of having disparate and fragmented territories. It abhors the notion of foreign control, and utilises tools such as a common language and culture to embellish its idea of a single community. Conversely, nationalism falls short when it comes to certain economic imperatives – especially in times of war.

The formulation of the **United Nations in 1945** is a perfect example of how the espousal of other states may mitigate the risk of conflict – especially after having humanity learn that the ravages of world wars are not the optimal route to tread down. Thus, this introduced the epiphany that conflict resolution may very well occur on a table through diplomatic dialogue, and not necessarily through physical battle.

Attempts at European Integration

In **1951**, the **European Coal and Steel Community (ECSC) Treaty** was signed by France, Germany, Italy, and the Benelux countries. Proposed by **Jean Monnet**, this treaty bore both economic and political characteristics – as it facilitated the commerce of desirable resources (such as steel) amongst signatory countries, thus also assuring the countries in question that the resources traded were not to be used against each other for reasons borne of the intention to go to war. The ECSC was supervised by an entity dubbed as the **High Authority**.

The subsequent founding of the **European Economic Community (EEC) in 1957** was also an admirable attempt at fostering **economic integration** between European member states.

NB: In 1960, the **European Free Trade Association** (**EFTA**) was baptised as an alternative bloc for European states unable/unwilling to join the EEC. The **Stockholm Convention** establishing the EFTA was signed by the 'outer seven': Switzerland, Austria, Norway, Portugal, Sweden, Denmark, and the UK.

The 1950s also gave rise to two other attempts at European integration (albeit unsuccessful). Thus, the **European Defence Community (EDC)** and the **European Political Community (EPC)** were the two main plans that failed to reach their desired potential.

The EDC was an attempt at creating a European army with a common budget; but the Brits refused to sign the EDC Treaty in 1952 – as they pointed out that something like this would require some sort of European foreign policy.

The EPC was drafted by a Constitutional Committee in 1953, and introduced the notion of having a federal, parliamentary-style form of European integration boasting a bicameral parliament (one chamber elected by universal suffrage, and the other chamber appointed by national parliaments). And this type of parliament would have had real legislative power. The notion of the EPC received massive support from the ECSC Assembly; however, there was significant opposition to the degree of parliamentary power that existed under said draft EPC statute.

Ultimately, both the EDC and the EPC never came into existence. But their failure did not dishearten those striving for European integration. Thus, focus shifted onto **economic stances**, rather than political standpoints.

The Netherlands came up with the idea of including a common market in the draft EPC statute, but this notion proved to be a smidge too risky for many countries and the protectionist climate they harboured in the 1950s. However, such an idea made a stunning reappearance in the EEC (European Economic Community).

A conference of foreign ministers of the six Member States of the ECSC was thus held in Messina, Italy in 1955, wherein the founding ideas for the upcoming EEC and the Euratom became established, and later on, signed by the Member States.

NB: The **Euratom (European Atomic Energy Community) Treaty** established a single market for the trade in nuclear materials and technology.

Hence, one can notice the subliminal economic undertones of such movements.

The idea of a common market **demolished any barriers impeding trade** (such as tariffs or quotas), thus **facilitating importation of products**. Instead, a common customs tariff was that which was established. This common market also enabled **free movement of the economic factors of production**, ensuring the efficiency of the 'four freedoms' of the EEC – goods, services, capital, and persons.

This exercise ensured that, for instance, if a person could not find employment in a particular country, then the person in question would be able to find a job within another country in the EEC thanks to the efficient characteristic of the freedom of movement.

Similarly, if a resource was to be found in excess amounts in a particular Member State, then the inherent value of said resource would be aggrandised within the EEC.

Fundamentally, the 1957 Treaty of Rome made sure that nationalist actions in favour of domestic industries was never to undermine the intrinsic concept of a level playing field within the EEC. Therefore, the Rome Treaty aimed at **promoting economic development** within the EEC, **raise the standard of living**, **maintain economic stability**, and to **strengthen the bond between Member States**.

A **European Social Fund** was also set up to improve employment opportunities, and an **Investment Bank** was established to dish out loans and help lesser developed regions within the EEC.

Although the Parliamentary Assembly and the Court of Justice were shared with the ECSC, a separate **Council of Ministers** comprised of a representative from each Member State, AND a separate executive body – the **Commission** – were now suddenly baptised. It was only until the **1965 Merger Treaty** that these institutions were amalgamated with each other.

The same contempt shown to towards the parliamentary side of the aforementioned EPC resurfaced once again in the Rome Treaty – ensuring that contemptable parliamentary characteristics do not spawn within certain institutions propounded by the EEC. Legislative power was to reside between the Commission (the ones creating ideas) and the Council of Members (the ones voting on said ideas). It is also important to note that the Parliamentary Assembly (AKA modern-day European Parliament) had the right of being consulted during legislative proceedings.

The Commission reserved the executive responsibility of acting as a watchdog – ensuring that Member States complied with the rules of the Rome Treaty. On the other hand, the Council of Members had the executive power of overseeing and facilitating the processes of international agreements and the EEC budget.

Tensions Within the EEC

The EEC became aggrandised through the accession of other Member States. The UK made its first application to join the EEC in 1961, but the French President, **Charles de Gaulle**, vetoed UK's membership in 1963 *and* their second application in 1967. In fact, the UK was able to access the Community only when Gaulle's resignation ensued in 1973.

The thirty-year gap between the Rome Treaty and the establishment of the **Single European Act (SEA)** revealed certain friction between two notions lingering betwixt the Member States of the Community:

The **Intergovernmental View** (championed by Gaulle) held that domestic interests of the state were those that took priority; whereas the **Supranational View** (championed by Walter Hallstein) believed that affairs concerning the Community as a whole were those that were truly paramount – even if dealing with them comprised of a sacrifice from certain Member States.

The **Single European Act (SEA)** was the first major revision of the prior Treaty of Rome, setting the target of attaining a single market between Member States and thus strengthening the sense of political co-operation.

More tension resurfaced in 1965, when transitional provisions in the Treaty now demanded a qualified majority rather than a unanimous vote in order for certain decisions to be made. The French were not content with new and incoming policies such as this, and thus adopted the '**empty-chair**' tactic – wherein they would abstain from attending any Council meetings. After having this charade last for months, the **Luxembourg Accords** were drafted, which were, in essence, a formal statement declaring agreement on disagreement regarding certain voting methods in the Council. To add, France kept on insisting that even though certain decisions requiring majority vote were to be made, discussions should still be kept ongoing if unanimity was still unattained.

In 1970, the **Davignon Report** was issued – implying that quarterly meetings between foreign ministers of the Member States were to be held. Thus, this strengthened the notion of European cooperation, and was hence dubbed as European Political Cooperation in 1973.

A year later in 1974, the **European Council** was baptised with the sole intention of holding regular summits, wherein the heads of Member States convene and address particular interests and conundrums. This European Council was not one of the ingredients found in the Treaties, and was recognised as a formal instrument only when the **Single European Act** was drafted.

The Member States also maintained greater control over secondary legislation governing the Community – a practice which was later on dubbed as **Comitology**.

Monism & Dualism

Why does Malta adhere to laws stipulated by the ECHR if they have been enacted in a court extraneous to the one found domestically?

In 1966, Malta joined the Council of Europe, and thus joined forces with the other member states adhering to the provisions stipulated by the ECHR.

However, when Malta amalgamated itself to the Council of Europe, it became solely bound to *obligations* asserted by the Council; thus meaning that it **was NOT legally bound to the ECHR in 1966**. Therefore, this denoted the fact that one could not use the ECHR as an argument in a 1966 Maltese court.

Ultimately, all this boils down to the fact that **Malta is a dualist country**. In essence, **a dualist country signs with the *intention* to become bound** – as long as the state actually becomes bound at a later point in time. **Therefore, signing a treaty as a dualist country shows that the signer would like to be bound**. The actual process of becoming bound to the provisions of a treaty is much lengthier than just simply signing a piece of paper.

In 1987, Malta finally integrated the ECHR into the laws of Malta:

- **Cap. 319** of the *Laws of Malta* – **European Convention Act**
- **Cap. 460** of the *Laws of Malta* – **European Union Act**.

Very few states are monist countries. Such states become bound to treaties once they sign them. **Therefore, in recap, once ratification is complete by monist countries, the signed law becomes enforced instantly**, whereas transposition of a treaty's laws into domestic legislation occurs at a prospective date when a dualist state signs a treaty.

