INTRODUCTION TO EUROPEAN UNION LAW

ECL2000

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Conflict of EU law vs Member State Law.

Upon a member state entering into the European Union, that member state must be aware that it must give up part of the sovereignty, in order to enjoy the rights and duties of being a member in such European Union, and being able to work in unison with the other member states. There are certain competences in which the European Union can interfere in, and the instances where the European Union has full control in is the area of exclusive competence in which member stateside not have a say. This in principle means that in these ares, the member states have lost their powers. Just as Article 2(1) of the TFEU states that in the areas of "exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts".

A member states still has national laws to abide by, as well as the EU Laws in addition to that. Member states must make sure that regulations are applied in the appropriate manner into national law. This is found in Article 288 of the TEU, which outlines all the legal instruments necessary in order to "To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions."
The commission also aids member states in correctly implementing all the EU Laws. The commission serves as a watchdog, and ensures that national states apply EU Law in the correct manner. One can say that one of the Commissions's roles are of guarding treaties and making sure that such treaties are abided with. A treaty is a binding agreement between the member states of the European Union, which sets out objectives, rules for the institutions of the European Union, and also manages how decisions are made and ensures the relationship between the EU and its member countries.

When a member state of the European Union fail to abide by EU Laws or else, fail to properly implement laws, the Commission is able to launch an infringement procedure, against the country in question. However, in the instance where the issue is still not yet settled, then the commission may refer the case to the European Court of Justice. The importance of the supremacy of European Law was highlighted in the landmark judgement of the 'Van Gend en Loos Case'.

This case, Case 26/62, which concerns NV Algemene Transporten Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen, which took place in the year 1963 gave rise to the principle of direct effect and also evoked the importance of European Union law. This principle was firstly ever identified in this case, and the doctrine of direct effect is when there is the immediate enforceability by the individual applicant of those provisions in national courts.

In this case, Van Gend en Loos, was an importing company which was importing a chemical from Germany to the Netherlands, which both Germany and the Netherlands were the founding fathers of the European Union back then known as the Community. Whilst importing the goods, this company was charged with an import duty by the Dutch Tax collector, which goes against Article 12, which now is Article 30 of the TFEU, which states that;

"Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States."

This transportation company, still payed the import duty charge, but it seeked compensation afterwards. In the appeal of the Dutch Tariefcommissione, Article 12, which is now Article 30, was raised in this argument. The question was brought about, whether nationals belonging to another state could bring up such plea, for the court to protect their rights.

In this key judgement, the ECJ said that[1]:

"EU Law… not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage…not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defines way upon individuals."[2]

In this case therefore, the court declared that the laws adopted by the EU Institutions, must be integrated into the legal systems of EU countries, which are obliged to comply with them. Hence, EU law has primacy over national laws.

Another case defining the supremacy of EU Law is the case of Costa vs. Enel.

In this case, Case 6/64, of Flaminio Costa v ENEL, established the primacy of EU Law, which prevails over the laws of the state.

The Court in this case clarified that the primacy of EU Law must be applied to all national acts, irrelavant if adopted before or else after the EU act in question. The principle of primacy is an important concept. Due to the fact that EU Law is becoming superior to national law, this principle of primacy therefore, wants to ensure that citizens are protected by EU Law across all the EU territories.

In the book 'EU Law', by Craig & Deburca, they commented by stating that; "the ECJ's functional argument in *Costa*: primacy of application of EU law is demanded because 'the Union could not exist as a legal community if the uniform effectiveness of Union law were not safeguarded in the Member States'."

Another case on the supremacy of EU Law is the case of Vodafone Malta Limited and Mobisle Communications Limited vs. Attorney General, Comptroller of Customs, Minister of Finance and the Malta Communications Authority, decided by the Constitutional Court in the 3rd March 2019.

The applicant companies, in this case claimed that an excise duty which the tax authorities imposed was unconstitutional, as it was in breach of European Union law. They claimed that this was unconstitutional, as it breached article 65 subsection one of the Maltese constitution. This article states that;

65. *(1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Malta in conformity with full respect for human rights, generally*

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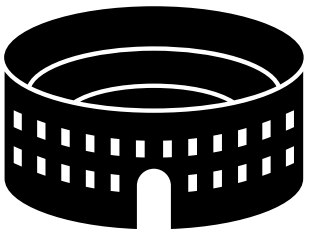
1 Turner C, *EU Law* (Routledge 2014)

2 Turner C, *EU Law* (Routledge 2014)

accepted principles of international law and Malta's international and regional obligations in particular those assumed by the treaty of accession to the European Union signed in Athens on the 16th April, 2003.



The last part of the article which provides that Parliament could enact laws in order to fulfil Malta's international obligations under the Treaty of Accession in 2003, in which Malta joined the European Union.

In this case, the court ruled that any breach of European Union law would be a breach of article 65 of the Constitution. However in this case the excise duty did not breach EU Law. This judgment has had significant importance, due to the fact that one can say that it 'constitutionalised' EU Law. Dr. Tonio Borg in his book 'Leading Cases in Maltese Constitutional Law' commented on this case by stating that;

"The court ruled that this puts Malta is international obligations including the adherence to the EU law as part of the 2003 Treaty on Accession to the EU on a constitutional plane."

Therefore, if nation law breaches the EU Law, if the states are members of the EU, they must abide by such Union, which aims to better the states as well as the union itself in the process conflict. Despite the fact that member states give up part of their sovereignty, such members still enjoy freedoms and rights in return, as just as John Bruton, an Irish Politician stated; "The European Union is the world's most successful invention for advancing peace.".

EU COMPETENCES

- For exam, put emphasis on competences and different categories of competencies, exclusive, supporting etc and some cases such as tobacco advertising case, etc…

- And also on What is done when there is a conflict between MS and EU as regards competences.

The European Union competences are expressly defined int he European Union Treaties. Since the European Union is not a sovereign state, but is in fact a group of national all uniting together, the European Union is not omni competent, as the European Union countries are limited.

When it comes to competences, one must distinguish between explicit powers and implied powers, as well as subsidiary powers.

Explicit Powers are powers which are clearly defined in the Treaties

Implied Powers is when the European Union has powers to act in a specify area. It must also have powers to conclude international agreements with countries which are not in the European Union or even international organisations.

CRAIG & DEBURCA - EU LAW

"The general principle is, and always has been, that the EU only has the competence conferred on it by the Treaties."
That is why we say that the European Union has attributed competence.

"The existence and scope of EU competence were therefore key elements in the reform process that culminated in the Lisbon Treaty."

The Lisbon treaty now is categorised with categories in relation to competences. These categories are exclusive competence

Article 5 (2) TEU of the Lisbon Treaty;

> "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."

"The reality was that EU competence resulted from the symbiotic interaction of four variables: Member State choice as to the scope of EU competence, as expressed in Treaty revisions; Member State, and, since the SEA, European Parliament acceptance of legislation that fleshed out the Treaty Articles; the jurisprudence of the EU Courts; and decisions taken by the institutions as to how to interpret, deploy, and prioritize the power accorded to the EU."

Lisbon strategy

The Lisbon treaty repreats with some changes the provisions in the constitutional treaty, such provisions are contained in the TEU and the TFEU. The main provisions on the EU competence are found in the TFEU.

Express and Implied power

Principle of Conferral - Are 5 of the TEU

Article 5 of the TEU

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. 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.

Competences are defined in Articles 2-6 of the TFEU, since the Lisbon Treaty.

Competences which are in no way conferred on the EU by the Treaties are to remain by the EU member states. The European Union only acts within the limits of the competencies that the European Union countries have conferred upon it in the treaties.

Different types of EU Competences

Exclusive competence - instances where only the European Union has power to act
Shared competences - this competence is shared between the European Union and the Member states. This in principle means that members states can only act, if the European Union has chosen not to act.
Supporting competences - in this type of competences, the European Union has the competence to support, coordinate or even supplements the actions of the Member states.

Subsidiary powers - defined also as the 'flexibility clause'

Article 352 of the TFEU

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, t**he 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.

2. Using the procedure for monitoring the subsidiarity principle referred to in Article 5(3) of the Treaty on European Union, the Commission shall draw national Parliaments' attention to proposals based on this Article.

3. Measures based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation.

4. This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy and any acts adopted pursuant to this Article shall respect the limits set out in Article 40, second paragraph, of the Treaty on European Union.

- Subsidiary powers are instances where the EU has neither explicit nor implicit powers to achieve a Treaty objective which concerns the common market. Article 352 of the TFEU allows the Council, "acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament," to take measures that it deems necessary

- The subsidiarity principle was introduced in the Maastricht Treaty.

Article 5(3) of the TEU

"3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol."

Article 5(4) of the TEU

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

Deburca

"The subsidiarity principle has been retained in the Lisbon Treaty. It distinguishes between the existence of competence and the use of such competence, the latter being determined by subsidiarity and proportionality."

The Lisbon Treaty contains a Protocol on the Application of the principles of subsidiary and proportionality.

This subsidiarity principle enhanced the role of national parliaments. This is due tot he fact that the Commission must send all legislative proposals to the national parliaments as well as the institutions of the European Union. The national parliament must be catered with

Exclusive Competence is found in Article 3 of the TFEU

Article 2 TFEU

1. When the Treaties confer on the Union **exclusive competence in a specific area**, **only the Union may legislate and adopt legally binding acts,** the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.

2. When the Treaties confer on the Union a **competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence.** The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.

3. The Member States shall coordinate their economic and employment policies within arrangements as determined by this Treaty, which the Union shall have competence to provide.

4. The Union shall have competence, in accordance with the provisions of the Treaty on European Union, to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.

5. In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.

Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of Member States' laws or regulations.

6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions of the Treaties relating to each area.

EXCLUSIVE COMPETENCE - Article 3 of the TFEU

1. The **Union shall have exclusive competence** in the following areas:
(a) customs union
(a) the establishing of the competition rules necessary for the functioning of the internal market;
(b) monetary policy for the Member States whose currency is the euro;
(c) the conservation of marine biological resources under the common fisheries policy;
(d) common commercial policy.

2. The **Union shall also have exclusive competence** for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

- These are the competences in which only the European Union has the power to act.only the union can legislator and adopt legally binding acts. Since the member states have gave up part of their sovereignty upon entering the European Union, this is one of the instances in which Malta for example can not have the power to act with regards to "customs union" (A3 TFEU, paragraph 1(a)).
- Therefore, only the EU is competent to adapt the relative legislation int his type of competence. This in principle means that in these ares, the member states have lost their powers.

- The European Union also has exclusive competence when it comes to make intenrantiola agreements, as long as the conditions in **Article 3(2)** of this article are abided by.

Conditional Exclusivity - the European Union also enjoys exclusive competence to make an international agreement, only if the conditions of **Article 3(2) of the TFEU** are met. This article must be read in the context of Article 216 of the TFEU, the latter article is concerned with other the EU has competence to conclude an international agreements.

Pre -Lisbon case law - to understand A3(2).

"Thus in *ERTA* the ECJ held that when the Community acted to implement a common policy pursuant to the Treaty, the Member States no longer had the right to take external action where this would affect the rules thus established or distort their scope. This position was modified in *Kramer*. The ECJ held that the EC could possess implied external powers even though it had not taken internal measures to implement the relevant policy, but that until the EC exercised its internal power the Member States retained competence to act, provided that their action was compatible with Community objectives"

"The same general message emerged from the *Lugano* Opinion: implied external competence could be exclusive or shared, but where the EC had exercised its powers internally, then the ECJ would be inclined to conclude that this gave rise to exclusive external competence, whenever such exclusive competence was needed to 'preserve the effectiveness of Community law and the proper functioning of the systems established by its rules'."

External Competence and Exclusivity: Post-Lisbon

Article 3(2) TFEU specifies three situations in which the EU has exclusive external competence;

1. "where conclusion of an international agreement is provided for by a legislative act of the Union"
2. "ECJ jurisprudence that accords the EU competence to conclude an international agreement where this is necessary to effectuate its internal competence, even where there is no express external competence."
3. "the EU shall have exclusive competence insofar as the conclusion of an international agreement 'may affect common rules or alter their scope'. This is in accord with the ECJ's case law considered above."

"Cremona has argued convincingly that Article 3(2) 'conflates the two separate questions of the existence of implied external competence and the exclusivity of that competence', and that the combination of this Article when read with Article 216 TFEU is that implied shared competence could disappear."

Shared Competence is found in Article 4 of the TFEU

1. The **Union shall share competence with the Member States where the Treaties confer** on it a competence which does not relate to the areas referred to in Articles 3 and 6.

2. 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.

3. In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

- These are instances in which both he European Union as well as the Member states with share competence. This in practice means that the member states can act when the European Union has refused not to act. An example of a shared competence is for example in the internal market, or

else in the transport and also environment sector. In the field of internal market therefore, the member satiates can only act when there is no set regulation set by the EU. The moment that the EU would have set a regulation, then that regulation would have to be abided with by the member states.if the European Union chooses minimum harmonisation, in that case, the member states have room for action in the relevant area.

- Article 2(2) TFEU - defines shared competence ;

"When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence."

"It provides that where the Union has taken action in an area governed by shared competence, 'the scope of this exercise of competence only covers those elements governed by the Union act in question and therefore does not cover the whole area'" - DEBURCA

Supporting, coordinating or supplementing competencies - Article 6 of the TFEU

Article 2(5) TFEU - "In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas."

