

EUROPEAN LAW/EUROPEAN TAX LAW

PART II


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Content

- The Court of Justice of the European Union
- Responsibilities of the European Union
- Budget and Financing of the European Union
- Legal framework of the European Union - European law
- Legislation in the European Union



THE COURT OF JUSTICE OF THE EUROPEAN UNION

The Court of Justice of the European Union

- Tasks

- According to Article 19 of the EU Treaty, the main task of the Court of Justice of the European Union (i.e. the entire court system) is to "uphold the law in the interpretation and application of the Treaties"
- The EU member states also play a part in this task, as they must create the necessary legal remedies within the scope of their competences so that citizens can enforce their rights arising from EU law before the national courts



The Court of Justice of the European Union

- Infringement proceedings
 - The infringement procedure is governed by Articles 258 to 260 TFEU
 - Under this procedure, both the EU Commission (so-called supervisory action, Art. 258) and one of the member states (so-called state action, Art. 259) can assert violations of EU law by a member state
 - Infringement proceedings initiated by the Commission play a major role in maintaining the legal order of the Union (formerly: the Community legal order)
 - The Commission, as guardian of the Treaties, is in principle obliged to intervene against objective violations of EU law by Member States
 - The procedure itself is divided into a preliminary procedure and a judicial procedure

The Court of Justice of the European Union

- Infringement proceedings

- The judicial procedure is initiated by an action

- This can be brought if the member state does not comply with the Commission's reasoned opinion

- The ECJ then decides whether the Member State is in breach of the EU Treaties and what measures it must take to remedy the breach (Art. 260 (1) TFEU)

- If the Court answers in the affirmative, the Member State concerned must take the measures necessary to comply with the Court's judgment

- If the Member State also fails to comply within a certain set time limit, the Commission may again refer the case to the ECJ, which may impose a penalty in the form of a fine and/or periodic penalty payment that it deems appropriate in the individual case (Art. 260 TFEU, so-called second infringement procedure)

The Court of Justice of the European Union

- **Preliminary ruling procedure**
- A preliminary ruling procedure under Article 267 TFEU is intended to ensure the uniform application and validity of EU law
- National courts can refer preliminary questions on the interpretation of EU law or the validity of secondary law to the European Court of Justice
- If the national court decides in the last instance, it is obliged to refer the matter
- The question must be of significance for the decision, i.e. it must have an impact on the operative part
- The obligation to refer a question to the European Court of Justice may be waived if the question has already been decided by the European Court of Justice in accordance with the *acte clair* theory
- To the extent that a national court violates the duty to refer, this may constitute a denial of justice. In the Federal Republic of Germany, a violation of the right to the administration of justice (fundamental right to justice) under Article 101 (1) sentence 2 of the Basic Law can be asserted in a constitutional complaint to the Federal Constitutional Court (BVerfG)

The Court of Justice of the European Union

- Case Study

- Facts

- The craftsman H lives near the Dutch border and often works in the neighboring country. H considers a tax provision of German law that is detrimental to him to be contrary to European law. H brings an action before the competent German tax court. The tax court also has doubts about the compatibility of the national provision with European law. There has not yet been a corresponding decision by the ECJ in this regard. (1) What options does the tax court have? (2) How would the case be assessed if the case were already pending before the Federal Fiscal Court in the second instance? (3) Suppose the Federal Fiscal Court were to issue a substantive decision against H without any special interlocutory acts: Is the legal dispute now finally lost for H?

The Court of Justice of the European Union

- Case Study

- Solution

- Re (1): Article 267, second subparagraph, TFEU: The Tax Court may refer the question to the ECJ, but is not obliged to do so
- Re (2): Art. 267 subparagraph 3 TFEU: The Federal Fiscal Court must refer the question to the ECJ for a preliminary ruling
- Re (3): H has not yet definitively lost the legal dispute. This is because Art. 101 (1) sentence 2 GG (German Constitution) stipulates: "No one may be deprived of his lawful judge." The statutory judge here is the European Court of Justice in the preliminary ruling proceedings. H can therefore lodge a constitutional complaint under Article 93 (1) No. 4a of the Constitution. This will be successful, so that ultimately the Federal Fiscal Court will have to decide anew in terms of content, taking into account the obligation to make a reference.



