

European Union Law

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The institutional structure of the EU

Lesson No 6

The European Union is ...

... a new '**legal entity**' on which the MS have conferred competences to attain objectives they have in common – Art 1 TEU

It actually consists of "*an **institutional framework** which shall aim to promote (the) values (of the EU), advance its objectives, serve its interests, those of its citizens and those of the MS, and ensure the consistency, effectiveness and continuity of its policies and actions*" – Art 13 TEU



A set of bodies (the "institutions") vested with governmental 'powers' or functions

The Union's institutional framework

Article 13.1 TEU (Lisbon):

The Union's institutions shall be:

- the European Parliament,
- the European Council,
- The Council,
- the European Commission (hereinafter referred to as 'the Commission'),
- the Court of Justice of the European Union,
- the European Central Bank,
- the Court of Auditors.

THE 'SEPARATION-OF-POWERS' PRINCIPLE AND THE EU

The governmental 'powers' or functions

The 'classic trinity' of powers ← Montesquieu –

- 1) **Legislative**: to make laws
- 2) **Executive**: to propose and implement laws
- 3) **Judicial**: to arbitrate laws (solving disputes)

Additional powers (recognised by modern constitutions) –

- 4) **External**: foreign relations (it lies in between legislative and executive powers)
- 5) Governmental control of **financial** markets

The Montesquieu's theory: distribution of powers

What if the governmental 'powers' are united in the same person or institution?

→ there can be no liberty, but tyranny

These powers must then be 'distributed' (allocated) between different institutions: the separation-of-powers principle

How can they be distributed? → two models

Separation of powers models

A) Separation of functions – the **US system**

→ the different powers are vested in different institutions

B) Cooperation of functions – the **EU system**

→ each institution partakes in a combination of powers

→ a system of checks and balances is needed

→ principle of inter-institutional balance – Art 13(2) TEU

"Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation"

The principle of inter-institutional balance

Three constitutional commands

- 1) “*Each institution shall act within the limits of the powers conferred on it in the Treaties*” → it is not possible for an institution to unilaterally extend its powers through constitutional practice
- 2) “*The institutions shall practice mutual sincere cooperation*” → each of them must exercise its powers with due regard for the powers of the other institutions → inter-institutional agreements
- 3) “*Each institution shall act ... in conformity with the procedures ... set out in*” the Treaties

THE DEMOCRATIC PRINCIPLES IN THE EU

Democracy and effectiveness

- Democracy, equality and the rule of law are among the values the Union is founded upon – Art 2 TEU → the Union's institutional framework is to be modelled on those values
- The Union's system has to ensure that EU law is effective ← this firstly depends upon the effective functioning of EU political institutions
- Is there a **tension** between democracy and effectiveness?

Title II TEU, "*Provisions on Democratic Principles*"

- Principle of the equality of European citizens – Art 9 TEU
- **Representative Democracy**, which the functioning of the Union shall be founded on – Art 10 TEU
- **Participatory Democracy** – Art 11 TEU
- National Parliaments actively contributing to the good functioning of the Union – Art 12 TEU

Representative democracy in the EU

Art 10(1) TEU – “*the functioning of the Union shall be founded on representative democracy*”

What does ‘representative democracy’ mean?

Sovereignty lies in the people, which exercises it through its representatives, democratically elected

- Decision-making powers are vested in political institutions having a democratic mandate (they have been elected by the public)
- Multiple levels of government – the dual nature of the EU, as union of peoples and sovereign States

Representative democracy in the EU ‘*political*’ institutions

A) Institutions charged with decision-making powers:

- Citizens are directly represented at Union level → European Parliament
- Art 10.4 TEU → Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union
- Member States are represented in → European Council and Council → by their Heads of State or Government and by their governments, themselves ‘*democratically accountable*’ either to their national Parliaments, or to their citizens

B) European Commission → responsible to the European Parliament – Art 17.8 TEU

Participatory democracy in the EU

- ✓ Art 11(2) TEU → an “*open, transparent and regular dialogue*” between the Union’s institutions and representative associations and civil society
- ✓ Art 11(3) TEU → “*The European Commission*” – before proposing a normative act: Art 17(2) TEU – “*shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent*”
- ✓ Arts 11(4) TEU and 24 TFEU → **the European citizens’ initiative**, inviting the European Commission to submit any appropriate proposal for a legal act of the Union

The European citizens’ initiative

- ✓ Art 11(4) TEU – “*Not less than one million citizens who are nationals of a significant number of MS may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties*”
- ✓ Art 24 TFEU – the European Parliament and the Council shall adopt the provisions for the procedures and conditions required for a citizens’ initiative → Regulation (EU) No 211/2011 of 16 February 2011

Regulation (EU) No 211/2011 on the citizens' initiative

- The initiative must be supported by (see Art 7)
 - (i) not less than one million citizens of the Union, who shall be of the age to be entitled to vote in elections to the European Parliament
 - (ii) the signatories shall come from at least one quarter of MS (now, 7 SM)
 - (iii) in at least $\frac{1}{4}$ of MS, signatories shall comprise at least a minimum number of citizens (Italy: 54 750)
- Organisers shall form a citizens' committee of at least 7 persons who are residents of at least 7 different MS