

# Foundations of European Law

Prof. Dr. Wolfgang Voegeli

## 1. The summary of all themes studied within the course

### Course outline

The course is an introductory course to European Law designed to secure a common basis for all students going on to study more specialized European law courses. It also serves as a necessary complementary background course to all political science and economics courses dealing with Europe. The course is compulsory for all Euromaster students, and other students wanting to study another EU-Law course. Students having successfully passed an EU-Law course in undergraduate studies may apply for an exemption.

The course will touch upon the structures of the European Union, the legal basis of the institutions of this political entity as well as the legal instruments and processes. At the centre of discussions will be the special quality of the EU as a legal community as developed in the judgments of the ECJ. The Treaty on European Union and the Treaty on the Functioning of the European Union will be analysed as legal documents providing a 'constitution' for a 'would-be state'. Furthermore, the scope of regulation offered by these two treaties will be explored with an emphasis on Basic Freedoms. The differences in the legal heritage of the Member States that form the background of legal development and the legal practice of the European Court of Justice will be analysed.

### Themes

Foundations of European Law	Theme	Hours, Total	Hours, Lectures	Hours, Study
Theme 1	Introduction – a) Legal Methodology b) Short historical overview; the EU as a unique new polity	4	2	2
Theme 2	Institutions of the EU	8	2	6
Theme 3	EU competences and the principle of subsidiarity	6	2	4
Theme 4	Legislative Processes	4	2	2
Theme 5	Supremacy: Traditional concepts of international law; standards of interpretation; Quality of EU-Law; relation to Member States' law (Read van Gend; Costa/ENEL; Simmenthal)	8	2	6
Theme 6	EU legal acts: Regulations, Directives and Decisions; General principles of Community law	8	2	6
Theme 7	Direct effect of Directives (read van Gend; van Duyn; Marshall; Signalson)	6	2	4

Theme 8	State liability for failing to transform Directives (read Francovich; Faccini Dori)	6	2	4
Theme 9	State liability for failing to conform to treaty obligations (read Brasserie without the part on Factortame)	8	2	6
Theme 10	Duty to interpret National Law in the light of EU law; effects of Directives during the transposition period; (read von Colson; Inter-Environnement)	6	2	4
Theme 11	Judicial Remedies: Enforcement of EU-Law; procedures before the ECJ	8	2	6
Theme 12	Free movement of goods (read Dassonville, Cassis, and Keck)	6	2	4
Theme 13	Freedom to provide services (read Alpine, and Ciola) incl. Freedom of establishment	4	2	2
Theme 14	Free movement of persons (read Bosman, and Angonese)	4	2	2
Theme 15	Free movement of capital (read Sanz de Lera, and Verkooijen)	4	2	2
	Research paper	90	0	90
	<b>Total:</b>	<b>180</b>	<b>30</b>	<b>150</b>

### Required prior knowledge

A basic understanding of constitutional law would be beneficial.

## 2. The goals and objectives of the course.

Students should be able to understand the complex legal structure of the EU, and the rights that EU-Law confers to EU-citizens. Students should be able to analyse the conditions for the further integration of this culturally complex supra-national legal entity while preserving the existing diversity. Students should especially be able to assess the scope of action provided by the four basic freedoms.

## 3. Detailed description of themes

### Theme 1:

An general introduction into legal methodology of interpretation will be given as well as an introduction to the unique European supra-national legal system, including the historical development of the Treaties. The focus will be on the development of EU Law. The historical development of the EU as a unique polity will be the subject of the course 'Introduction to the System of the EU'

### Theme 2:

The main institutions of the EU: Council, Commission Parliament, European Council, Court of Justice will be explained with respect to their composition and function. Reference will be made to the changes envisaged in the 'Constitution'.

### Theme 3:

EU competences and their context, the system of specific enumerated powers, will be explained in relation to the principle of subsidiarity.

### Theme 4:

The main legislative processes: consultation procedure as an important example of a special

legislative procedure, the ordinary legislative procedure and the budgetary procedure will be explained as well as the powers of the various institutions in their context. Reference will be made to the changes effected by the Treaty of Lisbon.

**Theme 5:**

The unique quality of EU Law as opposed to standard concepts of international law will be explained and the role of the ECJ in the development of this unique body of law will be analysed. The concept of supremacy of the supra-national EU-Law will be explained. Leading cases (see above) of the ECJ will be analysed.

