

'These books help students take their learning up a notch'

– **Emily Allbon**, Senior Lecturer in Law and creator of Lawbore, City University

# EUROPEAN UNION LAW

**Glenn Robinson**

Second Edition

UNDERSTAND THE  
LAW AND REMEMBER  
THE DETAILS

AVOID COMMON  
MISTAKES

GET THE MOST  
FROM YOUR  
REVISION

# **Optimize European Union Law**

**Second Edition**

# OPTIMIZE LAW REVISION

## **Titles in the series:**

Contract Law  
Equity and Trusts  
Land Law  
Public Law  
EU Law  
Tort Law

## **The Optimize series' academic advisors are:**

– **Michael Bromby**, Higher Education Academy Discipline Lead for Law 2011–2013, Reader in Law at Glasgow Caledonian University.

‘The use of visualisation in Optimize will help students to focus on the key issues when revising.’

– **Emily Allbon**, Senior Lecturer in Law and creator of Lawbore, City University.

‘Partnering well-explained, comprehensive content with visual tools like maps and flowcharts is what makes the Optimize series so unique. These books help students take their learning up a notch; offering support in grappling with the subject, as well as insight into what will help make their work stand out.’

– **Sanmeet Kaur Dua**, Lecturer in Law, co-creator of Lawbore, City University.

‘This series sets out the essential concepts and principles that students need to grasp in a logical way by combining memorable visual diagrams and text. Students will find that they will not easily forget what they read in this series as the unique aim higher and interaction points will leave a blueprint in their minds.’

– **Zoe Swan**, Senior Lecturer in Law, University of Greenwich.

‘The wide range of visual material includes diagrams, charts, tables and maps to enable students to check their knowledge and understanding on each topic area, every step of the way ... When combined with carefully explained legal principles and solid, understandable examples, students will find this series provides them with a win-win solution to the study of law and developing revision techniques.’

# **Optimize European Union Law**

**Second Edition**

**Glenn Robinson**

Second edition published 2017  
by Routledge  
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge  
711 Third Avenue, New York, NY 10017

*Routledge is an imprint of the Taylor & Francis Group, an informa business*

© 2017 Glenn Robinson

The right of Glenn Robinson to be identified as author of this work has been asserted by him in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

*Trademark notice:* Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

First edition published by Routledge 2014

*British Library Cataloguing in Publication Data*

A catalogue record for this book is available from the British Library

*Library of Congress Cataloging in Publication Data*

Names: Robinson, Glenn, author.

Title: Optimize European Union law/Glenn Robinson.

Description: 2nd edition. | New York: Routledge, 2016. | Series: Optimize series | Includes index.

Identifiers: LCCN 2016022855 (print) | LCCN 2016023203 (ebook) | ISBN 9781138670839 (pbk.) | ISBN 9781315617428 (e-Book) | ISBN 9781317207917 (Web PDF) | ISBN 9781317207900 (ePub) | ISBN 9781317207894 (Mobipocket)

Subjects: LCSH: Law—European Union countries.

Classification: LCC KJE947. R63 2016 (print) | LCC KJE947 (ebook) | DDC 341.242/2—dc23

LC record available at <https://lcn.loc.gov/2016022855>

ISBN: 978-1-138-67083-9 (pbk)

ISBN: 978-1-315-61742-8 (ebk)

Typeset in The Sans  
by Wearset Ltd, Boldon, Tyne and Wear

Visit the companion website: [www.routledge.com/cw/optimize-law-revision](http://www.routledge.com/cw/optimize-law-revision)

# Contents

Optimize – Your Blueprint for Exam Success	vii
Preface	ix
Guide to Using the Book and the Companion Website	xiii
Table of Cases and Statutes	xv
1 The EU: History, Institutions and Sources of Law	1
2 Enforcement Actions Against Member States and Preliminary Rulings	31
3 European Law Supremacy and Direct Effect	47
4 Indirect Effect and State Liability	69
5 Free Movement of Goods 1: Articles 28–30 and 110 TFEU	91
6 Free Movement of Goods 2: Articles 34–36 TFEU	111
7 Personal Mobility: Citizenship and Free Movement of Persons	137
8 Freedom of Establishment and Freedom to Provide Services	167
9 Competition Law 1: Article 101 TFEU	205
10 Competition Law 2: Article 102 TFEU	231
Index	253



**Taylor & Francis**

Taylor & Francis Group

<http://taylorandfrancis.com>

# Optimize – Your Blueprint for Exam Success

## Why Optimize?

In developing the 'Optimize' format, Routledge have spent a lot of time talking to law lecturers and examiners about assessment, teaching and learning, and exam preparation. The aim of our series is to help you make the most of your knowledge to gain good marks – to optimize your revision.

### Students

Students told us that there was a huge amount to learn and that visual features such as diagrams, tables and flowcharts made the law easier to follow. Learning and remembering cases was an area of difficulty, as was applying these in problem questions. Revision guides could make this easier by presenting the law succinctly, showing concepts in a visual format and highlighting how important cases can be applied in assessment.

### Lecturers

Lecturers agreed that visual features were effective to aid learning, but were concerned that students learned by rote when using revision guides. To succeed in assessment, they wanted to encourage them to get their teeth into arguments, to support their answers with authority and show they had truly understood the principles underlying their questions. In short, they wanted students to show that they understood how they were assessed on the law, rather than repeating the basic principles.

### Assessment criteria

If you want to do well in exams, it's important to understand how you will be assessed. In order to get the best out of your exam or essay question, your first port of call should be to make yourself familiar with the marking criteria available from your law school; this will help you to identify and recognise the skills and knowledge you will need to succeed. Like course outlines, assessment criteria can differ from school to school, so if you can get hold of a copy of these criteria, this will be invaluable. To give you a clear idea of what these criteria look like, we've collated the most common terms from 64 marking schemes for core curriculum courses in the UK.





*Common Assessment Criteria, Routledge Subject Assessment Survey*

## Optimizing the law

The format of this ‘Optimize Law’ volume has been developed with these assessment criteria and the learning needs of students firmly in mind.

- ❖ **Visual format:** Our expert series advisors have brought a wealth of knowledge about visual learning to help us to develop the books’ visual format.
- ❖ **Tailored coverage:** Each book is tailored to the needs of your core curriculum course and presents all commonly taught topics.
- ❖ **Assessment led-revision:** Our authors are experienced teachers with an interest in how students learn, and they have structured each chapter around revision objectives that relate to the criteria you will be assessed on.
- ❖ **Assessment led-pedagogy:** The ‘Aim Higher’, ‘Common Pitfalls’, ‘Up for Debate’ and ‘Case Precedent’ features used in these books are closely linked to common assessment criteria – showing you how to gain the best marks, avoid the worst pitfalls, apply the law and think critically about it.
- ❖ **Putting it into practice:** Each chapter presents example essays or problem questions and template answers to show you how to apply what you have learned.

Routledge and the ‘Optimize’ team wish you the very best of luck in your exams and essays!

# Preface

For many students EU law can be a challenge; at times, the perceived legislative density of this essentially civil law subject can appear impenetrable. One of the aims of this text is to provide a way in to this subject by providing the key information in a series of manageable steps allowing the reader to walk through the most essential topics in a visual and stimulating way.

