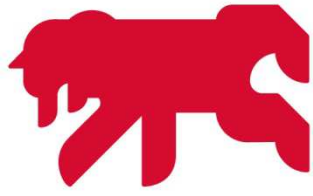


Institutions of the European Union and the ECHR - An Overview -

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Lecture at SLS March 2016



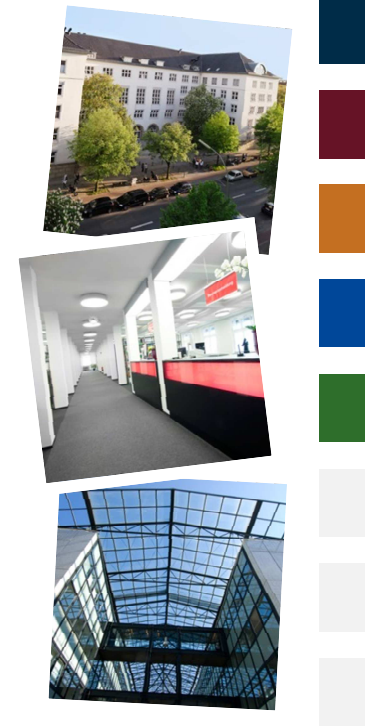
Hochschule für
Wirtschaft und Recht Berlin
Berlin School of Economics and Law

A Few Figures

- About **10,000** students
- **2300** graduates annually
- Teaching staff:
Approx. **200** professors and
800 part-time lecturers
- **5** departments

Departments

- Business and Economics
- Company-Linked Programmes
- Public Administration
- Legal Studies
- Police and Security Management



Department of Police and Security Management

- BA in Police Management (3 years)
- BA in Security Management (3 years)
- 2 MA Programmes (2 years)
- More than 1000 students
- **BA in Police Management** today is entry level for most police officers (depending on State)
- Students get selected by State police, get salary from the first day of the studies
- University education is fully autonomous/separate from police force (constitutional freedom of research and teaching)
- About 30 full time professors



EU – an Overwies: Topics

- I. Some Facts**
- II. Major Treaties**
- III. Major Legal Sources**
- IV. Institutions**
- V. Courts**

28 Member States of European Union (EU)

Austria (1995) / Belgium (1952) / Bulgaria (2007)
Croatia (2013) / Cyprus (2004) / Czech Republic (2004)
Denmark (1973) / Estonia (2004) / Finland (1995) /
France (1952) / Germany (1952) / Greece (1981)
Hungary (2004) / Ireland (1973) / Italy (1952)
Latvia (2004) / Lithuania (2004) / Luxembourg (1952)
Malta (2004) / Netherlands (1952) / Poland (2004)
Portugal (1986) / Romania (2007) / Slovakia (2004)
Slovenia (2004) / Spain (1986) / Sweden (1995)
United Kingdom (1973)

Turkey next ?

More details:

http://europa.eu/about-eu/countries/member-countries/index_en.htm



Broad Variety of Member States

- **Population**
 - **EU: ≈ 510 Mio. inhabitants**
 - **Cyprus: 0.8 Mio. inhabitants**
 - **Germany: 82 Mio. inhabitants**
- **Size**
 - **Cyprus: 9.250 km²**
 - **France: 550 000 km²**
- **GDP nominal (2012)**
 - **EU: US\$ 16.566 trillion**
 - **GDP per capita: US\$ 32.000**
 - **Denmark and Sweden per capita: US\$ 42-44,800**
 - **Bulgaria per capita: US\$ 5,400**

