Europa-Universität Flensburg

European Law and Politics

Autumn 2017

Group I (0/2/4/6/8): Wednesday, 11-14, Room MAD 126
Group II (1/3/5/7/9): Tuesday, 16-19, Room MAD 131

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Priv.-Doz. Dr. Eike Michael Frenzel
Eike.Frenzel@Jura.Uni-Freiburg.DE
Office hours: DUB 014, every Wednesday, 14:30-16, or on appointment

Worksheet: Learning Progress

Lecture 1 (cw 38)	
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Please try to describe three aspects of each lecture which you are able to recall prior to the following lecture. This documentation should display what seemed to be important or memorable to you and will be helpful in order to prepare for the exam.

Outline

1. Introduction
   1.1. Foundations of Europe and the European Union – now and then
   1.2. Sources of European law and European Union law
   1.3. From pillars to layers and houses
   1.4. Granting impact: Instruments, institutions, individuals
2. The substantial law of the European Union
   2.1. Non-discrimination
   2.2. Citizenship
   2.3. Fundamental freedoms and the Internal Market
   2.4. Competition law
   2.5. Anti-discrimination law
3. Further European Union policies and internal actions
   3.1. Area of freedom, security and justice
   3.2. Economic and monetary policy
   3.3. Protection: consumer, data, environment
4. Enhanced cooperation
   4.1. Concept and alternatives
   4.2. Fields of application
5. External action and the common foreign and security policy
   5.1. Common foreign and security policy
   5.2. Common commercial policy
6. Changeover: European Union law and politcis from the member states' perspectives
   6.1. European Union law and politics in parliaments of Member States
   6.2. European Union law and administrative bodies of Member States
   6.3. European Union law in the national courts
7. The European Union as an economic, legal, social, political community

Learning Objectives

The module "European Law" provides two perspectives: "European Law and Politics" refers to contents and functions of European Law, "European Constitutional Law" refers to its forms and powers. You will be able to develop and improve professional, methodological and media competence in order to gain insight into law-making and enforcement of European Union Law. The policy fields and the institutions of the European Union as well as their procedures (legislative, administrative, judicial) will be subject to presentations and discussions. This includes the consideration of different texts – legal as well as non-legal – and different (historical, economical, political) contexts. Further stakeholders and their contributions to European Integration will be taken into account.

In order to succeed in this course you should be able

to use
- the treaties as well as other sources of law (regulations, directives; judgments) in order to answer questions and to develop criteria for specific cases;
- sources of legal knowledge such as reports, articles, obiter dicta;
- legal method in order to categorise, allocate, interpret legal provisions;

to describe
- the different layers of European law and the system of multi-level governance;
- the implementation of Union policies, internal and external actions;
- the background, functionality and enforcement of fundamental freedoms;

to explain
- the effects of European Law on daily life;
- the principles and interpretation of European Law;
- the development of the European Union;
- the success of the European Union, its reputation and discredit from a legal as well as a political point of view.

With regard to these skills, you will able to pass the exam. The written exam will be introduced to you step by step, with several examples of questions. You will have the opportunity to hand in papers and a test exam which will be reviewed and returned.

Please bring with you this script and a textbook that includes the Treaty of European Union, the Treaty on Functioning of the European Union as well as the Charter of Fundamental Rights of the European Union (recommended: Foster, Nigel, EU Treaties & Legislation 2016-2017, 27th edition, 2016 [Blackstone's Statutes], 19 €; TEU, TFEU and Charter will be the essential sources that will be used for both lectures, however, Foster's collection provides further useful sources of law and is inexpensive, especially compared to a copied collection of the Treaties and the Charter). Materials and slides will be uploaded (Moodle).

Bibliography

Arnull, Anthony, European Union Law. A Very Short Introduction, 2017.
Arnull, Anthony/Chalmers, Damian (eds.), The Oxford Handbook of European Union Law, 2015.
Barnard, Catherine/Peers, Steve, European Union Law, 2nd edition 2017.
Craig, Paul/de Búrca, Gráinne, The Evolution of EU Law, 2nd edition 2011.
Craig, Paul/de Búrca, Gráinne, EU Law: Text, Cases, and Materials, 6th edition 2015.
Cuthbert, Mike, European Union Law, 8th edition 2015.
Davies, Karen, Understanding European Union Law, 6th edition 2016.
de Schutter, Olivier, Fundamental Rights in the European Union, 2017.
Dickson, Julie/Eleftheriadis, Pavlos, Philosophical Foundations of European Union Law, 2012.
Fahey, Elaine, The Global Reach of EU Law, 2017.
Fairhurst, John, Law of the European Union, 11th edition 2016.
Foster, Nigel, EU Treaties & Legislation 2016-2017, 27th edition 2016.
Foster, Nigel, EU Law, 6th edition 2016.
Haltern, Ulrich, The Constitution of the European Union. A Contextual Analysis, 2018.
Harris, Thomas, Law of the European Convention on Human Rights, 2nd edition 2009.
Horspool, Margot/Humphreys, Matthew/Wells-Greco, Michael, European Union Law, 9th edition 2016.
Kaczorowska-Ireland, Alina, European Union Law, 4th edition 2016.
Kent, Penelope, European Union Law, 6th edition 2012.
Maduro, Miguel/Azoulai, Loïc (eds.), The Past and Future of EU Law. The Classics of EU Law Revisited on the 50th Anniversary of the Rome Treaty, 2010.
Mathijsen, Petrus, A Guide to European Union Law, 2010.
Moussis, Nicholas, Access to the European Union. Law, Economics, Policies, 22nd edition 2016.
Nicola, Fernanda G./Davies, Bill (eds.), EU Law Stories. Contextual and Critical Histories of European Jurisprudence, 2017.
Weatherill, Stephen, Cases and Materials on EU Law, 10th edition 2012.

Internet ressources (last accessed on September 10th, 2017)

http://europa.eu (official website of the European Union)

http://eur-lex.europa.eu/homepage.html (EUR-Lex: Access to EU law)

http://iate.europa.eu (Inter-Active Terminology for Europe)

http://curia.europa.eu (CJEU)

http://www.coe.int/en/web/portal/home (Council of Europe)

http://www.echr.coe.int/Pages/home.aspx?p=home&c= (European Court of Human Rights)

https://kvk.bibliothek.kit.edu/index.html?lang=en&digitalOnly=0&embedFulltitle=0&newTab=0 (Karlsruhe Virtual Catalogue – KVK)

http://verfassungsblog.de/ (forum of debate on topical events and developments in constitutional law and politics in Germany and Europe)

The Schuman Declaration – 9 May 1950

World peace cannot be safeguarded without the making of creative efforts proportionate to the dangers which threaten it.

The contribution which an organized and living Europe can bring to civilization is indispensable to the maintenance of peaceful relations. In taking upon herself for more than 20 years the role of champion of a united Europe, France has always had as her essential aim the service of peace. A united Europe was not achieved and we had war.

Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity. The coming together of the nations of Europe requires the elimination of the age-old opposition of France and Germany. Any action taken must in the first place concern these two countries.

With this aim in view, the French Government proposes that action be taken immediately on one limited but decisive point.

It proposes that Franco-German production of coal and steel as a whole be placed under a common High Authority, within the framework of an organization open to the participation of the other countries of Europe. The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe, and will change the destinies of those regions which have long been devoted to the manufacture of munitions of war, of which they have been the most constant victims.

The solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible. The setting up of this powerful productive unit, open to all countries willing to take part and bound ultimately to provide all the member countries with the basic elements of industrial production on the same terms, will lay a true foundation for their economic unification.

This production will be offered to the world as a whole without distinction or exception, with the aim of contributing to raising living standards and to promoting peaceful achievements. With increased resources Europe will be able to pursue the achievement of one of its essential tasks, namely, the development of the African continent. In this way, there will be realised simply and speedily that fusion of interest which is indispensable to the establishment of a common economic system; it may be the leaven from which may grow a wider and deeper community between countries long opposed to one another by sanguinary divisions.

By pooling basic production and by instituting a new High Authority, whose decisions will bind France, Germany and other member countries, this proposal will lead to the realization of the first concrete foundation of a European federation indispensable to the preservation of peace.

To promote the realization of the objectives defined, the French Government is ready to open negotiations on the following bases.

The task with which this common High Authority will be charged will be that of securing in the shortest possible time the modernization of production and the improvement of its quality; the supply of coal and steel on identical terms to the French and German markets, as well as to the markets of other member countries; the development in common of exports to other countries; the equalization and improvement of the living conditions of workers in these industries.

To achieve these objectives, starting from the very different conditions in which the production of member countries is at present situated, it is proposed that certain transitional measures should be instituted, such as the application of a production and investment plan, the establishment of compensating machinery for equating prices, and the creation of a restructuring fund to facilitate the rationalization of production. The movement of coal and steel between member countries will immediately be freed from all customs duty, and will not be affected by differential transport rates. Conditions will gradually be created which will sponta-

neously provide for the more rational distribution of production at the highest level of productivity.
In contrast to international cartels, which tend to impose restrictive practices on distribution and the exploitation of national markets, and to maintain high profits, the organization will ensure the fusion of markets and the expansion of production.
The essential principles and undertakings defined above will be the subject of a treaty signed between the States and submitted for the ratification of their parliaments. The negotiations required to settle details of applications will be undertaken with the help of an arbitrator appointed by common agreement. He will be entrusted with the task of seeing that the agreements reached conform with the principles laid down, and, in the event of a deadlock, he will decide what solution is to be adopted.
The common High Authority entrusted with the management of the scheme will be composed of independent persons appointed by the governments, giving equal representation. A chairman will be chosen by common agreement between the governments. The Authority's decisions will be enforceable in France, Germany and other member countries. Appropriate measures will be provided for means of appeal against the decisions of the Authority.
A representative of the United Nations will be accredited to the Authority, and will be instructed to make a public report to the United Nations twice yearly, giving an account of the working of the new organization, particularly as concerns the safeguarding of its objectives.

Source: https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en

President of the European Commission Jean-Clause Juncker
State of the Union Address 2017
Brussels, 13 September 2017

INTRODUCTION – WIND IN OUR SAILS

Mr President, Honourable Members of the European Parliament,

When I stood before you this time last year, I had a somewhat easier speech to give. It was plain for all to see that our Union was not in a good state. Europe was battered and bruised by a year that shook our very foundation. We only had two choices. Either come together around a positive European agenda or each retreat into our own corners.

Faced with this choice, I argued for unity. I proposed a positive agenda to help create – as I said last year – a Europe that protects, empowers and defends. Over the past twelve months, the European Parliament has helped bring this agenda to life. We continue to make progress with each passing day. Just last night you worked to find agreement on trade defence instruments and on doubling our European investment capacity. I also want to thank the 27 leaders of our Member States. Days after my speech last year, they welcomed my agenda at their summit in Bratislava. In doing so they chose unity. They chose to rally around our common ground.

Together, we showed that Europe can deliver for its citizens when and where it matters. Ever since, we have been slowly but surely gathering momentum. It helped that the economic outlook swung in our favour. We are now in the fifth year of an economic recovery that finally reaches every single Member State.

Growth in the European Union has outstripped that of the United States over the last two years. It now stands above 2% for the Union as a whole and at 2.2% for the euro area. Unemployment is at a nine year low. Almost 8 million jobs have been created during this mandate so far. With 235 million people at work, more people are in employment in the EU than ever before. The European Commission cannot take the credit for this alone. Though I am sure that had 8 million jobs been lost, we would have taken the blame. But Europe's institutions played their part in helping the wind change.