**Theme 6:**

Sources of Law: Primary Law (Treaties), Secondary Law (EU legal acts: Regulations, Directives and Decisions) and General Principles of Community Law will be explained.

**Theme 7:**

When article 249 EC (now 288 TFEU) was drafted, no-one anticipated that Directives could have any direct legal consequences without prior transposition into national law. Direct effect of Directives was a major instrument invented by the ECJ to secure compliance by the Member States with their obligations under EU Law. Leading cases (see above) will be analysed.

**Theme 8:**

State liability for failing to transform or adequately transform Directives into national law as an instrument to secure compliance will be analysed using leading cases (see above).

**Theme 9:**

State liability for failing to conform to treaty obligations introduced by the ECJ in a series of cases is the obvious consequence of the general concept of state liability for breach of the Treaty. This concept goes beyond many Member States' rules on state liability and is a corner stone in the establishment of the rule of law at supra-national level. A leading case will be analysed (see above).

**Theme 10:**

The duty to interpret National Law in the light of EU law and deriving effects of Directives during the transposition period are the finishing touches in the complex design of enforcement of EU Law against the Member States. Again leading cases will be discussed (see above).

**Theme 11:**

Enforcement of EU-Law: procedures before the ECJ; covers the main procedures. Articles 258-260 TFEU are discussed which allow the Commission to institute proceedings for breach of the Treaty. A final discussion on article 267 TFEU, which has figured prominently in many cases discussed so far, will be held. Procedures for challenging the legality of acts of EU institutions will also be explained.

**Theme 12:**

The scope of free movement of goods and the limits to public regulation of cross-border trade will be analysed using leading cases.

**Theme 13:**

#### **4. Assessment**

Students have to write a research paper of 20 – 25 pages.

#### **5. Recommended reading**

**Text Books**

1. Steiner, Jo; Lorna Woods, and Christian Twigg-Flesner, EU Law Oxford University Press
2. Wyatt and Dashwood's European Union law Arnall, Anthony; Dashwood, Alan; Ross, Malcolm; Wyatt QC, Derrick Sweet & Maxwell, 2006

3. Weatherill, Stephen, Cases and Materials on EU Law, Oxford University Press 2006
4. Craig, P. and de Burca, G., Cases and Materials, Oxford University Press.
5. Principles of European Constitutional Law, Armin v. Bogdandy and Jürgen Bast (eds.), Hart Publishing 2007

**Cases (see the files on my web-site)**

**Legal texts**

1. Treaty on European Union (TEU)
2. Treaty on the Functioning of the EU (TFEU)
3. Accession Treaty Romania and Bulgaria
4. PROTOCOL Concerning the conditions and arrangements for admission of the republic of Bulgaria and Romania to the European Union
5. Treaty on European Union - old
6. Treaty establishing the European Community

# FOUNDATION OF EU LAW – BASIC LITERATURE

## Introduction

- **Steiner and Woods** chapter 1 (From EEC to EU: a brief history of the development of the Union), **pages 3-19**
- **Wyatt and Dashwood** chapter 1 (from the Founding Treaties to the Treaty on European Union), **pages 3-20**
- **Craig and de Burca** chapter 1 (The development of European integration), **pages 1-37**
- **Weatherill and Beaumont** chapter 1 (The Development of the European Union), **pages 1-44**

## Institutions and competences

- **Steiner and Woods** chapter 2 (institutions of the EC: composition and powers), **pages 20-40**
- **Wyatt and Dashwood** chapter 2 (The institutions of the European Union), **pages 21-38**
- **Craig and de Burca** (The Institutions), **pages 38-81**
- **Weatherill and Beaumont** chapters 2-4 and 6, **pages 45-149 and 173-211** (Commission 45-72; Council pages 73-99; European Parliament pages 100-149; ECJ pages 173-211)

## Competences

- **Steiner and Woods** chapter 3 (scope of the EC Treaty: laws and law-making in the community), **pages 41-68**
- **Wyatt and Dashwood** chapter 3 (The legislative Process), **pages 39-58**
- **Craig and de Burca** (Instruments and competences), **pages 82-107**

## Legislation

- **Steiner and Woods** review chapters 2 and 3
- **Wyatt and Dashwood** review chapter 3
- **Craig and de Burca** review pages 108-143
- **Weatherill and Beaumont** chapter 5, (EC legislation), **pages 150-172**

