The Development of European Integration

The European Union before and after the Lisbon revision

**Topic:**
The Lisbon Treaty does away with the European Union's traditional pillar structure.

The effect of the Lisbon Treaty on the structure of the EU

**The EU before the Lisbon Treaty:**
Three Treaties (Nice versions):
- The EU Treaty (overall structure);
- The EC Treaty (first pillar);
- The Euratom Treaty (first pillar).

**The Lisbon Treaty (Reform Treaty) contains the changes to the present Treaties.**

The Lisbon Treaty does away with the EU's traditional pillar structure. The Union is no longer based on the European Communities. The EC is replaced and succeeded by the EU. Euratom exists outside the framework of the EU Treaty.

**The EU and Euratom following the Lisbon Treaty:**
Three Treaties (Lisbon versions):
- Two Treaties on the EU: the EU Treaty and the Treaty on the Functioning of the European Union (former EC Treaty);

See Chart 2/22, Chart 2/23
### Membership

#### Founding members of the European Communities

<table>
<thead>
<tr>
<th>Year</th>
<th>Community</th>
<th>States</th>
</tr>
</thead>
<tbody>
<tr>
<td>1951/57</td>
<td>ECSC, Euratom, EEC</td>
<td>France, Germany, Italy, three Benelux States (Belgium, the Netherlands, Luxembourg)</td>
</tr>
</tbody>
</table>

#### Enlargement

(in the case of some countries: moving from the EFTA to the E(E)C/EU)

<table>
<thead>
<tr>
<th>Year</th>
<th>Community</th>
<th>States</th>
</tr>
</thead>
<tbody>
<tr>
<td>1973</td>
<td>ECSC, Euratom, EEC</td>
<td>UK, Ireland, Denmark (negative popular vote in Norway)</td>
</tr>
<tr>
<td>1981</td>
<td>ECSC, Euratom, EEC</td>
<td>Greece</td>
</tr>
<tr>
<td>1986</td>
<td>ECSC, Euratom, EEC</td>
<td>Spain, Portugal</td>
</tr>
<tr>
<td>1995</td>
<td>EU (incl. ECSC, Euratom, EEC)</td>
<td>Austria, Sweden, Finland (negative popular vote in Norway)</td>
</tr>
<tr>
<td>2004</td>
<td>EU (incl. the two remaining Communities: Euratom and EC)</td>
<td>Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia</td>
</tr>
<tr>
<td>2007</td>
<td>EU (incl. Euratom and EC)</td>
<td>Bulgaria, Romania</td>
</tr>
</tbody>
</table>

#### Candidate States and applicants

- **EU (incl. Euratom and EC)**: Candidate States: Turkey, Croatia, Macedonia
- **Applicant States**: Albania, Montenegro, Iceland, Serbia (plus: a non-active application for membership by Switzerland)

#### Rejected as "non-European"

- Morocco (1987)

### Outside the EU: EFTA and EEA States

- Remaining EFTA States: Iceland, Liechtenstein, Norway, Switzerland ...
- ... of whom some are also EEA States ("EEA EFTA States"): Iceland, Liechtenstein, Norway.
The adoption of secondary measures

The ordinary legislative procedure (codecision, Art. 294 TFEU)

Topic:
In the codecision procedure, the European Parliament and the Council (of Ministers) act as a co-legislators.

Note:
The voting modalities in the Council (i.e. qualified majority voting, unanimity) differ depending on the stage of the procedure. Adoption of the act by qualified majority (see Chart 5/6, Chart 5/7) is possible in certain circumstances.
Introduction to Substantive EU Law

Art. 18 TFEU: the general prohibition of discrimination on grounds of nationality

**Topic:**
A generally applicable prohibition of discrimination on grounds of nationality underpins the European Union as a whole. The fundamental provision on this issue is Art. 18 TFEU.

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### Prohibition of discrimination on grounds of nationality

**Renumbering:** originally Art. 7 of the EEC Treaty, then Art. 6 of the EC Treaty, then Art. 12 EC, since the Lisbon revision Art. 18 TFEU.