- This article provides that the European Union only has the power to support, coordinate and suppelemtn, but not supersede the member state's competence. This article also mentions that legally binding acts of the EU, which are adopted on the basis of these procioons can not entail harmonisation of member state laws.hence, eventhough the EU can not harmonise the law in these areas, it can still pass legally binding acts, based on the specific provisions to these areas,

- This in pricniple means that even though the EU can pass legislative acts in this area of competence, these legislative acts passed can not ential harmonisation, and also provided that there is foundation for the passage of such laws in the detailed provision of the TFEU.

Article 6 of the TFEU

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.

- In this type of competence, the European Union has the power to support, coordinate and even supplements the actions done by member states. An example of this is in the protection and improvement of human health, the industry, culture, tourism, education.. **Supporting competences** - in this type of competences, the European Union has thE competence to support, coordinate or even supplements the actions of the Member states.

- The scope of the EU power in relation to this section of competence should not be undermined. The boundary of this competence is that such legal acts must be designed in order to attain the objectives listed for EU involvement in the area.

Article 2(3) TFEU - specific provision on Economic and employment policies

ECONOMIC, EMPLOYMENT AND SOCIAL POLICY

Article 2(3) TFEU

"3. The Member States shall coordinate their economic and employment policies within arrangements as determined by this Treaty, which the Union shall have competence to provide."

The European Union may adopt guidelines and also initiatives to co-ordinate member state approaches, in relation to three policy ares; being mainly; the economic policy, employment policy, as well as social policies.

The reason for these specific rules on these policies is that their unison under shared competences was resisted by many member states. Consequently, they are situated between shared and supporting, coordinating or else supplementing competences. Member states are free to decide their social security policy, which means the age of retirement, … as long as they are entitled to non discrimination policies.

The field of the Common Foreign and Security Policy

The rules which concern the Common Foreign and Security Policy are found in Title V TEU. With regards to the Common Foreign and Security Policy is given the competence by the Treaty on the European Union to define and implement such Common Foreign and Security Policy. The decision making process however, is different in this case. In this case, the Commission alone can not initiate policy. The EU High Representative for Foreign Affairs and Security Policy, as well ass the member states of the European Union have the right to initiate policy. Thus, in principle this means that the Commission can propose a joint-proposal with the High Representative for foreign Affairs and security policy, but not by itself.

"Decision-making in this area continues to be more intergovernmental and less supranational by way of comparison with other areas of Union competence."

"The European Council and the Council dominate decision-making, and the legal instruments applicable to CFSP are distinct from those generally applicable for the attainment of Union objectives."

In reality, none of the types of competences fit in relation to the common foreign and security policy.

Article 2(4) of the TFEU

"The Union shall have competence, in accordance with the provisions of the Treaty on European Union, to define and implement a common foreign and security policy, including the progressive framing of a common defence policy."

The use of EU Competence is governed by the principles of Subsidiarity and also proportionality

Principle of Subsidiarity - Article 5 of the TEU

1. "The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. 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.

3. **Under the principle of subsidiarity,** in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed **action, be better achieved at Union level.**

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the **principle of proportionality,** the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality."

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol."

- This principle of subsidiary is mainly about the instance where the European Union does not take any action, except for the areas that fall in its exclusive competence, of course,. So the European Union does not take action unless the European Union action it takes would be more effective that the action taken at national, regional or even local level. This might be challenged int he case of a breach of the principle of subsidiarity and the Committee of Regions or EU contours may act in that case.

The Principle of Proportionality - Under Article 5 TEU

This Principle of Proportionality entails that the EU action must be limited solely to what is necessary, in order to achieve the main objective of the Treaties. Hence the EU must not exceed the limits outlined in the Treaties, it must stay proportional. Both the content and the form of the action must be in line with the aim pursued.

Article 5 of the TEU sub- article 4; "Under the **principle of proportionality,** the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

Assessing EU measures based on the constitutional proportionality principle

In the case of C-11/70, Internaitioanle Handelgesschaft, Common Agricultural Policy allowed exports only by those exporters who had a special license, on a deposit of money that could in some way be fortified if they failed to make the export during the license's validity period. The applicant in this case argued that this licensing system was a disproportionate violation of the right to conduct business. However, the Court of Justice of the European Union, upon hearing this case, self that the validity of EU measures can in no way be challenged on the grounds of national law.

Principle of Proportionality applicable on acts of EU Institutions

In the case of C-181/84, the Intervention Board for Agricultural Produce, was seeking a deposit of a sum of money, after the company Sugar Ltd had failed to submit a liscense application for the export of goods within the prescribed time by the EU Regulation on the common organisation of the sugar market. This application was only submitted a few hours later than needed. The court of Justice of the European Union, after heating the applicant, who argues that the provision was not in line with the principle of proportionality, in this case, the court agreed that the Regulation which was requiring such forfeiture was indeed invalid, since the application was made only a few hours after its expiration.

The court said that by giving the money back would go against the principle of poroptitonaity

So ltd won the case

Principle of Proportionality applicable on acts of EU Institutions

In the case of C-114/76, in the case of Muhle v. Grows - the Farm Regulation 563/76, the Court of Justice of the European Union annulled the Regulation as the compulsory purchase was. imposed at a price which was equal to around three times its value as animal feed. Hence, the court annulled the Regulation, due to the disprorprotionality in the price, and also to the discrimination and obligation to buy skimmed milk.

Principle of Proportionality applicable on acts of EU Institutions

In the case of C104-94, In the case of Italia vs. Azienda Agricola Castello, the court assessed whether a measure imposed in order to prevent fraud, was in line with the proportionality principle. The court of justice of the euwropessn union in the case, the court in hiss case penalties which were imposing forfeiture of entitlement, to aid for two marketing years, whereby a producer due to

serious negligence, or else in a deliberate manner, did not notify the commission of the changes in the area sown, were indeed proportionate. Upon reaching this conclusion, the court underlined that the obligation to notify had primary importance for the aid system.

Principle of Proportionality - review of EU measures

In the case of C-404/93. Germany v. Council, set up a common organisation on the banana market. Germany was seeking the annulment of this regulation, (404/93), stating that this regulation was imposing a disorioritonate burden on traders who marketed bananas to third countries by reducing their share of the market.

The court in did case did not accept this argument, by stating that upon adopting the regulation, the council had to reconcile the conflicting interests of the member states, which produced banana and those which did not. All in all, the court eventuality did rule that the court could not substitute the assessment for that of the council, if such measures have not proved in any way to be manifestly inappropriate for achieving the ejective pursued.

Principle of Proportionality - review of EU measures

This case is known as the mushroom case, C-24/90, whereby the applicant did challenge the commission regulation 3429/80. Which imposed a levy on the importation of mushroom up to certain quantities. This levy was imposed due to the fact that the community market for mushrooms was threatened by the imports from third countries at much lower prices.

The applicant in this case argued that the levy Wass disproportionate because it was set at 150% of the cost price of the top quality mushrooms. In this case, the court of justice of the eu, ruled that the measure was truly disproportionate due to the high levy, as to constitute a financial charge for importers and it did not in any way attain the objective pursued.

Principle of Proportionality - governing the exercise off EU Competence - germany vs council

In the case of C-426/93, Germany challenged the legality of the regulation 2186/93, which required member streets to establish registers for statistical purposes, which contained information relating to commercial enterprises.

Germany in this case stated that the financial and adminisrtrative costs of establishing and also periodically updating the national registers were not proprortioanl by comparison to the potential benefits and that certain collected data, was not necessary to the objectives of the act. Despite this argument, the Court of Justice of the European Union, rejected both of the arguments and claimed that the regulation was proportional.

Principle of Proportionality - review of punitive sanctions

In the case of C-308/90, Advanced Nuclear Fuels vs. Commission. Due to a mistake in transportation, the applicant exported radioactive material from Germany to the United States. The applicant was under administration for a period of 4 months by the Commission, such maonuvre was based on the EURATOM treaty. As a response to this, the applicants argued that this was not proportionate. The court of justice of the European Union however held that failure to abide by the EUROATOM Treaty provision, was a serious violation , as it ensures the security of nuclear materials. The same court claimed that this punitive sanction was needed to make sure that a similar incident would not take place anywhere in the future .

An example of broadening EU Competence

In the case of C-440/05, the Commission vs. Council case, whereby the Commission, supported the European Parliament requested the annulment of the framework decision on strengthening the framework for criminal law, for the enforcement of the law against ship source pollution. The court of justice of the European union, un this case, annulled the entire framework decision, but maintained that; "the determination of the type and level of the criminal penalties to be applied", do not fall within the scope of the community competence.

"Criminalisation" incompatible with the EU Law

In the case of C- 83/73, Pigs Marketing board vs. Redmond, criminal charges were instituted against Mr.Redmond, for transporting bacon pigs without the authorisation which needed to be issued by the northern Ireland pigs marketing board. The applicant claimed that these measures were incompatible with EU on production of and trade in agricultural products. The court of Justice of the European Union in this case rules that this marketing system which was administered by a national body and powers to control the sector and the subsequent criminal sanctions were not compatible with the European Union law.

Criminal sanctions incompatible with European Union law

The court in the case of C- 299/96, R. Drexl, ruled that "National legislation which penalises offences concerning the payment of VAT on importation more severely than those concerning the payment of VAT on domestic sales of goods is incompatible with EU law".

DISCRIMINATORY REQUIREMENT INCOMPATIBLE WITH EU lAW

In this case, C- 137/84, Mutsch, a national from Luxembourg who resided in a German speaking municipality of Belgium, was fined in absentia, and later on submitted an appeal before the Belgian court. According, to the Belgian code, Belgians residing in this German-speaking municipality from where the applicant was from could also be asked to be tried in the German language. The applicant in this case was not given this option to opt for, due to him from Luxembourg.

The Court of Justice of the European Union in this case held that this was a discriminative provision , which was incompatible with the free movement of workers and that discrimination procedure right should also be granted to other EU nationals who reside in this area.

Relation between EU Law and National criminal law - positive duty of member states to penalise certain acts

In a number of judgements by the court of Justice of the European Union, the court evokes the active and positive duties of member states to introduce measures of criminal law, so that the execution of you obligations is insured. There is also the link with the loyalty principle, (effectiveness, proportionality and dissuasiveness of penalties linked to the violation of EU Law).

There is also the link to the assimilation principle (infringement of EU Law must be penalised on the conditions analogous to those applicable for national law of similar nature and importance).

Positive obligation to adopt affective criminal provisions

In C- 68/88, Commission v. Greece, Greece was convicted of not penalising civil servants who had falsely declared that maize exported to Belgium was from Greece, when in reality it was from Yugoslavia. This false declaration was done in order to avoid the agricultural levy payable to the community own resources.

The court of Justice of the European Union said that in the instances where the EU law does not specifically provide any affinity for an infringement or a phase for this purpose to be dealt with by a national laws, the principle of loyalty requires the member states to take all measures necessary to ensure the application and also the effectiveness of EU law.

Even the exercise of exclusive competencies of member states may be subject to requirements of EU Law – acquisition of nationality example

In the case of C-135/08, Rottman v. Freistaat Bayern, an Austrian national obtained German nationality, by not disclosing the fact that he was the subject of judicial investigation in Austria. After his naturalisation, he lost his Austrian nationality and could not regain it back after the withdrawal of his naturalisation by German authorities.

The court in this case ruled that, even though the acquisition and loss of nationality fall under the exclusive competence of the other states, the withdrawal of naturalisation by a member state falls within the scope of the treaties, hence it should be subject to the principle of proportionality due to the fact that its results and the loss of rights attached to EU citizenship.

Principle of proportionality applicable on acts of Member states when implementing EU Law

In the case of C- 316/10, *Danske Svineproducenter,* which concerned Regulation 1/2005, on the protection of animals during transport, it was examined whether the national standards, which concern detailed requirements on transport by road of pigs were disprportionate. The court in this case held that even though the regulation did not preclude more detailed national rules, these rules should be appropriate and shouldn't exceed what is necessary for achieving the EU oBJECTIVE pursued.

Alleged religious discrimination and proportionality

In the case of C-157/15, Samira Achbita vs. G4S, the court had to decide whether if a private employer is allowed to not let a female employee of Muslim faith to wear a headscarf in the work place, and also, if that employe is allowed to dismiss her if she refuses to remove the scarf at work.

The court of justice of the European union in this case held that this restriction does not constitute direct discrimination which is based on religion with an article 2(2)(a) of the Directive 2000/78/EC, If that ban if founded on a genuine company rule with visible political and religious symbols in the workplace and not on stereotypes or prejudice against one or more particular religions or against religious beliefs in general. Therefore, the court held that that ban may lead to indirect discrimination which may be justified in order to enforce a policy of religion in the ideological neutrality, as long as proportionality is always observed.

WHO DECIDES IN CASES OF CONFLICTS TO EU AND MEMBER STATE COMPETENCES ?

The European Union cannot do what it wants, due to the fact that it has limited powers, and the powers are governments by attributed competences, hence the European Union can only act within the competences attributed to it the member states give the European Union the confidence to act by signing treaties and do European Union must make sure that detect only within the fields permitted. As already mentioned prior there are three types of competencies; exclusive, shared and supporting. The court of Justice of the European Union can intervene and also annul a certain act.

An example of a limitation of EU Legislative Competence

In the case of C -376/98, Tobacco Advertising, the EU adopted directive on the laws relating to the general prohibition of advertising and sponsorship of tobacco products, with the aim of eliminating obstacles to the functioning of the internal market and distortions of competition resulting from differences in the relevant national rules.

