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Reflections on the Development of the EU Law

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“Reflections on the development of the EU law”

Novitet Xh. Nezaj

Preface

This paper is about European Union Law or – as it is also called – the “EU Law”. It emerged from Master studies (University of Hamburg, Germany 2008; and RIT/American University of Kosovo, 2012), work experience and presentations I delivered at The EU Summer School in Summer 2011. It deals with EU law and the methods which EU makes law. But my ambitions go beyond the classical doctrinal legal analysis.

This paper explores the many complex ways in which the EU law operates, in theory and in practice. I look into treaties and other sources of European law, and I also try to outline the boundaries of EU law to deal broadly with such matters as the influence of national legal culture in shaping the norms on rule of law, the institutions that develop those norms and work for their implementation, the networks of lawmaking actors in this area and the legal procedures in which the EU Law and its various institutions are embedded. I will not try to place EU Law in a larger context of international relations and institutions.

The EU law can be considered from various perspectives: legal, political, economic, etc. I shall deal with the subject as a lawyer, but I shall also include reflections that are not, strictly speaking, legal. However, it is my intention, throughout the text I will deal with the observable facts of the EU law in a more abstract way and try, from a more objective perspective, to deal methodically with the EU law.

Thinking about the EU law as an international lawyer can mean a number of different things.¹ For instance, one might choose an approach that is rather “complex and dynamic” or one that is “mosaic.”² This means that one author intends, first of all, to interpret and comment on existing EU law and on legal institutions by examining these matters closely. While, other one might also concentrate on the law as it is or instead emphasize developing the EU law to make it more responsive to the problems that are constantly emerging. This paper is a description that deals with processes, events, movements, results, and institutions in their inter-connectedness. This paper makes use of legal methods³, in order to restrict the text to a manageable length, which, I hope will inspire the reader.

It is my argument that at the beginning of the 21st century the European legal order finds itself in a phase of modification. Since 2000, it is shifting from the classical inter-State (Community) order to a much more diversified, richer, and regional system of actors and norms, or – as it is also called – the “innovative dynamism into EU processes.”⁴ I share the view expressed by P. Craig and G. De Búrca that there is “an life long dynamic process”⁵. For this reason I shall, in the following pages, return from time to time to the enlightened teachings of the two authors of the EU law who, standing at the threshold of modern EU law, have a broader and a truly universal vision. These ideas are

¹ It requires knowledge regarding EU legal principles: Direct Applicability, Direct Effect, Direct Applicability vs. Direct Effect, Direct Applicability Versus Direct Effect, Direct Effect of Regulations, Direct Effect of Directives, Vertical Versus Horizontal, Direct Effect of Directives, Indirect Effect of Directives, Direct Effect of Decisions, Compensation for Breaches of EU Law, Supremacy of EU Law over National Law, Supremacy over National Constitutional Law, Reassertion of the Supremacy of EU Law, Duty of the National Authorities.

² P. Craig and G. De Búrca, *The EU Law: Text, Cases, and Materials*, 4th ed. (Oxford, 2008); N. Nugent, *The Government and Politics of the European Union*, (Palgrave, 2010).

³ I. Mcleod, *Legal Method*, (Palgrave, 2005); Sh. Hanson, *Legal Method & Reasoning*, 2nd ed. (Cavendish, 2003).

⁴ See N. Nugent, *The Government and Politics of the European Union*, (Palgrave, 2010).

⁵ P. Craig and G. De Búrca, *The EU Law: Text, Cases, and Materials*, 4th ed. (Oxford, 2008) p.35.

at the core of this paper and give it its general direction. This paper has an argument to make, a persuasive, I hope to defend the need to uphold a necessary system of law and to adapt it to changing needs brought about by new realities. All these thoughts were in my mind during the writing of this paper. I should also like to thank those who now have the text under their eyes for their time and for their interest.