<table>
<thead>
<tr>
<th><strong>Substantive provision:</strong> Art. 18(1) TFEU, prohibition of discrimination on grounds of nationality</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Meaning:</strong> a prohibition on the worse treatment of foreign EU nationals as compared with a Member State's own nationals; Vatsouras (2009).</td>
</tr>
<tr>
<td><strong>Scope:</strong> the prohibition is general because it applies within the full scope of the Treaties, though without prejudice to special provisions: Art. 18(1) TFEU &quot;applies independently only to situations governed by EU law for which the [Treaties] lay down no specific rules prohibiting discrimination&quot;; Peralta (1994), see also e.g. Lyyski (2007), UTECA (2009).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Legal basis provision:</strong> Art. 18(2) TFEU</th>
</tr>
</thead>
<tbody>
<tr>
<td>For secondary law designed to prohibit discrimination on grounds of nationality falling within the scope of Art. 18(1) TFEU</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Areas covered by Art. 18(1) TFEU</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Various different areas; e.g.:</td>
</tr>
<tr>
<td>• Vocational training; Gravier (1985);</td>
</tr>
<tr>
<td>• Civil procedure; Hayes and Hayes (1997);</td>
</tr>
<tr>
<td>• Minimum subsistence allowances; Grzelczyk (2001);</td>
</tr>
<tr>
<td>• Student loans and maintenance grants; Bidar (2005), Förster (2008);</td>
</tr>
<tr>
<td>• Processing of data in the context of fighting crime; Huber (2008).</td>
</tr>
<tr>
<td>Particularly important: the link to Art. 18 TFEU is often made through Art. 21 TFEU; see Chart 7/19.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Special provisions that leave no room for the application of Art. 18(1) TFEU</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>E.g.:</td>
</tr>
<tr>
<td>• Arts. 45, 49, 56, 57 and 63 TFEU;</td>
</tr>
<tr>
<td>• Arts. 101 TFEU et seq. - according to the GC; Thermenhotel (2004).</td>
</tr>
</tbody>
</table>

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**Note:**
For other types of discrimination, written prohibitions apply in limited areas only; e.g. discrimination on grounds of sex, sexual orientation, racial or ethnic origin, religion or belief, disability and age, Art. 157 TFEU and secondary law; see Chart 10/8.
Decision tree: fiscal restrictions (Arts. 30 and 110 TFEU)

1. Check: Quantitative restrictions (Arts. 34 TFEU et seq.)
   - See Chart 8/17

2. Is it a taxation measure (Art. 110 TFEU)?
   - Yes → Prohibited under Art. 110(2) TFEU
   - No → Proceed to next step

3. Are the products dissimilar, but in competition (Art. 110(2) TFEU)?
   - Yes → Proceed to next step
   - No → Not covered by Arts. 30 and 110 TFEU

4. Does it concern similar products (Art. 110(1) TFEU)?
   - Yes → Proceed to next step
   - No → Proceed to next step

5. Is there prima facie indirect discrimination?
   - Yes → Proceed to next step
   - No → Proceed to next step

6. Is there an objective justification?
   - Yes → Proceed to next step
   - No → Proceed to next step

7. Is it a MEEQR having equivalent effect (Art. 30 TFEU)?
   - Yes → Proceed to next step
   - No → Proceed to next step

8. Is it a customs duty (Art. 30 TFEU)?
   - Yes → Proceed to next step
   - No → Proceed to next step

9. Does it concern similar products (Art. 110(1) TFEU)?
   - Yes → Proceed to next step
   - No → Proceed to next step

10. Does it discriminate directly?
    - Yes → Proceed to next step
    - No → Proceed to next step

11. Is it a tax measure (Art. 110 TFEU)?
    - Yes → Proceed to next step
    - No → Proceed to next step

12. Is it an MEEQR having equivalent effect (Art. 30 TFEU)?
    - Yes → Proceed to next step
    - No → Proceed to next step

13. Is it a service (Art. 30 TFEU)?
    - Yes → Proceed to next step
    - No → Proceed to next step

14. Is the measure protective?
    - Yes → Proceed to next step
    - No → Proceed to next step

15. Is it a financial charge?
    - Yes → Proceed to next step
    - No → Proceed to next step

16. Are the products dissimilar, but in competition (Art. 110 TFEU)?
    - Yes → Proceed to next step
    - No → Proceed to next step

