# European Union Law

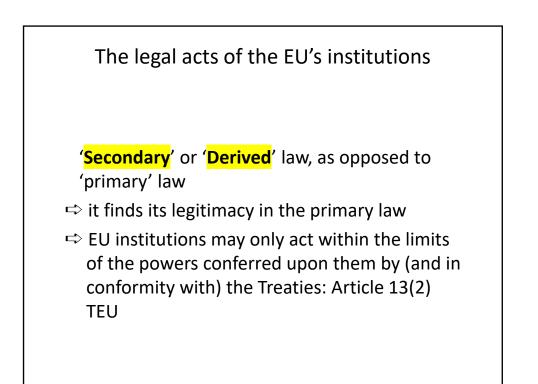
Prof Dr Gaetano Vitellino

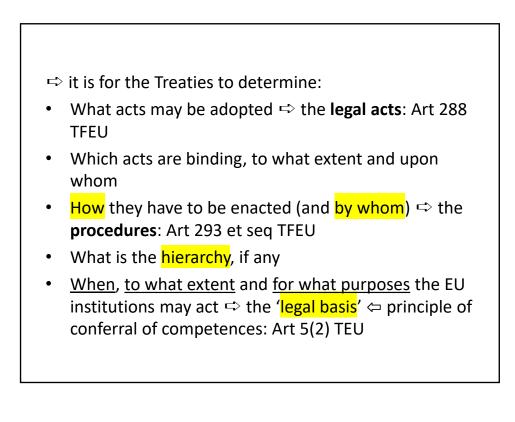
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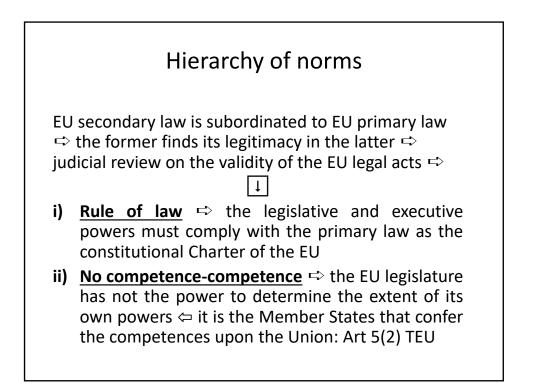
A.Y. 2018-2019

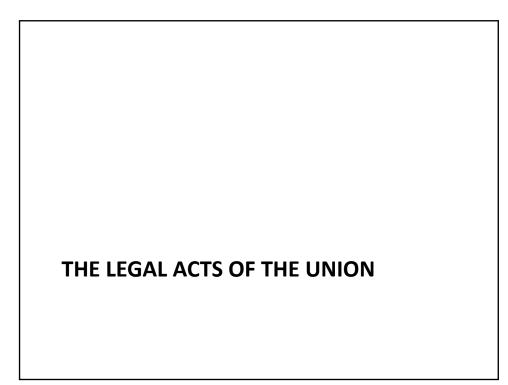
The sources of EU law: (iii) secondary law

Lesson No 11









## Art 288 TFEU

- regulations
- directives
- decisions
- recommendations and opinions"

#### Distinctions to be drawn

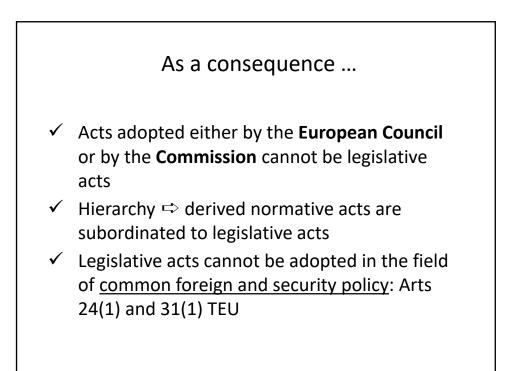
- A) Legally binding acts 
   ⇒ regulations, directives and decisions
- B) Non-binding acts ⇒ recommendations and opinions
- A) Legislative acts ⇒ any act adopted by legislative procedure: Art 289(3) TFEU
- B) Non-legislative acts ⇒ any act other than legislative acts
- (this latter distinction has been introduced by the Lisbon Treaty)