CASE LAW: *Van Gend en Loos*

The Van Gend en Loos case was a landmark ruling by the **European Court of Justice (ECJ)** in 1963 that **established the principle of Direct Effect in European Union law**.

The case involved a Dutch company, **Van Gend en Loos**, which challenged the imposition of a customs duty by Dutch authorities on goods imported from Germany. The ECJ ruled that EU law had created a new legal order for member states and that individuals could rely on EU law in national/domestic courts, **even if national law contradicted it**.

This established the principle of Direct Effect, which meant that **EU law could be invoked by individuals and had supremacy over national law**. The Van Gend en Loos case was significant because it established the foundation for the development of EU law and paved the way for the creation of a more integrated European Union.

CASE LAW: *Costa* vs *ENEL*

The Costa v ENEL case was another landmark ruling by the European Court of Justice (ECJ) in 1964, which further **solidified the principle of supremacy of EU law over national law**.

The case involved an Italian citizen, Mr. Costa, who challenged the nationalisation of the Italian electricity industry and the subsequent transfer of shares from private companies to the state-owned ENEL. The Italian courts rejected his challenge, citing the doctrine of the supremacy of national law over EU law.

However, the ECJ ruled that EU law had created a new legal order that was binding on all member states, and that **national courts must apply EU law even if it contradicted national law**.

Once again, this established the principle of the supremacy of EU law over national law, which remains a fundamental principle of EU law to this day. The Costa v ENEL case was significant because it further strengthened the legal foundation for the development of the European Union and ensured that EU law would prevail over national law in cases of conflict.

EU Treaties

1. The 1952 European Coal and Steel Community (ECSC) (expired 2002).

The **1952 European Coal and Steel Community** (**ECSC**) Treaty founded an organization comprising six European countries: **Belgium**, **France**, **Germany**, **Italy**, **Luxembourg**, and the **Netherlands**.

The ECSC was created in response to the devastation caused by World War II and aimed to promote economic cooperation and prevent future conflicts between its member states. The organization established a **common market for coal and steel products** and created a supranational authority to oversee the industry, with the power to make decisions that were binding on member states.

The ECSC was the first step towards European integration and was later incorporated into the European Union, which has since expanded to include 27 member states. The success of the ECSC paved the way for the creation of other European institutions, such as the European Economic Community (EEC), which was established in 1957 and became the basis for the modern-day EU.

2. The 1957 European Economic Community (EEC)

The **1957 European Economic Community** (**EEC**), also known as the **Common Market**, was established by the **1957 Treaty of Rome**. The EEC was founded by six European countries: **Belgium**, **France**, **Germany**, **Italy**, **Luxembourg**, and the **Netherlands**, with the aim of creating a **common market for goods, services, capital, and labour among member states**.

The EEC eliminated trade barriers, such as tariffs and quotas, and created a customs union, which allowed goods to be traded freely among member states without internal border checks.

The EEC **also established common policies in areas such as agriculture, transport, and energy**, and established a supranational commission to oversee the functioning of the community.

3. The 1957 European Atomic Energy Community (Euratom)

The **1957 European Atomic Energy Community** (**Euratom**) was also established by the **1957 Treaty of Rome** alongside the aforementioned European Economic Community (EEC).

Euratom was created to **coordinate the peaceful development of nuclear energy in Europe** and to **promote research and cooperation in the field of atomic energy**. The community aimed to ensure the supply of nuclear materials and technology to its member states, to **promote nuclear safety** and to **prevent the proliferation of nuclear weapons**.

Euratom established a supranational organization that had the power to regulate nuclear energy and to negotiate international agreements in the field of atomic energy. **The community played a significant role in promoting the use of nuclear power in Europe during the 1960s and 1970s**, but its role declined following the Chernobyl disaster in 1986, which led to increased concerns about the safety of nuclear energy.

Euratom continues to exist as a separate organization within the European Union, with a focus on promoting research and development in the field of nuclear energy and ensuring the safe and secure use of nuclear materials.

4. The 1965 Merger Treaty

The **1965 Merger Treaty** (AKA the **Brussels Treaty**) was a treaty that **merged the executive bodies of the ECSC, the EEC, and the Euratom into a single institutional framework**.

The treaty created a single Commission and a single Council of Ministers to govern all three communities, with the aim of streamlining decision-making and increasing efficiency. The Merger Treaty also **established a single budget** and a **single Court of Justice** for all three communities. The treaty marked an important step towards the further integration of the European Union and paved the way for the creation of new institutions, such as the European Parliament, which was first directly elected in 1979.

The Merger Treaty helped consolidate the European Union's institutional framework and **laid the foundations for the creation of a single European market**, which was established by the Single European Act in 1986.

5. The 1986 Single European Act (SEA)

The **1986 Single European Act** (**SEA**) aimed to **complete the establishment of the European Single Market by removing barriers to trade, services, and capital across the EU**. The treaty was a significant step towards deeper economic integration within the EU and marked a major milestone in the history of European integration.

The SEA **introduced new measures to harmonize laws and regulations across member states** and to facilitate the free movement of goods, services, capital, and people within the EU. It **abolished many physical and technical barriers to trade** and set deadlines for the removal of remaining barriers, such as restrictions on the provision of services and the movement of workers.

The treaty also **strengthened the decision-making process within the EU by expanding the use of qualified majority voting in the Council of Ministers** and by **giving greater powers to the European Parliament**. Additionally, the SEA **established new policies on environmental protection, research and development, and foreign policy cooperation**.

Overall, the Single European Act helped transform the European Union into a more integrated and cohesive political and economic entity, paving the way for further integration through subsequent treaties, such as the Maastricht Treaty.

6. The 1992 Maastricht Treaty (TEU)

The **1992 Maastricht Treaty** (AKA the **Treaty on European Union** (**TEU**) was a landmark treaty that **established the European Union** and laid the foundations for deeper political and economic integration among its member states.

The treaty **created a common foreign and security policy**, **a common citizenship for EU citizens**, and a **central bank** (the **European Central Bank**) with the power to set monetary policy for the EU. It also **established the Euro as the single currency of the EU** and **created new institutions**, such as the European Council and the Council of the European Union, to coordinate policies and decision-making among member states.

In addition, the Maastricht Treaty strengthened the powers of the European Parliament and expanded the scope of EU law to include new areas such as justice and home affairs. The treaty also **established new criteria for EU membership**, including the adoption of democratic principles and the respect for human rights.

Albeit a major step towards European integration, the treaty faced criticism from some quarters, who argued that it represented **a loss of national sovereignty for member states and that the EU was becoming too powerful and bureaucratic.**

The Maastricht Treaty introduced the Three Pillar System to the EU.

1st Pillar: the **Communities**.

2nd Pillar: the **Common Foreign & Security Policy**. This entails the preservation of peace and international security, adherence to human rights, and respect towards the notion of democracy. The **European Council** outlines the principles of this Pillar, with strict consultation to the European Parliament.

3rd Pillar: the **Justice & Home Affairs Policy**. This pertains to policies regarding third country immigrants, asylum, battling international crime, and the founding of the EUROPOL. The **European Council** also outlines the principles of this Pillar.

7. The 1997 Amsterdam Treaty

The 1997 Amsterdam Treaty amended the Maastricht Treaty and the European Community Treaty.

The Amsterdam Treaty included several important provisions, including the creation of new policy areas for the EU to address, such as **employment**, **social policy**, and **justice and home affairs**.

In addition, the Amsterdam Treaty **expanded the role of the European Parliament** and increased the use of qualified majority voting in the Council of Ministers, making decision-making more efficient. The treaty also **included provisions on the protection of human rights**.

One of the most notable achievements of the Amsterdam Treaty was the establishment of the concept of '**co-decision**' between the European Parliament and the Council of Ministers, which **gave the European Parliament greater power in the legislative process**.

8. The 2000 Nice Treaty

The **2000 Nice Treaty aimed to reform the EU's institutional framework and prepare the Union for its *eastward* expansion**.

The Nice Treaty included several significant changes to the EU's decision-making processes, such as an **increase in the number of policy areas subject to qualified majority voting in the Council of Ministers** and a reduction in the number of areas requiring unanimity. The treaty **also increased the power of the European Parliament** and introduced new provisions for the involvement of national parliaments in EU decision-making.

