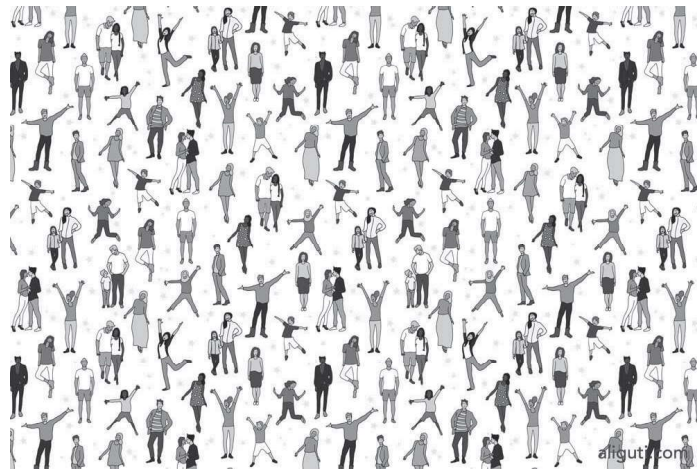Basics of European Union Law

Fundamenta Fontium Iuris Internationalis
A szegedi nemzetközi jogi iskola tankönyvei

Source:
Ali Gutiérrez Romero: Europe Day poster – pattern design

Készült
a Szegedi Tudományegyetem
Állam- és Jogtudományi Kara
Nemzetközi Jogi és Európa-jogi Tanszékén

Tanszékvezető:
Blutman László
egyetemi tanár

Basics of European Union Law

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(eds.)

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Sorozatszerkesztő:
Blutman László

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1. Introduction and basic concepts
(Imola Schiffner – Szilvia Váradi)

Learning goals

After reading this chapter, you will be able to:
1. Unfold why European integration is considered as a cooperation of states unique in economic history.
2. Identify the most important symbols of the European Union and the founding element of the European integration.
3. Understand the legal characteristics of the European Union law.

The European Union (EU) is a unique economic and political union between 28 European countries that together cover much of the continent. The EU has delivered more than half a century of peace, stability and prosperity, helped raise living standards and launched a single European currency: the euro. In 2012, the EU was awarded the Nobel Peace Prize for advancing the causes of peace, reconciliation, democracy and human rights in Europe.

Thanks to the abolition of border controls between EU countries, EU citizens can travel freely throughout most of the continent. And it has become much easier to live, work and travel abroad in Europe. The single or 'internal' market is the EU's main economic engine, enabling most goods, services, money and people to move freely.

One of the EU's main goals is to promote human rights both internally and around the world. Human dignity, freedom, democracy, equality, the rule of law and respect for human rights: these are the core values of the EU. Since the Lisbon Treaty's entry in force in 2009, the EU's Charter of Fundamental Rights brings all these rights together in a single document. Furthermore, the enlarged EU still puts an emphasis on making its governing institutions more transparent and democratic.

The symbols of the European Union

Political symbols serve an *identifying function* for the European Union as well. They are the external signs through which European citizens, aware of their belonging, can be influenced to set aside their differences and act in the common public good and, therefore, to perceive the European Union as their home. In this sense, symbols may help to consolidate the fledgling European demos. Political symbols such as the flag, the anthem, the motto, the currency and Europe Day may therefore contribute, by creating emotive images and rites, even subliminally, towards making the European Union more legitimate in the eyes of its citizens and

help them to identify with the plan for a common destiny. In other words, they help to construct a *political identity*, so that a set of values that identify us as belonging to the same community are felt to be binding. Though, the founding treaties of the European Communities and the European Union contain no provisions on the flag, the motto, the anthem or Europe Day.

The flag of the European Union

Among the Union's symbols, the flag contains *a circle of 12 golden stars on a blue background*. It was originally adopted by the Council of Europe on 8 December 1955 and was taken up by the European Communities (EC) in 1986. Its symbolic description states that against the background of blue sky, twelve golden stars form a circle representing the union of the peoples of Europe. The number of stars is fixed, twelve being the symbol of perfection and unity.