As most students will be familiar with the common law approach with the focus on case law precedent and the relative rigidity of the *stare decisis* doctrine, it is worth explaining at this point how EU law departs from the binding precedent template and to emphasise the importance of legislation in this system.

In one important way, EU law differs from UK law in that the use of precedent in the overwhelming majority of Member States within the union is persuasive; the judiciary are guided by previous cases, but are not necessarily bound to follow them. In this European approach, the case can be followed by the judge, but there is a greater freedom about the choices and pathways available in the judicial decision-making process.

Another notable difference between the two systems, the UK common law and the civil law prevalent in mainland Europe is the role of statutes or as they are more commonly termed within the EU Member States, codes. Whereas, in the UK, a statute is typically written in a detailed way with precise definitions where possible, in Europe and as we shall see in the EU, the legislation acts a starting point for the judiciary to interpret and apply in an arguably more dynamic way.

As I am sure you know, in the UK, the traditional approach to statutory interpretation has always been the literal rule, the so-called 'dictionary rule' which compels the judge to produce meanings for the words in the statute which are arguably limited to the obvious, literal meanings of the words. This can lead to absurdities where the clear literal meaning is out of date or does not produce the intended outcome which the statute was designed to achieve. Jurisprudence is littered with many such examples.

By way of contrast, the European approach has developed along teleological lines and has come to be known commonly in the UK as the 'purposive' rule. Using this

tool, the European judge will focus on the reason for the legislation. Broadly speaking, instead of asking the question: What does the statute say? A European judge will ask: What is the purpose of the code?

This approach throws up some interesting issues relating to the role of the judge in Europe and the way in which legislation is produced in the EU Member States and, by extension, the EU itself.

Starting with the first issue: the role of the judge. In the Court of Justice of the European Union, the judges will treat the legislation in front of them as a 'living document' to be interpreted and upgraded as social circumstances and legal necessity demand. For example, in 1957 in the original Treaty of Rome, sex discrimination was provided for in only a limited way. The original Article 119 (now Article 157 TFEU), merely stated that men and women should have equal pay.

This legal area developed greatly over the years through a progressive series of judgments which drove the law forward and expanded the notion of sex discrimination. Over this period, issues such as work of equal value, discrimination against pregnant women, equal rights for those who have changed gender or have been discriminated against on the grounds of their sexuality have all been raised and formed the basis for judgments in the European Court. Through this purposive approach, the original EU law has been re-interpreted in line with prevailing contemporary attitudes without the need to change the legislation at all.

However, this leads on to my next point, concerning the role of legislation. First, the law in the EU does clearly change over time. The cases outlined above in relation to sex discrimination have led to revisions in the EU through new Treaty articles, or the introduction of regulations or directives. This usually happens following a sequence of cases which have flagged up an area as especially complex or in need of clarification. Here, the legislation fulfils the roles of law reform and codification of the case law.

Second, in regard to legislation, it is worth noting that, in contrast to UK statutes, EU law is worded in a 'looser', less precise and less definitive manner. This allows the judiciary greater freedom in their approach and is typical of the European, civil law *modus operandi*. In this way, through a combination of the mode of language deployed, the persuasive use of precedent and the purposive interpretative approach, the law of the EU continues to develop and grow to meet the challenges of an ever-growing Union.

There is a further introductory point to make.

The law-making powers of the institution and the interpretative powers of the judiciary are bounded. This is in line with the approach prevalent in a common law system.

In the UK, common law is driven forward by the courts, hence the name, ‘judge-made’ law. It is possible for law to be taken in unexpected directions and, when there is no obvious precedent or it is clearly time for a change, it is now accepted that British judges enjoy some freedom in this area.

Arguably, this is not the case in the EU. The Treaties as outlined in the next chapter act as the starting point for the law to develop. This operates in two ways.

First, when new secondary legislation is planned, it must emerge from the foundation treaty: put simply, the EU could not produce legislation on free movement of goods unless a Treaty article on this area was already in existence.

Second, when deciding cases, the judges of the CJEU must produce judgments which sit within the overarching EU legal framework of Treaty Articles, and secondary legislation.

This means that the common law freedom arguably enjoyed by judges in the UK is not available to their colleagues in the EU. The closest topics to the common law approach are arguably those of direct effect, indirect effect and state liability where the judges creatively introduced these doctrines. However, in all three, justification for the judicial approach was found within the body of the treaties – again illustrating the bounded nature of the EU system.

In terms of learning the law contained in this text, there is a very useful approach which my students have found helpful in ‘seeing’ their way through.

When asked a legal question relating to UK law, the habitual answer of the student is to cite case law and precedent. This needs to be modified when studying EU law.

When you are asked a similar question on EU law – you should invariably start with the Treaty Article relating to that area. As you will note in the majority of the following chapters, each topic area cites the relevant Treaty Articles first. This is important as the primary legislation, the Article, will lay out the framework for the area and provide the requisite legal permission for secondary legislation to be introduced to broaden out the area and fill in any gaps which appear as the law is used and applied.

Once the relevant Article has been engaged, two routes of exploration open up. First, what are the key cases relating to that Article – how has the legal content of the Article been interpreted and applied in the courts? Each Article thus has associated case law whereby the judges tell us what the language of the Article means. As noted previously, these judgments are persuasive and can change over time.

Second, once you have an overview of the base Articles and their interpreting cases, you should turn to any secondary legislation which is relevant. This law develops, codifies and expands the law but can only be produced by the EU institutions if related to a Treaty Article. The format of this secondary legislation is typically as regulations or as directives.

You should then familiarise yourself with any cases which interpret and explain the provisions of this secondary legislation in the same way that you did for those cases relating to Articles above.

In this way, a ‘paper trail’ should develop which you can use to plot your way through each topic:

Article

Regulation or Directive

Supporting cases.

If you remember to do this and construct your study notes accordingly, it is hard to go wrong.

This latest edition of *Optimize European Union Law* has been updated to include:

- ❖ A new chapter on Freedom of Establishment and Services;
- ❖ new cases and legislation;
- ❖ enhanced parts on EU supremacy and the relationship between the EU and the UK.

# Guide to Using the Book and the Companion Website

The Routledge 'Optimize' revision series is designed to provide students with a clear overview of the core topics in their course, and to contextualise this overview within a narrative that offers straightforward, practical advice relating to assessment.

## Revision objectives

A brief introduction to the core themes and issues you will encounter in each chapter.

## Chapter Topic Maps

Visually link all of the key topics in each chapter to tie together understanding of key issues.

## Illustrative diagrams

A series of diagrams and tables are used to help facilitate the understanding of concepts and interrelationships within key topics.

## Up for Debate

'Up for Debate' helps you to critique current law and reflect on how and in which direction it may develop in the future.

## Case precedent boxes

A variety of landmark cases are highlighted in text boxes for ease of reference. The facts, principle and application for the case are presented to help students understand how these courses are used in legal problems.

## Aim Higher and Common Pitfalls

These assessment-focused sections show students how to get the best marks, and avoid the most common mistakes.