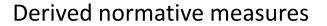


Legislative procedure ➡ legislative powers conferred on European Parliament and Council only ➡ these acts are adopted either

- a) Jointly by EP and Council 
   ⇒ Ordinary

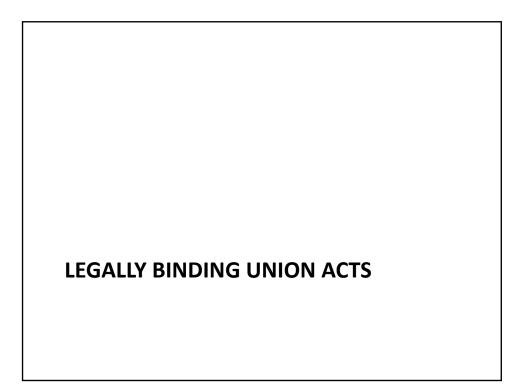
   legislative procedure: Arts 289(1) and 294
   TFEU
- b) By the EP with the participation of the Council or vice versa ⇒ <u>Special</u> legislative procedure: Art 289(2) TFEU

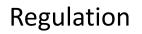




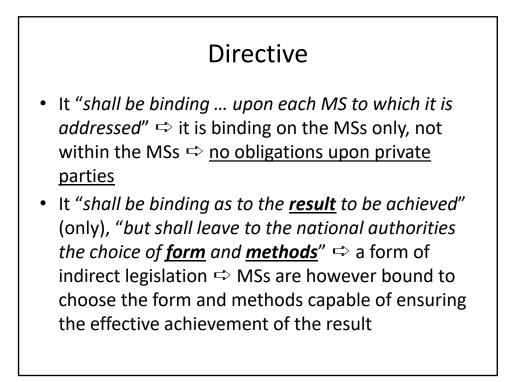
Non-legislative acts explicitly mentioned in the Treaties (post-Lisbon)

- i) 'Delegated' acts: Art 290 TFEU ⇒ non-legislative acts of general application adopted by the Commission "to supplement or amend certain <u>non-</u> <u>essential elements of the legislative act</u>"
- ii) 'Implementing' acts: Art 291 TFEU ⇒ non-legislative acts adopted by the Commission, or exceptionally by the Council, "where uniform conditions for implementing legally binding Union acts are needed" ⇐ it works as an exception: see Art 291(1) TFEU



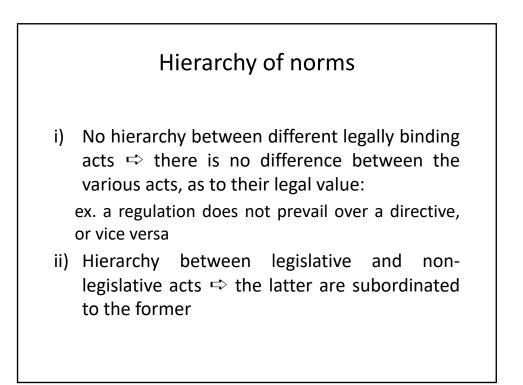


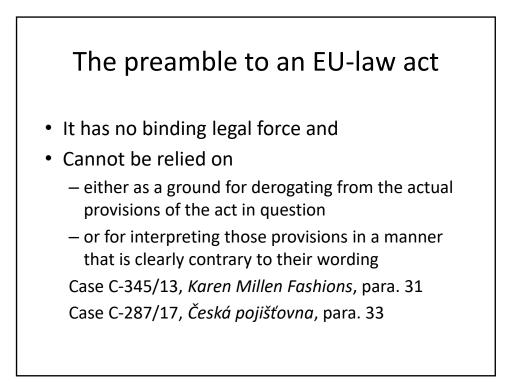
- It "shall have general application" 
  → it is the equivalent of a statute or law in the national legal order
- It "shall be binding in its entirety" 
   ⇔ though MSs may be required to adopt implementing provisions 
   ⇔ Art 291(1) TFEU: "MSs shall adopt all measures of national law necessary to implement legally binding Union acts"
- It is "directly applicable in all MSs" 
  → MSs are prevented from adopting national measures to give effect to a regulation, as this would disguise the EU character of the act



