

Dieser Artikel stammt von Frank Felgenträger und wurde in 1/2004 unter der Artikelnummer 8730 auf den Seiten von jurawelt.com publiziert. Die Adresse lautet www.jurawelt.com/artikel/8730.



FRANK FELGENTRÄGER

EUROPEAN LAW

Das folgende Skript ist als Mitschrift im Rahmen der Fachfremdsprachenausbildung (FFA) zur Englischen Rechtssprache an der Universität Bielefeld entstanden. Es erhebt keinen Anspruch auf Vollständigkeit, sondern soll als Anregung dienen, was zur Prüfung über das Europarecht gelernt werden kann.

EUROPEAN LAW

A. SOURCES OF LAW	3
I. Primary Legislation.....	3
II. Secondary Legislation	3
III. Case Law	4
B. TREATIES	4
I. European Coal and Steel Community Treaty (ECSC), 1951 (Paris)	4
II. European Atomic Energy Treaty (EURATOM), 1957 (Rome)	4
III. European (Economic) Community Treaty (EC), 1957 (Rome)	5
IV. Merger Treaty, 1967.....	5
V. Single European Act (SEA), 1986.....	5
VI. Treaty on European Union (TEU), 1993 (Maastricht).....	5
VII. Treaty of Amsterdam (1999).....	6
C. INSTITUTIONS	6
I. Commission	6
II. Council of the European Union, Art. 202-210	6
III. European Council.....	7
IV. The European Parliament, Art. 192, 249 EGV	7
V. European Court of Justice	7
VI. Court of First Instance	7
D. FREE MOVEMENT OF GOODS - COMMON MARKET	7
E. FREE MOVEMENT OF WORKERS, ART. 39 EC TREATY	9
F. COMPETITION LAW	9
G. EC SEX EQUALITY LEGISLATION	9
H. GENERAL PRINCIPLES	9
I. Direct Effect.....	10
II. Supremacy of EC Law.....	10
III. Preliminary References, Art. 234 EC Treaty	10

A. Sources of Law

The European Communities' core objective of achieving European unification is based exclusively on the rule of law. Community law is an independent legal system which takes precedence over national legal provisions. A number of key players are involved in the process of implementing, monitoring and further developing this legal system for which a variety of procedures apply. In general, EU law is composed of three different - but interdependent - types of legislation:

I. Primary Legislation

- Treaties
- Other agreements having similar status

Primary legislation is agreed by direct negotiation between Member State governments. These agreements are laid down in the form of Treaties which are then subject to ratification by the national parliaments. The same procedure applies for any subsequent amendments to the Treaties.

The Treaties establishing the European Communities have been revised several times through:

- the **Single European Act** (1987),
- the **Treaty on European Union - 'Maastricht Treaty'** (1992),
- the **Treaty of Amsterdam** (1997), which entered into force on 1 May 1999.

The Treaties also define the role and responsibilities of EU institutions and bodies involved in decision-making processes and the legislative, executive and juridical procedures which characterise Community law and its implementation.

II. Secondary Legislation

Secondary legislation is based on the Treaties and implies a variety of procedures defined in different articles thereof. In the framework of the Treaties establishing the European Communities, Community law may take the following forms:

- **Regulations** which are directly applicable and binding in all EU Member States without the need for any national implementing legislation.
- **Directives** which bind Member States as to the objectives to be achieved within a certain time-limit while leaving the national authorities the choice of form and means to be used. Directives have to be implemented in national legislation in accordance with the procedures of the individual Member States.
- **Decisions** which are binding in all their aspects for those to whom they are addressed. Thus, decisions do not require national implementing legislation. A decision may be addressed to any or all Member States, to enterprises or to individuals.
- **Recommendations** and **opinions** which are not binding.

III. Case Law

- judgments of the European Court of Justice and of the European Court of First Instance
 - for example, in response to referrals from the Commission, national courts of the Member States or individuals

These types of legislation comprise the *acquis communautaire*.

