

EUROPEAN LAW/EUROPEAN TAX LAW

PART I

State Tax University of Irpin – University of Finance of North
Rhine-Westphalia

Prof. Dr. Lars Micker, LL.M., BScEc





INTRODUCTION

Introduction

- Cooperation between our institutions
 - Established on April 28th 2023 by Signing a Memorandum of Understanding
 - The goals of our cooperation
 - Holding joint seminars, lectures
 - Dialogue at lecturer and administrative level
 - Supporting student encounters and the university partnership
 - Strengthening interpersonal relations between the two sides

Introduction

Cooperation between our institutions

➤ Established on April 28th 2023 by Signing a Memorandum of Understanding



Content

- Overview and history of the European Union
- International Legal Status and Institutions of the EU
- Responsibilities of the European Union
- Legal framework of the European Union - European law
- Budget and Financing of the European Union
- Policy Areas and Responsibilities of the European Union
- Influence of European Law on National Tax Law



OVERVIEW AND HISTORY OF THE EUROPEAN UNION

Overview and history of the European Union

- Overview
 - Association of 27 European states
 - Of the 27 EU states, 20 form an economic and monetary union. A common currency for these states, the euro, was introduced in 2002
 - Total population of about 450 million
 - In 2012, the European Union was awarded the Nobel Peace Prize
 - EU constitutes a legal entity in its own right and therefore has the right to inspect and speak at the United Nations
 - The political system, which has emerged in the course of European integration, is based on the **Treaty on European Union** and the **Treaty on the Functioning of the European Union**: It contains both supranational and intergovernmental elements

Overview and history of the European Union

- History

- Coal and Steel Union (1951)

- Jean Monnet, then head of the French Planning Office, voiced the proposal to place all Franco-German coal and steel production under a joint authority
- French Foreign Minister Robert Schuman took up this idea and presented it to Parliament on May 9, 1950, which is why it went down in history as the *Schuman Plan*
- This Schuman Plan led to the founding of the European Coal and Steel Community (ECSC, colloquially also "Coal and Steel Community") on April 18, 1951



Overview and history of the European Union

- History

- Treaties of Rome (1957)

- On March 25, 1957, the so-called Treaties of Rome constituted the next step in integration
- With these treaties, the same six states founded the European Economic Community (EEC) and the European Atomic Energy Community (EAEC and Euratom)
- Goal of the EEC: to create a common market in which goods, services, capital and labor could move freely
- Through Euratom, there was to be a common development for the peaceful use of atomic energy



Overview and history of the European Union

- History

- Maastricht Treaty (1992)

- On February 7, 1992, the Maastricht Treaty establishing the European Union (EU) was signed

- Entered into force on November 1, 1993

- On the one hand, the treaty decided to establish an economic and monetary union, which later led to the introduction of the euro

- On the other hand, the member states decided on closer coordination in foreign and security policy and in the area of home affairs and justice

- At the same time, the EEC was renamed the European Community (EC), as it was now given responsibilities in policy areas other than the economy (such as environmental policy)



Overview and history of the European Union

- History
 - Treaty of Amsterdam and Treaty of Nice
 - With the Treaty of Amsterdam (signed in 1997) and the Treaty of Nice (in force since February 2003), the EU's treaty structure was again revised to bring about better functioning of the institutions
 - Until the Lisbon Treaty, only the European Communities had legal personality, not the European Union itself
 - This meant that the EC could take generally binding decisions within the scope of its competences, while the EU acted merely as an "umbrella organization."
 - In the Common Foreign and Security Policy (CFSP) in particular, the EU could not act as an independent institution, but always only in the form of its individual member states
 - EU member states also established the so-called **Copenhagen accession criteria** in 1993: defining freedom, democracy, the rule of law, human rights, and fundamental civil liberties as the Union's core values