Germany was requesting the annulment of the directive as the main objective was the protection of public health. The court of justice of the European union in this case held that such a general prohibition was limiting the economic operations and that protection of public health can not be the subject of harmonisation, hence it annulled the directive.

WITH REGARDS TO COMPETENCE, the EU has SUPPORTING competence in the public health domain.

An example of broadening EU Competence

In the case of C- 176/03, Commission v. Council, the commission which was supported by the European Parliament requested the annulment of the framework decision for the protection of environment through criminal law , as it has been based on the eu intergovernmental policy, and not on the supranational environmental policy. The council, which was supported by 11 member states claimed that a it was a criminal law measure and hence, it fell under the third pillar.

The court of justice of the European union ruled that since the aim and content of the framework decision had environmental protection as a main purpose, the framework decision should have been adopted under the former 1st pillar, meaning that the framework decision should be annulled.

- In this case the ECJ found that the principal aim of the framework decision Wass in fact to protect the environment .

Intersection between national competences and EU competences

Exercise of competences of Member states subject to requirement of EU Law - criminal law example

In the case of C - 348/96, a tourist in Greece, with the name of Donatella Calfa, from another country member states of the eu . Whilst she was there, she was convicted for the drug use, and consequently excluded for life from the territory of Greece. She could only return after 3 years which decision was at the discretion of the Minister of Justice. This penalty could in no way be appleid to Greek nationals.

The greek supreme court asked the Court fo justice of the European union whether the penalty given to Donatella Calfa in this case was legitimate. The latter court ruled that since expulsion is an instance to freedom of services it was in no way justified in this case.

"Criminalisation" incompatible with EU Law

In c-83/78, Pigs Marketing Board vs. Redmond, criminal charges were imposed against the accused, MR. Redmond, after transporting what are known as 'bacon pigs' with op transport authroitiazation issued by the northern Ireland pigs marketing board.

In this case, the defendant said that these measures we are not compatible with the European Union law on production of trade in agricultural products. The court of justice of the European Union ruled in this case that this marketing system which was administered by a national body important to control the sector and also subsequent criminal sanctions were not compatible with EU Law.

"Criminalisation" incompatible with EU Law

In C- 41/76, Donckerwolcke, two Belgian merchants were charged for importing fabrics sacks into France and alleged false declarations which related to the country of origin of these products. The accused claimed that the products were circulating freely in Belgium. To this, the court of justice of the European union stated that "National rules making the importation of products in free circulation in a member state and originating in a third country subject to the issuance of a license constitute a quantitative restriction prohibited under EU RULES"

Another case which was incompatible with EU law was the case of C- 299/98, r. Drexl, whereby the court ruled that; "National legislation which penalises offences concerning the payment of VAT on importation more severely than those concerning the payment of VAT on domestic sales of goods is incompatible with EU Law."

Criminal actions incompatible with EU Law and Proportionality

In this case, C-118/75, Watson and Belman, the Italian authorities wanted to expel Mr.Watson for failing to abide by certain administrative procedures which are requires under Italian law. The court of justice of the european union claimed that although member states could impose penalties for non-compliance with administrative requirements which are related to the free movement of persons, these penalties should not lead to the deportation, and the principle of proportionality should be repeated.

Discriminatory criminal procedural requirements incompatible with EU Law

In this case, C- 137/84, Mutsch, a Luxembourgish national who resided in a German speaking municipality of Belgium. He was fined in absentia, and later on submitted an appeal before the Belgian court. According, to the Belgian code, Belgians residing in this German-speaking municipality from where the applicant was from could also be asked to be tried in the German language. The applicant in this case was not given this benefit due to him from Luxembourg.

The Court of Justice of the European Union in this case held that this was a discriminative provision which was incompatible with the free movement of workers and that discrimination procedure right should also be granted to other EU nationals who reside in this area.

Relationship between EU Law and National criminal law - positive duty of the member states to "penalise" certain acts

- In many judgements by the Court of Justice of the European Union, the court underlines the active and positive duties of Member states, in order to introduce measures of criminal law of criminal law so as to ensure the execution of EU obligations.

Loyalty Principle - effectiveness, proportionality, and dissuasiveness of penalties linked to violation of the EU LAW.

Assimilation Principle - the infringement of European Union law must be penalised on the conditions analogous to those applicable for a national law of similar nature and importance

Positive obligation to adopt effective criminal provisions

In C- 68/88, Commission v. Greece, Greece was convicted of nothing penalised civil servants who had flatlet declared that maize exported to Belgium was from Greece, when in reality it was from Yugoslavia. This false declaration was done in order to avoid the agricultural levy payable to the community own resources.

The court of Justice of the European Union held that in the instances where the EU law does not specifically provide any penalty for an infringement or a phase for this purpose to be dealt with by a national laws, the principle of loyalty requires the member states to take all measures necessary to ensure the application and also the effectiveness of EU law.

Positive obligation to adopt effective and equivalent criminal provisions

In the Case C- 105/14, the Taricco Case, criminal proceedings were instituted against him and some others for offences relating to VAT. The Italian legislation provided for absolute limitation periods which might give rise to impunity in respect of these offences. The court of justice of the European union, after a preliminary ruling stated that this law might lead to potential prejudice to the financial interest of the EU. It also underlined the obligation for the national court to display any provision of national law, which is liable to affect the fujcifillemnt of the member states under eu law.

The exercise of exclusive competences of Member states may be subject to requirements of EU Law.

In C- 135/08 Rottman v. Freistaat Bayern
In this case, an Austrian national obtained German nationality by not disclosing the fact that he was the subject of judicial investigation in Austria. After his naturalisation, his Austrian nationality was lost, and he could not get it back after the withdrawal of his naturalisation by German authorities.

In this case, the court ruled that despite the acquisition, and loss of nationality, which fall under the exclusive competence of the member states, withdrawn of naturalisation by a member state falls within the scope of the treaties, and it should be subject to the principle of proportionality, due to the fact that it results in the loss of rights, which are attached to EU citizenship.

Principle of proportionality applicable on acts of Member states when implementing EU Law

In the case of C- 316/10, *Danske Svineproducenter,* which concerned Regulation 1/2005, on the protection of animals during transport, it was examined whether the national standards, which concern detailed requirements and transport by road of pigs were disproportionate The court in this case held that even though the regulation did not preclude more detailed national rules, these rules should be appropriate and shouldn't exceed what is necessary for achieving the EU oBJECTIVE pursued.

How did the European Union start ?

Treaty of Paris 1951

The European Union started originally away back in the 1950s, after the second world war. After such war, six countries decided to unite with one another to avoid even the possibility of a third war from taking place. Hence, the six founding member of what is now called the European Union originally were referred to as the Benelux countries. These six countries were; the Netherlands, Belgium, Luxembourg, France, Germany and Italy. These six countries established the European Coal and Steel Community, in the Treaty of Paris, which ewas signed in 1951.

Treaty of Rome 1957

In 1957, the same six founding member stetted signed the Treaty of Rome, a treaty from which the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM) were established. The main scope of the European Economic Community was to establish a common market which is based on the four freedoms (being mainly movement, goods, capital and services), amongst all of the six countries among themselves. These six founding countries all had different things to gain from such collaboration with the other states .

Single European Act

In the mid 1960s, these founding countries were very well established. Despite this, there was still room for improvement. In fact in 1986, the Single European Act was adopted, which established a single market for all the six members, as this single market was a great leap forward in the historical development of what we nowadays call the European Union.

Treaty of Maastricht

Then the Treaty of Maastricht, which established the European Union was signed in 1992. This treaty was based on three major pillars; the European Communities, the Common Foreign and Security Policy and lastly, the Police and Judicial Cooperation. This treaty is famous for the creation of a new treaty which is called the umbrella treaty which upholds in it the 3 major pillars mentioned prior, which created the concept of the European Union. The first pillar, is composed of communities such as; EURATOM, ECSC and EEC) -all of which were made via supranaationalism. The other two pillars on the other hand are mainly inter governmental.

This treaty transforms the community into a union, in which now the member states have enlarged their number and hence there is the need for them to work all in unison. Hence in this treaty;

"There was only agreement to co-operate on defence and justice, rather than being part of the legal order"[3] *..."But it did create the union and the idea of European citizenship - though not within the legal order."*[4]

Treaty of Amsterdam

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[3] Turner C, *EU Law* (Routledge 2014)

[4] Ibid.

This Treaty of Amsterdam came in force in 1997 with the solutions of the problems in prior treaties. The need to improve the freedom of meoevemnt was recignized by the member states at the time, were gradually increasing in number. This freedom of movemt would help to give the economy of the member states a good boost. In fact, this Treaty included new provisions with regards to the Schengen Agreement

The Treaty of Nice

The Treaty of Nice, signed in 2001, further improved the composition of institutions, as well as voting procedures which all helped gear up to the largest enlargement of the European Union, which took place in 2004, and in which Malta was a part of, along with 9 other countries.

Lisbon Treaty

The Lisbon Treaty, signed in 2007, established more updated regulations for the European Union, and it also established a process in which countries can leave the European Union.

September 2019 Q2; The treaties amending **the original Treaty of Rome (1957)**, **the European Economic Community Treaty (EEC),** have each in their own way **contributed towards the development of the European Union** as we know it today. Discuss the **most salient** contributions made by each **amending treaty.**

Like every other thing, the European Union as we know it today has once had long history, from which it is originating from.

Treaty of Paris 1951

The European Union started originally way back in the **1950s**, after the second world war, yearning for the wish to have an ounce of peace in Europe. After such war, six countries decided to unite with one another to avoid even the possibility of a third war from taking place. Hence, the six founding member of what is now called the European Union originally were referred to as the Benelux countries. These six countries were; the Netherlands, Belgium, Luxembourg, France, Germany and Italy. These six countries established the European Coal and Steel Community, in the Treaty of Paris, which was signed in 1951. The coal and steel were used for a reason, so as to symbolise a material which could possibly be used in a war, and hence, by uniting with regards to such materials, the countries are trusting each other through these materials, which can be used against them.

"Four institutions were set up: a High Authority, made up of nine independent appointees of the six Member State governments, which was the main executive institution with decision-making power; an Assembly made up of national parliaments' delegates with mainly supervisory and advisory powers; a Council composed of a representative from each national government, with a consultative role and some decision-making powers, and the task of harmonizing the activities of the states and the High Authority; and finally a Court of Justice of nine judges."[5]

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"The SEA made other institutional changes. It gave a legal basis to European Political Cooperation and formal recognition to the European Council, although not within the Community Treaties."

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[5] Craig P, and De Búrca G, *EU Law* (Oxford University Press 2011)

"The substantive changes made by the SEA were equally important. First, Article 18 EC set out the internal market aim of 'progressively establishing the internal market over a period expiring on 31 December 1992', and defined the internal market as 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured'."[6]

"the SEA added new substantive areas of Community competence, some of which had already been asserted by the institutions and supported by the Court, without any express Treaty basis. The additions covered cooperation in economic and monetary union, social policy, economic and social cohesion, research and technological development, and environmental policy."[7]

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This treaty transforms the community into a union, in which now the member states have enlarged their number and hence there is the need for them to work all in unison. Hence in this treaty;

"There was only agreement to co-operate on defence and justice, rather than being part of the legal order"[8] *..."But it did create the union and the idea of European citizenship - though not within the legal order."*[9]

"The most striking feature of the TEU, apart from the detailed provisions on EMU, was the institutional change it brought about, establishing the 'three-pillar' structure for what was henceforth to be the European Union, with the Communities as the first of these pillars and the EEC Treaty being officially renamed the European Community (EC) Treaty."[10]

"The Amsterdam and Nice Treaties preserved this basic edifice, subject to certain amendments, but it has, as will be seen, been removed by the Lisbon Treaty."[11]

"The most significant institutional change made by the Maastricht Treaty was the increase in the Parliament's legislative involvement, by introducing the so-called co-decision procedure, what was Article 251 EC. This allowed the EP to block legislation of which it disapproved, if it was subject to

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6 Deburca

7 Deburca

8 Turner C, *EU Law* (Routledge 2014)

9 Ibid.

10 Deburca

11 Ibid.

this procedure.The Parliament was also given the right to request the Commission to initiate legislation and the power to block the appointment of the new Commission."[12]

Treaty of Amsterdam

This Treaty of Amsterdam came in force in 1997 with the solutions of the problems in prior treaties. The need to improve the freedom of meoevemnt was recignized by the member states at the time, were gradually increasing in number. This freedom of movemt would help to give the economy of the member states a good boost. In fact, this Treaty included new provisions with regards to the Schengen Agreement

The Treaty of Nice

The Treaty of Nice, signed in 2001, further improved the composition of institutions, as well as voting procedures which all helped gear up to the largest enlargement of the European Union, which took place in 2004, and in which Malta was a part of, along with 9 other countries

"The Nice Treaty made a number of changes to the EC Treaty, in particular relating to the Community's institutional structure. The major political achievement was agreement on the issues relevant to enlargement: the weighting of votes in the Council, the distribution of seats in the European Parliament, and the composition of the Commission. The relevant Treaty provisions have been altered by the Lisbon Treaty"

"The Nice Treaty also made changes to the Court system, in particular by strengthening the powers of the CFI."

"The Nice Treaty made relatively modest changes to the Second and Third Pillars, dealing with the CFSP and PJCC respectively. The relevant rules in these areas have been superseded by the Lisbon Treaty, and will be explicated in later chapters."