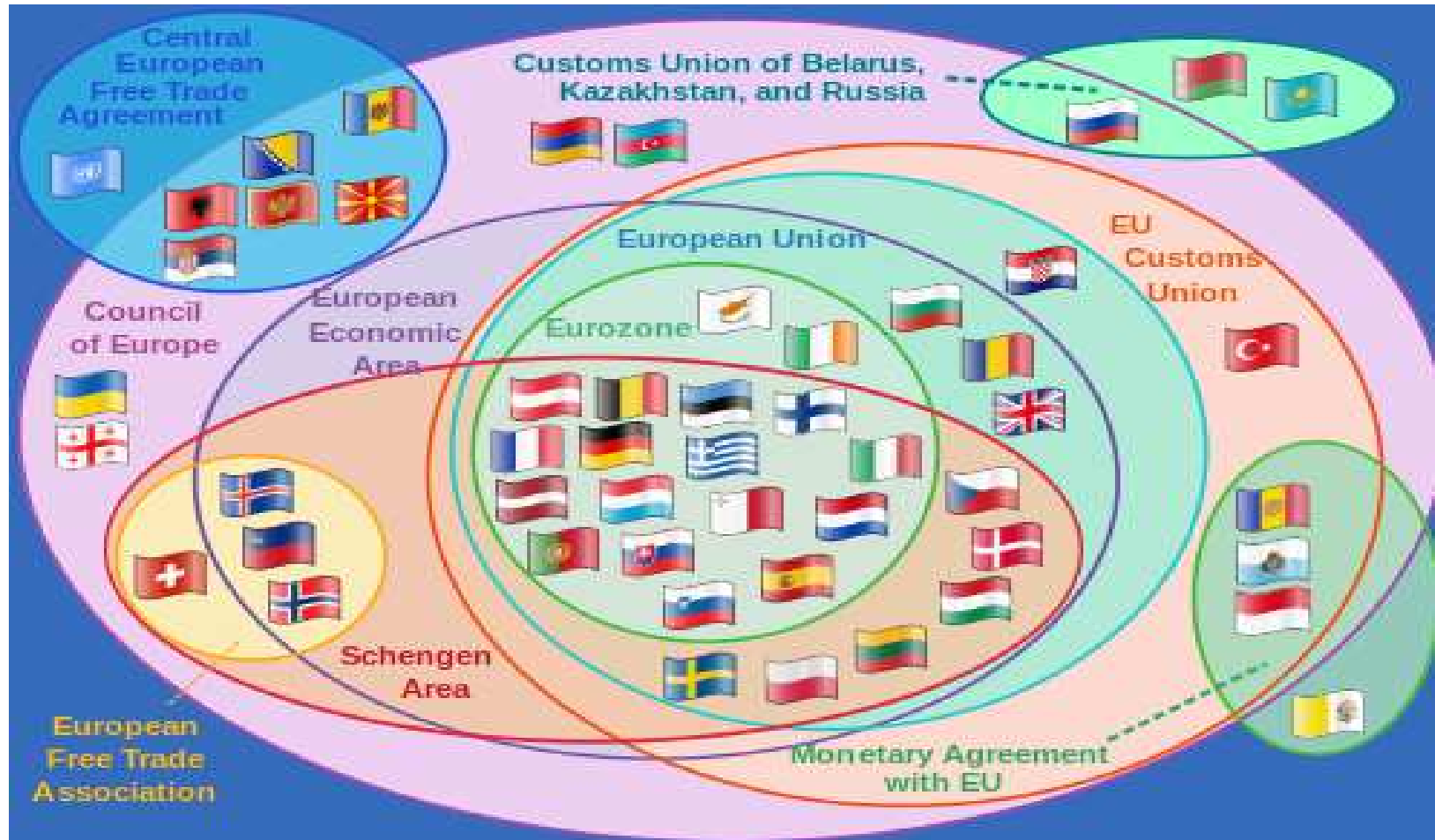
So-called „Schengen-Area“

- 26 Member-States: some non-EU, not all EU-members
- **No regular checks** or controls on persons at **internal borders**
- Common set of rules applying to people crossing the external borders of the EU Member States
- Harmonisation of **conditions of entry** and rules on **visa**
- Enhanced **police cooperation** (including rights of cross-border surveillance and hot pursuit)
- Stronger **judicial cooperation** through a faster extradition system and transfer of enforcement of criminal judgments
- Used to be very „effective“ **means against immigration** and those seeking political asylum in „core-Europe“, especially in Germany
- 2015/16: High influx of **refugees** – in effect *Shengen* has collapsed

