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Eleventh Edition

# LAW OF THE EUROPEAN UNION

John Fairhurst

# Law of the European Union

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Eleventh Edition

# Law of the European Union

JOHN FAIRHURST

London School of Business and Management

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# Preface

Within this new edition I have included all legislative changes and recent judgments of the Court of Justice and the General Court. The format of this edition follows the same format as the previous edition.

Part 1 covers the Constitutional and Administrative Law of the European Union. Chapter 1 comprises an introduction to the European Communities and the European Union. This chapter contains a historical analysis of the evolution of the European Union. There is an update on the Union's protracted discussions for accession to the European Convention on Human Rights. Chapter 2 is devoted to the sources of Union law, including a commentary on general principles of law and fundamental rights. The rationale for this approach is that I prefer that learners have an understanding of such sources, principles and rights before embarking upon a consideration of the Union institutions (Chapter 3) and the decision-making process (Chapter 4). Chapter 3 has been updated to reflect the new composition of the European Parliament following the June 2014 elections and the appointment of the new Commission. There is a separate chapter on the Court of Justice of the European Union (which consists of the Court of Justice, the General Court and the specialised courts), together with its methods of interpretation (Chapter 5). Chapters 6–8 cover the preliminary ruling jurisdiction of the Court of Justice (Art 267 TFEU), direct actions against Member States (Arts 258–260 TFEU), and judicial review of acts of the Union institutions, respectively.

Chapter 9 examines the principles of supremacy of Union law over the national law of the Member States (including a commentary on its impact on the UK's traditional doctrine of parliamentary sovereignty), indirect effect, direct effect and state liability. Included in this chapter is a discussion of how these principles have been applied by UK courts. The final chapter of Part 1 (Chapter 10) explores the application of Union law in UK courts and the adaptation of remedies to the requirements of Union law.

The final three parts of the book (Parts 2–4) relate to three areas of substantive Union law: free movement of persons and services, and freedom of establishment (Part 2, Chapters 11–16); free movement of goods (Part 3, Chapters 17–18); and competition law (Part 4, Chapters 19–22). In each of these three parts, judgments of the Court of Justice and the General Court have been extracted to provide a deeper exposure to the methodology adopted by the Courts in the development of the Union's substantive law. New legislative developments have been incorporated throughout.

The EU's institutional websites provide a vast array of resources, including free full-text copies of legislation and judgments of the Court of Justice of the European Union. A number of the website addresses (URLs) have changed from those published in the last edition. This edition includes the updated URLs.

Updates to the book are available online at [www.pearsoned.co.uk/legalupdates](http://www.pearsoned.co.uk/legalupdates). This is an important feature given the dynamic nature of Union law. Whether you are a teacher or learner, I hope you find the time to access these online resources.



I would like to thank the following staff at Pearson Education for their support and guidance throughout this latest rewrite: Hannah Marston (Editor for Law) and Jennifer Sargunar (Senior Project Editor).

I have endeavoured to state the law as at 1 January 2016.

*John Fairhurst*  
1 January 2016

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- 48/72 *Brasserie de Haecht SA v Wilkin (No. 2)* [1973] ECR 77, [1973] CMLR 287 [278](#)
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- 4/73 *J Nold KG v Commission* [1974] ECR 491, [1974] 2 CMLR 338 [74](#), [75](#)
- 6, 7/73 *Istituto Chemioterapico Italiano SpA and Commercial Solvents Corporation v Commission* [1974] ECR 223, [1974] 1 CMLR 309 [706](#), [711](#), [717](#)
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## List of abbreviations

AC	Appeal Cases
ACP	African Caribbean Pacific states
AJCL	American Journal of Comparative Law
AJIL	American Journal of International Law
All ER	All England Law Reports
Anglo-Am LRev	Anglo-American Law Review
BDMA	British Direct Mailing Association
BGC	British Gas Corporation
Bull EC	Bulletin of the European Communities
BYIL	British Yearbook of International Law
CAP	Common Agricultural Policy
CE	Compulsory Expenditure
CEE	Charge having an equivalent effect to a customs duty
CEN	European Committee for Standardisation
CENELEC	European Committee of Electrotechnical Standardisation
CFI	Court of First Instance
CFSP	Common Foreign and Security Policy
CJHA	Cooperation in Justice and Home Affairs
CLJ	Cambridge Law Journal
CLP	Current Legal Problems
CMLR	Common Market Law Reports
CML Rev	Common Market Law Review
COM	Common Organisation of the Market or Commission Document
COREPER	Committee of Permanent Representatives ( <i>Comité des Représentants Permanents</i> )
Crim LR	Criminal Law Reports
DG	Directorate General
DSB	Dispute Settlement Board of the World Trade Organization (WTO)
EAGGF	European Agricultural Guidance and Guarantee Fund (often referred to as FEOGA – <i>Fonds européen d'orientation et de garantie agricole</i> )
EBL Rev	European Business Law Review
EC	European Community
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECLR	European Competition Law Review
ECL Rev	European Constitutional Law Review
ECOFIN	Council of Economic and Finance Ministers
ECR	European Court Reports
ECSC	European Coal and Steel Community