"The driving force behind the Treaty of Nice was, as we have seen, to make the institutional changes necessary for further enlargement. This was especially pressing because the 2004 enlargement brought ten further states into the EU: the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, and Slovakia. Bulgaria and Romania joined the EU in 2007, making twenty- seven states in all. Negotiations are ongoing with Croatia and Turkey."[13]

"Nice Treaty, which called for a 'deeper and wider debate about the future of the European Union', involving a broad range of opinion. The Declaration identified four issues for the 2004 IGC: the 'delimitation of powers' between the EU and the Member States, the status of the Charter of Fundamental Rights, simplification of the Treaties, and the role of the national parliaments."

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12 Ibid.

13 Deburca.

Lisbon Treaty

"The objective was to see whether an agreement could be brokered between the Member States that would pave the way for acceptance of some revised Treaty reform. The June 2007 European Council then considered a detailed mandate of the changes that should be made to the Constitutional Treaty, in order that a revised Treaty could successfully be concluded."

"This led to the birth of the Reform Treaty. The European Council concluded that 'after two years of uncertainty over the Union's treaty reform process, the time has come to resolve the issue and for the Union to move on'."

"The Reform Treaty was to contain two principal substantive clauses, which amended respectively the TEU and the EC Treaty, the latter of which would be renamed the Treaty on the Functioning of the European Union, TFEU."

The Lisbon Treaty, signed in 2007, but came into force in 2009 established more updated regulations for the European Union, and it also established a process in which countries can leave the European Union. The two main elements stemming from the Lisbon Treaty are the Treaty on European Union (TEU) and also the Treaty on the Functioning of the European Union (TFEU).

"The Lisbon Treaty removed the three-pillar structure, although the reality is that distinct rules still apply in the field of the CFSP. They are now found in Articles 21–45 TEU of the Lisbon Treaty, and will be examined below."

"Lisbon Treaty was, by way of contrast, forged by the Member States and Community institutions, and there was scant time afforded for further deliberation."

"The Lisbon Treaty has seven Articles, of which Articles 1 and 2 are the most impor- tant, plus numerous Protocols and Declarations. Article 1 amends the Treaty on European Union, TEU, and contains some principles that govern the EU, as well as revised provisions concerning the Common Foreign and Security Policy and enhanced cooperation. Article 2 amends the EC Treaty, which is renamed the Treaty on the Functioning of the European Union. The EU is henceforth to be founded on the TEU and the TFEU, and the two Treaties have the same legal value."

"The Lisbon Treaty did, however, improve the architecture of the TFEU. It is divided into seven Parts. Part One, entitled Principles, contains two Titles, the first of which deals with Categories of Competence, the second of which covers Provisions having General Application. Part Two deals with Discrimination and Citizenship of the Union. Part Three, which covers Policies and Internal Actions of the Union, is the largest Part of the TFEU with twenty-four Titles.[116] The most note- worthy change is that the provisions on Police and Judicial Cooperation in Criminal Matters, the Third Pillar of the old TEU, have been moved into the new TFEU. They have been integrated with what was Title IV EC, dealing with Visas, Asylum, etc, and is now Title V of the TFEU, renamed the Area of Freedom, Security and Justice. Part Four of the TFEU covers the Association of Overseas Countries and Territories. Part Five deals with EU External Action, bringing together subject

matter with an external dimension.Part Six is concerned with Institutional and Budgetary Provisions, while Part Seven covers General and Final Provisions."

"The Lisbon Treaty is not built on the pillar system, but the distinctive rules relating to the Common Foreign and Security Policy, CFSP, mean that in reality there is still something akin to a separate 'Pillar' for such matters. The approach to the CFSP in the Lisbon Treaty largely replicates that in the Constitutional Treaty, subject to the change of nomenclature from Union Minister for Foreign Affairs to High Representative of the Union for Foreign Affairs and Security Policy. The rules relating to the CFSP remain distinct and executive authority continues to reside principally with the European Council and the Council.[118] The ECJ continues to be largely excluded from the CFSP."

Conclusion

"Establishing a supranational authority whose independent institutions has the power to bind its constituent Member States."[14]

[14] Craig P, and De Búrca G, *EU Law* (Oxford University Press 2011)

Van Gend en Loos Case

Article 258 TFEU - Allows the commission to sue member states before the ECJ for breach of EU Law

Article 30 (was Article 12)

(ex Article 25 TEC)

Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.

Article 258

(ex Article 226 TEC)

If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

Article 259 (was Article 170)

(ex Article 227 TEC)

A Member State which considers that another Member State has failed to fulfil an obligation under the Treaties may bring the matter before the Court of Justice of the European Union.
Before a Member State brings an action against another Member State for an alleged infringement of an obligation under the Treaties, it shall bring the matter before the Commission.
The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.
If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court.

Article 267

(ex Article 234 TEC)

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

Case 26/62 NV Algemene Transporten Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen 1963 - if the ECJ appleid the concept of direct effect in this case

Van Gend en Loos Case 26/62

This ground-breaking and infamous judgement gave rise to the principle of the direct effect and ensured that Treatiess also apply to individuals and not only to states. The main objective of the EEC Treaty was ro establish a common market. In fact the main pivotal point in this judgement was the fact that "The conclusion to be drawn up from this is that the Community constitutes a new legal order of international law for the benefit of which states have limited their sovereign rights."

This landmark judgement is about Van Gend en Loos, an importing company which was importing a chemical from Germany **to the Netherlands,** which were both 2 of the 6 founding fathers, and whilst doing so was charged with an import duty by the Dutch Tax collector, which goes against Article 12, now Article 30 of the TFEU.

"Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States."[15]

The transportation company still payed the import duty charge, but sought to seek compensation afterwards. In the appeal of the Dutch Tariefcommissione, Article 12 was raised in this argument. The question of whether a nationals belonging to a member state could bring up such plea for the court to protect was raised.

This case evoked the concept of the direct effect, understood as the "immediate enforceability by individual applicants of those provisions in national courts"[16]

"The ECJ nonetheless held that Treaty Articles could in principle have direct effect"[17]

"The ECJ considered that strong enforcement was needed to ensure that member states compiled with the provisions to which they agreed."

In this key judgement, the ECJ said that[18]:

"EU Law… not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage…not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defines way upon individuals."[19]

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[15] Article 30 TFEU

[16] Deburca

[17] Deburca

[18] Turner C, *EU Law* (Routledge 2014)

[19] Turner C, *EU Law* (Routledge 2014)

"(Art 30 TFEU) 'contains a clear and unconditional prohibition…ideally adapted to produce direct effects between member states and their subjects."[20]

Another case where the court affirmed the primacy of EU Law are;
"the ECJ's functional argument in *Costa*: primacy of application of EU law is demanded because 'the Union could not exist as a legal community if the uniform effectiveness of Union law were not safeguarded in the Member States'."

The importance in the case of Costa vs. ENEL is because this case, was a landmark decision in which is was decided that the European Court of Justice, which established the primacy of EU Law, prevails over the laws of the state.
The applicant in this case said that the company suing him was not legally constituted as it was in relations to a monopoly something which is a treaty prohibited.

In this case, the applicant, Costa, was an Italian citizen. He had some shares in the electricity supply company called Edisonvolta. He was seeking to nationalise the electric industry. What eh did was that he attempted to assert that the creditor for his electricity bill wassail Edisonvolta, rather than the new electricity company, ENEL. What Costa did was he submitted that nationalisation was in fact violating the Treaty of Rome. To this, the Italian Constitutional court viewed that the traditional rules of statutory interpretation apply. This means that the newer law prevails.

The court in this case clarified that the primacy of EU Law must be applied to all national acts, irrelavant if adopted before or else after the EU act in question. The principle of primacy is an important concept. Due to the fact that EU Law is becoming superior to national law, this principle of primacy therefore, wants to ensure that citizens are protected by EU Law across all the EU territories.

The European Court of Justice in this case, overturned the verdict of the Italian Constitutional court, and found that the provision of the Treaty of Rome, about the single market, did not have direct effect. This led to the fact that only the Economic Community would bring a charge against a member state.

The court said that; "from all the observations, the law coming from the treaty, could not be over ridden by domestic legal provisions."

Craig and deburca

"EU law should be accorded primacy because it flowed from the agreement made by the Member States when they joined the EU"

"Member States transferred to the new Union institutions 'real powers stemming from a limitation of sovereignty'"

[20] Turner C, *EU Law* (Routledge 2014)

“A second aspect of the judgment is more functional in nature, capturing the idea that the very aims of the Treaty could not be achieved unless primacy were accorded to EU law”

“Thus the ECJ adverts to what is now **Article 288 TFEU,** which provides that regulations are directly applicable, and concludes that this would be meaningless if states could negate the effect of EU law by subsequent inconsistent legislation”

“the Court sought to establish a general principle of the supremacy of all bind- ing EU law. Moreover, direct applicability refers to the way in which Union law becomes part of the national legal system without the need for implementing measures.”

Article 288 TFEU

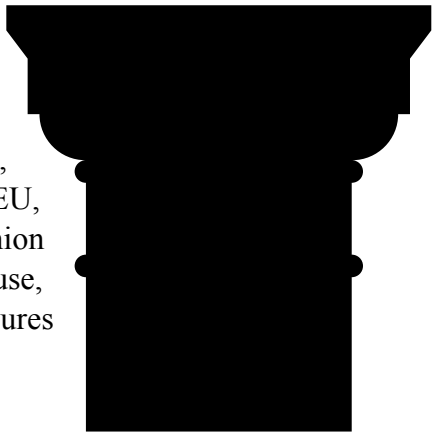
To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

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.



EU Institutions

In all there are 7 main EU institutions. Amongst all the 7 main institutions, there are some which are more important than others. Article 13 of the TEU, lays down the institutional framework and it holds that the European Union shall have an institutional framework which shall aim to promote its use, advance its objectives as well as serve the interests its citizens and ensures continuity of policies as well as actions.

The 7 are;
- the European Parliament,
- the European Council,
- the Council,
- the Commission,
- the Court of Justice of the European Union,
- the European Central Bank, and the
- Court of Auditors

The original 4

The Council of Ministers

The Commission

The European Parliament

The European Court of Justice

The EU Institutions are; the Council of Ministers, the Commission, the European Parliament, the European Court of Justice, the Court of Auditors, the European Council, and the European Central Bank. Out of all the institutions, the most important is the Commission, which is like the brain of the union. Also important is the Court of justice, which upholds the balance between the Council of Ministers, the European Parliament and also the European Court of Justice. Hence, the court of Justice acts like a referee in a football match. Article 13 of the TEU lays down these 7 institutions

> (1)"The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions."

The European Union is not a state, but is rather a supranational body, whereby there are 2 levels of governors and membership; the member states are members in their own rights, and the people of Europe are also members in their own right.

CRAIG AND DEBURCA - *"The Lisbon Treaty has made a number of significant changes to the internal organization of the EU institutions and their respective powers. These changes were hotly debated in the Convention on the Future of Europe that produced the Constitutional Treaty."*

Community method - the commission is the only institution with power to propose. The council and European Parliament vote according to the established procedure for the area. The European Court of Justice acts as a refereee and upholds the law.

Legislative Process

Once the Commission makes a proposal, it then goes to the Council. What happens at the Council, will be dependant on what is going to happen in the consultation, cooperation and the co-decision.

Consultation Procedure - This procedure means that, once the commission reaches the council. The council is then bound to seek, consult an opinion from Parliament. Such that, there is a 2 month period where the Parliament is consulted.

Cooperation Procedure - This means that it is possible whereby the individual or int his case, Parliament, would have the possibility yo make a suggestion. You can make a suggestion in this procedure, something which under the Consultation procedure one can not.

Co-decision Procedure - In this case, the two are deciding together, which in this case, it is a question of equality, as both are deciding together.

The Council- represents member states - Brussels

The council of ministers have their head quarters in Brussels, but occasionally, around twice a year. They meet in Luxembourg. Decision making procedures only apply to the Council of Ministers. The Voting in the Council of Ministers is by means of the Qualified Majority voting, now for almost all of the areas, except for some minor exceptions. The three elements which must be respected in this type of voting is that, one must be a state in order to vote, there must be a weighted average and also the population of the state.

The Council of Ministers is made up of 27 EU ministers depending on the issue being discussed.

After the TEU, it is no longer referred to as the Council of Ministers but as the Council of the European Union. After the Treaty of Lisbon, it is now referred to as the council. This council is the major legislative organ, despite some exceptions. This institution consults the Parliament and also the economic and social committee however, it makes the final decision on any legislation.

The voting procedure is of two main types;

1. Unanimous - which is necessary for certain areas
2. Qualified majority - this requires a mimimim of 255 votes, which in reality they represent 62% of the EU population. This system is based on differential weighting, depending on the size and influence of the state.

The COREPER is a permanent committee representing member states, it acts as a sifting organ through commission proposals.

Composition - Article 16(2) of the TEU states that; "The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote."

Most of the council meetings take place in Brussels, and the meetings held in the month of April, June, and October are held in Luxembourg.

The Lisbon Treaty provides that Council meetings are to be divided into two; meetings which deal with legislative acts and meetings which deal with non-legislative acts. Council meetings are organised according to the subject matter being discussed, with different ministers from the member states attending. So for example, if the subject being discussed is Financial matters, the Finance Minister would attend.

Presidency of the Council - this presidency is held by each member state for a period of 6 months.

"There was considerable contestation in the debates that led to the Constitutional Treaty and Lisbon Treaty as to who should hold the Presidency of the Council."