17. Does it concern similar products (Art. 110(1) TFEU)?
    - Yes → Proceed to next step
    - No → Proceed to next step

18. Is there prima facie indirect discrimination?
    - Yes → Proceed to next step
    - No → Proceed to next step

19. Is there an objective justification?
    - Yes → Proceed to next step
    - No → Proceed to next step

20. Is it a MEEQR having equivalent effect (Art. 30 TFEU)?
    - Yes → Proceed to next step
    - No → Proceed to next step

21. Is it a customs duty (Art. 30 TFEU)?
    - Yes → Proceed to next step
    - No → Proceed to next step

22. Does it concern similar products (Art. 110(1) TFEU)?
    - Yes → Proceed to next step
    - No → Proceed to next step

23. Does it discriminate directly?
    - Yes → Proceed to next step
    - No → Proceed to next step

24. Is it a tax measure (Art. 110 TFEU)?
    - Yes → Proceed to next step
    - No → Proceed to next step

25. Is it an MEEQR having equivalent effect (Art. 30 TFEU)?
    - Yes → Proceed to next step
    - No → Proceed to next step

26. Is it a service (Art. 30 TFEU)?
    - Yes → Proceed to next step
    - No → Proceed to next step

27. Is the measure protective?
    - Yes → Proceed to next step
    - No → Proceed to next step

28. Is it a financial charge?
    - Yes → Proceed to next step
    - No → Proceed to next step

Decision tree: fiscal restrictions (Arts. 30 and 110 TFEU)
**Topic:**
Service providers and service recipients enjoy the right to access the services market in other Member States as well as a number of other, additional rights (such as movement and residence).

**Rights of service providers and of service recipients**
Beyond the wording of Art. 57 TFEU, those who derive rights from the Treaty include both the providers and the recipients of services; *Luisi and Carbone* (1984).

**Market access**
See **Chart 8/33**
- Non-discrimination/equal treatment on grounds of nationality
  - Art. 57 TFEU
- No restrictions in a broader sense
  - Mentioned in Art. 56 TFEU, recognised by case law; *Insurance and Co-insurance* (1986).

**Additional, specific rights**
Including in particular movement and residence; see **Chart 7/20**.
- Regarding the right of the service recipient to export the money necessary for payment, see *Luisi and Carbone* (1984).
  - Since 1994: Art. 63(2) TFEU on payments; see **Chart 8/67**.
- To the exclusion of measures that merely raise the cost of the service and affect in the same way the provision of services between the Member States and within one Member State; *Mobistar and Belgacom* (2005)

**Direct discrimination**

**Indirect discrimination**

**Note:**
These rights are subject to derogations under Art. 62 TFEU in conjunction with Art. 52 TFEU: public policy, public security, public health; see **Chart 8/36** (market access), **Chart 7/22** (additional, specific rights).
EU competition law addresses the conduct of undertakings and also of the Member States. Together, Arts. 101(1), 102 and 106 TFEU and the Merger Regulation form a comprehensive system of competition rules for undertakings. Art. 107 TFEU prohibits state aid. Other competition rules exist for specific areas.

### The nucleus of EU competition law

- Rules (primarily) aimed at undertakings; see Chart 9/3
- Rules aimed at the Member States

### Rules aimed at undertakings

- **Art. 101 TFEU**: Agreements, decisions by associations, concerted practices
  - See Chart 9/5, Chart 9/6
- **Art. 102 TFEU**: Abuse of a dominant position
  - See Chart 9/5, Chart 9/19
- **Regulation 139/2004/EC**: Merger control by the Commission
  - See Chart 9/30
- **Art. 106 TFEU**: Undertakings with a special position under national law
  - See Chart 9/35
- **Art. 107 TFEU**: State aid
  - See Chart 9/38

### State aid

- **Art. 107 TFEU**: State aid
  - See Chart 9/35

### Legal basis provisions for secondary law in the field of competition

- **Art. 103 TFEU**, regarding Arts. 101 and 102 TFEU;
- **Art. 106(3) TFEU**, regarding Art. 106(1) and (2) TFEU;
- **Art. 109 TFEU**, regarding Arts. 107 and 108 TFEU;
- Legal basis provisions for specific areas; e.g. Arts. 42 and 43 TFEU (agriculture);
- The general legal basis provisions of Arts. 114 and 115 TFEU: for other issues.