We can take credit for our European Investment Plan which has triggered €225 billion worth of investment so far. It has granted loans to over 445,000 small firms and more than 270 infrastructure projects. We can take credit for the fact that, thanks to determined action, European banks once again have the capital firepower to lend to companies so that they can grow and create jobs. And we can take credit for having brought public deficits down from 6.6% to 1.6%. This is thanks to an intelligent application of the Stability and Growth Pact. We ask for fiscal discipline but are careful not to kill growth. This is in fact working very well across the Union – despite the criticism.

Ten years since crisis struck, Europe's economy is finally bouncing back. And with it, our confidence.

Our EU27 leaders, the Parliament and the Commission are putting the Europe back in our Union. Together we are putting the Union back in our Union. In the last year, we saw all 27 leaders walk up the Capitoline Hill in Rome, one by one, to renew their vows to each other and to our Union. All of this leads me to believe: the wind is back in Europe's sails. We now have a window of opportunity but it will not stay open forever. Let us make the most of the momentum, catch the wind in our sails.

For this we must do two things: First, we should stay the course set out last year. We have still 16 months in which real progress can be made by Parliament, Council and Commission. We must use this time to finish what we started in Bratislava and deliver on our positive agenda. Secondly, we should chart the direction for the future. As Mark Twain wrote, years from now we will be more disappointed by the things we did not do, than by the ones we did. Now is the time to build a more united, stronger and more democratic Europe for 2025.

STAYING COURSE

Mr President, Honourable Members,

As we look to the future, we cannot let ourselves be blown off course. We set out to complete an Energy Union, a Security Union, a Capital Markets Union, a Banking Union and a Digital Single Market. Together, we have already come a long way. As the Parliament testified, 80% of the proposals promised at the start of the mandate have already been put forward by the Commission. We must now work together to turn proposals into law, and law into practice.

As ever, there will be a degree of give and take. The Commission's proposals to reform our Common Asylum System and strengthen rules on the Posting of Workers have caused controversy. Achieving a good result will need all sides to move towards each other. I want to say today: as long as the outcome is the right one for our Union and is fair to all Member States, the Commission will be open to compromise We are now ready to put the remaining 20% of initiatives on the table by May 2018. This morning, I sent a Letter of Intent to European Parliament President Antonio Tajani and Prime Minister Jüri Ratas outlining the priorities for the year ahead. I will not list all our proposals here, but let me mention five which are particularly important.

Firstly, I want us to strengthen our European trade agenda. Yes, Europe is open for business. But there must be reciprocity. We have to get what we give. Trade is not something abstract. Trade is about jobs, creating new opportunities for Europe's businesses big and small. Every additional €1 billion in exports supports 14,000 extra jobs in Europe. Trade is about exporting our standards, be they social or environmental standards, data protection or food safety requirements. Europe has always been an attractive place to do business. But over the last year, partners across the globe are lining up at our door to conclude trade agreements with us. With the help of the European Parliament, we have just secured a trade agreement with Canada that will provisionally apply as of next week. We have a political agreement with Japan on a new economic partnership. By the end of the year, we have a good chance of doing the same with Mexico and South American countries. And today, we are proposing to open trade negotiations with Australia and New Zealand. I want all of these agreements to be finalised by the end of this mandate. And I want them negotiated in the fullest transparency. Open trade must go hand in hand with open policy making. The European Parliament will have the final say on all trade agreements. So its Members, like members of national and regional parliaments, must be kept fully informed from day one of the negotiations. The Commission will make sure of this. From now on, the Commission will publish in full all draft negotiating mandates we propose to the Council. Citizens have the right to know what the Commission is proposing. Gone are the days of no transparency. Gone are the days of rumours, of incessantly questioning the Commission's motives. I call on the Council to do the same when it adopts the final negotiating mandates. Let me say once and for all: we are not naïve free traders. Europe must always defend its strategic interests.

This is why today we are proposing a new EU framework for investment screening. If a foreign, state-owned, company wants to purchase a European harbour, part of our energy infrastructure or a defence technology firm, this should only happen in transparency, with scrutiny and debate. It is a political responsibility to know what is going on in our own backyard so that we can protect our collective security if needed.

Secondly, I want to make our industry stronger and more competitive. This is particularly true for our manufacturing base and the 32 million workers that form its backbone. They make the world-class products that give us our edge, like our cars. I am proud of our car industry. But I am shocked when consumers are knowingly and deliberately misled. I call on the car industry to come clean and make it right. Instead of looking for loopholes, they should be investing in the clean cars of the future. The new Industrial Policy Strategy we are presenting today will help our industries stay or become the world leader in innovation, digitisation and decarbonisation.

Third: I want Europe to be the leader when it comes to the fight against climate change. Last year, we set the global rules of the game with the Paris Agreement ratified here, in this very House. Set against the collapse of ambition in the United States, Europe will ensure we make our planet great again. It is the shared heritage of all of humanity. The Commission will shortly present proposals to reduce the carbon emissions of our transport sector.

Fourth priority for the year ahead: we need to better protect Europeans in the digital age. In the past three years, we have made progress in keeping Europeans safe online. New rules, put forward by the Commission, will protect our intellectual property, our cultural diversity and our personal data. We have stepped up the fight against terrorist propaganda and radicalisation online. But Europe is still not well equipped when it comes to cyber-attacks.

Cyber-attacks can be more dangerous to the stability of democracies and economies than guns and tanks. Last year alone there were more than 4,000 ransomware attacks per day and 80% of European companies experienced at least one cyber-security incident. Cyber-attacks know no borders and no one is immune. This is why, today, the Commission is proposing new tools, including a European Cybersecurity Agency, to help defend us against such attacks.

Fifth: migration will stay on our radar. In spite of the debate and controversy around this topic, we have managed to make solid progress – though admittedly insufficient in many areas. We are now protecting Europe's external borders more effectively. Over 1,700 officers from the new European Border and Coast Guard are now helping Member States' 100,000 national border guards patrol in places like Greece, Italy, Bulgaria and Spain. We have common borders but Member States that by geography are the first in line cannot be left alone to protect them. Common borders and common protection must go hand in hand. We have managed to stem irregular flows of migrants, which were a cause of great anxiety for many. We have reduced irregular arrivals in the Eastern Mediterranean by 97% thanks our agreement with Turkey. And this summer, we managed to get more control over the Central Mediterranean route with arrivals in August down by 81% compared to the same month last year. In doing so, we have drastically reduced the loss of life in the Mediterranean. Tragically, nearly 2,500 died this year. I will never accept that people are left to die at sea. I cannot talk about migration without paying strong tribute to Italy for their tireless and noble work. This summer, the Commission again worked closely together with Prime Minister Paolo Gentiloni and his government to improve the situation, notably by training the Libyan Coast Guard. We will continue to offer strong operational and financial support to Italy. Because Italy is saving Europe's honour in the Mediterranean. We must also urgently improve migrants' living conditions in Libya. I am appalled by the inhumane conditions in detention or reception centres. Europe has a collective responsibility, and the Commission will work in concert with the United Nations to put an end to this scandalous situation that cannot be made to last. Even if it saddens me to see that solidarity is not yet equally shared across all our Member States, Europe as a whole has continued to show solidarity. Last year alone, our Member States resettled or gran-

ted asylum to over 720,000 refugees – three times as much as the United States, Canada and Australia combined. Europe, contrary to what some say, is not a fortress and must never become one. Europe is and must remain the continent of solidarity where those fleeing persecution can find refuge. I am particularly proud of the young Europeans volunteering to give language courses to Syrian refugees or the thousands more young people who are serving in our new European Solidarity Corps. They are bringing European solidarity to life. We now need to redouble our efforts. Before the end of the month, the Commission will present a new set of proposals with an emphasis on returns, solidarity with Africa and opening legal pathways. When it comes to returns: people who have no right to stay in Europe must be returned to their countries of origin. When only 36% of irregular migrants are returned, it is clear we need to significantly step up our work. This is the only way Europe will be able to show solidarity with refugees in real need of protection. Solidarity cannot be exclusively intra-European. We must also showsolidarity withAfrica. Africa is a noble and young continent, the cradle of humanity. Our €2.7 billion EU-Africa Trust Fund is creating employment opportunities across the continent. The EU budget fronted the bulk of the money, but all our Member States combined have still only contributed €150 million. The Fund is currently reaching its limits. We know the dangers of a lack of funding – in 2015 many migrants headed towards Europe when the UN's World Food Programme ran out of funds. I call on all Member States to now match their actions with their words and ensure the Africa Trust Fund does not meet the same fate. We will also work on opening up legal pathways. Irregular migration will only stop if there is a real alternative to perilous journeys. We are close to having resettled 22,000 refugees from Turkey, Jordan and Lebanon and I support UN High Commissioner Grandi's call to resettle a further 40,000 refugees from Libya and the surrounding countries. At the same time, legal migration is a necessity for Europe as an ageing continent. This is why the Commission made proposals to make it easier for skilled migrants to reach Europe with a Blue Card. I would like to thank the Parliament for your support and I call for an ambitious and swift agreement on this important issue.

SETTING SAIL

Mr President, Ladies and Gentlemen, Honourable Members,
I have mentioned just a few of the initiatives we should deliver over the next 16 months. But this alone will not be enough to regain the hearts and minds of Europeans. Now is the time to chart the direction for the future.
In March, the Commission presented our White Paper on the future of Europe, with five scenarios for what Europe could look like by 2025. These scenarios have been discussed, scrutinised and partly ripped apart. That is good – they were conceived for exactly this purpose. I wanted to launch a process in which Europeans determined their own path and their own future.
The future of Europe cannot be decided by decree. It has to be the result of democratic debate and, ultimately, broad consensus. This House contributed actively, through the three ambitious resolutions on Europe's future and your participation in many of the more than 2,000 public events that the Commission organised since March.
Now is the time to draw first conclusions from this debate. Time to move from reflection to action. From debate to decision.
Today I would like to present you my view: my own 'scenario six', if you will. This scenario is rooted in decades of first-hand experience. I have lived and worked for the European project my entire life. I have seen good times and bad.
I have sat on many different sides of the table: as a Minister, as Prime Minister, as President of the Eurogroup, and now as President of the Commission. I was there in Maastricht, Amsterdam, Nice and Lisbon as our Union evolved and enlarged. I have always fought for Europe. At times I have suffered with and because of Europe and even despaired for it. Through thick and thin, I have never lost my love of Europe. But there is rarely love without pain.
Love for Europe because Europe and the European Union have achieved something unique in this fraying world: peace within and outside of Europe. Prosperity for many if not yet for all.
This is something we have to remember during the European Year of Cultural Heritage. 2018 must be a celebration of cultural diversity.

