

# European Union Law

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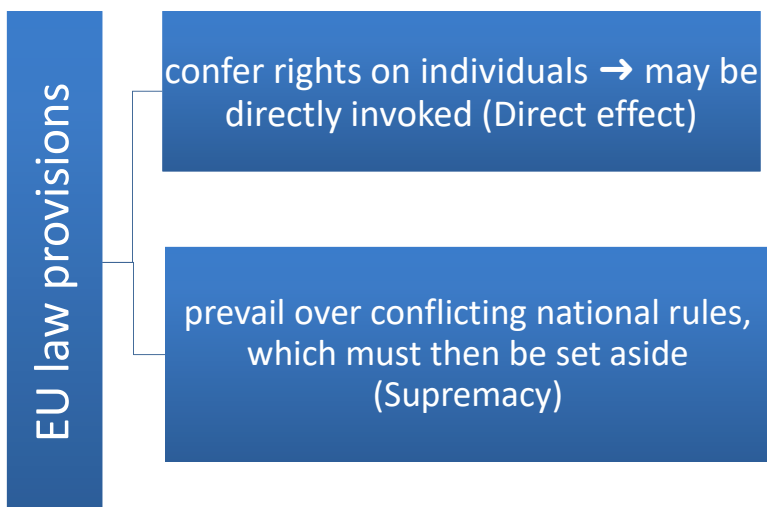
## **Judicial protection in the EU B) (Decentralised) European procedures: (i) procedural autonomy of Member States and its limits**

Lesson No 24

*“National courts are the principal judicial enforcers of EU law”*

**DECENTRALISED NATIONAL PROCEDURES & COOPERATIVE FEDERALISM**

## National courts and EU law

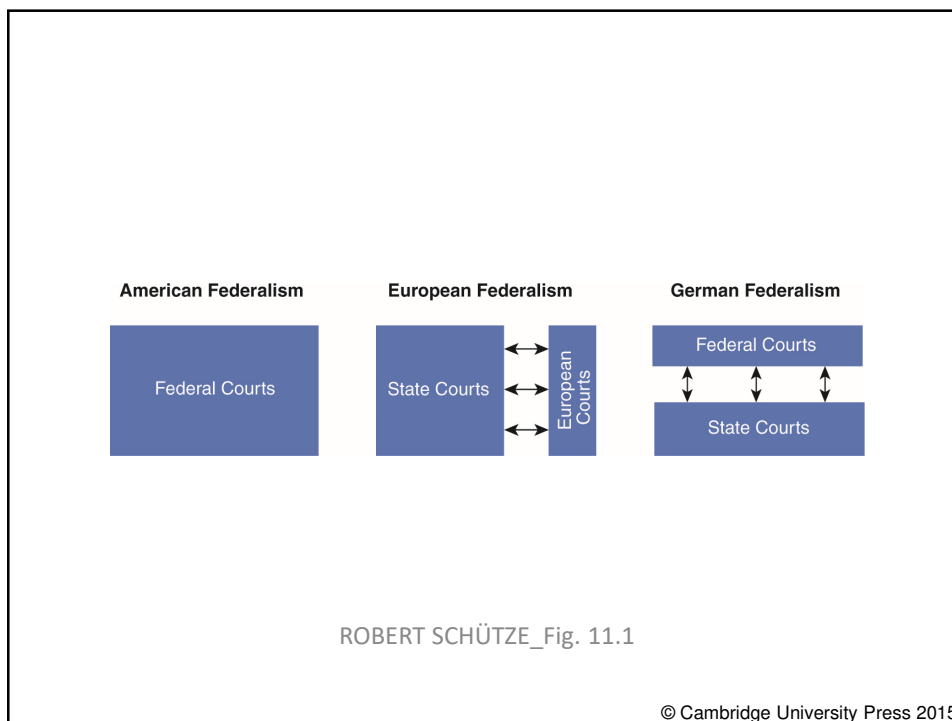


## National courts and EU law



## National courts and tribunals

- A) From a **functional** perspective, national courts are decentralised 'European' courts → they have to interpret and apply EU law
- B) From an **institutional** perspective, national courts are national bodies only → they are distinct and there is no institutional bridge from the national courts to the CJEU: decision of national courts cannot be appealed or reviewed by the CJEU
- C) The preliminary reference procedure is the judicial cornerstone of the Union's cooperative federalism → it combines the central interpretation of EU law by the CJEU with the decentralised application of EU law by national courts