One of the main goals of the Nice Treaty was to prepare the EU for its eastward expansion by **ensuring that the Union's institutions were capable of functioning effectively with a larger number of member states**. To this end, the treaty **reformed the size and composition of the EU's institutions**, including the European Commission, the Council of Ministers, and the European Parliament.

9. The 2004 Constitutional Treaty

The **2004 Constitutional Treaty aimed to create a new institutional framework for the EU and to establish a constitution that would replace the existing EU treaties**.

The Constitutional Treaty was negotiated by representatives of the member states and the European Convention – a body established to draft proposals for the future of the EU. The treaty was intended to streamline and simplify the functioning of the EU institutions, increase transparency and democratic accountability, and provide the Union with a clearer direction for its future development.

Some of the key provisions of the Constitutional Treaty included:

- The establishment of a **permanent President of the European Council** and a new **EU foreign minister**;
- A simplification and **clarification of the EU's decision-making process**, including an increase in the use of qualified majority voting;
- The creation of a **Charter of Fundamental Rights**, which would have enshrined a range of civil, political, economic and social rights for EU citizens;
- A **greater role for national parliaments in the EU legislative process**.

However, the Constitutional Treaty faced significant opposition in several member states, particularly in France and the Netherlands, where **it was rejected in referendums**. As a result, **the treaty was never ratified and never came into force**.

Nonetheless, many of the ideas and proposals contained in the Constitutional Treaty were later incorporated into the Lisbon Treaty, which was signed in 2007 and is still in force today. The Lisbon Treaty represented a significant reform of the EU's institutional framework and strengthened the Union's ability to address new challenges in the years ahead.

10. The 2007 Lisbon Treaty

The **2007 Lisbon Treaty** included several important provisions, including:

- the creation of a **more powerful and accountable European Parliament**.
- the **establishment of a permanent President of the European Council**.
- the **creation of a new position of High Representative of the Union for Foreign Affairs and Security Policy**.

The treaty also introduced a new system of qualified majority voting in the Council of Ministers and strengthened the role of national parliaments in EU decision-making.

In addition, the Lisbon Treaty **expanded the EU's policy areas**, including new provisions for **climate change**, **energy policy**, and **space policy**. The treaty also **created new rules for EU citizenship and reinforced the protection of fundamental rights**, including the **establishment of the Charter of Fundamental Rights as *legally binding***.

One of the most significant changes introduced by the Lisbon Treaty was the creation of the **European External Action Service**, which brought together the EU's diplomatic resources and represented a major step forward in the EU's foreign and security policy. **The Lisbon Treaty also established the possibility for member states to leave the EU** – a provision that was activated when the United Kingdom voted to leave the EU in 2016.

Overall, the Lisbon Treaty represented a significant reform of the EU's institutional framework and helped to strengthen the Union's ability to address new challenges in the years that followed. It remains a key part of the legal framework governing the functioning of the EU today.

CHECKPOINT

1952 ECSC Treaty

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1957 EEC Treaty

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1957 Euratom Treaty

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1965 Merger Treaty

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1986 SEA Treaty

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1992 Maastricht Treaty (TEU)

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1997 Amsterdam Treaty

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2000 Nice Treaty

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2004 Constitutional Treaty

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2007 Lisbon Treaty

The Council Of The EU

The Council of the EU (or The Council of Ministers) maintains its legal basis on **Art. 16 of the Treaty of the EU**. The Council of the EU's functions are also embalmed in **Art. 237-243 of the Treaty of the Functioning of the EU**.

As the alternate name suggests, the Council of Ministers is **composed of ministers hailing from governments of each EU member state**. The Council meets in different configurations depending on the subject matter. For instance, if the topic of 'Justice' is being discussed, an array of Ministers for Justice will thus be required to attend the conference.

The primary role of the Council is to represent the national interests of the member states. Art. 16 (1) of the Treaty on the EU asserts that:

> "The Council shall, jointly with the European Parliament, **exercise legislative and budgetary functions**. It shall carry out policymaking and coordinating functions as laid down in the Treaties."
>
> **Art. 16** (**1**) of the *Treaty on the EU*

Owing to this, the Council of the EU has functions related to <u>legislation</u>, <u>budgeting</u>, <u>policymaking</u>, and <u>coordination</u>.

The Council of the EU also has the power to:

1. **Approve virtually all proposals** issued by the European Commission.
2. **Request the European Commission to consider accepting specific proposals**.
3. **Conclude on national agreements** in the name of the EU.
4. **Navigate through certain social policy** areas such as Foreign Security.

Decisions in the council are taken mostly by the **Qualified Majority Vote** – with at least 55% of member countries voting in favour for the proposal to be greenlighted. <u>The aggregate population of these member states however **must amount to 65% of the population of the whole of the EU**</u> (stipulated in **Art. 16** (**4**) of the *Treaty on the EU*).

The Council is managed by a Presidency (NOT a President), denoting the fact that it is governed by a whole EU member state, and not a single individual. A Presidency **rotates between every EU member state country equally every six months**. Each member state declares its priority areas it plans on working on during its term in office, as long as such priority areas reside in harmony with the holistic agenda of the EU.

The Trio System is there to ensure that EU member states are divided into groups of three, which cover three Presidencies of 6 months each *in succession*. These trios are chosen based on **diversity** and **geographical balance**. Three small states would not be put into the same group, because their interests would not align with the interests of much larger states. **Therefore, a trio group presides for 18 months – as each country will have a 6-month presidency in succession**. The member state in presidency sets the agenda for conferences and meetings, and thus also chairs them.

The Council of Europe is assisted by the Committee of Permanent Representatives (**COREPER**) – which is NOT regarded to be a European institution. This Committee is split into two:

Coreper I (made up of **Deputy Ambassadors** in charge of lesser affairs); and

Coreper II (made up of **Ambassadors** in charge of the most important affairs).

The European Council

Also known as the **European Summit** or the '**EUCO**', the European Council started as a string of *ad hoc* meetings between the leaders of member states. The EUCO became institutionalised in the **1974 Paris Summit**, and was acknowledged *formally* by the **Single European Act** (**SEA**). Ultimately however, **the 2009 Lisbon Treaty was that which recognised the European Council as a fully-fledged European Institution**.

The European Council comprises the leaders of the EU member states, and its dubbing was arbitrarily given by former French President **Valery Giscard** in one of the summits.

The EUCO does NOT possess legislative power, and its role entails that of making decisions which can only be made by leaders. Therefore, **it suggests a magisterial perspective**. This institution strives to achieve compromise for the sake of agreement, always in ***bona fide***.

Ultimately, the European Council maintains a voice in:

1. The **promulgation of major treaties**.
2. Setting **objectives for what is optimal on the global stage**.
3. Discussing **policies regarding the Euro (€) Areas**.
4. **Appointing the President of the European Commission**.
5. Discussing the **potential aggrandising of the EU**.

The EUCO has an individual President (not a Presidency) who holds office for a two-and-a-half-year period.

The European Parliament

Structure & MEP Elections

The **European Parliament** is one of the most important institutions in the EU. It plays a crucial role in **shaping the policies of the EU**, **representing the interests of its citizens**, and ensuring **accountability** and **transparency** in the EU decision-making process.

The Parliament is composed of **705 Members of the European Parliament** (**MEPs**), who are elected by EU citizens every five years. The number of MEPs for each member state is proportional to its population, with the largest member state, Germany, having the most MEPs (96), and the smallest member states, Malta and Luxembourg, having the fewest MEPs (6 each).

The MEPs are organized into **political groups**, which are made up of MEPs from different member states who share the same political ideology or affiliation. The largest political groups in the current Parliament are the **centre-right *European People's Party (EPP)*** and the **centre-left *Progressive Alliance of Socialists and Democrats (S&D)***. Other political groups include the liberal Renew Europe, the Greens/European Free Alliance, the European Conservatives and Reformists, and the far-right Identity and Democracy.

In most member states, voting is mandatory, although some countries allow for voluntary voting. EU citizens residing in another member state can choose to vote in their country of residence or in their home country. The number of MEPs allocated to each member state is determined by the principle of proportionality, with larger states having more MEPs than smaller states.

The voting system used in each member state varies, but in most cases, **proportional representation is used**. This means that parties receive a number of seats in proportion to the number of votes they receive. Some member states use a *closed-list system*, in which voters can only vote for a political party, while others use an *open-list system*, in which voters can also choose specific candidates within a party.

