

Introduction to the Institutional and Legal System of the European Union

Zsuzsanna Horváth

Osijek, 25-27 April 2012



Hungary-Croatia
IPA Cross-border Co-operation Programme



Historical development of the EU institutional system

(Part One - Content)

- 1 Establishment of the Institutions of the European Communities
 - 1.1 Integration efforts after World War II
 - 1.2 Launching of the integration process, establishment of the ECSC
 - 1.3 Establishment of the EEC and Euratom
 - 1.4 The European Atomic Energy Community (Euratom)
 - 1.5 The European Economic Community (EEC)
- 2 Institutional changes introduced by the Treaty modifications
 - 2.1 Institutional changes from the ECSC to Lisbon
 - 2.2 Institutional structure under the TEU and TFEU

Principles characterizing the EU institutional structure and its functioning (Part Two: content)

- 1 The supranational character of the EU institutional system
- 2 Division of powers between the European Union and its Member States
- 3 Separation of powers among the EU institutions and the institutional balance

Integration efforts after the World War II

- 1948 Organisation for European Economic Co-operation (OEEC) 1948 - (US Marshall aid)
- North Atlantic Treaty (NATO) 1949
- Council of Europe 1949
political aims: to prevent further wars
- International Monetary Fund (IMF) 1945
- General Agreement of Tariffs and Trade (GATT) 1946 (later replaced by the WTO)
- Benelux Customs Union 1947 (transformed into an economic union in 1950)

Schuman Declaration

- 1950 Schuman Declaration (French foreign minister, Robert Schuman): he proposed to place the Franco-German production of coal and steel under a common High Authority
- A political plan developed on the basis of economic proposals of Jean Monnet (French governmental official), making materially impossible any war between France and Germany due to mutual economic interdependence
- As a first step, the ECSC is the foundation for economic unification

Establishment of the European Coal and Steel Community (ECSC)

- Paris Treaty 18 April 1951 (effect: 24.7.1952)
- Six Member States: France, Germany, Italy, Belgium, The Netherlands, Luxembourg
- Established for a limited period: 50 years (expired in 2002 – its tasks are continued by the EC)
- Common market in coal and steel industries: abolition of customs duties and trade restrictions (sectoral integration)
- Aims: economic expansion, growth of employment, raising of standard of living, ensure supply in and equal access to coal and steel production, low prices, improvement in working conditions, prohibition of discriminatory measures, state aids

Institutional structure of the ECSC

The High Authority

- Establishment of four main institutions
 - 1) **High Authority**: 9 members appointed for 6 years, experts from Member States
- The chief executive body to achieve Treaty objectives
- Entrusted with taking binding decisions
- Complete independence from Member States and any other organisations, and from industry
- Acting in the *general interest of the Community*; thus it was a truly supranational body

Institutional structure of the ECSC

2) Council of Ministers: 6 representatives of national governments

- Main tasks: to harmonize economic policies of Member States
- Approval of the High Authority's decisions in important political and economic questions – regulatory cooperation
- The Presidency of the Council was held by each Member State in turn, for 3 months

Institutional structure of the ECSC

- 3) Assembly:** representatives of national parliaments (78 delegates in all, numbers for each country are fixed in the Treaty)
- Political supervisory function: questions to the High Authority; discussion on the General Report submitted by the High Authority; motion of censure against the High Authority

Institutional structure of the ECSC

4) Court of Justice: 7 judges appointed for 6 years by common agreement of Member States' governments

- Main task: to ensure that the law is observed in the interpretation and implementation of the Treaty and implementing legislation
- Jurisdiction: annulment of decisions of the High Authority, acts of the Council or of the Assembly; exclusive right to rule on the validity of the acts of the High Authority or of the Council contested in litigation before a national tribunal

Institutional structure of the ECSC

- Consultative Committee of the ECSC: consisted of nationals of the Member States
- Represented producers, workers, consumers, retailers
- Task: to advise the High Authority on general objectives and programmes
- Members of the Committee were appointed by the Council from national lists
- (predecessor of the Economic and Social Committee)