### Examples of specific areas where secondary law exists

- Agriculture;
- Insurances;
- Professional services;
- Transfer of technology;
- Transport;
- Energy;
- Postal services;
- Telecommunication.

### Renumbering of the most relevant articles through Treaty revisions; see Chart 2/14, Chart 2/24:

- **Post Maastricht**: Art. 85 of the EC Treaty
- **Post Amsterdam**: Art. 81 EC
- **Post Lisbon**: Art. 101 TFEU

- **Art. 86 of the EC Treaty**
- **Art. 86 EC**
- **Art. 80 EC**
- **Art. 87 EC**
- **Art. 90 of the EC Treaty**
- **Art. 92 of the EC Treaty**
- **Art. 101 TFEU**
- **Art. 102 TFEU**
- **Art. 106 TFEU**
- **Art. 107 TFEU**
### Competition Law

#### The *de minimis* rule regarding effect on competition

**Topic:**
Art. 101(1) TFEU does not cover conduct which has an insignificant effect on competition.

---

**De minimis: appreciable effect on competition**

Art. 101(1) TFEU applies only where conduct has (or is intended to have) an appreciable effect on competition.

---

Guidance from the Commission through the Notice on agreements of minor importance (2001): Art. 101(1) TFEU does not apply where certain market share thresholds are not exceeded and where there are no hardcore restrictions.

**Thresholds:**

- **Horizontal agreements:** ≤10%  
  I.e. agreements between competitors; see *Chart 9/8*
  
  Threshold of 10% aggregate market share in any of the relevant markets.

- **Vertical agreements:** ≤15%  
  I.e. agreements between non-competitors; see *Chart 9/8*
  
  Threshold of 15% aggregate market share in any of the relevant markets.

- **In the case of unclear definition:** ≤10%

- **In the case of a cumulative foreclosure effect of parallel networks of similar agreements having similar effects on the market:** ≤5%.

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**In all cases:**

Threshold may be exceeded by 2% within two successive calendar years.

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**Practical consequence**

In the case of undertakings with market shares below the relevant thresholds, the Commission will not institute proceedings, unless the agreement contains a hardcore restriction; see *Chart 9/13.*
Individual exemption under Art. 101(3) TFEU

Topic:
In order to benefit from an individual exemption under Art. 101(3) TFEU, the conduct of undertakings needs to fulfil the conditions laid down in Art. 101(3) TFEU.

Individual exemption under Art. 101(3) TFEU: a test with four cumulative elements


Starting point:
Conduct is in principle prohibited under Art. 101(1) TFEU

Conduct does not fall under a block exemption

Need for an individual exemption, based on the following test:

Is there an improvement in the production or distribution of goods or a promotion of technical or economic progress?

Yes

No

Do consumers receive a fair share of the resulting benefit?

Yes

No

Are the restrictions indispensable?

Yes

No

Does some level of competition remain? (i.e. no substantial elimination of competition)

Yes

No

No exemption, prohibited under Art. 101(1) TFEU (“incompatible with the internal market”)

Acceptable: compatible with the internal market


E.g. Métropole Télévision (2001)

Application in practice

Under Regulation 1/2003/EC, individual exemptions are based on self-assessment, which is, however, subject to control by the NCAs, the national courts and arbitrators, and is subject to control by the Commission, the General Court and the Court of Justice.
### Legal Integration

#### The Cassis de Dijon principle and the need for harmonisation

**Topic:** At a time when positive integration was difficult to achieve due to political difficulties (including the requirement for unanimity voting in the Council of Ministers), the ECJ's Cassis de Dijon ruling drastically reduced the need for harmonisation.

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**The Cassis de Dijon principle ...**

*Cassis de Dijon* (1979) on the meaning of Art. 34 TFEU (then Art. 30 of the EEC Treaty): goods lawfully produced in one Member State must, in principle, be accepted in other Member States.

