

EU Constitutional Law: IV. The Treaties

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IV. The Treaties

1. TEU and TFEU

2. CFR

This part of the course will give an overview of what to find where in the basic Treaties.

1. TEU and TFEU

The Treaty on the European Union consists of:

- Declaration of goals including ‘an ever closer Union of the peoples of Europe’, and fundamentals such as democracy, dignity of human beings, equality ... (Art. 1, 2, 3 TEU)
- General provisions on distribution of powers between EU and MS, foundational principles such as conferral, subsidiarity, proportionality and protection of human rights (Art. 4, 5)
- Provisions concerning the democratic principle (Art. 9-12)
- Basic provisions concerning the institutions (Art. 13-19)
- Provisions on enhanced cooperation (Art. 20)
- Provisions on the Union’s external action and specific provisions on the Union’s Common Foreign and Security Policy (Art. 21-46)

TFEU – An overview (1)

The TFEU lays down rules governing the institutions and decision-making procedures. It includes provisions on and the legal basis for action in the following policy areas:

- General principles of the EU, e.g.
 - Limited allocation of powers / attribution limitée de compétences / begrenzte Einzelermächtigung
 - Proportionality / proportionnalité / Verhältnismäßigkeit
 - Subsidiarity / subsidiarité / Subsidiarität
 - Non-discrimination / Diskriminierungsverbot
- Establishment of EU citizenship.

TFEU – An overview (2)

- Rules on fundamental freedoms / libertés fondamentales / Grundfreiheiten in the EU:
 - Free movement of goods / libre circulation des marchandises / Warenverkehrsfreiheit, Customs Union and the prohibition of quantitative restrictions between Member States (Article 30 et seq. TFEU).
 - Free movement of persons / libre circulation des personnes / Personenfreizügigkeit (originally only free movement of workers / libre circulation des travailleurs / Arbeitnehmerfreizügigkeit) (Articles 45 et seq. read in conjunction with Articles 20 et seq. TFEU).
 - Right of establishment / droit d'établissement / Niederlassungsrecht (Articles 49 et seq. TFEU).
 - Freedom to provide services / libre prestation des services / Dienstleistungsfreiheit (Articles 56 et seq. TFEU).
 - Free movement of capital / libre circulation des capitaux / Kapitalverkehrsfreiheit (Articles 63 et seq. TFEU).

TFEU – An overview (3)

Common rules on competition, taxation and approximation of laws:

- Rules on competition (antitrust) / droit de la concurrence / Wettbewerbsrecht (Articles 101 et seq. TFEU).
- Aids granted by States / aides accordées par les Etats / Staatliche Beihilfen (Articles 107 et seq. TFEU).
- Tax provisions / dispositions fiscales / Steuerregelungen (Articles 110 et seq. EC).
- Approximation of laws/rapprochement des législations / Rechtsangleichung (Articles 115 et seq. TFEU).

Rules on economic and monetary policy:

- Economic policy / politique économique / Wirtschaftspolitik (Articles 120 et seq. TFEU).
- Monetary policy / politique monétaire / Geldpolitik (euro) (Articles 127 et seq. TFEU).
- Institutional provisions / dispositions institutionnelles / institutionelle Vorschriften (ECB, ESCB) (Articles 282 et seq. TFEU).

TFEU – An overview (4)

Legal basis and rules on single policy matters such as:

- Agriculture
- Area of Freedom, Security and Justice
- Transport
- Employment
- Common commercial policy (especially external trade)
- Customs cooperation
- Social provisions
- The European Social Fund
- Education, vocational training and youth
- Culture
- Public health
- Consumer protection
- Trans-European networks
- Industry
- Economic and social cohesion
- Research and technological development
- Environment
- Development cooperation
- Economic, financial and technical cooperation with third countries

TFEU – An overview (5)

Provisions governing the institutions (Article 13 et seq. TEU):

- The European Parliament (EP) / Parlement européen (PE) / Europäisches Parlament (EP) (Articles 14 TEU and 223 et seq. TFEU).
- The European Council / Conseil européen / Europäisches Rat (Articles 15 TEU and 235-236 TFEU)
- The Council / Conseil / Rat (Articles 16 and 237 et seq. TFEU).
- The Commission (Articles 17 TEU and 244 et seq. TFEU).
- The Court of Justice / Cour de justice / Gerichtshof (Articles 19 TEU and 251 et seq. TFEU).
- The European Central Bank / Banque central européenne (Articles 282-284 TFEU)
- The Court of Auditors / Cour des comptes / Rechnungshof (Articles 285-287 et seq. TFEU).

Provisions governing the other bodies:

- The High Representative of the Union for Foreign Affairs and Security Policy (Article 18 TEU)
- The European Economic and Social Committee / Comité économique et social / Wirtschafts- und Sozialausschuß (Articles 301 et seq. TFEU).
- The Committee of the Regions / Comité des régions / Regionalausschuß (Articles 305 et seq. TFEU).
- The European Investment Bank / Banque européenne d'investissement / Europäische Investitionsbank (Articles 308-309 TFEU).

2. CFR

Article 6 (1) TEU:

‘The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, ***which shall have the same legal value as the Treaties.***’

The CFR therefore is part of primary law of the EU.
Consequences:

- In case of conflict, TEU, TFEU and CFR provisions have equal value – they will need to be balanced to give each provision its utmost ‘effet utile’.
- Normal rules of interpretation (*lex specialis derogat legi generali*, broad interpretation of a rule – narrow interpretation of an exception etc.) are applicable in their relation.