# Decision

- It "shall be binding in its entirety"
- It may be:
- a) either of general application
- b) or it may "specifies those to whom it is addressed" (including private parties) ⇒ in such a case, it "shall be binding only on them" ⇒ if it imposes a pecuniary obligation on persons other than States, it shall be <u>enforceable</u> within the MSs; enforcement shall be governed by the rules of civil procedure of the MS in the territory of which it is carried out: Art 299 TFEU





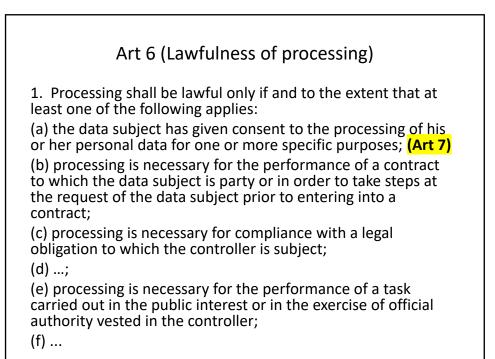


## REGULATION (EU) 2016/679 OF 27 APRIL 2016 (GENERAL DATA PROTECTION REGULATION)

Art 5 (Principles relating to processing of personal data)
1. Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');
(b) ... ('purpose limitation');
(c) ... ('data minimisation');
(d) ... ('accuracy');
(e) ... ('storage limitation');
(f) ... ('integrity and confidentiality').

2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accuntability').



#### Art 6 (Lawfulness of processing)

2. Member States may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to processing for compliance with points (c) and (e) of paragraph 1 by determining more precisely specific requirements for the processing and other measures to ensure lawful and fair processing including for other specific processing situations as provided for in Chapter IX.

3. The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by:

(a) Union law; or

(b) Member State law to which the controller is subject...



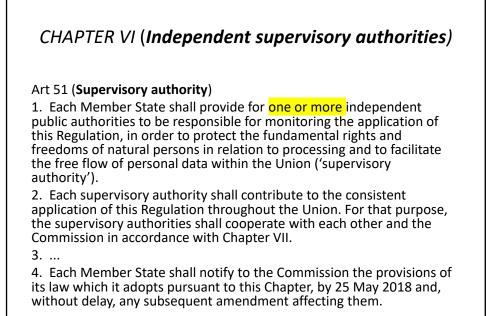
Art 12 (Transparent information, communication and modalities for the exercise of the rights of the data subject)

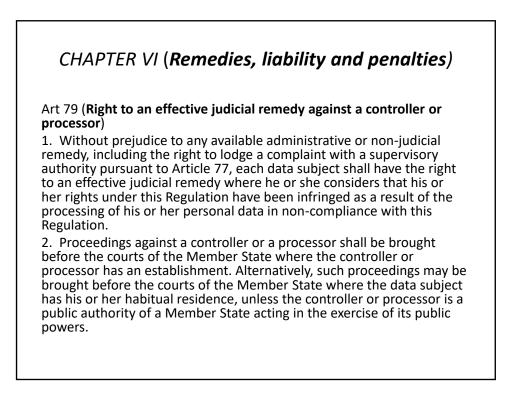
Art 13 (Information to be provided where personal data are collected from the data subject)

Art 15 (Right of access by the data subject)

Art 16 (Right to rectification)

Art 17 (Right to erasure ('right to be forgotten'))





#### Art 78 (Representation of data subjects )

1. The data subject shall have the <u>right to mandate</u> a not-for-profit body, organisation or association which has been properly constituted in accordance with the law of a Member State, has statutory objectives which are in the public interest, and is active in the field of the protection of data subjects' rights and freedoms with regard to the protection of their personal data (i) to lodge the complaint on his or her behalf, (ii) to exercise the rights referred to in <u>Articles 77, 78 and 79 on his or her behalf</u>, and (iii) to exercise the right to receive compensation referred to in Article 82 on his or her behalf where provided for by Member State law.

## Art 78 (Representation of data subjects )

2. Member States <u>may</u> provide that any body, organisation or association referred to in paragraph 1 of this Article, independently of a data subject's mandate, has the right to lodge, in that Member State, a complaint with the supervisory authority which is competent pursuant to Article 77 and <u>to exercise the rights</u> <u>referred to in Articles 78 and 79</u> if it considers that the rights of a data subject under this Regulation have been infringed as a result of the processing.