Introduction

The idea of European union is as old as the European idea of the sovereign State.[1] Yet the spectacular rise of the latter overshadowed the idea of European union for centuries. Within the twentieth century, two ruinous world wars and the social forces of globalization, however, discredited the idea of the sovereign State. The decline of the monadic State found expression in the spread of inter-state cooperation.[2] The various efforts at European cooperation after the Second World War indeed formed part of a general transition from an international law of coexistence to an international law of cooperation.[3]

The European Union was born in 1952 with the coming into being of the European Coal and Steel Community (ECSC).[4] Its original members were six European States: Belgium, France, Germany, Italy, Luxembourg, and the Netherlands. The Community had been created to *integrate* one industrial sector; and the very concept of *integration* indicated the wish of the contracting States "to break with the ordinary forms of international treaties and organizations".[5] The 1957 Treaty of Rome created two additional Communities: the European Atomic Energy Community and the European (Economic) Community. The "three Communities" were partly "merged" in 1967,[6] but continued to exist in relative independence. A major organizational leap was taken with the 1992 Maastricht Treaty. It integrated the three Communities into the European Union. But for a decade, this European Union was under constant constitutional construction. In an

[1] R. H. Foerster, *Die Idee Europa 1300–1946, Quellen zur Geschichte der politischen Einigung* (Deutscher Taschenbuchverlag, 1963).
[2] G. Schwarzenberger, *The Frontiers of International Law* (Stevens, 1962).
[3] W. G. Friedmann, *The Changing Structure of International Law* (Stevens, 1964).
[4] For a detailed discussion of the negotiations leading up to the signature of the ECSC Treaty, see: H. Mosler, "Der Vertrag über die Europäische Gemeinschaft für Kohle und Stahl", 14 (1951/2) *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 1.
[5] *Ibid.*, 24 (translation – RS).
[6] This was achieved through the 1965 "Merger Treaty" (see Treaty establishing a Single Council and a Single Commission of the European Communities).

attempt to prepare the Union for the twenty-first century, a European Convention was charged to draft a Constitutional Treaty in 2001. But this Treaty failed; and it took almost another decade to rescue the reform into the 2007 Reform (Lisbon) Treaty that came into force on 1 December 2009. The Lisbon Treaty has replaced the "old" European Union with the "new" European Union. It is this European Union that will be analysed in this "Introduction to European Law".

What is the structure of this book on European Union law? The book is divided into three parts, which correspond to the three themes of "creation", "enforcement", and "substance" of European law.

Part I analyses the Union as an institutional "creature", and considers the creation of European (secondary) law. It starts with an overview of the four major Union institutions: the European Parliament, the Council, the Commission, and the European Court in Chapter 1. Chapter 2 investigates how these institutions cooperate in the creation of European legislation. The Union cannot legislate in all areas of social life; and Chapters 3 and 4 look at two constitutional limits to Union legislation. Based on the principle of conferral, the Union must act within the scope of competences conferred upon it by the Member States. The scope of these competences – and their nature – will be discussed in Chapter 3. The final chapter within this part analyses the second constitutional limit to the exercise of Union

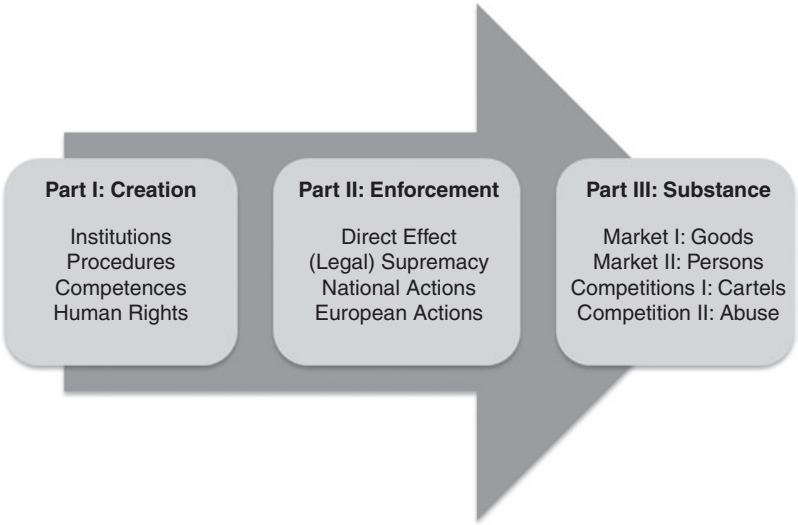

Figure 0.1 Structure of the book

competences: European fundamental rights. These rights first emerged as general principles of Union law, but have now been codified in the Union's Charter of Fundamental Rights.

