Chapter II

European Administration

THE EU AS AN ADMINISTRATIVE SYSTEM

The European Administration course (20 teaching hours) is divided to 5 blocks (chapters).

A chapter is designed for **4x45 minutes** of studying!

Advices for your individual work:

1. Read the reading material! You may use the additional slideshow to see a graphical version of your reading! By clicking on the hyperlinks, you can get some additional information, or you can refresh your basic knowledge!

2. Try to test your knowledge with the help of the exercises! They help you to process the material in depth and the terms and significant definitions help you to catch up quickly with the mainstream of the material!

3. Do the test of multiple choices for a final check upon your newly gained knowledge!

4. If you have further plan to deepen your knowledge on the issue, the collected literature helps you to step on that path!

Erzsébet CSATLÓS, PhD
INSTITUTE OF PUBLIC E LAW, UNIVERSITY OF SZEGED
CSATLOS.E@JURIS.U-SZEGED.HU

I. READING MATERIAL FOR SESSION Nº 2

THE EU AS AN ADMINISTRATIVE SYSTEM

1. THE EUROPEAN UNION AS INTERNATIONAL ORGANISATION: *SUI GENERIS* NATURE

1.1. The European Union as an international organisation

The European Union is an international organization under the general definition:

- it is based on a formal instrument of agreement (*founding treaties*) between the governments of nation states
- it includes three or more nation states (27 after Brexit) as parties to the agreement;
- it possesses a permanent organisation created by the Treaties meaning 7 institutions. Besides, it has many other bodies and agencies. to help the work of the institutions.

The main institutions, the so -called legislative triangle are the Council, the Commission and the EP.

*1. The **Council of the European Union ('Council')** is one of the EU's main decision-making bodies in Brussels. Its meetings are attended by ministers from the ó Member States, and it is the institution where Member States adopt legal acts and coordinate policies. The Council meets in 10 configurations, bringing together the relevant ministers from EU Member States: General Affairs; Foreign Affairs; Economic and Financial Affairs; Justice and Internal Affairs; Employment, Social Policy, Health and Consumer Affairs; Competitiveness; Transport, Telecommunications and Energy; Agriculture and Fisheries; Environment; Education, Youth and Culture. The 'General Affairs' Council coordinates the work of the different Council formations, with the Commission's help.*

Decisions are prepared by the Committee of Permanent Representatives of the Member States (Coreper), assisted by working groups of national government officials.

*2. The **European Parliament (EP)** is the only directly-elected EU body and one of the largest democratic assemblies in the world. Its 751 Members represent the EU's 500 million citizens. It is seated in Brussels and Strasbourg. They are elected once every 5 years by voters from across the Member States. Its representatives are called Members of the European Parliament - MEPs. The number of MEPs per Member State is set by a European Council decision adopted unanimously on the EP proposal. No Member State has fewer than 6 or more than 96 MEPs. Each Member State decides on the form its election will take but must guarantee equality of the sexes and a secret ballot. EU elections are by proportional representation. Voting age is 18, aside from Austria, where it is 16. Seats are allocated on the basis of population of each Member State. Slightly more than a third of MEPs are women. MEPs are grouped by political affinity, not nationality. MEPs divide their time between their constituencies, Strasbourg - where 12 plenary sittings a year are held - and Brussels, where they attend additional plenary sittings, as well as committee and political group meetings. The terms and conditions for Members are laid out in the Statute of 2009.*

From 1 July 2014 to 31 January 2020 there were 751 MEPs in the European Parliament, as laid down in the Lisbon Treaty. However, the withdrawal of the UK as an EU Member State reduced that figure to 705 MEPs, allowing room for possible future enlargements of the European Union. Of the 73 UK seats vacated, 27 were re-allocated to better reflect the principle of degressive proportionality. The 27 seats were distributed to France (+5), Spain (+5), Italy (+3), Netherlands (+3), Ireland (+2), Sweden (+1), Austria (+1), Denmark (+1), Finland (+1), Slovakia (+1), Croatia (+1), Estonia (+1), Poland (+1) and Romania (+1). No member state lost any seats.

MEPs by Member State and political group

Country	EPP	S&D	Renew	ID	Greens/EFA	ECR	GUE/NGL	NI	Total
Belgium	4	3	4	3	3	3	1		21
Bulgaria	7	5	3			2			17
Czechia	5		6	2	3	4	1		21
Denmark	1	3	6	1	2		1		14
Germany	29	16	7	11	25	1	5	2	96
Estonia	1	2	3	1					7
Ireland	5		2		2		4		13
Greece	8	2				1	6	4	21
Spain	13	21	9		2	4	6	3	58
France	6	6	23	23	13		6		79
Croatia	4	4	1			1		2	12
Italy	8	18	1	29		6		14	76
Cyprus	2	2					2		6
Latvia	2	2	1		1	2			8
Lithuania	4	2	2		2	1			11
Luxembourg	2	1	2		1				6
Hungary	13	5	2					1	21
Malta	2	4							6
Netherlands	6	6	7	1	3	4	1	1	29
Austria	7	5	1	3	3				19
Poland	17	8				27			52
Portugal	7	9			1		4		21
Romania	14	11	8						33
Slovenia	4	2	2						8
Slovakia	5	3	2			2		2	14
Finland	3	2	3	2	3		1		14
Sweden	6	5	3		3	3	1		21
EU	187	147	98	76	67	61	39	29	704

1 *MEPs. https://www.europarl.europa.eu/meps/en/search/table .*

*3. The **European Commission** now comprises 27 Commissioners including its President. It acts in the EU's general interest with complete independence from national governments and is accountable to the EP. It has the right of initiative to propose laws in a wide range of policy areas. In the fields of justice and home affairs, it shares a right of initiative with Member States. Like the European Parliament and the Council, EU citizens may also call on the Commission to propose laws by means of the European Citizens' Initiative. The Commission has the right to adopt non-legislative acts, in particular delegated and implementing acts, and has important powers to ensure fair conditions of competition between EU businesses.*

The Commission oversees the implementation of EU law. It executes the EU's budget and manages funding programmes. It also exercises coordinating, executive and management functions, as laid down in the Treaties. It represents the EU around the world in areas not covered by the common foreign and security policy, for example in trade policy and humanitarian aid.

The Commission comprises Directorates-General (departments) and Services which are mainly located in Brussels and Luxembourg.

*4. The judicial power lies in the hand of the **Court of Justice of the European Union (CJEU)** created in 1952. It is seated in Luxemburg. Its main mission is to*