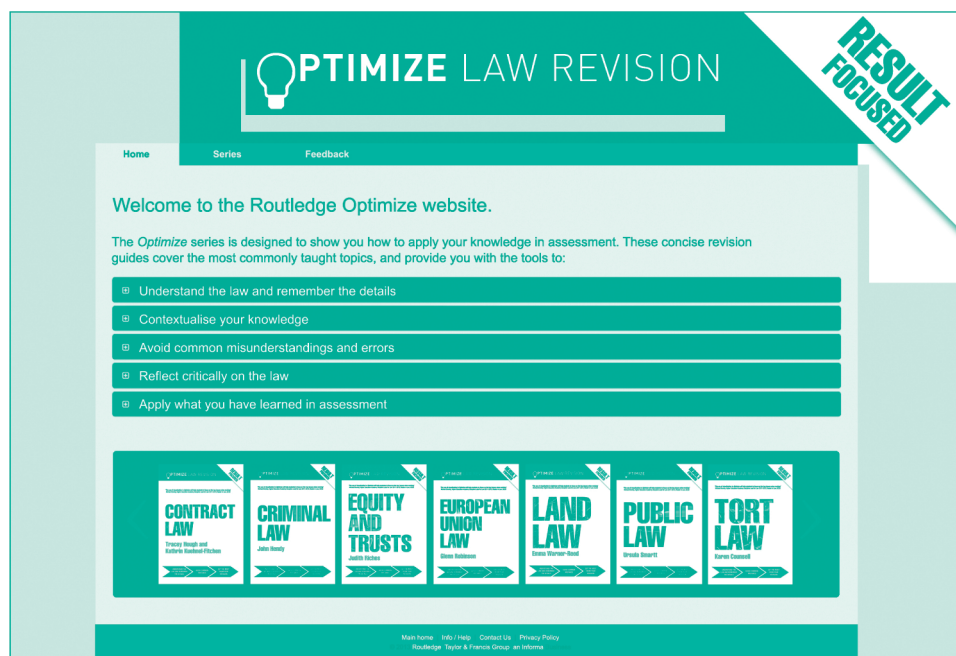
## Table of key cases

Drawing together the key cases from each chapter.

## Companion Website

[www.routledge.com/cw/optimize-law-revision](http://www.routledge.com/cw/optimize-law-revision)

Visit the Law Revision website to discover a comprehensive range of resources designed to enhance your learning experience.



## Resources for Optimize Law revision

- ❖ Revision tips podcasts
- ❖ Topic overview podcasts
- ❖ Subject maps for each topic
- ❖ Downloadable versions of Chapter Maps and other diagrams
- ❖ Flashcard Glossary
- ❖ MCQ questions

# Table of Cases and Statutes

## ■ Cases

AC Treuhand AG v Commission

CT99/04 [2008] WLR (D) 229 **211, 228**

Adeneler v Ellinikos Organismos

Galaktos (ELOG) C212/04 [2006] ECR I-6057 **77, 82**

Adoui and Cornuaille v Belgium State

C115 & 116/81 [1982] ECR 1665 **160, 163**

Åklagaren v Mickelsson and Roos

C142/05 [2009] ECR I-4273 **128, 133**

Akzo Chemie BV v Commission C62/86

[1991] ECR I-3359 **244, 250**

Alfons Lütticke GmbH v Hauptzollamt

Saarlouis C57/65 [1966] ECR 205 **54, 66, 99, 109**

AM & S Ltd v Commission C155/79

[1982] 2 CMLR 264 **26, 29**

Amministrazione delle Finanze dello

Stato v Simmenthal SpA C106/77 [1978] ECR 629 **51, 66**

ANSEAU/NAVEWA [1982] 2 CMLR

193 **209, 228**

Apple and Pear Development Council v

Lewis C222/82 [1983] ECR 4083 **113, 133**

Asociación Profesional de Empresas

Navieras de Líneas Regulares (Analir) v Administración General del Estado C205/99 [2001] ECR I-1271 **195, 200**

Astrid Proll v Entry Clearance Officer

Dusseldorf [1988] 2 CMLR 387 **161, 163**

Atlanta C104/9 [1995] ECR I-3761 **41, 45**

B&I Line plc v Sealink Harbours Ltd and

Sealink Stena Ltd [1992] 5 CMLR 255 **243, 246, 250**

BASF C137/92P [1994] ECR I-2555 **36, 45**

Bayer AG v Commission T41/96 [2000]

ECR II-3383 **211, 228**

BBI/Boosey & Hawkes Decision 87/500

[1987] OJ L286/36 [1988] 4 CMLR 67 **240, 250**

Bela Mühle Josef Bergman KG v Grows-

Farm GmbH & Co KG (the 'Skimmed Milk Powder' case) C114/76 [1977] ECR 1211 **26, 29**

Bettray v Staatsecretaris van Justitie

C344/87 [1989] ECR 1621 **145, 163**

Blaizot v University of Liège C24/86

[1988] ECR 379 **157, 164**

Bonsignore v Oberstadtdirektor der

Stadt Köln C67/74 [1975] ECR 297 **160, 163, 164**

Brasserie de Haecht SA v Wilkin-Janssen

C3/67 [1967] ECR 407 **213, 228**

Brasserie du Pêcheur SA v Germany

C46/93 and R v Secretary of State for Transport ex parte Factortame Ltd (No. 4) C48/93 [1996] ECR I-1029 **82-3, 85-9, 90**