Westlake and Galloway hold that the Presidency is neither an institution nor a body, but rather a function and an offence which as become vital tot he good working of the council.'

Before taking office, the president is to set the date for the consultation meetings with the preceding presidencies and following its term of office.

The committee of permanent representative - COREPER

The work of such council is to be represented by the COREPER (which is the Committee of Permanent Representatives). It shall lay out the tasks assigned by the council and it is also able to adopt procedural decisions in cases provided for in the Council's rule of procedure.an important thing is that is can not take decisions in its won rights, but is auxiliary to the council.

"Coreper is staffed by senior national officials and operates at two levels."

"Coreper II is the more important and consists of permanent representatives who are of ambassadorial rank. It deals with the more contentious matters, such as economic and financial affairs, and external relations. It also performs an important liaison role with the national governments."

"Coreper I is composed of deputy permanent representatives and is responsible for issues such as the environment, social affairs, the internal market, and transport."

Coreper plays an important role in decision making, due to the fact that it's considered and digests draft legislation legislative proposals, that stem from the commission.

The Council Secretariat - this is under the responsibility of a Secretary General. The secretary general provide administrative support. The general secretary it provides administrative services to the council, as well as to COREPER, and the working parties. This Council Secretariat, gives legal advice, undertakes translation, prepares documentation…

The Secretariate General is High Representative for what is known as the EU's foreign and security policy .

The Powers of the Council

Regarding the powers of the council, the Lisbon Treaty provides very little guidance Wirth regards to such powers of this institution. Article 16 (1) TEU provides that;

"The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Treaties."

The council exercises an important role in relation to the decision making procedures. One prominent role of the council is that it has to vote its approval of all Commission legislative intiitatives, prior to them becoming law.

The voting would be by unanimity, qualified or else simple majority, depending on the particular Treaty Article.

Another role is that through Article 241 of the TFEU, the council has become more proactive int he legislative process, due to the fact that;

"The Council, acting by a **simple majority**, may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals. If the Commission does not submit a proposal, it shall inform the Council of the reasons."

Another role by the council is that it can delegate power to the commission, which enables the commission to pass regulations within this area. Another role is that the council has increased the complexity of the European Union union's decision-making processes, which according to Craig and Deburca, this role has **"necessitated greater inter-institutional collaboration between the Commission, the Parliament, and the Council."**

Also, the Council, together with the European Parlaiment has a major role in the **EU's budget.**

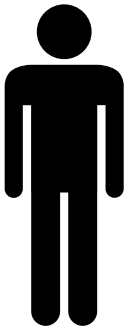
The council also has the power to conclude agreements on the European Union's behalf, with third states or else international organisations.

Another important ROLE which the council has is in relation to the common foreign and security policy. The council, takes the adequate decisions for defining and implementing this common foreign and security policy in relation to the guidelines of the European Council.

The role of the council

The council and commission do not exist in perfect harmony. The council has strengthened its position in relation to the commission, and example of this is the veto power of the council and also the growing importance of the COREPER.

The Commission - represents the community



Article 17 of the TEU - "The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes."

The Commission has three principle roles; that of drafting legislation, serves as a watchdog of the Treaties and also is responsible for elective functions. It is composed of 27 Commissoners, one from each member state.

The EU Comisssion's head quarters, are mainly located in Brussels, but certain departnemtns of the commission are located in Luxembourg. Hence the Commission has two head quarters, mainly that in Brussels and also in Luxembourg. The Commission is the only institution among all the others, with the power to **propos**e, it **is the driving force behind the union policy**.

The commission is made up of a college of commissioners, which are political appointees, that come from each member state, to form the executive branch of the union. The commissioners do not represent the member states, as there is no such thing as a French Commissioner or Maltese Commissioner for example. The commissioner is not representing anyone, even though there is one commissioner from each member state. The commissioners are representing the common good.

The commission has legislative, administrative, executive and judicial powers. It is made up of 27 members, one from each member state. Article 17 (4) of the TEU;

"The Commission appointed between the date of entry into force of the Treaty of Lisbon and 31 October 2014, shall consist of one national of each Member State, including its President and the High Representative of the Union for Foreign Affairs and Security Policy who shall be one of its Vice-Presidents."

Some of the tasks of the EU commission are initiating EU legislation, Monitoring, observance and application of union law, another role is that of Adminsistrating and implementing union legislation. As well as As well as representing the eu union in international organisations

The commission, as stated prior, has the primary power to legislate in certain areas, like the European Union Budget, structural funds…

The commission has an important role of guarding union law, due to the fact that it monitors the member states' application and implementation of primary and secondary union legislation, and also institutes infringement proceedings in the event of any violation to union law.

This is stated in Article 258 of the TFEU;

"If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union."

One can say that the Commission, to a limited extent, is an executive body.

Presidency of the commission

The president of the commission is an important figure, and the President's powers have increased with time and treaty amendments coming into force.

To elect the president; The European Council, acting by qualified majority, after consultation and taking into consideration the elections of the European Parliament, puts forward to the European Parliament the European Council's candidate for Presidency of the Commission.

Then, the European Parliament elects the candidate by a majority of all members. If the candidate does not attain the requisite majority, the European Council then puts forward a new candidate within one month.

College of commissioners - one from each member state, representing not their country, but the common good.

Appointment of the commissioners -"The regime is that Member States make suggestions for Commissioners, and the Council, by common accord with the President-elect of the Commission, adopts the list of those who are to be Commissioners. The body of Commissioners is then subject to a vote of approval by the European Parliament. However the formal appointment of the Commission is made by the European Council, acting by qualified majority, albeit on the basis of the approval given by the European Parliament."

The commission is to consist of the commissioners, the president, and the High Representative for Foreign Affairs, which correspond to 2/3 of the member states.

"The composition of the Commission must reflect the demographic and geographical range of all the Member States."

"Commissioners hold office for five years, and this term is renewable."

The commissioners must be chosen on grounds of general competence, and it is important that there indepence is not in doubt. This is because it can threaten democracy, if they are not independent in the carrying out of their duties.

"The Commission operates under the guidance of its President, and the Commissioners take decisions by majority vote."

Removal of the commission - An individual commissioner may be forced to resign if he/she no longer fulfil the conditions of the perforce of their role or else for serious misconduct. This took place in the Santer Commission, whereby, several commissioners were forced to resign after fraud allegations.

Decision-making - with regards to decision making procedures, the commissions deals with important matters through the weekly meetings. If the Commissioners agree on something, the proposal is sent to the Commissioner's cabinets, and a decision is made if there are no objections.

"The basic principle within the Commission is for positions and promotions to be based upon merit, determined by competitive examination."

"Member States will take a keen interest to ensure that their own nationals are properly represented, particularly in the senior posts."

Powers of the Commission -

Article 17 of the TEU -

"1. The **Commission shall promote the general interest of the Union** and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multi-annual programming with a view to achieving inter-institutional agreements."

2. Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide."

Legislative Power

The Commission has an important role with regards to the legislative process. Most of the proposals made have to be approved by the council and the European Parliament. However, the Commission's rights of initiative has enabled it to act as a 'motor of integration' for the European Union.

Another legislative function is outlined in Article 17(1) of the TEU, in which the Commission initiates the annual and also the multi-annual programme.

The commission also impacts the EU police by developing policy strategies.

The commission also has the power to exercise legislative power in certain limited areas, without any of the other institutions interfering in the process.

Also, the Commission exercises delegated powers outlined in Article 290 of the TFEU.

Administrative Power - The common has various administrative responsibilities, which is reflected in Article 17(1) of the TFEU. Once policies are made they have to be administrated, just like once legislation is enacted, it must be implemented.

Executive Power - the commission also possesses responsibilities which are executive. The most important are those which relate to external relations and those which relate to finance. The Commission has an important role with regards to the EU's budget establishment.

Nugent on external relations explains that;

"First, the Commission is centrally involved in determining and conducting the EU's external trade relations."

"Second, the Commission has important negotiating and managing responsibilities in respect of the various special external agreements that the EU has with many countries and groups of countries. …"

"Third, the Commission represents the EU at, and participates in the work of, a number of important international organizations . . ."

"Fourth, the Commission has responsibilities for acting as a key point of contact between the EU and non-member States."

"Fifth, ... the Commission is entrusted with important responsibilities with regard to applications for EU membership."

Judicial Power - The Commission is responsible for exercising two kinds of judicial powers. Article 17(1) of the TEU, provides that the Commission must ensure; "the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union.".

If a member state has breached EU Law, the Commission has the Power to bring actions against such member states., as Article 258 of the TFEU states. RFER TO COMMISSION VS. — CASE

The commission also can act as an investigator or a first judge when a treaty has been violated. The General court would then review the Commission's decision and act accordingly.

Role of the Commission - J Peterson, the College of Ministers;

"institutionalist theory, now firmly established as the 'leading theoretical approach in EU studies' ... paints a portrait of the Commission that is often powerful in day-to-day policy debates"

The European Parliament - represents the people of europe

In the 1952, in the ECSC Treaty, Parliament was a powerless assembly. Its influence grew mainly in the 1992, with the co-decision procedures under the Maastricht Treaty. Nowadays, Parliament has evolved to the extent that it exercises legislative, budgetary and supervisory powers.

Before the SEA, the European Parliament only used to be consulted on legislation where the treaty article provided. The SEA, introduced the cooperation procedure, and the Maastricht Treaty also intrudes the co-decision procedure which have more powers to the parliament. There are also areas in which the parliament is needed to give its assent.

The role in the second and third pillar is more limited
2nd - presidency must consult European Parliament on the main aspects and also basic choices of policy and the views of the European Parliament must be taken into account.

3rd - the council must be consulted prior to adopting measures and the council cannot act until the Parliament has given its opinion. The European Parliament has a consultative role in a house corporation and also the location of expenditure.

What is interesting to note is that, the European Parliament is not like the national Parliament. A national law is made through Parliament when a member of Parliament presents a bill, and if the majority of the members of Parliament agree, that becomes law. The voting system in Parliament is on a majority basis.

However, this philosophy is not the same as in the European Parliament is more complicated than that of a national parliament. This is because European Union Law its not made by the European Parliament, but is made by the Commission. This commission has the right to initiate policy. At some second thoughts, one may realise that in fact, the EU parliament is not a ‘parliament’ which legislates and creates laws . Even though the EU parliament participates in the legislative process, it does not make laws.

Really and truly, no institution represents the legislative branch - reason being that The legislative process between the institutions takes place by a proposal by the EU Commission, and the EU parliament and Council of Ministers vote in favour. Hence these 3 mentioned institutions are participating in the legislative process.

The MEPs in Parliament do not sit in Parliament according to their country, but according to their political grouping. The European Parliament is made up of 705 members of Parliament after Brexit. Prior to Brexit it was 751 members.

BUDGETARY FUNCTIONS - Article 14 of the TEU - “The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties”

The members of such parliament are the President, 14 vice Presidents, 5 questers (which are like advisors), the parliamentary session, currently made up of 705 Members of Parliament.

Article 225 os the TFEU - "The European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons."

MEPs are now elected on the basis of proportional representation. Elections shall be by direct universal suffrage; it is important that such elections are secret and free. The parliament's term is that of 5 years.

The European Parliament must adopt its own rules of procedure regulations and general conditions which are covering the performance of its members duties. Regulations must be approved by counsel by qualified majority voting, except those which concern taxation of the numbers of Parliament which require unanimity

Composition and Functioning

Article 14(2) of the TEU states that;

"The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number, plus the President. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats."

The European Council shall adopt by unanimity, on the initiative of the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph.

"The number of seats per country ranges from ninety-nine for Germany to five for Malta."

"The **Parliament's term is five years**, like that of the Commission. Following the Maastricht Treaty provisions on citizenship, citizens of the EU resident in any Member State gained the right to vote and to stand as candidates in European Parliament elections."

"MEPs sit according to political grouping, rather than nationality. There are currently seven political groups, the largest three being, respectively, the centre-right European People's Party (Christian Democrats and European Democrats) with 265 seats after the 2009 elections, the Party of European Socialists with 183, and the Group of the Alliance of Liberals and Democrats for Europe with eighty- five. The other parties are the Greens/Free Alliance with fifty-five MEPs, the European Conservatives and Reformists with fifty-four MEPs, the Confederal Group of the European United Left-Nordic Green Left with thirty-five, and the Europe of Freedom and Democracy Group with thirty. There were twenty-eight non-attached members."

Article 224 TFEU deals with European political parties.

"The Parliament elects its own President, together with fourteen Vice-Presidents, for two-and-a-half-year terms, and collectively they form the Bureau of Parliament."

- This bureau of parliament is considered the regulatory body which is responsible for the Parliament's budget, and also for administrative, organisational and staff matters.

- "The Parliament has twenty standing committees on matters including foreign affairs; development; international trade; budgets; economic and monetary affairs; employment and social affairs; environment, public health and food safety; industry, research and energy; internal market and…."

- "Article 232 TFEU states that the Parliament is to adopt its own rules of procedure, and Article 223(2) TFEU requires it to lay down the regulations and general conditions governing the performance of its Members' duties."

Powers - Legislative Powers

The role of the European Parliament over time has become stronger. Before the single European act, in 1986, the general rule was that parliament only could be consulted on legislation. However, after the Single European Act introduced the cooperation procedure, this brought the European Parliament into the legislative process. The Maastricht Treaty also introduced the co-deisicion procedure which made the European Parliament on equal levels with the Council in specific areas of legislation.