---

<table>
<thead>
<tr>
<th>Home state control</th>
<th>Mutual recognition</th>
</tr>
</thead>
<tbody>
<tr>
<td>The quality of a good is controlled by the state of origin, i.e. only the home state may legislate on this issue.</td>
<td>In principle, Member States must accept goods originating from other Member States.</td>
</tr>
</tbody>
</table>

"In principle":
- In the case of indistinctly applicable measures: subject to mandatory requirements; see Chart 8/20.
- In all cases: subject to Art. 36 TFEU; see Chart 8/24.

---

**... drastically reduced the need for harmonisation**

*Cassis de Dijon* Communication by the Commission (1979)

After *Cassis de Dijon* (1979), harmonisation in respect of those areas covered under Art. 34 TFEU is only necessary in the context of:
- Mandatory requirements;
- Art. 36 TFEU justifications.

---

**Notes:**
- After *Cassis de Dijon* (1979) and through the development of the definition of restrictions as a legal concept by the ECJ, the Cassis de Dijon principle also applies in other fields of EU Treaty law; see Chart 8/35, Chart 8/63.
- The Cassis de Dijon principle also applies in the framework of certain secondary legislation; e.g. Art. 3 of Directive 2000/31/EC (e-commerce Directive); Arts. 2 and 2a of Directive 89/552/EEC (Audiovisual Media Services Directive).
Jurisdiction of the different levels of the ECJ

**Chart 12 | 4**

**Topic:**
The Civil Service Tribunal, the General Court and the Court of Justice have different tasks in relation to the various judicial procedures mentioned in the TFEU.

**Court of Justice of the European Union ("European Court of Justice", ECJ)**
Art. 19 TEU, Arts. 251 TFEU et seq, Statute for the Court of Justice, Rules of Procedure; see Chart 3/10

**Task common to all levels**
Art. 19 TEU: "Ensuring that in the interpretation and application of the Treaties the law is observed."

**Distribution of work**

**Applicants**
- EU civil servants
- Individuals
- EU institutions
- Member States
- Member State courts

**Type of procedure**
- Disputes involving EU civil servants:
  - Annulment;
  - Failure to act;
  - Non-contractual liability
- Other:
  - Annulment and failure to act against the EP and/or the Council (of Ministers), or against the Commission or the ECB;
  - Enforcement

**Courts**
- Civil Service Tribunal (CST)
- General Court (GC)
- Court of Justice (CJ)

**Note:**
- The Treaty provisions on the different procedures do not specify which level of the ECJ has jurisdiction of a given procedure. Instead, the TFEU simply speaks about “the Court”. The jurisdiction in a concrete case has to be determined according to the above rules.
- Under Art. 256(3) TFEU, the General Court has jurisdiction to deal with requests for preliminary rulings in specific areas laid down by the Statute; these areas are as yet undefined in the Statute.
Specifically: the protection of individuals’ rights

**Topic:**
EU law provides for different means for the protection of rights which individuals derive from EU law.

**The protection of individuals’ rights**

Important starting point:
The ECJ is **not a last instance Court** for individuals. The possibilities for individuals to use the enforcement procedures and arguments provided by EU law are limited.

Specifically:
- The enforcement procedure is not for individuals; at most they may informally complain to the Commission.
- Individuals have access to the preliminary ruling procedure only indirectly, by requesting the national court to ask for such a ruling.
- Individuals have only limited possibilities to challenge the legality of secondary EU measures.

**Possibilities for individuals to challenge the legality of secondary EU measures**

**Direct action to the GC**
(and on appeal to the CJ)
- Action for annulment, Arts. 263 TFEU et seq.:
  - Very limited standing;
  - Action to be brought within two months.
- See Chart 12/7, Chart 12/9

**Indirect action to the ECJ**
- Question of validity by the national court in the preliminary ruling procedure, Art. 267 TFEU.
- See Chart 12/19

**Argument before the GC / CJ**
- Plea of illegality, Art. 277 TFEU.
- See Chart 12/25

**Relationship between these different possibilities: precedence of the annulment action**

No circumvention of the requirements under Art. 263 TFEU, in particular in relation to the time-limits.

Therefore: only where natural or legal persons cannot directly challenge EU measures of general application, they are able, depending on the case, to either:
- Indirectly plead the invalidity of such acts before the ECJ (Art. 277 TFEU); or
- Go before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid, to make a reference to the ECJ for a preliminary ruling on validity (Art. 267 TFEU).