B. Treaties

= written constitution of European Union

I. European Coal and Steel Community Treaty (ECSC), 1951 (Paris)

- first of the constitutive treaties
- **purpose:**
 - to create a common market for coal and steel products
- **tasks** set in the contract:
 - economic expansion and growth of employment
 - a rising standard of living
 - rational distribution of production
- **goals:**
 - to abolish import and export duties (on coal and steel products)
 - to abolish quantitative restrictions (on coal and steel products)
 - the prohibition of measures or practices which discriminate between producers, purchasers or consumers on the basis of nationality
 - to place restrictions on the Member States to grant aid in order to promote domestic production
 - the prohibition of restrictive practices which tend towards the sharing or exploiting of markets
- **creation of** four supranational institutions:
 - Council of Ministers
 - High Authority (supranational executive)
 - Assembly (a parliament)
 - later shared with EURATOM and E(E)C
 - Court of Justice (for Acts of the High Authority or of businesses)
 - later shared with EURATOM and E(E)C

II. European Atomic Energy Treaty (EURATOM), 1957 (Rome)

- **purpose:**
 - to create a specialist market for atomic energy
 - to distribute it through the Community
 - to develop nuclear energy
 - to sell surplus quantities to non-Community States
- **goals:**
 - to promote research and ensure dissemination (*Weitergabe, Verbreitung*) of technical information throughout the Community
 - to establish uniform safety standards to protect workers and the general public
 - to make certain that nuclear materials are not diverted for aims other than peaceful purpose

III. European (Economic) Community Treaty (EC), 1957 (Rome)

a separate Treaty of Rome

- **aim in the preamble:**
 - to lay the foundations of an even closer union among the peoples of Europe
- **objectives:**
 - a harmonious, balanced and sustainable **development of economic activities**
 - a high degree of **competitiveness** and **convergence** of economic performance
 - a high level of **employment and social protection**
 - the raising of the **standard of living and quality** of life equality between man and women
 - these objectives were to be established by a **common market** and the progressive approximation of **economic policies** of Member States
- economic integration as the forerunner of political integration

IV. Merger Treaty, 1967

- the various institutions in the three different communities merged
 - three councils = one council
 - one High Authority + two commissions = one commission
 - one Assembly = one Assembly
 - one Court of Justice = one Court of Justice

V. Single European Act (SEA), 1986

- first major amendment to the EC Treaty
- **major aim:**
 - to **speed up** the **decision making process** through greater use of qualified majority voting in the Council of Ministers (Member States with larger populations have more votes than smaller states)
 - significant transfer of sovereignty from Member States to EC

VI. Treaty on European Union (TEU), 1993 (Maastricht)

- second major amendment to the EC Treaty
- TEU created a EU with **three pillars** of the EC:
 - common foreign and security policy (safeguard the common values, fundamental interests and the independence of the EU; promote international cooperation)
 - to safeguard the common values, fundamental interests and independence of the EU
 - to strengthen security
 - to preserve peace
 - to develop and consolidate democracy
 - Justice and home affairs
 - asylum and immigration policy, judicial cooperation in civil and criminal matters, custom and police cooperation
 - eight areas of common interest were defined
 - general principles

- three matters of constitutional importance: human rights, subsidiarity and citizenship
 - TEU established a **European Citizenship**

VII. Treaty of Amsterdam (1999)

- It was intended to prepare the Community for expansion in membership with the inclusion of the Central and Eastern European states. Moreover the EU should seem less remote to its citizens.

C. Institutions

I. Commission

- **functions:**
 - **Initiator** of community action:
 - **Legislative** initiative
 - **Council decisions** are taken on the basis of **Commission proposals**
 - **watchdog** for:
 - the enforcement of the **community law** and
 - especially the **competition law policy**
 - power to impose fines and penalties on individuals
 - **executive** functions
 - the commission can formulate **recommendations** or **opinions** on matters dealt with in the treaties
 - representative, financial and administrative functions
- **composition:**
 - **20 members** of the commission, who are appointed by the governments of the Member States. Except the five larger States (Germany, France, Italy, Spain and UK) every Member State has one Commissioner.