Introduction

In coping daily with the EU law, we couldn't remain the same lawyers as coping with the national legal system. The features of origin of EU law were rooted in the Europe's various legal cultures. I shall try to introduce EU law to some broader, cross-disciplinary methods of legal thought. While designing the content of this paper (substance and style) I had in my mind readers with broad interests. I believe that all good practice of law must be rooted in good theory, methodology or philosophy. I also try to preserve throughout the text, at least in parts, the original style so as to keep my idea simple and understandable.

Throughout the existence of the EU law, and in the first few years after the establishment of the European Union, European lawyers tend to conceptualize the dynamism of EU law. EU legal system, or the national legal systems of the European Union Member States as it is known (national or domestic law), is perhaps the most dynamic branch of law in international legal system, and "is prominent as the primary example of a powerful organization that has transformed itself from a single - to a multiple-purpose"⁶ But it seems to me that, in many respects, it is in need of a fresh approach and reflection. Since this paper deals with both the theory and the practice of the EU law, I intend to demonstrate how the EU law has come to occupy a central position in perceptions of legal thinking as well as within the framework and structure of law itself, because today, "the EU is a single integrated trading unit made up of twenty-seven European nations".⁷

⁶ Ch. William Kegley and Shannon Lindsey Blanton, *World Politics: Trend and Transformation*, (Cengage Learning 2010 – 2011 ed) p.155.

⁷ R. LeRoy Miller and G. A. Jentz, *Business Law Today: The Essentials Test & Summarized Cases, E-Commerce, Legal, Ethical, and Global Environment*, 9th ed. (Cengage, 2011) p.725.

There is a great deal about “deepening” and “widening” (Craig and De Búrca, Oxford 2008) of the European Union in this paper. The motives for both are various: security, economic development, and environment protection, free market is only some of them.⁸ The Second World War was perhaps the most destructive war of all. Post-war cooperation it was characterized by two kinds of cooperation simultaneously: first, across national borders between European countries, and second, by the integrating policies that they wished to cooperate. In that time, they benefited in two ways. First, it created a reformed system of supranational law within the Western European nations, and second, it began to develop a system of European Union law. Since the Second World War this Western European cooperation on the whole, was a comparatively peaceful period in human history. This paper is divided into three parts.

The first part sets out the development of the European Union, as it is traditionally understood. It deals with specific aspects of Treaty law as they have developed and crystallized over the course of integration. This will be the starting point for the general discussions that will follow. This takes a general approach to EU law.

The second part two treats matters that are, strictly speaking legal: it attempts to explore how lawmaking is essential material source of EU law and, in certain cases, obstacles to it. I focus on all procedures and stages of lawmaking. It discusses the implications of changes in the methods and the role played by economic considerations.

The third part discusses whether this body of law can adequately meet the challenges that have arisen in a global era of legal reform. In recent years, the contributions of EU institutions and actors of various kinds to the development, promotion and dissemination

⁸ The EU is described as “a highly competitive social market economy, aiming at full employment and social progress” (Art 3(3) TEU). The Treaties require that Member States operate in conformity with the principle of “an open market economy with free competition” (Art 120 TFEU).

of law, has been growing steadily. I attempt, throughout the text, to analyze the EU law as it is today, but I also ask how it might be developed in order to serve the human community better in times to come.

Part I

The deep roots of the EU law

The motto of the EU – “united in diversity”.

The aim of the European integration has been described as replacing war by a system of political and economic cooperation between Western European nations based on common institutions, procedures and rules of conduct.⁹ The elimination of confrontation by treaty law was a guiding ideal of the European Communities.¹⁰ Since then, however, the EU law has become much more dynamic and diversified. Also, this kind of dynamism has been supported by factors determined the United States’ vision of the post-war world and the reconstruction of Europe: politics, economics, and humanitarianism.¹¹

An original treaty¹² thus, realistically and pragmatically offers two types of response to the challenges of European integration: a set of rules known as *supranational law* and another called *supranational institutions*.¹³ The aim was to promote joint development. To achieve its – ultimate – purpose, meaning that an “internal market” is under way, later on the Single Act¹⁴ came into force and aiming to develop the cooperation in the

⁹ The first Community in 1951, that is, the European Coal and Steel Community (ECSC), and those relevant to the creation of the other two Communities in 1957, that is, the European Atomic Energy Community (Euratom) and the European Economic Community (EEC). It should be noted that under the Treaty of Maastricht the EEC was renamed to become the European Community (EC) and that under the ToL the EU succeeded and replaced the EC.