Establishment of the EEC and Euratom

- Successes of the ECSC – ideas on a more close unification of Europe
- European Defence Community (Treaty signed 1952)
- Failure of the EDC – establishment of the Western European Union (WEU) 1954 to integrate Germany and Italy to the Western security system, to promote an economic recovery and a progressive integration of Europe
- 1955 Messina Conference of the ECSC – established a committee for the preparation of a European Common Market. Chair: Paul Henry Spaak (Belgian Foreign Minister)
- Spaak Report, detailed programme of economic integration

The European Atomic Energy Community (Euratom)

- Treaty signed in Rome, 25 March 1957 (effect: 1 January 1958) for an unlimited period
- Sectoral integration confined to the atomic energy industry. Aims: to develop Europe's nuclear industries; to ensure security of supply, to modernize technical processes, to create safe conditions
- Institutional structure: 1) Council of Ministers, 2) Commission, 3) Assembly, 4) Court of Justice and Economic and Social Committee
- The EAEC still exists, it has not merged with the EU

The European Economic Community (EEC)

- Treaty of Rome: signed 25 March 1957 (effect: 1 January 1958) for an unlimited period
- Integration organisation of a general character
- Realisation of the neo-functional spill-over concept (the integration expands from one sector to others of the economy, and to political spheres)
- Preamble: far reaching political aims: to lay down the foundations of an ever closer union among the peoples of Europe, to eliminate barriers which divide Europe, to preserve and strengthen peace and liberty
- Political aims to be achieved through means of economic integration

Objectives and policies of the EEC

- Art. 2 EEC: establishment of a common market, progressive approximation of economic policies of Member States, harmonious development of economic activities, continuous and balanced expansion, increase in stability, an accelerated raising of standard of living, closer relation between MSs
- Art. 3 EEC: elimination of customs duties, quantitative restrictions on export-import of goods; establishment of common customs tariffs; common commercial policy; free movements of services, persons, and capital; common agricultural and transport policies; free competition; coordination of economic policies, approximation of laws of MSs; European Social Fund; European Investment Bank, association of overseas countries to increase trade

Characteristics of the EEC Treaty

- Established the constituent elements of the common market ('four freedoms'), customs union, single economic area, free competition
- Established common policies
- General but not unlimited integration
- The scope of the EEC was extended to further economic and policy sectors (internal market, economic and monetary union)
- Framework treaty: contains basic substantive rules to be filled up through secondary legislation
- The Treaty is of a constitutional character: it sets up governing institutions, rules for competences, legislation, legal remedies (ECJ: it is a constitutional charter based on the rule of law)

The institutional structure of the EEC

- The EEC is built upon the institutional structure of the ECSC (with broader roles and decision-making rules). The Treaty provided for rules of composition, competences, operation of the institutions, relations between them, forms of legal acts, legislative procedures
- Institutions: Assembly, Council, Commission, Court of Justice
- Committee of Permanent Representatives COREPER (1965)
- Economic and Social Committee
- Court of Auditors (1975)

Institutional changes introduced by Treaty amendments

- Convention on Certain Institutions Common to the European Communities (1957): single Assembly and the single Court of Justice
- Merger Treaty (1965): single Council and single Commission; single ECOSOC; COREPER
- Treaty on financial provisions (1975): Court of Auditors
- Single European Act: Court of First Instance, European Council (Treaty basis)

Institutional changes introduced by the Maastricht Treaty (1992)

- Committee of Regions
- European Ombudsman
- European Central Bank/EU System of Central Banks
- European Monetary Institute
- Political Committee (Common Foreign and Security Policy)
- Coordinating Committee (Justice and Home Affairs)
- European Police Office (EUROPOL)
- Court of Auditors (institutional status)

Institutional changes introduced by the Treaty of Amsterdam (1997) and the Treaty of Nice (2001)

- **Treaty of Amsterdam:** High Representative for the Common Foreign and Security Policy
- **Treaty of Nice:**
- The ECSC ceased to exist
- Judicial Panels (specialised chambers in the Court system – EU Civil Service Tribunal 2004)
- Limited the number of Commissioners
- Changed the size of institutions and bodies (due to the envisaged enlargement)

Institutional changes introduced by the Lisbon Treaty (2007)

