

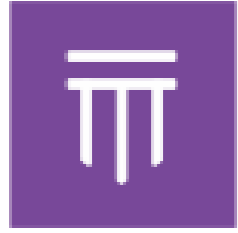
EU law seminar I 10.03.2020



EU law as a new legal order of international law: general principles

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Objectives of seminar I



The European Union as a Legal Construction

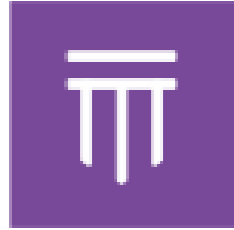
1.1. What is the European Union?

1.2. The relation between EU and domestic law according to the European Court of Justice

1.2.1. Van Gend & Loos (1962)

1.2.2. Costa v ENEL (1963)

1.2.3. Internationale Handelsgesellschaft (1970)



Van Gend & Loos

Costa v ENEL

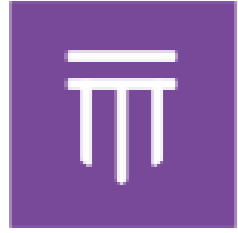
Internationale Handelsgesellschaft

Why do we study these cases when they are dealing with trivial legal issues and outdated Treaty (EEC):

- *Van Gend & Loos* – reclassification of a chemical substance changing a tax tariff
- *Costa v ENEL* – a less than 2 Euro electricity bill
- *Internationale Handelsgesellschaft* - system of deposit for export licence of cereals

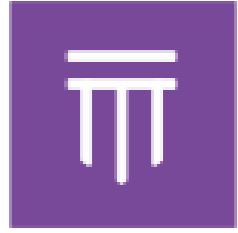
Why not studying only the EU founding Treaties or EU secondary legislation?

- EU treaties do not contain details rules on the relation between the EU and national legal order;
- The 3 precedent-setting judgments of the CJEU are still valid for the EU in its current form



The specific characteristics of the EU and EU law

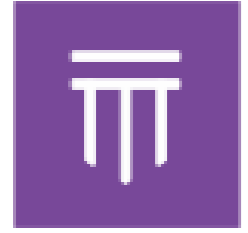
- Origins and Development of the European Integration Process
The evolution of the EU's legal architecture from the Treaty of Paris (1952) to the Lisbon Treaty (2009) (see Annex I in seminar I file)
The Enlargement Process
- The legal nature of the EU = **international organisation** based on TEU and TFEU + bound to comply with the rules of international law (Article 3(5) TEU)
- EU's legal personality = Separate (derivative) **legal personality** from the Member States (Art 47 TEU)
- EU- **principle of conferred powers**, unlike the Member States (Art 5(2) TEU)
 - **The types of competences** are enumerated in Articles 2-6 TFEU (exclusive, shared, supporting, flexibility clause – Art 352 TFEU)



The specific characteristics of the EU and EU law

- **Pre-determined institutional set-up** (Arts. 13-19 TEU):





The relationship between EU and national law:

What are the effects that EU law produces at national law?

Are the effects of EU law into national law following the classical rules of public international law (PIL)? Or is EU law a *lex specialis* compared to PIL?

Effects of PIL in national laws are governed by national constitutional norms:

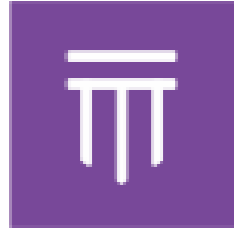
- Monism - provisions of IL are self executing (e.g. Netherlands)
- Dualism – provisions of IL have to be ratified by the Parliament before they produce effects at the national level (e.g. Finland)
- Mixed systems: monist towards certain rules of international law and dualist for other rules (e.g. Germany)
- Czech Republic: dualist or monist? Read Article 10 of the Constitution

The effects of EU law into national law follow the same rules as that of PIL?

Is the EU like any other international organisation?

- *Where do we find the rules governing the effects of EU law into national law?*
- *What is the legal hierarchy between EU and national law?*

Van Gend & Loos case



Legal issue: What are the effects of EU law into national law?

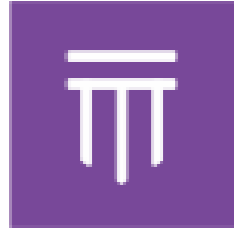
Facts:

- Van Gend & Loos, Dutch undertaker imports a chemical substance from Germany to Netherlands
- Protocol Benelux – reclassification of the chemical substance=> custom tariff increase
- Van Gend & Loos challenges the legality of this increase on the basis of Art 12 EEC Treaty
“Member States shall refrain from introducing between themselves any new duties on imports...and from increasing those which they already apply...”

