



The evolution of EU competences and acts

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1. Some general remarks

- The **EU legal order consists of international, European and national rules**: it is considered a multilevel legal system;
- Distinction between **primary and secondary legislation**;
- Distinction between **binding and non binding acts**;
- Changes of Lisbon Treaty:
 1. It reduces the **number of legal instruments**;
 2. It introduces a new category of act: **delegated acts and implementing acts**;
 3. It distinguishes **legislative and non-legislative acts**.

According to the definition of Eur-Lex Glossary:

The **Community method** is characterized by:

- the sole right of the European Commission to initiate legislation;
- the co-decision power between the Council and the European Parliament, and
- the use of qualified majority voting in Council.

It contrasts with the **intergovernmental method** of operation used in decision-making, mainly on **Common Foreign and Security Policy and aspects of police and judicial cooperation**. This method has the following salient features:

- the Commission's right of initiative is shared with the EU countries or confined to specific areas of activity;
- the European Council, explicitly mentioned in the Lisbon Treaty, often plays a key role;
- the Council generally acts unanimously;
- the European Parliament has a purely consultative role.

2. A look at articles 1 and 5 TEU

Article 1 TUE

1. By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called "the Union", on which the **Member States confer competences to attain objectives they have in common.**
2. This Treaty marks a new stage in the process of creating an **ever closer union among the peoples of Europe**, in which decisions are taken as openly as possible and as **closely as possible to the citizen.**
3. The Union shall be founded on the **present Treaty and on the Treaty on the Functioning of the European Union** (hereinafter referred to as "the Treaties"). Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.

The **three main principles** of EU competences are:

- a. the principle of **conferral**;
- b. the principle of **subsidiarity**;
- c. the principle of **proportionality**.

Article 5 TUE (ex Article 5 TEC), paragraph 1, states that: “*The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality*” ;

According to these principles, the Union can only act in a policy area if:

- the action forms part of the **competences conferred upon the EU by the Treaties** (principle of conferral);
- in the context of competences shared with Member States, the **European level is most relevant in order to meet the objectives set by the Treaties** (principle of subsidiarity);
- the content and form of the **action does not exceed what is necessary to achieve the objectives set by the Treaties** (principle of proportionality).

Furthermore, the Treaty of Lisbon has clearly established some categories of competences:

- **exclusive competences** (Article 3 TFEU),
- **shared competences with member states** (Article 4 TFEU);
- **coordinated competences** (Article 5 TFEU);
- **competences of support, coordination or supplement** (Article 6 TFEU).

a. the principle of conferral

- **Article 5 TUE** (ex Article 5 TEC), paragraph 2, states that: *“Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States”*;
- This principle must be read in conjunction with the so-called flexibility clause contained in **Article 352 TFEU** (ex Article 308 TEC), which states: *“If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures”*.
- There are also **some limits**, introduced by the Lisbon Treaty and specified in paragraphs 2, 3 and 4 .

b. The principle of subsidiarity

- Article 5 TEU (ex Article 5 TEC), paragraph 3 states: “ *Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.* ”
- The principle of subsidiarity **aims at determining the level of intervention** that is most relevant in the areas of competences shared between the EU and Member States;
- It also aims at bringing the **EU and its citizens closer** by guaranteeing that action is taken at local level where it proves to be necessary;

- The EU may only intervene if it is able to act more effectively than Member States, according to the **Protocol (no. 2) on the application of the principles of subsidiarity and proportionality** which lays down **three criteria**:
 - 1) the action have transnational aspects that cannot be resolved by Member States;
 - 2) national action or an absence of action is contrary to the requirements of the Treaty;
 - 3) action at European level has clear advantages.
- The Treaty of Lisbon introduced also a **political control of national parliaments** through a mechanism of early warning and a **judicial control of the EU Court of Justice** in case of infringement of such principle.

c. the principle of proportionality

- Article 5 TEU (ex Article 5 TEC), paragraph 4, states: “*Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.*”
- The Court of Justice has interpreted very broadly this principle with reference to all policies and action of EU;
- It means that:
 - 1) the content and form of the action must be in keeping with the aim pursued or the measure must be suitable to achieve the aim;
 - 2) the measure must be necessary;
 - 3) the measure must be reasonable.
- Another basic principle of the EU is **the principle of sincere cooperation** (Article 4, paragraph 3). It is essential to the proper functioning of the EU.