Once the elections are over, the allocation of seats is determined based on the number of votes received by each party or candidate. Parties that receive a certain percentage of the votes are entitled to at least one seat in the Parliament. The allocation of seats is then divided among the parties based on the proportion of votes received.

The newly elected Parliament then meets for the first time in July, and MEPs form political groups based on their political affiliations. These groups work together to form a majority in the Parliament and to elect the President of the Parliament.

MEPs are not allowed to form part of their national government – a motion supplemented by the Nice Treaty.

The **administrative bodies** of the Parliament include:

- **President** – the head of the Parliament; responsible for representing the Parliament in external affairs.
- **Bureau** – responsible for managing the Parliament's budget and administrative affairs; made up of the President, the Vice-Presidents, and the Quaestors.
- **Secretariat** – responsible for providing administrative support to the Parliament and its committees.

Powers

The role of the European Parliament is to represent the interests of EU citizens and to exercise legislative, **budgetary**, and **supervisory** powers over the other EU institutions, namely the European Commission and the Council of the European Union.

Legislative Powers: The Parliament has the power to **propose** and **adopt legislation** in areas such as agriculture, the environment, transport, consumer protection, and human rights. It **shares this power with the Council of the European Union**, and both institutions must agree on the final text of any legislation before it can be adopted. The Parliament also has the power to amend or reject legislation proposed by the Commission or the Council.

Budgetary Powers: The Parliament has **the power to approve the EU budget**, which is proposed by the Commission and negotiated with the Council. It can also **make changes to the budget** and has the power to reject it if it is not satisfied with the proposed allocation of funds.

Supervisory Powers: The Parliament has the power to **supervise the work of the other EU institutions**, **particularly the European Commission**. It can request the Commission to provide information or explanations about its work, and it can hold hearings and investigations to scrutinize the Commission's actions. The Parliament also has the power to censure the Commission, which could result in the resignation of the entire Commission.

The Parliament also has an important role in the **appointment of the President of the European Commission**. After the elections, the political group with the most MEPs nominates a candidate for the presidency of the Commission. The nominee then needs to be approved by a majority of the Parliament, which involves a series of hearings and interviews with the nominee and other Commissioners.

The Parliament has the power to request the Council to initiate a **treaty change**, which could lead to significant changes in the EU's institutional setup or policy areas.

The European Parliament is based in **Strasbourg**, France, but also has offices in Brussels and Luxembourg. The Parliament holds **12 plenary sessions in Strasbourg per annum,** where MEPs debate and vote on legislation and other issues. The Parliament also holds committee meetings and other events in Brussels and Luxembourg throughout the year.

In recent years, the European Parliament has become more visible and influential in the EU decision-making process. The rise of populist and Eurosceptic parties has also brought attention to the Parliament's role in ensuring democratic values and protecting the rule of law in the EU.

European Court of Justice

The European Court of Justice (**ECJ**) is a vital institution within the European Union (EU). Its role in **interpreting EU law** and ensuring its uniform application is essential to the functioning of the EU and the effective operation of the single market.

History

The ECJ was established in 1952 as part of the European Coal and Steel Community. At that time, its role was primarily to settle disputes between member states regarding the interpretation of the Treaty establishing the Community. However, over time, the ECJ's role expanded, and it became the highest court in the EU for matters of EU law. The ECJ is **located in Luxembourg** and is composed of one judge from each EU member state and 8 advocate generals, who provide legal opinions on cases brought before the court.

Structure

- **Court of Justice**: is the main body of the ECJ and consists of **one Judge from each member state**. The Judges are appointed for a renewable term of six years and are assisted by **eight Advocate Generals**. The Court of Justice has jurisdiction over all matters related to EU law, including preliminary rulings, appeals, and infringement proceedings.

- **General Court**: is a lower court of the ECJ and consists of **two Judges from each member state**. The judges are appointed for a renewable term of six years and are assisted by **11 Advocate Generals**. The General Court hears cases related to competition law, state aid, and intellectual property, among other areas. Its decisions can be appealed to the Court of Justice.

- **Specialized Courts**: The ECJ also includes **specialized courts**, which have *specific areas of jurisdiction*. These include the Civil Service Tribunal, the EU Civil Service Tribunal, and the European Union Intellectual Property Office.

- **Registry**: is responsible for the **administration** and **management of the ECJ**. It is headed by the **Registrar**, who is responsible for the day-to-day running of the court and the coordination of its activities. The Registry is also responsible for providing legal advice and support to the Judges and Advocate Generals.

In addition to these bodies, the ECJ is supported by a number of other institutions, including the **European Data Protection Supervisor** (which oversees data protection issues), the **European Judicial Training Network** (which provides training to judges and legal professionals), and the **European Law Institute** (which conducts research and provides advice on EU law).

Powers

The ECJ's primary role is to interpret EU law and ensure its uniform application across all member states. Its roles entail:

- **Interpretation of EU Law**: The ECJ is responsible for interpreting EU law and ensuring its consistent application across all member states. The ECJ has the power to interpret the meaning and scope of EU treaties, regulations, directives, and other legal instruments. Its interpretations are binding on all national courts and authorities in the EU.

- **Preliminary Rulings**: The ECJ can provide preliminary rulings on questions of EU law referred to it by national courts. This means that if a national court has a question regarding the interpretation of EU law, it can refer the matter to the ECJ for clarification. The ECJ's ruling is binding on the national court and on all other national courts in the EU.

- **Direct Actions**: The ECJ can hear direct actions brought by individuals, companies, or member states against EU institutions or member states for alleged violations of EU law. These actions can include claims for damages, annulment of EU acts, or failure to act.

- **Indirect Actions**: The ECJ can hear indirect actions, wherein actions are brought by individuals to the ECJ itself, but are first heard in another court pre-judgement.

- **Infringement Proceedings**: The ECJ can initiate infringement proceedings against member states that are not complying with EU law. If the ECJ finds that a member state has violated EU law, it can impose financial penalties or other measures to ensure compliance.

- **Review of EU Institutions**: The ECJ can review the legality of acts and decisions taken by EU institutions, such as the European Commission or the European Parliament. If the ECJ finds that an act or decision is illegal, it can annul or declare it void.

- **Opinions**: distributing opinions with regards to treaties and their compatibility with the European Charter.

Overall, the ECJ plays a vital role in ensuring the consistent and effective application of EU law across all member states. In sum therefore, its powers include the **interpretation of EU law**, the provision of **preliminary rulings**, **direct actions**, **infringement proceedings**, dispensing **opinions**, and **reviewing EU institutions**.

The ECJ's judgments are binding on all member states and have a significant impact on the development and evolution of EU law.

The ECJ hears cases brought by individuals, companies, and organizations against member states or EU institutions for violations of EU law (see above Costa vs ENEL case & Van Gend en Loos case).

The court also hears cases relating to anti-competitive practices, such as cartels, abuse of dominant positions, and mergers and acquisitions. **The ECJ's rulings have helped to ensure fair competition within the EU** and have had a significant impact on businesses operating within the single market.

In recent years, the ECJ has also been involved in cases relating to **environmental protection** and **data privacy**. The court has heard cases relating to the interpretation of EU environmental legislation, including cases relating to the conservation of natural habitats and the protection of endangered species.

CASE LAW: *Schrems* vs *Facebook*

The ECJ has also been involved in cases relating to data privacy:

The **Schrems vs Facebook** case was a legal challenge brought by Austrian privacy activist **Max Schrems** against Facebook's **transfer of user data from the European Union (EU) to the United States (US)**. Schrems argued that US government surveillance practices, such as the National Security Agency's PRISM program, **violated the privacy rights of EU citizens**, and that Facebook's data transfers to the US were therefore illegal under EU law.

The case was first heard by the European Court of Justice (ECJ) in 2015, which invalidated the EU-US Safe Harbour agreement that had allowed such data transfers. The ECJ found that the Safe Harbour did not provide adequate protection for EU citizens' personal data and that national data protection authorities had the power to suspend data transfers to the US if they deemed them unlawful.

Following the ruling, Facebook implemented alternative legal mechanisms for transferring user data to the US, including **Standard Contractual Clauses** (**SCCs**). However, in 2020, the ECJ invalidated the use of SCCs for data transfers to the US, citing concerns about US government surveillance practices.

The ECJ's ruling in the Schrems vs Facebook case has had significant implications for the way that companies transfer personal data from the EU to third countries, **particularly the US**. The ruling has made it more **difficult for companies to rely on SCCs to transfer data to the US**, and has led to **increased scrutiny of government surveillance practices in the US and other third countries**.