¹⁰ See Treaty Establishing the European Economic Community, Rome, 25 March 1957.

¹¹ A. Kaczorowska, *European Union Law*, 2nd ed. (Routledge, 2011) p.4.

¹² The European Coal and Steel Community Treaty (CS Treaty) was designed to provide a common market for coal and steel. It was concluded for a period of 50 years from its entry into force, and ceased to exist on its expiry on 23 July 2002.

¹³ Much detailed material relating to the history of the EU may be found at the following website: <http://aei.pitt.edu> (Archive of European Integration).

¹⁴ See Single European Act, Luxembourg, 17 February 1986, The Hague, 28 February 1986, 1754 UNTS 3; 25 ILM 506; OJ L 169, 29.6.1987, p 1.

legislative process of EC and integration as much as possible. Thus, the European legal system underwent a revolutionary change after the Second World War.

The EU law originally consisted of two bodies of law: the “Community Law” (named after the original Treaty of Paris 1951 and Treaties of Rome of 1958) which eventually developed into the much more far-reaching Maastricht Treaty the “European Union Law” (named after the Maastricht Treaty of 1993). The Maastricht Treaty concerns itself with the broader EU law authority over policy areas. Later on, we have Amsterdam Treaty¹⁵ and Treaty of Nice. The development of the EU law was not consistent.

The rules of the EU law that are applicable today are largely the product of the legal culture of the second half of the twentieth century.¹⁶ In fact, under the Community doctrine¹⁷, the emergency for “ever closer Union” was needed.¹⁸ Thus, depended on the question of “deepening and widening” Western European nations were obliged to advance integration.

Broadly speaking, four kinds of freedoms have encouraged the development and application of the EU law of throughout development: the free movement of goods¹⁹, persons and services²⁰ and capital between the Member States.²¹ The Lisbon Treaty

¹⁵ The ToA was signed on 2 October 1997 and came into effect on 1 May 1999. It had three parts and substantially amended both the TEU and the EC Treaty. It simplified the latter, deleted obsolete provisions, updated others and renumbered almost all of them. All modifications were set out in an explanatory report prepared by the General Secretariat of the Council of the European Union.

¹⁶ In 1997 the Treaty of Amsterdam introduced many reforms of the founding Treaties. See Treaty of Amsterdam, Amsterdam, 2 October 1997, 37 ILM 56; OJ C 340, 10.11.1997, p 1.

¹⁷ The EU glossary provides the following definition of the “Community/EU method”: “The Community method is based on the idea that the general interest of Union citizens is best defended when the Community institutions play their full role in the decision-making process, with due regard for the subsidiarity principle” see http://europa.eu/scadplus/glossary/communitisation_en.htm

¹⁸ See Treaty of Nice, Nice, 26 February 2001, OJ C 80, 10.3.2001, p 1.

¹⁹ Arts 28–32 and 34–36 TFEU deal with the free movement of goods, the customs union, the common customs tariff and the elimination of quantitative restrictions between Member States.

²⁰ Title IV of Part Three of the TFEU has three relevant chapters concerning the free movement of persons and the provision of services: Chapter 1 (workers), Chapter 2 (right of establishment) and Chapter 3 (services). A consideration of the relevant law involves an examination of Arts 45, 49 and 56 TFEU. These

protects and advances these four freedoms. These were, and still are, the ideas underlying the development of European integration.

