

5. INTRODUCTION TO EUROPEAN LAW: TO PROVIDE PARTICIPANTS WITH BASIC KNOWLEDGE OF THE LEGAL FRAMEWORK AND THE REGULATIONS GOVERNING IT OF THE EUROPEAN UNION.

The legal system of the European Union is an integral part of our political and social reality. The European Union has legal personality and, as such, its own legal system, distinct from the international system. Furthermore, EU law has a direct or indirect effect on the legislative provisions of its Member States and becomes part of the legal system of each Member State. The European Union is itself a source of law.

Thousands of decisions are adopted every year based on the EU treaties, which play a decisive role in shaping the context in which the Member States and their citizens find themselves.

The single individual is now not only a citizen of his state, his city or his municipality, but is also a citizen of the EU.

The structure of the European Union legal system is very complex. To understand the overall structure of the EU and, here to make it more comprehensible, the writer is certainly making a reduction, but an extreme reduction for necessary training purposes, but which are developed in the second phase of the project.

We therefore choose to focus the attention of the particular and complex structure of the EU on the pillars of the European legal system.

The European legal system is divided into **primary law** (treaties and general principles of law), **secondary law** (based on treaties) and **complementary law**.

Primary law

The main **sources of primary law** are the treaties establishing the Union and the Treaty on the European Atomic Energy Community (Euratom).

These treaties establish the division of competences (powers) between the Union and the Member States of the Union, defining the powers of the Union institutions.

These treaties, therefore, establish the legal context within which the institutions of the Union operate to implement policies.

Primary law also includes:

- amendments to the Union treaties.
- the protocols annexed to the founding treaties and the amending treaties.
- the treaties on the accession of new Member States to the Union.
- the Charter of Fundamental Rights (from the Treaty of Lisbon - December 2009).
- General principles of law.

The general principles of Union law may also result from the constitutional traditions common to the Member States.

The treaties explicitly name fundamental rights, as guaranteed by the European Convention on Human Rights (ECHR), as general principles of Union law.

Secondary law includes legal acts that fall into two categories: those listed in Article 288 TFEU: regulations, directives, decisions, opinions and recommendations; those not listed in Article 288 TFEU: atypical acts, such as internal regulations of the institutions and interinstitutional agreements.

Other sources of Union law:

- The jurisprudence of the CJEU.
- International law, often considered a source of inspiration for the CJEU when developing its own jurisprudence.
- International agreements with third countries or with international organizations which are an integral part of Union law.

Indication of the hierarchy of sources:

- Treaty on European Union (TEU), Treaty on the Functioning of the European Union (TFEU), and related protocols (there are 37 protocols, 2 annexes and 65 declarations, which are annexed to treaties to specify details, without appearing in the legal text business suit)
- Charter of Fundamental Rights of the European Union
- Treaty establishing the European Atomic Energy Community (EURATOM), still in force as a separate treaty;
- International agreements. The Union may conclude, within the scope of its competences, international agreements with third countries or other international organizations (Article 216(1) TFEU). Such agreements are binding on the Union and the Member States and form an integral part of Union law (Article 216(2) TFEU). Pursuant to Article 217 TFEU, the EU may also conclude agreements establishing an association characterized by mutual rights and obligations, joint actions and special procedures;
- General principles of Union law;
- Derivative law.

Hierarchy in secondary law:

legislative acts, delegated acts and implementing acts.

Legislative acts are defined as legal acts adopted through the ordinary or special legislative procedure. By contrast, **delegated acts** are non-legislative acts of general scope which supplement or amend certain non-essential elements of the legislative act. The legislator (Parliament and Council) can delegate the power to adopt such acts to the Commission. The legislative act defines the objectives, content, scope and duration of the delegation of power as well as, if necessary, the emergency procedures. **Implementing acts** are generally adopted by the Commission, which is competent to do so in cases where uniform conditions for the implementation of legally binding acts are necessary. Implementing acts are adopted by the Council only in specific duly justified cases and in areas of the common foreign and security policy. In case the basic act is adopted in accordance with the ordinary

legislative procedure, the European Parliament or the Council may, at any time, inform the Commission that, in their opinion, a draft implementing act exceeds the envisaged implementing powers in the basic act. In this case, the Commission must review the draft act in question.

The **acts** of Union law are **regulations, directives, decisions, recommendations and opinions**.

