

FOUNDATIONS SERIES

FAIRHURST, MORANO-FOADI
AND NELLER'S
LAW OF THE
EUROPEAN UNION

Sonia Morano-Foadi
Jen Neller



 Pearson

Thirteenth Edition

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MORANO-FOADI
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Preface for educators

Dear educator,

We are excited to present the thirteenth edition of *Law of the European Union*. This is the second time we have updated this popular textbook, which was originally authored by Professor John Fairhurst, and we have continued to pursue an accessible but thorough approach throughout. We have worked to build on and improve the innovative features that we introduced in the last edition, including the addition of new **reflection boxes** to provide further consideration of interesting or difficult issues. Other features that facilitate accessibility and easy navigation of the material include: a brief **glossary** at the beginning of each chapter; **learning objectives** that correspond with chapter headings; the division of **case boxes** into ‘facts’, ‘ruling’ and ‘significance’; **diagrams** to illustrate procedures or conditionality; and **chapter summaries**.

This edition is now also available as an ebook, which includes deep links to legal materials and self-assessment questions.

The book is divided into two main parts. Part 1 (chapters 1–8) covers the constitutional and administrative law of the European Union. Part 2 then delves into the substantive law of the European Union, with chapters 9–12 examining EU citizenship and the free movement of workers, services and goods.

For Chapter 1, we begin with an overview of the European Union as it currently exists, before then setting out the story of its creation and development. The rationale here is that students will be better able to understand the significance of the history of the Union if they first understand what it is a history of. Brexit is considered both in the opening ‘current’ section, where information on membership of the Union includes the procedures set out in the Treaties for both accession and withdrawal, and in the final section of the chapter, which considers the future of the Union. All information on Brexit is correct as of 1 February 2020.

Chapter 2 then sets out the institutions of the EU, with information provided on their functions, composition and working procedures in turn, and with new material added on comitology and EU agencies. This provides students with a firm understanding of the actors that variously produce and are bound by the sources of EU law, which are examined in Chapter 3. This chapter includes information on the legislative procedures for enacting sources of EU law and fundamental rights. The last section of Chapter 3, which covers agreements made between the Union external entities, also includes brief mentions of Brexit in relation to withdrawal agreements and association agreements.

Chapter 4 then moves deeper into questions regarding the nature of EU law with an examination of the competences and supremacy of the Union. This chapter includes questions relating to the division of competences in the Brexit negotiations.

Chapters 5, 6 and 7 are focused on the functions of the Court of Justice of the European Union. These are preliminary rulings, judicial review of the validity of EU law and infringement proceedings against Member States, respectively. Chapter 5 also includes a section on the judicial methodology of the Court of Justice. New material has been added to Chapter 6 to further clarify the scope of a regulatory act under Article 263 TFEU. A new section has been added to Chapter 7 providing information and analysis on Article 7 TEU (concerning

enforcement of respect for Union values), which was first invoked against Poland in 2017 and Hungary in 2018.

Chapter 8 concludes Part 1 of the book with analysis of the principles of direct effect, indirect effect and state liability. While the history of the direct effect of EU law in the UK has been retained, brief comments are now also included on the future effect of EU law in the UK.

Part 2 on substantive areas of EU law begins with Chapter 9 on EU citizenship. This chapter now includes discussion of the controversial *Tjebbes* ruling of March 2019 on the withdrawal of EU citizenship. A new section has been added outlining freedom of movement after Brexit. Chapter 10 then examines the free movement of workers and includes a section on post-Brexit possibilities in this area. Chapter 11 on the free movement of services and the right to establishment includes analysis of new updates to the Posted Workers Directive. In Chapter 12 on the free movement of goods, we now take a less cautious approach to the Court of Justice's abandonment of the *Keck* formula in favour of the market access test. Again, a new section has been added to the end of the chapter to discuss the free movement of goods after Brexit.

For the most part, we have endeavoured to state the law as at 1 January 2020. However, information on Brexit has been updated so that it is correct as of 1 February 2020. This means that the UK is not counted as a current Member State of the European Union and it is assumed that the transition period will cease on 31 December 2020. Updates to the book are available online at go.pearson.com/uk/legalupdates.

We sincerely hope that this book will assist you in the delivery of your EU law module and that it will prove helpful to your students. We would be delighted to hear any feedback that could assist us with future editions.

Warmest regards,
Sonia Morano-Foadi and Jen Neller

Preface for students

Dear student,

Welcome to the thirteenth edition of *Law of the European Union*. We are delighted that this book has found its way into your hands. Before you get stuck in, we would like to take a moment to explain a few things about EU law and about this book that we think you might find helpful.

