

# Studying EU Law: A Law Student's Guide

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(<http://eulawanalysis.blogspot.it/p/studying-eu-law-catherine-barnard.html>)

You'll love studying EU Law if you like politics, if you are a visionary, if you are a pragmatist. In other words, EU law has something in it for everyone – and even if you are none of those things, you must study it because it's compulsory. But bear in mind EU law is unlike anything you'll have studied before: whatever 'types' of law you've liked before, EU law doesn't 'fit' into any single category (e.g. public v. black-letter). Here are some words of advice.

1. **Give yourself a political health-check before starting out:** it's helpful to recognise any preconceptions you have about the EU politically before starting to study the law. Every student comes at the law from a certain angle, so it's good to think about where you sit in terms of the politics before you start to engage in the debates around the law/what it should be.

2. **Be prepared to change what you think:** law and politics are inextricably linked, so studying EU law has the potential to change your views about the EU as a political institution - some students undergo a complete volte-face.

3. Most courses start with an introduction to the EU institutions. Most students don't find that the most exciting part of the course, at least not at the beginning, but hang on in there. Think of it as learning the building blocks of the system. These institutions are crucial to the functioning of the EU system. It's the Commission which comes up with the legislative proposals, it's the European Council where much of the real power now lies for big decisions, and the European Parliament now has the joint final say on most legislation with the Council of Ministers (comprised of ministers of the 28 Member States, all accountable to their own national parliaments). And what the Court does, will occupy much of your time.

4. If you can, visit the institutions - it will bring some of this to life. If not, look at their websites, the live streaming of parliamentary debates. Don't think of the institutions as dull buildings but as comprised of people operating in an international environment trying to find ways of addressing some of the most intractable problem of our times: the Eurozone crisis, the refugee crisis, climate change, mass unemployment.

5. **The institutions become much more interesting when you start thinking about whether they should be doing what they are doing and how they are doing it.** The European Parliament has a lot of power yet in the last European Parliament elections in 2014 only 43% of the overall EU population bothered to vote (60% in the UK, 13% in Slovakia). Why is that? Many people talk of the democratic deficit in the EU. But is the EU worse than many of the Member States? Should the EU be assessed by the standards applied to a sovereign state? Can the EU even be considered a state? If not, should it be aiming to become one?

6. The Foundation Treaties (EEC, ECSC [now abolished], Euratom) have been amended on a number of occasions by further Treaties. Try to develop a sense of which Treaty introduced which major change. This will provide you with some sort of historical perspective

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and help you understand the context in which decisions were made. The Treaties are often referred to by the place in which they were signed. By far the most important changes were introduced by the Maastricht Treaty in 1992. Most notably, that Treaty introduced the (flawed) provisions on Economic and Monetary Union. Also important was the Lisbon Treaty which divided up the existing provisions of the Treaty into two Treaties of equal value: the more ‘constitutional’ provisions (eg guiding principles, allocation of powers) were put in the Treaty on European Union (TEU), the other, more ‘operational’, principles were put in the inelegantly named Treaty on the Functioning of the European Union (TFEU) (eg the rules on free movement of goods, persons, services and capital, how to access the Court of Justice).

7. The bugbear of all students (and anyone involved in EU law) is that with the Treaty amendments came new numbers. Originally, the change was indicated by calling the new provision A, B etc. So the new legal basis giving the EU power to regulate the Single Market was Article 100A, inserted after Article 100 giving powers to the EU to adopt measures to establish the Common Market. This seemed logical and straightforward. However, this approach was not considered sufficiently transparent and so the EU decided to renumber every provision of the Treaty not once, but twice, first in 1997 by the Amsterdam Treaty and again in 2009 by the Lisbon Treaty. So what is now Article 34 TFEU on the free movement of goods was originally Article 30 EEC and then Article 28 EC (the term EEC was replaced by EC at Maastricht and then by the term ‘EU’ at Lisbon). Extremely unhelpful, especially when reading older cases. There are destination tables in the front of your statute books and the leading textbooks. The modern practice is generally to use the Lisbon number even in discussing older cases (ie use Article 34 TFEU rather than Article 30 EEC or Article 28 EC) .

8. Much of your time will be spent looking at the Court of Justice, which in fact comprises three courts: the Civil Service Tribunal (dealing with appeals from cases brought by the staff of the EU [‘F’ cases]), the General Court (formerly the Court of First Instance[‘T’ cases]), which hears a lot of competition cases and so called direct actions on the validity of EU law, and the Court of Justice of the EU which hears all other cases (‘C’ cases). The citation of cases has recently changed. The changes are usefully summarised [here](#). The Court of Justice sits in Chambers of three or five judges, or as the Grand Chamber or, very occasionally, as the Full Court. As a rule of thumb, the more important cases are decided by the Grand Chamber or the Full Court.

9. Judgments of the Court of Justice look different to those of the common law courts. There is a single judgment and no dissents or concurring opinions. Generally, cases are shorter. There is a helpful summary of what the Court has decided at the end of the judgment (the *dispositif*). If the case is a preliminary reference (ie questions from the national court as to the meaning or validity of EU law), look in the early part of the judgment for the key facts, often set out by the Court just after it has set out the relevant provisions of EU law and national law. The Court will then try to answer the national court’s questions. Sometimes the final outcome of the case is not clear. This is as it should be: under the division of powers between the national courts and the Court of Justice, the Court of Justice interprets EU law, the national courts apply that interpretation to the facts. Sometimes, in important or difficult cases, the Court of Justice does what it should not and tells the national court whether the national law is, for example, justified and proportionate. Cases are then often settled prior to a final hearing in the national courts.