Part II concentrates on the "enforcement" of European law in the courts. We shall see that European law establishes rights and obligations that directly affect individuals. The direct effect of European law in the national legal orders will be discussed in Chapter 5. Where a European norm is directly effective, it will also be "supreme" over national law. The "supremacy" of European law is the subject of Chapter 6. But how will individuals enforce their "supreme" European rights? Chapters 7 and 8 look at the dual enforcement machinery within the Union legal order. Individuals will typically enforce their European rights in national courts. In order to assist these courts in the interpretation and application of European law, the Union envisages a preliminary reference procedure. The Union legal order has equally required national courts to provide effective remedies for the enforcement of European rights, and has even created a European remedy of state liability. The indirect enforcement of European law through the national courts is discussed in Chapter 7. It is complemented by the direct enforcement of European law in the European Courts, and Chapter 8 explores these direct actions.

Part III analyses the substantive heart of European law, that is: the law governing the internal market and European competition law. From the very beginning, *the* central economic task of the European Union was the creation of a "common market". The Rome Treaty had thereby not solely provided for a common market in goods. It equally required the abolition of obstacles to the free movement of persons, services, and capital. Europe's "internal market" was thus to comprise four fundamental freedoms. Two of these freedoms will be discussed in turn: Chapter 9 looks at the free movement of goods, while Chapter 10 examines the free movement of persons. The two subsequent chapters, Chapters 11 and 12, analyse the two pillars of European competition law: Articles 101 and 102 TFEU. The former deals with anti-competitive agreements, the latter prohibits the abuse of a dominant position by an undertaking. European competition law is thereby traditionally seen as a functional complement to the internal market. It would – primarily – protect the internal market from *private* power.

This book is (relatively) short for a book on European law. But brevity is the spice of language; and in order to keep this book as spicy as possible,

many selective choices had to be made. Inevitably, some aspects will not be covered, others only marginally. Nevertheless, this "Introduction to European Law" will deal with all essential aspects of this complex area. And by concentrating on the "essence" of the subject, the book aims to help seeing the proverbial "wood" instead of the trees. For these European trees are ever growing and multiplying, and it is no wonder that many a student might get lost in the legal undergrowth! But if there is a second wish which this "Introduction to European Law" has, it is also to make the reader "thirsty" for more. Yet this thirst will have to be quenched by one of the larger generalist textbooks,[7] or one of the major textbooks dedicated to a specialized branch of European law.[8]

[7] The three traditional textbooks in English are: D. Chalmers et al., *European Union Law* (Cambridge University Press, 2010), P. Craig and G. de Búrca, *EU Law: Text, Cases, and Materials* (Oxford University Press, 2011), and A. Dashwood et al., *European Union Law* (Hart, 2011).

[8] European law is traditionally divided into three major branches: European *constitutional* law (see T. Hartley, *The Foundations of European Union Law* (Oxford University Press, 2010); and: R. Schütze, *European Constitutional Law* (Cambridge University Press, 2012)), European *internal market* law (see C. Barnard, *The Substantive Law of the EU* (Oxford University Press, 2010); and: G. Davies, *European Union Internal Market Law* (Routledge, 2006)), and European *competition* law (see J. Goyder and A. Albors-Llorens, *EC Competition Law* (Oxford University Press, 2009), and: A. Jones & B. Sufrin, *EU Competition Law* (Oxford University Press, 2011)). In addition to these three principal branches, the last two decades have seen the emergence of many smaller branches, such as European *external relations* law (see P. Eeckhout, *EU External Relations Law* (Oxford University Press, 2011), and: P. Koutrakos, *EU International Relations Law* (Hart, 2006)), and European *environmental* law (see J. H. Jans and H. Vedder, *European Environmental Law* (Europa Law Publishing, 2008), and: L. Krämer, *EC Environmental Law* (Sweet & Maxwell, 2006)).

Part I

European Law: Creation

This Part analyses the Union as an institutional "creature", and considers the creation of European (secondary) law. It starts in Chapter 1 with an overview of the four major Union institutions: the European Parliament, the Council, the Commission, and the European Court. Chapter 2 investigates how these institutions cooperate in the creation of European legislation. The Union cannot legislate in all areas of social life; and Chapters 3 and 4 look at two constitutional limits to Union legislation. Based on the principle of conferral, the Union must act within the scope of competences conferred upon it by the Member States. The scope of these competences – and their nature – will be discussed in Chapter 3. Chapter 4 analyses the second constitutional limit to the exercise of Union competences: European fundamental rights. These rights first emerged as general principles of Union law, but have now been codified in the Union's Charter of Fundamental Rights.

1 Union institutions

Introduction

The creation of governmental institutions is *the* central task of all constitutions. Each political community needs institutions to govern its society; as each society needs common rules and a method for their making, execution, and arbitration. The European Treaties establish a number of European institutions to make, execute, and arbitrate European law. The Union's institutions and their core tasks are defined in Title III of the Treaty on European Union (TEU). The central provision here is Article 13 TEU:

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 Union's institutions shall be:

- the European Parliament,
- the European Council,
- the Council,
- the European Commission (hereinafter referred to as 'the Commission'),
- the Court of Justice of the European Union,
- the European Central Bank,
- the Court of Auditors.[1]

The provision lists seven governmental institutions of the European Union. They constitute the core "players" in the Union legal order.[2] What strikes the attentive eye first is the number of institutions: unlike a tripartite institutional structure, the Union offers more than twice that number. The two institutions that do not – at first sight – seem to directly correspond to "national" institutions are the (European) Council and the Commission. The name "Council" represents a reminder of the "international" origins of the European Union, but the institution can equally be found in the governmental structure of Federal States. It will be harder to find the name "Commission" among the public institutions of States, where the executive is typically referred to as the "government". By contrast, central banks and courts of auditors exist in many national legal orders.