A UNION OF VALUES

Our values are our compass. For me, Europe is more than just a single market. More than money, more than the euro. It was always about values. In my scenario six, there are three principles that must always anchor our Union: freedom, equality and the rule of law.
Europe is first of all a Union of freedom. Freedom from the kind of oppression and dictatorship our continent knows all too well – sadly none more than central and Eastern Europe. Freedom to voice your opinion, as a citizen and as a journalist – a freedom we too often take for granted. It was on these freedoms that our Union was built. But freedom does not fall from the sky. It must be fought for. In Europe and throughout world.
Second, Europe must be a Union of equality. Equality between its Members, big and small, East and West, North and South. Make no mistake, Europe extends from Vigo to Varna. From Spain to Bulgaria. East to West: Europe must breathe with both lungs. Otherwise our continent will struggle for air. In a Union of equals, there

can be no second class citizens. It is unacceptable that in 2017 there are still children dying of diseases that should long have been eradicated in Europe. Children in Romania or Italy must have the same access to measles vaccines as other children right across Europe. No ifs, no buts. This is why we are working with all Member States to support national vaccination efforts. Avoidable deaths must not occur in Europe. In a Union of equals, there can be no second class workers. Workers should earn the same pay for the same work in the same place. This is why the Commission proposed new rules on posting of workers. We should make sure that all EU rules on labour mobility are enforced in a fair, simple and effective way by a new European inspection and enforcement body. It seems absurd to have a Banking Authority to police banking standards, but no common Labour Authority for ensuring fairness in our single market. We will create one.
In a Union of equals, there can be no second class consumers. I will not accept that in some parts of Europe,people are sold food of lower quality than in other countries, despite the packaging and branding being identical. Slovaks do not deserve less fish in their fish fingers. Hungarians less meat in their meals. Czechs less cacao in their chocolate. EU law outlaws such practices already. We must now equip national authorities with stronger powers to cut out any illegal practices wherever they exist.
Third, in Europe the strength of the law replaced the law of the strong. The rule of law means that law and justice are upheld by an independent judiciary. Accepting and respecting a final judgement is what it means to be part of a Union based on the rule of law. Member States gave final jurisdiction to the European Court of Justice. The judgements of the Court have to be respected by all. To undermine them, or to undermine the independence of national courts, is to strip citizens of their fundamental rights. The rule of law is not optional in the European Union. It is a must. Our Union is not a State but it is a community of law.

A MORE UNITED UNION

Honourable Members,
These three principles must be the foundations on which we build a more united, stronger and more democratic Union.
When we talk about our future, experience tells me new Treaties and new institutions are not the answer people are looking for. They are merely a means to an end, nothing more, nothing less. They might mean something to us here in Strasbourg and in Brussels. But they do not mean a lot to anyone else. I am only interested in institutional reforms if they lead to more efficiency in our Union. Instead of hiding behind calls for Treaty change – which is in any case inevitable – we must first change the mind-set that for some to win others must lose. Democracy is about compromise. And the right compromise makes winners out of everyone. A more united Union should see compromise, not as something negative, but as the art of bridging differences. Democracy cannot function without compromise. Europe cannot function without compromise. This is what the work between Parliament, Council and Commission should always be about. A more united Union also needs to become more inclusive. If we want to strengthen the protection of our external borders, then we need to open the Schengen area of free movement to Bulgaria and Romania immediately. We should also allow Croatia to become a full Schengen member once it meets all the criteria. If we want the euro to unite rather than divide our continent, then it should be more than the currency of a select group of countries. The euro is meant to be the single currency of the European Union as a whole. All but two of our Member States are required and entitled to join the euro once they fulfil all conditions. Member States that want to join the euro must be able to do so. This is why I am proposing to create a Euro-accession Instrument, offering technical and even financial assistance.
If we want banks to operate under the same rules and under the same supervision across our continent, then we should encourage all Member States to join the Banking Union. Completing the Banking Union is a matter of urgency. We need to reduce the remaining risks in the banking systems of some of our Member States. Banking Union can only function if risk-reduction and risk-sharing go hand in hand. As everyone well knows, this can only be achieved if the conditions, as proposed by the Commission in November 2015, are met. To get access to a common deposit insurance scheme you first need to do your homework. If we want to avoid social fragmentation and social dumping in Europe, then Member States should agree on the European Pillar of Social Rights as soon as possible and at the latest at the Gothenburg summit in November. National social systems will still remain diverse and separate for a long time. But at the very least, we should work for a European Social Standards Union in which we have a common understanding of what is socially fair. Europe cannot work if it shuns workers. If we want more stability in our neighbourhood, then we must maintain a credible enlargement perspective for the Western Balkans. It is clear that there will be no further enlargement during the mandate of this Commission and this Parliament. No candidate is ready yet. But thereafter the European Union will be greater than 27 in number. Accession candidates must give the rule of law, justice and fundamental rights utmost priority. This rules out EU membership for Turkey for the foreseeable future. Turkey has been taking giant strides away from the European Union for some time.Journalists belong in newsrooms not in prisons. They belong where freedom of expression reigns. The call I make to those in power in Turkey is this: Let our journalists go. And not just them either. Stop insulting our Member States by comparing their leaders to fascists and Nazis. Europe is a continent of mature democracies. Insults create roadblocks. Sometimes I get the feeling Turkey is intentionally placing these roadblocks so that it can blame Europe for any breakdown in accession talks. As for us, we

will always keep our hands stretched out towards the great Turkish people and those who are ready to work with us on the basis of our values.

A STRONGER UNION

Honourable Members,
Our Union must also grow stronger. I want a stronger single market. When it comes to important single market questions, I want decisions in the Council to be taken more often and more easily by qualified majority – with the equal involvement of the European Parliament. We do not need to change the Treaties for this. There are so-called "passerelle clauses" in the current Treaties which allow us to move from unanimity to qualified majority voting in certain areas – if all Heads of State or Government agree to do so.
I am also strongly in favour of moving to qualified majority voting for decisions on the common consolidated corporate tax base, on VAT, on fair taxes for the digital industry and on the financial transaction tax. Europe has to be able to act quicker and more decisively.
I want a stronger Economic and Monetary Union. The euro area is more resilient now than in years past. We now have the European Stabilisation Mechanism (ESM). I believe the ESM should now progressively graduate into a European Monetary Fund and be firmly anchored in our Union. The Commission will make concrete proposals for this in December. We need a European Minister of Economy and Finance: a European Minister that promotes and supports structural reforms in our Member States. He or she can build on the work the Commission has been doing since 2015 with our Structural Reform Support Service. The new Minister should coordinate all EU financial instruments that can be deployed when a Member State is in a recession or hit by a fundamental crisis. I am not calling for a new position just for the sake of it. I am calling for efficiency. The Commissioner for economic and financial affairs – ideally also a Vice-President – should assume the role of Economy and Finance Minister. He or she should also preside the Eurogroup. The European Economy and Finance Minister must be accountable to the European Parliament.
We do not need parallel structures. We do not need a budget for the Euro area but a strong Euro area budget line within the EU budget. I am also not fond of the idea of having a separate euro area parliament. The Parliament of the euro area is the European Parliament.
The European Union must also be stronger in fighting terrorism. In the past three years, we have made real progress. But we still lack the means to act quickly in case of cross-border terrorist threats. This is why I call for a European intelligence unit that ensures data concerning terrorists and foreign fighters are automatically shared among intelligence services and with the police. I also see a strong case for tasking the new European Public Prosecutor with prosecuting cross-border terrorist crimes.
I want our Union to become a stronger global actor. In order to have more weight in the world, we must be able to take foreign policy decisions quicker. This is why I want Member States to look at which foreign policy decisions could be moved from unanimity to qualified majority voting. The Treaty already provides for this, if all Member States agree to do it. And I want us to dedicate further efforts to defence matters. A new European Defence Fund is in the offing. As is a Permanent Structured Cooperation in the area of defence. By 2025 we need a fully-fledged European Defence Union. We need it. And NATO wants it.
Last but not least, I want our Union to have a stronger focus on things that matter, building on the work this Commission has already undertaken. We should not meddle in the everyday lives of European citizens by regulating every aspect. We should be big on the big things. We should not march in with a stream of new initiatives or seek ever growing competences. We should give back competences to Member States where it makes sense. This is why this Commission has been big on big issues and small on the small ones, putting forward less than 25 new initiatives a year where previous Commissions proposed over 100. We have handed back powers where it makes more sense for national governments to deal with things. Thanks to the good work of Commissioner Vestager, we have delegated 90% of state aid decisions to the regional or local level. To finish the work we started, I am setting up a Subsidiarity and Proportionality Task Force as of this month to take a very critical look at all policy areas to make sure we are only acting where the EU adds value. First Vice-President Frans Timmermans, who has a proven track record on better regulation, will head this Task Force. The Timmermans Task Force, which should include Members of this Parliament as well as Members of national Parliaments, should report back in a years' time.

A MORE DEMOCRATIC UNION

Honourable Members, Mr President,
Our Union needs to take a democratic leap forward. I would like to see European political parties start campaigning for the next elections much earlier than in the past. Too often Europe-wide elections have been reduced to nothing more than the sum of national campaigns. European democracy deserves better.
Today, the Commission is proposing new rules on the financing of political parties and foundations. We should not be filling the coffers of anti-European extremists. We should be giving European parties the means to better organise themselves.

I also have sympathy for the idea of having transnational lists – though I am aware this is an idea more than a few of you disagree with. Such lists would help make European Parliament elections more European and more democratic.
I also believe that, over the months to come, we should involve national Parliaments and civil society at national, regional and local level more in the work on the future of Europe. Over the last three years, Members of the Commission have visited national Parliaments more than 650 times. They also debated in more than 300 interactive Citizens' Dialogues in more than 80 cities and towns across 27 Member States. But we can still do more. This is why I support President Macron's idea of organising democratic conventions across Europe in 2018.
As the debate gathers pace, I will personally pay particular attention to Estonia, Latvia, Lithuania and Romania in 2018. This is the year they will celebrate their 100th anniversary. Those who want to shape the future of our continent should well understand and honour our common history. This includes these four countries – Europe would not be whole without them.
The need to strengthen democracy also has implications for the European Commission. Today, I am sending the European Parliament a new Code of Conduct for Commissioners. The new Code first of all makes clear that Commissioners can be candidates in European Parliament elections under the same conditions as everyone else. The new Code will of course strengthen the integrity requirements for Commissioners both during and after their mandate.
If you want to strengthen European democracy, then you cannot reverse the democratic progress seen with the creation of lead candidates – 'Spitzenkandidaten'.
I am convinced that any future President will benefit greatly from the unique experience of having campaigned in all quarters of our beautiful continent. To understand the challenges of his or her job and the diversity of our Member States, a future President should have met citizens in the townhalls of Helsinki as well as in the squares of Athens. In my personal experience of such a campaign, it makes you more humble, but also strengthens you during your mandate. And you can face the other leaders in the European Council with the confidence that you have been elected, just as they have. This is good for the balance of our Union.
More democracy means more efficiency. Europe would function better if we were to merge the Presidents of the European Commission and the European Council.
This is nothing against my good friend Donald, with whom I have worked seamlessly together for the past three years. This is nothing against Donald or against me.
Europe would be easier to understand if one captain was steering the ship.
Having a single President would better reflect the true nature of our European Union as both a Union of States and a Union of citizens.

