

BUSINESS LAW - EC INTERNAL MARKET LAW
for students of the MBA program of the Faculty of Economics and Management

Additional material 1

The Law of the European Union

- **Terminology:** The whole of the law of the European Union is called the *Union law*. The *Community law* is the most important part of it. It is the law of the European Communities (European Community [EC] and European Atomic Energy Community [EURATOM]). The term *European law* describes all the law of all European international and supranational institutions, including the statute of the Council of Europe, the European Convention (Convention for Protection of Human Rights and Fundamental Freedoms) and other international treaties which have been prepared by the Council of Europe). The law of the European Union is by far the largest and most important part of European law.

A. The sources of Union law

I. Primary law

- corresponds to the constitutional law in a constitutional state
 - enjoys primacy vis-à-vis secondary law
 - is the basis for secondary law
- 1) The founding treaties (EU-Treaty, EC-Treaty, EURATOM-Treaty)
 - include the relevant protocols (which are parts of the treaties)
 - 2) General principles of law
 - unwritten parts of Union law, "discovered" by the European Court of Justice
 - in particular principles reflecting aspects of the rule of law (principle of proportionality etc.) and fundamental rights
 - 3) Complementing customary law (rare) and general rules of international law (DISPUTED.)

II. Secondary law

- the law that has been created by the institutions of the European Communities, based on the primary law
 - no sources of law: decisions in the context of the Common Foreign and Security Policy or the Judicial Cooperation in Criminal Matters (art. 12 et. seq., 34 EU-Treaty); these decisions are binding but no legal norms
- 1) Regulation (art. 249 sub-section 2 EC-Treaty)
 - general rules with *direct effect* in the member states
 - corresponds to an act of parliament in national law
 - 2) Directive (art. 249 sub-section 3 EC-Treaty)
 - general rules that first have to be *implemented in the legal order of the member states*
 - binding, as to the result to be achieved, but leaves the choice of form and methods to the national authorities
 - corresponds to framework legislation in national law
 - there are various precautions in Community law to assure their effective compliance (obligation to implement by law, obligation to interpret the national law in conformity with the directions, direct application and state liability in case of late or inadequate implementation)
 - 3) Decision (art. 249 sub-section 4 EC-Treaty)
 - binding regulation in an individual case; binding only upon those to whom it is addressed
 - corresponds mainly to an administrative act in national law
 - 4) Recommendation and opinion (art. 249 sub-sect. 5 EC-Treaty)
 - not legally binding
 - 5) Other legal acts
 - international treaties concluded by the European Communities
 - decisions according to special provisions in the Founding Treaties

B. The characteristic features of Union law

I. Autonomy

- a separated legal order (apart from the legal orders of the member states; apart from international public law [DISPUTED])
- autonomous vis-à-vis the national law of the member states, but dependent on the will of the community of all member states as a whole (the so-called "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

IV. Primacy over national law

- primacy in application, no (hierarchical) primacy in validity: conflicting national law must not be applied but is not void
- also primacy over national constitutional law

C. The execution of Union law

I. As a rule: Execution by the member states

1) Indirect execution by the member states

- in particular: indirect execution of directives
- first implementation in the national legal order, then execution of the relevant national law

2) Direct execution by the member states

- in particular: direct execution of regulations and decisions
- execution of the European legal norm without intermediate national law

II. As an exception: Execution by the Union

- in particular in the field of competition law (art. 81 et seq. EC-Treaty), when monitoring state aids (art. 87 et seq. EC-Treaty) and when managing European funds
- mostly by the European Commission