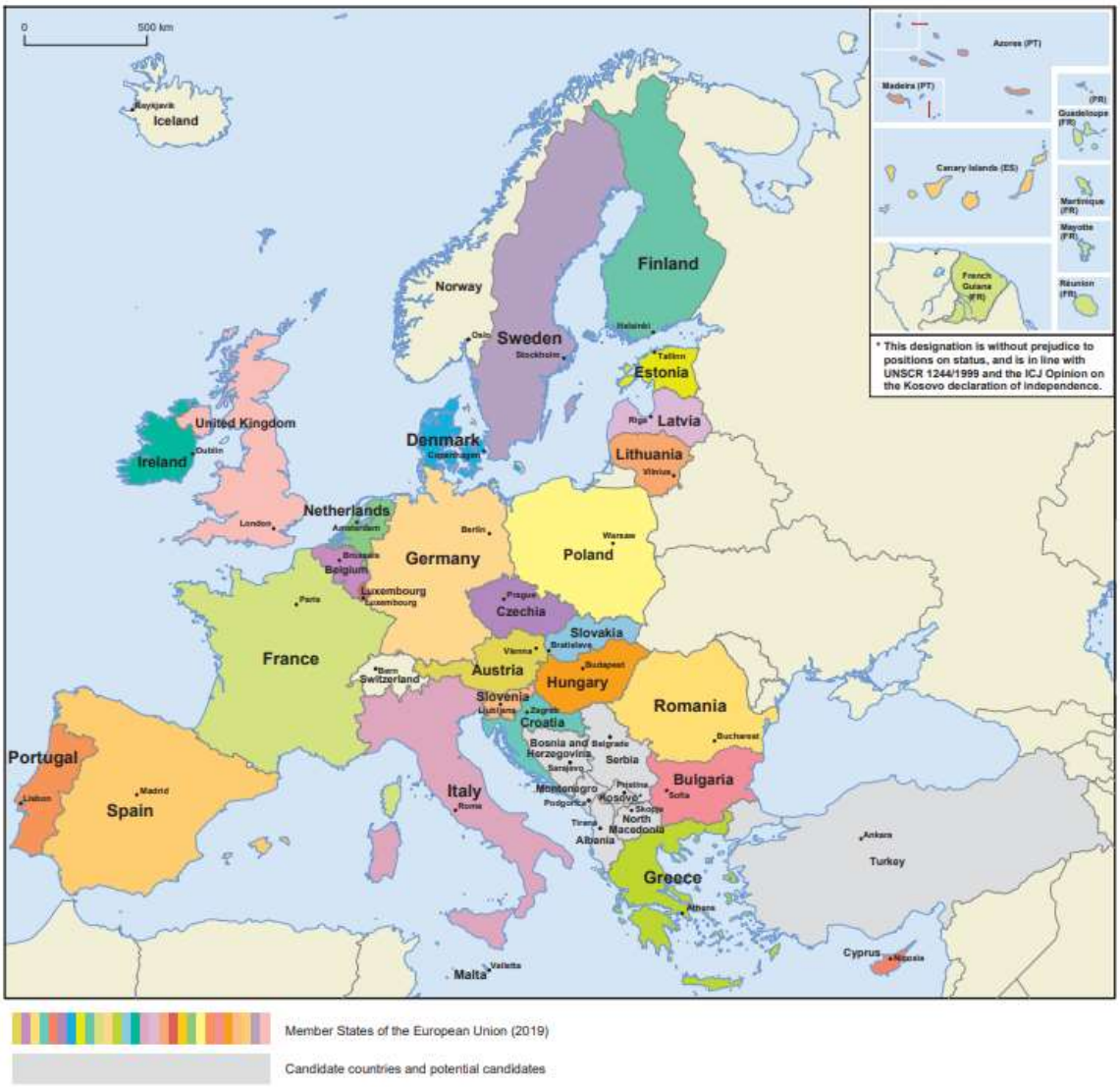
- *review the legality of the acts of the institutions of the European Union,*
- *ensure that the Member States comply with obligations under the Treaties, and*
- *interpret European Union law at the request of the national courts and tribunals.*

The CJEU comprises the following 2 branches.

*(1) The **Court of Justice** continues to give preliminary rulings, hear some actions against EU institutions brought by Member States and take appeals from the General Court. It now also gives rulings in the area of freedom, security and justice and makes decisions on police and judicial cooperation in criminal matters and issues arising from the Charter of Fundamental Rights.*

*(2) The **General Court** has jurisdiction to hear actions against EU institutions brought by citizens and, in some instances, by Member States. It also gives rulings in cases on employment relations between the EU institutions and their civil servants.*

*5. The **Court of Auditors**, based in Luxembourg, was established in 1975. It is the EU's independent external auditor and financial watchdog. It comprises 1 member from each Member State appointed for 6 years (renewable).*
*6. The **European Central Bank (ECB)** is the central bank of the euro area and an EU institution located in Frankfurt am Main. Together with the euro area national central banks, it forms the Eurosystem, which conducts monetary policy in the euro area. Its primary objective is to maintain price stability, i.e. to safeguard the value of the euro.*
*7. The **European Council's** role is to provide the impetus, general political guidelines and priorities for the EU's development. It is the youngest institutions formalised only by the Treaty of Lisbon. Comprising the Heads of State or Government of the Member States, it meets at least 4 times a year and includes the President of the European Commission as a full member. It does not exercise any legislative function. However, it may be consulted. Its decisions are taken mainly by consensus (or, where so provided by the treaties by unanimity, qualified majority or simple majority).*
Beside the main institutions. the EU has many other bodies, including two advisory ones:
*(a) The **European Economic and Social Committee (EESC)** is an EU consultative body. It was set up in 1957 to represent the interests of the various economic and social groups in Member States. It has a maximum of 350 members: between 5 and 24 members per Member State. Members fall into 3 groups representing the interests of: 1. employers, 2. workers and 3. particular types of activity (such as farmers, small businesses, professions, consumers, cooperatives, families, environmental groups). EESC members are appointed for 5 years (renewable).*
(b) The ***Committee of the Regions (CoR)*** *was created in 1992 by the Treaty of Maastricht and established in 1994. It is also a consultative body on certain topics affecting local or regional interests, economic and social cohesion, employment, social policy, energy and telecommunications, vocational training, and, since the entry into force of the Lisbon Treaty, issues such as climate change and civil protection. The CoR may also draw up opinions on its own initiative. The maximum number of members of the CoR is 350 and the Council of the EU appoints the members for a 5-year term.*
*It also has a source for the projects. The **European Investment Bank (EIB)** established in 1958 under the Treaty of Rome, the EIB is the EU's long-term lending institution, providing money for various projects in order to finance viable capital projects which further EU objectives. The EIB's shareholders are the 28 EU Member States. Nearly 90% of EIB lending is to Member States with the remainder dispersed, under the external lending mandate, to 150 partner-countries around the world. The EIB Group, comprising the EIB and the European Investment Fund (EIF), was created in 2000 with a view to boosting lending to small- and medium-sized enterprises (SMEs). Headquartered in Luxembourg, it has a network of local and regional offices in Europe and beyond.*



The *ever closer union among the peoples of Europe* has been the main objective of European integration since the **Treaties of Rome** in 1957, however, the organisation has always balanced between the intergovernmental and the community method of functioning; depending on the policy in question and the competence (transferred by the Member States) of the common legislator.

1.2. The European Union's supranational character

Since the entry into force of the last reform treaty (Lisbon Treaty), the EU has moved towards a **supranational character** by, inter alia:

- it got *legal personality*, including:
  - EU has the possibility to conclude international agreements with third countries or other international organizations,
  - has rights and can assume international obligations,
  - can issue claims and claim compensation in the light of international law rules,
  - can establish diplomatic relations
  - can have privileges and immunities in relation with national jurisdictions.

- *political leader institution:* the European Council is a formal institution with a president elected for 2,5 years
- *rotating presidency*: the leader of the Council of the European Union (Council of Ministers) is one of the Member States according to a previously settled list for 6 months.
- the *ordinary legislative procedure* has become the leading method of adopting binding sources of law: it means that qualified majority voting and the collaboration of the European Parliament and the Council is the main decision-making procedure used for around 85 policy areas. Many of the adopted sources have *direct effect*, which means that the EU is empowered to adopt obligatory legislation which can create right and obligation straight to the individuals, without any implementing act of the Member States.

At present, **all three types** of organisation characteristics **are present under the roof of the EU**.

> *The common foreign policy and common defence policy are classic examples of the traces of intergovernmental cooperation. It is such a unique area of EU policies that the Treaty on The European Union (TEU) contains its rules. Besides, among the other policies of the EU which do not fall under ordinary legislative procedure. Special legislative procedures are used in certain sensitive policy areas. Unlike in the case of the ordinary legislative procedure, the Treaty on the Functioning of the EU (TFEU) does not give a precise description of special legislative procedures. The rules for these are therefore defined on a case-by-case basis by the treaty articles that lay down the conditions for their implementation. Under special legislative procedures, the Council is, in practice, the sole legislator. The Parliament is simply associated with the procedure. Its role is thus limited to consultation (such as under Article 89 TFEU concerning cross-border police operations) or consent (such as under Article 86 TFEU concerning the European Public Prosecutor's Office) depending on the case.*