OUR ROADMAP

Honourable members,
The vision of a more united, stronger and more democratic Europe I am outlining today combines elements from all of the scenarios I set out in March. But our future cannot remain a scenario, a sketch, an idea amongst others. We have to prepare the Union of tomorrow, today. This morning I sent a Roadmap to President Tajani, President Tusk as well as to the holders of the rotating Presidencies of the Council between now and March 2019, outlining where we should go from here. An important element will be the plans the Commission will present in May 2018 for how the future EU budget can match our ambition and make sure we can deliver on everything we promise. On 29 March 2019, the United Kingdom will leave the European Union. This will be a very sad and tragic moment. We will always regret it. But we have to respect the will of the British people. On 30 March 2019, we will be a Union of 27. I suggest that we prepare for this moment well, amongst the 27 and within the EU institutions. European Parliament elections will take place just a few weeks later, in May 2019. Europeans have a date with democracy. They need to go to the polls with a clear understanding of how the European Union will develop over the years to come. This is why I call on President Tusk and Romania, the country holding the Presidency in the first half of 2019, to organise a Special Summit in Romania on 30 March 2019. My wish is that this summit be held in the beautiful ancient city of Sibiu, or Hermannstadt as I know it. It should be the moment we come together to take the decisions needed for a more united, stronger and democratic Europe. My hope is that on 30 March 2019, Europeans will wake up to a Union where we all stand by our values. Where all Member States firmly respect the rule of law. Where being a full member of the euro area, the Banking Union and the Schengen area has become the norm for all EU Member States. Where we have shored up the foundations of our Economic and Monetary Union so that we can defend our single currency in good times and bad, without having to call on external help. Where our single market will be fairer towards workers from the East and from the West. Where we managed to agree on a strong pillar of social standards. Where profits will be taxed where they were made. Where terrorists have no loopholes to exploit. Where we have agreed on a proper European Defence Union. Where a single President leads the work of the Commission and the European Council, having been elected after a democratic Europe-wide election campaign. If our citizens wake up to this Union on 30 March 2019,

then they should be able vote in the European Parliament elections a few weeks later with the firm conviction that our Union is a place that works for them.

CONCLUSION

Honourable Members,
Europe was not made to stand still. It must never do so. Helmut Kohl and Jacques Delors taught me that Europe only moves forward when it is bold. The single market, Schengen and the single currency were all written off as pipe dreams before they happened. And yet these three ambitious projects are now a reality. I hear those who say we should not rock the boat now that things have started to get better. But now is not the time to err on the side of caution. We started to fix the roof. But we must complete the job now that the sun is shining and whilst it still is. Because when the next clouds appear on the horizon – and they will – it will be too late. So let's throw off the bowlines. Sail away from the harbour.
And catch the trade winds in our sails.

Source: http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm

Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union

of 4 July 2013 (Federal Law Gazette [BGBl.] Part I p. 2170)

The Bundestag has adopted the following Act:

Section 1 Participation of the Bundestag

(1) In matters concerning the European Union, the Bundestag shall participate in the decision-making processes of the Federation and shall have the right to state its position. The Federal Government shall notify the Bundestag of such matters comprehensively and as early as possible.

(2) Matters concerning the European Union within the meaning of Article 23 of the Basic Law are, in particular, amendments to the Treaties and corresponding amendments at the level of primary law as well as legislative acts of the European Union. International agreements and intergovernmental arrangements are also matters concerning the European Union if they supplement, or are otherwise closely related to, the law of the European Union.

Section 2 Committee on the Affairs of the European Union

The Bundestag shall appoint a Committee on the Affairs of the European Union. The Bundestag may authorise the Committee to deliver opinions on its behalf. It may authorise the Committee to exercise the rights granted to the Bundestag by Article 23 of the Basic Law in relation to the Federal Government. It may also authorise it to exercise the rights granted to the Bundestag by the contractual foundations of the European Union.

Section 3 Notification principles

(1) The Federal Government shall notify the Bundestag comprehensively, as early as possible and continuously of matters concerning the European Union. This notification shall, in principle, be made in writing through the forwarding of documents or the presentation of the Federal Government's own reports and, in addition, orally. The oral notification shall perform a merely supplementary and explanatory function. The Federal Government shall ensure that this notification serves to enable the Bundestag to deliberate on its content.

(2) The notification shall cover, in particular, the Federal Government's decision-making process, the preparation and course of discussions within the institutions of the European Union and the opinions of the European Parliament, of the European Commission and of the other Member States of the European Union as well as the decisions that have been taken. The same shall also apply to all preparatory bodies and working groups.

(3) The duty of notification shall also encompass the preparation and course of discussions at informal ministerial meetings, at euro summits and at meetings of the Eurogroup and of comparable institutions that are held on the basis of international agreements and other arrangements which complement or are otherwise particularly closely related to the law of the European Union. The same shall also apply to all preparatory bodies and working groups.

(4) The core area of the Federal Government's own executive responsibility shall not be affected by the duty of notification.

(5) The Bundestag may waive its right to receive notification in specific cases, unless a parliamentary group or five per cent of the Members of the Bundestag lodge an objection.

Section 4 Transmission of documents and reporting obligations

(1) The notification of the Bundestag under section 3 of this Act shall be effected in particular through the transmission of all of the following items received by the Federal Government:

1. documents:

a. of the institutions of the European Union, the informal ministerial meetings, the Committee of Permanent Representatives and other Council committees and working groups,

b. of the euro summits, the Eurogroup and comparable institutions that meet on the basis of international agreements and other arrangements which complement or are otherwise particularly closely related to the law of the European Union,
c. of all bodies and working groups performing preparatory tasks for the institutions referred to in items a and b above,
2. reports from the Permanent Representation of the Federal Republic of Germany to the European Union or from the Federal Government concerning:
a. meetings of the institutions referred to in subparagraph 1 above,
b. sittings of the European Parliament and meetings of its committees,
c. the convening of trialogues and their proceedings and outcome, and
d. decisions of the European Commission.
The Bundestag must be informed in advance and in sufficiently good time to form an opinion on the subject of the meetings and on the position of the Federal Government and to be able to influence the negotiating line and voting decisions of the Federal Government. Reports of meetings must present at least the positions adopted by the Federal Government and other states, the course of negotiations, intermediate findings and final outcomes as well as any decisions for which parliamentary approval is required.
(2) In addition, the Federal Government shall transmit to the Bundestag:
1. documents and information on the Federal Government's initiatives, opinions, contributions to consultations, draft programmes and explanations for institutions of the European Union, for informal ministerial meetings, for euro summits and for the Eurogroup and comparable institutions that meet on the basis of international agreements and other arrangements which complement or are otherwise particularly closely related to the law of the European Union,
2. relevant initiatives, opinions, contributions to consultations and explanations from governments of Member States of the European Union,
3. relevant initiatives, opinions, contributions to consultations and explanations from the Bundesrat and the Länder, and
4. coordinated instructions for the German representative on the Committee of Permanent Representatives.
The same shall also apply to all preparatory bodies and working groups.
(3) The Federal Government shall communicate information about unofficial documents it has received on matters concerning the European Union and shall make these available on request as early as possible.
(4) Before meetings of the European Council and of the Council, informal ministerial meetings, euro summits and meetings of the Eurogroup and comparable institutions that meet on the basis of international agreements and other arrangements which complement or are otherwise particularly closely related to the law of the European Union, the Federal Government shall notify the Bundestag of each subject of discussion in writing and orally. This notification shall encompass the main features of the subject matter and of the state of negotiations as well as the negotiating line of the Federal Government and its initiatives. After these meetings, the Federal Government shall provide written and oral information on their outcome.
(5) The Federal Government shall regularly transmit to the Bundestag, on at least a quarterly basis, early-warning reports on current political developments in matters concerning the European Union.
(6) The Federal Government shall also notify the Bundestag
1. of the institution of infringement proceedings under Articles 258 and 260 of the Treaty on the Functioning of the European Union by transmitting letters of formal notice and reasoned opinions as well as explanatory information and documents, particularly the response of the Federal Government, in so far as the proceedings concern the failure of the Federation to transpose directives or its incomplete or incorrect transposition of directives,

2. of proceedings before the Court of Justice of the European Union to which the Federal Republic of Germany is a party and shall transmit the pertinent documents relating to such proceedings, and
3. of other proceedings before the Court of Justice of the European Union and shall transmit the pertinent documents in so far as it has received them.

Section 5 Projects of the European Union
(1) Projects of the European Union ('projects') within the meaning of this Act are, in particular,
1. proposals and initiatives for decisions to open negotiations on amendments to the contractual foundations of the European Union,
2. proposals and initiatives for decisions to open negotiations with a view to preparing accessions to the European Union,
3. proposals and initiatives for decisions within the meaning of Article 140(2) of the Treaty on the Functioning of the European Union on the introduction of the euro. proposals for legislative acts of the European Union,
4. proposals for legislative acts of the European Union,
5. negotiating mandates for the European Commission to engage in negotiations on international agreements of the European Union,
6. items for discussion, initiatives, negotiating mandates and negotiation guidelines for the European Commission in the framework of the common commercial policy and the world trade rounds,
7. communications, opinions, green and white papers and recommendations from the European Commission,
8. reports, action plans and policy programmes of the institutions of the European Union,
9. interinstitutional arrangements concluded by the institutions of the European Union,
10. budgetary and financial plans of the European Union,
11. draft international agreements and other arrangements if they supplement, or are otherwise closely related to, the law of the European Union,
12. items for discussion, proposals and initiatives being addressed in the framework of international agreements and arrangements within the meaning of subparagraph 11 above.
(2) Proposals and initiatives of the European Union for which the participation of the Bundestag is required under the Responsibility for Integration Act (Integrationsverantwortungsgesetz) of 22 September 2009 (Federal Law Gazette I, p. 3022), as amended, are also projects within the meaning of the present Act.
(3) The following provisions shall apply to the matters specified below:
1. notwithstanding the provisions of sections 1 to 4 of the present Act, the provisions of the ESM Financing Act (ESM-Finanzierungsgesetz) of 13 September 2012 (Federal Law Gazette I, p. 1918), as amended, shall apply to the European Stability Mechanism;
2. notwithstanding the provisions of sections 1 to 4 of the present Act, the provisions of the Stabilisation Mechanism Act (Stabilisierungsmechanismusgesetz) of 22 May 2010 (Federal Law Gazette I, p. 627), as amended, shall apply to the European Financial Stability Facility;
3. section 7 of the present Act shall apply to the Common Foreign and Security Policy and the Common Security and Defence Policy.

Section 6 Formal forwarding, report form and comprehensive appraisal, conclusion of EU legislative procedures
(1) The Federal Government shall transmit all projects to the Bundestag with a forwarding letter (formal forwarding). The forwarding letter shall be based on the document to be forwarded and contain the following information:
1. the main substance and aim of the project,
2. the date on which the German-language version of the relevant document appeared,

3. the legal basis,
4. the applicable procedure, and
5. the designation of the lead federal ministry.

(2) Within two weeks following the formal forwarding of a project, the Federal Government shall transmit a report in accordance with the annex to this Act (report form). In particular, this form shall contain an appraisal of the project in terms of its compatibility with the principles of subsidiarity and proportionality.

(3) In addition, the Federal Government shall transmit a comprehensive appraisal of proposals for legislative acts of the European Union within two weeks following their referral to the Bundestag committees but no later than the start of their discussion by the Council bodies. Besides indications regarding the competence of the European Union to adopt the proposed legislative act and its compatibility with the principles of subsidiarity and proportionality, this appraisal shall, in the framework of a comprehensive assessment of the impact on the Federal Republic of Germany, contain statements, particularly in the light of legal, economic, financial, social and environmental considerations, on the substance of the regulatory provisions, alternatives, costs, administrative burden and the need for transposition. In the case of other projects within the meaning of section 5(1) of this Act, a comprehensive appraisal of the project shall be made solely on request.

(4) In the case of urgent proposals, the time limits defined in paragraphs 2 and 3 above shall be shortened so as to ensure timely notification of the Bundestag and the opportunity for the latter to deliver an opinion in accordance with the first sentence of section 8(1) of this Act. If a particularly extensive appraisal is required, the time limit may be lengthened.