"The co-equal status of the EP and Council is affirmed in Article 14(1) TEU, which now states that the EP shall, jointly with the Council, exercise legislative and budgetary functions"

Article 14 (1) of the TEU states that; "The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties"

The European Parliament now , also enjoys the right to veto delegated acts

"The changes in the EP's role in the legislative process, most especially through what is now the ordinary legislative procedure, have brought it from the fringes of the EU to become a major player in the shaping of legislation."

"Its role has been further enhanced through regular meetings held by Council, Commission, and EP in inter-institutional conferences, and through the EP's greater contribution to the framing of the overall legislative agenda."

The European Parliament's role in relation to the Common Foreign and Security Policy is relevantly very small. It is the role of the High representative that is responsible with consulting the European Parliament on the Amin aspects fo this Common Foreign and Security Policy.

DISMISSAL/APPOINTMENT POWER

Since the Maastricht Treaty, the European Parliament has enjoyed the right to appoint the Commission.

"Article 14(1) TEU states that the EP shall elect the President of the Commission." However, this must be read with Article 17(7) of the TEU, which provides that the European Council has influence over the candidate which is put before the European Parliament.

- "Thus the regime now is that the European Council, acting by qualified major- ity, taking into account the EP elections and after having held appropriate consultations, proposes to the EP a candidate for President of the Commission." … "The candidate is then elected by the EP by a majority of its component members. If the candidate does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate, who shall be elected by the European Parliament following the same procedure."

- "In the case of members of the Court of Auditors, and the President, Vice-President, and Executive Board of the European Central Bank, the Parliament is to be consulted by the Council and the Member States, but its approval is not required."

Supervisory power

The European Parliament supervises the work of other institutions. Mainly the commission to oral and written questions and also the establishment of committees of enquiry.

Ombudsman - office holder

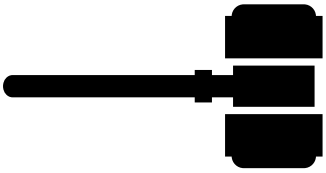
"The Maastricht Treaty also provided for the appointment by the Parliament of an Ombudsman. The Ombudsman is to receive complaints from Union citizens or resident third-country nationals or legal persons, concerning 'instances of maladministration in the activities of Union institutions, bodies, offices or agencies'196 as well as to 'conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a member of the European Parliament'.197 The Ombudsman is appointed for the duration of the Parliament, and in the case of serious misconduct or non-fulfillment of the conditions of the office the ECJ may, at the request of the EP, dismiss the office holder."

Budgetary Power

European Parliament enjoys powers with relation to the budget. The procedure followed up saying the budget is quite complex and contained in article 314 of the TFEU.

R Corbett, F Jacobs and M Shackleton, The European Parliament

"It is an independent institution whose members are not bound to support a particu- lar governing majority and which does not have a permanent majority coalition …



The European Court of Justice - now is Court of Justice of the European Union - represents the law

The European Court of Justice is in Luxembourg, and within its institutions there are two other courts; the general court as well as the court of justice. So, this court is one court with 2 different branches. The General court is made up of 54 judges, two from each member state, whirls the Court of Justice is made up of 27 judges, one from each member state. One should be vert attentive to not mix up this court with the European Court of Human Rights, which is located in Strasbourg. The latter court is the court which interprets the European Convention on Human Rights, and has nothing to so with the European Union.

The main role of the Court of Justice of the European Union, is to interpret EU law. The role is two-fold, as it serve as a referee between the institutions of the EU, as well as it also serves as a final arbitrar in the interpretation and validity of the EU law, and also to ensure uniformity in the interpretation of the EU law.

The Court of Justice of the European Union is an active court, it practices judicial activism. Two important European cases are; Van Gen end Loos and Costa vs. Enel.

The General Court in the Court of Justice of the European Union deals with repetitive and also common cases. It is closer to a national court. It ensures that the law is adhered to and abided with/. Some matters it deals with are; agriculture, state aid, competition, transport, trade mark law..

A statue of the Court of Justice is capable of amendment by an unanimous act of the council. This does not include provisions which deal with the status of Judges and Advocate General. The rules of procedure must be approved by the council by a qualaiitive makotiy vote.

The European court of justice under Article 19(1) of the TEU states that;

“The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.”

Before the Lisbon treaty, it used to be known as the European Court of Justice, but with the Lisbon treaty coming into force, it is now reworded into the Court of Justice of the European Union.

This article also states that there shall be one judge per member state. Their term of offset is that of six years, however a judge can be reappointed.

Article 253 of the TFEU - Court of Justice

"The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected. Retiring Judges and Advocates-General may be reappointed. The Court of Justice shall appoint its Registrar and lay down the rules governing his service."

The type of proceedings which are looked into at the court of justice are;

1. Actions for failure to fulfil obligations under the treaties. This means that you will have cases like Commission vs. The member state, as outlines in Article 258 of the TFEU, or else Member state vs. Member state, as outlined in Article 259 of the TFEU.

2. Actions for annulment as well as actions on grounds for failure to act, brought by a union institution or a manager state, against parliament for example. Or else, the member council in connection with an illegal act or failure to act (outlined in Article 263 and 265 of the TFEU).

3. Cases referred to by national courts for preliminary rulings. To clarify the interpretation and validity of union law, as per Article 267 of the TFEU, ad well as appeals against decision of the general court, Article 256 of the TFEu.

The main role of this court is to monitor the application of union law, the interoperation of union law, and for further shaping european union law.

A statute of the court of justice is capable of an amendment by a unanimous act of the council , this does not include provisions which deal with the status of the Judges and Advocates General, which need Treaty amendment procedure.

This court of justice is assisted by eight Advocates general - this number can be further increased by unanimous decision of the council.

Judges and advocate generals must be independent and must also have the respective qualification to be appointed In their own receptive national countries.

This court may sit in a full court, a Grand Chamber or a camber in accordance with rules which are laid out by statute. This grand chamber is made up of 13 judges.

Article 254 of the TFEU - General Court - Court of First instance

This court was established in 1988, and its task is to ensure that law is observed, int he interpretation and the application of the treaty.

In this court, there is no separate AG but the judge can be called upon to perform such task.

There eis an appeal to the ECJ within 2 months from this court's decision.

"The number of Judges of the General Court shall be determined by the Statute of the Court of Justice of the European Union. The Statute may provide for the General Court to be assisted by Advocates-General."

This is also known as the Court of First Instance. This court is made up of at leat one judge per member state.
The number of cases referred to the general court has increased steadily and it will continue to grow. This general court was established in the year 1988, to take off some pressure off the court of justice.
"There is an appeal to the ECJ within two months from the General Court's decision."

The type of proceeders that are looked at by the general court are;
1. Actions for annulment and complaints for failure to act - Articles 263 and Article 265 of the TFEU

The general court is now a new EU institution, which has its own registry and rules of procedures, which makes it distinct from the court of justice.

The reason why this court was established was so as to take off some pressure off the ECJ

A difference between the general court and the court of justice, is that, cases handles by the general court are identified by means of the letter 'T', example T1/1990. On the other hand, cases of the court of justice are referred to with a letter 'C' example C1/2002

Direct actions - law suits that sort and finish in that court - cases filed in lux and are concluded in that lux -

Indirect actions - the opposite - those actions that are not filed in lux - but are referred to in Luxembourg - the law suit is filed in the national court - the national court has an interpretation with eu law - so it refers the case to lux

Judicial Panels - also known as specialised courts

— intended to ease the work load off the 2 courts

ARTICLE 257 TFEU specialises on this court

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish s**pecialised courts attached to the General Court** to hear and determine at first instance certain classes of action or proceeding brought in specific areas. The European Parliament and the Council shall act by means of regulations either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation of the Commission.

The regulation establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.
Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the regulation establishing the specialised court, a right of appeal also on matters of fact, before the General Court.

The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.

The specialised courts shall establish their Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council.

Unless the regulation establishing the specialised court provides otherwise, the provisions of the Treaties relating to the Court of Justice of the European Union and the provisions of the Statute of the Court of Justice of the European Union shall apply to the specialised courts. Title I of the Statute and Article 64 thereof shall in any case apply to the specialised courts.

- This article stipulates that the European Parliament and the council, may establish these types of specialised courts, which are attached to the General courts, so as to hear specified cases in specific areas.

Procedure

The procedure in the ECJ AND GENERAL COURT - governed by their respective rules of procedure.
ECJ - the procedure takes place in two stages - the oral and written

THERE is no appeal for the ECJ, which is the ultimate supreme court of this instiiton, there are appeals permitted in the general court to the ECJ.

Other major institutions

The European Council

The first mention of this institution was int the Single European Act. This institution has nothing to do with the Council of ministers. Its membership is made up of the heads of government of each state. The European Council have the power to amend the treaties by unanimity. It is made up of the 27 heads of states, the President od the European Council and the President of the Commission.

The governing provision is now Article 15 TEU:

1. The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.

2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work.

3. The European Council shall meet twice every six months, convened by its President. When the agenda so requires, the members of the European Council may decide each to be assisted by a minister and, in the case of the President of the Commission, by a member of the Commission. When the situation so requires, the President shall convene a special meeting of the European Council.

4. Except where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus.

Meetings of the European Council are now held in Brussels,

"Prior to the Lisbon Treaty the Member State that held the Presidency of the Council also chaired the European Council for the same period."

"The Lisbon Treaty, following the Constitutional Treaty, provided that the European Council should elect a President, by qualified majority, for two-and-a-half years, renewable once; that the European Council should define the general political directions and priorities of the EU; and gave the President of the European Council increased powers within the Council."

Ratioanle

The European Consul was in part, because of the documents between the member states. Normally such disagreements are resolved during council meetings. However, if the disagreements are severe or on important issues, for example the budget, then the only solution is at the highest level

Role

Some roles of the European Council are that, it will not only initiate the IGC, but also affirm consequential treaty changes, which must be ratified by the member states. Another role of the

European Council is that it will confirm important changes in the institutional structures of the community.

The European Council can also take part in the initiation or develop of particular policy strategies. It is also responsible to the consideration of new exceptions to the European Union. It also has external relations.

Its role is central to the development os the community ands the union.

The European Central Bank

The European Central Bank was established in 1998, and it is the only institution which is found in Germany, Frankfurt. This institution is at the heart of the economic and monetary union. Its task is to enhance the stability of the European Union currency, as established in Article 128 of the TFEU.

Article 128 of the TFEU

"1. The European Central Bank shall have the exclusive right to authorise the issue of euro banknotes within the Union. The European Central Bank and the national central banks may issue such notes. The banknotes issued by the European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the Union.

2. Member States may issue euro coins subject to approval by the European Central Bank of the volume of the issue. The Council, on a proposal from the Commission and after consulting the European Parliament and the European Central Bank, may adopt measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Union."

- The functions of the European Central Bank are that of defining and implementing the monetary policy for the Eurozone, to take care of the foreign reserves of the European System of Central Banks, and another role is that of contributing to meaning a stable financial system and monitoring banking sectors. Such European Central Bank is composed of an Executive Board and a Governing Board. In this institution, we find 19 governors from the member states, which reflects the 19 area countries which adopt the Euro currency.

Article 129 of the TFEU;

"1. The ESCB shall be governed by the decision-making bodies of the European Central Bank which shall be the Governing Council and the Executive Board

2. The Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as 'the Statute of the ESCB and of the ECB') is laid down in a Protocol annexed to the Treaties."

Article 130 of the TFEU;

When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks.

The European Court of Auditors

This is made up of 27 members, one from each member state, and are appointed for the duration of 6years . The members elect the Presiendt of the Court of Auditors fro a term of 3 years. This European Court of Auditors is found in Luxembourg. It is not exactly a court, it is more of a body of auditors, and accountants, whose function of this institution is to make sure that the money of the EU are spent according ot law, and not in some illegal activities. This court of auditors Wass established in 1973, and in the Maastricht amendments, it was recognised as an institution. This institutions main task is to examine whether all revenue has been received and whether the expedite is incurred in a lawful manner. Each year, a financial report is published in the official journal the EU

Article 285 of the TFEU

"The Court of Auditors shall carry out the Union's audit.
It shall consist of one national of each Member State. Its Members shall be completely independent in the performance of their duties, in the Union's general interest.

Article 286 of the TFEU

"1. The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective States to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

2. The Members of the Court of Auditors shall be appointed for a term of six years. The Council, after consulting the European Parliament, shall adopt the list of Members drawn up in accordance with the proposals made by each Member State. The term of office of the Members of the Court of Auditors shall be renewable."

Ancillary bodies to the institutions are the European investments bans, the European commit and social committee, the community of the regions of the eu union.

First Advisory body - The European Economic and Social Committee

These advisers are appointed for a term of 5 years, by the council. The members of such institution are dived into 3 groups being; employers, workers and other parties representative of civil society. This economic and social committee works closely with the committees of the European Union parliament. This is jot actually an institution as its function is mostly advisory. It is made up of 329 members, which are known as advisers.

Article 305 of the TFEU

"The number of members of the Committee of the Regions shall not exceed 350.

The Council, acting unanimously on a proposal from the Commission, shall adopt a decision determining the Committee's composition.

The members of the Committee and an equal number of alternate members shall be appointed for five years. Their term of office shall be renewable. The Council shall adopt the list of members and alternate members drawn up in accordance with the proposals made by each Member State. When the mandate referred to in Article 300(3) on the basis of which they were proposed comes to an end, the term of office of members of the Committee shall terminate automatically and they shall then be replaced for the remainder of the said term of office in accordance with the same procedure. No member of the Committee shall at the same time be a Member of the European Parliament."