The case has also highlighted the **importance of protecting the privacy rights of EU citizens** and ensuring that their personal data is not subject to unlawful surveillance or other forms of government interference.

The European Central Bank

The **European Central Bank** (**ECB**) is the **central bank of the EU** and the institution **responsible for monetary policy in the Eurozone**, which consists of 20 EU member states that have adopted the euro as their currency. The ECB was established in 1998 and is **headquartered in Frankfurt**, Germany.

The ECB is an integral part of **The Economic and Monetary Union** (**EMU**) – a group of policies aimed at converging the economies of member states of the European Union at three stages. Launched in 1992, the EMU involves the coordination of economic and fiscal policies, a common monetary policy, and a common currency (the euro). **All the EU states are in the economic union, but not all are in the monetary union (**ex. Bulgaria**).**

The main task of the ECB is to **maintain price stability in the Eurozone** and to support the general economic policies of the EU. To achieve this, the ECB **sets the interest rates at which it lends money to commercial banks**, and it also conducts open market operations to manage the supply of money in the economy.

In addition to its monetary policy role, the ECB also **supervises the banking system in the Eurozone**, and it plays a key role in **crisis management** and **financial stability**. The ECB is governed by a board of directors, which is made up of the President of the ECB, the Vice-President, and four other members.

Structure

The ECB has a hierarchical structure that consists of several bodies:

1. **Governing Council**: is the highest decision-making body of the ECB, and is responsible for setting monetary policy in the Eurozone. The Council is composed of the six members of the Executive Board of the ECB and the governors of the national central banks of the 20 Eurozone member states.

2. **Executive Board**: is responsible for the day-to-day management of the ECB and the implementation of its monetary policy. It is composed of the President, the Vice-President, and four other members who are appointed for non-renewable eight-year terms.

3. **General Council**: is responsible for the coordination of monetary policies of the EU member states that have not adopted the euro as their currency. It is composed of the governors of the national central banks of all EU member states.

4. **Supervisory Board**: is responsible for the prudential supervision of significant banks in the Eurozone. It is composed of the Chair, Vice-Chair, and four other members who are appointed by the European Parliament and the Council of the European Union.

5. **Audit Committee**: is responsible for internal audit and control functions, as well as external audit activities related to the ECB.

Powers

The European Central Bank (ECB) has several powers that are crucial for its mandate of ensuring price stability, supporting the EU's economic policies, and maintaining the stability of the Eurozone's financial system. Here are some of the key powers of the ECB:

- **Monetary policy**: to set and implement monetary policy in the Eurozone. This includes setting interest rates, conducting open market operations, and providing liquidity to banks.

- **Banking supervision**: to supervise banks in the Eurozone, including conducting stress tests, monitoring their financial stability, and taking corrective measures when necessary.

- **Foreign exchange operations**: to conduct foreign exchange operations, such as buying and selling foreign currencies, to ensure the stability of the euro in international markets.

- **Crisis management**: to take action in times of financial crisis, such as providing emergency liquidity to banks, and coordinating with other central banks and government authorities to stabilize financial markets.

- **Research and analysis**: to conduct research and analysis on economic and financial issues in the Eurozone, which helps to inform its policy decisions.

Overall, the ECB's powers are designed to enable it to fulfil its mandate of **maintaining price stability**, **supporting the EU's economic policies**, and **ensuring the stability of the Eurozone's financial system**, even in times of crisis.

The Court of Auditors

The Court of Auditors is an institution of the EU that **is responsible for auditing the EU's accounts and ensuring that EU funds are used efficiently and effectively**. The Court of Auditors was established in 1975 and is based in **Luxembourg**.

The main role of the Court of Auditors is to provide **assurance that EU funds are being used properly**, that the EU's financial transactions are **legal** and regular, and that financial management is **efficient** and **effective**. The Court of Auditors is also responsible for auditing the accounts of all EU institutions and bodies, as well as the accounts of EU-funded programs and projects in the member states.

The Court of Auditors carries out 2 types of audits:

1. **Financial audits**: assess the accuracy and legality of EU financial transactions.
2. **Performance audits**: assess the effectiveness and efficiency of EU programs and policies.

The Court of Auditors reports its findings to the European Parliament, the Council of the EU, and the European Commission. Its reports provide valuable insights into the management of EU funds and can help to identify areas where improvements are needed.

Structure

The Court of Auditors is a single institution composed of **one member from each EU member state**. The members of the Court of Auditors are appointed by the Council of the European Union, after consulting the European Parliament and on the basis of nominations made by their respective governments. The members of the Court of Auditors are appointed for a term of six years, which may be renewed once.

The Court of Auditors is headed by a **President** who is elected by the members of the Court for a term of three years, which may be renewed once. The President is responsible for the overall management of the Court, and chairs the plenary sessions of the Court.

The Court of Auditors has a number of departments and units that are responsible for carrying out its audit work. These include *audit departments* (responsible for conducting audits of the EU's financial transactions), and *support departments* (which provide administrative and technical support to the Court).

Powers

The Court of Auditors is an independent institution of the European Union (EU) with significant powers to audit and scrutinize the EU's financial management. Its main powers include:

1. **Auditing EU Accounts**: to audit the accounts of all EU institutions and bodies, including the European Commission, the European Parliament, the Council of the EU, and other EU agencies. It also audits the accounts of EU-funded programs and projects in the member states.

2. **Providing Assurance**: provides independent assurance on the legality and regularity of EU spending. This includes assessing the accuracy and legality of EU financial transactions and evaluating the effectiveness and efficiency of EU programs and policies.

3. **Issuing Recommendations**: issues recommendations to EU institutions and bodies to improve their financial management practices. Its recommendations are intended to help prevent financial irregularities and improve the effectiveness and efficiency of EU spending.

4. **Making Special Reports**: reports on specific issues related to the management of EU funds. These reports can focus on topics such as the fight against fraud, waste and mismanagement, and the effectiveness of EU policies and programs.

5. **Providing Opinions**: provides opinions on EU financial legislation, such as the EU's annual budget and the EU's financial regulations. Its opinions are intended to help ensure that EU financial legislation is consistent with sound financial management practices.

In recap therefore, the Court of Auditors has significant powers to **audit and scrutinize the EU's financial management**. The Court of Auditors may also file reports with regards to financial irregularities to an organisation dubbed as **OLAF** (which then continues the financial investigation on its own).

The Court of Auditors does not have the power to impose sanctions, but simply reports on what it sees.

The European Commission

Baptised after the **Nice Treaty** and the **Lisbon Treaty**, The **European Commission** is the **executive branch** of the EU, responsible for **proposing** and **enforcing EU laws**, **policies**, and **programs**. It is comprised of **one commissioner from each of the 27 EU member states**, who are appointed for a five-year term.

The Commission is headquartered in **Brussels**, Belgium, and is led by a President who is appointed by the European Council, with the approval of the European Parliament. The current president of the European Commission is **Ursula von der Leyen** – who is ***primus inter pares*** (first amongst equals).

The President of the European Commission has significant authority in guiding the activities of the institution. Specifically, the President sets the direction for the Commission by laying down guidelines for its work, deciding on its internal organization, and appointing vice-presidents.

Moreover, the **President plays a key role in shaping EU policy** as a whole, consulting with both the Council and the Parliament. As such, the President's decisions have a significant impact on the future of the EU, and her leadership is crucial to ensuring the Commission's success in promoting the EU's interests and values.

For instance, President von der Leyen is setting her eyes on the EU Green Deal, a more solid economy, and prepping for the upcoming digital age tsunami.

The European Commission is not directly elected by citizens of the EU. Instead, the Commissioners are nominated by the member states of the EU and *appointed by the European Council* (and also with the approval of the European Parliament).

The Commissioners do not represent their state and thus do not take orders from their national government. Ultimately, Commissioners preserve the **common good of the EU**, and brandish their own cabinet.

Helena Dalli is the current Maltese Commissioner in office in Brussels.

The President of the European Commission is also a member of the **College of Commissioners**, and serves as its head. The College meets weekly to discuss and make decisions on various policy proposals and legislative initiatives, as well as to coordinate the work of the Commission's various departments and agencies.

Structure

The European Commission has a hierarchical structure that includes several levels of officials and departments:

1. **President**: The President of the European Commission is the head of the institution and represents the Commission in the EU and internationally.