Bresciani v Amministrazione Italiana

delle Finanze C87/75 [1976] ECR 129 **92, 96-7, 106, 108**

British Leyland v Commission C226/84

[1986] ECR 3263 **248, 250**



- Brown v Secretary of State for Scotland C197/86 [1988] ECR 3205 **155, 158, 164**
- Bulmer v Bollinger [1974] 2 All ER 1226 **6, 29**
- C v Netherlands C41/02 [2004] ECR I-11375 **122, 133**
- Caixa Bank France v Ministère de L'Economie C442/02 [2004] ECR I-8961 **179, 200**
- Campus Oil Ltd v Minister for Industry and Energy C72/83 [1984] ECR 2727 **120, 122, 133**
- Casagrande v Landeshauptstadt München C9/74 [1974] ECR 773 **155, 164**
- Centros Ltd v Erhvervsog Selskabsstyrelsen C212/97 [1999] ECR I-1459 **176, 200**
- Cinéthèque SA v Fédération Nationale des Cinémas Français C60 & 61/84 [1985] ECR 2605 **124, 133**
- CNTA v Commission C74/74 [1976] ECR 797 **24, 29**
- Collins v LB Sutton [2002] EWHC (Admin) 195 **9, 30**
- Collins v Secretary of State for Work and Pensions C138/02 [2004] ECR I-2073 **142, 146, 164**
- Commerical Solvents Corporation (CSC) v Commission C6 & 7/73 [1974] ECR 223 **146, 250**
- Commission v Belgium (the 'Customs Warehouses' case) C132/82 [1983] ECR 1649 **92, 97, 108**
- Commission v Belgium C256/85 [1987] ECR 3299 **103-4, 108**
- Commission v Belgium C42/89 [1989] ECR I-3083 **36, 45**
- Commission v Denmark (the 'Disposable Beer Cans' case) C302/86 [1988] ECR 4607 **124, 131, 133**
- Commission v Denmark C106/84 [1986] ECR 833 **92, 100, 107, 108**
- Commission v France (French Merchant Seamen) C167/73 [1974] ECR 359 **151, 164**
- Commission v France (Reprographic Machinery) C90/79 [1981] ECR 283 **98, 106, 108**
- Commission v France (the 'Spanish Strawberries' case) C265/95 [1997] ECR I-6959 **113, 133**
- Commission v France (the 'Spirits' case) C168/78 [1980] ECR 347 **92, 99, 103, 108**
- Commission v France (the 'Nurses' case) C307/84 [1986] ECR 1725 **151, 164**
- Commission v Germany ('Insurance Services') C205/84 [1986] ECR 3755 **170, 194, 196-7, 200**
- Commission v Germany C18/87 [1988] ECR 5427 **92, 96, 98, 106, 108**
- Commission v Greece C306/89 [1991] ECR I-5863 **180, 193, 200**
- Commission v Greece C132/88 [1990] ECR I-1567 **102, 108**
- Commission v Greece C347/88 [1990] ECR I-4747 **120, 122, 133**
- Commission v Ireland (Re Dundalk Water Supply) C45/87 [1988] ECR 4929 **118, 133**
- Commission v Ireland (the 'Buy Irish' case) C249/81 [1982] ECR 4005 **113, 116, 133**
- Commission v Ireland (the 'Irish Souvenirs' case) C113/80 [1981] ECR 1625 **116, 134**
- Commission v Italy ('Trailers') C110/05 [2009] ECR I-519 **127, 134**
- Commission v Italy C272/91 [1994] ECR I-1409 **180, 193, 201**
- Commission v Italy (Regenerated Oil) C21/79 [1980] ECR **92, 101, 108**
- Commission v Italy (the 'Italian Art' case) C7/68 [1968] ECR 423 **94, 108, 121**

- Commission v Italy (the ‘Relabelling of Cocoa Products’ case) C14/00 [2003] ECR I-513 **124, 134**
- Commission v Italy (the ‘Statistical Levy’ case) C24/68 [1969] ECR 193 **92, 95, 108**
- Commission v Italy C101/84 [1985] ECR 2629 **36, 45**
- Commission v Netherlands C89/76 [1977] ECR 1355 **92, 98, 109**
- Commission v UK (Open Skies) C466/98 [2002] ECR I-9427 **181, 201**
- Commission v UK (the ‘Imports of Poultry Meat’ case) C40/82 [1982] ECR 2793 **121, 134**
- Commission v UK (the ‘Wine and Beer’ case) C170/78 [1980] ECR 417 and [1983] ECR 2265 **103, 109**
- Conegate v HM Customs & Excise Commissioners C121/85 [1986] ECR 1007 **120, 132, 134**
- Consten SARL v Grundig-Verkaufs GmbH C56 & 58/64 [1966] ECR 299 **213, 227, 228**
- Cooperativa Co-Frutta Srl v Amministrazione delle Finanze dello Stato C193/85 [1987] ECR 2085 **105, 109**
- Costa v ENEL C6/64 [1964] ECR 585 **8, 29, 50, 53, 66**
- Courage Limited v Crehan C453/99 [2001] ECR I-6297 **88, 90**
- Criminal Proceedings against Donatella Calfa C348/96 [1999] ECR I-11 **161, 164**
- Criminal Proceedings Against Gilli and Andres C788/79 [1980] ECR 2071 **123**
- Cristini v SNCF C32/75 [1975] ECR 1085 **153, 164**
- Cullet Leclerc Toulouse C231/83 [1985] ECR 305 **120, 134**
- D’Hoop v Office National de l’Emploi C224/98 [2002] ECR I-6191 **141–2, 156, 164**
- Dano and Dano v Jobcenter Leipzig C333/13 [2014] ECR I-2358 **142, 164**
- Dansk Denkvit ApS v Danish Ministry of Agriculture C29/87 [1988] ECR 2965 **92, 96, 106, 109**
- Dassonville for Procureur du Roi v Benoit and Gustave Dassonville C8/74 [1974] ECR 837 **112, 115, 117, 131, 134**
- Defrenne v SABENA (No. 2) C43/75 [1976] ECR 455 **54, 66**
- Deliège v Ligue Francophone de Judo et Disciplines Associées ASBL C51/96 and C191/97 [2000] ECR I-2549 **192, 197, 201**
- Diatta v Land Berlin C267/83 [1985] ECR 567 **149, 164**
- Dillenkofer and others v Germany C178 & 188–190/94 [1996] ECR I-4845 **81, 83, 87–8, 90**
- Distribution of Package Tours During the 1990 World Cup Decision C92/521 [1992] OJ L 326/31 **209, 229**
- Dominguez v Centre Informatique du Centre Ouest Atlantique [2012] ECR 00 **62, 66**
- Doughty v Rolls Royce Plc [1992] 1 CMLR 1045 CA **60–1, 66**
- Duke v G.E.C. Reliance Ltd [1988] 1 AC 618 **73, 74, 82**
- Echternach and Moritz v Minister van Onderwijs en Wetenschappen C389 & 390/87 [1989] ECR 723 **154, 163, 164**
- Eugenio Branco Ltd v Commission C85/94 [1995] ECR II-2555 **41, 45**
- Euroemballage Corn and Continental Can Co Ltd C6/72 [1973] ECR 215 **250**
- European Night Services v Commission T374, 375, 384, 388/94 [1998] ECR II-3141 **215, 229**