The symbolic components to be considered are therefore: the circle; the stars, including their number and shape; the colours. The circle has no beginning or end, no direction or orientation, and is homogeneous, perfect and indivisible. A circle leads back to itself and is therefore a symbol of unity, of the absolute and of perfection. For this reason it is a good illustration of the union of the peoples of Europe to which the official symbolic description refers. However, it is just as good an illustration of the parity of the member states.

In flags, the star illustrates independence, unity, liberty, renewal and hope. One of the features of the stars of the European flag is that they have five points which do not touch one another; they are also known as pentagrams or pentacles. In the European flag, the pentagram fits in well with the circle, which is also a symbol of perfection. Symbolically, therefore, the European Union is not a closed society; it is not, as is often said with a negative connotation, a fortress; on the contrary, the European Union is above all open to the accession of the states of Europe and is an active member of the international community, being open to the outside world and playing its part in the life of international relations. The number of stars is fixed and was set at 12 in 1955.

The colours of a flag have their own expressive and symbolic value. The rectangle of the European flag is blue, the colour of the sky and the universe. Blue is also traditionally the colour of the European continent. Many parliamentarians referred to this symbolism when the Council of Europe was preparing to adopt the flag.

Therefore the European flag satisfies all the requirements of an ideal emblem: its good symbolism is simple and easy to interpret and is easily recognisable; it is harmonious, original and also simple to produce. It is therefore a perfect flag from a geometric, symbolic and political point of view.

The European Union anthem

The European anthem is the *prelude to the Ode to Joy, the fourth movement of Beethoven's Ninth Symphony*. It is precisely this exhortation to fraternity and friendship, to love and to peace, of which the Ode is a highly figurative symbol. That explains why the Council of Europe and then the European Communities decided to take as their official anthem a hymn to fraternity going beyond the confines of nations and beyond the differences between peoples, in order to bring about something more sublime and exceptional in European society.

The motto of the European Union

For quite a long time, no official motto was declared for European integration. Then, in 2000, "*United in diversity*" became the motto of the European Union. Like the other symbols, the motto clearly highlights the sense of European identity that is the birth right of every EU citizen, over and above the actual European Union. It signifies how Europeans have come together, in the form of the EU, to work for peace and prosperity, while at the same time being enriched by many different cultures, traditions and languages of the European continent.

This phrase clearly explains both the notion of unity and the notion of diversity. The concepts expressing unity are not new. They recall, and appropriately take up, the formula of *ever closer union* included in the preamble to the Treaty on European Union (TEU). The path towards ever closer ties is gradual and proceeds, as heralded right from the *Schuman Declaration* of 9 May 1950, from concrete achievements that create actual solidarity. However, unity is not an end in itself but has a specific goal: forging a common destiny. The notion of diversity is nevertheless also explained. It lies in the strong call for peoples to be proud of their national identities and history and for the respect of everyone's rights.

Striking a balance between unity and diversity is crucial. Too much unity would run the risk of standardisation and therefore the destruction of national identities. Too much diversity could easily prevent intentions from converging and, in the long term, undermine the construction of a re-united Europe. It is seen as crucial to seek unity in basic values and the combined presence of unity and difference. Europe has to be organized on the basis of its diversity and not against its diversity. A reasonable balance therefore has to be struck between the needs of diversity and the need to form a coherent whole.[1]

Europe Day

In all the member states *9 May* is celebrated as Europe Day. It involves all of the EU citizens, because it celebrates the declaration delivered on 9th May 1950 by Robert Schuman. On that day, five years after the end of the Second World War

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[1]   The symbols of the European Union. CVCE website.

in Europe, the French Foreign Minister Robert Schuman made the initial appeal for the construction of Europe. This declaration announced the creation of the European Coal and Steel Community (ECSC). During the European Council in Milan in 1985 the heads of State and government decided to set 9 May as Europe Day. Celebrated each year since 1986, Europe Day is the occasion for events and celebrations and it also provides an opportunity to reflect on the current and real situation which changes daily. It is a day of information, guidance and discussion of European Union themes, especially, but not just, in schools and universities, with events of a particular cultural and educational content.