The Euro: Common Currency Area

- **Currently 19 out of 28 EU countries**
- **Official name: Euro (€)**
- **Introduced in 2002**
- **≈ 350 million people**
- **1 € ≈ 74 Rs.**

European Organizations and Agreements



1951: Birth of European Integration

European Union is not starting point but „end product“ of many decades of „ups and downs“ in European co-operation

- **First Treaty: European Coal and Steel Community**
- **Signed:** 18 April 1951
Entered into force: 23 July 1952
- **Expired:** 23 July 2002
- **Purpose:**
Create interdependence in coal and steel so that one country could no longer mobilise its armed forces without others knowing. This eased distrust and tensions after WWII.

1957: A Broader Scope

- **Treaties of Rome**
 - **European Economic Community (EEC)**
 - **EURATOM**
- **Signed:** 25 March 1957
Came into force: 1 January 1958
- **Purpose:**
Set up the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).
- **Main changes:**
Extension of European integration to include general economic cooperation.

Main Treaties Since 1965

- **Merger Treaty: Brussels Treaty**
- **Single European Act**
- **Treaty on European Union: Maastricht Treaty**
- **Treaty of Amsterdam**
- **Treaty of Nice**

- **Treaty of Lisbon**
 - **Entered into force 2009**
 - **Basis for current legal framework**

Major „Primary“ Sources of Law

- Consolidated versions of
 - Treaty on European Union
 - Treaty on the Functioning of the European Union
- Charter of **Fundamental Rights** of the European Union
- Others
- **„Secondary“ sources of law can only be based on legislative competences in EU Treaties = primary law**

Principles Limiting EU Competences

Art. 5 Treaty on the European Union

- Principle of **conferral**: Union shall act only within the limits of the competences conferred upon it by Member States in the Treaties to attain the objectives set out therein.
- Competences not conferred upon the Union in the Treaties remain with the Member States
- Principle of **subsidiarity**: In areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, but can, by reason of the scale or effects of the proposed action, be better achieved at Union level
- Principle of **proportionality**: Content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties

Natur of Union Law

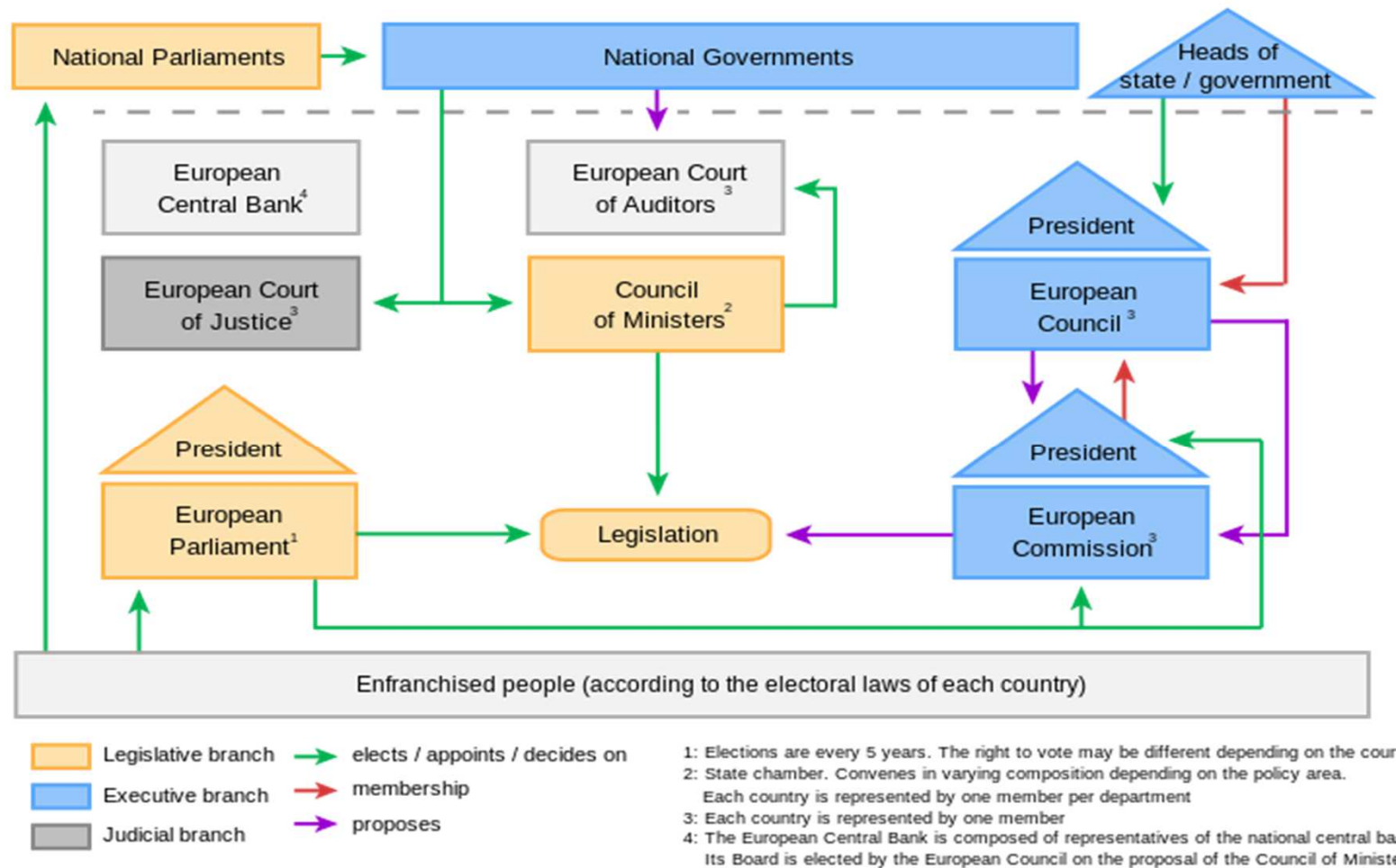
- Supranational *law sui generis*
- Different from „normal“ International Law/Treaties:
 - Statutory **supremacy** over National Law
 - In many areas EU law **directly applicable** in Member States (depending on category of legal act and not in as far Foreign Affairs and Security Policy is concerned)
 - Where **transformation** is required, lack of transformation will cause liabilities and sanctions

Major EU Institutions

Art. 13 Treaty on the European Union

- **European Parliament**
- **European Council**
- **Council**
- **European Commission**
- **Court of Justice of the European Union**
[≠ European Court of Human Rights, not an EU institution]
- **European Central Bank**
- **Court of Auditors**

Political System of the EU



European Parliament

Art. 14 Treaty on the European Union

- **Legislative and budgetary functions, jointly with the Council**
- **Political control, and consultation as laid down in the Treaties**
- **Elects President of the Commission**
- **750 representatives**
- **Minimum 6 members per Member State (MS), maximum 96**
- **Term of five years by direct universal suffrage**

Fighting for and becoming more and more a „full fledged“ parliament

European Council

Art. 15 Treaty on the European Union

- Shall provide necessary **impetus for EU development** and define general political directions and priorities
- No legislative functions
- Consists of Heads of State or Government of MS, its President and the President of the Commission
- High Representative of the Union for Foreign Affairs and Security Policy [see Art. 18 Treaty] shall take part in its work
- Shall meet twice every six months
- Except where the Treaties provide otherwise, decisions of EC Council by **consensus**
- EC shall elect its President, by a qualified majority, for a term of two and a half years, renewable once

Rather a supervisory and political body

President of the European Council

Art. 15 Treaty on the European Union

- Chairs and drives forward its work
- Shall endeavour to facilitate **cohesion and consensus** within the European Council
- Shall present a report to the European Parliament after each of the meetings of the European Council.
- Shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the **powers of the High Representative** of the Union for Foreign Affairs and Security Policy.
- Shall not hold a national office.