Modern aspects - The EU modern law has its origin in cooperation between Western European States (Treaty of Paris, 1951), which has already been mentioned as the origin of European Community law. It developed further in the deepening and widening integration. However, with the passage of time, the shape of the EU has changed significantly. Today, the European Union has purely international legal personality in character²², and takes place on international agendas. This is a favorable and also a reasonable development. One of the main purposes of modern EU law are set out in the Lisbon Treaty. In the European Union of the 21st century, most of the provisions of the Lisbon Treaty were a response to the staggering influence of policies in international legal system.²³

The EU law is growing markedly by a rapidly evolving legal framework. Besides the various legal mechanisms created within domestic or national law, the EU Law is growing in importance. I would like to mention a specific method for making the EU Law standards work: the concept of a “supranational law” and “direct effect”. I see it in the form of a pyramid. The national rules of the EU Member States form the base of the pyramid and the principles of “supremacy” “direct applicability” and “direct effect” at the

Articles deal with the rights of “workers” (Art 45), self-employed persons (Art 49) and the providers of services (Art 56) respectively.

²¹ The Treaty provisions concerning free movement of capital were replaced by the Maastricht (Union) Treaty. Under the amended Treaty all restrictions on the movement of capital between Member States, and between Member States and third countries, are prohibited (Art 63(1) TFEU). This provision has direct effect.

²² TFEU, available at <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2010:083:SOM:EN:HTML>

²³ See for example H. G. Schermers & N. M. Blokker, *International Institutional Law*, (Martinus Nijhof, 2003); and N. Nugent, *The Government and Politics of the European Union*, (Palgrave, 2010) p.445.

top. The Court of Justice of the European Union has put it more formally. It stated, in two very important cases:

- *Flaminio Costa v E.N.E.L case law*²⁴ and
- *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*²⁵ case,

First case is based on core rules of the supranational law, and carried out in accordance with the principles that have just been mentioned. Second case is based on core rules of the direct effect.

Many European and international lawyers consider EU law as a highly specialized field of law containing many legal documents and provisions (the EU *Acquis communautaire* consist of over hundreds or thousands legal articles and numerous annexes).²⁶ The legal integration and unification of the EU law between Member States obviously is becoming much more dynamic than ever before.²⁷ The EU law constitutes – as a specific model of law, the significance of which goes beyond the national law with its many rules. There are, six key aspects of the EU law:

²⁴ Judgment of the Court of 15 July 1964. *Flaminio Costa v E.N.E.L.* Reference for a preliminary ruling: Giudice conciliatore di Milano - Italy. Case 6-64. Available at EUR-LEX http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61964J0006&lg=en

²⁵ Title and reference: Judgment of the Court of 5 February 1963. *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration.* Reference for a preliminary ruling: Tariefcommissie - Netherlands. Case 26-62. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61962J0026:EN:NOT>

²⁶ *Acquis communautaire* is a French term referring to the cumulative body of European Community laws, comprising the EC's objectives, substantive rules, policies and, in particular, the primary and secondary legislation and case law – all of which form part of the legal order of the European Union (EU). This includes all the treaties, regulations and directives passed by the European institutions, as well as judgements laid down by the Court of Justice of the European Union. The *acquis* is dynamic, constantly developing as the Community evolves, and fundamental. All Member States are bound to comply with the *acquis communautaire*. Available at http://europa.eu/legislation_summaries/index_en.htm

²⁷ G. Moens, J. Trone, *Commercial Law of the European Union, Ius Gentium: Comparative Perspectives on Law and Justice*, (Springer, 2010) p.131.

- First, the cooperation is assigned the highest value. Cooperation is protected and assisted. European Union law is based on common values.²⁸ There are values of respect for human dignity, freedom, democracy, equality, the rule of law and the respect for human rights, including the rights of persons belonging to minorities.
- Second, by virtue of logic, the rules of the EU law aspire to *universality*. They are applicable not only within a community of nations (European Union) but across cultural and geographical boundaries. It is important to note that the rules of the EU law are norms that must be respected. Every EU Member States has accepted the key instruments of this body of law.²⁹
- Third, the EU law developed into a system of objective rules that had moved away from its previous contractual basis and is now guided by its own intrinsic purpose. They include the promotion of peace, offering Union citizens an area of freedom, security and justice without internal frontiers. A fundamental principle is laid down in Article 3 of the Lisbon Treaty: it stipulates that the Treaties' provisions must meet the terms. This means that under the Treaties, Member States are obliged to fulfill obligations.
- Fourth, the same rules apply equally to all EU Member States.
- Fifth, the rules of the EU law are binding, which means that all Member States, demand compliance. This fundamental principle is also laid down in the Lisbon Treaty, which obliges EU Member States "to respect, the provisions of the EU legal acts.