2. **College of Commissioners**: The College of Commissioners consists of the President of the Commission and 26 Commissioners, 1 from each EU member state. The Commissioners are responsible for proposing and implementing EU policies, laws and programs, and managing the EU budget.

3. **Directorates-General** (**DGs**): The DGs form part of the **Civil Service** and are responsible for developing and implementing policies in specific areas, such as agriculture, environment, or trade. There are currently 33 DGs.

4. **Cabinets**: Each Commissioner has a Cabinet, which consists of a small team of advisors and experts who support the Commissioner in developing and implementing policy initiatives.

5. **Services**: The Commission also has a number of specialized services that support its work, such as the Legal Service, the Joint Research Centre, and the European Anti-Fraud Office (OLAF).

6. **Representations**: The Commission has offices in each EU member state, known as Representations, which are responsible for communicating EU policies and initiatives to the national authorities and the public.

Powers

The European Commission has significant powers within the EU:

- **Legislative initiative**: the power to propose new laws and policies to the European Parliament and the Council of the European Union.

- **Implementing and enforcing EU law**: the responsibility for implementing and enforcing EU law, including monitoring compliance with EU rules and regulations.

- **Negotiating international agreements**: negotiating international agreements on behalf of the EU in areas such as trade, development, and cooperation.

- **Managing the EU budget**: manages the EU's budget and ensures that funds are used in accordance with EU priorities and policies.

- **Competition policy**: the responsibility for enforcing EU competition policy, including investigating anti-competitive behaviour and imposing fines on companies that violate EU competition rules.

- **State aid control**: the power to control state aid granted by EU member states to companies, in order to ensure that it does not distort competition within the EU.

- **External representation**: The Commission represents the EU in international organizations and forums, such as the United Nations and the World Trade Organization.

Additionally, the Commission works to **promote EU values**, such as **democracy** and **human rights**, and to ensure that member states comply with EU rules and regulations. The

Concluding Notes on EU Institutions

Art. 13 (4) of the *Treaty on the Functioning of the EU*:

This treaty highlights 2 important principles:

Principle of Institutional Balance: each institution will act within the limits of its conferred powers elaborated in the treaties. The EU talked about this principle in the Chernobyl Case, holding that it assigned duties and tasks to different institutions in order for the EU community to run smoothly. It went on to state that observance of this Institutional Balance means that each of these institutions must exercise with due regard to the *other* institutions, and also requires that it should be possible to penalise any breach of powers and institutional jurisdiction that may occur. Thus, this connotes a tenet relating to a separation of powers.

Principle of Sincere Cooperation: that institutions shall practice such a principle with each other; to act and in cooperate with each other, while keeping boundaries vis-à-vis the above principle.

Advisory Bodies

The Economic and Social Committee: a *consultative* body of the EU established in 1958. Composed of representatives of various interests, the EESC issues opinions to other EU institutions and **plays a role in shaping EU policy**. The EIB has regular contacts with the EESC to take account of the Committee's opinions. The EESC is involved in a range of issues, including the European electricity market. Members work for the EU, independently of their governments. Moreover, EESC has to be consulted by the Institutional Trio.

The European Committee of the Regions: an *advisory* body composed of nominated representatives of Europe's regional and local authorities. It was established in 1994 to give regions and cities **a formal say in EU law-making**, ensuring that the position and needs of regional and local authorities are respected. The CoR provides sub-national authorities with a direct voice within the EU's institutional framework. It submits political recommendations regarding the strategies of the European Union and also assumes a consultative role in the development of EU policies. The CoR is involved in a range of issues, including decentralised cooperation for development. As above, the CoR has to be consulted by the Institutional Trio.

Competence

As a collection of states, the EU acts only upon the competences voluntarily bestowed upon it by member states, attributed to it in **Art. 5** of the *Treaty on the Functioning of the EU*. Thus, it cannot act beyond the powers conferred upon it in this treaty (***ultra vires***).

The EU has no *right* to competences because any power it has must be expressly decreed and agreed upon by member states. Thus, **competences which are not conferred upon the EU by the Treaties remain within the national domain of the Member States.** And adding unto this, any competences the EU maintains are bequeathed unto it by the Treaties (**Attributed Competences**). Thus, the Treaties are the **legal bases** for this competence.

The **2001 Laeken Declaration** produced **4 main proponents** to the reform process of competence:

1. **Clarity**
2. **Conferral**
3. **Containment**
4. **Consideration**

Art. 5 of the *TEU* states that Conferral denotes the fact that the **EU should function within the limits conferred upon it**, and that **it must have the power to, at least, carry out the functions stipulated in the TFEU**.

Before the **2009 Lisbon Treaty** however, it was still quite hard to outline the EU's competence. The mentioned treaty has spelled out the EU's competences, one by one.

The EU's degree of *power* depends on what is bestowed to it within Treaties; and can be of 3 types:

1. **Explicit Powers**: powers which are clearly defined in the Treaties. They must be clear and explicit. For example, the EU can regulate matters in the field of **competition policy**.

2. **Implied Powers**: do not derive from the Treaties, but from **CJEU** judgments. Notwithstanding the definition of competence asserted by the Lisbon Treaty, there is still some debate regarding the subject matter; thus arises the concept of Implied Competence, which has a **wide** and **narrow** interpretation. The CJEU accepts both interpretations:
   - **Narrow Interpretation of Implied Competence**: the existence of a given ***power*** in the treaties implies the existence of any other power that is reasonably necessary for the exercise of the former.

- **Wide Interpretation of Implied Competence**: the existence of a given ***objective*** implies the existence of power reasonably necessary to obtain said objective (ex. in the case of ***Germany*** vs ***Commission***).

The CJEU accepts both.

3. **Subsidiary Powers**: **Art. 352** of the TFEU contains a rule allowing the EU to adopt appropriate measures when, according to the treaties, it lacks competence. However, this may only be used as a legal basis if and only if the action envisaged is **necessary to attain an EU objective** and **does not breach the *vires* bestowed unto the EU** in the Treaties.

The EU's degree of *competence* may also be:

Internal Competence: used powers vis-à-vis between the member states.

External Competence: the EU's power to act on a global stage with third countries.

The main provisions stipulating the EU's competence are listed in **Art. 2** – **Art. 6** of the TFEU:

- **Exclusive competence**
- **Shared Competence**
- **Special Competence**
- **Supporting Competence**

Art. 4 of the *TEU* states that competences not conferred on the Union remain with the Member States.

CASE LAW: ***2006 Tobacco Advertising Case:***

This case outlines how the EU has the power of casting an Article bearing broad terms in a Treaty, irrespective of the degree of competence it has.

In 2006, the EU passed a directive banning all tobacco advertising and sponsorship within the EU.

The directive prohibited all forms of tobacco advertising in newspapers, magazines, and other printed media, as well as on radio and television.

The directive was challenged by several tobacco companies, including Philip Morris and British American Tobacco, who argued that it violated their right to free speech. However, in 2010, the European Court of Justice (ECJ) ruled that the directive was valid and did not violate the companies' rights.

The ECJ determined that the ban on tobacco advertising was necessary to protect public health and prevent young people from taking up smoking. The court also noted that the ban did not prevent tobacco companies from communicating with their customers through non-promotional means, such as product packaging and direct mail.

Due to its competence, the EU also implements market policies:

Market-Correcting policies (ex. common agricultural policy) aim to compensate for the of economic inequalities.

Market-Cushioning policies (ex. safety legislation) aim to limit the potentially harmful effects of the market on people and the environment. This also falls under *shared competence*.

Exclusive Competence

This connotes that there are areas wherein member states have agreed to grant the **EU exclusive power to legislate in those areas**. In other words, the EU calls the shots with regards to these areas. This does not necessarily mean that member states are excluded from these areas, but only if the EU allows them to do so.

Art. 3 of the *Treaty on the Functioning of the EU* maintains an exhaustive list on the competences of the EU, which is very categorical in order to avoid interpretation.

The EU has Exclusive Competence in:

- **The Customs Union** (specific to the *free movement of goods*, which aids in the removal of customs duties across borders, and establishes a common tariff for goods hailing from third countries)
- **Competition Rules**
- **Monetary Policy**
- **The Common Fisheries Policy**
- **Common Investment Policies**
- **Inclusion of Certain International Agreements**

The Principle of Subsidiarity does **NOT** apply to situations of Exclusive Competence.