RESPONSIBILITIES OF THE EUROPEAN UNION

Responsibilities of the European Union

- The principle of conferral applies to the competences of the EU (Art. 5 TEU)
- The EU can only legislate in those policy areas that are explicitly mentioned in the founding treaties
- In addition, the treaties specify objectives for the individual areas - formulated in very general terms - toward which the EU's measures must be directed
- All competences not expressly assigned to the EU in the founding treaties remain with the nation states
- The type of competences that the EU possesses may differ depending on the policy field (Art. 2 TFEU)

Responsibilities of the European Union

- Areas where the EU has exclusive competence
 - Only the EU is entitled to legislate
 - The member states may only act here if they are authorized to do so by the EU
 - European Customs Union
 - Definition of competition rules for the European Single Market
 - The monetary policy of the states participating in the European Monetary Union
 - The conservation of marine biological resources under the Common Fisheries Policy
 - The Common Commercial Policy (Article 3 TFEU)

Responsibilities of the European Union

- Areas of shared competence
 - Member states can make law if and to the extent that the EU has not done so
 - The European internal market
 - Certain areas of social policy
 - Economic, social and territorial cohesion
 - Agriculture and fisheries with the exception of the conservation of marine biological resources
 - Environmental policy
 - Consumer protection
 - Transport policy (Art. 4 TFEU)

Responsibilities of the European Union

- Areas of supporting competence
 - EU can only supplement and coordinate measures taken by the member states
 - Unlike in the area of shared competence, the EU cannot decide to harmonize national legislation here, so the member states retain their full legislative sovereignty
 - Health protection
 - Industrial policy
 - Cultural policy
 - Tourism
 - Education
 - Youth policy, sport, civil protection and administrative cooperation (Art. 6 TFEU)



BUDGET AND FINANCING OF THE EUROPEAN UNION

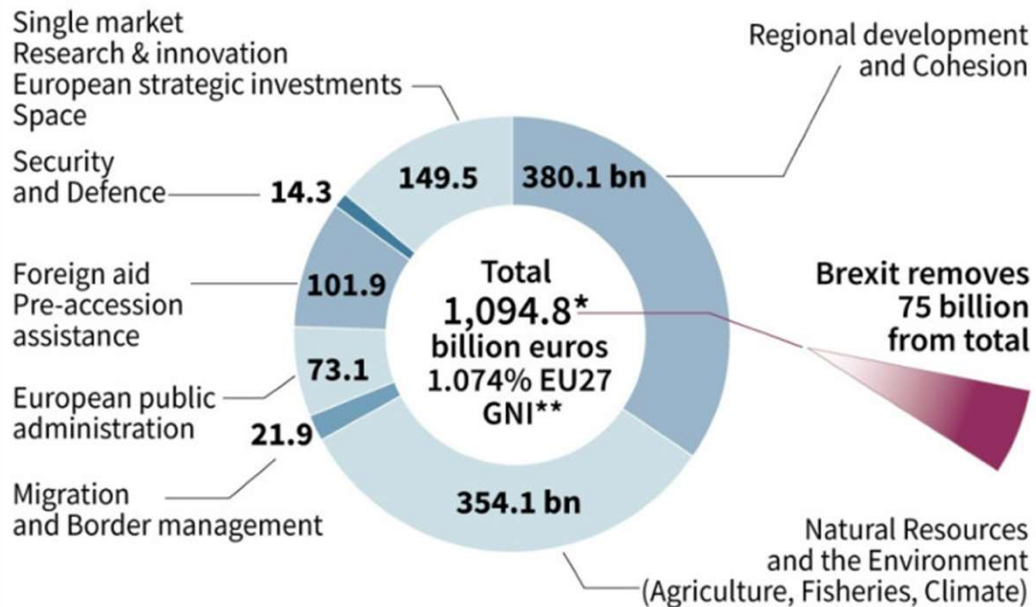
Budget and Financing of the European Union

- Revenues and expenditures are determined annually for the following EU budget year
- The budget is integrated into a system of a so-called multi-year financial framework (MFF) that has been in place since the Treaty of Lisbon came into force on December 1, 2009
- The European Union sets the binding financial framework for the budget in a multi-year period
- It is agreed on the basis of a proposal by the European Commission by the Council, which in this case decides unanimously, together with the European Parliament, and transferred into a so-called interinstitutional agreement

