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Course: Law of the European Union

[1] Origins, Development and Nature of the EC/ EU

Origins

Textbooks mention elder projects of European integration.

There is long lasting dream of writers, scientists, artists or clergymen of united peaceful Europe .

Several projects of political union of European countries were prepared and proposed by monarchs and politicians. However no project has been not realised until the second World War. Only partial alliances were built. Unification based on coercion was successful for short period of time and did not covered all European countries (Napoleonic wars, Nazi idea of united Europe).

Little was thought about economic and social integration.

European Integration since 1945 has been based on the idea, that integration of nations (not only states) would preclude war among European countries.

The first impulse for after-war integration were atrocities of the second world war.

However, until today there are no *United States of Europe* (as they were proposed by Winston Churchill in 1946 for continental Europe). The United States model cannot be simply adopted in Europe.

Basic legal instrument for integration is international law.

Several international organisations, established by international conventions and treaties which are agreed and ratified by founding states are visible expression of European Integration.

Plurality of international organisations allows differentiated membership. European countries can choose level of participation they estimate appropriate and suitable for them.

Other European international organisations

The most important pan-European international organisations beside the European Community and the European Union are:

* **North Atlantic Treaty Organization** (1949) is defense covenant and international organisation of many European countries joined together with the United States and Canada (26 members, not all EC / EU member states are members of NATO). Basic legal instrument is obligation of members for joint defense if any member attacked in north Atlantic area.

The Council of Europe (1949). International Organisation (47 member states including all EU / ES member states) for administrative, social and cultural cooperation and enforcement of basic human rights (two hundred treaties and

conventions have been concluded under auspices of the Council of Europe). The European Court for Human Rights is attached to the Council of Europe.

* **The Organisation for Security and Cooperation in Europe** (established in 1991, since 1975 the Conference for Security and Cooperation in Europe). The Organization is an international organisation expected by the Charter of United Nations for regional peace and security (56 member states of northern part of northern hemisphere including all EU / EC members).

There are or there were other European international organisations too: European Free Trade association, West European Union, Organization for European Economic Cooperation transformed into Organization for Economic Cooperation and Development.

For information or reminder! There was significant Integration of socialist countries behind iron curtain including former Czechoslovakia (dissolved in 1992 in the Czech Republic and Slovakia): **the Council of Mutual Economic Assistance** (more than 10 member states) and so called **Warsaw Pact** (7 member states)

the European Communities + the European Union

Development and construction of the EC and the EU

European Coal and Steel Community (1951). Six original member states were France, Germany (west), Italy, the Netherlands, Belgium, Luxemburg. The Community was established for integration of coal and steel markets (important for both armament and reconstruction of damaged European economies several years after the second world war).

Projects of parallel communities for defence and foreign policies, however, failed quickly. Therefore, „founding fathers“ of European Communities decided to focus on economic integration.

Two additional communities founded several years later (1957) by the same member states: the European Atomic Energy Community and the European Economic Community

The ECSC ceased to exist in 2002 because it was established for 50 years. Its task were assumed by the European Community.

the European Atomic Energy Community for was the second sectoral community for peace use of atomic energy. It reflected optimism related to atomic energy of that time. The EAEC continues to exist as the only sectoral community together with the EC and within the EU.

and

the European Economic Community (since 1993 **the European Community**) was established for general economic integration with exception of sectors covered by already mentioned specialised European communities

Joint membership in all three/two communities (ECCS existed until 2002) is and was compulsory for all member states.

Enlargements of all European Communities (and since 1993 simultaneously enlargements of the European Union):

Northern enlargement (1973): the United Kingdom, Ireland and Denmark. Norway failed to ratify the treaty of accession.

Southern enlargements (1981 and 1986): Greece, Spain and Portugal.

„Residual“ enlargement (1995): Austria, Sweden and Finland.