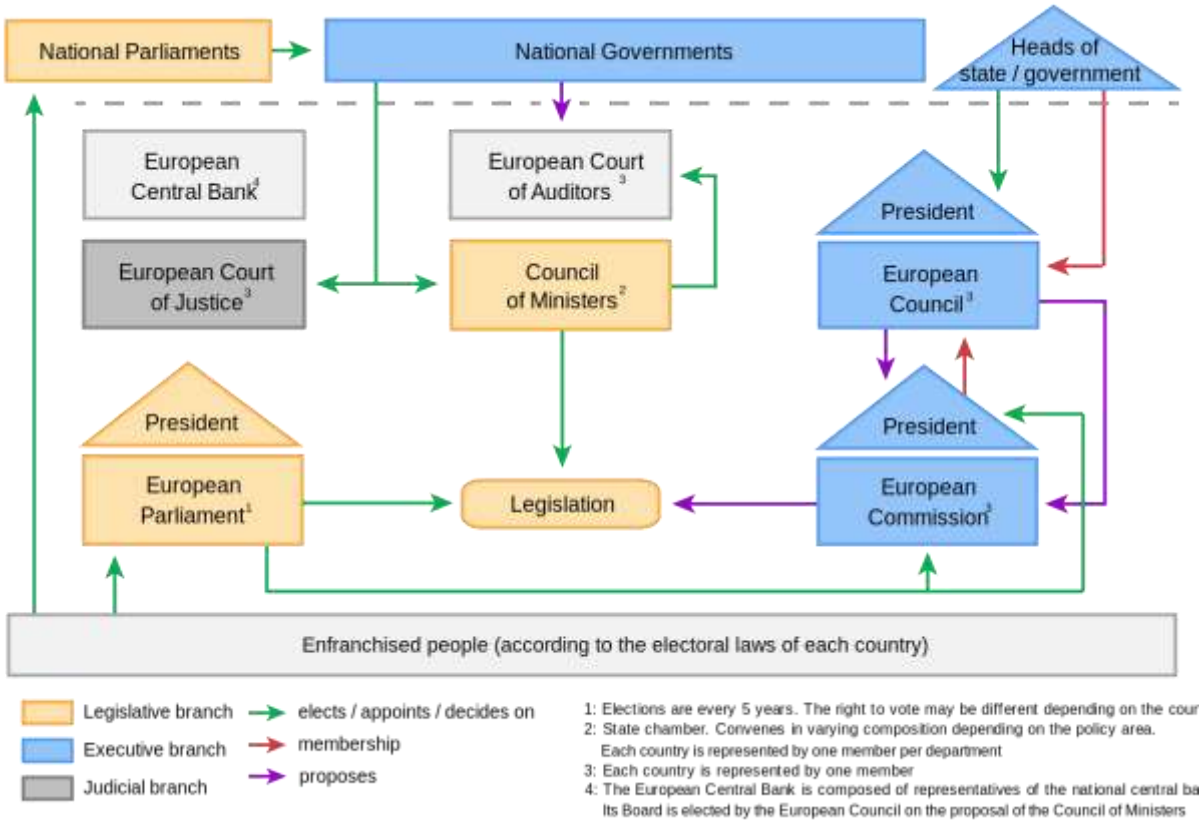
1.3. The administrative structure of the European Union

The EU constitutive treaties or any other official documents of the European Union do not directly and distinctively address administrative structures, administrative norms, principles of functioning, etc., of what can be called ***European public administration.*** The best notion to describe the EU administration is the ***European Administrative Space:*** *a common set of standards for action within public administration, which is defined by national law and enforced through relevant procedures and accountability mechanism.*

After almost six decades of successful functioning, the European Union **still lacks** a coherent and comprehensive set of codified rules of administrative procedures at all levels, although it is generally acknowledged that the key for successful application of EU law lies in administration. The correlation of direct and indirect administration allows to describe the EU as a ***multilevel administrative system*** in which there is an increasing number of policies that requires an intensive cooperation and direct co-working of the competent authorities at national and supranational level.

The EU is then a multi-level administrative space with two major levels and an intermediate level which establishes connection between the two others.

(a) ***direct level of administration***: the European Commission is the responsible institution to guard the implementation of EU acquis and called as the centre of execution, however, it has limited competences and resources for steering the implementation. It rather monitors and intervenes when the primarily responsible Member States fail to ensure the proper execution of EU law. [*institutions of direct level administration are marked with blue* on the following chart]



As for governing function, it is primary exercised by those institutions of the EU which consist of the heads of states/government leaders of the Member States, and not by one supra-state institution. Such tasks are dispersed.

It is very rare that a direct level institution possesses hierarchical tools (i.e. giving orders for the indirect level authorities) and/or practices authority power in concrete, individual cases. So, in administrative law aspect, the EU is not a supra-national authority.

(b) ***indirect level of administration***: the EU institutions cannot be substituted with national institutions, but they are obliged to cooperate. National administrations are responsible for the implementation and execution of EU law. National administrations have to be reliable, transparent and have to function in a democratic way.

(c) ***administrative networks of the EU***: In order to overcome the deficiencies of the EU which does not have its own administrative authorities' structure, European ***administrative networks*** (EANs) are established. They consist of institutional representatives of national executives – primarily departments and/or agencies – with tasks in the realm of national implementation or enforcement of EU policies. It includes horizontal and vertical cooperation among the

competent organs and authorities and the nature and normative background of such co-work depends on the Europeanisation of the policy in question.

Now, we are going to explore how this system is formulated, what it characterises and then, step -by – step we will discover each level and their nature during the rest of the course.

2. THE HISTORY OF EUROPEAN ADMINISTRATION IN AN ADMINISTRATIVE PERSPECTIVE

2.1. The beginning decades of integration

Given the fact that the EU originally was created as an international organisation by the founding treaties, the execution and the administrative issues were treated as domestic competence and only the civil service area was regulated by a regulation for those people who worked in community institutions. Later, by the expansion of legal areas falling under community rules, the Member States realised that the key for the successful implementation and execution of the acquis lies in a well-functioning public administration, so a certain harmonisation on the functioning of Member States administration is needed. Meanwhile, in 1981 the **European Institute of Public Administration (EIPA)** was created with the mission is to provide a mix of deep insights and practical knowledge about EU policies, to all professionals related to community public affairs.

> *Most of EIPA's activities, including courses, research, and consultancy, are based in Maastricht where it was established, but in 1992, EIPA founded its 2nd centre, the European Centre for Judges and Lawyers, in Luxembourg, It is supported by EU Member States and the European Commission. We serve officials in national and regional public administrations in Member States, in the European Commission itself, and in other EU institutions.*

The requirements of public administration were put on the agenda only around the 1990s' when the former post soviet states which were just living their democratic transition wanted to join the western integration. To avoid the regression of the Community, the political leaders of the Member States adopted the main requirements at a European Council summit held in Copenhagen in 1993 and later strengthened by the Madrid European Council in 1995. The Copenhagen criteria contained the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law.

> *This body of law encompassing all legal and non-legal norms and values issued under the scope of the Community was defined as acquis communautaire. Since the entry into force of the Lisbon Treaty which eliminated the Community, it is called 'acquis of the EU' or just simply 'acquis'.*

Central and eastern European countries applying for membership needed to reform their public administrations to meet these criteria for accession.

Shared principles of public administration among the democratic Member States constitute the conditions of a **European Administrative Space** (EAS).

The EAS includes a set of common standards for action within public administration which are defined by law and enforced in practice through procedures and accountability mechanisms. Countries applying for membership should take these standards into account when developing their public administrations. Although the EAS does not constitute an agreed part of the acquis communautaire, it should nevertheless serve to guide public administration reforms in candidate countries.

To help candidate States to comply with the often uncertain content of requirements, the so-called SIGMA *(Support for Improvement in Governance and Management in Central and Eastern European Countries*) program was announced as a joint program of the Organisation for Economic Co-operation and Development (OECD)and the European Commission.

2.2. The achievements of the 1990's

The **European Union** was born in 1992 by the **Maastricht Treaty** along with the pillar system which distinguishes supranational community policies and those which are of common interest but kept under inter-governmental regime. All has impact on public administration ie. the execution of the acquis, although all the treaties that were concluded in the '90s (Maastricht and Amsterdam Treaties) still keeps public administration in domestic area and brings no change in its primarily source regulation. However, the establishment of the **European citizenship** and certain rights inherent is a step forward the concept of homogenous people of Europe where all the citizens of Member states shall be equal to get benefits of EU law.