Budget and Financing of the European Union

EU budget 2021-2027

Proposal by European Council president Charles Michel



Source: European Council

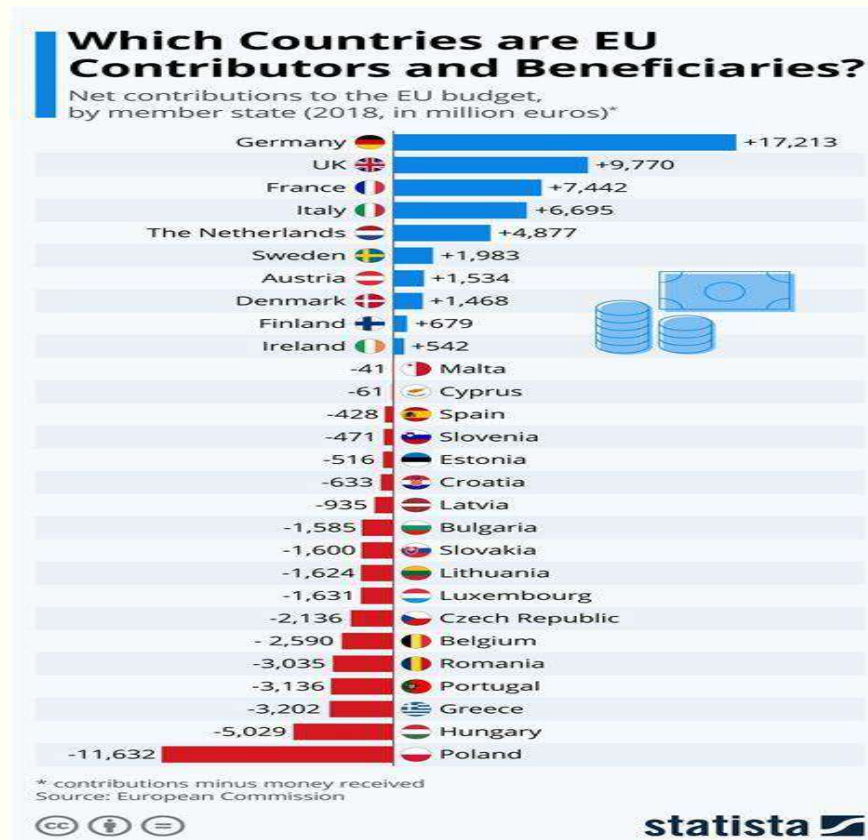
*At 2018 prices **Gross National Income

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Budget and Financing of the European Union

- Financing of the expenditures
 - The European Union has so-called own resources, which consist of contributions from the member states and, to a lesser extent, import duties at the external borders
 - The contributions of the member states result, on the one hand,
 - from a share of the sales tax that must be paid to the EU (so-called VAT own resources) and, on the other hand,
 - from contributions that are proportional to the gross national income (GNI) of the states