3. The evolution of the Treaties

- **The Single European Act**, which was signed in February **1986** and came into force on **1st July 1987**;
- **The Treaty of Maastricht**, formally the **Treaty on European Union** (or TEU), which created the European Union, by adding intergovernmental cooperation in areas such as foreign policy and internal security to the existing Community system. This treaty is famous also because it established the three pillars of the European Union. It came into force on **1° November 1993**. It was considered the first reform treaty of the original Communities. It also established the European citizenship and introduced the principles of subsidiarity;
- **The Treaty of Amsterdam**, officially the Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities, was signed on **2nd October 1997**, and entered into force on **1st May 1999**;

- **The Treaty of Nice** was signed on **26th February 2001** and came into force on **1st February 2003**. In particular, it reformed the institutional structure of the European Union to withstand eastward expansion. This treaty was considered a compromise. However, at the European Council of Nice on 7th December 2000, the Presidents of the European Parliament, the European Council and the European Commission solemnly proclaim the **Charter of Fundamental Rights of the European Union**.
- On **14-15 December 2001**, took place the European Council of Laeken which adopted the **Declaration on the future of the EU**. This opened the way for the forthcoming major reform of the EU and for the creation of a Convention (chaired by Valéry Giscard d'Estaing) to draft the **European Constitution**;
- On **29th October 2004**, the **Treaty establishing a Constitution for the Europe** was signed in Rome by the 25 Heads of State or Government, but it was not ratified by all the member States. New rules, proposed in this Constitution, would have to replace all the existing treaties;
- Thus, it was replaced by the **Treaty of Lisbon**, which was signed on **13 December 2007** and came into force on **1st December 2009**. It amended, but did not replace the previous treaties, and it introduced most of the amendments that were featured in the Constitution.

The most evident new provisions of the Lisbon Treaty are :

1. **the replacement of the European Community with the European Union.** Article 1 of TEU states in fact that: *“The Union shall replace and succeed the European Community”*;
2. There are still two treaties, but they are consequently the **Treaty on the European Union (TEU) and Treaty on the Functioning of European Union (TFEU)**;
3. It **suppressed the subdivision in pillars**. Thus, the **Common Foreign and Security Policy is still intergovernmental**, that is to say that it is based essentially on the cooperation of governments in the European Council, acting unanimously;
4. It introduced a **new Title II concerning provision on democratic principles** along the lines of national democracies;
5. It established the **High Representative of the Union for Foreign Affairs and Security Policy** and a **stable presidency of the European Council**;
6. It attributed a **binding value to the Charter of Fundamental Rights**, under the new Article 6, paragraph 1, which states: *“The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties”*

4. The point of view of Scholars

Theories which tried to explain the EU:

- **neo-functionalism** was developed in the second half of the 1950s. It was based on **Jean Monnet's approach to European integration** and on the **concept of 'spill-over'**;
- **intergovernmentalist** was developed in the mid-1960s. **National governments control the level and speed of European integration.** It depends on direct decisions by governments;
- **federalism** was the **idea of Altiero Spinelli**, which laid down on a political Union to **integrate different entities**;
- **multilevel governance** has its origins in the early 1990s in order to conceptualized the evolving EU structural policy after the Maastrich reform. It is based on a **constant coordination across different territorial levels** including a supranational, national, regional and local level (**vertical dimension**) and **within them (horizontal dimension)**, that is to say a **complex overlapping process which involves numerous actors.**

Scholarship considered the EU as **a supranational organization**

Article 9 of the Treaty establishing the European Coal and Steel Community (... "Les membres de la Haute Autorité exercent leurs fonctions en pleine indépendance, dans l'intérêt général de la Communauté. Dans l'accomplissement de leurs devoirs, ils ne sollicitent ni n'acceptent d'instructions d'aucun gouvernement ni d'aucun organisme. Ils s'abstiennent de tout **acte incompatible avec le caractère supranational de leurs fonctions**").

Nevertheless, the **European Union is the organization with most supranational features**, but it depends to a considerable extent on intergovernmental cooperation. As a result, some scholars consider the **EU as an organization of cooperation and integration as a result of the special relationship that exists between the EU legal order and the national legal orders**.

5. Effects of EU law

Article 288 TFEU (ex Article 249 TEC) states: *“To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.*

- *A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.*
- *A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.*
- *A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.*
- *Recommendations and opinions shall have no binding force”.*

a. Direct effect

- in the famous judgement of **5th February 1963 *Van Gend en Loos***, the Court of Justice specifies that “*the Community constitutes a new legal order of international law for the benefit of which the States have limited their sovereign rights and the subjects of which comprise not only Member States but also their nationals*”;
- the Court states that European law not only engenders obligations for Member States, but also rights for individuals. Individuals may therefore take advantage of these rights and **directly invoke European acts before national courts**;
- According to the type of act concerned, the Court of Justice has accepted either a **full direct effect** (i.e. a horizontal and vertical direct effect) or a **partial direct effect** (confined to the vertical direct effect).

- EU obligations must be **precise, clear and unconditional** and they do not call for additional measures, either national or European;
- Normally, the primary legislation has a full direct effect.
- In order to the secondary legislation, the application of direct effect depends on the type of act:
 1. regulations have full direct effect (judgement 14 December 1971, *Politi*);
 2. a directive has direct effect when its provisions are unconditional and sufficiently clear and precise (Judgement of 4 December 1974, *Van Duyn*) and if the Member States have not transposed the directive by the deadline (Judgement of 5 April 1979, *Ratti*);
 3. decisions may have direct effect when they refer to a Member State.

b. Supremacy

- This principle guarantees **the superiority of European law over national laws**;
- It has been enshrined by the Court of Justice in the decision 15 July 1964 *Costa v. Enel case*;
- the precedence of European law is to be applied **to all national acts**, whether they were adopted before or after the European act in question (*Simmenthal*, Case 106/77, 9 March 1978);
- This means that the EU law has precedence over national laws. If a national rule is contrary to a European provision, Member States' authorities must apply the European provision.
- The limit are the fundamental constitutional principles of Member States.