II. Council of the European Union, Art. 202-210

- “The Council”, formerly: “Council of Ministers”
- **purpose:**
 - to represent the interests of the Member States
- composition: each Member State is represented by a government minister, 15 members.
- presidency rotates among the Member States
 - at **six monthly intervals**
- **functions:**
 - to take general policy decisions
 - to ensure objectives set out in the Treaty are attained (Art. 202)
 - to ensure coordination of general economic policies of Member States (Art. 202)
 - to take decisions, generally based on Commission proposals
 - to conclude agreements with foreign countries
 - to jointly decide budgetary with the EP
 - Art. 308 enables the Council to legislate on the basis of a Commission proposal and after consulting the EP
 - this happens in order to achieve a Treaty objective

III. European Council

- since 1974
- heads of state or of government of the Member States, together with foreign ministers meet at regular intervals
- Council possesses **no formal powers**
 - just a forum for discussion on an informal basis

IV. The European Parliament, Art. 192, 249 EGV

- **function:**
 - representation of the peoples of the Member States
- seats: Germany: 99; France, Italy, UK: 87 → Luxembourg: 6
- the **powers** of the EP
 - supervisory function
 - the commission is politically accountable to the Parliament
 - various powers like:
 - Commission has to reply orally or in writing to questions put to it by the Parliament (Art. 197)
 - the Parliament can demand the resignation of the Commission *en bloc*
 - participation in legislative process
 - budgetary
 - special powers

V. European Court of Justice

- **function**, Art. 220:
 - to ensure that, in the interpretation and application of the Treaty, the law is observed
- **composition:**
 - one judge per Member State (**15 judges**) + **9 Advocates General** (similar to an *amicus curiae* in English system – s.o. who gives the court the benefit of his views on a question of law)

VI. Court of First Instance

- since 1989, brought upon by SEA
- **purpose:**
 - to bring a reduction in the ECJ's caseload

D. Free Movement of goods - Common Market

- **purpose** behind the provisions that create the Free Movement of Goods:
 - free trade in the EU, abolition of custom duties between Member States
 - customs Union: No taxes and duties on exports/imports within the EU
 - common tariff/ tax against third nations
 - restrictions and measures which are equivalent to quantitative restrictions (= any trading rule which restricts trade or is capable of hindering intra-community-trading either directly or indirectly)
 - **Dassonville-Formula (1974)**
 - **Example:**
 - Arthur Flower Ltd. imported a consignment of plastic tulips from the Netherlands into the United Kingdom and was required to have

each flower individually tested to ensure that it conformed to a new test for imported plastic products. The company wishes to challenge this requirement on the ground that it is incompatible with European Community law.