Big eastern“ enlargement (2004): Estonia, Latvia, Lithuania, Poland, Czechia, Slovakia, Hungary, Slovenia, Malta and Cyprus.

„Additional Eastern“ enlargement (planned 2007): Romania, Bulgaria.

Negotiations opened or to be opened soon: Croatia, Macedonia, Turkey

Membership wished: several other Balkan and Eastern European states (Serbia, Montenegro, Albania, Bosnia-Herzegovina, Ukraine, Georgia, Moldova. Morocco has also expressed its interest to be member state.

How to define an European country which is entitled to ask for membership?

Membership possible and (would be) welcomed by member states, but rejected or not-applied for due to lack of support of population of these countries: Norway, Switzerland, Iceland. All these countries have established, however, special legal arrangements with the European Communities and their member states for partial economic integration.

The European Union

The European Union was found 1992-3: Treaty of Maastricht) is an international structure - without being an international organisation. It covers two (earlier three) European Communities (1st pillar for economic integration) and other forms of cooperation of member states (called 2nd and 3rd pillar: common foreign and security policy and cooperation in matters of criminal justice).

Treaty establishing a Constitution for Europe expected merger of the European Community and the European Union. So called „Reform Treaty“ agreed in autumn 2007 expects same change.

Nature of the European Community (Communities) and the European Union

(1) Formalistic approach

The European Communities and the European Union are international organisations and structure which shall be distinguished from numerous international non-governmental organizations.

However, there are several special features which cannot be found in other international organisations.

There are several alternative descriptions of this situation. It is difficult because there is no comparable structure to EC / EU in contemporary world:

The best description is a **supranational organisation / structure** (taking into account formal status of existing EU)

Main legal difference: the European Communities and the European Union have been based on international treaties and not on any constitution. The „Constitutional Treaty“ and „Reform Treaty“ would not change it.

(2) Factual approach

The European Union including the European Communities are more than typical international organisation or structure, but less than any typical federation (federally organized countries).

Please remember several international organisations or structures: the United Nations Organization, the World Trade Organization, NATO, OSCE, the Council of Europe, the Organization of American States, the African Union, the Food and Agricultural Organization of the UN and dozens other.

On the other hand, please remember several federations: the United States of America, Germany, India, Brazil, Russia, Nigeria, Malaysia, Australia, Canada, Switzerland, South Africa and several other countries. Many other countries are at least regionalized: Belgium, Spain, Italy etc.

Law of the European Communities (1st pillar law of the European Union) is quasi-federal legal order.

However, it lasted forty years to achieve this approach. Until today, there are disputes on nature and position of this law in legal order of member states. Its supremacy (priority and direct effect) is sometime contested.

The law of the 2nd. and 3rd. pillars of the European Union does not enjoy this features of supranational law at all or enjoys it to significantly lesser extent.

Institutions confirm supranational nature of the European Union and especially of the European Community. There several supreme institutions - European Parliament, the Commission, the Court of Justice - are comparable to federal government. However, there are almost no executive agencies and judiciary for day-to-day application of EC / EU law.

All legal enforcement is ensured by member states. The European Communities and the European Union rely on loyalty of member states.

There is no European army and no European police! Therefore, no coercion of member states is possible from legal, practical and political points of view.

Tasks and competences: some competences of typical federations have been already transferred to EU / EC. Several other important competences, however, are absent (single foreign policy and joint defense).

There is no social and political base for pan-European state: there is no European nation and no Europe-wide politics.

I am convinced that the main reason for absence of European nation and European politics is non-existence of one (or two-three) language(s) of general communication. Every country needs one (or at the most two-three) languages of general communication. English has not yet achieved this position. We can debate whether this language can achieve it in next decades.

Nevertheless, tendencies towards further federalisation can be observed.

Could „Constitutional Treaty“ and „Reform Treaty“ be decisive step towards European federal state?

Could the European Union (and the European Communities) become an European federal state in foreseeable future?