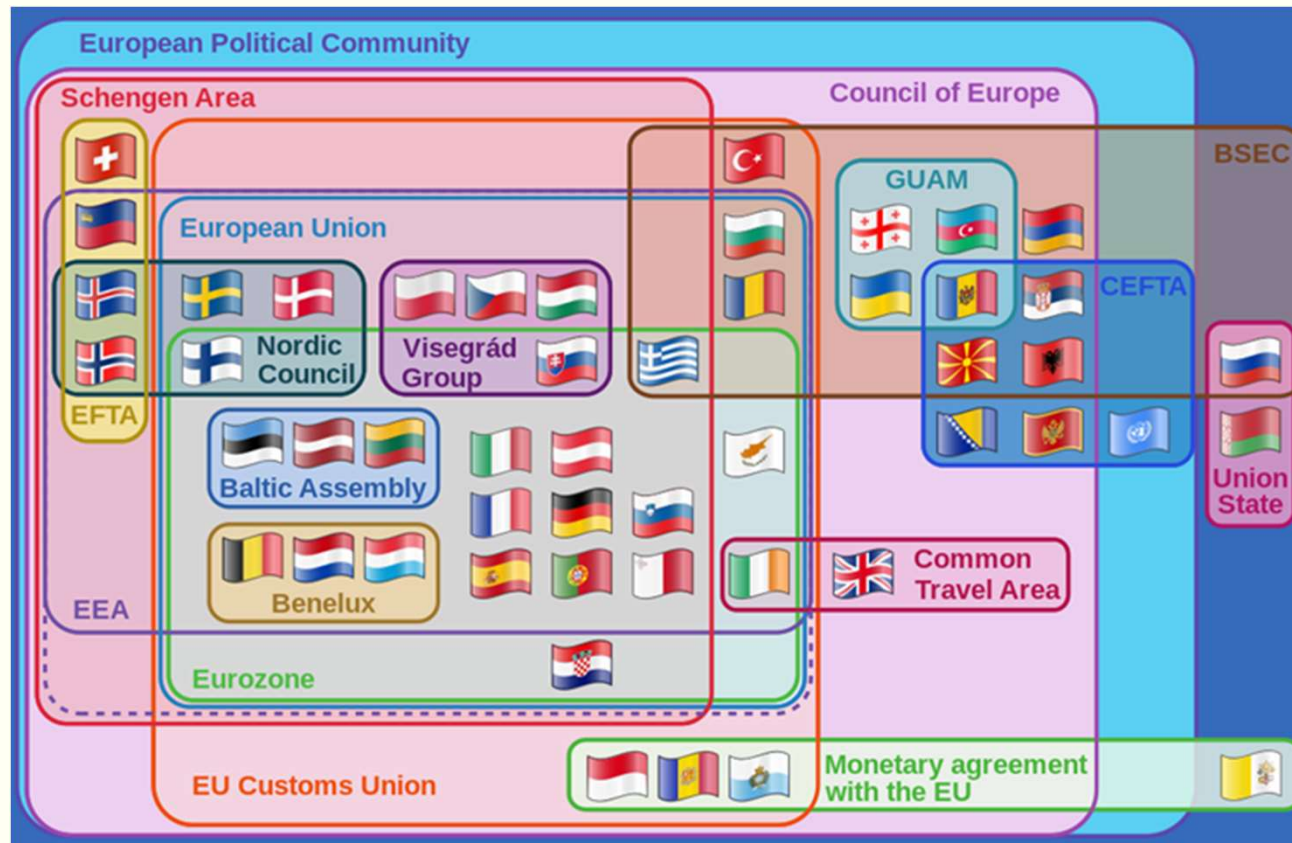
Budget and Financing of the European Union





LEGAL FRAMEWORK OF THE EUROPEAN UNION - EUROPEAN LAW

Legal framework of the European Union - European law



Legal framework of the European Union - European law

- European law in the narrower sense
 - Since the entry into force of the Treaty of Lisbon, the law of the European Union has been referred to as Union law
 - Union law is distinguished from international law (and the associated European law in the broader sense) in particular by two peculiarities that affect its relationship to the national law of the Member States:
 - its partial direct applicability in the Member States without a national act of transposition and
 - the primacy of application of Union law over Member State law
 - European law in the narrower sense consists of primary law and its subordinate secondary law; in addition, the case law of the European Court of Justice is of particular importance

Legal framework of the European Union - European law

- Primary law

- Primary law is the central legal source of European law in the narrower sense
- Treaties concluded between the Member States (founding, revision and accession treaties)
- The Member States continue to have the "constitutional power" and are therefore referred to as the "masters of the treaties"
- Today, the most important treaties under primary law are the Treaty on European Union (EU Treaty) and the Treaty on the Functioning of the European Union (TFEU Treaty), also called the Treaties (Article 1 (2) sentence 1 TFEU)
- Primary law also includes the protocols annexed to these treaties, each of which regulates very specific matters but is considered "as an integral part of the Treaties" to be legally equivalent to the TEU/TFEU provisions (Art. 51 TEU)

Legal framework of the European Union - European law

▪ Secondary law

- Secondary law (law derived from primary law) is the legal acts adopted on the basis of primary law by the institutions of the European Union
- Secondary law must not violate primary law
- In the event of a breach of primary law, the European Court of Justice may declare the secondary law null and void
- Art. 288 TFEU provides for the following acts:
 - Regulation (general regulation with direct domestic application; would correspond to a law in state law)
 - Directive (general regulation to be transposed into national law by the Member States within a specified period; it is binding as to the result to be achieved but leaves to the Member States the choice of form and methods)
 - Decisions (binding regulation in individual cases; a decision is only binding for the addressees designated therein; would correspond to an administrative act in state law)
 - Recommendations and opinions (not legally binding)