## Supremacy

- **Steiner and Woods** Chapter 4 (Principles of supremacy of EC law), **pages 69-88**
- **Wyatt and Dashwood** chapter 4 (Sources, Supremacy and Direct effect of Community law), **pages 59-109**
- **Craig and de Burca** (Legislation and Policy-making), **pages 108-143**
- **Craig and de Burca** (The Relationship between EC law and National Law: Supremacy ), **pages 344-390**
- **Weatherill and Beaumont** chapter 12 (Supremacy of EC law), **pages 433-453**

## Legal acts

- **Steiner and Woods** chapters 5 and 6 (principles of direct applicability and direct effects ; general principles of law), **pages 89-144**
- **Wyatt and Dashwood** chapter 6 (General Principles of Community law), **pages 131-150**

- **Craig and de Burca** (The Nature and effect of EC Law: Direct Effect And Beyond), **pages 268-304**
- **Weatherill and Beaumont** chapter 7 (Actions against Member States), **pages 212-243**; chapter 8 (judicial review of EC Acts), **pages 244-313**; chapter 11 (Direct Effect of Community Law and Actions for Damages against Member States), **pages 392-432**

#### State Liability and Duty to interpret EU Law

- **Steiner and Woods** Chapter 7 (jurisdiction of the European Courts), **pages 147-167**, review chapter 5
- **Wyatt and Dashwood** chapter 9-11 (Jurisdiction of the Court of Justice and the Court of First Instance), **pages 170-286**
- **Craig and de Burca** (Enforcement action against Member States), **pages 428-459**

#### Judicial remedies

- **Steiner and Woods** Chapter 8 (state liability and remedies in national courts), **pages 155-192** and Chapter 9 (the preliminary ruling procedure), **pages 193-224**
- **Steiner and Woods** chapters 10-13, **pages 225-306**
- **Wyatt and Dashwood** chapter 5 (Rights and Remedies), **pages 110-130**
- **Craig and de Burca** (The Application of EC Law Remedies in National Courts), **pages 305-343**
- **Weatherill and Beaumont** chapter 9 (Article 234 (ex 177): Preliminary Rulings), **pages 314-356**; chapter 10 (Miscellaneous aspects of the Court's Jurisdiction), **pages 357-391**

## **Course Material**

**Prof. Dr. W. Voegeli**

T.: (040) 42838 5216

E-Mail: wolfgang.voegeli@wiso.uni-hamburg.de

## **FOUNDATIONS OF EUROPEAN LAW / INTRODUCTION TO THE SYSTEM OF THE EU**

### **Treaties:**

[http://europa.eu/documentation/legislation/index\\_en.htm](http://europa.eu/documentation/legislation/index_en.htm)

### **Historical Material:**

<http://www.ena.lu/mce.cfm>

### **Guide to Legislation**

[http://europa.eu/legislation\\_summaries/index\\_en.htm](http://europa.eu/legislation_summaries/index_en.htm)

[Legislative Observatory, database of the EU Parliaments](#)

[PRE-Lex, database on inter-institutional procedures](#)

<http://ec.europa.eu/prelex/apcnet.cfm?CL=en>

[EUR-Lex, the portal to European Union law](#)

[http://eur-lex.europa.eu/RECH\\_menu.do?ihmlang=en](http://eur-lex.europa.eu/RECH_menu.do?ihmlang=en)

### **Legislative Material Constitution**

<http://european-convention.eu.int/>

[http://european-convention.eu.int/doc\\_wg.asp?lang=EN](http://european-convention.eu.int/doc_wg.asp?lang=EN)

<http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>

[http://www.europa.eu.int/futurum/1000debates/index.cfm?page=dsp\\_content\\_page&lng\\_id=2](http://www.europa.eu.int/futurum/1000debates/index.cfm?page=dsp_content_page&lng_id=2)

[http://www.unizar.es/euroconstitucion/Treaties/Treaty\\_Const.htm](http://www.unizar.es/euroconstitucion/Treaties/Treaty_Const.htm)

### **Other materials on the Reform Treaty and the Constitution**

[http://en.wikipedia.org/wiki/Treaty\\_of\\_Lisbon](http://en.wikipedia.org/wiki/Treaty_of_Lisbon) (TEU-reform)

[http://en.wikipedia.org/wiki/European\\_constitution](http://en.wikipedia.org/wiki/European_constitution)