## Relevant provisions

- Duty of sincere cooperation – Art 4(3) TEU: *“MS shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union ...”*  
→ it applies also to the courts as national bodies
- Art 19(1) TEU: *“MS shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law”*
- Art 47 Charter: *“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article ...”*

## A decentralised system of judicial enforcement

- it is the task of national courts to protect rights which individuals derive from the direct effect of EU law
- (to this end) national courts must interpret and apply EU law provisions, giving them full effect
- Effective protection of rights means that (effective, adequate?) remedies must be provided for → what are the **procedural and substantive conditions** for the exercise of the EU rights?

## **PRINCIPLE OF NATIONAL PROCEDURAL (AND SUBSTANTIVE) AUTONOMY**

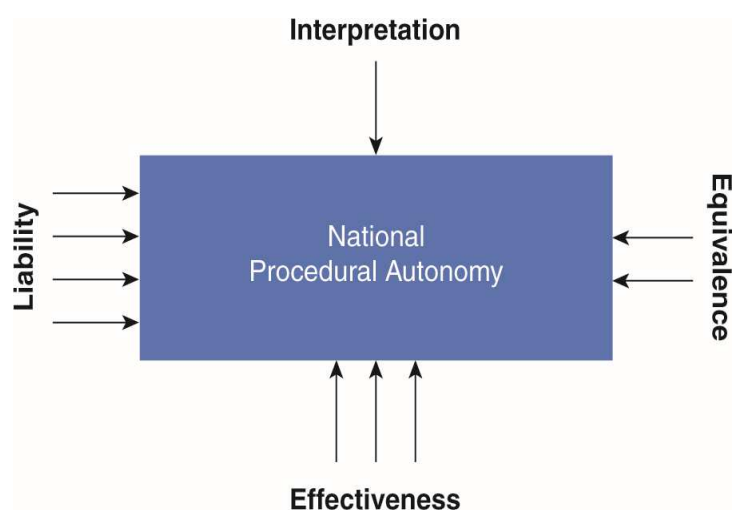
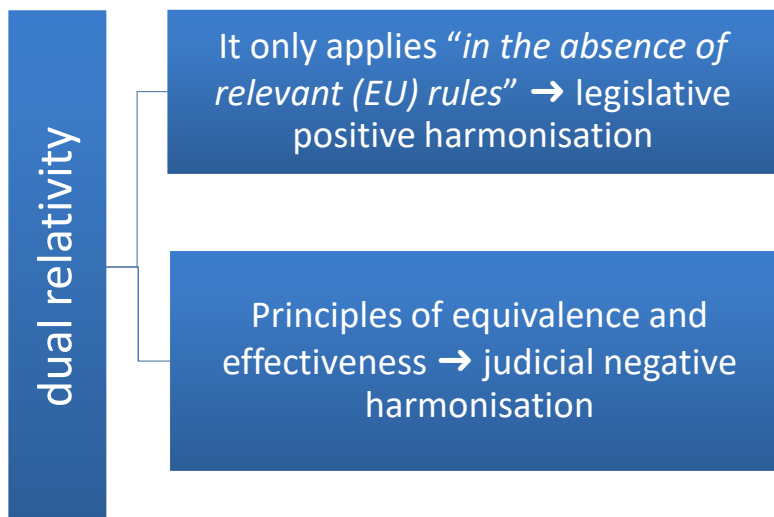
## A decentralised system of judicial (i) enforcement of EU law and (ii) protection of EU-based rights