- Evobus Austria GmbH v  
Niederösterreichischer  
Gebietskrankenkasse C111/97 [1998]  
ECR I-5411 **76, 80, 82**
- Felixstowe Dock and Railway Co v  
British Transport Docks Board [1976]  
2 CMLR 655 **7, 29**
- Férnandez de Bobadilla v Museo  
Nacional del Prado C234/97 [1999]  
ECR I-4773 **188, 201**
- Firma Denkavit Futtermittel GmbH v  
Minister für Ernährung C251/78  
[1979] ECR 3369 **116, 134**
- Foster v British Gas plc C188/89 [1990]  
ECR I-3313 **58–61, 65, 66**
- France v Commission C327/91 [1991]  
ECR I-3641 **40, 45**
- Francovich & Bonifaci v Italian Republic  
C6 & 9/90 [1991] ECR I-5357 **81, 83–5,  
87–8, 89, 90**
- Garland v British Rail Engineering Ltd  
[1983] 2 AC 751 **7, 29**
- Garofalo and others v Ministero della  
Sanità and Unità sanitaria locale  
(USL) n° 58 di Palermo C69-79/96  
[1997] ECR I-5603 **34, 45**
- Gebhard v Consiglio dell’Ordine degli  
Avvocati e Procuratori di Milano  
C55/94 [1995] ECR I-4165 **168, 171,  
179, 182, 200, 201**
- Geddo v Ente Nazionale Risi C2/73 [1973]  
ECR 865 **112, 114, 134**
- Gravier v City of Liège C293/83 [1985]  
ECR 593 **157, 165**
- Griffin v South West Water Services Ltd  
[1995] IRLR 15 HC **60, 66**
- Groener v Ministry for Education  
C379/87 [1989] ECR 3967 **152, 162,  
165**
- Groenveld BV v Produktschap voor Vee  
en Vlees C15/79 [1979] ECR 3409 **129,  
134**
- Grzelczyk v Centre Public d’Aide Sociale  
C184/99 [2001] ECR I-06193 **141, 156,  
158, 165**
- Guiot C272/94 [1996] ECR I-1905 **197,  
201**
- Gül v Regierungspräsident Düsseldorf  
C131/85 [1986] ECR 1573 **153, 165**
- Gutmann v Commission C18 & 35/65  
[1966] ECR 103 **42, 45**
- Haim v Kassenzahnärztliche  
Vereinigung Nordrhein C319/92  
[1994] ECR I-425 **189, 201**
- Harz v Deutsche Tradax C79/83 [1984]  
ECR 1921 **72, 82**
- Her Majesty’s Customs and Excise v  
Schindler C275/92 [1994] ECR  
I-1039 **192, 197, 201**
- Herbert Karner Industrie – Auktionen  
GmbH v Troostwijk GmbH C71/02  
[2004] 2 CMLR 75 **126, 131, 134**
- Hercules Chemicals NV v Commission  
T7/89 [1991] ECR II-1711 **211, 229**
- Hilti AG v Commission T30/89A [1990]  
ECR II-163 and C53/92P [1994] ECR  
I-667 **235–6, 239, 242, 249, 250**
- HM Revenue and Customs v IDT Card  
Services Ireland Ltd [2006] EWCA Civ  
29 **78, 82**
- Hoeckx v Centre Public d’Aide Sociale de  
Kalmthout C249/83 [1985] ECR  
973 **153, 165**
- Hoekstra (née Unger) v Bestuur der  
Bedrijfsvereniging voor Detailhandel  
en Ambachten C75/63 [1964] ECR  
177 **144, 165**
- Hoffmann-La Roche & Co v  
Commission C85/76 [1979] ECR  
461 **244, 247, 250**
- Hugin v Commission C22/78 [1979] ECR  
1869 **239, 243, 244, 250**
- Humblot v Directeur des Services  
Fiscaux C112/84 [1985] ECR 1367 **101–2,  
107, 109**

Hunt v London Borough of Hackney  
[2002] LLR 548 **9, 30**

ICI Polypropylene Cases [1986] OJ  
L230/1 **214, 229**

ICI v Commission (the 'Dyestuffs' case)  
C48/69 [1972] ECR 619 **212, 229**

Intel Corporation (Decision  
IP/09/745) **244–5, 247, 250**

International Fruit Co (No. 2) v  
Produktschap voor Groenten  
C51–4/71 [1971] ECR 1107 **114, 134**

International Transport Workers  
Federation v Viking Line ABP C438/05  
[2007] ECR I-779 **172, 201**

Internationale Handelsgesellschaft v  
Einfuhr und Vorratstelle für Getreide  
und Futtermittel C11/70 [1970] ECR  
1125 **50, 66**

Jany v Staatssecretaris van Justitie  
C268/99 [2001] ECR I-8615 **168, 169,**  
**190–1, 201**

Jia v Migrationjverket C1/05 [2007] ECR  
I-1 **148, 165**

John Walker & Sons Ltd v Ministeriet  
for Skatter og Afgifter C243/84  
[1986] ECR 875 **100, 109**

Kamer van Koophandel en Fabrieken  
voor Amsterdam v Inspire Art Ltd  
C167/01 [2003] ECR I-10155 **177, 201**

Kampelmann v Landschaftsverband  
Westfalen-Lippe C243–258/96 [1997]  
ECR I-6907 **61, 66**

Keck and Mithouard C267 & 268/91  
[1993] ECR I-6097 **112, 117, 125–6,**  
**131–2, 135**

Kempf v Staatssecretaris van Justitie  
C139/85 [1986] ECR 1741 **145, 165**

Kolpinghuis Nijmegen BV C80/86  
[1987] ECR 3969 **77, 80, 82**

Koninklijke C48 & 66/90 [1992] ECR  
I-565 **41, 45**

Konsumentombudsmannen (KO) v De  
Agostini (Svenska) Förlag AB  
C34–36/95 [1997] ECR I-3843 **127,**  
**135**

Konsumentombudsmannen v  
Gourmet International Products  
Aktiebolag C405/98 [2001] ECR  
I-1795 **127, 135**

Ladbroke Racing (Deutschland) GmbH v  
Commission C74/92 [1998] ECR  
II-1 **43, 45**

Lair v Universität Hannover C39/86  
[1988] ECR 3161 **155, 158, 165**

Lawrie-Blum v Land Baden-  
Württemberg C66/85 [1986] ECR  
2121 **144, 151, 162, 165**

Levin v Staatssecretaris van Justitie  
C53/8 [1982] ECR 1035 **145, 165**

Litster v Forth Dry Dock and  
Engineering Co Ltd [1990] 1 AC  
546 **73–4, 82**

Luisi and Carbone v Ministero del  
Tesoro Joined Cases 286/82 and  
26/83 [1984] ECR 377 **198, 201**

Lütticke (Alfons) GmbH v Hauptzollamt  
Saarlouis C57/65 [1966] ECR 205 **54,**  
**66, 99, 109**

Macarthy's Ltd v Smith [1981] QB 180 **7,**  
**29**

Maria Martinez Sala v Freistaat Bayern  
C85/96 [1998] ECR I-2691 **140, 156,**  
**165**

Marleasing SA v La Comercial  
Internacional de Alimentación SA  
C106/89 [1990] ECR I-4135 **75–7, 80,**  
**82–3**

Marrosu and Sardino v Azienda  
Ospedaliera Ospedale San Martino di  
Genova e Cliniche Universitarie  
Convenzionate C53/04 [2006] ECR  
I-7213 **62, 67**

