

# **European Union Law**

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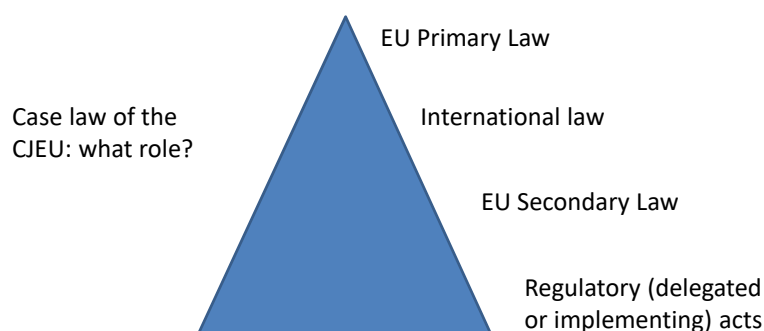
## **The sources of EU law: (i) primary law and general principles**

Lesson No 9

## Hierarchy of norms

EU has its own legal system, independent both from the international legal order and from the domestic legal systems of the MSs

As such, the EU legal order has its own sources of law → hierarchy of norms: each source has its own place in the hierarchical pyramid



## Hierarchy of norms and Rule of law

- Hierarchical relationship between different sources of EU law → the lower norm is subordinate to the upper one
- Who is to arbitrate? → judicial review → it is for the CJEU to scrutinise whether EU norms comply with sources upstream → rule of law (cf. Art 2 TEU)
- Is the CJEU empowered to rule on the validity of the founding Treaties? → Case C-370/12, *Pringle* (as to the compliance with the simplified revision procedures)

At the apex of the pyramid

## **THE EU PRIMARY LAW**

Primary law consists of

- a) Sources of written law
  - i. Founding Treaties
  - ii. Charter of Fundamental Rights of the EU
  - iii. Protocols and Annexes
  - iv. Treaties revision
- b) Sources of unwritten law → the general (or fundamental) principles of EU law developed in the case law of the CJEU

## Sources of written law

### i. Founding Treaties

- a) EU, that replaced and succeeded EC, is founded on two treaties, **TEU** and **TFEU**, having the same legal value: Art 1 TEU, Art 1(2) TFEU
- b) EAEC (Euratom) is founded on its own Treaty

### ii. Charter of Fundamental Rights of the EU – it has the same legal value as the Treaties: Art 6(1) TEU

### iii. Protocols and Annexes – they form “*an integral part of*” the Treaties: Art 51 TEU →

- Protocol (No 1) on the role of national Parliaments in the EU
- Protocol (No 2) on the application of the principles of subsidiarity and proportionality
- Protocol (No 3) on the Statute of the CJEU
- Protocol (No 4) on the Statute of the ESCB and ECB

## Treaties revision

### I. Revision procedures for amending the Treaties: Art 48 TEU

- a) Ordinary (and general) revision two-stage procedure: Convention + IGC → int'l agreement
- b) 3 simplified revision procedures
  - i. Art 48(6) TEU – revision of Part Three TFEU
  - ii. Art 48(7) TEU – Council voting rule (from unanimity to QM); legislative procedure (from special to ordinary)
  - iii. Miscellaneous specific revision procedures: ex. Arts 25, 81(3) TFEU

### II. Accession to the EU of a new MS: Art 49 TEU → final stage: agreement between old and new MSs

### III. Withdrawal of a MS from the EU: Art 50 TEU

## The dual nature of the founding Treaties

**A) International agreements** entered into between sovereign States → what about simplified revision?

**B) Basic Constitutional Charter** of the Union (see lastly Opinion 2/13, para. 163)

→ “*the [Union] is based on the **rule of law**, inasmuch as neither its Member States nor its institutions can avoid review of the conformity of their acts with the basic constitutional charter, [the Treaties], which established a complete system of legal remedies and procedures designed to enable the Court of Justice to review the legality of acts of the institutions*”: Joined Cases C-402/05 P and C-415/05 P, *Kadi*

## Differences in the nature of Treaties’ provisions

**A. Procedural** provisions:

- Art 16 TEU: the Council
- Art 293 et seq TFEU: procedures for the adoption of acts
- Art 12 TFEU on consumer protection requirements

**B. Substantive** provisions:

- Art 18 TFEU: discrimination on ground of nationality
- Art 20 TFEU: EU citizens’ rights
- Art 45 TFEU: free movement of workers
- Arts 101 and 102 TFEU: competition law