6. The Treaty of Lisbon and the instrument of partnership

The Treaty of Lisbon reunited the objectives

The current article 3 TEU describes them, simply distinguishing between internal objectives (paras. 2, 3 and 4) and external (par. 5).

It is possible to identify a number of objectives concerning the aims that the Union intends to accomplish in relations with the rest of the world

Article 21 TEU states that *'the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law'*;

- *'the Union shall seek to develop relations and **build partnerships** with third countries, and international, regional or global organisations'*;
- This terminology “build partnership” seems to create a specific legal arrangement between the Union and its member States and third countries or other international organizations;

- the EU (*rectius* the EC) used partnership to establish a framework of **privileged relationships with some countries or regional areas**;
- In particular, in the EU development cooperation, for example, with the group of the **African, Caribbean and Pacific Countries (ACP Countries)**;
- the Cotonou Partnership Agreement is literally a partnership agreement;
- EU (*rectius* EC) used partnership to support **bi-regional relationships with Africa, Caribbean and Pacific**;
- it is mostly a **form of political dialogue**;
- the so-called **EU-Caribbean Partnership** is a political partnership and the EU-Africa Partnership is a continent-to-continent strategic partnership;

- The relationships between EU and the Caribbean are also included in the EU-CELAC strategic partnership that is a **regional mechanism for political dialogue and cooperation**, the EU-CELAC Summits;
- Since the Nineties, the EU tried to establish relationships with its neighbours to achieve the closest possible political association based on common interests and values; the well-known **European Neighbourhood Policy (ENP)**;
- the **Euro-Mediterranean Partnership that started with the Final Declaration of Barcelona** (i.e. process of Barcelona). The next step was the well-known **Union for the Mediterranean**;

- the EU concluded a **strategic partnership with Russia and the so-called Eastern Partnerships**;
- bilateral **strategic partnerships with Asian countries or with the whole Asian area**;
- an informal process of meetings, better known as **ASEM process**;
- The 14th ASEM Foreign Ministers' Meeting (ASEMFMM14) will take place on 15-16 December in Madrid, Spain, under the theme of *"Asia & Europe - Together for Effective Multilateralism"*..

- **Accession Partnership” as a Strategy Instrument in the EU Enlargement Process.** The enlargement process of the EC before and after the EU was in part the result of the provisions of primary law, in part the result of an intergovernmental process following the Treaty of Maastricht;
- The legal requirements of the membership are included in **Article 49 TEU**;
- the accession was in practice subordinated to the respect of **some substantive criteria** elaborated during the European Council of Copenhagen, the well-known Criteria of Copenhagen;
- The European Council of Essen of 9-10 December 1994 defined for the first time a **pre-accession strategy** to prepare the countries of Central and Eastern Europe for EU membership;

- the latest enlargement processes were driven in the framework of additional instruments, such as the **pre-accession strategy and the Accession Partnerships (APs)**;
- According to the conclusions of the European Council of Luxembourg of 1997 and the Agenda 2000 of European Commission, these instruments were necessary to face the **EU biggest-ever enlargement**;
- it has a wider purpose because it should be understood as a strategy on the future of the Union;
- the new instrument of the AP was considered the **key feature of such reinforced strategy for programming all pre-accession assistance**;

- It had been experimented with reference to the applicant countries of Central and Eastern Europe;
- It was established according to the Council Regulation (EC) No 622/98 of 16 March 1998 on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships (OJ L 85/1, 20.3.1998);
- In this context, **partnership took the form of Council decision** establishing the principles, priorities, intermediate objectives for each applicant State (as well as subsequent significant adjustments applicable to each of them under Article 2 Reg. No. 622/98);
- As a result, it is only binding for the EU and member States;

7. Conclusions

- The EU evolved thanks to the evolutions of its competences and acts.
- Partnership has been an instrument often used by the EC and EU.
- Partnership has had many features, assuming the **role of real programs to be carried out according to specific criteria**, the achievement of which is considered as an indicator of democratization of the State itself, for example, but not only, in EU enlargement policy;
- EU legal order developed its own democratic principles that constitutes an obligation, not only for member States, but also for States want to become members or third States that want to maintain relationships with the Union;
- the European Union has set a **new regulatory framework thanks to the Lisbon Treaty**;

- the EU avails partnership **for purposes of economic assistance and development**: a regime of EU associated members;
- Then, partnership was used as **an instrument of stabilization and security of European borders: strategic partners and associated neighbours**;
- In such context, it was also used as an **instrument of the process of stabilization and association of Balkans**;
- Partnership was considered the most important **legal instrument for the enlargement of EU membership** in the 'reorientation of the EAs from the aim of association to that of accession'.

Thank you for your attention!

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