The **regulations** have general scope, are mandatory in all their elements and directly applicable. They must be fully respected by the recipients (private individuals, Member States, Union institutions). The Regulations are directly applicable in all Member States from their entry into force (on the specified date or, in the absence of an indication, twenty days after their publication in the Official Journal of the European Union), without the need for transposition into national law.

The regulations aim to ensure the uniform application of Union law in all Member States. It follows that national rules incompatible with the substantive clauses contained in the regulations are made inapplicable by them.

The **directives** bind the Member State or Member States to which they are addressed as to the result to be achieved, without prejudice to the competence of the national bodies as to the form and means. The national legislator must adopt a transposition act i.e. a "national implementing measure" in domestic law which adapts national legislation to the objectives defined in the directive. In essence, individual citizens are granted rights and imposed obligations only once the transposition act has been adopted. Member States have a certain margin of maneuver for transposition which allows them to take into account specific national circumstances. Transposition must take place within the deadline set in the directive. When transposing the directives, Member States are required to ensure the effectiveness of Union law, by virtue of the principle of sincere cooperation referred to in Article 4(3) TEU. In principle, the directives are not directly applicable. The Court of Justice has ruled that certain provisions of a directive can, exceptionally, produce direct effects in a Member State without the latter having previously adopted a transposition act if: a) the directive has not been transposed or is was incorrectly transposed into national law; (b) the provisions of the Directive are, from a substantive point of view, unconditional and sufficiently clear and precise; and (c) the provisions of the Directive confer rights on individuals. If these conditions are met, individuals can invoke the provisions of the Directive before the public authorities. The authorities of the Member States have the obligation to take the non-transposed directive into account even if the provision in question does not grant any rights to the private individual and only the first and second conditions mentioned above exist. This jurisprudence is based above all on the principles of useful effect, prevention of violations of the treaty and judicial protection. On the other hand, a private individual cannot directly invoke the direct effect of a non-transposed directive against another private individual (the so-called "horizontal effect"). According to the jurisprudence of the Court of Justice, a private individual is authorized to ask a Member State for compensation for damage suffered due to the latter's failure to comply with Union law. If it is a non-transposed or insufficiently

transposed directive, this appeal is possible if: a) the directive aims to confer rights on individuals, b) the content of the rights can be deduced from the directive itself; and c) there is a cause and effect link between the violation of the transposition obligation by the State and the damage suffered by the private individual. In this case it is possible to establish the responsibility of the Member State without having to prove fault on its part.

The **decisions** are mandatory in all their elements. If they designate the addressees (Member States, natural persons or legal persons), they are binding only towards them and deal with situations specific to those Member States or those persons. The private individual can assert rights attributed by a decision addressed to a Member State only if the latter has adopted a transposition act. Decisions can be directly applicable under the same conditions as directives.

Recommendations **and** opinions do not create any rights or obligations for their recipients, but may provide guidance on the interpretation and content of Union law.

Regarding the **choice of act**, the provisions in the TFEU (Treaty on the Functioning of the EU), Article 296, first paragraph, indicate that it is up to the institutions to decide on a case-by-case basis the type of act to be adopted "in compliance with the applicable procedures and of the principle of proportionality".

Regulatory competence is particularly divided between Parliament, the Council and the Commission, a topic that is developed and articulated in the second phase of the project.

The European Union only has the competences conferred on it by the treaties (**principle of attribution**).

Under this principle, the Union can act only within the limits of the competences conferred on it by the Member States of the Union in the treaties, in order to achieve the objectives of the treaties.

The competences not attributed to the Union in the treaties remain the prerogative of the member states.

The Treaty of Lisbon clarifies the division of competences between the Union and its Member States.

These skills are divided into **three main categories**:

- exclusive competences of the Union;
- competing skills;
- support skills.

The Union has **exclusive competence** in the areas:

- customs union;
- competition rules necessary for the functioning of the internal market;
- monetary policy for the countries of the euro area;

- conservation of marine biological resources within the framework of the common fisheries policy;
- common commercial policy.

Competing skills

The Union and its Member States can legislate and adopt legally binding acts. Member States exercise their competence where the Union does not exercise it or has decided not to exercise it. Shared competence between the Union and its Member States applies in the following areas:

- internal market;
- social policies (but only for the aspects specifically defined in the treaty);
- economic, social and territorial cohesion (regional policies);
- agriculture and fishing (except the conservation of marine biological resources);
- environment;
- consumer protection;
- transport;
- trans-European networks;
- power;
- area of freedom, security and justice;
- public health safety issues (limited to the aspects defined in the TFEU);
- research, technological development and space;
- development cooperation and humanitarian aid.