²⁸ Article 2 of TEU sets out the values on which the European Union is founded. Article 3 of TEU (which is revised ex-Article 2) amends the objectives of the Union.

²⁹ This process is known as harmonization and approximation process of legislation.

- Sixth, the basic norms of the EU law are generally recognized as having a preemptory status, in the hierarchy of norms in the EU legal system.

It should be obvious from the foregoing that the EU law contains some of the most fundamental rules of international law. Its basic norms take precedence over all other legal considerations, overriding some of the oldest principles of national law and incorporating universal values. Since its advent, European integration has had a progressive effect on the development of the EU law.

Within the EU law, some norms are more important than others; but all of them yield precedence to the basic provisions of Treaties. A new hierarchy of norms is established distinguishing between legislative acts, delegated acts, and implementing acts.³⁰ At this point, it shall be remembered that the EU law has contributed to important advances in international legal system. But the changing nature of the European Union development requires reconsidering the provisions of the EU law again and again and shaping the “tension” within this body of law.

Let me conclude this overview with some remarks on the “deepening and widening” and specific method of present realities and future prospects of the European Union and the EU law itself. It should be mentioned that the EU law is, first and foremost, applicable to Member States. The ability of the EU law to reach internal policies³¹ within Member States is one of the special strengths of European legal system law when compared to other systems of law. Also, the institutional set-up is different from other legal systems. The Commission plays the predominant role in lawmaking of the EU law. The Court of Justice of the European Union is regarded as the “guardian” of the Treaties. However,

³⁰ See N. Nugent, *The Government and Politics of the European Union*, (Palgrave, 2010) p.81.

³¹ Overview of EU activities in all areas: Establishing the internal market, macroeconomic and fiscal policies, functional policies, and sectoral policies. Available at http://ec.europa.eu/policies/index_en.htm

there are a growing number of players in the field: for instance, the European Parliament and the European Council. All these institutions participate, in various ways and to different degrees, in developing and assisting lawmaking of the EU law. One of the challenges the EU Law faces today is to define and realize its specific role in a fast growing and crowded field of international legal system.

Part II

A network of actors

In part one, I focused on the structure and the general characteristics of the EU law. As far as the philosophy and the directive force of the EU legal evolution are concerned – we may distinguish between two kinds of rule: rules of “soft law”³², and rules, which we may call “hard law”.³³ These two sets of rules are, of course, interdependent.

In this part, I shall tackle “lawmaking.” The aim is to reflect and to keep methodology approaches within certain boundaries. The way in which the EU makes laws is also the subject of evolution.³⁴ Lawmaking is, of course, closely linked to legal instruments on which the EU Law operates.³⁵ The rules of EU can and should – as we shall demonstrate later on – be developed and interpreted in the light and in the spirit of Treaty law in order to be effective.

To the casual point of view, this may seem to be a disordered state of affairs. But policies and policy process between European Union and EU Member States are usually highly organized affairs. In this part I shall examine the methods of making and applying of EU legislation. Of the many procedures, those of the consultation procedure, the ordinary legislative procedure, and consent procedure are among the most important. They are at the heart of the EU lawmaking. More effective and sustainable efforts to codify the

³² Secondary Legislation: Regulations, Directives, Decisions, and Recommendations.

³³ EU Treaties (TFEU into force).

³⁴ B. Bishop, *European Union Law for International Business*, (Cambridge, 2009) p.4.