Preliminary questions addressed by the domestic court:

1. Whether Article 12 of the EEC Treaty has direct application within the territory of a Member State, in other words, whether nationals of such a State can, on the basis of the Article in question, lay claim to individual rights which the courts must protect?
2. In the event of an affirmative reply, whether the application of an import duty of 8% to the import into the Netherlands by the applicant in the main action of ureaformaldehyde originating in the Federal Republic of Germany represented an unlawful increase within the meaning of Article 12 of the EEC Treaty.....

Van Gend & Loos case



1. Dutch government:

- No increase of tariff compared to the entry into force of the EEC Treaty
- Preliminary reference procedure was not the right mechanism for addressing the breach of the EEC Treaty by a provision of the Benelux Protocol

2. Belgian government:

- The question whether Article 12 EEC Treaty produces direct effect and creates individual rights is a matter of national constitutional law
- Legal issue falls exclusively within the jurisdiction of Dutch court: which international treaty prevails over the other: EEC Treaty or Benelux Protocol?

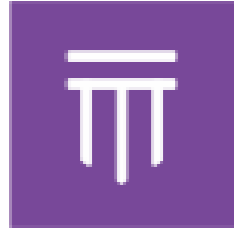
3. European Commission:

- The question is one of EU law and not of national law – Treaty interpretation

4. Applicant:

- Art. 12 EEC Treaty – directly applicable, without need of transposition since it only imposes a negative obligation; directly effective – it does not matter that it does not address individual rights; disapplication of national law.

Van Gend & Loos case



Issues to be decided by the CJEU:

- 1) Does the CJEU have jurisdiction over the case?
 - The preliminary questions are admissible if the questions referred raise an issue of EU law
- 2) Does Art 12 EEC Treaty have direct effect?

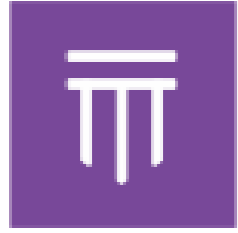
To answer the question, the CJEU used the following methods of interpretation:

- Wording (textual)
- General scheme (contextual)
- Spirit (teleological)

Teleological interpretation:

- ‘this Treaty is **more than an agreement** which merely creates mutual obligations between the contracting states.’
- Citizens
- ‘Community constitutes a **new legal order of international law** for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals.’
- Individual rights arise not only when expressly provided by the Treaty.

Van Gend & Loos case



What does direct effect mean?

Direct effect is the ability of individuals to rely upon EU law in the national courts of the member states and those courts are bound to uphold and apply the EU legal provision.

What are the conditions for an EU legal provision to have direct effect?

- Sufficiently clear, precise for judicial application
- It must establish an unconditional obligation
- Obligation must be complete, not dependent on further measure being taken at national level:

Does the direct effect apply to all EU legal provisions? (yes, C-41/74 Van Duyn)

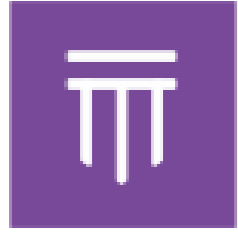
What is the difference between direct applicability and direct effect?

Direct effect against whom: state authorities and/or another private party?

Examples of provisions: do they fulfil the requirements of direct effect?

Example 1: Article 119 reads: Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work. For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer

Van Gend & Loos case



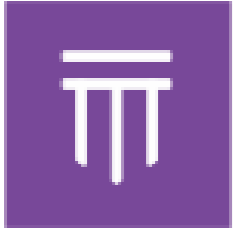
Example 2: Article 2(5) of Regulation No 797/85 provides:

'Member States shall, for the purposes of this regulation, define what is meant by the expression farmer practising farming as his main occupation.'

This definition shall, in the case of a natural person, include at least the condition that the proportion of income derived from the agricultural holding must be 50% or more of the farmer's total income and that the working time devoted to work unconnected with the holding must be less than half of the farmer's total working time.

On the basis of the criteria referred to in the foregoing subparagraph, the Member States shall define what is meant by this same expression in the case of persons other than natural persons.

COSTA v Enel case



Legal issue: what are the effects of EU law in the Member States in case of conflict between EU and domestic law?