Legal framework of the European Union - European law

- Secondary law
 - In the area of taxation, directives are the primary regulatory instrument
 - Directives under Article 288 (3) TFEU are binding targets for the Member States
 - They therefore require transformation into national law and are generally not directly effective
 - Directives are exceptionally applicable even without transformation if they
 - work in favor of the citizen
 - were culpably not or incompletely transformed
 - and the content of the directive is sufficiently defined

Legal framework of the European Union - European law

▪ Case Studies

➤ Case 1 (simplified according to ECJ, Case C-361/88 - TA Luft)

➤ Facts:

- A directive has been issued requiring a number of countermeasures to be taken if certain air pollution levels are exceeded
- Germany regulates the countermeasures itself in a formal law. The respective limit values, on the other hand, are laid down in an administrative regulation
- The Commission is of the opinion that this form of implementation is not sufficient. The citizen, whose health is at stake, does not receive a sufficiently secure legal position. In the German statement it is said that the responsible administration has to adhere to the regulation and thus a secure implementation is given.

Legal framework of the European Union - European law

- Case Studies

- Case 1 (simplified according to ECJ, Case C-361/88 - TA Luft)

- Solution:

- The merely internal binding effect of an administrative regulation is not sufficient for the requirement of effective implementation of a directive
- In particular, the citizen whose protection is at stake cannot identify his legal position with sufficient certainty

Legal framework of the European Union - European law

- Case Studies

- Case 2:

- Facts:

- Mr. E would like to invoke a directive that is favorable to him. This directive is very specific and grants him a claim against the respective member state.
- However, the directive has not yet been transformed into national law, although the deadline for doing so has passed
- E believes that it cannot be correct that the Member State is not obliged to comply with the Directive simply because the State has already breached its obligation to transpose the Directive.
- Can E rely on the Directive? How would the case be assessed if the Directive did not grant a claim against the Member State, but a claim against another private party?

Legal framework of the European Union - European law

- Case Studies

- Case 2:

- Solution:

- In principle: No.

- The directive does not have any direct effect on E, but only contains a "mandate to the Member State" to implement it.

- However, the ECJ makes an exception to this under strict conditions:

- For this, no transposition into national law may have taken place despite the expiry of the deadline. Furthermore, the directive must be sufficiently specific and favorable to the citizen. These conditions are met. Therefore, E can exceptionally refer directly to the directive.

- Variation: The principle remains: no direct application of the directive. The exception only applies to the state.

Legal framework of the European Union - European law

- European law in the broader sense
 - European law in the broader sense also includes - in addition to European law in the narrower sense - the law of other European organizations
 - Above all, the Council of Europe with the European Convention on Human Rights and the EFTA are to be mentioned
 - Other European law agreements and organizations are:
 - the European Social Charter;
 - the European Convention on Human Rights (which established the European Court of Human Rights);
 - the European Economic Area (EEA);
 - the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Lugano Convention)

Legal framework of the European Union - European law

- European law in the broader sense
 - Other European law agreements and organizations are:
 - the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR);
 - the Schengen Implementing Convention (before its incorporation into EU law with the Treaty of Amsterdam);
 - the Organization for Security and Cooperation in Europe (OSCE);
 - the Organization for Economic Cooperation and Development (OECD)



LEGISLATION IN THE EUROPEAN UNION

Legislation in the European Union

- Ordinary legislative procedure

- Basics

- The ordinary legislative procedure is now the most frequently used legislative procedure in EU lawmaking
- It is used in almost all areas of EU legislation in which decisions are taken by qualified majority in the Council of the European Union
- In the ordinary legislative procedure, the role of the European Parliament is particularly strong
- Under this procedure, a legal act (e.g. directive or regulation) cannot enter into force without its consent