³⁵ The legal principle of publicity requires the publication of certain EU legal acts in the Official Journal of the European Union (OJ). The TFEU provides that “Legislative acts shall be published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the 20th day following that of their publication” (Art 297 TFEU). Available at <http://eur-lex.europa.eu/JOIndex.do>

methods of lawmaking were made in the Lisbon Treaty in 2009.³⁶ The Lisbon Treaty contains something of a fundamental norm, on the “competences of the European Union”. They fall into three broad categories: exclusive, shared, and supporting or supplementary. Thus, legal obligations are imposed on the European Commission, the Council, and European Parliament. One of the main aims of the European Union Treaties is to set out the key organizational features of the EU legislative and application process and the position of the main EU institutions within them. The figure below reflects the lawmaking process of EU law (N. Nugent, 2010, p.307)

European Council - does not legislate, but may issue guidelines to the Commission and the Council of Ministers		Commission - initiates proposals	Court of Justice - charged with ensuring EU law is interpreted and applied correctly	
	“Political” and “significant” legislation is adopted		Administrative legislation is adopted by the	
European Parliament works in two levels: Plenary – Committees			Commission via	
		Council of Ministers Works at three levels Minister – COREPER – Working parties	Commitology Committees	Direct action by the Commission
Legislation is adopted in three forms: 1. Regulations are binding to all Member States 2. Decisions are binding on those to whom they are addressed 3. Directives are binding as to the result to be achieved, but require transposition by the appropriate national authorities				

³⁶ EU legal acts are freely available on the Internet. An electronic version of the Official Journal is available at <http://eur-lex.europa.eu/JOIndex.do> The Official Journal prints the texts of laws as they were originally adopted and does not consolidate amendments to the original legislation. Consolidated versions of EU legislation may be found at <http://eur-lex.europa.eu> For preparatory materials for EU legislation, see <http://ec.europa.eu/prelex/apcnet.cfm?CL=en> A frequently updated Directory of EU Legislation in Force is available at <http://eur-lex.europa.eu/en/legis/index.htm> Summaries of numerous EU legal acts are available at http://europa.eu/legislation_summaries/index_en.htm Information about recent EU legislation may be found in the annual General Report of the Activities of the European Union (<http://europa.eu/generalreport/en/welcome.htm>) and the monthly Bulletin of the European Union (<http://europa.eu/bulletin/en/welcome.htm>). A directory of proposed legislation is available at <http://eur-lex.europa.eu/en/prep/latest/index.htm> Numerous EU publications are freely available on the website of the EU Bookshop (<http://bookshop.europa.eu>).

After adoption, national authorities of the EU Member States, subject to a general supervision by the Commission, carry the main responsibility for implementing EU law.

There are three principles that govern the setting of EU legislation after adoption:

- The need for additional legislation which requires the adoption of additional or legislative measures;
- The need to transpose legislation; the Member States themselves determine which are the appropriate national authorities by what process the transposition is to be made; and
- The need to apply legislation; responsibilities for applying EU legislation are shared between EU authorities and the various Directorate Generals that are responsible for particular policies.

In such a framework and from this perspective, the principle of applicability is the goal of the system of EU law. The difficulty is not so much with the transposition of EU laws into national law as with the ground-level application of EU laws. This reflects a shift in modern European law, of “many differences of – size, competences, working patterns, and cultures – between national administrations”³⁷ of EU Member States. An interesting approach for the future might be to oblige EU Member States to bear more responsibility for the use of EU legislation by them. Under Treaty law, EU Member States are bound not only to respect the law but also to ensure that others respect it. Logically, this means that they should bear some responsibility for the unlawful use of EU legislation. There exists between EU Member States an overall order of governance. This network of actors has been part of EU legal system for a long time. This network, are closely connected. Such a legal development would be neither possible today nor desirable. But legal forces

³⁷ N. Nugent, *The Government and Politics of the European Union*, (Palgrave, 2010) p.322.

(Treaty law) seem to hold various sets of institutions together and make the system visible as a coherent, ensemble.