The Treaty of Maastricht (1992) created the European Union as a single body of 3 pillars.
(I) The European Communities (EC): it consists of the European Economic Community (EEC) and the European Atomic Energy Community (EUROATOM) which were founded by the Treaty of Rome (1957) and the European Coal and Steel Community (ECSC) founded in 1951 by the Treaty of Paris.. The responsibilities of the EC addressed the core economic initiatives of the European Union including closely related social policy, regional policy, and environmental policy. The main areas of economic initiative are customs union, single market, common agricultural policy, economic and monetary union, and structural policy. This is usually called the supranational pillar, as the institutions have legislative power with directly binding effect on Member States. The two other pillars operated under inter-governmental regime.
The (II) Common Foreign and Security Policy (CFSP) was coordinated through the Secretary-General of the Council of the European Union. The Secretary-General carried the parallel title of High Representative for the CFSP, a capacity closest to that of an EU foreign minister.
The (III) Cooperation in Justice and Home addressed the need for interaction between the police, customs, immigration services, and justice ministries of Member-States. This initiative emerged out of the Schengen Agreements of 1985 and 1990 to coordinate border policy resulting from more open movement of people between EU Member-States and later was moved to the Ist pillar by the Amsterdam Treaty, and the Police and Judicial Cooperation remained as IIIrd pillar. The pillar system was vanished by the Lisbon Treaty when it entered into force in 2009, although specific provisions are still applied for the former II and III pillar policies.

2.2.1. The Commission's White paper of 1995

Parallel to the launch of the SIGMA program, the Commission, the responsible organ for the execution of the acquis, issued a White Paper in 1995 for the Preparation of the Associated Countries of Central and Eastern Europe (CEECs) for Integration into the Internal Market of the Union.

> *European Commission White Papers are documents containing proposals for European Union (EU) action in a specific area. In some cases, they follow on from a Green Paper published to launch a consultation process at EU level. The purpose of a White Paper is to launch a debate with the public, stakeholders, the European Parliament and the Council in order to arrive at a political consensus.*

Recognizing that to ensure mutual transparency between the CEECs and the European Union, it is necessary to set up two comparable systems so that **administrative channels** can be established **between the two systems without interfering with their own internal procedures**. Once this inter-communication is established, the CEECs, like the Member States of the EU, will have to accept that the other side is able -and entitled to make comments and request changes to draft technical regulations which could create barriers to trade between themselves and the Union.

Beside CEEs case, for the success of trade and economic collaboration, the Commission also emphasized that the implementation of the procedure for exchanging information between the Member States **requires coordination between the various ministries** likely to adopt draft technical regulations. In fact, the Commission requires establishment of a central unit, the composition and organization of which is decided upon by the Member State itself to serve as a single point of contact with the Commission in order to ensure that the procedure works properly and fairly. Thus, it required the establishment of a permanent administrative channel between the Commission and the existing Member States, too.

In addition, the **Treaty of Amsterdam** adopted in 1997 put an emphasize on the free movement of persons and the creation of an area of **freedom, security and justice** where a high level of

protection to citizens is guaranteed. To that end, a well-functioning execution of the acquis, the proper administrative background and the access to justice is of fundamental importance.

2.2.2. SIGMA Program and its impact on public administration

SIGMA Program was the first to describe and analyse the role of public administration and the relationship of the Community and the Member States in this view.

In 1999, the SIGMA summarised its concepts and issued the *European Principles for Public Administration* which clarified the role of public administration in the functioning of the integration, European requirements towards member States while still considering public administration a domestic issue.

> *Public administration has always been a domestic affair for Member States. At the same time, national public administrations have to implement the law of the integration in such a way that European citizens are able to enjoy the rights granted to them by the Treaties, irrespective of the Member State in which they live; a fact, which on its own could well justify the interest of the integration in ensuring that each national administration has comparable quality and professionalism and therefore in the administrative capacities of their Member States.*
>
> *In addition, Community legislation has a great impact on economic and social conditions in Member states and thus on their economic competitiveness. As national public administrations as well as the judiciary are the guarantors for its implementation, the interest of Member states in public governance of other member states has increased over time.*

Therefore,

- EU institutions cannot be substituted with national institutions, but they are obliged to cooperate with each other;
- national administrations are responsible for the implementation and execution of the EU's decisions;
- national administrations have to be *reliable, transparent* and have to function in a *democratic* way.

Public administration shall, inter alia, comply with the following basic requirements.

- **Rule of law:** i.e. legal certainty and predictability of administrative actions and decisions, which refers to the principle of legality as opposed to arbitrariness in public decision-making and to the need for respect of legitimate expectations of individuals;
  The administrative bodies have to be bound by the law and have to ensure the rule of law and the principle of legality when they take their decisions and their actions. Thus, the administration can do exclusively for what it has authorization (the principle of competence). However, in when it has got authorization, it has to act (the principle of ex officio investigation).
- **Openness and transparency**, aimed at ensuring the sound scrutiny of administrative processes and outcomes and its consistency with pre-established rules;

The principle of openness means that the administration is available for the external examinations and for the citizens concerned. The principle of transparency enables the realization of the aims of control and examination.

- **Accountability** of public administration to other administrative, legislative or judicial authorities, aimed at ensuring compliance with the rule of law;
  The accountability and public responsibility are synonymous terms. It means that in the field of administration each authority is liable for their actions and omissions before the other authorities, the courts or the legislator.
- **Efficiency** in the use of public resources and effectiveness in accomplishing the policy goals established in legislation and in enforcing legislation.
  Effectiveness means the favourable ratio between the resources used and the results obtained. This is an economic category.

The major deficiency of SIGMA principles is that they have never been incorporated into legal act or made any part of a treaty. They are enforceable requirements towards candidate States which shall precisely comply with them.

> *The SIGMA Program is still on under the name Support for Improvement in Governance and Management to build up stability, security, prosperity and democracy through the promotion of policies that will improve the economic and social well-being of people. It supports the EU enlargement and neighbourhood policies and the aim is to unite Member States around a common project by stimulating political and socio-economic reforms. The circle of is partner countries is wider than candidate states and partnership includes benefits other than progression with accession, like cross-border trade and mobility agreements.*

2.3. Achievements of the 2000s

2.3.1. The Lisbon Strategy in 2000

The aim of the Lisbon Strategy, launched in March 2000 by the EU heads of state and government, was to make Europe *"the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion*". The key for that end lies in a successful execution of the acquis which is the area of public administration of the Member States.

> *In 2000, the strategy was based on economic and social pillars. One year later, at the European Summit in Gothenburg, a third pillar has been added: the environmental dimension. The underlying idea was that only a common action could lead to success, but several competences were actually at national level, not the European one. The Lisbon Strategy then adopted the Open Method Coordination to provide a common framework for coordinating actions to be taken at the Member states level.*

2.3.2. The Charter of Fundamental Rights of 2000

The Charter of Fundamental Rights was signed by the Presidents of the European Parliament, the Commission and the Council at the European Council meeting in Nice on 7 December 2000. and attached to the modificatory treaty concluded in Nice in 2001 (entry into force in 2003) as a *political declaration*. It was not made an integral part of the treaty thus had no binding force.

It sets out in a single text, for the first time in the European Union's history, the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU including the *right to good administration* (article 41).