ECU	European Currency Unit
EEA	European Economic Area
EEC	European Economic Community
EELR	European Environmental Law Review
EESC	European Economic and Social Committee
EFTA	European Free Trade Association
EHRR	European Human Rights Reports Review
EIB	European Investment Bank
EIPL	European Intellectual Property Law
EJML	European Journal of Migration and Law
ELJ	European Law Journal
EL Rev	European Law Review
EMU	Economic and Monetary Union
EP	European Parliament
EPC	European Political Cooperation
EPL	European Public Law
ERDF	European Regional Development Fund
ESCB	European System of Central Banks
EU	European Union
Euratom	European Atomic Energy Community
FamLaw	Family Law
FAO	Food and Agriculture Organisation of the United Nations
FSR	Fleet Street Reports
FYRM	Former Yugoslav Republic of Macedonia
GATT	General Agreement on Tariffs and Trade
GmbH	Gesellschaft mit beschränkter Haftung (Plc)
GNP	Gross National Product
Harv Int LJ	Harvard International Law Journal
HarvLR or Harvard LR	Harvard Law Review
HRLJ	Human Rights Law Journal
IAT	Immigration Appeals Tribunal
IBL	International Business Lawyer
ICLQ	International and Comparative Law Quarterly
ICR	Industrial Cases Reports
IGC	Intergovernmental Conference
IndLJ	Industrial Law Journal
Int Lawyer	International Lawyer
IRLR	Industrial Relations Law Reports
JBL	Journal of Business Law
JCMS	Journal of Common Market Studies
JESP	Journal of European Social Policy
JHA	Justice and Home Affairs
JLIS	Journal of Law and Information Science
JLS	Journal of Law and Society
JPL	Journal of Planning and Environmental Law
JRC	Joint Research Centre
JSWL	Journal of Social Welfare Law (now JSWFL – Journal of Social Welfare and Family Law)

## LIST OF ABBREVIATIONS

LIEI	Legal Issues of European Integration
LQR	Law Quarterly Review
MAFF	Ministry of Agriculture, Fisheries and Food
MCA	Monetary Compensatory Amount
MEP	Member of the European Parliament
MEQR	Measure having Equivalent Effect to Quantitative Restrictions
MGQ	Maximum Guaranteed Quantities
MLR	Modern Law Review
NATO	North Atlantic Treaty Organization
NCE	Non-Compulsory Expenditure
NILQ	Northern Ireland Legal Quarterly
NLJ	New Law Journal
OECD	Organisation for Economic Cooperation and Development
OJ	<i>Official Journal</i> of the European Communities
OJLS	Oxford Journal of Legal Studies
OLAF	European Anti-Fraud Office (Office Européen de Lutte Anti-Fraude)
PA	Public Administration
PL	Public Law
PPLR	Public Procurement Law Review
QB	Queen's Bench
QMV	Qualified Majority Voting
QRs	Quantitative Restrictions
SCA	Special Committee on Agriculture
SEA	Single European Act
SI	Statutory Instrument
SIRENE	Supplementary Information Request at the National Entry
SIS	Schengen Information System
SJ	Solicitors' Journal
SPUC	Society for the Protection of the Unborn Child
SRWT	Société Régionale Walloon du Transport
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
ToA	Treaty of Amsterdam
ToL	Treaty of Lisbon
ToN	Treaty of Nice
WHO	World Health Organization
WLR	Weekly Law Reports
WTO	World Trade Organization
Yale LJ	Yale Law Journal
YEL	Yearbook of European Law

# Equivalences

For tables of equivalences as referred to in Article 5 of the Treaty of Lisbon, please refer to the document at the following web address: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:0202:0229:EN:PDF>

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## Part 1

# Constitutional and administrative law of the European Union

- 1 An introduction to the European Communities and the European Union
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