10. Try to read the Advocate General’s (AG) ‘advisory’ Opinion too, especially if you want to really understand what is going on. Essentially, the AG’s Opinion is more like a common law judgment (but without being binding); it is essentially one Judge’s view as to what the

answer to the case should be. The Court is not obliged to follow what the AG says but does so in, it is thought, about 70% of cases. Some AG's Opinions are considered classics (eg AG Jacobs' Opinion in Case C-50/00P *UPA v. Council* [2002] ECR I-6677).

11. The Court of Justice is often considered an activist Court, giving surprising rulings which push back the frontiers of the law. For some people the 'activist' label is intended as a criticism. But bear in mind that the Court is often working against an incomplete canvas. The Treaty doesn't lay down every rule and it is up to the Court to shape the system against an understanding of the broader aims of the EU, for example the creation of a functioning single market. Ask yourself how you would have decided the case if you had been in the Court's shoes. Remember, too, that the Court's working language is French but that cases can be pleaded in anyone of the 24 official languages of the EU and the Court has to interpret legislation in any of the 24 languages.

12. One of the most difficult questions for the Court is how to operationalise the relation between the centre (the EU) and the Member States (MS). In other words, a number of the Court's decisions affect what MS can do and what the EU can do. So every time the EU finds a national rule breaches, say, Article 34 TFEU on the free movement of goods, it makes inroads into the States' freedom to regulate in that area and it gives the EU the power to (re)regulate those matters. These are highly sensitive political matters. Think of the headlines: 'Court of Justice tells UK/Scotland to stop minimum alcohol pricing'. The Court's decisions have a direct impact on decisions taken by democratically elected governments.

13. One of the main focuses now on an undergraduate course is the role of the EU Charter of Fundamental Rights. Adopted in 2000 and with legal force since 2009, the Charter has had a significant effect, not perhaps as much as its supporters may have liked, but important nonetheless. The Charter has been used to declare provisions of EU law invalid, and significantly steer the interpretation of EU law (for better and worse). It has, however, major limitations, not just the misnamed UK opt-out. Studying these limits will occupy much of your time.

14. The Charter borrows a number of rights from the European Convention on Human Rights (ECHR) but remember that the two documents belong to two different systems: the ECHR is a product of the Council of Europe, it is adjudicated on by the Court of Human Rights (sitting in Strasbourg) and applies to 47 States (including the 28 Member States of the EU, but also other states such as Russia). The Charter applies to the EU institutions and to the Member States, but the latter only when they are implementing EU law. It is applied and interpreted by the Court of Justice (sitting in Luxembourg). A recent attempt for the EU itself to accede to the ECHR has been rejected by the Court of Justice.

15. One of the other major issues that you will consider is the role and function of EU citizenship. Everyone holding the nationality of a Member State is also a citizen of the EU. What does that mean in practice? Does it have merely rhetorical value or does it, in fact, give substantive rights, particularly for those on the margins of society? What implications does EU citizenship have on the right to secure a job or claim benefits in another MS?

16. These questions and many others will feed into the UK referendum campaign. Studying EU law will make you feel more involved in the debates and enable you to participate in them in a more informed way. It will also give you a more nuanced understanding of what the EU is about and what problems it is up against. The outcome of the referendum will affect you for the rest of your adult life. It is something to engage with seriously. So read about the debates, listen to speakers, attend seminars, speak, campaign. Get involved.

17. Reading articles and opinion-based pieces is key to enjoyment of EU law, because there is so much to debate and the parameters of that debate are always evolving. There are, of course, a number of dedicated academic journals (e.g. Common Market Law Review, Cambridge Yearbook of European Legal Studies, European Law Review, European Law Journal, Yearbook of European Law). In addition, there are many sources of information about EU law online. All the institutions have websites and active twitter feeds. There are also a number of EU law blogs (e.g. this blog [[EU law analysis](#)], [EUtopia](#), [European law blog](#)). The *Financial Times* is the best source of news and comment on EU matters.

18. **Remember, too, that there is also a lot of misinformation out there too, and not just about bendy bananas.** Take, for example, the front page headline in the [Daily Express](#) ‘[Teach Boys to Dust says EU: Barmy Brussels latest call for gender equality](#)’. The UK Rep of the European Commission does attempt to address these [euromyths](#) but it pays you to read all reports with a healthy scepticism.

19. When it comes to exams, please remember that the Advocate General is not the Attorney General, *Francovich* is not *Francovitch*, direct effect is different to direct concern, and the Court of Justice sits in Luxembourg, not Strasbourg. Once you have mastered these basics you will be well on your way.

20. Most importantly, remember just how exciting and dynamic EU law is. It is a subject constantly in flux. The destination of the EU project is by no means fixed. There is so much still to decide. There is much uncertainty and much that is unknown. As one former student put it: ‘At times this seems a bit overwhelming, but reframing it as an opportunity for debate makes it a really rewarding subject.’

Enjoy.