2.3.3. White paper on European governance of 2001: citizens are in focus

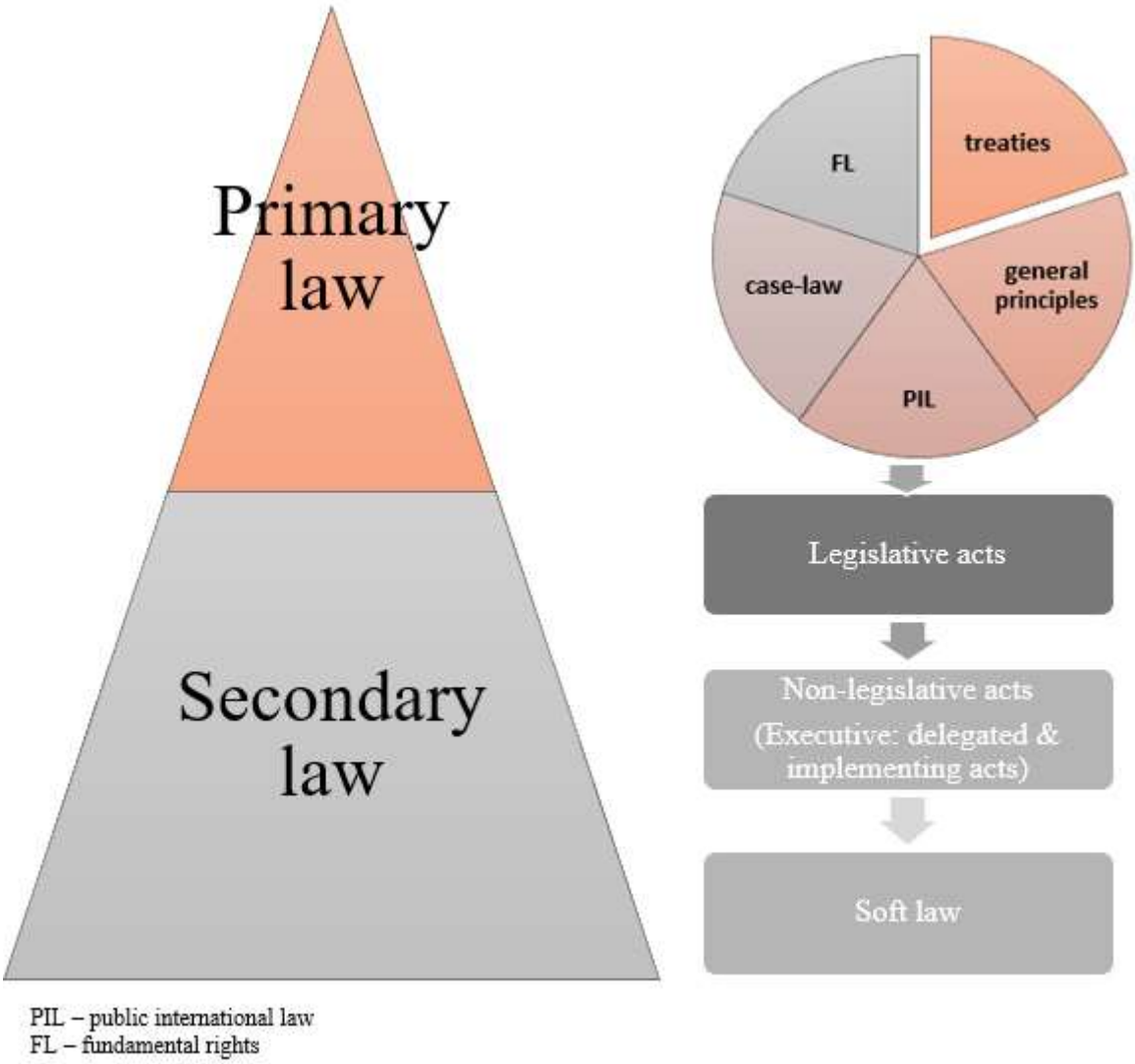
The integration recognized that democratic institutions and the representatives of the people, at both national and European levels, can and must try ***to connect Europe with its citizens***. Already within the existing Treaties the Union must start adapting its institutions and establishing more coherence in its policies so that it is easier to see what it does and what it stands for. A more coherent Union will be stronger at home and a better leader in the world. The White Paper proposes opening up the policy-making process to get more people and organisations involved in shaping and delivering EU policy. It promotes greater openness, accountability and responsibility for all those involved. This should **help people to see how** Member States, by acting together within the Union, are able to tackle their concerns more effectively.

2.3.4. The Treaty of Lisbon of 2007 (entered into force in 2009)

The Treaty establishing the European Community is renamed the '***Treaty on the Functioning of the European Union***' and the term 'Community' is replaced by 'Union' throughout the text. it changes the way the Union exercises its existing powers and some new (shared and supportive) powers, by enhancing citizens' participation and protection, creating a new institutional set-up (abolishment of the pillar system) and modifying the decision-making processes for increased efficiency and transparency. As part of the Treaty of Lisbon, the Charter became legally binding when the Treaty of Lisbon entered into force.

3. NORMATIVE BACKGROUND OF EUROPEAN ADMINISTRATION

While the Member States have conferred considerable competences on the Union, the **implementation and application of EU legislation** was for a considerable time, subject to certain exceptions, the **preserved domain of the Member States**, and still remains so to a substantial extent. However, it does not mean that there are no provisions for this area at EU level, just the administrative law of the European Union is based upon many different sources of law, in the form of both written and unwritten rules and principles.
Collectively, all the documents of normative nature of the EU can be called **legal act**. Legal acts of the EU can be put in two main groups: ***primary sources*** at the top of the norm hierarchy and ***secondary sources*** created upon primary sources.



PIL – public international law
FL – fundamental rights

3.1. Primary law—the Treaties and unwritten sources of law

Primary sources of EU law are those **treaties** which are concluded by the Member States to give powers and competences to the organisation. In addition, those **values and principles** are added to the highest level of norm hierarchy, which dominates over the whole legal system of the EU and shall be respected under any circumstances.

The EU treaties are binding international agreements between EU Member States. They set out EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its Member States. Every action taken by the EU is founded on treaties.

Currently, the EU is based on the following treaties in force:

- ✓ Treaty on European Union (TEU)
- ✓ Treaty on the Functioning of the European Union (TFEU)
- ✓ Treaty establishing the European Atomic Energy Community (EURATOM Treaty)
- ✓ Charter of Fundamental Rights of the European Union (EU Charter)

Due to the primacy of international law, all other (previous or future) agreements concluded by Member States and also all the international agreements concluded by the EU and third parties are also primary sources of EU law.

3.1.1. Written sources – treaty based

Treaty law particularly relevant to the operation and effect of EU administrative law can be either general in scope or specific to particular policy areas. Such law may not only contain structural and procedural provisions touching upon administrative law and policy, but also provide for substantive criteria for the legality of administrative action.
The Treaties are relatively quiet about the general concept of public administration of the EU and declare only that "[i]n carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an ***open, efficient and independent European administration***. [TFEU Article 298.1.]

3.1.1.1. ***Treaty-based general*** *principles underlying the relationship between the European Union and the Member States – in an administrative point of view*
General principles of law are basic rules whose content is very general and abstract, sometimes reducible to a maxim or a simple concept and often invoked as 'gap fillers' when treaties or customary international law do not provide a rule of decision.

a) Principle of attributed powers
The EU has only the competences conferred on it by the Treaties, thus the EU may only act within the limits of the competences conferred upon it by the EU Member States in the Treaties to attain the objectives provided therein. Competences not conferred upon the EU in the Treaties remain with the EU Member States.

> *(1) When the has exclusive competences (Article 3 TFEU) the EU alone is able to legislate and adopt binding acts and Member States are able to do so themselves only if empowered by the EU to implement these acts. The EU has exclusive competence to regulate customs union; the establishing of competition rules necessary for the functioning of the internal market; monetary policy for euro area Member States; conservation of marine biological resources under the common fisheries policy; common commercial policy; conclusion of international agreements under certain conditions.*
> *(2) In case of shared competences (Article 4 TFEU): the EU and EU Member States are able to legislate and adopt legally binding acts. EU Member States exercise their own competence where the EU does not exercise, or has decided not to exercise, its own competence. Shared competence applies in the following areas: internal market; social policy, but only for aspects specifically defined in the Treaty; economic, social and territorial cohesion (regional policy); agriculture and fisheries (except conservation of marine biological resources); environment; consumer protection; transport; trans-European networks; energy; area of freedom, security and justice; shared safety concerns in public health matters, limited to the aspects defined in the TFEU; research, technological development, space; development cooperation and humanitarian aid.*
> *(3) Supporting competences (Article 6 TFEU) mean that the EU can only intervene to support, coordinate or complement the action of EU Member States. Legally binding EU acts must not require the harmonisation of EU Member States' laws or regulations. Supporting competences relate to the following policy areas: protection and improvement*

of human health; industry; culture; tourism; education, vocational training, youth and sport; civil protection; administrative cooperation.
Apart from the basics, there are special competences. The EU can take measures to ensure that EU Member States coordinate their economic, social and employment policies at EU level. The EU's common foreign and security policy is characterised by specific institutional features (limited participation of the European Commission and the European Parliament in the decision-making procedure and the exclusion of any legislation activity. That policy is defined and implemented by the European Council (consisting of the Heads of States or Governments of the EU Member States) and by the Council (consisting of a representative of each EU Member States at ministerial level). The President of the European Council and the High Representative of the Union for Foreign and Security Policy represent the EU in matters of common foreign and security policy.