Legislation in the European Union

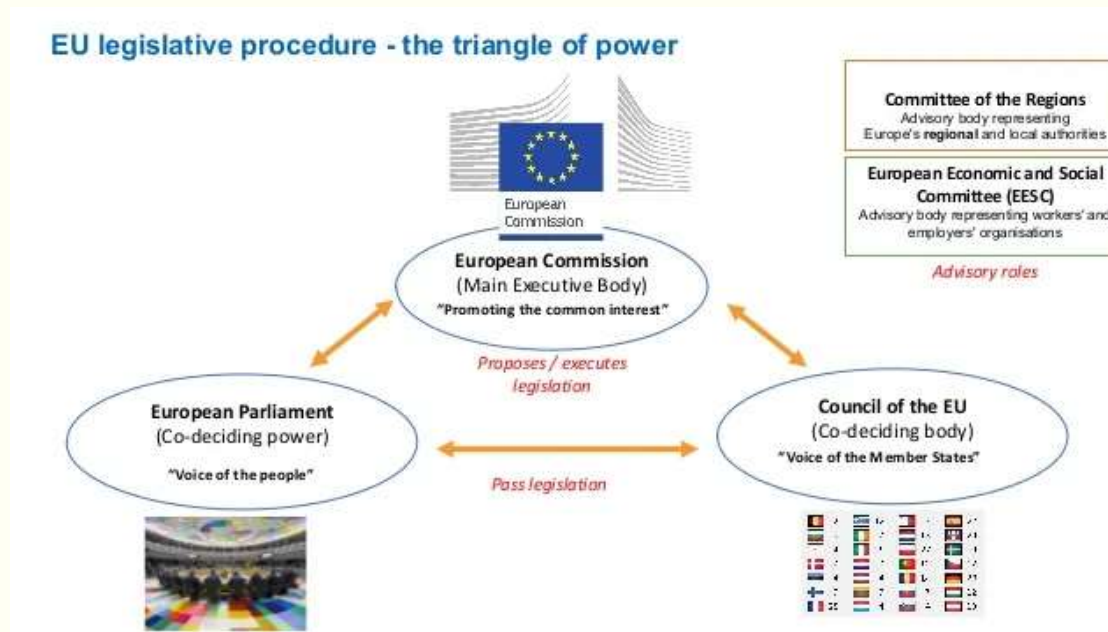
- Ordinary legislative procedure

- Procedure

- Governed by Article 294 of the Treaty on the Functioning of the European Union (TFEU) and comprises up to three readings
- The European Commission has the sole right of initiative (the Treaties provide for exceptions to this principle) and proposes a legal act. This initiates the procedure.
- The European Parliament (pursuant to Art. 225 TFEU) and the Council of the European Union (pursuant to Art. 241 TFEU) may request the European Commission to propose a legal act
- In addition to the procedural steps regulated in the treaties, a so-called informal triad, i.e. consultations between two members of the European Parliament, the Council President and the European Commission, can take place throughout the entire procedure

Legislation in the European Union

- Ordinary legislative procedure
- Procedure



Legislation in the European Union

- Ordinary legislative procedure
 - Areas of application of the ordinary legislative procedure
 - The procedure was first introduced by the Maastricht Treaty under the name co-decision procedure in Art. 189b of the EC Treaty
 - At that time, it applied only in a few areas, such as the research framework program and consumer policy
 - The Amsterdam and Nice Treaties added further areas, so that after the Treaty of Nice the procedure had to be applied in more than half of all policy areas
 - The Amsterdam Treaty also simplified the procedure so that it could be implemented more quickly
 - With the Treaty of Lisbon, the codecision procedure was given its new place in Art. 294 TFEU

Legislation in the European Union

- Ordinary legislative procedure
- Areas of application of the ordinary legislative procedure
 - Examples of the use of the ordinary legislative procedure include:
 - Transport policy
 - Environmental policy
 - Organization of agricultural markets
 - Judicial cooperation in civil matters
 - Border protection and dismantling of identity checks
 - Rights, such as data protection, protection against discrimination

Legislation in the European Union

- Special legislative procedure
 - The special legislative procedure takes place only in (rare) cases explicitly provided for in the treaties
 - The exact procedure is laid down in the respective legal bases
 - According to Art. 289 TFEU, the Council of the European Union with the participation of the European Parliament or, exceptionally, the European Parliament with the participation of the Council of the European Union alone decides
 - Important areas:
 - Harmonisation of Value Added Tax (Art. 113 TFEU)
 - Harmonisation of direct taxes (Art. 115 TFEU)