Brexit

At the time of writing, the UK is not a member of the European Union. This edition has been written **after** ‘exit day’ (31 January 2020), but **before** the transition period is due to end (31 December 2020). This means that the UK is not counted as a Member State of the European Union throughout this print edition, but that the future relationship between the UK and the EU has not yet been established. Therefore, while this book includes as much information on Brexit as possible, it is inevitable that further developments will have occurred between finalising this text and the time that you are reading it. Sections on Brexit have been written with this in mind and updates to the book are available at go.pearson.com/uk/legalupdates.

It is worth noting that ‘Brexit’ is a vague term. The phrase ‘after Brexit’ has been used variously in the media to refer to after the 2016 referendum, after the triggering of Article 50 TEU in March 2017, after ‘exit day’ on 31 January 2020 or after the end of the Brexit transition period on 31 December 2020. What is meant by ‘after Brexit’ therefore depends on the context and whether it is the political, institutional or legal situation that is being referred to.

Why study EU law?

If the UK is leaving the EU, then why should UK students continue to study EU law? While each law school or department is likely to have different ideas about this, we suggest three broad reasons.

- 1 EU law has had a **profound effect on UK law** that will not be erased by Brexit. The UK was a member of the EU for 47 years. Throughout the whole of that time, the UK Parliament enacted reams of legislation in order to transpose particular requirements of EU law into domestic legislation. Furthermore, UK policies, court judgments and practices across a wide range of policy areas have been required to conform to EU law. EU law is thus deeply embedded within UK law and practice and forms a core chapter within UK legal history, the impact of which will be relevant for decades to come.
- 2 With respect to the Brexit process and the future of UK law, an understanding of EU law has rarely ever been **in such high demand**. While it is initially expected that, for the most part, all EU law that has an effect in the UK will be automatically transposed into UK legislation, there will be some degree of opportunity, sooner or later, for such legislation to be reassessed. In areas of law that have been heavily affected by EU legislation, such as workers’ rights and product standards, there is the potential for significant changes to be up for negotiation. UK lawyers who understand the impact of the EU legacy will be best

placed to help reshape UK law. Additionally, regardless of whether Brexit is ‘hard’ or ‘soft’, any kind of future engagement with the European Single Market will require knowledge of this entity and its rules.

- 3 From a constitutional perspective, the European Union is a **unique legal entity**. There is no other international system that compares to it. Although other regional organisations have sought to emulate its successes, they have yet to establish the means of producing effective and enforceable controls and genuine integration to the extent that the EU has achieved. The study of EU law is thus the study of regional politics, international diplomacy and the constant negotiation of interests at all levels. The EU may therefore be deemed to be of considerable intellectual interest regardless of the UK’s relationship with it.

A couple of things you should know about EU law

As it is a unique legal entity, there are a couple of things that it would be helpful to note before your module begins. Attention to these details early on could give you a head start and help you to avoid common mistakes and confusion further down the line.

First, it is important to note the difference between the **Court of Justice of the European Union** (CJEU or sometimes ECJ) and the **European Court of Human Rights** (ECtHR). The former is an institution of the European Union, which sits in Luxembourg and rules on cases pertaining to EU law. The latter is an institution of the Council of Europe, which sits in Strasbourg and rules on cases pertaining to the European Convention on Human Rights (ECHR). The two courts are often confused with each other, especially when vague references are made in the media to ‘the European Court’, but it is important to understand that the Council of Europe is an entirely separate organisation to the European Union.

Secondly, it will be helpful to be aware that **the Treaties** of the European Union have been renamed and renumbered several times throughout the history of the EU. Since 2009, the primary Treaties have been called the **Treaty on European Union** (TEU) and the **Treaty on the Functioning of the European Union** (TFEU). It is from these two Treaties that all the powers of the EU institutions are derived. Prior to 2009, the TFEU was known as the Treaty on the European Communities (EC Treaty) and before that it was the Treaty on the European Economic Communities (EEC Treaty). The TEU has never been renamed, but both treaties have been renumbered. This means that the articles within them have moved around. For example, the article on the free movement of workers is currently Article 45 TFEU, but it was previously Article 39 EC Treaty, and before that it was Article 48 EEC Treaty. Don’t panic – you will not need to remember all of these outdated article numbers! However, if you are reading older cases, books or journal articles, you should be aware that the Treaty articles that they refer to may now have a different number. The link provided on page lxvi directs you to a table where you can see equivalent pre- and post-2009 article numbers.

About this book

This book is divided into two main sections: Part 1 on the constitutional and administrative law of the EU (Chapters 1–8) and Part 2 on substantive EU law (Chapters 9–12). There are a number of useful features included within each chapter that we would like to draw to your attention.

Each chapter begins with a list of **objectives**, which are designed to help you to navigate the chapter and to keep track of your progress. The objectives are followed by **key terms and concepts**, which provide you with a head start on understanding some of the specific terminology of the topic and which can be referred back to as required. Then, at the end of each

chapter, we have provided a brief **summary**, enabling you to rapidly revise the main points of the chapter and to identify any gaps in your knowledge. At the end of the book you can find a list of references and **further reading**, which sets out books and journal articles that you may find helpful for expanding your understanding of the complexities, controversies and uncertainties of the topic.