Second Advisory Body - The European Investment Bank

The European Investment Bank is located in Luxembourg. It provided loans as well a guarantees in all its economic sectors, to develop the less developed regions to modernise undertakings or even create new jobs and to assist projects of common interest to several states.

Article 308 of the TFEU

The European Investment Bank shall have legal personality.
The members of the European Investment Bank shall be the Member States.
The Statute of the European Investment Bank is laid down in a Protocol annexed to the Treaties.
The Council acting unanimously in accordance with a special legislative procedure, at the request of the European Investment Bank and after consulting the European Parliament and the Commission, or on a proposal from the Commission and after consulting the European Parliament and the European Investment Bank, may amend the Statute of the Bank.

The EU Legal Sources

1. Primary Legislation - it is composed of union treaties, the charter of human rights and also the general principles of law
2. The EU International Agreements
3. Secondary Legislation - this source of law is made up of legislative acts which are made up directives and decisions as well as non-legislative acts. We also find non-binding instruments

and decisions as wells as the non-legislative acts. This also encompasses recommendations and opinions.

The Legal instruments - Article 288TFEU

"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.

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."

EXAM PAPER 2021 - Student got 80/100 = A from this exam

Question 1

In all there are 7 EU institutions, mainly being; the Council of Ministers, the Commission, the European Parliament, the European Court of Justice, the Court of Auditors, the European Council, and the European Central Bank. However, when it comes to the executive functions, the main institutions take part in such a process. These institutions can not be compared to the national institutions, as their roles and functions are not the same. Craig and Deburca, in their book 'EU Law' mention that; "- *"The Lisbon Treaty has made a number of significant changes to the internal organization of the EU institutions and their respective powers."*

One can say that out of all the institutions, the one closest to being an executive body, is in fact the Commission.The commission is made up of commissioners, who do not represent the member states, as there is no such thing as a French Commissioner or Maltese Commissioner for example. The commissioner is not representing anyone, except for the common good.

The Commission has legislative, administrative, executive and judicial powers. It is made up of 27 members, one from each member state. Article 17 (4) of the TEU;

"The Commission appointed between the date of entry into force of the Treaty of Lisbon and 31 October 2014, shall consist of one national of each Member State, including its President and the High Representative of the Union for Foreign Affairs and Security Policy who shall be one of its Vice-Presidents."

The president of the commission is an important figure, and the President's powers have increased with time and treaty amendments coming into force.

The Commission has three principle roles; that of drafting legislation, it serves as a watchdog of the Treaties and also is responsible for elective functions. Article 17 of the TEU evokes the functions of such institution *; "The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them."*

The Commission has an important role with regards to the legislative process. Most of the proposals made by such Commission, have to be approved by the council and the European Parliament. However, the Commission's rights of initiative has enabled it to act as a 'motor of integration' for the European Union.

The Commission is the only institution among all the others, with the power to propose, it is the driving force behind the union policy. The commission also impacts the EU policy by developing policy strategies.It also has the power to exercise legislative power in certain limited areas, without any of the other institutions interfering in the process. the commission also possesses responsibilities which are executive. The most important are those which relate to external relations and those which relate to finance. The Commission has an important role with regards to the EU's budget establishment.

The Commission also has administrative powers, apart from the executive powers. Policies must be administered, and legislation should also be implement. It is of great vitality for the Commission to

maintain a general supervisory role so as to ensure the uniform and also proper application with the member states.

The commission also has the power to exercise legislative power in certain limited areas, without any of the other institutions interfering in the process. Another executive role by the council is that it represents and acts, on the behalf of the EU both in formal negotiations as in informal exchanges. Such institution also has negotiating and managing responsibilities, with regards to special external agreements that the EU has with many countries and also group of countries.

The commission despite its strong powers, when proposing most of the laws, Most of the proposals made have to be approved by the council and the European Parliament. The latter institutions composed of the President, 14 vice Presidents, 5 questers (which are like advisors), the parliamentary session, currently made up of 705 Members of Parliament.

The European Parliament, an institution with growing influences with time, as In the 1952, in the ECSC Treaty, Parliament was a powerless assembly. Its influence grew mainly in the 1992, with the co-deicison procedures under the Maastricht Treaty. Nowadays, Parliament has evolved to the extent that it exercises legislative, budgetary and supervisory powers.

What is interesting to note is that, the European Parliament is not like the national Parliament. A national law is made through Parliament when a member of Parliament presents a bill, and if the majority of the members of Parliament agree, that becomes law.

However, this philosophy is not the same as in the European Parliament is more complicated than that of a national parliament. This is because European Union Law its not made by the European Parliament, but is made by the Commission. This commission has the right to initiate policy. At some second thoughts, one may realise that in fact, the EU parliament is not a ‘parliament’ which legislates and creates laws . Even though the EU parliament participates in the legislative process, it does not make laws.

Really and truly, no institution represents the legislative branch - reason being that The legislative process between the institutions takes place by a proposal by the EU Commission, and the EU parliament and Council of Ministers vote in favour. Hence these 3 mentioned institutions are participating in the legislative process.

“The co-equal status of the EP and Council is affirmed in Article 14(1) TEU, which now states that the EP shall, jointly with the Council, exercise legislative and budgetary functions”

The European Parliament now, also can exercise budgetary functions, as outlines in Article 14 of the TEU; “The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties”. This puts the Parliament on an equal status with the Council as they both are involves in such legislative process.

The European Parliament’s powers have been enhanced through its greater contribution to framing of the overall legislative agenda.

Another power of the Parliament was outlined in this Article; Article 225 os the TFEU - “The European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for

the purpose of implementing the Treaties. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons."

The European Parliament supervises the work of other institutions. Mainly the commission to oral and written questions and also the establishment of committees of enquiry.

Another institution, which has been mentioned already, and which is equally important as Parliament when it comes to the diffusion of executive powers, is the Council. The Council of Ministers is made up of 27 EU ministers depending on the issue being discussed. After the TEU, it is no longer referred to as the Council of Ministers but as the Council of the European Union. After the Treaty of Lisbon, it is now referred to as the Council. This institution consults the Parliament and also the economic and social committee however, it makes the final decision on any legislation.

Apart from one minister from each member state, as Article 16(2) of the TEU states: ; "The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote." This institution is also composed by a COREPER, a permanent committee representing member states, it acts as a sifting organ through commission proposals.

Article 16(1) of the TEU provides that;

"The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Treaties."

The council exercises an important role in relation to the decision making procedures. One prominent role of the council is that it has to vote its approval of all Commission legislative initiatives, prior to them becoming law, along with the European Parliament.

Another role is that through Article 241 of the TFEU, the council has become more proactive int he legislative process, due to the fact that;

"The Council, acting by a simple majority, may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals. If the Commission does not submit a proposal, it shall inform the Council of the reasons."

Another role by the council is that it can delegate power to the commission, which enables the commission to pass regulations within this area. Another role is that the council has increased the complexity of the European Union union's decision-making processes, which according to Craig and deburca, this role has "necessitated greater inter-institutional collaboration between the Commission, the Parliament, and the Council."

The council also has the power to conclude agreements on the European Union's behalf, with third states or else international organisations The council, takes the adequate decisions for defining and implementing this common foreign and security policy in relation to the guidelines of the European Council.

As stated prior, the Council, together with the European Parliament has a major role in the EU's budget. The council and commission do not exist in perfect harmony. The council has strengthened

its position in relation to the commission, and example of this is the veto power of the council and also the growing importance of the COREPER.

The executive functions of the institutions are shared amongst each other. However, the mentioned institutions in this essay are the main institutions which hold the closest or support such power within their framework.

Question 2

A legal order is known to be a system of laws. In the European Union's Context, this system of laws has evolved throughout the years in the historical development of this Union. The European Union is known to have been founded on the rule of law, which means that every action taken by the EU, is based on treaties. A treaty is a binding agreements between the member states of the European Union, in which objectives are set out, as well as the rules for the institutions of the EU, which make up this legal order.

With the development of the European integration, many phases of the integration process have been identified and with it, different theories have also emerged to explain the different phases. The theories of integration help to set up this integration process of the legal order in a more effect way. These theories are mainly on functionalism, neo- functionalism as well as inter-governmentalism.

To comprehend nowadays legal order, one must delve into the historical perspective of the start up of the European Union. The first treaty ever to be signed was that of the European coal and Steel community, which was signed in 1951, which united the first 6 founding counties to restrain themselves, in order to gain more freedoms through this union. Many are of the opinion that this treaty was in fact the first step to European Integration. In 1957, the same six founding member signed the Treaty of Rome, a treaty from which the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM) were established. The EURATOM treaty is an important treaty despite it being relatively small, as it established a common market for the nuclear elements. The EEC Treaty was going to establish a common market, which is based on the Four Fundamental Freedoms. Both treaties are of significant importance in the European Union's foundation.

The Single European Act was established in the year 1986. It aimed to develop a single market, and intended to remove all barriers in order for a common market to be established. The Single European Act also brought institutional changes which would give a legal basis to this legal order. It set out an internal market, and defined such market as "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured" (Craig and Deburca). This bettered our legal order as it also gave more power to the legislative Process of the European Parliament.

Another important Treaty is the Treaty on the European Union, also known as the Treaty of Maastricht. . In 1989 the committee presented a report which set out a three stage plan for reaching the economic and monetary union (EMU). Then the Treaty of the European Union, which established the European Union was signed in Maastricht in 1992 by the member states.it came into force a year later in 1993. This treaty was based on three major pillars; the European Communities, the Common Foreign and Security Policy and lastly, the Police and Judicial Cooperation. This treaty is known as the birth of the European Union, as it not only gave the union a legal order, but also, transformed the community into a union, and the idea of a citizenship. This Treaty also led to the co- decision in Parliament, giving such institution more power.

This Treaty of Amsterdam came in force in 1997, and came into force on the 1st of May 1999, with the solutions of the problems in prior treaties. The need to improve the freedom of movement was recognised by the member states at the time, were gradually increasing in number. This freedom of movement would help to give the economy of the member states a good boost. In fact, this Treaty included new provisions with regards to the Schengen Agreement. The Common provisions of such

treaty were that the principle of 'openness' was established, so that decisions made by the EU are open as possible and also close as possible to the citizen.

The Treaty of Nice, signed in 2001, further improved the composition of the institutions, as well as voting procedures which all helped gear up to the largest enlargement of the European Union, which took place in 2004, and in which Malta was a part of, along with 9 other countries.This Nice Treaty consisted of two main parts; the substantive amendments to the EU and EC treaties AND also the transitional and final provisions. Craig and Deburca in their book 'EU Law', mention that;

"*The Nice Treaty made a number of changes to the EC Treaty,...to the Community's institutional structure. The major political achievement was agreement on the issues relevant to enlargement: the weighting of votes in the Council, the distribution of seats in the European Parliament, and the composition of the Commission. The relevant Treaty provisions have been altered by the Lisbon Treaty"*

Another important treaty which gave the European Union a massive change in its legal order is the Lisbon Treaty, also known as the 'Reform Treaty'. This treaty was signed in 2007, but came into force in 2009. It also established the process in which countries can leave the European Union. This treaty took place after the failed treaty, known as the Constitutional Treaty. The Reform Treaty included the amendment of two climes, the Treaty on the European Union as well as the EC Treaty, the latter was renamed as the Treaty on the Functioning of the European Union, TFEU.

This treaty also removed the three pillar structure and included 7 Articles. Of the 7, the first 2 are the most important, Article 1 concerns the amendments on the the Treaty on European Union, whilst the second Article is on the amendments of the EC Treaty. Article 1 contains principles that govern the EU as well as revised provisions which concern the Common Foreign and Security Policy and enhanced cooperation.

The Lisbon Treaty also improved the architecture of the TFEU, as it divided it into 7 parts. Part 1 concerns the Entitled principles, Part 2 is dedicated to Discrimination and Citizenship of the Union, Part 3 is on Policies and Internal Actions of the Union, Part 4 on the TFEU and covers the Association of Overseas Countries and Territories. Part 5- deals with EU External Action, bringing together subject matter with an external dimension, Part 6- concerned with Institutional and Budgetary Provisions and Part 7 - covers General and Final Provisions.

A member state still has national laws to abide by, as well as the EU Laws in addition to that.When a member state of the European Union fail to abide by EU Laws or else, fail to properly implement laws, the Commission is able to launch an infringement procedure, against the country in question. However, in the instance where the issue is still not yet settled, then the commission may refer the case to the European Court of Justice. The importance of the supremacy of European Law was highlighted in the landmark judgement of the 'Van Gend en Loos Case'.

This case, Case 26/62, which concerns NV Algemene Transporten Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen, which took place in the year 1963 gave rise to the principle of direct effect and also evoked the importance of European Union law. This principle was firstly ever identified in this case, and the doctrine

of direct effect is when there is the immediate enforceability by the individual applicant of those provisions in national courts.

In this case, Van Gend en Loos, was an importing company which was importing a chemical from Germany to the Netherlands, which both Germany and the Netherlands were the founding fathers of the European Union back then known as the Community. Whilst importing the goods, this company was charged with an import duty by the Dutch Tax collector, which goes against Article 12, which now is Article 30 of the TFEU, which states that;

"Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States."

This transportation company, still payed the import duty charge, but it seeked compensation afterwards. In the appeal of the Dutch Tariefcommissione, Article 12, which is now Article 30, was raised in this argument. The question was brought about, whether nationals belonging to another state could bring up such plea, for the court to protect their rights.