Where do the Treaties define the Union institutions? The provisions on the Union institutions are split between the Treaty on European Union and the Treaty on the Functioning of the European Union in the following way:

[1] Article 13(1) TEU. Paragraph 2 adds: "Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practise mutual sincere cooperation."

[2] While the Treaties set up seven "institutions", they do acknowledge the existence of other "bodies". First, according to Article 13 (4) TEU, the Parliament, the Council and the Commission "shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity". The composition and powers of the "Economic and Social Committee" are set out in Articles 301–4 TFEU. The composition and powers of the "Committee of the Regions" are defined by Articles 305–7 TFEU. In addition to the Union's "Advisory Bodies", the Treaties also acknowledge the existence of a "European Investment Bank" (Articles 308–9 TFEU; as well as Protocol No. 5 on the Statute of the European Investment Bank).

Table 1 Treaty provisions on the Institutions

Provisions on the Institutions	
EU Treaty – Title III	FEU Treaty – Part VI – Title I – Chapter 1
Article 13 Institutional Framework	Section 1 European Parliament (Arts. 223–234)
Article 14 European Parliament	
Article 15 European Council	Section 2 European Council (Arts. 235–236)
Article 16 Council	Section 3 Council (Arts. 237–243)
Article 17 Commission	Section 4 Commission (Arts. 244–250)
Article 18 High Representative	Section 5 Court of Justice (Arts. 251–281)
Article 19 Court of Justice	Section 6 European Central Bank (Arts. 282–284)
	Section 7 Court of Auditors (Arts. 285–287)
Protocol (No.3): Statute of the Court of Justice Protocol (No.4): Statute of the ESCB and the ECB Protocol (No.6): Location of the Seats of the Institutions etc. (Internal) Rules of Procedure of the Institution	

The four sections of this chapter will concentrate on the classic four Union institutions: the Parliament, the Council, the Commission, and the Court.[3]

1. The European Parliament

Despite its formal place in the Treaties, the European Parliament has never been the Union's "first" institution. For a long time it followed, in rank, behind the Council and the Commission. Its original powers were indeed minimal. It was an "auxiliary" organ that was to assist the institutional duopoly of Council and Commission. This minimal role gradually increased from the 1970s onwards. Today the Parliament constitutes – with the Council – a chamber of the Union legislature. Directly elected by the European citizens,[4] Parliament constitutes not only the most

[3] For an analysis of the three other Union institutions, see R. Schütze, *European Constitutional Law* (Cambridge University Press, 2012), Chapters 3 and 4.

[4] Article 10(2) TEU: "Citizens are directly represented at Union level in the European Parliament."

democratic institution; in light of its elective "appointment", it is also the most supranational institution of the European Union.

This section will analyse two aspects of the European Parliament. First, we shall look at its formation through European elections. A second subsection provides an overview of Parliament's powers in the various governmental functions of the Union.

(a) Formation: electing Parliament

When the European Union was born, the European Treaties envisaged that its Parliament was to be composed of "representatives of the peoples of the States".[5] This characterization corresponded to its formation. For the European Parliament was not directly elected. It was to "consist of delegates who shall be designated by the respective Parliaments from among their members in accordance with the procedure laid down by each Member State".[6] European parliamentarians were thus – delegated – *national* parliamentarians. This formation method brought Parliament close to an (international) "assembly". The founding Treaties did nonetheless breach the classic international law logic already in two ways. First, they had abandoned the idea of sovereign equality of the Member States by recognizing different sizes for national parliamentary delegations.[7] Second, and more importantly, the Treaties already envisaged that Parliament would eventually be formed through "elections by direct universal suffrage in accordance with a uniform procedure in all Member States".[8]

When did the transformation of the European Parliament from an "assembly" of national parliamentarians into a directly elected Parliament take place? It took two decades before the Union's 1976 "Election Act" was adopted.[9] And ever since the first parliamentary elections in 1979, the European Parliament ceased to be composed of "representatives of the peoples of the States". It constituted henceforth the representative of a European people. The Lisbon Treaty has – belatedly – recognized this dramatic constitutional change. It now characterizes the European

[5] Article 137 EEC. See also Article 20 ECSC.
[6] Article 138 EEC. See also Article 21 ECSC.
[7] Originally, the EEC Treaty granted thirty-six delegates to Germany, France and Italy; fourteen delegates to Belgium and the Netherlands; and six delegates to Luxembourg.
[8] Article 138 (3) EEC. See also Article 21 (3) ECSC.
[9] "Act concerning the Election of the Members of the European Parliament by direct universal Suffrage." The Act was adopted in 1976 ([1976] OJ L278/5).