Supporting competences

The Union can only support, coordinate or complement the action of its Member States. Legally binding Union acts must not require the harmonization of the laws or regulations of the Member States. The support skills refer to the following strategic sectors:

- protection and improvement of human health;
- industry;
- culture;
- tourism;
- education, vocational training , youth and sport ;
- civil protection;
- administrative cooperation.

Special skills

The Union may take measures to ensure that Member States coordinate their economic, social and employment policies at Union level.

The Union's common foreign and security policy is characterized by specific institutional aspects, such as the limited participation of the European Parliament and the European Commission in the decision-making process and the exclusion of any legislative activity. This policy is defined and implemented by the European Council (made up of the heads of state or government of the member states) and the Council of the European Union (made up of representatives of each member state at ministerial level). The President of the

European Council and the High Representative of the Union for Foreign Affairs and Security Policy represent the Union in matters of common foreign and security policy.

Exercise of skills

The exercise of the Union's competences is subject to two fundamental principles set out in Article 5 of the Treaty on European Union.

- Proportionality. The content and scope of the Union's action may not exceed what is necessary to achieve the objectives of the Treaties.
- Subsidiarity. In the area of its non-exclusive competences, the Union may act only if, and to the extent that, the objective of a proposed action cannot be achieved satisfactorily by the Member States but could be achieved in a better way at Union level.

Regarding the **enforcement of** Union law primary law gives the EU limited executive powers, generally delegating the enforcement of EU law to the Member States. Article 291(1) TFEU specifies that "Member States are required to adopt all measures of national law necessary for the implementation of legally binding acts of the Union". Where uniform conditions for the implementation of legally binding Union acts are necessary, the Commission exercises its implementing powers (Article 291(2) TFEU).

Bibliography

- Bank of Italy , *Money and alternative payment instruments to cash* , The Teaching Notebooks of the Bank of Italy, Rome, 2018.
- Barbiellini G., Bernardi AU, *Society, economies, political systems* , Bergamo, Minerva Italica, 1995.
- Cafaro S., *The ratification of international treaties, a comparative law perspective* , EPRS, Directorate General of Parliamentary Research Services, Comparative Law Library Unit July 2018.
- Capano G., Piattoni S., Raniolo R., Verzichelli L., *Manual of political science* , Chapter 3. *Regime, political system, state*, Bologna, Il Mulino, 2014.
- Carbone S. The subjects and actors in the international community, Turin, Giappichelli,
- Cassese S. (ed.), *Dictionary of public law* , Milan, Giuffr , 2006,.
- Cotta M., Della Porta D., Morlino L., *Political science.*, Bologna, il Mulino, 2001.
- Dastoli PV, *European Union The long journey of the European Union*, in Dictionary of economics and finance, Rome, Treccani 2012
- Farnararo P., *From the Community to the European Union* , Edizioni Centro Europeo J. Monnet, Salerno, 1999.
- ISTAT, POLITICAL PARTICIPATION IN ITALY | YEAR 2019.
- Papisca A., Mascia M., *International relations in the era of interdependence and human rights* , Padua, Cedam, 1997.
- Papisca A., *Introduction to international relations*, Turin, Giappichelli Editore, 1973.
- Pasquino G., *New course in political science*, Bologna, Il Mulino Strumenti series, 1997.

- Pizzorno A. *Introduction to the study of political participation* , An introduction to the study of political participation [1966], Quaderni di Sociologia, n. 79/2019.
- Regonini G. , *Understanding public policies* Bologna, Il Mulino, 2001.
- Robertson I. Sociology, chapter 19, *The political order* , ed. Italian edited by Dei M., Bologna, Zanichelli, 1993.
- Sani G, *Political participation* , Encyclopedia of social sciences, Rome , Treccani, 1966.
- Tesauro, G., *European Union Law* , Padua, CEDAM, 2005.
- Villani P, The contemporary age , *European civilization in world history* III, Bologna, Il Mulino, 1994.
- Vito M., *Law of treaties and evolution of international law* , in Law & Rights, Fondazione Francesco Brugaletta, 2017.

SITOGRAHY

- Law, jurisprudence of the European Union, Official Journal of the European Union <https://eur-lex.europa.eu/>
- European institutions: <https://european-union.europa.eu/>
- European Commission: <https://commission.europa.eu/>
- European Council: <https://www.consilium.europa.eu/it/european-council/>
- European Parliament: <https://www.europarl.europa.eu>