Council [≠ European Council]

Art. 16 Treaty on the European Union

- Exercises, jointly with the European Parliament, **legislative and budgetary functions**
- Carries out policy-making and coordinating functions as laid down in the Treaties
- **One representative** of each Member State at ministerial level
- Shall act by a **qualified majority** except where the Treaties provide otherwise.
- A **qualified majority** shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union.
- **Blocking minority** must include at least four Council members, failing which the qualified majority shall be deemed attained.

Council (II)

- Other arrangements governing the qualified majority are laid down in Article 238(2) of the Treaty on the Functioning of the European Union
- **Meets in different configurations**, the list of which shall be adopted in accordance with Article 236 of the Treaty on the Functioning of the European Union
- Meets **in public** when it deliberates and votes on a draft legislative act
- The **Presidency** of Council configurations, other than that of Foreign Affairs, shall be held by Member State representatives in the Council on the basis of equal rotation

Major political body, much influence, also on law making

European Commission

Art. 17 Treaty on the European Union

- Commission shall **promote the general interest** of the Union and take appropriate initiatives to that end
- Shall ensure **application of the Treaties**, and of measures adopted by the institutions pursuant to them
- Shall oversee **application of Union law** under the control of the Court of Justice of the European Union
- Shall execute budget and manage programmes
- With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's **external representation**
- Union **legislative acts** may only be adopted on the basis of a **Commission proposal**, except where the Treaties provide otherwise

European Commission (II)

- Commission shall be **completely independent**. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity
- As from 1/11/2014, Commission shall consist of a **number of members**, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number
- Commission's term of office shall be five years

European Commission (III)

- Taking into account the elections to the European Parliament the European Council, acting by a qualified majority, shall propose **candidate for President** of the Commission
- Candidate shall be **elected by the European Parliament** by a majority of its component members
- If she/he does not obtain required majority, European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure

European Commission (IV)

- Commission **responsible to European Parliament**
- European Parliament may vote on a **motion of censure** of the Commission
- Members of the Commission shall be chosen from among the nationals of the Member States on the basis of a system of strictly equal rotation between the Member States, reflecting the demographic and geographical range of all the Member States

Commission is most powerful institution in EU which only recently came under more thorough control of EU parliament

Actors in Law Making Process in the EU

- **European Commission** which represents the interests of the Union as a whole
- **European Parliament**, which represents the EU's citizens and is directly elected by them
- **Council of the European Union**, which represents the governments of the individual member countries. The Presidency of the Council is shared by the member states on a rotating basis
- Inofficial actors are $\approx 20,000$ registered and unregistered **lobbyists** at EU level

Law Making Process



Different Types of Legal Acts

Art. 288 Treaty on the Functioning of the European Union

- **Regulation** has general application. Binding in its entirety and directly applicable in all Member States
- **Directive** is **binding, as to the result** to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods
- **Decision** is **binding in its entirety**. A decision which specifies those to whom it is addressed shall be binding only on them
- Recommendations and **opinions** have no binding force

More information

Slides can be downloaded at:

www.hwr-berlin.de/prof/clemens-arzt/lehre/

Go towards end of page: „Lectures at Symbiosis Law School“

Lots of information on **EU**:

http://europa.eu/index_en.htm

Find **EU-Law**:

<http://eur-lex.europa.eu/en/index.htm>

<http://new.eur-lex.europa.eu/homepage.html?locale=en>

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