Overview and history of the European Union

- History
 - Treaty of Lisbon (2007)
 - In October 2004, a new constitutional treaty was signed in Rome. Among other things, it provided
 - for the dissolution of the EC and the transfer of its legal personality to the EU
 - an expansion of majority decision-making
 - a reduction in the size of the Commission
 - and better coordination of the Common Foreign Policy
 - Ratification of the Constitutional Treaty failed, however (the French and Dutch rejected it in a referendum)
 - Instead, an intergovernmental conference in 2007 drew up the Treaty of Lisbon, which adopted the main content of the Constitutional Treaty
 - The Treaty of Lisbon entered into force on December 1, 2009



Overview and history of the European Union

- History
- Phases of challenges of the Union
 - Since the financial crisis from 2007 onward, which resulted in high levels of sovereign debt in some cases, and the ensuing euro crisis, the European Union has experienced economic and social turmoil among some of its members, which has in some cases strained the relationship between member states in need of financial assistance and those eligible for support measures
 - After 2010, a number of measures were initiated to address the euro crisis, including
 - the European Stability Mechanism (ESM), established in 2012 as part of the euro bailout fund, and
 - the European Fiscal Compact, which imposes fiscal discipline and debt limits on participating member states

Overview and history of the European Union

- History
- Phases of challenges of the Union
- Disunity and further crisis-ridden developments in the European Union resulted in the refugee crisis from 2015 onward: Increasing anti-European political thoughts
- The refugee crisis is also seen as partly responsible for the United Kingdom's exit from the European Union
- The willingness of the various governments of the member states to accept refugees varied greatly and stood in the way of joint action by the members of the Union to overcome the crisis
- In some cases, border controls were reintroduced in the Schengen area
- Various arrangements were made to protect the EU's external borders, including the expansion of Frontex

Overview and history of the European Union

- History
- Phases of challenges of the Union
 - A plan for the distribution of refugees among the member states was only rudimentarily implemented and was boycotted by national conservative governments, in part openly, contrary to majority decisions confirmed by the European Court of Justice
 - It is not only in this context that the European Union will soon have to decide what means it should use in the future to respond to open breaches of treaty by these governments
 - The Treaty on European Union obliges the Member States of the European Union to show solidarity and uphold the rule of law (cf. Art. 2 TEU, Art. 3 TEU)



MEMBERSHIP IN THE EUROPEAN UNION

Membership in the European Union

- **Founding Members**

- The origin of today's European Union was, as shown above, the European Communities (ECSC, EEC and Euratom) founded in 1951 and 1957
- Its member states were Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Kingdom of the Netherlands
- Founding members are generally regarded as possible integration pioneers in various concepts of graduated integration

Membership in the European Union

- Extensions



Membership in the European Union

- Extensions

- In 1973, the United Kingdom, Ireland and Denmark (In Norway, which had also signed an accession treaty, its ratification was rejected by the population in a referendum)
- In the 1980s, Greece (1981), Portugal and Spain (both 1986)
- With German reunification on October 3, 1990: area of the former GDR.
- Austria, Finland and Sweden in 1995
- May 1, 2004: Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary and Slovenia, State of Malta and the island of Cyprus
- On January 1, 2007, Romania and Bulgaria
- On July 1, 2013, Croatia became the then 28th Member State

Membership in the European Union

- Area reductions
 - On June 23, 2016, a majority of 51.9% in the United Kingdom voted to leave the European Union (Brexit) in the non-binding referendum on whether the United Kingdom should remain in the European Union
 - On March 29, 2017, the Prime Minister initiated the UK's withdrawal request
 - However, according to Article 50 para. 3) of the Treaty on European Union, the United Kingdom was still part of the Union for the time being
 - The withdrawal took place on January 31, 2020

Membership in the European Union

- Current member states and candidates



Membership in the European Union

- Candidate Countries

- According to Article 49 of the EU Treaty, any European state that respects the values of the EU and is committed to promoting them may apply for EU membership.
- Accession can only be completed if the so-called Copenhagen criteria (in particular democracy and the rule of law) are fulfilled
- To meet these conditions, the EU provides both advisory and financial assistance to candidate countries (Council Regulation (EC) No. 1085/2006 of July 17, 2006)
- Within the framework of accession partnerships, work is thus being done toward alignment with EU standards. This is also linked to a twinning process with cooperation assistance for administrative development
- The accession process is concluded with an accession treaty, which must be ratified by all EU member states, the candidate country and the European Parliament

