

Legal Aspects of MAS Design

spm4423

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13 February 2013

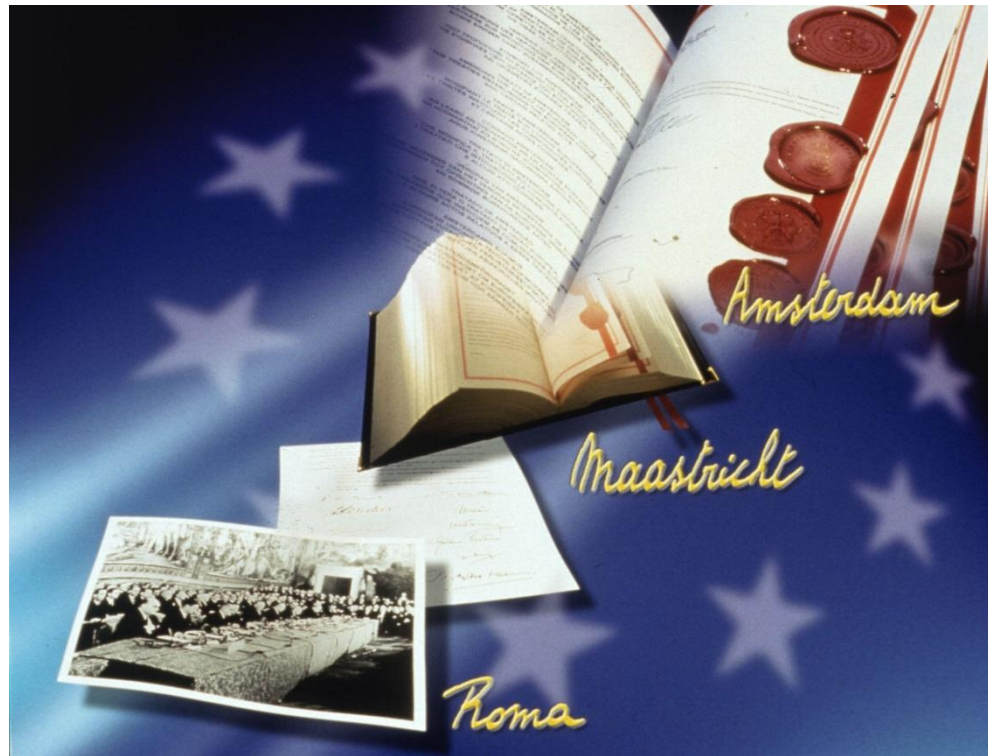
Course information

- Blackboard, Course information: Information sheet
- Lectures: Wednesdays, Thursdays and (some) Fridays
- But also Tuesday 5 March (TPM-CZ A)
- Time: 8.45 – 10.30 / 13.45 – 15.30
- Room: CT-CZ F / EWI-CZ Chip
- 14 lectures + 1 practicum + 1 general repetition
- Exam: 10 April 2012, 9.00 – 12.00
- Open book
- Mark for spm4423 is fully determined by the exam

SPM7050

- Skill attached to spm4423 (critical reading)
- ***You have to enroll also for spm7050!!!!***
 1. Analysis of a judgment
 - Hand in date: **15** March 2013, 10 a.m. through SafeAssignment
 - Judgment is on BlackBoard (Assignments)
 - Formal requirements on BlackBoard
 2. Upload your answers to last year's exam (lecture 16)
 - Hand in date: 27 March, 10 a.m. through SafeAssignment
 - Not the good answers (no mark) but your serious effort
- Satisfactory / unsatisfactory

Institutional Law



<http://ec.europa.eu>

Why do we have an EU?



www.welingelichtekringen.nl



Not found



<http://gratitudeplanet.com>

What is the EU?

- An international organisation
- Established through multilateral treaties (international agreements)
- Has legal personality
- Creates, through its institutions, law

Special features

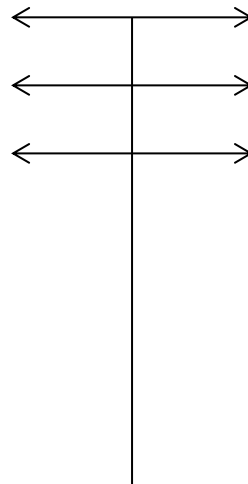
- The EU has a legal order of its own, in which individuals participate directly (monism/dualism irrelevant)
- Legislative and executive powers for more or less independent institutions within the EU
- EU law takes precedence over national law, irrespective of the national legal system

Position of EU law in the Dutch legal system

Public law

- Penal law
- Constitutional law
- Administrative law
- ...

- EU law



Private law

- Contract law
- Employment law
- Corporate law
- ...

Where can you find EU law in Dutch law?