<http://www.irri-kiib.be/depEU-institut.htm>

<http://www.jeanmonnetprogram.org/papers/00/000501.html>

### **Useful Net Resources (Links)**

Europe Homepage <http://europa.eu/>

[Fact sheets of the European parliament](#)

[Information Sources and Contacts in EU](#) [http://europa.eu/index\\_en.htm](http://europa.eu/index_en.htm)

[Glossary: Institutions, policies and enlargement of the EU](#)

[Newsletters:](#) [http://europa.eu/documentation/order-publications/newsletter/index\\_en.htm](http://europa.eu/documentation/order-publications/newsletter/index_en.htm)

[Council of the EU](#)

[EU Commission](#) [http://ec.europa.eu/index\\_en.htm](http://ec.europa.eu/index_en.htm)

[Secretariat General of the EU Commission:](#) [http://ec.europa.eu/dgs/secretariat\\_general/index\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/index_en.htm)

[European Court of Justice:](#) <http://curia.europa.eu/>

[European University Institute Working Papers](#)

[Internet EU-Law Course](#)

[European Interest Links:](#) <http://centers.law.nyu.edu/jeanmonnet/links/EU/index.html>

[The European Policy Center](#)

### **Booklets (not scientific, just for orientation)**

All available brochures

[http://ec.europa.eu/publications/index\\_en.htm](http://ec.europa.eu/publications/index_en.htm)

# Foundations of European Law

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Dear Students,

please read these notes carefully. They will guide you in your preparations for

- a) the intensive course 27-30 September, 2-4 November
- b) the preparation for writing a research paper.

## **Format of the Course**

The course will work with lectures, group presentations and discussions. Since this will be your first course in which group presentations will be expected they will not be subject to formal assessment. Rather, they offer you practice opportunities.

## **Assessment**

Assessment will only be by a 20 – 25 pages research paper.

## **Preparation**

The way to prepare is to read in one of the textbooks that are noted in the course description. Identify the chapters relevant to the themes listed in the course description and make notes of what you do not understand. Be sure to raise these questions during the course. Before you start reading a textbook you may want to read the “ABC of EU Law”, also on the web-site. But please be aware that this is not up to date and not on a level of a master’s degree course. You might also turn to [http://europa.eu/scadplus/scad\\_en.htm](http://europa.eu/scadplus/scad_en.htm) and look under “Institutional Affairs” for information on the historical development of the EU, the institutions and the decision making processes.

## **Necessary Time**

The practice hours mentioned in the overview are rough estimates. These hours should cover your preparation for the course and your revision of the course in preparation for writing a research paper.

## **Cases and Presentations**

While reading the relevant chapters of the textbooks also refer to the cases that are mentioned in the course description. You will find them in the folders on the web-site under *WS10* of my course.

Furthermore, I would like to have groups of 2 – 3 students to each present a case or set of cases. We need 7 presentations. I shall start off with a presentation of the cases *van Gend*, *Costa/ENEL* and *Simmenthal*. The groups should be as follows:



- Group 1: van Duyn; Marshall  
Group 2: von Colson; Inter-Environnement  
Group 3: Francovich;  
Group 4: Brasserie  
Group 5: Dassonville, Cassis  
Group 6: Alpine, Ciola  
Group 7: Bosman  
Group 8: Sanz de Lera, Verkooijen

If only 7 groups constitute themselves, group 8 may be deleted. Groups 1 – 3 will present in the September session, the rest in November. Please discuss with each other who will be part of which group and let me know in advance by e-mail.

Please note that every student is expected to read all the cases posted and not only the cases he or she is presenting.

The way to prepare a case study is to:

1. identify the parties and the main issues of their dispute;
2. identify the questions put to the ECJ by the national court (Note that although all cases to be discussed are preliminary rulings where such questions are raised by a national court, in other procedures there will be no such questions.);
3. reconstruct the legal reasoning of the parties and third parties such as Member States or the Commission;
4. identify how the ECJ treats the questions and the reasons given by the Court
5. explain the importance of the judgement by looking into the text books or literature available in the library or the internet on the importance of the case.

## **Materials**

You will also need a print of the EU-Treaty and the TFEU as well as of the conversion tables. The old treaties are available on the website

## **Objectives**

You need to be able to discuss basic problems of EU law theoretically as well as analyse a judgement by the ECJ in the context of the case law established by the Court so far.