

## 2nd lecture – EU Law

1. What do you understand by the term „EU law“? How do you define primary and secondary EU law?
2. Based on the following text, try to answer the questions below. The text is Article 288 of the Treaty on the Functioning of the European Union, which concerns the so-called secondary sources of law.

### SECTION 1

#### THE LEGAL ACTS OF THE UNION

#### Article 288

(ex Article 249 TEC)

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.

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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.

✓ Languages, formats and link to OJ

	BG	ES	CS	DA	DE	ET	EL	EN	FR	GA	HR	IT	LV	LT	HU	MT	NL	PL	PT	RO	SK	SL	FI	SV
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- a) What types of legal acts can EU institutions adopt in exercising their powers?
- b) Which of these do not have to be followed by the Member States?
- c) In which languages are legal acts, especially regulations, issued? (In general).
- d) Where are legal acts published? (Infer from the attached screenshot of the text.)
- e) How would you describe the fundamental difference between a regulation and a directive? Try to identify as many differences as possible based on the provided text.
- f) Also, try to define the difference between a regulation and a decision based on the text.

3. Do you know how EU legal acts (regulations, directives) are adopted? Which EU institution has the right of initiative (proposes legislation), and which institutions adopt it and in what manner?
4. What do you understand by the terms powers or competences of the EU? Based on common sense, try to describe in your own words what you imagine under the terms exclusive competence, shared competence, and supporting competence.

*The Union shall have **exclusive competence** in the following areas:*

- (a) customs union;*
- (b) the establishing of the competition rules necessary for the functioning of the internal market;*
- (c) monetary policy for the Member States whose currency is the euro;*
- (d) the conservation of marine biological resources under the common fisheries policy;*
- (e) common commercial policy*

***Shared competence** between the Union and the Member States applies in the following principal areas:*

- (a) internal market;*
- (b) social policy, for the aspects defined in this Treaty;*
- (c) economic, social and territorial cohesion;*
- (d) agriculture and fisheries, excluding the conservation of marine biological resources;*
- (e) environment;*
- (f) consumer protection;*
- (g) transport;*
- (h) trans-European networks;*
- (i) energy;*
- (j) area of freedom, security and justice;*
- (k) common safety concerns in public health matters, for the aspects defined in this Treaty.*

*The Union shall have **competence to carry out actions to support, coordinate or supplement** the actions of the Member States. The areas of such action shall, at European level, be:*

- (a) protection and improvement of human health;*
- (b) industry;*
- (c) culture;*
- (d) tourism;*
- (e) education, vocational training, youth and sport;*
- (f) civil protection;*
- (g) administrative cooperation.*

5. Which of these legal acts could not have been issued by the European Union? And why? For the others, indicate under which competence the legal act was adopted.
  - a) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights
  - b) Council Recommendation 2021/0255 on blended learning for high quality and inclusive primary and secondary education (proposal)
  - c) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code
  - d) Regulation (EU) No 2021/123 of the European Parliament and of the Council of 20 August 2021 on the requirements for the color of jerseys in football matches
  - e) Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport

## 6. Supremacy of EU law

A Polish company, "PolskiFoods," manufactures and sells food products in Poland and other EU Member States. The Polish government recently passed a law regulating food labeling, aimed at protecting domestic producers. This law requires that all food products sold in Poland must have labeling only in Polish, even when the products are sold in other Member States where food labeling rules are already unified at the EU level.

"PolskiFoods" wants to expand into the German and Czech markets, but this new Polish law would incur significant administrative and financial costs because the company would need to adjust all its packaging for each state individually.

The company decides to challenge this law before the Polish domestic courts, but the company is unsuccessful. As a result, the case is ultimately brought before the Polish Constitutional Court, where the company argues that the law violates its rights to the free movement of goods within the EU and the supremacy of EU law, specifically Regulation (EU) No 1169/2011, which establishes rules for food labeling within the single EU market.

1. How should the Polish Constitutional Court rule? Should it respect the decision of the Court of Justice of the European Union (*Costa v. Enel*) and interpret the Polish law in accordance with EU law?
2. What would happen if the Polish Constitutional Court decided that the Polish law is in conformity with the constitution but is in conflict with EU law?
3. What would be the consequences for the Polish government and for "PolskiFoods"?
4. How could the European Commission respond to a breach of the supremacy of EU law by a Member State?

## 7. Supremacy of EU law

Let's imagine that the Union adopted a new regulation – Regulation (EU) No 995/2010 on the Export of Wood and Wood/Timber Products. This regulation (under EU primary law, such as the Treaty on the Functioning of the European Union, Articles 191 + 288 TFEU) states that Member States are required to adopt specific measures to ensure that wood products sold within the EU comply with the EU's sustainability and environmental protection rules.

The city of "GreenCity" in an EU Member State has not fully complied with this regulation. The local authorities decided to postpone the implementation of necessary measures designed to ensure that the wood products sold in the city are legally sourced and compliant with EU sustainability standards. The authorities cite budget constraints and logistical difficulties as the reason for the postpone.

A resident of "GreenCity," who works in environmental area, decides to challenge the local authorities' inaction by suing them in the national court for failing to comply with the regulation.

1. Can the resident of "GreenCity" sue the local authorities directly based on the EU regulation?
2. How should the national court rule if the resident sues based on the EU regulation?