All other treaty-based general principles can be interpreted as a consequence of the principle of attributed powers.

b) External competence

The EU can enter into international agreements where such power is expressly conferred by the Treaties in different policies.

It can conclude international agreements in the field of the common foreign and security policy (Art. 37 TEU), common commercial policy (Art. 4. TFEU); association agreements (Art. 217 TFEU); relations with international organizations (Art. 211 TFEU); research and technological development (Art 186 TFEU); environmental policy (Art. 191(4) TFEU); development cooperation (Art 211 TFEU); economic, financial, and technical cooperation with third countries (Art 212 TFEU); humanitarian aid (*Art. 214 (4)); and monetary policy(Art. 219 TFEU).*

Besides the cases when the EU enjoys exclusive competence to conclude international agreements, its power to do so is merely concurrent with that of the Member States.

c) Subsidiarity and proportionality (Article 5 TEU)

In the area of its non-exclusive competences, the EU may act only if — and in so far as — the objective of a proposed action cannot be sufficiently achieved by the Member States but could be better achieved at EU level (subsidiarity). The content and scope of EU action may not go beyond what is necessary to achieve the objectives of the Treaties (proportionality).

This principle has outstanding relevance, as administrative law falls outside the scope of exclusive competences, although the execution and implementation of all sorts of EU legislation affects it.

e) Principle of sincere (loyal) cooperation

In the absence of a structural subordination of the Member States to the Union, pursuant to the principle of *sincere cooperation*, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. (Article 4(3) TEU and Article 10 EC).

The principle of sincere cooperation is a general principle of EU law (C- 105/03) which has further impacts(C-453/00):

- it requires Member States to refrain from any measure which could jeopardise the attainment of the Union's objective;

- duty of national administration to re-open the case if it is necessary to modify it in order to be in conformity with EU law
- administrative authorities shall exceed their competences under national law and put aside conflicting national legislation

e) Executive action of the Commission issuing from the principle of attributed powers
In accordance with the principle of attributed powers, the Commission can exercise powers on the basis of the competences provided directly in the Union treaties.
The competence of the Commission under Article 290 TFEU is limited to the adoption of ***delegated acts*** which amend or supplement non-essential elements of the legislative act.
On the other hand, where uniform conditions for implementing legally binding Union act are needed, the conferral of implementing powers to the Commission, or exceptionally the Council, takes place under Article 291 TFEU. ***Implementing acts*** are adopted, thus, where uniform conditions of implementation within the EU are required and trusting simply on the loyal cooperation of Member States is not enough.

> *One of the central differences between an authorization to issue a delegated act under Article 290 TFEU and an authorization to issue an implementing act under Article 291 TFEU is the possibility of supervision The competence of the Commission to adopt delegated act is subject to strict supervision by the Council and the European Parliament. On the other hand, the adopting implementing act by the Commission, or exceptionally by the Council, has a vertical dimension—as between the EU and Member States—through the comitology committee procedures.*

The Commission cannot use soft law instruments to achieve binding legal effects. (C-57/95)

3.1.1.2. Fundamental rights

Originally, Treaty provisions contained no explicit reference to fundamental rights and their protection. The protection of fundamental rights in the EC was initially recognized by the CJEU on the basis of **general principles of law**. (first in 1969 by C- 29/69, now Article 6(3) TEU). Therefore, the fundamental rights shall prevail in the application of legal material under the scope of the EU.
It was the Lisbon Treaty that made the Charter of fundamental rights a part of the treaty-based provisions and gave it binding effect as a primary source of law. The provisions of the Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
Inter alia, the following provisions are the most significant for administrative law: right to good administration (Art. 41.); Right of access to documents (Art. 42) protection of personal data (Art. 8); equality before the law (Art. 20); non-discrimination (Art. 21.); right to an effective remedy and to a fair trial (Art. 47.)

*3.1.1.3. Article 197 TFEU on **administrative cooperation***

Article 197 established by the Lisbon Treaty is definitely a milestone in the history of the integration as a supportive competence was given to the EU legislator for the first time in history to rule administrative matters describing it as a key for effective implementation of EU law.

Respecting the national autonomy, this power shall not be practiced as a tool for harmonisation of administration of the Member States.

> *Article 197*
> *1. Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.*
> *2. The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and of civil servants as well as supporting training schemes. No Member State shall be obliged to avail itself of such support. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish the necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States.*
> *3.This Article shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission. It shall also be without prejudice to other provisions of the Treaties providing for administrative cooperation among the Member States and between them and the Union.*

The Treaty of Lisbon used the first time the expression of **European administration** at treaty level and drew up requirements (open, efficient and independent) towards it without explaining their content.

> *In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration. (Art. 298 1. TFEU)*

3.1.2. Unwritten sources of law on the level of primary law: jurisprudence

The Treaties are frames and many gaps remain to be filled: by general principles of law developed through the jurisprudence of the Court of Justice of the European Union (CJEU) and in secondary legislation.
The CJEU occupies the position of furthering the constitutional development of the EU through the **interpretation of written law** and ensuring the **observance** of general principles of law applicable within the Union. [Article 19(1) TEU]
The ECJ has the right to review measures of the institutions and bodies, as well as agencies, of the EU unless exceptions are explicitly mentioned in the Treaties, the ECJ has thus played a central role in identifying, applying, and developing the unwritten general principles of EU law. Reliance on these principles has provided many of the basic elements of European administrative law, in most of the cases both procedural and substantive rights of individuals.

3.1.3. Public international law

International law or international public law is set of norms that rules the relationship of nations and is formulated beyond the scope of EU, but it may also affect European administration, inter alia, in the following cases.

- international law gives the legal background of State-to State relations, so it is the legal basis of the treaties establishing the EU;
- it also governs international agreements to which the EU is a party. Such agreements can bind the EU when created within the procedures under EU law;
- method of interpreting the Treaties according to their *effet utile* used in delimiting the external powers of the EU;

- the EU must respect international law in the exercise of its powers it is therefore required to comply with the rules of customary international law (C-162/96).

Due to the general principle of primacy of international law over domestic legal norms, it is among the primary sources of EU.

3.2. Secondary legal acts

Secondary sources of law are issued by institutions of the EU. A secondary legal act shall never bee in conformity with primary sources.
Secondary legal acts can be binding and non -binding and there is a third category for those which cannot be placed in either of them due to their nature.

- **binding legal acts** (regulations, directives and decisions)

Regulations *are legal acts that apply automatically and uniformly to all Member States as soon as they enter into force, without needing to be transposed into national law. They are binding in their entirety on all Member States*
Directives *require Member States to achieve a certain result but leave them free to choose how to do so. Member States must adopt measures to incorporate them into national law (transpose) in order to achieve the objectives, set by the directive. National authorities must communicate these measures to the European Commission. Transposition into national law must take place by the deadline set when the directive is adopted (generally within 2 years). When a Member State does not transpose a directive, the Commission may initiate infringement proceedings because it breaches EU law.*
Decisions *specifies those to whom it is addressed shall be binding only on them.*
The choice of form *always depends on the policy and the legislative competence of EU to govern it.*

