

# Competences

Questions to be answered today are:

1. Which competences the European Union does have?
2. What is the character and division of these competences?
3. What was 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 3 TEU: „The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties:
- Article 5 TEU “1. The limits of Union competences are governed by the **principle of conferral** ... Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States. ”
- Compare with former EU – 3 pillar structure
  - 1<sup>st</sup> pillar – EC/EU competency
  - 2<sup>nd</sup> and 3<sup>rd</sup> pillar – were generally national competencies (basically members pursue cooperation but do not transfer sovereignty to EU.

# Principle of subsidiarity

- Art. 5 TEU: 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 Union shall not go beyond what is necessary to achieve the objectives of the Treaties.

# Categories of EU competence

- The distribution of powers between the European Union and its Member States makes a distinction between three different types of competence:
  - **exclusive Union 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 Union's sole task is to coordinate and encourage action by the Member States).**

# Exclusive competences

- = only the Union 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 Treaties (express powers)
- Some, however, not – implied powers
- IP = the EU 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 EU cannot cover all necessary areas -> subsidiary powers (see Art. 352 TFEU)
- 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 one of the objectives of the Union";
  - 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 Union

# 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 – the EU with supporting role

- 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

# 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 Union 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 both Treaties. This Treaties, thus the EU law determines the fields the Union governs;
- There are two main variety of Union powers – exclusive and shared competences;
- Where the Union has the exclusive competence to act the Member States are excluded from law-making. Only a small number of Union competence are exclusive;
- Most Union competences are shared. Where the Union 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 Union has already exercised its law-making power;
- The Union has also a general power to legislate in any field related to the internal market in so far as it is necessary to attain its objectives laid down by Treaties. In such case the Council must always act unanimously;
- In exercising its competences the Union is limited by principles of proportionality and subsidiarity;
- According to the principle of subsidiarity the Union may act only if the objective cannot be better attained on a lower (state or municipal) level;
- According to the principle of proportionality the Union must not go beyond what is necessary to achieve the objectives of both Treaties;
- Principle of proportionality applies limits exercise of both shared and exclusive competences. The principle of subsidiarity limits only the exercise of shared competences.

EU exclusive competence	EU shared competence	EU supporting competence	U.S. exclusive competence
<p>The Union has exclusive competence to make directives and conclude international agreements when provided for in a Union legislative act.</p>	<p>Member states cannot exercise competence in areas where the Union has done so.</p>	<p>The Union can carry out actions to support, co-ordinate or supplement member states' actions.</p>	<p>U.S. federal government in the 19th century.</p>
<ul style="list-style-type: none"> <li>• the customs union</li> <li>• the establishing of the competition rules necessary for the functioning of the internal market</li> <li>• monetary policy for the member states whose currency is the euro</li> <li>• the conservation of marine biological resources under the common fisheries policy</li> <li>• common commercial (trade) policy</li> </ul>	<ul style="list-style-type: none"> <li>• the internal market</li> <li>• social policy, for the aspects defined in this Treaty</li> <li>• economic, social and territorial cohesion</li> <li>• agriculture and fisheries, excluding the conservation of marine biological resources</li> <li>• environment</li> <li>• consumer protection</li> <li>• transport</li> <li>• trans-European Networks</li> <li>• energy</li> <li>• the area of freedom, security and justice</li> <li>• common safety concerns in public health matters, for the aspects defined in this Treaty</li> <li>• Common Foreign and Security Policy</li> </ul>	<ul style="list-style-type: none"> <li>• the protection and improvement of human health</li> <li>• industry</li> <li>• culture</li> <li>• tourism</li> <li>• education, youth, sport and vocational training</li> <li>• civil protection (disaster prevention)</li> <li>• administrative cooperation</li> </ul>	<ul style="list-style-type: none"> <li>• Internal improvements</li> <li>• <a href="#">Subsidies</a> (mainly to shipping)</li> <li>• <a href="#">Tariffs</a></li> <li>• Disposal of <a href="#">public lands</a></li> <li>• <a href="#">Immigration law</a></li> <li>• <a href="#">Foreign policy</a></li> <li>• <a href="#">Copyrights</a></li> <li>• <a href="#">Patents</a></li> <li>• Currency</li> </ul>