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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 against other European Countries.

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.

### *Legal Framework for International Integration*

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 has been attacked in north Atlantic area.

**The Council of Europe** (1949). The Council of Europe is international Organisation with 47 member states including all EU - ES member states) for

administrative, social and cultural cooperation and enforcement of basic human rights (more than two hundred treaties and conventions have been concluded in the Council of Europe).

The European Court for Human Rights is attached to the Council of Europe. It enforces the Convention of Human Rights and Fundamental Freedoms.

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

There are or there were **other European international organisations**:

- \* European Free Trade association

- \* West European Union

- \* Organization for European Economic Cooperation transformed into Organization for Economic Cooperation and Development.

Reminder for students from east Europe, west Europe and from overseas!

There was significant integration of socialist countries behind iron curtain including former Czechoslovakia: **the Council of Mutual Economic Assistance** (10 member states) and military **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).**

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.

**European Atomic Energy Community, or EURATOM (1957)**

There 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

**European Economic Community** (1957, since 1993 **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):

### **Membership in 3(2) European Communities**

Six original member states of ECSC, EAEC, and E(E)C were: France, Germany (west), Italy, the Netherlands, Belgium, Luxemburg.

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

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

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

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

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

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

Membership wished: several other Balcan and Eastern European states (Serbia, Montenegro, Albania, Bosnia-Hercegovina, 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 developed and democratic west European countries: Norway, Switzerland, Iceland.

These countries, however, 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 with Treaty of Maastricht.

The European Union is an international structure. It is not an international organisation. It lacks legal personality.

It includes 2 (earlier 3) European Communities

1st pillar for economic integration (European Communities)

and other forms of cooperation of member states, labelled the 2nd and the 3rd pillar: i. e. common foreign and security policy, and cooperation in matters of (criminal) justice and interior, respectively.

Treaty establishing a Constitution for Europe expected merger of the European Community and the European Union.

„Reform“ Lisbon Treaty concluded in December 2007 expects same change.

Nevertheless, until now there are separate structures: the European Community (+EURATOM) and the European Union.

### **Nature of the European Community (-s) and of the European Union**

The European Communities and the European Union are international organisations and structures 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 established with international treaties and not with any constitution.

The „Constitutional Treaty“ and Lisbon Treaty would not change it.

### **Between International organizations and Federations**

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

Let us 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, Universal Postal Union etc.

On the other hand, let us remember existing federations: the United States of America, Germany, India, Brasil, Russia, Nigeria, Malaysia, Australia, Canada, Switzerland, South Africa and several other ones.

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.

### **Deficiencies if compared with federations**

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).

### **Explanation of lack of federalism**

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 principal reason for absence of European nation and European politics is absence of one (or two, or three) language(s) of general communication. Every country needs one or limited number of 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 Lisbon Treaty be decisive steps towards European federation? I am convince that NO.

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