The Founding fathers of European integration

It is impossible to dissociate some names from the initial stages of European integration. In the past a great number had already put forward the idea of a united Europe, e.g. *Aristide Briand* and *Richard Nikolaus de Coudenhove-Kalergi*, and also in a more distant past, *Victor Hugo* when he delivered his famous speech on the United States of Europe on 21 August 1849 at the Peace Congress. There was also *Winston Churchill* who put forward his vision of a united Europe as a remedy to nationalist passions during his speech to students at the University of Zurich in 1946.[2]

Winston Churchill

Winston Churchill was the British Prime Minister (1940-45 and 1951-55), who called firstly for the creation of a *United States of Europe*. Following the Second World War, he was convinced that only a united Europe could guarantee peace. His aim was to eliminate the European ills of nationalism and war-mongering once and for all. He formulated this concept in his famous speech held at the University of Zurich in 1946 (Textbox 1.1). With this concept of a United States of Europe, Churchill was the first who suggested a European integration to prevent the atrocities of two world wars from ever happening again, calling for the creation of a Council of Europe as a first step.[3]

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[2] Fondation Robert Schuman.

[3] In 1948, in The Hague, 800 delegates from all European countries met, with Churchill as honorary president, at a grand Congress of Europe. This led to the creation of the Council of Europe on 5 May 1949, the first meeting of which was attended by Churchill himself.

Textbox 1.1 Excerpts from Winston Churchill's Zurich speech of 1946

There is a remedy which (...) would in a few years make all Europe (...) free and ... happy (...). It is to re-create the European family, or as much of it as we can, and to provide it with a structure under which it can dwell in peace, in safety and in freedom. We must build a kind of United States of Europe.[4]

The structure of the United States of Europe, if well and truly built, will be such as to make the material strength of a single state less important.

If at first all the States of Europe are not willing or able to join the Union, we must nevertheless proceed to assemble and combine those who will and those who can.

Konrad Adenauer

Konrad Adenauer was the first Chancellor of the Federal Republic of Germany, who stood at the head of the newly-formed state from 1949 to 1963. A cornerstone of Adenauer's foreign policy was reconciliation with France. Together with French President Charles de Gaulle they made from the one-time arch-enemies Germany and France cooperating partners, which became one of the milestones on the road to European integration.

Adenauer was a great proponent of the European Coal and Steel Community. His point of view was that European unity was essential for lasting peace and stability, so he worked for the reconciliation of Germany with its former enemies, especially France. In 1963, the Élysée Treaty, also known as the Treaty of Friendship, set the seal on this reconciliation. With this Treaty, Germany and France established a firm foundation for relations that ended centuries of rivalry between them.[5]

Robert Schuman

French foreign minister between 1948 and 1952, Robert Schuman is regarded as one of the founding fathers of European unity. Schuman was born in Luxembourg and was influenced by his background in the French-German border region. He became a key negotiator of major treaties and initiatives such as the Council of Europe, the Marshall Plan and NATO: all initiatives aimed at increased cooperation within the western alliance and to unite Europe.

He recognised that only a lasting reconciliation with Germany could form the basis for a united Europe. In cooperation with Jean Monnet he drew up the internationally renowned *Schuman Plan*, which he published on 9 May 1950, the date now regarded as the birth of the European integration. He proposed

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[4] Winston Churchill's speech to the academic youth held at the University of Zurich, 19 September 1946.

[5] Official website of the European Union.

joint control of coal and steel production, the most important materials for the armaments industry. The basic idea was that whoever did not have control over coal and steel production would not be able to fight a war. In this document he proposed to Germany and the rest of the European countries to work together towards a merger of their economic interests. He was convinced that when these were tied together, it would render war not merely unthinkable, but materially impossible.