Settled case-law of the CJEU –

- *“it is for the domestic legal system of each MS to designate the courts having jurisdiction and to determine the procedural conditions governing actions at law intended to ensure the protection of” EU rights*
- *“the right conferred by (EU) law must be exercised before the national courts in accordance with the conditions laid down by national rules”*
- *“the detailed procedural rules designed to ensure the protection of (EU individual rights) are a matter for the domestic legal order of each MS”*

Rights	Remedies	Procedural and substantive conditions
What private interests are protected by the (EU) law?	How are those rights protected? What if they are infringed?	How and under which conditions can the remedies be enforced?
Examples <ul style="list-style-type: none"> <li>• Consumer’s right not to be bound by unfair terms</li> <li>• Right not to be discriminated on nationality grounds</li> <li>• Right to freely carry out an economic activity in other MS</li> </ul>	<i>(ex ante or ex post remedies)</i> Examples <ul style="list-style-type: none"> <li>• Contractual remedies: invalidity</li> <li>• Interim relief</li> <li>• Injunctive relief</li> <li>• Compensation of harm suffered</li> </ul>	Examples <ul style="list-style-type: none"> <li>• Courts’ jurisdiction</li> <li>• Court’s power or duty to assess of its own motion (ex officio) whether the law has been breached</li> <li>• Limitation period</li> <li>• Damages quantification</li> </ul>

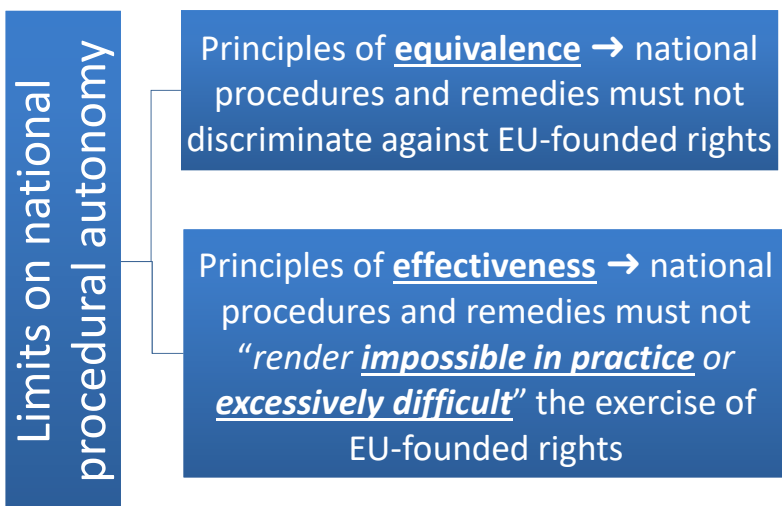
## National procedural autonomy



ROBERT SCHÜTZE\_Fig. 11.2

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## Negative & Judicial Harmonisation



Rights	Remedies	Procedural and substantive conditions
<p>granted by EU law</p> <ul style="list-style-type: none"> <li>• either directly (EU directly applicable rules)</li> <li>• or indirectly → EU directives when the result prescribed by them entail the grant of rights to individuals (namely towards other individuals)</li> </ul>	<ul style="list-style-type: none"> <li>❑ <u>harmonised by EU legislative acts</u>: ex. <ul style="list-style-type: none"> <li>• ‘IPR Enforcement Directive’ 2004/48/EC</li> <li>• ‘Injunctions Directive’ 2009/22/EC</li> <li>• ‘Private Antitrust Enforcement’ Directive 2014/104/EU</li> </ul> </li> <li>❑ If not, <u>a matter for the domestic legal order of each MS</u> → National Procedural Autonomy</li> <li>❑ <u>harmonised</u>, to a minimum extent, <u>by the EU judiciary</u> → State (but also private?) liability for breach of EU law: a European remedy of last resort</li> </ul>	



European remedies for breach of EU law

## **THE LIABILITY PRINCIPLE**

### **Conditions for State Liability**

Individuals who have been harmed have a right to reparation if three conditions are met:

- (i) the rule of EU law infringed must be intended to confer rights on them;
- (ii) the breach of that rule must be sufficiently serious; and
- (iii) there must be a direct causal link between that breach and the loss or damage sustained by the individuals (the plaintiffs)