Facts:

- In 1962 Italy nationalised the production and distribution of electricity and transferred the assets of the electricity undertakings to the national electricity board (ENEL)
- As a shareholder of one of the nationalised companies, Volt, Mr Costa considered that he had been deprived of his dividend and consequently refused to pay an electricity bill (approx. 2 EUR)

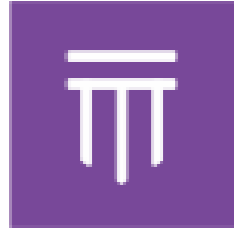
Mr Costa arguments:

- The nationalised act infringed a number of provisions of the EEC Treaty

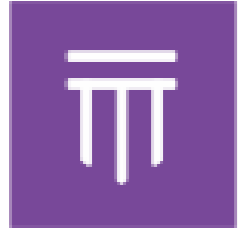
CJEU preliminary ruling:

- Court reformulated the preliminary questions as solely EU law related questions:
- The specific characteristics of EU and EU law:
 - **‘By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply. By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane, and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights and have thus created a body of law which binds both their nationals and themselves.’**

COSTA v Enel case



- The principle of primacy (or supremacy) of EU law over domestic law:
 - ‘It follows from all these observations that the law stemming from the Treaty, an independent source of law, could not, because of its **special and original nature**, *be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.*
The transfer by the States from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail.’



Internationale Handelsgesellschaft case

Legal issue: Where does EU law sit within the hierarchy of domestic legal sources? Does it prevail or not over constitutional provisions?

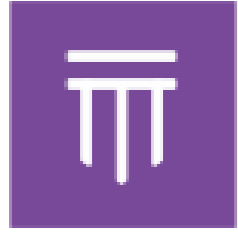
Facts: the export license of a German undertaker had expired without exporting the entire quantity. The Internationale Handelsgesellschaft claimed that the licensing system under a Regulation adopted within the Common Agricultural Policy was a disproportionate violation of their right to conduct a business under the German constitution, because it did more than was necessary to achieve the public objective at hand.

Legal issue: the validity of a system of licences instituted by EU Regulation with national constitutional provisions/which norm prevails: EU law or Constitutional law?

CJEU:

- The validity of EU law can be assessed only in light of EU law and not of national law, even when they are of a high legal value.
- The respect of fundamental rights represents an integral part of the general principles of law protected by EU law; constitutional traditions common to the Member States are a source of inspiration for EU fundamental rights recognised as general principles of EU law
- The principle of primacy of EU law: In case of conflict between EU and national law, EU law takes precedence over national law, even over constitutional provisions.

To be remembered



CJEU jurisdiction:

COMPOSITION OF THE COURT OF JUSTICE OF THE EUROPEAN UNION (after Brexit)

27 judges
and
8 Advocates General
appointed by the governments of the Member States
by common accord for a term of six years

Types of proceeding

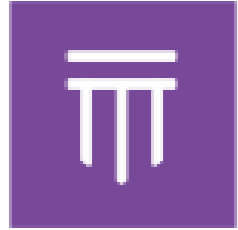
Actions for failure to fulfil obligations under the Treaties: Commission v Member State (Art 258 TFEU); Member State v Member State (Art 259 TFEU)

Actions for annulment and actions on grounds of failure to act brought by a Union institution or a Member State in connection with an illegal act or failure to act (Art 263 and 265 TFEU)

Cases referred by national courts for preliminary rulings to clarify the interpretation and validity of Union law (Art 267 TFEU)

Appeals against decision of the General Court (Art 256 TFEU)

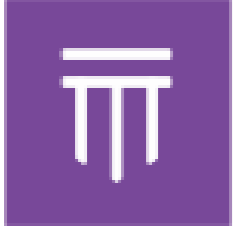
To be remembered



The specific characteristics of EU law:

- It stems from an independent source of law, the Treaties;
- The principle of supremacy (primacy): in cases of conflict between EU and domestic law, EU law prevails over the domestic law of the Member State:
 - pre-dating the EU law
 - post-dating the EU law
 - Even over provisions of constitutional nature.
- Read also Court of Justice, Opinion 2/13, Draft Accession Agreement of the EU to the ECHR, 18 December 2013 paras 167 – 178 for additional specific characteristics
- In case of conflict the obligation binding on all national authorities is to disapply the conflicting national provisions
- Not all EU legal provisions have direct effect, but only those that fulfil the 3 mandatory, exhaustive requirements (see slide)
- Direct applicability (refers to transposition) \neq direct effect (effects as regards individual rights)

The principle of primary does not set a general legal hierarchy between EU and national legal order (confined to situations of conflict); Legal theories explaining more generally the relationship between EU – national legal order – international legal order: *legal pluralism* (there is no hierarchy between these various legal orders)



Further reflection

- What has been the importance of the direct effect doctrine for the development of the EU integration process?
- What has been the reaction of national constitutional courts to the development of the principle of primacy of EU law?

If you have further questions do not hesitate to email me your questions at:

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