Schuman informed the German chancellor Adenauer of the plan, who immediately recognised the opportunity for a peaceful Europe and agreed. Shortly afterwards, the governments of Italy, Belgium, Luxembourg and the Netherlands also reacted. The six states signed the agreement for the European Coal and Steel Community (ECSC) in Paris in April 1951. In this way, Europe began as a peace initiative. Schuman also supported the formation of a common European defence policy, and held the post of President of the European Parliament from 1958 to 1960.[6]

Jean Monnet

Jean Monnet was a French political and economic adviser who dedicated himself to the project of European integration. Monnet was from the Cognac region of France and left school at 16 to travel internationally as a cognac dealer in order to continue his family's business, and later he also worked as a banker. During both world wars he held high-level positions relating to the coordination of industrial production in France and the United Kingdom. Monnet recognised that it was time to take real steps towards European unity and he and his team began work on the concept of a European Community.

He was the inspiration behind the Schuman Plan, which foresaw the merger of west European heavy industry. This Declaration was instigated and prepared by Monnet and proposed to place all German-French production of coal and steel under a centralised authority, and after the creation of the European Coal and Steel Community (ECSC), he was the first president of its High Authority.[7]

Political leaders of the European Union

European Council President[8]

The European Council President is appointed by the national leaders (heads of state or government of EU member states) for a two-and-a-half-year term, with the

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[6]   Official website of the European Union.

[7]   Official website of the European Union.

[8]   Please note that Chapter 3 contains detailed information about these key political leaders.

possibility of renewal once. The President leads the European Council's work in setting the EU's general political direction and priorities – in cooperation with the Commission. He promotes cohesion and consensus within the European Council and represents the EU externally on foreign and security issues. The President may not hold a national office at the same time, and also has his own private office, the Cabinet of the President. His staff and his office are located in the Council's Europa building in Brussels, Belgium. The role of the President is set out in article 15 of the Treaty on the European Union (TEU).[9]

European Commission President

The President of the European Commission is the head of the European Commission. The President is appointed by the national leaders (heads of state or government of EU countries) with the approval of the European Parliament for a five year term, with the possibility of renewal once.[10] According to the founding Treaties, he decides on the organization of the Commission, allocates portfolios to members of the Commission and can make changes at any time. The President gives political guidance to the Commission, calls and chairs meetings of the college of the Commissioners. He leads the Commission's work in implementing EU policies.

European Parliament President

The President would elected by Members of the European Parliament for five years.[11] The role of the President is to ensure parliamentary procedures are properly followed. He oversees Parliament's various activities and committees, represents Parliament in all legal matters and in its international relations and gives final assent to the EU budget.

High Representative of the Union for Foreign Affairs and Security Policy

The High Representative is appointed by the European Council, which comprises the heads of state or government of all EU member states, for a five-year term, which coincides with the five-year mandate of the European Commission. The High Representative has also the role of Vice-President of the European Commission

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[9] The President of the European Council at the time of finalisation of this manuscript is Donald Tusk. He replaced Herman Van Rompuy on 1 December 2014 and has won a second term as European Council President in 2017.

[10] The composition of the European Commission at the time of finalisation of this manuscript is valid between November 2014 and October 2019. For this period, Jean-Claude Juncker is the President of the Commission.

[11] The President at the time of finalisation of this manuscript is Antonio Tajani, who is in office between January 2017 and July 2019.

(thus often referred to as High Representative Vice-President or simply HRVP) and is charged with coordinating and carrying out the EU's foreign and security policy – known as the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP).[12]

Legal characteristics of the European Union law

The European Union is a supranational and *sui generis* entity. A supranational union is a supranational polity which lies somewhere between a confederation and a federation. Confederation is an association of states, while a federation is a state.

The European Economic Community (EEC) was described by its founder Robert Schuman as midway between confederalism, which recognises the complete independence of states in an association and federalism which seeks to fuse them in a super-state.

