

# Competences

Questions to be answered today are:

1. Which competences the European Union does have?
2. In what areas does the European Union have competences?
3. What is the character and division of these competences?
4. What will be changed by the Lisbon Treaty

# Task allocation

- Who governs?
- Policy: a plan of action adopted by a person or organisation
- Who does what?
  - Setting foreign policy
  - Speed limits
  - Trade policy
- Typical levels:
  - Local
  - Regional
  - National
  - EU

# Task allocation and federalism

- Latin: *foedus* = covenant
- = political concept with shared power to govern
- EU has many characteristics of federalism

# Competences: introduction

- Article 5 of the EC Treaty: *“The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein”*
- the principle of conferral
- EU – 3 pillar structure
  - 1<sup>st</sup> pillar – EC/EU competency
  - 2<sup>nd</sup> and 3<sup>rd</sup> pillar - are generally national competencies (basically members pursue cooperation but do not transfer sovereignty to EU.

# Principle of subsidiarity

- Art. 5 TEC: the EU may only act where action of individual Member states is insufficient
- Legal and political dimension
- Various criteria to explain its content:
  1. The action must be necessary because actions of individuals or member-state governments alone will not achieve the objectives of the action
  2. The action must bring added value over and above what could be achieved by individual or member-state government action alone
  3. Decisions should be taken as closely as possible to the citizen
  4. The action should secure greater freedoms for the individual

# Principle of proportionality

- = the Community shall not go beyond what is necessary to achieve the objectives of the EC Treaty.

# Categories of EC/EU competence

- The distribution of powers between the European Union and its Member States makes a distinction between three different types of competence:
  - exclusive Community powers (the Member States have irrevocably relinquished all possibility of taking action);
  - shared powers (the most common case);
  - supporting powers or areas of supporting action (the Community's sole task is to coordinate and encourage action by the Member States).

# Exclusive competences

- = only the Community may legislate and adopt legally binding acts
- following areas:
  1. customs union;
  2. the establishing of the competition rules necessary for the functioning of the internal market;
  3. monetary policy for the Member States whose currency is the euro;
  4. the conservation of marine biological resources under the common fisheries policy;
  5. common commercial policy.
  6. the conclusion of some international agreements



# Shared (joint) competence

- **COMMISSION v UNITED KINGDOM JUDGMENT**
- ...
- *Directive 76/756/EEC on the approximation of the laws of the Member States relating to the installation of lighting and light-signalling devices on motor vehicles, as amended by Directive 83/276, is exhaustive and motor vehicles complying with the technical requirements laid down therein must be able to move freely within the common market. A Member State cannot therefore unilaterally require manufacturers who have complied with those requirements to comply with a requirement not provided for by this directive.*
- ...

# Areas of shared competences

- internal market;
- social policy, for the aspects defined in this Treaty;
- economic, social and territorial cohesion;
- agriculture and fisheries, excluding the conservation of marine biological resources;
- environment;
- consumer protection;
- transport;
- trans-European networks;

# supporting competences

- 1.protection and improvement of human health;
- 2.industry;
- 3.culture;
- 4.tourism;
- 5.education and sport;
- 6.administrative

# Express and implied powers

- Most powers are expressly mentioned in the EC Treaty (express powers)
- Some, however, not – implied powers
- IP = the EC is competent to enter into international agreements if it is entitled to legislate on this particular issue internally
- ***ERTA JUDGMENT*** : ... *The Community enjoys the capacity to establish contractual links with third countries over the whole field of objectives defined by the Treaty. This authority arises not only from an express conferment by the treaty, but may equally flow from other provisions of the Treaty and from measures adopted, within the framework of those provisions, by the Community institutions.*
- *In particular, each time the Community, with a view to implementing a common policy envisaged by the Treaty, adopts provisions laying down common rules, whatever form they may take, the Member States no longer have the right, acting individually or even collectively, to undertake obligations with third countries which affect those rules or alter their scope.*
- *With regard to the implementation of the provisions of the Treaty, the system of internal Community measures may not be separated from that of external relations*
- ...

# Subsidiary powers

- The EC cannot cover all necessary areas -> subsidiary powers (see Art. 308 TEC)
- SP = the Community's powers can be adjusted to the objectives laid down by the Treaty when the latter has not provided the powers of action necessary to attain them
- SP are possible only if:
  - the action envisaged is "necessary to attain, in the operation of the common market, one of the objectives of the Community";
  - no provision in the Treaty provides for action to attain the objective.
- SP - cannot in any circumstances be used as a basis for extending the areas of competence of the Community

# Lisbon Treaty

- LT expressly lists areas of shared, exclusive and supporting competence
- Exclusive c. = competition rules within the internal market, the customs union, common commercial policy, monetary policy for Euro countries, the conservation of marine biological resources under the common fishing policy and - under certain circumstances - the conclusion of international agreements.
- Shared c. = competition rules within the internal market; the Area of Freedom, Security and Justice; agriculture and fisheries; transport; trans-European networks; energy; social policy; Economic, social and territorial cohesion; the environment; public health; and consumer protection, Research, technological development and space

# Member States' exclusive competence

- Protection and improvement of human healthcare
- Industry
- Culture
- Tourism
- Education, professional training, youth and sport
- Civil protection
- Administrative co-operation.

# Coordination competences

- Economic policies
- Foreign and security policy
- No significant change



# New areas of supporting competences

- protection and improvement in human health;
- tourism;
- industry;
- education; and
- civil protection.
- Intellectual property rights
- Data protection

# Find „7“ differences 😊

- Article 352 (ex Article 308 TEC): 1. If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.
- Article 308 TEC: If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.

# conclusion

- As we have seen already, the European Community is in many aspects unique international organization. It has a sovereignty of its own and has law-making powers in a number of areas. These powers were conferred upon it by Member States by the EC Treaty. It is also the EC Treaty, thus the Community law that determines the fields the Community governs;
- There are two main variety of Community powers – exclusive and shared competences;
- Where the Community has the exclusive competence to act the Member States are excluded from law-making. Only a small number of Community competence are exclusive;
- Most Community competences are shared. Where the Community has a shared competence the Member States are allowed to adopt if it is not in conflict with the Community rules. The Member state law is pre-empt only if the Community has already exercised its law-making power;
- The Community has also a general power to legislate in any field related to the common market in so far as it is necessary to attain its objectives laid down by the EC Treaty. In such case the Council must always act unanimously;
- In exercising its competences the Community is limited by principles of proportionality and subsidiarity;
- According to the principle of subsidiarity the Community may act only if the objective cannot be better attained on a lower (state or municipal) level;
- According to the principle of proportionality the Community must not go beyond what is necessary to achieve the objectives of the EC Treaty;
- Principle of proportionality applies limits exercise of both shared and exclusive competences. The principle of subsidiarity limits only the exercise of shared competences.