(5) In addition, the Federal Government shall draw up detailed reports on request on particularly complex or significant projects.

(6) The Federal Government shall notify the Bundestag of the conclusion of a legislative procedure of the European Union; this notification shall also contain an appraisal as to whether the Federal Government considers the legislative act to be consistent with the principles of subsidiarity and proportionality; in the case of directives, the Federal Government shall inform the Bundestag of time limits to be observed for transposition into national law and of the transposition requirement.

Section 7 Common Foreign and Security Policy and Common Security and Defence Policy

(1) In the realm of the Common Foreign and Security Policy and the Common Security and Defence Policy, the Federal Government shall provide comprehensive, continuous notification as early as possible. The notification shall, as a rule, be made in writing. It shall comprise the forwarding of a summary of the legislative acts that are due to be the subject of discussion, an appraisal of them and a prognosis of the future course of discussions. Section 4(4) shall apply, mutatis mutandis, to meetings of the European Council and the Council featuring decisions and conclusions in the realm of the Common Foreign and Security Policy and the Common Security and Defence Policy.

(2) In addition, the Federal Government shall forward to the Bundestag, on request, documents of fundamental importance in accordance with the provisions of section 6(1) of this Act. Section 6(2) of this Act shall apply, mutatis mutandis.

(3) The Federal Government shall also provide continuous and early oral notification of all relevant developments in the realm of the Common Foreign and Security Policy and the Common Security and Defence Policy.

(4) The Federal Government shall notify the competent committees of the Bundestag orally about the meetings of the Political and Security Committee.

Section 8 Opinions of the Bundestag

(1) Before participating in projects, the Federal Government shall give the Bundestag the opportunity to deliver an opinion. To this end, the Federal Government shall continuously

transmit to the Bundestag updated information on the course of discussions which will enable the Bundestag to determine, on the basis of the course of the discussions, the time by which it seems appropriate to deliver an opinion.
(2) If the Bundestag delivers an opinion, the Federal Government shall use it as a basis for its negotiations. The Federal Government shall notify the Bundestag continuously about the consideration given to its opinion in negotiations.
(3) The Bundestag may adapt and supplement its opinion while a project is being discussed. The first sentence of paragraph 2 above shall apply, mutatis mutandis.
(4) If the Bundestag avails itself of the opportunity to deliver an opinion under the first sentence of Article 23(3) of the Basic Law (Grundgesetz), the Federal Government shall invoke the requirement of prior parliamentary approval in the negotiations if the main interests expressed in the decision of the Bundestag cannot be asserted. The Federal Government shall notify the Bundestag thereof without delay in a special report. In its form and content, this report must lend itself to discussion by the bodies of the Bundestag. Before the final decision, the Federal Government shall endeavour to reach agreement with the Bundestag. This shall also apply if the Bundestag delivers an opinion on matters concerning municipal services of public interest in connection with projects of the European Union. The foregoing provisions shall not prejudice the right of the Federal Government, in awareness of the Bundestag's opinion, to take divergent decisions for good reasons of foreign or integration policy.
(5) After the final decision, the Federal Government shall notify the Bundestag in writing without delay, particularly as regards the adoption of the parliamentary opinion. If not all of the interests expressed in the opinion have been taken into account, the Federal Government shall also state the reasons for this. At the request of one quarter of the Members of the Bundestag, the Federal Government shall also explain these reasons in the framework of a plenary debate.

Section 9 Opening of negotiations on accessions and treaty amendments
(1) When notifying the Bundestag of proposals and initiatives for decisions on the opening of negotiations
1. to prepare an accession to the European Union, or
2. to make amendments to the contractual foundations of the European Union,
the Federal Government shall refer to the Bundestag's right to deliver an opinion under section 8 of this Act.
(2) Before the final decision in the Council or in the European Council, the Federal Government is to reach agreement with the Bundestag. This shall not prejudice the right of the Federal Government, in awareness of the Bundestag's opinion, to take divergent decisions for good reasons of foreign or integration policy.

Section 9a Introduction of the euro in a Member State
(1) When notifying the Bundestag of proposals and initiatives for Council decisions under Article 140(2) of the Treaty on the Functioning of the European Union on the introduction of the euro in an additional Member State, the Federal Government shall refer to the Bundestag's right to deliver an opinion under section 8 of this Act.
(2) Before the final decision in the Council, the Federal Government is to reach agreement with the Bundestag. This shall not prejudice the right of the Federal Government, in awareness of the Bundestag's opinion, to take divergent decisions for good reasons of foreign or integration policy.

Section 10 Access to databases, confidential treatment of documents
(1) Within the scope of the provisions on data protection, the Federal Government shall grant the Bundestag access to the documentary databases of the European Union that are accessible to the Federal Government.

(2) The documents of the European Union shall, in principle, be transmitted openly. Security classifications applied by the institutions of the European Union to ensure special confidentiality shall be respected by the Bundestag. Any national classification as confidential which may be necessary for these documents or for other information, reports and communications to be transmitted to the Bundestag within the scope of this Act shall be applied prior to dispatch by the Federal Government and shall be respected by the Bundestag. The reasons for the classification shall be explained on request.
(3) The Bundestag shall take account of the particular need to protect current confidential negotiations by according them confidential treatment.

Section 11 Bundestag Liaison Office
(1) The Bundestag may maintain direct contacts with bodies of the European Union through a liaison office in so far as this enables it to exercise its participatory rights in matters concerning the European Union. The parliamentary groups in the Bundestag shall second representatives to the liaison office.
(2) The Federal Government shall assist the Bundestag Liaison Office in its professional tasks through the Permanent Representation of the Federal Republic of Germany to the European Union and the Embassy of the Federal Republic of Germany to the Kingdom of Belgium.

Section 12 Entry into force, termination
This Act shall enter into force on the day following the date of promulgation. At the same time, the Act of 12 March 1993 on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union (Federal Law Gazette I, p. 311), as amended by Article 2 of the Act of 13 September 2012 (Federal Law Gazette 2012 II, p. 1006), shall terminate.

Source: https://www.gesetze-im-internet.de/englisch_euzbbg/index.html

Federal Constitutional Court of Germany, Press Release No. 72/2009 of 30 June 2009
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

Judgment of 30 June 2009, 2 BvE 2/08

The Second Senate of the Federal Constitutional Court has decided today that the Act Approving the Treaty of Lisbon (*Zustimmungsgesetz zum Vertrag von Lissabon*) is compatible with the Basic Law. In contrast, the Act Extending and Strengthening the Rights of the Bundestag and the Bundesrat in European Union Matters (*Gesetz über die Ausweitung und Stärkung der Rechte des Bundestages und des Bundesrates in Angelegenheiten der Europäischen Union*) infringes Article 38.1 in conjunction with Article 23.1 of the Basic Law (*Grundgesetz* - GG) insofar as the *Bundestag* and the *Bundesrat* have not been accorded sufficient rights of participation in European lawmaking procedures and treaty amendment procedures. The Federal Republic of Germany's instrument of ratification of the Treaty of Lisbon may not be deposited as long as the constitutionally required legal elaboration of the parliamentary rights of participation has not entered into force. The decision was reached unanimously as regards the result, by seven votes to one as regards the reasoning (for the facts see German press releases no. 2/2009 of 16 January 2009 and no. 9/2009 of 29 January 2009).

In essence, the decision is based on the following considerations:
1. Overview of the central aspects of the judgment
The judgment focuses on the connection between the democratic system prescribed by the Basic Law on the level of the Federation and the level of independent rule which has been reached on the European level. The structural problem of the European Union is at the centre of the review of constitutionality: The extent of the Union's freedom of action has steadily and considerably increased, not least by the Treaty of Lisbon, so that meanwhile in some fields of policy, the European Union has a shape that corresponds to that of a federal state, i.e. is analogous to that of a state. In contrast, the internal decision-making and appointment procedures remain predominantly committed to the pattern of an international organisation, i.e. are analogous to international law; as before, the structure of the European Union essentially follows the principle of the equality of states.
As long as, consequently, no uniform European people, as the subject of legitimisation, can express its majority will in a politically effective manner that takes due account of equality in the context of the foundation of a European federal state, the peoples of the European Union, which are constituted in their Member States, remain the decisive holders of public authority, including Union authority. In Germany, accession to a European federal state would require the creation of a new constitution, which would go along with the declared waiver of the sovereign statehood safeguarded by the Basic Law. There is no such act here. The European Union continues to constitute a union of rule (*Herrschaftsverband*) founded on international law, a union which is permanently supported by the intention of the sovereign Member States. The primary responsibility for integration is in the hands of the national constitutional bodies which act on behalf of the peoples. With increasing competences and further independence of the institutions of the Union, safeguards that keep up with this development are necessary in order to preserve the fundamental principle of conferral exercised in a restricted and controlled manner by the Member States. With progressing integration, fields of action which are essential for the development of the Member States' democratic opinion-formation must be retained. In particular, it must be guaranteed that the responsibility for integration can be exercised by the state bodies of representation of the peoples.
The further development of the competences of the European Parliament can reduce, but not completely fill, the gap between the extent of the decision-making power of the Union's institutions and the citizens' democratic power of action in the Member States. Neither as regards its composition nor its position in the European competence structure is the European Parliament sufficiently prepared to take representative and assignable majority decisions as uniform decisions on political direction. Measured against requirements placed on democracy in states, its election does not take due account of equality, and it is not competent to take authoritative decisions on political direction in the context of the supranational balancing of interests between the states. It therefore cannot support a parliamentary government and organise itself with regard to party politics in the system of government and opposition in such a way that a decision on political direction taken by the European electorate could have a politically decisive effect. Due to this structural democratic deficit, which cannot be resolved in an association of sovereign national states (*Staatenverbund*), further steps of integration that go beyond the *status quo* may undermine neither the States' political power of action nor the principle of conferral.
The peoples of the Member States are the holders of the constituent power. The Basic Law does not permit the special bodies of the legislative, executive and judicial power to dispose of the essential elements of the constitution, i.e. of the constitutional identity (Article 23.1 sentence 3, Article 79.3 GG). The constitutional identity is an inalienable element of the democratic self-determination of a people. To ensure the effectiveness of the right to vote and to preserve democratic self-determination, it is necessary for the Federal Constitutional Court to watch, within the boundaries of its competences, over the Community or Union authority's not violating the constitutional identity by its acts and not evidently transgressing the competences conferred on it. The transfer of competences, which has been increased once again by the Treaty of Lisbon, and the independence of decision-making

procedures therefore require an effective *ultra vires* review and an identity review of instruments of European origin in the area of application of the Federal Republic of Germany.