- Marshall v Southampton and South West Area Health Authority (Teaching) (No. 1) C152/84 [1986] ECR 723 **48, 55–8, 67**
- Microsoft Case COMP/C-3/37.792 **238–9, 244, 246, 249, 250**
- Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Domosio C49/07 [2009] All ER (EC) 150 **209, 229**
- National Union of Teachers v Governing Body of St Mary's Church of England School (Aided) Junior School [1997] CMLR 630 **60, 67**
- Nederlandsche Banden-Industrie Michelin NV v Commission C332/81 [1983] ECR 3461 **240, 242, 250**
- Netherlands State v Reed C59/85 [1985] ECR 1283 **147, 153, 165**
- NV Algemene Transport– en Expeditie Onderneming Van Gend en Loos v Nederlandse Administratie der Belastingen (the 'Van Gend en Loos' decision) C26/62 [1963] ECR 1 **33, 46, 50–7, 64, 68, 92, 94, 109**
- O'Flynn v Adjudication Officer C237/94 [1996] ECR I-2617 **153, 165**
- Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn C36/02 [2004] ECR I-9609 **195, 201**
- Ordre des Avocats v Klopp C107/83 [1984] ECR 2971 **179, 202**
- Pickstone v Freemans plc [1989] AC 66 **8, 29, 73–4, 82**
- Plaumann v Commission C25/62 [1963] ECR 95 **39, 45**
- Portgás – Sociedade de Produção e Distribuição de Gás SA v Ministério da Agricultura, do Mar, do Ambiente e do Ordenamento do Território C425/12 [2013] ECR I-829 **61–2, 67**
- PreussenElektra AG v Schleswag AG C379/98 [2001] ECR I-2099 **121, 135**
- Procureur du Royer C48/75 [1976] ECR 497 **146, 166**
- Pronuptia de Paris GmbH v Pronuptia de Paris Irmgard Schillgallis C161/84 [1986] ECR 353 **218, 229**
- Pubblico Ministero v Ratti C148/78 [1979] ECR 1629 **48, 57, 63–4, 67**
- Punto Casa SpA v Sindaco del Comune di Capena and others C69 & 258/93 [1994] ECR I-2355 **126, 131, 135**
- R (Bidar) v London Borough of Ealing C209/03 [2005] ECR I-2119 **156, 166**
- R (HS2 Action Alliance Ltd) v Secretary of State for Transport [2014] UKSC 3 **10, 29**
- R v Bouchereau C30/77 [1977] ECR 1999 **160, 163, 166**
- R v HM Treasury, ex parte Daily Mail and General Trust plc C81/87 [1988] ECR 5483 **174, 202**
- R v Henn and Darby C34/79 [1979] ECR 3795 **120, 135**
- R v HM Treasury ex parte British Telecommunications Plc C392/9 [1996] ECR I-1631 **87, 90, 242**
- R v Immigration Appeal Tribunal, ex parte Antonissen C292/89 [1991] ECR I-745 **146, 166**
- R v Ministry of Agriculture, Fisheries and Food, ex parte Hedley Lomas (Ireland) Ltd C5/94 [1996] 2 CMLR 391 **87, 90**
- R v Royal Pharmaceutical Society of Great Britain, ex parte Association of Pharmaceutical Importers C266–267/87 [1989] ECR 1295 **113, 135**
- R v Secretary of State for Employment, ex parte Equal Opportunities Commission [1995] 1 AC 1 **8, 30**

- R v Secretary of State for Transport, ex parte Factortame Ltd ('Factortame II') C213/89 [1990] ECR I-2433 **171, 173, 202**
- R v Secretary of State for Transport, ex parte Factortame Ltd (No. 2) [1991] 1 All ER 70; [1991] 1 AC 603; [1990] UKHL 13 **8, 9, 29**
- R v Secretary of State for Transport, ex parte Factortame Ltd (No. 4) ('Factortame III') C46 & C48/93 [1996] ECR I-1029 **85, 86, 90**
- R v Secretary of State for Transport, ex parte Factortame Ltd (No. 5) [2000] 1 AC 524 **88, 90**
- R v Secretary of State for the Home Department ex parte Sandhu [1983] 3 CMLR 553 **149, 166**
- R v Thompson C7/78 [1978] ECR 247 **120, 129, 135**
- Reina v Landeskreditbank Baden-Württemberg C65/81 [1982] ECR 33 **153, 166**
- Reiser Internationale Transporte GmbH v Autobahnen und Schellstrassen Finanzierungs AG (Asfinag) C157/02 [2004] ECR I-1477 **62, 68**
- Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (the 'Cassis de Dijon' case) C120/78 [1979] ECR 649 **122, 135**
- Rewe-Zentrale des Lebensmittel-Großhandels GmbH v Hauptzollamt Landau/Pfalz C45/75 [1976] ECR 181) **99, 109**
- Reyners v The Belgian State C2/74 [1974] ECR 63 **167, 171, 180, 202**
- Rheinmühlen-Düsseldorf v Einfuhr- und Vorratsstelle für Getreide und Futtermittel C166/73 [1974] ECR 33 **34**
- RTE & ITP v Commission T69 & 76/89 [1991] ECR II-485 **242, 251**
- Rush Portuguesa Lda v Office National d'Immigration C113/89 [1990] ECR I-1417 **198, 202**
- Säger v Denemeyer & Co Ltd C76/90 [1991] ECR 421 **194, 196, 202**
- Salamander AG, Una Film City Revue GmbH and others v European Parliament and Council of the European Union T172/98 & 175-177/98 [2000] ECR II-02487 **62, 67**
- Santoz C174/82 [1983] ECR 2445 **121, 132, 135**
- Schmidberger C112/00 [2003] ECR I-5659 **124, 136**
- Segers v Bestuur van de Bedrijfsvereniging voor Banken Verzekeringswezen, Groothandel en Vrije Beroepen C79/85 [1986] ECR 2375 **175, 202**
- Sociaal Fonds voor de Diamantarbeiders v Chougol Diamond Co C2 & 3/69 [1969] ECR 211 **96, 109**
- Société Générale Alsacienne de Banque SA v Koestler C15/78 [1978] ECR 1971 **194, 202**
- Société Technique Minière v Maschinenbau Ulm GmbH (the 'STM' case) C56/65 [1966] ECR 235 **219, 229**
- Society for the Protection of Unborn Children v Grogan C159/90 [1991] ECR I-4685 **191, 195, 202**
- Sozialhilfeverband Rohrbach v Arbeiterkammer Oberösterreich C297/03 [2005] ECR I-4305 **62, 67**
- Steymann v Staatssecretaris van Justitie C196/87 [1988] ECR 6159 **145, 166, 170, 192, 202**
- Tankstation 't Heukste vof and JBE Boermans C401-402/92 [1994] ECR I-2199 **126, 131, 136**