- The European Community ceased to exist (replaced by the European Union)
- President of the European Council
- High Representative of the Union for Foreign Affairs and Security Policy
- Renamed the EU Courts: European Court, General Court, specialised courts
- A panel to give opinion on suitability of candidates for a position of Judge or Advocate General of the Court of Justice and General Court
- European Central Bank – institutional status

Enlargement: 'Copenhagen Criteria'

- European Council meeting in Copenhagen (1993) adopted the criteria for accession of Central and Eastern EU countries:
- Political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights, respect for protection of minorities
- Economic criteria: existence of a functioning market economy (to cope with market competition)
- Administrative – legal criteria: ability of applying the *acquis communautaire* (approximation of national law to EU law)

Lisbon Treaty amendments: the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) (2007)

- Treaty of Lisbon: 2007 (effect: 2009) resulted in two Treaties. It established the European Union which now comprises the former European Community.
- TEU contains provisions on: Union's aims, values, principles on competences, democratic principles, institutional system, external actions, CFSP, and other general matters
- TFEU contains provisions on: categories of EU competences, general provisions, EU citizenship, Union policies, detailed provisions on EU institutions, legal system, legislative procedures, budgetary and financial provisions, general provisions

Institutional structure of the European Union under the TEU and TFEU

The **Union's institutions** are:

- European Parliament
- European Council
- European Commission
- Court of Justice of the European Union
- European Central Bank
- Court of Auditors

Institutional structure of the European Union under the TEU and TFEU

Other bodies:

- Economic and Social Committee
- Committee of the Regions
- Committee of Permanent Representatives
- European Ombudsman
- President of the European Council
- High Representative of the Union for Foreign Affairs and Security Policy

Main functions of the EU institutions under the TEU and TFEU

- Art. 13 (2) TEU: "Each institution shall act within the *limits of the powers* conferred on it in the Treaties and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice *mutual sincere cooperation*."
- **The European Parliament:** elected by EU citizens, represents their interests. It exercises *legislative and budgetary functions* – jointly with the Council as co-legislator, having powers equal to that of the Council. *Political control functions:* it supervises the Commission and other bodies.

Main functions of the EU institutions under the TEU and TFEU

- **European Council:** Heads of State or Government of the MSs. It *defines the general political directions and priorities*. It represents the interests of the Union and Member States. It has no legislative functions, it adopts political declarations and strategic guidelines.
- **Council (of Ministers):** a body of an *intergovernmental* character, represents the Member States' interests. It exercises *legislative and budgetary functions* – jointly with the EP as co-legislator. It carries out policymaking and coordinating functions. It *may adopt implementing acts*; it has a right to *appoint* members of other bodies.

Main functions of the EU institutions under the TEU and TFEU

- **European Commission:** represents the *general interests* of the Union, a body of *supranational* character. It ensures the *application of Union law*, it promotes and *controls the implementation* ('guardian of Treaties'), it has the right to initiate infringement procedures against Member States. It has the *right of initiating legislation*, it *adopts implementing acts and delegated acts* to supplement and amend legislative acts. It executes the budget, manages programmes, it is responsible for managing the Union's Structural Funds. As a main executive body, it is responsible to the European Parliament.

Main functions of the EU institutions under the TEU and TFEU

- **Court of Justice of the European Union:** it ensures that in the interpretation and application of the Treaties the law is observed (Art. 19(1) TEU). (however, national courts have to enforce EU law!)
Procedures: infringement procedures against MSs; actions for annulment of EU acts (review of legality of legislative acts of EU institutions); actions against EU institutions for failure to act; preliminary ruling procedures on the interpretation or validity of acts of EU institutions requested by national courts.