2. The standard of review

a) The Act Approving the Treaty of Lisbon is measured by the Federal Constitutional Court against the standard of the right to vote. As a right that is equivalent to fundamental right, a violation of the right to vote can be challenged by a constitutional complaint (Article 38.1 sentence 1 in conjunction with Article 93.1 no. 4a GG). The right to vote specifies the right to democratic self-determination, to free and equal participation in the state authority exercised in Germany and to compliance with the principle of democracy including the respect of the constituent power of the people. The review of a violation of the right to vote also comprises encroachments on the principles which are codified in Article 79.3 of the Basic Law as the identity of the constitution. The citizens' right to determine, in equality and freedom, public authority affecting them with regard to persons and subject-matters through elections and other votes is anchored in human dignity and is the fundamental element of the principle of democracy. The principle of democracy is not amenable to weighing with other legal interests. Amendments of the Basic Law affecting the principles laid down in Article 1 and Article 20 of the Basic Law shall be inadmissible (Article 79.3 of the Basic Law). The so-called eternity guarantee takes the disposal of the identity of the free constitutional order even out of the hands of the constitution-amending legislature. The constituent power has not granted the representatives and bodies of the people a mandate to change the constitutional principles which are fundamental pursuant to Article 79.3 GG.

b) At the same time, the elaboration of the principle of democracy by the Basic Law is open to the objective of integrating Germany into an international and European peaceful order. The German constitution is oriented towards opening the state system of rule to the peaceful cooperation of the nations and towards European integration. Neither the integration *pari passu* into the European Union nor the integration into peacekeeping systems such as the United Nations necessarily lead to a change in the system of exercise of public authority in the Federal Republic of Germany. Instead, it is a voluntary, mutual commitment *pari passu*, which secures peace and strengthens the possibilities of shaping policy by joint coordinated action. The constitutional mandate to realise a united Europe which follows from Article 23.1 of the Basic Law and its Preamble means with regard to the German constitutional bodies that participation in European integration is not left to their political discretion. The Basic Law wants European integration and an international peaceful order. Therefore not only the principle of openness towards international law (*Völkerrechtsfreundlichkeit*), but also the principle of openness towards European law (*Europarechtsfreundlichkeit*) applies.

c) The authorisation to transfer sovereign powers to the European Union pursuant to Article 23.1 GG is, however, granted under the condition that the sovereign statehood of a constitutional state is maintained on the basis of a responsible integration programme according to the principle of conferral and respecting the Member States' constitutional identity, and that at the same time the Federal Republic of Germany does not lose its ability to politically and socially shape the living conditions on its own responsibility. Article 23.1 GG and the Preamble do not say anything about the final character of the political organisation of Europe. With its Article 23, the Basic Law grants powers to participate and develop a European Union which is designed as a *Staatenverbund*. The concept of *Verbund* covers a close long-term association of states which remain sovereign, an association which exercises public authority on the basis of a treaty, whose fundamental order is, however, subject to the disposal of the Member States alone and in which the peoples of their Member States, i.e. the citizens of the states, remain the subjects of democratic legitimisation. The European Union must comply with democratic principles as regards its nature and extent and also as regards its own organisational and procedural elaboration (Article 23.1, Article 20.1 and 20.2 in conjunction with Article 79.3 of the Basic Law). This means firstly that European integration may not result in the system of democratic rule in Germany being undermined. This does not mean that a number of sovereign powers which can be determined from the outset or specific types of sovereign powers must remain in the hands of the state. European unification on the basis of a union of sovereign states under the Treaties may, however, not be realised in such a way that the Member States do not retain sufficient room for the political formation of the economic, cultural and social circumstances of life. This applies in particular to areas which shape the citizens' circumstances of life, in particular the private space of their own responsibility and of political and social security, which is protected by the fundamental rights, and to political decisions that particularly depend on previous understanding as regards culture, history and language and which unfold in discourses in the space of a political public that is organised by party politics and Parliament. To the extent that in these areas, which are of particular importance for democracy, a transfer of sovereign powers is permitted at all, a narrow interpretation is required. This concerns in particular the administration of criminal law, the police monopoly, and that of the military, on the use of force, fundamental fiscal decisions on revenue and expenditure, the shaping of the circumstances of life by social policy and important decisions on cultural issues such as the school and education system, the provisions governing the media, and dealing with religious communities.

d) The Basic Law does not grant the German state bodies powers to transfer sovereign powers in such a way that their exercise can independently establish other competences for the European Union. It prohibits the transfer of competence to decide on its own competence (*Kompetenz-Kompetenz*). The principle of conferral is therefore not only a principle of European law (Article 5.1 of the Treaty establishing the European Community; Article 5.1

sentence 1 and 5.12 of the Treaty on European Union in its version of the Treaty of Lisbon), but, just like the European Union's obligation to respect the Member States' national identity (Article 6.3 TEU; Article 4.2 sentence 1 TEU Lisbon), it takes up constitutional principles from the Member States. The integration programme of the European Union must therefore be sufficiently precise. To the extent that the Member States elaborate the law laid down in the Treaties in such a way that, with the principle of conferral fundamentally continuing to apply, an amendment of the law laid down in the Treaties can be brought about without a ratification procedure, a special responsibility is incumbent on the legislative bodies, apart from the Federal Government, as regards participation, which, in Germany, must, on the national level, comply with the requirements under Article 23.1 of the Basic Law (responsibility for integration). The act approving a treaty amending a European Treaty and the national accompanying laws must therefore be such that European integration continues to take place according to the principle of conferral without the possibility for the European Union of taking possession of *Kompetenz-Kompetenz* or to violate the Member States' constitutional identity which is not amenable to integration, in this case, that of the Basic Law. For borderline cases of what is still constitutionally admissible, the German legislature must, if necessary, make arrangements with its laws that accompany approval to ensure that the responsibility for integration of the legislative bodies can sufficiently develop.

e) The Federal Constitutional Court reviews whether legal instruments of the European institutions and bodies, adhering to the principle of subsidiarity under Community and Union law (Article 5.2 ECT; Article 5.1 sentence 2 and 5.3 TEU Lisbon), keep within the boundaries of the sovereign powers accorded to them by way of conferred power (*ultra vires* review). Furthermore, the Federal Constitutional Court reviews whether the inviolable core content of the constitutional identity of the Basic Law pursuant to Article 23.1 sentence 3 in conjunction with Article 79.3 of the Basic Law is respected (identity review). The exercise of these competences of review, which are constitutionally required, safeguards the fundamental political and constitutional structures of sovereign Member States, which are recognised by Article 4.2 sentence 1 TEU Lisbon, even with progressing integration. Its application in a given case follows the principle of the Basic Law's openness towards European law.

3. The subsumption

a) There are no decisive constitutional objections to the Act Approving the Treaty of Lisbon.

aa) With the present status of integration, the European Union does, even upon the entry into force of the Treaty of Lisbon, not yet attain a shape that corresponds to the level of legitimisation of a democracy constituted as a state. It is not a federal state but remains an association of sovereign states to which the principle of conferral applies.

The European Parliament is not a body of representation of a sovereign European people but a supranational body of representation of the peoples of the Member States, so that the principle of electoral equality, which is common to all European states, is not applicable with regard to the European Parliament. Other provisions of the Treaty of Lisbon, such as the double qualified majority in the Council (Article 16.4 TEU Lisbon, Article 238.2 of the Treaty on the Functioning of the European Union), the elements of participative, associative and direct democracy (Art. 11 TEU Lisbon) as well as the institutional recognition of the national Parliaments (Article 12 TEU Lisbon) cannot compensate the deficit of European public authority that exists when measured against requirements on democracy in states, but can nevertheless increase the level of legitimisation of the *Staatenverbund*.

bb) With the entry into force of the Treaty of Lisbon, the Federal Republic of Germany will remain a sovereign state. In particular, the substance of German state authority is protected. The distribution of the European Union's competences, and their delimitation from those of the Member States, takes place according to the principle of conferral and according to other mechanisms of protection under substantive law, in particular according to provisions concerning the exercise of competences. The transfer of sovereign powers to the European Union, which is thus performed in a controlled and responsible manner, is not called into question by individual provisions of the Treaty of Lisbon. This applies first of all to the simplified amendment procedure (see in particular Article 48.6 TEU Lisbon). The "approval" of the Federal Republic of Germany in simplified revision procedures requires a law within the meaning of Article 23.1 sentence 2 of the Basic Law as a *lex specialis* with regard to Article 59.2.

cc) To the extent that the general bridging clause under Article 48.7 TEU Lisbon makes possible the transition from the principle of unanimity to the principle of qualified majority in the decision-making of the Council, or the transition from the special to the ordinary legislative procedure, this is also a Treaty amendment under primary law, which is to be assessed pursuant to Article 23.1 sentence 2 of the Basic Law. The national parliaments' right to make known their opposition (Article 48.7(3) TEU Lisbon) is not a sufficient equivalent to the requirement of ratification. The representative of the German government in the European Council may therefore only consent to a Treaty amendment brought about by the application of the general bridging clause if the German *Bundestag* and the *Bundesrat* have adopted within a period yet to be determined a law pursuant to Article 23.1 of the Basic Law, which takes the purpose of Article 48.7(3) TEU Lisbon as an orientation. This also applies in case of the special bridging clause pursuant to Article 81.3(2) TFEU being used.

dd) A law within the meaning of Article 23.1 sentence 2 of the Basic Law is not required to the extent that special bridging clauses are restricted to areas which are already sufficiently determined by the Treaty of Lisbon,

and which do not provide for a right for national Parliaments to make known their opposition. Also in these cases, however, it is incumbent on the *Bundestag* and, to the extent that the legislative competences of the *Länder* are affected, on the *Bundesrat*, to comply with their responsibility for integration in another suitable manner. The veto right in the Council may not be waived without the participation of the competent legislative bodies even as regards subject-matters which have already been factually determined in the Treaties. The representative of the German government in the European Council or in the Council may therefore only consent to an amendment of primary legislation through the application of one of the special bridging clauses on behalf of the Federal Republic of Germany if the German *Bundestag* and, to the extent that this is required by the provisions on legislation, the *Bundesrat*, have approved this decision within a period yet to be determined, which takes the purpose of Article 48.7(3) TEU Lisbon as an orientation.

ee) Also the flexibility clause under Article 352 TFEU can be construed in such a way that the integration programme envisaged in the provisions can still be predicted and determined by the German legislative bodies. With a view to the undetermined nature of possible cases of application, the use of the flexibility clause constitutionally requires ratification by the German *Bundestag* and the *Bundesrat* on the basis of Article 23.1 sentence 2 of the Basic Law.

ff) The Federal Constitutional Court's competence of review is not affected by Declaration no. 17 on Primacy annexed to the Final Act of the Treaty of Lisbon. The foundation and the limit of the applicability of European Union law in the Federal Republic of Germany is the order to apply the law which is contained in the Act Approving the Treaty of Lisbon, which can only be given within the limits of the current constitutional order. In this respect, it is insignificant whether the primacy of application, which the Federal Constitutional Court has already essentially recognised for Community law, is provided for in the Treaties themselves or in Declaration no. 17 annexed to the Final Act of the Treaty of Lisbon.

gg) The competences that have been newly established or deepened by the Treaty of Lisbon in the areas of judicial cooperation in criminal and civil matters, external trade relations, common defence and with regard to social concerns can, within the meaning of an interpretation of the Treaty that does justice to its purpose, and must, in order to avoid imminent unconstitutionality, be exercised by the institutions of the European Union in such a way that on the level of the Member States, tasks of sufficient weight as to their extent as well as their substance remain which legally and practically are the precondition of a living democracy. In this context, the following aspects must be given particular attention:

- Due to the fact that democratic self-determination is affected in an especially sensitive manner by provisions of criminal law and law of criminal procedure, the corresponding foundations of competence in the Treaties must be interpreted strictly - on no account extensively -, and their use requires particular justification.
- The use of the dynamic blanket authorisation pursuant to Article 83.1(3) TFEU to extend the list of particularly serious crimes with a cross-border dimension "on the basis of developments in crime" is factually tantamount to an extension of the competences of the European Union and is therefore subject to the requirement of the enactment of a specific statute under Article 23.1 sentence 2 GG.
- In the area of judicial cooperation in criminal matters, particular requirements must additionally be placed on the provisions which accord a Member State special rights in the legislative procedure (Article 82.3, Article 83.3 TFEU: so-called emergency brake procedure). From the perspective of German constitutional law, the necessary measure of democratic legitimisation via the national parliaments can only be safeguarded by the German representative in the Council exercising the Member State's rights set out in Article 82.3 and Article 83.3 TFEU only on the instruction of the *Bundestag* and, to the extent that this is required by the provisions on legislation, of the *Bundesrat*. (...)

b) There are also no decisive constitutional objections against the Act Amending the Basic Law (Articles 23, 45 and 93). A violation of democratic principles pursuant to Article 79.3 GG occurs neither by Article 23.1a GG, new version, which elaborates the right to bring a subsidiarity action as a minority right and sets the quorum at one fourth of the Members, nor by Article 45 sentence 3 GG, new version.

c) In contrast, the Act Extending and Strengthening the Rights of the Bundestag and the Bundesrat in European Union Matters infringes Article 38.1 in conjunction with Article 23.1 of the Basic Law insofar as rights of participation of the German *Bundestag* and the *Bundesrat* have not been elaborated to the constitutionally required extent. If the Member States elaborate the European law laid down in the Treaties on the basis of the principle of conferral in such a way that an amendment of the Treaty law can be brought about solely or decisively by the institutions of the European Union - albeit under the requirement of unanimity in the Council -, a special responsibility is incumbent on the national constitutional bodies in the context of participation. In Germany, this responsibility for integration must on the national level comply with the constitutional requirements made in particular under Article 23.1 GG.