EU law



central

- Act
- Decrees, orders (AMvB, KB)
- Ministerial regulations
- Administrative decisions

decentral

- Provincial and municipal regulations; decrees of the water Boards
- Implementing regulations

EU Institutions

1. European Council
2. European Parliament
3. Council of the European Union
4. European Commission
5. Court of Justice (ECJ, General Court, Civil Service Tribunal)
6. Court of Auditors
7. European Central Bank

Treaties (primary legislation)

1. Treaty on European Union
2. Treaty on the functioning of the European Union
3. Charter of Fundamental Rights
4. Treaty establishing the European Atomic Energy Community

Also primary legislation: treaties between the EU and third countries or organizations, general principles of law

Legal acts

1. Legislative acts

- All legislation that is adopted according to a formal legislative procedure
- E.g. the Enabling regulation for state aid

2. Non-legislative acts

- Delegated legislation
- E.g. Exemption regulations for state aid
- Adopted by the Commission

3. Implementing acts

- Implements legislative acts
- E.g. adoption of the 'black list' of terrorist groups
- Mostly adopted by the Commission, sometimes by the Council

Secondary legislation

1. Regulations
2. Directives
3. Decisions

➔ Can be both legislative, delegated and implementing acts!

Examples

Legislation

I *Legislative acts*

REGULATIONS

- * **Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors ⁽¹⁾**

Legislation

II *Non-legislative acts*

REGULATIONS

- * **Commission Delegated Regulation (EU) No 114/2013 of 6 November 2012 supplementing Regulation (EU) No 510/2011 of the European Parliament and of the Council with regard to rules for the application for a derogation from the specific CO₂ emissions targets for new light commercial vehicles ⁽¹⁾**
- * **Commission Implementing Regulation (EU) No 115/2013 of 8 February 2013 amending the Annex to Regulation (EU) No 37/2010 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origin, as regards the substance diclazuril ⁽¹⁾**

Soft law

1. Opinions
2. Resolutions
3. Guidelines
4. Communications
5. Frameworks
6.

Direct effect

- Provisions of primary and secondary legislation can have direct effect: nationals can invoke these provisions directly (national transposition cannot be required)
- Conditions:
 1. provision contains rights for individuals
 2. provision is sufficiently clear and precise
 3. rights do not depend on further measures by MS
 4. no/wrong implementation after transposition date (**only for directives**)
- Provisions of a directive can only have a vertical direct effect (citizen → government)

Legislative procedures

1. Ordinary procedure (co-decision)
2. Special procedures (consultation and consent)

Actors in the legislative process

1. Commission: exclusive right to initiate legislation
2. Council: can amend the proposal and has to adopt the proposal; legislation is not valid unless it bears the signature of the Council (apart from delegated legislation)
3. EP: is either advisor or co-legislator, depending on the applicable procedure

Judicial protection (1)

1. Preliminary rulings
2. Actions for failure to fulfill obligations (Commission vs MS)
3. Actions for annulment
4. Actions for failure to act
5. Actions seeking compensation for damage
6. Appeals

Judicial protection (2)

- Cases on competition → General Court
- Natural / legal persons → General Court
- MS vs Commission → General Court
- MS vs other institution → ECJ
- Commission vs MS → ECJ
- Institution vs institution → ECJ
- MS vs MS → ECJ
- Preliminary rulings → ECJ

Old exam questions on institutional law



www.fd.nl

- What Treaty resulted in the most fundamental and far reaching change in the structure and competences of the European cooperation?
 - a) The Single European Act
 - b) The Treaty of Maastricht
 - c) The Treaty of Amsterdam
 - d) The Treaty of Lisbon

- Formerly the European Union was based on the Treaty on European Union, the Treaty establishing the European Community and the Treaty establishing the European Atomic Energy Community. On what treaties is the European Union now based?
 - a) The Treaty on European Union, the Treaty establishing the European Community and the Treaty establishing the European Atomic Energy Community
 - b) The Treaty on European Union
 - c) The Treaty on European Union and the Treaty on the Functioning of the European Union
 - d) The Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community

Article 44

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this [...] before 28 December 2009.

They shall forthwith communicate to the Commission the text of those measures.