- Tarantik v Direction des Services Fiscaux de Seine et Marne C421/97 [1999] ECR I-3633 **100, 110**
- Tawil-Albertini v Ministre des Affaires Sociales C154/93 [1994] ECR I-451 **189, 202**
- Tepea v Commission [1978] 3 CMLR 392 **211, 229**
- Tetrapak Rausing SA v Commission T51/8 [1990] ECR II-309 **244, 247, 251**
- Thieffry v Conseil de l'Ordre des Advocats a la Cour de Paris C71/76 [1977] ECR 765 **161, 166, 168, 178–9, 182, 185, 202**
- Thijssen v Controledienst voor deVerzekeringen C42/92 [1993] ECR I-4047 **180, 202**
- Thoburn v Sunderland City Council [2003] QB 151 **9–10, 30**
- Torfaen Borough Council v B & Q plc C145/88 [1989] ECR 3851 **125, 136**
- Transocean Marine Paint Association v Commission C17/74 [1974] ECR 1063 **25, 30, 209, 221, 228, 229**
- UNETEF v Heylens C222/86 [1987] ECR 4097 **186, 202**
- United Brands Co v Commission C27/76 [1978] ECR 207 **214, 227, 229, 236–7, 241, 243–4, 246, 247, 249, 251**
- van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid C33/74 [1974] ECR 1299 **190, 193, 196, 203**
- Van Duyn v Home Office C41/74 [1974] ECR 1337 **160, 166**
- Vassallo v Azienda Ospedaliera Ospedale San Martino di Genova e Cliniche Universitarie Convenzionate C180/04 [2006] ECR I-7251 **62, 68**
- Verein gegen Unwesen in Handel und Gewerbe Koln v Mars GmbH C470/93 [1995] ECR I **118, 136**
- Vereinigte Familiapress Zeitungsverlags und Vertriebs GmbH v Heinrich Bauer Verlag C368/95 [1997] ECR I-3689 **127, 136**
- Vlassopoulou v Ministerium für Justiz, Bundes und Europaangelegenheiten Baden-Württemberg C340/89 [1991] ECR 2357 **187, 203**
- Völk v Vervaecke C5/69 [1969] ECR 295 **217, 229**
- Von Colson & Kamann v Land Nordrhein-Westfalen C14/83 [1984] ECR 18 **71–5, 80, 83**
- Wagner Miret v Fondo di Garanzia Salarial C334/92 [1993] ECR I-6911 **76, 83**
- Walrave & Koch v Association Union Cycliste Internationale C36/74 [1974] ECR 1405 **145, 166**
- Walter: Rau Lebensmittelwerke v de Smedt PvbA C261/81 [1982] ECR 3961 **115, 136**
- Webb v EMO Air Cargo (UK) Ltd (No. 1) [1992] 1 All ER 43 **77–8, 80**
- Webb v EMO Air Cargo (UK) Ltd (No. 2) [1995] 4 All ER 577 **78, 83**
- Württembergische Milchverwertung-Südmilch-AG v Salvatore Ugliola C15/69 [1970] ECR 363 **152, 166**

## ■ Table of statutes

### UK Legislation

- Bill of Rights 1689 **9**
- Art 9 **10**
- Employment Protection (Consolidation) Act 1978 **9**
- Equal Pay Act 1970 **8, 73**
- Gas Act 1972 **58–9**
- Human Rights Act 1998 **38**



Merchant Shipping Act 1988 **9, 88, 173**  
 Sex Discrimination Act 1975 **77**  
 Equal Pay (Amendment) Regulations  
 1983 **73**  
 Transfer of Undertakings (Protection of  
 Employment) Regulations 1981 **73**  
 Weights and Measures Act 1985 **9**

## Primary EU Legislation

European Coal and Steel Community  
 (ECSC) Treaty (Treaty of Paris)  
 1951 **4, 49**  
 EEC Treaty (Treaty of Rome) 1957 **4, 6,**  
**50, 183**  
 Art 12 **52**  
 Art 45 **139**  
 Art 95 **54, 100**  
 Art 119 **54**  
 Art 169 **49**  
 Art 170 **49**  
 Art 177 **49**  
 Art 189 **49**  
 Euratom Treaty **2, 4–5, 12, 49**  
 European Communities Act  
 (ECA) 1972 **6–9**  
 s 2(1) **6**  
 s 2(4) **6–8**  
 s 3(1) **6**  
 Lisbon Treaty 2007 **2, 12**  
 Declaration 17 **51**  
 Treaty of the European Union (TOTEU)  
 (Maastricht Treaty 1993) **2, 4, 12, 13, 27,**  
**49, 140, 158**  
 Art 3 **139**  
 Art 4 **71**  
 Art 5 **18, 41**  
 Art 6 **15, 27**  
 Art 13 **13**  
 Art 14 **14**  
 Art 15 **15**  
 Art 16 **15**  
 Art 17 **17**  
 Art 19 **20**  
 Art 141 **9**

Treaty of Accession 1972 **6**  
 Treaty on the Functioning of the  
 European Union (TFEU) **12, 13**  
 Art 10 **96**  
 Art 11 **121**  
 Art 13 **12**  
 Art 16 **199**  
 Art 18 **24, 42, 140–3, 156–7, 161**  
 Art 19 **24**  
 Art 20 **140–3**  
 Art 21 **142–3**  
 Art 26 **93**  
 Art 30 **52, 92–7, 99–102, 104–7**  
 Art 34 **112–14, 116, 119–20, 123, 125–9,**  
**131–2**  
 Art 35 **129**  
 Art 36 **112, 115, 119–23, 126, 131–3**  
 Art 45 **140, 141, 143, 159, 161**  
 Art 49 **161, 169, 171, 189–90, 193, 199**  
 Art 50 **10**  
 Art 51 **180, 192**  
 Art 52 **181–2, 195**  
 Art 53 **183**  
 Art 54 **172, 190**  
 Art 55 **169**  
 Art 56 **157, 189–95, 198–9**  
 Art 57 **191, 194, 198**  
 Art 59 **190**  
 Art 62 **189–90, 192, 195**  
 Art 101 **25, 206–25, 227**  
 Art 102 **25, 231–49**  
 Art 110 **54, 92–3, 98–102, 104–7**  
 Art 157 **24, 54**  
 Art 165–166 **157**  
 Art 215 **42**  
 Art 218 **11, 19**  
 Art 223–224 **14**  
 Art 225 **18**  
 Art 235–236 **15**  
 Art 237–243 **15**  
 Art 241 **18**  
 Art 244–250 **17**  
 Art 254–257 **21**  
 Art 256 **20**



Art 258–259 19–20, 35, 49  
 Art 260 19–20, 40  
 Art 263 14, 19–20, 37, 40  
 Art 265 14, 19–20, 42–3  
 Art 267 20, 33, 49  
 Art 268 20  
 Art 277 39  
 Art 288 22, 49, 53  
 Art 292 17  
 Art 293 17  
 Art 314 18  
 Art 317 18  
 Art 340 20, 24

## Secondary EU Legislation

Notice on Agreements of Minor  
 Importance [2014] OJ C291 217  
 Notice on the Definition of the Relevant  
 Market for the Purposes of  
 Community Competition Law [1997]  
 OJ C372/5 233, 235, 238  
 Directive 64/221 139  
 Directive 68/151 75  
 Directive 70/50 112, 114  
 Directive 73/173 57  
 Directive 75/117 73

Directive 76/207 55, 58–9, 71, 73, 77–8  
 Directive 77/187 73  
 Directive 77/228 56  
 Directive 78/546 37  
 Directive 78/686 189  
 Directive 80/777 77  
 Directive 80/987 76, 84  
 Directive 89/48 183  
 Directive 92/13 76  
 Directive 93/38 62  
 Directive 93/96 158–9  
 Directive 98/5 161, 184  
 Directive 2004/38 139, 142–3, 147–8,  
 150, 153, 158–9  
 Art 7 158  
 Art 27–29 159–60  
 Directive 2005/36 139, 161, 183–4  
 Directive 2006/123 168, 198  
 Directive 2014/104 226  
 Regulation 1612/68 139, 151–5  
 Regulation 189/72 24  
 Regulation 1/2003 206–7, 221–2, 225,  
 232, 233  
 Regulation 330/2010 206–7, 222–4  
 Regulation 492/2011 139–42, 150–2,  
 154–5, 157

# 1

## The EU: History, Institutions and Sources of Law

### Revision objectives

#### Understand the law

- Do you understand the formation and driving principles behind the EU?