For policies falling within the exclusive competence of the EU, the **impact assessment** is carried out by the **European Commission**, which is responsible for proposing new legislation and policy initiatives. **The Commission assesses the potential impacts of its proposals and prepares an impact assessment report**, which includes an analysis of the costs and benefits of the proposed action, the social and environmental impacts, and the potential impacts on trade and competition.

Shared Competence

"The Member States shall exercise their competence to the extent that the Union has not exercised its competence"

Competence shared between the EU and member states in certain areas; wherein both have the power to enact legislation. However, this might create confusion if no policy draws the line between the two.

The general rule is the member states may enact legislation in shared areas *only if the EU has not done so already*. Therefore, member states may not legislate if the EU has already legislated itself, thus connoting that over time, the shared portion of power belonging to member states diminishes.

Even so however, this does not mean that member states become completely powerless, because there are different ways the EU may intervene in different areas; for example, when enacting legal acts with the aim of achieving a minimum degree of harmonisation, meaning that member states have the power to go beyond that minimum degree of harmonisation – as long as they do not conflict with the desires of the EU.

Art. 4 of the *Treaty* provides a NON-exhaustive list of areas of shared competence:

- **The Internal Market**
- **Areas of Agriculture and Fisheries**
- **The Environment**
- **Consumer Protection**
- **Transport**
- **Energy**
- **Justice and Home Affairs**

Art. 4 (3) and **(4)** decrees that the Union has the competence to carry out activities in certain areas, but this does not necessarily deny member states the right to carry out *their* own activities either.

The **Principle of Subsidiarity** stipulated in **Art. 5** explains that, under this tenet, and in areas which do NOT fall under *exclusive* competence, the EU has to provide a justification for why it is legislating thus asserting that the Union shall act if and only if the aims of the proposed actions cannot be achieved by member states on their lonesome, but may only be achieved through means emanating from Union level. Naturally, the EU does not need to justify its actions with regard to exclusive competencies.

Therefore, the EU is able to intervene only if its actions are more impactful than domestic efforts. These 3 questions must be considered before the EU takes action in shared competency areas:

1. **Does the action require going beyond the nation state's powers?**
2. **Does the action go against or beyond the objectives of the EU?**
3. **Does the action bearing EU-level have clear advantages?**

For policies falling within the shared competence of the EU and its member states, the impact assessment is conducted ***jointly*** by the **European Commission** and the **member states**. The **Commission prepares a draft impact assessment report**, which is then **reviewed and discussed by the member states**.

The Impact Assessment strategy therefore constitutes a framework within which to address concerns as to **competence anxiety**.

NB: "**Competence anxiety**" is a term used to describe the concerns and fears that some member states of the EU have about the **potential loss of sovereignty and control** as the EU exercises its competences in various policy areas.

The EU has gradually gained more authority in areas such as trade, agriculture, and environmental policy, thus making itself seem potentially intimidating in the eyes of member states. Some member states, in fact, have expressed concerns about the potential for the EU to overstep its bounds and interfere in areas that they believe should remain under national control.

These concerns are often referred to as "competence anxiety." This anxiety can take different forms, such as fears of losing national sovereignty, concerns about the perceived democratic deficit of the EU, or worries about the potential economic costs of EU regulations and policies. Competence anxiety can also arise from differences in political and cultural traditions between member states, which can make it difficult to reach consensus on certain issues.

Competence anxiety is a complex issue that **reflects the tension between the EU's supranational ambitions and the desire of member states to maintain control over their own affairs**. To address these concerns, the EU has developed various mechanisms to ensure **transparency**, **accountability**, and **democratic legitimacy in its decision-making processes**. However, competence anxiety remains a significant challenge for the EU as it seeks to balance the competing demands of integration and national sovereignty.

Special Competence

This falls between the areas of Shared Competence and Supporting Competence and is divided into 2:

1. The Competence of the EU **to provide arrangements for the coordination of economic and social policies between member states**.
2. The Competence of the EU **to define and implement a common foreign and security policy**.

This Special Competence is erected mostly due to political reasons because the above divisions are very sensitive in nature when it comes to the adjudicational stance assumed by governments of member states. This are of competence thus falls within the conundrum of attempting to give EU the right amount of power – not too much, but not too little.

Supporting Competence

This means that member states have agreed to grant EU competence to carry out actions that **support**, **coordinate**, or **supplement** their actions in certain areas. However, the actions carried out by the EU in supporting competence cannot entail the harmonisation of member state laws, because the harmonisation of laws would be too intrusive for a 'supporting' competence.

Art. 6 contains the areas wherein the EU has this supporting role:

- **The Protection and Improvement of Human Health**
- **Culture**
- **Education**
- **Tourism**
- **Industry**
- **Civil Protection**
- **Administrative Cooperation**

The EU may thus issue **guidelines on best practices of these areas**, issue soft laws, monitor, and adopt legally binding acts (which may not interfere with the harmonisation of member state laws).

The **Principle of Proportionality** and the **Principle of Subsidiarity** also applies to this area.

Principles

Prior to the Lisbon Treaty, there was no real mechanism which monitored the Union for infringement of the subsidiarity principle (**Art. 5** *TEC*). The Commission merely had an obligation to *observe* the subsidiarity principle when preparing its draft legislation. In 1993 this obligation was also extended to the European Parliament and the Council through the Maastricht Treaty.

Subsidiarity regulates the exercise of competence. This principle was first introduced in the **Maastricht Treaty**, and contains **3 main features**:

1) The EU should take action only if the objectives of **such action could not be sufficiently achieved by the Member States**.

2) The envisioned action is **necessary.**

3) If the EU takes action, **then this action should not go beyond what is necessary to achieve the Treaty objective**.

Therefore, decisions should be made at the **lowest possible level of government**, while the higher levels should only intervene when necessary.

In essence, this also diverges with the **Principle of Proportionality** (not having the EU have more power than expressed in the Treaties).

A revised version of the Principle of Subsidiarity is contained in the **Lisbon Treaty**. Subsidiarity decides, where the jurisdiction of a member state and the EU diverge, at which level policy decisions will be made.

The **preamble** to the TEU suggests that **Subsidiarity requires that decisions should be taken as closely as possible to the citizen**; and the principle of subsidiarity itself can be found in **Art. 5** of the **TFEU**, **Art. 4** of the **TEU**, and **Protocol 2** on the **Application of the Principles of Subsidiarity and Proportionality.**

The Principle of Subsidiarity does **NOT** apply if the Union is exercising exclusive competence. Moreover, the **1993** ***Inter-Institutional Agreement on Procedures for Implementing the Principle of Subsidiarity*** requires EU institutions to consider the Principle of Subsidiarity when drafting EU legislation.

Ultimately, the 2009 Lisbon Treaty distinguishes between the *existence* of competence and the *use* of competence. Thus, Subsidiarity is intended to **balance powers between Member States and EU institutions**. It has both a **substantive** and a **procedural** dimension.

The ***substantive*** dimension is the **comparative efficiency calculus** which is a detailed statement containing the financial impact of proposals, assessing whether the envisaged objective can be better achieved at EU level (rather than by the Member State).

The ***procedural*** dimension consists of **obligations to consult national Parliaments, not only EU institutions**. National Parliaments can send their feedback, which should be considered by EU institutions. However, this does not mean that the powers of national Parliaments have been *added*.

The 2018 Swedish Match has shown that the CJEU is starting to give more importance to Subsidiarity, and that judicial review can become more intensive.

Ultimately, **The Subsidiarity Protocol** imposes an obligation on the **Commission to consult widely before proposing legislative acts**.

The most important innovation in the Subsidiarity Protocol is **the enhanced role for national parliaments**. The Commission must send all legislative proposals to the national parliaments at the same time as to the Union institutions. Thus, a national parliament may, within 8 weeks, send the Presidents of the Commission, European Parliament, and Council a reasoned opinion as to why it considers that the proposal does not comply with subsidiarity. The European Parliament, Council, and Commission must take this opinion into account.

The Yellow Card Mechanism: This is when a reasoned opinion is sent to the EU institutions stating why there are any concerns of an infringing of subsidiarity. If this is agreed upon by one-third of national parliaments, the Commission will thus have to revise its proposition. The Commission will then decide to maintain, amend, or withdraw the proposition, and give a reason to their decision.