Worksheet: Buzzword Bingo – European Law

equivalent effect	globalisation	government liability	Kompetenz-Kompetenz	esprit de corps
context	four fundamental freedoms	Lisbon	concours	acquis communautaire
Luxembourg	three pillars	European Coal and Steel Community	Van Gend & Loos	institutional balance
openness towards European law	multi-level governance	democratic deficit	rule of law	funded by the EU
effet utile	judicial review	Flaminio Costa	directorate-general	Treaties of Rome

If a buzzword is used during class, you check it off. The objective is to fill a row and to modify each field by adding a definition, citation or picture in order to substantiate the abstract terms or names. Cf. http://dilbert.com/strip/1994-02-22.

Worksheet: Exercises

	Member State	European Institution	German Basic Law	Act of Parliament*	Case	EU-Agency
A	Belgium	European Council	Preamble	Medicinal Products Act (AMG)	AETR	CEDEFOP
B	Germany	Council	2	The Fiscal Code of Germany (AO)	Annibaldi	CEPOL
C	France	Commission	3	Act on the Implementation (…) in the Safety and Health Protection of Workers at Work (ArbSchG)	Casagrande	CPVO
D	Italy	Court of Justice	8	Residence Act (AufenthG)	Chiquita	EACEA
E	Netherlands	Central Bank	9	General Ordinance on the Weapons Act (AWaffV)	CILFIT	EACI
F	Luxembourg	President of the EC	11	Federal Data Protection Act (BDSG)	CMA	ECDC
G	Denmark	High Representative of the Union	12	Works Constitution Act (BetrVG)	Daily Mail	ECHA
H	Ireland	Court of Auditors	12a	Act on the Legal Protection of Designs (DesignG)	ERT	EDA
I	UK	COREPER	14	Freedom of Movement Act_EU	Großkrotzenburg	EEA
J	Greece	Committee if the Regions	16	Commercial Code (HGB)	Iida	EFSA
K	Portugal	Economic and Social Committee	16a	Insolvency Statute (InsO)	Kalanke	EIGE
L	Span	Investment Bank	23	Act on International Cooperation in Criminal Matters (IRG)	Karlsson	EMCDDA
M	Finland	Ombudsman	24	(Cultural Property Protection Act (KGSG)	Potatoe starch	EMEA
N	Austria	European Council	28	Trade Mark Act (MarkenG)	Kreil	ENISA
O	Sweden	Council	38	Patent Act (PatentG)	Art treasures	ERA
P	Estonia	Commission	45	Product Safety Act (ProdSG)	Omega	ERC
Q	Latvia	Court of Justice	50	Act on Copyright and Related Rights (UrhG)	Parking Brixen	EUIPO
R	Lithuania	Central Bank	52	Transformation Act (UmwG)	Philip Morris	ETF
S	Malta	President of the EC	59	Act Against Unfair Competition (UWG)	Plaumann	EUISS
T	Poland	High Representative of the Union	73	Insurance Tax Act (VersStG)	Porsche	ACER
U	Slovakia	Court of Auditors	76	Insurance Contract Act (VVG)	Regulatory holiday	EU-OSHA
V	Slovenia	COREPER	77	Weapons Act (WaffG)	Rottmann	EU-ROJUST
W	Czech Republic	Committee if the Regions	87d	Code of Civil Procedure (ZPO)	Schrems	EUROPOL
X	Hungary	Economic and Social Committee	87e	Law on the Remuneration of Attorneys (RVG)	Stauder	EUSC
Y	Cyprus	Investment Bank	87f	Foreign Maintenance Act (AUG)	Table Wine	FRA
Z	Bulgaria	Ombudsman	88	Federal Mining Act (BBergG)	Wachauf	FRONTEX
Γ	Romania	European Council	106	Biological Agents Ordinance (BioStoffV)	Zambrano	GNSS/ GSA
Ł	Croatia	Council	108	Members of the European Parliament Act	Zhu and Chen	TENT-T EA
Å	*Turkey*	Commission	115	Civil Code (BGB)	Zuckerfabrik	ESA

* http://www.gesetze-im-internet.de/Teilliste_translations.html

and facilities to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity;
24. Welcome the important role played by national institutions in the genuine and constructive promotion of human rights, and believe that the conceptualization and eventual establishment of such institutions are best left for the States to decide;
25. Acknowledge the importance of cooperation and dialogue between governments and non-governmental organizations on the basis of shared values as well as mutual respect and understanding in the promotion of human rights, and encourage the non-governmental organizations in consultative status with the Economic and Social Council to contribute positively to this process in accordance with Council resolution 1296 (XLIV);
26. Reiterate the need to explore the possibilities of establishing regional arrangements for the promotion and protection of human rights in Asia;
27. Reiterate further the need to explore ways to generate international cooperation and financial support for education and training in the field of human rights at the national level and for the establishment of national infrastructures to promote and protect human rights if requested by States;
28. Emphasize the necessity to rationalize the United Nations human rights mechanism in order to enhance its effectiveness and efficiency and the need to ensure avoidance of the duplication of work that exists between the treaty bodies, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights, as well as the need to avoid the multiplicity of parallel mechanisms;
29. Stress the importance of strengthening the United Nations Centre for Human Rights with the necessary resources to enable it to provide a wide range of advisory services and technical assistance programmes in the promotion of human rights to requesting States in a timely and effective manner, as well as to enable it to finance adequately other activities in the field of human rights authorized by competent bodies;
30. Call for increased representation of the developing countries in the Centre for Human Rights.

Source: Sullivan/Kymlicka (eds.), The Globalization of Ethics, 2007, pp. 263-6.

cal pressure;
6. Reiterate that all countries, large and small, have the right to determine their political systems, control and freely utilize their resources, and freely pursue their economic, social and cultural development;
7. Stress the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization, and that no violation of human rights can be justified;
8. Recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds;
9. Recognize further that States have the primary responsibility for the promotion and protection of human rights through appropriate infrastructure and mechanisms, and also recognize that remedies must be sought and provided primarily through such mechanisms and procedures;
10. Reaffirm the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the need to give equal emphasis to all categories of human rights;
11. Emphasize the importance of guaranteeing the human rights and fundamental freedoms of vulnerable groups such as ethnic, national, racial, religious and linguistic minorities, migrant workers, disabled persons, indigenous peoples, refugees and displaced persons;
12. Reiterate that self-determination is a principle of international law and a universal right recognized by the United Nations for peoples under alien or colonial domination and foreign occupation, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural development, and that its denial constitutes a grave violation of human rights;
13. Stress that the right to self-determination is applicable to peoples under alien or colonial domination and foreign occupation, and should not be used to undermine the territorial integrity, national sovereignty and political independence of States;
14. Express concern over all forms of violation of human rights, including manifestations of racial discrimination, racism, apartheid, colonialism, foreign aggression and occupation, and the establishment of illegal settlements in occupied territories, as well as the recent resurgence of neo-nazism, xenophobia and ethnic cleansing;
15. Underline the need for taking effective international measures in order to guarantee and monitor the implementation of human rights standards and effective and legal protection of people under foreign occupation;
16. Strongly affirm their support for the legitimate struggle of the Palestinian people to restore their national and inalienable rights to self-determination and independence, and demand an immediate end to the grave violations of human rights in the Palestinian, Syrian Golan and other occupied Arab territories including Jerusalem;
17. Reaffirm the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights, which must be realized through international cooperation, respect for fundamental human rights, the establishment of a monitoring mechanism and the creation of essential international conditions for the realization of such right;
18. Recognize that the main obstacles to the realization of the right to development lie at the international macroeconomic level, as reflected in the widening gap between the North and the South, the rich and the poor;
19. Affirm that poverty is one of the major obstacles hindering the full enjoyment of human rights;
20. Affirm also the need to develop the right of humankind regarding a clean, safe and healthy environment;
21. Note that terrorism, in all its forms and manifestations, as distinguished from the legitimate struggle of peoples under colonial or alien domination and foreign occupation, has emerged as one of the most dangerous threats to the enjoyment of human rights and democracy, threatening the territorial integrity and security of States and destabilizing legitimately constituted governments, and that it must be unequivocally condemned by the international community;
22. Reaffirm their strong commitment to the promotion and protection of the rights of women through the guarantee of equal participation in the political, social, economic and cultural concerns of society, and the eradication of all forms of discrimination and of gender-based violence against women;
23. Recognize the rights of the child to enjoy special protection and to be afforded the opportunities

Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights

The Ministers and representatives of Asian States, meeting at Bangkok from 29 March to 2 April 1993, pursuant to General Assembly resolution 46/116 of 17 December 1991 in the context of preparations for the World Conference on Human rights, adopt this Declaration, to be known as "The Bangkok Declaration", which contains the aspirations and commitments of the Asian region:

BANGKOK DECLARATION

Emphasizing the significance of the World Conference on Human Rights, which provides an invaluable opportunity to review all aspects of human rights and ensure a just and balanced approach thereto,
Recognizing the contribution that can be made to the World Conference by Asian countries with their diverse and rich cultures and traditions,
Welcoming the increased attention being paid to human rights in the international community,
Reaffirming their commitment to principles contained in the Charter of the United Nations and the Universal Declaration on Human Rights,
Recalling that in the Charter of the United Nations the question of universal observance and promotion of human rights and fundamental freedoms has been rightly placed within the context of international cooperation,
Noting the progress made in the codification of human rights instruments, and in the establishment of international human rights mechanisms, while expressing concern that these mechanisms relate mainly to one category of rights,
Emphasizing that ratification of international human rights instruments, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, by all States should be further encouraged,
Reaffirming the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of States,
Stressing the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization,
Recognizing that the promotion of human rights should be encouraged by cooperation and consensus, and not through confrontation and the imposition of incompatible values,
Reiterating the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the inherent interrelationship between development, democracy, universal enjoyment of all human rights, and social justice, which must be addressed in an integrated and balanced manner,
Recalling that the Declaration on the Right to Development has recognized the right to development as a universal and inalienable right and an integral part of fundamental human rights,
Emphasizing that endeavours to move towards the creation of uniform international human rights norms must go hand in hand with endeavours to work towards a just and fair world economic order,
Convinced that economic and social progress facilitates the growing trend towards democracy and the promotion and protection of human rights,
Stressing the importance of education and training in human rights at the national, regional and international levels and the need for international cooperation aimed at overcoming the lack of public awareness of human rights,
1. Reaffirm their commitment to the principles contained in the Charter of the United Nations and the Universal Declaration on Human Rights as well as the full realization of all human rights throughout the world;
2. Underline the essential need to create favourable conditions for effective enjoyment of human rights at both the national and international levels;
3. Stress the urgent need to democratize the United Nations system, eliminate selectivity and improve procedures and mechanisms in order to strengthen international cooperation, based on principles of equality and mutual respect, and ensure a positive, balanced and non-confrontational approach in addressing and realizing all aspects of human rights;
4. Discourage any attempt to use human rights as a conditionality for extending development assistance;
5. Emphasize the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of politi-