Membership in the European Union

- EFTA States
 - The European Union also maintains special relations with some other neighboring countries
 - This concerns in particular **Norway, Iceland** and **Liechtenstein**
 - These European Free Trade Association (EFTA) member states joined with the EU in 1994 in the European Economic Area (EEA), which is an extension of the European Single Market
 - Through the EEA Agreement, the internal market regulations of the EU also apply to the EFTA countries in the EEA - but without their having a say in the EU institutions
 - These three states are thus economically, but not politically, integrated into the structures of the EU
 - All three EFTA states in the EEA are also members of the Schengen Agreement



INTERNATIONAL LEGAL STATUS

International Legal Status

- Legal basis of the European Union is currently two international treaties that the EU member states have concluded with each other
 - the Treaty on European Union (TEU), concluded in Maastricht in 1992, and
 - the Treaty on the Functioning of the European Union (TFEU), concluded in Rome in 1957 as the EEC Treaty, renamed the EC Treaty in 1992, and given its current name in 2007
- With these treaties, the member states agreed to create the EU, to give it a legal personality (Art. 47 TEU) and to confer certain sovereign rights and legislative powers on its institutions
- They are therefore referred to as "European primary law"
- All "secondary law" which the EU itself enacts in accordance with its own legislative procedures is derived from these treaties and the competences mentioned therein
- As a subject of international law with its own legal personality, the EU can also conclude treaties with other states itself and be a member of an international organization: not a confederation of states in the classical sense



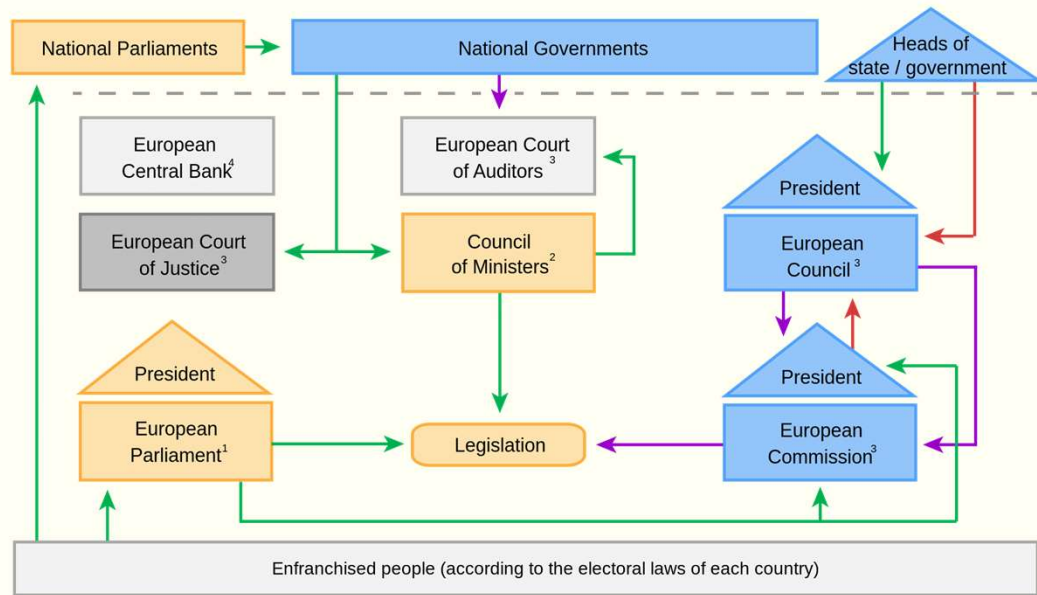
INSTITUTIONS OF THE EUROPEAN UNION

Institutions

- **Overview**
- The European Union has seven institutions, which are defined in Art. 13 of the EU Treaty
- In detail these are
 - the European Parliament,
 - the European Council,
 - the Council of the European Union (also called the "Council of Ministers"),
 - the European Commission,
 - the Court of Justice of the European Union,
 - the European Central Bank and
 - the European Court of Auditors