The EU has *supranational* competences, but it possesses these competences only to the extent that they are conferred on it by its member states. Within the scope of these competences, the EU exercises its powers in a sovereign manner, having its own legislative, executive, and judicial authorities (*sui generis union*). Unlike states in a federal super-state, member states retain ultimate sovereignty, although some sovereignty is shared with the supranational body.

The supranational action may be time-limited. A supranational union, because it is an agreement between sovereign states, is based on international treaties. The European treaties in general are different from classical treaties as they are constitutionalizing treaties; they provide the basis for a European level of governance and rule of law.

Within the Community areas *decision-making* is *partly intergovernmental and partly supranational*. The latter provides a higher degree of institutional scrutiny both via the Parliament and through the Consultative Committees. *Intergovernmentalism* provides for less democratic oversight, especially where the institution such as the Council of Ministers or the European Council takes place behind closed doors, rather than in a parliamentary chamber. A supranational authority may have some independence from member state governments in specific areas, although not as much independence as with a federal government.

The EU has *legal supremacy* over its member states only to the extent that its member state governments have conferred competences on the EU. It is up to the individual governments to assure that they have full democratic backing in each of the member states. The citizens of the member states, though retaining their nationality and national citizenship, additionally become citizens of the EU.

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[12] Federica Mogherini is the High Representative at the time of finalisation of this manuscript. Her term of office officially started on 1 November 2014 which will run until 31 October 2019.

The European Union, the only clear example of a supranational union,[13] has a parliament with legislative oversight, elected by its citizens. To this extent, a supranational union like the European Union has characteristics that are not entirely dissimilar to the characteristics of a federal state like the United States of America.

Because decisions in some EU structures are taken by majority votes, it is possible for a member state to be obliged by the other members to implement a decision. The states retain the competence for adding this additional supranational competence.

Historically the concept was introduced and made a concrete reality by Robert Schuman when the French Government agreed to the principle in the Schuman Declaration and accepted the Schuman Plan. They agreed about the means: putting the vital interests, namely coal and steel production, under a common High Authority, subject to common democratic and legal institutions.

Due to the complexity of the European Union governing system today supranationalism exists only in the two European Communities inside the EU, i.e. the Economic Community (EEC) and the European Atomic Energy Community (Euratom, a non-proliferation community, in which certain potentialities have been frozen or blocked).

The leaders of the European integration created a *three-pillar system under the Maastricht Treaty* in 1992, mixing intergovernmental and supranational systems. Two pillars governing external policy and justice and home affairs are not subject to the same democratic controls as the Community system.

In 2009, the Lisbon Treaty abolished the pillar structure of the EU, the Common Foreign and Security Policy (CFSP) (the former second pillar) remains mainly intergovernmental, with unanimity as the main decision-making procedure, but it was a very important step that from that time the whole legal and political system of the EU became supranational.

Summary

1. The European Union is a unique economic and political union between 28 European countries.
2. Political symbols of the EU: the flag, the anthem, the motto, the currency and Europe Day.
3. Founding fathers of the integration are: Winston Churchill, Konrad Adenauer, Robert Schuman, Jean Monnet.
4. Sovereignty is a legal theory. It refers to the capability of states to make their own laws independently. The EU member states have given up their sovereignty to the EU in the areas covered by the Treaties.

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[13] For more information on this topic, please see Avbelj 2011, 744-763.

5. The federalism reflects the relationship between states where each has conceded some independence in order to share in decision-making in defined areas.
6. The supranationalism refers to decision-making above the level of states, but capable of binding the states concerned.
7. The intergovernmentalism represents a way for limiting the conferral of powers upon supranational institutions, halting the emergence of common policies. In the current institutional system of the EU, the European Council and the Council play the role of the institutions which have the last word about decisions and policies of the EU, institutionalizing a de facto intergovernmental control over the EU as a whole, with the possibility to give more power to a small group of states.