#### Remember the details

- Can you explain the significance of the different treaties?

#### Reflect critically on areas of debate

- Do you understand how the institutions work together and their respective roles?

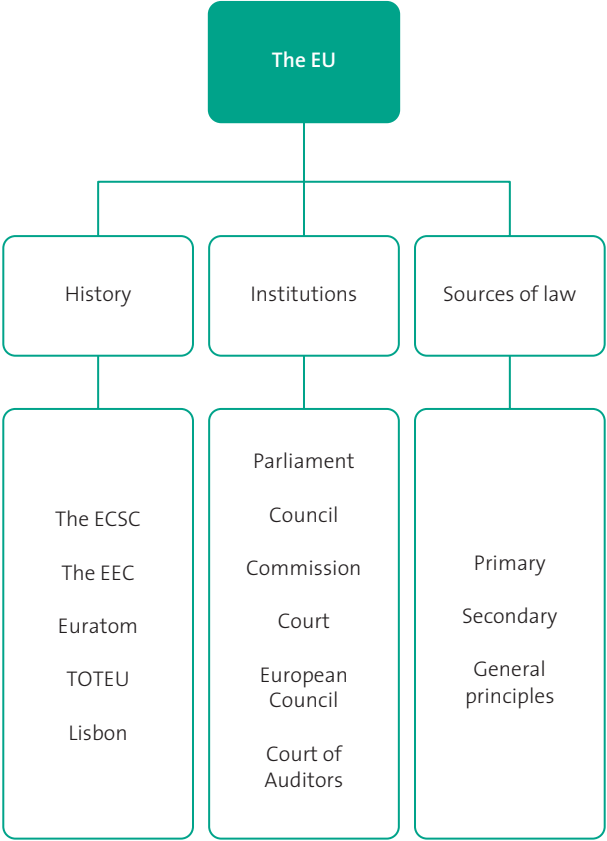
#### Contextualise

- Can you see how this foundation chapter sets up the subsequent topics?

#### Apply your skills and knowledge

- Could you explain the development and legal standing of the EU?

# Chapter Map



# History of the EU

## Introduction

At the conclusion of the Second World War with Europe in a state of economic, political and moral turmoil, it was clear that a pathway was needed for reconstruction and cooperation between the European states. The first step was the Council of Europe formed in 1949 for closer political integration.

However in economic terms it was from the Schuman Plan that the current European Union developed.

The **Schuman Plan** envisaged the merging of production of what, at that time, were the two wartime necessities, coal and steel, to ensure these could not be used to promote war. With this in mind it proposed that the control of these sections of the economy was given over to an independent international authority, the High Authority, comprising individuals who were not Government representatives but who were given the power to fix prices and ensure compliance with competition rules.

The Schuman experiment in economic cooperation involved the removal of these vital wartime industries from the control of the national governments in the hope of providing a sounder foundation for peace and stability in Europe.

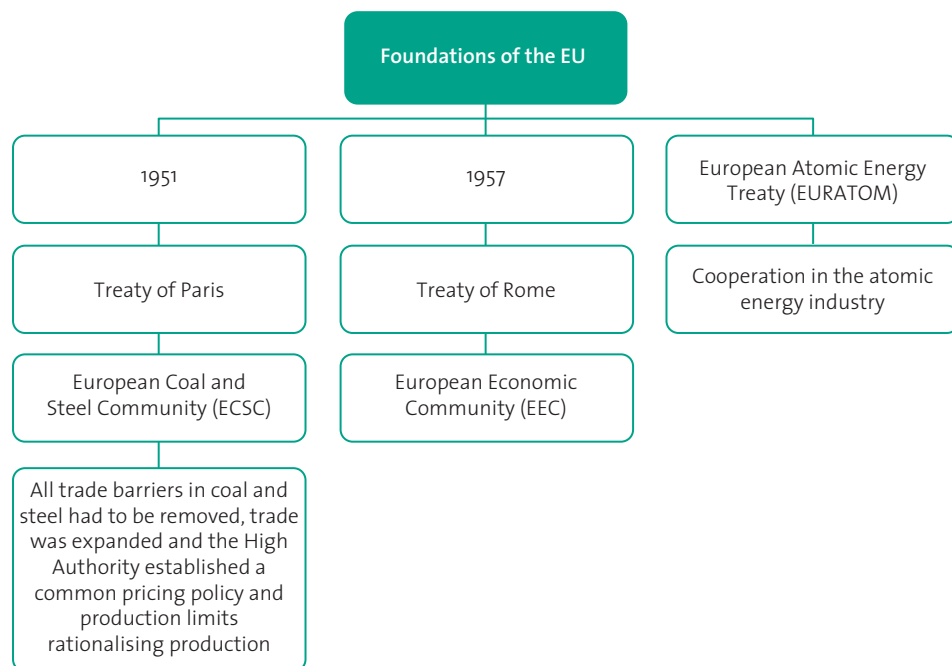
While the original plan (drafted by French statesman Jean Monnet and the French Foreign Minister Robert Schuman) only envisaged France and Germany acceding to this Treaty, Schuman invited the rest of Western Europe to join.

In the resulting conference (1950) France, Germany, Italy and the Benelux nations produced the draft treaty (1951) that created the European Coal and Steel Community (ECSC).

Significantly, the Treaty aimed at a federal Europe.

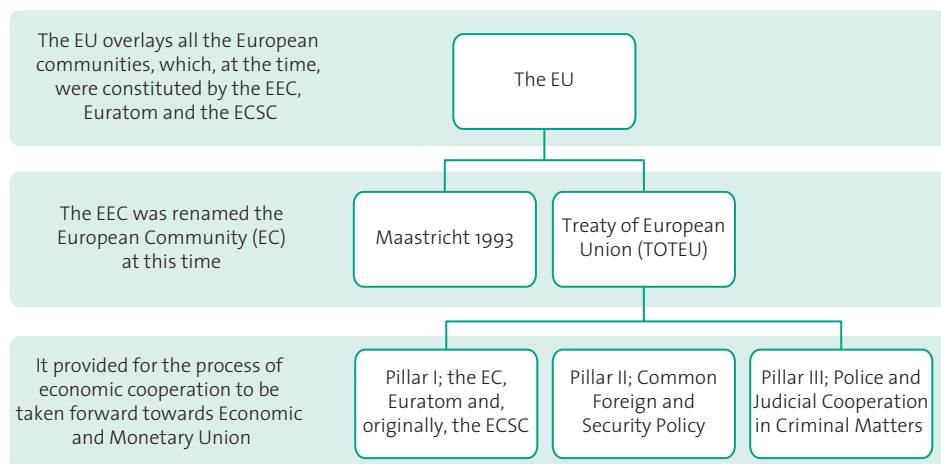
## The beginning

Following these early steps, the EU was created as outlined below:



## The next step

However, the ambitions of the Member States did not stop there and the EU really came into being following the Maastricht reforms and innovations in 1992.



These four treaties, the ECSC Treaty, the Euratom Treaty, the EC Treaty and the TOTEU, are the founding treaties of the EU.