In this key judgement, the ECJ said that[1]:

"EU Law... not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage...not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defines way upon individuals."[2]

In this case therefore, the court declared that the laws adopted by the EU Institutions, must be integrated into the legal systems of EU countries, which are obliged to comply with them. Hence, EU law has primacy over national laws.

Another case defining the supremacy of EU Law is the case of Costa vs. Enel.

In this case, Case 6/64, of Flaminio Costa v ENEL, established the primacy of EU Law, which prevails over the laws of the state.

The Court in this case clarified that the primacy of EU Law must be applied to all national acts, irrelavant if adopted before or else after the EU act in question. The principle of primacy is an important concept. Due to the fact that EU Law is becoming superior to national law, this principle of primacy therefore, wants to ensure that citizens are protected by EU Law across all the EU territories.

In the book 'EU Law', by Craig & Deburca, they commented by stating that; "the ECJ's functional argument in *Costa*: primacy of application of EU law is demanded because 'the Union could not exist as a legal community if the uniform effectiveness of Union law were not safeguarded in the Member States'."

All in all this legal order has evolved, and it will continue to evolve with time, as long as member states respect the fact that once they are member states the rules of the union apply to them. Such rules and laws must be respected for a united and peaceful collaboration of the member states.

Explain in detail the major changes to the European Treaties brought by the Masstricht Treaty and then the Amsterdam Treaty.

"The European Union is based on the rule of law. This means that every action taken by the EU is founded on treaties that have been approved voluntarily and democratically by all EU member countries. For example, if a policy area is not cited in a treaty, the Commission cannot propose a law in that area.

A treaty is a binding agreement between EU member countries. It sets out EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its member countries.

Treaties are amended to make the EU more efficient and transparent, to prepare for new member countries and to introduce new areas of cooperation – such as the single currency."

The Maastricht Treaty, followed by the Amsterdam Treaty brought major changes to the European Treaties. In 1989, Jacques Delors presented a report, which set out a three stage plan for the Economic and Monetary Union (EMU). After many revisions, the Treaty on the European Union was signed in the year 1992, in Maastricht, by the member states and it took up until 1993 to enter into force. This treaty is also known as the birth of the European Union.

A prominent feature which this treaty established was the **three major pillars**; the European Communities, the Common Foreign and Security Policy and lastly, the Police and Judicial Cooperation. The three major pillars, specifically the communities pillar, is outlined in Titles 2,3 and 4. In this treaty, the EEC Treaty was renamed the European Community Treaty (Titles 2, 3 and4), ESCS and EURATOM. The second pillar is regulated by title 5 and the last pillar by title 6.

The scope of the three pillar structure created, was to create a mechanism which facilitates the cooperation in the areas of Common Foreign and Security Policy, as well as Justice and Home Affairs.

The first Pillar included the European Community; which consisted of the EC Treaty, the ECSC, as well as the EURATOM. The 'common provisions' evoked basic aims of the newly created European Union. They contained closeness to the citizen, respect for national identities, and human rights, as well as a provision to safeguard the *"aquis communautaire"*. This same First Pillar characterised by supranationalism.

With regards to the second and third pillars, on the other hand, they are mainly inter governmental. This means that power was held in their own hands and not in the community's institutions. The second pillar, concerning the Common Foreign and Security Policy, is dealt with in Articles 11-28 of the TEU. This treaty on the European Union provides that council is to define common positions which are based on agreement of the member states to which states had to make sure that the national policies are conformed. The Commission was to be be fully associated with the work which was carried out in the Common Foreign and Security Policy Pillar, and it could also refer any question or submit proposals tot he council, or even request the convening of an extraordinary council meeting. In such procedure, the European Parliament had to be consulted by the Presidency on the basic choices of this pillar.

The last pillar regarding Justice and Home Affairs deals with immigration, third country nationals and also covers areas of cooperation on a range of international criminal issues and also various forms of judicial, customs and police cooperation. Since the treaty of Amsterdam, these areas have been integrated into the EC Treaty.

The most important change made in this Treaty was with regards to the fact that the Euroepan Parliament's legislative involvement was to be increased, by the introduction of the co-deicison procedure.

*"The most significant institutional change made **by the Maastricht Treaty** was the increase in the Parliament's legislative involvement, by introducing the so-called co-decision procedure, what was Article 251 EC. This allowed the EP to block legislation of which it disapproved, if it was subject to this procedure. The Parliament was also given the right to request the Commission to initiate legislation and the power to block the appointment of the new Commission.*[21]

Other changes that took place were that the court of auditors become a community institution, the European System of Central Banks and a European Central Bank was created. The Parliamentary Ombudsman was created, as well as the establishment of a 'committee of regions'.

"the principle of subsidiarity, which was initially introduced by the Maastricht Treaty." Deburca
In this treaty, the Council of Ministers were given the role of adopting joint positions on the basis of Member States and commission initiatives. In this treaty also, the commission had to be fully associated, and the European Parliament's views were to be taken into consideration. Under the third pillar however, the European Council did not have the same powerful leadership as it enjoyed under the second pillar.

ON 3 PILLAR STRIUCTRE - "The Amsterdam and Nice Treaties preserved this basic edifice, subject to certain amendments, but it has, as will be seen, been removed by the Lisbon Treaty."[22]

This Treaty of Amsterdam came into force on the 1st of May 1999, with the solutions of the problems in prior treaties. The need to improve the freedom of movement was recognised by the member states at the time, which were gradually increasing in number. This freedom of movement would help to give the economy of the member states a good boost. In fact, this Treaty included new provisions with regards to the Schengen Agreement.

With regards to the first pillar, the Treaty of Amsterdam removed obsolete provisions. Do European Parliament poll was increased by needing it to send for appointing the commission president.

With regards to the second pillar about the common foreign and security policy, the European Parliament's role did not change, the European Court of Justice remained excluded and a small part change took place to the Commission's role, permitting it to submit implementation proposals.

Two major elements of this Treaty were the integration of parts of the third pillar into the EC Treaty, as well and the introduction of provisions which concern closer co-operation. A prominent feature

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[21] Deburca

[22] Ibid.

to note with regards to this Treaty, is that it focused on consolidation, rather than the extension of the Community's powers.

Some of the common provisions which the Treaty of Amsterdam changed of the Treaty on the European Union, were the introduction of the principle of openness, the fact that Article 6 of the Treaty on the European Union, was altered in order to declare that the union is founded on the respect for human rights, and all democracy and the rule of law. Article 7 also provided that in the event where the Council finds a breach of the principles in Article 6, it may suspend some of that state's rights under the Treaty.

The Treaty of Amsterdam also changes many provision in the EC Treaty. An example of this change is the amendments and extension of the co-deicison procedure, the promotion of gener equality, and also the incorporation of the former Third Pillar on the free movement of persons into the Community Pillar, amongst others.

The second pillar of the Maastricht Treaty was also changed in some manner. The European Parliament's role did not change and the role of the European Court of Justice also remained excluded. The Commission however, had the power to submit implementation proposals. The Third Pillar's name changes to 'Police and Judicial Co-operation in Criminal Matters'.

The Treaty of Amsterdam also introduced Title VII, the aim of which was to encourage closer co-operation between Member States. After merely 2 months that the Treaty of Amsterdam had entered into force it called an IGC to address the size and composition of the Commission, the weighting of votes in the Council,, and also the extension of qualified voting.

Treaty of Maastricht

This treaty is famous for the creation of a new treaty which is called the umbrella treaty which upholds in it the 3 major pillars mentioned prior, which created the concept of the European Union.

The first pillar, is composed of communities such as; EURATOM, ECSC and EEC) -all of which were made via supranationalism. The other two pillars on the other hand are mainly inter governmental. This means that power was held in their own hands and not in the community's institutions.

This treaty transforms **t**he community into a union, in which now the member states have enlarged their number and hence there is the need for them to work all in unison. Hence in this treaty;

"There was only agreement to co-operate on defence and justice, rather than being part of the legal order"[23] *..."But it did create the union and the idea of European citizenship - though not within the legal order."*[24]

"The most striking feature of the TEU, apart from the detailed provisions on EMU, was the institutional change it brought about, establishing the 'three-pillar' structure for what was henceforth to be the European Union, with the Communities as the first of these pillars and the EEC Treaty being officially renamed the European Community (EC) Treaty."

"The most significant institutional change made ***by the Maastricht Treaty*** *was the increase in the Parliament's legislative involvement, by introducing the so-called co-decision procedure, what was Article 251 EC. This allowed the EP to block legislation of which it disapproved, if it was subject to this procedure.*[51] *The Parliament was also given the right to request the Commission to initiate legislation and the power to block the appointment of the new Commission."*

[23] Turner C, *EU Law* (Routledge 2014)

[24] Ibid.

Explain the main changes brought about by the Lisbon treaty and discuss to what extent if any, the Lisbon amendments are a reflection of the previously proposed in the constitutional treaty.

The Lisbon Treaty, signed in **2007**, but came into force in **2009** established more updated regulations for the European Union, and it also **established a process in which countries can leave the European Union**. The two main elements stemming from the Lisbon Treaty are the Treaty on European Union (TEU) and also the Treaty on the Functioning of the European Union (TFEU).

"The objective was to see whether an agreement could be brokered between the Member States that would pave the way for acceptance of some revised Treaty reform. The June 2007 European Council then considered a detailed mandate of the changes that should be made to the Constitutional Treaty, in order that a revised Treaty could successfully be concluded."

This led to what is known as the Reform Treaty. This took place as after around two years of uncertainty over the Union's treaty reform process, the time had arrived in order to resolve the issue and also for the union to move on.

A detailed mandate of the changes that should be made to the Constitutional Treaty were considered in order to have a revised Treaty that could be passed. This Reform Treaty was going to contain two principal substantive clauses, which changed the TEU and the EC Treaty. The EC Treaty was gong to be renamed as the Treaty on the Functioning of the European Union.

The constitutional treaty was ratified by two-thirds of the EU members states. However, after the failed referenda on the EU Constitution, in France and Netherlands, the ratification process has been put on hold. Despite this, the EU is still seeking to save the main elements of the Constitution in a new treaty, which is to be agreed upon by EU Leaders.

The Lisbon Treaty, removed the three-pillar structure, even though distinct rules still apply in the field of the Common Foreign and Security Policy. Craig and Deburca in their book 'EU Law', mention that the; "Lisbon Treaty was, by way of contrast, forged by the Member States and Community institutions, and there was scant time afforded for further deliberation."

The Lisbon Treaty also amended the Treaty on the European Union and the Treaty Establishing the European Community. The Lisbon Treaty contains seven Articles, the most important of which are the first and second Articles. Article 1 amends the Treaty on European Union, and also contains some principles that govern the EU, as well as revised the provisions concerning the Common Foreign and Security Policy and enhanced cooperation. Article 2 then amend the European Community Treaty, which is then renamed as the Treaty on the Functioning of the European Union. One can therefore say that the EU is founded on the TEU as well as the TFEU.

With regards to the Constitutional Treaty, part 1 of such treaty contained a clear constitutional architecture, which is not true to say for the Lisbon Treaty. Title 1 of such Treaty is regards the Common Provisions, title 2, on democratic principles, title 3 on the provisions on the institutions, which contain some constitutional principles.

Some elements from the TEU which were not revised from the Constitutional Treaty were for example, rules which concern the competences. However, the Lisbon Treaty emancipated further

even with regards to the TFEU's architecture which is divided into seven parts. Part one concerns entitled principles, which are split into two titles; the first title deals with categories of competence, whilst the second title deals with provisions which have a general application. Part two deals with matters of discrimination, as well as citizenship of the union.

The third part is about the policies and internal actions of the Union. This part contains around 24 articles making it the largest of all. A very imporrtnay and also notable change is that the Provisions with regards to Police and judicial Cooperation in Criminal Matters, the third pillar has been moved into the new TFEU. Part 4 deals with the association of overseas countries and territories, Part 5 with the EU external action which brings together the subject matter with an external dimension. Part 6 is about the Institutional and Budgetary Provisions and Part seven on the general and final provisions.

Despite the fact, that the Lisbon Treaty is not built upon the pillar, the rules in relation to the common foreign and security policy still evoke a separate pillar for such method. The approach to the Common Foreign and Security Policy in the Lisbon Treaty, resembles that in the Constitutional treaty. To this, the European Court of Justice continues to be excluded from the common foreign and security policy, and the executive authority continues to reside mainly with the European council and the council.

The increase in co-decision is renamed 'ordinary legislative procedure', which ensures that the European Parliament now has gained to an extent, the same degree of law making power as the council, in areas where it was not involved at all or else where it was barely even consulted. In matters of international agreements, the power in parliament assent is now required in the fields which are governed by the ordinary legislative procedure.

Following the objectives of the constitutional treaty, the Lisbon Treaty introduced and adopted a change in the Parliament composition, which increased the number of MEPs. Each member state would be to given the minimum of six MEPs to represent the European Union is reinvested. This number from each state one should not exceed 96 members of Parliament for one country.

The Lisbon Treaty introduced what is known as the double majority rule within the Council. This is where a qualified majority is defined as 55% of the member states, representing at least 65% of the European union's population.

Through the Lisbon Treaty, the commission as an institution has gained full role as the guardian of treaties as it has increased its powers of imposing penalties in the case of a breach of European Union Law.

Something which was going to be included in the constitutional treaty that is provided for in the Lisbon Treaty, is known as the 'early warning mechanism'. This gives national parliaments the power to enforce subsidiarity.