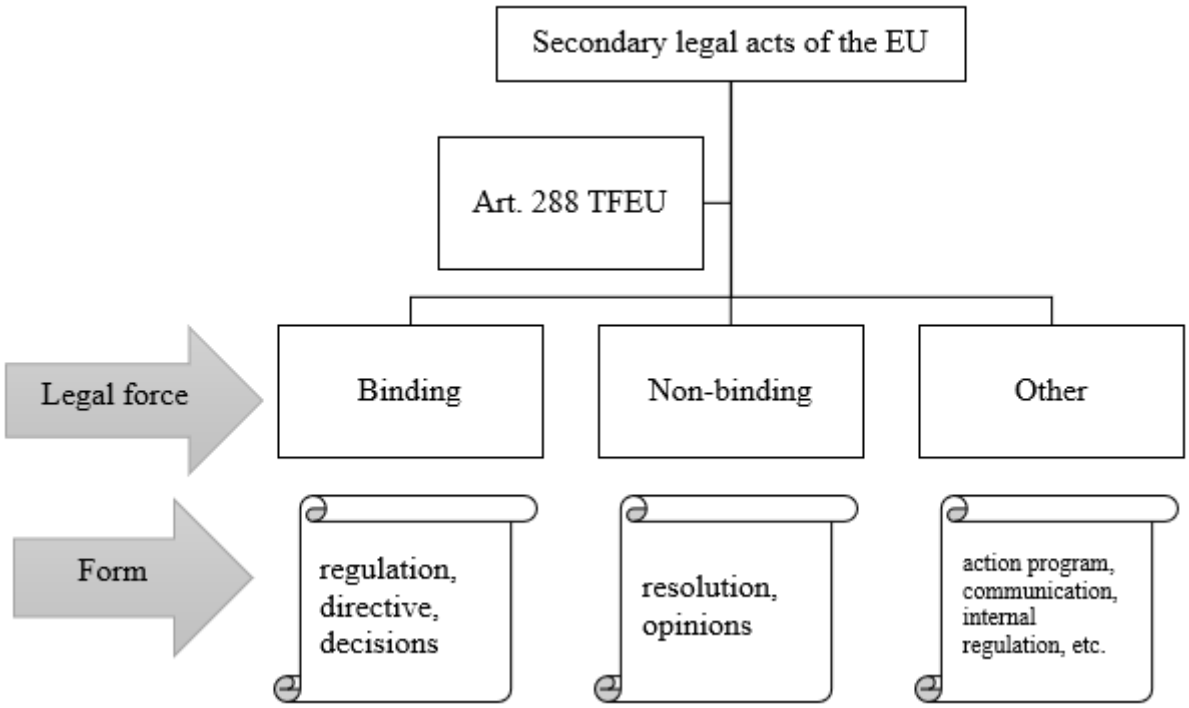
- **non-binding legal acts** (resolutions, opinions)

Recommendations *allow the EU institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed. The* ***opinion*** *is an instrument that allows the EU institutions to make a statement, without imposing any legal obligation on the subject of the opinion. An opinion has no binding force.*

- **other acts** (EU institutions' internal regulations, EU action programmes, etc.)

Those legal acts of the institutions and bodies are often called soft law of the EU.

The basic forms of binding legal acts: regulations, directives, and decisions. The non-bindings are recommendations and opinions. (Article 288 TFEU)



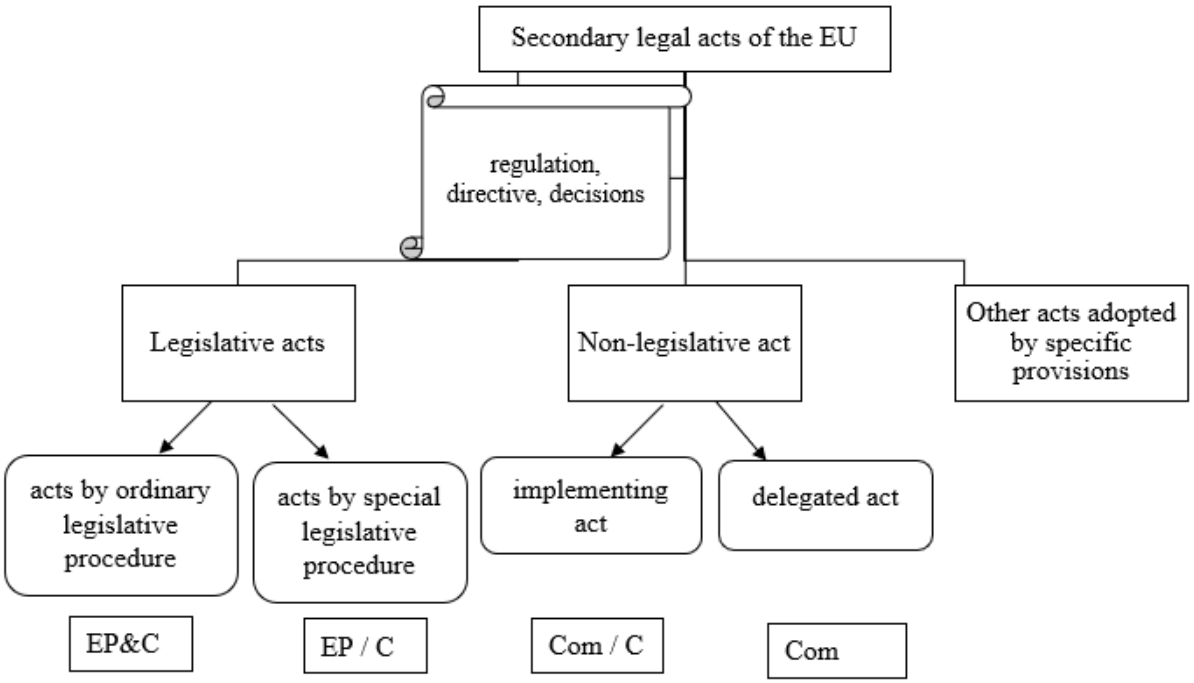
The mode of adoption defines the hierarchy between binding secondary legal acts. **Legislative acts** are adopted following either by ordinary legislative procedure or by special legislative procedure.

> *Most EU laws are adopted using the ordinary legislative procedure, in which the European Parliament (directly elected) and the Council of the EU (representatives of the 28 EU Member States -minus 1 because of the Brexit) have equal say. The Commission submits a legislative proposal to the Parliament and Council, who must agree on the text in order for it to become EU law.*
> *Special legislative procedures are followed only in certain cases. Typically, the EU Council is the sole legislator and the EU Parliament is only required to give its consent to a legislative proposal or be consulted on it. More rarely the Parliament alone (after consulting the Council) can adopt legal acts.*

Non-legislative acts are executive acts adopted mainly by the Commission as delegated act or implementing act.

There are special legal areas that require **unique legislative procedure** like the adoption of the annual budget of the EU or the modification of the treaties. Such circumstances require unique decision-making procedure.

Altogether, **European Union administrative law** covers all the rules and principles which govern the functional, organizational, and procedural elements of the administration of the EU.



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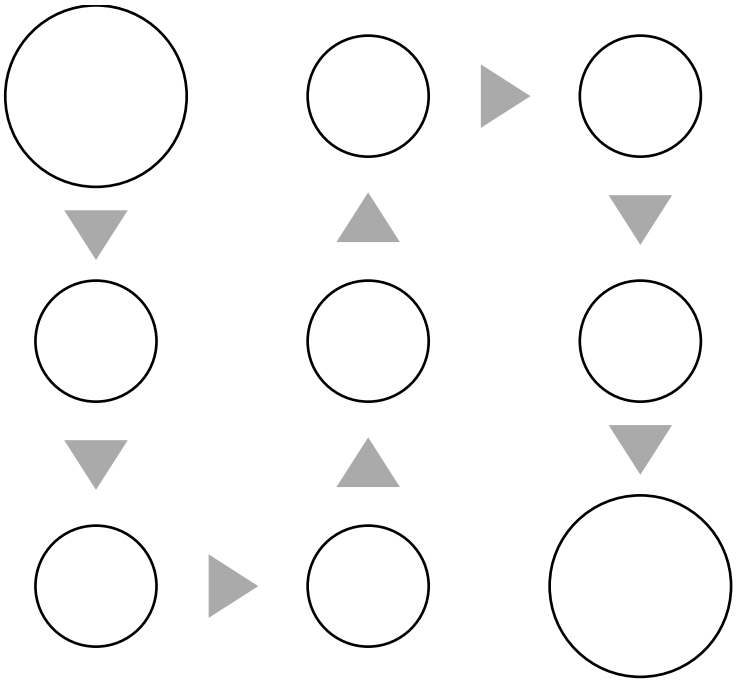
SIGNIFICANT DEFINITIONS