Within the main body of the chapters you will find **legislative excerpts**, which provide the exact wording of relevant legislation, **case boxes**, which set out the facts, ruling and significance of important cases, and **reflection boxes**, which draw attention to key issues. Where cases or issues are also mentioned elsewhere in the book, **cross-references** are provided in the margins. These features are designed to help you to navigate the law with relative ease and to help you to draw connections between the different topics. A variety of **diagrams** have also been provided throughout the book to complement the main text and reinforce your understanding of the topic. However, it should be noted that your greatest asset, as with all modules, will be the notes that you take. The features in this book are designed to support, but never to replace, your own notes and revision materials.

We sincerely hope that this book will help you to ace your EU law module and we would be delighted to hear any feedback that could assist us with future editions.

Best of luck and warmest regards,
Sonia Morano-Foadi and Jen Neller

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List of abbreviations

AFSJ	Area of Freedom, Security and Justice
AG	Advocate General
All ER	All England Law Reports
BGC	British Gas Corporation
CE	Compulsory Expenditure
CEE	Charge having an equivalent effect to a customs duty
CETA	Comprehensive Economic Trade Agreement
CTA	Common Travel Area
CFI	Court of First Instance
CFSP	Common Foreign and Security Policy
CJHA	Cooperation in Justice and Home Affairs
CLJ	Cambridge Law Journal
CML Rev	Common Market Law Review
COREPER	Committee of Permanent Representatives (<i>Comité des Représentants Permanents</i>)
DG	Directorate General
DSB	Dispute Settlement Board of the World Trade Organization (WTO)
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
ECR	European Court Reports
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
ECU	European Currency Unit
EEA	European Economic Area
EEC	European Economic Community
EESC	European Economic and Social Committee
EFTA	European Free Trade Association
EIB	European Investment Bank
EJML	European Journal of Migration and Law
ELJ	European Law Journal
EL Rev	European Law Review
EMU	Economic and Monetary Union
EP	European Parliament
EPL	European Public Law
ESCB	European System of Central Banks
EU	European Union

Euratom	European Atomic Energy Community
EUSS	European Union Settlement Scheme
FAO	Food and Agriculture Organisation of the United Nations
FTA	Free Trade Agreement
FYRM	Former Yugoslav Republic of Macedonia
GATT	General Agreement on Tariffs and Trade
GmbH	Gesellschaft mit beschränkter Haftung (Plc)
Harv Int LJ	Harvard International Law Journal
ICLQ	International and Comparative Law Quarterly
ICR	Industrial Cases Reports
IGC	Intergovernmental Conference
IRLR	Industrial Relations Law Reports
JCMS	Journal of Common Market Studies
JHA	Justice and Home Affairs
JSWFL	Journal of Social Welfare and Family Law
LQR	Law Quarterly Review
MAFF	Ministry of Agriculture, Fisheries and Food
MEE	Measure having Equivalent Effect to quantitative restrictions
MEP	Member of the European Parliament
MEQR	Measure having Equivalent Effect to Quantitative Restrictions
MLR	Modern Law Review
NATO	North Atlantic Treaty Organization
NCE	Non-Compulsory Expenditure
OECD	Organisation for Economic Cooperation and Development
OJ	Official Journal of the European Union
OLAF	European Anti-Fraud Office (Office Européen de Lutte Anti-Fraude)
QB	Queen's Bench
QMV	Qualified Majority Voting
QR	Quantitative Restriction
SEA	Single European Act
SI	Statutory Instrument
SIRENE	Supplementary Information Request at the National Entry
SIS	Schengen Information System
SPUC	Society for the Protection of the Unborn Child
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
ToA	Treaty of Amsterdam
ToL	Treaty of Lisbon
ToM	Treaty of Maastricht
ToN	Treaty of Nice
WHO	World Health Organization
WLR	Weekly Law Reports
WTO	World Trade Organization
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: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_6&format=PDF

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Part 1

Constitutional and administrative law of the European Union

- 1** An introduction to the European Union
- 2** Institutions of the European Union
- 3** Sources of European Union law
- 4** Competence and supremacy of the Union
- 5** Judicial methodology and preliminary rulings of the Court of Justice
- 6** Review of the legality of Union acts
- 7** Infringement proceedings against Member States
- 8** Direct effect, indirect effect and state liability

Chapter 1

An introduction to the European Union

Learning objectives

At the end of this chapter you should understand:

- 1** The basic features of the Union and Union law as it exists today.
- 2** How the Union came to take its current form, including how and why the European Communities were established, their aims and objectives and their successes and challenges.
- 3** The changes brought by the Treaty of Lisbon.
- 4** Ways in which the Union might develop in the future.