Principles characterizing the EU institutional structure and its functioning (Part Two: content)

- 1 The supranational character of the EU institutional system
- 2 Division of powers between the European Union and its Member States
- 3 Separation of powers among the EU institutions and the institutional balance

Supranational character of the EU institutional and legal system

- The word '*supranational*' indicates the difference between international organisations and international law and the EU institutional and legal system.
- The EU Treaties established a *sui generis* legal order
- Member States transferred their powers to the EU, its institutions are endowed with sovereign rights
- EU law affects MSs and citizens, it creates individual rights
- EU law is directly applicable and has direct effect
- EU law has precedence over conflicting national law (supremacy)
- Decisions taken by majority voting bind those states which voted against

Supranational character of the EU institutional and legal system

- National courts must apply EU law and protect individual rights conferred by EU law on them;
- The Court of Justice has a broad jurisdiction, Member States have to apply to the EU Court in EU legal disputes;
- The Court of Justice acts as a promoter of integration (extending the EU competences), and as a *quasi* legislator (teleological interpretation);
- Treaties are the ‘constitution’ of the EU, which is based on the rule of law, the Union Court is a constitutional court.

Division of powers between the EU and its Member States – a divided power system

- The EU is a divided power system having characteristics similar to federal states; it is more than an intergovernmental cooperation but less than a state; it has both intergovernmental and supranational characteristics
- Competences are divided between the Union's independent central decision-making institutions and the authorities of the MSs; in many important areas that generally belong to the federal governments are conferred upon by the Member States to the EU

Division of powers between the EU and its Member States – EU competences

- *Exclusive competence*: only the EU may adopt legislation, Member States may legislate only to implement them
- *Shared competence*: both the Union and Member States can legislate, however, MSs can exercise their residual competences, to the extent that the EU has not done so
- *'Supplementary' competence*: the EU measures can support, coordinate or supplement the action of MSs, EU measures cannot involve harmonisation of national laws

Principles governing the division and exercise of powers

- *Principle of sincere cooperation*: the EU and Member States in full mutual respect have to assist each other, MSs have to take all appropriate measures to ensure fulfilment of their obligations resulting from the Treaties and from the acts of the institutions, and to refrain from any measure which could jeopardise the attainment of the Union's objectives (Art. 4(3) TEU)
- *Principle of conferral*: the EU has competences only in areas where Member States have conferred their competences upon the EU in the Treaties
- *Principle of limited powers*: the EU can act only within the limits of the competences conferred upon it (provided for by the Treaties) (Arts. 3(6), 5 (1)-(2) TEU)

Principles governing the division and exercise of powers

- *Subsidiarity principle*: in areas which do not fall within its exclusive competence – i.e. areas of shared competence – the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level (Art.5 (3) TEU) (effectiveness)
- *Principle of proportionality*: the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties (Art.5 (4) TEU)

Separation of powers among the EU institutions

'trias politica'

- The EU is a rule of law, based on a constitutional charter, it respects democracy
- Montesquieu's *'trias politica'* (tripartite system): the concept of a separation of legislative, executive and judicial powers – essential structural guarantee of democracy, a balanced distribution of political functions among organs which should cooperate and control each other, thus, the abuse of power by one actor can be blocked by others
- A clear distinction can be done between state organs who exercise the three basic functions: the parliament is the legislator, the government is the executive body and the court exercises the judicial functions – *'organic' separation of powers*

Functional separation of powers among the EU institutions

- In the EU, ‘trias politica’ is not applicable in a clear way: institutions are not exclusive holders of one or other power, the allocation of powers among the institutions shows overlaps between the legislative, executive and judicial functions – *functional separation of powers*
- Legislative power: assigned to the Parliament and to the Council; but the Commission may adopt implementing and delegated acts, and it has ‘own’ legislative powers as well
- Executive power: assigned primarily to the Commission, but the Council may retain such powers; Member States have to implement Union law, as the executive branch of the government
- Judicial power: is exercised by the Court of Justice of the EU, however, national courts have to apply and enforce EU law

Separation of powers among the EU institutions and the institutional balance

- In the EU the special system of ‘checks and balances’ is a guarantee of democracy and the rule of law
- Its elements are e.g.: principle of sincere cooperation among the institutions and between them and the Member States
- The system of controls by committees of the Commission’s implementing legislation
- The ‘limited powers’ doctrine; the Union Court may annul secondary legislation on grounds of lack of competence
- The guaranteed independence of the judiciary
- The political control function of the European Parliament, etc.
- This system is often called as ‘institutional balance’, which must be respected by the institutions and Member States

Thank you for your attention!