European Union administrative law	all the rules and principles which govern the functional, organizational, and procedural elements of the administration of the EU
European administrative network (EAN)	systematic horizontal or/and vertical cooperation among the competent organs and authorities in the field of a certain EU policy
European Administrative Space (EAS)	a place where States share a set of common standards for action within public administration which are defined by law and enforced in practice through procedures and accountability mechanisms. These common standards are rooted in constitutional history of the Member States.
general principles	are basic rules whose content is very general and abstract, sometimes reducible to a maxim or a simple concept and often invoked as 'gap fillers' when treaties or customary international law do not provide a rule of decision
legislative act	those legal acts of the EU which were adopted either by ordinary or special legislative procedure in the form of regulation, decision or directive.
non-legislative act	those legal acts of the EU which were not adopted in legislative procedure but according to unique rules of decision-making. They are below legislative acts in the hierarchy of norms.
primary source of law	are the sources of EU law which comes directly from the Member States (treaties)under the rules of international public law or dominate over the complete legal system by helping interpretation (fundamental rights, general principles, case-law)
secondary source of law	are legal acts adopted by the institutions established by the treaties.
sincere cooperation	The Member States and the EU shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties, and the Member States 1. take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the EU; and also 2. shall refrain from any measure which could jeopardise the attainment of the Union's objectives.
sui generis international organisation	an international organisation that is so special that it is not similar to any other international organisations
transparency	clear and visible line of action among the source of power, the actor and the result of acting which enables to check accountability
treaties	the current basic international agreements in force that are the fundamentals of the EU the Treaty (TEU) on the European Union and the Treaty on the Functioning of the European Union (TFEU). In addition, the EU Charter and the Euratom Treaty also belongs to this group.

white paper	European Commission White Papers are documents containing proposals for European Union action in a specific area with the purpose to launch a debate with the public, stakeholders, the European Parliament and the Council in order to arrive at a political consensus. Once it is done, legislation can be drafted.

EXERCISES TO TEST YOUR KNOWLEDGE

1. Place the information on timeline and define their role in the EU administration!

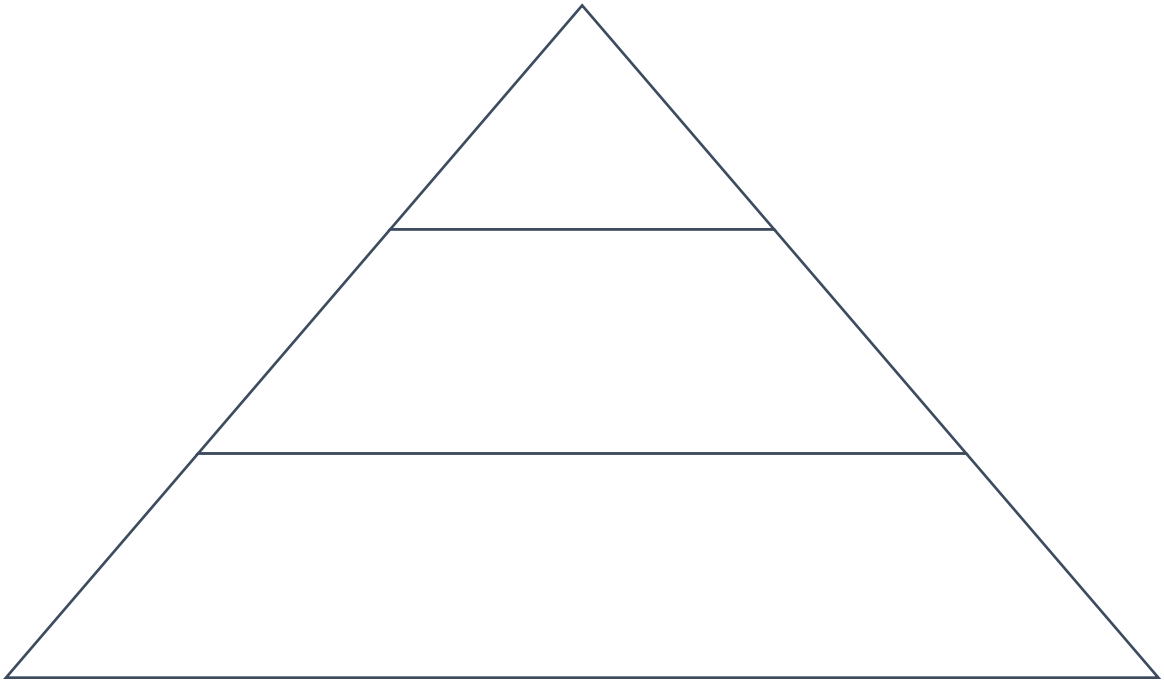


a) Copenhagen criteria……..
b) Political declaration of the European Charter of fundamental rights……
c) SIGMA principles……
d) White paper on European governance……..
e) birth of article 197 TFEU on administrative cooperation…….
f) Treaties of Rome……...
g) Amsterdam Treaty…….
h) birth of the 'European citizenship'……...
i) Lisbon Strategy…….

2. Place the type of legal sources on the norm pyramid!

a) Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries

b) Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest
c) Commission action plan on financing sustainable growth. 08 March 2018
d) Treaty on the Functioning of the European Union.
e) Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders
f) Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 on Better Law-Making
g) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
h) Article 41 of the EU Charter on the right to good administration
i) C- 105/03 (Pupino case) at 58. "the Union must respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 ('the Convention'), and as they result from the constitutional traditions common to the Member States, as general principles of law."
j) Commission Implementing Regulation (EU) 2019/66 of 16 January 2019 on rules on uniform practical arrangements for the performance of official controls on plants, plant products and other objects in order to verify compliance with Union rules on protective measures against pests of plants applicable to those goods
k) Commission Delegated Regulation (EU) 2019/897 of 12 March 2019 amending Regulation (EU) No 748/2012 as regards the inclusion of risk-based compliance verification in Annex I and the implementation of requirements for environmental protection



TEST OF MULTIPLE CHOICES/QUIZ

1. The EU is a
a) huge federal State.
b) a sui generis international organisation.
c) a classical international organisation with an agreement on its foundation and own organs as forum for discussion.

2. The EU consists of members that are
a) States.
b) States and NGOs.
c) States and all types of non-state actors.

3. The European administration…
a) history goes back to the 1950's when the integration was called to life.
b) has been continuously formulating to be a multi-level administrative system.
c) does not exist as only the Member States own, domestic administration executes the acquis, EU institutions and organs do not care about execution.

4. The European Administrative Space…
a) is a notion that describes the EU's administrative organisation since 1957.
b) is a notion first used by the SIGMA program and it covers the supranational level of the EU governed by the Commission's activity when it performs administrative tasks.
c) is a notion that describes the complex multi-level European administrative system, including Member State and supranational administration, that is based on common standards for actions within public administration.

5. Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as …
a) an exclusive competence of the EU to regulate it.
b) absolutely a domestic competence of EU Member States without any EU law intervening into it.
c) a matter of common interest.

6. The structure of public administration…
a) is regulated by the EU since the application of the Copenhagen criterion.
b) depends on historical traditions and current political choices of a State and EU law has no influence on it.
c) depends on historical traditions and current political choices of a State although EU law has influence on it.

7. The SIGMA…
a) is a program of the Commission to develop the Member States' executive capacity.
b) is a program of the Member States of the EU to develop their administrative capacity.
c) is a program of the Commission and the OECD to develop the candidate States' legal system including administrative capacity for the future accession.

8. The EU may support the efforts of Member States to improve their administrative capacity to implement Union law…

a) by means of regulations in accordance with the special legislative procedure to achieve the harmonisation of the laws and regulations of the Member States.
b) by means of directives in accordance with the ordinary legislative procedure to achieve the harmonisation of the laws and regulations of the Member States.
c) by means of regulations in accordance with the ordinary legislative procedure, excluding any harmonisation of the laws and regulations of the Member States.

9. The EU
a) does not issue executive legal acts as execution is the task of Member States.
b) issues executive norms in the form of non-legislative acts if it is necessary.
c) issues executive norms in the form of legislative acts if it is necessary.

10. The execution of the EU acquis
a) requires Member States to cooperate with the EU and with each other.
b) requires Member States to cooperate with each other.
c) requires Member States to cooperate only in the common foreign policy area.

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