Institutions

- Overview



- Legislative branch
- Executive branch
- Judicial branch
- elects / appoints / decides on
- membership
- proposes

1: Elections are every 5 years. The right to vote may be different depending on the country.
 2: State chamber. Convenes in varying composition depending on the policy area. Each country is represented by one member per department.
 3: Each country is represented by one member.
 4: The European Central Bank is composed of representatives of the national central banks. Its Board is elected by the European Council on the proposal of the Council of Ministers.

Institutions

- European Parliament

- Art. 14 EU Treaty

- Since 1979, it has been elected every five years (most recently in 2019) by the citizens of the EU in general, direct, free, secret, but not equal European elections

- Since the 2014 European elections, the Parliament has comprised a maximum of 750 seats plus the President (Article 14 (2) of the EU Treaty)

- Tasks

- Legislative function

- Budgeting function

- Control function

Institutions

- European Parliament

- Legislative function

- The Parliament shares the legislative function with the Council of the European Union
- It adopts European laws (directives, regulations, decisions)
- In most policy areas, the so-called ordinary legislative procedure has applied since the Treaty of Lisbon (Art. 294 TFEU), in which the Parliament and the Council of the EU have equal rights and can each introduce amendments to a legislative text proposed by the European Commission in two readings
- At the EU level, only the EU Commission has this right of initiative, which can, however, be requested by the European Parliament to exercise it in accordance with Art. 225 TFEU

Institutions

- European Parliament

- Appointment function:

- According to Art. 17 of the EU Treaty, the Parliament elects the President of the European Commission. However, the right of nomination lies with the European Council, which must, however, "take into account" the results of the previous European elections
- In addition to the Commission President, the Parliament also confirms the entire Commission
- In addition, Parliament can force the resignation of the Commission through a vote of no confidence (Art. 234 TFEU). To do so, it requires a two-thirds majority, which is quite a high hurdle compared with national parliaments and gives the Commission a relatively large degree of autonomy

Institutions

- European Council

- Summit of EU Heads of State and Government (intergovernmental body and part of the EU political system)
- Chair: Charles Michel (President of the Council)
- According to Art. 15 of the EU Treaty, the European Council "shall give the EU the necessary impetus for its development and shall define the general political guidelines and priorities for it"
- In addition, the European Council also deals with important issues for which no consensus could be found at ministerial level
- Nomination of the President of the Commission and also of the High Representative of the EU
- Election of the members of the Executive Board of the European Central Bank



Institutions

- Council of the European Union
 - Exercises, together with the European Parliament, the legislative power of the European Union
 - Functioning is governed by Art. 16 TEU and Art. 237 et seq. TFEU Treaty
 - It is composed of one representative per Member State, who must be authorized to take binding decisions on behalf of his or her government
 - The Council formations meet at ministerial level twice per Council presidency, i.e. every three months
 - Voting in the Council of the European Union is usually by qualified majority, but in some cases specified in the treaties it may be by simple majority or unanimously. In purely procedural matters, the Council usually decides by simple majority. On issues of common foreign and security policy and other politically sensitive matters, such as tax policy, the Council acts unanimously.
 - According to Art. 238 (1) TFEU, a simple majority exists if the majority of the Member States agree

Institutions

- Council of the European Union
 - Qualified majority
 - Qualified majority voting is required for the ordinary legislative procedure, which applies in most EU policy areas, and for many other decisions in the Council
 - According to Art. 16 (3) TEU, the qualified majority is always decisive if the treaties do not provide for a different procedure
 - Since the Treaty of Lisbon, this has been defined by the principle of a double majority (Art. 16 (4) TEU), which requires that
 - at least 55% of the member states agree (that would currently be 15) that at the same time
 - represent at least 65% of the EU population, whereby
 - a blocking minority applies, by which member states that together represent more than 35% of the EU population plus one additional member state (that would currently be a total of 4) can exercise a veto