Explanation Relating to the Charter of Fundamental Rights
Official Journal of the European Union, C 303/17

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.
(…)

Title VII — General provisions governing the interpretation and application of the charter

Explanation on Article 51 — Field of application
The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by the Cologne European Council. The term ‘institutions’ is enshrined in the Treaties. The expression ‘bodies, offices and agencies’ is commonly used in the Treaties to refer to all the authorities set up by the Treaties or by secondary legislation (see, e.g., Articles 15 or 16 of the Treaty on the Functioning of the European Union).
As regards the Member States, it follows unambiguously from the case-law of the Court of Justice that the requirement to respect fundamental rights defined in the context of the Union is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, Case C-260/89 ERT [1991] ECR I-2925; judgment of 18 December 1997, Case C-309/96
Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case-law in the following terms: ‘In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ...’ (judgment of 13 April 2000, Case C-292/97 [2000] ECR I-2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.
Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the Treaties confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by the Treaties. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter may arise only within the limits of these same powers.
Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the Treaties. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant [1998] ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the reference to the Charter in Article 6 of the Treaty on European Union cannot be understood as extending by itself the range of Member State action considered to be ‘implementation of Union law’ (within the meaning of paragraph 1 and the above-mentioned case-law).

The vigilance of individuals concerned to protect their rights amounts to an effective supervision in addition to the supervision entrusted by articles 169 and 170 to the diligence of the commission and of the member states.

It follows from the foregoing considerations that, according to the spirit, the general scheme and the wording of the treaty, article 12 must be interpreted as producing direct effects and creating individual rights which national courts must protect.

European Court of Justice, Judgment of 15 July 1964, Case 6-64, Flaminio Costa/ENEL

By contrast with ordinary international treaties, the eec treaty has created its own legal system which, on the entry into force of the treaty, became an integral part of the legal systems of the member states and which their courts are bound to apply.

By creating a community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the states to the community, the member states have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.

The integration into the laws of each member state of provisions which derive from the community, and more generally the terms and the spirit of the treaty, make it impossible for the states, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity. Such a measure cannot therefore be inconsistent with that legal system. The executive force of community law cannot vary from one state to another in deference to subsequent domestic laws, without jeopardizing the attainment of the objectives of the treaty set out in article 5 (2) and giving rise to the discrimination prohibited by article 7.

The obligations undertaken under the treaty establishing the community would not be unconditional, but merely contingent, if they could be called in question by subsequent legislative acts of the signatories. Wherever the treaty grants the states the right to act unilaterally, it does this by clear and precise provisions (for example articles 15, 93 (3), 223, 224 and 225). Applications, by member states for authority to derogate from the treaty are subject to a special authorization procedure (for example articles 8 (4), 17 (4), 25, 26, 73, the third subparagraph of article 93 (2), and 226) which would lose their purpose if the member states could renounce their obligations by means of an ordinary law.

The precedence of community law is confirmed by article 189, whereby a regulation 'shall be binding' and 'directly applicable in all member states'. This provision, which is subject to no reservation, would be quite meaningless if a state could unilaterally nullify its effects by means of a legislative measure which could prevail over community law.

It follows from all these observations that the law stemming from the treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as community law and without the legal basis of the community itself being called into question.

The transfer by the states from their domestic legal system to the community legal system of the rights and obligations arising under the treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the community cannot prevail. Consequently article 177 is to be applied regardless of any domestic law, whenever questions relating to the interpretation of the treaty arise.

50 Years van Gend & Loos and Costa/ENEL
Historical „Killer Applications“ or Judicial Self-Empowerment?

European Court of Justice, Judgment of 5 February 1963, Case 26-62, van Gend & Loos

The first question of the tariefcommissie is whether article 12 of the treaty has direct application in national law in the sense that nationals of member states may on the basis of this article lay claim to rights which the national court must protect.

To ascertain whether the provisions of an international treaty extend so far in their effects it is necessary to consider the spirit, the general scheme and the wording of those provisions.

The objective of the eec treaty, which is to establish a common market, the functioning of which is of direct concern to interested parties in the community, implies that this treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the preamble to the treaty which refers not only to governments but to peoples. It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the exercise of which affects member states and also their citizens. Furthermore, it must be noted that the nationals of the states brought together in the community are called upon to cooperate in the functioning of this community through the intermediary of the european parliament and the economic and social committee.

In addition the task assigned to the court of justice under article 177, the object of which is to secure uniform interpretation of the treaty by national courts and tribunals, confirms that the states have acknowledged that community law has an authority which can be invoked by their nationals before those courts and tribunals. The conclusion to be drawn from this is that the community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals. Independently of the legislation of member states, community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the treaty, but also by reason of obligations which the treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the community.

With regard to the general scheme of the treaty as it relates to customs duties and charges having equivalent effect it must be emphasized that article 9, which bases the community upon a customs union, includes as an essential provision the prohibition of these customs duties and charges. This provision is found at the beginning of the part of the treaty which defines the 'foundations of the community '. It is applied and explained by article 12.

The wording of article 12 contains a clear and unconditional prohibition which is not a positive but a negative obligation. This obligation, moreover, is not qualified by any reservation on the part of states which would make its implementation conditional upon a positive legislative measure enacted under national law. The very nature of this prohibition makes it ideally adapted to produce direct effects in the legal relationship between member states and their subjects.

The implementation of article 12 does not require any legislative intervention on the part of the states. The fact that under this article it is the member states who are made the subject of the negative obligation does not imply that their nationals cannot benefit from this obligation.

In addition the argument based on articles 169 and 170 of the treaty put forward by the three governments which have submitted observations to the court in their statements of case is misconceived. The fact that these articles of the treaty enable the commission and the member states to bring before the court a state which has not fulfilled its obligations does not mean that individuals cannot plead these obligations, should the occasion arise, before a national court, any more than the fact that the treaty places at the disposal of the commission ways of ensuring that obligations imposed upon those subject to the treaty are observed, precludes the possibility, in actions between individuals before a national court, of pleading infringements of these obligations.

A restriction of the guarantees against an infringement of article 12 by member states to the procedures under article 169 and 170 would remove all direct legal protection of the individual rights of their nationals. There is the risk that recourse to the procedure under these articles would be inneffective if it were to occur after the implementation of a national decision taken contrary to the provisions of the treaty.

Learning Objectives

The module "European Law" provides two perspectives: "European Constitutional Law" refers to forms and powers of European Law, "European Law and Politics" to its contents and functions. You will be able to develop and improve professional, methodological and media competence in order to gain insight into law-making and enforcement of European Union Law. The policy fields and the institutions of the European Union as well as their procedures (legislative, administrative, judicial) will be subject to presentations and discussions. This includes the consideration of different texts – legal as well as non-legal – and different (historical, economical, political) contexts. Further stakeholders and their contributions to European Integration will be taken into account.

In order to succeed in this course you should be able

to use
- the treaties as well as other sources of law (regulations, directives; judgments) in order to answer questions and to develop criteria for specific cases;
- sources of legal knowledge such as reports, articles, obiter dicta;
- legal method in order to categorise, allocate, interpret legal provisions;

to describe
- the different layers of European law and the system of multi-level governance;
- the forms, acts and procedure of different institutions of the European Union;
- the financial framework of the European Union;
- how European Union law comes into effect, is enforced and reviewed by different institutions;

to explain
- the effects of European Law on daily life;
- the principles and interpretation of European Law;
- the development of the European Union;
- the success of the European Union, its reputation and discredit from a legal as well as a political point of view.

With regard to these skills, you will able to pass the exam. The take-home exam will be introduced to you step by step. You will have the opportunity to hand in papers and a test exam which will be reviewed and returned.

Please bring with you this script and a textbook that includes the Treaty of European Union, the Treaty on Functioning of the European Union as well as the Charter of Fundamental Rights of the European Union (recommended: Foster, Nigel, EU Treaties & Legislation 2016-2017, 27th edition, 2016 [Blackstone's Statutes], 19 €; TEU, TFEU and Charter will be the essential sources that will be used to both lectures, however, Foster's collection provides further useful sources of law and is inexpensive, especially compared to a copied collection of the Treaties and the Charter). Materials and slides will be uploaded (Moodle).

Bibliography

→ European Law and Politics

Outline

1. Introduction
   1.1. On contracts and treaties
   1.2. The unnamed constitution
   1.3. The concept of multi-level governance
2. Institutions of the European Union – front and second row
   2.1. European Parliament: First among equals?
   2.2. European Council: Providing impetus?
   2.3. Council: Intermediary or second chamber?
   2.4. Commission: Engine – or administrative office?
   2.5. Court of Justice of the European Union: Guardian – or engine?
   2.6. European Central Bank: Monetary watchdog – or sponsor?
   2.7. Court of Auditors: Controlling without judges – or reputation management?
   2.8. Hidden figures
3. Legal and legislative acts and law-making in the European Union
   3.1. Primary law of the European Union
   3.2. Secondary law of the European Union
   3.3. Competences of the European Union
   3.4. Legislative procedures – and preliminary proceedings
4. Implementation and enforcement of European Union law
   4.1. The Member States and "any appropriate measure"
   4.2. The Commission and its auxiliaries
   4.3. The Court of Justice of the European Union and its contributions
5. Fundamental Rights in Europe – Fundamental Rights of the European Union
   5.1. Status quo
   5.2. Status quo ante
   5.3. Great expecations ... and setbacks
6. Payday: The financial system of the European Union
7. Finale: Amending, joining, and leaving

Worksheet: Learning Progress

Lecture 1 (cw 38)	
Lecture 2 (cw 39)	
Lecture 3 (cw 40)	
Lecture 4 (cw 41)	
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Lecture 10 (cw 48)	
Lecture 11 (cw 49)	
Lecture 12 (cw 50)	

Please try to describe three aspects of each lecture which you are able to recall prior to the following lecture. This documentation should display what seemed to be important or memorable to you and will be helpful in order to prepare for the exam.

Europa-Universität Flensburg

European Constitutional Law

Autumn 2017

Group I (0/2/4/6/8): Thursday, 8-10, Room MAD 098
Group II (1/3/5/7/9): Wednesday, 8-10, Room MAD 024

Outline
Learning Objectives
Materials
Worksheets

Priv.-Doz. Dr. Eike Michael Frenzel
Eike.Frenzel@Jura.Uni-Freiburg.DE
Office hours: DUB 014, every Wednesday, 14:30-16, or on appointment