The Orange Card Mechanism: Where EU **ordinary legislation** is made, and at least a simple majority of votes given to national parliaments signals non-compliance with subsidiarity, then the proposal must once again be reviewed. And although the Commission can decide NOT to amend it, the Commission must provide a reasonable opinion on the matter, and this can, in effect, be overridden by the European Parliament or the Council.

With regards to these mechanisms however, the **Right of Initiative** belongs *only* to the **Commission** and it cannot be forced into providing a legislative proposal.

While the Subsidiarity Protocol imposes obligations on the Commission to ensure compliance with the principles of subsidiarity and proportionality, national parliaments are afforded a role only in relation to the former and not the latter.

The opinion submitted by the national parliament must relate only to subsidiarity. This is regrettable, as Weatherill rightly notes, since it is difficult to detach the two principles, and there is little reason why national parliaments should not be able to submit a reasoned opinion on proportionality as well as subsidiarity.

From a **political perspective** however, Subsidiarity has its risks - as it can lead to **regulatory failure**. One reason for this is that different countries within the EU may have **different standards and regulations in place**, which can lead to a **lack of consistency** and coherence in EU policies.

For example, if one country has weak environmental regulations, and a company in that country is allowed to pollute the environment, then this leads to having negative impacts on neighbouring countries. The principle of subsidiarity may ***prevent*** **the EU from intervening** in such a case, as it may be seen as a matter for the country to handle. This can lead to a regulatory failure, as the company may continue to pollute without any consequences.

"We must kill off the idea that the Member States and the EU level are rivals. Everyone should be working to the same goal—to secure the best results for citizens."

JM Barroso

The development of impact assessment is significant in this context. It includes the **subsidiarity calculus**, with a specific section devoted to the verification of the EU's right of action. This is a positive step, which facilitates scrutiny, and thus, **judicial review**.

Furthermore, the principle of subsidiarity can also lead to **a lack of coordination and cooperation** between different levels of government. This can result in policies that are ineffective, as they may not take into account the perspectives and needs of all stakeholders.

Finally, it might be argued that the existing subsidiarity principle is defective, and that the focus should be on **whether the EU norm violates *proportionality* by infringing too greatly on Member State values**.

The **Principle of Solidarity and Sincere Cooperation** asserts that the Union and the Member States shall, **assist each other** in carrying out tasks which flow from the Treaties (ex. in *monetary policy*).

The **Principle of Transparency** states that any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a **right of access to documents of the institutions**, bodies, offices and agencies of the Union.

EU Rule of Law

The EU is founded on the values of **respect for human dignity**, **freedom**, **democracy**, **equality**, the **rule of law**, and **respect for human rights**. This envelopes the **constitutional profile** of the EU.

Moreover, this constitutional profile supplement the presumption that member states will adhere to the values stated above. This **presumption of adherence** is essential for the EU's legal order as it, *inter alia*, allows for trust between all national institutions.

Fundamentally, **Dicey's Rule of Law** within the EU exhibits the principle of having anyone and everyone being equally subjected to the law, regardless of their social status. Moreover, the Rule of Law ensures the separation of the judicial sector from the other organs of the state through full independence and impartiality.

> ***"Be you ever so high, the law is above you".***
>
> **Lord Alfred Denning**

Thus, the Rule of Law preserves the inherent nature of **Liberal Democracy** within EU member states, and is the legal basis upon which the EU functions.

However, the Rule of Law within the EU is being compromised by certain member states; especially **Poland** and **Hungary** – of whose Rule of Law impingements affect the European single market *and* competition law as a whole.

Poland and Hungary score lowest in the **V-DEM Liberal Democracy Index**, because they infringe upon the inherent principles revolving around liberal democracy, namely:

- **Free and Fair Elections**
- **Freedom of Speech**
- **Protection of Journalists and The Media**
- **Academic Freedom**
- **Principle of Legality**

Hungary

The **populist playbook** is in fierce effect in Hungary, giving the impression that the populist politician is striving to battle in the name of the 'pure people' against the 'corrupt elite'. Thus, this also instils a dogma crossing swords with that of the Rule of Law**;** the **Rule *by* Law** – which is the exercise of using the law to help oneself to power.

Hungary's liberally democratic demise was ushered by the employment of **anti-EU rhetoric**, which, apart from being misinforming to citizens, is made to sound saccharine and appealing – especially to those who are not politically savvy.

Hungary's Rule by Law also taints the courts, which in itself, is an act impinging the inherent tenet of the Rule of Law, because it annihilates any independency and impartiality from the courts' behalf. But how was this executed?

The Hungarian government reduced the retirement age of judges from 70yrs to 62yrs, thus meaning that the older and more experienced judges were now shooed off and replaced by new and corrupt judges who are NOT impartial and NOT independent, and may consequently push the government's Rule by Law agenda.

Moreover, the Hungarian government is fiercely focused on the Higher Courts, because to have control over the superior courts connotes having control over almost any judgement and appeal.

Poland

In Poland, a **Disciplinary Chamber** was added to the supreme courts; of whose function was solely that of rebuking judges in other divisions were they to be deemed undesirable in their actions. Thus, this means that corrupt judges working in the Disciplinary Chamber have the competence of reprimanding judges who do not abide by the government's agenda, blackmail other judges, and intervene in cases to ensure that the government's desires are continually met. And to make matters worse, the judges working in the Disciplinary Chamber are elected by officials who are NOT independent and impartial from the government.

Moreover, the Polish government does not hesitate in suing *public* and *academic* intellectuals for defamation for giving an educated opinion on the undesirable state of affairs in Poland. This produces a **chilling effect**, because through this action, the government forewarns the public that it is not afeared of prosecuting people for whichever reason it deems worthy, regardless of their qualifications and status.

EU Competence

The EU strives to preserve the Rule of Law within its member states by employing the **Three R's**: **Purse**, **Press**, and **Parties**.

Purse:

This tactic entails that if an EU member state is considered to have neglected EU law, then the EU will not hesitate to cut funds flowing to the transgressing country. For instance, Hungary is currently being denied €30 billion.

2 new regulations in the EU link the privilege of receiving EU funding with one's compliance with the basic values of the EU – the **Conditionality Regulation** and the **RRF Regulation**. In the Conditionality Regulation, the EU Council decided to suspend 55% of 3 cohesion funds and all monies flowing through 'public interest trusts' in Hungary.

Press:

The European Commission has labelled the compromise of the press as a danger to EU democracy, as well as it being a grave internal market issue.

The **European Media Freedom Act** was established in order to resolve internal market issues related to the press. For instance, every person has the right to vote for their national MEPs, but to do so, one must first be learned about certain EU-related situations.

The press is there to render one's vote as informed with regards to the people it is going to be given to. Therefore, tainting the press would thus taint the people's vote. Informed voters are only those who know all sides of the political climate they are voting in, and information is not only a right, but also something we pay for as taxpayers.

Examples of media freedom include the pending '**Klubradio'** case and the pending '**Child Protection Law** vs **LGBTIQ'** case in Hungary.

Parties

This refers to rules applying to national parliamentarians which stipulate that they must work in tandem with at least 25% of other parliamentarians within the EU. This keeps a solid stream of democratic principles flowing within EU member states.

Other political tools employed by the EU in the face of conundrums compromising the Rule of Law is **Art. 7** of the *Treaty on EU Procedure*. Moreover, the **Commission Annual Rule of Law Report** also acts as a political tool which ensures that compliance of basic EU values is being adhered to in member states. The European Council may even veto voting rights of member states in order to mitigate the chances of having biased votes (ex. Poland voting for Hungary and vice versa).

> ***"Member states shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law."***
>
> **Art. 19** of the *Treaty on EU Procedure*

Legal remedies include **Infringement Cases** (where the EU Commission sues a member state for violating EU law under **Art. 258** and **Art**. **260** of the *Treaty on EU Procedure*; ex. cases against Poland's Disciplinary Chamber and the 'Muzzle Law'), **Actions for Annulment**, and **References for Preliminary Rulings**.

> **NB**: the EU Commission rarely sues member states for the simple reason that in doing so, the EU Commission puts a bullet in the head of the relationship between itself and the member state it is suing.

Ultimately, member states may only guarantee the preservation of the Rule of Law *if and only if* the judicial organ is always impartial and independent. Every single judge in the EU may make a question to the EU with regards to interpretating cases appurtenant to the Rule of Law. **National judges are thus a very powerful ingredient in the EU**.