Institutions

- European Commission
 - Art. 17 EU Treaty and Art. 244 et seq. TFEU
 - It essentially performs the functions of the executive and in this respect is comparable to the government of a nation state
 - Ensures the correct implementation of European legal acts (i.e. directives, regulations, decisions), implements the EU budget and carries out the agreed funding programs.
 - It has the sole right of initiative in the area of EU legislation, i.e. only it can make the formal proposal for an EU legislative act
 - Special role as "guardian of the treaties": It ensures that the member states also comply with the obligations under European law that they have entered into with the EU Treaty and the TFEU
 - In the event of infringements of the law by the Member States, the Commission can initiate infringement proceedings before the European Court of Justice

Institutions

- European Commission
 - The European Commission currently consists of 27 members
 - Since the EU enlargement in 2004, each of the member states sends one national as a member of the Commission
 - The President of the Commission has the power to issue directives within the Commission, he appoints the Vice-Presidents and can also independently dismiss individual Commissioners (Article 17 (6) of the EU Treaty)
 - However, decisions are generally taken according to the collegial principle



Case Studies

- Case Studies

- Case 1: Competences of the European Parliament

- Facts: The European Parliament is highly in agreement with the Commission's activities. Only one Commissioner displeases Parliament. The person in question does not perform his duties and frequently makes disparaging remarks about Parliament. Everyone in Parliament agrees that this Commissioner should no longer be a member of the Commission. A vote of no confidence is planned against this person. However, a part of the MEPs is skeptical about this: the possibility of directing this means against an individual Commissioner could not be inferred from the TFEU. The majority of MEPs see it differently: if it is possible to force even the whole Commission to resign, then even more so an individual. What do you think?

Case Studies

- Case Studies

- Case 1: Competences of the European Parliament

- Solution:

- The wording of Art. 234 TFEU is unambiguous ("shall resign as a body")
- In addition, a mirror image can be argued with the establishment of the Commission (Art. 17 (7) TEU, "shall, as a college, submit to a vote of consent by the European Parliament")
- Here, too, it is clear that the Commission as a college, i.e. in its entirety, is to be dependent on the confidence of the Parliament
- A vote of no confidence against an individual by the Parliament would not be permissible

Case Studies

- Case Studies
 - Case 2: Composition of the (Ministerial) Council
 - Facts: Germany sends a state minister (authorized internally) to a vote in the Council on a topic in the field of education. Doubts are expressed in the Council as to whether this minister can effectively represent Germany in the vote. Some of the Council members believe that only a federal minister could be authorized to do so. Question 1: Why did Germany come up with the idea of sending the state minister in the first place? Question 2: Are the doubting Council members right?

Case Studies

- Case Studies

- Case 2: Composition of the (Ministerial) Council

- Solution

- (1) Education is a national responsibility of the federal states of Germany
- (2) A correspondingly internally authorized State minister is included in Art. 16 (2) TEU
- In order to make this solution possible for federally organized states, the initially somewhat cumbersome wording of Art. 16 Para. 2 TEU was deliberately chosen
- Effective representation is therefore possible in this case

Case Studies

- Case Studies
 - Case 3: Competencies of the (Ministerial) Council
 - Facts
 - The Council wishes to enact a law for a matter it considers urgent. In terms of content, the regulation also falls within the appropriate area of competence. The Commission believes that only it can initiate a legislative procedure, but it currently sees no reason to do so. The Council believes that, as the most important legislative body in the EU, it should also be able to do so, since the Council would ultimately even have to decide on the outcome. What do you think?

Case Studies

- Case Studies
 - Case 3: Competencies of the (Ministerial) Council
 - Solution
 - The Council does not have a genuine right of initiative
 - Like the Parliament (Art. 225 TFEU), it has only an "indirect right of initiative", Art. 241 TFEU
 - Thus, the Council can only make non-binding requests to the Commission
 - In principle, there is no legislative procedure without a proposal by the Commission (see also Article 17 (2), first sentence, TEU)