- Answer Plan

- This problem question concerns the free movement of goods. The Community is based upon a customs union which requires a common external tariff, but the removal of barriers to intra-Community trade.
- **Under Article 28 EC Treaty barriers to trade which amount to quantitative restrictions and all measures having equivalent effect are prohibited** (*Riseria Luigi Geddo v. Ente Nazionale Risi* (1974)). The concept of measures having equivalent effect to quantitative restrictions has been given a wide interpretation by the ECJ. It has been divided into **measures** which are **indistinctly applicable** and those which are **distinctly applicable**. Distinctly applicable measures are those which are applicable only to imported goods.
- Directive 70/50 provides non-binding guidelines to the interpretation of Article 28. It is Article 3 of the Directive which deals with indistinctly applicable measures. Such measures are said to be only contrary to Article 28 EC Treaty if they do not satisfy the principle of proportionality, *i.e.* if the same objective cannot be attained by other measures which are less of a hindrance to trade.
- In *Procureur du Roi v. Dassonville* (1974), the court developed the **Dassonville formula**. **The formula is that all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions.**
- In the *Cassis de Dijon* case (1978) the court developed the *Dassonville* formula. The formula is that all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions.
 - In the *Cassis de Dijon* case (1978) the *Dassonville* formula was extended. Under the first principle certain measures which may fall within the *Dassonville* formula will not breach Article 28 EC Treaty if they are necessary to satisfy mandatory requirements of the public interest. These include protection of public health and the defence of the consumer. This principle has become known as the "rule of reason". However, the national measure must be proved to serve a purpose which is in the general interest and has to take precedence over the requirements of the free movement of goods. Thus, if the measure is necessary in order to protect mandatory requirements, it will not breach Article 28.
 - The second principle derived from the *Cassis de Dijon* case gives rise to a presumption that goods which have been lawfully marketed in one Member State will

comply with the "mandatory requirements" of the importing state.

- In this question it would appear that the requirement for testing is only applicable to goods imported into the United Kingdom so it would be considered as a distinctly applicable measure. As the goods are sold in the Netherlands it would seem that the second principle from the *Cassis de Dijon* case would apply. The most appropriate way for Arthur Flowers to challenge the United Kingdom requirement is by bringing an action in the United Kingdom courts or waiting to be prosecuted for failure to test the flowers. Once before the court, the company can raise the Community law perspective which the court can either apply itself, or make a reference to the ECJ under Article 234 EC Treaty.

E. Free Movement of Workers, Art. 39 EC Treaty

- Art. 39 EC Treaty provides for the Free Movement of Workers
 - "fundamental right"
 - a right for "economically active" persons and their families
- **purpose:**
 - to allow economically active persons the freedom to move around the EC so that "workers" could move to jobs and higher wages in other parts of the EC
- **Definitions:**
 - worker: ECJ: wide definition
 - "s.o. who is in genuine and effective employment and performing services for an employer under his direction and control"

F. Competition Law

- competition Law aids the creation a common market by removing barriers and restrictions set by undertakings
- consumer protection against price fixing, excessive charges and unfair trading conditions
- violation of Art. 81 by undertakings
 - agreements between undertakings
 - decisions between undertakings
 - concerted practice
- violation of Art. 82: Abuse of a dominant position

G. EC Sex Equality Legislation

- Art. 141 EC Treaty: equal pay for equal work
- Directive 75/117: equal pay for work of equal value
- Directive 76/207: Equal Treatment Directive for man and women in Employment

H. General Principles

- the EC legal order is said to be built on the "**Twin Pillars**":
 - direct effect
 - supremacy

I. Direct Effect

- direct effect of treaty provisions:
 - the treaties created a new legal order
 - which created rights for individuals
 - provisions of treaties can entitle individuals to bring an action to court
 - a Treaty Article could be relied on by an **individual** against a national government **before a national court**
 - first stated in case:
 - **“Van Gend en Loos v. Nederlandse Administratie” (1963)**
 - the provision must be clear and unambiguous
 - it must be unconditional
 - its operation must not be dependent on further action being taken by the EC or national authorities
- Direct applicability of regulations
- Direct effect of directives

II. Supremacy of EC Law

- EC law **overrules** domestic legal provisions
 - regardless of whether the provisions came earlier or later than EC law
 - first stated in **“van-Gend-en-Loos-case”**, but known from case:
 - **“Costa vs. ENEL” (1964)**

III. Preliminary References, Art. 234 EC Treaty

- gives the ECJ jurisdiction to give preliminary references on questions of the **interpretation and validity of EC law**
 - at the request of the **national court** of a Member State (when it encounters problems relating to the interpretation of the treaties etc.)
- **purposes:**
 - uniformity of interpretation
 - to familiarise national courts with EC legal order
 - to develop European legal order