- The provision above belongs to
 - a) the Treaty
 - b) a regulation
 - c) a directive
 - d) a decision

- What is **not** a requirement for a provision of European law having direct effect?
 - a) the provision must confer rights on individuals
 - b) there must be a causal link between the infringement of the provision and the damage caused
 - c) the provision must be unconditional
 - d) the provision must be sufficiently precise

- What is the main difference between a directive and a regulation?
 - a) A directive constitutes primary legislation, whereas a regulation is secondary legislation
 - b) A regulation is generally applicable (member states and individuals), whereas a directive is applicable to all member states
 - c) A regulation is binding upon all member states, whereas a directive is only binding as to the result to be achieved
 - d) A regulation is an EU instrument, whereas a directive is CFSP instrument

- What statement about the Treaty of Lisbon is **correct**?
 - a) The Treaty of Lisbon consolidates the existing treaties into a single text, the Treaty on European Union
 - b) After entry into force of the Treaty of Lisbon, the European Union will have 6 institutions
 - c) The Treaty of Lisbon will reduce the number of legislative procedures to 1: the co-decision procedure
 - d) After entry into force of the Treaty of Lisbon, the European Union will have a 'president'; this is the president of the European Council

- The Treaty of Lisbon changed the structure of the European Union completely. Which of the following statements is **false**?
 - a) Adopting the Treaty of Lisbon, the member states have made the European Union more supranational. There are however still intergovernmental elements within this European Union.
 - b) Even though the Treaty of Lisbon is supposed to get rid of the pillar structure, the common foreign and security policy still retains a specific place within the European Union.
 - c) The Treaty of Lisbon has shifted the balance of power within the EU, since now the European Council is an official institution, which increases its powers in the legislative process.
 - d) The Treaty of Lisbon aims to further democratize the European Union.

- The Dutch authorities asked an opinion of the European Commission on the compatibility of the project *Maasvlakte 2* and the proposed compensatory measures with the Habitat Directive. Suppose the European Commission gave a negative advice: the project with the proposed compensatory measures would not fulfill the requirements under the Habitat Directive. What legal steps can the Dutch authorities take against this negative opinion?
 - a) There is nothing they can do
 - b) Bring proceedings before a national court
 - c) Bring proceedings before the General Court
 - d) Bring proceedings before the European Court of Justice

- The European Council and the European Commission have both been described as moving towards being an institution at the European level that is comparable to what we consider the 'government' on a national level. Which statement is **true**?
- a) Just like the Dutch national government, the European Commission has the right to initiate legislation. However, it lacks the enforcement powers.
- b) Just like the Dutch national government, the European Council sets out the political agenda, and may be held responsible in front of its parliament, in this case the European parliament.
- c) Just like the Dutch national government, the European Commission is a representation of the voting results in the European elections.
- d) Just like the Dutch national government, the European Council can initiate legislation.

- In April and May, Iceland's Eyjafjallajökull volcano erupted and caused an immense ash cloud. The European Ministers of Transport decided to lock down the air space. As a result of this, the European air transport industry suffered huge losses. The industry asked their national authorities for some compensation. But most member states were not willing to grant state aid. The European Parliament has now adopted a resolution in which it strongly condemns this attitude of the member states. The Dutch Minister is not pleased with this resolution, especially now that the discussion with KLM regarding compensating hotel accommodation for stranded passengers is a hot issue (KLM is only prepared to pay for the first 24 hours of 'care', including hotel accommodation, food and drinks). What can the Minister do?
 - a) Bring proceedings before a national court
 - b) Bring proceedings before the General Court
 - c) Bring proceedings before the Court of Justice
 - d) Nothing

- The European Commission has adopted the text of a proposal for a regulation on the application of the state aid rules on aid for museums. The consultation procedure is applicable. A civil servant of the Dutch Ministry of Culture reads this proposal and agrees with almost everything. However, one provision in the proposal would have the consequence – if this proposal is adopted by the Community legislator - that a special subsidy for the maintenance of the famous painting the Nachtwacht in the Rijksmuseum would become illegal. In order to prevent this, what would be the best option?
 - a) Try to convince the Commission to revoke the proposal
 - b) Try to convince the European Parliament to amend the proposal
 - c) Try to convince the Council to amend the proposal
 - d) Try to convince the Court of Justice to annul the proposal

- The municipality of Amsterdam has invested in the construction of a glass fiber network. It set up a public-private partnership, Glasvezelnet Amsterdam CV, together with ING Real Estate, Reggefibre and five housing corporations. The investments of Amsterdam into the infrastructure were notified to the European Commission as a possible state aid measure. The Commission decided on 11 December 2007 that it did not constitute a state aid measure. UPC, a company that owns a broadband infrastructure (though not glass fiber) in Amsterdam, is not pleased with this decision. What can UPC do?
- a) UPC can bring an action for annulment of the decision of 11 December 2007 before a national court
- b) UPC can bring an action for annulment of the decision of 11 December 2007 before the General Court
- c) UPC can bring an action for annulment of the decision of 11 December 2007 before the European Court of Justice
- d) UPC cannot do anything about it

- I. When the European Council and the European Parliament cannot agree on a legislative proposal, a Conciliation Committee can be set up
 - II. A preliminary ruling is not subject to appeal
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- a) Both are correct
 - b) Both are incorrect
 - c) I is correct, II is incorrect
 - d) I is incorrect, II is correct