The emergence of a macro network in the promotion of much more clarification in future will influence the EU law. Various institutions have put new concepts and initiatives in EU legal system. The rise of EU as global player contributed to the present state of affairs. This part aims to describe the role, of some of these various players. The scope of a review such as this is, of necessity, limited. But this should not prevent authors from getting a general idea of some of the major contributors within this growing network.

The European Union law has a character in a double sense. It is *Sui Generis* in its outlook, regional in its origin and it sees itself as organization rooted in rule of law, but works in a pragmatic way. The European Union law is supranational in character and it is recognized as a subject under Treaty law. It embraces 27 legal systems³⁸ which, in fact, constitute the implementing body or actors. The EU law, then, is unique in its legal character and its pragmatic mode of action. It has, for some considerable time now, been the crucial driving force for creating, developing and promoting European and international law.

The EU has been the main driving force in promoting and strengthening international rule of law and universal principles. However, the EU is well aware of the fact that the power of legal rules to shape the new legal order in the faces of ideologies is changing. The European Union and its predecessor, the European Community, initially focused on

³⁸ The Member States are (in order of accession): Belgium, the Netherlands, Luxembourg, France, Germany, Italy, the United Kingdom, Ireland, Denmark, Greece, Spain, Portugal, Austria, Finland, Sweden, Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovak Republic, Bulgaria and Romania.

economic and political questions, should start systematically and gradually to comply with the standards of global legal reform.

Part IV

A system of systems

I began by trying to draw a general portrait of the EU law in all its developments. I explored its roots of developments and deepening and widening potential, and I went on to the lawmaking of EU law. I found that the ideals of developments and cooperation that underlay the major progress were inherent in the EU law. This led to some general conclusions regarding the basic values on which the EU law rests. Then I discussed the character of the EU law in an age of new era.

In this concluding part, I shall try to outline the legal effects of EU law in the EU Member States legal order. I shall try to situate the EU law within a legal structure or system of the EU Member States legal order. I shall then consider how these systems affect one another. I shall conclude this paper by drawing the attention to the potential challenges for the idea and the capacities of the regulatory process.

As the role to the European Union grows, so does the EU law. This body of law is essential in the political, and the economic sphere. What is especially important in our present context is that the European Union is changing. In fact, the nature of the EU law has changes over time. Whatever form they take, such rules are a necessity on the rule of law. To assess the effectiveness of the EU law, we must use some important criteria:

- Are rules adequate, do they meet the needs of dynamic changes at present;
- Is the EU legal system comprehensive;
- Does EU law permit a legal vacuum;

- Are the EU rules effective in practice, and are there procedures in place to ensure their implementation.

The doctrines of direct effect and supremacy are very important pillars of EU law. The supremacy doctrine ensures that EU law prevails over any inconsistent law of a Member States, whether it is legislation or the national constitution.³⁹

Also, EU law becomes directly effective upon the expiration of any transitional period for which they provide, even if these provisions have not been implemented by the Member States. Regarding direct applicability in opposition to direct effect Article 288 of TFEU provides that EU regulations have a general application and are binding in their entirety and are applicable in all Member States.⁴⁰ The rules enshrined in treaty law are therefore binding on all EU Member States. Nevertheless, given their relative lack of effectiveness, we must face the fact that the implementation of all theoretically imposed obligations is still far from assured. It is, after all, the task of law to set limits. I am of the opinion that legal methodology can shape minds. Consequently, over the course of time, the European Union should gradually built up impressive legal system. Ideally, such a large supranational system should enable Member States systems to co-exist together in a more orderly way.

³⁹ German case, available at http://www.bverfg.de/entscheidungen/es20090630_2bve000208en.html; See also German Federal Constitutional Court, Act Approving the Treaty of Lisbon compatible with the Basic Law; accompanying law unconstitutional to the extent that legislative bodies have not been accorded sufficient rights of participation, available at <http://www.bundesverfassungsgericht.de/pressemitteilungen/bvg09-072en.html>

⁴⁰ Article 288 of TFEU, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:FULL:EN:PDF>

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